

[Form of Energy Services Agreement tailored for the service of multiple healthcare or education facilities in Nigeria owned by the Nigerian State government.]

[Date]

Energy Services Agreement

between

[●]
as ESCO

and

[●]
as Employer¹

¹ NTD: This assumes a central health or educational ministry can act as customer for all sites, as is expected for Nigeria. If this is not the case, there may need to be two customer parties, being the central ministry responsible for payment and the individual facilities responsible for the obligations regarding the sites and energy usage, which is the approach in the Benin template.

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EXHIBITS

Exhibit A	Description of the Facilities
Exhibit B	Description of the Sites
Exhibit C	Description of the Energy Systems
Exhibit D	Specified Energy, Availability Payment Deductions, Verification Process ²
Exhibit E	Insurance Requirements
Exhibit F	Reporting Requirements
Exhibit G	Form of Direct Agreement
Exhibit H	Form of Guarantee
Exhibit I	Coverage of ESCO Legal Opinion
Exhibit J	Cover of Employer & Guarantor Legal Opinions
Exhibit K	Form of Performance Monitoring Agreement
Exhibit L	Site Studies and Inspections
Exhibit M	Financing Documents

² NTD: Monthly payments to ESCO will be reduced pro-rata based on the level of service delivered. The Availability Payment will be subject to deductions if (a) less than the full quantity (kWp) is delivered by any Energy System (thus working as LDs but avoiding the need for Customer's funds to be disbursed for services not performed/energy not delivered) or (b) the volume of such fixed quantity that is generated using diesel (fuel used per kWp delivered) exceeds the permitted percentage in any applicable period. These KPIs will be verified by the Verification Agent. Customer will submit data electronically to the Verification Agent.

This Energy Services Agreement (this “**Agreement**”), dated as of [●] (the “**Effective Date**”), is entered into between **ESCO**

[**NAME OF ENERGY SERVICE COMPANY**], an energy service company operating in the Federal Republic of Nigeria, duly registered and licensed to operate energy systems in Nigeria (hereinafter referred to as the "ESCO" or the "Service Provider" which expression shall, where the context so admits, include its successors-in-title and assigns) of the first part;

AND

[**NAME OF STATE GOVERNMENT**], an existing State created under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) having its seat of Government at [address], represented by the [Head of State Agency],[Name of State Agency], [address of Employer] (hereinafter referred to as "Employer" which expression shall, where the context so admits, include its successors-in-title and assigns) of the second part;

The Employer and the ESCO are hereinafter collectively referred to as the "Parties" and individually as a "Party".

W I T N E S S E T H:

WHEREAS, ESCO is an energy-as-a-service provider that deploys power systems in Nigeria;

WHEREAS, Employer owns and operates certain [Health center /school] facilities in Nigeria and wishes to engage ESCO to design, construct, operate and maintain [solar or other]³ energy systems to be co-located with such facilities;

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which ESCO will provide such services to Employer.

The Parties wish to set out their respective rights and obligations in respect of the supply of electricity services and related operation and maintenance services (including performance standards, payments, monitoring and reporting) for the Site, and to align this Energy Service Agreement with any parallel Grant Agreement executed between REA and ESCO.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, Employer and ESCO hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Defined Terms. Wherever used in this Agreement, the following terms have the following meanings:

“**Abandonment**” means:

- (a) during the DB Works stage, the voluntary cessation of the construction of the DB Works, or the withdrawal of all, or substantially all, personnel by ESCO (or ESCO contractors)

³ NTD: Adjust as needed based on available technologies.

from the Site or Facility in either case, for a period of more than thirty (30) days, for reasons other than a Employer Fault, Relief Event, or an event of Force Majeure; and

(b) at any time from the Commercial Operation Date, the voluntary cessation of the operation or maintenance of the Energy Systems, or the withdrawal of all, or substantially all, personnel by ESCO (or ESCO contractors) from the Site or Facility in either case, for a period of more than thirty (30) days, for reasons other than a Employer Fault, Relief Event, or an event of Force Majeure.

“**Account Balances**” means all amounts standing to the credit of any bank account held by or on behalf of ESCO, or the value of any letter of credit or similar instrument issued in lieu of any bank account held or required to be held by or on behalf of ESCO the reimbursement of which is not an obligation of ESCO, at the Termination Date.

“**Adverse Site Condition**” means any condition or characteristic of any Site, or any substance, item or organism found at, near or on any Site or such location that could reasonably be expected to materially and adversely impact the performance of ESCO’s obligations under this Agreement, including [(i) sinkholes or other defects in the underlying soil at any Site; (ii) the discovery at, near or on any Site or such location of Archaeological Remains, Geological Obstructions,]⁴ Third Party Environmental Conditions [or Endangered Species]⁵; (iii) the discovery of existing utilities or structures on any Site or such location not identified in the Site Studies or in a condition different to that specified in the Site Studies; or (iv) performance of work in or adjacent to any Site or such location that materially disrupts ESCO’s ESCOuse of any Site or such location; provided, however, that Adverse Site Condition shall not include Excluded Site Conditions.

“**Affiliate**” means, in respect of any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such first Person.

“**Affiliate Contractor**” means any contractor that is an Affiliate of ESCO that performs Energy Services on behalf of ESCO.

“**Agreement**” has the meaning given to such term in the preamble.

“**Applicable Legal Requirements**” means (a) Corrupt Practices Laws (b) any law, act, rule, code, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of, or by any Governmental Authority having jurisdiction over Employer , Employer’s ownership or operation of a Site or Facility, ESCO, ESCO’s ownership and operation of an Energy System or ESCO’s performance of the Energy Services; (c) all Employer Permits and (d) all ESCO Permits.⁶

“**Applicable Sales**” has the meaning given to such term in Section 10.02(a) (*Sharing of Third-Party Revenues*) of this Agreement.

“**Applicable Standards**” means with respect to the Parties, or any of the performance obligations of any of the Parties under this Agreement, as may be adjusted from time to time as a result of a Change in Law/Standard (subject to Article XIV (*Relief Events*) of this Agreement):

(a) standards, practices, methods and procedures to a reasonable commercial standard, conforming to Applicable Legal Requirements and consistent with that degree of skill and care,

⁴ NTD: Applicable if the Sites are not roofs.

⁵ NTD: Applicable if the Sites are not roofs.

⁶ NTD: To the extent applicable law requires specific local content that may be encompassed in Applicable Legal Requirements. To the extent that local content is to be assessed for scoring of bids beyond Applicable Legal Requirements, that should be in the bidding documents.

diligence and prudence which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

(b) practices, methods and acts engaged in or approved by a majority of the active participants in the electric utility industry in the country and geographic region where the Sites are located;

(c) practices, methods and acts that, in the exercise of reasonable judgment based on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition;

(d) standards, practices, methods and procedures established from time-to-time by the NERC, any relevant State Electricity Regulatory Authority in Nigeria, or any other applicable Governmental Authority; and

(e) the standards of licensure set by the Council for the Regulation of Engineering in Nigeria.

“Applicable Utility Company” means, in respect of any Facility, the local electric distribution company whose service area includes the location of such Facility.

[**“Archaeological Remains”** means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites and human remains and other similar remains of archaeological interest discovered on any part of the Site.]⁷

“Availability Payment” has the meaning given to such term in Section 9.01 (*Availability Payment*) of this Agreement.

“Backup Storage Amount” has the meaning given to such term in **Error! Reference source not found.** (*Back-up Fuel*) of this Agreement.

“Building Permit” means, in respect of any Facility, a certificate issued by a relevant State’s planning authority, pursuant to such State’s urban and regional planning law, authorizing the implementation of the relevant Energy System on the relevant Site associated with such Facility.

“Business Day” means a day other than a Saturday, Sunday, or official federal holiday in Nigeria.

“Change in Law/Standard” means, following the Effective Date, (a) the coming into effect of, or any change, amendment or modification (including repeal) to, any Applicable Legal Requirements (excluding Applicable Legal Requirements of general application with respect to Taxes, it being understood that any change in Applicable Legal Requirements with respect to Taxes shall not be deemed of general application if it is solely directed at, and the effect of which is solely borne by, ESCO or operators of energy assets in Nigeria) or Applicable Standards, including any interpretation thereof, (b) the imposition of new requirements by Governmental Authorities in connection with any Employer Permit or ESCO Permit, including in connection with any change in permitted land use or zoning classification of any Site or Facility (c) any change in the nature or severity of the actions typically taken by a Governmental Authority in compliance with Applicable Legal Requirements or (d) an Expropriation/Nationalization Event.

⁷ NTD: Applicable if Sites are not roofs.

“Change Proposal” means a written proposal submitted to Employer by ESCO in connection with an Employer Change or an ESCO Change, as the case may be, pursuant to Section 13.03 (*Change Implementation Process*) of this Agreement.

“Claim Notice” has the meaning given to such term in Section 14.02(b) (*Relief Event Claim Process*) of this Agreement.

“Claimant” has the meaning given to such term in Section 22.02(b) (*Dispute Resolution*) of this Agreement.

“Commercial Operation” means, with respect to any Energy System, that the DB Work related to such Energy System has been completed, such Energy System has been commissioned and such Energy System is capable of being operated to deliver the Specified Energy associated therewith in accordance with this Agreement.

“Commercial Operation Date” means, with respect to any Energy System, the date ESCO provides written notice to Employer pursuant to Section 5.02 (*Construction Schedule*) that such Energy System has achieved Commercial Operation.

“Commercial Operation Longstop Date” means [*date*].

“Confidential Information” includes this Agreement, any pricing information relating to this Agreement, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the engineering, design, construction, operation and maintenance of the Energy Systems or of Employer’s or ESCO’s business.

“Contractor Breakage Costs” means Losses that have been or will be reasonably and properly incurred by ESCO under a contract as a direct result of the termination of this Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(a) the Losses are incurred in connection with the Energy Systems and in respect of the Energy Services required to be provided or carried out, including:

(i) Any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;

(ii) Any expenditure incurred in anticipation of the provision or completion of Energy Services in the future; and

(iii) The cost of demobilization including the cost of any relocation of equipment used in connection with the Energy Systems;

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm’s length basis; and

(c) ESCO and the relevant contractor have each used their reasonable efforts to mitigate such Losses.

“Control” means, in respect of any Person, ownership, directly or indirectly, of more than fifty percent (50%) of the shares (or its equivalent) conferring the right to vote at a general meeting (or its equivalent) of such Person or otherwise to appoint the majority of the directors or other governing body of such Person, and the expressions “Controls” and “Controlled” shall be construed accordingly.

“**Corrupt Practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

“**Corrupt Practices Laws**” means (a) the Corrupt Practices and Other Related Offences Act, 2000, Act No. 5 of 2000, (b) the Economic and Financial Crimes Commission (Establishment) Act, 2004, Act No. 1 of 2004, (c) the United States Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1 et seq., (d) the United Kingdom Bribery Act (2010), and (e) any other Applicable Legal Requirements relating to bribery, corruption, kick-backs, or similar business practices, in each case, to the extent applicable.

“**Cost to Complete**” means, without double counting:

(a) those costs (internal and external) that the Employer reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the Employer to achieve the Final Energy System Commercial Operation Date, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(b) costs that the Employer reasonably and properly projects that it will incur in achieving Final Energy System Commercial Operation Date; plus

(c) any other Losses that the Employer would, but for the termination of this Agreement, not have incurred prior to the Final Energy System Commercial Operation Date; minus

(d) any insurance proceeds available to the Employer for the purposes of achieving the Final Energy System Commercial Operation Date.

“**Council for the Regulation of Engineering in Nigeria**” means the regulatory body that governs the practice of engineering in Nigeria.

“**Employer**” has the meaning given to such term in the preamble.

“**Employer Change**” has the meaning given to such term in Section 13.01 (*Employer Change*) of this Agreement.

“**Employer Default Termination Amount**” means an amount equal to:

(a) to the extent it is a positive amount, (i) all amounts shown in the Financial Model payable by ESCO from the Termination Date to the end of the Term (had the termination not occurred), either in dividends or other distributions on the share capital or repayments in respect of share capital of ESCO or as payments of interest or repayments of principal made by ESCO under funding agreements relating to equity investor debt, each amount discounted back at the [*discount rate*]⁸ (as of the Termination Date) from the date on which it is shown to be payable in the Financial Model to the Termination Date, it being understood that no amounts shall be payable in respect of Deferred Equity Amounts; plus

(b) Any grants received by ESCO that are required to be repaid; plus

(c) Lenders’ Liabilities; plus

(d) Contractor Breakage Costs; plus

⁸ NTD: The discount rate is typically the equity IRR set out in the Financial Model less a specified percentage if termination occurs after completion.

(e) Redundancy Payments; minus

(f) Account Balances; minus

(g) All insurance proceeds payable to ESCO (or should have been payable to ESCO but for ESCO's breach of an obligation under this Agreement related thereto) on or after the Termination Date, other than any insurance proceeds received by ESCO on or after the Termination Date for physical damage to any Energy System that occurred prior to the Termination Date (which proceeds shall be remitted by ESCO to the Employer unless it is for the cost of Energy Services authorized by the terms of this Agreement and completed by ESCO prior to the Termination Date, in which case ESCO shall be permitted to retain same).

"Employer Event of Default" has the meaning given to such term in Section 18.03 (*Events of Employer r Default*) of this Agreement.

"Employer Fault" means any of the following events or circumstances:

(a) an act or omission that constitutes (or with the giving of notice and/or passage of time, would constitute) a Employer Event of Default;

(b) a breach by Employer of its obligations under this Agreement; and

(c) any negligence, violation of Applicable Legal Requirements or willful misconduct of Employer;

(d) except, in each case, to the extent arising from any breach by ESCO of ESCO's obligations under this Agreement, any negligent act or omission of ESCO or the violation of Applicable Legal Requirements by, or willful misconduct of, ESCO.

"Employer Indemnitee" has the meaning given to such term in Section 20.01 (*Indemnification by ESCO*) of this Agreement.

"Employer Offtake Data" has the meaning set forth in the definition of Offtake Data.

"Employer Permits" means all approvals, permits, inspections, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) provided by any Governmental Authority which are required under the Applicable Legal Requirements to be obtained by **Employer** from time to time in connection with Employer's ownership or operation of a Site or Facility or ESCO's performance of the Energy Services.

"Data" means any information, data, records or other content, in any form or medium.

"DB Work" means all the work and services related to designing, building, constructing, installing, testing, commissioning and completing each of the Energy Systems required to be provided by ESCO to Employer under this Agreement prior to the Commercial Operation Date of such Energy System.⁹

"Decommission Period" has the meaning given to such term in Section 11.03 (*Removal Following the Expiration Date; Option to Purchase*) of this Agreement.

⁹ NTD: Specific provisions on goods, materials and service procurement, including those depending on local regulation and local content requirements, should be specified in the exhibits and schedules (and particularly in Exhibit C- Description of Energy Systems) or in other bidding documents.

“Deferred Equity Amounts” means, on any date, any amount of unfunded equity that has been committed to ESCO (including commitments to provide an equity investment or equity member debt) but has not been contributed or caused to be contributed to ESCO.

“Delivery Point” means, in respect of each Energy System, the points on the Site associated with such Energy System that is identified in Exhibit B (*Description of the Sites*) as the “Delivery Point” and “Delivery Points” means all or any of them, as the context requires.

“Dispute” has the meaning given to such term in Section 22.02(a) (*Dispute Resolution*) of this Agreement.

“Dispute Notice” has the meaning given to such term in Section 22.02(b) (*Dispute Resolution*) of this Agreement.

“Effective Date” has the meaning given to such term in the preamble.

“Emergency” means a circumstance that requires a Party to take immediate action to prevent, correct or protect an Energy System and/or Facility from substantial loss or to prevent or minimize an imminent loss of availability.

“Endangered Species” means any species of animal or plant wildlife listed as endangered under the Endangered Species (Control of International Trade and Traffic) Act 1985.

“Endangered Species (Control of International Trade and Traffic) Act 1985” means the principal law regulating the conservation and management of Nigeria’s wildlife and the protection of some of her endangered species in danger of extinction.

“Energy Services” means ESCO’s performance of the DB Work and the O&M Work in accordance with this Agreement.

“Energy Services Standards” has the meaning given to such term in Section 7.01 (*Standard of Performance*) of this Agreement.

“Energy System” means each of the energy systems to be designed, constructed, operated and maintained by ESCO at the Sites at each Facility pursuant to this Agreement comprising the components as more particularly described in Exhibit C (*Description of the Energy Systems*) and “Energy Systems” means all or any of them, as the context requires.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, attributes and allowances of any kind (including all Renewable Attributes or RECs), howsoever entitled and whether arising before, on, or after the Effective Date, attributable to an Energy System or the electric capacity or other generator-based products produced therefrom, including (i) any avoided emissions of pollutants to the air, soil or water, such as sulphur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto; (ii) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and any rights related thereto; (iii) any reporting rights relating to the reduction of “greenhouse gases” under any federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates;” and (iv) any credits, certificates or similar instruments issued pursuant to a federal or state renewable portfolio

standard or analogous program. Notwithstanding the foregoing, and for the avoidance of doubt, Environmental Attributes shall not include any Renewable Energy Incentives.¹⁰

“**Environmental Condition**” means a ESCO Environmental Condition or a Third Party Environmental Condition, as the case may be.

“**Environmental Impact Assessment Certificate**” means, in respect of any Site, a certificate issued by the Federal Ministry of Environment pursuant to the Environmental Impact Assessment Act, 1992 and such regulations and guidelines made pursuant thereto, authorizing the implementation of the relevant Energy System to be located on such Site.

“**Environmental Impact Assessment Act 1992**” means the principal law regulating the undertaking of environmental impact assessments for all relevant development projects.

“**ES Loss**” has the meaning given to such term in Section 12.03 (*Loss of the Energy Systems*) of this Agreement.

“**Exchange Rate**” means [(i) the applicable sell rate for the conversion of USD to Naira published by the Central Bank of Nigeria on the Business Day immediately prior to the date of payment or the most recent Business Day on which such rate is published if such rate remains applicable, or, if such rate is not published by the Central Bank of Nigeria, (ii) on the Business Day immediately prior to the date of payment or the most recent Business Day on which such rate is published if such rate remains applicable, the Investors and Exporters FX window exchange rate (commonly referred to as NAFEX) published on the FMDQ’s website (fmdqgroup.com), or any replacement website which displays that rate, or on the appropriate page of such other platform or information service which publishes that rate in place of FMDQ (as may be prescribed from time to time by the Central Bank of Nigeria), or, if such rate is no longer available at such sites for any reason, the rate reasonably agreed in writing between the Parties.]¹¹

“**Excluded Site Conditions**” means any condition or characteristic of any Site, or any substance, item or organism found at, near or on any Site, identified in any of the Site Studies.

“**Expiration Date**” means either (i) the last day of the Initial Term or (ii) if this Agreement is extended pursuant to Section 2.02 (*Renewal Term*), the last day of the Renewal Term.

“**Expiration Date Payment Amount**” means the depreciated asset value of the Energy Systems on the Expiration Date.

“**Expropriation/Nationalization Event**” means any action by which any Governmental Authority condemns, nationalizes, seizes, or otherwise expropriates any substantial portion of the assets or shares of ESCO or takes any action that would prevent ESCO from carrying on any material part of its business or operations.

“**Extra Work**” means any work in the nature of additional DB Work or O&M Work, altered DB Work or O&M Work, delayed DB Work or O&M Work or deleted DB Work or O&M Work, which is directly attributable to the occurrence of a Relief Event and absent the Relief Event would not be otherwise required by this Agreement, including any additional work to address the Relief Event.

“**Extra Work Costs**” means the incremental increase in costs attributable to Extra Work.

¹⁰ NTD: Local counsel has confirmed that Environmental Attributes currently are not applicable but given the prospect it will be applicable in the future, the provision should be retained. Technical advisors have noted that there is an existing voluntary market for carbon trading in Nigeria which could serve as an incentive for investors.

¹¹ NTD: Adjust if used for a template in countries other than Nigeria.

“**Facility**” means those [schools][hospitals] owned and operated by Employer described in Exhibit A (*Description of the Facilities*) and “**Facilities**” means all or any of them, as the context requires.

“**Federal Ministry of Environment**” means the Governmental Authority responsible for issuing the Environmental Impact Assessment Certificate in Nigeria.¹²

“**FGN**” means the Federal Government of Nigeria, and where the context admits, includes or any person, body agency, bureau or otherwise empowered by, or acting under authority granted by the Federal Government of Nigeria or any ministry thereof.¹³

“**Final Energy System Commercial Operation Date**” means the Commercial Operation Date of the last Energy System to achieve Commercial Operation.

“**Financial Model**” means the financial model setting out the financial forecasts in respect of the Energy Systems and the performance of the Energy Services, which has been audited by an independent model auditor acceptable to the Employer and delivered by ESCO to Employer on the Effective Date.

“**Financing Documents**” means the documents identified in Exhibit M (*Financing Documents*) to this Agreement, and any other document jointly designated by the Parties as a Financing Document.¹⁴

“**Force Majeure**” means any event or occurrence not within the reasonable control of ESCO, which precludes ESCO from carrying out, in whole or in part, ESCO’s obligations under this Agreement, provided, however, that such event or occurrence (or the effects of such event) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the ESCO, including: acts of God; hurricanes; tornadoes; fires; epidemics; pandemics; landslides; earthquakes; floods; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in such Governmental Authority’s regulatory or judicial capacity (provided, however, that a violation by ESCO of Applicable Legal Requirements shall not constitute an event of Force Majeure); civil unrest, insurgency or protests; military action; war, whether or not declared; acts of terrorism; acts of sabotage; or a shortage or unavailability of equipment, parts, materials, electricity, natural gas, water, fuel or sanitary sewage capacity, whether or not caused by a supplier of such commodities.

[“**Geological Obstructions**” means the geological make-up of any Site or the location and/or size of any natural foundations, infrastructures, or manmade obstructions on any Site which disrupt the progress of the Energy Services.]¹⁵

“**Governmental Authority**” means any federal, state, municipal or local governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement.

“**Guarantee Agreement**” means a guarantee agreement substantially in the form of Exhibit H (*Form of Guarantee*) entered into on or about the date hereof by the Guarantor for the benefit of ESCO.

“**Guarantor**” means FGN acting by and through the Finance Minister of Nigeria.¹⁶

¹² NTD: Adjust if used for a template in countries other than Nigeria.

¹³ NTD: Adjust if used for a template in countries other than Nigeria.

¹⁴ NTD: If Holdco debt supports the Projects, those debt instruments should be listed among the Financing Documents to have the relevant Lender Liabilities covered.

¹⁵ NTD: Applicable if Sites are not roofs.

¹⁶ NTD: Adjust if used for a template in countries other than Nigeria.

“Hazardous Environmental Condition” means the presence on, in or under the Site, of Hazardous Material (or environmental media contaminated with Hazardous Material) and/or the presence on, in or under any adjacent off-Site area of Hazardous Material (or environmental media contaminated with Hazardous Material) that shall have migrated to or from the Site, in each case at concentration levels:

- (a) at which any relevant Governmental Authority requires investigation, monitoring, reporting, institutional control, engineering control, removal, remedial action, disposal or management of such Hazardous Material as a hazardous or solid waste;
- (b) which exceed any relevant Governmental Authority standards or screening levels, or exceed naturally-occurring or background concentrations; or
- (c) which would require personnel protective equipment, monitoring, disposal or training to comply with Applicable Legal Requirements and, if more protective of the environment, applicable Performance Standards governing such Hazardous Material.

“Hazardous Materials” means any substance, material, or waste which is (a) defined now or hereafter as a “pollutant,” “contaminant,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “industrial waste,” or other similar term or phrase under any Applicable Legal Requirement, (b) any substance, the presence of which is on, under, or in any Facility, or contained in any structure thereon, is prohibited or regulated by any Applicable Legal Requirement or under relevant IFC Performance Standards or which requires investigation, removal, response or remediation under any Applicable Legal Requirement, and (c) petroleum or any fraction or by-product thereof, asbestos, any polychlorinated biphenyl, urea formaldehyde foam insulation, radon or any other radioactive or explosive substance, methane, volatile hydrocarbons, or an industrial solvent.

“Initial Term” means the period from the Effective Date until the date that is four/five years from the Final Energy System Commercial Operation Date.

“Insolvency Event” means, with respect to any Person, any of the following events:

- (a) a receiver, receiver manager, liquidator or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of such Person;
- (b) the filing or commencement of a petition by such Person for protection under applicable laws providing for bankruptcy, insolvency or similar protection against creditors or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of such Person or of any substantial part of its property;
- (c) the filing or commencement of an involuntary case under applicable laws providing process for bankruptcy, insolvency or similar protection against creditors and such case is not dismissed within sixty (60) days;
- (d) an assignment for the benefit of all the creditors of such Person (whether made voluntarily by such Person or rendered in an involuntary proceeding), or the winding up or liquidation of the affairs of such Person;
- (e) the entry of a decree or order for relief by a court or regulatory authority having jurisdiction in respect of such Person in an involuntary case under relevant bankruptcy laws, or
- (f) such Person admitting in writing such Person’s inability to pay such Person’s debts generally as they become due, becoming insolvent, or ceasing to carry on business.

“Insurance Providing Party” means, as the context may require, ESCO or Employer with respect to the Required Insurance.

“Insurer” means [●].

“Intellectual Property” means any or all of the following and all rights arising out of or associated therewith:

(a) national, international, and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;

(b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and Employer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;

(c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;

(d) industrial designs and any registrations and applications therefor throughout the world;

(e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;

(f) data and data collections and all rights therein throughout the world;

(g) moral and economic rights of authors and inventors, however denominated, throughout the world; and

(h) any similar or equivalent rights of any kind to any of the foregoing anywhere in the world, including rights to sue, recover damages or other amounts for, and enjoin the past, present or future infringement, misappropriation, dilution, misuse, or other violation of any of the foregoing anywhere in the world.

“Intellectual Property Rights” means any personal and property rights to the Intellectual Property held by a Party, whether patented, trademarked, copyrighted, or otherwise.

“IVA” means the Verification Agent.

“**IVA Fault**” means the occurrence and continuance of any of the following events or circumstances [or any other event or circumstances that would permit the Verification Agent to be dismissed for cause under the Performance Monitoring Agreement]:¹⁷

(a) Verification Agent fails, whether by act or omission, to provide or is materially delayed (other than by force majeure) in providing any material portion of the Verification Agent Services, which failure of performance is not cured within thirty (30) days of written notice from either ESCO or Employer;

(b) Verification Agent causes material damage to an Energy System or Measurement Device;

(c) any gross negligence, bad faith, willful misconduct or material violation of Applicable Legal Requirements of Verification Agent;

(d) any Insolvency Event with respect to the Verification Agent; or

(f) any representation, warranty or statement of Verification Agent made in the Performance Monitoring Agreement or any certificate, report or other writing delivered by Verification Agent thereunder shall be false in any material respect as of the date made and such false representation shall not have been cured or waived within thirty (30) Business Days after an officer of Verification Agent acquiring knowledge thereof (in which case, Verification Agent shall provide prompt notice thereof to each of the other parties hereto).

“**Late Payment Rate**” means the Prime Rate plus [three percent (3%)].

“**Lenders’ Liabilities**” means, at the relevant time, the aggregate of (without double counting), all principal, interest (including capitalized and default interest under the Financing Documents,¹⁸ but with respect to default interest, only to the extent that it arises as a result of the Employer making any payment later than the date that it is due under this Agreement or any other default by the Employer under this Agreement), banking fees, premiums or reimbursement obligations with respect to financial insurance policies, agent and trustee fees, costs and expenses properly incurred owing or outstanding to the lenders of ESCO by ESCO (or, if accepted as finance documents by a holding company of ESCO) under or pursuant to the Financing Documents on the date on which the relevant Termination Payment is received by ESCO, including any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that ESCO (or, if accepted as finance documents by a holding company of ESCO) must pay, or that may be payable or credited to ESCO (or, if accepted as finance documents by a holding company of ESCO), under the Financing Documents or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of the debt outstanding under the Financing Documents prior to its scheduled payment date.

“**Losses**” means any loss, damage, injury, liability, obligation, cost, expense (including attorneys’, accountants’ and expert witnesses’ fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, or fine.

“**Maintenance Rectification Costs**” means, in respect of any early termination of this Agreement that occurs after the Final Energy System Commercial Operation, all Losses that the Employer determines

¹⁷ NTD: Overall, this definition should match the grounds for which the Verification Agent may be dismissed under the Performance Monitoring Agreement.

¹⁸ NTD: If Holdco debt supports the Projects, those debt instruments should be listed among the Financing Documents to have the relevant Lender Liabilities covered.

it is reasonably likely to incur as a direct result of the termination of the Agreement, including (without double counting):

- (a) Those costs (internal and external) that the Employer is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with the Employer to carry out the O&M Work, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation, and execution of relevant contracts; and
- (b) Those costs reasonably projected to be incurred by the Employer in relation to:
 - (i) Remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective Energy Services;
 - (ii) Rectification or cure of any breach of this Agreement by ESCO; and
 - (iii) Carrying out of all other matters necessary to ensure that within a reasonable period after the Termination Date, the Energy Systems comply with the Energy Services Standards and have a reasonable prospect of continuing to perform to the same standard and cost that it would have continued to perform at had this Agreement not been terminated.

“**Measurement Device**” has the meaning given to such term in Section 6.03 (*Measurement and Monitoring*) of this Agreement.

“**Net Lenders’ Liabilities**” means the amount (without double counting) as follows:

- (a) Lenders’ Liabilities; minus
- (b) Account Balances; minus
- (c) insurance proceeds payable to ESCO (or that should have been payable to ESCO but for ESCO’s breach of an obligation under this Agreement related thereto) on or after the Termination Date (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

“**NERC**” means the Nigerian Electricity Regulatory Commission.¹⁹

“**No Default Termination Amount**” means an amount equal to:

- (a) the aggregate amounts of equity actually contributed or caused to be contributed by the shareholders to ESCO as of the termination date, less dividends and other distributions paid to the equity investors in ESCO (save to the extent deducted below), which shall never be a negative number; plus
- (b) the outstanding equity investor debt less an amount equal to the aggregate of all payments of interest made by ESCO under any funding agreements relating to equity investor debt prior to the Termination Date (save to the extent deducted below); minus
- (c) Any grants received by ESCO that are not required to be repaid; plus
- (d) Lenders’ Liabilities; plus

¹⁹ NTD: Adjust if used for a template in countries other than Nigeria.

- (e) Contractor Breakage Costs; plus
- (f) Redundancy Payments; plus
- (g) Account Balances; minus

(h) All insurance proceeds payable to ESCO (or should have been payable to ESCO but for ESCO breach of an obligation under this Agreement related thereto) on or after the Termination Date, other than any insurance proceeds received by ESCO on or after the Termination Date for physical damage to any Energy System that occurred prior to the Termination Date (which proceeds shall be remitted by ESCO to the Employer unless it is for the cost of Energy Services authorized by the terms of this Agreement and completed by ESCO prior to the Termination Date in which case ESCO shall be permitted to retain same);

provided, that, if such amount is payable in connection with the removal of one or more Energy Systems as permitted under Section 3.04 (*Employer's Options Relating to Grid Interconnection*), the amount then payable shall be the result of the above formula times the proportion that the applicable [monthly/quarterly]²⁰ Availability Payments(s) related to the removed Energy System(s) bears to the aggregate amount of all applicable monthly Availability Payments(s) in place prior to such removal and future No Default Termination Amounts, if any, shall be adjusted to reflect such prior partial payment.

