

**IMPLEMENTATION AGREEMENT**

**between**

**The Republic of Maldives**

**acting through the Ministry of Climate Change, Environment and Energy**

**And**

[Seller]

**Design, Build, Finance, Own, Operate, and Transfer of Grid-tied Solar Photovoltaic System in the Greater Malé Region**

**[date]**

Accelerating Renewable Energy Integration and Sustainable Energy (ARISE) Project

Project No.: [●]

Ministry of Climate Change, Environment and Energy

Male’, Republic of Maldives

**IMPLEMENTATION AGREEMENT**

This Implementation Agreement (“Agreement”) is made and entered into as of [•]by and between:

1. **REPUBLIC OF MALDIVES,** acting through the **MINISTRY OF CLIMATE CHANGE, ENVIRONMENTAND ENERGY**(“Government”); and
2. **[Seller]** a limited liability company, company registration number: [●], organised and existing under the laws of [●], with its principal office located at [●]; and

hereinafter referred to as the “Seller”.

**WHEREAS:**

1. The Government (as defined in the PPA), with support from the Clean Technology Fund, International Development Association and Multilateral Investment Guarantee Agency of the World Bank and Asian Infrastructure Investment Bank has initiated a program called Accelerating Renewable Energy Integration and Sustainable Energy (ARISE) for inviting private sector generators to develop solar Photo Voltaic (PV) projects in Maldives on a DBFOOT (i.e. design, build, finance, own, operate and transfer) basis, deploy Battery Energy Storage Systems (BESS) and modernize the grid for Variable Renewable Energy integration in selected Islands. The electrical energy generated from such projects is proposed to be purchased by a Government owned utility under a long-term power purchase agreement.
2. The Government had invited bids from interested independent power producers, *vide* RFB (as defined in the PPA) dated [●] for setting up solar power projects on public spaces and/or on the roof tops of Government owned buildings identified and procured by the Government in the RFP.
3. Seller had submitted a Proposal (as defined in the PPA) in response to the RFB, and has been selected by the Government *vide* Letter of Acceptance, dated [●] to develop a solar PV power project. Accordingly, the Seller desires to construct, own and operate grid connected solar PV electric generating facilities with a total electric capacity equal to 15MWp on the islands of Laamu Hithadhoo, Laamu Kunahandhoo, Laamu Maabiadhoo, Laamu Maamendhoo, Laamu Isdhoo, Laamu Kalaidhoo, Laamu Fonadhoo, Laamu Gan, Laamu Dhanbidhoo, Lhaviyani Naifaru, Gaafu Alif Villingili and Shaviyani Funadhoo.
4. FENAKA (as defined in the PPA) is the identified state utility under the ARISE program for purchase of the Electric Energy (as defined in the PPA) generated by the Seller.
5. The Seller, on or about the date hereof, will enter in to the following Agreements;
6. a Power Purchase Agreement (“PPA”) with FENAKA to set forth the mechanism for purchase of the Electric Energy generated by the Seller and other mutual rights and obligations of Seller and FENAKA.

1. a long-term Roof Lease Agreements (as defined in the PPA) with the Government or Government-owned entities for taking over on lease the Sites in the island of Lhaviyani Naifaru which comprise of the roof tops of Government owned buildings on which the Project (as defined in the PPA) shall be established. Such Roof Lease Agreement to be co-terminous with the Contract Term (as defined in the PPA)
2. a long term license agreement with the respective Site owners to develop the Project at the spaces allocated for ground mounted solar PV in the islands of Laamu Hithadhoo, Laamu Kunahandhoo, Laamu Maabiadhoo, Laamu Maamendhoo, Laamu Isdhoo, Laamu Kalaidhoo, Laamu Fonadhoo, Laamu Gan, Laamu Dhanbidhoo, Gaafu Alif Villingili and Shaviyani Funadhoo (“License Agreement”). Such License Agreement to be co-terminous with the Contract Term (as defined in the PPA).
3. The Government will also fund an Escrow Account (as defined in the PPA) that shall be maintained to provide payment security to the Seller for the Electric Energy sold by the Seller to FENAKA, which account will be replenished by FENAKA and/or the Government in the event of a drawdown. The terms and conditions of the Escrow Account will be separately agreed between FENAKA, Government, the Seller and a commercial bank selected by the Government in an Escrow Agreement (as defined in the PPA).
4. The Seller and the Government desire to enter into this Agreement to set forth the mutual rights and obligations of the Seller and the Government.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATIONS**

## 

## Definitions

In this Agreement, unless the context otherwise requires, any term defined in Article 1.1 of the PPA, but not defined herein, shall have throughout this Agreement the meaning set forth against that term in the PPA and the following terms shall have the following meanings:

“**Adjusted First Installment**” has the meaning set forth in Article 5.2(b)(iii) hereof.

“**Adjusted Second Installment**” has the meaning set forth in Article 5.2(b)(v) hereof.

“**Agreement**” has the meaning set forth in the Preamble hereof.

“**Assessment Notice**” has the meaning set forth in Article 5.2(c)(iv) hereof.

“**Alternative Site(s)**” has the meaning set forth in Article 5.2(c) hereof.

“**Concurrence Notice**” has the meaning set forth in Article 5.2(c)(iv) hereof.

**“Contract of Guarantee”** means agreement between the Seller and the Multilateral Investment Guarantee Agency dated [●], as may be amended from time to time.

**“Community Engagement Plan”** has the meaning set forth in Article 3.1 (b).

“**Dispute**” has the meaning set forth to the said term in Article 7.2 hereof.

“**Dispute Notice**” has the meaning set forth to the said term in Article 7.2 hereof.

“**Effective Date**” has the meaning set forth to the said term in Article 2.1 hereof.

“**Escrow Agreement**” has the meaning set forth in Recital F hereof.

**“Expected Capacity of the Project”** has the meaning ascribed to the term “Expected Capacity” with respect to the Project in Article 1.1 of the PPA.

“**Expert**” has the meaning set forth in Article 7.3(a) hereof.

**“First Installment”** has the meaning set forth in Article 6.2(b)(ii) hereof.

**“Generation Adjustment”** has the meaning set forth in Article 5.2(c)(v) hereof.

**“Guarantee”** means political risk insurance to be provided to the Seller by the Multilateral Investment Guarantee Agency pursuant to the Contract of Guarantee, for the purposes of guaranteeing certain payment obligations of the Government under this Agreement, as well other non-commercial risk(s).

**“Maximum Tariff Buy Down”** has the meaning set forth in Article 5.2(b)(i).

**“License Agreement”** has the meaning set forth in Recital E hereof.

“**PPA**” has the meaning set forth in Recital E hereof.

“**Parties**”means collectively the Government and the Seller; and “**Party**” shall mean any of them.

“**Protected Assets**” has the meaning set forth in Article 7.6 hereof.

