



Operation and maintenance contract – details

Contract Name/No.	[insert contract name or number]
Owner	[insert name] [address] ABN [insert] Tel: [insert]
Operator	[insert name] [address] ABN [insert] Tel: [insert]
Term	The Term is [insert] years from the Commencement Date.
Services	You are responsible for the provision of the Services in accordance with, and as more fully described in Schedule 1 (<i>Scope of Services</i>), including any Variation (Services).
Total Yearly Fee	The Total Yearly Fee is: [insert price in Australian dollars] . See Schedule 2 (<i>Fees and Expenses</i>) for payment terms of the Total Yearly Fee.
Commencement Date	The Commencement Date is [insert date] or [insert days] days from the date of signing this Contract. If nothing stated, then the Commencement Date is the date of signing the Contract.
Your Representative (GC5.1)	Your Representative is: [insert name and details]
Our Representative: (GC 5.2)	Our Representative is: [insert name and details]
Security (GCs6.6 and 6.7)	Bank guarantee required: Yes/No Delete whichever is not applicable. Percentage of Total Yearly Fee budgeted for the relevant Operating Year: [200%]
Performance Guarantees (GC 8)	The Performance Guarantees are set out in Schedule 3 (<i>Performance Guarantees and Performance Liquidated Damages</i>). [Drafting note: if no Performance Guarantees are to be provided by the Operator, this provision and the references in the rest of the document can be deleted]

<p>Liquidated damages (GC 8)</p>	<p>Performance Liquidated Damages are set out in Schedule 3 (<i>Performance Guarantees and Performance Liquidated Damages</i>).</p> <p>If none stated in Schedules 3, then general damages at law apply.</p> <p>[Drafting note: as above, if no Performance Guarantees are to be provided by the Operator, this provision and the references in the rest of the document can be deleted]</p>
<p>Insurance (GC 10)</p>	<p>[Drafting note: the below should be reviewed and discussed with project insurers, including in light of any project-wide insurance strategy]</p> <p>Public liability: [insert amount] per occurrence and [insert amount] in the aggregate.</p> <p>Motor vehicle liability: [insert amount] per occurrence.</p> <p>Marine transportation: [insert amount] per occurrence.</p> <p>Workers Compensation: [insert amount] per occurrence.</p> <p>Other insurance: [insert type/amount] per occurrence</p>
<p>Aggregate limit ('cap') on uninsured liability (GCs 11.5 and 11.6)</p>	<p>[insert]% of the Total Yearly Fee for each Operating Year.</p> <p>[Drafting note: Insert limit of uninsured liability. Consider carefully for each project and the scope of services to be performed by the Operator. Some projects may, in fact, justify a cap of higher than 100% of the Total Yearly Fee]</p> <p>If nothing stated it is 100% of the Total Yearly Fee for each Operating Year.</p>
<p>Address for Service of Notices (GC 22)</p>	<p>[insert name of Owner]</p> <p>Attention: [insert name]</p> <p>Address: [insert address]</p> <p>Email address: [insert address]</p> <p>[Insert name of Operator]</p> <p>Attention: [insert name]</p> <p>Address: [insert address]</p> <p>Email address: [insert address]</p>
<p>Date of this Contract</p>	<p>/ /</p>

The parties agree to the performance of the Works on the terms and conditions set out in this Contract.

Executed as a deed

[Drafting note: execution blocks to be confirmed]

Signed and delivered by ***[insert]*** in accordance
with section 127 of the Corporations Act 2001 (Cth)
and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed and delivered by ***[insert]*** in accordance
with section 127 of the Corporations Act 2001
(Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

General Conditions

1 Conditions Precedent

- 1.1 The obligations of the parties under this Contract are conditional upon:
- (a) us notifying you that the ARENA Funding has been received;
 - (b) the Power Purchase Agreement becoming unconditional;
 - (c) the EPC Contract becoming unconditional;
 - (d) financial close occurring (other than the requirement that this Contract has become unconditional in accordance with its terms), as evidenced in a notice delivered by us to you with supporting documentation confirming such;
 - (e) you providing us evidence that the insurance under GC 10 has been effected; and
 - (f) you providing us with the bank guarantee in the form of Schedule 4 (*Form of Bank Guarantee*) if we request you to do so under GC6.6.
- 1.2 As soon as reasonably practicable following the Commencement Date, you must use reasonable endeavours to procure the satisfaction of the conditions precedent listed in GC 1.1
- 1.3 We may waive the satisfaction of any Condition Precedent by notice to you. Where a Condition Precedent is waived, you must satisfy the waived Condition Precedent as soon as reasonably practicable.
- 1.4 After we are satisfied that each of the conditions precedent listed in GC 1.1 have been met, but no later than 3 months prior to the anticipated Commercial Operation Date, we will issue you the Notice to Proceed.

2 Commencement of Services

- 2.1 You must commence the performance of the Services in accordance with this Contract from the Services Start Date set out in the Notice to Proceed for the duration of the Term.

3 Performance of the Services

- 3.1 You must perform the Services such that the Facility complies with:
- (a) Schedule 1 (Scope of Services);
 - (b) the Performance Guarantees;
 - (c) all applicable Laws, Government Authority Approvals, Standards and Good Solar Industry Practices; and
 - (d) the other requirements of this Contract.
- 3.2 You must perform the Services:
- (a) exercising due care, skill and judgment and using reasonable endeavours;
 - (b) in an efficient, professional, cost effective and environmentally-responsible manner;

- (c) in accordance with manufacturers' requirements, manuals, instructions and guidelines;
- (d) in accordance with all applicable Laws, Government Authority Approvals, Standards and Good Solar Industry Practices; and
- (e) in accordance with this Contract and all guidelines, procedures and directions made by us under this Contract.

- 3.3 You must cooperate with the Contractor to prepare the Operation and Maintenance Manual in accordance with Schedule 1 (Scope of Services). You must revise and update the Operation and Maintenance Manual as necessary to reflect the performance of the Services in accordance with this Contract and to ensure it remains consistent with those requirements and standards listed in GCs 3.1 and 3.2.
- 3.4 You must cooperate with the Contractor to prepare the Spare Parts List in accordance with Schedule 1 (*Scope of Services*). You will be responsible for procuring and storing all Spare Parts, and you warrant to us that all Spare Parts you use at any time during the Term will be free from defects in design, material and workmanship for 24 months from the date on which they are provided or used, whichever is the later.
- 3.5 At our request you must conduct an audit of the Spare Parts List to show:
- (a) the Spare Parts that have been used and require replacement;
 - (b) the residual life of any components refurbished during that year; and
 - (c) the Spare Parts that have been procured since the last audit you conducted under this GC 3.5.
- 3.6 You must comply with all applicable Laws and the requirements of any relevant Government Authority. You must ensure that you obtain and maintain all relevant Government Authority Approvals required to perform the Services, unless otherwise specified in Schedule 1 (*Scope of Services*).
- 3.7 Without limiting GCs 3.1 and 3.2, you must comply with:
- (a) all applicable occupational health, safety and environmental laws, guidelines and codes of practice including, without limitation, the **[insert relevant occupational health and safety legislation]**;
 - (b) all occupational health, safety and environmental guidelines, rules and procedures provided to you by us; and
 - (c) any induction requirements in relation to the Facility notified by us.