“Non-Insurance Providing Party” means the Party that is not the Insurance Providing Party.

“O&M Work” means all the work related to the operation, management, administration, maintenance, repair, restoration, renewal and replacement of components of each of the Energy Systems required to be provided by ESCO to Employer under this Agreement on and after the Commercial Operation Date of such Energy System.

“Offtake Data” means, with respect to Employer, the following Data that is collected, extracted, or downloaded (whether before or after the Commercial Operation Date of any System) by or through the Energy Services or otherwise for the purpose of delivering the Energy Services: (a) Data collected, extracted, or downloaded from the Utility’s utility meter for such Employer (**“Utility Offtake Data”**) and (b) any of the following: (i) submetering Data collected, extracted, or downloaded from Employer’s meters; (ii) power bills Data and historical interval Data, in each case, collected, extracted, or downloaded from Employer’s or Utility’s document management systems; (iii) planned maintenance schedule and downtimes and Facility operating modes, in each case, collected, extracted, or downloaded from Employer’s maintenance and operation systems; (iv) building information modelling Data, building management system Data (e.g., temperature), and occupancy schedules, in each case, collected, extracted, or downloaded from Employer or its building management system (collectively, (i) through (iv), **“Employer Offtake Data”**).²¹

“Parties” has the meaning given to such term in the preamble.

“Performance Monitoring Agreement” means a performance monitoring agreement substantially in the form of Exhibit K (*Form of Performance Monitoring Agreement*) entered into on or about the Effective Date by and among the Employer, ESCO and the Verification Agent.

“Performance Standards” means the IFC Performance Standards (January 1, 2012).

“Permitted Liens” means any liens (whether or not of public record) not interfering with usage of the Facility, and applicable zoning, building and other laws, regulations and ordinances, and any violations

²⁰ NTD: To be adjusted on a case-by-case basis.

²¹ NTD: Data requirements should be reviewed by operators of any monitoring platform and by the IVA.

or any encroachments thereof, which do not materially and adversely affect, financially or otherwise, the exclusive rights granted to ESCO pursuant to this Agreement, and the ability of ESCO to provide the Energy Services as contemplated by this Agreement.

“Permitted Third Party Off-taker” means any Person receiving electricity from an Energy System that is not a federally excluded, suspended or disbarred Person.

“Person” means an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, business trust or a government or agency or a political subdivision thereof or other entity or organization.

“Prime Rate” means the rate of interest published from time to time by *The Wall Street Journal* (or any successor publication) as the “prime rate” of interest. If *The Wall Street Journal* or a successor publication no longer publishes a prime rate of interest, then the “Prime Rate” will be the prime rate of interest announced from time to time by a national banking association, doing business in the United States of America, selected by ESCO and to which Employer has no reasonable objection.

“Process” means to take any action or perform any operation or set of operations that the Energy Services are capable of taking or performing on or with respect to any Data, including to collect, extract, download, receive, input, upload, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, block, erase, destroy, truncate, copy, adapt, alter, translate or make other derivative works or improvements of, process, retrieve, output, consult, use, perform, display, aggregate, exploit, analyze, reproduce, distribute, disseminate, transmit, submit, post, transfer, or disclose or otherwise provide or make available.

“Redundancy Payments” means the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by ESCO to its employees under law, or under the terms and conditions of ESCO’s employment agreements with its employees, or under secondment agreements or management services agreements pursuant to which ESCO staffs the Energy Services, as a direct result of termination of the Agreement pursuant to Section 19.01 (*Termination by ESCO due to Employer Default*), Section 19.03 (*Termination by Employer for Convenience*) or Section 19.04 (*Termination following an Extended Relief Event*), as applicable.

“Relief Event” means any of the following events or circumstances:

- (a) a Change in Law/Standard;
- (b) a Force Majeure event;
- (c) an Adverse Site Condition;
- (d) a loss of or persistent interruption in the provision of Utilities;
- (e) any interruption or interference to the Energy Services caused by the Employer’s own activities, including the performance by or on behalf of Employer of any other work at any Facility or the enforcement of any Permitted Lien on any Facility;
- (f) Employer Fault or IVA Fault;
- (g) the revocation or non-renewal of any ESCO Permit to the extent not caused by a failure of ESCO to comply with ESCO’s obligations under this Agreement, the terms and conditions of such ESCO Permit or Applicable Legal Requirements;

- (h) a failure to obtain or delay in obtaining ESCO Permits, which could not have been prevented by commercially reasonable technical and scheduling measures or other reasonable measures of ESCO;
- (i) issuance of a temporary or permanent restraining order or any other form of injunction or legal order by a court that prohibits prosecution of any portion of the Energy Services by ESCO or any of the material terms and conditions hereunder, unless such order is appealed against and such appeal or any related process has the effect of suspending the effectiveness of the order;
- (j) the implementation of any Employer Change pursuant to Section 13.01 (*Employer Changes*) of this Agreement or any Energy System modification pursuant to Section 3.04(a) (*Employer's Options Relating to Grid Interconnection*) of this Agreement;
- (k) the implementation by Employer of alterations or repairs to any of the Sites or Facilities that adversely affect ESCO's performance of the Energy Services;
- (l) any persistent or lasting interference with an Energy System's insulation;
- (m) Employer's election to modify an Energy System pursuant to Section 3.04(a) (*Employer's Options Relating to Grid Interconnection*) of this Agreement;
- (n) a failure to obtain or delay in obtaining Employer Permits;
- (o) Employer's failure to pay any shortfall in Required Insurance proceeds pursuant to Section 12.03(c)(iii) (*Loss of the Energy Systems*) of this Agreement.

except, in each case, to the extent arising from ESCO Fault.

"Relief Event Claim" has the meaning given to such term in Section 14.02(c) (*Relief Event Claim Process*) of this Agreement.

"Renewable Attributes" or **"RECs"** means any and all renewable resource attributes (including renewable energy certificates or credits or similar rights arising out of any applicable REC registration program), green tags, emissions or carbon credits, reductions, offsets, and allowances, and any other environmentally related attributes that are, or in the future may be, recognized by any Governmental Authority, and that are attributable to the availability, production, purchase or sale of Energy Services from the Energy Systems. For the avoidance of doubt, "Renewable Attributes" excludes any Renewable Energy Incentives.

"Renewable Energy Incentives" means: (i) tax incentives associated with any aspect of the Energy Systems including any investment tax credits, any projection tax credit, and any other similar federal or state tax credits or governmental payments made in lieu of such credits or other benefits, (ii) any federal, state or local grants, rebates, subsidized financing or any other subsidy relating to the Energy Systems or the output thereof, and (iii) any other form of incentive that is not an Environmental Attribute that is available with respect to the Energy Systems or the output thereof.

"Renewal Term" has the meaning given to such term in Section 2.02 (*Renewal Option*).

"Respondent" has the meaning given to such term in Section 22.02(b) (*Dispute Resolution*) of this Agreement.

"Required Insurance" means each of the insurance policies that ESCO or Employer, as applicable, is required to provide pursuant Section 12.01 (*Insurance Requirements*) of this Agreement as set forth on 0 (*Insurance Requirements*).

“**Revenue Payment**” has the meaning given to such term in Section 10.02(a) (*Sharing of Third-Party Revenues*) of this Agreement.

“**Revenue Payment Amount**” has the meaning given to such term in Section 10.02(b) (*Sharing of Third-Party Revenues*) of this Agreement.

“**Revenue Payment Calculation Date**” has the meaning given to such term in Section 10.02(b) (*Sharing of Third-Party Revenues*) of this Agreement.

“**Rules**” has the meaning given to such term in Section 22.02(d)(i) (*Arbitration*) of this Agreement.

“**Scheduled Commercial Operation Date**” means [the first anniversary of the Effective Date]²², as such date may be extended in accordance with this Agreement.

“**ESCO**” has the meaning given to such term in the preamble.

“**ESCO Change**” has the meaning given to such term in Section 13.02(a) (*ESCO Changes*)

“**ESCO Change of Control**” means any event or series of events occurring on or after the Effective Date by which any Person or group (i) owns or controls, directly or indirectly, more than 50% of the equity interests of ESCO; (ii) has the ability to appoint more than 50% of the members of the [board of directors] of the ESCO; or (iii) otherwise has the power to direct or cause the direction of the management or policies of the ESCO whether through the ability to exercise voting power, by contract or otherwise; provided, however, that the following shall not constitute a ESCO Change of Control:

(a) A change in possession of the power to direct or control the management of ESCO or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) An upstream reorganization or transfer, assignment, sale, conveyance or transaction of any type or description in respect of an indirect interests in ESCO so long as there occurs no change in the Person with ultimate power to direct or control or cause the direction or control of the management of ESCO. For purposes of this definition of “Change of Control”, the Person with ultimate power to direct or control or cause the direction or control of the management of ESCO is [●]; any transaction referred to in this clause (b) in respect of or relating to a direct or indirect interest in [●] shall not constitute a Change of Control for purposes of this definition and the Agreement;

(c) A change in possession of the power to direct or control the management of ESCO or a material aspect of its business due solely to a bona fide transaction involving beneficial interest in a parent organization of an equity investor in ESCO whose references, experience or financial statements, and any other qualified investor’s references, experience or financial statements, were not considered or evaluated in the proposal; provided, however, that this exception shall not apply if the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency;

(d) An equity transfer, where the transferring equity investor in ESCO and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

²² NTD: To include any reasonable buffers that ESCO and ESCO’s lenders may require.

(e) The exercise of minority veto or voting rights (whether provided by Applicable Legal Requirements, by ESCO's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of ESCO, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, the Employer received copies of such agreements as of the Effective Date;

(f) The grant of security interests in strict compliance with a direct agreement entered into in accordance with Section 17.02 (*Direct Agreement*) or the exercise of lender remedies thereunder, including foreclosure; and

(g) a transfer of interests (i) between managed funds that are under common ownership, management or control, (ii) between the general partner, manager or the parent company of such general partner or manager and any managed funds under common ownership or control with such general partner or manager (or parent company of such general partner or manager), or (iii) by an equity investor in ESCO to a fund, investment vehicle or other entity managed by or under common control with such equity investor.

“ESCO Default Termination Amount” means an amount equal to:

(a) [80]% of an amount equal to: the aggregate amounts of equity actually contributed or caused to be contributed by the shareholders to ESCO as of the termination date, less dividends and other distributions paid to the equity investors in ESCO (save to the extent deducted below), which shall never be a negative number; plus

(b) [80]% of an amount equal to: the outstanding equity investor debt less an amount equal to the aggregate of all payments of interest made by ESCO under any funding agreements relating to equity investor debt prior to the Termination Date (save to the extent deducted below); minus

(c) Any grants received by ESCO that are not required to be repaid; plus

(d) Lenders' Liabilities; plus

(e) Contractor Breakage Costs; plus

(f) Redundancy Payments; plus

(g) Account Balances; minus

(h) All insurance proceeds payable to ESCO (or should have been payable to ESCO but for ESCO breach of an obligation under this Agreement related thereto) on or after the Termination Date, other than any insurance proceeds received by ESCO on or after the Termination Date for physical damage to any Energy System that occurred prior to the Termination Date (which proceeds shall be remitted by ESCO to the Employer unless it is for the cost of Energy Services authorized by the terms of this Agreement and completed by ESCO prior to the Termination Date in which case ESCO shall be permitted to retain same);

“ESCO Environmental Condition” means a Hazardous Environmental Condition in connection with Hazardous Materials that have been brought to the Site by or on behalf of ESCO.

“ESCO Event of Default” has the meaning given to such term in Section 18.01 (*Events of Default by ESCO*) of this Agreement.

“ESCO Fault” means any of the following events or circumstances:

- (a) an act or omission that constitutes (or with the giving of notice and/or passage of time, would constitute) a ESCO Event of Default;
- (b) a breach by ESCO of its obligations under this Agreement; and
- (c) any negligence, violation of Applicable Legal Requirements or willful misconduct by ESCO;

except, in each case, to the extent arising from any breach by Employer of Employer’s obligations under this Agreement, any negligent act or omission of Employer or the violation of Applicable Legal Requirements by, or willful misconduct of, Employer.

“ESCO Intellectual Property” has the meaning given to such term in Section 16.01(a) (*Ownership of Intellectual Property*).

“ESCO Permits” means all approvals, permits, inspections, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) provided by any Governmental Authority which are required under the Applicable Legal Requirements to be obtained by ESCO from time to time in connection with ESCO’s ownership of any Energy System or ESCO’s performance of the Energy Services.

“Site” means, in respect of each Facility, the roof or land area specified for such Facility on which the primary equipment for an Energy System is located, together with the mounting equipment for, and enclosure surrounding, such Energy System, the power or control rooms for the Energy System and the closet or room in which the associated equipment is installed, as described in Exhibit B (*Description of the Sites*) and “Sites” means all or any of them, as the context requires.

“Site Studies” means the following documents: [describe],²³ each of which is attached as Exhibit L (*Site Studies and Inspections*) to this Agreement.

“Specified Energy” means the electric energy to be delivered by each Energy System each [month/quarter] after the Commercial Operation Date of such Energy System meeting the quantity and other performance requirements as specified in Exhibit D (*Specified Energy, Availability Payment Deductions, Verification Process*).

“State Electricity Regulatory Authority” or **“SERC”** means the electricity regulatory authority in the State where a Site is located, to whom NERC has transferred regulatory oversight of the electricity market in such State.

“Taxes” means all present and future national, local, or other lawful taxes, duties, levies, or other impositions applicable to the Parties in relation to the Energy Services.

“Technical Matters” has the meaning given to such term in Section 22.02(e)(i) (*Independent Verification Agent*) of this Agreement.

“Term” means Initial Term as extended by the Renewal Term pursuant to Section 2.02 (*Renewal Term*), as applicable.

²³ NTD: There should be a study commissioned to show the state of the site and identify any adverse conditions before any construction of the systems is started.

“**Termination Date**” means the earlier of the Expiration Date and the effective date of early termination of this Agreement pursuant to the provisions of Article XIX of this Agreement.

“**Termination Payment**” means the Expiration Date Payment Amount, the Employer Default Termination Amount, the ESCO Default Termination Amount or the No Default Termination Amount, as the context may require.

“**Third Party Contractor**” means any third party (other than any Affiliate of ESCO) performing Energy Services on behalf of ESCO under a contract with ESCO.

“**Third Party Environmental Condition**” means a Hazardous Environmental Condition in connection with Hazardous Materials that have been brought to the Site by or on behalf of Persons other than ESCO (other than Excluded Site Conditions).

“**USD**” means the United States dollars.

“**Utilities**” means the following services:

- (a) electricity and natural gas;
- (b) water and sewer; and
- (c) telephone and data systems for building automation connectivity.

“**Utility Offtake Data**” has the meaning set forth in the definition of Offtake Data.

“**Verification Agent**” means [●] or any successor thereto in such capacity.

Section 1.02 Interpretation.

(a) The definitions of terms will apply equally to the singular and plural forms of the terms defined;

(b) Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms;

(c) The words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”;

(d) The verb “will” shall be construed to have the same meaning and effect as the verb “shall”;

(e) Any definition of or reference herein to any agreement, document or other instrument will be construed as referring to such agreement, document or other instrument as from time to time amended, supplemented, substituted, novated, assigned or otherwise modified;

(f) Any reference herein to any Person, or to any Person in a specified capacity, will be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be;

(g) The words “herein”, “hereof” and “hereunder”, and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision thereof;

(h) All references to Articles, Sections and Exhibits will be construed to refer to Articles, Sections and Exhibits of this Agreement. The Exhibits to this Agreement are an integral part to this Agreement;

(i) The headings used are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement; and

(j) All monetary amounts are expressed in USD.

Section 1.03 Order of Precedence. In the event of any conflict, ambiguity or inconsistency between the terms of the main body of this Agreement and the terms of any of the Exhibits to this Agreement, the terms of the main body of this Agreement shall control.

ARTICLE II

TERM

Section 2.01 Term. This Agreement is effective as of the Effective Date and shall remain in full force and effect until the end of the Term unless terminated by either Party in accordance with Article XIX (*Termination; Purchase and Sale of Energy Systems*) or renewed by Employer in accordance with Section 2.02 (*Renewal Option*) of this Agreement.

Section 2.02 Renewal Option. Employer has the option to extend the Term by an additional [six (6)] year period (the “**Renewal Term**”), exercisable by written notice to ESCO at least 180 days prior to expiration of the Initial Term.

Section 2.03 Effective Date Acknowledgments. The Parties acknowledge that the following has occurred as of the Effective Date:²⁴

(a) ESCO has delivered to the Employer a legal opinion of ESCO’s [in-house][external] legal counsel in substantially the form attached hereto as Exhibit I (*Form of ESCO Legal Opinion*);

(b) the Employer, ESCO and the Verification Agent have entered into the Performance Monitoring Agreement and such agreement is in full force and effect;

(c) the Employer has delivered to ESCO an Environmental Impact Assessment Certificate in respect of each Site;

(d) ESCO has delivered to Employer the Financial Model.

Section 2.04 Further Acknowledgments. The Parties acknowledge that promptly following the Effective Date the following will occur:

(a) each Party shall deliver to the other copies of the insurance policies required to be obtained and maintained by such Party pursuant to Section 12.01 (*Insurance Requirements*);²⁵

²⁴ NTD: This form of Agreement assumes that (a) site, structural engineering, permitting and real estate due diligence have been conducted prior to the Effective Date and revealed no obstacles to the implementation of the Energy Systems in any of the Sites and that no agreements with utilities are needed to connect any of the Energy Systems to the relevant Facility and (b) any construction subcontracts and financing documents will be entered into by ESCO simultaneously with this Agreement.

²⁵ NTD: Insurance Advisor to determine the insurance requirements for the overall project and prepare Exhibit E (*Insurance Requirements*).

(b) the Employer shall deliver to ESCO a legal opinion on the enforceability of this Agreement against the Employer and the enforceability of the Guarantee in against the Guarantor²⁶ in substantially the form attached hereto as Exhibit J (*Form of Employer Legal Opinion*);

(c) the Guarantor shall deliver to ESCO a copy of the Guarantee Agreement duly executed and delivered by the Guarantor and such agreement shall be in full force and effect;

(d) the Employer shall deliver to ESCO a Building Permit and such other material permits as are necessary for ESCO to perform its obligations hereunder in respect of each Facility;

(e) the Employer shall provide the Direct Agreement and provide, or reasonably cooperate with the ESCO so that it can obtain and provide such further documents as may be necessary to satisfy the reasonable requirements of lenders (as contemplated in Section 17.01) and to ensure that all ESCO Permits and Employer Permits are available as and when needed for the services to be provided hereunder.

ARTICLE III

ENERGY SERVICES

Section 3.01 ESCO's Obligation to Provide Energy Services.

(a) Employer hereby engages ESCO to perform, and ESCO agrees to perform, the Energy Services.

(b) Subject to the terms and conditions of this Agreement, on and from the Final Energy System Commercial Operation Date, ESCO shall perform the O&M Work so to cause the Energy Systems to deliver to Employer, at their respective Delivery Points each [month/quarter], the Specified Energy in accordance with Section 9.02 (*Delivery Points and Risk of Loss*).

Section 3.03 Verification Agent

(a) The Parties acknowledge that pursuant to the Performance Monitoring Agreement, the Verification Agent shall, *inter alia*:

(i) confirm the quantities of electric energy delivered by each Energy System pursuant to Section 3.01(b) (*ESCO's Obligation to Provide Energy Services*), validate any invoices delivered by either Party to the other Party pursuant to this Agreement and provide such confirmation to the Parties and compliance with the other requirements for Specified Energy set forth in Exhibit D;²⁷

(ii) confirm, if requested, Employer's compliance with its obligations hereunder including related to site access and confirm the existence and duration of any Relief Events; and

(iii) adjudicate Disputes relating to Technical Matters in accordance with Section 22.02(e)(i) (*Dispute Resolution*).

²⁶ NTD: Should come from relevant attorney general or external legal counsel; note that this may be difficult to obtain with respect to the Guarantee and should be discussed as soon as practical with the governmental authorities.

²⁷ NTD: Key Performance Indicators should be contained in Exhibit D. IVA will provide confirmation unless the metering system is robust enough to provide the confirmation.

(b) In the case of an IVA Fault, Employer and ESCO shall jointly remove the IVA within 30 days of request from the other.

Applicable For REA Data Aggregation Platform Provider (the above section 3.03 may not be applicable)

(a) The Parties acknowledge that pursuant to the Performance Monitoring Agreement, the Data Aggregation Platform Provider shall, *inter alia*: (i) determine compliance with the KPIs for each Energy System pursuant to (b) (*ESCO's Obligation to Provide Energy Services*), validate any invoices related to compliance with the KPIs delivered by either Party to the other Party pursuant to this Agreement and provide such confirmation to the Parties and compliance with the other requirements for Specified Energy set forth in Exhibit D;

(i) (ii) determine the quarterly Availability Payment value, considering any derating as set forth in Exhibit D;

(ii) (iii) track invoicing and payments completed.

(iii) (iv) adjudicate Disputes relating to certain Technical Matters in accordance with (f) (*Dispute Resolution*).

(iv) (b) In the case of an Data Aggregation Platform Provider Fault, Employer and ESCO shall jointly identify a suitable replacement within 30 days of request from the other, and transition to the new Data Aggregation Platform Provider within 90 days.

Section 3.04 Employer's Options Relating to Grid Interconnection.

(a) At any time after an Energy System becomes capable of being connected to the distribution system of the Applicable Utility Company and such distribution system of the Applicable Utility Company is available and ready for technical connection, the Employer may request ESCO to provide an estimate of the cost of any modifications to such Energy System necessary to interconnect such Energy System to such distribution system. ESCO shall have the option, exercisable by written notice to ESCO within [●] days of Employer's receipt of ESCO's estimate, to (i) remove such Energy System from this Agreement upon payment of the relevant No Default Termination Amount or (ii) require ESCO to modify such Energy System to enable grid interconnection.

(b) If Employer elects to remove an Energy System from this Agreement pursuant to Section 3.04(a) (*Employer's Options Relating to Grid Interconnection*), effective immediately upon ESCO's receipt of ESCO's written notice to such effect and payment of the relevant No Default Termination Amount, (i) any and all references to the Energy System removed by Employer shall be deemed excluded from Exhibit C (*Description of the Energy Systems*) and such Energy System shall no longer be an "Energy System" for the purposes hereof, and (ii) any and all references to the Site and the Facility associated with such Energy System shall be removed from Exhibit B (*Description of the Sites*) and Exhibit A (*Description of the Facilities*), respectively, and such Site and Facility shall no longer be a "Site" and a "Facility" for the purposes hereof.

(c) If Employer elects to modify an Energy System pursuant to Section 3.04(a) (*Employer's Options Relating to Grid Interconnection*), such modification shall constitute a Relief Event and Employer shall compensate ESCO for the Extra Work Costs associated with such modification in accordance with Section 14.04 (*Consequences of Relief Event*). Employer shall be exclusively responsible

for obtaining and maintaining all governmental approvals and access rights required for the interconnection of the relevant Energy System with the distribution system of the Applicable Utility Company and for procuring the performance of all work required to be performed after the Delivery Point outside of such Energy System to interconnect such Energy System to the Applicable Utility Company's distribution system.

ARTICLE IV

SITE ACCESS²⁸

Section 4.01 Description of the Facilities and the Sites; Title. Employer hereby represents and warrants that, as of the Effective Date and the Commercial Operation Date for each Energy System:

(a) Exhibit A (*Description of the Facilities*) and Exhibit B (*Description of the Sites*) contain true and correct descriptions of the Facilities and the Sites; and

(b) Employer has good and valid title to the Facilities (including the Sites), free and clear of all liens other than Permitted Liens, in all cases sufficient in all respects to grant to ESCO the rights and licenses set forth in this Agreement.

Section 4.02 Right of Access.

(a) Subject to the terms and conditions set forth in this Agreement, during the Term from the Effective Date, Employer hereby grants to ESCO:

(i) an exclusive right to access, use and occupy the Sites for the limited purpose of performing the Energy Services in accordance with the terms of this Agreement; and

(ii) to the extent reasonably necessary or desirable for ESCO to exercise its exclusive rights set out above and perform the Energy Services, (A) a non-exclusive right to use the Utilities serving the Facilities and (B) a non-exclusive right to access the remainder of the Facilities, including access to areas adjacent to the Sites and for receipt of major equipment deliveries.

(b) The rights conferred on ESCO by this Agreement rest in contract only and do not confer a proprietary interest on ESCO in respect of the Sites or the Facilities, and nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against any part of the Sites or the Facilities.

(c) Employer shall ensure that ESCO has access to the Sites and the Facilities via roads and access points appropriate for the number and type of vehicles and equipment to be used by ESCO in the performance of the Energy Services. Employer shall ensure that such access is continuous and uninterrupted. Employer shall respond promptly to any notification from ESCO that such access has been interrupted and cause the source of such interruption to be removed or eliminated.

(d) Without limiting the foregoing, ESCO shall require any ESCO/ESCO employee, contractor, agent or invitee to obtain security identification and access cards (or similar devices) prior to accessing the Facilities to the extent required by the security procedures and protocols established from time to time by Employer in respect of access to the Facilities by third parties generally.

²⁸ NTD: If the "Control Room" (i.e., a dedicated room for switching and monitoring the Energy Systems with access to necessary Utilities) will not be located at the Site, then Article IV (*Site Access*) should be adjusted to cover access to the Control Room as well.

Section 4.03 No obstruction or Interference.²⁹

(a) ESCO shall perform the Energy Services in a manner so as not to unreasonably interfere with or interrupt the operations or activities of the Employer.

(b) ESCO acknowledges that Employer may grant rights of access in favor of third parties as may be necessary or desirable by Employer with respect to Employer's operations at the Facilities. Employer agrees that any such third party rights shall (i) not include access to the Sites and the Energy Systems, (ii) otherwise be subject to ESCO's exclusive right to access the Sites pursuant to Section 4.02 (*Right of Access*) and (iii) not unreasonably interfere with ESCO's exercise of ESCO's exclusive access rights or performance by ESCO of the Energy Services.

(c) Employer shall not allow any of Employer's actions or those of any Employer contractor, agent or invitee to unreasonably interfere with ESCO's performance of the Energy Services. Employer shall, and shall require all such Persons to, mitigate any disruption to ESCO's performance of the Energy Services.

Section 4.04 Obligation to Defend Title. Employer shall, at all times during the Term, defend

(a) Employer's title to the Facilities (subject to any Permitted Liens) and (b) the rights to access the Sites and the Facilities granted by Employer to ESCO hereunder, in each case against any Person claiming any fee, leasehold or other interest adverse to Employer or ESCO, except where such adverse interest arises as a result of the act or omission by ESCO on breach of the provisions of this Agreement or the negligence, willful misconduct or violation of the Energy Services Standards by ESCO in any material respect.

Section 4.05 Safety and Security. Employer shall ensure the general safety and security of the Facilities and the Sites and ensure that the Sites are protected from theft and vandalism. ESCO shall provide for the safety and security of the Energy Systems and of any Person servicing the Energy Systems. ESCO shall appropriately safeguard the Sites and ensure it against loss in accordance with the [specifics in the bidding documents].

ARTICLE V

CONSTRUCTION OF THE ENERGY SYSTEMS

Section 5.01 Commencement of Construction; Reporting; Costs.

(a) ESCO shall commence the DB Work promptly following execution of this Agreement.

(b) Each [month/quarter], beginning after the first full [month/quarter] following the Effective Date until the Final Energy System Commercial Operation Date, ESCO shall deliver to Employer, a [monthly/quarterly] progress report, including information on each Energy System that has not yet achieved Commercial Operation, specifying the progress of the DB Work associated with such Energy Systems and the expected progress towards the Commercial Operation Date thereof.

(c) Any costs incurred by ESCO in connection with the performance of the DB Work shall be the sole responsibility of ESCO (subject to ESCO's rights pursuant to Article XIV (*Relief Events*)).

²⁹ NTD: Consider whether specific Customer obligations not to interfere with equipment that might be installed within the Facilities but outside of the Sites are needed.

Section 5.02 Construction Schedule. ESCO shall notify Employer in writing promptly following the date each Energy System achieves Commercial Operation. ESCO shall cause each Energy System to achieve Commercial Operation on or before the Scheduled Commercial Operation Date.

ARTICLE VI

OPERATION OF THE ENERGY SYSTEMS

Section 6.01 Operation and Maintenance of the Energy System. On and from the Commercial Operation Date of each Energy System ESCO shall perform all routine and emergency repairs to, and maintenance of, such Energy System and keep such Energy System in good working and operating condition, and in a manner materially consistent with the [maintenance plan provided by the ESCO in the bidding documents].

Section 6.02 Outages; Coordination of Repairs.

(a) ESCO shall promptly notify Employer following its discovery of (i) any material malfunction in the operation of any Energy System or (ii) an unscheduled interruption in the supply of the Specified Energy by any Energy System.

(b) Notwithstanding anything to the contrary contained herein, ESCO shall be entitled to suspend supply of the Specified Energy by any Energy System for the purpose of maintaining, protecting and repairing such Energy System and such suspension shall not constitute a breach of this Agreement so long as the relevant repairs are completed within a commercially reasonable timeframe. ESCO shall use commercially reasonable efforts to minimize any interruption in the supply of the Specified Energy and shall notify Employer of any such suspension with as much advance notice as possible (in any event, other than an Emergency, no less than three days), which notice shall be in writing and describe the nature of such suspension and its anticipated duration.

Section 6.03 Measurement and Monitoring.³⁰

(a) Measurement Devices. ESCO shall provide, install, operate and maintain one Measurement Device at each Delivery Point (each, a “**Measurement Device**”) in a location reasonably acceptable to Employer and Data Aggregation Platform Provider or Verification Agent. Each Measurement Device shall (i) be a revenue meter capable of communicating and integrating to the applicable Energy System, (ii) comply with Applicable Legal Requirements and Applicable Standards and any technical specifications included in the bidding package and (iii) comply with specifications provided to the Employer and the Data Aggregation Platform Provider or Verification Agent for review and approval (such approval not to be unreasonably withheld, conditioned or delayed) at least 30 days prior to the date ESCO expects to achieve Commercial Operation of the first Energy System.

(b) Application. ESCO shall electronically read the Measurement Devices and use the readings of the Measurement Devices for purposes of the invoices to be issued by ESCO in accordance with Section 9.04 (*Billing and Payment*) of this Agreement.

(c) Recordkeeping. In addition to providing “real time” access to the Data Aggregation Platform Provider or IVA for remote monitoring in accordance with clause (g) below, ESCO shall keep electronic records of all data collected when the Measurement Devices are read, and shall make such records available to the Employer and the Data Aggregation Platform Provider or Verification Agent within five Business Days of any request for such records.

³⁰ NTD: To be reviewed by operator of monitoring platform and IVA.

