

This template was commissioned by the German Federal Ministry of Economic Affairs and Energy (BMWi) within the German Energy Solutions Initiative and co-funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) through the develoPPP Programme and co-funded by the EU-Vietnam Energy Facility (EVEF).



**Legal Framework for Embedded Production in Vietnam**

**Template – Solar Lease and Maintenance Contract**

**Published by:**

Deutsche Gesellschaft für

Internationale Zusammenarbeit (GIZ) GmbH

Registered offices

Bonn and Eschborn

Köthener Str. 2–3

10963 Berlin, Deutschland

T +49 61 96 79-0

F +49 61 96 79-11 15

E info@giz.de

I www.giz.de

**Programme/project description:**

Project Development Programme (PDP), develoPPP, EU-Vietnam Energy Facility (EVEF)

**Author/Responsible/Editor, etc.:**

Becker Büttner Held (BBH) and Asia Counsel

**Design/layout, etc.:**

Project Development Programme (PDP), Berlin

**Photo credits/sources:**

Cover Image: GIZ GmbH

This geographical map is for informational purposes only and does not constitute recognition of international boundaries or regions; GIZ makes no claims concerning the validity, accuracy or completeness of the maps nor assumes any liability resulting from the use of the information therein.

**URL links:**

Responsibility for the content of external websites linked in this publication always

lies with their respective publishers. GIZ expressly dissociates itself from

such content.

On behalf of

German Energy Solutions Initiative of the

German Federal Ministry of Economic Affairs and Energy (BMWi)

Berlin, German Federal Ministry of Economic Cooperation (BMZ) and EU-Vietnam Energy Facility (EVEF)

GIZ is responsible for the content of this publication.

It should also be noted that this template only

reflects the opinion of the author BBH and its partners.

Berlin, 2020

**Disclaimer**

This model contract can be used as a template from which a specific agreement can be developed. As with any model contract, the parties will need to finalise and tailor it to their specific situation and circumstances and the commercial agreement that the parties are looking to document. Any interested parties are recommended to obtain legal, tax and technical advice to adapt the document for each specific situation. While to the maximum extent possible the authors of these Guidelines have attempted to provide legally correct information, the document or its authors and publishers cannot be held legally responsible for its full accuracy.

The authors or publishers will therefore not be held liable regarding any business losses, including without limitation loss of or damage to profits, income, revenue, production, anticipated savings, contracts, commercial opportunities or goodwill.

Anybody using these templates is highly encouraged to provide feedback to GIZ on any legal or regulatory changes they may be aware of, as well as the application and interpretation of them. Feedback on the general usefulness of this document is also much appreciated, in order to improve future versions.

**Solar Lease and Maintenance Contract[[1]](#footnote-1)**

**This Solar Lease and Maintenance Contract** (the “**Agreement**”)

is made on [\*\*\*]**[[2]](#footnote-2)**

**Between**

1. **[\*\*\*][[3]](#footnote-3)** a [[limited liability/joint stock] company incorporated in Vietnam, with enterprise registration certificate number [\*\*\*], issued on [\*\*\*] by the Department of Planning and Investment of [\*\*\*] and whose registered office is at [\*\*\*]] **OR** [a [\*\*\*] citizen, holding ID Card No. [\*\*\*]issued on [\*\*\*] and residing at[\*\*\*] (the "**Customer**"); and
2. **[\*\*\*][[4]](#footnote-4)** [a [limited liability/joint stock] company incorporated in Vietnam, with enterprise registration certificate number [\*\*\*], issued on [\*\*\*] by the Department of Planning and Investment of [\*\*\*] and whose registered office is at [\*\*\*] (the "**Solar Service Company**")

(Each of the Customer and the Solar Service Company is hereinafter referred to as a “**Party**” and collectively as the “**Parties**”). [[5]](#footnote-5)

**Whereas:**

1. The Solar Service Company is engaged and experienced in the business of planning, designing, installing, maintaining and leasing rooftop solar PV systems for residential, commercial and industrial customers.
2. The Customer wishes to engage the Solar Service Company to design, install, and maintain a rooftop solar PV system at the Site and to initially lease and subsequently purchase the system from the Solar Service Company, and the Solar Service Company agrees to be engaged by the Customer for these purposes, on the terms and conditions of this Agreement. [[6]](#footnote-6)

**It is hereby agreed as follows:**

1. **Definitions**
   1. In this Agreement, words and expressions shall, save as the context otherwise requires, have the following meaning:

**“Bank Guarantee”** has the meaning given to it in Clause 21.1.

**[“Bi-directional Meter”** means the alternating-current meter installed as required by the Utility for connection of the Solar PV System to the Grid and for the purposes of the Utility PPA;][[7]](#footnote-7)

**“Business Day”** means a day on which commercial banks are open for business in Vietnam and excludes any Saturday, Sunday and public holidays in Vietnam;

“**Civil Code**”means the Civil Code No. 91/2015/QH13 issued by the National Assembly of the Socialist Republic of Vietnam on 24 November 2015 and any successor legislation;

**“Commercial Operation Date”** means thefirst day on which the Solar PV System is mechanically complete and capable of providing electric energy to the Delivery Point on a sustained basis and the Solar Service Company has obtained all required Permits from the relevant Governmental Authorities for the commercial operation of the Solar PV System as contemplated under this Agreement;

**“Conditions Precedent”** meansthose conditions as set out in Schedule 1.

**“Deemed Generation”** means the amount of Energy Output that the Solar PV System had the capacity of generating and delivering to the Delivery Point but was prevented from generating and/or delivering to the Delivery Point as a result of a the Customer’s failure to take delivery of such Energy Output, the Customer’s breach of this Agreement or otherwise as agreed pursuant to the terms of this Agreement calculated based on the average per day from the Solar PV System in the same month of the previous calendar year or, if the period of consideration is within the first twelve (12) months following the Commercial Operation Date, the deemed generation per day will be based on the daily average as calculated based on the Projected Annual Energy Output.

**“Delivery Point”** means the point at which the Energy Output is delivered to the Existing Electrical System [on the Customer’s side of the System Meter] as further described in Schedule 2 and highlighted in the relevant drawing listed in Schedule 2**.**

**“Disclosing Party”** has the meaning given to it in Clause 31.1.

**“Effective Date”** means the date of signing of this Agreement.

**“Energy Output”** means the electricity generated by the Solar PV System measured in kWh.

**“Environmental Attributes”** means any and all carbon credits and any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances arising out of any international, national, or other law or regulation (and whether now existing or enacted in the future).

**“Event of Force Majeure”** has the meaning given to it in Clause 26.1.

**“Existing Electrical System”** means the Customer’s existing electrical system including, without limitation the electrical wiring, transformers, meters and distribution boards and other existing electrical distribution systems at the Premises and as further described and set out in Schedule 2.

**“Fair Market Value”** means the fair market value of the Solar PV System being the fair market value at such time based on its linear depreciated asset value (including, for the avoidance of doubt, the capitalized financing cost, development cost and reasonable overhead) as calculated in accordance with Vietnamese Accounting Standards.[[8]](#footnote-8)

**[“Fixed Service Fee”** has the meaning set out in Schedule 3.**][[9]](#footnote-9)**

**“Governmental Authority”** means any statutory authority, government department, agency, commission, board, tribunal, court or other institution in Vietnam authorised to make Laws.

**“Grid”** means the local electricity distribution and transmission network of the Utility.

**“Insolation”** has the meaning given to it in Clause 16.2.

**“Insolvency Event”** means in respect of a Person any of the following:

1. an inability to pay debts as they fall due or presumed inability to do so;
2. for a body corporate, any corporate action, or any other steps, and/ or legal proceedings have been started or threatened against the Person, for its liquidation or bankruptcy or for the appointment of a liquidation committee, team of receivers or similar officer or officers in respect of it or any or all of its assets subject to claims which by law have priority.

**“Instalment Payment”** has the meaning set out in Schedule 4.

**“kWh”** means kilowatt-hour alternating current;

**“Lease”** has the meaning given to it in Clause 5.1.

**“Lease Expiry Date”** means the [eighth (8th) anniversary] of the Commercial Operation Date.[[10]](#footnote-10)

**“Lease Term”** has the meaning given to it in Clause 5.2.

**“Long Stop Date”** means **[[**four (04)] months after the date of satisfaction (or waiver by the Solar Service Company) of all Conditions Precedent.[[11]](#footnote-11)

**“Maintenance Arrangement”** has the meaning given to it in Clause 12.

**“Maintenance Services”** mean the services to be provided by the Solar Service Company for the maintenance of the Solar PV System, being all routine and unscheduled maintenance and any operational activities necessary to operate (during the Lease Term) and to perform the maintenance of the Solar PV System in accordance with the Maintenance Plan and the standard of a Reasonable and Prudent Operator, including the ordering of any spare parts or additional maintenance from any appropriate third party.

**“Maintenance Plan”** means the manufacturer’s maintenance manual for the Solar PV System or, in the absence of a maintenance manual, the maintenance of the Solar PV System in accordance with good industry practice.

**“Monitoring System”** means the online monitoring equipment required to remotely monitor the performance of the Solar PV System, including measuring the quantity of electricity that is generated by the Solar PV System and delivered to the Customer at the Delivery Point.

**“Monthly Rental Fee”** has the meaning set out in Schedule 3.

**“Monthly Service Fee”** has the meaning set out in Schedule 4.

**“NRAST”** has the meaning given to it in Clause 10.4.

**“Operational Year”** means for the date from the Commercial Operation Date to the date being twelve (12) months after such date, and/or each succeeding twelve (12) month period thereafter until termination of the Agreement.

**“Ownership Transfer Date”** means the day immediately subsequent to the Lease Expiry Date.

**“Permits”** mean all licenses, permits, approvals, authorizations, consents, waivers, exemptions, variances or orders of, or filings by any of the Parties and required by, or otherwise issued by, any Governmental Authority.

**“Permitted Limit”** has the meaning set out in Clause 6.2(b).

**“Premises”** mean the Customer’s building and the location of the Site where the Solar Service Company shall supply and install the Solar PV System as further defined by the schedules to this Agreement.

**“Projected Annual Energy Output”** has the meaning set out in Clause 6.3.

**“Purchase Price”** has the meaning set out in Schedule 4.

**“Reasonable and Prudent Operator”** means a person acting in good faith with the intention of performing its contractual obligations and who, in so doing, and in the general conduct of its undertaking, exercises the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable laws and regulations and observing all applicable standard industry practices and guidelines engaged in the operation and maintenance of photovoltaic solar electric generating rooftop systems similar to the Solar PV System;

**“Scheduled Outage”** has the meaning set out in Clause 6.4;

**“Site”** means the rooftop of the Premises on which the Solar PV System shall be constructed and installed and as further defined and highlighted in the relevant drawing listed in Schedule 2.

