**Solar PV Rooftop**

**PRIVATE POWER PURCHASE AGREEMENT**

**Version 1.3 as of October 31st, 2017**



Photo credit: Thai Submit

This Power Purchase Agreement Template has been developed by the USAID Clean Power Asia and GIZ Thailand to facilitate an investment of distributed electricity generation system from Solar PV rooftop in Thailand.

This is a standardized agreement aiming to support market players by providing neutral clauses as a starting point for a negotiation between the Seller and the Purchaser of solar power. We expect that this agreement can help to reduce soft costs and negotiating time for all interested parties. We encourage the use of this document by all interested parties. The PPA will be updated periodically to account for changes in government policies, and can be accessible at location [http://usaidcleanpowerasia.aseanenergy.org](http://usaidcleanpowerasia.aseanenergy.org/)

**POWER PURCHASE AGREEMENT**

**THIS POWER PURCHASE AGREEMENT** (the “**Agreement**”)is made on [●], 2017.

**BY AND BETWEEN:**

1. **[Solar Service Provider Name]**, a company registered and existing under the laws of Thailand, having its registered office at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Seller**”); and
2. **[HOST Name]** a company registered and existing under the laws of Thailand, having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Purchaser**”).

The Seller and the Purchaser shall be collectively referred to as the “**Parties**” and individually as a “**Party**”.

**WHEREAS:**

1. The Seller desires to develop, design, construct, own and operate the solar PV system (the “**System**”) located on Purchaser's property.
2. The Purchaser desires to make a portion of such property available to the Seller for the construction, operation and maintenance of a solar powered electric generating project.
3. The Seller intends to sell to the Purchaser and the Purchaser intends to purchase from the Seller all of the power generated by the System (as defined below) pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE,** the Parties agree as follows:

1. **DEFINITIONS**

Unless otherwise defined herein, capitalized terms used herein shall have the following meanings, whether used in the singular or in the plural.

**“Actual Electricity Generation”** means, for a calendar month, the amount of electricity (expressed in kWh) generated by the solar PV system stated in the invoice for the Energy Charge payable for that calendar month.

“**Applicable Law**” means any part of the constitution of Thailand in force, or any law, legislation, statute, act, decree, rule, ordinance, judgment, order, treaty, regulation, directive, requirement, other governmental restriction or announcement or any interpretation thereof enacted or issued by any Government Authority (including without limitation labor laws, immigration, trade and customs, and road laws) which necessarily relate to or impact upon the transactions contemplated under this Agreement.

“**Business Day**” means any day on which commercial banks are open in Bangkok.

“**CO2**” shall have the meaning defined in Clause 8 (*Carbon Credit*).

“**Commercial Operation Date**” shall have the meaning defined in Clause 4.1.

“**Consent Letter**” means a letter to be issued by the Purchaser, or any Transferee of the Property, in relation to the access and the right to use the Property in a substantial form as set out in **Schedule 1 *(Form of Consent Letter)***.

**“Contract Year”** means, in respect of the first Contract Year, the period of twelve (12) calendar months from the date on which the Operational Period commences and, in respect of subsequent Contract Years, means each successive period of twelve (12) calendar months thereafter;

“**Electricity Authority**” means any legal entity which produces and sells electricity to the Purchaser at any time, whether such entity is a limited company, government authority, state-owned enterprise or organization which has the legal right to perform such tasks.

“**Electricity Authority Tariff Rate**” means, the PEA/MEA’s electricity user category rate as of November 2015 (entire section, except the service charge) as applicable to the Purchaser, published by the PEA from time to time, which comprises:

1. the applicable retail based tariff rate, as determined by the MEA/PEA [● electricity user category rate] ; and
2. the variable tariff rate derived from the automatic tariff mechanism formula (Ft), as adjusted and announced from time to time by the Energy Regulatory Commission (ERC).

“**Energy Charges**” shall have the meaning defined in Clause 4.3.

“**Estimated Production**” shall have the meaning defined in Clause 12.7.

“**Expansion**” shall have the meaning defined in Clause 9 (*Future Expansion*).

“**Force Majeure Event**” shall have the meaning defined in Clause 15.2.

“**Government Approval**” means any approval, consent, permit, license or other authorization from any relevant Government Authority, which is necessary or desirable for the development, construction, installation, financing, operation and/or maintenance of the System.

“**Government Authority**” means any relevant government, administrative or regulatory authority, agency or ministry in Thailand having authority in respect of the matters being described in this Agreement.

“**Grid**” means the generation and bulk transmission facilities used for the purpose of transmitting electricity, including importing from the external supply thereof.