“**Relocation Costs**” means all documented costs and expenses reasonably incurred by the Seller, and net of any applicable insurance proceeds, to install at the Alternative Site(s) the Facility(ties) that was installed at the Site(s) that became unavailable, which shall include without limitation the costs arising from or relating to:

1. transportation to the Alternative Site(s) the Facility(ies) that was installed at the Site(s) becoming unavailable;
2. application for licenses and permits required for installing at the Alternative Site(s) the relevant Facility(ies);
3. complying with the environmental clearance requirements applicable to the Alternative Site(s);
4. repair or replacement of the Facility(ies) or any portion thereof due to damage to or loss of the same in the course of relocating the Facility(ties) to the Alternative Site(s) despite the exercise of due and good care by the Seller; and
5. removal of Facility(ies) installed at the Site(s) that became unavailable in order to hand over peaceful possession of such Site(s) to the relevant lessors in accordance with the applicable Site Agreements.

“**Relocation Determination**” has the meaning set forth in Article 5.2(c)(v) hereof.

**“Second Installment”** has the meaning set forth in Article 5.2(b)(ii) hereof.

“**Seller**” has the meaning set forth in the Preamble hereof.

“**Site**” means for each Facility, the site at which such Facility is located, as further described in Exhibit B of the PPA.

**“Site Agreements”** means the Roof Lease Agreement(s) and/or the License Agreement(s) executed to provide a valid and binding leasehold interest in, or an easement, right-of-way, license, or other right in favor of the Seller to use the Site(s) or the Alternative Site(s) (as the case may be) in order to develop the Project.

**“Tariff Buy Down”** means the payment provided by the Government to the Seller in accordance with Article 5.2(b) hereof, to offset a portion of the capital costs of the Project to enable a lower feed in tariff.

“**Tariff Buy Down Installment**” means the First Installment, Second Installment, Adjusted First Installment, Adjusted Second Installment, or the balance of the Maximum Tariff Buy Down, as applicable, to be paid to the Seller in accordance with Article 5.2(b)(iv) hereof.

“**Unavailability Notice**”has the meaning set forth in Article 5.2(c)(iii) hereof.

## Interpretations

In this Agreement:

* 1. any reference to any statute or statutory provision shall include:

1. all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
2. such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) and (to the extent liability thereunder may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated), which the provision referred to has directly or indirectly replaced;
   1. reference to any Party under this Agreement shall also include its successors, administrators, legal representatives, and permitted assigns as the case may be;
   2. heading to Articles and paragraphs are for information only, and shall not form part of the operative provisions of this Agreement and be ignored in construing the same;
   3. references to Articles and schedules are to Articles and schedules to this Agreement. All of these form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Articles and schedules;
   4. unless the contrary is expressly stated, no Article in this Agreement limits the extent or application of another Article;
   5. any reference to books, files, records or other information or any of them means books, files, records or other information or any of them in any form or in whatever medium held including paper, electronically stored data, magnetic media, film and microfilm;
   6. “in writing” includes any communication made by letter or facsimile;
   7. the words “*include*”, “*including*”, “*inter alia*” and “*in particular*” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
   8. the words “*directly or indirectly*” mean directly or indirectly through one or more intermediary persons or through contractual or other legal arrangements, and “direct or indirect” shall have the correlative meanings;
   9. the expression “*this Article*” shall, unless followed by reference to a specific provision, be deemed to refer to the whole Article (not merely the sub-Article, paragraph or other provision) in which the expression occurs;
   10. the terms ‘*hereof*’, ‘*herein*’, ‘*hereby*’, ‘*hereto*’ and derivative or similar words shall, unless followed by a reference to a specific provision of the Agreement, be deemed to refer to this entire Agreement;
   11. when any number of Days are prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last Day, unless the last Day does not fall on a Business Day, in which case the last Day shall be the next succeeding Day which is a Business Day;
   12. time is of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
   13. a reference to any agreement is a reference to that agreement and all schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended from time to time;
   14. all provisions of this Agreement shall be interpreted and construed in accordance with their meanings, and not strictly for or against either Party, regardless of which Party may have drafted this Agreement or a specific provision;
   15. grammatical variations of defined words shall be construed in accordance with the relevant definition(s);
   16. references to the singular number shall include references to the plural number and vice versa; and
   17. words denoting one gender shall include all genders.

**ARTICLE 2**

**EFFECTIVE DATE AND DURATION**

* 1. **Effective Date**

This Agreement shall enter into full force and effect from the date of execution of this Agreement (the “Effective Date”).

* 1. **Term**

The term of this Agreement shall continue until (a) the PPA has expired or has been terminated in accordance with its terms, or (b) all outstanding obligations of FENAKA under the PPA have been performed, whichever is later, unless terminated earlier or extended in accordance with the provisions of this Implementation Agreement.

**ARTICLE 3**

**OBLIGATIONS OF THE SELLER**

**3.1 Seller’s Obligations Generally**

1. The Seller shall design, build, finance, own, operate and transfer the Project with due diligence and efficiency and in accordance with Good Engineering and Operating Practices, Codes and Standards, Applicable Laws, World Bank Performance Standards, Environmental and Social Management Framework, the World Bank Anti-Corruption Guidelines, and this Agreement. The Seller shall, at all times, comply with the provisions of the PPA, Site Agreements and the Escrow Agreement.
2. The Seller shall implement a Community Engagement Plan to the satisfaction of the Government as per the Proposal, indicating an approach for disseminating Project information and establishing dialogues with the respective island communities through training, employment opportunities, awareness programs, educational seminars for locals and others initiatives.
3. The Seller shall provide, promptly as needed, the resources (financial and otherwise) required for the design, development, operation, maintenance and the transfer of the Project.
4. The Seller shall maintain a financial management system and prepare financial statements in accordance with accounting standards (i) applicable to it under Applicable Laws; and (ii) acceptable to the World Bank. The financial statements shall reflect the true and correct view of the operations, resources and expenditures related to the Project.

**3.2 Construction of the Project**

Provisions of Article 3.1, Article 3.2, Article 3.3, Article 3.4, Article 3.6(c), Article 3.6(d), Article 3.7, and Article 3.8 of the PPA shall *mutatis mutandis* apply to this Agreement, with the modification that all references to FENAKA therein shall be read as Government.