**“Solar PV System”** means the electric power generation equipment, including without limitation, solar panels, mounting racks, brackets, substrates or supports, power inverters and micro-inverters, optimizers, service equipment, metering equipment, controls, switches, connections, conduit, wires and other equipment connected to the Delivery Point installed by the Solar Service Company on the Site for the purposes of providing electric power to the Customer under this Agreement.[[12]](#footnote-12)

**“Subcontractor”** means any appointed subcontractor engaged by the Solar Service Company under a separate subcontract agreement who will supply services to the Customer on behalf of the Solar Service Company pursuant to the terms of this Agreement.

**“System Meter”** means the electricity meters installed by the Solar Service Company for the purpose of accurately measuring the quantity of electricity that is generated by the Solar PV System and delivered to the Customer at the Delivery Point and, if the case may be, any replacement Meters installed by the Solar Service Company from time to time.

**“Taxes”** means all taxes, duties, imposts, fees and withholdings (including, without limitation, any value added taxes and corporate income taxes), import duties and/or import surcharges imposed by any Governmental Authority of any country having jurisdiction over any matter related to this Agreement.

**“Term”** has the meaning as set out in Clause 27.

**“Utility”** means the Electricity of Vietnam Group (Tập đoàn Điện lực Việt Nam) or its authorized member entity.

**[“Utility PPA”** means any agreement between the Customer and the Utility pursuant to which the Customer receives payment from the Utility for any Energy Output delivered to the Grid as recorded by the Bi-directional Meter.**]**[[13]](#footnote-13)

**“Utility’s Retail Electricity Tariff”** means the retail electricity price applicable to the Customer and the Premises for such month as published by the Utility from time to time (for the avoidance of doubt, excluding VAT).

**“Vietnam”** means the Socialist Republic of Vietnam;

**“Vietnamese Law”** or **“Law or Laws”** means (i) all law applicable in the Socialist Republic of Vietnam; and (ii) any regulatory policies, guidelines or industry codes which apply to the supply of services pursuant to this Agreement; and (iii) any directions, rules or regulations issued by any competent or regulatory authorities.

**“VND”** means the lawful currency of Vietnam.

**SECTION I: Design, PROCUREMENT and Installation of SOLAR PV SYSTEM**

1. **Design, Procurement and Installation** 
   1. The solar service company shall design and, subject to satisfaction of the Conditions Precedent or waiver of these by the Solar Service Company in accordance with Schedule 1, procure, at its own cost, the Solar PV System and carry out the installation, completion, testing, and commissioning of the Solar PV System for production from the Commercial Operation Date in accordance with the technical specifications and requirements set out in Schedule 2.[[14]](#footnote-14)
   2. The Solar Service Company shall install the Solar PV System for the proper and safe interconnection of the Solar PV System to the Existing Electrical System necessary to transmit and deliver the Energy Output at the Delivery Point.
   3. The Solar Service Company shall install the System Meter for the purposes of accurately recording the amount of Energy Output delivered to the Customer at the Delivery Point.
2. **Commercial Operation Date**
   1. The Solar Service Company shall begin such process for the design, procurement, installation, completion, testing and commissioning of the Solar PV System on satisfaction of the Conditions Precedent or waiver of these by the Solar Service Company in accordance with Schedule 1 following which the Solar Service Company shall proceed in an expedient manner to achieve the Commercial Operation Date as soon as possible and in any event no later than by the agreed Long Stop Date.
3. **Licenses and Permits[[15]](#footnote-15)**
   1. It is agreed by the Parties that the Solar Service Company, at its own cost and expense, shall commence procedures on the Effective Date and use its reasonable efforts to:
4. obtain any required Permits and agreements for the installation of the Solar PV System; and
5. prepare and submit any required applications to obtain all Permits for the operation of the Solar PV System on behalf of the Customer.
   1. The Solar Service Company shall commence procedures to obtain such Permits pursuant to Clause 4.1 on the Effective Date and use its reasonable efforts to obtain such Permits. [[16]](#footnote-16)
   2. The Customer shall provide all such cooperation and assistance to the Solar Service Company as necessary, including signing any relevant applications, forms and documents, for the Solar Service Company to perform its obligations pursuant to this Clause 4.

**SECTION II: LEASE OF THE SOLAR PV SYSTEM**

1. **Lease and Lease Term**
   1. The Solar Service Company leases to the Customer the Solar PV System throughout the Lease Term in consideration of the Monthly Rental Fee and other obligations specified in this Agreement (the “**Lease**”).
   2. The Lease commences on the Commercial Operation Date and unless early terminated under Clause 27, shall terminate on the Lease Expiry Date[[17]](#footnote-17) (the “**Lease Term**”).
2. **Solar PV System and Generation of Electricity**
   1. It is agreed and acknowledged between the Parties that the Customer as lessee of the Solar PV System throughout the Lease Term:
3. is the operator of the Solar PV System;
4. is the electricity generator in respect of the Solar PV System and all Energy Output produced by the Solar PV System; and
5. shall take title to all Energy Output that the Solar PV System generates from the moment the Solar PV System generates such Energy Output and that such Energy Output shall be delivered to the Customer at the Delivery Point.[[18]](#footnote-18)
   1. **System Meter**
6. The System Meter will be installed and maintained by the Solar Service Company to monitor and accurately record the quantity of Energy Output delivered to the Customer from the Solar PV System. The System Meter must meet the agreed technical specifications as per Schedule 2 and the applicable technical standards under applicable Law. As part of the testing and commissioning of the Solar PV System, the System Meter shall be tested, and thereafter inspected on an **[**annual**]** basis by an independent accreditation authority determined jointly by the Parties at the Solar Service Company’s cost.
7. If the System Meter records defective readings, as determined by the Parties or, if not agreed by the Parties, as determined by an independent accreditation authority jointly appointed by the Parties resulting in inaccuracy of recorded Energy Output by an amount of plus or minus **[**\*\*\*%**]**[[19]](#footnote-19) over a [3 (three)] months’ period (the “**Permitted Limit**”), the Solar Service Company shall adjust or replace such System Meter. Where a Party considers that the System Meter is damaged, such Party must immediately inform the other Party. The Solar Service Company is obliged to inspect, repair and replace any defective System Meter at its cost and expense.
8. In the event the System Meter is defective and its readings exceed the Permitted Limit, the Energy Output which has been sold by the Solar Service Company to the Customer in the period of time during which the System Meter was defective in excess of the Permitted Limit shall be determined as follows:
9. an estimate must be made of the Energy Output delivered and received in accordance with the monthly average data of the Solar PV System during the six (6) previous months before the System Meter was defective (or a smaller number of months if the Solar PV System has not yet been operating for six (6) months), unless otherwise agreed in writing by the Parties; and
10. on the basis of the adjusted metering results as agreed by the Parties, the Solar Service Company is obliged to calculate and determine the amount of money that either the Solar Service Company must pay to the Customer or the Customer must pay to the Solar Service Company, as the case may be, for such period that the System Meter was inaccurate beyond the Permitted Limit to compensate for such inaccuracy.
    1. **Projected Annual Energy Output**
11. The Solar Service Company shall prior to the Commercial Operation Date and thereafter on or prior to each anniversary of the Commercial Operation Date throughout the Lease Term provide the Customer with a one (1) year forecast of the Solar PV System’s anticipated monthly Energy Output (the “**Projected Annual Energy Output**”).
12. **[**Notwithstanding the foregoing, it is agreed and acknowledged by the Parties that the Solar Service Company shall have no liability, nor suffer any reduced payment, or penalty in the event the actual amount of Energy Output in such year differs from the Projected Annual Energy Output provided by the Solar Service Company pursuant to this Clause 6.3.][[20]](#footnote-20)
    1. [**Scheduled Outages**
13. The Customer shall be permitted to take the Solar PV System off line for a total of [\*\*\*] day light hours (each, a “**Scheduled Outage**”) per calendar month during the Lease Term, during which period the Customer shall not be obligated to reimburse the Solar Service Company; provided that the Customer must notify the Solar Service Company in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage.
14. In the event that Scheduled Outages exceed a total of [\*\*\*] day light hours per calendar month or there are unscheduled outages caused or otherwise avoidable by the action of the Customer, in each case for a reason other than an Event of Force Majeure, the Customer shall pay the Solar Service Company an amount equal to the sum of the additional Monthly Rental Fee for such month that the Solar Service Company would have received with respect to Energy Output that would have been produced during the outage based on the Deemed Generation.][[21]](#footnote-21)
15. **Rent and Payments**
    1. The Customer shall pay the Solar Service Company the Monthly Rental Fee throughout the Lease Term in such amount and at such intervals as set out in Schedule 3.
16. **Maintenance and Repair of the Solar PV System**
17. Subject to the further terms of this Clause 8, the Solar Service Company shall maintain the Solar PV System in good and proper working order throughout the Lease Term and protect the same from deterioration, other than normal wear and tear.
18. **Standard Solar PV System Maintenance and Repair**
19. During the Lease Term, the Solar Service Company shall operate and perform the Maintenance Services in accordance with the Maintenance Plan including all routine and emergency repairs to, and maintenance of, the Solar PV System **[**at its sole cost and expense**]** **[**in consideration of the payment of the Fixed Service Fee by the Customer as set out in Schedule 3**][[22]](#footnote-22)**.
20. The Solar Service Company shall provide the Customer with reasonable notice prior to accessing the Premises to perform standard Maintenance Services. Notwithstanding the foregoing, it is agreed and acknowledged that the Solar Service Company shall have access to the Site at all times pursuant to Clause 18 and that no such notice is required to be given to the Customer in event of the Solar Service Company requiring access to perform emergency Maintenance Services.
21. Notwithstanding Clause 8.2(a), the Customer shall reimburse the Solar Service Company for the cost of any repairs or maintenance resulting from the Customer’s negligence, willful misconduct or breach of this Agreement **[**in addition to the Fixed Service Fee**[[23]](#footnote-23)]**.
22. The Solar Service Company shall not:
23. be responsible for any work done by others on any part of the Solar PV System unless the Solar Service Company authorizes that work in advance in writing;
24. be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the Solar PV System by anyone other than the Solar Service Company or the Solar Service Company’s Subcontractors.
25. **Non-standard Solar PV System Maintenance and Repair**

If any repair or maintenance of the Solar PV System is required due to:

1. conditions at the Premises;
2. the Customer’s breach of any provisions of this Agreement;
3. the negligent act or wilful misconduct of the Customer;
4. any work carried out on the Solar PV System by the Customer or any third party other than as prior approved by the Solar Service Company; or
5. inaccuracy of any information provided by the Customer and relied upon by the Solar Service Company,

the Customer shall fully reimburse the Solar Service Company the cost and expense for such maintenance and repair at the Solar Service Company’s, or if applicable the Subcontractor’s, then current standard rates **[**in addition to the Fixed Service Fee**[[24]](#footnote-24)]**.