**“Guaranteed Electricity Generation”** means, for any Contract Year during the Term, the amount of electricity set out in Schedule 5.

“**Insurance Policy**” means the all risks insurance and third party liability insurance that the Parties shall reasonably agree in good faith to obtain and maintain according to the terms and conditions in this Agreement.

“**kW**” means kilowatt.

**“MEA**” means Metropolitan Electricity Authority which supplies electricity in the Bangkok region

“**Metering Equipment**” means the metering equipment and devices owned by the Seller for the measurement of power generated by the System and located at the Property.

“**New Property**” shall have the meaning defined in Clause 10.

**“Operational Period”** means the period of [ ● years ] commencing on the Commercial Operation Date.

**“Outage”** means a continuous period of 24 hours or more during which the solar PV system does not produce electricity despite there being sufficient solar radiation to generate electricity.

**“PEA”** means Provincial Electricity Authority which supplies electricity in the rest of Thailand

**“Planned Outage”** means an Outage that has been planned in advance by the Seller and which has been notified to the Purchaser in accordance with Clause 6.1 (a).

“**Property**” means the land and the building(s) designated by the Purchaser on which the System is to be installed with the address as set out below.

[Insert address]

“**Property Audit**” shall have the meaning defined in Clause 3.1.

“**Property Modification**” shall have the meaning defined in Clause 3.2(b).

“**Property Modification Statement**” shall have the meaning defined in Clause 3.2(b).

“**Purchased Power**” shall have the meaning defined in Clause 4.2.

“**Remedy Period**” shall have the meaning defined in Clause 12.2.

“**System**” means the photovoltaic system consisting of the PV modules, corresponding inverter(s), Metering Equipment, monitoring system, mounting system and other equipment to be installed by the Seller at the Property having the specifications of the main equipment set out in **Schedule 2 *(Specifications of the System)***.

“**System Design**” shall have the meaning defined in Clause 3.2(a).

“**System Installation**” shall have the meaning defined in Clause 3.5.

“**Term**” shall have the meaning defined in Clause 5.1.

“**Transferee**” shall have the meaning defined in Clause 10.

“**Unplanned Outage**” means an Outage, other than a Planned Outage.

“**Willful Misconduct**” means, on the part of a Party, any deliberate or intentional disregard of any provision of this Agreement by an officer, director or employee of such Party when acting for and on behalf of that Party, with the intention to inflict damage or injury, or a reckless disregard of the consequences of such act, but shall not include any omission, error of judgment, mistake or negligence or recklessness of any officers, directors, employees, agents of such Party in the exercise of any function, authority or discretion conferred upon that Party in such capacity. .

1. **PURPOSE**

The Parties agree that, subject to the terms and conditions set forth in this Agreement, the Seller shall invest, construct, install, own, operate, and maintain the System located at the Property and the Purchaser shall purchase all of the power generated by the System from the Seller under the terms and conditions set forth herein.

1. **CONDITIONS PRIOR TO POWER SALE AND PURCHASE** 
   1. Upon the execution of this Agreement, the Seller shall commence a due diligence and a thorough physical inspection of the Property (the “**Property Audit**”) to confirm the suitability of the Property for the construction, installation, operation and maintenance of the System.
   2. After the completion of the Property Audit:
2. the Seller shall provide the Purchaser with a proposed design of the System (the “**System Design**”);
3. the Seller may request the Purchaser to verify, renovate, repair, improve or change the Property (including but not limited to the removal of trees or shading and the repair of roof leakages) (the “**Property Modification**”) as necessary and with approval of the Purchaser to enable the Seller to safely and efficiently construct, install, operate and maintain the System. Such request shall be in writing and will be referred to as the “**Property Modification Statement**”;
4. the Seller shall consult with the Purchaser regarding the System Design and the Property Modification Statement, if any, and provide feedback on the System Design after receipt of the abovementioned documents; and
5. the Purchaser may ask to revise the System Design, provided that the revisions shall not materially affect the nature, scope and/or schedule of the whole System Installation.
   1. If there is a Property Modification and the Purchaser does not agree to carry out the Property Modification, either Party is entitled to terminate this Agreement.

The termination of this Agreement by either Party under this Clause 3.4 shall not give rise to any legal liability for the Seller. Each Party shall be responsible for its own costs and expenses incurred before or on the termination date of this Agreement.

