

DATED _____

- between -

**ST. VINCENT ELECTRICITY COMPANY LIMITED
(VINLEC)**

- and -

[Insert EPC Company Name]

CONTRACT

**EPC CONTRACT FOR
BATTERY ENERGY STORAGE
SYSTEM (BESS) AT CANE HALL
POWER STATION for SPINNING
RESERVE**

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Exhibit C:	Guarantees and Liquidated Damages
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Contract Exhibits Source Documents:

Contract Exhibits	Source documents
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	Exhibit A - BESS Scope of Work
	Exhibit B - BESS Testing Specifications
	Exhibit C - BESS SCADA Specifications
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	Preferred Bidder's Technical Proposal RFP Appendix D
Exhibit B: Compensation	Preferred Bidder Completed RFP Appendix D
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Exhibit C: Guarantees and Liquidated Damages	Preferred Bidder VINLEC Approved Warranties & Guarantees Plan
	Preferred Bidder proposed and VINLEC Approved Liquidated Damages
Exhibit D: Quality, Health & Safety and Environmental	Preferred Bidder and VINLEC Approved:
	Health and Safety Plan
	Environmental Management / Compliance Plan
	Quality Control and Assurance Plan

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT (this **Contract**) is made this ____ day of _____, 202__ (the **Effective Date**)

BETWEEN:

- (1) St. Vincent Electricity Services Limited, whose principal address is at Paul's Avenue, Kingstown, St. Vincent and the Grenadines (the **Company**); and
- (2) (the **Contractor**) of (address).

RECITALS

WHEREAS

- (A) The Company intends to own, manage, operate and maintain the Battery Energy Storage System and associated facilities at the project site located at Cane Hall, St. George, St. Vincent and the Grenadines; and
- (B) The Contractor desires to provide, and the Company desires to obtain, engineering, design, construction and related services (including operation, maintenance and training) for the realization of the Plant Battery Energy Storage System on a fixed-price and on a date- certain basis in accordance with the terms and conditions set forth herein.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions shall have effect throughout this Contract except where the context otherwise requires.

Acceptance Tests means those tests as set out in Exhibit A (the Works) and Exhibit C (Guarantees and Liquidated Damages) to establish the performance levels of the Battery Energy Storage System.

Advance Payment shall have the meaning set forth in Clause 12.7.

Advance Payment Bond means the bond to be provided by the Contractor to the Company pursuant to Clause 12.7.

Affiliate means, as to any person, any other person that (a) controls directly or indirectly such person, or (b) is controlled directly or indirectly by such person, or (c) is directly or indirectly controlled by a person that directly or indirectly controls such person.

Annexure means any one of Annexures, which are annexed hereto.

Applicable Currency means United States Dollars (USD).

Applicable Laws means all laws, treaties, regulations, standards, decrees, rules, decisions, judgments, orders, injunctions, interpretations, authorisations and directives applicable to the performance of the Works and issued by any Government Authority having jurisdiction over the matter in question and that are in effect at the time in question, as well as the environmental, occupation health and safety standards (including the terms of any environmental impact statement).

Approved Variation shall have the meaning set forth in Clause 15.2(f).

Battery Energy Storage System means a Lithium-ion battery energy storage and power management system capable of delivering a minimum of 5 Megawatts (MW) (maximum.....) continuously over a duration of 1 hour to achieve a usable energy capacity of Megawatt-hours and all associated facilities which will be built on Site and as more particularly described in Exhibit A (the Works), be interconnected to the Company's existing 11kV busbar at the Plant and meet the Facility Functional Requirements stipulated by the Company in its Request for Proposal.

Business Day means any Day other than a Saturday or Sunday on which banks are open in St. Vincent and the Grenadines for general interbank business.

Change of Law means:

- (a) the adoption, promulgation, change or repeal of any applicable law by any Government Authority; or
- (b) the adoption, promulgation, change or repeal by any Government Authority of any material condition in connection with the issuance, renewal or modification of any permit, licence, authorisation or approval that the Contractor is required to procure from any such Government Authority in connection with the Works, that:
 - (i) occurs after the Effective Date;
 - (ii) either (A) results in any change in taxes, duties and levies payable by the Contractor in St. Vincent and the Grenadines in relation to the Works that directly increases the cost and expense to the Contractor of performing the Works or (B) adopts, changes or repeals requirements applicable to performance of the Works; and
 - (iii) materially affects the performance of the Contractor's obligations under this Contract.

Clause refers to a clause of this Contract.

Code means the applicable standards and codes set forth in Exhibit A (the Works).

Coercive Practice means the impairing or harming or threatening to impair or harm (directly or indirectly) any person or its property or to influence improperly the actions of that person.

Collusive Practice means an arrangement between two or more persons designed to achieve an improper purpose (including influencing improperly the actions of another person).

Commencement Date means the date for commencement of the Works being the date stipulated as such in the Notice to Proceed.

Commissioning means all those activities in the Works up to the issuance of the Practical Completion Certificate which relate, inter alia, to preparation for start-up, testing and operating the Battery Energy Storage System and carrying out of the Acceptance Tests.

Company shall have the meaning set forth in the preamble to this Contract.

Company Contractor means any contractor or vendor of any tier (other than the Contractor or any Contractor Indemnified Party) performing works for the Company, or providing goods or services to the Company, in relation to the Project.

Company Indemnified Parties shall have the meaning set forth in Clause 20.1(a).

Confidential Information shall have the meaning set forth in Clause 26.1.

Contract means this Contract duly executed by the Parties comprising of Clauses 1 to 33, the Annexures, the Exhibits and any document incorporated by express reference in any of the foregoing but only to the extent of the reference.

Contract Documents means the Request for Proposal issued by the Company, the Proposal issued by the Contractor together with this Contract duly executed by the Parties

Contract Price means the total sum of the price to be paid for performance of the Works as set out in Exhibit B (Compensation), as such sum may be adjusted in accordance with Clause 16.

Contractor shall have the meaning set forth in the preamble to this Contract.

Contractor Default shall have the meaning set forth in Clause 18.1.

Contractor Indemnified Parties shall have the meaning set forth in Clause 20.1(b).

Contractor's Representative means the individual appointed as such by the Contractor pursuant to Clause 3.3.

Corrupt Practice means the offering, giving, receiving or soliciting (directly or indirectly) of anything of value to influence improperly the actions of another person.

Cost means all expenditures properly and reasonably incurred (or to be incurred) by a Party including overhead and similar charges, but does not include any amount on account of profit.

Day means a calendar day, **Week** means seven (7) consecutive Days, **Month** means thirty (30) consecutive Days, and **Year** means three hundred and sixty-five (365) consecutive Days.

Defect means any non-compliance of the Works or the Battery Storage Energy System (or any portion thereof) with any of the warranties set forth in Clause 10.1, and **Defective** shall be construed accordingly.

Defects Liability Period shall have the meaning set forth in Clause 10.4(a).

Dispute shall have the meaning set forth in Clause 25(a).

Dispute Committee shall have the meaning set forth in Clause 25(a).

Distribution System means the bulk power network owned and operated by VINLEC, as modified or extended from time to time for the purpose of generating, transmitting and distributing electricity.

Documents means written documents, drawings, specifications, graphical materials, photographs, models (including three-dimensional physical models) and all other information (including that stored by electronic means).

Effective Date means the date of this Contract.

Exhibit means any one of Exhibits A to D (inclusive), together with all attachments thereto.

Final Completion shall have the meaning set forth in Clause 9.4.

Final Completion Certificate shall have the meaning set forth in Clause 9.5.

Fraudulent Practice means any action or omission (including a misrepresentation) that knowingly or recklessly misleads (or attempts to mislead) a person to obtain improperly a financial or other benefit or to avoid improperly an obligation.

Force Majeure shall have the meaning set forth in Clause 24.5(a).

Good Industry Practice means practices, methods and procedures and that degree of skill, diligence, prudence and foresight that would reasonably be expected to be observed by a skilled and experienced engineering, procurement and construction contractor of international repute engaged in carrying out activities the same as or similar to the Works under the same or similar circumstances as those contemplated in this Contract.

Government Authority means the Government of St. Vincent and the Grenadines or any ministry, department or political subdivision thereof, and any person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any governmental entity, instrumentality, agency, authority, corporation, committee or commission under the direct or indirect control of the Government of St. Vincent and the Grenadines.

Guaranteed Completion Date means the date by which the Contractor guarantees that it will achieve Practical Completion of the Works and the Battery Energy Storage System in accordance with this Contract as set out in Exhibit C (Guarantees and Liquidated Damages).

Hazardous Waste means (a) any material that, by reason of its composition or characteristics, is hazardous waste or a hazardous substance or hazardous material as defined in or under any Applicable Laws

Indemnify means to indemnify, defend and hold harmless and corresponding terms such as **Indemnity** and **Indemnified** shall be construed accordingly.

Independent Expert means a company approved by the Company to conduct the Acceptance Test for the Contractor.

Interface means the interconnection point between the Battery Energy Storage System and the Distribution System, as specifically set forth in Exhibit A (the Works)

Intellectual Property Rights means patents, utility models, registered designs and models, trademarks, trade secrets, service marks, copyrights, applications for any of the foregoing and rights to apply for any of the foregoing, ownership of inventions, proprietary information and technical know-how, whether patentable or not, and any similar rights.

Land means the portion of land situated at the Cane Hall Power Station as shown on the E200 site plan contained in the Request for Proposal and selected by the Contractor in its Technical Proposal as the best option for installation of the Battery Energy Storage System .

Liability Limitation shall have the meaning set forth in Clause 20.7.

Lien has the meaning set forth in Clause 33.11(a).

Loss means any loss, claim, Cost, charge, expense, liability and/or damage (including legal costs and attorneys' fees).

Money Laundering means:

- (i) the conversion or transfer of property, knowing it is derived from a criminal conduct for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement,

rights with respect to, or ownership of, property knowing or believing that it is derived from criminal conduct; or

- (iii) the acquisition, possession or use of property knowing or believing at the time of its receipt that it is derived from a criminal offence.

Milestone means the key stages and associated timing of the Works identified in Exhibit C (Guarantees and Liquidated Damages).

Milestone Date means the date by which the Contractor will achieve a Milestone in accordance with this Contract as set out in Exhibit C (Guarantees and Liquidated Damages) (including the Guaranteed Completion Date).

Minimum Performance Guarantee means the minimum performance standards set out in Exhibit C (Guarantees and Liquidated Damages).

Monthly Progress Report shall have the meaning set forth in Clause 3.6(c).

Notice to Proceed means a notice to proceed issued by the Company in accordance with Clause 7 in the form set out in Annexure 2.

Obstructive Practice means:

- (i) deliberately destroying, falsifying, altering or concealing evidence material to an investigation (or making false statements to investigators) in order to materially impede an investigation by the Company's or any of their Affiliates into allegations of a Coercive Practice, Collusive Practice, Corrupt Practice or Fraudulent Practice;
- (ii) threatening, harassing or intimidating any person to prevent it from disclosing its knowledge of matters relevant to such an investigation or from pursuing an investigation; or
- (iii) acts intended to materially impede the exercise of the Company's contractual right of audit or right of access to information in relation to an investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

O&M Procedures Manual means the operation and maintenance procedures manual prepared by the Contractor and approved by the Company as further described in Exhibit A.

Parties means the Company and the Contractor and **Party** means either of them.

Payment Schedule means the schedule of payments set forth in Exhibit B.

Performance Guarantees shall have the meaning set forth in Exhibit C.

Permit means any permit, licence, consent, certificate, authorisation or similar document which any Applicable Law requires either Party (or any Subcontractors) to hold or obtain in order for the Works to be performed or for transmission of power to the Distribution System or operation of the Works, and shall include visas and permits for personnel to work and reside in any location.

Plant means the existing Cane Hall power station owned by the Company and all associated facilities more particularly described in the Exhibit A (the Works).

Policies shall have the meaning ascribed to it in Clause 21.1.

Practical Completion shall have the meaning set forth in Clause 9.1

Practical Completion Certificate shall have the meaning set forth in Clause 9.2(a).

Prohibited Act shall have the meaning set forth in Clause 33.10(b).

Programme means the programme to be prepared by the Contractor and submitted to the Company in accordance with Clause 3.5 (as such programme may be adjusted in accordance with Clause 15).

Progress Meeting shall have the meaning set forth in Clause 3.6(d).

Project means the design, engineering, procurement, construction, expansion, installation, testing, commissioning and start-up of the Battery Energy Storage System.

Project Procedures means such procedures and policies as are produced by or on behalf of the Company from time to time and that are of general application to the Company's Contractors and the Contractor for the Project.

Punch-List Items means minor items of work forming part of the Works that, as determined by the Company, remain to be completed by the Contractor but that do not affect the safe operation of the Battery Energy Storage System and/or the Project.

Quality Plan means the document to be prepared and implemented by the Contractor in accordance with Clause 3.4.

Request for Proposal means the Tender documents issued by the Company on the ... day of 2025

Retention means a percentage (10% or 15%) of the amount certified as due to the contractor on an interim certificate, that is deducted from the amount paid and retained by the Company.

Retention Amount shall have the meaning set forth in Clause 11.2.

Rules shall have the meaning set forth in Clause 25(d).

Safety Plan means the document to be prepared and implemented by the Contractor in accordance with Clause 3.7.

Sanctionable Practice means:

- (i) a Coercive Practice;
- (ii) a Collusive Practice;
- (iii) a Corrupt Practice;
- (iv) a Fraudulent Practice; or
- (v) an Obstructive Practice.

Sanctions means economic, financial or trade sanctions or restrictive measures enacted, imposed, administered or enforced from time to time by (i) the US government or any US agency (including the Office of Foreign Assets Control of the United States Department of the Treasury, the US State Department, the US Department of Commerce or the US Department of the Treasury), (ii) the United Nations Security Council, (iii) the European Union (or any of its member states), including, in each case, any other governmental institution of any of the foregoing; (iv) The Government of St. Vincent and the Grenadines.

Site means the land provided by the Company on or under or through which the Works are to be executed as identified in Exhibit A (the Works).

Site Conditions means the Site conditions as described in Exhibit A (the Works).

Software means any computer software or computer program(s) (whether standard or bespoke) provided by the Contractor as a part of the Battery Energy Storage System or for use in connection with the Works.

Standard Test Conditions means the standard conditions for BESS testing as per Exhibit B of the RFP BESS Testing Specifications.

Statement of Dispute shall have the meaning set forth in Clause 25(a).

Subcontractor means any person to which the Contractor subcontracts performance of any part of the Works or performance of any other obligation of the Contractor under this Contract, and includes any person (at any further subcontracting tier) to which such performance is further subcontracted.

System means the Battery Energy Storage System

Taxes shall have the meaning set forth in Clause 14.1.

Technical Specification means the requirements of the Company in relation to the Works and the Battery Energy Storage System set forth in Exhibit A (the Works).

Third Party means any person other than the Company, and the Contractor except in the context of Clauses 200 and 21 in which cases **Third Party** means any person other than the Company Indemnified Parties and the Contractor Indemnified Parties.

Unforeseen Subsurface Conditions shall mean: (i) subsurface or latent physical conditions or obstructions at the Project site unforeseen by the Contractor at the date of execution of the Contract; or (ii) physical conditions at the Project site of an unusual nature or differing materially from those ordinarily encountered by the Contractor (including, but not limited to, presence of cavities).

Variation shall have the meaning set forth in Clause 15.1(a).

Variation Order Request shall have the meaning set forth in Clause 15.1(b).

VINLEC means St. Vincent Electricity Services LTD, a company duly established under the laws of St. Vincent and the Grenadines, including any of its affiliated companies. VINLEC is an electrical utility responsible for the generation, distribution and sale of power to both domestic and commercial customers in St. Vincent and the Grenadines.

Wilful Misconduct means a conscious or deliberate act, failure to perform a duty, or the conscious or deliberate performance of a malicious act in reckless disregard of the consequences to the life or property of another.

Works means all of the activities and all of the obligations of the Contractor that the Contractor is required to perform pursuant to this Contract as further described in Exhibit A (the Works).

1.2 Interpretation

- (a) The headings and marginal notes in this Contract are included for convenience only, and shall be ignored for the purpose of interpretation.
- (b) Words importing (i) the singular also include the plural and vice versa (ii) one gender also include the other gender and/or neuter gender.
- (c) The Contractor shall promptly bring to the Company's attention in writing any conflict or inconsistency between or within the Contract documents. All questions on the part of the Contractor concerning interpretation or clarification of this Contract shall be submitted in writing to the Company. All determinations, instructions and clarifications from the Company will be rendered in writing without undue delay after such

submissions and shall be final and binding on the Contractor unless contested in writing within seven (7) Days from the receipt thereof by Contractor. Any determination, instruction and clarification from the Company that has been contested within such seven (7) Day period shall be resolved in accordance with Clause 25.