1. **Breakdown Notice[[25]](#footnote-25)**
2. The Solar Service Company shall notify the Customer within twenty-four (24) hours following the Solar Service Company’s discovery of any material malfunction in the operation of the Solar PV System.
3. The Customer shall notify the Solar Service Company immediately upon the discovery of any condition adversely affecting the operation of the Solar PV System.
4. The Parties shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring the Solar Service Company’s repair or alteration of the Solar PV System throughout the Lease Term.
5. If the Solar Service Company fails to remedy the material malfunction within [five (5)] Business Days of either:
6. notifying the Customer of such material malfunction pursuant to Clause 8(a); or
7. receiving notification from the Customer pursuant to Clause 80(b)

the Customer shall be entitled to secure a penalty payment of VND[\*\*\*] from the Solar Service Company and such penalty payment will be deducted from the next relevant **[**Fixed Service Fee**]** **[**Monthly Rental Fee**]**.**[[26]](#footnote-26)**

1. **Suspension[[27]](#footnote-27)**

Notwithstanding anything to the contrary herein, during the Lease Term the Solar Service Company shall be entitled to suspend operation of the Solar PV System for the purpose of maintaining and repairing the Solar PV System and such suspension of operation shall not constitute a breach of this Agreement; *provided* *that:*

1. the Solar Service Company shall use its reasonable best efforts to minimize any interruption in operation to the Customer; and
2. [if the duration of such suspension of operation of the Solar PV System (excluding Events of Force Majeure or due to the fault or negligence of the Customer) amounts to more than [\*\*\*] day light hours in a calendar year then the Customer shall be entitled to secure a penalty payment of VND[\*\*\*] from the Solar Service Company and such penalty payment will be deducted from the next relevant **[**Fixed Service Fee**]** **[**Monthly Rental Fee**][[28]](#footnote-28)**.] **[[29]](#footnote-29)**
3. **Maintenance and Repair of the Site and Existing Electrical System[[30]](#footnote-30)**
4. The Customer shall, at its sole cost and expense, maintain the Site in good condition and repair, suitable for the installation and operation of the Solar PV System.
5. The Customer is fully responsible for the maintenance and repair of the Existing Electricity System and of all of the Customer’s equipment that utilizes the Solar PV System outputs.
6. The Customer shall promptly notify the Solar Service Company of any matters of which it is aware pertaining to any damage to the Site that could reasonably be expected to adversely affect the Solar PV System.
7. The Customer shall not make any alterations or repairs to the Site and/or Premises which could adversely affect the operation and maintenance of the Solar PV System without the Solar Service Company’s prior written consent (such consent not to be unreasonably withheld). The Customer shall give the Solar Service Company the opportunity to advise the Customer in making such alterations or repairs in a manner that avoids damage to the Solar PV System. Notwithstanding any such advice, the Customer shall be responsible for all damage to the Solar PV System caused by the Customer or its contractors. The Customer shall remain obliged to pay the Monthly Rental Fee to the Solar Service Company for any period of temporary disconnection as required for such alteration or repairs to the Site and/or Premises on an uninterrupted basis as based on the Deemed Generation.
8. **Ownership and Security Throughout the Lease Term**
   1. Throughout the Lease Term, the Solar PV System and its components shall at all times remain the property of the Solar Service Company and no right, title or interest in the Solar PV System or its components shall pass to the Customer by virtue of the Lease or this Agreement.
   2. Without limiting the foregoing, the Solar PV System (and no component thereof) shall in no way be deemed as any asset attached to land or to the Premises in the meaning of Article 107.1(c) of the Civil Code. [[31]](#footnote-31) If the Customer has provided any security over the Premises, the Solar Service Company may require the Customer to obtain a written confirmation issued by the beneficiary of such security confirming that the Solar PV System shall not form part thereof.
   3. Throughout the Lease Term, the Customer agrees and undertakes not to sell, assign, pledge, or otherwise encumber the Solar PV System or its components. The Customer undertakes not to remove the Solar PV System or its components from the Premises other than in accordance with the conditions of Clause 24.
   4. Further to the above, the Customer shall provide the Solar Service Company with any assistance as required, in order for the Solar Service Company at its sole discretion to register ownership of the Solar PV System and retention of title with National Agency for Registration of Security Transactions (“**NRAST**”) in favour of the Solar Service Company, or any other such registration or filing as may be required under Law to secure ownership of the Solar PV System for the Solar Service Company throughout the Lease Term. [The Solar Service Company will bear the costs of any such process, including registration with NRAST.][[32]](#footnote-32)

**SECTION III: PURCHASE OF THE SOLAR PV SYSTEM BY CUSTOMER**

1. **Purchase of the Solar PV System by Customer[[33]](#footnote-33)**
   1. The Parties agree that with effect from expiry date of the Lease Term, always provided the Customer is not in default under this Agreement, the Solar Service Company shall sell and the Customer shall purchase the Solar PV System from the Solar Service Company for the Purchase Price.
   2. The payment of the Purchase Price by the Customer to the Solar Service Company shall be deferred and the Purchase Price shall be payable in Instalment Payments in such amounts and at such intervals as set out in Schedule 4 during the Maintenance Term.
   3. Notwithstanding Clause 11.2, legal title to the Solar PV System shall pass to the Customer with effect from the expiry of the Lease Term and the Solar Service Company shall take all actions as required to transfer legal and beneficial title to the Solar PV System to the Customer with effect from the expiry of the Lease Term.
   4. It is agreed and acknowledged by the Parties that any purchase of the Solar PV System by the Customer under this Agreement shall be on an as-is, where-is basis, provided that the Solar Service Company shall:
2. take all steps to release, discharge and de-register any security or encumbrance created in respect of the Solar PV System; and
3. assign to the Customer any manufacturers warranties that are in effect as of the date of purchase, and which are assignable pursuant to their terms.

**SECTION IV: MAINTENANCE ARRANGEMENT**

1. **Scope and Term of Maintenance Arrangement**
   1. The Solar Service Company undertakes to maintain, repair and manage the Solar PV System on behalf of the Customer in consideration of the Maintenance Service Fee throughout the Maintenance Term and the Customer agrees to engage the Solar Service Company throughout the Maintenance Term to carry out the Maintenance Services and further activities contemplated under Section IV of this Agreement and on the terms and conditions of this Agreement (the “**Maintenance Arrangement**”).
   2. The term of the Maintenance Arrangement commences on the Ownership Transfer Date and unless early terminated in terms of Clause 27, shall terminate on the [[\*\*\*] anniversary] of the Ownership Transfer Date (the “**Maintenance Term**”).[[34]](#footnote-34)
2. **Maintenance and Repair**
   1. The Solar Service Company will maintain the Solar PV System in good and proper working order throughout the Maintenance Term and undertakes to perform the Maintenance Services with effect from the Ownership Transfer Date in consideration of payment by the Customer of the Monthly Service Fee as set out in Schedule 4.
   2. The Maintenance Services will be performed by the Solar Service Company to the standards expected of a Reasonable and Prudent Operator and in accordance with the Maintenance Plan, provided always that the Maintenance Plan shall be amended to the extent reasonably necessary in order to reflect:
3. any breach of any obligations of the Customer under this Maintenance Arrangement (Section IV of the Agreement) and/or negligence by it; and/or
4. any cause of delay which was beyond the reasonable control of the Solar Service Company.
   1. The Solar Service Company shall provide [monthly] service level reports to the Customer beginning in the first month immediately following the Ownership Transfer Date.
   2. If the Solar PV System completely fails to provide Energy Output during more than [\*\*\*] hours of daylight in one day on more than [five (5)] instances in any three-months’ period during the Maintenance Term the Customer shall be entitled to [either:
5. terminate this Agreement upon giving at least [30] days’ notice to the Solar Service Company expiring not later than the end of the second month following the relevant three-month period pursuant to this Clause 13.4; or][[35]](#footnote-35)
6. a penalty payment of [\*\*\*]VND from the Solar Service Company and such penalty payment will be deducted from the next relevant Monthly Service Fee. **[[36]](#footnote-36)**
   1. For the avoidance of doubt, the Customer as owner of the Solar PV System shall be liable for and make direct payment to any supplier or reimburse the Solar Service Company as duly invoiced to the Solar Service Company for any parts, components, fixtures or other items required for the repair of the Solar PV System provided that the Customer shall be entitled to prior approve the order and purchase of any items or combined order of a value of VND[\*\*\*] or more.
7. **Maintenance Service Fee**
8. The Customer shall pay the Solar Service Company the Monthly Service Fee throughout the Maintenance Term in such amount and at such intervals as set out in Schedule 4.

**Section V: General Matters**

1. **Further General Rights and Obligations of the Solar Service Company[[37]](#footnote-37)**
   1. **Further general rights of the Solar Service Company**

Without limitation to any other rights of the Solar Service Company under this Agreement throughout the Term and in accordance with this Agreement, the Solar Service Company shall be entitled to:

1. receive payment from the Customer of any payments due pursuant to this Agreement in a timely manner without the need for further demand or notice by the Solar Service Company and in accordance with the terms of Schedules 3 and 4;
2. prior approve in writing any work, modification, alteration, revision or additions to the Solar PV System, and the Site so far as such work, modification, alteration or additions to the Site that would impact upon the operation of the Solar PV System, which approval the Solar Service Company may withhold at its sole discretion acting reasonably; and
3. upon termination of this Agreement for any reason prior to the expiration of the Lease Term to remove the Solar PV System and any improvements and additions to the Solar PV System installed by the Solar Service Company at the Site, *provided that* the Customer has not purchased the Solar PV System pursuant to the relevant provisions of this Agreement at such time.
   1. **Further general obligations of the Solar Service Company**

Without prejudice to any other obligations imposed upon the Solar Service Company under this Agreement throughout the Term and in accordance with this Agreement, the Solar Service Company shall:

1. ensure that all of its work, whether accomplished directly, or by the Solar Service Company’s Subcontractors, is performed:
2. by qualified and licensed engineers and personnel;
3. so as to minimize interference with the Customer’s occupation and activities [and production] at the Premises; and
4. to the standard of a Reasonable and Prudent Operator;
5. ensure that its personnel, agents or Subcontractors deployed to the Premises to perform the services contemplated under this Agreement shall comply with the Customer's health and safety policies as notified to the Solar Service Company from time to time;
6. use good and suitable materials for any maintenance and repair work of no lesser standards as those recommended by the manufacturer of the Solar PV System; and
7. operate in accordance with all applicable Vietnamese Laws, the requirements of all relevant Governmental Authorities and any consents, licences or approvals required to be obtained.
8. **Further General Rights and Obligations of the Customer[[38]](#footnote-38)**
   1. **Further general rights of the Customer**

Without limitation to any other rights of the Customer under this Agreement throughout the Term and in accordance with this Agreement, the Customer shall:

1. have exclusive use and enjoyment of the Solar PV System; and
2. take title to all electric energy that the Solar PV System generates from the moment the Solar PV System generates such electric energy.
   1. **Further general obligations of the Customer**

Without prejudice to any other obligations imposed upon the Customer under this Agreement throughout the Term and in accordance with this Agreement, the Customer shall:

1. not cause or permit interference with the Solar PV System’s access to sunlight (“**Insolation**”) and as such levels of access as exist at the Effective Date to the extent the Customer has control over such interference;
2. if the Customer becomes aware of any activity or condition that could diminish the Insolation of the Solar PV System, the Customer shall notify the Solar Service Company immediately and shall cooperate with the Solar Service Company in preserving the Solar PV System’s existing Insolation levels;
3. not conduct by itself or through any contractors or other such persons any work, modification, alteration, revision or additions to the Solar PV System, and the Site so far as such work, modification, alteration or additions to the Site would impact upon the operation of the Solar PV System, without having obtained the Solar Service Company’s prior written approval pursuant to Clause 15.1(b);
4. make available an internet connection at all times sufficient for the Solar Service Company to remotely monitor the Solar PV System;
5. provide and take all reasonable measures for security of the Solar PV System;
6. take all reasonable precautions to protect the health and safety of the Solar Service Company’s personnel, agents and Subcontractors whilst at the Premises;
7. provide the Solar Service Company with all assistance, materials and accurate and timely information for the purposes of enabling the Solar Service Company to perform its obligations under this Agreement; and
8. make payment to the Solar Service Company of any payments due pursuant to this Agreement in a timely manner without the need for further demand or notice by the Solar Service Company and in accordance with the terms of the relevant Schedules.
9. **Sub-contracting**
   1. The Solar Service Company may only subcontract part (but not all) of the services to be performed under this Agreement during the Term with the prior written consent of the Customer (such consent not to be unreasonably withheld).
   2. Notwithstanding Clause 17.1, the Solar Service Company shall remain liable for the provision of any and all such work and services to the Customer.[[39]](#footnote-39)
10. **Solar Service Company Right of Access[[40]](#footnote-40)**
    1. The Customer grants the Solar Service Company and its employees, agents and subcontractors, throughout the Term of this Agreement:
       1. a right of egress and ingress over all walkways and roads at all times to the Premises
       2. a right to enter upon and obtain access to the Site through the Premises, including the right to access and use all elevators, stairways or other access points of egress and ingress for the purposes of accessing the Site; and
       3. a right to access all parts of the Existing Electricity System,

for the purposes of performing the services contemplated by this Agreement, and the Customer shall provide such cooperation and assistance to enable the Solar Service Company (including its employees, agents and Subcontractors) to install, test, commission, operate, repair and maintain the Solar PV System and carrying out all other services contemplated under this Agreement on the terms and conditions of this Agreement.

* 1. If the Customer refuses the right of access, or obstructs such right of access it will be deemed a material breach of the terms of this Agreement by the Customer. **[[41]](#footnote-41)**

1. **Insurance[[42]](#footnote-42)**
   1. The Solar Service Company shall procure and maintain the following insurance policies:
2. during the installation, testing and commissioning phase the Solar Service Company shall take out and maintain comprehensive policies of insurance in respect of the following matters and in the minimum amounts set out below:
3. contractor all risk insurance in an amount of not less than [VND\*\*\*];
4. third party liability insurance in an amount of not less than [VND\*\*\*]].
5. during the Lease Term the Solar Service Company shall take out and maintain comprehensive policies of insurance in respect of the following matters and in the minimum amounts set out below:
6. property insurance for the Solar PV System in an amount of not less than [VND\*\*\*;
7. third party liability insurance in an amount of not less than [VND\*\*\*].
8. during the Maintenance Term the Solar Service Company shall take out and maintain comprehensive policies of insurance in respect of the following matters and in the minimum amounts set out below:
9. third party liability insurance in an amount of not less than [VND\*\*\*].
   1. The Customer shall procure and maintain during the Lease Term the following insurance policies:
10. property insurance for the Site [and the Solar PV System] in an amount of not less than [VND\*\*\*];
    1. The Solar Service Company and the Customer will not do anything or omit to do anything which could cause any insurance policy referred to in this Clause 19, to become wholly or partly void or voidable, and will comply with all requirements and recommendations of any such insurers; and give immediate notice to the other Party of any event that might affect any such insurance policy (including any claims made under it).
11. **Payment Terms**
    1. All payments to the Solar Service Company under this Agreement shall be made to the following bank account (as applicable), unless otherwise notified by the Solar Service Company to the Customer:

Bank Account Name: [\*\*\*]

Bank Account Number: [\*\*\*]

Bank Name: [\*\*\*]

SWIFT/BIC: [\*\*\*]

* 1. The Customer shall make all payments under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
  2. If the Customer fails to pay the Solar Service Company any sum payable to the Solar Service Company when due pursuant to the Agreement, the Customer shall be liable to pay interest to the Solar Service Company on such sum from the due date for payment at the annual rate of [20%] accruing on a daily basis until payment is made.[[43]](#footnote-43)

1. **[Performance Security[[44]](#footnote-44)**
   1. It is agreed by the Parties:
2. concurrently with signing of this Agreement, the Customer shall deliver to the Solar Service Company an irrevocable bank guarantee payable on first demand in form satisfactory to the Solar Service Company (the “**Bank Guarantee**”) issued by a reputable bank or other lending institution satisfactory to the Solar Service Company in a stated amount equal to VND[\*\*\*] as security for the performance by the Customer of all of its obligations under this Agreement and for losses and damages the Solar Service Company may suffer as a result of the Customer’s failure to comply with one or more provisions of this Agreement, including, but not limited to, any professional fees incurred in the event of any enforcement action as well as all outstanding amounts owed to the Solar Service Company together with any interest and penalties;
3. each twelve (12) months a new Bank Guarantee shall be submitted accordingly by the Customer to the Solar Service Company, having a validity of twelve (12) months, at least one month prior to the expiry of the previous Bank Guarantee or the existing Bank Guarantee may be extended, suitably amended, each twelve (12) months throughout the Term.
   1. The cost of obtaining and maintaining the Bank Guarantee, if any, shall be borne by the Customer.**]**
4. **[Customer and Solar Service Company Representatives[[45]](#footnote-45)**
   1. The Solar Service Company and the Customer shall each nominate a representative for communication throughout the Term of this Agreement and provide the other Party with the respective representative’s details, including name, position and contact information. Such representatives will be the first point of contact for each Party. If either Party wishes to change such representative, it must give reasonable prior notification to the other Party of the replacement representative.
   2. Further to Clause 22.1, the Solar Service Company’s and Customer’s respective representatives shall meet on a [monthly] basis (or at such other intervals as the representatives may mutually agree) to:
5. consult and discuss the arrangement and implementation of each phase of the Agreement; and
6. discuss and settle any issues which may arise throughout the term of this Agreement.]
7. **Relocation of the Solar PV System at the Premises[[46]](#footnote-46)**
   1. Subject to Clause 23.2, in the event that the Customer determines that the Solar PV System requires to be relocated within the Site for any reason whatsoever at the Customer’s discretion at any time following the Commercial Operation Date, the Parties agree that the Solar PV System may be relocated at the Customer’s sole cost, expense and risk, and at no cost, expense and risk to the Solar Service Company to a mutually agreed upon location at the Site.
   2. The Customer must provide the Solar Service Company with not less than two (2) months’ prior written notice of the Customer’s proposed relocation of the Solar PV System pursuant to Clause 23.1, unless such relocation is required in case of emergency. Furthermore:
8. if such relocation of the Solar PV System is during the Lease Term, the Customer shall be obliged to pay the Monthly Rental Fee to the Solar Service Company for such period of temporary disconnection as required for such relocation on an uninterrupted basis based on the Deemed Generation;
9. if such relocation of the Solar PV System is during the Maintenance Term, the Customer shall be obliged to pay the Monthly Service Fee to the Solar Service Company for such period of temporary disconnection as required for such relocation on an uninterrupted basis based on the Deemed Generation.
10. **Relocation of the Customer and Transfer of the Solar PV System[[47]](#footnote-47)**
    1. In the event the Customer must relocate from the Premises:
11. prior to the end of the Lease Term, the Customer shall be obliged to either:
12. continue with this Agreement, in which case the Customer shall cover all costs incurred by the Solar Service Company in removing the Solar PV System from the Premises, transporting and installing the Solar PV System to the Customer’s new location and shall be obliged to pay the Monthly Service Fee to the Solar Service Company for such period of temporary disconnection as required for such relocation on an uninterrupted basis based on the Deemed Generation; or
13. if the Solar Service Company at its sole discretion decides to terminate the Agreement due to this event, compensate the Solar Service Company:
14. [in full][an amount equal to [\*\*\*%][[48]](#footnote-48) of] the total Monthly Rental Fee outstanding under this Agreement at the time of such early termination if the Agreement had not been early terminated. [In this case the outstanding total Monthly Rental Fee shall be calculated based on the average Monthly Rental Fee for the period from the Commercial Operation Date to the date of termination under this Clause 24.1(a)]; [or]
15. purchase the Solar PV System from the Solar Service Company at the Fair Market Value of the Solar PV System at such time of termination and legal title to the Solar PV System shall pass to the Customer in such event upon payment in full of the applicable purchase price to the Solar Service Company].
16. subsequent to the expiration of the Lease Term and purchase of the Solar PV System by the Customer pursuant to Clause 11 but prior to the end of the Term the Customer shall have the option to request the Solar Service Company to relocate the Solar PV System to its new location, and such request shall not be unreasonably denied by the Solar Service Company subject to all costs incurred by the Solar Service Company in removing the Solar PV System from the Premises, transporting and installing the Solar PV System to the Customer’s new location being covered by the Customer and both Parties shall continue with this Agreement. In the event that:
17. the Customer does not exercise its option to request the Solar Service Company to relocate the Solar PV System to its new location; or
18. the Solar Service Company cannot accept such request due to circumstances making such relocation of the Solar PV System to the new location prohibitive, including but not limited to, any regulatory issues with the relevant Governmental Authorities, insufficient Insolation at such new location to make operation of the Solar PV System at such new location viable and so on

either Party shall have the option to terminate this Agreement, and in such event the Customer shall compensate the Solar Service Company [in full][an amount equal to [\*\*\*%] of] the total Monthly Service Fee outstanding under this Agreement at the time of such early termination if the Agreement had not been early terminated. In this case the outstanding total Monthly Service Fee shall be calculated based on the average Monthly Service Fee for the period from the Ownership Transfer Date to the date of termination under this Clause 24.1(b).