* 1. Upon the Parties’ agreement on the System Design and the Property Modification, the Seller shall, at its own costs and expenses, prepare and submit applications for any Governmental Approvals (in its own name and/or on behalf of the Purchaser) as required for the agreed Property Modification and the construction, installation, operation and maintenance of the System. The Purchaser shall give cooperation to the Seller as necessary.
  2. Upon the Purchaser having obtained all of the required Governmental Approvals and completed the agreed Property Modification, the Seller shall install the System in accordance with the agreed System Design (the “**System Installation**”). In this regard, the Purchaser shall provide the Seller with: (i) the original or a certified true copy of written evidence showing that the Purchaser has a valid and legal right to implement the Property Modification, (ii) an original Consent Letter, (iii) an appropriate area suitable for the storage of the equipment required for the construction, installation, operation and maintenance of the System, and (iv) a certified true copy of the Insurance Policy evidencing that the Property has been insured against all risks in an amount satisfactory to the Seller and containing a waiver of any subrogation rights of the insurer against the Seller, reasonably satisfactory to the Seller.

The Seller shall also provide the Purchaser with a certified true copy of the Insurance Policy containing a waiver of any subrogation rights of the insurer against the Purchaser, reasonably satisfactory to the Purchaser.

* 1. The Purchaser hereby agrees that the System shall, at all times, be the Seller’s personal property, and shall not be a fixture attached to the Property, with the exception that upon the end of the Term, including any extension thereof, the System shall be automatically transferred to the Purchaser free of charge. In that case, the valid output warranty of the PV modules provided by the PV module manufacturer shall also be transferred to the Purchaser

1. **POwer sale and purchase**
   1. Upon the Seller having completed the System Installation and having obtained all Government Approvals as required for its power generation and distribution under this Agreement, the Seller shall notify the Purchaser in advance of the date on which the System will be turned on and generate power (the “**Commercial Operation Date**”). Provided, however, that such Commercial Operation Date must not be later than [●] days after the signing date of this Agreement.
   2. Throughout the Term of this Agreement, the Seller shall sell to the Purchaser the electricity generated from the PV system in an amount not less than the Guaranteed Electricity Generation set out in Schedule 5, and the Purchaser shall purchase from the Seller, all of the power generated by the System (the “**Purchased Power**”) with the exception under Clause 8 where the Seller has the right to sell power to other entities. For the avoidance of doubt, the Purchaser shall consume the Purchased Power as a first priority before consuming the power supplied by other sources, including the Electricity Authority.
   3. In consideration for each calendar month’s Purchased Power, the Purchaser shall pay to the Seller, an energy charge (the “**Energy Charge**”) in the amount less a discount as set out in **Schedule 3*****(Energy Charge Discount)***. An example of the Energy Charge calculation is set out in **Schedule 4 *(Energy Charge Calculation)***.
   4. The amounts of the Energy Charge to be calculated pursuant to Clause 4.3 are exclusive of, and subject to, value added tax., and the Seller shall be solely responsible for such value added tax.
   5. The Parties shall agree on the Metering Equipment to be used for billing and for their maintenance and calibration schedules. The Metering Equipment and its enclosure may be sealed and the seals shall be broken only for its maintenance and calibration schedules, or when both Parties agree to do so. The readings from such Metering Equipment shall be used for billing purposes, and the Parties shall agree on the time at which the readings of the Metering Equipment for billing shall be carried out on a monthly basis. Meter readings can be carried out remotely by the Seller using the System’s internet connection.
   6. At the end of each calendar month, the Seller shall prepare and render to the Purchaser an invoice for the Energy Charge payable for that calendar month.
   7. The Purchaser shall pay the Energy Charge to the Seller’s designated bank account within 30 days of its receipt of the relevant invoice. If the payment is not made when due, the Purchaser shall, in addition to such amount due, pay interest thereon at the rate of 15% per annum (accrued on a daily basis) from the due date until such amounts are paid in full.
   8. In the event that the Guaranteed Electricity Generation in any Contract Year cannot be reached, the Seller will compensate the Purchaser for the difference between the Guaranteed Electricity Generation and the Actual Electricity Generation using the Electricity Authority Tariff Rate for calculation as stated in Schedule 4.
2. **TERM**
   1. This Agreement shall be effective upon the signing date of this Agreement. For the avoidance of doubt, the term of this Agreement shall commence from the Commercial Operation Date until the end of the calendar month of the [●] anniversary of the Commercial Operation Date (the “**Term**”).
   2. The Term may be extended for a number of days equal to the days that: (i) the System is shut down in accordance with Clause 7.2(h); or (ii) the Seller is not able to sell power in accordance with Clause 7.2(i).
3. **MAINTENANCE SCHEDULE AND OUTAGE NOTIFICATION**

6.1 Annual Maintenance Plan

1. On the first Business Day of each Contract Year throughout the Term, the Seller shall provide the Purchaser with a schedule of the period of any Planned Outages and the dates of such Planned Outages if known, (the “Planned Outage Schedule”).
2. The Seller shall notify the Purchaser of any changes to or variation from the Planned Outage Schedule at least 5 Business Days in advance.