- (d) The language for day-to-day communications shall be the English language. All documents provided by the Contractor to the Company under this Contract shall be in English for the purpose of interpretation.
- (e) References to "persons" include individuals, corporations, limited liability companies, bodies corporate, associations, partnerships, unincorporated entities, and any organisation having legal capacity and any Government Authority (whether or not having a separate legal personality);
- (f) Notwithstanding the sub division of any document forming part of this Contract into separate sections and volumes, every part of each shall be deemed to be supplementary to and complementary with every other part and shall be read with and construed as a part of this Contract as far as it is practicable so to do.
- (g) The words "includes" or "including" shall mean "including without limitation".
- (h) References to any statute or law or Applicable Laws include reference to every order, instrument, regulation, direction or plan having the force of law made thereunder or deriving validity therefrom and any amendment or re-enactment of the same in force from time to time.
- (i) Reference to any contract, agreement or other arrangement between any Parties thereto should be interpreted as the same may be amended, modified or supplemented from time to time (as evidenced in writing) unless the contrary is stated herein.
- (j) The Contractor shall comply with all of the obligations set out in the Exhibits irrespective of whether such obligations are expressly cross-referred to in this Contract.
- (k) All references to persons or parties or entities shall include their permitted successors and assigns.
- (l) Wherever references are made in this Contract to standards or codes in accordance with which the Works under this Contract are to be performed, the edition or revision of the standards or codes current on the Effective Date shall apply unless otherwise expressly stated. In case of conflict between any referenced standards and codes and the provisions of this Contract (including any Annexure or Exhibit hereto) Clause 1.2(c) shall apply. The Contractor shall, in preparation of its detailed design, select the more stringent of applicable local, national and international standards or codes of practice, when not otherwise specified in this Contract or in writing by the Company.

1.3 Communications

- (a) Wherever provision is made in this Contract for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified, such communication shall be in writing.
- (b) Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, type-written or printed communication (including fax transmissions unless expressly otherwise provided but excluding e-mails).
- (c) Communications shall be addressed to the Parties' respective representatives at the addresses stated in Clause 29.

1.4 Representations and Warranties of Contractor

The Contractor represents and warrants that as at the Effective Date:

- (a) the Contractor is a corporation duly organised and validly existing under the laws of the jurisdiction in which it is incorporated and has all necessary power and authority to carry on its business as presently conducted, into and perform its obligations under this Contract;
- (b) each of the execution, delivery and performance by the Contractor of this Contract has been duly authorised by all necessary action on the part of the Contractor and does not require any consent or approval and does not contravene or constitute a default under any Applicable Laws, the memorandum or articles (or other corporate constitutional documents) of the Contractor or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Contractor, and does not and/or will not subject the Works or any component part thereof, the other facilities comprising the Project or any portion thereof to any lien other than as contemplated or permitted by this Contract;
- (c) the Contractor has not and shall not at any time permit or cause to permit any encumbrance, lien or charge to be placed on the Works; and
- (d) the Contractor has adequate expertise, funds and personnel to comply with its obligations under this Contract.

2. THE COMPANY OBLIGATIONS

2.1 Company's Duties and Authority

- (a) The Company's Point of Contact is
- (b) The Company's Point of Contact shall have no authority to relieve the Contractor of any of its duties, obligations, responsibilities or any liability of the Contractor under this Contract and shall have no authority to amend or vary the terms of this Contract.

2.2 Delegation of Company Powers

The Company' may subcontract any of its powers, functions and authorities to any competent individual at its discretion, and may at any time revoke any such delegation.

2.3 Company's Approvals

No approval, comment, instruction or consent given or made by the Company (or others acting on it respective behalf), and no failure to make any comment or instruction in relation to the Works shall relieve the Contractor of liability for, or except as otherwise provided in this Contract, modify, any of the Contractor's duties, obligations or responsibilities under this Contract.

2.4 Site Access

From the Notice to Proceed, the Company shall provide the Contractor with sufficient access (on a non-exclusive basis) to the Site to perform the Works.

3. RESPONSIBILITIES OF THE CONTRACTOR

3.1 Scope of Works

- (a) (i) The Contractor shall perform the Works in accordance with this Contract, including Exhibit A (the Works), the Programme, Good Industry Practice, in compliance with Applicable Laws. The specific descriptions in Exhibit A (the

Works) do not relieve the Contractor's obligation to perform all work necessary to cause the Battery Energy Storage System to pass all tests (including the Acceptance Tests), achieve the Performance Guarantees, achieve Practical Completion by the Guaranteed Completion Date, achieve Final Completion and otherwise conform with the terms of this Contract and carry out all other works that can reasonably be inferred from this Contract, even though not expressly mentioned herein, in order to satisfy the above and to deliver to the Company the completed and fully operational Battery Energy Storage System in accordance with this Contract.

- (ii) The Contractor shall provide all necessary equipment, personnel, facilities, construction services, labour and supervision, mobilisation and demobilisation, office support, consumables, construction equipment, machinery, tools and other items necessary for, or useful in, the performance of the Works. The Contractor shall, at the time any equipment is moved onto the Site, present to the Company an itemised list of all equipment and tools, together with a description and quantity. Prior to removal of any or all equipment, the Contractor shall clear such removal through the Company.
 - (iii) Each described item within the Technical Specification shall include all things and services reasonably implied from such item or customarily provided in the Contractor's line of work, or necessary to complete such items for inspection and approval in accordance with all Applicable Laws and the provisions of this Contract.
- (b) The Contractor shall ensure that the Works conform to the specifications set forth in the Exhibits and the other provisions of this Contract. The actual conduct of the Works in accordance with the parameters and quality control specifications set forth herein and the manner of performance of work in connection therewith shall be the responsibility of and under the direction, supervision and control of the Contractor.

3.2 Permits

- (a) The Contractor shall, at its own cost and expense, obtain and maintain in force, and shall ensure that its Subcontractors obtain and maintain in force, such Permits as the Contractor and its Subcontractors may be required to maintain in order for the Contractor to perform the Works in accordance with this Contract.
- (b) The Contractor shall assist the Company in applying for the Permits that the Company is required by this Contract to obtain.
- (c) The Contractor shall comply with the terms of those Permits that it or the Company holds.
- (d) The Contractor shall ensure that all subcontracts with its Subcontractors contain provisions imposing obligations on the Subcontractor in accordance with the terms of this Clause 3.2 in respect of all work performed under that subcontract.

3.3 Contractor's Representative

- (a) The Contractor's Representative shall be appointed by the Contractor and approved in writing by the Company and once such consent has been given in writing, the Contractor shall not revoke the appointment of the Contractor's Representative nor appoint a replacement for the Contractor's Representative without the prior written consent of the Company.
- (b) Except as otherwise stated in this Contract, the Contractor's Representative shall be authorised to give and receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under this

3.4 **Quality Assurance/Quality Control**

- (a) The Contractor shall prepare and implement a quality plan (the **Quality Plan**) that shall be capable of demonstrating the Contractor's compliance with the requirements of this Contract. Such plan shall be in accordance with the details set out in Exhibit D (QHSE) and shall be submitted to the Company for approval within thirty (30) Days of the Effective Date. Compliance with the Quality Plan shall not relieve the Contractor of liability for any of its other duties, obligations or responsibilities under this Contract.
- (b) Details of all procedures and compliance documents not submitted with the above shall be submitted to the Company for information in accordance with the Quality Plan and otherwise in accordance with Exhibits D (QHSE).
- (c) The Company shall be entitled to audit any aspect of the Quality Plan and require that corrective action be taken in respect of any deficiency identified thereby.

3.5 **Programme**

- (a) Based on the preliminary Programme in Exhibit C (Guarantees and Liquidated Damages), and having regard to all Milestones therein, including the Guaranteed Completion Date and any Milestone Date, the Contractor shall, within fourteen (14) Days of the Commencement Date, submit to the Company for approval (in such form and detail as reasonably required by, and as previously advised in writing by, the Company), a programme detailing how and when the Contractor proposes to carry out each stage of the Works (this initial programme and any subsequent revision in accordance with this Contract being the **Programme**).
- (b) Whenever requested to do so by the Company, the Contractor shall provide the status of any particular aspect of the Programme. The Programme may not be altered without the prior written consent of the Company, except in accordance with Clause 15 and save for any modifications which may not have a direct effect on the critical path of the Works, the achievement of any Milestones, the Guaranteed Completion Date and any Milestone Date.
- (c) The Contractor shall notify the Company in writing of any occurrence which, in the opinion of the Contractor, has caused or which it anticipates may cause a delay to the Programme or the achievement of any Milestone by any Milestone Date or the Guaranteed Completion Date within [four (4) Days] of the Contractor becoming aware of such delay.
- (d) The Contractor guarantees that the Works shall be completed in accordance with the Programme. The Programme shall be designed to achieve Practical Completion by the Guaranteed Completion Date.

3.6 **Measurement; Reports; Progress Meetings**

- (a) The Contractor acknowledges that all records, reports, information generated in the course of the Works or any other data relating to the Works acquired, produced or obtained by the Contractor pursuant to this Contract shall at all times be the sole property of the Company and that all right, title and interest to any compilation or collection of such data is vested solely in the Company.
- (b) The Contractor shall be responsible for the maintenance of complete and accurate records of all Works and shall prepare and submit to the Company the reports and other information as instructed by the Company. Such reports and other records shall be accompanied by a certification by the Contractor's Representative or an officer of the Contractor that the information provided is true and correct.

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- (c) Without prejudice to Clause 3.6(b), the Contractor shall prepare and submit (in hardcopy and electronically) to the Company on the first Day of each Month, or as otherwise agreed between the Contractor and the Company, a written progress report in a form acceptable to the Company (the **Monthly Progress Report**).
 - (d) The Contractor shall attend a progress meeting at a date, time and location as reasonably notified by the Company in writing (the **Progress Meeting**).
 - (e) The Monthly Progress Report shall be submitted to the Company prior to each Progress Meeting to be held between the Company and the Contractor and in each such Progress Meeting the contents of the Monthly Progress Report shall be discussed along with any other matters in connection with the Works raised by the Company or the Contractor.

3.7 **Health and Safety Precautions; Safety Plan; Discipline**

- (a) The Contractor shall conduct the Works and any operations related thereto in a prudent manner at all times so as to avoid the risk of bodily harm to persons and damage to property. The Contractor shall continually and diligently inspect all Work, materials and equipment to discover, prevent and correct any such harm or damage.
- (b) The Contractor shall prepare and implement a safety plan (the **Safety Plan**) in accordance with the details set out in Exhibit D (QHSE) and shall be submitted to the Company for approval within thirty (30) Days of the Effective Date.

3.8 **Protection of the Environment; Cleanliness**

The Contractor shall, in the performance of the Works, take all necessary steps to protect the environment and comply with all Applicable Laws and Good Industry Practice regarding the protection of the environment.

3.9 **Drawings, Data and Samples**

- (a) Exhibit A (the Works) sets forth the procedures for submission of designs, drawings, specifications, diagrams, samples, procedures, certificates and data by the Contractor to the Company for its review and approval thereof on behalf of the Company.
- (b) As a condition of its approval of any such designs, drawings, specifications, diagrams, samples, procedures, certificates and data, the Company may request that the Contractor make certain modifications or additions to such documentation. The Contractor shall incorporate such requested modifications or additions into such documentation, provided they are consistent with the intended purpose of this Contract. Review and approval by the Company of the same on the terms set forth in Exhibit A (the Works) and this Clause 3.9 does not constitute acceptance or approval of the materials and documents developed or selected by the Contractor, nor is it a warranty, guarantee or representation by the Company with respect to any such documentation or the method or manner of performing the Works and any approval by the Company shall only constitute permission to proceed and shall not relieve the Contractor from its obligations under this Contract, nor diminish or modify any such obligations, nor shall such approval create any responsibility by the Company for the accuracy of such materials and documents.
- (c) The Contractor shall maintain at the Site a complete copy of all drawings and specifications prepared by or on behalf of the Contractor, kept current with all changes, modifications and additions and shall at all times provide the Company with access to the same and shall deliver copies upon the request of the Company or following the termination of this Contract for any reason.

3.10 Design; Endorsement

- (a) The Contractor is responsible for the correctness and accuracy of all designs, specifications, drawings, data and other technical documents relating to the Works and any discrepancies, errors or omissions therein, if prepared or furnished by or on behalf of the Contractor, any Subcontractor or otherwise, whether or not any of the foregoing have been approved by the Company. The Contractor shall not be entitled to any adjustment to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price arising out of discrepancies, errors or omissions within or between the foregoing. Without prejudice to the generality of this Clause 3.10(a), the Contractor's responsibility in respect of the Technical Specification is as more particularly set out in Clause 3.10(d).
- (b) In addition to the responsibilities under Clause 3.10(a), the Contractor is also responsible for the correctness and accuracy of the designs, specifications, drawings, data and other technical documents related to the Works that are provided to the Contractor by or on behalf of the Company or any Company Contractor from and after the Effective Date and any discrepancies, errors or omissions therein and the Contractor takes full responsibility for the foregoing as though prepared by the Contractor itself (whether or not this is the case) and whether or not any of the foregoing have been approved by the Company; *provided, however*, that the Contractor will not be responsible for any errors or omissions in any such designs, specifications, drawings, data or other technical documents if such errors or omissions could not have been discovered by the Contractor acting in accordance with Good Industry Practice.
- (c) The Contractor shall complete the design and detailed engineering of the Battery Storage Energy System in accordance with the specifications contained in this Contract and submit the same to the Company for its comment and approval in accordance with this Contract. The Contractor's design and detailed engineering shall be based upon the requirements of this Contract and Good Industry Practice and provide for an efficient, balanced and completely operable and maintainable Battery Energy Storage System that is safe to operate for the design life of the Battery Energy Storage System as specified in Exhibit A (the Works).
- (d) Endorsement of Technical Specification
 - (i) Without prejudice to the generality of Clause 3.10(a), the Contractor shall have, or be deemed to have, prior to the Effective Date, fully checked and verified all aspects of the Technical Specification. The Contractor hereby fully endorses the Technical Specification as being free from any errors, omissions, deficiencies, inaccuracies, contradictions, ambiguities, and/or discrepancies and as being a suitable design basis to satisfy the Company's requirements as set out in this Contract.
 - (ii) The Contractor, hereby endorses that the performance of the Works and the completed Battery Energy Storage System based on the Technical Specification set out in Exhibit A (the Works) will in all respects comply with the Company's requirements as set out in this Contract including the Performance Guarantees.
 - (iii) The Contractor shall have no entitlement to any relief (including any adjustment to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price) in respect of the Technical Specification (including arising out of development of the Technical Specification into detailed design) or its suitability for the Company's requirements as set out in this Contract.

3.11 **Applicable Laws**

In the performance of the Works, the Contractor shall comply, and shall ensure its Subcontractors comply, with all Applicable Laws. The Contractor shall perform the Works such that the completed Battery Energy Storage System complies with, and can be operated in compliance with, all Applicable Laws.

3.12 **Hazardous Waste**

The Contractor shall be responsible for, at its sole Cost, the handling, disposal and redemption, in accordance with all Applicable Laws, of:

- (a) any Hazardous Waste brought or to be brought onto or generated at the Site or elsewhere by the Contractor;
- (b) any other Hazardous Waste existing at the Site of which the Contractor is, or reasonably ought to have been, aware and that is released as a result of the negligence or Wilful Misconduct of the Contractor; and
- (c) any other Hazardous Waste that is present at the Site as a result of the Contractor's failure to comply with its obligations under Exhibit A (the Works) and Exhibit D (QHSE) or any other provision of the Contract.

3.13 **Local Services**

In performing the Works, the Contractor shall:

- (a) give preference to the purchase and use of goods manufactured, produced or supplied in St. Vincent and the Grenadines; *provided, however*, that such goods are available on terms equal to or better than imported goods with respect to timing of delivery, quality and quantity required, price and other terms;
- (b) employ local Subcontractors having the required skills or expertise, to the maximum extent possible, insofar as their services are available on comparable standards with those obtained elsewhere and at competitive prices and on competitive terms; *provided, however*, that where no such Subcontractors or other contractors are available, preference shall be given to non-local Subcontractors and other contractors who utilise local goods to the maximum extent possible, subject, however, to the *proviso* in Clause 3.13(a); and
- (c) ensure equivalent provisions in terms of Clauses 3.13(a) and (b) are contained in contracts between the Contractor and its Subcontractors and suppliers.

3.14 **Information about Risks**

The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances (including conditions affecting St. Vincent and the Grenadines) that may influence or affect the Contractor's performance of the Works in accordance with this Contract.

3.15 **Sufficiency of Information**

Regardless of any information provided by the Company and in any documents provided to the Contractor by the Company, the Contractor shall be deemed by its own means and at its own responsibility to have satisfied itself as to: (a) the accuracy, sufficiency and completeness of information; (b) all conditions and circumstances affecting the Contract Price, (c) the nature and condition of the Site or any other land upon which the Works are to be performed (including as to access, soil/sub-soil, topography, geology, geography and hydrology); (d) all goods, equipment and materials that are to be delivered; (e) climatic conditions; (f) the extent and nature

of the Works; (g) the Programme, the Guaranteed Completion Date, the Performance Guarantees; (h) the superintendence; and (i) completion of all Interfaces, the labour and all other things whether of a temporary or permanent nature, required in and for the carrying out and completion of the Works and the remedying of defects therein. Certain information in connection with the Site (including relating to soil and subsoil conditions) may be made available to the Contractor at the Company's discretion. The Company does not warrant the accuracy or sufficiency of any such information.

3.16 Operation, Maintenance and Training

(a) The Contractor shall operate and maintain the Battery Energy Storage System for two (2) years prior to handing over the same to the Company. The terms and conditions of operation and maintenance (save and except the agreed cost) shall be negotiated and contained in a separate contract between the parties to be executed prior to the date of Practical Completion.

(b) During the two-year period, the Contractor shall be responsible for training the Company's staff to ensure appropriate knowledge transfer.