- 3.8 Subject to the exclusions specified in the Fair Work (*Building Industry – Accreditation Scheme*) Regulations 2005 (Cth), you must maintain, and comply with all conditions of, accreditation under the accreditation scheme established by the *Fair Work (Building Industry) Act 2012* (Cth) while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out.

[Drafting note: this clause should be used where the Contract relates to building work (as defined in the FWBI Act – note, this definition is broad and includes such things as installation of fittings such as security and communication systems) that is funded by the Commonwealth or a Commonwealth Authority. If there is no Commonwealth funding for this project, delete this GC.]

- 3.9 You must, in a form acceptable to us, provide us with regular reports, or more frequently on request from us, in relation to the Services and any occupational, health and safety issues in relation to the Services and any other documents you are required to prepare or maintain under any Laws concerning occupational health, safety and the environment.
- 3.10 We may, at any time, require you to provide us with evidence of your compliance with your obligations under GCs 3.3 to 3.9.
- 3.11 The description of the Services set out in Schedule 1 (*Scope of Services*) represents the parties' best efforts to define the Services. However, you acknowledge that your obligations include the carrying out of all activities necessary for the performance of the Services in accordance with this Contract.
- 3.12 If you fail to perform the Services and/or operate and maintain the Facility in accordance with this Contract you must promptly and diligently make good your failure at your own cost, or we may engage a third party to perform the Services and the costs incurred by us will be deducted from the Total Yearly Fee or Expenses due and payable to you, and we may also have recourse to the security you have provided under this Contract.
- 3.13 If a Forced Outage occurs, you must immediately notify us of the existence, nature and expected duration of the Forced Outage.
- 3.14 You must immediately notify us on becoming aware of any Industrial Matter and you must meet with us, as soon as practicable after that notification, for the purpose of discussing and agreeing on any necessary or appropriate action to be taken to resolve the Industrial Matter.
- ## 4 Our obligations
- 4.1 We agree to pay you

- (a) the Total Yearly Fee for each Operating Year, paid in equal monthly instalments in arrears; and
- (b) Expenses (if any), paid monthly, for the Services, in accordance with Schedule 2 (Fees and Expenses).

4.2 We must provide you with possession of and access to the Facility and all other areas reasonably required for the proper performance of the Services on and from the Services Start Date. You acknowledge that you may not be given exclusive possession of, or exclusive access to, the Facility.

4.3 We have no responsibility to you or any of your personnel regarding remuneration, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any applicable Law.

5 Representatives

5.1 The person nominated by you in the Details will be your Representative. Your Representative has authority to issue notices to us and receive notices from us. You may change your Representative at any time by notice to us. You are responsible for all acts and omissions of your Representative.

5.2 The person nominated by us in the Details is our Representative. Our Representative has authority to issue directions, notices and certificates to you and receive notices from you. We may change our Representative at any time by notice to you. We are responsible for all acts and omissions of our Representative.

6 Invoicing, payment and security

6.1 You must prepare and submit to us an invoice on the 25th day of each month, signed by your Representative. Each invoice submitted by you must be in a form approved by us and must include details of the value of the work performed by you and may include details of other moneys due to you under this Contract.

6.2 **[Drafting note: Insert jurisdiction-specific clause 6.2].**

6.3 When submitting your invoice under GC 6.1, you must provide us with all relevant records and, if requested by us, a signed declaration by you certifying that all monies owed to subcontractors have been paid and any other information requested by us or to enable us to verify the amount of the invoice.

[Drafting note: While you can require records to be provided, the Owner may not rely on a failure by the Operator to provide the records to refuse to pay a progress payment to which the Operator is entitled under Security of Payment legislation]

6.4 Subject to your compliance with GCs 6.1 and 6.3, we will pay you the amount set out in the invoice

you submit under GC 6.1 within 15 business days of receipt of that invoice, except where we:

(a) exercise our right to withhold, retain or set off part of the Price under GC 6.8; or

(b) dispute the invoice, in which case:

(i) we will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute in accordance with GC 20; and

(ii) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of the dispute.

6.5 No interest will be payable by us in respect of any invoice you render under GC 6.1 which remains due and unpaid (including any amounts withheld as a result of a dispute).

6.6 If we request you to provide a bank guarantee in accordance with the Details, the bank guarantee to be provided by you must be:

(a) from a financial institution that is acceptable to us;

(b) an irrevocable, unconditional and enforceable undertaking that is payable on demand;

(c) for the amount specified in the Details; and

(d) in the form set out in Schedule 4 (*Form of Bank Guarantee*).

6.7 Any bank guarantee provided to us under GC 6.6 must be valid for the relevant Operating Year, and must be replaced no later than 25 Business Days prior to the expiry of each Operating Year with a bank guarantee conforming with the requirements in GC6.6.

6.8 **[Drafting note: Insert jurisdiction-specific clause 6.8].**

6.9 We have the right to conduct an audit of the basis of your invoices using your records. This right continues for 12 months after we pay the relevant invoice. If we exercise this right, you must make available to us all relevant records and documentation.

6.10 **[Drafting note: Insert jurisdiction-specific clause 6.10].**

7 Variations

7.1 You must not vary the Services except as directed by us.

7.2 We may by written notice expressed as a "Variation Notice" omit certain services from the Services or request you to perform services related to the operation, maintenance or improvement of the Facility which are not included or are not reasonably inferred from GC 3 or Schedule 1 (*Scope of Services*). You agree that we may engage others to perform that part or parts so omitted. You acknowledge that the omission of

one or more parts of the Services will not constitute a basis to allege that we have repudiated this Contract notwithstanding the extent or timing of the omission.

7.3 Within 5 Business Days of receipt of the notice referred to in GC7.2, and before you carry out the variation of the Services, you must provide to our Representative a detailed breakdown of:

(a) the variation's effect on the scope of Services, the Performance Guarantees, the Total Yearly Fee or Expenses payable to you, and the relevant warranties given by you under this Contract;

(b) any proposed modifications to this Contract and/or any effect such variation will have on the Services (including reliability, operability, life cycle costs and maintenance cost) and/or any other provisions of this Contract; and

(c) any increased or decreased costs arising from the request supported by a detailed financial breakdown using the rate set out in Schedule 1 (Fees and Expenses).