**3.3 Project Development Documents**

Seller shall, within the periods stipulated herein, provide the following documents to Government, for Government’s approval, which approval shall not be unreasonably conditioned, withheld or delayed;

1. Detailed work and implementation schedule (indicating major milestones) within thirty (30) Days from the Effective Date. Seller shall endeavor not to significantly deviate from this schedule once approved by the Government.
2. Concept design drawings of the Facilities within sixty (60) Days from the Effective Date, prepared based on Site(s) verification assessments.
3. Detailed Site assessments & Detailed design report within ninety (90) Days from the Effective Date, which shall include assessments, studies, calculations, and results of surveys conducted, as described in Part B, Section B.1.2 of the RFB, and Part D, Section D.3.10 and Section D.4.3 of the RFB, demonstrating the feasibility of the Facilities.
4. Certified Solar Yield Analysis for twenty-five (25) years within ninety (90) Days from the Effective Date**.**
5. Detailed design drawings including that of array structures and interconnections, within one hundred and twenty (120) Days from the Effective Date, prepared based on the approved concept design drawings approved by the Government.
6. Assessment of the existing environment and social management system of the Seller, as per the environment and social performance standards defined in the Environment and Social Management Framework (as defined in the PPA) relating to ARISE, within thirty (30) Days of the Effective Date.
7. Construction method statementwithin one hundred and fifty (150) Days from the Effective Date.
8. Environmental and social impact assessment covering all areas of environmental and social safeguards requirements of the Project, within ninety (90) Days from the Effective Date.
9. Exit Management Plan agreed between the Seller and FENAKA as per the PPA, prior to COD.
10. A community engagement plan indicating an approach for disseminating Project information and establishing dialogues with the respective island communities through training, employment opportunities, awareness programs, educational seminars for locals and other initiatives, within ninety (90) Days of the Effective Date.

**3.4 Third Party Rights**

1. The Seller shall, as and when required by Government or the World Bank, have its financial statements audited by independent auditors acceptable to the World Bank, in accordance with consistently applied auditing standards acceptable to the World Bank. Further, the Seller shall promptly, upon a request in writing, furnish the audited statements to the Government and the World Bank.
2. The Seller shall, upon being given reasonable notice, enable and permit Government and the World Bank to inspect the Project, and any records and documents in relation to the Project.
3. The Seller shall prepare and furnish to the Government and the World Bank all such information in relation to the Project as Government or the World Bank may reasonably request in this regard.

**ARTICLE 4**

**CONSTRUCTION SECURITY AND ENVIRONMENTAL AND SOCIAL PERFORMANCE SECURITY**

**4.1** On the Effective Date or within thirty (30) Days thereafter, Seller shall provide two (2) performance bank guarantees from a bank acceptable to the Government in the form substantially similar to the format annexed as Exhibit A for an aggregate amount of Dollars one hundred and thirty (130) per kWp of Expected Capacity, such amount divided amongst the two (2) performance bank guarantees in the ratio of 25:75 respectively, to secure Seller's obligations hereunder, which performance bank guarantees shall remain in full force and effect until one hundred and ninety (190) Days after the Scheduled Commercial Operation Date (each such performance bank guarantee a “Construction Security”). In the event, the Scheduled Commercial Operation Date (as defined in the PPA) is extended in accordance with the PPA, the Seller shall substitute the Construction Security with such performance bank guarantees of equivalent value that are valid and in force for a period of one hundred and ninety (190) Days after such extended Scheduled Commercial Operation Date.

**4.2** Government shall be entitled to invoke the Construction Security in the following circumstances, without notice to the Seller:

1. on termination of the PPA before the Commercial Operation Date (as defined in the PPA), by FENAKA for Seller’s Event of Default (as defined in the PPA), Government shall be entitled to encash the whole of the Construction Security (i.e both the first and the second Construction Security);
2. on failure by the Seller to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date due to the fault of the Seller, the Government shall be entitled to encash, at any time after the Scheduled Commercial Operation Date, the first Construction Security for twenty-five percent (25%) of the aggregate value of the two (2) Construction Securities;
3. on failure by the Seller to achieve the Commercial Operation Date by the one hundred eightieth (180th) Day from the Scheduled Commercial Operation Date due to the fault of the Seller, Government shall be entitled to encash the whole of the Construction Securities (i.e. both the first and the second Construction Securities) upon expiry of such one hundred eighty (180) Days; and
4. on delay by the Seller, of up to one hundred eighty (180) Days from the Scheduled Commercial Operation Date, in achieving the Commercial Operation Date due to the fault of the Seller, the Government shall be entitled to invoke on or after the Commercial Operation Date, in addition to the first Construction Security in accordance with Article 4.2(b), the second Construction Security up to such amount calculated by (i) multiplying the Expected Capacity of the Project (in kWp) with the number of Days of delay, minus (ii) the amount of the first Construction Security.

**4.3** On the Effective Date or within thirty (30) Days thereafter, Seller shall provide a performance bank guarantee from a bank acceptable to the Government in the form substantially similar to the format annexed as Exhibit B for an amount of Dollars thirty (30) per kWp of Expected Capacity, to secure Seller's Environmental and/or Social (ES) obligations relating to the environmental, social, health and safety requirements under this Agreement and the PPA in the construction the Project, which performance bank guarantee shall remain in full force and effect until one hundred and ninety (190) Days after the Scheduled Commercial Operation Date (“Environmental and Social Performance Security”). In the event, the Scheduled Commercial Operation Date is extended in accordance with the PPA, the Seller shall substitute the Environmental and Social Performance Security with a performance bank guarantee of equivalent value that is valid and in force for a period of one hundred and ninety (190) Days after such extended Scheduled Commercial Operation Date.

**4.4** Government shall be entitled to invoke the Environmental and Social Performance Security, on failure by the Seller to perform any of Seller’s ES obligations with respect to environmental, social, health and safety requirements under Environmental and Social Safeguards Documents (as defined in the PPA) and Environmental Laws, and such failure remains uncured within the period stipulated in a notice of such failure from Government, with such notice describing in reasonable detail the nature of the failure; provided that, if such failure to perform is not reasonably capable of being cured within the cure period stipulated in the notice but is reasonably capable of being cured, Seller shall have such additional time, not to exceed sixty (60) Days, as is reasonably necessary to cure such non-performance, (before the Government shall have the right to encash the Environmental and Social Performance Security) so long as Seller promptly commences and diligently pursues such cure.

