

## POWER PURCHASE AGREEMENT

This power purchase agreement (“Agreement”) is made and entered into as of [●], 2015 by and between:

- 1) State Electricity Company Limited, a company incorporated and existing under the laws of the Republic of Maldives (“Maldives”) (“STELCO”), and
- 2) [●], a [limited liability company] organized and existing under the laws of [●], with its principal office located at [●] (“Seller”).<sup>1</sup>

### WHEREAS:

- A) The Government (as defined below), with support from the Strategic Climate Fund and International Development Association, has initiated a programme called Accelerating Sustainable Private Investment in Renewable Energy (“ASPIRE”) for inviting private sector generators to develop roof top solar PV (defined herein below) projects in Maldives on DBFOOT (i.e. design, build, finance, own, operate and transfer) basis. The electrical energy generated from such projects is proposed to be purchased by Government owned utilities under long term power purchase agreement.
- B) The Government invited bids from interested independent power producers, vide a Request for Proposal, dated [●] (“RFP”) for setting up roof top solar power projects on Government owned buildings identified and procured by it.
- C) The Seller had submitted a proposal in response to the RFP (“Proposal”). The Seller has been selected by the Government vide Letter of Acceptance, dated [●] to develop a roof top solar PV power project. Accordingly, the Seller desires to construct, own operate and subsequently transfer a grid connected solar PV electric generating facilities situated at the roof top of Government owned buildings with a total electric capacity equal to [2.5 MW on the island of Male] /[1.5MW on the island of Hulhumale]. The details of the Sites (defined hereinbelow), together with the Expected Capacity (defined hereinbelow) of the Facility (defined hereinbelow) at each Site is further described in Exhibit B hereto.
- D) STELCO is the identified state utility under the ASPIRE programme for purchase of the Electric Energy (defined hereinbelow) generated by the Seller.
- E) The Government also proposes to support the Project (defined hereinbelow), the details of which support have been detailed in a separate agreement, setting forth mutual rights and obligations of the Seller and the Government, executed between the Seller and the Maldives, dated [●] (“Implementation Agreement”). The Seller will also enter into long term lease agreements (co-terminous with the Contract Term (defined hereinbelow)) with the Government or Government-owned entities for taking over on lease the Sites on which the Project shall be established (each a “Roof Lease Agreement”).
- F) Maldives will also fund an escrow account (“Escrow Account”) that shall be maintained to provide payment security to the Seller for the Electric Energy sold by the Seller to STELCO, which account will be replenished by STELCO and/or Maldives in the event of a drawdown.

---

<sup>1</sup>**Note:** In the event, a JVA is the selected bidder, the PPA should be executed by the special purpose vehicle formed by the members of the JVA.

The terms and conditions of the Escrow Account will be separately agreed between STELCO, Maldives and a commercial bank selected by the Government in an escrow agreement (“Escrow Agreement”).

- G) The Seller desires to develop the Project and sell and deliver to STELCO, and STELCO desires to purchase and accept from Seller, the Electric Energy produced by the Project, in accordance with the terms and conditions set forth in this Agreement.

**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 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context requires otherwise, the following words shall have the meaning set forth below:

“**Abandonment**” means to the extent not as a result of a Force Majeure Event:

- (a) the performance of the Seller in discharge of its duties and/or obligations under this Agreement has been so inadequate, or
- (b) the level and/or quality of resources applied by the Seller has been so deficient; or
- (c) the Seller has disregarded its duties and/or obligations under this Agreement, to such an extent,

in each case as to reasonably demonstrate:

- (i) an intention of the Seller to no longer properly and diligently carry out and fulfill substantially the Seller’s duties and obligations as set forth in this Agreement; or
- (ii) a declaration by the Seller’s conduct that the Seller will not properly and diligently perform, substantially its duties and obligations as set forth in this Agreement.

Explanation: Except as a result of occurrence of a Force Majeure Event, (a) the cessation of substantially all activities relating to the construction or operation and maintenance of the Project, as appropriate, or (b) the physical absence, during a period when the Project is not generating Electric Energy despite availability of adequate irradiation, of substantially all technical employees of Seller and its contractors from the Sites, in either case (a) or (b) for at least 168 consecutive hours, shall be deemed to result in Abandonment.

“**AC**” means alternating current.

“**Affected Party**” has the meaning set forth in Article 12.5(a).

“**Affiliate**” means in relation to a person, a company or entity that directly or indirectly controls, or is controlled by, or is under common control with that person. For the purposes of this definition, “control” shall mean: (a) ownership or control (whether directly or otherwise) of fifty percent (50%) or more of the equity share capital, voting capital or the like of the controlled person, company or entity; or (b) ownership of equity share capital, voting capital, or the like by contract or otherwise, conferring control of, power to control the

composition of, or power to appoint, fifty percent (50%) or more of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled person, company or entity.

“**Aggregate Present Value**” has the meaning set forth in Schedule 7.

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

“**Annual Degradation**” means 0.5% per year.

“**Applicable Laws**” means any and all central, state, or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, Permits and Approvals, codes or license requirements, or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority, that apply to the either Party under this Agreement, whether now or hereafter in effect.

“**ASPIRE**” has the meaning set forth in Recital A.

“**Availability Factor**” means, with respect to any period for a Facility, the number equal to:(A) the number equal to (1) the number of hours in such period, minus (2) the sum of (i) the number of hours in such period that Seller was prevented from delivering Electric Energy from such Facility because of Force Majeure Events pursuant to Article 12, plus (ii) the number of hours of outages of such Facility due to any scheduled or unscheduled maintenance of STELCO’s Electric System, STELCO’s transmission constraints or Electric System Emergencies (outside of Force Majeure Events), minus (3) the number of hours of scheduled and unscheduled outages due to the Seller, excluding outages in hours in (2) divided by (B) the difference between (1) and (2). For the Project, the Availability Factor shall be the weighted average of the Availability Factors for all Facilities comprising a Project, weighted by the Facility Capacity of each such Facility.