7.4 No variation issued in accordance with this Contract will vitiate or invalidate this Contract.

7.5 The rate or price for each variation must be determined by agreement between the parties, or in the absence of agreement, a valuation will be made by us on the basis of the fees set out in Schedule 2 (*Fees and Expenses*), or if there are no applicable fees set out in Schedule 2 (*Fees and Expenses*), then determined by a fair and reasonable valuation made by us.

8 Performance Guarantees, Performance Tests and Performance Liquidated Damages

[Drafting note: if no Performance Guarantees will be included in the Contract, this GC may be deleted]

8.1 You must give us at least 7 days' prior written notice before you carry out the Performance Tests.

8.2 As soon as reasonably practicable after receiving your notice under GC 8.1 we will issue a notice to you specifying the date for commencement of the Performance Tests, if such date is not identified in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).

8.3 You guarantee that the Facility and all component parts will meet the Performance Guarantees specified in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).

8.4 If the Performance Guarantees are not met, you must pay Performance Liquidated Damages to us in the amounts and at the times specified

- in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).
- 8.5 The payment of Performance Liquidated Damages will be in satisfaction of the Performance Guarantees, but does not in any way relieve you from any of your obligations to perform the Services or from any of your other obligations and liabilities under this Contract.
- 8.6 The Performance Liquidated Damages claimed by us must not exceed the maximum liability for Performance Liquidated Damages set out in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).
- 8.7 Notwithstanding anything to the contrary in this GC 8, to the extent that the Performance Guarantees are not met as a result of:
- (a) any defects or deficiencies in the Facility which the Contractor is responsible for under the EPC Contract and the Contractor has paid the corresponding Performance Liquidated Damages pursuant to the EPC Contract; or
- (b) any act or omission of ours (or our employees, contractors or agents (other than the Contractor)), other than acts or omissions permitted by this Contract or the EPC Contract, or acts or omissions of ours which are the result of a breach of the EPC Contract by the Contractor,
- you will not be in breach of your obligations contained in this GC 8 and will not be liable to pay Performance Liquidated Damages.
- 8.8 The parties agree that the Performance Liquidated Damages specified in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*) are a genuine, fair and reasonable pre-estimate of the damages we are likely to sustain as a result of your failure to achieve the Performance Guarantee.
- 9 Warranted Component Parts**
- 9.1 You warrant that:
- (a) the Services will be performed with all the skill and care to be expected of an appropriately qualified and experienced contractor with experience in performing services of a similar size, type, nature and complexity to the Services;
- (b) the Services will be performed in a timely and professional manner in accordance with all applicable Laws and this Contract;
- (c) you have, and you will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:
- (i) assessing the risks which you are assuming under this Contract; and
- (ii) ensuring that the Total Yearly Fee contains allowances to protect you against any of these risks eventuating,
- and you will not make a claim for an increase in the Total Yearly Fee or for any Expenses if any of those risks eventuate;
- (d) the Spare Parts and other equipment you provide are new and unused, fit for purpose and of a quality reasonably expected in the process and manufacturing industries, free from material defects and deficiencies of any kind, and free from any encumbrance or lien and must conform to the requirements set out in Schedule 1 (Scope of Services);
- (e) the Services will be performed in accordance with Schedule 1 (Scope of Services) for the Total Yearly Fee;
- (f) the Facility will meet the requirements specified in this Contract, including the Performance Guarantees; and
- (g) the Services will be performed with the highest regard for safety and protection of the environment and so that the Facility is capable of being operated and utilised in accordance with all applicable Laws, Government Authority Approvals and this Contract.
- 9.2 We do not warrant, guarantee or make any representation about the accuracy or adequacy of any information, data or documents made available to you as to the existing conditions at the Site. Such information, data or documents do not form part of this Contract.
- 10 Insurance**
- 10.1 You must take out and maintain during the period of this Contract:
- (a) a comprehensive public liability policy to cover all sums which you may become legally liable to pay consequent upon:
- (i) death of, or bodily injury (including disease or illness) to, any person; and
- (ii) loss of, or damage to, property (including loss of use),
- (b) in connection with the performance of the Services;
- (c) insurance in respect of all claims and liabilities arising, whether at general law or under statute relating to workers compensation or employer's liability, from the death of, or bodily injury (including disease or illness) to any person employed by you in connection with this Contract and you must ensure that all subcontractors
- are similarly insured in respect of their employees;
- (d) a policy of insurance against any and all liability, loss and damage of any kind whatsoever to the Services; and
- (e) other insurances specified in the Details, required by law, or otherwise reasonably required by us.
- The limit of liability provided by each policy must not be less than the amount specified in the Details.
- 10.2 You must ensure that all policies of insurance required to be taken out by you under this Contract include us as a named co-insured and you must do anything we reasonably request to protect us as an insured. However, if the relevant insurer refuses to include us as a named co-insured, you must ensure that the policy notes our interest under this Contract.
- 10.3 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.
- 10.4 Without limiting our rights under any insurance policy taken out by you in accordance with this Contract (whether as co-insured or otherwise), if an event occurs or a circumstance arises which may affect our interests and which may give rise to a claim under any insurance policy to be taken out by you under this Contract, you must:
- (a) notify us within 10 Business Days of that event;
- (b) actively make a claim under the relevant policy and remit to us any insurance proceeds recovered by you in respect of our rights and interests under or in connection with this Contract or any liability to third parties; and
- (c) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 10.5 At our request, you must promptly produce evidence acceptable to us that you are maintaining the insurances required by this GC 10.
- 10.6 We have the right to take out and maintain any policy of insurance required by this GC 10 if you fail to do so.
- 10.7 You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance taken out by us under GC 10.6.
- 11 Liability and indemnities**
- 11.1 You will be liable for and you must indemnify us against any liability and any loss or damage of any kind whatsoever arising out of your acts or omissions whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in relation to this Contract, except to the extent that