(d) Testing and Calibration.

(i) ESCO shall test and calibrate (or recalibrate) each Measurement Device in accordance with the manufacturer's instructions therefor, as often as required by and promptly after obtaining knowledge of any issue affecting such Measurement Device that in accordance with such manufacturer's instructions requires testing and calibration. The Employer may request additional tests at any time, and shall reimburse ESCO for the reasonable costs incurred by ESCO in connection with any such additional testing within thirty (30) days after receipt of ESCO's invoice for such costs, unless such additional tests identify a material issue with or affecting a Measurement Device, in which case, ESCO shall be responsible for the costs incurred for such tests.

(ii) ESCO will provide Employer at least three (3) Business Days' notice of any Measurement Device tests and calibration and shall permit Employer and the Data Aggregation Platform Provider or Verification Agent to witness any such test and calibration; provided, however, that in the event of an Emergency, ESCO will only be required to provide Employer with such notice as is practical under the circumstances.

(iii) Following the completion of testing and calibration, ESCO will provide all test results and final reports to Employer and Data Aggregation Platform Provider or the Verification Agent within five Business Days.

(iv) ESCO may seal or lock any Measurement Device or such Measurement Device's connections or location. Employer shall not, and shall ensure that the Data Aggregation Platform Provider or Verification Agent will not, break or replace a seal or lock on any Measurement Device or such Measurement Device's connections or location except as directed by ESCO or in the case of an Emergency, if such Measurement Device access is required for remediation.

(e) Repair and Replacement. ESCO shall repair and replace each Measurement Device in accordance with the manufacturer's instructions therefor after obtaining knowledge of any issue affecting such Measurement Device that in accordance with such manufacturer's instructions requires repair or replacement of such Measurement Device.

(f) Adjustments to Measurement Readings. If any test performed by ESCO pursuant to Section 6.03(d) (*Testing and Calibration*) establishes that a Measurement Device is providing readings that are more than [2%] higher or lower than the amount indicated by such test, ESCO shall notify Employer and the Data Aggregation Platform Provider or IVA of such event within five (5) Business Days of the occurrence thereof and adjust any previous readings of such Measurement Device for the period from the date of the first inaccurate Measurement Device reading, as mutually agreed upon by the Parties, until the date of the test that established the inaccurate Measurement Device readings. Any Dispute regarding the date of the first inaccurate Measurement Device reading shall be resolved pursuant to Article XXII (*Governing Law; Dispute Resolution*).

(g) Remote Monitoring. ESCO shall cause interval data to be collected in "real time" [fifteen (15)]³¹ minute increments and otherwise in accordance with the technical specifications included in the bidding package from the Measurement Devices and shall be responsible for causing all such data, together with all meter readings used for invoicing, to be transmitted electronically to, or available for remote review by, the Data Aggregation Platform Provider or Verification Agent[, preferably by automatic transmission to a review platform].³² ESCO shall include in its plans for the Energy Systems the necessary

³¹ NTD: Interval frequency to be confirmed with the operator of any remote system and by the IVA and to be included in the technical specifications for any bidding process.

³² NTD: Platform if any should be specified in the bidding documents.

hardware and software to collect and transmit such data and to store such data, including as a backup in case transmission is limited by outages or interruptions.

Section 6.04 Reporting. Promptly and not later than [fifteen (15) days] after the end of each calendar [month/quarter]³³ and each calendar year following the Commercial Operation Date of the first Energy System to reach commercial operations, ESCO shall provide to Employer a [monthly/quarterly] and an annual report, respectively, in respect of the metrics related to the Energy Services set out in Exhibit F (*Reporting Requirements*).

ARTICLE VII

OTHER OBLIGATIONS OF ESCO

Section 7.01 Standard of Performance. ESCO shall perform the Energy Services in accordance with Applicable Legal Requirements and Applicable Standards (collectively, the “**Energy Services Standards**”).

Section 7.02 Permits.

(a) ESCO shall, on a timely basis, obtain and maintain, at its sole cost and expense, all ESCO Permits necessary for the performance of ESCO’s obligations under this Agreement (including any import or transport permit necessary for ESCO’s performance of the DB Work or Energy Services, either during the construction period or thereafter).

(b) ESCO shall reasonably cooperate with Employer’s permitting activities, including by providing timely and reasonable support to Employer, with respect to Employer Permits.

Section 7.03 Subcontracting. Notwithstanding anything to the contrary in this Agreement, and in accordance with Applicable Legal Requirements, ESCO may, at no cost to the Employer, subcontract the performance of all or any portion of the Energy Services to any properly qualified and licensed (i) Affiliate Contractor or (ii) subject to Employer’s consent (not to be unreasonably withheld, conditioned or delayed) in the case of the subcontracting of any material portion of the Energy Services, Third Party Contractor; provided that ESCO remains fully liable for the performance of the Energy Services and the adherence of the subcontractor to all terms of this Agreement Any such Third Party Contractor approved by Employer may be engaged only for the performance of the Energy Services so approved by Employer and not for Energy Services for which they were not approved.

Section 7.04 Anti-Corruption Compliance. The ESCO shall not engage in, nor permit the continuation of, any Corrupt Practices. If the ESCO discovers any such practices, it shall promptly notify the Employer and provide a report detailing its efforts to cease and remedy any such activities.

³³ NTD: To be conformed to the KPIs set forth in the exhibits and any bidding document specifications.

ARTICLE VIII

OTHER OBLIGATIONS OF EMPLOYER ³⁴

Section 8.01 Maintenance of and Alterations to the Facilities.

(a) Employer shall maintain the Sites and the Facilities, and protect and preserve all portions thereof that may in any way affect the Energy Systems, in accordance with the Energy Services Standards.

(b) Employer shall notify ESCO immediately upon the discovery of an emergency condition affecting the Energy Systems or impacting access to the Energy Systems.

(c) Employer shall not undertake any alterations or repairs to the Sites or the Facilities which may materially and adversely affect the performance of the Energy Services without (i) giving ESCO prior written notice, setting forth the alterations or repairs to be undertaken, and (ii) offering ESCO the opportunity to advise Employer in conducting such alterations or repairs in a manner that will not adversely affect ESCO's performance of the Energy Services.

Section 8.02 Duty to Maintain Utilities.

(a) Employer shall contract with all applicable Utility providers for the delivery and purchase of Utilities for utilization by the Energy Systems in such quantities as to allow ESCO to fully perform all of ESCO's obligations under this Agreement, including [●],³⁵ which Utilities shall be purchased and supplied at Employer's cost and expense.

(b) Title to any Utilities used to perform the Energy Services will remain with Employer at all times after such Utilities are delivered to the Facilities by the applicable Utility providers.

(c) Employer shall notify ESCO in writing within twenty-four (24) hours after Employer's knowledge of the occurrence of any malfunction in the Utility connections to any Facility.

Section 8.03 Permits.

(a) Employer shall, on a timely basis, obtain and maintain, at its sole cost and expense, all Employer Permits necessary for the performance of the Energy Services (including all land use and zoning approvals and Building Permits).

(b) Employer shall reasonably cooperate with ESCO's permitting activities, including by providing timely and reasonable support to ESCO, with respect to ESCO Permits.

Section 8.04 Insolation. Employer acknowledges and agrees that unobstructed insolation is essential to ESCO's performance of its obligations and a material term of this Agreement. Employer shall not in any way cause, and where possible shall not in any way permit, any persistent or lasting interference with an Energy System's insolation. If Employer becomes aware of any activity or condition that could

³⁴ NTD: If the Control Room will not be located at the Site and built by ESCO, then Article VII (*Other Obligations of Customer*) should be adjusted to cover construction of the Control Room by a date certain and make the same available to ESCO through the Termination Date.

³⁵ NTD: Specify, using a schedule if needed in the bidding documents, any utilities necessary to access any remote monitoring system or provide reports to IVA.

diminish the insulation of any Energy System, Employer shall notify ESCO as soon as practicable and shall cooperate with ESCO in preserving and reinstating such Energy System's existing insulation levels.]³⁶

Section 8.05 Obligation to Procure Legislative Appropriation.³⁷ Employer shall procure that [Niger, FCT or Nasarawa State House of Assembly] appropriates and encumbers sufficient funds for the Energy Services to be performed by ESCO ESCO and for payments to be made by Employer from the Effective Date for a period of no less than the end of the first fiscal year following the Commercial Operation Date of the first Energy System to reach commercial operations hereunder. Further, and notwithstanding anything to the contrary in this Agreement, Employer shall also procure that [Niger, FCT or Nasarawa State House of Assembly] continues to appropriate and encumber a sufficient amount to fund Employer's obligations hereunder during each subsequent fiscal year of the Term.

Section 8.06 Anti-Corruption Compliance. The Employer shall not engage in, nor permit the continuation of, any Corrupt Practices. If the Employer discovers any such practices, it shall promptly notify the ESCO and provide a report detailing its efforts to cease and remedy any such activities.

ARTICLE IX

PAYMENT FOR THE ENERGY SERVICES

Section 9.01 Availability Payment. Subject to any deductions pursuant to Section 9.03 (*Deductions*), following the Commercial Operation Date for the first Energy System to reach commercial operations hereunder through the Termination Date, the Employer shall pay to ESCO an amount per [month/quarter] reflecting such Energy Systems as have reached their Commercial Operation Date³⁸ by the end of each such [month/quarter] of up to the total amount shown in Exhibit D (the "**Availability Payment**").

Section 9.02 Delivery Points and Risk of Loss. ESCO shall deliver the electricity produced through ESCO's performance of the Energy Services to the applicable Delivery Points, and title and risk of loss to such electricity shall pass from ESCO to Employer at the Delivery Points.

Section 9.03 Deductions. The Availability Payment is subject to deductions (subject in all cases to ESCO's rights set out in Article XIV (*Relief Events*)) in accordance to Exhibit D (*Specified Energy, Availability Payment Deductions, Verification Process*) in respect of (a) ESCO's failure to deliver the Specified Energy, and (b) ESCO's use of backup fuel for the performance of the Energy Services in excess of the amounts permitted in Exhibit D (*Specified Energy, Availability Payment Deductions, Verification Process*).³⁹⁻⁴⁰

³⁶ NTD: This is needed for solar arrays, but if technology other than solar is needed, different requirements may be applicable. Also to consider the local weather and its impact on insulation.

³⁷ NTD: (1) To be included because Customer is a Governmental Authority; (2) The intent is to have Customer commit to take the actions that it should take prior to the start of each fiscal year in accordance law to ensure sufficient funds are appropriated for the availability payment under this Agreement. Parties to consider whether there can be a grace period for the Customer (and if so, for how long it would span) if there is a delay in appropriating and encumbering sufficient funds. Such a grace period would be dependent on the timing of the applicable budgetary entity's annual appropriations, which would have to be encumbered prior to the availability payments for the year.

³⁸ NTD: Schedule D should assign values for each system so that, if one system comes online before others, payments are only for the systems that are online in a given period.

³⁹ NTD: Specified Energy to reflect agreed upon system uptime and maintenance days so any failure to deliver energy in these circumstances will not reduce the Availability Payment.

⁴⁰ NTD: The simplest way of effecting the deductions for failure to deliver required quantities of energy or excessive diesel usage is to state that: in any month, (a) the Availability Payment will be reduced pro rata to the amount of electricity delivered

Section 9.04 Billing and Payment.

(a) Commencing on the Final Energy System Commercial Operation Date, ESCO shall invoice Employer [monthly/quarterly] in arrears in respect of the Availability Payment. Such [monthly/quarterly] invoices shall state:

(i) the amount of electricity produced through ESCO's performance of the Energy Services and made available to Employer as measured by the Measurement Devices for the prior [month/quarter];

(ii) the Availability Payment due with respect to such [month/quarter];

(iii) calculations of any deductions from the Availability Payment assessed pursuant to Section 9.03 (*Deductions*);

(iv) the amount and calculation of fees due and payable to the IVA by the Employer for the prior [month/quarter], in accordance with Section 2 (*Compensation*) of the Performance Monitoring Agreement;

(v) if applicable, the amount of [diesel]⁴¹ used by ESCO in such [month/quarter] in accordance with **Error! Reference source not found.** (*Back-up Fuel*); and

(vi) the total amount due from Employer, including any Value Added or other applicable Taxes for which Employer is liable.

(b) In addition to such information provided to the Verification Agent by remote monitoring, ESCO shall also deliver such other documentation or information as the Employer or the Verification Agent may reasonably require to determine the accuracy and appropriateness of the amounts related to the Availability Payment included in such invoice.

(c) Each Party shall pay or cause to be paid, on or before the due date, all undisputed amounts that become due and payable by such Party to the other Party pursuant to an invoice issued hereunder. Except as otherwise provided in this Agreement, all amounts due under this Agreement shall be due and payable within thirty (30) days⁴² from receipt of invoice. Amounts will be assumed in USD and any payments made in local currency shall be in an amount equal to the amount in USD due based on the Exchange Rate prevailing on the date of payment.

(d) If the Party receiving an invoice in good faith disputes all or any portion of an invoice, it shall notify the invoicing Party in writing of the basis of such dispute. The receiving Party shall pay the undisputed portion of the invoice; payment of the disputed amount shall not be required until the dispute is resolved in accordance with Section 22.02 (*Dispute Resolution*) of this Agreement. After resolution of any dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by ESCO or Employer (as the case may be) to the other Party, together with interest thereon as calculated at the Late Payment Rate under Section 9.05 (*Late Payments*).⁴³

below the relevant Specified Energy and (b) the amount of electricity produced with diesel in excess of the permitted monthly diesel consumption set out in Exhibit D shall be deemed as Specified Energy not delivered by ESCO.

⁴¹ NTD: References to diesel may be deleted if a different form of backup is used (e.g., battery backup).

⁴² NTD: Feasibility to be confirmed by the Customer.

⁴³ NTD: This Article IX assumes that if the IVA disagrees with the amount of electricity delivered as specified in any ESCO invoice, the Customer will dispute such invoice.

(e) All monetary amounts expressed in USD under this Agreement shall be payable in Naira, converted at the applicable Exchange Rate.

Section 9.05 Late Payments. If a Party fails to pay an amount that is due and owing from such Party to the other Party under this Agreement, the owing Party shall pay to the other Party interest on such amount at the Late Payment Rate, from the date on which the amount is deemed delinquent until fully paid.

Section 9.06 Set-Off. Each Party may set-off any amount due and payable by the other Party under this Agreement against any amount due and payable to such Party; provided, however, that any amounts so deducted and set-off are not subject of any dispute. Each Party shall provide the other Party prior notice of its intention to deduct and set-off any amounts in accordance with this Section 9.06 (*Set-Off*).

Section 9.07 Taxes. [All payments under an invoice issued under this Agreement shall be made free and clear from any Taxes. If any Taxes in relation to providing the Energy Service (including on the generation, sale, delivery or consumption of the Energy Services) are payable and Employer is not permitted to pay such Taxes directly, the Availability Payment will be increased by the amount of such Taxes.]

Section 9.08 Payment Escalation.

(a) The [monthly/quarterly] Availability Payments payable by the Employer to ESCO shall be subject to periodic review which shall be based on the following parameters:

(i) **Change in Law/Standard:** If a Change in Law/Standard results in the increase by at least [x%] of the operating costs and/or capital expenditure incurred by ESCO in the performance of its obligations under this Agreement, the Availability Payment shall be adjusted to put ESCO in at least the same financial position as it would have been had such Change in Law/Standard not occurred. Provided that such increase generally shall not have been occasioned by ESCO's breach or violation of any Applicable Legal Requirements and that such costs shall be those incurred solely towards the performance of ESCO's obligations hereunder.

(ii) **Naira Devaluation:** To account for the devaluation of the Naira, the Availability Payments shall be adjusted [monthly/quarterly] following the Effective Date, to take into account any devaluation of the Naira against the USD using the Exchange Rate. Either Party may call for such adjustment if the devaluation of the Naira against the USD at the Exchange Rate exceeds [1]% over the value of the preceding quarter. Notwithstanding the above, ESCO shall have the right to escalate the [monthly/quarterly] Availability Payments at the Commercial Operation Date if the devaluation of the Naira against the USD exceeds [10]% over the prevailing Exchange Rate. For the avoidance of doubt, the Availability Payments shall not be escalated at the Commercial Operation Date if the devaluation of the Naira against the USD does not exceed 10% over the prevailing NAFEX rate.⁴⁴

(iii) **Inflation:** Every change in inflation rate as indicated in the most recent consumer price index published National Bureau of Statistics will result in a corresponding change in the Availability Payments. This determination and adjustment shall be made every January of a year using the value of the Availability Payments as at the immediately preceding [month of December/ end of quarter].

(b) Any adjustment of the Availability Payment as determined by the parameters stated above shall be notified in writing to the Employer with clear and supporting basis for the adjustments,

⁴⁴ Note: May vary depending on the dynamics of the relevant currency. Commercial operators typically require monthly adjustment for Naira rates.

and appropriate changes shall be made immediately and become binding on the Employer on a forward-looking basis.

ARTICLE X

THIRD PARTY SERVICES

Section 10.01 Provision of Services to Third Parties.

(a) Subject to the following conditions, Employer acknowledges and agrees that ESCO shall have the right to make energy services using the Energy Systems available to Permitted Third Party Off-takers:

(i) ESCO is providing the Facilities with Energy Services in compliance with Section 3.01 (*ESCO's Obligation to Provide Energy Services*);

(ii) ESCO has provided written notice to Employer in respect of the amount and type of services required to comply with ESCO's obligations under such third party agreements;

(iii) no ESCO Event of Default has occurred and is continuing; and

(iv) ESCO has obtained all necessary regulatory approvals to provide energy services to the relevant Permitted Third Party Off-takers and provision of such services using the Energy Systems shall not result in a violation of Applicable Legal Requirements or Applicable Standards by any Party.

(b) Notwithstanding anything to the contrary in this Agreement, ESCO acknowledges and agrees that:

(i) Employer's rights under this Agreement, including its rights to ESCO's performance of the Energy Services pursuant to this Agreement, are paramount to and shall supersede any rights of any Permitted Third Party Off-takers; and

(ii) the provision of electricity by ESCO from the Energy Systems to any Permitted Third Party Off-taker is subordinate in all respects to ESCO's obligations under this Agreement, including ESCO's obligations to provide Energy Services to the Facilities in accordance with Section 3.01 (*ESCO's Obligation to Provide Energy Services*) of this Agreement.

Section 10.02 Sharing of Third-Party Revenues.

(a) ESCO acknowledges the Employer's grant to ESCO of the opportunity to make available energy services using the Energy Systems to Permitted Third Party Off-takers (the "**Applicable Sales**"), which may confer material additional economic opportunities to ESCO. In consideration of those additional economic opportunities, ESCO agrees to pay to the Employer revenue payments as determined under this Section 10.02 (*Sharing of Third-Party Revenues*) (each a "**Revenue Payment**") in respect of all Applicable Sales.

(b) The amount of each Revenue Payment (the "**Revenue Payment Amount**") shall be (i) calculated as of December 31 of the year in which the closing of the Applicable Sales occurs, as of December 31 of every subsequent year during the Term, and as of the last day of the Term (each such date as of which the Revenue Payment is calculated, a "**Revenue Payment Calculation Date**") and (ii) shall equal [●] percent ([●]%) of the profit from the Applicable Sales for the year (or portion thereof) immediately preceding the Revenue Payment Calculation Date.

(c) Within 120 Days after the end of each year, ESCO shall deliver to the Employer (i) a detailed calculation of the Revenue Payment Amount, and (ii) subject to this Section 10.02(c) (*Sharing of Third-Party Revenues*), full payment of the Revenue Payment as so calculated.

(d) Within 60 Days after receipt of the detailed calculation deliverables, Employer may request clarification or amendment to the final calculation of the Revenue Payment Amount, which ESCO shall provide to Employer within 30 Days after such request. If Employer does not agree with the calculation of the Revenue Payment after receipt of such clarification or amendment, or if ESCO refuses to amend the final calculation, the Dispute shall be resolved in accordance with Article XXII (*Governing Law; Dispute Resolution*) of this Agreement.

ARTICLE XI

OWNERSHIP OF THE ENERGY SYSTEMS

Section 11.01 Ownership. Employer acknowledges and agrees that: (a) the Energy Systems shall be removable equipment and regardless of their degree of annexation to the Sites, will not be a fixture or otherwise form part of the Sites or the Facilities; and (b) Employer shall have no ownership interest in the Energy Systems.

Section 11.02 No Liens by Employer. Employer shall not directly or indirectly cause, create, incur, or assume any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to any Energy System. Should any Person (other than a Person acting through or under ESCO) file a lien or other encumbrance against all or any portion of any Energy System, Employer shall, at its sole cost and expense, remove and discharge, by payment, bond or otherwise, such lien or encumbrance within ten (10) days after the filing of such lien or encumbrance. If Employer fails to remove and discharge any such lien or encumbrance within such ten- day period, ESCO may, in its sole discretion and in addition to any other rights that it has under this Agreement, at law or equity, take any one or more of the following actions:

(a) remove and discharge such lien and encumbrance using whatever means that ESCO, in its sole discretion, deems appropriate, including the payment of settlement amounts that it determines in its sole discretion as being necessary to remove or discharge such lien or encumbrance. In such circumstance, Employer shall be liable to ESCO for all Losses (including all consultant fees and settlement payments) incurred by ESCO arising out of or relating to such removal and discharge. All such Losses shall be paid by Employer no later than thirty (30) days after receipt of each applicable invoice from ESCO;

(b) conduct the defense of any action in respect of (and any counterclaims related to) such liens or encumbrances, without regard to Employer's rights; or

(c) withhold any amounts otherwise due and owing to Employer under this Agreement equal to the amount of the lien or encumbrance plus all Losses arising out of such lien or other encumbrance (including reasonable consultant fees and settlement payments).

Section 11.03 Removal Following the Expiration Date; Option to Purchase.

(a) Within 90 days after the Expiration Date (the "**Decommission Period**"), unless Employer has exercised its option to purchase the Energy Systems in accordance with Section 11.03(b) (*Removal Following the Expiration Date; Option to Purchase*), ESCO shall decommission and remove the Energy Systems from the Facilities. During the Decommission Period, ESCO shall continue to have the right to access the Facilities and the Sites in accordance with the terms of this Agreement to decommission and remove the Energy Systems. ESCO shall use reasonable efforts to leave the Sites in the same general

condition that existed immediately prior to installation of the Energy Systems (reasonable wear and tear excepted); provided, however, in no event shall ESCO be required to disturb the Sites to remove equipment that can otherwise be abandoned in place (including any underground wires or conduit). ESCO may leave in place any other equipment that Employer agrees to retain on the Sites.

(b) Employer shall have the right, by delivering written notice to ESCO at least 30 days prior to the Expiration Date, to require ESCO to sell the Energy Systems to Employer on the Expiration Date in accordance with Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the Expiration Date Payment Amount.

(c) Employer shall have the option to extend the terms of this Agreement, as mutually agreed amongst the parties.

Section 11.04 Ownership of Environmental Attributes and Renewable Energy Incentives. ESCO is the owner of all Environmental Attributes, if any, that may be associated with this Agreement and the Energy Systems, and retains exclusive rights to all Renewable Energy Incentives, subject to the transfer and sale obligations of ESCO under this Agreement. Except as expressly set forth herein, this Agreement does not pertain to or create in Employer any right to the Energy Systems or to any product generated by the Energy Systems, including any Environmental Attributes and Renewable Energy Incentives. Employer shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by ESCO; provided, however, Employer shall be obligated to reasonably cooperate with and support ESCO's efforts to secure the benefit of all Environmental Attributes and Renewable Energy Incentives, and Employer shall remain at all times in compliance with all Applicable Legal Requirements so that ESCO has the opportunity to secure such benefits. For grants or incentives that will be exclusively granted to Employer by any Governmental Authority, with confirmation in writing of no possibility of assignment or transfer to ESCO, ESCO shall use reasonable efforts to cooperate with Employer in furtherance of Employer securing the benefit of such grants, by reasonably entering into customary agreements, attending meetings with, making filings to, or supporting filings to, any Governmental Authority, and ESCO shall remain at all times in compliance with all Applicable Legal Requirements so that Employer has the opportunity to secure such benefits.

ARTICLE XII

INSURANCE; LOSS AND CONDEMNATION

Section 12.01 Insurance Requirements. At all times during the Term, each Party shall maintain, at its sole cost and expense, the Required Insurance allocated to such Party strictly in accordance with the minimum coverage requirements and terms set out in 0 (*Insurance Requirements*) and shall comply with all related obligations set out in 0 (*Insurance Requirements*).

Section 12.02 Prosecution of Claims.

(a) Unless otherwise directed by the Non-Insurance Providing Party in writing with respect to the Non-Insurance Providing Party's insurance claims, each Insurance Providing Party shall report and process all potential claims by such Insurance Providing Party or by the Non-Insurance Providing Party against the Required Insurance maintained by such Insurance Providing Party. Each Insurance Providing Party agrees to report to the Insurers any and all matters which may give rise to an insurance claim by such Insurance Providing Party or the Non-Insurance Providing Party under any Required Insurance maintained by such Insurance Providing Party and to timely and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies of Required Insurance, whether for defense or indemnity or both. Each Insurance Providing Party shall use commercially reasonable efforts to enforce all legal rights against the insurer under the applicable policy of Required Insurance maintained by such Insurance Providing Party and Applicable Legal Requirements in order to collect thereon, including

pursuing necessary litigation and enforcement of judgments; provided, however, that the Insurance Providing Party shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means or if pursuing litigation would not be commercially reasonable under the facts and circumstances.

(b) Each Non-Insurance Providing Party agrees to promptly notify the Insurance Providing Party of incidents, potential claims and matters which may give rise to an insurance claim under Required Insurance maintained by such Insurance Providing Party, to tender to the applicable insurer the Non-Insurance Providing Party's defense of the claim (if applicable) under such Required Insurance and to cooperate with the Insurance Providing Party as necessary for the Insurance Providing Party to fulfil the Insurance Providing Party's duties hereunder.

(c) If in any instance the Insurance Providing Party has not promptly performed the Insurance Providing Party's obligation to report to applicable insurers and process any potential insurance claim tendered by the Non-Insurance Providing Party, then the Non-Insurance Providing Party may report the claim directly to the Insurer and thereafter seek coverage under the relevant policy, if the Non-Insurance Providing Party is named an additional insured thereunder.

Section 12.03 Loss of the Energy Systems.

(a) If any portion of any Energy System is damaged or destroyed (an "ES Loss"), ESCO shall repair or replace the affected Energy System in accordance with a repair and replacement schedule agreed to by the Parties in accordance with this Section 12.03 (*Loss of the Energy Systems*).

(b) ESCO shall prepare and provide a proposed repair and replacement schedule to Employer within 15 days after the occurrence of such ES Loss. ESCO shall promptly and reasonably respond to the Employer's questions and comments with respect to such schedule. Within ten days after receipt thereof, Employer shall either confirm that ESCO's proposed schedule is agreed to by Employer or provide ESCO with any reasonable comments. If Employer provides any comments to ESCO's proposed schedule, ESCO shall within ten days after receipt thereof revise ESCO's proposed repair and replacement schedule to implement Employer's comments or notify Employer in writing that it disagrees with any such comments. Any Disputes between the Parties in connection with such repair and replacement schedule shall be resolved pursuant to Article XXII (*Governing Law; Dispute Resolution*).

(c) Except where the Employer elects to remove the Energy System in accordance with this Section 12.03(c) (*Loss of the Energy Systems*) of this Agreement, ESCO shall be entitled to receive all Required Insurance proceeds, with respect to such ES Loss, and shall apply all such proceeds received by ESCO to complete the repair and replacement of the affected Energy System. To the extent that ESCO will not be fully compensated for repair or replacement costs by such proceeds following such ES Loss, ESCO shall provide written notice to Employer of the amount of such shortfall (including any deductible amount and any uninsured loss). In the case of:

(i) an ES Loss not due to ESCO Fault or Employer Fault, then (i) within ten days of receipt of ESCO's notice, Employer shall notify ESCO in writing of Employer's election, in Employer's discretion, either to (A) pay to ESCO the amount of such shortfall or (B) remove the affected Energy System from this Agreement (in which case the provisions applicable to Section 19.03 (*Termination by Employer for Convenience*) shall apply), and (ii) notwithstanding anything herein to the contrary, ESCO shall have no obligation to repair or restore the affected Energy System until Employer has made available to ESCO the amount of such shortfall;

(ii) an ES Loss due to ESCO Fault, ESCO shall be required to fund the amount of such shortfall; and

(iii) an ES Loss due to Employer Fault, then (i) within ten days of receipt of Employer's notice, Employer shall pay to ESCO the amount of such shortfall, (ii) notwithstanding anything herein to the contrary, ESCO shall have no obligation to repair or restore the affected Energy System until Employer has made available to ESCO the amount of such shortfall and (iii) Employer's failure to pay such shortfall amount shall constitute a Relief Event pursuant to clause (o) of the definition thereof.

(d) If Employer elects to remove an Energy System from this Agreement pursuant to Section 12.03(c) (*Loss of the Energy Systems*), effective immediately upon ESCO's receipt of Employer's written notice to such effect, (i) any and all references to the Energy System removed from by Employer shall be deemed excluded from Exhibit C (*Description of the Energy Systems*) and such Energy System shall no longer be an "Energy System" for the purposes hereof, and (ii) any and all references to the Site and the Facility associated with such Energy System shall be removed Exhibit B (*Description of the Sites*) and Exhibit A (*Description of the Facilities*), respectively, and such Site and Facility shall no longer be a "Site" and a "Facility" for the purposes hereof for the purposes hereof and Section 19.05 (*Termination following Energy System Removal*) shall apply to compensate ESCO.

Section 12.04 Damage or Destruction to the Sites or Facilities.

(a) If any portion of any Site or Facility is damaged or destroyed such that ESCO's performance of the Energy Services in respect of such Facility, or Employer's ability to accept such Energy Services, is materially impaired or prevented, and:

(i) such damage or destruction is not due to Employer Fault, Employer will notify ESCO, within five Business Days of such event, of Employer's election either to (A) restore the relevant Site or Facility or (B) remove from this Agreement the Energy System related to the affected Site or Facility; or

(ii) such damage or destruction is due to Employer Fault, Employer will notify ESCO, within five (5) Business Days of such event, of Employer's election either to (A) restore the Facility or (B) remove from this Agreement the Energy System related to the affected Site or Facility, provided that a removal of an Energy System pursuant to this Section 12.04(a)(ii) (*Damage or Destruction to the Sites or Facilities*) shall not give any Party the right to terminate this Agreement pursuant to Section 12.04(b) (*Damage or Destruction to the Sites or Facilities*), Section 3.04 (*Employer's Options Relating to Grid Interconnection*) or Section 12.03(c) (*Loss of the Energy Systems*).