1. **Environmental Attributes**
   1. Environmental Attributes are not included in the Lease by the Solar Service Company to the Consumer and shall remain the sole property, and under the sole control of, the Solar Service Company. The rights to any Environmental Attributes shall pass to the Customer from the Ownership Transfer Date.
   2. The Customer and the Solar Service Company agree that the Solar Service Company shall retain all environmental, financial and tax incentives and benefits, as well as all other incentives and benefits associated with the development, installation, ownership and operation of the Solar PV System and the generation and sale of its Energy Output not expressly transferred to the Customer during the Lease Term hereunder. From the Ownership Transfer Date, the Customer shall retain all environmental, financial and tax incentives and benefits, as well as all other incentives and benefits associated with the ownership and operation of the Solar PV System and the generation and sale of its Energy Output.
2. **Force Majeure[[49]](#footnote-49)**
   1. If the performance of any obligation under this Agreement by a Party should be prevented or delayed by an event of force majeure (“**Event of Force Majeure**”), such as fire, natural disaster, war, rebellion, sabotage, embargo, epidemic, act of God, or act, rule, regulation, order or directive of any Governmental Authority or the order of any court of competent jurisdiction, that Party’s duty to perform their obligations affected by the Event of Force Majeure shall be suspended for a period equal to the delay directly resulting from the occurrence of such event, provided such event is without the fault of and beyond the reasonable control of the Party invoking force majeure. In the Event of Force Majeure, the Party invoking force majeure shall not be responsible for any damage, increased costs or loss which the other Parties may sustain by reason of such a failure or delay of performance.
   2. In the event that a Party wishes to invoke force majeure, such Party shall, within seven days after the occurrence of the Event of Force Majeure has become known to such Party, send written notice thereof to the other Party. The Party affected by force majeure shall take appropriate measures to minimise or remove the effects of force majeure and, within the shortest possible time, attempt to resume performance of its obligations affected by the Event of Force Majeure.
3. **Term and Termination[[50]](#footnote-50)**
   1. This Agreement shall be effective from the Effective Date until expiration of the Maintenance Term (“**Term**”)[[51]](#footnote-51) unless it is early terminated in accordance with this Clause 27 or other applicable provisions of this Agreement.
   2. This Agreement may be terminated in the following circumstances:
4. upon the expiration of the Term without any requirement for further notice;
5. the Parties mutually agree to terminate this Agreement;
6. by written notice to the other Party on breach of any obligation under this Agreement by the other Party, and, where capable of remedy, such breach remains unremedied after [thirty (30)] days of such notice; and
7. by written notice to the other Party with immediate effect at any time if the other Party ceases or threatens to cease to carry on its business or substantially the whole of its business or goes into liquidation or if such Party enters into any arrangement for the benefit of or compounds with its creditors or if a proposal or threat to do any of the above acts or things occurs or if an event analogous to the aforesaid occurs in any jurisdiction in each case, other than pursuant to a bona fide restructuring or reorganisation of the other Party.
   1. Further to the above, the Solar Service Company shall have the right to unilaterally terminate this Agreement with immediate effect in any of the following events:
8. the Customer fails to make any payment to the Solar Service Company under this Agreement when due and such payment remains outstanding for a period of more than [30 Business Days];
9. a breach of any obligation under this Agreement by the Customer, and, where it is possible to remedy the breach, the Customer does not remedy it within [thirty (30)] days of notice of the breach having been given by the Solar Service Company;
10. the Commercial Operation Date has not been achieved by the Long Stop Date as a consequence of the Customer’s failure to obtain any required Permit; and
11. pursuant to any other right of unilateral termination the Solar Service Company may have under this Agreement, including Clauses 24.1, and Vietnamese Law.

In the event the Solar Service Company unilaterally terminates this Agreement in accordance with Clause 27.3, it is agreed the Solar Service Company shall be entitled to at its sole option: (i) enforce the Bank Guarantee; and/or (ii) sell to the Customer and the Customer shall be obliged to purchase the Solar PV System from the Solar Service Company at the Fair Market Value of the Solar PV System at such time of termination and legal title to the Solar PV System shall pass to the Customer in such event upon payment in full of the applicable purchase price to the Solar Service Company.

* 1. Further to the above, the Customer shall have the right to unilaterally terminate this Agreement with immediate effect in any of the following events:[[52]](#footnote-52)

1. the Commercial Operation Date has not been achieved by the Long Stop Date as a consequence of the Solar Service Company’s failure to obtain any required Permit; and
2. pursuant to any other right of unilateral termination the Customer may have under this Agreement, including Clauses 13.4 and 24.1, and Vietnamese Law.
   1. Termination of this Agreement is without prejudice to any rights and obligations that have already accrued to a Party prior to the termination.
   2. On termination of this Agreement for whatever reason:[[53]](#footnote-53)
3. the Solar Service Company shall, unless the Customer has purchased the Solar PV System from the Solar Service Company, remove the Solar PV System and any improvements and additions to the Solar PV System installed by the Solar Service Company at the Site at the Customer’s cost and expense and the Customer shall provide all such cooperation and assistance to the Solar Service Company as necessary for the Solar Service Company to do so;
4. subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.
5. **Limitation of Liability**
   1. During:
6. the Lease Term, the Customer shall be liable for a breach of the warranty or damage of any part of the Solar PV System caused if the Customer alters, repairs or interferes with the Solar PV System without the written consent of the Solar Service Company, including any damage caused by the condition of the Site, the Premises and the Existing Electrical System;
7. the Maintenance Term, the Solar Service Company shall be liable for a breach of the warranty or damage of any part of the Solar PV System caused by the negligence or fault of the Solar Service Company.
   1. Where penalties apply to any breach by the Solar Service Company, the penalties shall be the only remedy and all other remedies or damages under Vietnamese Law are waived by the Customer. In any other event of a breach by the Solar Service Company, the Solar Service Company’s liability shall be limited to direct actual damages only.[[54]](#footnote-54)
   2. Nothing in these conditions excludes or limits the liability of the Solar Service Company for death or personal injury caused by the Solar Service Company’s negligence; for any matter which it would be illegal for the Solar Service Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.
   3. This Agreement, and all liability and obligations of the Solar Service Company pursuant to this Agreement, shall terminate at the end of the Term. For the avoidance of doubt, the Solar Service Company shall be entitled on termination to:
8. be paid all sums due to it under this Agreement; and
9. this Agreement shall remain in force only to the extent necessary to allow the Solar Service Company to do same.
10. **Warranties**
    1. Each Party (a “**Relevant Party**”) represents, warrants and covenants to each other Party that:
11. the Relevant Party is duly connected incorporated, validly existing and in good standing order under the law of its jurisdiction of incorporation;
12. the Relevant Party has the full power and authority to enter into and perform its obligations under this Agreement;
13. this Agreement constitutes binding obligations on the Relevant Party in accordance with its terms, subject to any principles of equity or insolvency law;
14. other than as expressly stated in this Agreement, the Relevant Party has obtained all applicable corporate approvals, licenses, waivers or exemptions as required under its constitutional documents, applicable law, and as required by any Government Authority to empower it to enter into and perform its obligations under this Agreement.
    1. **Warranties given by the Customer**

The Customer represents, warrants and covenants to the Solar Service Company:

1. it has title to or a valid and ongoing lease for the Premises;
2. if the Customer does not own the Premises, it has obtained all required consents from the owner of the Premises to have the Solar PV System installed on the Site and to grant the right of access to the Solar Service Company and its employees, agents and Subcontractors pursuant to Clause 18 and enter into and perform its obligations under this Agreement;
3. it will not violate any provision of Laws, order, judgment, or violate any provision in any formation documents of Customer, the violation of which could have a material adverse effect on the ability of Customer to perform its obligations under this Agreement;
4. it shall ensure to maintain its valid title to or rights as lessee of the Premises, as the case may be, throughout the Term, including by paying any relevant fees to Governmental Authorities and/or fees, including rental, to the owner of the Premises, as applicable, as and when due.
5. **Notices[[55]](#footnote-55)**

All notices shall be made in writing and shall be deemed given or made as of the date delivered, whether by personal delivery, courier or email to the address set out in the introduction, or to such other postal or email address of which the sender has received prior written notice from the recipient advising the sender that correspondence in connection with this Agreement should be sent to such other postal or email address.

1. **Confidentiality and Publicity[[56]](#footnote-56)**
   1. The Parties shall (and shall ensure that each of their agents and where applicable officers and employees shall) at all times keep confidential any Confidential Information which it may acquire during any communications preceding or after the execution and during the performance of this Agreement in relation to the other Party and this Agreement, and shall not use or disclose such Confidential Information to any other person. For the purposes of this clause, “Confidential Information” shall include in respect of the disclosing Party (the “**Disclosing Party**”), any and all information and know-how in any form, whether of a technical, financial, business or other nature, including, without limitation, the disclosing Party's activities, operations, research, development, finances, marketing plans, product specifications, operations, systems, policies, procedures, practices, data, methods, any ideas, concepts, sketches, copy, art-work, documentation or notes conceived related to the Solar PV System, any information, analyses, compilations, studies and other material generated pursuant to this Agreement which contains, reflects, or is/are derived from, any of the foregoing, and any other sensitive information or communications which would reasonably be deemed to be confidential that is or has been disclosed to or otherwise received or obtained, directly or indirectly, by the other Party, whether or not in connection with or pursuant to this Agreement, and the details, terms and conditions of this Agreement.
   2. Each Party shall cause its personnel, agents and any Subcontractors engaged in performance of this Agreement to treat all such Confidential Information in Clause 31.1 as confidential, as well as any third party, who has been given access to such Confidential Information shall treat it as confidential so as to ensure that such Confidential Information will not be made available to any unauthorized third party.
   3. Notwithstanding Clauses 31.1 and 31.2:
2. the Parties may disclose Confidential Information if and to the extent:
3. required by any Governmental Authority;
4. required by any applicable Law;
5. disclosed to the professional advisors, auditors and/or bankers of each Party;
6. the Confidential Information has come into the public domain through no fault of that Party; or
7. the other Party has given its prior written approval of the disclosure,

provided that any Confidential Information so disclosed will be disclosed only after consultation with the other Party and such consultation is lawful and reasonably practicable;

1. it is agreed and acknowledged by the Parties that:
2. [the Solar Service Company][both Parties] have a desire to generate favourable publicity regarding the Solar PV System and such party’s association with it, and [the Solar Service Company][either Party] may from time to time issue press releases regarding the Solar PV System and subject to the other Party’s prior approval, such approval not to be unreasonably withheld; and
3. [the Solar Service Company][both Parties] have the right to publicise and display photographs of the Solar PV System in its advertising and marketing materials, provided that any such materials shall identify the Solar Service Company as the developer of the Solar PV System.
4. **Variations**

No variation to this Agreement shall be effective unless it expressly refers to this Agreement and is made in writing and signed by or on behalf of the Parties.

1. Severability

If any provision of this Agreement is determined by any arbitral tribunal, court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).