(c) The Contractor shall prepare and share with the Company one Hardcopy and one Electronic copy of the Operational and Maintenance Manual(s).

3.17 Security Requirements

In performing the Works under this Contract, the Contractor shall establish and maintain a security program, implementing and supplementing Project security requirements. This shall include a written security plan which shall be submitted to the Company for review and approval within thirty (30) Days after the Effective Date and in any event prior to the Commencement Date. The Contractor's security plan, once approved by the Company shall be added as an appendix to its health, safety and environment (**HSE**) plan for the Project.

3.18 Interfaces

(a) The Contractor shall coordinate, liaise and cooperate with Third Parties (including Company Contractors) performing any works in connection with the Project and provide any information to such Third Parties as they reasonably require in relation to the Project on a timely basis. The Contractor hereby acknowledges the significance and importance of this liaison obligation, particularly in regard to Company Contractors working on other aspects of the Project, and will take all necessary steps as part of the Works to liaise with and grant such access to such Third Parties in order to ensure that interfacing with other facilities/works in relation to the Project occurs in accordance with this Contract, including the Programme, and so as to facilitate the interfacing and performance obligations of such Third Parties.

(b) The Contractor shall protect from possible damage resulting from the Works any other facilities, equipment, materials (whether stored or installed) and/or any other items at the Site. Should the Contractor cause damage to any Works or to the property of the Company or any Company Contractor, the Contractor shall promptly remedy such damage to the satisfaction of the Company, or the Company Contractor or, if the Contractor fails to promptly remedy such damage, the Company may perform any such remedial work and deduct the cost thereof from any amounts due or to become due to the Contractor hereunder.

(c) The Contractor shall be fully responsible for all physical tie-ins and Interfaces with the Plant, facilities, services and utilities necessary for the completion of the Works in accordance with this Contract and all risk in relation thereto shall lie with the Contractor.

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- (d) The measures to be taken under this Clause 3.18 shall be deemed to be allowed for by the Contractor in the Programme and the Contract Price. Without prejudice to or limitation of the foregoing, the Contractor shall comply with the Project Interface requirements relating to the Battery Energy Storage System.

3.19 Access

- (a) The Contractor agrees to allow the Company, any Government Authority, or any Third Party notified by the Company, the freedom of access at all reasonable times to all places where Works are performed or relevant information is stored, for the purpose of reviewing the conduct and progress of Works and all Documents in the Contractor's possession prepared for or in the course of preparation for, performance of the Works including those Works performed by its Subcontractors.
- (b) The Company's rights under this Clause 3.19 may, at the sole discretion of the Company, be exercised by the Company's own staff and/or by Third Parties appointed by the Company.

3.20 Assistance to the Company

The Contractor shall provide any reasonable assistance and further services and facilities for the Company at no cost to the Company unless specified as being reimbursement items in accordance with Exhibit B (Compensation).

3.21 Project Procedures

The Contractor shall comply at all times with the Project Procedures.

4. INSPECTION, TESTING AND PERFORMANCE

4.1 Inspection of Materials and Workmanship

- (a) All material and equipment furnished and work performed shall be properly inspected by the Contractor at its expense, and shall at all times be subject to quality surveillance and quality audit by the Company. The Contractor shall provide safe and adequate facilities, drawings, documents and samples as requested, and shall provide assistance and cooperation including stoppage of work to perform such examination as may be necessary to determine compliance with the requirements of this Contract. Failure of the Company to make such quality surveillance or to discover defective design, equipment, materials or workmanship shall not relieve the Contractor of its obligations under this Contract nor prejudice the rights of the Company to reject or require the correction of defective work in accordance with the provisions of this Contract.
- (b) If any work is determined by the Company to be defective or otherwise not in conformance with this Contract the provisions of Clause 10 shall apply.

4.2 Testing

- (a) Unless otherwise provided in this Contract, testing of equipment, materials or work shall be performed by the Contractor at its expense and in accordance with the requirements set out in this Contract including any Acceptance Tests.
- (b) The Contractor shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing.

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- (c) Without prejudice to the generality of the foregoing, the Works and the Battery Energy Storage System shall be subject to commissioning and Performance Testing in accordance with Exhibit A (the Works) and Exhibit C (Guarantees and Liquidated Damages).
 - (d) The Company (including their respective representatives, consultants and advisers), shall be entitled to attend any tests and/or inspections required pursuant to this Contract. The Contractor shall comply with the testing notification requirements of Exhibit A (the Works). Where Exhibit A (the Works) does not address notice, the Contractor shall give reasonable advance written notice of any testing and material inspections to the Company. No test/inspection may proceed save where the notice procedure herein has been followed.
 - (e) The Contractor shall provide all resources, necessary for tests and inspections. The Contractor shall hire one of the three Independent Experts set forth in Exhibit C (Guarantees and Liquidated Damages) to conduct the Acceptance Test according to the procedures set forth in Exhibit A (the Works).
 - (f) The Contractor shall provide the Company with a certified report of the results of any test and/or inspection carried out pursuant to this Contract.
 - (g) The Contractor agrees that neither the execution of a test and/or inspection of goods, equipment, materials or any part of Works or the Battery Energy Storage System, nor the attendance by the Company, or its respective representatives nor the issue of any test report pursuant to Clause 4.2(f) shall release the Contractor from any obligations or liabilities under this Contract.

4.3 Performance Guarantees

- (a) The Contractor guarantees that the Battery Energy Storage System and all parts thereof shall achieve the Performance Guarantees specified in Exhibit C (Guarantees and Liquidated Damages). The Contractor's performance in respect of the Performance Guarantees shall be established pursuant to the Acceptance Tests carried out pursuant to Exhibit A (the Works) and C (Guarantees and Liquidated Damages).
- (b) If the Battery Energy Storage System or a part thereof fails to achieve the Performance Guarantees as demonstrated by the Acceptance Tests, the Company will be entitled to:
 - (i) order the Contractor to (A) undertake all necessary remedial action to cause the Battery Energy Storage System (or part thereof) to achieve the Performance Guarantees and (B) repeat the Acceptance Tests in respect of all or part of the Battery Energy Storage System under the same terms and conditions;
 - (ii) if the failure deprives the Company of substantially the whole of the benefit of the Battery Energy Storage System or a part thereof, reject the same or such part (as the case may be), in which event the Contractor shall be obliged to remedy the Battery Energy Storage System or part (as the case may be) in accordance with Clause 10.5; or
 - (iii) deem the Battery Energy Storage System or part thereof (as the case may be) to have successfully passed the Acceptance Tests and achieved the Performance Guarantees, in which case the Contractor shall proceed in accordance with all other obligations under this Contract and the Contractor shall be obliged to pay the performance liquidated damages specified in Exhibit C (Guarantees and Liquidated Damages) (which the Parties agree represent a reasonable pre-estimate of the losses likely to be suffered by the Company in the event that the Performance Guarantees are not achieved).

5. TECHNICAL PERSONNEL

5.1 Local Labour

The Contractor shall use its best endeavours to recruit nationals of St. Vincent and the Grenadines for the purposes of performing the Works, provided that it is satisfied with the competency levels and the skills of such persons.

6. INTELLECTUAL PROPERTY

6.1 Intellectual Property Rights

The Contractor, in the furnishing of the Works shall have or shall acquire for the benefit of the Company all Intellectual Property Rights that may subsist in the Works necessary to allow: the use by the Company of the Works; the incorporation of the Works into the Project; and the design, installation, commissioning, operation, maintenance, repair, alteration and modification of the Works and/or the Project with such Works as so incorporated. The Contractor hereby grants to the Company a non-exclusive, irrevocable, royalty free licence to any and all such Intellectual Property Rights that may subsist in the Works for use in connection with the design, installation, commissioning, operation, maintenance, repair, alteration and modification of the Works and/or the Project and in connection with the incorporation of the Works into the Project.

6.2 Indemnity Against Intellectual Property Right Infringement

- (a) The Contractor shall, at its own cost and expense, Indemnify the Company from and against any and all Losses suffered by any Company Indemnified Party and any and all claims, suits and/or proceedings of any kind brought against any Company Indemnified Party that are based upon or arise out of a claim, whether rightful or otherwise, that the Works or any portion or part thereof supplied by the Contractor under this Contract constitutes an infringement of any Intellectual Property Rights of any person. In case the Works or any portion or part thereof is in such claim, suit and/or proceeding held to constitute such an infringement and/or its use by the Company is enjoined, the Contractor shall, at its own cost and expense and subject to the following provisions, either procure for the Company an irrevocable, royalty free licence to continue using such Works, or with the Company's prior written approval, replace the Works enjoined with substantially equivalent but non-infringing Works or modify the Works enjoined so that such Works becomes non-infringing; *provided, however*, that no such replacement or modification shall in any way relieve the Contractor of liability for any of its duties, obligations, responsibilities under this Contract.
- (b) The Company shall promptly notify the Contractor of any claim, suit and/or proceeding in which such infringement is alleged, shall permit the Contractor to control the defence or compromise of any such allegation of infringement and shall render such reasonable assistance at the Contractor's cost and expense in the defence thereof as the Contractor may require.
- (c) Notwithstanding any proprietary legends or copyright notices to the contrary, the Company may copy or reproduce documents and information furnished by the Contractor in connection with the Contractor's performance of the Works and may distribute such copies or reproductions to others for the purposes of designing, installing, commissioning and operating, maintaining, repairing, altering or modifying any facilities forming part of the Project or obtaining any licences or permits for or in relation to the Project. The Contractor is responsible for obtaining necessary permission and releases from any third parties placing proprietary legends or copyright notices on such documents or information and, at its own cost and expense, shall Indemnify the Company from and against any and all Losses suffered by any Company Indemnified Party and any and all claims, suits and/or proceedings of any kind brought against any Company Indemnified Party based upon a claim, whether rightful or otherwise, that a proprietary right or copyright has been infringed by the copying,

7. COMMENCEMENT AND PROGRESS

7.1 Notice to Proceed

The Contractor shall commence the Works on the Commencement Date as notified by the Company to the Contractor pursuant to the Notice to Proceed. Until a Notice to Proceed is issued:

- (a) the Contractor shall not become entitled to any payment under this Contract; and
- (b) notwithstanding anything to the contrary in the Contract, at any time prior to the issuance of a Notice to Proceed, the Company may terminate this Contract for convenience hereunder and, in the event of such termination pursuant to this Clause 7.1(b), the Company shall have no liability whatsoever to the Contractor or any Contractor Indemnified Party whether direct or indirect, in contract, tort or otherwise in relation to or arising out of or in connection with any transactions contemplated under or in connection with this Contract or otherwise.

7.2 Commencement and Progress of the Works

- (a) Following receipt of the Notice to Proceed, the Contractor shall, on the Commencement Date, commence and expeditiously and diligently perform the Works in accordance with this Contract.

8. SCHEDULE GUARANTEE AND DELAY LIQUIDATED DAMAGES

- (a) Subject to any Punch-List Items which shall be agreed by the Company as not being material to Practical Completion of the Battery Energy Storage System, the Contractor guarantees that it shall achieve Practical Completion of the Works and the Battery Energy Storage System on or before the Guaranteed Completion Date. The Contractor shall also guarantee meeting all the Milestones of the Programme.
- (b)
 - (i) The Contractor shall pay to the Company by way of delay liquidated damages and not as a penalty for a failure to achieve Practical Completion by the Guaranteed Completion Date, the amounts set out in Exhibit C (Guarantees and Liquidated Damages) for each Day of delay or part thereof in achieving Practical Completion subject to the liability cap referred to in Clause 20.8.
 - (ii) The Contractor shall pay to the Company by way of delay liquidated damages and not as a penalty for a failure to achieve all Milestones of the Programme by the relevant Milestone Date, the amounts set out in Exhibit C (Guarantees and Liquidated Damages) for each Day of delay or part thereof after one (1) week of the Milestones Date of the Programme, subject to the liability cap referred to in Clause 20.8.
- (c) The Parties agree that the levels of delay liquidated damages specified in Exhibit C (Guarantees and Liquidated Damages) represent a reasonable pre-estimate of the losses likely to be suffered by the Company in the event that Practical Completion is not achieved by the Guaranteed Completion Date and/or a Milestone by the relevant Milestone Date and are not in the nature of a penalty. These amounts are agreed upon and fixed because of the difficulty of ascertaining the exact amount of loss that the Company would suffer in such circumstances and shall be applicable regardless of the actual loss that the Company sustains.

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- (d) The delay liquidated damages payable by the Contractor under this Clause 8 may, at the Company's option, be recovered by the Company from the Contractor by either (i) deduction from payments to be made to the Contractor in respect of this Contract, (ii) withholding by the Company from any other amount due to the Contractor, or (iii) retention withholding in each case only if the Contractor has not paid the full amount of such liquidated damages to the Company within the time specified in Clause 8(e) below.
 - (e) All liquidated damages payable pursuant to this Clause 8 shall be payable within fifteen (15) days of the Company's notification that such payments are due.

9. COMPLETION

9.1 Conditions of Practical Completion

Subject to agreement between the Parties in writing as to Punch-List Items, "**Practical Completion**" of the entire Works and the Battery Energy Storage System will be achieved when the following requirements have been met:

- (a) all Acceptance Tests have been completed successfully in accordance with this Contract or the Company has exercised its rights under Clause 4.3(b)(iii);
- (b) all Performance Guarantees have been achieved as evidenced in accordance with this Contract or the Company has exercised its rights under Clause 4.3(b)(iii);
- (c) any liquidated damages payable by the Contractor to the Company pursuant to Clauses 4.3 and 8 have been paid and/or satisfied;
- (d) final as-built drawings for the Works, O&M Procedures Manual and spare parts lists as specified in Exhibit A (the Works) (or, to the extent not so specified, as reasonably satisfactory to the Company) have been issued by the Contractor to the Company;
- (e) the Contractor has issued an initial close-out report to the Company as specified in Exhibit A (the Works) (or, to the extent not so specified, as reasonably satisfactory to the Company);
- (f) the completed Battery Energy Storage System is compliant with, and capable of commercial operation in accordance with, Applicable Laws and the Contract Documents;
- (g) all Works, components or equipment are ready for safe operation or use in the manner for which they are intended;
- (h) the Contractor has returned all Company Items and removed all of its construction materials, temporary facilities, waste material and rubbish from the Site, except for construction materials and facilities required for Operation and Maintenance to be performed by the Contractor following Practical Completion; and
- (i) (without prejudice to the aforementioned Punch-List Items) all Works required pursuant to this Contract to be completed on or before Practical Completion have been completed in accordance with this Contract.

9.2 Practical Completion Certificate

- (a) The Company shall issue a certificate (the **Practical Completion Certificate**) in the form set out in ANNEXURE 3 when the conditions set forth in Clause 9.1 have been met. The Contractor may apply by notice to the Company for the issuance of the Practical Completion Certificate and the Company shall, within fifteen (15) Days after receipt of the Contractor's application, either:
 - (i) issue the Practical Completion Certificate to the Contractor dated as of the date on which the last of the conditions of Clause 9.1 have been satisfied; or
 - (ii) reject the application, giving its reasons and specifying, if applicable, which of the conditions of Clause 9.1 remain to be satisfied, in which case the Contractor shall then complete such Works as may be required in order to satisfy the conditions of Clause 9.1 before making a further application under this Clause for issuance of the Practical Completion Certificate.
- (b) Notwithstanding Clause 2.4, if the Company fails to either issue the Practical Completion Certificate signed by the Company or to reject the Contractor's application for the issuance of the Practical Completion Certificate within the fifteen (15) Day period referred to above and provided that such application was properly made as described above, the Contractor shall be entitled to an extension of time to the Guaranteed Completion Date.
- (c) The date of Practical Completion shall be the Day that a successful application for the Practical Completion Certificate is made in accordance with this Clause 9.2.

9.3 Takeover

- (a) Subject to clause 9.2 (b) and (c), takeover of the Battery Energy Storage System by the Company from the Contractor shall occur two (2) years following the date of the issuance of the Practical Completion Certificate. At takeover of the Battery Energy Storage System, the Contractor shall deliver up the same to the Company in a state and condition so as to satisfy its obligations under this Contract as of Practical Completion and otherwise in accordance with Good Industry Practice.
- (b)
 - (i) Whenever, as determined by the Company, any portion of the Battery Energy Storage System or the Works performed by the Contractor is suitable for use, the Company may, upon written notice, which shall specify the part of the Works and/or the Battery Energy Storage System to which such takeover applies and the date from which the same applies, occupy and use such portion prior to Practical Completion and formal takeover in accordance with Clause 9.3(a). From the date identified in the said statement, the part of the Works and/or the Battery Energy Storage System that are taken over shall be deemed to have achieved Practical Completion and any liquidated damages payable under Exhibit C only in connection with such Works and/or the Battery Energy Storage System shall be reduced by the value that the proportion of such Works and/or the System amount to as a portion of the Contract Price. Such partial acceptance of any Works and/or the System shall not relieve the Contractor of any of its obligations under this Contract or act as a waiver of any of the Company's rights hereunder.

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- (ii) If, as a result of the Contractor's failure to comply with the provisions of this Contract, use of the Battery Energy Storage System, or the Works or any part thereof pursuant to (i) above proves to be unsatisfactory to the Company, the Company shall have the right to continue such use until such portion of the Works can, without injury to the Company, be taken out of service for correction of defects, errors, omissions or replacement of unsatisfactory materials or equipment as necessary for such portion of the Works to comply with this Contract; *provided, however*, that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve (12) Months unless otherwise mutually agreed in writing between the Parties.
 - (iii) The Contractor shall not use any permanently installed equipment unless the Company approves such use in writing. When such use is approved, the Contractor shall at the Contractor's expense properly use and maintain and, upon completion of such use, recondition such equipment as required to meet specifications.