“**Billing Period**” means each Calendar Month, except that (i) for the purpose of billing for the Test Energy, it shall be the period commencing on the date the Test Energy is delivered for the first time and ending on the Commercial Operation Date, (ii) in the case of the first Billing Period after the Commercial Operation Date, it shall be the period commencing on the Commercial Operation Date and ending on the last Day of the relevant Calendar Month in which the Commercial Operation Date falls, and (iii) for the last month of the Contract Term, it shall mean the date commencing on the first Day of the Calendar Month, and ending on the last Day constituting the Contract Term.

“**Business Day**” means any Day on which banks in the Maldives are legally permitted to be open for business.

“**Calendar Month**” means a month in accordance with the Gregorian calendar.

“**Capacity Benefits**” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location,

or any other attribute of the Project, intended to value the electrical capacity of the Project or any aspect of the capacity of the Project to produce electric energy or ancillary services, including any accounting construct so that the Electric Capacity of the Project may be counted toward a resource adequacy requirement or any other measure under Applicable Laws.

**“Capacity Utilization Factor”** or **“CUF”** means seventeen percent (17%).

**“Cause”** means, in relation to the issuance, renewal, revocation, amendment or modification of any Permits and Approvals, any default, neglect or failure by the relevant party to abide by any Applicable Laws of Maldives or any of the terms and conditions of any Permits and approvals which entitles the relevant Governmental Authority to revoke, or refuse to issue or renew, the Permits and Approvals or make an amendment to its terms and conditions.

**“Change in Law”** means any of the following events occurring after the Contract Date as result of any action by any Governmental Authority:

- (a) repeal, in whole or in part, or modification, of an existing Applicable Law of Maldives;
- (b) enactment or commencement of a new Applicable Law of Maldives not existing as of the Contract Date;
- (c) modification of any existing Permits and Approvals after it is granted to the Seller in relation to the Facility or the Project, other than for a Cause;
- (d) cancellation or non-renewal, or a material adverse change in, the conditions applicable to any Permits and Approvals granted to the Seller in relation to the Facility or the Project, other than for a Cause;
- (e) imposition of a requirement for Permits and Approvals not required as of the Contract Date; and
- (f) any change in the manner in which any of the Applicable Laws of Maldives or Permits and Approvals that affects any Facility or the Project are applied or interpreted by any Governmental authority having authority for the interpretation, application or enforcement of such Applicable Laws, and Permits and Approvals.

**“Closing Date”** means the date when (i) the Seller has received (a) the first draw down on its senior debt or lease financing, as applicable, arranged solely for the Project from independent third party financial institutions, pursuant to duly executed financing agreements, and (b) all financing proceeds or commitments necessary in the aggregate to pay for Seller’s cost of the financing, development, design, construction, completion, and start-up of the Project and the Interconnection Facilities, or (ii) the Seller has notified the Government and STELCO that it shall develop the Project out of its own fund, and has submitted its bank statements, and audited profit and loss account, audited balance sheet and such other documents as may be reasonably requested by the STELCO to demonstrate its ability to develop the Project out of its own funds, and (iii) the Roof Lease Agreement has been executed for all the Sites constituting the Project.

**“Codes and Standards”** means all industrial or engineering codes, standards, or guidelines, and insurance requirements, applicable to the design, engineering, construction, completion, start-up, testing, commissioning, operation, or maintenance of the Project.

“**Commercial Operation Date**” means the date on which each of the requirements set forth in Article 6.1 and on Schedule 1 have been satisfied.

“**Completion Notification**” has the meaning set forth in Article 3.3(b).

“**Construction Security**” has the meaning set forth in Article 9.1.

“**Contract Date**” means the date of execution of this Agreement.

“**Contract Energy**” means for any relevant period,

- (a) prior to the Commercial Operation Date (i) with respect to any Facility the electrical energy calculated as the Expected Capacity (of the Facility) multiplied by CUF multiplied by the number of hours in such period; (ii) with respect to the Project the electrical energy calculated as Expected Capacity (of the Project) multiplied by CUF multiplied by the number of hours in such period;
- (b) after the Commercial Operation Date (i) with respect to any Facility the electrical energy required to be delivered by the Facility, calculated as Electric Capacity (of the Facility) multiplied by CUF multiplied by the number of hours in such period; (ii) with respect to the Project the electrical energy required to be delivered by the Project, calculated as Electric Capacity (of the Project) multiplied by CUF multiplied by the number of hours in such period.

“**Contract Term**” has the meaning set forth in Article 2.1.

“**Contract Year**” means each twelve (12) month period beginning at 00:00 hours on the Commercial Operation Date and ending at 00:00 hours of the Day preceding each anniversary thereof.

“**Curtailed Product**” has the meaning set forth in Article 4.7.

“**Curtailment**” has the meaning set forth in Article 4.7.

“**Day**” means a twenty four (24) hour period beginning at 12:00 midnight and ending at 11:59:59 p.m. on the following day, Maldivian time.

“**DC**” means direct electric current.

“**Deemed Generation Charge**” has the meaning set forth in Article 4.7.

“**Delivery Point**” means, with respect to a Facility, the physical point at which Electric Energy generated by such Facility will be delivered to STELCO in accordance with this Agreement as such point may be specified in the Interconnection Requirements.

“**Dispute Notice**” has the meaning set forth in Article 16.2.

“**Dispute**” has the meaning set forth in Article 16.2.

“**Dollars**” and “**\$**” mean lawful currency of the United States of America.