6.2 Unplanned Outages

1. The Seller shall use its Reasonable Endeavors to minimize the number of Unplanned Outages and to remedy any Unplanned Outage and return the Solar PV system to full operation as soon as is reasonably practicable after the commencement of any such Unplanned Outage.However such remedy must be completed not later than [●] days after occurrence of such Unplanned Outage .
2. If the Seller does not remedy such Unplanned Outage within a reasonable time, or within [●] days after the occurrence of such Unplanned Outage as the case may be, then the Seller is subject to a daily penalty at [●] baht per day until the remedy is completed. The Purchaser has its sole discretion to exercise its right to terminate this Agreement if it foresees that the Seller cannot complete such remedy within the time as referred to above.
3. **OTHER OBLIGATIONS OF THE PARTIES**
   1. In the event that there is:
4. any material change in the electricity consumption of the Purchaser;
5. any change in the Electricity Authority’s meter type of the Purchaser;
6. any change in the tariff calculation scheme of the Electricity Authority; and/or
7. any change in solar radiation which materially affects the performance of the System,

which causes the calculations pursuant to Clause 4.3 not to be practicable or otherwise adversely affects the Seller’s revenue and/or the Purchaser’s costs and expenses incurred in connection with this Agreement, the Parties shall renegotiate the terms and conditions of this Agreement in good faith with a view to protecting both Parties’ benefits. If the parties fail to agree on such change, either party is entitled to terminate this Agreement..

* 1. Throughout the Term, including any extension thereof, the Purchaser shall, at its own costs:

1. keep trees, bushes and hedges trimmed so that the System receives as much sunlight as it did on the Commercial Operation Date;
2. provide electricity, water and other utilities necessary for the construction, installation, operation and maintenance, repair, removal and replacement of the System;
3. not modify or repair the Property, in a manner that will have any impact on or interfere with the operation of the System, without obtaining prior written consent from the Seller 15 days in advance;
4. not remove any markings or identification tags on the System;
5. provide the Seller, after it has given the Purchaser reasonable notice, with the right to use the Property and access to the Property and the System for any construction, installation, inspection, operation and maintenance, repair, removal and replacement or other proper operation as the Seller determines necessary;
6. not do anything or permit or allow to exist any condition or circumstances that would have a negative impact on solar radiation or the performance of the System or a reduction of the output capacity of the System;
7. promptly notify the Seller if the System (or any part thereof) is damaged, appears unsafe, or is stolen;
8. not perform any actions to the System which result in the System being shut down continuously for more than one full 24 hour day without obtaining prior written consent from the Seller;
9. not perform any actions which result in the Seller not being able to sell the power to the Purchaser for more than one full 24 hour day without giving written notice to the Seller one day in advance;
10. not make any modification to the System;
11. provide assistance, perform any actions and execute any documents for the Seller to obtain or renew any required Governmental Approvals;
12. maintain insurance cover of the Property against all risks with any reputable insurance company and in an amount acceptable to the Seller;
13. subject to Clause 10 (*Transfer of the Property*), legally and beneficially possess and own the Property or have the legal and valid right to possess and use the Property;
14. at all times, keep the System free and clear of all encumbrances, claims, levies and legal processes not created by the Seller, and protect and defend the Seller against the same; and
15. in addition to the Property Modification, properly maintain, repair and procure that the Property is in good condition and is capable of being used safely for the System Installation, inspection, operation and maintenance, and the removal and replacement of the System.
    1. If the Purchaser modifies or repairs the Property pursuant to Clause 7.2(c) above, if the System has been interfered with, the Purchaser agrees that the Seller has the right to remove and then reinstall the System at the cost of the Purchaser. Unless such modification is made with the consultation or approval from the Seller for which the Seller is required to be responsible for any cost.
    2. Throughout the Term, including any extension thereof, the Seller shall, at its own costs:
16. provide maintenance services to the System;
17. upon reasonable request in writing by the Purchaser, investigate the cause of the System being shut down for more than 24 hours continuously and provide a solution within 48 hours after receipt of such notice. The Seller having provided a solution the Seller shall then put such solution into practice and remedy the situation as soon as possible, but not later than [●] hours after receiving such notification.
18. when entering into the Property to construct, install, operate and maintain the System, comply with the safety standards of the Purchaser provided to the Seller upon the execution date of this Agreement.

7.5 Throughout the Term, including any extension thereof, each Party shall, at its own cost, ensure that its Insurance Policies include waivers of subrogation in favour of the other Party.