(b) If Employer elects to remove an Energy System from this Agreement pursuant to Section 12.04(a) (*Damage or Destruction to the Sites or Facilities*), effective immediately upon ESCO's receipt of Employer's written notice to such effect, (i) any and all references to the Energy System removed from by Employer shall be deemed excluded from Exhibit C (*Description of the Energy Systems*) and such Energy System shall no longer be an "Energy System" for the purposes hereof, and (ii) any and all references to the Site and the Facility associated with such Energy System shall be removed Exhibit B (*Description of the Sites*) and Exhibit A (*Description of the Facilities*), respectively, and such Site and Facility shall no longer be a "Site" and a "Facility" for the purposes hereof and Section 19.05 (*Termination following Energy System Removal*) shall apply to compensate ESCO.

ARTICLE XIII

CHANGES TO THE ENERGY SERVICES

Section 13.01 Employer Changes.

(a) The Employer shall have the right to make, at any time prior to or during the progress of the Energy Services, alterations or changes in the Energy Services as the Employer may find reasonably necessary to ensure proper functionality of any Energy System (each, a “**Employer Change**”), subject to the limitations set forth in Section 13.01(b) (*Employer Changes*). The Employer shall compensate ESCO for any such Employer Changes and ESCO shall be entitled to an extension of the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date in connection with any delays in the performance of the DB Work associated with the implementation of any such Employer Changes, in each case in accordance with Article XIV (*Relief Events*). Such Employer Changes shall not constitute a breach of or invalidate this Agreement. ESCO agrees to perform the Energy Services, as altered or changed, as if the same had been a part of this Agreement originally. Any such Employer Change shall be the subject of a written Change Proposal in accordance with Section 13.03 (*Change Implementation Process*).

(b) The Employer shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and ESCO may refuse to implement, a Employer Change which: (i) would be contrary to Applicable Legal Requirements or Applicable Standards; (ii) would render any policy of Required Insurance void or voidable (unless the Employer agrees to provide replacement insurance or other security reasonably satisfactory to ESCO); (iii) would cause the revocation of any ESCO Permit; (iv) would require a new governmental approval for ESCO to perform ESCO’s obligations under this Agreement which governmental approval would not, using reasonable efforts, be obtainable; or (v) would materially and adversely affect (A) the risk allocation among the Parties under this Agreement, (B) ESCO’s ability to perform (including any material increase in the risk of non-performance of) ESCO’s obligations under this Agreement or (C) ESCO’s cost of performance under this Agreement.

Section 13.02 ESCO Changes.

(a) At any time during the Term, ESCO may request the Employer to approve modifications to the Energy Services that, in ESCO’s opinion, would improve the efficiency or value of the Energy Services, enable ESCO to better manage the risks assumed by it under this Agreement and maintain compliance with Applicable Legal Requirements and Applicable Standards or otherwise benefit the Employer (each, a “**ESCO Change**”). Any such ESCO Change shall be the subject of a written Change Proposal in accordance with Section 13.03 (*Change Implementation Process*).

(b) The Employer, in its sole discretion, may accept or reject any ESCO Change. If such ESCO Change is accepted by Employer, ESCO shall implement the change in accordance with all applicable Energy Services Standards (as revised pursuant to Section 13.03 (*Change Implementation Process*)), if applicable, and shall be solely responsible for payment of any costs and expenses, additional risks and other impacts, as applicable, resulting from a ESCO Change accepted by Employer.

Section 13.03 Change Implementation Process.

(a) When either the Employer or ESCO requests a change as set forth in Section 13.01 (*Employer Changes*) or Section 13.02 (*ESCO Changes*), ESCO shall prepare a written notice of such

change in a Change Proposal, and submit such Change Proposal to the Employer to allow reasonable opportunity to review and comment upon, such Change Proposal. The Change Proposal shall contain:

(i) sufficient information for the Employer and ESCO to determine that the applicable change: (A) does not diminish the capacity of any Energy System to be operated so as to meet the Energy Services delivery obligations set forth in Section 3.01 (*ESCO's Obligations to Provide Energy Services*); (B) does not impair the safety, quality, integrity, durability and reliability of any Energy System; and (C) is technically feasible;

(ii) in the case of any proposed Employer Change, (A) sufficient information for the Employer and ESCO to determine that the applicable change meets the limitations set forth in Section 13.01(*Employer Changes*) and (B) ESCO's detailed estimate of the cost impact of the requested change; and

(iii) details of how the proposed change will impact the Energy Services, including any schedule impact with respect to a change that is proposed prior to the Commercial Operation Date of any Energy System.

(b) The Parties shall negotiate each Change Proposal in good faith until each Party is satisfied that the conditions of Section 13.03(a) (*Change Implementation Process*) and (in the case of a proposed Employer Change) Section 13.01(*Employer Changes*) are satisfied. Any such Change Proposal, as accepted or modified by the Employer and ESCO and any related change in the terms and conditions of this Agreement, shall be memorialized in a signed writing pursuant to the requirements of Section 23.04(*Amendments and Waivers*).

ARTICLE XIV

RELIEF EVENTS

Section 14.01 Relief Event Claim. Wherever this Agreement expressly provides that ESCO is entitled to seek additional compensation, time extension or other relief in respect of a Relief Event, the provisions of this Article XIV (*Relief Events*) shall apply. ESCO unconditionally and irrevocably waives the right to any claim against the Employer for any monetary compensation, schedule or other relief with respect to the occurrence of Relief Events except in accordance with this Article XIV (*Relief of Events*). The provisions of this Section 14.01 (*Relief Event Claim*) shall not limit ESCO's rights under Article XXII (*Governing Law; Dispute Resolution*); provided, however, that no award of compensation or damages shall be duplicative and, except as set forth in Section 14.04(b)(ii) (*Monetary Relief*), no change to the Availability Payment shall occur.

Section 14.02 Relief Event Claim Process.

(a) ESCO shall comply with the claims procedures and requirements set forth in Section 14.02(b) and (c) (*Relief Event Claim Process*) and such compliance shall be a condition precedent to ESCO's right to receive any compensation, time extension or other relief under Section 14.04 (*Consequences of Relief Event*) in connection with such Relief Event. Failure by ESCO to comply with Section 14.02(b) and (c) (*Relief Event Claim Process*) shall constitute a waiver by ESCO of its right to receive any such relief in connection with such Relief Event; provided, however, that any delay in providing the required notices or claims shall not constitute a waiver of ESCO's rights under this Article XIV (*Relief Events*) to the extent the Employer's rights hereunder are not prejudiced by such delay.

(b) Within 30 days of ESCO first becoming aware of the occurrence of a Relief Event, ESCO shall notify the Employer in writing (a "**Claim Notice**") of ESCO's intention to make a claim with respect to such Relief Event, setting forth in reasonable detail, to the extent such information is then

available: (i) the nature and date of occurrence of the Relief Event; (ii) the nature of any Extra Work resulting or anticipated to result therefrom; (iii) the commencement date of any delay and the key workstreams affected by such delay; (iv) ESCO's preliminary estimate of Extra Work Costs, and length of delay of key workstreams, including any extension sought of any completion deadline; and (v) a description of any other relief sought from ESCO's obligations under this Agreement.

(c) As a condition precedent to any entitlement of ESCO to additional compensation, time extension or other relief under Article XIV (*Relief Events*), ESCO shall submit a written claim, certified by an authorized representative of ESCO (a "**Relief Event Claim**") to the Employer with respect to the Relief Event that is the subject of the Claim Notice no later than the date that is 30 days from the submission of the Claim Notice or, if applicable, the elimination of the subject of delay. ESCO shall include in the Relief Event Claim the following information:

(i) a detailed description of the Relief Event, including the dates on which the Relief Event occurred or when conditions resulting in the Relief Event Claim became evident, and dates, locations and items of Energy Services affected by the Relief Event;

(ii) identification of all pertinent documents and the substance of any material oral communications relating to such Relief Event Claim and the name of the Persons making such material oral communications;

(iii) identification of the provisions of this Agreement which support the Relief Event Claim and a statement of the reasons why such provisions support the Relief Event Claim;

(iv) to the extent known at such time, a detailed compilation of the amount of any compensation sought and a breakdown of the amount sought, including supporting documentation;

(v) a detailed description of any effect of the Relief Event on ESCO's ability to perform any of its obligations under this Agreement and, to the extent known at such time, the duration of that effect and the relief sought;

(vi) an explanation of the measures ESCO has taken to mitigate the consequences of the Relief Event, including steps taken in accordance with Applicable Standards; and

(vii) the type of insurance applicable and amounts that have been or are anticipated to be collected under such insurance.

(d) If the Employer disagrees with ESCO's entitlement to a Relief Event or the scope of relief claimed in the Relief Event Claim by ESCO, the Employer shall notify ESCO in writing of such disagreement within thirty (30) days following the delivery of the Relief Event Claim and ESCO and the Employer shall commence good faith negotiations to resolve the Dispute within 120 days following the delivery of the Employer's notice of disagreement. If the Dispute cannot be resolved within such one hundred and twenty (120) days, either Party may submit the Dispute for resolution pursuant to Article XXII (*Governing Law*); provided, however, that the Employer shall proceed to make payment to ESCO of the undisputed portion of the Relief Event Claim (if applicable) in accordance with Section 9.01 (*Availability Payment*) and any undisputed schedule extension shall be granted, in each case without regard to the procedure for the resolution of Disputes set out in Article XXII (*Governing Law; Dispute Resolution*) of this Agreement.

Section 14.03 Mitigation; Insurance Proceeds; Cost Savings.

(a) ESCO shall use commercially reasonable efforts to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Applicable Standards.

(b) Any entitlement of ESCO to compensation with respect to a Relief Event shall be net of: (i) insurance proceeds received by ESCO pursuant to any Required Insurance and (ii) any Extra Work Costs that can reasonably be mitigated by the ESCO.

Section 14.04 Consequences of Relief Event.

(a) Performance Relief.

(i) The Parties agree that ESCO shall be excused from complying with any of ESCO's obligations under this Agreement but only to the extent performance thereof is prevented by the occurrence of a Relief Event, and no penalties shall be assessed, or other remedies enforced, on account of such noncompliance; provided, however, that ESCO shall not be excused from any obligation under this Agreement to mitigate such Relief Event, including as set forth in Section 14.03 (*Mitigation; Insurance Proceeds; Cost Savings*).

(ii) If a Relief Event occurs that would impact the ESCO's ability to meet a portion of the requirements for Specified Energy for any given [month/quarter] during the continuation of the Relief Event (or the effects thereof), ESCO shall be excused for its inability to comply with such obligations resulting from the Relief Event and no deductions pursuant to Section 9.03 (*Deductions*) shall be assessed for the duration of the Relief Event or the consequences thereof (as such is specifically set out in the Relief Event Claim).

(b) Monetary Relief.

(i) If a Relief Event occurs, the Employer shall pay an amount equal to Extra Work Costs actually incurred by ESCO as a result of the Relief Event in the performance of ESCO's obligations under this Agreement, including due to undertaking Extra Work.

(ii) In addition to any compensation to which ESCO is entitled under Section 14.04(b)(i) (*Monetary Relief*), in the case where any Final Energy System Commercial Operation Date is delayed due to a Relief Event, from the date when ESCO would have achieved such Final Energy System Commercial Operation Date but for the occurrence of such Relief Event through the Final Energy System Commercial Operation Date, Employer shall pay to ESCO an amount per [month/quarter] for the applicable Energy System equal to the amount set forth in Exhibit D.⁴⁵

(iii) Employer shall compensate ESCO for Extra Work Costs as progress payments invoiced as such Extra Work is completed. ESCO shall provide the Employer with an invoice for each [month/quarter] in which such Extra Work is completed.

(c) Extension of Scheduled Deadlines. If a Relief Event occurs prior to the Final Energy System Commercial Operation Date, the Parties agree that the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date, as specifically set out in the relevant Relief Event Claim, shall be extended day-for-day for any delays in ESCO's performance of the DB Work.

⁴⁵ NTD: Amount to equal the monthly Availability Payment minus the O&M expense component thereof since O&M expenses are not being incurred. Amounts to be on a system-by-system basis so that, if a Relief Event does not affect all systems, relief is on a system-by-system basis.

ARTICLE XV

ENVIRONMENTAL MATTERS

Section 15.01 Environmental Conditions.

(a) If either Party discovers any Environmental Condition prior to or following commencement of the Energy Services, such Party shall notify the other Party as soon as practicable. ESCO shall then carry out all Work related to removal, remediation and clean-up of Environmental Conditions in accordance with the Energy Services Standards, subject to ESCO's rights under Article XIV (*Relief Events*) in connection with Third Party Environmental Conditions.

(b) ESCO shall not be deemed to be the generator of any Hazardous Material relating to any Excluded Conditions or Third Party Environmental Conditions.

(c) If any ESCO Environmental Condition arises, ESCO shall (i) pay any resulting fines, assessments, levies, impositions, penalties and other charges imposed by any Governmental Authority on ESCO, (ii) indemnify, defend and hold harmless the Employer in accordance with Section 20.01 (*Indemnification by ESCO*) of this Agreement from any loss and expense incurred by the Employer in connection therewith and (iii) comply with any corrective action plan filed with or mandated by any Governmental Authority in order to remedy a failure of ESCO to comply with Applicable Legal Requirements or applicable Performance Standards.

ARTICLE XVI

INTELLECTUAL PROPERTY AND DATA

Section 16.01 Ownership of Intellectual Property.

(a) Unless this Agreement expressly provides otherwise, all of the ESCO Intellectual Property will remain the exclusive property of ESCO and ESCO's respective Affiliates, and Employer will not by virtue of this Agreement acquire any ownership interest in any ESCO Intellectual Property.

(b) All of the Intellectual Property Rights owned by the Employer or their Affiliates with respect to any part of the Facilities or any operations conducted therefrom will remain the exclusive property of Employer or such Employer's Affiliate, and ESCO will not by virtue of this Agreement acquire any ownership interest in Employer's Intellectual Property Rights.

Section 16.02 ESCO IP License.

(a) ESCO hereby grants Employer a limited, nonexclusive, non-transferable, revocable, fully paid up right and license to use, during the Term, the Intellectual Property Rights of ESCO and ESCO's Affiliates that are directly relevant to the provision of the Energy Services (the "**ESCO Intellectual Property**"), but solely in connection with the performance by Employer of Employer's obligations under this Agreement. The foregoing right and license of Employer to use ESCO Intellectual Property will terminate and expire at the end of the Term, subject to Section 16.01(b) (*Ownership of Intellectual Property*).

(b) Effective upon the end of the Term for any reason (unless the Term ends on the Expiration Date and Employer has not exercised its option to acquire the Energy Systems in accordance with this Agreement), ESCO hereby grants to Employer solely for the benefit of and use for the Energy Services and to the extent necessary for Employer to continue to operate an Energy System, a limited, nonexclusive, non-transferable, fully paid up right and license to use all ESCO's Intellectual Property for so long as Employer requires such license as necessary; provided, however, that ESCO and its Affiliates

will not have any obligation to provide any upgrades or new versions of any software included within such ESCO Intellectual Property.⁴⁶

(c) Subject to this Section 16.02 (*ESCO IP License*) and Section 23.02 (*Confidentiality*), each Party will be free to use any general concepts, techniques, feedback, and know-how provided to it, used by it, or developed by it during the Term or in the course of the Parties' relationship.

Section 16.03 Utility Offtake Data License. Employer hereby grants to ESCO a non-exclusive, irrevocable, perpetual, transferable, royalty-free, worldwide license that is sublicensable to and exercisable solely by its sublicensees and transferees (a) to Process any and all Utility Offtake Data to the extent necessary to sell and deliver the Energy Services to Employer (including to operate the Energy Systems, to perform analytics and to optimize the performance of the Energy Systems, the provision of the Energy Services or grid services, or a network participation program) and (b) to Process any and all Utility Offtake Data in an anonymized manner for any purposes. The foregoing right and license of ESCO to use Utility Offtake Data will terminate and expire at the end of the Term.⁴⁷

Section 16.04 Employer Offtake Data License. Employer hereby grants to ESCO an exclusive, irrevocable, perpetual, transferable, royalty-free, worldwide license that is sublicensable to and exercisable solely by its sublicensees and transferees (a) to Process any and all Employer Offtake Data to the extent necessary to sell and deliver the Energy Services to Employer (including to operate the Energy Systems, to perform analytics and to optimize the performance of the Energy Systems, the provision of the Energy Services or grid services, or a network participation program) and (b) to Process any and all Employer Offtake Data in an anonymized manner for any purpose. The foregoing right and license of ESCO to use Employer Offtake Data will terminate and expire at the end of the Term.⁴⁸

ARTICLE XVII

FINANCING

Section 17.01 Cooperation. Employer shall provide reasonable cooperation to ESCO in connection with ESCO's financing of the Energy Systems and the reasonable requirements of lenders under the Financing Documents. Without limiting the foregoing, Employer shall deliver such legal opinions with respect to this Agreement and provide information (including budget confirmations and related documentation) about the Employer, the Facilities or this Agreement, in each case, as ESCO's lenders may reasonably request. Employer agrees to consider and to negotiate in good faith any changes to this Agreement that may be reasonably requested by ESCO's lenders.

Section 17.02 Direct Agreement. Employer agrees to enter into a direct agreement with ESCO's lenders in connection with any financing of the Energy Systems in substantially the form attached hereto as Exhibit G (*Form of Direct Agreement*).

⁴⁶ NTD: Intellectual property license to be tailored as needed to exclude any ESCO Intellectual Property that Customer will cease to have access to upon expiration or early termination of the Agreement (e.g., any ESCO cloud-based portal or digital platform).

⁴⁷ NTD: Operator of any monitoring platform and IVA should review these provisions.

⁴⁸ NTD: Operator of any monitoring platform and IVA should review these provisions.

ARTICLE XVIII

EVENTS OF DEFAULT; REMEDIES

Section 18.01 Events of Default by ESCO.

(a) Each of the following events or conditions shall be a “**ESCO Event of Default**”:

(i) ESCO fails to pay any undisputed amount due and payable under this Agreement within 30 days following receipt of written notice from the Employer of such failure to pay;

(ii) ESCO fails to achieve the Commercial Operation in respect of all Energy Systems by the Commercial Operation Longstop Date;

(iii) (A) ESCO assigns this Agreement in violation of Section 23.01 (*Assignment*) or (B) a ESCO Change of Control occurs without Employer’s prior written consent; or

(iv) Abandonment;

(v) ESCO fails to perform any material obligation (other than as specified in the preceding paragraphs) under this Agreement within thirty (30) days following receipt of written notice from the Employer demanding such cure; provided, however, that if such breach cannot reasonably be cured during such thirty (30) -day period, ESCO shall be entitled to such additional reasonable period within which to cure such breach (in no event more than sixty (60) days in the aggregate), so long as ESCO has commenced curing such breach within the initial thirty (30)-day period and is diligently pursuing such cure;

(vi) If any representation or warranty of ESCO proves at any time to have been incorrect in any material respect when made, unless the circumstance giving rise to such incorrect representation or warranty is capable of remedy and is cured within thirty (30) days of receipt of written notice by ESCO from Employer; and

(vii) an Insolvency Event occurs with respect to ESCO.

(b) Notwithstanding Section 18.01(a) (*Events of Default by ESCO*), no ESCO Event of Default shall arise where a default by ESCO under this Agreement arises as a result of:

(i) actions or omissions by the Employer where ESCO is otherwise in compliance with its obligations under this Agreement in respect of which the ESCO Event of Default has arisen; or

(ii) a Relief Event.

Section 18.02 's Remedies. Upon the occurrence of a ESCO Event of Default, Employer shall have the right to terminate this Agreement as set forth in Section 19.02 (*Termination by Employer for ESCO Default*) and may exercise any other rights and remedies available under this Agreement or available under Applicable Legal Requirements against ESCO.

Section 18.03 Events of Default by Employer. Each of the following events or conditions shall be a “**Employer Event of Default**”:

(a) Employer fails to pay any undisputed amount due and payable under this Agreement within thirty (30) days following receipt of written notice from the ESCO of such failure to pay;

(b) Employer fails to perform any material obligation (other than as specified in the preceding paragraph) under this Agreement within thirty (30) days following receipt of written notice from the ESCO demanding such cure; provided, however, that if such breach cannot reasonably be cured during such thirty (30) -day period, Employer shall be entitled to such additional reasonable period within which to cure such breach (in no event more than sixty (60) days in the aggregate), so long as Employer has commenced curing such breach within the initial thirty (30) -day period and is diligently pursuing such cure;

(c) If any representation or warranty of Employer proves at any time to have been incorrect in any material respect when made, unless the circumstance giving rise to such incorrect representation or warranty is capable of remedy and is cured within thirty (30) days of receipt of written notice by Employer from ESCO;

(d) An Insolvency Event occurs with respect to the Employer or the Guarantor; and

(e) An Expropriation/Nationalization event occurs.

Section 18.04 ESCO's Remedies. Upon the occurrence of a Employer Event of Default, ESCO shall have the right to terminate this Agreement as set forth in Section 19.01 (*Termination by ESCO for Employer Default*) and may exercise any other rights and remedies available under this Agreement or available under Applicable Legal Requirements.

ARTICLE XIX

TERMINATION; PURCHASE AND SALE OF ENERGY SYSTEMS

Section 19.01 Termination by ESCO for Employer Default. In the event of a Employer Event of Default, ESCO shall have the right to deliver a written notice to the Employer requiring Employer to purchase the Energy Systems from ESCO in accordance with Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the Employer Default Termination Amount and terminating this Agreement effective on the closing date of such purchase and sale, at which point Employer shall be deemed to have purchased the systems and the Employer Default Termination Amount shall be due and payable.⁴⁹

Section 19.02 Termination by Employer for ESCO Default. In the event of a ESCO Event of Default, Employer shall have the right to deliver a written notice to ESCO requiring ESCO to sell the Energy Systems to Employer in accordance with Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the ESCO Default Termination Amount and terminating this Agreement effective on the closing date of such purchase and sale and the Employer will have the obligation to so purchase on receipt of such notice.

Section 19.03 Termination by Employer for Convenience. The Employer may, in its sole discretion, terminate this Agreement in its entirety if the Employer determines that a termination is in the Employer's best interest. The Employer shall deliver to the ESCO a written notice requiring ESCO to sell the Energy Systems to Employer in accordance with Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the Employer Default Termination Amount and terminating this Agreement effective on the closing date of such purchase and sale.

Section 19.04 Termination following an Extended Relief Event. Either Party may deliver to the other Party written notice of the notifying Party's election to effect a transfer of the Energy Systems pursuant to Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the No Default

⁴⁹ NTD: If the Government refuses to purchase mentioned systems and keeps using them without paying; ESCO would have rights to claim payment under this Agreement and, if not paid, under the Sovereign Guaranty.

Termination Amount and terminate this Agreement effective on the closing date of such transfer based on the occurrence of a Relief Event (other than a Relief Event related to a Employer Event of Default, which is governed by Section 19.01 (*Termination by ESCO for Employer Default*) above under the following circumstances:

(a) such Relief Event shall (i) prior to the Final Energy System Commercial Operation Date, result in a delay in achieving the Commercial Operation Date for all of the Energy Systems more than one hundred and eighty (180) days from the Scheduled Commercial Operation Date; or (ii) after the Final Energy System Commercial Operation Date, result in the inoperability of one or more Energy System representing for a period of three hundred and sixty days (360) days or more;

(b) ESCO could not have mitigated or cured such result through the exercise of diligent efforts;

(c) such result is continuing at the time of delivery of the written notice; and

(d) the written notice sets forth in reasonable detail the Relief Event, a description of the result and its duration, and the notifying Party's intent to terminate this Agreement.

Section 19.05 Termination following Energy System Removal. If Employer or ESCO elects to terminate this Agreement pursuant to Section 3.04(b) (*Employer's Options Relating to Grid Interconnection*), Section 12.03(d) (*Loss of the Energy Systems*) or Section 12.04(b) (*Damage or Destruction of the Facilities*), such Party shall deliver a written notice to the other Party requiring such other Party to sell or purchase, as applicable, the Energy Systems in accordance with Section 19.06 (*Purchase and Sale of the Energy Systems*) at a price equal to the No Default Termination Amount and terminating this Agreement effective on the closing date of such purchase and sale.

Section 19.06 Purchase and Sale of the Energy Systems.

(a) If either Party delivers a written notice to the other Party in accordance with this Article XIX (*Termination; Purchase and Sale of Energy Systems*) requiring such other Party to sell or purchase, as applicable, the Energy Systems, or if Employer exercises its right to purchase the Energy Systems on the Expiration Date in accordance with Section 11.03(b) (*Removal Following the Expiration Date; Option to Purchase*), the closing of such purchase and sale of the Energy Systems shall occur within [●] days of the receipt of such notice by the other Party or on the Expiration Date, respectively, and, on such closing date, (i) the Employer shall pay to ESCO the applicable Termination Payment payable to ESCO in accordance with this Agreement, (ii) ESCO shall relinquish full control and possession of the Energy Systems to the Employer, including executing all transfer documents and fulfilling any regulatory requirements for the full and complete release or sale of the Energy Systems to the Employer, and the Employer shall assume responsibility for the Energy Systems, (iii) ESCO shall assign and convey, or cause to be assigned and conveyed, to Employer, pursuant to a form of deed, bill of sale, assignment or other appropriate instrument reasonably acceptable to Employer, and Employer shall accept and assume, good and indefeasible title and interest in, to and under the Energy Systems, free and clear of all liens, and (iv) upon payment of such Termination Payment, the Termination Date shall be deemed to have occurred and this Agreement shall terminate.

(b) In no event shall any such assignment or conveyance impose upon the Employer any cost or liability arising prior to the Termination Date, as to which costs and liabilities ESCO shall indemnify and defend the Employer.

(c) [Each party shall pay all taxes required to be paid by it either party in connection with any such assignment or conveyance, including any recording fees.]

ARTICLE XX

INDEMNIFICATION; LIMITATIONS ON LIABILITY

Section 20.01 Indemnification by ESCO. ESCO shall defend, indemnify and hold harmless the Employer, Employer's Affiliates and the directors, trustees, officers, shareholders, partners, members, agents and employees of any of the foregoing ("**Employer Indemnitees**"), from and against all Losses resulting from the following, in each case, except to the extent caused by the Employer Fault:

- (a) a breach by ESCO of this Agreement;
- (b) any claims relating to injury to or death of persons, or damage to or loss of property, to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, ESCO in connection with ESCO's performance of this Agreement;
- (c) the violation by ESCO of Applicable Legal Requirements in connection with ESCO's performance of this Agreement;
- (d) any ESCO Environmental Condition;
- (e) any claims by Permitted Third Party Off-takers against Employer arising from Employer's performance or non-performance under its agreements with such Permitted Third Party Off-takers; or
- (f) any allegation that ESCO's and/or Employer's use of the ESCO Intellectual Property in accordance with this Agreement infringes or misappropriates the Intellectual Property of any third party or violates any Applicable Legal Requirements.

Section 20.02 Indemnification by Employer. Employer shall defend, indemnify and hold harmless the ESCO, ESCO's Affiliates and the directors, trustees, officers, shareholders, partners, members, agents and employees of any of the foregoing ("**ESCO Indemnitees**"), from and against all Losses resulting from the following, in each case, except to the extent caused by the ESCO Fault:

- (a) a breach by Employer of this Agreement;
- (b) any claims relating to injury to or death of persons, or damage to or loss of property, to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, Employer;
- (c) the violation by Employer of Applicable Legal Requirements; and
- (d) any Environmental Condition other than a ESCO Environmental Condition;

Section 20.03 Limitation on Liability.

(a) Mutual Limitation on Consequential Damages. NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL LOSS, INCLUDING LOSS OF REVENUE, OR DAMAGE OF ANY NATURE ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER, EVEN IF ADVISED OF SUCH.

(b) Exclusions. Notwithstanding anything to the contrary contained herein, the limitation of liability set forth in Section 20.03 (*Limitation on Liability*) shall not apply to damages arising from, related to or based on: (i) ESCO's indemnification obligations in respect of third-party claims hereunder, (ii) fraud, willful misconduct, gross negligence or violation of Applicable Legal Requirements

by either Party, (iii) damages that are covered by the proceeds of the Required Insurance to be obtained and maintained by the liable Party (or that would have been so covered if the liable Party had complied with its obligations to maintain such Required Insurance in accordance with this Agreement), (iv) any amounts that a Party may owe or be obligated to reimburse to the other Party under the express terms of this Agreement or (v) interest, late charges, fees, penalties and similar charges that this Agreement expressly states are due from one Party to the other.

ARTICLE XXI

REPRESENTATIONS AND WARRANTIES

Section 21.01 ESCO's Representation and Warranties.

(a) ESCO is a [●] and validly existing under the laws of Nigeria,⁵⁰ has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of ESCO provided for herein. ESCO is duly qualified to do business, and is in good standing, in Nigeria,⁵¹ and shall remain in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under this Agreement.

(b) The execution, delivery and performance of this Agreement has been duly authorized by all necessary [corporate] action of ESCO; each Person executing this Agreement on ESCO's behalf has been duly authorized to execute and deliver this Agreement.

(c) Neither the execution and delivery by ESCO of this Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or shall result in a default under or a violation of the organizational documents of ESCO or any Applicable Legal Requirement or any other agreements or instruments to which ESCO is a party or by which ESCO is bound.

(d) This Agreement constitutes the legal, valid and binding obligation of ESCO, enforceable against ESCO in accordance with its terms, [subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity].

(e) There is no action, suit, proceeding, investigation or litigation pending and served on ESCO which challenges ESCO's authority to execute, deliver or perform, or the validity or enforceability against ESCO of, this Agreement, or which challenges the authority of ESCO's representative executing this Agreement.

Section 21.02 Employer's Representation and Warranties.

(a) Employer is a [●], duly formed and validly existing under the laws of Nigeria,⁵² and has full status, power, right and authority to execute, deliver and perform this Agreement and to perform each and all of the obligations of the Employer provided for herein.

(b) Each Person executing this Agreement has been duly authorized to execute and deliver this Agreement on behalf of the Employer; and this Agreement has been duly executed and delivered by the Employer.

⁵⁰ NTD: Adjust if used for a template in countries other than Nigeria.

⁵¹ NTD: Adjust if used for a template in countries other than Nigeria.

⁵² NTD: Adjust if used for a template in countries other than Nigeria.

(c) Neither the execution and delivery by the Employer of this Agreement nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or shall result in a default under or violation of the Employer's organizational documents or any Applicable Legal Requirement or any other agreements or instruments to which the Employer is a party or by which the Employer is bound.

(d) This Agreement has been duly authorized by the Employer and constitutes a legal, valid and binding obligation of the Employer enforceable against the Employer in accordance with its terms, [subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity].

(e) There is no action, suit, proceeding, investigation or litigation pending and served on the Employer which challenges the Employer's authority to execute, deliver or perform, or the validity or enforceability against the Employer of, this Agreement, or which challenges the authority of the Employer official executing this Agreement.

ARTICLE XXII

GOVERNING LAW; DISPUTE RESOLUTION

Section 22.01 Governing Law. This Agreement, all matters arising out of or relating to this Agreement, including its interpretation, construction, performance, and enforcement, and all of the transactions contemplated hereby shall be governed by the laws of the Federal Republic of Nigeria,⁵³ without giving effect to such jurisdiction's conflicts of law principles to the extent they would prompt the application of different substantive law.

Section 22.02 Dispute Resolution.