“**Electric Capacity**” means the rated solar PV capacity, expressed in kWp, capable of being generated by the Facility or the Project, as the case may be, as specified by the manufacturer of the solar panels, inverters, and related equipment, systems, and components and confirmed by the Performance Tests subject to the Annual Degradation.

“**Electric Energy**” means (i) with respect to a Facility, the net actual electrical energy in kWh generated by such Facility and delivered by the Seller to STELCO at such Facility's Delivery Point and measured by the Metering Devices, or (ii) with respect to the Project, the aggregate Electric Energy generated by all Facilities comprising the Project and delivered by the Seller to STELCO at such Facilities' respective Delivery Points and measured by the Metering Devices.

“**Electric System Emergency**” means the existence of a physical or operational condition, including transmission or distribution contingencies, or the occurrence of an event on STELCO's Electric System, that in STELCO's sole judgment (a) is imminently likely to endanger life or property, or (b) impairs or imminently will impair: (i) STELCO's ability to discharge its statutory obligations to provide safe, adequate and proper service to its electric customers, or (ii) the safety or reliability of STELCO's Electric System.

“**Environmental and Social Management Framework**” means the environment and social framework of the Government dated March 27, 2014 for undertaking environmental and social analysis and developing mitigation measures for projects, as may be revised from time to time with the prior written agreement of the World Bank, and includes any annexes and schedules to such framework.

“**Environmental Attributes**” means any and all environmental, renewable energy, clean energy, carbon reduction, greenhouse gas reduction, or air quality credits, offsets, allowances, or other benefits related to the ownership or operation of the Project or the generation of Electric Energy at the Project, the sale of Electric Energy to STELCO hereunder, or the other transactions contemplated by this Agreement, or the reduction, displacement, or offset of any emissions resulting from the combustion of fuel at any other location, pursuant to any Applicable Law (whether of Maldives or any other relevant jurisdiction), or voluntary market, and the aggregate amount of credits, offsets, or other benefits related to STELCO's marketing program, any successor marketing or green pricing program, or any other environmental or renewable energy credit program derived from the generation, sale, purchase, distribution, or use of renewable energy from the generation of energy at the Project or any similar program pursuant to any Applicable Law (whether of Maldives or any other relevant jurisdiction), or voluntary market. Environmental Attributes include renewable or clean energy credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual

or potential threat of altering the Earth's climate by trapping heat in the atmosphere; or (3) the reporting rights to these avoided emissions.

**“Environmental Law”** means any Applicable Law relating to (a) pollution or protection of natural resources or the environment (including ambient air, surface or subsurface waters, and surface lands and subsurface strata), (b) the treatment, disposal, emission, discharge, release, or threatened release into the environment of Hazardous Substances, or (c) protection of wildlife or endangered species, and shall include the Environmental Protection and Preservation Act, of the Republic of Maldives, Environment Impact Assessment Regulations of Maldives, the Environmental and Social Management Framework, and the World Bank Performance Standards.

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

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

**“Expected Capacity”** means (i) with respect to a Facility, the Electric Capacity set forth with respect to such Facility in Schedule 3, or (ii) with respect to the Project, the aggregate of the Electric Capacity of all the Facilities, and set forth on Schedule 3.

**“Expert”** has the meaning set forth in Article 16.3(a).

**“Extended Outage”** means (i) a complete outage at any Facility for more than thirty (30) Days, for any reason, or (ii) the failure of the Seller to deliver at least 60% of the Contract Energy from the Project over any thirty (30) Day period; except where such complete outage or non-performance is on account of the occurrence of a Force Majeure Event.

**“Facility Capacity”** means, with respect to a Facility, the Electric Capacity of such Facility, as determined in the manner provided in Article 6.3.

**“Facility”** means the solar PV systems, inverters, and related equipment, systems, components, fixtures, and facilities sharing a common point of interconnection with STELCO's Electric System, the Site at which such systems, equipment, fixtures and facilities are located, Seller's Interconnection Facilities relating thereto, and the other assets, tangible and intangible as further described on Exhibit A.

**“Force Majeure Event”** has the meaning ascribed to the term in Article 12.1.

**“Good Engineering and Operating Practices”** means generally accepted and sound independent power producer industry practices, in particular those applicable to solar PV power producers, methods, procedures and acts applicable to similarly situated facilities, which at a particular time, in the exercise of reasonable judgment expected of a skilled and experienced international operator of a solar PV facility engaged in the same type of undertaking under the same or similar circumstances to those pertaining in the Project, and in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy and expedition. Good

Engineering and Operating Practices is not intended to be limited to the optimum practices, methods and acts to the exclusion of all others, but rather to be acceptable practices, methods, and acts generally accepted in similarly situated facilities. With respect to the Project, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (a) adequate equipment, materials, resources, and supplies in sufficient reliable volumes and quality, are available to meet the Project's needs;
- (b) sufficient qualified and experienced operating, maintenance and supervisory personnel are available and adequately trained on the systems and other equipment comprising each Facility to operate, maintain, and supervise each Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;
- (c) preventive, routine and non-routine maintenance and repairs are performed on a basis consistent with manufacturers' guidelines and specifications that ensures reliable and safe long-term operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment, tools, and procedures;
- (d) appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning consistent with manufacturers' guidelines and specifications as designed and to assure that equipment and systems will function properly under normal conditions and emergency conditions; and
- (e) equipment and systems are operated in a manner safe to workers and the environment.

**“Government”** means the Government of Maldives and includes the MEE, MEA and other ministries, departments and regulatory bodies (whether existing now or in future) with jurisdiction over the Project or generation of electricity under the Applicable Laws in Maldives.