**ARTICLE 5**

**OBLIGATIONS OF THE GOVERNMENT**

* 1. **Site Agreements**

1. The Government undertakes that it will procure execution of the Site Agreement(s) for all the Sites, in the formats set out in Exhibit D within [●] Days from the Contract Date.
2. The Government hereby guarantees the punctual and due performance of the relevant lessor and/or licensor, as the case maybe, of its obligations under the respective Site Agreement, throughout the Contract Term, and shall, at the request of the Seller, in a timely manner take any necessary measures to ensure that the lessor and/or the licensor, as the case may be, comply with their obligations under the Site Agreement.
   1. **Obligations during Contract Term**
3. The Government shall not take any discriminatory action which shall include the imposition of obligations, conditions or standards in relation to the Project that are unduly and materially more onerous than those relating to any similar solar PV power project in the Maldives that is privately financed on a similar basis by any Person other than the Government that materially and adversely affects the Project, the performance of the Seller’s obligations or the enjoyment of its rights under this Agreement, the PPA, the Escrow Agreement or the Site Agreement(s).
4. **Provision of Tariff Buy Down**
   1. The Government shall allocate [●] (*Insert amount*) as the maximum aggregate Tariff Buy Down amount (“Maximum Tariff Buy Down”) to be paid to the Seller in accordance with this Article 5.2(b).
   2. The Government shall pay the Seller an amount equivalent to hundred percent (100%) of the Maximum Tariff Buy Down, if, after conducting the Initial Performance Tests pursuant to Schedule 1 of the PPA and upon achieving the Commercial Operation Date, the Project Capacity is demonstrated to be equal to or greater than one hundred percent (100%) of the Expected Capacity of the Project (“First Installment”).
   3. If, after conducting the Initial Performance Tests pursuant to Schedule 1 of the PPA and upon achieving Commercial Operation Date, the Project Capacity is demonstrated to be less than one hundred percent (100%) of the Expected Capacity of the Project, but more than or equal to the Minimum Project Capacity, the Government shall pay the Seller an amount equal to eighty percent (80%) of the Maximum Tariff Buy Down (“Adjusted First Installment”).
   4. Where the Seller has been paid an Adjusted First Installment in accordance with Article 5.2(b)(iii), and if, upon conducting the Second Performance Tests (as defined in the PPA), the Project Capacity is demonstrated to be equal to or greater than one hundred percent (100%) of the Expected Capacity of the Project, the Government shall pay the Seller an amount equal to the full balance remaining of the Maximum Tariff Buy Down.
   5. Upon becoming eligible for a Tariff Buy Down Installment as stipulated in this Article, the Seller shall submit a request for the payment of the applicable Tariff Buy Down Installment from the Government, in writing, accompanied by sufficient documentation evidencing the results of the Initial Performance Tests or the Second Performance Tests, as applicable, confirmed and accepted by FENAKA (in accordance with the PPA), and the Seller’s calculation of the amount of the Tariff Buy Down Installment claimed. The Government shall pay the relevant Tariff Buy Down Installment to the Seller within ninety (90) Days of receipt of the request for payment from the Seller.
   6. Notwithstanding anything else to the contrary in this Article 5.2(b), the Government shall have the right to suspend or terminate the payment of Tariff Buy Down to the Seller upon Seller’s failure to perform any of its material obligations under this Agreement or the PPA.
   7. Notwithstanding the above provisions of this Article 5.2(b), the Seller may request for and receive from the Government, the Maximum Tariff Buy Down, within ninety (90) days from the Effective Date provided that;
      * 1. the Seller has achieved significant progress in the execution of the Project activities, including but not limited to the formation of the Project Company in Maldives, in accordance with Applicable Laws (if such company has not been formed before the execution of this Agreement) and submission of the Project Development Documents as stipulated in Article 3.3, and
        2. the Seller has furnished the Government with a performance bank guarantee from a bank acceptable to the Government, in the form substantially similar to the format annexed as Exhibit C for an amount of the Maximum Tariff Buy Down, which performance bank guarantee shall remain in full force and effect until one hundred and ninety (190) Days after the Scheduled Commercial Operation Date (“Tariff Buy Down Performance Security”). In the event, the Scheduled Commercial Operation Date is extended in accordance with the PPA, the Seller shall substitute the Tariff Buy Down Performance Security with a performance bank guarantee of equivalent value that is valid and in force for a period of one hundred and ninety (190) Days after such extended Scheduled Commercial Operation Date.
   8. The Government shall be entitled to invoke the Tariff Buy Down Performance Security, if, after conducting the Initial Performance Tests pursuant to Schedule 1 of the PPA and upon achieving the Commercial Operation Date, the Project Capacity is demonstrated to be less than Minimum Project Capacity.
   9. Where the Seller has been paid the Maximum Tariff Buy Down in accordance with Article 5.2(b)(vii) and, if after conducting the Initial Performance Tests pursuant to Schedule 1 of the PPA and upon achieving the Commercial Operation Date, the Project Capacity is demonstrated to be less than one hundred percent (100%) of the Expected Capacity of the Project, but more than or equal to the Minimum Project Capacity, the Seller shall substitute the Tariff Buy Down Performance Security with a performance bank guarantee in the amount equal to eighty percent (80%) of the Maximum Tariff Buy Down that is valid and in force for a period of one hundred and ninety (190) Days from the first anniversary of achieving Commercial Operation Date. And the Government shall be entitled to invoke such performance bank guarantee, if after conducting the Second Performance Tests (as defined in the PPA), the Project Capacity is demonstrated to be less than the Expected Capacity of the Project.