(a) Any dispute arising out of or relating to this Agreement (whether based upon contract, tort or any other legal theory) (a "**Dispute**") will be resolved in accordance with the procedures specified in this Article XXII (*Governing Law; Dispute Resolution*).

(b) Any Party ("**Claimant**") having a Dispute with another Party ("**Respondent**") will provide written notice to the Respondent ("**Dispute Notice**"), stating the following (and Claimant shall use commercially reasonable efforts to cause such Dispute Notice to be plain and concise to the extent practicable; provided, however that the failure to do so shall not affect the validity of the Dispute Notice):

(i) the nature of the Dispute, including the Persons involved and Respondent's role in the Dispute;

(ii) the legal basis of the Dispute;

(iii) Claimant's proposed remedy, if Claimant elects to propose the same at such time; and

(iv) that Claimant will meet with Respondent as per Section 22.02(c) (*Negotiation*), to discuss in good faith ways to resolve the Dispute.

(c) Negotiation.

(i) The Parties shall cause their respective senior executives to meet "in person" and negotiate in good faith to attempt to resolve the Dispute within 15 days from the date

⁵³ NTD: Adjust if used for a template in countries other than Nigeria.

of the Dispute Notice for a negotiation period of at least 15 days or such longer negotiation period as may be mutually agreed by the Parties. Statements made by representatives of the Parties during any such meetings and documents specifically prepared for such meetings shall be considered part of settlement negotiations and shall not be admissible as evidence in any proceeding between the Parties of any kind without the mutual written consent of the Parties.

(ii) If the Parties succeed in resolving a Dispute through their senior executives, they shall memorialize the resolution in writing, and promptly perform their respective obligations in accordance therewith.

(iii) If the senior executives of the Parties are unable to resolve the Dispute within such fifteen (15) day period, unless such Parties agree to extend such negotiation period, any such relevant Party may:

(A) if such Dispute is exclusively within the categories of Disputes which may be resolved by the Verification Agent in accordance with Section 22.02(e) (*Independent Verification Agent*), refer the Dispute for resolution by the Verification Agent; or

(B) refer the Dispute to arbitration under Section 22.02(d) (*Arbitration*).

(d) Arbitration.

(i) Any Dispute which cannot be resolved pursuant to Section 22.02(c) (*Negotiation*) shall be settled by arbitration carried out in accordance with the [Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”)] by one or more arbitrators appointed in accordance with said [Rules]⁵⁴.

(ii) The seat of arbitration shall be [●].⁵⁵

(iii) The language of the arbitration shall be English.

(iv) The laws applicable at the seat of arbitration shall govern this arbitration agreement.⁵⁶

(v) This agreement to arbitrate is binding upon the Parties and the successors and permitted assigns of any of them.

(vi) At either Party’s option, any other Person may be joined as an additional party to any arbitration conducted under this Section 22.02(d) (*Arbitration*) in accordance with the Rules.

(vii) The Parties agree that any dispute arising out of or relating to this Agreement, or any related agreement may be consolidated into one arbitration proceeding in accordance with the Rules.

(viii) The arbitration award shall be final and binding, in writing, signed by all arbitrators, and shall state the reasons upon which the award thereof is based.

⁵⁴ NTD: The number of arbitrators desired should be specified.

⁵⁵ NTD: This should be an offshore jurisdiction (e.g., London, Paris, Geneva, etc.).

⁵⁶ NTD: To be included if London chosen as the seat.

(ix) The arbitrators may award costs of the arbitration and fees, including reasonable attorney's fees and expenses to the prevailing Party.

(e) Independent Verification Agent.

(i) In the event of a Dispute of a technical, engineering, construction or operational nature relating to the Energy Services, including with respect to the condition of an Energy System (including following a casualty), any failure by ESCO to deliver the Specified Energy or any other Dispute of a technical, engineering, construction or operational nature relating to the performance or non-performance by a Party of such Party's obligations under this Agreement (but specifically excluding a Party's indemnification obligations hereunder) (collectively, "**Technical Matters**") that is not resolved pursuant to Section 22.02(c) (*Negotiation*), either Party may submit such Dispute to the Verification Agent.

(ii) If a Party refers a Dispute to the Verification Agent in accordance with this Section 22.02(e) (*Independent Verification Agent*), the other Party shall comply with the provisions of this Section 22.02(e) (*Independent Verification Agent*) and cooperate fully with the referring Party in regard to all procedural actions and timelines in this Section 22.02(e) (*Independent Verification Agent*). In the event any of the Parties refers a Dispute to the Verification Agent, such Party shall refer the matter to the Verification Agent by service of a notice of reference to the Verification Agent by the referring Party upon the other Party. The Verification Agent will be instructed by the Parties that he or she is to act as an expert in engineering (and not as an arbitrator or mediator) to resolve, in accordance with the Applicable Standards, only the Technical Matters submitted to the Verification Agent as a Dispute.

(iii) As promptly as practicable, but no later than ten Business Days after submission of a Technical Matter to the Verification Agent (unless a longer period is mutually agreed by the Parties), each of the Parties will submit to the Verification Agent a position paper in support of, or further explaining, such Party's position with respect to a referred Technical Matter, a copy of which will be delivered to the other Party. The Verification Agent will deliver to the Parties a written decision as promptly as practicable but: (A) not sooner than (1) the submission deadline for their respective position papers described in the preceding sentence or (2) if supporting position papers are submitted, five Business Days after the Verification Agent's receipt of such papers; and (ii) in any event within ten Business Days after the submission of a Technical Matter to the Verification Agent (unless a longer period is mutually agreed by the Parties involved in the Dispute).

(iv) A decision of the Verification Agent under this Section 22.02(e) (*Independent Verification Agent*) shall be binding on the Parties and is intended to assist the Parties in reaching an agreement to resolve a Technical Matter in an expedited manner. Any such decision of the Verification Agent may be submitted to an arbitral tribunal under this Article XXII (*Governing Law; Dispute Resolution*), solely with respect to the Technical Matters decided therein, and shall be binding on the Parties for such purposes.

(v) The Verification Agent will conduct an impartial review of the Technical Matter in such manner as the Verification Agent thinks fit, including carrying out site inspections, review of documents and interviews with any relevant individuals, as necessary or prudent to rule on the Technical Matter. The Parties will comply with all reasonable requests from the Verification Agent for additional information or documents. Any submission or documentation in respect to the Technical Matter provided to the Verification Agent by any Party will also be provided to the other Party.

ARTICLE XXIII

MISCELLANEOUS

Section 23.01 Assignment.

(a) This Agreement may not be assigned, transferred, or novated in whole or in part by ESCO or Employer without the prior written consent of the other Party, which may be withheld in the sole discretion of the non-assigning Party. Any attempted or purported assignment or transfer by any Party in violation of this (b) (*Assignment*) shall be deemed null and void and of no force or effect.

(b) Notwithstanding the foregoing, without the prior written consent of the Employer, ESCO may grant the ESCO lenders a collateral assignment of this Agreement as permitted by and in accordance with the terms of a direct agreement entered into in accordance with Section 17.02 (*Direct Agreement*).

Section 23.02 Confidentiality. Neither Party shall disclose directly or indirectly any Confidential Information without the prior written confirmation from the other Party; provided that, a Party shall not be required to hold confidential any information that: (a) becomes publicly available other than through the receiving Party; (b) is required to be disclosed to a Governmental Authority under any Applicable Legal Requirements; (c) is required to be disclosed pursuant to a validly issued subpoena; (d) is independently developed by the receiving Party, or (e) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality; provided further that if disclosure of information is required by a Governmental Authority or validly issued subpoena, prior to disclosing any such Confidential Information, to the extent possible, Employer shall provide ESCO with an opportunity to propose redactions protecting its interests in any information Employer intends to disclose. After performing an independent review in accordance with applicable Legal Requirements, Employer will provide ESCO with its intended disclosure, including redactions, if any, and provide sufficient time for the ESCO to take such legal action as it sees necessary to prevent disclosure of any Confidential Information it believes is not disclosable under applicable Legal Requirements.

Section 23.03 Notices. Any notice or other communication to be given under this Agreement shall be given in writing in English and may be delivered in person or sent by a reputable courier or electronic mail to the address of the relevant recipient set forth in Section 23.03(c) (*Notices*) or such other address as the Parties, as applicable, may specify in writing pursuant to this Section 23.03 (*Notices*).

(a) Any notice or document shall be deemed to be given:

(i) if delivered in person, at the time of delivery; or

(ii) if sent by reputable courier for overnight delivery, at 10:00 a.m. on the second (2nd) Business Day after it was deposited with such reputable courier; or

(iii) in any other case on the next Business Day following the date of transmission; provided that if sent by electronic mail, a hard copy of such notice or document must be dispatched by post within forty-eight (48) hours of the time and date such electronic mail was sent.

(b) In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted or that the fax was properly addressed and transmitted.

- (c) The addresses for notices are as follows:
 - (i) ESCO: [●]
 - (ii) Employer: [●]
 - (iii) IVA: [●]

Section 23.04 Amendments and Waivers. This Agreement may be amended, modified, superseded, cancelled, and the terms and conditions hereof may be waived, only by a written instrument signed by the Parties hereto or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Furthermore, if the Parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

Section 23.05 Survival. Section 9.04 (*Billing and Payment*), Section 9.07 (*Taxes*), Section 20.01 (*Indemnification by ESCO*), Section 20.03 (*Limitation on Liability*) and Section 23.01 (*Assignment*) shall survive termination or expiration of the Agreement, in addition to any other provisions, which by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of the Agreement.

Section 23.06 Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and their respective heirs, successors, and permitted assigns and shall not imply or create any rights on the part of, or obligations to, any other Person.

Section 23.07 Relationship of the Parties. Nothing in this Agreement will be deemed to constitute either Party a partner, agent, or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The Parties' respective obligations are individual and not collective in nature.

Section 23.08 Entire Agreement; Severability. The Parties agree that this Agreement together with all Exhibits constitutes the entire agreement between Employer and ESCO in respect of the subject matter hereof. If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the Parties shall, in good faith, reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

Section 23.09 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

Section 23.10 Waiver of Sovereign Immunity. Each Party recognizes and acknowledges that this Agreement constitutes a commercial transaction, and that its rights and obligations under this Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by any Applicable Legal Requirements, each Party hereby irrevocably waives on behalf of itself and its assets, any

and all sovereign or other immunities from jurisdiction, from enforcement and for any other purpose whatsoever; *provided, however*, that this waiver is qualified by the carving out of certain military and diplomatic assets of the FGN, referred to as the “*protected assets*” under Applicable Legal Requirements, including:

(a) military property, including aircrafts and warships, customarily used for defense purposes and under the control of a military authority; and

(b) diplomatic and consular property customarily used to discharge diplomatic and consular functions under the control of a diplomatic or consular authority.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.

[ESCO Name]

By: _____

Name: _____

Title: _____

[Employer Name]

By: _____

Name: _____

Title: _____

Exhibit A

Description of the Facilities

1. FACILITY GENERAL INFORMATION⁵⁷

Description	Designation
1. Name of the Location	
2. Facility GPS Coordinates	
3. Type of facility (health centers, school, Administrative building, etc.)	
4. Facility categorization (E.g., for health centers: Primary Healthcare, District Hospital etc.)	
5. KPI Category (e.g., small, medium)	

Refer to Appendix [●] ([●]) of the bidding documents for additional details regarding the description of each Facility (e.g., architectural and electrical diagram, climatic data, drawings etc.). Information from such appendix will be incorporated in this exhibit prior to contracting. Additional details may be added to or revised in this exhibit prior to contracting based on details submitted by the ESCO in its proposal.

Lot 1 :

S/N	LGA	Ward	Facility	Solar Power Size	Longitude (°)	Latitude (°)
1	Agaie	Magaji Ward	Magaji Primary Health Care	10 kWp		
2	Edati	Guzan	PHC Diko (Egba Enagi PHC+)	15 kWp		
3	Gurara	Izom Ward	Izom Primary Health Care Centre	20 kWp		
4	Gurara	Gawu Ward	Gawu Babangida Maternal and Child Health	10 kWp		
5	Katcha	Sidi Saba Ward	PHC Sidi Saba	10 kWp		
6	Kontagora	Nagwamatse Ward	Rigiyan Nagwamatse Primary Health Care Centre	10 kWp		
7	Kontagora	Gabas	PHCC Gabas	10 kWp		
8	Lapai	Ebbo/Gbace nku Ward	Ebbo Comprehensive Health Centre	10 kWp		
9	Bida	Masaba B Ward	Makwallah Maternal and Child Health Clinic	10 kWp		
10	Mariga	Beri Ward	Beri Comprehensive Health Centre	10 kWp		
11	Mokwa	Rabba/Ndayako Ward	Rabba Primary Health Centre	10 kWp		

⁵⁷ Note to Template: To be provided for each Facility.

12	Munya	Dangunu Ward	Sarkin Pawa Rural Hospital	10 kWp		
13	Rafi	Kwana Ward	Kwana Primary Health Centre	10 kWp		
14	Rijau	Ushe Ward	Sabongari Ushe Primary Health Clinic	10 kWp		
15	Shiroro	Rafin Kuka	Rafin Kuka PHCC	10 kWp		
16	Suleja	Second Gate	Second Gate PHCC	10 kWp		
17	Wushishi	Maito	Maito PHCC	10 kWp		

Lot 2:

S/N	LGA	Ward	Facility	Solar Power Size	Longitude (°)	Latitude (°)
1	Bida	Masaba	Government Girls Science College, Bida	50 kWp	6.0125E	9.0850N
2	Suleja	Kurmin Sarki	Government Science College, Suleja	50 kWp	7.1872E	9.2082N
3	Bosso	Bosso	Maryam Babangida Girls Science College, Minna	50 kWp	6.55694E	9.61389N
4	Lapai	Arewa/Yamma	Muhammadu Kobo Secondary School, Lapai	50 kWp	6.5718E	9.0436N
5	Kontagora	Masuga	College of Arts and Islamic Legal Studies, Kontagora	50 kWp	5.5938E	10.4086N
6	Kontagora	Magajiya	Government Girls Science Unity College, Kontagora	50 kWp	6.00621E	10.1414N

Lot 3:

S/N	LGA	Ward	Facility	Solar Power Size	Longitude (°)	Latitude (°)
1	Gudupe	Abuja Municipal Area Council	PHC Gudupe	15 kWp	7.46844	9.18467
2	Kuje	Kuje Area Council	PHC Kuje	15 kWp	7.48797	9.07292
3	Ibwa 1	Abaji Area Council	PHC Ibwa 1	15 kWp	7.05862	9.06363
4	Abaji	Abaji Area Council	PHC Abaji	20 kWp	6.85064	8.50465
5	Mangoro	FCT	PHC Mangoro	50 kWp	7.56352	8.91694

Lot 4

S/N	LGA	Ward	Facility	Solar Power Size	Longitude (°)	Latitude (°)
1	Omamini	Omamini	PHC Omgmini	5 kWp	8.35677	8.40315
2	Nunku	Nunku	PHC Nunku	5 kWp	8.40246	9.13827
3	Karmo	Karmo	PHC Karmo	5 kWp	7.489615	8.496621
4		Keane	FGG Keane	110 kWp		

Exhibit B

Description of the Sites – Refer to section II of the RFB for details

SITE

A description of each Site (as defined in the Energy Services Agreement) shall, at minimum, include a description of the Energy System generator, affiliated equipment and power control rooms.

1. ENERGY GENERATOR AREAS DESCRIPTION

It will include the following:

- The location of the generator supported by a drawing with the dimension
- GPS coordinates of the Energy System
- Type of fence or other enclosures provided for the Energy System and associated equipment
- The type of Energy System, including in the case of PV generation structures, indications of whether they are ground-mounted, pole-mounted or roof-mounted) for the Facility and how the associated equipment is housed and secured

2. POWER CONTROL ROOMS DESCRIPTION

It will include the following:

- A drawing of the room indicating the location of the Energy System components such as batteries, inverters, regulators and other controls units for the Facility and associated equipment
- The location and type of the room for the Facility and for housing associated equipment

Refer to Appendix [●] ([●]) of the bidding documents for additional information on the description of each Site (e.g., drawings of the site components). Information from such appendix will be incorporated in this exhibit prior to contracting. Additional details may be added to or revised in this exhibit prior to contracting based on details submitted by the ESCO in its proposal.

Exhibit C

Description of the Energy Systems – Refer to Section II of the RFB

Refer to Appendix [●] ([●]) of the bidding documents for descriptions of each Energy System (e.g., Energy System design parameters, size, type of configuration, technical specifications etc.). Information from such appendix will be incorporated in this exhibit prior to contracting. Additional details may be added to or revised in this exhibit prior to contracting based on details submitted by the ESCO in its proposal.

All components shall be selected and installed in compliance with all manufacturer's instructions and according to related quality standards. Care should be taken to comply with any instructions related to interoperability of components to ensure that the components selected are capable of operating when combined into a complete system. Components shall be rated for the anticipated ambient temperature considering both the local climate and the specific operating environment of the equipment location.

Exhibit D

Specified Energy, Availability Payment Deductions, Verification Process

The following key performance indicators (KPIs) presented in Table 1 shall be used to assess compliance by the ESCO and the Employer. Descriptions of these KPIs, as well as information relating to their determination and reporting, are provided below. Following the description and examples are the specified target values and tolerances needed to determine compliance with the KPIs for all indicators.

All KPIs under the responsibility of the ESCO include a grace period of [4] days after a high consumption event where the maximum agreed upon energy consumed (EC) or Peak Load (PL) has been exceeded – that is, if the Employer did not comply with the KPIs under the responsibility of the facility. These events could cause a system to not provide the agreed-upon energy in the days following the event. Repeated incidents of the facility exceeding agreed-upon values should be addressed quickly by ESCO and the Employer.

Table 1. Project Key Performance Indicators (KPIs)

System KPI	KPI Guidelines	Compliance responsibility
Available energy (EA)	<p>Available energy (EA) per day \geq Target performance (EA_{target}) per day. This metric will be evaluated on a daily basis. The prorated value for the [month/quarter] will be determined by averaging the prorated percentages for each day within the [month/quarter], as described in Tables 2 and 3.</p> <p>Note that repercussions for non-compliance will be dependent on whether the Employer has exceeded the agreed upon Energy consumed (EC).</p>	ESCO
System Uptime (USYS)	System uptime \geq a target amount of time. This metric will be evaluated as a percentage of the number of minutes the system is functional during the reporting period.	ESCO
Depth of discharge (DoD)	<p>Depth of discharge (DoD) \leq maximum DoD recommended for the battery. The recommended depth of discharge is [XX%]⁵⁸</p> <p>This metric is intended to ensure the discharge voltage of the battery is maintained above a level appropriate for the long-term health of the battery. This metric will be evaluated as the percentage of the number of minutes the battery's state of charge is maintained above the maximum depth of discharge.</p>	ESCO
Days fully charged (batteries) (DFC)	Days batteries are fully charged \geq minimum days of full charge. Only applicable to lead-acid batteries.	ESCO
Energy consumed (EC)	<p>Energy consumed \leq Maximum agreed upon value</p> <p>To ensure the facility does not misuse the system, the energy the facility consumes each day should not exceed a maximum agreed upon value, which may be equal to or greater than EA_{target}, and</p>	Public Institution

⁵⁸ Break into categories if and as needed. Recommended DoD is based on battery chemistry, e.g., 80% is a general recommendation for lithium batteries, 50% is a general recommendation for lead acid batteries.

System KPI	KPI Guidelines	Compliance responsibility
	may vary throughout the year at the discretion of the ESCO. This metric will be used to determine whether the ESCO should be held accountable for non-compliance with the Available energy metric.	
Peak Load (PL)	<p>Peak load \leq a maximum power value</p> <p>This metric is assessing the facility’s compliance with this Agreement and may indicate the need for intervention or education if the peak load is routinely exceeded.</p>	Public Institution
Manually identified issues	<p>All issues identified by on-site staff or other system users have been resolved within an acceptable time period, or have an approved plan in place for their resolution. Major issues are required to be addressed on a faster timeline than minor issues.</p> <p>Major issues may include, but are not limited to:</p> <ul style="list-style-type: none"> • Incidents of theft or loss of electrical or energy system equipment • Safety hazards • Malfunctioning wiring that limits service provision to significant portions of the Facility • Failed remote monitoring hardware or issues impeding data transfer (each a “Major Issue” and collectively the “Major Issues”) <p>Minor issues may include, but are not limited to:</p> <ul style="list-style-type: none"> • Failed bulbs • Failed, malfunctioning, or underperforming streetlights • Malfunctioning outlets or switches (each a “Minor Issue” and collectively the “Minor Issues”) <p>Issues shall be logged in the data aggregation system by facility staff, district engineers, the ESCO or the Employer.</p> <p>This indicator is evaluated with two metrics:</p> <ul style="list-style-type: none"> • The percentage of issues that have been reviewed within 72 hours • The percentage of Major Issues that have been resolved within two weeks of the issue being reported. <p>Additionally, in the case that any Major or Minor Issues that were reported in the prior [month/quarter] have not been resolved in the current [month/quarter], [10%] of the total payment for the Lot will be withheld until the outstanding issues are resolved.</p>	ESCO

Deductions from Availability Payments for noncompliance with KPIs under responsibility of the ESCO will be determined by the level of attainment of KPI thresholds. For each KPI, there exists a target value that will grant full attainment of the indicator, as well as lower values that allow the prorating or the waiver of the Availability Payment. Consequences for the failure to attain target values, including the prorating

and waiver of the Availability Payment, will depend on the level of service provided against the aforementioned values. Table 2 provides Availability Payment prorating and waiver levels for the KPIs.

Table 2. KPI Attainment Level and Associated Prorating Percentage of Payment⁵⁹

KPI attainment level	Definition	Availability Payment prorating
Target value	Meets the target performance specified in Table 3 to receive full payment for the evaluation period	100%
Low value	Lowest performance level below the target value but equal to or greater than the low value prompts prorated payment for the evaluation period	[80]%
Below Low value	Performance below the Low value will result in the payment being waived for that metric over the stated evaluation period (e.g., for EA, the evaluation period is on a daily basis, while for other metrics the evaluation period is over the entire [month/quarter])	0%

The KPI values for each system type are presented in Table 3, Table 4, Table 5, and Table 6:

Table 3. Values of Project Key Performance Indicators (KPIs) for the Main Buildings (ESCO Responsibility)

KPI	Target value	Low Value
Available energy (EA)	[●] kWh	[●] kWh
System Uptime (USYS)	[98]% of the number of minutes in the [month/quarter]	[95]% of the number of minutes in the [month/quarter]
Depth of discharge (DoD)	[95]% of the number of minutes in the [month/quarter]	[80]% of the number of minutes in the [month/quarter]
Manually identified issues (review)	[100]% of issues have been reviewed within [72] hours	[80]% of issues have been reviewed within [72] hours
Manually identified Major Issues (resolve)	[100]% of Major Issues have been resolved within [two weeks] of the issue being reported	[80]% of Major Issues have been resolved within [2 weeks] and no major issues remain unresolved at the end of the [month/quarter] aside from those reported within the past 2 weeks

⁵⁹ NTD: To consider the option to structure prorating with a flexible number of levels (e.g., setting target, medium, and low values rather than target and low values).

Note: The Available energy (EA) Availability Payment prorating is evaluated daily and each day's percentage will be averaged across the [month/quarter]. The Availability Payment prorating for all other KPIs are evaluated over the [month/quarter] rather than on a daily basis.

Table 4. Values of Project KPIs for the Main Buildings (Facility Responsibility)

KPI	Maximum value
Energy consumed (EC)	[●] kWh per day (though may be increased during higher insolation times of the year or sites with higher insolation at the discretion of the ESCO. Changes shall be communicated to the Employer, Facility, and data aggregation platform provider).
Peak Load (PL)	[●] kW (see note on Energy consumed)

Type of System Size	KPI			
	Ea Target value (kWh)	Ea low target value (kWh)	Ec (kWh)	PL (kW)
5 kWp System	22	17.60	22	4
10 kWp System	44	35.20	44	8.5
15 kWp System	66	52.80	66	12.5
20 kWp System	88	70.40	88	17.8
50 kWp System	220	176	220	45
110 kWp System	484	387.20	484	102

Table 5. Values of Project Key Performance Indicators (KPIs) for staff house if applicable (ESCO Responsibility)⁶⁰

KPI	Target value	Low Value
Available energy (EA)	[●] kWh	[●] kWh
System Uptime (USYS)	[98]% of the number of minutes in the [month/quarter]	[95]% of the number of minutes in the [month/quarter]
Depth of discharge (DoD)	[95]% of the number of minutes in the [month/quarter]	[80]% of the number of minutes in the [month/quarter]
Manually identified issues (review)	[100]% of issues have been reviewed within [72 hours]	[80]% of issues have been reviewed within [72 hours]

⁶⁰ NTD: Table 5 applies to cases where staff housing has a separate energy system.

Manually identified Major Issues (resolve)	[100]% of Major Issues have been resolved within [two weeks] of the issue being reported	[80]% of Major Issues have been resolved within [2 weeks] and no major issues remain unresolved at the end of the [month/quarter] aside from those reported within the past [2 weeks]
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Table 6. Values of Project Key Performance Indicators (KPIs) for staff houses (Facility Responsibility)⁶¹

KPI	Maximum value
Energy consumed (EC)	[●] kWh per day (though may be increased during higher insolation times of the year or sites with higher insolation at the discretion of the ESCO. Changes shall be communicated to the Employer, Facility, and IVA).
Peak Load (PL)	[●] kW (see note on Energy consumed)

The target performance (EA_{target}) for a system is the agreed-upon level of energy available to power loads (specified in units of kilowatt-hours per day [kWh/day]). EA_{target} is used as a threshold for determining compliance with the KPI of Available Energy (EA). This value will be used as the basis for the original system design.

In cases of non-compliance with EA, if any party believes the cause for non-compliance is due primarily to the actual insolation or environmental conditions differing from the average historical values used for system design, procedures can be used to adjust the expected value of EA_{target} to account for the change in insolation or temperature. EA_{target} shall be adjusted by using design software with the actual system specifications as inputs, along with real-time insolation and weather data taken on site or from satellite-based datasets, to estimate the amount of energy the system should produce given the new insolation or temperature. The design software and input values used for this assessment shall be agreed upon by all parties. To complete this analysis, recent time-series data will be required. Due to the cost of real-time data, this calculation is only conducted in the case of a plausible dispute.

The following examples (Table 7, Table 8, Table 9, Table 10, Table 11, and Table 12) illustrate how compliance with the KPIs will be evaluated and prorated to determine the adjusted [month/quarter]ly payment.

Table 7. KPI compliance Example 1 (ESCO compliant, Employer compliant)

System KPI	KPI measurement	Compliance assessment	Results
Available energy (EA)	Available energy (EA) per day \geq Target performance (EA_{target}) per day	ESCO in compliance	Availability Payment must be performed in full by Employer

⁶¹ NTD: Table 6 applies to cases where staff housing has a separate energy system.

System KPI	KPI measurement	Compliance assessment	Results
<i>System Uptime (USYS)</i>	System uptime \geq Target amount of time		
<i>Depth of discharge (DoD)</i>	Depth of discharge (DoD) \leq maximum DoD recommended for the battery for at least the Target amount of time		
<i>Days fully charged (batteries) (DFC)</i>	Days batteries are fully charged \geq Target days of full charge. Only applicable to lead-acid batteries.		
<i>Manually identified issues (review)</i>	All issues have been reviewed within 72 hours		
<i>Manually identified Major Issues (resolve)</i>	All Major Issues have been resolved within two weeks of the issue being reported		
<i>Energy consumed (EC)</i>	Energy consumed \leq Target value	Employer in compliance	
<i>Peak Load (PL)</i>	Peak load \leq Target value		

Deductions from Availability Payments for noncompliance with KPIs under responsibility of the ESCO will include prorating or a complete waiver of the Availability Payment due by the Employer to the ESCO related to the noncompliance period (see example in **Table 8**).

Table 8. KPI compliance Example 2 (ESCO non-compliant, Employer compliant)

System KPI	KPI measurement	Compliance assessment	Results
<i>Available energy (EA)</i>	Available energy (EA) per day \leq Target performance (EA _{target}) per day	ESCO NOT in compliance	Availability Payment must be prorated or waived according to the amount specified in Tables 2, 3 and 4
<i>System Uptime (USYS)</i>	System uptime \geq Target amount of time		
<i>Depth of discharge (DoD)</i>	Depth of discharge (DoD) \leq maximum DoD recommended for the battery for at least the Target amount of time		
<i>Days fully charged (batteries) (DFC)</i>	Days batteries are fully charged \geq Target days of full charge. Only applicable to lead-acid batteries.		
<i>Manually identified issues (review)</i>	All issues have been reviewed within 72 hours		

System KPI	KPI measurement	Compliance assessment	Results
<i>Manually identified Major Issues (resolve)</i>	All Major Issues have not been resolved within two weeks of the issue being reported		
<i>Energy consumed (EC)</i>	Energy consumed \leq Target value	Employer in compliance	
<i>Peak Load (PL)</i>	Peak load \leq Target value		

Table 9. Example levels of ESCO compliance for Available Energy KPI

System KPI	KPI measurement	Compliance assessment	Results and suggested Availability Payment prorating
<i>Available energy (EA)</i>	Available energy (EA) per day \geq Target performance (EA_{target}) per day	ESCO in compliance	Availability Payment must be performed in full by Employer for that day
	$EA_{low} \leq$ Available energy (EA) per day \leq Target performance (EA_{target}) per day	ESCO NOT in full compliance	Availability Payment must be [80]% prorated for that day
	Available energy (EA) per day $< EA_{low}$	ESCO NOT in compliance	Availability Payment must be fully waived for that day

In case of ESCO non-compliance with multiple KPIs, the final prorating of the Availability Payment will follow the prorating level assigned to the lowest KPI value achieved as outlined in **Table 10**.

Table 10. KPI compliance example 3 (ESCO non-compliant in multiple KPIs)

System KPI	KPI measurement	Prorating assessment per indicator	Final prorating
<i>Available energy (EA)</i>	EA prorated percentage averaged over all days in the [month/quarter]	[94]%	[80]%
<i>System Uptime (USYS)</i>	$USYS_{mid} [\geq] USYS \leq$ Target amount of time	[80]%	
<i>Depth of discharge (DoD)</i>	Depth of discharge (DoD) \leq maximum DoD recommended for the battery for at least the Target amount of time	100%	

System KPI	KPI measurement	Prorating assessment per indicator	Final prorating
<i>Days fully charged (batteries) (DFC)</i>	Days batteries are fully charged \geq target days of full charge. Only applicable to lead-acid batteries.	100%	
<i>Manually identified issues (review)</i>	All issues have been reviewed within 72 hours	100%	
<i>Manually identified Major Issues (resolve)</i>	All Major Issues have been resolved within two weeks of the issue being reported	100%	

ESCO is required to address performance, E&S or other types of issues or emergencies raised by the Employer in a timely manner. The Employer may also resort to the grievance redress mechanism (GRM) to resolve any issues arising from the service provision under this Agreement.