**“Governmental Authority”** means (a) the Government, (b) any political sub-division of the Government, (c) any ministry, department, political sub-division, instrumentality or agency under the direct control of the Government, (d) any other governmental, quasi-governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory, or taxing authority or power having jurisdiction over either Party, a Site, a Facility, the Project, or the Interconnection Facilities, whether acting under actual or assumed authority; provided, that for purposes of this Agreement, STELCO shall not be deemed to be a Governmental Authority.

**“Hazardous Substance”** means (a) any material, substance, or waste (whether liquid, gaseous or solid) that (i) requires removal, remediation, or reporting under any Environmental Law, or is listed, classified or regulated as a “hazardous waste” or “hazardous substance” (or other similar term) pursuant to any applicable Environmental Law, or (ii) is regulated under applicable Environmental Laws as being, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and (b) petroleum-derived substances, wastes or breakdown products, friable asbestos, or polychlorinated biphenyls.

**“ICC”** means the International Chamber of Commerce, Paris.

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

“**Initial Performance Tests**” has the meaning set forth in Article 6.1(c).

“**Insurance Date**” has the meaning set forth in Article 11.1(a).

“**Interconnection Facilities**” means the facilities necessary to connect STELCO's Electric System to each Facility at its Delivery Point, including breakers, bus work, bus relays, visible disconnect devices, and associated equipment installed for the direct purpose of interconnecting each such Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of such facilities. The Interconnection Facilities include Seller's Interconnection Facilities and STELCO's Interconnection Facilities.

“**Interconnection Requirements**” means the interconnection procedures and interconnection requirements specified by STELCO and Maldives Energy Authority in accordance with the Applicable Laws, set out in Schedule 9.

“**Invoice**” has the meaning set forth in Article 5.3(b).

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour (AC).

“**Lock-in Period**” has the meaning set forth in Article 18.1(c).

“**Maldives**” has the meaning set forth in the Preamble.

“**MEA**” means the Maldives Electricity Authority.

“**MEA Regulations**” means the “Guidelines on Technical Requirements for Photovoltaic Grid Connection” issued by MEA as available on the date of this Agreement at [http://www.energy.gov.mv/v1/wp-content/files/lawsandregulations/Guideline\\_for\\_Grid-connected\\_PV\\_System\\_-\\_Feb\\_2013.pdf](http://www.energy.gov.mv/v1/wp-content/files/lawsandregulations/Guideline_for_Grid-connected_PV_System_-_Feb_2013.pdf).

“**MEE**” means the Ministry of Environment and Energy of the Government of the Republic of Maldives.

“**Metering Devices**” means all meters, metering equipment, including tele-metering equipments, communication equipments and data processing equipment used to measure, record, or transmit data relating to electric output of a Facility or the Project, as applicable, installed by Seller pursuant to Schedule 6.

“**Minimum Project Capacity**” means that the Project has an Electric Capacity equal to not less than sixty percent (60%) of the Expected Capacity of the Project.

“**Natural Force Majeure Event**” has the meaning set forth in Article 12.2.

“**Operating Representatives**” has the meaning set forth in Article 8.5(a).

“**Outstanding Receivables**” has the meaning set forth in Schedule 7.

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

“**Performance Tests**” has the meaning set forth in Article 6.1(c).

“**Permits and Approvals**” means any and all permits, approvals, consents, authorizations, agreements, licenses, or inspection certificates of, by, or with any Governmental Authority or other Person.

“**Person**” means any legal or natural person, including any individual, corporation, partnership, limited liability company, joint stock company, association, joint venture, trust, Governmental Authority, or other entity.

“**Political Force Majeure Event**” has the meaning set forth in Article 12.3.

“**Present Value**” has the meaning set forth in Schedule 7.

“**Product**” means the Electric Energy, Electric Capacity, Capacity Benefits, Environmental Attributes, and all ancillary products, services, or attributes which are or can be produced by or associated with the Project.

“**Project**” means the Facilities, the Sites at which the Facilities are located, Seller's Interconnection Facilities, and the other assets, tangible and intangible, that comprise the Facilities, collectively, as further described on Exhibit A and Exhibit B.

“**Project Capacity**” means, with respect to the Project, the Electric Capacity of the Project, as determined in the manner provided in Article 6.3.

“**Project Management Procedures**” has the meaning set forth in Article 8.6.

“**Proposal**” has the meaning set forth in the Recital C.

“**Protected Assets**” has the meaning set forth in Article 16.7.

“**PV**” means photovoltaic.

“**Qualified Owner**” means a Person that satisfies the criterion specified in Schedule 10.

“**Reference Rate**” means the rate notified by the Maldives Monetary Authority for 364 Days Treasury Bills, on the Day that is two (2) Business Days prior to the date on which interest shall begin to be calculated hereunder, subject to a maximum of five percent (5%).

“**Residual Life**” has the meaning set forth in Schedule 7.

“**Revised Tariff**” has the meaning set forth in Article 12.10(b).

“**RFP**” has the meaning set forth in the Recital B hereof.

“**Roof Lease Agreements**” has the meaning set forth in Recital E hereof.

“**Ruffiya**” or “**MVR**” means the lawful currency of Maldives.

“**Scheduled Commercial Operation Date**” has the meaning set forth in Article 3.3(a).

“**Scheduled Maintenance Outages**” means those scheduled electric maintenance outages of a Facility, including outages for major overhauls, planned by Seller each Contract Year pursuant to Article 8 that either (i) require a complete outage of a Facility for a period exceeding seventy two (72) hours, or (ii) is expected to reduce the Electric Energy generated by such Facility by more than fifty percent (50%) for a period in excess of ninety six (96) hours.

“**Seller’s Back-up Metering Device**” has the meaning set forth in Schedule 6.

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

“**Seller’s Event of Default**” has the meaning set forth in Article 13.1.