9.4 Conditions of Final Completion

"**Final Completion**" shall occur on the date when all of the following conditions have been satisfied:

- (a) the Defects Liability Period has expired;
- (b) the Contractor has completed all the Works required by this Contract (including those pursuant to Clause 10 and all Punch-List Items);
- (c) the Contractor has executed and delivered to the Company and the Company has accepted the lien waiver in the form and substance as that set forth in ANNEXURE 4; and
- (d) the Contractor has provided the final close-out report to the Company pursuant to Clause 9.1.

9.5 Final Completion Certificate

The Company shall issue a certificate (the **Final Completion Certificate**) in the form set out in ANNEXURE 3 when the conditions set forth in Clause 9.4 have been met. The Contractor may apply by notice to the Company for the issuance of the Final Completion Certificate and the Company shall, within fifteen (15) Days after receipt of the Contractor's application, either:

- (a) issue the Final Completion Certificate signed by the Company to the Contractor dated as of the date on which the last of the conditions of Clause 9.4 have been satisfied; or
- (b) reject the application, giving its reasons and specifying, if applicable, which of the conditions of Clause 9.4 remain to be satisfied, in which case the Contractor shall then complete such Works as may be required in order to satisfy the conditions of Clause 9.4 before making a further application under this Clause for issuance of the Final Completion Certificate.

Notwithstanding Clause 2.3, if the Company fails to either issue the Final Completion Certificate signed by the Company or to reject the Contractor's application for the issuance of the Final Completion Certificate within fifteen (15) Day period referred to above and provided that the conditions set forth in Clause 9.4 have been met, the Final Completion Certificate shall be deemed to have been issued on the last Day of that period.

10. WARRANTY AND DEFECTS LIABILITY

10.1 Warranty

The Contractor warrants that:

- (a) the Works and the Battery Energy Storage System shall:
 - (i) be free from defects in title, design, materials or workmanship;
 - (ii) be designed and, as completed, be fit for the purposes set forth in the Technical Specification or otherwise in this Contract and for the purpose of improving the Company's grid operational efficiency by providing a cost effective spinning reserve to accommodate higher levels of renewable energy penetration and meeting all of the other requirements at the grid operator, and the Code;
 - (iii) conform to all specifications and all applicable codes and standards set out in the Exhibits including all specifications and all applicable codes and standards incorporated by reference into and/or appended to the Exhibits;
 - (iv) conform in all respects to the terms and conditions of this Contract;
 - (v) comply with all Applicable Laws and Permits;
 - (vi) except insofar as otherwise required by the Technical Specification or otherwise in this Contract, be designed using a period of not less than twenty (20) years as the basis of the design lifetime of the Works and the System;
 - (vii) be designed and constructed to operate with a minimum of maintenance being at levels indicated in the Technical Specification or otherwise in this Contract;
 - (viii) be new and of good quality, normal fair wear and tear excepted;
 - (ix) have the selected processes, and technology incorporated into the Battery Energy Storage System that are, at the Effective Date, of acceptable international standards including but not limited to standards of efficiency, reliability, health and safety;
 - (x) as designed and constructed will at all times be insurable by the Company with coverage for normal risks and without excessive premia or other onerous conditions;
 - (xi) be designed and constructed so that no infringement of any patent, trade mark, registered design, copyright or any other registrable or proprietary intellectual property right of any kind will result from the performance of this Contract or the operation or ownership of the Works and the System by the Company;
 - (xii) be designed to meet the Performance Guarantees; and
 - (xiii) not include any materials generally recognised in international engineering contracts as being materials to be avoided;
- (b) the Contractor has fully considered the Technical Specification and the requirements of this Contract and has brought to the attention of the Company anything set out therein which is:
 - (i) unsuitable for a Battery Energy Storage System with the output stated in the Technical Specification and having a twenty (20) year life with maintenance

and interruption for maintenance being at minimum levels; or

- (ii) not in compliance with the terms of the Contract Documents, Permits or Applicable Laws;
- (c) it has reviewed the details of the technical requirements or specifications contained in the Contract Documents and has brought to the attention of the Company anything therein which does not accord with the design prepared by the Contractor in accordance with Clause 3.10;
- (d) the Company shall have the benefit of any Manufacturer's or third party warranty in St. Vincent and the Grenadines with respect to equipment or products supplied under this Contract in accordance with the Warranties outlined in this Contract, and that it will have delivered to the Company such instruments as may be reasonably required by the Company to obtain the benefit of such warranties; and
- (e) the Works shall be performed in accordance with all reasonable skill and care and Good Industry Practice.

10.2 **Submission of Warranty Plan**

- (a) Based on the requirements set forth in Clause 10.1 and the requirements outlined in the Request for Proposal, the Contractor shall prepare and submit to the Company, prior to the purchase of the Battery Energy Storage System, a plan for a comprehensive project warranty to be approved by the Company.
- (b) The warranty plan approved by the Company shall form an integral part of this Contract.

10.3 **Remedying Defects**

If at any time prior to the expiry of the Defects Liability Period, the Works and/or the Battery Energy Storage System are found to be Defective, then upon written notice from the Company to the Contractor to such effect (together with details of the Defect) the Contractor shall, at its own cost and expense, take all necessary steps to remedy the Defect either by the date set out in the notice or, in the absence of such a date, as soon as practicable following the Company's notice such that the Works and/or the Battery Energy Storage System are not in accordance with this Contract.

10.4 **Reimbursement of Costs of Remedying Defect**

If the Contractor remedies a Defect, or attempts to remedy a suspected Defect, pursuant to a notice given by the Company under Clause 10.3 and it is discovered that the Defect is not one which the Contractor was liable to remedy at its own cost and expense under Clause 10.3, or was not in fact a Defect, then the Company shall reimburse the Contractor for its Costs incurred in remedying the Defect or attempting to remedy the suspected Defect.

10.5 **Defects Liability Periods**

- (a) Subject to any re-warranty or extension as set out in this Clause 10, the "**Defects Liability Period**" shall be a period of twelve (12) months from the date of Practical Completion as evidenced by issuance of the Practical Completion Certificate other than with respect to Punch-List Items, for which the Defects Liability Period shall be a period of twelve (12) Months from the date of completion of such Punch-List Items.
- (b) Any Defective Works repaired, replaced, reperformed or otherwise remedied during the applicable Defects Liability Period shall, notwithstanding any expiry of the twelve (12) Month period referred to in Clause 10.5, be re-warranted (on the basis of the same warranties in Clause 10.1) for a further twelve (12) Months from the date of completion of such repair, replacement, reperformance and/or remedy, the Defects Liability Period shall

be extended accordingly (but only in respect of such parts of the Works repaired and/or replaced, reformed or otherwise remedied), and this Clause 10 shall continue to apply in full in respect of such Defective Works repaired, replaced, reformed and/or remedied.

- (c) Where required by the Company acting reasonably, the Contractor prior to Practical Completion or the Company post Practical Completion, shall at the Contractor's cost, perform all necessary performance testing in accordance with Exhibit A (the Works) to demonstrate the correction of any Defect. Further, all details of all work performed during the Defects Liability Period shall be included in the Final Closeout Report.
- (d) Should the Battery Energy Storage System or any part thereof be shut down following Practical Completion as a result of a Defect, the Defects Liability Period shall be extended for a time equal to the duration of such shut-down.

10.6 Failure to Remedy Defects

- (a) If the Contractor fails to effectively remedy any Defect by the time specified in the Company's written notice given under Clause 10.3, or, if no time is specified, within a reasonable time after the notice, the Company may, after giving reasonable advance notice, fix a date on or by which the Contractor must remedy the Defect.
- (b) If the Contractor fails to remedy the Defect by the date fixed under Clause 10.6(a), then the Company may (at its sole discretion) either:
 - (i) carry out or engage others to carry out the work required to remedy the Defect in a reasonable manner and at the Contractor's risk, cost and expense, but the Contractor shall have no responsibility for such work, and the Contractor shall reimburse the Company for the cost and expense properly incurred by the Company in so remedying the Defect; or
 - (ii) if the Defect is such that the Company has been deprived of substantially the whole of the benefit of the Works and/or the Battery Energy Storage System or any part thereof, terminate this Contract in accordance with Clause 18 in respect of such parts or portions of the Works and/or the Battery Energy Storage System as cannot be put to the intended use, and in such case the Contractor shall reimburse the Company all sums paid to the Contractor for such parts or portions of the Works and/or the Battery Energy Storage System together with any other damages or liability incurred as a result of such Defect.

10.7 Removal of Defective Work

If the Defect is such that it cannot be remedied expeditiously at the location where it is situated, the Contractor may, with the consent of the Company, remove from that location for the purposes of repair, replacement or remedy at the Contractor's risk, cost and expense the Defective Works or any part or portions thereof.

10.8 Right of Access

The Company shall provide the Contractor with access to the Works and/or the Battery Energy Storage System and to records of the working and performance of the Battery Energy Storage System as may be reasonable and necessary to enable the Contractor to perform its obligations under this Clause 10, subject to the reasonable constraints required in order to avoid interference with the Company's installation, commissioning, testing, operation and maintenance of the Works and/or the Battery Energy Storage System or any other aspect of the installation, construction, commissioning, testing, operation and maintenance of any other facilities comprising the Project or connected equipment. The Company may require the Contractor to carry out work under this Clause 10 during planned shutdowns or at such times of the day or night as will minimise the effects on the Company and the Project of any such work.

11. CONTRACT PRICE

11.1 Contract Price

Subject to Clause 11.2 and 11.3, the Company, shall pay the Contractor in full and final compensation and in consideration for all the Contractor's obligations under this Contract, including all things necessary for the Contractor's complete performance of the Works (including the remedying of any Defects) the Contract Price set out in Exhibit B (Compensation), which shall be paid in accordance with the Payment Schedule and Clause 12. The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the unit rates set out in Exhibit B (Compensation). The payment obligations from the Company to the Contractor shall be governed by the terms of the letter agreement attached hereto as Annexure 5.

11.2 Retention Amount

The Company shall be entitled to retain 10% of each stage payment if an Advance Payment is requested or 15% if an Advance Payment is NOT requested ("the Retention Amount") which shall be applied to Contractor issued invoices and the Company shall hold the same as security for the rectification of performance and/or defects during the Performance and Defects Liability Period.

Providing the Retention Amount has not been applied in to rectify performance or any defect, the Company shall pay the Retention Amount to the Contractor in two installments as follows:

- (a) 50% upon completion of all Punch List Items; and
- (b) 50% at the end of the Defects Liability Period.

11.3 Conditions Precedent to Payment

It shall be a condition precedent to the Contractor's entitlement to receive any payment under this Contract that the Contractor has provided to the Company, and is maintaining (a) the Advance Payment Bond in accordance with Clause 12.7 and (b) the Policies in accordance with Clause 21.

11.4 Currency

Other than for any specific items set out herein, all amounts stated in this Contract are expressed in the Applicable Currency, including for accounting and payment purposes.

11.5 Fixed Rates and Prices

Except for any adjustment to the Contract Price as made pursuant to any Approved Variation, all rates, sums and prices stated in this Contract are fixed and firm and not subject to any revision, escalation or adjustment of any kind.

11.6 Local Agent's Fees

The Contract Price shall be inclusive of all fees and charges incurred by the Contractor's and Subcontractors' local agents and/or sponsors in St. Vincent and the Grenadines and/or elsewhere.

12. INVOICING AND PAYMENT

12.1 Invoicing and Payment Procedures

Invoicing and payment procedures set out in this Clause 12 shall apply to all amounts due to the Contractor under this Contract including those resulting from any Approved Variation.

12.2 Submission of Invoices

The Contractor shall submit an invoice established in accordance with Clauses 11 and 12 to the Company upon achievement of a Milestone entitling the Contractor to payment pursuant to the Payment Schedule.

12.3 Invoices

All invoices shall:

- (a) bear the reference "Contract No: [●]";
- (b) clearly indicate the part of the Works or the Milestone for which payment is requested;
- (c) be supported by all necessary documents to enable the Company's review, including a copy of the Milestone Payment Certificate signed by Company;
- (d) clearly designate the Contractor's bank references and account number;
- (e) clearly indicate all credits for sums due by the Contractor to the Company including reimbursement of advance payment(s), if any;
- (f) be in the name of the Contractor; and
- (g) be sent in one (1) original (clearly stamped "Original") and a copy to:

.....

.....

12.4 Disputed Invoices

If the Company disputes all or part of any invoice, the Company shall, at its option, either:

- (a) return such invoice to the Contractor specifying in writing the items to which the Company objects and the reasons for such objections, in which case the Contractor shall re-submit to the Company a revised invoice taking into account the Company's objections. If the Company disputes all or part of the revised invoice, it shall so advise the Contractor and the foregoing procedure shall be repeated until the Parties have reached agreement and the Contractor shall submit a revised invoice as so agreed together with the next issued invoice pursuant to Clause 12.2; or
- (b) advise the Contractor in writing of the items to which the Company objects and the reasons for such objections, in which case the Contractor shall submit to the Company a credit note for the disputed amount and the Contractor's response to the Company's objections. If the Company maintains all or part of its objections, it shall so advise the Contractor and this procedure shall be repeated until the Parties have reached agreement with respect to the disputed amount.

If the Parties cannot reach agreement with respect to the disputed invoice and/or amounts before the time of the next issued invoice pursuant to Clause 12.2, the dispute will be resolved pursuant to Clause 25.

12.5 Terms of Payment

- (a) The correct and undisputed invoices from the Contractor shall be paid within thirty (30) days from the date such invoice was received to the bank account designated on invoices by the Contractor under Clause 12.3(d), subject to withholding required by, and other

requirements of, any Applicable Laws. Payment shall be deemed made as of the date of transfer from the bank.

12.6 Sums Due by Contractor

The Company shall have the right, after notice to the Contractor, to deduct (and, at the Company's discretion apply such withheld sums towards remedying any associated breach of this Contract) from any sums payable to the Contractor any amount due from the Contractor to the Company for whatever reason, including:

- (a) the amount of any Punch-List Item forming part of the Contract Price, only until such Punch-List Item is completed by the Contractor in accordance with this Contract, at which time the Contractor shall submit an invoice in respect of such completed Punch-List Item;
- (b) overpayments made to the Contractor;
- (c) the failure of the Contractor to pay any Subcontractors, suppliers or other providers of labour;
- (d) Defective or damaged Works which has not been remedied by the Contractor in accordance with the terms of this Contract;
- (e) materials sold or services furnished to the Contractor by the Company;
- (f) any amount paid in connection with any encumbrances, liens or similar claims of any Subcontractors against the Project;
- (g) any recovery of Losses, compensation and/or liquidated damages provided for by this Contract and due to the Company from the Contractor;
- (h) any amounts due to the Company under any Indemnity hereunder;
- (i) any other deduction required by any Applicable Laws; and/or
- (j) any amounts due to the Company by the Contractor or costs or expenses incurred by the Company on behalf of the Contractor or for which the Contractor is liable pursuant to this Contract.

If such sums due by the Contractor to the Company at any time exceed the sums due to the Contractor, then the Contractor shall immediately pay the difference to the Company, failing which the Company shall have the right to draw upon the Advance Payment Bond or the amounts retained under Clause 11.2 and such payment shall not prejudice the Company's other rights under this Contract or at law.

12.7 Advance Payment

- (a) The Company shall make an advance payment ofof the Base Contract Price to the Contractor (the **Advance Payment**). Subject to receipt by the Company of the Contractor's correct invoice thereof and of the Advance Payment Bond, payment shall be made to the Contractor of the Advance Payment by the later of thirty (30) Days after the Commencement Date or satisfaction of the aforementioned preconditions, and receipt by the Company of the Contractor's correct invoice thereof.
- (b) The Contractor shall provide the Company with a bond, to the value of the Advance Payment; such bond to be in the form set out in Annexure 1 Part IV, executed by a first-class bank or financial institution approved by the Company (the **Advance Payment Bond**).

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- (c) The cost of the Advance Payment Bond and/or any changes and/or extensions thereto shall be borne by the Contractor.
 - (d) The Company shall be entitled to draw down under the Advance Payment Bond if this Contract is terminated and the Advance Payment Bond has not been returned in accordance with this Clause 12.7.
 - (e) The Contractor shall ensure that the Advance Payment Bond shall remain valid and enforceable until the expected date of Practical Completion as specified in Exhibit C. If the Advance Payment Bond will expire on its terms prior to the expected date of Practical Completion as specified in Exhibit C, then at any time within the fourteen (14) Days prior to such expiry, the Company may draw down the full value of the Advance Payment Bond and apply the proceeds thereof in satisfaction of the Advance Payment.
 - (f) The Advance Payment Bond shall be returned by the Company promptly following the confirmation of Practical Completion in accordance with paragraph (e) above.

13. ACCESS TO INFORMATION AND AUDIT

- (a) The Company shall during the performance of the Works have access to all Project data and information.
- (b) To the extent that the Contract Price includes any amounts for man-hours or any cost reimbursable elements, the Contractor shall keep full and detailed accounts of all financial transactions and actual man-hours spent on the Project including all travelling time spent on Project-related business in a form acceptable to the Company. During the term of this Contract and for two (2) Years thereafter, the Company or its authorised representatives shall be afforded access in order to conduct audits of the Contractor's books of account and supporting documents, as is necessary to substantiate the correctness of all financial transactions relating to the Works or the Project.