1. **CARBON CREDIT**

The Seller shall be entitled to the benefits of, and to sell or otherwise realize for its own account, all carbon dioxide (“**CO2**”) emission credits or allowances and/or entitlements and/or other similar entitlements, allowances, rights or benefits in respect of CO2 of whatever nature, accruing, resulting or derived from the System or its operation.

1. **FUTURE EXPANSION**

During the Term, including any extension thereof, if the Purchaser would like to use the Property and other facilities of the Purchaser in order to expand and improve the capacity and efficiency of the System so as to participate in future governmental policies including any net metering program, or for other purposes (the “Expansion”), The Seller can offer the Purchaser a profit sharing scheme on the difference between the proposed discounted tariff (applicable at the time of such policy announcement) and the policy tariff, based on further discussion to be mutually agreed by both parties.If the agreement cannot concluded or agreed within [●] days after the offering, then the Purchaser is entitled to see another person to handle such work.

1. **TRANSFER OF THE Property**

During the Term, including any extension thereof, if the Purchaser wishes to sell, transfer or otherwise dispose of all or any material part(s) of the Property to a third party (the “**Transferee**”), the Purchaser shall inform the Seller in writing at least one month prior to such sale, transfer or disposal, and shall, before such transfer, take one of the following actions:

1. terminate this Agreement and pay the termination fee calculated as the sum of the cost of decommissioning the System, the residual value of the System at the time of termination and other associated costs as determined by the Seller under terms and conditions and within the time frame to be mutually agreed by the Parties; or
2. if so agreed by the Seller, procure that the Transferee assumes all of its rights and obligations under this Agreement by entering into a novation agreement with the Seller and executing a Consent Letter; or subject to (i) due diligence and inspection of a new property (the “**New Property**”) satisfactory to the Seller, (ii) none of the events set out in Clause 7.1 having occurred, and (iii) terms and conditions to be mutually agreed by the Parties, remove and then install the System at the New Property, at the cost of the Purchaser. The terms and conditions. to be applied with the New Property will be made in a separate agreement to be agreed by both Parties.
3. **INDEMNIFICATION**
   1. Each Party shall indemnify, defend, protect, save and hold harmless the other Party,

its employees, officers, directors, agents, successors and assigns from any and all third party claims, actions, costs, expenses (including reasonable attorneys’ fees and expenses), damages, liabilities, penalties, losses, obligations, injuries, demands and encumbrances of any kind or nature arising out of, connected with, relating to or resulting from the first Party’s negligence or Willful Misconduct or breach of this Agreement including Force Majeure Event as set out in Clause 15.2); provided, that nothing herein shall require the first Party to indemnify the other Party for its own negligence or Willful Misconduct or breach of this Agreement.

* 1. The provisions of this Clause (b) (*Indemnification*) shall survive the termination or

expiration of this Agreement.

1. **LOSS OR DAMAGE**
   1. In the event of any loss, damage, theft, destruction or a similar occurrence affecting the System, the Purchaser shall continue to make all payments due under this Agreement in a timely manner.
   2. In the case that the event referred to in Clause 12.1 was due to the Purchaser’s negligence or Willful Misconduct or breach of this Agreement, the Purchaser shall, at its sole cost and expense, procure that the System be repaired or replaced within two months from the date that such event occurs (the “**Remedy Period**”). If the Purchaser fails to procure the repair or replacement of the System within the Remedy Period, the Purchaser shall also pay to the Seller the estimated amount of the Energy Charge, using the average total production in the last three months, that would have been payable during the period after the end of the Remedy Period had such event never occurred.
   3. In the case that the event referred to in Clause 12.1 was not due to the Purchaser’s negligence or Willful Misconduct or breach of this Agreement, the Seller shall bear all of the risks, costs and expenses of such event and the Purchaser shall only be required to cooperate with the Seller, at the Seller’s sole cost and expense, to the extent necessary to have the System repaired or replaced.
   4. The Seller shall be responsible for damage to or loss of the Property arising out of the System Installation.

If there is any roof leakage after the Commercial Operation Date, the Parties shall investigate to verify the cause of such leakage. If the leakage is due to the System (including normal wear and tear), the Seller’s negligence or Willful Misconduct or breach of this Agreement, the Seller shall be responsible for the costs and expenses for the repair of such roof leakage. If the leakage is due to any other causes, the Purchaser shall be responsible for those costs and expenses.