1. Assignment
   1. The Customer may not without the prior written consent of the Solar Service Company assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
   2. The Solar Service Company may assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights under this Agreement on giving thirty (30) days’ prior notice to the Customer without the prior written approval of the Customer, including for the purposes of obtaining financing or providing security for the supply of the Solar PV System. Notwithstanding the foregoing, the Solar Service Company may not without the prior written consent of the Customer assign, transfer, charge, license or otherwise deal in or dispose of any contractual obligations under this Agreement.[[57]](#footnote-57) **[**Without limiting the foregoing,the Customer shall extend all reasonably required support including acknowledgement of the rights of the Solar Service Company under this Agreement to assist the Solar Service Company in securing financing by the Solar Service Company.**]**
2. Law, Language and Copies
   1. This Agreement (together with all documents referred to herein) shall be governed by and construed according to Vietnamese Laws.
   2. This Agreement shall be entered into in [English and] Vietnamese in two (2) original copies of each version. In the event of any inconsistency between the English and Vietnamese language versions, the [English][Vietnamese] language version shall prevail.
3. Disputes
   1. Any dispute arising out of or in connection with the Agreement shall be resolved in accordance with this Clause 36. Before referring a dispute to arbitration, the Parties shall endeavour to resolve any dispute amicably within 30 days of a Party giving notice to the other Party that a dispute has arisen.
   2. Any such dispute which cannot be resolved amicably shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration. The number of arbitrators shall be three. Each Party shall appoint one arbitrator, with the third to be appointed by such two appointed arbitrators. The place of arbitration shall be Ho Chi Minh City, Vietnam. The language to be used in the arbitral proceedings shall be English provided that any arbitral award shall be rendered in both English and Vietnamese.

[*SIGNATURE PAGE TO FOLLOW*]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
| For and on behalf of  **[The Solar Service Company]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [\*\*\*]  [Position] | For and on behalf of  **[The Customer]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [\*\*\*]  [Position] |

**SCHEDULE 1 – CONDITIONS PRECEDENT**

1. The Solar Service Company’s obligations under this Agreement to design, construct, install and operate the Solar PV System and lease the Solar PV System to the Customer are subject to the satisfaction, or waiver by the Solar Service Company, of the following conditions:
2. the Solar Service Company has completed its due diligence[[58]](#footnote-58) of the Customer and the project and the results are satisfactory to the Solar Service Company;
3. [the Customer has delivered the Bank Guarantee to the Solar Service Company in accordance with Clause 21;]
4. the Customer has handed over the peaceful and vacant possession of the Site at the Premises to the Solar Service Company;
5. all necessary approvals, permits and consents including design approval, roof adequacy report (if applicable), and insurance policies for the Premises have been obtained by the Customer; and
6. [\*\*\*].[[59]](#footnote-59)
7. The Parties shall use best efforts to satisfy the Conditions Precedent for which they are responsible as soon as practicable after the Effective Date and notify the other Party immediately upon satisfaction of any such Condition Precedent.

**SCHEDULE 2 – SOLAR PV SYSTEM SPECIFICATIONS[[60]](#footnote-60)**

1. **System Installed Capacity (kW): [\*\*\*]**
2. **Module(s):**

|  |  |  |
| --- | --- | --- |
| **Manufacturer/Model** | **Specifications** | **Quantity** |
| **[\*\*\*]** | **[\*\*\*]** | **[\*\*\*]** |
| **[\*\*\*]** | **[\*\*\*]** | **[\*\*\*]** |

1. **Inverter(s):**

|  |  |  |
| --- | --- | --- |
| **Manufacturer/Model** | **Specifications** | **Quantity** |
| **[\*\*\*]** | **[\*\*\*]** | **[\*\*\*]** |
| **[\*\*\*]** | **[\*\*\*]** | **[\*\*\*]** |

1. **Solar PV System Degradation**

| **Year** | **Solar PV System Degradation** |
| --- | --- |
| Operational Year 1 to Operational Year 2 of the Term | [\*\*\*]% |
| Operational Year 2 to Operational Year [\*\*\*] of the Term | [\*\*\*]% |
| Operational Year [\*\*\*] to Operational Year [\*\*\*] of the Term | [\*\*\*]% |
| Operational Year [\*\*\*] to Operational Year [\*\*\*] of the Term | [\*\*\*]% |

1. **Delivery Point**

**[To add written description of the Delivery Point and refer to relevant drawing below]**

1. **List of accompanying drawings**

**[To be added by the Solar Service Company as necessary, including drawing of the Solar PV System and so on]**

1. **Existing Electrical System**

**[To be added by the Customer]**

**SCHEDULE 3 – CALCULATION OF RENT [AND FIXED SERVICE FEE][[61]](#footnote-61) / PAYMENT TERMS**

1. **Monthly Rental Fe**
2. It is agreed between the Parties that it is fair and reasonable in light of the benefit that the Customer receives under the Lease Term that the Monthly Rental Fee payable by the Customer to the Solar Service Company in consideration of the Lease shall be calculated as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Monthly Rental Fee** | **=** | **Monthly Energy Output** | **x** | **A** |

In which:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Monthly Energy Output** | | | **=** | **the amount of electricity in kWh generated by the Solar PV System in such month as measured and recorded by the System Meter installed pursuant to Clause 2.3 of the Agreement** |
| **A** | = | **the Utility’s Retail Electricity Tariff with a [\*\*\*%] discount applied[[62]](#footnote-62)** | | |

In which:

**“Utility’s Retail Electricity Tariff”** means the retail electricity price applicable to the Customer and the Premises for such month as published by the Utility from time to time (for the avoidance of doubt, excluding VAT).

1. **[Fixed Service Fee**
2. The Fixed Service Fee payable by the Customer to the Solar Service Company in consideration of the Maintenance Services during the Lease Term shall be a fixed monthly fee of: [\*\*\*]/VND (the “**Fixed Service Fee**”).
3. The Fixed Service Fee shall be payable from the Commercial Operation Date.
4. The Fixed Service Fee shall be subject to applicable Value Added Tax and any bank charges, which shall be borne by the Customer.**] [[63]](#footnote-63)**
5. **Payment**
6. The payments to the Solar Service Company of the Monthly Rental Fee **[**and the Fixed Service Fee**]** during the Lease Term under this Agreement shall be made in accordance with Clause 20 and this Schedule 3.
7. The Monthly Rental Fee shall be paid monthly in arrears as invoiced by the Solar Service Company to the Customer. The Solar Service Company shall provide the Customer with System Meter readings taken from the System Meter within [5] Business Days of the end of each calendar month. For the avoidance of doubt, the System Meter readings shall be taken to provide a definitive record of the quantity of Energy Output generated by the Solar PV System in such month.
8. Further to the above, it is agreed in order to determine the amount of Energy Output delivered to the Customer as generated by the Solar PV System, the record of Energy Output, the Monthly Rental Fee and payment must be based on the estimated data in the following order:
9. the readings of the System Meter during the relevant month, which must have the level of accuracy complying with the relevant standard;
10. the Monitoring System shall be used as back up for the readings of the System Meter;
11. when the System Meter and Monitoring System do not record exactly the amount of delivered Energy Output, this amount must be estimated based on the Deemed Generation.
12. **[**The Fixed Service Fee shall be paid monthly in advance on the first day of each calendar month by bank transfer to the Solar Service Company’s account under Clause 20 without any need for invoicing or notice from the Solar Service Company.**] [[64]](#footnote-64)**

**SCHEDULE 4 – CALCULATION OF THE PURCHASE PRICE AND SERVICE FEE / PAYMENT TERMS**

1. **Purchase Price**
2. The purchase price payable by the Customer to the Solar Service Company for the Solar PV System shall be an amount of VND [\*\*\*] (the “**Purchase Price**”). The Parties agree and acknowledge that the Purchase Price is equal to the anticipated Fair Market Value of the Solar PV System at such time.
3. **Monthly Service Fee**
4. The Monthly Service Fee payable by the Customer to the Solar Service Company in consideration of the Maintenance Services shall be calculated as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Monthly Service Fee** | **=** | **Monthly Energy Output** | **x** | **A** |

In which:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Monthly Energy Output** | | | **=** | **the amount of electricity in kWh generated by the Solar PV System in such month as measured and recorded by the System Meter installed pursuant to Clause 2.3** |
| **A** | = | **the Utility’s Retail Electricity Tariff with a [\*\*\*%] discount applied** | | |

In which:

**“Utility’s Retail Electricity Tariff”** means the retail electricity price applicable to the Customer and the Premises for such month as published by the Utility from time to time.

1. **Payment**
2. The payments to the Solar Service Company of the Purchase Price and the Monthly Service Fee during the Maintenance Term under this Agreement shall be made in accordance with Clause 20 and this Schedule 3.
3. The Purchase Price shall be payable in [48] monthly instalments in the amount of VND[\*\*\*] each (each an “**Instalment Payment**”) on the first day of each calendar month during the Maintenance Term by bank transfer to the Solar Service Company’s account as set out in Clause 20 without any need for invoicing or notice from the Solar Service Company[[65]](#footnote-65).
4. The Monthly Service Fee shall be paid monthly in arrears as invoiced by the Solar Service Company to the Customer. The Solar Service Company shall provide the Customer with System Meter readings taken from the System Meter within [5] Business Days of the end of each calendar month. For the avoidance of doubt, the System Meter readings shall be taken to provide a definitive record of the quantity of Energy Output generated by the Solar PV System in such month.
5. Further to the above, it is agreed in order to determine the amount of Energy Output delivered to the Customer as generated by the Solar PV System, the record of Energy Output, the Monthly Service Fee and payment must be based on the estimated data in the following order:
6. the readings of the System Meter during the relevant month, which must have the level of accuracy complying with the relevant standard;
7. the Monitoring System shall be used as back up for the readings of the System Meter;
8. when the System Meter and Monitoring System do not record exactly the amount of delivered Energy Output, this amount must be estimated based on the Deemed Generation.

**[SCHEDULE 5 – UTILITY PPA[[66]](#footnote-66)**

1. It is agreed and acknowledged that the Customer shall be the Party to enter into a Utility PPA with the Utility in respect of Energy Output produced by the Solar PV System.
2. Notwithstanding paragraph 1 of this Schedule 5, it is agreed and acknowledged by the Parties that:
3. the Solar Service Company shall prepare and submit all applications to obtain all Permits for interconnection of the Solar PV System to the Grid, including completing all technical dealings with the Utility to ensure the Bi-directional Meter is in place and to ensure all Grid feasibility studies have been undertaken to the satisfaction of the Utility; and
4. the Solar Service Company shall carry out and complete all such procedures contemplated in this paragraph 2 of Schedule 5 at the Solar Service Company’s sole cost and expense;
5. the Customer shall provide all such cooperation and assistance to the Solar Service Company as necessary for such process including execution and delivery of all documentation reasonably requested by the Solar Service Company.