“**Seller's Interconnection Facilities**” means “Seller’s Interconnection Facilities” under and as described in the Interconnection Requirements, as applicable.

“**Site Control**” has the meaning set forth in Article 3.5.

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

“**STELCO**” has the meaning set forth in the Preamble.

“**STELCO's Electric System**” means STELCO's Interconnection Facilities and the electric power generation, transmission, substation, switching station and distribution facilities owned, operated and maintained from time to time by STELCO on the island of [Male/Hulhumale] in Maldives.

“**STELCO’s Event of Default**” has the meaning set forth in Article 13.2.

“**STELCO Fiscal Year**” means the fiscal year of STELCO, which as of the Contract Date is the twelve-month period beginning each January and concluding on December, as such fiscal year may be changed from time to time by STELCO upon reasonable advance notice to Seller.

“**STELCO's Interconnection Facilities**” means STELCO's Interconnection Facilities as described in the Interconnection Requirements.

“**STELCO Notice**” has the meaning set forth in Schedule 7.

“**Supplementary Charge**” has the meaning set forth in Article 12.10(a).

“**Tariff**” means Dollars [●] per kWh.

“**Termination Cost**” means the Termination Cost as determined in accordance with Schedule 7.

“**Test Energy**” has the meaning set forth in Article 6.1(d).

“**Transmission Event**” has the meaning set forth in Article 4.6(a)(i).

“**World Bank**” means International Development Association.

“**World Bank Anti-Corruption Guidelines**” means the World Bank’s “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006 and revised in January 2011, available at: <http://documents.worldbank.org/curated/en/2011/01/14059862/guidelines-preventing-combating-fraud-corruption-projects-financed-ibrd-loans-ida-credits-grants>.

“**World Bank Performance Standards**” means the World Bank Performance Standards for Private Sector Activities as published at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23410617~menuPK:9180326~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html>.

## 1.2 Interpretation

In this Agreement:

- (a) any reference to any statute or statutory provision shall include:
  - (i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
  - (ii) 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;
- (b) reference to any Party under this Agreement shall also include its successors, administrators, legal representatives, and permitted assigns as the case may be;
- (c) 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;

- (d) 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;
- (e) unless the contrary is expressly stated, no Article in this Agreement limits the extent or application of another Article;
- (f) 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;
- (g) “in writing” includes any communication made by letter or facsimile;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) 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;
- (p) grammatical variations of defined words shall be construed in accordance with the relevant definition(s);
- (q) references to the singular number shall include references to the plural number and vice versa; and
- (r) words denoting one gender shall include all genders.

## **ARTICLE 2 TERM**

### **2.1 Contract Term**

The term of this Agreement shall enter into full force and effect on the Contract Date and shall expire on the twentieth (20th) anniversary of the Commercial Operation Date (the "Contract Term"), unless sooner terminated in accordance with Article 13.

### **2.2 Transfer of Project**

Upon expiry of the Contract Term, the Seller shall at its own cost, and at the option of STELCO either: (a) transfer to STELCO and/ or its Affiliate or nominee such Facilities that STELCO wishes to acquire free of cost, or (b) for such Facilities that STELCO does not wish to purchase, decommission such Facilities and remove from the relevant Sites of such Facilities the assets belonging to the Seller in accordance with the applicable Roof Lease Agreement(s).

**ARTICLE 3**  
**CONSTRUCTION OF THE PROJECT**

**3.1 Description and Location of the Project**

The Project shall consist of [Insert Number] Facilities generating an aggregate Expected Capacity of the Project equal to [●] kW, located at the respective Sites. Exhibit A and Exhibit B provide a more detailed description of the Facilities and the Sites, including identification of the primary solar PV electric generating systems and components which make up the Project, a description of the Interconnection Facilities, and a drawing and a map identifying the location of such electric generating systems.

**3.2 Project Design**

(a) Design of the Project

Seller shall design, engineer, procure, finance, and construct the Project in accordance with this Agreement (including the Schedules and Exhibits hereto), Good Engineering and Operating Practices, World Bank Performance Standards, the Environmental and Social Management Framework, and Applicable Laws, and Seller shall cause the Project to adhere to such requirements for the Contract Term.

(b) Design and Engineering Documentation

Seller shall, at its own expense, provide to STELCO, for its review and comment, all such information related to the design, engineering, and construction contracts for the Facilities relevant to Seller's performance hereunder, including major engineering drawings, in each case as may be reasonably requested by STELCO and to the extent such information is reasonably available to Seller.

In addition to the information contained in Schedule 9, STELCO shall provide to the Seller, at Seller's request, such information as may be necessary for the Seller to design, engineer, and construct the Interconnection Facilities, to the extent such information is already within STELCO's possession.

(c) Changes to Certain Specifications

Seller shall not modify any of the design specifications of any Facility set forth on Part [●] of Exhibit A to the extent that such modification would materially change the Expected Capacity of such Facility or the expected Contract Energy of the Project set out in Schedule 3, without the prior written consent of STELCO.

(d) Construction Schedule

Within ninety (90) Days of the Contract Date, the Seller shall provide STELCO an indicative construction schedule that includes (A) tentative date for commencement and completion of the construction of the Facilities; (B) an indicative schedule of construction activities for

each Facility and/ or the Project.

### **3.3 Commercial Operation Date**

#### **(a) Commercial Operation**

The Project shall achieve the Commercial Operation Date effective as of the date on which each of the conditions set forth on Schedule 1 have been satisfied for all the Facilities. The Seller shall cause the Project to achieve the Commercial Operation Date and to be fully capable of reliably producing and delivering all Product required in accordance with this Agreement no later than [insert date twelve (12) months after the Contract Date] (the “Scheduled Commercial Operation Date”).