* 1. Each Party’s liability to the other Party under Clause 12.2, Clause 12.3, or Clause 12.4 above shall not exceed:

1. [●] ThaiBaht in aggregate throughout the Term.
   1. Each Party’s liability to the other Party under this Agreement shall be limited to direct and actual damages only. The Parties agree that, unless specifically provided for in this Agreement, neither Party shall be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages.
   2. If the System does not report the power generation to the Seller, then the Seller shall reasonably estimate the amount of power that would have been delivered to the Purchaser during such period (the “**Estimated Production**”) using the average production in the preceding three months, and shall consider the Estimated Production as the actual production for the purposes of Clause 4.3.

If the Seller sends an invoice to the Purchaser for Estimated Production pursuant to the preceding paragraph, and the Seller subsequently determines that it has either overestimated or underestimated the actual production, then the Seller will adjust the next bill downwards (to refund the overbilling) or upwards (to make up for the lost billing), as the case may be.

1. **EVENTS OF DEFAULT**
   1. The Purchaser shall be in default under this Agreement if any one of the following events occur:

(a) The Purchaser fails to make payment of any amount due and such failure continues for a period of 30 days after receipt of written notice of such non-payment;

(b) The Purchaser fails to perform any obligation specified under this Agreement and fails to commence (and thereafter diligently proceed with) appropriate steps to remedy such failure within a period of 60 days from the date of written notice identifying the breach and requiring the remedy of the breach;

or

(c) The Purchaser makes an assignment for the benefit of creditors, admits in writing its insolvency, files or there is filed against it a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent or undertakes or experiences any substantially similar activity.

* 1. The Seller shall be in default under this Agreement if any one of the following events occur:

(a) The Seller fails to perform any obligation specified under this Agreement and fails to commence (and thereafter diligently proceed with) appropriate steps to remedy such failure within a period of 60 days from the date of written notice identifying the breach and requiring the remedy of the breach.

(b) The Seller makes an assignment for the benefit of creditors, admits in writing its insolvency, files or there is filed against it a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent or undertakes or experiences any substantially similar activity.

1. **REMEDIES IN THE CASE OF DEFAULT/TERMINATION**
   1. If there is an event of default by the Purchaser under Clause 13.1, the Seller may take any one or more of the following actions. The Seller may:

(a) terminate this Agreement by giving written notice to the Purchaser of such breach and the intention to terminate this Agreement, which termination shall be effective on a date specified by the Seller that is no earlier than 30 days following the date of such notice;

(b) take any reasonable action to correct the Purchaser’s default or to prevent the Seller’s loss; and any amount that the Seller pays with respect to this matter will be added to the amount the Purchaser owes to the Seller and will be immediately due;

(c) require the Purchaser, at its own expense, to return the System or make it available to the Seller in a reasonable manner;

(d) proceed, by appropriate court action, to enforce the performance of this Agreement and to recover damages for the Purchaser’s breach;

(e) disconnect, turn off or take back the System by legal process or self-help, to the extent permissible under the law; or

(f) exercise any rights or remedies available under applicable law or this Agreement.

* 1. If there is an event of default by the Seller under Clause13.2the Purchaser may take any one or more of the following actions. The Purchaser may:

(a) terminate this Agreement by giving written notice to the Seller of such breach and the intention to terminate this Agreement, which termination shall be effective on a date specified by the Purchaser that is no earlier than 30 days following the date of such notice;

(b) take any reasonable action to correct the Seller’s default or to prevent the Purchaser’s loss; and any amount that the Purchaser pays with respect to this matter will be added to the amount the Seller owes to the Purchaser and will be immediately due;

(c) uninstall and return the System to the Seller, at the sole cost of the Seller; or

(d) proceed, by appropriate court action, to enforce performance of this Agreement and to recover damages for the Seller’s breach.

* 1. The defaulting Party agrees to repay the non-defaulting Party for any reasonable amounts the non-defaulting Party pays to correct or cover the default. The defaulting Party also agrees to reimburse the non-defaulting Party for any reasonable costs and expenses the non-defaulting Party incurs resulting from early termination. By choosing any one or more of these remedies, the non-defaulting Party does not give up its right to use another remedy. By deciding not to use any remedy in respect of a default by the defaulting Party, the non-defaulting Party does not give up the right to use that remedy in the case of a subsequent default.