1. **Arrangement of Alternate Site**
2. The Government shall provide a suitable alternative site(s) (“Alternative Site(s)”) to the Seller, if, during the Contract Term, any Site becomes unavailable to the Seller due to a Political Force Majeure Event in accordance with Article 11.7(c) of the PPA or there is a breach by the licensor, of its obligation under any of the License Agreement in effect or due to reasons attributable to the licensor which results in any of the Sites becoming unavailable. The Alternative Site(s) shall have the capacity to develop similar Electric Capacity and Contract Energy as was installed at the Site(s) that became unavailable. If the cost of generation of Electric Energy at such Alternative Site(s) is different than at the Site(s) that became unavailable, a Generation Adjustment shall be determined in accordance with Article 5.2(c)(v) or Article 5.2(c)(x), as the case may be, and adjusted (either positively or negatively, as the case may be) in the Relocation Cost payable by the Government to the Seller, in accordance with Article 5.2(c)(ii).
3. In the event of a Political Force Majeure Event or if there is a breach by the licensor of its obligation under any of the License Agreement in effect or due to reasons attributable to the licensor which results in any of the Sites becoming unavailable in addition to such rights that the Seller has under the PPA, the Government shall pay to the Seller the Relocation Cost in full in respect of the relocation of the Facility from the Site that became unavailable to the Alternative Site(s), subject at all times to Article 5.2(c)(v).
4. In the event that any Site(s) becomes unavailable due to a Political Force Majeure Event or there is a breach by the licensor of its obligation under any of the License Agreement in effect, or due to reasons attributable to the licensor which results in any of the Sites becoming unavailable, the Seller shall, by a notice in writing notify the Government of such unavailability (“Unavailability Notice”). Within seven (7) Days of receipt of the Unavailability Notice, the Government shall by a notice in writing notify the Seller that it either: (A) concurs with the Seller’s determination of the unavailability of the Site(s) (“Concurrence Notice”), or (B) requires a physical inspection and assessment of the Site(s) (“Assessment Notice”) to determine if the Site(s) is indeed unavailable. If the Government fails to issue either a Concurrence Notice or an Assessment Notice within the period stipulated in the preceding sentence, the Government shall be deemed to have issued a Concurrence Notice.
5. If (A) the Government issues or is deemed to have issued a Concurrence Notice, or (B) following its inspection of the Site(s) pursuant to an Assessment Notice, the Government concurs with the Seller’s determination of the unavailability of the Site(s), then the Government shall submit to the Seller a description of proposed Alternative Site(s) available for the relocation of the Facility(ies). The Government shall also provide to the Seller all such assistance as may be reasonably required by the Seller to ascertain the suitability of the proposed Alternative Site(s) for the relocation of the Facility(ies).
6. The Parties shall jointly determine: (A) the Alternative Site(s) to which the Facility(ies) shall be relocated; (B) the quantum of the Relocation Cost that the Government must pay to the Seller for relocation of the Facility(ies) to such Alternative Site(s); (C) whether the cost of generation of Electric Energy at the Alternative Site(s) is less than or equal to the cost of generation of Electric Energy at the Site that became unavailable, and if not, the difference in the cost of generation of Electric Energy between the Site(s) that became unavailable and the Alternative Site(s) and the overall economic impact of such difference in cost of generation (whether positive or negative) for the remaining Contract Term (such economic impact the “Generation Adjustment”), which Generation Adjustment shall be adjusted (either positively or negatively, as the case may be) in the Relocation Cost payable by the Government to the Seller (collectively, the “Relocation Determination”); provided that if the Parties are unable to agree on the Relocation Determination or any part thereof, then the Parties shall appoint an Expert in accordance with Article 7.3 to make a determination in accordance with Article 5.2(c)(vii).
7. If the Parties agree on a Relocation Determination in accordance with Article 5.2(c)(v), then the Government shall procure the execution of Site Agreement(s) for the selected Alternative Site(s), between the Government or the relevant Government-owned entity and the Seller, and the Seller shall promptly relocate the Facility(ies) to such Alternative Site(s).
8. If (A) following its inspection of the Site(s) pursuant to an Assessment Notice, the Government does not concur with the Seller’s determination of the unavailability of the Site(s), or (B) in the event that the Parties are unable to agree on a Relocation Determination pursuant to Article 5.2(c)(v), then the Parties shall proceed to appoint an Expert in accordance with the Article 7.3 to make a determination in accordance with Article 5.2(c)(x). After appointment of the Expert, the Parties shall inform STELCO in writing of the details of the Expert so appointed, and STELCO shall have the right to make such representation to the Expert as it deems fit.
9. Within seven (7) Days of the of the Expert (appointed in accordance with Article 5.2(c)(vii)), determining the existing Site(s) to be unavailable in accordance with Article 5.2(c)(x), the Government shall submit to the Expert (with a copy to the Seller and STELCO) a description of proposed Alternative Site(s) available for the relocation of the Facility(ies). The Government shall also provide to the Seller all such assistance as may be reasonably required by the Seller to ascertain the suitability of the Alternative Site(s) for the relocation of the Facility(ies).
10. Within seven (7) Days of the Government’s submission of the list of proposed Alternative Site(s) to the Expert pursuant to Article 5.2(c)(viii), the Seller shall indicate in writing to the Expert (with a copy to the Government and STELCO) its preference(s) among the proposed Alternative Site(s) for the relocation of the Facility(ies).
11. The Expert shall, as applicable and on the basis of submissions made by the Government and the Seller and the representations (if any) made by STELCO, determine: (A) if the existing Site(s) is unavailable, and if so; (B) if the proposed Alternative Site(s) made available by the Government are fit for relocation of the Facility(ies); and if so, (C) the Alternative Site(s) to which the Facility(ies) shall be relocated; (D) the Generation Adjustment, if any, and (E) the Relocation Determination.
12. Within fifteen (15) Days of the determination of the Expert pursuant to Article 5.2(c)(x), the Government shall procure the execution of Site Agreements for the selected Alternative Site(s) between the Government or the relevant Government-owned entity and the Seller, and the Seller shall promptly, but in any case, within thirty (30) Days, relocate the Facility(ies) to such Alternative Site(s).
13. **Escrow Account**
14. The Government shall, by no later than the Scheduled Commercial Operation Date: (A) set up and maintain for the Term of this Agreement the Escrow Account in US Dollars, with a commercial bank acceptable to the World Bank; and (B) deposit in the Escrow Account, as the initial funding for such Escrow Account, an amount equivalent to the amount arrived at by multiplying the Contract Energy for one hundred and eighty (180) Days with the Tariff.
15. Upon receipt of a Deficiency Notice from the Escrow Agent in accordance with Article 4.8 of the Escrow Agreement, the Government shall ensure that STELCO shall transfer the amount set out in the Deficiency Notice to the Escrow Account, failing which, the Government shall transfer to the Escrow Account such amount, or any portion thereof which has not been transferred by STELCO to the Escrow Account, in accordance with Article 4.8 of the Escrow Agreement.

**(e) Availability of foreign exchange**

* 1. The Government undertakes to assist the Seller in obtaining foreign exchange as reasonably requested by the Seller to the Government, to enable the Seller to convert to US dollars and repatriate the revenues generated by the Seller from the Project, subject to compliance by the Seller with Applicable Laws relating to taxation and re-patriation of funds from the Maldives, and provided that:
     + 1. prior to making such request to the Government, the Seller has been unable to convert all or a portion of such revenues from Rufiyaa into US Dollars, at an exchange rate (excluding any Conversion Fees) equal to the US Dollar - Rufiyaa exchange rate (as notified by the Maldives Monetary Authority (or such other Governmental Authority authorized to administer exchange rates in Maldives) (the “Official Rate”) applicable on the date on which the Seller receives payment in Rufiyaa under the PPA, for a period of thirty (30) Days after receipt of such payment;
       2. as part of its request to the Government, the Seller provides reasonable evidence of its inability to convert (exclusive of any Conversion Fees) such Rufiyaa into US Dollars at the Official Rate; and
       3. the Seller makes such request to the Government within sixty (60) Days after receipt of the revenues in Rufiyaa as payments under the PPA.
  2. Upon receipt of a request by the Seller in accordance with Article 5.2(e)(i) above, the Government shall make available to the Seller, within hundred fifty (150) Days of such request, an amount of US Dollars which corresponds to the amount of Rufiyaa from revenues generated by the Seller from the Project that the Seller has been unable to convert into US Dollars (based on the Official Rate applicable on the date the revenues were received as payments under the PPA and excluding any Conversion Fees).
  3. For the avoidance of doubt, the parties acknowledge and agree that conversion fees or similar fees or charges that may be charged in addition to the relevant exchange rate in connection with the conversion of Rufiyaa into US Dollars (“Conversion Fees”) do not form part of the exchange rate and shall be excluded in determining whether the Seller has been unable to convert Rufiyaa into US Dollars at the Official Rate.