- liability or loss or damage arises out of the negligent acts or omissions of us.
- 11.2 Each indemnity in this Contract is a continuing obligation separate and independent from your other obligations and survives termination of this Contract.
- 11.3 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.
- 11.4 Without prejudice to our right to recover Performance Liquidated Damages under GC8, neither party will be liable to the other party in any circumstances for any indirect or consequential loss or damage.
- 11.5 Subject to GCs 11.6 and 11.7, your total liability to us under this Contract which is not subject to insurance taken out under GC 10 will not exceed the amount of the aggregate limit of uninsured liability set out in the Details.
- 11.6 If:
- (a) you fail to take out and maintain insurance under GC 10 and we do not take out the insurance under GC 10.6; or
 - (b) you take out insurance under GC 10 but fail to comply with your obligations under GC 10 or through any act or omission prejudice the insurance cover,
- then the amount of your aggregate limit of uninsured liability set out in the Details is deemed to increase by the amount of insurance that would have been available if you had taken out and maintained the insurance or had not prejudiced the insurance (as the case may be).
- 11.7 GCs 11.4 and 11.5 do not limit your liability where liability:
- (a) arises under GCs 3.6 to 3.7;
 - (b) arises from a breach of GC 12.6;
 - (c) arises under GC 11.1, in respect of any claim or loss in relation to personal injury, disease, illness or death;
 - (d) arises under any other provisions of this Contract which expressly impose a greater liability;
 - (e) arises from fraud, wilful misconduct or illegal or unlawful acts by you or your employees, agents, contractors and/or subcontractors; or
 - (f) arises from your acts or omissions which are contrary to the most elementary rules of diligence which a conscientious contractor would have followed in similar circumstances.
- 11.8 **[Insert jurisdiction-specific clause].**
- 11.9 You further agree that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- 12 Intellectual property**
- 12.1 We retain the Intellectual Property Rights in the Owner Background IP.
- 12.2 We give you a licence to reproduce and use the Owner Background IP as necessary for the sole purpose of you complying with your obligations under this Contract. You must not reproduce, use or otherwise deal with the Owner Background IP, or allow any other person to do the same, for any other purpose. We have the right to revoke this licence at any time by notice in writing to you.
- 12.3 You retain the Intellectual Property Rights in the Operator Background IP.
- 12.4 You give us a licence to reproduce and use the Operator Background IP to own, operate, repair and maintain the Services.
- 12.5 You agree and acknowledge that all Project IP will be vested in and owned by us.
- 12.6 You warrant that performance of the Services in accordance with this Contract will not infringe the Intellectual Property Rights of any third party.
- 12.7 You must notify us as soon as you become aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the:
- (a) Owner Background IP;
 - (b) Operator Background IP; or
 - (c) Project IP.
- 12.8 You must provide all reasonable assistance we may request to protect the Intellectual Property Rights in the:
- (a) Owner Background IP; and
 - (b) Project IP.
- 13 Confidential information**
- 13.1 Each party undertakes that it will not, either during the term of this Contract or at any time thereafter (except to the extent necessary to comply with its obligations under this Contract) disclose to any person any information of or relating to the other party of which it has become possessed as a result of this Contract or the negotiations preceding this Contract including all information and documentation supplied by you or us or information to which you or we have access in the performance of this Contract.
- 13.2 You must not publish alone or in conjunction with any other party or organisation, any information, drawing or photograph concerning this Contract except with our written consent and subject to such conditions as we may prescribe.
- 13.3 Nothing in this Contract prohibits disclosure of information which:
- (a) is in the public domain otherwise than as a result of a breach of this GC 13;
 - (b) is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this GC 13;
 - (c) is required to be disclosed by Law or any Government Authority having authority over a party; or
 - (d) is for the purposes of obtaining legal advice.
- 14 Taxes**
- 14.1 Should any Taxes be levied on, in respect of, or in relation to, the performance of the Services these will be to your account. You will be responsible for payment of those Taxes and will immediately provide us with documentary evidence of payment if payment is made by you on our behalf.
- 14.2 Except where expressly stated otherwise, all amounts referred to in this Contract are exclusive of GST. Where any supply occurs under or in connection with this Contract or for the performance of the Services, the party making the supply (**Supplier**) is entitled to increase the amount payable for the supply by the amount of any applicable GST.
- 14.3 Where under this Contract you are entitled to any adjustment to the Total Yearly Fee, and such adjustment is based on the reasonable or actual cost to you of performing any work, any input tax credits available to you, or your representative member, in relation to performing such work will be deemed to reduce the cost of such work.
- 14.4 Where the amount payable to the Supplier (as that term is defined in the GST Legislation) for a supply under or in connection with this Contract or the Services is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid will be reduced by any input tax credits available to the Supplier, or its representative member, in respect of such costs.
- 14.5 A party will not be obliged to pay any amount in respect of GST on a supply to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that supply. Each party agrees to do all things including providing invoices or other documentation, that may be necessary or desirable to enable or assist the other party to claim input tax credits to the maximum extent possible or itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.