14. TAXES

14.1 Taxes

- (a) The Contractor declares that it has taken into account in establishing the Contract Price, the unit rates, service rates and all other prices and fees set out in Exhibit B (Compensation), all taxes including withholding taxes (if any) fees, levies, imposts, duties, charges, dues or assessments of any nature whatsoever payable (whether levied on or payable by the Contractor or any of its Subcontractors) and the like (including all direct and indirect costs and expenses to discharge the same and any and all penalties and fines pertaining to any of the above) for which it is liable (collectively, the **Taxes**) with no exception whatsoever except as specified in Clause 14.2.
- (b) Subject to clause 14.2, the Contractor agrees that it shall be liable for all Taxes arising out of the Contractor's or any Subcontractor's performance of the Works.
- (c) All port dues, revenue recovery charges, landing charges, pilotage, lighterage, legalisation fees and fees in connection with other customs formalities and all other dues and charges whatsoever relating to the importation of the goods, equipment and materials required to perform the Works shall be for the sole account of the Contractor.
- (d) The Contractor shall abide by any instructions of the Company regarding the import (including any necessary measures as to maximise the benefits of any custom duties exemptions to which the Company or any Company Contractor may be entitled) of any of the Contractor's equipment or personnel.

14.2 Exemption from Customs Duties

- (a) The Contractor shall not be liable for any customs duties that may be assessed on the import into St. Vincent and the Grenadines of any goods, equipment or materials required for performance of the Works. In order to enable the Company to take advantage of any exemption from customs duties that may be levied in St. Vincent and the Grenadines on all goods, equipment and materials imported, the Contractor shall ensure that all bills of lading designate the Company (or any other person designated by the Company) as the consignee and shall assist the Company in preparing all other necessary documentation, including the taking of all necessary steps to ensure any such relief from customs duties is secured.
- (b) The Company shall be solely liable for all customs duties levied in St. Vincent and the Grenadines on either the Company or the Contractor and arising out of or in connection with the performance of the Works unless the Contractor has failed to provide the Company, in a timely manner, with copies (conforming to the requirements of Applicable Laws including legalisation by the relevant embassy in the country of manufacture of the relevant goods, equipment or materials or other requirements as are advised by the Company) of the following: (a) original bill of lading consigned to the Company (or any other person designated by the Company); (b) certificate of origin; (c) pro forma invoices; (d) packing slip; and (e) any other documents required to ensure that relief from customs duties is secured as may be advised by the Company.

15. VARIATIONS

15.1 Right to Vary

- (a) The Company may, at any time and for any reason, instruct by notice in writing an addition, deletion, alteration and/or modification to or from the Works or to the timing thereof or to the conditions under which they are to be carried out (a **Variation**). If the Company instructs a Variation which requires the Contractor to modify its performance of the Works, any necessary adjustments to the Milestones, the Milestone Dates, the Guaranteed Completion Date, , the Performance Guarantees and/or the Contract Price resulting from such Variation shall be made only as an Approved Variation in accordance with this Clause 15.
- (b) The Company may, at any time and before instructing a Variation pursuant to Clause 15.1(a), request the Contractor, under cover of a "change proposal request", to submit a proposal, which shall include all information as prescribed in Clause 15.2(a), in respect of the Variation proposed to be instructed, and, in addition, the Contractor shall be entitled to submit a proposal including the same prescribed information of its own initiative in the circumstances and for the reasons set out in Clause 15.1(d) (in either case, a **Variation Order Request**).
- (c) The Contractor shall not make any addition, deletion, alteration and/or modification to the Works unless instructed to do so by a Variation and/or in accordance with an Approved Variation.
- (d) Subject to the terms of this Clause 15, the Contractor shall be entitled to a Variation in the following circumstances:
 - (i) a Change of Law;
 - (ii) a delay caused to the Contractor's performance of the Works by Force Majeure (in which case, any Variation will, if granted, only be in respect of an adjustment to the Milestones, the Milestone Dates and/or the Guaranteed Completion Date);
 - (iii) a delay caused to the Contractor's performance of the Works by a suspension

instructed by the Company pursuant to Clause 16.1 (except as provided in Clause 16.5);

- (iv) any information the subject of the *proviso* in Clause 3.10(b) contains an error or discrepancy that has a material and adverse effect on Contractor's ability to achieve the Performance Guarantees and/or comply with other requirements of this Contract;
- (v) a delay caused to the Contractor's performance of the Works by the Company failure to perform any of its obligations under this Contract or other act of prevention of the Company or any Company Contractor that prevents the Contractor from complying with the Programme; or
- (vi) a delay caused by the Company failing to provide a suitable connection point at least thirty (30) days prior to commissioning.

provided, however, (A) that the Contractor will not be entitled to such an adjustment to the Milestones, the Milestone Dates and/or the Guaranteed Completion Date to the extent that the Company determines that the Contractor's achievement of the Milestones, the Milestone Dates, the Guaranteed Completion Date or the other dates specified in the Programme would have been delayed notwithstanding the occurrence of the events specified in this Clause 15.1(d) and (B) the Contractor will be entitled to an increase in the Contract Price only to the extent that the Company determines that a Variation would actually increase the Contractor's cost and expense of performance of the Works in order for the Milestones, the Milestone Dates and/or the Guaranteed Completion Date to be achieved.

15.2 Variation Procedure

- (a) The Contractor shall:
 - (A) within ten (10) Days of receipt of the Company's "change proposal request", or
 - (B) if the Contractor is requesting the instruction of a Variation in accordance with Clause 15.1(d)(i), within ten (10) Days of becoming aware of the Change of Law; or
 - (C) if the Contractor is requesting the instruction of a Variation in accordance with Clauses 15.1(d)(ii) – 15.1(d)(v), within ten (10) Days of the start of the event(s) described in such Clauses;submit a Variation Order Request which shall include:
 - (i) a description of the work to be performed in order to carry out the addition, deletion, alteration or modification to or from the Works described in the Variation or the Variation Order Request;
 - (ii) the Contractor's proposal for any necessary adjustments to the Milestones, the Milestone Dates, the Guaranteed Completion Date and/or the Performance Guarantees;
 - (iii) if the Variation to the Works necessitates variations under any contracts with any Subcontractors or any other contractors, corresponding estimates from such Subcontractors and contractors; and
 - (iv) the Contractor's proposal for adjustment to the Contract Price (based on unit rates as set out in Exhibit B (Compensation) unless otherwise agreed).

The Contractor's failure to give a Variation Order Request within the time prescribed under this Clause 15.2(a) shall constitute a waiver of any entitlement to a change in the

Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price.

- (b) The Company shall, as soon as practicable after receipt of a Variation Order Request, respond with the issue of a Variation or the Company's rejection of, or comments in relation to, the Variation Order Request.
- (c) If the Parties agree on all changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price required by a Variation and/or a Variation Order Request, the Variation and/or the Variation Order Request shall be effected in accordance with the terms as so agreed and set out in writing.
- (d) If the Parties do not agree on all changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price required by a Variation but the Company nevertheless wishes the Works to proceed on the basis of the Variation, then the Company shall be entitled at any time to instruct the Contractor to immediately commence any Works necessary to effect a Variation notwithstanding that the Parties have not agreed on all changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price. The Contractor shall comply with any instruction of the Company issued in accordance with this Clause 15.2(d) on the terms set out by the Company and the disputed changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price shall be determined in accordance with Clause 25 but any such referral of disputed changes shall not entitle the Contractor to delay or otherwise interfere with the conduct of the Works under this Contract.
- (e) If the Parties do not agree on any changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price required by a Variation Order Request submitted by the Contractor pursuant to Clause 15.1(d), the Contractor shall continue to carry out the Works and the changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price upon which the Parties do not agree shall be resolved in accordance with Clause 25.
- (f) A Variation and/or a Variation Order Request in relation to which changes to the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price have been agreed between the Parties under Clause 15.2(c) or have been finally determined in accordance with Clause 25, shall become an "**Approved Variation**" and from the date of agreement under Clause 15.2(c) or from the date of resolution under Clause 25 (as the case may be) this Contract shall be deemed to be amended in accordance with, and shall be construed in light of, such Approved Variation.
- (g) A Variation and/or a Variation Order Request are effective only if made in accordance with this Clause 15. The Contractor shall not be or become entitled to additional payment for any addition, deletion, alteration or modification to the Works or to any adjustment of the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price unless reflected in an Approved Variation in accordance with this Clause 5 or as determined in accordance with Clause 26.
- (h) The Contractor shall keep such contemporary records as may be necessary to justify any matter described in any of Clauses 15.2(a)(i), 15.2(a)(ii) and 15.2(a)(iii), at such location as may be acceptable to the Company, and such other records as may reasonably be requested by the Company. The Contractor shall permit the Company to inspect all such records and shall provide the Company with copies as requested by the Company.

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- (i) When the Contractor becomes aware of an event giving rise to a delay of its performance of the Works, the Contractor shall forthwith take all reasonable measures to avoid or minimise such delay and shall inform the Company of such measures and shall supply the Company with such information as the Company may reasonably require. The Contractor shall not be entitled to an adjustment of any of the Milestones, the Milestone Dates, the Guaranteed Completion Date, the Performance Guarantees and/or the Contract Price to the extent that the Contractor has failed to take such reasonable measures to avoid or minimise the delay suffered.

15.3 Detailed Design Not a Variation

The Company will not consider any Variation Order Request in respect of a claimed Variation from the Contractor where the Technical Specification and concept of this Contract's overall objectives are not affected and/or where the claimed Variation is merely a closer definition, change in detail or alteration in the manner in which the Works are to be carried out or which is a normal engineering development. Should any Works, goods, equipment and/or materials be required that are not denoted in this Contract or elsewhere in this Contract but that, in the reasonable opinion of the Company and by exercise of the Contractor's stated expertise and application of Good Industry Practice, can be considered necessary for the proper execution of the Works then the Contractor shall perform these Works and/or furnish said goods, equipment and/or materials as if so denoted without request for a Variation.

15.4 Variation Accounts and Cost

The Contractor shall maintain separate accounts for each Variation. All costs incurred by the Contractor pursuant to this Clause 15 in relation to the preparation of submissions in support of any proposal in respect of a Variation or request for a Variation Order shall be for the Contractor's account.

15.5 Critical Path Analysis

To the extent that the Contractor seeks an adjustment to the Milestones, the Milestone Dates and/or the Guaranteed Completion Date pursuant to this Clause 15, it shall only be entitled to an adjustment to the extent that the circumstances causing the Contractor to seek such adjustments to the Milestones, the Milestone Dates and/or the Guaranteed Completion Date and the consequences thereof directly affect the critical path of the Works to achieve specific milestones in accordance with the Programme.

15.6 Longstop

Without prejudice to the time limits specified in Clause 15.2(a), the Contractor shall not be entitled to make a claim, in respect of a Variation pursuant to this Clause 15, after issue of the Practical Completion Certificate.

16. SUSPENSION

16.1 Company Right to Suspend

The Company may, by written notice issued by the Company to the Contractor, order the Contractor to suspend its performance of the Works at any time and for any reason whatsoever. Such notice shall specify which, if not all, parts of the Works that are to be so suspended, the effective date of such suspension together with reasons therefor.

16.2 Without Prejudice to Claims

A notice given under Clause 16.1, shall be made without prejudice to the claims of either Party in respect of any antecedent breach of the terms of this Contract.

16.3 Mitigation

Following a notice under Clause 16.1 and throughout any period of suspension, the Contractor shall use its best efforts to mitigate the impact of the suspension including utilising its personnel and equipment in such a manner so as to minimise the Cost associated with the suspension.

16.4 Contractor's Obligations

Upon receipt of any notice pursuant to Clause 16.1, the Contractor shall, unless the notice requires otherwise:

- (a) immediately suspend the performance of the Works to the extent specified in the notice (except those activities that are necessary for the care or preservation of the Works) until ordered in writing to resume the same by the Company and place no further contracts or subcontracts to the extent that they relate to the performance of the suspended Works;
- (b) properly protect and secure parts of Works already completed, including all data and records obtained through or in the course of performance of the Works;
- (c) comply with any other reasonable requests from the Company regarding the Works or the Project.

16.5 Resumption of Works

Upon receipt of notice from the Company to resume the suspended Works, the Contractor shall as promptly as practicable resume the Works to the extent required in the notice. Any claim on the part of the Contractor for any Variation shall be made in accordance with Clause 15 save that the Contractor shall have no entitlement to a Variation where any suspension is as a result of any act or omission of the Contractor.

17. TERMINATION FOR CONVENIENCE

17.1 Notice of Termination for Convenience

In addition to its rights under Clause 7, the Company may terminate the whole of this Contract or part of the Works at any time at its convenience in accordance with this Clause 17. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the termination of this Contract or the extent of the Works under this Contract that are terminated and the date upon which such termination becomes effective. With the exception of the payments to be made to the Contractor in those circumstances enumerated in Clause 17.3, the Contractor shall not be entitled to any payment or compensation in respect of the termination of the whole of this Contract or the terminated portion of the Works.

17.2 Contractor's Obligations

Upon receipt of any notice delivered by the Company under Clause 17.1, the Contractor shall, unless the notice requires otherwise:

- (a) immediately discontinue work on the date and to the extent specified in the notice and place no further contracts or subcontracts to the extent that they relate to the performance of the terminated Works;
- (b) inventory, maintain and turn over to the Company all goods, equipment, materials, data, drawings, specifications, designs, licences, construction equipment, materials, tools, and property furnished by the Contractor or provided by the Company for performance of the terminated Works;
- (c) promptly obtain cancellation upon terms satisfactory to the Company of all contracts,

subcontracts, rentals, or any other agreements existing for performance of the terminated Works or assign those agreements as directed by the Company;

- (d) co-operate with the Company in the transfer of data, designs, licenses and information and disposition of work in progress so as to mitigate the amount of Company's exposure under Clause 17.3;
- (e) comply with any other reasonable requests from the Company regarding the terminated Works or the Project; and
- (f) continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Works that are not terminated.

17.3 Payment Upon Termination for Convenience

- (a) If requested to do so by the Contractor, the Contractor will be paid to the extent not already done so in accordance with this Contract, as full compensation for the terminated Works (and in full and final settlement of any claims of Contractor pursuant to a termination of this Contract pursuant to this Clause 7 including any flowing from claims of Subcontractors and Third Parties) and within a mutually agreeable timeframe after notice of termination:
 - (i) all amounts due and not previously paid to the Contractor for Works performed and completed in accordance with this Contract prior to the notice of termination and for work thereafter completed as specified in such notice;
 - (ii) a reasonable amount for any goods or equipment requested under a Notice to Proceed then in production; *provided, however*, that no such amount shall be paid to the Contractor with respect to any such goods or equipment the Contractor has not stocked, purchased or manufactured specifically for the Works;
 - (iii) reasonable Costs incurred in demobilisation and the disposition of residual material, and equipment; and
 - (iv) Costs of settling and paying claims to Subcontractors arising out of cancelled orders.
- (b) The total sum to be paid to the Contractor under this Clause 7 shall not exceed the total Contract Price as reduced by the amount of payments otherwise made to the Contractor and as further reduced by that portion of the Contract Price attributable to Works not terminated, and will not include any consideration for loss of anticipated profits on the terminated Works, all claims for which the Contractor waives.

18. DEFAULT OF CONTRACTOR

18.1 Contractor Events of Default

The Company may terminate the whole of this Contract or part of Works in any one of the following circumstances (each a **Contractor Default**):

- (a) if the Contractor fails to perform the Works in accordance with this Contract;
- (b) if the Contractor is in breach of any of its material obligations under this Contract;
- (c) if the Contractor fails to make progress in the performance of the Works so as to endanger performance of this Contract in accordance with the Programme;
- (d) if the Contractor assigns the whole or part of this Contract, or subcontracts the whole

or a part of the Works otherwise than in accordance with Clause 28;

- (e) if the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which under any Applicable Laws has a similar effect to any of these acts or events;
- (f) if the Contractor abandons the Works or repudiates this Contract;
- (g) if the Contractor fails to provide or maintain the Advance Payment Bond in accordance with Clause 12.7 or the Advance Payment Bond is invalid or ineffective or unenforceable in whole or part; or
- (h) if any cap on the Contractor's liability (including under Clause 20.8) is reached under this Contract such that the Contractor has no further liability in relation to the matters to which such cap relates.

18.2 Notice of Default

In the event of any Contractor Default, the Company will provide the Contractor with written notice of the nature thereof and the Company's intention to terminate this Contract pursuant to Clause 18.1. Except for the Contractor Defaults specified in Clauses 18.1(e) and 18.1(h) in relation to which any notice given hereunder shall be immediately effective in terminating this Contract, in the event the Contractor: (a) does not commence to cure such Contractor Default within ten (10) Days of such notice; or (b) does not effect such cure within thirty (30) Days of such notice; or (c) if such Contractor Default is not capable of being cured within such thirty (30) Day period but is capable of being cured within a longer period, does not within such ten (10) Day period, provide a programme acceptable to the Company, which acceptance shall not be unreasonably withheld, to cure such Contractor Default; and (d) does not thereafter diligently pursue such cure in accordance with such programme the Company may, in addition and without limitation to its rights, by written notice, terminate this Contract.