1. **Co-operation**
   1. The Government shall reasonably cooperate with the Seller so that the Seller can procure, at the Seller's cost, all Permits and Approvals for design, engineering, construction, financing, operations, maintenance and deconstruction of the Instant Facility, and meet its obligations under this Agreement.
   2. [The Government shall take all necessary actions required on its part, and take all reasonable measures to facilitate the due performance of all necessary actions required on the part of FENAKA (including the delivery of any legal opinions required from the Government or FENAKA under the Guarantee Agreement), to assist the Seller in procuring the Guarantee and to ensure the effectiveness of the Guarantee no later than the Closing Date (as defined in the PPA).][[1]](#footnote-2)
   3. **Upon Termination of the PPA**
2. If the PPA is terminated in accordance with its terms (whether in respect of a Facility or the entire Project) and FENAKA opts, or is required, to purchase any one or more Facility(ies) and/ or the Project in accordance with Articles 12.3(d), 12.4(e), 12.5(b), 12.5(c), 12.6(b) or 12.6(d) of the PPA and FENAKA does not dispute the same, the Government shall pay to the Seller the Termination Cost payable for purchase of the Facility(ies) or the Project or the assets constituting the Facility(ies), in the manner and the amount as provided in the PPA, to the extent the same has not been paid by FENAKA on or by the date provided therefor, in accordance with the PPA, within ninety (90) Days from the receipt of a demand by the Seller to the Government for such payment.
3. If upon termination of the PPA (whether in respect of a Facility or the entire Project), FENAKA refers either the termination or any matter connected with its obligation to purchase the Facility(ies) or the Project, to dispute resolution in accordance with Article 15 of the PPA, the Government shall pay to the Seller, the balance of the consideration payable by FENAKA to the Seller, if and as determined by mutual agreement, expert determination or arbitration, which has not been paid by the FENAKA to the Seller, within the period determined by mutual agreement, expert determination or arbitration.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES**

**6.1**

* 1. **Representations and Warranties of Seller**

The Seller represents and warrants as of the date hereof as follows:

1. Seller is a corporation duly organized and validly existing under the laws of its place of incorporation, is duly qualified to conduct business in Maldives, and has full legal right, power and authority under the Applicable Laws to enter into and perform its obligations under this Agreement.
2. Seller has duly authorized the execution and delivery of this Agreement in accordance with its Applicable Laws. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium, and other Applicable Laws affecting creditors rights generally.
3. Neither the execution nor the delivery by Seller of this Agreement nor the performance by Seller of its obligations hereunder:
4. will conflict with, violate, or result in a breach of any Applicable Laws applicable to Seller; or
5. conflicts with, violates or results in a breach of any term or condition of any judgment, decree, franchise, agreement (including the certificate of [incorporation/ registration] of Seller) or instrument to which Seller is a party or by which Seller or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or installment.
6. There is no action, suit, or other proceeding as of the date hereof at law or in equity, before or by any Governmental Authority, pending or, to its knowledge, threatened against Seller, which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by Seller in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by Seller of its obligations hereunder or under any such other agreement or instrument.
   1. **Representations and Warranties of the Government**

The Government represents and warrants as of the date hereof as follows:

1. The Government has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Government and will constitute a legal, valid and binding obligation of the Government.
2. Neither the execution nor the delivery by the Government of this Agreement nor the performance by the Government of its obligations hereunder: (i) conflict with, violate, or result in a breach of any Applicable Law applicable to the Government; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, agreement or instrument to which the Government is a party or by which the Government or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

**ARTICLE 7**

**DISPUTE RESOLUTION**

* 1. **Continued Performance**

Each Party shall continue to perform its obligations under this Agreement (including any payment obligations) pending resolution of any dispute pursuant to this Article 7. Provided that, if the dispute is with respect to any payments, neither Party shall be required to make such disputed payment(s) to the other Party so long as such dispute has been referred to the process for resolution pursuant to this Article 7; provided, that to the extent any amounts owed to either Party by the other Party are not disputed and can be segregated from amounts with respect to which there is a dispute, such undisputed amounts shall, in good faith, be identified by the Parties and paid as required by this Agreement. To the extent that any disputed amount was withheld from a Party, and such Party is ultimately found to be entitled to all or any portion of such disputed amount pursuant to this Article 7, then such Party shall be entitled to the payment of interest on any withheld amount, at an annual rate equal to Reference Rate, from the original due date for payment of such amount until the payment of such disputed amount.

* 1. **Negotiations**

If any dispute, controversy or claim arises under or relates to this Agreement or the breach, termination or validity thereof (the “Dispute”), such Dispute shall be referred by each Party to its designated senior officer for resolution upon five (5) Days written notice from either Party (the “Dispute Notice”). The Dispute Notice shall specify the name and contact details of each Party’s designated senior officer. The Parties agree to attempt to resolve all Disputes promptly and equitably and to provide each other with reasonable access during regular business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

* 1. **Expert Determination**
  2. A dispute may be referred to an expert (the “Expert”) in accordance with this Article 6.3 if:
  3. the Parties are not able to agree under Article 7.2 (*Negotiation*) on an amicable resolution to such dispute; and
  4. this Agreement expressly provides that such dispute shall be referred to an Expert or the Parties agree in writing that such dispute shall be referred to an Expert.
  5. Any Party to such a dispute may initiate an Expert reference under this Article 7.3 by proposing to the other Party to the dispute the name of the Expert. If the other Party does not agree to the name suggested by the Party making the reference, and the Parties are otherwise unable to agree on the name of an Expert, either Party may apply to *Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland* for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the Expert for the matter in dispute.  If the last remaining nominee has not been determined in this manner within sixty (60) Days of the date of receipt of the list, *Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland* shall appoint, upon the request of either Party and from such list or otherwise, an Expert for the matter in dispute.
  6. The Parties shall request that the Expert determine the referred dispute, within thirty (30) Days of receiving the reference, or in such additional time as may be reasonably required by the Expert to determine the Dispute, which shall not be more than one hundred and eighty (180) Days of receiving the reference. Provided that, the Expert shall determine the matters referred to in Article 5.2(x) of this Agreement within thirty (30) Days of receipt of the list of alternative Sites from the Government in accordance with Article 5.2 (b)(viii).
  7. The Expert shall act as an expert and not as an arbitrator.
  8. The Parties shall have the right to make representations and submissions to the Expert. There shall be no formal hearing.
  9. The Expert shall have power to request any Party to provide him/her with such statements (which shall be written unless otherwise specifically required) or documents or information within their control as the Expert may determine necessary and the Parties shall comply with any such request in accordance with the timeframes set out by the Expert or in the absence of such timeframes, in a timely manner as required to enable the Expert to determine the dispute within thirty (30) Days of receiving the reference or as otherwise provided herein.
  10. The Expert shall give his/her decision to the Parties to the dispute in writing and his/her decision, which shall promptly be given effect to by such Parties, shall be final and binding (save in the case of fraud or manifest error) on them.
  11. If the Expert decides that a sum is due and payable by one Party to another Party then:
      1. any such sum shall be due and payable within fourteen (14) Days of receipt by the Parties of written notice of such decision, unless the Expert decides otherwise; and
      2. interest shall accrue at the rate of Reference Rate, compounded annually, from the date expiry of the period mentioned in Article 7.3(h)(i). Provided that if the sum specified in Article 7.3(h)(i) includes any interest, no interest shall be payable on such interest.
  12. The fees of the Expert and any other costs of and incidental to the reference to Expert determination shall be payable by such Party to the dispute as the Expert may determine but, in the absence of any such determination, by the Parties to the dispute in equal shares.
  13. **Arbitration**
  14. Selection of Arbitrators