1. This Agreement is provided as a suggested alternative contractual arrangement to the direct power purchase agreement. Under this structure, the Customer will either self-consume all output by the system that it initially leases (and later purchases) or the Customer may sell excess electricity to the Utility under the Utility PPA. The template Agreement has been structured on the basis of a business model of a long-term solar lease during an initial term and an obligation to purchase the system upon the expiry of the leasing term (and at the beginning of the maintenance term, although with deferred payment obligation). [↑](#footnote-ref-1)
2. As a general comment, all sections shown in square brackets are to be modified by the parties based on specific circumstances and/or to be completed with the details pertaining to the parties’ situation. [↑](#footnote-ref-2)
3. Name and details of the Vietnamese Customer would be included here. [↑](#footnote-ref-3)
4. Name and details of the Solar Service Company would be included here. This template has been prepared for use by a Solar Service Company being either a domestic Vietnamese company or a 100% foreign owned Vietnamese subsidiary providing the services to a Vietnam-based Customer. Further points to be noted based on this: (i) all prices in this Agreement must be stated in Vietnamese dong and cannot refer to foreign currency or adjusted based on any foreign currency exchange rate; and (ii) the governing law must be the laws of Vietnam. [↑](#footnote-ref-4)
5. Parties to input specific details including, incorporation/registration number, and registered address in respect of the Solar Service Company and the Customer, if it is an enterprise, or personal details for the Customer in the case of this contract being used for installation at a residence. [↑](#footnote-ref-5)
6. This is a general background to the contract and should be able to be applied to any circumstance without any need to be amended. However, additional background to the transaction can be added as appropriate. [↑](#footnote-ref-6)
7. To be retained if the Utility PPA will be entered into. [↑](#footnote-ref-7)
8. This is suggested as the purchase price for the Solar PV System in the event of early termination of this Agreement due to breach of this Agreement by the Customer and so on. The determination will ideally reflect the initial cost, financing cost, development cost and overhead which generally are in the range of 25-30% over and above the fixed asset cost. Alternatively, the fair market value of the Solar PV System may be agreed at the effective date and depreciated at an agreed percentage each year to give the ‘fair market value’ purchase price for the system on any such early termination to ensure an acceptable IRR for the Solar Service Company in such event rather than relying on depreciation based on VAS. [↑](#footnote-ref-8)
9. Whether a Fixed Service Fee is payable will depend on the commercial arrangement that the Solar Service Company requires and agrees with the Customer. Adding a fixed fee element would shorten the payback period and allow an earlier capital recovery. To be removed or retained dependent on whether it is agreed there will be a Fixed Service Fee during the Lease Term or not. [↑](#footnote-ref-9)
10. This should be set by the Solar Service Company based on the amount of time required to recover costs and make approximately an 80% return on the value of the Solar PV System in light of financial leasing restrictions, and to be agreed with the Customer. Generally, an energy supply contract of this nature usually has a term of between 15 to 20 years in Vietnam. However, the term will need to be considered in light of the restrictions on financial leasing under Vietnamese law and a term that does not exceed 60% of the life-time of the Solar PV System should be used. A term of 8 years has been suggested based on the asset life-time of a solar PV rooftop system generally being accepted at 20 years. [↑](#footnote-ref-10)
11. This is provided as a last date by which the Solar Service Company must have the Solar PV System operational and have obtained any necessary approvals otherwise the Customer can terminate the contract under clause 26.4(a). Therefore, this should be set as a realistic date by the Solar Service Company taking into account the timeline for installation but also crucially the timeline in practice for obtaining any required permits and licenses for the Solar PV System. [↑](#footnote-ref-11)
12. This description is wide to encompass most aspects of a solar PV rooftop system that may be installed under this contract, but can be modified based on the actual Solar PV System specifications. [↑](#footnote-ref-12)
13. To be retained or removed depending on whether it is intended to enter into a Utility PPA or not. [↑](#footnote-ref-13)
14. Schedule 1 sets out the detailed description of the Solar PV System, its components and the various equipment to be installed by the Solar Service Company and should be completed in as much detail as necessary to record such items for future reference as ownership of these will either be retained by the Solar Service Company, in the case of early termination or default by the Customer during the Lease Term, or transferred to the Customer at expiry of the Lease Term. It also includes details of the Customer’s Existing Electrical System and the Site, which should be completed in as much detail as possible as these will be under the ownership and responsibility of the Customer and the Customer has responsibilities to maintain these to not negatively impact upon the Solar PV System. [↑](#footnote-ref-14)
15. As noted, the Customer shall be the electricity generator for regulatory purposes under this contractual structure and as such would be the party required to obtain additional licenses/approvals, if any. However, the Solar service Company as the party experienced in the solar energy sector should be responsible for such process and this will be covered by the Monthly Rental Fee. [↑](#footnote-ref-15)
16. Currently, an electricity operating license is not required for Solar PV Systems where the electricity will be for self-consumption and for systems of up to 1 MWp (and meeting other requirements for solar rooftop systems, such as its connection not exceeding 35 kv) for the generation and sale of electricity to other entities (under a draft regulation to follow Decision 13, this threshold may be revised to be any systems with an installed capacity greater than 1MW). Therefore, if the system will be used solely for self consumption no electricity operation license will be required and if it will sell excess to the Utility no electricity operation license should be required as the system should have an installed capacity of a maximum of 1MWp to qualify as a rooftop system under Decision 13. [↑](#footnote-ref-16)
17. The definition of “Lease Expiry Date” must be completed in the definitions in Clause 1.1 above. The period should be set by the Solar Service Company based on the amount of time required to recover costs and make approximately an 80% return on the value of the Solar PV System in light of financial leasing restrictions, and to be agreed with the Customer. Generally, an energy supply contract of this nature usually has a term of between 15 to 20 years in Vietnam. However, the term will need to be considered in light of the restrictions on financial leasing under Vietnamese law and a term that does not exceed 60% of the life-time of the Solar PV System should be used. A term of 8 years has been suggested based on the asset life-time of a solar PV rooftop system generally being accepted at 20 years. [↑](#footnote-ref-17)
18. This is included as an explicit agreement and acknowledgement of the Customer’s role under this contract during the Lease Term as the electricity generator and self-consumer of such generated electricity for regulatory purposes. [↑](#footnote-ref-18)
19. The “Permitted Limit” of inaccuracy should be agreed between the Parties based on standard industry practice. [↑](#footnote-ref-19)
20. Applicable in the case of the Monthly Rental Fee is variable based on the Energy Output. In this case the Contractor may provide the forecast as an additional service, but the Solar Service Company should not be bound by guaranteeing a minimum energy output from the Solar PV System as such output is dependent on a number of variables outside the Solar Service Company’s control. Furthermore, as the Monthly Rental Fee is to be variable based on monthly Energy Output the Contractor would suffer reduced fees and slower payback from any reduction in Energy Output from the Solar PV System in any event. Accordingly, the template does not include a performance guarantee although, depending on the specific circumstances and the final terms of the arrangement between the Customer and the Solar Service Company, this could separately be negotiated (e.g. in the form of a simple performance ratio or single or multi-year yield scenarios (e.g. based on P50/P75/P90) with different contractual consequences. [↑](#footnote-ref-20)
21. Applicable for use if the variable Monthly Rental Fee based on Energy Output is used. This should be applied (i) to allow the Customer to take the Solar PV System offline for an agreed period of time each month (such as the Customer’s weekly off days if it is an enterprise, or public holidays and so on for any type of Customer) so that the Customer does not have to pay rent based on Energy Output that is generated but not ultimately used by the Customer; and (ii) to avoid the Customer being able to take the Solar PV System offline for extended periods and consequently reducing the Monthly Rental Fee. [↑](#footnote-ref-21)
22. The Parties must consider whether there should be a Fixed Service Fee payable by the Customer for the Maintenance Services during the Lease Term or if this service should be covered by the Monthly Rental Fee. In particular, the Solar Service Company must consider this together with the setting of the Monthly Rental Fee rate, as this will impact upon the pay back rate for the Solar Service Company but also on the incentive for the Customer to enter into this arrangement if the savings are minimal compared with staying with energy supply from the Utility. [↑](#footnote-ref-22)
23. To delete if it is agreed there will be no Fixed Service Fee during the Lease Term. [↑](#footnote-ref-23)
24. To delete if it is agreed there will be no Fixed Service Fee. [↑](#footnote-ref-24)
25. There should be an obligation on both Parties to inform the other in the event the Solar PV System breaks down to ensure the matter is remedied as soon as possible. [↑](#footnote-ref-25)
26. To delete or retain as applicable here depending on whether there is a Fixed Service Fee during the Lease Term or not. The level of penalty here and throughout this Agreement that may be enforced against the Solar Service Company should be determined with the understanding that the Customer will likely have no such right under their existing electricity supply arrangements for compensation and that such penalties transfer financial risk to the Solar Service Company who has already taken the risk in financing the project with recovery only over a long-term period. [↑](#footnote-ref-26)
27. The Solar Service Company must have the right to take the Solar PV System off line to perform necessary maintenance and repair services. This should be to an agreed maximum level beyond which the Solar Service Company may face a penalty. However, as the Solar PV System will in most cases supply a maximum of 60% of the Customer’s energy needs the penalty should not be overly punitive as the Customer will not be dependent on the Energy Output from the Solar PV System (even in the case of industrial Customer’s) and, as the Monthly Rental Fee is variable based on generation the Solar Service Company will already incur reduced payments for such period in any event. [↑](#footnote-ref-27)
28. To delete or retain as applicable here depending on whether there is a Fixed Service Fee during the Lease Term or not. [↑](#footnote-ref-28)
29. The level of penalty here and throughout this Agreement that may be enforced against the Solar Service Company should be determined with the understanding that the Customer will likely have no such right under their existing electricity supply arrangements for compensation and that such penalties transfer financial risk to the Solar Service Company who has already taken the risk in financing the project with recovery only over a long-term period. [↑](#footnote-ref-29)
30. These obligations of the Customer to maintain the rooftop and Existing Electrical System should be retained as the condition of these will have an effect on the operation of the Solar PV System and its ability to generate electricity. This also clearly defines that such maintenance and repairs are the responsibility of the Customer. [↑](#footnote-ref-30)
31. This agreement between the parties should be retained to provide that ownership will remain with the Solar Service Company, as the Solar PV System shall be integrated with the Premises it could otherwise be possible for the Customer to argue that it has become the Customer’s asset by virtue of being attached to the Premises. [↑](#footnote-ref-31)
32. It is suggested that ownership and retention of title be registered in Vietnam to protect and secure ownership for the Solar Service Company throughout the Lease Term until the purchase of the Solar PV System by the Customer pursuant to Clause 11. At the time of drafting no separate agreement between the Parties is required for this, but legal advice should be sought on this matter at the time of entering into this Agreement and also on completion of such process. [↑](#footnote-ref-32)