- 14.6 You acknowledge and agree that if a Law requires us to deduct an amount in respect of withholding tax from a payment under this Contract such that you would not actually receive on the due date the full amount provided for under this Contract then on the due date:
- we must deduct the amount for the withholding tax;
 - we must pay an amount equal to the amount deducted to the relevant Government Authority in accordance with applicable Law and give the original receipt to you; and
 - we must pay you an amount equal to the difference between the payment and the amount deducted.
- 15 Plans and Reports**
- 15.1 You must submit to us for our approval:
- a program and outline of the Scheduled Maintenance (in the form set out in Schedule 1 (*Scope of Services*)) to be conducted in respect of the Facility for each Operating Year, at any time after the Commencement Date but prior to the Services Start Date; and
 - an annual program of Scheduled Maintenance, prior to the commencement of each subsequent Operating Year.
- 15.2 You must notify us of any changes to the annual program of Scheduled Maintenance you submit under GC 15.1(b) as soon as is practicable. Subject to Good Solar Industry Practice, we may request that you defer any Scheduled Maintenance. We will make such request in accordance with the procedures outlined in Schedule 1 (*Scope of Services*).
- 15.3 No later than 20 Business Days after the Services Start Date, you must submit to us for our approval operating and maintenance plans and budgets for each quarter, each Operating Year, and for the Term.
- 15.4 No later than 20 Business Days before the anniversary of each Operating Year, you must submit to us for our approval an updated operating and maintenance budget for each Operating Year and for the Term, and no later than 5 Business Days before the end of each calendar month during each Operating Year, you must submit to us an updated rolling quarterly operating and maintenance plan and budget.
- 15.5 You must perform the Services in accordance with the approved operating and maintenance plan and budgets and must notify us in writing of any deviations or discrepancies in the projections contained in any approved operating and maintenance Plan and budget, or if you have incurred or will incur an amount of Expenses which exceeded or will exceed for any month, the amount provided for that month in the relevant approved operating and maintenance plan and budget.
- 15.6 Within 40 Business Days after the end of the relevant Operating Year, you must submit to us an operations report covering the operations and maintenance conducted at the Facility during the preceding Operating Year.
- 15.7 Within 5 Business Days after the end of each calendar month and each quarter, respectively, you must submit to us an operations report, in reasonable detail, covering the operations and maintenance conducted at the Facility during such calendar month and quarter, respectively, containing appropriate sections on safety, weather conditions including irradiance levels, production of electricity, details of scheduled and unscheduled maintenance, Spare Parts utilised, condition of the Facility and any manufacturers' warranties that are due to expire in the following quarter.
- 16 Ownership, Procurement and Risk**
- 16.1 We own the electricity, any benefits arising out of the operation of the Facility and Spare Parts at all times. You agree and acknowledge that you have no legal or equitable title to, or interest in, the electricity or Spare Parts, and that you are prohibited from maintaining any lien or encumbrance over the electricity or Spare Parts.
- 16.2 The ownership of Spare Parts not provided under the EPC Contract transfers to us on the earlier of:
- delivery of the Spare Parts to the Site; and
 - your submitting an invoice for payment for such Spare Parts in accordance with this Contract.
- 16.3 We own all Spare Parts that are removed from the Facility for refurbishment, and you own any Spare Parts that are unable to be refurbished and which are replaced by new Spare Parts. You take the risk of any loss or damage in respect of any Spare Parts removed from the Site for refurbishment.
- 16.4 You agree that any benefits, including any carbon credits, renewable electricity certificates or similar royalty or credit that may arise as a result of the operation of the Facility and of having the Project undertaken, belong to us and you agree to take all actions necessary, including to execute any documents necessary, to vest such ownership in us.
- 16.5 You are responsible for the procurement and for the testing and maintenance of supplies of all goods and services necessary to ensure compliance with your obligations under this Contract. You must use reasonable efforts to obtain all items and services required for the operation and maintenance of the Facility (including, without limitation, Spare Parts) at market related prices, which must take into account the Expenses which are expected to be incurred during the operating life of the Facility and taking into account quality and safety.
- 16.6 You must take good care of all items so procured and must store such items at the Site unless we authorise you in writing to do otherwise.
- 16.7 The ownership of any item (not including the electricity or benefits arising out of the operation of the Facility) you procure and/or supply pursuant to this Contract and which becomes or is intended to become a permanent part of the Facility transfers to us on the earlier of:
- delivery of these items at the Site; and
 - you being paid the cost relating to those items.
- 16.8 Unless we otherwise approve in writing, you must ensure that risk of loss and damage remains with the seller of any items referred to in GC 16.5 and the seller maintains insurance on such items on a full replacement cost basis until delivery to the Site (at which time risk will transfer to us).
- 17 Force Majeure**
- 17.1 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Contract or is delayed in performing those obligations:
- the affected party must immediately give notice to the other party setting out full details of the Event of Force Majeure and the reasons for the Event of Force Majeure preventing that party from, or delaying that party from, performing the affected obligations under this Contract;
 - the affected obligations identified in the notice referred to in GC 17.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
 - the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 17.2 Upon completion of the Event of Force Majeure, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 17.3 You have no entitlement and we have no liability for:
- any costs, losses, expenses, damages or the payment of any

- part of the Total Yearly Fee during an Event of Force Majeure; and
- (b) any costs in any way incurred by you due to an Event of Force Majeure.
- 17.4 An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.
- 18 Suspension**
- 18.1 We have the right, at any time and for any reason, to suspend performance of your obligations under this Contract by giving you notice specifying the obligation which is to be suspended, the effective date of the suspension and the reasons for the suspension.
- 18.2 When you receive a notice of suspension from us in accordance with GC 18.1, you must suspend performance of the relevant obligations until such time as we direct you to resume performance of those obligations by notice in writing. At such time, you must promptly recommence the performance of those obligations in accordance with this Contract.
- 18.3 We must pay you the Total Yearly Fee for the duration of the suspension and any unavoidable Expenses arising during the period of such suspension and you must continue to provide all Services not affected by our suspension.
- 18.4 You have no entitlement, and we have no obligation or liability for, any costs, losses, expenses, damages, or the payment of any part of the Total Yearly Fee, Expenses, in the case of a suspension caused by your failure to fulfil your obligations under this Contract.
- 18.5 During the period of suspension, you must not remove any Spare Parts or any part of the Facility, without our prior consent, which we will not unreasonably withhold.
- 19 Termination**
- 19.1 We may, by notice to you, immediately terminate this Contract if:
- (a) you commit or suffer an Act of Insolvency;
- (b) you are in breach of GC 21;
- (c) you have, without valid reason, failed to commence the Services within 20 Business Days of the Services Start Date or have suspended the Services without due cause for more than 20 Business Days after the Services Start Date;
- (d) you refuse or are unable to provide the Services;
- (e) you abandon the Site, the Services or the Facility and/or have repudiated this Contract;
- (f) you abandon the performance of the Services and/or operation and maintenance of the Facility in breach of your obligations contained in this Contract;
- (g) you default in the performance of any provisions of this Contract;
- (h) you have incurred and are liable for Performance Liquidated Damages up to the aggregate liability specified in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*);
- (i) you or the provider of any bank guarantee fails to pay any amount within 5 Business Days of that amount falling due; or
- (j) the Power Purchase Agreement is terminated.
- The rights given by this GC 19.1 are in addition to any other rights that may be exercised by us under this Contract or at Law.
- 19.2 You may only terminate this Contract or suspend your obligations under this Contract by notice to us if:
- (a) we commit or suffer an Insolvency Event; or
- (b) we have failed to make a payment in breach of GC 6, and you have provided us with a notice requiring payment within 20 Business Days of the expiry of the period in GC 6.4, except with respect to any payment or portion that we dispute under GC 20.
- 19.3 If we fail to remedy or to take adequate steps to remedy our default within 40 Business Days of our receiving your notice under GC 19.2, you may immediately terminate this Contract by giving us a notice of termination which refers to this GC 19.3.
- 19.4 If you receive a notice of termination from us under GC 19.1, or you terminate by notice to us under GC 19.3, you must:
- (a) stop work (except to the extent specified in the notice from us);
- (b) take such action as necessary or as we direct, for the transfer, protection and preservation of our property; and
- (c) take all reasonable steps to minimise the costs of termination to us.
- 19.5 If this Contract is terminated by us under GC 19.2, we will only be liable for payment of:
- (a) the Total Yearly Fee and Expenses attributable to the Services performed to the date of termination;
- (b) any costs you have necessarily incurred in performing any work specified in our notice of termination under GC 19.1; and
- (c) committed costs including cancellation of subcontracts (if any),
- subject to our right of set off, your compliance with GC 19.4, and less the aggregate of all previous payments we have made to you and sums due to us from you accruing prior to the date of termination.
- 19.6 Any expiry or termination of this Contract does not affect any rights of the parties which may have accrued before the date of expiry or termination.
- 20 Dispute Resolution**
- 20.1 If a dispute arises, the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute.
- 20.2 If a dispute arises, the dispute must be referred to the Representatives appointed by you and us for resolution by written notice specifying that it is a notice given under this GC 20 giving full particulars of the nature and extent of the dispute.
- 20.3 If the dispute is not resolved within 10 Business Days of a referral in accordance with GC 20.2, the dispute must be referred to a Panel for resolution. Each party must nominate a senior representative for the Panel within 3 Business Days of the referral to the Panel in accordance with this GC 20.3.
- 20.4 If the dispute is not resolved by the Panel within 20 Business Days of the referral, either party may commence legal proceedings in accordance with this GC 20.
- 20.5 The Panel will determine its own procedures for the resolution of a dispute. Unless otherwise agreed by the parties, all discussions involving the Panel will be conducted on a without prejudice basis.
- 20.6 Decisions of the Panel may only be made by unanimous agreement of the members of the Panel.
- 20.7 Any decision of the Panel which is recorded in writing and signed by each member of the Panel is binding on the parties.
- 20.8 Neither party may commence legal proceedings unless the parties have undertaken the processes set out in GCs 20.1 to 20.4 and those processes have failed to resolve the dispute or one of the parties has attempted to follow these processes and the other party has failed to participate.
- 20.9 Nothing in this GC20 prevents a party seeking urgent injunctive relief or similar interim relief from a court.
- 20.10 Despite the existence of a dispute, the parties must continue to perform their respective obligations under this Contract.
- 21 Assignment and subcontracting**
- 21.1 You may not assign or novate your rights and obligations under this