#### **(b) Procedures**

When Seller believes that all of the conditions to the Commercial Operation Date in Schedule 1 have been satisfied, Seller shall submit to STELCO a certificate (“Completion Notification”), certifying (a) that each of the requirements set forth in Article 6.1 and on Schedule 1 have been satisfied with respect to each Facility and the Project, as applicable, (b) the Facility Capacity of each Facility, (c) the Project Capacity of the Project, (d) that the Project Capacity of the Project is not less than the Minimum Project Capacity. If, after the Seller provides a Completion Notification, STELCO believes, in good faith, that the conditions set forth on Schedule 1 have not been satisfied, STELCO shall, as soon as practicable but in no event more than ten (10) Business Days after receipt of the Completion Notification, provide a written objection to Seller stating with specificity those conditions that STELCO believes, in good faith, have not been satisfied and the basis for such conclusion. If STELCO fails to provide a written objection within such ten (10) Business Day period according to the immediately preceding sentence, the Commercial Operation Date shall be the date on which such conditions were satisfied, as set forth in the Completion Notification. If STELCO provides a written objection within such ten (10) Business Day period, then the Parties shall promptly confer for the purpose of resolving any dispute with respect to any condition set forth on Schedule 1. If the Parties reach agreement, the Commercial Operation Date shall be the date agreed by the Parties. If the Parties do not reach agreement, either Party may submit the dispute to the dispute resolution procedures set forth in Article 16.

### **3.4 STELCO’s Rights During Construction**

STELCO shall have the right to monitor the construction, start-up and testing of the Facilities, and Seller shall comply with all reasonable requests of STELCO with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the Facilities as may be reasonably requested by STELCO during and after completion of construction. All persons visiting the Facilities on behalf of STELCO shall comply with Seller's reasonable safety and health rules and requirements. STELCO's technical review and inspection of the design documents or any of the Facilities shall not be construed as endorsing the design thereof or its compliance with this Agreement, nor as any warranty of safety, durability, or reliability of the Facility.

### **3.5 Site Control**

Seller shall obtain a valid and binding leasehold interest in, or an easement, right-of-way, license, or other right to use, such Site by executing a Roof Lease Agreement for each Site, for the Contract Term and on a schedule sufficient to meet its obligations under this Agreement, and in any case prior to the commencement of construction and not later than thirty (30) Days from the Contract Date (“Site Control”). Seller shall provide to STELCO, promptly after obtaining such leasehold interest, easement, right-of-way, license or other right to use in such Site, a copy of the relevant documentation with respect to such leasehold, interest, easement, right-of-way or other right to use and in any event prior to the commencement of construction. The Parties acknowledge that it is the primary responsibility of the Government to arrange the Site for the Seller in accordance with the Implementation Agreement. Failure of the Government to arrange the Site, in a condition fit for lease in accordance with the Implementation Agreement, for the Seller shall automatically result in extension of the deadline for Site Control and the Scheduled Commercial Operation Date on day-for-day basis, for the duration the Site is not made available to the Seller in a condition, fit for lease.

### **3.6 Project Development**

#### **(a) Site Report**

The Seller shall,

- (i) for each Site, conduct an environmental investigation conforming with the relevant Environmental Laws within ninety (90) Days of the Contract Date and shall promptly after each investigation, provide STELCO a copy of the report summarizing such investigation that includes (A) any data or information generated pursuant to such investigation, and (B) a confirmation from a reputable, qualified environmental engineer selected by Seller that the Site has been inspected for environmental contamination and the results of such inspection;
- (ii) conduct an assessment of its existing environment and social management systems as per the Environmental and Social Management Framework within one (1) Calendar Month from the Contract Date, and submit a report to the Government for its approval;
- (iii) implement an action plan to address any gaps identified in its environment and social management systems by the Government to the satisfaction of the Government; and
- (iv) not undertake any physical activities at the Site until the relevant clearances are obtained by the Environment Protection Agency as per the Environment Impact Assessment Regulation (2012) of Maldives.

#### **(b) Permits and Approvals**

The Seller shall, at its expense, acquire and maintain in effect, and shall comply with, all Permits and Approvals from all Governmental Authorities with jurisdiction over Seller, the Project, any Facility, or any Site, or necessary for the design, construction, finance, ownership, operation, maintenance, removal, or remediation of the Project, any Facility, or any Site, including the disposal of any waste, byproduct(s) or Hazardous Materials, if any, and shall complete all environmental impact studies necessary for the ownership, construction, or completion of the Project, a Facility or a Site, including the disposal of any waste, by-products, or Hazardous Materials, if any, and for Seller to perform its obligations under this Agreement. STELCO shall not be responsible in any way whatsoever for any Permits and Approvals or environmental studies or assessments or other requirements under the Applicable Laws, including Environmental Laws, that may be necessary for Seller to perform its obligations under this Agreement.

(c) Facility Contracts

The Seller shall provide to STELCO (in accordance with Article 18.5), not later than thirty (30) Days from the Closing Date, copies of the following major contracts governing the design and construction of the Facilities and the ability of the Seller to deliver the Product in accordance with this Agreement:

- (i) contracts for the manufacture, delivery and installation of the solar PV systems and inverters;
- (ii) engineering, procurement and construction, or other general contractor agreements; and
- (iii) operating agreements, warranty agreements, and long-term service agreements.

Upon STELCO's reasonable notice and request, Seller shall provide STELCO with other construction contracts and major engineering drawings related to the Facilities. Seller shall provide sufficient information for STELCO to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process.