33. The ownership of the Solar PV System should pass to the Customer at the expiry of the Lease Term, unless the Customer is in default. Title to the Solar PV System must not pass to the Customer at expiry of the Lease Term free of charge, or at a nominal rate (due to financial leasing restrictions) and it is suggested the Customer pay for the system (e.g. at 20% of the historical cost) but credit the purchase price and to off-set it against payments made under the Maintenance Term. [↑](#footnote-ref-33)
34. This should be set by the Solar Service Company based on the amount of time required to recover costs and make a return beyond that already made during the Lease Term, and to be agreed with the Customer. [↑](#footnote-ref-34)
35. This right to terminate the Agreement may be deleted based on the Solar Service Company’s opinion and industry practice as it may be unfairly punitive to the Solar Service Company and the sole remedy of application of a penalty may be appropriate. [↑](#footnote-ref-35)
36. The level of penalty here and throughout this Agreement that may be enforced against the Solar Service Company should be determined with the understanding that the Customer will likely have no such right under their existing electricity supply arrangements for compensation and that such penalties transfer financial risk to the Solar Service Company who has already taken the risk in financing the project with recovery only over a long-term period. [↑](#footnote-ref-36)
37. This section sets out general rights and responsibilities of the Solar Service Company to be applied throughout both the Lease Term and the Maintenance Term. The responsibilities placed on the Solar Service Company include performing its obligations to the required standard of care and skill, and within the relevant Vietnamese regulations, and its rights include to receive payment from the Customer and so on. One notable right of the Solar Service Company is to approve any modification to the Solar PV System or to the Site as this may impact upon its operability and capacity to generate electricity which would in turn affect the payment amounts to be received by the Solar Service Company. [↑](#footnote-ref-37)
38. This section sets out the general rights and responsibilities of the Customer to be applied throughout both the Lease Term and the Maintenance Term. The important general obligations of the Customer include ensuring the Insolation levels at the Site are not negatively impacted upon throughout the Term as this would reduce the amount of electricity the Solar PV System could generate and the corresponding benefit of the system to the Customer and the Solar Service Company. Also, the Customer must ensure that an internet connection is available throughout the Term as this is essential for the Solar Service Company to be able to monitor the Solar PV System. [↑](#footnote-ref-38)
39. It is understood it is the intention that the Solar Service Company will perform most if not all of the services under this Agreement, but may need to engage Subcontractor’s for performance of certain services over the course of the long term contract with the Customer’s approval. However, it should be noted by the Solar Service Company that the Solar Service Company will remain liable for the provision of the services to the Customer under this Agreement and for that reason, the Solar Service Company should take all precautions to ensure it is equally protected under any separate subcontract agreements it enters into with local service provider(s). [↑](#footnote-ref-39)
40. As the Solar PV System will be installed on the Customer’s rooftop, the Solar Service Company will require a right of access to the Solar PV System in order to effectively perform its obligations under the contract. Such right of access must be granted to the Solar Service Company, its authorised personnel and importantly extended to the Subcontractor(s) throughout the Term of the contract. The extension of this right to subcontractors is necessary for the Solar Service Company to be able to grant the right of access to the Subcontractors, who may be engaged to perform certain of the Solar Service Company’s services and as such would need to enter upon the Customer’s premises to do so. [↑](#footnote-ref-40)
41. Due to the vital importance of this right of access for the Solar Service Company to be able to perform its obligations under the Agreement, such right should be irrevocable during the Term and if the Customer denies, obstructs or in any way refuses such access it will be considered a material breach of the Agreement. [↑](#footnote-ref-41)
42. Appropriate insurance types and levels should be agreed here and procured based on standard industry practice. [↑](#footnote-ref-42)
43. The application of interest to late payments is permitted under Article 357 of the Civil Code 2015. The suggested interest rate of 20% is the maximum permitted under Article 478.1 of the Civil Code 2015 and a lower rate may be agreed between the Parties. [↑](#footnote-ref-43)
44. Suggested the Customer shall provide a bank guarantee to secure its performance under this Agreement. Market practice is for this to be for an amount equivalent to 10% of the value of the Solar PV System. The Solar Service Company may also consider asking for further security such as advance payment deposit of a number of months projected Monthly Rental Fee for example. [↑](#footnote-ref-44)
45. Applicable only in the case the Customer is an enterprise or organization. This is recommended in such case to ensure ease of communication between the Parties and to avoid and/or deal with issues efficiently and effectively as these arise during the Term. [↑](#footnote-ref-45)
46. This has been included as there is a possibility the Customer may require the Solar PV System to be moved to another location on its rooftop for further construction/renovation of its building purposes and so on. In this event the Solar Service Company should be compensated for any costs of relocation within the Customer’s rooftop and not be penalized due to the Solar PV System being taken off line for such relocation requested by the Customer. [↑](#footnote-ref-46)
47. This has been included as there is a risk the Customer may lease, transfer or otherwise relocate from the Premises during the Term as this is a long term contract. The consequences of this are different depending on whether it is prior to expiry of the Lease Term (at such time this provision should protect the Contractor more stringently as it will not yet have made any significant return on its investment) or during the Maintenance Term after the Customer has purchased the Solar PV System (at such time the Solar Service Company should still be protected but the option to terminate may be more flexibly applied to include the Customer’s right as it will own the Solar PV System at such time. In either period the Solar Service Company should be compensated in the event of termination due to relocation of the Customer, but the specific levels of compensation should be agreed between the Parties to take into account any foreseeable losses of the Solar Service Company in such event. [↑](#footnote-ref-47)
48. Whether the Customer must compensate the Solar Service Company (i) in full or at a percentage (and which percentage) of the total outstanding Monthly Rental Fee on termination; and/or (ii) purchase the system at the Fair Market Value of the system at such time, on termination of the Agreement under this clause should be considered by the Parties and agreed here, dependent on the commercial model that the Solar Service Company applies. It would also be possible to agree different amounts / percentages dependent on, for example, the year in which the agreement is terminated in comparison with the overall term, to take into account the gradual amortization of the cost incurred by the Solar Service Company. [↑](#footnote-ref-48)
49. This is an important clause and should be retained to allow either Party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible. The list of events to be included is a matter of negotiation between the Parties, but the clause as drafted is typical and should include “*regulation, order or directive of any Governmental Authority”* as Vietnamese Law is developing, and regulations can change in nature relatively often compared to other legal systems. [↑](#footnote-ref-49)
50. These provisions for early termination include standard cases such as agreement between the Parties, material and unremedied breach, and bankruptcy/winding up of either Party. Beyond these, specific rights of the Contractor to terminate the Agreement have been included to protect the Contractor in the event the Customer fails to make payments, and denies access to the Contractor (subcontractor). Further specific events that may enable either Party to terminate the Agreement may be agreed between the Parties based on commercial concerns and so on at such time. Depending on the circumstances of each specific transaction, the Agreement could also include that (i) the Parties may mutually agree to extend the Term after the initial Term has expired (e.g. where the Customer has no interest in taking over the system and prefers for the Solar Service Company to continue to maintain the system), or (ii) could also include a unilateral option for the Customer to extend the Term. [↑](#footnote-ref-50)
51. Please see clause 12.2 containing the definition of “Maintenance Term” which must be completed by the Parties as discussed in footnote number 40. [↑](#footnote-ref-51)
52. The Solar Service Company will have made significant upfront investment in purchasing the Solar PV System, designing, installing and commissioning the system etc. Such costs will only be recovered over a number of years through payments from the Customer. Therefore, it is suggested that the Customer is not able to early terminate the contract other than on mutual agreement with the Solar Service Company, or as specifically listed. [↑](#footnote-ref-52)
53. The obligation and right of the Solar Service Company to remove the Solar PV System on termination unless the Customer has purchased it is specified to protect the Solar Service Company’s investment in the Solar PV System in the event the Agreement is terminated prior to the end of the Lease Term. [↑](#footnote-ref-53)
54. The Solar Service Company’s liability has been limited to the agreed penalties for underperformance and so on in this Agreement. Beyond this the Solar Service Company’s liability should be limited to direct damages in any event. [↑](#footnote-ref-54)
55. This is a standard clause and should not require to be amended. Also, it sets agreement on deemed delivery of notice, which shall trigger time lines under other clauses such as Clause 26.2(c), under which a party must remedy a breach of contract within 30 days of receiving notice from the other Party otherwise the Agreement may be terminated. [↑](#footnote-ref-55)
56. This is a standard clause on confidentiality with minor additions to allow each party to include specific information/images in promotional materials, such as the Solar Service Company’s website or the Customer’s (if it is an enterprise) press releases. This clause should not require much modification, other than specifying which information shall be included as confidential. It also includes exceptions on disclosing such Confidential Information, such as to advisors and as required under law necessary in practice. [↑](#footnote-ref-56)
57. The right of the Solar Service Company to assign its contractual obligations must be included to allow the Contractor to engage a Subcontractor to perform certain of its obligations if necessary. [↑](#footnote-ref-57)
58. This review would typically include the Customer’s financial statements, Customer’s legal rights in respect of the ownership or right to use the Premises and the Site etc. [↑](#footnote-ref-58)
59. Suggested conditions precedent based on proposed terms under this template Agreement. The Solar Service Company should review and add/remove conditions based on its internal process and any requirements of its funders. [↑](#footnote-ref-59)
60. The Contractor and Customer shall insert a full technical description of the relevant equipment and so on. This should cover make, specification, age and condition as defined by a professional expert. Records of any the maintenance and servicing prior to entering into this Agreement should be included if available. This should also include all ancillary equipment. This shall take the form of written records, photographs and scaled plans and sections. [↑](#footnote-ref-60)
61. To delete or retain dependent on whether there will be a Fixed Service Fee during the Lease Term or not. [↑](#footnote-ref-61)
62. Agreeing a fixed discount to the applicable Utility tariff is currently the most common approach to pricing in the market, although the parties can also agree a specific price per kwh which can be indexed (e.g. increased annually based on the Vietnamese CPI or can be adjusted by the same percentage as the EVN feed-in-tariff which will adjusted annually). [↑](#footnote-ref-62)
63. To delete or retain dependent on whether there will be a Fixed Service Fee during the Lease Term or not. [↑](#footnote-ref-63)
64. To delete or retain dependent on whether there will be a Fixed Service Fee during the Lease Term or not. [↑](#footnote-ref-64)
65. The overall amount of the Purchase Price (which can be pre-agreed at the time of signing of the contract and which will be based on the anticipated linear written down historical cost of the Solar PV System) will then be taken into account when agreeing the rate for the Monthly Service Fee for the Maintenance Phase. [↑](#footnote-ref-65)
66. To be deleted or retained depending if the Utility PPA will be entered into. [↑](#footnote-ref-66)