18.3 Consequences of Termination for Default

- (a) In the event the Company terminates this Contract in whole or with respect to a part of the Works as provided in this Clause 8, the Company may procure, upon such terms and in such manner as the Company may deem appropriate to reasonably meet the requirements of the Project under the circumstances, works similar to the Works in respect of which this Contract has been terminated, and the Contractor shall pay the Company the difference between the price paid for all such similar works and the Contract Price applicable to the Works in respect of which this Contract has been terminated. The Contractor shall continue the performance of the Works in accordance with this Contract to the extent they are not terminated under the provisions of this Clause.
- (b) The Contractor agrees to assist the Company in the event that repurchase action is necessary as a result of a Contractor Default by cooperation in the transfer of information, in the disposition of work in progress or residual material and in the performance of other reasonable requests made by the Company.
- (c) The Contractor shall be entitled to payment for Works performed before the effective date of such termination.
- (d) If, after notice of termination of this Contract, it is determined that the Contractor was not in default under the provisions of this Clause 18 the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Clause 17.

18.4 Contractor's Obligations Upon Termination for Default

Upon termination pursuant to a notice issued under Clause 18.2, the Contractor shall:

- (a) immediately discontinue work on the date and to the extent specified in the notice and place no further contracts or subcontracts to the extent that they relate to the performance of the terminated Works;
- (b) inventory, maintain and turn over to the Company all goods, equipment, materials, data, designs, licences, construction equipment, materials, tools, and property furnished by the Contractor or provided by the Company for performance of the terminated Works;
- (c) assign to the Company, on the Company request, all of the Contractor's rights relating to the Project, if any, under contracts or agreements then outstanding;
- (d) co-operate with the Company in the transfer of data, designs, licences and information and disposition of work in progress so as to mitigate the amount of Company's damages;
- (e) comply with other any reasonable requests from the Company regarding the terminated Works or the Project; and
- (f) continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Works that are not terminated.

19. DEFAULT OF THE COMPANY

19.1 Contractor's Entitlement to Terminate

If:

- (a) the Company fails to pay the Contractor any amount due (other than amounts in bona fide dispute) under this Contract within thirty (30) Days after the expiry of the time within which payment is to be made (except for any deduction or set-off that the Company is entitled to make under this Contract); or
- (b) the Company becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which under any Applicable Law has a similar effect to any of these acts or events;

then the Contractor may, after having given thirty (30) Days' written notice to the Company terminate this Contract.

19.2 Consequences of Termination by Contractor

In the event this Contract is terminated in accordance with Clause 19.1 the Contractor shall proceed in accordance with Clause 17.2 and shall be entitled to payment in accordance with Clause 17.3.

20. RISK, RESPONSIBILITY AND LIMITATION OF LIABILITY

20.1 Liabilities and Indemnities

The following terms shall have the stated meaning:

- (a) The term "**Company Indemnified Parties**" shall mean the Company and its Affiliates, any Company Contractor, and each of their respective officers, directors, employees,

agents and representatives and "**Company Indemnified Party**" shall mean any one of these persons; and

- (b) The term "**Contractor Indemnified Parties**" shall mean the Contractor and its Affiliates, any Subcontractor, and each of their respective officers, directors, employees, agents and representatives and "**Contractor Indemnified Party**" shall mean any one of these persons.

20.2 **Between Contractor and Company**

- (a) The Contractor shall Indemnify the Company from and against any and all Losses of any kind (including Losses relating to contractual indemnity claims brought by any Company Contractor) resulting from or arising out of:

- (i) any bodily injury, disease, sickness or death of any employee or invitee of the Contractor Indemnified Parties; or
- (ii) any loss of or damage to the property of any member of the Contractor Indemnified Parties;

in each case, in connection with the provision of the Works or the use of the Site in the provision of the Works by any of the Contractor Indemnified Parties as contemplated by this Contract.

- (b) The Company shall Indemnify the Contractor from and against any and all Losses of any kind resulting from or arising out of:

- (i) any bodily injury, disease, sickness or death of any employee or invitee of the Company Indemnified Parties; or
- (ii) any loss of or damage to the property of any member of the Company Indemnified Parties;

in each case, in connection with the provision of the Works or the use of the Site in the provision of the Works by any of the Contractor Indemnified Parties as contemplated by this Contract.

- (c) The indemnification provisions set forth in Clauses 20.2 and 20.3 will apply regardless of the sole, joint or concurrent negligence, strict liability or other fault of the person entitled to indemnification.

20.3 **Third Parties**

- (a) The Contractor shall Indemnify the Company from and against any and all Losses of any kind resulting from or arising out of: (i) any damage to, loss of and/or loss of use of any Third Party property; or (ii) any injury to or death of any Third Party to the extent caused by the Contractor or any Contractor Indemnified Party in connection with the provision of the Works as contemplated by this Contract.

- (b) The Company shall Indemnify the Contractor from and against any and all Losses of any kind resulting from or arising out of: (i) damage to, loss of and/or loss of use of any Third Party property; or (ii) any injury to or death of any Third Party to the extent caused by the Company or any Company Indemnified Party in connection with the provision of the Works as contemplated by this Contract.

20.4 **Applicable Laws**

The Contractor shall Indemnify the Company from and against any and all Losses of any kind suffered by a Company Indemnified Party by reason of any alleged or actual violation of any

Applicable Laws arising out of the Contractor's or any Subcontractors' acts or omissions or of those of their respective officers, employees and agents in relation to the Contractor's performance of the Works.

20.5 Health & Safety and Environment

The Contractor shall Indemnify the Company from and against any and all Losses of any kind suffered by the Company, and each Company Indemnified Party resulting from or arising out of any breach of the Contractor's obligations under Clause 3.7(a).

20.6 Tax

The Contractor shall Indemnify the Company from and against any and all Losses suffered by any Company Indemnified Party and any and all claims, suits and/or proceedings of any kind brought against any Company Indemnified Party in relation to the Taxes, whether the Taxes are levied on the Contractor and/or Subcontractors or their respective employees or otherwise charged to or levied on any person in relation to or by reason of Contractor's and/or any Subcontractors' performance of the Works and which may be levied by any and all authorities whatsoever. The Contractor further Indemnifies the Company in respect of any Taxes for which the Contractor would be liable pursuant to Clause 413 to the extent any Government Authority requires the Company to satisfy the aforementioned liabilities of the Contractor.

20.7 Limitations on Liability

Notwithstanding any other limitations of liabilities of the Contractor under this Contract, the Contractor's total aggregate liability to the Company for Loss arising out of or resulting from the Contractor's performance of the Works under or in connection with this Contract, whether arising in contract, tort (including negligence whether active or passive), warranty, strict liability or otherwise, shall in no case, save as provided in this Clause 20.7, exceed an amount equal to the Contract Price (the **Liability Limitation**). The Liability Limitation shall not apply to or be reduced by:

- (a) the Contractor's liability in respect of its Indemnity obligations in this Contract;
- (b) the Contractor's liability in the case of fraud, fraudulent misrepresentation, Wilful Misconduct or corrupt practices; and
- (c) any cost to the Contractor arising out of the re-performance of any Works or any Defect on the terms set out in this Contract.

20.8 Maximum Liability for Liquidated Damages

The Contractor's liability for liquidated damages under Clauses 4.3 and 8 shall not exceed an amount equal to fifteen percent (15%) of the Contract Price.

20.9 Excluded Loss

Save in respect of any liquidated damages or any Indemnity in respect of a Third Party claim payable under this Contract, neither Party shall be liable to the other for any consequential, indirect, special, punitive or exemplary damages, loss of power, loss of use, costs of capital or costs of replacement power, increased costs of or loss of anticipated savings (whether direct or indirect) or for any loss of profit, revenue or product.

20.10 Title and Risk of Loss

- (a) Title to the Works, including all goods, equipment, materials, Documents, and other items supplied or to be supplied by the Contractor or its Subcontractors to the Company under this Contract, shall pass to the Company on whichever is the earlier of the following dates:

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- (i) when delivered to the Site, or, in the case of imported items, the first point of entry into St. Vincent and the Grenadines;
 - (ii) when first identified as being specific to the Works and/or the Project;
 - (iii) when the Contractor receives payment from the Company for such Works.

As soon as title to any portion of the Works passes to the Company pursuant to this Clause 20.10(a), the Contractor or its Subcontractors (being whoever has possession of such portion of the Works at the moment title in them passes to the Company) shall ensure that the relevant packaging is clearly and indelibly marked in the name of the Company.

- (b) Irrespective of any transfer in title to any portion of the Works from the commencement of the Works until takeover of the Works and the Battery Energy Storage System in accordance with Clause 9.3(a), the Contractor shall take full responsibility for the care of the Battery Energy Storage System and all parts thereof, together with all Works (including all goods, equipment and materials) incorporated therein. In case any damage or loss shall occur to the Battery Energy Storage System or any part thereof, together with all Works (including all goods, equipment and materials) incorporated therein or to be incorporated therein, from any cause whatsoever, for which the Contractor is responsible pursuant to this Clause 20.10, the Contractor shall promptly repair and make good the same at no cost to the Company so that as at the date of issuance of the Practical Completion Certificate, the Works and the Battery Energy Storage System and all parts thereof shall be in good order and condition and in conformity in every respect with the requirements of this Contract. The Contractor shall also be responsible for any loss or damage to the Works (including any goods, equipment and materials) and/or the Battery Energy Storage System caused by the Contractor or its Subcontractors in the course of any works carried out pursuant to Clause 10 of this Contract. Notwithstanding anything to the contrary contained in this Contract, in the event of any loss or damage to the Works arising from any of the contingencies mentioned below (save where the relevant loss occurs as a result of Contractor act or omission), the Contractor shall, if and to the extent required by the Company, prior to issuance of the Practical Completion Certificate, rectify the loss or damage at the Company's cost. The contingencies are (to the extent not insured by the Company): nuclear reaction, nuclear radiation, radioactive contamination, pressure waves caused by aircraft or other aerial objects, war, civil war, terrorist acts or any other occurrences that are not reasonably insurable by the Company on reasonable terms in the international insurance market at the time the Company procures the insurances for which it is responsible pursuant to this Contract.

21. INSURANCES TO BE PLACED BY CONTRACTOR

21.1 Contractor's Required Insurances

Throughout the term of this Contract, the Contractor shall purchase and maintain at least all of the minimum insurance coverages described below with underwriters and on policies acceptable to the Company (each individually, a **Policy** and, collectively, the **Policies**); *provided, however*, that the minimum limits set forth below or the coverage amounts of such Policies actually maintained by the Contractor (including the lack thereof) shall in no way be deemed to be a limitation of the Contractor's liability under this Contract. The Policies shall be primary to any other insurance that may be available to either the Company, but only with respect to and to the extent of the liabilities and obligations assumed by the Contractor under this Contract. The Contractor shall secure and maintain:

- (a) third party liability insurance covering death or injury to third parties or damage to third party owned property (including costs and expenses of litigation and attorney's fees) with a minimum limit of at least Five Hundred Thousand United States Dollars US\$500,000 per occurrence; marine cargo insurance on an all risks basis with cover in accordance with

prevailing international market terms and conditions (i) insuring all materials, equipment, machinery, spares, supplies and other items to be incorporated in the Works against all risks of physical loss or damage by any means of transport from anywhere in the world to the Site or vice versa (from warehouse to warehouse) so including intermediate transit, intermediate transshipments, and all inland transportation (ii) from the date of first shipment until delivery at Site for last shipment and (iii) with a limit not less than an amount equal to 110% of the total value of the item to be shipped plus freight (CIF).

- (b) "all risks" insurance covering the full replacement value for physical loss or damage to the Battery Energy Storage System, materials and equipment, including all Contractor equipment (if any) during the course of the Works and up to the end of the Defects Liability Period; and
- (c) employer's liability insurance, including coverage for occupational disease, injury or death to employees and workers' compensation insurance, or similar statutory social insurance, as required by the laws of all jurisdictions in which any portion of the operations under this Contract are performed, (including as to policy limit, but in any event to a limit not less than Two Hundred and Fifty Thousand United States Dollars (US\$250,000) per occurrence covering all of the Contractor's employees engaged in performing such operations.
- (d) All insurances as required in accordance with Applicable Laws.

21.2 Special Provisions with Respect to Policies Placed by Contractor

The following provisions shall apply with respect to the Policies referred to under Clause 21.1:

- (a) Nature of Insurances

The insurances referred to herein shall:

- (i) be taken out with reputable, licensed insurers approved by the Company, such approval not to be unreasonably withheld and who are licensed to write insurance in the location within which the activity takes place;
- (ii) be primary to any insurance provided by the Company, unless otherwise stated herein; and
- (iii) include an "indemnity to principal" clause for the benefit of the Company relating to claims made against the Company arising out of the activities of the Contractor.

- (b) Deductibles under Contractor's Insurances

All the deductibles applicable to such insurances shall be for the sole account of the Contractor.

- (c) Waiver of Insurers' Rights of Subrogation

All such insurances shall contain provisions that insurance companies shall have no right of subrogation against the Company, each Company Indemnified Party.

- (d) Company as Additional Assured

All such insurances, with the exception of workers' compensation insurance and employers' liability insurance, shall provide that the Company, and each Company Indemnified Party are additionally insured.

(e) Special Provisions with respect to the Contractor's Third Party Liability Policies

- (i) All the Contractor's third party liability policies shall be primary for all co-insured parties and other insurance that may be carried by the Company shall not be called upon by the Contractor's underwriters to contribute or participate on the basis of contributing, concurrent, double insurance or otherwise, except as otherwise agreed in this Contract.
- (ii) All the Contractor's third party liability policies will include a cross liability provision which covers each insured's third party liability to another insured or additional insured in the same manner as if individual policies had been issued to each such insured.
- (iii) Such policies shall be valid anywhere in the world.

(f) Notice of Cancellation/Alteration

All such insurances must provide that insurers cannot cancel, terminate or materially alter any policy without first having given the Company thirty (30) Days' prior written notice or such other period as may be required by insurers or reinsurers of such risks of an intention to cancel or terminate and, in the case of non- payment of premium, an opportunity for the Company to pay such premium.

(g) Company Right to Examine Contractor's Insurances

On request, the Contractor shall permit the Company to examine original insurance policies issued in compliance with the requirements hereunder. Should the Contractor at any time neglect or refuse to provide any of the insurances described in Clause 21 or should such insurance be cancelled or terminated or substantially reduced, the Company shall have the right to procure the same and the cost thereof shall be deducted from any sums due or thereafter becoming due to the Contractor. Any additional cost involved for the Company in procuring such insurance, or loss due to the fact that the Contractor neglected or refused to provide the insurance or that the insurance is cancelled or terminated or substantially reduced, shall be for the Contractor's account.

(h) Insurance Amounts not constituting Limits of Liability

The insurance amounts indicated in this Clause 21 are minimum requirements and not limits of liability, and they are not to be construed as the Company's consent to substitute its financial liability in excess of the amounts set forth except as otherwise agreed in this Contract.

(i) Notification of Circumstances Likely to Give Rise to a Claim

- (i) As soon as the Contractor is aware of any circumstances which may give rise to a claim under its general third party liability insurances, including employer's liability insurance, the Contractor shall give written notice of such circumstances to its underwriters with a copy to the Company.
- (ii) Such notification shall make reference to the provision that the Company is an additional assured in respect of claims made against it arising out of liabilities accepted by the Contractor and its Subcontractors under this Contract.

(j) Subcontractors

Without prejudice to the Contractor's obligations and responsibilities under this Clause 21, the Contractor shall and shall cause each Subcontractor to take out and maintain, as a minimum, such insurance as specified in this Clause 21 during the term of this Contract.

21.3 Claims Procedure

- (a) The Contractor shall promptly (in any event no later than five (5) Days of the occurrence of the relevant incident) and accurately report to the Company any incident which results or may result in any claim with respect to any of the insurance policies maintained pursuant to this Clause 21, accompanied by full details of the relevant incident.
- (b) In respect of the insurances maintained pursuant to this Clause 21, the Contractor shall provide the Company with written details of any claims settled by the Contractor in respect of such insurances.
- (c) Each Party shall afford the other all such assistance as may reasonably be required for the preparation and negotiation of insurance claims arising out of or in connection with this Contract.

21.4 Failure to Insure

- (a) If the Contractor shall fail to procure or maintain any insurance required pursuant to this Clause 21, then the Company shall have the right to procure such insurance at the Contractor's expense, provided the Company shall have given thirty (30) Days' prior written notice to the Contractor of its intention to exercise such right unless such intention arises from the Contractor's non-payment of premiums for existing insurance in which case the Contractor shall have been given at least five (5) Days' prior written notice of such intention and the Contractor shall reimburse the Company for such premiums within (7) Business Days of being notified to do so.
- (b) If the Contractor fails to take out and/or maintain the relevant insurance under this Clause 21 and the Company does not approve such omission nor effect replacement insurance pursuant to Clause 21.4(a), any monies which would have been recoverable by the Company under the relevant insurance had it been properly taken out and maintained as required, shall be paid or allowed by the Contractor to the Company.

22. NOT IN USE

23. NOT IN USE

24. FORCE MAJEURE

24.1 Notification

If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Contract by an event of Force Majeure (as defined in Clause 24.5), then it shall notify the other Party in writing of the occurrence of such event and the circumstances thereof within two (2) Days of the Party becoming aware of such event. The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under this Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Party so affected shall give written notice to the other Party of the ending of that event within one (1) Day of becoming aware thereof.