(d) Financing

Within ninety (90) Days after the Contract Date, the Seller shall provide STELCO with sufficient evidence that it has the capability to finance construction of the Project, which may take the form of lender letters of intent or commitment letters, or, if the Seller intends to develop the Project out of its own funds, such other evidence acceptable to STELCO, including Seller's bank statements and balance sheet. The Seller shall achieve the Closing Date within one hundred and eighty (180) Days of the Contract Date, unless the delay in achieving the Closing Date is a result of the failure of the Government to procure execution of the Roof Lease Agreements, in accordance with the Implementation Agreement. The Seller shall give reasonable advance notice to STELCO of the expected date of the Closing Date, and shall notify STELCO promptly upon occurrence of the Closing Date.

**3.7 Progress Reports**

Seller shall notify STELCO in a timely manner of any significant changes to its construction

schedule intimated by the Seller under Article 3.2(d).

**3.8 Inspection**

Seller shall cooperate in any physical inspections of the Facilities or the Sites by STELCO, as may be reasonably required by STELCO during the Contract Term.

**3.9 Anti-Corruption**

Seller shall carry out the Project in accordance with the provisions of Section 10 of the World Bank Anti-Corruption Guidelines.

**ARTICLE 4**  
**ELECTRIC POWER PURCHASE AND SALE**

**4.1 Sale and Purchase of Electricity**

Commencing on the Commercial Operation Date and continuing throughout the Contract Term, and subject to the terms and conditions of this Agreement, including Article 4.3, Seller shall sell and deliver to STELCO, and STELCO shall purchase and accept from Seller (a) one hundred percent (100%) of the Electric Energy generated by each Facility and delivered by Seller to the Delivery Points as provided herein, up to the Contract Energy, and (b) for no additional consideration other than the payment of the amounts set forth in Article 4.2 and subject to the provisions of Article 8.7, the Capacity Benefits, Environmental Attributes and other Products in addition to Electric Energy that are produced by or associated with the Project.

**4.2 Purchase Price**

For each Billing Period, STELCO shall pay Seller for the Electric Energy and other Products delivered hereunder during such Billing Period, an amount equal to the sum of:

- (a) the Test Energy and Electric Energy upto Contract Energy of the Project, in kWh, delivered hereunder during such Billing Period, multiplied by the Tariff, and
- (b) Electric Energy in excess of the Contract Energy of the Project, delivered hereunder and purchased by STELCO, subject to Article 4.3, during such Billing Period, multiplied by 0.75 multiplied by the Tariff.

Provided that after the Commercial Operation Date, after expiry of every twelve (12) Billing Periods, Parties shall reconcile the Invoices for the immediately preceding twelve (12) Billing Periods to determine the aggregate Electric Energy delivered during the said Billing Periods and the actual payments claimed in such Invoices, and the payments due to the Seller shall be re-calculated to ensure that the Seller is entitled to the Contract Energy for such twelve (12) Billing Periods taken as a whole multiplied by the Tariff. The Seller shall be entitled to include the details of shortfall in the monthly Invoice generated after such reconciliation in accordance with Article 5.3(b).

**4.3 Limitation on Purchase**

- (a) Notwithstanding any other provision of this Agreement, STELCO shall have no obligation to purchase or accept, in any hour period, any Electric Energy, which is generated at a rate exceeding Electric Capacity of a Facility.
- (b) STELCO shall have the right to notify the Seller, from time to time, of the Electric Energy in excess of the Contract Energy that STELCO may be able to purchase from the Seller, and pay as per Article 4.2 (b), in any hour, based on the capacity of STELCO's Electric System, including grid capacity, provided that such notification shall not be deemed to constitute an obligation or commitment on STELCO's part to purchase such excess Electric Energy.

#### **4.4 Electrical Specifications**

Seller warrants that the Electric Energy delivered to STELCO shall meet the quality standards and technical specifications set forth in the Interconnection Requirements, and Schedule 2.

#### **4.5 Delivery**

Seller shall deliver all Electric Energy produced at each Facility to STELCO at such Facility's Delivery Point.

#### **4.6 Exceptions to Obligation to Deliver and Accept Electric Energy**

- (a) STELCO shall not be obligated to accept or purchase Test Energy or to accept or purchase Electric Energy from a Facility in accordance with this Article 4, as and to the extent any of the following applies:
- (i) To the extent that transmission facilities are loaded to their maximum capability and continued or increased output of Electric Energy from the Facility would adversely affect the reliability of STELCO's Electric System or STELCO interrupts acceptance of the Facility's Electric Energy to conduct maintenance or testing or to install or replace equipment of the STELCO's Interconnection Facilities or adjacent transmission or sub-transmission facilities (each such event, a "Transmission Event"); or
  - (ii) To the extent any of the following events applies to a Facility or the Project:
    - (A) STELCO during any Electric System Emergency has reduced interconnection service or disconnected any of the Facilities, or any of Seller's Interconnection Facilities in accordance with Interconnection Requirements, or deliveries of Electric Energy would contribute to such Electric System Emergency, or if the Project or any of the Facilities must be disconnected, or STELCO requires Seller to interrupt or reduce deliveries of Electric Energy, pursuant to the Interconnection Requirements;
    - (B) the Facility or the Electric Energy produced thereby does not comply with the requirements set forth in Schedule 2 of this Agreement, or the provisions of the Interconnection Requirements;
    - (C) the Facility is unavailable due to Scheduled Maintenance Outages, or forced outages, or unscheduled maintenance by the Seller; or
  - (iii) without limiting the provisions in Article 12, to the extent:
    - (A) performance by Seller is prevented by Force Majeure Event, to the extent such Force Majeure Event reduces the availability or output of Electric Energy below the Contract Energy for the Project; or

- (B) performance by STELCO is prevented by Force Majeure Events, or Force Majeure Events prevent STELCO from accepting, transmitting, or distributing, Electric Energy.

(iv) if the Seller has failed to synchronize the Facility with STELCO's Electric System.