If the Parties are unable to resolve their Disputes through negotiation within thirty (30) Days of the Dispute Notice or if the Dispute is not resolved through an Expert in accordance with Article 7.3, either Party may initiate proceedings to submit the Dispute for arbitration. Each Dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:

1. Where the Parties agree that the Dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) Days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to *Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland* for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute.  If the last remaining nominee has not been determined in this manner within sixty (60) Days of the date of the list, *Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
2. Where the Parties do not agree that the Dispute concerns a technical matter, the Parties may agree to appoint a sole arbitrator mutually agreed by them or, failing agreement on the identity of such sole arbitrator within thirty (30) Days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, each Party shall appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel.  If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) Days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Singapore International Arbitration Center (SIAC).
3. If, in a Dispute subject to Article 7.4(a)(ii) above, one Party fails to appoint its arbitrator within thirty (30) Days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to SIAC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that Dispute.
   1. Rules of Procedure

Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of SIAC as in force on the date of the Original Agreement.

* 1. Substitute Arbitrators

If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.

* 1. Nationality and Qualifications of Arbitrators

Each arbitrator appointed pursuant to Article 7.4(a)(i) to (iii) shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of Maldives or the home country of the Seller.  For the purposes of this Clause, “home country” means any of:

* 1. the country of incorporation of the Seller or their parent companies;
  2. the country in which Seller’s principal place of business is located;
  3. the country of nationality of a majority of the Seller’s shareholders; or
  4. where the Seller is a joint venture between two or more Persons, the country of incorporation, nationality or principal place of business of the partners or shareholders of such joint venture.

* 1. Miscellaneous

In any arbitration proceeding hereunder:

1. proceedings shall, unless otherwise agreed by the Parties, be held in Singapore;
2. the English language shall be the official language for all purposes; and
3. the decision of the sole arbitrator or of a majority of the arbitrators shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
   1. **Governing Law, Jurisdiction and Service of Process**
4. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of Maldives.

1. Jurisdiction

Subject to Article 7.3 and Article 7.4, each of the Parties consents to submit itself to the non-exclusive jurisdiction of the courts located in the Maldives in relation to recognition of any arbitral award, with respect to any Dispute that arises under this Agreement.

1. Service of Process

Subject to the rules of SIAC for the purposes of arbitration, each Party agrees that service of any process, summons, notice or document hand delivered or sent by certified mail, return receipt requested, to such Party's respective address set forth in Article 7.5 will be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to arbitration as set forth in Article 7.4.

* 1. **Waiver of Sovereign Immunity**

The Government hereby irrevocably and unconditionally agrees that to the extent permitted by Applicable Laws, (a) should any proceedings be brought against Government or its assets (other than assets protected by diplomatic and consular privileges legislation (the "Protected Assets")) in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings shall be claimed by or on behalf of the Government on behalf of itself or any of its assets (other than Protected Assets); (b) it waives any right of immunity which it or any of its assets (other than Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and (c) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction, to the giving of any relief or the issuance of any process in connection with such proceedings, including, without limitation, the making, enforcement or execution against or in respect of any of its assets (other than Protected Assets).

**ARTICLE 8**

**MISCELLANEOUS**

* 1. **Assignment**

1. Assignment by the Government

This Agreement and the rights and obligations of the Government hereunder shall not be capable of being assigned, by the Government.

(b) Assignment by the Seller

The Seller may assign this Agreement including its rights and obligations hereunder only to the Person who, (i) is a *bona fide* transferee of the PPA, in accordance with Article 17.1(a) of the PPA, and (ii) undertakes to comply with the obligations of the Seller under the PPA, this Agreement and the Site Agreements and the Escrow Agreement.

* 1. **Currency for payment**

All amounts reflected in this Agreement in Dollars shall be paid in their Rufiyaa equivalent calculated on the date such payments are made at the applicable Dollars - Rufiyaa exchange rate of the immediately preceding Day notified by the Maldives Monetary Authority (or such other Governmental Authority authorized to administer exchange rates in Maldives).

* 1. **Further Assurances**

Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full force and effect to this Agreement and to carry out its intent.

* 1. **Relationship of Parties**

Except as otherwise explicitly provided herein, neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party and nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between or among the Parties.

* 1. **Notices**

Any notices required to be given hereunder shall be deemed delivered when (a) sent by facsimile with electronic confirmation of successful transmission; (b) delivered to a nationally recognized express courier service that provides a receipt of delivery; (c) sent by email, upon dispatch and the receipt of a delivery confirmation, provided that email shall be used as a mode of notice and communication only for non-material day-to-day matters; or (d) delivered by personal delivery, in each case addressed to the following persons or such other persons as the Parties may designate in writing:

1. If to the Government:

Name:

Designation:

Address:

Email:

Fax:

with a copy to FENAKA:

Name:

Designation:

Address:

Email:

Fax:

1. If to Seller:

Name:

Designation:

Address:

Email:

Fax:

* 1. **Waiver**

No waiver of any provision of this Agreement shall be effective against a Party except as expressly set forth in a writing signed by such Party. The waiver by either Party of a default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

* 1. **Survival**

Notwithstanding anything provided herein to the contrary, Article 7 (*Dispute Resolution*), and Article 8 (*Miscellaneous*) (and, to the extent referenced in such provisions, the Exhibits and Schedules hereto) shall survive the termination of this Agreement.

* 1. **Third Party Rights**

Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement, except any rights created in favor of the World Bank, FENAKA, a lessor and/or the licensor under the Site Agreements or the Escrow Agent.

* 1. **Counterparts**

This Agreement and any amendment hereto may be executed and delivered in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each Party and delivered to the other Party. Delivery of this Agreement by facsimile transmission or electronic email shall be as effective as delivery of a manually executed counterpart.

* 1. **Severability**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement, or such other appropriate actions, as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

**For and on behalf of Republic of Maldives, Ministry of Climate Change, Environment and Energy**

...................................