24.2 No Liability

Neither Party shall be liable for delays caused by Force Majeure, provided notice thereof is given as required above.

24.3 Mitigation

The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to

mitigate the effect thereof upon its or their performance of this Contract and to fulfil its or their obligations under this Contract.

24.4 No Default

No delay or non-performance by either Party caused by the occurrence of any event of Force Majeure shall:

- (a) constitute a default or breach of this Contract; or
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby.

24.5 Force Majeure

- (a) The term "**Force Majeure**" shall mean any event beyond the reasonable control of the Company or the Contractor, as the case may be, occurring after the date of this Contract and which (or the effects of which) is or are unavoidable notwithstanding the reasonable care of the Party affected, and shall include, subject to the other provisions of this Clause 24, the following:
 - (i) any act of God, the effect of any natural element including any weather conditions of an extraordinary nature or duration, flood, lightning, fire, smoke, cyclone, hurricane, tornado, earthquake, tsunami or other natural disaster;
 - (ii) strikes, work stoppages or other labour disputes or disturbances (including lock-outs) which are wide spread and decreed or recommended for its members by a recognised contractors' association, of which the Contractor and/or a Subcontractor is a member or to which the Contractor and/or a Subcontractor is otherwise bound;
 - (iii) the presence of archaeological artefacts at the Site;
 - (iv) the failure of any Subcontractor to furnish materials or equipment on the dates agreed to if such failure is itself due to an event of Force Majeure;
 - (v) sabotage, terrorism or act of a public enemy (or threats thereof), civil disturbance (including any acts of any individuals engaged in activities in furtherance of a program of irregular warfare), acts of belligerence of foreign enemies (whether accorded diplomatic recognition or not), war, civil war, revolution, rebellion or insurrection, or any attempt, threat or civil strife arising therefrom, exercise of military or usurped power, or any attempts at usurpation of power, invasion, acts of emergency, boycott, blockade, embargo, sanction and riot;
 - (vi) nuclear, chemical or biological contamination;
 - (vii) any plague or epidemic; and
 - (viii) pressure waves caused by devices travelling at supersonic speed.
- (b) It is specifically understood that none of the following conditions shall constitute an event of Force Majeure:
 - (i) reasonably foreseeable weather conditions including high ambient temperatures and rain;
 - (ii) the failure of any Subcontractor to furnish labour, services, materials or equipment on the dates agreed to unless such failure is itself due to an event of Force Majeure;

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- (iii) general economic conditions and exchange rate fluctuations;
 - (iv) the financial condition of the Contractor or any Subcontractor;
 - (v) the financial condition of the Company; and
 - (vi) any matter, thing or circumstance that the Contractor takes risk in pursuant to this Contract.

24.6 Continuing Force Majeure

In the event that any event of Force Majeure continues for a period in excess of one hundred and twenty (120) consecutive or one hundred and eighty (180) non-consecutive Days then either of the Parties may terminate this Contract by written notice without any liability upon either of the Parties to the other save to the extent that any amount that shall have accrued to Contractor prior to the occurrence of the event of Force Majeure.

25. DISPUTES AND ARBITRATION

- (a) If there is any dispute, controversy or claim between the Parties arising out of, relating to, or connected with this Contract, the breach, termination or invalidity hereof, or the provisions contained herein or omitted herefrom (collectively, a **Dispute**), the Party asserting the Dispute shall first submit to a committee consisting of a senior officer of each Party (the **Dispute Committee**) a statement setting forth (a) succinct statement of the issue in Dispute, (b) why such Party believes it is a proper subject for resolution by the Dispute Committee, and (c) a proposed remedy for such Dispute (the **Statement of Dispute**). Within ten (10) Days thereafter, the Dispute Committee shall meet in person or by telephone or other virtual means to discuss and resolve the issue. If the Dispute Committee has failed to agree upon a unanimous resolution of the disputed issues within forty (40) Days following the delivery of the Statement of Dispute to the Dispute Committee, then any Party shall be free to commence arbitration.
- (b) If the Contractor fail to settle the Dispute within the forty (40) Day period but the Dispute is agreed by them to be a technical matter it shall be referred to a Technical Committee of three specialists and arbitration shall be conducted in accordance with the laws of St. Vincent and the Grenadines. One specialist shall be nominated by each Party to the Dispute. Those two specialists shall jointly nominate a third specialist. The decision of the majority of this Technical Committee shall be final and binding on the Parties to the Dispute.
- (c) All Disputes not resolved by the Dispute Committee shall be finally resolved in accordance with Clause 25(d).
- (d) The following principles shall apply in any arbitration under this Contract, unless the Parties unanimously agree otherwise in writing:
 - (i) All Disputes arising out of, or in connection with, this Contract shall be finally settled by binding arbitration under the laws of St. Vincent and the Grenadines by three (3) arbitrators appointed in accordance with the said Rules and the following provisions. The chairman of the arbitral tribunal shall be nominated by the two (2) arbitrators nominated by the Parties.
 - (ii) The arbitration proceedings shall be conducted in the English language and the arbitrators shall be fluent in the English language.
 - (iii) The place of arbitration shall be St. Vincent and the Grenadines.
 - (iv) The arbitral tribunal shall take into account principles of legal privilege, such as those involving the confidentiality of the communications between a lawyer

and a client.

- (v) The Parties waive any right to seek rulings from any court on issues of law that arise during the arbitration or to challenge the award on the grounds that the arbitral tribunal made errors of law or fact.
- (vi) It is understood that the arbitration may concern the on-going conduct of the Project rather than the award of monetary damages. The arbitral tribunal shall therefore have the power to render an award of relief other than money damages, including mandatory or prohibitory injunctions and orders for specific performance. The arbitral tribunal in making its award shall be guided by this Contract, the terms of any other written agreements among the Parties, and such other documents as the arbitral tribunal shall find relevant, and it shall make every effort to give effect to the Parties' intention as expressed therein, the Parties specifically agreeing to waive the application of any law or doctrine that would permit the arbitral tribunal to reach a result that is contrary to the expressed intent of the Parties.
- (vii) Damages of the type described in Clause 20.9 of this Contract shall not be allowed.
- (viii) All costs of the arbitration proceedings, including attorneys' fees and costs, shall be borne in the manner determined by the arbitral tribunal.
- (ix) Any Party to the arbitration, either prior to the appointment of the chairman of the arbitral tribunal or thereafter with the approval of the arbitral tribunal, may request injunctive relief, or other provisional or protective measures from any court having jurisdiction over the Party to which such measures would be applied and such request shall not waive the right to arbitrate.
- (x) Judgment upon the award may be entered in any court having jurisdiction over the Party against whom the award is issued or the assets of such Party or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- (xi) Any monetary award shall be rendered and promptly paid in United States Dollars free of any applicable taxes, deduction or set-off, and any costs, expenses or fees incident to enforcing the award shall be charged against the Party resisting such enforcement.
- (xii) Neither the existence of any Dispute as mentioned in this Clause nor the commencement of any proceedings referred to herein shall relive either Party to the Dispute from its obligation to continue to observe and perform each and every term, condition and provision of this Contract on its part to be so observed or performed, including in the case of the Contractor its obligation to proceed with the Works and the remedying of defects therein and to do so in accordance with the decisions, instructions and orders of the Company even if the dispute concerns any of such decisions, instructions or orders.

26. CONFIDENTIALITY

26.1 Confidentiality Obligation

Subject to this Clause 26, each Party shall keep confidential and shall not, without the written consent of the other Party, divulge to any Third Party the terms and conditions of this Contract, or any Documents or other information furnished directly or indirectly by the other Party in connection with this Contract or the Project (collectively referred to as **Confidential Information**), irrespective of whether such information has been furnished prior to the Effective Date or at any time thereafter (including following termination of this Contract).

26.2 Permitted Disclosure

Either Party shall be entitled to disclose Confidential Information without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to the extent required by any Applicable Laws;
- (b) to any insurer under a policy of insurance issued pursuant to this Contract;
- (c) to any of its Affiliates;
- (d) to its directors, employees and officers;
- (e) to any Subcontractor or any Company Contractor, for the furtherance of the performance of that Party's obligations under this Contract;
- (f) to outside consultants or advisers engaged by or on behalf of the disclosing Party or any Affiliate of the disclosing Party and acting in that capacity in connection with the Project;
- (g) to any engineering, construction and procurement contractors and to those contractor(s) that the Company proposes to retain to operate or maintain the Works and/or the Battery Energy Storage System or construct, operate or maintain any aspect of the Project (and any Affiliates of such contractors(s)); or
- (h) in the case of the Company, to its shareholders,

provided, however, that in the case of the persons mentioned in Clauses 26.2(b) to 26.2(h) the disclosing Party shall have first obtained the person's agreement in writing to be bound by the same obligations of confidence, *mutatis mutandis*, as are created by the terms of this Clause 26.

26.3 Use of Information

Contractor shall not use any Confidential Information received from Company for any purpose other than the performance of its obligations under this Contract.

26.4 Exceptions

The obligations of a Party under this Clause 26 shall not apply to Confidential Information which:

- (a) is known to either Party (as evidenced by its written records) prior to obtaining the same from the other or any party on behalf of the other;
- (b) now or hereafter has entered the public domain through no fault of that Party;
- (c) otherwise lawfully becomes available to that Party from a Third Party under no obligation of confidentiality; or
- (d) is required to be disclosed by the Contractor to comply with any Applicable Laws or in accordance with any request by any government, statutory or regulatory body;

and in the event of any disclosure made pursuant to any of paragraphs (a) to (d), the Contractor shall immediately notify the Company of such disclosure or, if reasonably practicable, notify the Company as soon as possible prior to such disclosure so as to enable the Company to contest such disclosure or otherwise agree the content and timing of such disclosure.

26.5 Survival of Termination; Replacement

The provisions of this Clause 26 shall survive termination or expiry for whatever reason of this Contract and shall be without limit in point of time. The provisions of this Clause 26 will replace any confidentiality agreement entered into between the Parties with respect to the Works and the Project.

26.6 Press Releases

All press releases and information intended to be supplied to news media or otherwise to be published by the Contractor shall be subject to the prior written consent of the Company.

27. ASSIGNMENT

27.1 Contractor's Right to Assign

The Contractor shall not assign all or any of its rights under this Contract, nor shall any share or interest therein in any manner or degree be assigned by the Contractor, directly or indirectly, without the prior consent in writing of the Company. Any and all purported assignments of rights under this Contract without the prior consent in writing of the Company are void. Notwithstanding any assignment to which the Company has given consent, the Contractor shall be and remain solely responsible for the quality and proper execution of the Works, shall remain responsible for the performance of any assignee and shall remain liable for any breach of this Contract.

27.2 Company Right to Assign

The Company shall have the right to freely assign its rights under this Contract. The Contractor irrevocably consents to and hereby acknowledges any such grant, transfer and assignment.

28. SUBCONTRACTORS

28.1 The Contractor shall not subcontract all of its obligations under this Contract.

28.2 The Contractor shall be fully responsible for any part of this Contract performed by its Subcontractor(s) and for the acts and omissions of Subcontractor(s) and persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons directly employed by the Contractor.

28.3 The Contractor shall ensure that its subcontracts with Subcontractors shall reflect and be consistent with the provisions of this Contract including the confidentiality provisions in Clause 26. No such subcontract shall create any contractual relationship between the Company and any Subcontractor.

28.4 The Contractor shall take all precautions to ensure that all Subcontractors are financially sound and capable of complying with all conditions of any agreements or contract documents prepared by the Contractor.

28.5 The Contractor shall take all necessary actions to enforce warranties obtained from its Subcontractors.

28.6 All subcontracts with Subcontractors shall be freely assignable to the Company upon the Company written request and the Contractor shall ensure each subcontract provides that such subcontract shall be freely assignable to the Company by the Contractor. The Contractor shall, on the expiry of the Defects Liability Period or earlier termination of this Contract, assign, and hereby assigns effective as of such date, or otherwise make available, to the Company all of Contractor's rights under all such subcontractor guarantees and warranties and shall deliver to the Company copies of all documents required for the enforcement of such guarantees and warranties. After the assignment of rights pursuant to the preceding sentence, the Company

shall be entitled to receive all proceeds (including damages and liquidated damages) paid by any Subcontractor pursuant to any subcontract.

- 28.7 The Contractor shall provide the Company promptly with a copy of any unpriced subcontract with a Subcontractor of the first tier and any other tier requested by the Company.

29. NOTICES

Any notice provided for by the terms and conditions of this Contract shall be in writing and shall be deemed effective as follows: (a) if delivered personally, upon delivery; (b) if delivered by email, at the time of sending, provided that the delivery shall not occur if the sender receives an automated message indicating that the message has not been delivered to the recipient at the time of transmission, ; (c) if sent by post, upon certified receipt; (d) if sent by a courier service, upon receipt; or (e) if sent by facsimile transfer, when dispatched but only if sender's transmission report shows the entire facsimile to have been received by the recipient. Notices shall be addressed to the following persons and addresses (or to such other persons or addresses as either Party may add or substitute by written notice):

If to Company:

To:

Attention:

If to Contractor:

To:

Attention:

30. SPARES AND OBSOLESCENCE

30.1 Notice

- (a) If, at any time prior to or during the period of twenty (20) Years after expiry of the Defects Liability Period, the Contractor intends to discontinue or becomes aware that any Subcontractor or supplier intends to discontinue the manufacture of spare or replacement parts for the major items of equipment used in the Battery Energy Storage System the Contractor shall forthwith give notice to the Company of such intention and afford the Company the opportunity (which should be executed within three (3) Months of such notice) of ordering at such reasonable prices as shall be agreed between the Contractor and the Company such quantities of such spare or replacement parts as the Company shall reasonably require in relation to the anticipated life of such equipment.
- (b) Alternatively, the Contractor and the Company may agree within the said period of three (3) Months upon a reasonable price at which the Contractor will sell to the Company such drawings, patterns, specifications and other information as he may have in his possession and as the Company shall require to enable the Company to make or have made such spare or replacement parts.

30.2 Remedies

If during the period of Years referred to in Clause 30.1, the Contractor either fails to fulfil an order for the supply of spare or replacement parts given by the Company in accordance with Clause 30.1, or having given notice in accordance with Clause 30.1 either:

-
- (a) fails to make available to the Company with reasonable dispatch and at reasonable prices all such spare or replacement parts as the Company shall reasonably require; or
 - (b) becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or being a corporation commences to be wound up, or has an administration order made against him or carries on his business under an administrator or a receiver or manager for the benefit of his creditors or any of them,

then the Contractor shall so far as he is legally entitled so to do and if so required by the Company as soon as reasonably practicable deliver to the Company free of charge such drawings, patterns, specifications and other information as are referred to in Clause 30.1 and which the Company shall be entitled to retain for such time only as is necessary for the exercise by the Company of his rights under Clause 30.1 and which if the Contractor so requires shall be returned by the Company to the Contractor in good order and condition (fair wear and tear excepted) and at the Company's cost and expense.

30.3 Licence

If the Company shall exercise the right under Clause 30.2 the Contractor shall also grant to the Company without payment or any royalty or charge full right and liberty to make or have made spare or replacement parts for the relevant equipment.

30.4 Subcontractors and suppliers

The Contractor shall use his best endeavours to bind his Subcontractors or suppliers to warrant direct to the Company that they will conform with the requirements of this Clause (with references herein to the Contractor being read as references to the relevant Subcontractor) and he will, prior to entry into any subcontract provide the Company with full details of any Subcontractor who will not so warrant in which event the Company may direct the Contractor to seek an alternative Subcontractor.

31. SOFTWARE (if applicable)

31.1 Standard Software

Title and copyright will remain at all time the Contractor's or its sub-contractor's property. The Contractor will transfer an unlimited right of use of any Software delivered by the Contractor and required for the operation of the Battery Storage Energy System.

31.2 Copies

The Company shall be entitled to a minimum of three (3) copies of the Software as it may reasonably require for its own internal use without the payment of any royalty to the Contractor or any particular subcontractor and will ensure that all such copies acknowledge the Contractor's or Subcontractor's copyright therein.

31.3 Approval of Software specification, testing, training and documentation

The Contractor shall prepare and provide to the Company within sixty (60) Days of the Effective Date a draft report setting out its detailed proposals relating to the identification, specification and provision of the Software (and its related computer hardware), the testing of Software, the training to be given to the Company's staff in relation to the Software and O&M Procedures Manuals or documentation to be provided for use in connection with the Software. Within one (1) Month of receipt, the Company shall approve the draft report or inform the Contractor why it considers any proposal not to be in accordance with this Contract. If the latter, the Contractor will review the Company comments and carry out such amendments to the proposals in the draft report and, if they are in compliance with the Contract, the Company shall approve the same.

32. URGENT REPAIRS

If by reason of any accident or failure or other event occurring to or in connection with the Works or any part thereof, either during the execution of the Works or during the Defects Liability Period, any remedial or other work or repair shall in the opinion of the Company be urgently necessary and the Contractor is unable or unwilling at once to do such work or repair, the Company may by its own or other workmen do such work or repair as it considers necessary. If the work or repair so done by the Company is work which in its opinion the Contractor was liable to do under this Contract, all cost and charges properly incurred by the Company in so doing shall on demand be paid by the Contractor to the Company or may be deducted by the Company from any monies due or which may become due to the Contractor, provided always that the Company shall as soon as possible after the occurrence of any such emergency and, in any event, no later than thirty (30) Days of such occurrence notify the Contractor thereof in writing.