- Contract without our prior written consent.
- 21.2 We have the right to assign or novate any or all of our rights and obligations under this Contract.
- 21.3 You may not subcontract any of your obligations under this Contract without our prior written consent.

22 Notices

- 22.1 Any notice, approval, consent or other communication in relation to this Contract must be:
- (a) in writing;
 - (b) marked to the attention of the relevant Representative; and
 - (c) either:
 - (i) left at the address set out in the Details;
 - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address set out in the Details; or
 - (iii) sent by email to the email address of the addressee set out in the Details.

However, if the addressee has notified a change of postal address or email address, then the communication must be to that address.

- 22.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 22.3 A letter or facsimile is deemed to be received:
- (a) in the case of a posted letter, on the fifth day after posting (seventh in the case of a letter sent by airmail); and
 - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

23 Availability of information

- 23.1 During the period of this Contract, and for a further 2 years, our authorised representatives are entitled to access any relevant personnel, accounts, records (including data stored in computer files), vouchers, receipts and documents of any description which belong to you, or any of your employees, agents, contractors and/or subcontractors, for the purposes of ensuring that the terms and conditions of this Contract have been complied with and that all applications for payment have been and are being made in accordance with this Contract.
- 23.2 All accounts must be maintained by you.
- 23.3 Our duly authorised representatives have the right to reproduce any relevant documents accessed under this GC 23.

24 Business ethics

- 24.1 Neither you, nor any of your employees, agents, contractors and/or subcontractors, are expected, permitted or authorised to take any action on our behalf, including any action which could violate any Laws.
- 24.2 All financial statements, reports and applications for payment which are rendered by you under this Contract must completely and accurately reflect the facts about all the relevant activities, transactions and circumstances handled for the account of us.
- 24.3 You must immediately notify us in writing of any and all violations of this GC 24 upon becoming aware of such violations.

25 Conflict of interest

- 25.1 You must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with our best interests.
- 25.2 Your obligations under this GC 25 apply to the activities of your employees, agents, contractors, and/or subcontractors in their relations with our employees, agents, contractors, subcontractors and/or any third parties associated with this Contract (as well as their families).
- 25.3 Your obligations under this GC 25 include, but are not limited to, establishing precautions to prevent your employees, agents, contractors and/or subcontractors from making, receiving, providing or offering gifts, payments, loans, substantial entertainment or other considerations for the purpose of influencing individuals to act contrary to our best interests.
- 25.4 You must immediately notify us in writing of any and all violations of this GC 25 upon becoming aware of those violations.

26 Entire agreement

- 26.1 This Contract constitutes the entire agreement between the parties and sets out a full statement of the contractual rights and liabilities of the parties in relation to the performance of the Services and no negotiations between them nor any document agreed or signed by them prior to the date of this Contract in relation to the Services is of any effect.

27 Other matters

- 27.1 Any of our rights under this Contract may only be waived by us in writing signed by a duly authorised representative of us.
- 27.2 This Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.
- 27.3 We may exercise a right, remedy or power in any way we consider appropriate.
- 27.4 If we do not exercise a right, remedy or power at any time, this does not

mean that we cannot exercise it later.

- 27.5 To the extent of any inconsistency between the Details and the General Conditions, then the General Conditions will prevail.
- 27.6 To the extent of any inconsistency between the General Conditions and any schedules (including any documents referred to in the schedules), then the General Conditions will prevail.
- 27.7 To the extent of any inconsistency between the Details and any schedules (including any documents referred to in the schedules), then the Details will prevail.
- 27.8 The rights, remedies and powers of the parties under this Contract are in addition to any rights, remedies and powers provided by law.
- 27.9 This Contract may be signed in counterparts consisting of a number of copies each signed by one or more parties to this Contract. When taken together, the signed copies are treated as making up the one document.

28 Governing law

- 28.1 This Contract is governed by the laws of **[insert jurisdiction]** excluding the Vienna Convention on Contracts for the International Sale of Goods and the **[insert relevant sale of goods legislation]**.
- 28.2 The parties agree to submit to the exclusive jurisdiction of the courts of **[insert state]**. Each party waives any right it has to object to an action being brought in those courts including by claiming that action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

29 Definitions and Interpretation

- 29.1 In this Contract unless the contrary intention appears:

ARENA Funding means the funding from ARENA applied for by us **[Drafting note: further details to be provided]**

Business Day means a day when the banks in **[insert capital city of jurisdiction]** are open for business excluding a Saturday, Sunday or public holiday.

Commencement Date means the date of commencement of the Services as set out in the Details.

Commercial Operation Date means the date on which Commercial Operation occurred under the EPC Contract.

Conditions Precedent means the conditions in GC 1.1.

Contract means this operation and maintenance contract comprising the Details, the General Conditions, the schedules and any other documents referred to in the Details and the Schedules.

Date for Commercial Operation means the date specified in the EPC Contract.

Details means the section of this Contract headed "Details".

EPC Contract means the engineering, procurement and construction contract between the Owner and the Contractor dated on or about the date of this Contract.

Event of Force Majeure means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) earthquakes, flood, lightning or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (c) strikes at national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers but excluding any industrial dispute which is specific to the Site or you or the performance of this Contract.