**For and on behalf of Seller**

|  |  |
| --- | --- |
| ................................... | ................................... |

**Witnessed by:**

|  |  |
| --- | --- |
| ................................... | ................................... |

**EXHIBIT A**

**FORM OF CONSTRUCTION SECURITY**

Ministry of Climate Change. Environment and Energy

Attention: Mr. [●]

**WHEREAS:**

1. The Government (as defined in the PPA), with support from the Clean Technology Fund, International Development Association, Multilateral Investment Guarantee Agency and Asian Infrastructure Investment Bank has initiated a program called Accelerating Renewable Energy Integration and Sustainable Energy (ARISE) for inviting private sector generators to develop solar PV projects in Maldives on a DBFOOT (i.e. design, build, finance, own, operate and transfer) basis. The electrical energy generated from such projects is proposed to be purchased by FENAKA Corporation Limited, a company incorporated and existing under the laws of the Republic of Maldives (“FENAKA”).
2. The Government invited bids vide an RFB dated [●]. [●], a [limited liability company] organized and existing under the laws of [●], with its principal office located at [●] (“Seller”), has been selected by the Government vide [Letter of Acceptance], dated [●] to develop a floating solar PV power project.
3. Seller and the Government entered into an Implementation Agreement dated [●] (“the Implementation Agreement”), whereby Seller has agreed to develop the Project (as defined in the PPA) and under a power purchasing agreement (“PPA”) between the Seller and FENAKA dated [●] Seller has agreed to sell and deliver to FENAKA, and FENAKA has agreed to purchase and accept from Seller, the electric energy produced by the Project.
4. Pursuant to the terms and conditions of the Implementation Agreement, the Seller is required to furnish a performance bank guarantee of amount aggregating to USD [●] to secure the Seller’s obligation under the Implementation Agreement.
5. We, ……………… through our Branch at ……………………………..(the **“**Bank**”**) have agreed to furnish this Performance Bank Guarantee (“Guarantee”).
6. This Guarantee is being issued for a sum of USD [●] (“Guarantee Amount”).

**NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably guarantees and affirms as follows;**

* 1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of all the Seller’s obligations under the Implementation Agreement including, without limitation, the obligation to achieve the Commercial Operation Date (as defined in the PPA) by the Scheduled Commercial Operation Date (as defined in the PPA), and agrees and undertakes to pay to the Government, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Seller, such sum or sums up to an aggregate sum of the Guarantee Amount as the Government shall claim, without Government being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.
  2. A letter from Ministry of Finance of the Government, under the hand of an officer not below the rank of [●], that the Seller failed to meet its obligations under the Implementation Agreement and has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Implementation Agreement, shall be conclusive, final and binding on the Bank. The Bank further agrees that the Government shall be the sole judge as to whether the Seller is in default in due and faithful performance of its obligations under the Implementation Agreement and its decision that the Seller is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the Seller, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Seller for any reason whatsoever.
  3. In order to give effect to this Guarantee the Government shall be entitled to act as if the Bank were the principal seller and any change in the constitution of the Seller and/ or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
  4. It shall not be necessary, and the Bank hereby waives any necessity, for the Government to proceed against the Seller before presenting to the Bank its demand under this Guarantee.
  5. The Government shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Implementation Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Seller contained in the Implementation Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the Seller and either to enforce or forbear from enforcing any of the terms and conditions contained in the Implementation Agreement and/ or the securities available to the Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the Seller or any other forbearance, indulgence, act or omission on the part of the Government or of any other matter or thing whatsoever which under any law in relation to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
  6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Government in respect of or in relation to the Implementation Agreement or for the fulfillment, compliance and/ or performance of all or any of the obligations of the Seller under the Implementation Agreement.
  7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until *[insert a date falling on 190th day from the Scheduled Commercial Operation Date]* and unless a demand or claim in writing is made by the Government on the Bank under this Guarantee, on the date of expiry of this Guarantee, all right of the Government under this Guarantee shall be forfeited any the Bank shall be relieved from its liabilities hereunder.
  8. The Bank undertakes not to revoke this Guarantee during the term it is in force, except with the previous express consent of the Government in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
  9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be demand to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of Ministry of Finance of the Government that envelope was so posted shall be conclusive.
  10. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this …….. day of ……., 20…… at

**SIGNED, SEALED AND DELIVERED**

For and on behalf of

The BANK by:

(Signature)

(Name)

(Designation)

(Address)

**NOTES:**

1. The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

(ii) The address, telephone and other details of the Head office of the Bank as well as issuing Branch should be mentioned on the covering letter of issuing Branch.

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| **EXHIBIT B**  **FORM FOR ENVIRONMENTAL AND SOCIAL (ES) PERFORMANCE SECURITY** |

**ES Demand Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of* Employer*]*

**Date:** \_ *[Insert date of issue]*

**ES PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ *dated* \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and/or Social (ES) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2…, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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| **EXHIBIT C**  **TARIFF BUY DOWN PERFORMANCE SECURITY** |

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of* Employer*]*

**Date:** \_ *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

**WHEREAS:**

1. The Government of Maldives, with support from the Clean Technology Fund, International Development Association, Multilateral Investment Guarantee Agency and Asian Infrastructure Investment Bank has initiated a program called Accelerating Renewable Energy Integration and Sustainable Energy (ARISE) for inviting private sector generators to develop solar PV projects in Maldives on a DBFOOT (i.e. design, build, finance, own, operate and transfer) basis. The electrical energy generated from such projects is proposed to be purchased by FENAKA Corporation Limited, a company incorporated and existing under the laws of the Republic of Maldives (“FENAKA”).
2. The Government invited bids vide an RFB dated [●]. [●], a [limited liability company] organized and existing under the laws of [●], with its principal office located at [●] (“Seller”), has been selected by the Government vide [Letter of Acceptance], dated [●] to develop a floating solar PV power project.
3. Seller and the Government entered into an Implementation Agreement dated [●] (“the Implementation Agreement”), whereby Seller has agreed to develop the Project (as defined in the PPA) and under a power purchasing agreement (“PPA”) between the Seller and FENAKA dated [●] Seller has agreed to sell and deliver to FENAKA, and FENAKA has agreed to purchase and accept from Seller, the electric energy produced by the Project.
4. Pursuant to the terms and conditions of the Implementation Agreement, the Seller is required to furnish a performance bank guarantee of amount aggregating to USD [●] to secure the Seller’s obligation under the Implementation Agreement, to achieve Minimum Project Capacity (as defined in the Power Purchasing Agreement (PPA)) at Commercial Operation Date (as defined in the PPA).

**NOW, THEREFORE;**

* + - 1. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation to achieve Minimum Project Capacity (as defined in the PPA) at Commercial Operation Date (as defined in the PPA), without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
      2. This guarantee shall expire, no later than the …. Day of ……, 2…, and any demand for payment under it must be received by us at this office indicated above on or before that date.
      3. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

**EXHIBIT D**

**FORM FOR SITE AGREEMENT**

1. To be included if the Seller elects to obtain an MIGA Guarantee. [↑](#footnote-ref-2)