1. **FORCE MAJEURE EVENT**
   1. Subject to the limitations set forth in this Agreement, if either Party is rendered unable by reason of a Force Majeure Event (as defined below) to perform, wholly or in part, any obligation set forth in this Agreement, then upon such Party’s giving notice and full particulars of such event as soon as practicable after the occurrence thereof, such obligation of such Party shall be suspended or excused to the extent of such Force Majeure Event.
   2. For the purposes of this Agreement, “**Force Majeure Event**” shall mean an event, condition or circumstance beyond the reasonable control and without the fault or negligence of the Party claiming force majeure which, despite all reasonable efforts of the Party claiming force majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation imposed hereunder. Subject to the foregoing, Force Majeure Events shall include any of the following:

(a) lightning, storm, flood or other unusually severe weather conditions;

(b) earthquake, landslide or other natural disasters of overwhelming proportions;

(c) strikes, lockout or other industrial disturbance;

(d) war (whether declared or undeclared), mobilization or other unexpected call-up of armed forces, actions of terrorists, blockade, riot, insurrection, civil commotion, revolution, coup d’état, sabotage, vandalism or acts of public enemies;

(e) expropriation or compulsory acquisition of the Property and/or the System, omission or default by any Government Authority which adversely affects the Property and/or the System or any of the relevant Party’s rights under this Agreement;

(f) any permit or license or approval from a Government Authority being revoked or not renewed, the occurrence of which is not attributable to the failure of the relevant Party; or

(g) any restriction on the distribution of power by the Electricity Authority or any other Government Authorities who have authority over the Grid.

* 1. If a Force Majeure Event occurs that prevents a Party from performing its obligations hereunder, such Party shall:

(a) immediately notify the other Party in writing of such Force Majeure Event;

(b) be entitled to suspend performance under this Agreement only for the scope and duration as required by the Force Majeure Event;

(c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable;

(d) keep the other Party informed of such efforts on a continuous basis; and

(e) provide written notice of the resumption of performance hereunder.

* 1. Neither Party shall be relieved of any obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.
  2. If a Force Majeure Event continues for 180 consecutive days, either Party has the right to terminate this Agreement, provided that such period shall be extended if a Force Majeure Event cannot be cured within such 180 day period for as long as the affected Party is diligently seeking to mitigate such Force Majeure Event, provided that in no event shall a Force Majeure Event continue beyond 365 days.

1. **CONFIDENTIALITY**
   1. The Parties shall treat as strictly confidential all Confidential Information (defined below) received or obtained in relation to entering into or performing this Agreement.
   2. “Confidential Information” means any and all information furnished by the Disclosing Party to the Receiving Party in connection with this Agreement, whether disclosed directly or indirectly, verbally or in writing, and includes, without limitation business systems, operations, strategic plans, clients, pricing, methodologies, processes, financial data, technical specifications and/or products and services of the Disclosing Party, as well as all notes, compilations, analyses or other documents prepared by the Receiving Party which contain or are based upon the information provided by the Disclosing Party pursuant hereto.
   3. The Parties may disclose Confidential Information which would otherwise be confidential if and to the extent (a) required by any law; (b) disclosed to the professional advisers, auditors, the financing Parties and/or bankers of each Party on a need-to-know basis; (c) such Confidential Information has come into the public domain through no fault of that Party; or (d) the other Party has given prior written approval of the disclosure, provided that any such Confidential Information disclosed will be disclosed only after consultation with the other Party.
2. **MISCELLANOUS**
   1. Either party shall be entitled to assign this Agreement to one of the Lenders. The Purchaser agrees that the Seller may assign, sell or transfer the System and this Agreement, or any part of this Agreement or the Schedules, with the Purchaser’s prior written consent
   2. (a) Each Party shall be responsible for its own costs and expenses incurred in connection with its preparation, negotiation, execution and performance of this Agreement.

(b) The Purchaser agrees to be solely responsible for any costs and expenses in connection with the Property Modification, including removing trees or anything blocking or impeding access to the roof, for the System Installation.

(c) The Seller agrees to be solely responsible for any costs and expenses in connection with the System Installation and the application for required Governmental Approvals.

* 1. Any notice to be given under this Agreement shall be in writing and shall be sent by fax, email or courier to the fax number, email address or address of the relevant Party below, or to such other fax number, email or other address as that Party may from time to time notify to the other Party in accordance with this Clause. The details for notices of the Parties are as follows:

If to the Seller: [full name]   
[address]   
Fax: +66-2 [●]  
Attn: [●]  
Email: [●]

If to the Purchaser: [full name]   
[address]   
Fax: +66-2 [●]  
Attn: [●]  
Email: [●]

* 1. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall to the extent possible be regarded as having been replaced by an equivalent provision that, as closely as possible, reflects the original intent of the Parties while still being valid and enforceable. To the extent that such deemed replacement is not possible, then the provision held invalid or unenforceable shall be given no effect and shall be deemed not to be included in this Agreement, without invalidating any of the remaining provisions of this Agreement.
  2. This Agreement and its Schedules represents the entire agreement and understanding of the Parties with respect to the transaction forming the subject hereof, and supersedes any earlier agreements, understandings and communications between the Parties with respect thereto.
  3. Any Schedule attached hereto shall be deemed an integral part of this Agreement

In the event an inconsistency exists between this Agreement and any Schedules hereto, this Agreement shall prevail.