33. MISCELLANEOUS

33.1 Entire Agreement

This Contract embodies the entire agreement between Company and Contractor with respect to the Works. To the extent permitted by the Applicable Laws the Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

33.2 Rights and Remedies of the Company are Cumulative and Not Exclusive

No single or partial exercise of any right or remedy under this Contract by the Company shall preclude any other or further exercise of that right or remedy or the exercise of any other right or remedy by the Company under this Contract and the rights and remedies of the Company under this Contract shall be cumulative and not exclusive of any rights, remedies, powers and privileges provided by or available under common law or in equity, including the right to specific performance, injunctive relief and/or direct monetary damages.

33.3 Independent Contractor

- (a) The Contractor undertakes that it and its Subcontractor(s) are fully experienced and properly qualified to perform the Works, and that they are properly equipped, organised and financed to perform such Works. The Contractor shall act as an independent contractor in performing Works, maintaining complete control over its employees and all Subcontractors and shall in no case represent, or be the agent of, the Company or act in the Company's name without the prior written consent of the Company.
- (b) Nothing contained in this Contract or any subcontract awarded by the Contractor shall create any contractual relationship between the Company and any such Subcontractor(s). The Contractor shall perform all Works in accordance with its own methods, subject to compliance with this Contract.
- (c) Nothing in this Contract shall create an association, joint venture or partnership between the Parties or impose any partnership liability on any Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment or act on behalf of or otherwise bind the other Party without that Party's prior written consent.

33.4 Effect of Invalid Provisions

If any term, condition or provision of this Contract is held to be invalid, illegal or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract. The Parties undertake to replace any

invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

33.5 Rights of Third Parties

- (a) Subject to Clause 33.5(b), this Contract is not intended to confer any legally enforceable rights on any person other than the Parties or their successors in title and their assignees.
- (b) The Company, or their successors in title and their assignees, shall be a third-party beneficiary to and shall be entitled to enforce its rights pursuant to this Contract.

33.6 Conflict of Interest

- (a) Neither the Contractor nor any of its subsidiaries or Affiliates shall in connection with the Works enter into contract, give an undertaking, bid, enter into a joint venture partnership, have any relation with a Third Party or enter into any other arrangement to perform any services or to supply materials or equipment which may be prejudicial to performance of the Works pursuant to this Contract.
- (b) Each Party shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the best interests of the other Party. This obligation shall apply to the activities of employees, agents, or representatives of each Party in their relations with the employees, and their families, of the other Party, and of Third Parties arising from this Contract and performance of the work provided herein. Each Party's efforts shall include establishing precautions to prevent its employees, agents, or representatives from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations for the purpose of influencing individuals to act contrary to the best interests of the other Party.
- (c) The Contractor shall promptly notify the Company of the identity of any employee, agent, or representative of the Company who has at any time during performance of this Contract any financial interest in the Contractor's business.

33.7 Waiver

No term, condition, right, obligation or breach of this Contract shall be waived or be deemed to have been waived unless such waiver is in writing and addressed to the other Party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or conditions of this Contract unless expressly stipulated in such waiver. Waiver of one term, condition, right, obligation or breach shall not constitute waiver of any other term, condition, right, obligation or breach, unless otherwise specifically stated in writing and addressed to the other Party.

33.8 Joint and Several Liability

To the extent that the Contractor is comprised of more than one (1) person in joint venture, consortium or other unincorporated or incorporated grouping of two (2) or more persons:

- (a) these persons shall be jointly and severally liable to the Company for all obligations and liabilities of the Contractor as set out in this Contract;
- (b) these persons shall notify the Company of such natural person or persons who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall keep the Company informed promptly of any changes in the joint venture including: change in legal status; dissolution; amalgamation; demerger; merger; deterioration in financial condition; deratings; receiverships; liquidations; winding-up petitions; major legal claims and suits; and any other matter or

circumstance that could reasonably be deemed to be of concern to the Company.

33.9 Execution In Counterparts

This Contract may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of a scanned executed counterpart of a signature page to this Contract by email shall be effective as delivery of a manually executed counterpart of this Contract.

33.10 Anti-Corruption, Anti-Bribery and Sanctions Provisions

- (a) The Contractor represents, warrants and undertakes to the Company that:
 - (i) Neither it nor (to its actual knowledge having made reasonable enquiries) any of its directors or officers (acting on behalf of the Contractor), the Subcontractors or the Suppliers has committed a Prohibited Act.
 - (ii) Neither it nor (to its actual knowledge having made reasonable enquiries) any of its directors, officers, employees, the Subcontractors or the Suppliers is a person that is, or is majority-owned or controlled by a person that is:
 - (A) currently subject to any Sanction; or
 - (B) located, organised or resident in a country or territory that is the subject of comprehensive Sanctions.
 - (iii) It shall not directly or (to the extent within its actual knowledge) indirectly lend, make payments of, contribute or otherwise make available funds:
 - (A) for the purpose of financing the activity of any person currently subject to Sanctions;
 - (B) for the benefit of any country whose government is the subject of country-wide Sanctions; or
 - (C) for the benefit of any person listed on a Sanctions list or organised or located in any country or territory whose government is the subject of country-wide or territory-wide Sanctions, in a manner that would result in a violation of Sanctions.
 - (iv) It shall not engage in (and shall procure that no person acting on its behalf shall engage in) any Sanctionable Practices in relation to its business and operations (including in respect of the Works).
 - (v) it shall not engage (and shall procure that no person acting on its behalf shall engage) in any Money Laundering or financing of terrorism in relation to the Works.
 - (vi) it shall not engage in (and shall procure that no person acting on its behalf shall engage in) Prohibited Acts.
 - (vii) it shall use its best endeavours to ensure that each contract it enters into the Subcontractors or the Suppliers with respect to the Works contains provisions, at least as comprehensive as those contained in this Contract, related to Sanctions and Prohibited Acts.

-
- (b) The following are **Prohibited Acts** for the purposes of this Contract:
- (i) offering, giving or agreeing to give to any person employed by or on behalf of any public body or Government Authority any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other agreement or any contract relating to the Works or the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Contract or any contract with any public body or Government Authority;
 - (ii) entering into this Contract or any contract with the Company or any public body or Government Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before this Contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company and any relevant public body or Government Authority;
 - (iii) committing any offence;
 - (A) under any Applicable Laws creating offences in respect of fraudulent acts; or
 - (B) at common law in respect of fraudulent acts in relation to the obtaining or performance of this Contract or any other agreement relating to the Works or the Project; or
 - (iv) defrauding or attempting to defraud or conspiring to defraud any public body or Government Authority.

33.11 Claims and Liens

- (a) The Contractor shall not file or permit (and shall ensure its Subcontractors do not so file or so permit) any claims, liens or charges of any nature (collectively, **Liens**) against the Company's property (including the Plant), the Works, the Battery Energy Storage System or any portion of the Project without the Company's prior written approval. The Contractor shall Indemnify the Company from and against any Liens made, exercised or asserted against the Company or its property, the Works, the Battery Energy Storage System by the Contractor, any Subcontractor and its or their respective employees or by any other person whomsoever whether by judicial action and/or other proceeding and arising from or in respect of the Contractor's performance of Works.
- (b) Except in case of the Company's default, the Company shall promptly advise the Contractor of any such judicial action and/or other proceeding as is referred to in Clause 33.11(a) and shall allow the Contractor a reasonable period within which to settle or otherwise dispose of the same at no cost to the Company. If the Contractor is unable to settle or otherwise dispose of the relevant action or proceeding as aforesaid within such period, it shall upon receiving written demand from the Company, immediately reimburse the Company all sums which the Company may actually pay in respect of the said claims together with all costs and expenses incurred in connection with such claims, liens or charges, including all legal fees and expenses whatsoever on a full indemnity basis.
- (c) Without prejudice to Clause 33.11(b), the Contractor shall, on receiving written notice from the Company, or on otherwise becoming aware of any asserted Lien which is of

the kind described in Clause 33.11(a) and which interferes with the Company's free control of assets or with due and timely performance of Works, immediately procure the release or discharge of such Lien at its own expense, and shall reimburse the Company for any cost or expense suffered or incurred as a result of the imposition of same. Should the Contractor fail to procure the release or discharge of the Lien within thirty (30) Days of first receiving the Company's said written notice or otherwise becoming aware of the Lien, the Company may procure the release or discharge of same at its own expense and the Contractor shall Indemnify the Company from and against, and immediately reimburse the Company for, all Losses incurred in doing so.

- (d) The Company shall have first and paramount Lien on all goods, equipment and materials forming part of the Works to secure performance of the Contractor's obligations hereunder. The Contractor undertakes not to create or do any act, deed or thing which would result in the creation of any other Lien on any goods, equipment and materials forming or intending to form part of such Works.

33.12 Governing Law

This Contract shall be governed by, and construed in accordance with the laws of St. Vincent and the Grenadines. Subject to Clause 25 including the arbitration provisions thereunder, where the Parties have been prevented by Applicable Laws from exercising their rights pursuant to Clause 25, the Parties submit to the exclusive jurisdiction of the courts of St. Vincent and the Grenadines.

33.13 Survival

The provisions of the following Clauses shall survive the termination of or expiry of this Contract whether by completion of the execution of the Works or otherwise: 6.2, 7.1(b), 10, 11, 12, 13, 17, 18, 20, 24, 25, 26 and 33. This Clause 33.13 is without prejudice to any accrued rights and obligations of the Parties as at the date of any termination or expiry of this Contract.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Contract has been executed by duly authorised representatives of the Parties, on the date first written above.

For and on behalf of:

For and on behalf of:

Name:

Name:

Title:

Title:

The Parties agree to sign this Contract by electronic signature (whatever form the electronic signature takes) and that this method of signature is conclusive evidence of the Parties' intention to be bound by this Contract as if signed by manuscript signatures.

ANNEXURE 1

PART I: FORM OF ADVANCE PAYMENT BOND

THE parties to this Bond are:

----- (name
of Bank) whose registered office is at-----
-----('the Surety'),

and

ST. VINCENT ELECTRICITY SERVICES LIMITED (VINLEC)

whose registered office is at Paul's Avenue, Kingstown, St. Vincent and the Grenadines
(‘the Employer’).

- 2 The Employer and-----('the Contractor') have agreed to enter into a contract for Engineering, Procurement, and Construction ‘(the Works)’ of a ----- (MW) Battery Energy Storage System at Cane Hall Power Station, St. Vincent and the Grenadines (‘the Contract’).
- 3 The Employer has agreed to pay the Contractor the Sum of ----- (insert dollar amount) as an advance payment of sums due to the Contractor under the Contract (the Advance Payment) for reimbursement by the Surety on the following terms:
 - (a) When the Surety receives a demand from the Employer in accordance with Clause 3(b) the Surety shall repay the Employer the sum demanded up to the amount of the Advance Payment.
 - (b) The Employer shall in making any demand provide to the Surety a completed notice of demand (as per Annexure 1, Part II of the EPC Contract) which shall be accepted as conclusive evidence for all purposes under this Bond.
 - (c) The Surety shall within 5 Business Days after receiving the demand pay to Employer the sum so demanded. ‘Business Day’ means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in St. Vincent and the Grenadines.
- 4 Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Contractor and whether or not the Employer and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this bond and shall discharge the Surety from liability to the extent of such payment.
- 5 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:
 - (a) waiver by the Employer of any of the terms, provisions conditions obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;
 - (b) any modification or changes to the Contract: and/or
 - (c) the granting of any extension of time to the Contractor without affecting the terms of clause 7-c below.

two of its duly constituted attorneys on record
in the presence of

ANNEXURE 1

PART II: FORM OF PAYMENT DEMAND – ADVANCE PAYMENT BOND

Date: [date]

Contract Ref No: [●]

To: [Issuing bank name and address]

From: [Company name and address]

Re: Demand on the Irrevocable Transferable Advance Payment Bond number [number] issued on [date] by [issuing bank name and address] (the **Bond**).

Dear Sirs,

We, the undersigned, being the beneficiary under the above captioned Bond issued by [issuing bank's name and address] on the instructions of [Contractor's name] (the **Contractor**), hereby request you to pay to us on receipt by you of this demand the amount of [currency and amount in figures and letters] only.

We certify that this demand for payment is permitted under the terms of Contract dated [●] between [Company] and the Contractor.

Please make payment on this demand by wire transfer of immediately available funds to the following account:

[Insert account details]

[●]

By: _____

Name: _____

Title: _____

ANNEXURE 1

PART III: FORM OF TRANSFER CERTIFICATE – ADVANCE PAYMENT BOND

Date: [date]

Contract Ref No: [●]

To: [Issuing bank name and address]

From: [Company name and address]

Re: Transfer Certificate, on the Irrevocable Transferable Advance Payment Bond number [number] issued on [date] by [Issuing bank] (the **Bond**).

Ladies and gentlemen:

For value received, the undersigned Company hereby irrevocably transfers to [transferee's name and address] (the **Permitted Transferee**) all rights of the undersigned Company to draw under the Bond.

By this transfer, all rights of the undersigned Company in the Bond are transferred to the above Permitted Transferee and the Permitted Transferee shall thereafter have the sole rights as beneficiary thereof, including the undersigned Company's rights relating to all amendments, whether increases or extensions, now existing or hereafter made. All amendments are to be advised directly to the Permitted Transferee without the consent of, but with notice to, the undersigned Company.

The original Bond including all amendments, if any, are returned herewith and in accordance therewith we confirm that you immediately effect this transfer of the Bond to the above Permitted Transferee.

Transfer charges are for the account of the undersigned Company and are to be paid at time of transfer.

[COMPANY]

By: _____

Name: _____

Title: _____

(Permitted Transferee's name)

By: _____

Name: _____

ANNEXURE 2

FORM OF NOTICE TO PROCEED

Date: [●]

Contract Ref No: [●]

To: [●]

From: [●]

Notice to Proceed

This Notice to Proceed is hereby issued by [Company] (the **Company**) to [●] (the **Contractor**) and is dated as of [●].

Pursuant to a Contract between the Company and the Contractor dated [●], [●] (the **Contract**) the Contractor is hereby instructed to commence the Works in accordance with the Contract.

Signed for and on behalf of

[COMPANY]

By: _____

Name:

Title:

ANNEXURE 3

PART I: FORM OF PRACTICAL COMPLETION CERTIFICATE

DATED:

Contract Ref No: [●]

Contract:

Dated:

Between:

..... (the **Company**),

and

..... (the **Contractor**)

Pursuant to Contract between the Company and the Contractor dated [●] (the **Contract**), it is hereby certified and agreed, by the issuance of this Practical Completion Certificate that the conditions for Practical Completion set out in Clause 9.1 of the Contract have been satisfied.

Notwithstanding the issuance of this Practical Completion Certificate, the Contractor shall not be relieved of any obligations under the Contract or at law that survive the issuance of this Practical Completion Certificate.

For and on behalf of

For and on behalf of

[COMPANY]

[CONTRACTOR]

Signature: _____

Signature: _____

Name:

Name:

Position:

Position:

Witness:

Witness:

ANNEXURE 3

PART II: FORM OF FINAL COMPLETION CERTIFICATE

DATED:

Contract Ref No: [●]

Contract:

Dated:

Between:

..... (the **Company**),

and

..... (the **Contractor**)

Pursuant to an agreement between the Company and the Contractor dated [●] (the **Contract**), it is hereby certified and agreed, by the issuance of this Final Completion Certificate that the conditions for Final Completion set out in Clause 9.4 of the Contract have been satisfied.

Notwithstanding the issuance of this Final Completion Certificate, the Contractor shall not be relieved of any obligations under the Contract or at law that survive the issuance of this Final Completion Certificate.

For and on behalf of

For and on behalf of

[COMPANY]

[CONTRACTOR]

Signature: _____

Signature: _____

Name:

Name:

Position:

Position:

Witness:

Witness:

ANNEXURE 4

FORM OF LIEN WAIVER

Reference is made to Contract (the **Contract**) dated [●] between the undersigned Contractor and Company for the performance of works in accordance with the Contract (**Works**), in connection with the Project. Terms capitalised in this lien waiver shall have the meaning given to those terms in the Contract. In consideration of the payment of [] as final payment under the Contract, the Contractor hereby unconditionally releases and forever discharges the Company from any and all manner of claims, suits and/or proceedings including but not limited to claims, suits and/or proceedings as to title, demands, rights, liens or any cause of action whatsoever arising under or in relation to the Contract and which exist as of the date of this waiver, except as may have been agreed with the Company and as are set forth below:

[Insert any exceptions to the waiver] [/None]

As additional consideration for such final payment, the Contractor hereby unconditionally agrees to protect, defend, indemnify and hold harmless the Company from and against any costs, expenses, losses, liabilities and/or claims, suits and/or proceedings of any kind, arising under or in relation to the Contract (except for those claims, suits and/or proceedings agreed within the Company and set out above) and asserted by the Contractor or any of its Subcontractors or any of their respective representatives, officers, agents or employees.

The foregoing provisions shall not act to relieve the Contractor of any of its obligations under any of the provisions of the Contract that by their nature survive completion of the Works, including any indemnities, warranties or guarantees.

Executed this _____ day of _____ 20_____.

Name of Contractor: _____

By (Signature): _____

Print Name: _____

Title: _____