Expenses means the aggregate of all costs and expenses which are forecast and properly incurred by you in the performance of your obligations under this Contract (and substantiated by copies of receipts or other evidence reasonably acceptable to us), in connection with providing the Services, but excluding profit or overhead and similar charges.

Facility means the **[insert wattage]** MW photovoltaic power station located at [insert location] and all associated infrastructure to be operated and maintained in accordance with the terms of this Contract.

Forced Outage means the unplanned removal of the Facility or any part of the Facility from service (other than through lack of solar resource).

General Conditions means these general conditions comprising GCs 1 to 29.

Good Solar Industry Practices means the practices followed when services are performed in accordance with all of the following:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill;
- (c) with due expedition and without unnecessary or unreasonable delays;
- (d) in a manner which allows for this Contract to be efficiently performed;
- (e) using Spare Parts and equipment of acceptable quality and merchantable quality which are fit for the purposes reasonably ascertainable from this Contract;
- (f) in accordance with the Law and any Government Authority Approval; and
- (g) consistently with best practice for an experienced, prudent and competent solar project operator of the highest skill and quality.

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Services, the Site or the Project.

Government Authority Approval means any authorisation, assessment, consent, approval, licence, lease, determination, ruling, permit, accreditation, registration, exemption, filing, variance, order, judgment, decree, publication, notice to, declaration of or with, or regulation by or with any Government Authority or under any Law relating to the performance of the Services or otherwise in connection with the Services (including the use of the Services), the Site or the Project.

GST means the tax payable on Taxable Supplies under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Industrial Matter means industrial action of any sort, whether threatened or actual, involving your employees working at or in connection with the Facility.

Insolvency Event means in respect of a party:

- (h) the board of the party passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (i) the party is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);

- (j) a deed of company arrangement is entered in respect of the party;
- (k) an application is made to a court for the winding up of the party;
- (l) the party resolves that it be wound up voluntarily;
- (m) a winding up order is made in respect of the party;
- (n) a receiver or receiver and manager are appointed to any substantial assets of the party;
- (o) a court orders that there be a meeting of creditors or members of the party for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (p) a mortgagee takes possession of any substantial assets of the party; or
- (q) the party informs the other party or any creditor of the party, in writing, that it is insolvent.

Intellectual Property Rights includes the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information.

Law means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Authority.

Notice to Proceed means the notice issued by us under GC 1.4 that sets out the Services Start Date.

Services Start Date means the date stated as such in the Notice to Proceed.

Operating Year means each consecutive discrete 12 month period commencing on the Services Start Date.

Operation and Maintenance Manual means the Operation and Maintenance Manual prepared by the Contractor under the EPC Contract.

Operator Background IP means Intellectual Property Rights owned by or licensed to you (including know how and technical information) which exist prior to the date of this Contract but does not include Owner Background IP or Project IP.

Owner Background IP means Intellectual Property Rights owned by or licensed to us (including know how and technical information) which exists prior to the date of this Contract but does not include Operator Background IP or Project IP.

Panel means the panel established in accordance with GC 20.3.

parties means you and us.

party means you or us.

Performance Guarantee means the performance guarantees set out in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).

Performance Liquidated Damages means the liquidated damages due, through either payment or set off, by you to us in the event that the Facility does not meet the Performance Guarantees, as specified in Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).

Power Purchase Agreement means the power purchase agreement in respect of the Facility between us and **[insert Seller]**, dated on or about the date of this Contract.

Project means the **[insert wattage]** MW solar PV power station located at [insert location].

Project IP means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of or in connection with the performance of the Services in accordance with this Contract but does not include Operator Background IP or Owner Background IP.

Representative means the authorised representative nominated by each party in the Details or any other person appointed by the relevant party and notified to the other party from time to time in accordance with GC5.

Scheduled Maintenance means the maintenance activities conducted in accordance with the description and at the times set out in Schedule 1 (*Scope of Services*), as may be amended from time to time in accordance with this Contract.

Services means all services to be provided by you to us in respect of the operation and maintenance of the Facility as specified in this Contract, including those services specified in Schedule 1 (*Scope of Services*), as amended in accordance with GC 6.10.

Standards means all industry standards and government regulations applicable to the Services.

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government,

governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions, imposed, levied or assessed or otherwise payable.

Total Yearly Fee means the means the fee to be paid to the Operator for performance of Services from the Commencement Date as set out in Schedule 2 (*Fees and Expenses*).

Variation means any additional services requested by the Owner or omission from the Services directed by us in accordance with GC 6.10.

Variation Notice means the notice described in GC 7.2.

we and **us** and **our** means the person named in the Details as the Owner.

you and **your** means the person named in the Details as the Operator.

- 29.2 In this Contract unless the contrary appears:
- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
 - (b) the singular includes the plural and vice versa;
 - (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
 - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
 - (f) a reference to a GC or schedule is a reference to a GC or schedule in this Contract; and
 - (g) the words "including" and "include" are a reference to "including, but not limited to".
- 29.3 Headings are inserted for convenience only and do not affect the interpretation of this Contract.

Schedule 1 Scope of Services

Note:

This Schedule must set out a detailed description of the Services to be performed under this Contract. It should detail all services and the provision of all things needed to ensure that the Facility meets the Performance Guarantees and applicable Laws, and for the Operator to fulfil its obligations under this Contract.

This Schedule should also include the form of program and outline of Scheduled Maintenance to be provided by the Operator, and procedures for the Owner to request the Operator to alter Scheduled Maintenance.

Additionally, the provisions around Scheduled Maintenance should reflect the obligations of the Owner in respect of the Connection Agreement and the PPA. Under both, the owner is required to provide a program of Scheduled Maintenance (or "Planned Work" in the case of the Connection Agreement) a minimum of one financial year in advance. The obligations of the Owner under those agreements should be reflected herein.