1. **GOVERNING LAW AND JURISDICTION**
   1. This Agreement shall be governed by and construed in accordance with the laws of Thailand.
   2. (a) Any dispute between the Parties shall be exclusively referred to arbitration.

(b) The arbitration shall be conducted in accordance with the arbitration rules of the Arbitration Institute of the Ministry of Justice, Bangkok, Thailand applicable at the time of submission of the dispute to arbitration.

(c) Each arbitral tribunal shall consist of three arbitrators and each Party shall appoint one arbitrator. The arbitrators so appointed shall appoint the third arbitrator to be the umpire.

(d) The place of each arbitration shall be in Thailand, and the Parties agree to exclude any right of application to any court or tribunal of competent jurisdiction in connection with any question of law arising in the course of any arbitration; and

(e) The decision or award of an arbitral tribunal shall be final and binding upon the Parties. The Parties hereby agree to waive to the extent permitted by law any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. The Parties agree that any arbitration award made may be enforced against the relevant Party’s assets wherever they are located or may be found, and a judgment upon any arbitral award may be entered by any court having jurisdiction thereof.

The Parties have caused this Agreement to be executed in duplicate as of the day and year first written above, and each Party has retained one copy.

**[ ● Purchaser Name ]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
By: [**🞄**]   
Title: Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
By: [**🞄**]   
Title: Director

**[ ● Seller Name ].**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
By: [**🞄**]   
Title: Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
By: [**🞄**]   
Title: Director

**SCHEDULE 1**

**FORM OF CONSENT LETTER**

[Company Name]

[Company Address]

[Date]

[full name]   
[address]   
Fax: +66-2 [●]  
Attn: [●]  
Email: [●]

Attn: Directors

Dear Sirs,

We, [Company Name], refer to the Power Purchase Agreement dated [•] entered into by and between XXXXXXX, as the Seller and XXXXXXXXX, as the Purchaser (the “**PPA**”).

We confirm that we have the legal and beneficial ownership of the land and the building(s) designated by the Purchaser on which the rooftop solar system (the “**System**”) has been installed (the “**Property**”) with the address [insert address] according to the land title deed(s) and house registration document(s) attached herewith [and/or legal and valid possession and rights of use of the Property according to the registered land lease agreement between the [land owner] and [Company Name]]. [Company Name] grants the Seller access to and the right to use the buildings’ roofs, the buildings and/or the area inside the Property for the purpose of property modification, construction, installation, operation and maintenance of the System or any other related activities including the applications for approvals from the government or any related entities; as determined necessary by the Seller for the generation of power by the System throughout the term of the PPA of [●] years.

Sincerely,

[Name]

[Position]

Enclosures:

1. Land title deed(s) no. [•]
2. House registration documents of the Property

**SCHEDULE 2**

**SPECIFICATIONS OF THE SYSTEM[[1]](#footnote-2)**

System size: [**🞄**] kWdc

PV module: [**🞄**] modules

Inverter: [**🞄**] sets

**SCHEDULE 3**

**ENERGY CHARGE DISCOUNT[[2]](#footnote-3)**

|  |  |
| --- | --- |
| **Effective Period** | **Energy Charge Discount** |
| 1. **Year 1 – Year 5** | **XX%** |
| 1. **Year 6 – Year 10** | **XX%** |
| 1. **Year 11 – Year 15** | **XX%** |
| 1. **Year 16 – Year 25** | **XX%** |

**SCHEDULE 4**

**ENERGY CHARGE CALCULATION**

**ENERGY CHARGE CALCULATION**

Energy Charge due to Seller in the calendar month

= [(Electricity Authority Tariff Rate On-Peak x Purchased Power On-Peak) + (Electricity Authority Tariff Rate Off-Peak x Purchased Power Off-Peak) x (100% - Energy Charge Discount)]

where

Electricity Authority Tariff Rate On-Peak = (T On-Peak / U On-Peak) + Ft ; and

Electricity Authority Tariff Rate Off-Peak = (T Off-Peak / U Off-Peak) + Ft ;

**SCHEDULE 5**

**GUARANTEED ELECTRICITY GENERATION**

1. Please provide the details of the System and the specifications. [↑](#footnote-ref-2)
2. Please consider the method of such calculation. If it is not consistent with our requirements, please revise it. [↑](#footnote-ref-3)