Employer will ensure that the KPIs under their responsibility are met during the [month/quarter]ly billing period. Noncompliance with KPIs under responsibility of the Employer may be an indicator of system misuse, and repeated incidents should be addressed quickly by both the ESCO and the Employer. Tables 9 and 10 outline fee adjustments or payments due from the Employer in the event of non-compliance by or attributable to the Employer.

Table 11. KPI compliance example 4 (ESCO compliant, Employer non-compliant)

System KPI	KPI measurement	Compliance assessment	Results
<i>Available energy (EA)</i>	Available energy (EA) per day \geq Target performance (EA _{target}) per day	ESCO in compliance	Availability Payment must be performed in full by the Employer. Employer should be educated and trained on how to use systems appropriately by the ESCO. Repeated incidents of the Employer exceeding agreed upon values shall be addressed quickly by the Employer.
<i>System Uptime (USYS)</i>	System uptime \geq Target amount of time		
<i>Depth of discharge (DoD)</i>	Depth of discharge (DoD) \leq maximum DoD recommended for the battery for at least the Target amount of time		
<i>Days fully charged (batteries) (DFC)</i>	Days batteries are fully charged \geq target days of full charge specified. Only applicable to lead-acid batteries.		
<i>Manually identified issues (review)</i>	All issues have been reviewed within 72 hours		
<i>Manually identified</i>	All Major Issues have been resolved within two weeks of the issue being reported		

System KPI	KPI measurement	Compliance assessment	Results
<i>Major Issues (resolve)</i>			
<i>Energy consumed (EC)</i>	Energy consumed \leq Maximum agreed upon value	Employer NOT in compliance	
<i>Peak Load (PL)</i>	Peak load \geq a maximum power value		

Table 12. KPI compliance example 5 (ESCO non-compliant, Employer non-compliant)

System KPI	KPI measurement	Compliance assessment	Results
<i>Available energy (EA)</i>	Available energy (EA) per day \leq Target performance (EA _{target}) per day	ESCO NOT in compliance due to Employer misuse of the system ⁶²	Availability Payment must be performed in full by Employer. Employer should be educated and trained on how to use systems appropriately by the ESCO. Repeated incidents of the Employer exceeding agreed upon values shall be addressed quickly by the Employer.
<i>System Uptime (USYS)</i>	System uptime \geq Target amount of time		
<i>Depth of discharge (DoD)</i>	Depth of discharge (DoD) \leq maximum DoD recommended for the battery		
<i>Days fully charged (batteries) (DFC)</i>	Days batteries are fully charged \geq target days of full charge. Only applicable to lead-acid batteries.		
<i>Manually identified issues (review)</i>	All issues have been reviewed within 72 hours		
<i>Manually identified Major Issues (resolve)</i>	All Major Issues have been resolved within two weeks of the issue being reported		
<i>Energy consumed (EC)</i>	Energy consumed \geq Maximum agreed upon value within 4 days of a day in which the ESCO did not meet a Target Value	Employer NOT in compliance	
<i>Peak Load (PL)</i>	Peak load \leq a maximum power value		

D.2 Missing and Invalid Data

⁶² In this example, it is assumed that ESCO was unable to provide the required Available Energy in the aftermath of Public Institution exceeding the maximum allowed Energy consumed. The terms of the contract regarding compliance for EA include a “battery recovery grace period” after a high consumption event where either the maximum agreed upon EA or peak load (PL) has been exceeded. These events could cause a system to not provide the agreed upon energy a day or two after the event occurs.

Treatment of missing or lost data may be required if, for example, the monitoring system loses power temporarily, causing gaps in the data record.

Parties shall be notified of monitoring system failures as soon as possible to enable troubleshooting and reconnection of the system. The data aggregation platform shall notify [●] when data is not received within [[●] time period]. If public facility staff are aware of outages, they shall notify the Employer and ESCO through the data aggregation platform or other means when first feasible. If the ESCO notices the monitoring system failure, they shall notify the data aggregation platform and provide a time estimate of when the data transfer is expected to be restored.

If data was missing or lost during a reporting period, such time periods shall be clearly identified, and the specific treatments used to address them provided and justified. The selected method of treatment for missing or invalid data will vary depending on the parameter and quantity of lost data. Missing or invalid data may be treated in one of the following ways and will be determined by the data aggregation platform provider (adapted from IEC 61724-1):

1. The invalid or missing data may be replaced by values estimated from the valid data recorded before and/or after the invalid or missing data;
2. The invalid or missing data may be replaced with an average value for the analyzed interval;
3. The ESCO shall extract data manually from the remote monitoring hardware and transfer the data to the Platform. If manual retrieval of data is required, data shall be collected and uploaded to the platform within one week of the end of the [month/quarter];
4. [Reports from on-site staff may be gathered to determine system functionality during the time period.]

D.3 System measurements

The following system measurements shall be used to assess compliance by the Employer and ESCO. Descriptions of the system measurements, as well as information relating to their determination and reporting are provided below.

Table 13. System Measurements

System measurement	Unit of measurement	Description	Determination method	Evaluation period	Documentation & reporting requirements
Low Voltage Disconnect (LVD)	Volts (V)	Assessment of whether the battery discharge has been stopped to protect the battery, i.e., the battery has reached its LVD	Identify periods when the battery voltage is at or below the LVD, as indicated by voltage measurements or “flags” provided by the remote monitoring system	24 hours (midnight to midnight)	Criteria and system flags used to determine if the battery reached the LVD shall be provided. Flags or voltage should be logged at a frequency of at least 15 min intervals.
System Uptime (USYS)	Minutes	Amount of time the system is available to power loads ⁶³	Identify periods of system error, as indicated by “flags” provided by the remote monitoring system. Errors on both the (DC) (in the case of PV) side and the loads (AC) side of the system should be logged	[monthly/qu arterly]	Criteria and system flags used to determine if the system was offline shall be provided. Flags should be logged at a frequency of at least 15 min intervals.
Battery State of Charge (SOC)	Percentage (%)	Available capacity remaining in a battery, expressed as a percentage of the rated capacity. If the SOC is 100%, the battery is fully charged	Record the maximum SOC over the evaluation period.	24 hours (midnight to midnight)	Determined from measurements logged at a frequency of at least 15 min intervals, with the minimum and maximum reported over each 24-hour period ⁶⁴
Battery Depth of Discharge (DoD)	Percentage (%)	Amount of ampere-hours (Ah) removed from a fully charged battery, expressed as a percentage of rated capacity. If the DoD is 100%, the battery is fully discharged	Record the maximum DoD over the evaluation period.	24 hours (midnight to midnight) and [monthly/Qu arterly]	Determined from measurements logged at a frequency of at least 15 min intervals
Battery Days Fully Charged (DFC)	Number of days per week	Number of days over the evaluation period for which the battery reaches a full charge	Sum the number of days that the battery has reached SOC of 100%	24 hours (midnight to midnight)	Documentation describing battery characteristics, including full charge, shall be provided. DFC determined from measurements logged at a frequency of at least 15 min intervals

Energy Consumed (EC)	Kilowatt-hours (kWh)	Amount of energy used by the facility during an evaluation period	Direct measurement of the kWh used at the facility each day. Measurements can be made via a power meter or a calculation using measured current, voltage and power factor.	24 hours (midnight to midnight)	Documentation shall describe the measurements and equipment used to determine components of EC. Data shall be logged at an interval that ensures sufficient accuracy.
Peak Load (PL)	Watts (W)	Maximum instantaneous power required by loads during an evaluation period	Measure the maximum power required over the evaluation period.	24 hours (midnight to midnight)	Determined from measurements logged at a frequency of at least 15 min intervals, with a maximum recorded over each 24 hr period

⁶³ NTD: USYS is intended to identify instances where either the system has not reached its LVD, but energy is unavailable, or the stored energy (Es) is sufficient to be compliant with the available energy metric, but the energy cannot actually be consumed due to a malfunctioning inverter or similar issue. The time that the system is not providing power because the battery reached the LVD need not be considered when calculating USYS.

⁶⁴ Documentation describing how SOC and DoD are determined shall be provided and agreed upon during the contracting process, including protocols for initial calibration and recalibration of the monitor used to track SOC and DoD. The method for determining SOC and DoD will be dependent on the system and will need to be defined after equipment has been selected.

Exhibit E

Insurance Requirements

Note to Template Users: This Exhibit should be developed in consultation with insurance advisors to include insurance required by law for the Energy Systems of the type installed and such other insurance as is prudent for the Sites and Energy Systems, with reference to each site. Below is an outline of categories for the Parties to consider.

1. Types and Amounts of Insurance.⁶⁵

1.1 The Employer and ESCO shall, at their own cost and expense, procure and maintain (or cause to be procured and maintained) in full force and effect at all times from the Effective Date the following insurances at the following prescribed limits of liability:

- (a) *Worker's Compensation and Employers' Liability Insurance.* ESCO and Employer shall comply with Applicable Legal Requirements with respect to worker's compensation requirements and other similar requirements for wherever the Energy Services are performed and shall procure and maintain worker's compensation and employer's liability policies in accordance with Applicable Legal Requirements and the requirements of the Agreement.

ESCO:

Limits: Worker's compensation: Statutory;
Employer's liability:
[[\\$][●]] bodily injury by accident (each accident),
[[\\$][●]] bodily injury by disease (each employee), and
[[\\$][●]] bodily injury by disease (policy limit).

Employer:

Limits: Worker's compensation: Statutory;
Employer's liability:
[[\\$][●]] bodily injury by accident (each accident),
[[\\$][●]] bodily injury by disease (each employee), and
[[\\$][●]] bodily injury by disease (policy limit).

- (b) *Commercial General Liability Insurance.* This policy shall provide coverage against claims for bodily injury (including bodily injury and death), property damage and personal injury. The policy shall be endorsed to provide coverage wherever the Energy Services are performed.

⁶⁵ NTD: Subject to review and confirmation by each party's insurance advisors.

ESCO:

Limits: [[\\$][●]] each occurrence;
 [[\\$][●]] general aggregate.

Employer:

Limits: [[\\$][●]] each occurrence;
 [[\\$][●]] general aggregate.

- (c) *Commercial Automobile Insurance.* This policy shall include coverage for all owned, hired, and non-owned automobiles and equipment, and shall otherwise comply with Applicable Legal Requirements.

ESCO:

Limit: [[\\$][●]] combined single limit.

Employer:

Limit: [[\\$][●]] combined single limit.

- (d) *Umbrella or Excess Liability Insurance.* This policy shall be written on a “following form” basis and shall provide coverage in excess of the coverages requirement to be provided by ESCO and the Employer for employer’s liability insurance, commercial general liability insurance and commercial automobile insurance.

ESCO:

Limits: [[\\$][●]] each occurrence
 [[\\$][●]] general aggregate.

Employer:

Limits: [[\\$][●]] each occurrence
 [[\\$][●]] general aggregate.

- (e) *Pollution Liability Insurance.*

ESCO:

[●]

Employer:

[●]

2. **Additional Terms of Coverage.**

- 2.1 Insurance Companies. All insurance required to be obtained by the parties pursuant to the Agreement shall be from an insurer or insurers permitted to conduct business as required by Applicable Legal Requirements and shall be rated with either an “A- (A minus)” or better by Best’s Insurance Guide Ratings with a financial category of “VIII” or better or by Standard and Poor’s as “A-” or better or by Moody’s as “A3” or better.
- 2.2 Subcontractors. ESCO shall ensure that its subcontractors shall either be covered by the insurance provided by pursuant to the Agreement, or by insurance procured by such subcontractor. Should a subcontractor be responsible for procuring its own insurance coverage, ESCO shall have the sole responsibility for determining the limits of coverage required to be obtained by such subcontractors in accordance with prudent industry practices.
- 2.3 Additional Insured. The Employers’ Liability, Commercial Liability, Commercial Automobile, and Umbrella/Excess Liability policies shall include the other Party and its Affiliates as an additional insured.
- 2.4 Waiver of Subrogation and Waiver of Claims.
- (a) All policies of insurance provided by the parties pursuant to the Agreement (other than worker’s compensation policies) shall include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against (i) ESCO, its Affiliates, and their respective officers, directors and employees, or (ii) Employer, its Affiliates, and their respective officers, directors and employees.
- (b) Employer waives any and all claims, damages, losses, costs and expenses against ESCO to the extent such claims, damages, losses, costs and expenses have already been paid by the insurance provided pursuant to the Agreement.
- 2.5 Employer Insurance is Primary. The insurance policies of Employer shall state that such coverage is primary and non-contributory to any other insurance available to or provided by ESCO.
- 2.6 Severability. The insurance policies of the parties shall, where applicable, contain a severability of interest clause or a standard cross liability endorsement.
- 2.7 Jurisdiction. All insurance policies shall include coverage for jurisdiction within Nigeria⁶⁶ or other applicable jurisdiction.
- 2.8 Miscellaneous. The parties shall do nothing to void or make voidable any of the insurance policies purchased and maintained by them hereunder. A party shall promptly give notice in writing to the other of the occurrence of any casualty, claim, event, circumstance, or occurrence that may give rise to a claim under an insurance policy hereunder and arising out of or relating to the performance of the Energy Services. In addition, the parties shall ensure that the other parties are kept fully informed of any subsequent action and developments concerning the same, and assist in the investigation of any such casualty, claim, event, circumstance or occurrence.
- 2.9 Instructions for Certificate of Insurance. The parties’ certificate of insurance forms, completed by the parties’ insurance agents, brokers or underwriters, shall reflect the recognition of additional insured status, waivers of subrogation, and primary insurance requirements contained in this Exhibit and elsewhere in the Agreement.

⁶⁶ NTD: Adjust if used for a template in countries other than Nigeria.

- 2.10 Policy Form. Except as specifically set forth the Agreement, all policies of insurance required to be maintained by the parties shall be written on reasonable and customary terms, conditions and exclusions for facilities of similar size and scope as the Energy Systems.
- 2.11 Deductibles. The parties shall bear the cost of the deductible under the insurance provided by each party pursuant to the Agreement in accordance with the allocation of risk found elsewhere in the Agreement.
- 2.12 Disclosure to Insurers. The party procuring the respective insurance policy under this Exhibit shall ensure that full disclosure is made to the insurers providing insurance to such party under the Agreement, including: (i) all information which such insurers specifically request to be disclosed; (ii) all information which is of a type which insurance brokers in relation to the relevant policy notify such party should be disclosed to such insurers; (iii) reports required by such insurers; and (iv) details of any significant problems encountered in the Energy Services.
- 2.13 Lender Requirements. Employer agrees to cooperate with ESCO and as to any changes in or additional to the foregoing insurance provisions necessary by requirements imposed by any financing parties.

Exhibit F

Reporting Requirements

Note to Template Users: *This should be a form for reporting on KPIs for each system, developed in consultation with the technical advisor.*

The ESCO shall submit [monthly/quarterly] Availability Payment requests (invoices) to the Employer, with respect to each lot. The payment request will be supported by a performance report that documents the performance of each individual system with respect to the KPIs in that [month/quarter]. Additionally, the performance reports will detail the following items:

- Description of any issues raised by staff at the facilities regarding the performance of the energy system(s) or the services provided. Issues shall be documented with the date the issue is communicated, the specific facility impacted, and the contact information for the person reporting the issue.

Major issues may include, but are not limited to:

- Incidents of theft or loss of electrical or energy system equipment
- Safety hazards
- Malfunctioning wiring that limits service provision to significant portions of the Facility
- Failed remote monitoring hardware or issues impeding data transfer

Minor issues may include, but are not limited to:

- Failed bulbs
- Failed, malfunctioning, or underperforming streetlights
- Malfunctioning outlets or switches
- Description of the resolution or planned actions to resolve the identified issues. The date of any actions taken, and personnel involved in the corrective measures shall be documented. If the issue has not yet been fully resolved, the timeline for any planned actions shall be provided.
- Description of any trainings provided to facility staff or other system users
- Description of any repeated cases of facility misuse of the system (for instance, cases where the facility did not meet their KPIs and used more than the allotted energy or power) and any actions taken by the ESCO to minimize misuse of the system.
- List of any maintenance activities performed
- List of any equipment replacements made
- Dates of any site visits conducted
- Documentation of costs incurred for operations, maintenance, and replacements installed during the [month/quarter].
- Payment request for [monthly/quarterly] payment, prorated if appropriate based on performance with respect to the KPIs, as described in (d) *Billing and Payment*.

Exhibit G

Form of Direct Agreement⁶⁷

DIRECT AGREEMENT

Dated as of [●]

among

[●]

as the ESCO

and

[●]

as the Employer

and

[●]

as the Collateral Agent

⁶⁷ NTD: This is a general form, that will require review and update for any particular project including review by local counsel in the relevant Project Country.

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Exhibit A	Payment Account
Exhibit B	Form of ISPO
Exhibit C	Qualification Requirements for the Designee
Exhibit D	Opinion Coverage

This DIRECT AGREEMENT (as amended, restated supplemented or otherwise modified from time to time, the "**Direct Agreement**"), dated as of [●], is entered into by and among (a) [●] a [*entity type and jurisdiction of incorporation*] (the "**ESCO**"), (b) the [●] of [●] of the Government of [●] (the "**Employer**"), and (c) [●], as collateral agent on behalf of the Secured Parties described below (in such capacity and together with any permitted assignee or successor thereto appointed pursuant to the Credit Agreement and approved by the Employer in accordance with Section 1 hereof, the "**Collateral Agent**").

W I T N E S S E T H:

WHEREAS, the project (collectively, the "**Project**") involves the design, construction, operation and maintenance of [solar or other] energy systems (the "**Energy Systems**") that will provide energy services to [●] facilities under the control or supervision of Employer;

WHEREAS, the ESCO and the Employer have entered into that certain Energy Services Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**Energy Services Agreement**") dated as of [●] with respect to the Project;

WHEREAS, pursuant to the Energy Service Agreement, the ESCO and the Employer shall, prior to completion of the Project by the ESCO, enter into a Performance Monitoring Agreement with an independent verification agent (the "**Verification Agent**"), under which the Verification Agent shall, among other things, monitor the ESCO's performance in respect of the Project (the "**Performance Monitoring Agreement**" as may be amended, restated, supplemented or otherwise modified from time to time);

WHEREAS, pursuant to the [Credit Agreement dated as of [●] (the "**Credit Agreement**")], entered into by and [between/among] [●], [as Borrower] [ESCO] [as Borrower/Co-Borrower/Guarantor] and [●], as [lender(s)] (the "**Lender[s]**"), the Lender[s] ha[s/ve] agreed to make available to [ESCO] a loan facility to co-finance the Project, and security interests are required to be granted by ESCO to secure repayment of the relevant loans under the [Credit Agreement] and additional documents by and among [Borrower,] ESCO, the Lender(s), administrative agents, collateral agents and other agents for the Lender(s) (collectively, together with the Lender(s), the "**Secured Parties**"), including security documents, that are related to and required in connection with the [Credit Agreement] (all such additional documents, as amended, restated, supplemented or otherwise modified from time to time, "**Financing Documents**");

WHEREAS, pursuant to the security agreement entered into as one of the Financing Documents, ESCO has with the consent of the Employer, granted a security interest in the Assigned Agreements and certain other collateral in favour of the Collateral Agent for the benefit of the Secured Parties; and

WHEREAS, the Parties acknowledge that any requirement for the execution of this Direct Agreement in connection with the [Credit Agreement], including as a condition to loan availability, shall be as set out in and governed by the final financing documents agreed with the Lenders, which the Employer has reviewed prior to execution.

NOW THEREFORE, in consideration of the premises and mutual agreements hereinafter contained the parties hereto agree as follows:

1. Definitions. Unless otherwise defined in this Direct Agreement, capitalized terms used in this Direct Agreement (including in the recitals) will have the meanings assigned to them in the Energy Services Agreement and, unless otherwise stated, references herein to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. In addition, in this Direct Agreement (including the recitals), the following terms shall have the meanings set forth below:

“**Arbitration**” “**Arbitrator**” and “**Arbitration Rules**” have the respective meanings given in Section 9(j) and (k).

“**Assigned Agreements**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Collateral Agent**” has the meaning assigned to such term in the preamble of this Direct Agreement.

“**Credit Agreement**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Designee**” means any designee of the Collateral Agent, or any purchaser, transferee, grantee or assignee of the interests of the Collateral Agent in the Project, in respect of or under any New Agreement or in and to the Assigned Agreements as approved by the Employer subject to Section 4(b). A Designee shall have the qualifications listed in Exhibit C (Qualification Requirements for Designee).

“**Direct Agreement**” has the meaning assigned to such term in the preamble of this Direct Agreement.

“**ESCO**” has the meaning assigned to such term in the preamble of this Direct Agreement.

“**Energy Systems**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Energy Services Agreement**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Employer**” has the meaning assigned to such term in the preamble of this Direct Agreement.

“**Financing Documents**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Governmental Approval**” means any authorization, consent, approval, waiver, exception, variance, filing, permit, order, license, exemption or declaration of or with any Governmental Authority, including any siting or operating permit or licenses or any of the foregoing under any applicable environmental law that is necessary in respect of any aspect of this Direct Agreement or the Assigned Agreements, as applicable, and “**Governmental Approvals**” means all of them.

“**Governmental Authority**” means any federal, state, municipal or local governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of this Direct Agreement or the Assigned Agreements, as applicable, and “**Governmental Authorities**” means all of them

“**Lenders**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**New Assigned Agreements**” has the meaning set forth in Section 4(c).

“**Notice of EOD**” means a written notice from the Collateral Agent to the Employer that (a) an “Event of Default” has occurred and is continuing under the Financing Documents, and (b) the Collateral Agent and any permitted assignee thereof is exercising or has exercised its rights under the Financing Documents and this Direct Agreement.

“**Person**” means an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, business trust or a government or agency or a political subdivision thereof or other entity or organization.

“**Project**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Secured Parties**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Security Agreement**” has the meaning assigned to such term in the recitals of this Direct Agreement.

“**Substitution**” has the meaning assigned to such term in Section **Error! Reference source not found.****Error! Reference source not found.**

“**Verification Agent**” has the meaning assigned to such term in the recitals of this Direct Agreement.

Section 1. Approval of Collateral Agent:

- (a) Any replacement, successor or assignee of the Collateral Agent (whether before or after the closing date) shall be subject to the prior written consent of the Employer, such consent not to be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, any Designee that succeeds to the ESCO's interest under the Assigned Agreements shall also be subject to the Employer's reasonable approval.

Section 2. Employer's Representations and Warranties.

- (b) The Employer hereby represents and warrants, with respect to itself, that as of the date hereof:
 - (i) It has the full power, authority and legal right to execute, deliver and perform its obligations hereunder and under each Assigned Agreement to which it is a party. The execution, delivery and performance by it of this Direct Agreement and each Assigned Agreement to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action. This Direct Agreement and each Assigned Agreement to which it is a party have been duly executed and delivered by it and constitute the legal, valid and binding obligations of it enforceable against it in accordance with the respective terms.
 - (ii) The execution, delivery and performance by it of this Direct Agreement and each Assigned Agreement to which it is a party do not and will not: (1) require any consent or approval of any other Person which has not been obtained and each such consent or approval that has been obtained is in full force and effect, (2) violate any provision of any law, rule, regulation, order, writ, judgment, decree, determination or award.
 - (iii) To the best of its knowledge and belief (after having made due and careful inquiries), no breach or default has occurred and is continuing under the Assigned Agreements in respect of the Employer.
 - (iv) No litigation, arbitration or administrative proceedings of or before any court, arbitral body, agency or other competent authority (including any arising from or relating to environmental law) have been started or threatened against it or, to the best of its knowledge and belief (after having made due and careful inquiries), the ESCO or, with respect of the Project, which: (1) is reasonably likely to be adversely determined and, if adversely determined might materially and adversely affect the ESCO's ability to meet their obligations under this Agreement and the Assigned Agreements to which they are a party, or (2) relates to the validity, binding effect or enforceability of this Agreement and the Assigned Agreements to which it is a party or any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

- (c) Each of the representations and warranties set out in this Section 2 (*Representations and Warranties*) is deemed to be made by the Employer by reference to the facts and circumstances then existing on each day until the Final Maturity Date (as defined in the Financing Documents).

Section 3. Consent.

- (a) The Employer hereby consents to the pledge and assignment, by the ESCO, of all of the ESCO's right, title and interest in, to and under each Assigned Agreement to which the Employer is a party, in each case for the benefit of the Secured Parties pursuant to the Security Agreement. The Employer hereby further acknowledges, consents and agrees as follows:
- (i) Upon the Employer receiving a copy of the Notice of EOD, the Collateral Agent and any permitted assignee thereof shall be entitled to exercise any and all rights and perform any and all obligations of the ESCO under the Assigned Agreements and, subject to the Employer's rights, remedies and defenses thereunder and hereunder, the Employer shall accept any such exercise of rights and performance of obligations as if they had been exercised or performed by the ESCO. Without limiting the foregoing, the Collateral Agent and any assignee thereof shall, under the circumstances described in the preceding sentence, have the full right and power to enforce directly against the Employer all obligations of the Employer under each Assigned Agreement to which the Employer is a party, and otherwise to exercise all remedies, give all notices and make all demands or requests that the ESCO is permitted or required to make under the relevant Assigned Agreement(s).
 - (ii) Upon the Employer receiving a copy of a Notice of EOD, the Employer may rely upon this Direct Agreement and, subject to the Employer's applicable rights, remedies and defences under this Direct Agreement and the relevant Assigned Agreement(s), shall thereafter comply with any written notice and instruction from the Collateral Agent that is delivered in accordance herewith and therewith.
- (b) The Employer will not, without the prior written consent of the Collateral Agent, take any action to:
- (i) except as permitted in subsection (ii) below, cancel or terminate, or suspend performance under the Assigned Agreements, or consent to or accept any cancellation, termination or suspension thereof, (ii) exercise any of its rights set forth in any Assigned Agreements to cancel or terminate, or suspend performance thereunder, unless the Employer first delivers to the Collateral Agent written notice stating that it intends to exercise such right on a date not less than [forty-five (45)] days after the date of such notice in respect of a payment default of the ESCO (including under Clause 18.1(a)(i) of the Energy Services Agreement) and [sixty (60)] days after the date of such notice in respect of any other default under the Assigned Agreements (provided that, if such other default is capable of being cured, and the Collateral Agent is diligently seeking to cure such default, the Employer shall grant the Collateral Agent an additional period of time, as reasonably required (but not to exceed [one hundred twenty (120)] days in the aggregate) to cure such default), specifying the nature of the default giving rise to such right (and, in the case of a payment default, specifying the amount thereof) and permitting the Collateral Agent to cure such default by making a payment in the amount in default or by performing or causing to be performed the obligation in default, as the case may be, (iii) except as expressly provided in the Assigned Agreements, sell, assign or otherwise dispose of (by operation of law or otherwise) any part of its interest in the Assigned Agreements, or (iv) except as otherwise provided in clause (ii), petition, request or take any other legal or administrative action which seeks,

or may reasonably be expected, to rescind, terminate, suspend, amend or modify the Assigned Agreements or any part thereof.

- (c) The Employer shall deliver to the Collateral Agent at the address set forth on the signature pages hereof, or at such other address as the Collateral Agent may designate in writing from time to time to the Employer, concurrently with the delivery thereof to the ESCO, a copy of each material notice, request or demand given by the Employer pursuant to the Assigned Agreements.

Section 4. Succession; New Agreement.

- (a) In the event that the Collateral Agent or its Designee(s) succeeds to the ESCO's interest under the Assigned Agreements, whether by foreclosure or otherwise (including enforcement over the equity interests in the ESCO under the Security Agreements), the Collateral Agent or its Designee(s) shall be substituted (the "Substitution") for the ESCO under the Assigned Agreements; and the Employer shall, subject to subsection (b), recognize such substitute party; provided, however (without limitation of the Employer's rights and remedies under the Assigned Agreements), that, unless otherwise agreed in writing by the Collateral Agent or its Designee(s), the liability of the Collateral Agent or its Designee(s) shall not include any liability for claims of the Employer against the ESCO arising from the Employer's failure to perform prior to the Substitution; provided, further, that upon any Substitution, the Collateral Agent or relevant Designee(s), shall promptly make, or cause to be made, payment to the Employer or, if applicable, any undisputed amounts then due and payable to such person under the Assigned Agreements. Except as otherwise set forth in the immediately preceding sentence, none of the Collateral Agent or the other Secured Parties or their Designee(s) shall be liable for the performance or observance of any of the obligations or duties of the ESCO under the Assigned Agreements.
- (b) Notwithstanding subsection (a) of this Section 4, the Employer shall have the right to reject a Designee that in the reasonable opinion of the Employer does not meet the qualifications stated in Exhibit C. If the Employer intends to reject a Designee, it shall deliver a notice of the rejection to the Collateral Agent within five (5) Business Days of its being informed of the proposed Substitution and the Employer and Collateral Agent shall take immediate steps to appoint a suitably qualified Designee.
- (c) In the event that any Assigned Agreement is rejected or terminated in or as a result of any bankruptcy or insolvency proceeding and, if within [sixty (60)] days after such rejection or termination, the Collateral Agent or its Designee(s) shall so request and certify in writing that it intends to perform the obligations of the ESCO as and to the extent required under the rejected or terminated Assigned Agreements, the Employer will execute and deliver to the Collateral Agent or such Designee(s) new agreement(s) (the "New Assigned Agreements") which shall be for the balance of the remaining term under the applicable original Assigned Agreement(s) before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement(s) (except for any requirements which have been fulfilled by the Employer and the ESCO prior to such rejection or termination). Upon the Employer's execution of New Assigned Agreement(s), the Collateral Agent or its Designee(s) shall promptly make, or cause to be made, payment of undisputed amounts, if any, then due and payable from the ESCO to the Employer

under the relevant Assigned Agreement(s). References in this Direct Agreement to the "Assigned Agreements" shall be deemed also to refer to such new agreements.

- (d) In the event that the Collateral Agent or its Designee(s), or any purchaser, transferee, grantee or assignee of the interests of the Designee(s) in the Assigned Agreements, that assumes all of the obligations of the ESCO under the Assigned Agreements or becomes a party to New Assigned Agreements (in each case, as contemplated in paragraphs above or as otherwise agreed between the Collateral Agent and the Employer), no officer, director, employee, shareholder or agent thereof shall have any personal liability with respect thereto.
- (e) In the event of a Substitution, the Collateral Agent agrees (for itself and any relevant Designee) that:
 - (i) the Employer's use and occupancy of the Energy Systems and the Facilities respectively, and the Employer's rights and privileges under and in accordance with the terms and conditions of the Assigned Agreements shall not be disturbed, (ii) the Collateral Agent or such Designee shall recognize the Assigned Agreements and the Employer's rights thereunder, and (iii) the Employer's interest under the Assigned Agreements shall not be diminished, interfered with or disturbed.

Section 5. Arrangements Regarding Payments to Employer.

- (a) The Employer shall pay all amounts payable by it under the Assigned Agreement(s) to which it is a party, as and when required by such Assigned Agreement and directly into the account specified in Exhibit A (Payment Account) hereto, or to such other Person or account as shall be specified from time to time by the Collateral Agent to the Employer in writing. ESCO hereby authorizes and directs the Employer to make such payments as aforesaid and all parties hereto agree that each payment by the Employer as specified in the preceding sentence of amounts due to ESCO from the Employer under each Assigned Agreement shall satisfy the Employer's corresponding payment obligation under such Assigned Agreement.
- (b) Except as required by applicable law, provided or permitted otherwise in the Assigned Agreements, all payments to be made by the Employer to the ESCO under the Assigned Agreements shall be made without any offset, recoupment, abatement, withholding, reduction or defence whatsoever.