Services will typically include:

- **cooperating, reviewing and providing comments and necessary input to the Contractor in order to enable the Contractor to develop the Operation and Maintenance Manual and the Spare Parts List;**
- **provide personnel to attend and witness any Test or inspection of the Works performed by the Contractor in terms of the EPC Contract upon the Owner's written request;**
- **provide personnel to attend and witness training to be provided by the Contractor in terms of the EPC Contract upon the Owner's written request. Such training will be designed to enable such Operator's Personnel to efficiently, prudently, safely and professionally operate and maintain the Facility following Commercial Operation, and will consist of classroom and on-the-job training;**
- **notify the Owner of any defects it finds in the Works performed by the Contractor;**
- **prepare for the operation and maintenance of the Facility and ensure and complete an orderly transition from construction through to operation.**
- **providing all scheduled maintenance and unscheduled maintenance;**
- **employing, training and supervising qualified personnel to work at the Facility and managing the Operator's personnel;**
- **implementing the Operation and Maintenance Manual and such other guidelines required by Law and any manufacturer;**
- **regularly monitoring the Facility and correcting any damage or malfunction;**
- **providing information and other reasonable assistance at the Owner's request relating to the operation of the Facility;**
- **procuring and replacing all Spare Parts required;**
- **maintaining the Facility free and clear of debris and in a clean and tidy condition;**
- **promptly informing the Owner of any incident or accident involving an injury to personnel or any third party or damage to the Facility or any third party property;**
- **providing the Owner's personnel with access to all operational performance statistics; and**
- **complying with the obligations of the Owner under Laws in so far as they relate to the operation and maintenance of the Facility.**

Any abbreviations must be defined and technical terms must be explained.

Schedule 2 Fees and expenses

Note:

This Schedule must set out the Total Yearly Fee to be paid to the Operator, including a mechanism by which it can be increased at a rate of CPI and adjusted for abatement deductions where Performance Liquidated Damages are payable.

This Schedule must set out the timing for submission of requests for payment made in accordance with the Contract, and the amounts of the Total Yearly Fee to be paid in accordance with certain milestones.

This Schedule must also include the categories of Expenses that the Operator can claim, and the terms of payment for these claims.

For example:

1. Total Yearly Fee

The Total Yearly Fee is the fixed lump sum amount payable annually of \$ **[insert]**. The Total Yearly Fee shall from **[insert date]** and each anniversary thereof increase at a rate of the consumer price index for the relevant year.

Any abatement deductions will be payable in accordance with Schedule 3 (*Performance Guarantees and Performance Liquidated Damages*).

The annual Total Yearly Fee will be paid in twelve equal monthly instalments in arrears as set out below, following receipt by the Owner of requests for payments submitted by the Operator at the times set out below: **[insert milestones and instalments]**

2. Expenses

None. The Total Yearly Fee covers all of the Operator's costs and expenses in connection with the performance of the Services and its other obligations under this Contract from the Services Start Date for the Term.

[Drafting note: another option is to include set rates and expenses which the Operator may claim, subject to a pre-approval regime]

3. Payment terms

As set out in the Contract

4. Rates for Variations

To be agreed in writing between the Parties based on reasonable rates and prices.

5. Accounting Principles

To be agreed in writing between the Parties.

Schedule 3 Performance Guarantees and Performance Liquidated Damages

[Note: If a Performance Guarantee and Performance Liquidated Damages are to be used under the Contract they should be detailed here.]

This Schedule sets out the Performance Guarantee and Performance Liquidated Damages under the Contract. The Performance Guarantee is a guarantee granted by the Operator to the Owner that the Facility will, from the Commercial Operation Date up to the expiry of the Defects Liability Period, have an Actual Performance Ratio above the Guaranteed Performance Ratio.

For example:

PERFORMANCE GUARANTEE

[insert]

PERFORMANCE LIQUIDATED DAMAGES

If the Operator is in breach of the Performance Guarantee for any Guarantee Period, the Operator shall pay the Owner in respect of losses suffered during such Guarantee Period liquidated damages calculated as follows:

[insert method of calculation]

The Operator's aggregate liability for Performance Liquidated Damages will not exceed **[insert]**% of **[insert value]**.

Schedule 4 Form of Bank Guarantee

BANK GUARANTEE

[On the letterhead of the Bank]

Date: **[insert]**

To: **[insert name and address of the Owner]**

Dear **[insert]**

[insert Project] Operation and Maintenance Contract – Bank Guarantee

You entered into a contract dated **[insert date]** with **[insert] (Contractor)** titled **[insert]** for certain works and services (Works) to be undertaken by the Contractor (**Contract**).

We, **[insert Bank]**, irrevocably and unconditionally undertake with you that whenever you give written notice to us demanding payment, we will:

- (a) without any right of set-off or counterclaim;
- (b) without reference to the Contractor, any other person or the Contract;
- (c) without enquiring into the performance or non-performance of the Contract;
- (d) without reference to the correctness or validity of the written demand; and
- (e) despite any notice by the Contractor or any other person not to pay the whole or any part of the Guaranteed Sum,

immediately pay to you or as you may direct such an amount as you may in that notice require not exceeding (when aggregated with any amount(s) previously so paid) the sum equivalent to 200% of the Total Yearly Fee (**Bank Guarantee**).

This Bank Guarantee is valid from the date of this letter in its full amount of **[insert]**. Our liability under this Bank Guarantee will be a continuing liability and continues to be fully valid with respect to any written notice to us referred to above until the earlier of:

- (f) us receiving written notification from you that this Bank Guarantee is no longer required by you;
- (g) until this Bank Guarantee being returned to us; or
- (h) until payment to you by us of the whole sum of **[insert]**.

We may at any time without being required to do so pay you the sum of **[insert]** less any amount or amounts which we have previously paid under this Bank Guarantee.

Any payment by us in accordance with this Guarantee will be in immediately available and freely transferable Australian Dollars free and clear of and without any deduction for or on account of any present or future Taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations. Our obligations will not require any previous notice to or Claim against the Contractor and will not be discharged or otherwise prejudiced or adversely affected by any:

- (a) waiver, time, lenience or tolerance which you may grant to the Contractor, or the discharge or release of any person;
- (b) breach or breaches of the Contract by the Contractor or you;
- (c) amendment, modification or extension which may be made to the Contract or the Works performed under the Contract (with or without or knowledge or consent);
- (d) intermediate payment or other fulfilment made by us;
- (e) change in the constitution or organisation of the Contractor; or
- (f) other matter or thing which in the absence of this provision would or might have that effect.

- (g) This Bank Guarantee may not be assigned by you to any person, firm or company, without our prior written consent, which must not be unreasonably withheld. We hereby consent to:
- (h) you assigning this Bank Guarantee to your lenders or to the Security Trustee appointed by your lenders and we undertake that we will acknowledge such assignment; and
- (i) the grant of security by you to **[insert]**.

You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or 96 hours after being despatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

This Guarantee is governed by and construed in accordance with the laws of **[insert state]** and we agree to submit to the exclusive jurisdiction of the courts of **[insert state]**, Australia and any courts that may hear appeals from these courts regarding any proceedings under or in connection with this deed.

This Guarantee is executed by us.

IN WITNESS of which the **[insert Bank]** has duly executed this Guarantee on the date stated above.

Executed.

[Drafting note: execution blocks to be confirmed]

Signed and delivered by ***[insert]*** in accordance with section 127 of the Corporations Act 2001 (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Address for notices: [Insert address]