Section 6. Irrevocable Payment Instructions.

- (a) The Employer acknowledges that an Irrevocable Standing Payment Order (ISPO) has been established in connection with the Project. The Employer agrees to maintain such ISPO in accordance with applicable laws. For the avoidance of doubt, nothing in this Agreement shall be construed as creating any additional payment obligation or guarantee beyond those set out in the Energy Service Agreement.
- (b) The payment account set forth in Exhibit A (as updated from time to time by written notice from the Collateral Agent to the Employer) represents the bank account into which the Employer shall disburse all sums due to the ESCO under the Energy Service Agreement.
- (c) The ISPO the form of which is contained in Exhibit B constitutes an irrevocable standing payment instruction under applicable law, and the Employer shall not revoke, suspend, amend, or change such

instructions without the prior written consent of the Collateral Agent. Any attempted revocation, suspension, amendment, or change without such consent shall be null and void.

- (d) The Employer acknowledges that any payment made into the bank account stated in the payment instructions set forth in Exhibit A shall fully and finally discharge the Employer's corresponding payment obligation under the Assigned Agreements, regardless of any dispute, counterclaim, setoff, recoupment, abatement, withholding, reduction, or defence whatsoever between the Employer and ESCO or any other Person.
- (e) If the Employer makes any payment to ESCO or any other Person other than in compliance with this standing payment order, such payment shall not discharge the Employer's obligation to the Collateral Agent or the Secured Parties, and the Employer shall remain liable to the Collateral Agent for the full amount due.
- (f) The Employer hereby waives any right to challenge or object to the ISPO on any basis, including any claim of mistake, fraud, forgery, or unauthorized instruction, except in the case of actual fraud by the Collateral Agent proven by clear and convincing evidence.

Section 7. Opinions.

The Employer agrees to deliver an opinion of counsel (the identity and qualifications of which shall be reasonably satisfactory to the Collateral Agent), covering such of the topics set forth at Exhibit D for which coverage may be requested by the Collateral Agent. Such opinion shall be addressed to the Collateral Agent and each of the other Secured Parties and may contain reasonable and customary limitations so long as the overall opinion is in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Secured Parties). To the extent such opinion is required to come from outside counsel, the ESCO shall bear the cost thereof.

Section 8. Acknowledgement

Each party hereto acknowledges and agrees that the ESCO shall not be in breach of the Assigned Agreements by complying with its obligations hereunder.

Section 9. Miscellaneous.

- (a) No failure or delay on the part of the Collateral Agent or any of its agents or Designee(s) to exercise and no delay by any such Person in exercising, and no course of dealing with respect to, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- (b) Unless otherwise expressly provided herein, all notices and other communications provided for herein shall be in writing and shall be delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Direct Agreement, all such communications shall be deemed to have been duly given when transmitted by

international overnight carrier, or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

- (c) This Direct Agreement shall not terminate until the delivery by the Collateral Agent of written notice to the ESCO that all of the “Secured Obligations” under the Financing Documents have been paid in full by the Employer.
- (d) This Direct Agreement may be amended or modified only by an instrument in writing signed by the ESCO, the Employer, and the Collateral Agent, and any provision of this Direct Agreement may be waived only in writing and by the party hereto for whose benefit such provision runs. Any waiver shall be effective only for the specified purpose for which it was given. This Direct Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the ESCO, the Employer, the Secured Parties and the Collateral Agent (provided, however, that, other than in connection with an assignment of the Assigned Agreements permitted pursuant to this Direct Agreement, the Employer shall not assign or transfer its rights or obligations hereunder without the prior written consent of the Collateral Agent). Any assignment or transfer in violation of this provision shall be null and void.
- (e) This Direct Agreement may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. [Delivery by electronic transmission of an executed counterpart of a signature page to this Direct Agreement shall be effective as delivery of an original executed counterpart of this Direct Agreement. The word “executed” and words of similar import herein shall be deemed to include electronic or digital signatures or electronic records, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law.] The Collateral Agent may also require that this Direct Agreement and signatures delivered by electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of this Direct Agreement or signature delivered by telecopier or other electronic transmission.
- (f) If any provision of this Direct Agreement is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Direct Agreement shall not be affected or impaired thereby and (ii) the parties shall endeavour in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (g) Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Direct Agreement.
- (h) The agreements of the parties hereto are solely for the benefit of the Employer, the Collateral Agent and the other Secured Parties, and no Person (other than the parties hereto, the Secured Parties and their successors and assigns permitted hereunder) shall have any rights hereunder.
- (j) This Direct Agreement shall be governed by and construed in accordance with the internal laws of [●], without regard to conflicts of law principles that would result in the application of other law.
- (k) Any dispute arising out of or in connection with this Direct Agreement shall be submitted to binding arbitration in accordance with the rules of arbitration of the International Chamber of Commerce (the “**Arbitration Rules**”) in force as from 1 January 2021, supplemented by the terms of this Section

9(k)(i) to (q). The Emergency Arbitrator Provisions (as defined in the Arbitration Rules) shall not apply:

- (i) There shall be three (3) arbitrators (the “**Arbitrators**” and each an “**Arbitrator**”), with each party selecting one; the third Arbitrator, who shall be the president of the tribunal, shall be selected by the two party-appointed arbitrators according to the provisions of Section 7(k)(ii) below.
- (ii) Within thirty (30) days from receipt of any request for arbitration, the other party shall name its Arbitrator, or in default thereof, such Arbitrator shall be named pursuant to the Arbitration Rules. The two Arbitrators so selected shall name a third Arbitrator within fifteen (15) days after selection of the second Arbitrator, or, in the absence of agreement on a third Arbitrator by the two Arbitrators so appointed, a third Arbitrator shall be appointed in accordance with the Arbitration Rules. The president of the tribunal shall be a lawyer versed in this kind of agreement. The others may or may not be lawyers.
- (iii) The arbitration shall be held in [●] and the award shall be issued there. The arbitration shall be conducted in the English language.
- (iv) In preparation for the arbitration, there shall not be depositions or interrogatories, and document production shall take place in accordance with the IBA Rules on the Taking of Evidence in International Arbitration.
- (v) Any payment of a monetary award ordered by the Arbitrators shall be free of any tax and bear interest determined in accordance with the Energy Services Agreement from the date of the award to the date on which the party entitled thereto receives payment thereof in full. The award of the Arbitrators shall be final and binding. Such award may be entered on behalf of the prevailing party in any court having jurisdiction thereof and an application may be made by such party to any such court for judicial acceptance of such award and an order of enforcement.
- (vi) The prevailing party (as determined in the award) shall be reimbursed by the unsuccessful party for its expenses, including reasonable attorney’s fees, incurred in connection with the arbitration, unless the Arbitrators determine that it would be manifestly unfair to honor this agreement of the parties and determine a different allocation of costs.
- (vii) The ESCO or the Collateral Agent may consolidate an arbitration conducted under this Direct Agreement with any other arbitration to which it is a party related to any Assigned Agreement provided that (A) the arbitration agreement governing the other arbitration permits consolidation; (B) the arbitrations to be consolidated substantially involve common questions of law or fact; and (C) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). The ESCO or the Collateral Agent may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE ASSIGNED AGREEMENTS IN ANY TRIBUNAL REFERRED TO IN PARAGRAPH (j) ABOVE. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST

EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DIRECT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN PARAGRAPH (b) ABOVE. NOTHING IN THIS DIRECT AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

The parties to this Direct Agreement acknowledge and agree that the Collateral Agent will be exercising its rights and remedies hereunder, and will be providing any consents, directions or approvals contemplated to be provided by it hereunder, in accordance with directions that it may receive from the Secured Parties, and accordingly the Collateral Agent will not be liable for taking any such actions or failing to take any such actions in accordance with such directions or for delay in taking such actions resulting from any failure or delay by the Secured Parties in providing such directions.

IN WITNESS WHEREOF, each of the undersigned by its officer duly authorized has caused this Direct Agreement to be duly executed and delivered as of the date set forth above.

[●], as ESCO

By: _____

Name:

Title:

Address for Notices:

[●]

With copy to:

[●]

[●], as Employer

By:

Name:

Title:

By:

Name:

Title:

Address for Notices:

[●]

With copy to:

[●]

[●]

[●], as Collateral Agent

By: _____

Name:

Title:

Address for Notices:

[●]

**Exhibit A to Direct Agreement
Payment Instructions**

Any and all amounts owed to ESCO under each Assigned Agreement shall be paid to the following account:

Bank: [●]
ABA No.: [●]
Account No.: [●]
Account Name: [●]

The Employer acknowledges that the Collateral Agent shall be permitted to modify the account information set forth above upon [five days'] prior written notice to the Employer.

Exhibit B to Direct Agreement Form of Irrevocable Standing Payment Order

[To be inserted depending on State funding procedure]

**Exhibit C to Direct Agreement
Qualifications Requirements for Designee**

Any Designee of the Collateral Agent, or any purchaser, transferee, or assignee of the Collateral Agent's interests in the Project shall, as a condition to the exercise of any step-in rights or the assumption of any rights or obligations under the Energy Service Agreement, meet qualification requirements that are no less stringent than the technical, financial and legal qualification criteria applicable to the ESCO under the procurement process for the Project (the "Bid Qualification Criteria").

Without limitation to the foregoing, the Designee shall:

(a) **Technical Capacity:** demonstrate experience and capability in the development and implementation of projects of a similar nature, scale and complexity as the Project, as well as have the ability, either directly or through qualified contractors or operators, to perform or procure the performance of the ESCO's obligations under the Energy Service Agreement, consistent with the Bid Qualification Criteria;

(b) **Financial Capacity:** demonstrate adequate financial standing, including access to funding, liquidity and creditworthiness, in line with the thresholds set out in the Bid Qualification Criteria;

(c) **Legal and Regulatory Compliance:** be duly incorporated and in good standing, and hold or be capable of obtaining all required permits, licenses and approvals necessary to perform the obligations under the Energy Service Agreement; and

(d) **Procurement and Integrity Compliance:** satisfy all applicable anti-corruption, debarment and eligibility requirements as would have applied under the original procurement process.

The Employer shall be entitled to reasonably review and confirm compliance with the Bid Qualification Criteria, and its consent to the appointment or recognition of any Substitute Entity (to the extent required) shall not be unreasonably withheld, conditioned or delayed where such criteria are met.

For the avoidance of doubt, a Designee may satisfy the qualification requirements through its affiliates or through contractual arrangements with suitably qualified third parties, provided that overall responsibility for performance of the obligations under the Energy Service Agreement is maintained.

Exhibit H

Form of Guarantee

FORM OF SOVEREIGN GUARANTEE

THIS GUARANTEE is made on this [●], by **THE FEDERAL GOVERNMENT OF [NIGERIA]**,⁶⁸ represented by the Federal Ministry of Finance, and with authority to commit sovereign resources of the [Federal Republic of Nigeria] (“**Project Country**”)⁶⁹ hereinafter referred to as the “**Guarantor**”, in favor⁷⁰ of [●], a [entity type, corporate registration number, jurisdiction of incorporation, and registered office address], hereinafter referred to as “**ESCO**”, and together with the Guarantor, the “**Parties**”.

W I T N E S S E T H:

WHEREAS, ESCO is an energy-as-a-service provider;

WHEREAS, [●], which is a separate [agency/ministry] of Project Country (“**Employer**”), owns, operates and oversees certain [Health center/school] facilities in the Project Country and has engaged ESCO to design, construct, operate and maintain [solar or other]⁷¹ energy systems to provide services to such facilities pursuant to that certain Energy Services Agreement, dated as of [●] (such agreement, as may be amended, restated, supplemented or otherwise modified from time to time, the “**Energy Services Agreement**”);

WHEREAS, Employer, ESCO and [●], a [entity type, corporate registration number, jurisdiction of incorporation, and registered office address] (“**Verification Agent**”) have entered into a Performance Monitoring Agreement (the “**Verification Agreement**”) and payments and costs due from the Employer in connection therewith will be included in invoices to the Employer under the Energy Services Agreement; and

WHEREAS, in recognition that a reliable and irrevocable commitment of payment is essential for ESCO to make and finance the investments necessary to carry out the Energy Services Agreement, the Guarantor, acting through the Federal Ministry of Finance, has agreed to guarantee, and ensure the availability of public funds necessary for the Employer to fulfil all payment obligations of the Employer towards ESCO;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor undertakes as follows in favor of ESCO:

Article I **DEFINITIONS**

Capitalized terms that are not otherwise defined in this Guarantee, including the preamble and recitals hereto, shall have the respective meanings ascribed thereto in the Energy Services Agreement.

⁶⁸ NTD: Adjust if used for a template in countries other than Nigeria.

⁶⁹ Note to WBG: We expect that the FGN will push back against providing a guarantee (through Federal Ministry of Finance) and would not be willing to provide any such guarantee except to tertiary health centres or schools being overseen by the Federal Ministry of Health and Federal Ministry of Education. Guarantees for secondary and primary health centres and schools would need to be issued by the States/Ministry of the FCT (for secondary health centres and schools) and local government authorities (for primary health centres and schools). Accordingly, the pilot program should be conducted with sites limited to tertiary health centres or schools being overseen by the Federal Ministry of Health and Federal Ministry of Education.

⁷⁰ NTD: Adjust as needed depending on technologies available.

⁷¹ NTD: Customize for appropriate technologies.

**Article II
GUARANTEE**

Section 2.01 In consideration of ESCO entering into the Energy Services Agreement with the Employer, the Guarantor, by way of direct, independent and primary obligations that are absolute, present, unconditional and continuing and are not conditioned in any way on the institution of suit or the taking of any action or any attempt to enforce performance or compliance:

- (a) irrevocably and unconditionally guarantees to ESCO, as for its own debt, the full and timely payment by the Employer, as and when due, of each and every amount due to be paid under or in connection with the Energy Services Agreement, including in respect of periodic Availability Payments, Termination Payments, if any, indemnification payments required, if any, and fees and costs of the Verification Agent that are included in Employer invoices, any other amounts due thereunder and interest due in respect of any of the foregoing at the applicable Late Payment Rate; and
- (b) covenants with and undertakes to ESCO on the first demand of ESCO to pay and make good to ESCO forthwith (and fully to indemnify ESCO from and against) any losses, costs, claims, damages, proceedings and expenses reasonably occasioned to or suffered by ESCO duly documented, arising out of or by reason of any default of the Employer in respect of any of the obligations, warranties and/or undertakings of the Employer under and pursuant to the Energy Services Agreement (all of the obligations in Section 2.01(a) and Section 2.01(b) are hereinafter referred to as the "Obligations").

Section 2.02 If, at any time, the Employer fails to comply with any of the Obligations and such failure is not remedied by the Employer within thirty (30) days, Guarantor shall, on the written request of ESCO, make available sufficient funds to pay such Obligations and any interest charges, default fees or collection costs incurred by ESCO in connection therewith.

**Article III
GUARANTEED OBLIGATIONS**

Section 3.01 Multiple claims may be made from time to time under this Guarantee. The maximum amount of the Guarantor's obligations in respect of all claims under this Guarantee shall not exceed at any time, in aggregate the sum of (a) the total amount of the Availability Payments calculated as shown in Exhibit D of the Energy Services Agreement that have been invoiced prior to the date of claim; (b) the amount of Termination Payments then due, if any, and (c) the amount of all accrued interest, penalties, fees, costs, expenses and other liabilities due and payable by the Employer to ESCO under the Energy Services Agreement.

Section 3.02 So long as any amount remains due and payable by the Employer under the Energy Services Agreement, the Guarantor, upon notification by ESCO thereof, shall not have by any means (including payment hereunder) or on any ground claim, any right of set-off or counter claim.

**Article IV
WAIVER; PRESERVATION OF RIGHTS**

Section 4.01 The obligations of the Guarantor contained in this Guarantee shall be in addition to and shall be independent of any other security which ESCO may at any time hold in respect of any of the obligations of the Employer under the Energy Services Agreement.

Section 4.02 ESCO shall not be obliged before or at the same time as enforcing any of its rights or remedies conferred upon it by this Guarantee or by any law to:

- (a) take any legal proceedings or action or obtain any judgement against the Employer in any court;
- (b) pursue or exhaust any other right or remedy against the Employer and/or in respect of any other security for the Employer's obligations which ESCO holds;

and the liabilities of the Guarantor under this Guarantee may be enforced irrespective of whether any such steps are being or have been taken against the Employer and the terms of this Guarantee shall be a continuing guarantee and shall remain in full force and effect until each and every part of the duties, obligations, covenants, warranties and undertakings on the part of the Employer under and pursuant to the Energy Services Agreement shall have been discharged and performed in full.

Section 4.03 The Guarantor unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to:

- (a) the notice of any amendment, waiver or extension granted by or to the Employer;
- (b) require ESCO to proceed against the Employer or any other person or pursue any collateral or remedy within ESCO's power; or
- (c) require any election of remedies.

Section 4.04 A separate action or separate actions may be brought and prosecuted against the Guarantor or any other guarantor of the obligations of the Employer under the Energy Services Agreement whether or not any action is brought or prosecuted against the Employer or any of such other guarantors or whether the Employer or any other such guarantor is joined in any such action. In the event that an action is brought against the Guarantor, but not the Employer, relating to the obligations of the Employer under the Energy Services Agreement, the Employer may be made a party to such action. In the event that an action is brought against the Employer, but not the Guarantor, relating to the obligations of the Employer under the Energy Services Agreement, the Guarantor may be made a party to such action.

Section 4.05 Each right, power and remedy of ESCO provided in this Guarantee or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Guarantee or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or partial exercise by ESCO of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by ESCO of all such other rights, powers or remedies. No failure on the part of ESCO to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by ESCO of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by ESCO shall be effective unless it is in writing.

Section 4.06 The Obligation of the Guarantor under this Guarantee to make payments as contemplated herein shall not be affected by:

- (a) any legal limitation, disability, incapacity, or other circumstances affecting ESCO;

- (b) any change in the constitution or control of, or any amalgamation, merger, consolidation or reconstruction; or the coming into being of a successor; or the insolvency of, or bankruptcy, winding up or analogous proceedings relating to ESCO;
- (c) any invalidity, illegality or unenforceability of this Guarantee or Energy Services Agreement (or any part thereof);
- (d) any amendment or variation of this Guarantee or Energy Services Agreement; or
- (e) any other circumstance, which, but for this provision, would by operation of law reduce, release or prejudice the Guarantor's obligation,

and in each such case, the Guarantor's obligations shall continue to apply as if the circumstances referred to in items (a) to (e) had not occurred.

Section 4.07 The Guarantor agrees that if the Employer is no longer under the supervision, control or direction of the Guarantor, as a result of which the guaranteed obligations referred to in Sections 3.01 and 3.02 are terminated, the Guarantor shall ensure that a replacement coverage is provided, which is acceptable to the beneficiaries of guarantees.

Article V REPRESENTATIONS AND WARRANTIES

Guarantor represents and warrants to ESCO as follows:

Section 5.01 It has the power and authority to enter into, perform and deliver its obligations, and has taken all necessary action to authorize the entry into, performance and delivery of, this Guarantee and the transactions contemplated by this Guarantee.

Section 5.02 As at the date of this Guarantee, it has taken all acts, satisfied all conditions and obtained all authorizations required: (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Guarantee; and (b) to make this Guarantee admissible in evidence in the Project Country.

Section 5.03 This Guarantee and the obligations expressed to be assumed by it in this Guarantee are legal, binding, valid and enforceable, and this Guarantee is in the proper form for its enforcement in the Project Country and, if applicable, each other jurisdiction in which it is required to be registered for such purpose.

Section 5.04 The Guarantor has not granted any person any rights that are inconsistent or conflict, or that may limit or interfere, with the exercise and enjoyment of rights granted to ESCO hereunder.

Section 5.05 It is not necessary that this Guarantee be filed or recorded with any court or other authority in the Project Country to ensure its validity, enforceability or admissibility or that any stamp, or similar tax be paid in relation to this Guarantee or the transactions contemplated thereby, except that this Guarantee is required to be stamped by the Guarantor pursuant to the laws of the Project Country, and such stamping has been or will be duly made promptly after the date of execution of this Guarantee;

Section 5.06 The entry into, delivery of and performance by the Guarantor of, and the transactions contemplated by, this Guarantee do not and will not conflict with: (a) any law, regulation, authorization or judicial order applicable to it or (b) any agreement or instrument which is binding upon it or any of its assets.

Section 5.07 Its payment obligations under this Guarantee rank at least *pari passu* in right of priority and payment with its payment obligations to all its other present and future secured and unsubordinated creditors.

Section 5.08 Its (a) agreement to arbitrate included in this Guarantee; and (b) agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of the Project Country and will be recognized and enforced in the Project Country.

Section 5.09 Any arbitral award issued in relation to this Guarantee will be recognized and enforced in the Project Country.

Section 5.10 As of the date of this Guarantee, the Guarantor has put in place policies and procedures to detect and intercept money-laundering channels or chains involving the proceeds of terrorist activities, drug trafficking and organized crime.

Section 5.11 Any payment obligations of the Guarantor under this Guarantee shall be treated as sovereign debts of the Project Country.

Article VI TAXES

Section 6.01 The Guarantor shall pay all reasonable expenses (including, without limitation, reasonable litigation expenses) paid or incurred by ESCO in attempting to enforce this Guarantee and any taxes or levies paid by ESCO as a result of ESCO making a call on this Guarantee.

Section 6.02 If, in compliance with the laws of the Project Country, any taxes are withheld prior to making payments to ESCO under this Guarantee, the Guarantor shall pay additional amounts necessary to ensure that ESCO receives full payment.

Article VII NOTICES; ASSIGNMENT

Section 7.01 Any demand or other notice in connection with this Guarantee (a “**Notice**”):

- (a) shall be in writing;
- (b) shall be in the English language; and
- (c) shall be delivered personally or sent by first class post (and air mail if overseas) or by email to the Party due to receive the notice to the address specified in Section 7.02 or to another address specified by that Party by not less than seven (7) days’ written notice to the other Party received before the Notice was dispatched.

Section 7.02 The address referred to in Section 7.01 is:

- (a) In the case of the Guarantor:
[Federal Ministry of Finance
Ahmadu Bello Way
Central Business District
P.M.B. 14, Garki, Abuja
Nigeria]⁷²

⁷² NTD: Adjust as needed if used as a template for countries other than Nigeria.

For the attention of:
Honorable Minister of Finance and Coordinating Minister of the Economy

With a copy to Employer.

Address:
Email:
Marked for the attention of: *[insert person's name/title]*

(b) In the case of ESCO:

Address:
Email:
Marked for the attention of: *[insert person's name/title]*

With a copy to Employer:

Address:
Email:
Marked for the attention of: *[insert person's name/title]*

Section 7.03 This Guarantee shall automatically bind any successor government or entity to the Guarantor but may not otherwise be assigned, transferred, or novated in whole or in part by Guarantor without the prior written consent of ESCO. Any attempted or purported assignment or transfer in violation of this Section 7.03 shall be deemed null and void and of no force or effect.

Section 7.04 ESCO shall be permitted to assign this Guarantee in favor of its financiers and the Guarantor agrees that, upon request of ESCO or such lenders, Guarantor shall confirm such assignment and the related rights of financiers as contemplated in Section 17.02 (*Direct Agreement*) of the Energy Services Agreement.

Article VIII FOREIGN CURRENCY SUPPORT

Where ESCO receives any payment in respect of the Energy Services Agreement⁷³ in Naira, and seeks to convert same into the United States Dollars (“USD”), the Guarantor undertakes unconditionally to assist, and direct other Governmental Authorities to assist ESCO with sourcing and purchasing USD at favourable rates, and with the repatriation or exportation of the USD to such offshore accounts as ESCO may nominate.

Article IX EFFECTIVE DATE AND TERM; WAIVER OF SOVEREIGN IMMUNITY

Section 9.01 This Guarantee shall become effective upon the date of signing of it by Guarantor and shall remain in effect until the Employer has discharged all Obligations.

Section 9.02 Guarantor has provided this Guarantee in the context of a commercial transaction, and acknowledges and agrees that its obligations hereunder are of a commercial and not a governmental nature. Guarantor hereby, unconditionally and irrevocably and to the maximum extent permitted by law waives on behalf of itself and its assets, any and all sovereign or other immunities from jurisdiction, from enforcement, from suit, execution, attachment, judgment or other legal process in any proceedings taken in the Project Country and for any other purpose whatsoever; *provided, however*, that this waiver is qualified by the carving out of certain military

⁷³ NTD: If requested by the relevant government this paragraph can be limited to amounts claimed under the Guarantee.

and diplomatic assets of the Federal Government of the Project Country, referred to as the “*protected assets*” under Applicable Legal Requirements, including:

- (a) military property, including aircrafts and warships, customarily used for defense purposes and under the control of a military authority; and
- (b) diplomatic and consular property customarily used to discharge diplomatic and consular functions under the control of a diplomatic or consular authority.

Article X PARTIAL INVALIDITY

If at any time any provision hereof is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity, or enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

Article XI AMENDMENTS

Section 11.01 Subject to Section 11.02 below, amendments to this Guarantee shall only be effective if agreed to by all Parties in writing.

Section 11.02 The Parties acknowledge and agree that any amendment to this Guarantee shall be made in the form of an amendment and restatement of this Guarantee.

Article XII GOVERNING LAW AND DISPUTE RESOLUTION

Section 12.01 This Guarantee and all non-contractual obligations arising from or connected with it shall in all respects be governed by and interpreted in accordance with the law of the Project Country as such law shall from time to time be in effect, without regard to any conflict of laws rules.

Section 12.02 Any dispute arising out of or relating to this Guarantee (whether based upon contract, tort or any other legal theory) shall be settled by arbitration carried out in accordance with the [Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”) by one or more arbitrators appointed in accordance with said Rules.]⁷⁴

- (a) The seat of arbitration shall be [●].⁷⁵
- (b) The language of the arbitration shall be English.
- (c) The laws applicable at the seat of arbitration shall govern this arbitration agreement.⁷⁶
- (d) This agreement to arbitrate is binding upon the Parties and their respective successors and permitted assigns.
- (e) At either Party’s option, any other Person may be joined as an additional party to any arbitration conducted under this Section 12.02 in accordance with the Rules.

⁷⁴ NTD: The number of arbitrators desired should be specified.

⁷⁵ NTD: This should be an offshore jurisdiction (e.g., London, Paris, Geneva, etc.).

⁷⁶ NTD: To be included if London chosen as the seat.

- (f) The Parties agree that any dispute arising out of or relating to this Guarantee and any related agreement (including the Energy Services Agreement) may be consolidated into one arbitration proceeding in accordance with the Rules and, for such purpose, the Employer and the Guarantor shall be deemed one and the same party.
- (g) The arbitration award shall be final and binding, in writing, signed by all arbitrators, and shall state the reasons upon which the award thereof is based.
- (h) The arbitrators may award costs of the arbitration and fees, including reasonable attorney's fees and expenses to the prevailing Party.

**Article XIII
ENTIRE AGREEMENT**

This Guarantee contains the entire agreement between the Parties and supersedes any and all written and oral agreement, proposals, negotiations, understandings and representations relating to or connected with the subject matter of this Guarantee made or dated prior to the date hereof.

**Article XIV
COUNTERPARTS**

This Guarantee may be executed in counterparts and such counterparts taken together shall constitute one and the same instrument.

**Article XV
LANGUAGE**

This Guarantee is executed in the English language. The language for communications between the Parties pursuant to this Guarantee shall be the English language.

[The remainder of this page is intentionally blank. The next page is the signature page for the Guarantee.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Guarantee as a deed on the date first written above.

THE FEDERAL GOVERNMENT OF [NIGERIA],⁷⁷
acting by and through the following duly authorized representative

SIGNED, SEALED AND DELIVERED
AS A DEED BY THE MANAGING DIRECTOR OF THE RURAL ELECTRIFICATION AGENCY
For and on behalf of
THE FEDERAL GOVERNMENT OF [NIGERIA]⁷⁸

Name: ABBA ABUBAKAR ALIYU

Title: Managing Director of REA

In the presence of:

Name:.....

Signature:.....

Occupation:.....

Address:.....

⁷⁷ NTD: Adjust if used for a template in countries other than Nigeria.

⁷⁸ NTD: Adjust if used for a template in countries other than Nigeria.

**SIGNED, SEALED AND DELIVERED
AS A DEED**

For and on behalf of

[insert corporate name of ESCO]

Name:

Title:

In the presence of:

Name:.....

Signature:.....

Occupation:.....

Address:.....

Exhibit I
Coverage of ESCO Legal Opinions

ESCO is duly incorporated and existing [and in good standing] under the laws of [●].

ESCO has the necessary corporate power and authority to enter into and perform its obligations under the Energy Service Agreement and the Performance Monitoring Agreement (collectively, the “Documents”).

The execution and delivery of the Documents by ESCO and the performance by ESCO of its obligations thereunder will not violate the [organizational documents] of the ESCO or any law, regulation, order or decree of [Project Country] that is applicable to ESCO. Without limiting the foregoing, no order, consent or similar approval is necessary from any governmental authority of [Project Country] is required for ESCO to execute, deliver or perform its obligations under the Documents other than [describe permits needed to carry out construction and whether they are expected to be available in the ordinary course]

The Documents have been duly authorized, executed and delivered by or on behalf of ESCO, and constitute the valid, binding and enforceable obligations of ESCO enforceable in accordance with the terms thereof.

Note to Template Users: The above are opinions to be given to the Employer by legal advisors to ESCO. Lenders and other parties providing financing under the Financing Documents will likely expect additional opinions from the legal advisers to ESCO, or the legal advisers to such lenders, on the enforceability of the Financing Documents and the creation, perfection and enforceability of security interests in the ESA and payment accounts supporting the financing. Certain of those are included in the exhibit to the Direct Agreement.

Exhibit J
Coverage of Employer & Guarantor Legal Opinions

Each of the Employer and the Guarantor is duly existing under the laws of [Project Country].

Employer has the necessary power and authority to enter into and perform its obligations under the Energy Service Agreement and the Performance Monitoring Agreement (collectively, the “Employer Documents”).

Guarantor has the necessary power and authority to enter into and perform its obligations under the Guarantee (collectively, together with the “Employer Documents” the “Documents”).

The execution and delivery of the Documents by each of the Employer and the Guarantor and the performance by each of the Employer and the Guarantor of its obligations thereunder will not violate the [authorities/competencies/organizational documents] of the Employer or the Guarantor or any law, regulation, order or decree of [Project Country] that is applicable to the Employer or the Guarantor. Without limiting the foregoing, no order, consent or similar approval is necessary from any governmental authority of [Project Country] is required for the Employer or the Guarantor to execute, deliver or perform its obligations under the Documents[, other than [*list any parliamentary or other approvals necessary for authorization*]] all of which have been duly and validly obtained and are in effect.]

The Documents have been duly authorized, executed and delivered by or on behalf of each of the Employer and the Guarantor, and constitute the valid, binding and enforceable obligations of each of the Employer and the Guarantor in accordance with the terms thereof.

It is not necessary or desirable to ensure the enforceability in [Project Country] of the Documents that they be registered in any register kept by, or filed with, any governmental authority or regulatory body in [Project Country] or that any stamp or similar tax be paid.

All legal steps and approvals necessary for the Guarantee to be treated as, and enforced as, a sovereign debt of the [Project Country] have been carried out.

Employer and Guarantor have validly waived any sovereign or other immunity to which they are entitled under the laws of [Project Country], in respect of their obligations under the Documents.

The choice of [Governing Law] as the governing law of the Documents is a valid choice of law and would be recognized and given effect to in any action brought before a court of competent jurisdiction in [Project Country].

An award granted pursuant to arbitration proceedings in [Arbitral Forum Country] and conducted in accordance with the [rules set forth in the documents] would be enforceable in [Project Country] in the same manner as a domestic judgment or order.

Note to Template Users: The above are opinions to be given to the ESCO by legal advisors to the Employer and Guarantor, which may be an attorney general or similar legal authority of the government. Lenders and other parties providing financing under the Financing Documents will likely expect additional opinions on the enforceability of the Financing Documents and the creation, perfection and enforceability of security interests in the ESA and payment accounts supporting the financing. Certain of those are included in the exhibit to the Direct Agreement.

Exhibit K

**[FORM OF
PERFORMANCE MONITORING AGREEMENT] VERIFICATION AGENT AGREEMENT**

This AGREEMENT (as amended, restated supplemented or otherwise modified from time to time, the “**Agreement**”), dated as of [●] is entered into by and among (a) [●] a [entity type and jurisdiction of incorporation] (the “**ESCO**”), (b) the [●] of [●] of the Government of [●] (the “**Employer**”) and (c) [●] a [entity type and jurisdiction of incorporation] (in such capacity and together with any permitted assignee or successor thereto the “**Verification Agent**”).

W I T N E S S E T H:

WHEREAS, the project (the “**Project**”) involves the design, construction, operation and maintenance of energy systems [using solar photovoltaics or other technologies]⁷⁹ (the “**Energy Systems**”) that will provide energy services to [●] facilities under the ownership, control or supervision of Employer;

WHEREAS, the ESCO and the Employer have entered into an Energy Services Agreement (the “**Energy Services Agreement**”) dated as of [●] for the ESCO, to design, construct, operate and maintain the Project and provide relevant energy services to such facilities, in exchange for [monthly/quarterly] Availability Payments (as defined in the Energy Services Agreement) to be made by the Employer and other payments depending on certain events and circumstances relevant to the Project;

WHEREAS, the Energy Services Agreement calls for an independent Verification Agent to monitor and certify compliance by the ESCO with certain performance quantity and quality parameters provided in Exhibit D (*Specified Energy, Availability Payment Deductions, Verification Process*) of the Energy Services Agreement in order to verify the proper amounts due in respect of [monthly/quarterly] Availability Payments, and to serve as an independent advisor to resolve certain Technical Matters (as defined in the Energy Services Agreement) that may be disputed between ESCO and the Employer (collectively, the “**Clients**”); and

WHEREAS, ESCO and the Employer, as the Clients wish to engage [●] (the “**Verification Agent**”) on an exclusive basis to perform such duties for the ESCO and the Employer; and

WHEREAS, Verification Agent wishes to accept the engagement to perform such duties for the Clients under the terms and conditions in this Verification Agent Agreement (the “**Agreement**”).

NOW, THEREFORE, in consideration of the foregoing premises and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Verification Agent Services.

1.1 Verification Agent shall provide to Clients the verification services (the “**Verification Agent Services**”) described in *Schedule 1*. Verification Agent will perform with reasonable care the Verification Agent Services in good faith and in accordance with prudent industry standards.

2. Compensation. Each Client⁸⁰ agrees to pay the amounts required of it as set forth in *Schedule 2* so that all of Verification Agent’s fees, and any reasonable and documented third-party out-of-pocket costs and expenses as set forth in *Schedule 2*, are paid, including all reasonable and documented out-of-pocket expenses incurred by Verification Agent in the performance of its duties hereunder. In the case of Employer, such amounts shall be included in its invoices to be paid under the Energy Services Agreement for onward payment

⁷⁹ NTD: Customize for appropriate technologies.

⁸⁰ NTD: Customer obligations should also be covered by the Guarantee.

to the Verification Agent by the ESCO and the ESCO agrees to pay such amounts forthwith to the Verification Agent.⁸¹ Verification Agent shall provide to the Clients copies of documents showing any third-party costs and expenses incurred by the Verification Agent for which reimbursement is sought.

3. Effective Date. Verification Agent shall promptly commence providing the Verification Agent Services on the date noted above (the “**Effective Date**”).

4. Term of Agreement.

4.1 Term. This Agreement shall commence on the Effective Date and continue until all the Obligations under the Energy Services Agreement have been paid in full.

4.2 Early Termination.

4.2.1 Early Termination by Clients for Cause. Clients may terminate this Agreement with respect to Verification Agent for cause by giving at least 30 calendar days’ written notice to Verification Agent upon the occurrence of any of the following (each an “**IVA Default**”); provided that this Agreement may be terminated immediately upon written notice if terminated under Section 4.2.1 **Error! Reference source not found.** or (d) below; *provided, that* Verification Agent shall continue to be compensated by the Clients in accordance with this Agreement through the date of any such termination:

(a) Verification Agent fails, whether by act or omission, to provide or is materially delayed (other than by force majeure as described in Section 14) in providing any material portion of the Verification Agent Services, which failure of performance is not cured within thirty (30) days of written notice from either Client;

(b) Verification Agent causes material damage to an Energy System or Measurement Device;

(c) Any gross negligence, bad faith, willful misconduct or material violation of Applicable Legal Requirements of Verification Agent;

(d) Any Insolvency Event (as defined in the Energy Services Agreement) with respect to the Verification Agent; or

(e) Any representation, warranty or statement of Verification Agent made in this Agreement or any certificate, report or other writing delivered by Verification Agent in this Agreement shall be false in any material respect as of the date made and such false representation shall not have been cured or waived within thirty (30) Business Days after an officer of Verification Agent acquiring knowledge thereof (in which case, Verification Agent shall provide prompt notice thereof to each of the other parties hereto).

4.2.2 Early Termination by Verification Agent for Cause. Verification Agent may terminate its rights and obligations under this Agreement for cause if it does not receive any payment required to be made under the terms of this Agreement, which failure continues *unremedied* for a period of 60 days after written notice of such failure shall have been given to the Clients. If Employer fails to pay amounts due from it hereunder, ESCO shall be permitted (but not required) to make such payments in order to ensure the continuity of Verification Agent’s services hereunder, in which case such costs shall be added to the amounts due from the Employer to ESCO under the Energy Services Agreement.

4.2.3 Early Termination by Clients for Convenience. Either Client may terminate this Agreement with respect to Verification Agent for convenience by providing Verification Agent with ninety (90) calendar days’ prior written notice (the “**Early Termination Notice**”) of its intention to terminate this Agreement; *provided,*

⁸¹ NTD: The concept here is to include the amounts on invoices so that they are subject to the Guarantee. This may need fine-tuning to the extent the Verification Agent needs further assurance that the ESCO will pay it.

that the Verification Agent shall continue to provide the Verification Agent Services during such period and shall be compensated in accordance with this Agreement through the date of such early termination.

5. Termination and Expiration.

5.1 Return of Client Records. Upon termination of this Agreement for any reason, Verification Agent shall release to the relevant Client(s) the files, books, and records (collectively, “**Client Records**”) in the possession of Verification Agent, if any, relating to the services provided hereunder in the form requested by the relevant Clients, which may be either electronic or hard copy form. Thereafter, Verification Agent shall have no obligation to Clients to maintain, archive or provide Clients or any other party with such Client Records.

5.2 Payment upon Termination. Clients shall pay Verification Agent for its reasonable and documented out-of-pocket costs, including the reasonable and documented actual out-of-pocket costs and expenses incurred by Verification Agent in connection with the transfer of Client Records, in each case, within 60 days of relevant Client’s receipt of an invoice with supporting documentation (e.g. receipts).

6. Representations, Warranties and Covenants of Verification Agent. Verification Agent represents, warrants and covenants to each of Client as of the date hereof the following:

(a) Organization and Good Standing. Verification Agent has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with power, authority and legal right to own its properties and to conduct its business as such properties are currently owned and such business is currently conducted, and had at all relevant times, and now has, power, authority and legal right to enter into and perform its obligations under this Agreement;

(b) Due qualification. Verification Agent is duly qualified to do business and has obtained all necessary licenses and approvals to do business, in all jurisdictions where the failure to do so would materially and adversely affect the performance of its obligations under this Agreement;

(c) Power and Authority. Verification Agent has the power and authority to execute and deliver this Agreement and to carry out the terms hereof; and the execution, delivery and performance of this Agreement have been duly authorized by Verification Agent by all necessary corporate action;

(d) Binding Obligation. This Agreement shall constitute the legal, valid and binding obligation of Verification Agent enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally and by equitable limitations on the availability of specific remedies, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(e) No Violation. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the fulfillment of the terms hereof, shall not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the certificate of incorporation or bylaws of Verification Agent, or any indenture, agreement, mortgage, deed of trust or other instrument to which Verification Agent is a party or by which it is bound, or result in the creation or imposition of any lien upon any of its properties pursuant to the terms of any such indenture, agreement, mortgage, deed of trust or other instrument, other than this Agreement, or violate any law, order, rule or regulation applicable to Verification Agent of any court or of any [federal or] state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over Verification Agent or any of its properties;

(f) No Proceedings. There are no proceedings or investigations pending or, to Verification Agent’s knowledge, threatened against Verification Agent, before any court, regulatory body, administrative agency or other tribunal or governmental instrumentality having jurisdiction over Verification Agent or its properties (A) asserting the invalidity of this Agreement, (B) seeking to prevent the consummation of any of the transactions

contemplated by this Agreement, or (C) seeking any determination or ruling that might materially and adversely affect the performance by Verification Agent of its obligations under, or the validity or enforceability of, this Agreement; and

(g) No Consents. Verification Agent is not required to obtain the consent of any other party or any consent, license, approval or authorization, or registration or declaration with, any governmental authority, bureau or agency in connection with the execution, delivery, performance, validity or enforceability of this Agreement.

7. Representations and Warranties of Clients. Each Client represents and warrants to the Verification Agent as of the date hereof the following, with respect to itself only that:

(a) Business Entity; Authority. Such Client is a validly existing and in good standing under the laws of the jurisdiction of its organization and in possession of all necessary licenses and approvals in all jurisdictions where failure to be so qualified and in good standing would have a material adverse effect on Client's business and operations or on Client's ability to perform its duties contemplated by this Agreement.

(b) Authorization; Binding Agreement. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary limited liability company action by Client and its officers and directors. This Agreement has been duly and validly executed and delivered on behalf of Client and is binding upon and enforceable against Client in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting the rights of creditors, and except as enforceability may be limited by rules of law governing specific performance, injunctive relief, or other applicable remedies.

(c) No Adverse Consequences. Neither the execution and delivery of this Agreement by Client nor the consummation of the transactions contemplated hereby will (i) violate in any material respect any applicable law, judgment, order, decree, regulation, or ruling of any governmental authority or violate any provision of the formation documents of Client, (ii) conflict with, constitute grounds for termination of, or result in the breach of the terms, conditions, or provisions of or constitute a default or result in the imposition of any lien upon Client's property under any agreement, instrument, license, or permit to which Client is a party or by which it is bound or (iii) require any consent, approval, authorization or order of or declaration or filing with any governmental authority, other than the filing of financing statements contemplated by the Energy Services Agreement.

(d) No Proceedings. There are no proceedings or investigations pending, or to the knowledge of Client, threatened against Client that might materially and adversely affect the execution and delivery of this Agreement by Client or the consummation of the transactions contemplated hereby.

(e) Compliance with Laws. Client has operated its business in accordance with all applicable laws and regulations and Client is not in violation of any such laws or regulations other than such violations which singly or in the aggregate do not have a material adverse effect on its business or assets or its ability to perform its obligations under this Agreement.

8. Additional Covenants of Verification Agent. During the term of this Agreement, Verification Agent covenants and agrees as follows:

8.1 Compliance with Laws. Verification Agent will perform its duties hereunder in compliance with applicable law.

8.2 Preservation of Existence. Verification Agent will preserve and maintain its existence, rights, franchises and privileges under the laws of its jurisdiction of organization, and qualify and remain qualified in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualifications could reasonably be expected to have a material adverse effect on Verification Agent's business.

8.3 Disaster Recovery and Business Continuity Plan. Verification Agent shall maintain, at its own expense, a commercially reasonable disaster recovery and business continuity plan that provides for the resumption, as promptly as practicable and in any event within a commercially reasonable period of time, of the processing and related functions Verification Agent performs for the Client under this Agreement in the event that a disaster disrupts or impairs such functions.

8.4 Errors and Omissions Insurance; Other Insurance. Verification Agent shall, as of sixty (60) days from the date of this Agreement, procure and maintain, at its own expense, an errors and omissions insurance policy with broad coverage of all officers and employees acting in any capacity requiring such persons to handle funds, money, documents or papers relating to the Project. These policies shall insure Verification Agent against losses resulting from errors or omissions committed by Verification Agent's personnel. No provision of this Section 8.4 requiring such errors and omissions insurance shall diminish or relieve Verification Agent from its duties and obligations under this Agreement. The minimum coverage under such errors and omissions insurance policy shall be at least [●] ([\\$][●])⁸² in the aggregate. In addition to the foregoing, Verification Agent shall maintain all insurance coverage required by [federal,] state or local law and statute, including workers' compensation insurance. Verification Agent shall promptly, and in no event later than 5 Business Days of obtaining such policy, provide Client with written evidence of such policy once it is obtained.

9. Independent Contractor. Verification Agent is an independent contractor and shall perform the Verification Agent Services hereunder as such, and not as the agent, employee, or servant of the Clients. Verification Agent and Clients shall remain fully responsible for their respective employee's actions, salaries, benefits, taxes, worker's compensation, unemployment insurance, any other employee costs or benefits and any other expenses not provided for under this Agreement. Verification Agent may delegate any or all of the Verification Agent Services required under this Agreement to its affiliates provided that Verification Agent shall remain fully responsible for the acts and omissions of any such delegates. Nothing in this Agreement shall create a partnership or joint venture among Verification Agent, or any delegee of Verification Agent or Clients.

10. Access to Information. Upon giving at least ten (10) Business Days' written notice, but not more than once annually, Verification Agent or its applicable delegee shall give either Client and their respective counsel and/or other representatives reasonable access (including, without limitation, on-site access), during normal business hours, to all of Verification Agent's files, books, and records (including computer records) relating to the Verification Agent Services subject to Verification Agent's, or such delegee's, procedures for such access.

11. Confidentiality. Verification Agent agrees that it shall not disclose to any third party any information concerning the trade secrets, methods, processes, or procedures, or any other confidential, financial, or business information of either Client which it learns of in connection with this Agreement, without the prior written consent of the relevant Client, except Verification Agent may disclose a Client's confidential and proprietary information without obtaining prior written consent in the following circumstances only: (a) to employees of Verification Agent (or its permitted delegate), who require such information in order to assist Verification Agent in performing this Agreement, and that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof; and (b) as required in order to comply with any subpoena, audit request, court order, or applicable law, or pursuant to request by a regulator having jurisdiction over Verification Agent, provided that Verification Agent gives the relevant Client prior written notice of such disclosure and provided further that prior to Verification Agent's compliance with any such request or requirement, Verification Agent affords the relevant Client the time to seek a protective order or similar remedy to prevent or limit disclosure unless otherwise compelled under any applicable law, rule, regulation or related directive or order. Notwithstanding anything to the contrary in this Agreement, Verification Agent shall have no obligation to keep secret any confidential or proprietary information which is in or becomes part of the public domain not due to the fault of Verification Agent, its delegates, employees or

⁸² NTD: Financial/Insurance advisors to advise.

representatives. Verification Agent's obligations under this Section 11 shall survive the expiration, cancellation, or other termination of this Agreement.

12. Indemnity.

12.1 Indemnity. Employer shall defend, indemnify, and hold Verification Agent, and its shareholders, directors, affiliates, assignees, agents, and employees, harmless from and against any and all claims, counterclaims, liabilities, losses, damages, court costs, reasonable and documented out-of-pocket attorneys' fees, and other reasonable expenses directly arising from any claim (the "**Claims**") concerning in any way the Verification Agent Services or otherwise arising under this Agreement (including the out-of-pocket costs of enforcing the indemnity obligation hereunder and any out-of-pocket costs of successfully defending any claim by Employer relating to Verification Agent's standard or care of obligations hereunder), except for (a) Claims arising out of or resulting from (i) the gross negligence, bad faith, fraud, or willful misconduct of Verification Agent, or its shareholders, directors, affiliates, assignees, agents, and employees, (ii) Verification Agent's breach of this Agreement (including, without limitation, any material failure of the representations and warranties made by Verification Agent hereunder or in connection herewith to be true and correct in all material respects), or (iii) Verification Agent's failure to comply with requirements of applicable federal, state and local laws, rules and regulations (including any violation by Verification Agent of applicable privacy laws) in performing its duties hereunder (all of which shall be borne by the Verification Agent itself) and (b) any out-of-pocket costs of successfully defending any claim brought by ESCO relating to Verification Agent's standard of care or obligations hereunder, which costs shall be borne by ESCO.

12.2 Indemnity by Verification Agent. Verification Agent shall defend, indemnify, and hold Clients and their respective shareholders, directors, affiliates, assignees, agents, and employees harmless from and against any and all Claims arising out of or resulting from (a) the gross negligence, bad faith, fraud, or willful misconduct of Verification Agent, and its shareholders, directors, affiliates, assignees, agents, and employees, (b) Verification Agent's breach of this Agreement (including, without limitation, any failure of the representations and warranties made by Verification Agent hereunder or in connection herewith to be true and correct in all material respects), or (c) Verification Agent's failure to comply with requirements of applicable laws, rules and regulations (including any violation by Verification Agent of applicable privacy laws) in performing its duties hereunder.

12.3 Limitation and Survival. The parties hereto acknowledge and agree that any Claims with respect to which reimbursement is sought pursuant to this Section 12 must be commenced within [●]⁸³ years following termination of this Agreement. The parties hereto further acknowledge and agree to use commercially reasonable efforts at all times to minimize the losses for which such other party may be liable under this Agreement. Notwithstanding anything in the foregoing to the contrary, no party to this Agreement shall be responsible for reimbursement of any consequential, special or indirect damages, lost profits, lost investment or business opportunity, interest, damages to reputation, punitive damages, exemplary damages, treble damages, nominal damages or operating losses. The indemnity obligations of the parties shall survive the termination of this Agreement as provided for herein.

13. LIMITATION OF VERIFICATION AGENT'S LIABILITY AND LIMITATION OF CLIENTS' REMEDIES. Verification Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and shall not have any duties or responsibilities to any party under any agreement except those expressly set forth in this Agreement. Verification Agent shall have no obligation to administer the performance of the Clients under the Energy Services Agreement and shall have no liability for any action taken or omitted by the Clients.

⁸³ NTD: statutory limitation period to be checked with a local legal adviser.

13.1 None of Verification Agent or any of its directors, officers, members, partners, employees, auditors, accountants, or agents shall be liable for any action taken, suffered, or omitted by it in good faith and reasonably believed to be authorized or within the discretion, rights, or powers conferred upon it by this Agreement, or for errors in judgment; *provided, however*, that this provision shall not protect any such person against liability which would otherwise be imposed on such person by reason of such person's gross negligence, bad faith or willful misconduct. No liability shall accrue to Verification Agent when:

- (a) Either Client fails to provide necessary, timely, or accurate information in order for Verification Agent to fulfill the Verification Agent Services; and
- (b) Verification Agent reasonably relies, in good faith, on any document of any kind which, *prima facie*, is properly provided by an appropriate person respecting any matters arising hereunder; or
- (c) Verification Agent reasonably relies on the written instructions of any authorized representative of the Clients.

13.2 Anything in this Agreement to the contrary notwithstanding, in no event shall Verification Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if Verification Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

14. Force Majeure. No party to this Agreement shall be liable for any failure to perform its obligations where such failure is as a result of acts of nature (including fire, flood, earthquake, storm, hurricane, or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power of confiscation, terrorist activities, nationalization, government sanction, pandemic, blockage, embargo, labor dispute, strike, lockout, or interruption or breakdown of public or private or common carrier communications or transmission facilities or equipment failure, or the failure of any unrelated party whom Verification Agent relies upon to perform the Verification Agent Services.

15. No Liability for Clients or Servicer Actions. Verification Agent will not be responsible for delays attributable to the ESCO or Employer failure to deliver information, defects in the information supplied by the Clients or other circumstances beyond the control of Verification Agent.

16. Time of the Essence. Time is of the essence for all payment obligations under this Agreement and for all of Verification Agent's performance obligations under this Agreement.

17. Amendment. No modification, amendment, or waiver of any provision of, or consent required by, this Agreement, nor any consent to any departure from the terms of this Agreement, shall be effective unless it is in writing and signed by authorized officers of the parties hereto. Such modification, amendment, waiver, or consent shall be effective only in the specific instance and for the purpose for which given.

18. No Assignment. Neither of the Clients nor the Verification Agent may assign this Agreement or its rights hereunder, or, except as specifically provided herein, delegate its obligations hereunder, without the prior written consent of each other party; provided, however, that ESCO shall be permitted to assign its interests under this Agreement in favor of its financiers and the Verification Agent and Employer agree that, upon request of the ESCO or such lenders, they shall confirm such assignment and the related rights of financiers as contemplated in Section 17.02 (Direct Agreement) of the Energy Services Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

19. No Third Party Beneficiary. Verification Agent and the Clients are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

20. Waiver. No delay or omission on the part of any party in exercising any right hereunder shall operate as a waiver of any such right or any other right. All waivers must be in writing.

21. Severability. If any provisions of this Agreement are found to be unenforceable as to any person or circumstance, such finding shall not render such a provision invalid or unenforceable as to any other person or circumstance and shall not invalidate any other provision or provisions of this Agreement. If feasible, the term or provision which is found to be invalid or unenforceable shall be deemed to be modified to be within the limits of validity or enforceability.

22. Default and Remedies. A party to this Agreement shall be in default under this Agreement upon such party's failure to timely perform any obligation required of such party under this Agreement. Upon a party's default, the non-defaulting party shall have all the rights afforded it at law or in equity, including without limitation the right to suspend or terminate performance under this Agreement, and accelerate all sums to become due for the term of this Agreement remaining on the date of default. All of the non-defaulting party's remedies shall be cumulative and the exercise of one or more remedies shall not be deemed an election or waiver of any other remedy.

23. Waiver of Sovereign Immunity. Employer has entered into this Agreement in the context of a commercial transaction, and acknowledges and agrees that its obligations hereunder are of a commercial and not a governmental nature. Employer hereby irrevocably waives on behalf of itself and its assets, any and all sovereign or other immunities from jurisdiction, from enforcement and for any other purpose whatsoever; provided, however, that this waiver is qualified by the carving out of certain military and diplomatic assets of the [Federal] Government of [●], referred to as the "protected assets" under Applicable Legal Requirements, including:

(a) military property, including aircrafts and warships, customarily used for defense purposes and under the control of a military authority; and

(b) diplomatic and consular property customarily used to discharge diplomatic and consular functions under the control of a diplomatic or consular authority.

24. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall in all respects be governed by and interpreted in accordance with the law of [[●]]⁸⁴ as such law shall from time to time be in effect, without regard to any conflict of laws rules.

Any dispute arising out of or relating to this Agreement (whether based upon contract, tort or any other legal theory) shall be settled by arbitration carried out in accordance with the Rules of Arbitration of the International Chamber of Commerce (the "**Rules**") by one or more arbitrators appointed in accordance with said Rules.

- (i) The seat of arbitration shall be [●].
- (ii) The language of the arbitration shall be English.
- (iii) The laws applicable at the seat of arbitration shall govern this arbitration agreement.
- (iv) This agreement to arbitrate is binding upon the parties and the successors and permitted assigns of any of them.

⁸⁴ NTD: Governing law to be confirmed – Verification Agent may request neutral, well-known law to govern.

- (v) At any party's option, any other person may be joined as an additional party to any arbitration conducted under this Section 24 in accordance with the Rules.
- (vi) The parties agree that any dispute arising out of or relating to this Agreement and any related agreement (including the Energy Services Agreement) may be consolidated into one arbitration proceeding in accordance with the Rules.
- (vii) The arbitration award shall be final and binding, in writing, signed by all arbitrators, and shall state the reasons upon which the award thereof is based.
- (viii) The arbitrators may award costs of the arbitration and fees, including reasonable attorney's fees and expenses to the prevailing party.

25. Confidentiality. Except as may be required by law, no party, or its directors or shareholders, may disclose the existence, content, or results of any litigation or other legal actions hereunder without the prior written consent of each other party. Notwithstanding the foregoing, each party may disclose the existence, content and results of any litigation or other legal action hereunder to its directors and direct and indirect equity holders and legal and other professional advisors, in the case of ESCO, any lenders to it or any of its wholly-owned affiliates.

26. Notices.

(i) Any notice or other communication to be given under this Agreement shall be given in writing in English and may be delivered in person or sent by a reputable courier or electronic mail to the address of the relevant recipient set forth in Section 26(iii) (Notices) or such other address as the parties, as applicable, may specify in writing pursuant to this Section 26 (Notices).

(ii) Any notice or document shall be deemed to be given:

(A) if delivered in person, at the time of delivery; or

(B) if sent by reputable courier for overnight delivery, at 10:00 a.m. on the second (2nd) Business Day after it was deposited with such reputable courier; or

(C) in any other case on the next Business Day following the date of transmission; provided that if sent by electronic mail, a hard copy of such notice or document must be dispatched by post within forty-eight (48) hours of the time and date such electronic mail was sent.

In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted or that the fax was properly addressed and transmitted.

(iii) The addresses for notices are as follows:

ESCO: [●]

Employer: [●]

IVA: [●]

27. Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its duties and obligations hereunder and to carry out the intent of the parties hereto.

28. Entire Agreement. This Agreement contains the entire understanding of, and supersedes all prior or contemporaneous agreements not specifically referred to herein between, the parties with respect to the subject matter hereof.

29. No Party Deemed Drafter. The parties to this Agreement understand and agree that this Agreement has been negotiated at arm's length and on equal footing as between each of the parties hereto, that such parties are sophisticated, and that such parties fully understand and agree to all the terms and conditions contained in this Agreement. Accordingly, in any dispute concerning the meaning of this Agreement, or any term or condition hereof, such dispute shall be resolved without any presumption or rule of construction in favor of any party or any related or similar doctrine.

30. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. [Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by electronic mail attachment in portable document format (aka "pdf") shall be effective as delivery of a manually executed counterpart of this Agreement, and this Agreement shall be treated in all manner and respects as having an original signature (or counterpart thereof) and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.]⁸⁵ No party hereto shall raise the use of a facsimile machine, electronic signature or electronic transmission in portable document format or the fact that any signature was transmitted or communicated through the use of facsimile machine or electronic transmission in portable document format as a defense to this Agreement and each such party forever waives any such defense. Each person signing below represents and warrants that he or she has the necessary authority to bind the entity set forth below.

31. Defined Terms. Any initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Energy Services Agreement.

(Signature pages immediately follow)

⁸⁵ NTD: This should only be included if electronic signatures are permissible in the relevant jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ESCO:

[•]

By: _____

Name:

Title:

Employer:

[•]

By: _____

Name:

Title:

Verification Agent:

[•]

By: _____

Name:

Title:

SCHEDULE 1 TO PERFORMANCE MONITORING AGENCY AGREEMENT

SERVICES

Verification Agent Services

(i) Design, establish, provide and support a platform (expected to be cloud-based and hosted by the Verification Agent) (the “**Platform**”) that receives and compiles data from the remote Measurement Devices of all Energy Systems to monitor Energy System performance and gather relevant data appropriate to assess individual system compliance with key performance indicators and calculate the appropriate periodic Availability Payment;

(ii) provide a user interface for ESCO and Employer to view the data on the Platform;

(iii) using the information gathered through the Platform, and such other data as the Verification Agent may request or otherwise receive from the ESCO and Employer, confirm the quantities of electric energy delivered by each Energy System pursuant to Section 3.01(b) (*ESCO’s Obligation to Provide Energy Services*) of the Energy Services Agreement and such other matters as are to be verified by the Verification Agent pursuant to Exhibit D (Specified Energy, Availability Payment Deductions, Verification Process) of the Energy Services Agreement,

(iv) validate, to the extent reasonably subject to third party verification, any invoices delivered by ESCO to Employer or vice versa pursuant to the Energy Services Agreement and provide an analysis of, and confirmation of compliance with the other requirements set forth in Exhibit D (*Specified Energy, Availability Payment Deductions, Verification Process*) to the Energy Services Agreement;

(v) confirm, if requested by ESCO and reasonably subject to third-party verification, Employer’s compliance with its obligations under the Energy Services Agreement including the existence and duration of any Relief Events; and

(vi) review and recommend resolution of disputes relating to billing and Technical Matters in accordance with Section 22.02(e)(i) (*Independent Verification Agent*) of the Energy Services Agreement.

SCHEDULE 2 TO PERFORMANCE MONITORING AGENCY AGREEMENT

FEES

Verification Agent Fees:

- “Transaction Onboarding Fee” and fee to establish “Platform” of \$[●], payable by the Employer.
- “Verification Agent Fee”: an ongoing fee of \$[●] per [month/quarter] for maintaining the Platform and producing a Verification Report each [month/quarter], exclusive of any applicable VAT, payable by the Employer.
- “Additional Reporting Fee” fee of \$[●] per report for producing any additional Verification Reports, payable by the party requesting such report.
- “Technical Matter” resolutions, initial fee of \$[●], followed by charges on an hourly basis of [\$][●] per hour based on time required, and reasonable and documented third-party out-of-pocket costs and expenses shall be allocated by the Verification Agent to either be shared equally between the Employer and ESCO (if neither party is found vto have been at fault) or assigned to the party at error for the Dispute if the Verification Agent finds one party to be clearly in error.

SCHEDULE 3 TO VERIFICATION AGENCY AGREEMENT

Technical Requirements necessary for Verification

Note to Template Users: This schedule is to be developed in consultation with technical advisors to allow for automated interfaces needed for real time monitoring and to be included in technical exhibits to the ESA, e.g., Exhibit C (Description of the Systems) & Exhibit F (Reporting Requirements)

Exhibit L
Site Studies and Inspections

Note to Template Users: There should be a study commissioned to show the state of each site and identify any adverse conditions before any construction of the systems is started. This would typically be conducted by a third party with a survey on which all parties can rely attached.

Exhibit M
Financing Documents

Note to Template Users: This schedule should list the Financing Documents that will be utilized by the ESCO (or any affiliate seeking financing for the energy systems) in order to allow for calculation of financing costs and amounts due to financiers upon termination events.