- (b) Where practicable, each Party shall give the other Party reasonable advance notice of any interruption, curtailment, or reduction effected pursuant to this Article 4.6, the circumstances requiring or necessitating the interruption, curtailment or reduction of Seller's delivery or sale, or STELCO's acceptance or purchase, of the Facility's Electric Energy and, if possible, the reasons therefor, and the extent and duration thereof. In the event that a Party is unable, for any reason, to give the other Party such advance notice, such Party shall, as soon thereafter as practicable, contact the other Party explaining the circumstances requiring or necessitating the interruption, curtailment, or reductions, and, if possible, furnish the reasons therefor and the extent and duration thereof. STELCO shall resume the acceptance of the Facility's Electric Energy when the cause for the interruption, curtailment, or reduction no longer exists.
- (c) If the balance in the Escrow Account falls below an amount equal to the average monthly Contract Energy of the Project multiplied by the Tariff multiplied by three (3), the Seller may, at its option, fifteen (15) Days after the occurrence of such event suspend sale of Electric Energy to STELCO, without any adverse consequence to the Seller under this Agreement.

#### **4.7 Deemed Generation Charges**

In the following events, STELCO shall pay to the Seller the following charges ("Deemed Generation Charge"), even if Seller does not generate or deliver to STELCO, or STELCO does not purchase from the Seller, the Electric Energy:

- (a) To the extent an interruption, curtailment, or reduction pursuant to Article 4.6(a) ("Curtailment") results from a Transmission Event, STELCO shall pay the Seller an amount calculated as the Contract Energy (of the Facility or Facilities curtailed) for the period of Curtailment multiplied by the Tariff;

provided that no Deemed Generation Charges shall be due in any given year unless and until the cumulative duration of the Curtailments in such year exceed one hundred and fifty (150) hours. Provided further that, the Deemed Generation Charges for any given year shall be due and payable only for the number of hours in excess of one hundred and fifty (150) hours.

- (b) To the extent a Curtailment results from the Seller's inability to synchronize the Facility with STELCO's Electric System, where such failure to synchronize is attributable to STELCO, STELCO shall pay the Seller an amount calculated as Contract Energy (for the Facility or Facilities not synchronized) for the period of Curtailment (due to delay in synchronization) multiplied by the Tariff;

provided that no Deemed Generation Charges shall be due in any given year unless and until the cumulative duration of , the Curtailments in such year exceed one hundred and fifty (150) hours. Provided further that, the Deemed Generation Charges for any given year shall be due and payable only for the number of hours in excess of one hundred and fifty (150) hours.

- (c) If prior to the Commercial Operation Date, a Site becomes unavailable due to a Political Force Majeure Event, from the expiry of thirty (30) Days from the date of delivery of the Unavailability Notice, as per Article 4.2(b)(iii) of the Implementation Agreement, (and also subject to the delivery of notice of a Force Majeure Event under Article 12.5(a)(i) until the earlier of: (i) such time as the Site becomes available or expiry of fifteen (15) Days from the date of execution of the Roof Lease Agreement for an alternative Site in accordance with the Implementation Agreement, or (ii) this Agreement is terminated in accordance with the provisions of Article 13.5(c), STELCO shall pay the Seller for the Facility established on such Site, an amount calculated as the Contract Energy of the concerned Facility for such period multiplied by the Tariff multiplied by 0.5.

Provided that if after the Commercial Operation Date, the Project Capacity determined upon Initial Performance Test in accordance with Article 6.1(c) is lower than the Expected Capacity, the Deemed Generation Charges paid in accordance with this Article 4.7(c) shall be recalculated by making adjustments in the Contract Energy such that it is calculated with reference to the Project Capacity (as determined by the Initial Performance Test) , and not with reference to Expected Capacity; and STELCO shall have the right to recover such excess amount paid to the Seller, either by adjusting the same from a subsequent Invoice or otherwise.

- (d) If after the Commercial Operation Date, a Site becomes unavailable due to a Political Force Majeure Event, from the expiry of thirty (30) Days from the date of delivery of the Unavailability Notice, as per Article 4.2(b)(iii) of the Implementation Agreement, (and also subject to the delivery of notice of a Force Majeure Event under Article 12.5(a)(i)) until the earlier of: (i) such time as the Site becomes available or the expiry of fifteen (15) Days from the date of execution of Roof Lease Agreement for an alternative Site in accordance with the Implementation Agreement, or (ii) this Agreement is terminated in accordance with the provisions of Article 13.5(c), STELCO shall pay the Seller for the Facility established on such Site, an amount calculated as the Contract Energy of the concerned Facility for such period multiplied by the Tariff.
- (e) If prior to the Commercial Operation Date, a Natural Force Majeure Event affecting only STELCO occurs and continues for one hundred and eighty (180) Days (subject to the delivery of notice of a Force Majeure Event under Article 12.5(a)(i)) such that it delays the Commercial Operation Date beyond the Scheduled Commercial Operation Date, STELCO shall pay the Seller from the date falling immediately after expiry of one hundred and eighty (180) Days until (i) termination of this Agreement in accordance with Article 13.5(b) hereof; or (ii) the cessation of the Natural Force Majeure Event affecting STELCO, as the case may be, an amount calculated as the Contract Energy for such period multiplied by the Tariff multiplied by 0.5.

Provided that if after the Commercial Operation Date, the Project Capacity determined upon Initial Performance Test in accordance with Article 6.1(c) is lower than the Expected Capacity, the Deemed Generation Charges paid in accordance with this Article 4.7(e) shall be recalculated by making adjustments in the Contract Energy such that it is calculated with reference to the Project Capacity (as determined by the Initial Performance Test), and not with reference to Expected Capacity; and STELCO shall have the right to recover such excess amount paid to the Seller, either by adjusting the same from a subsequent Invoice or otherwise.

- (f) After the Commercial Operation Date, if a Natural Force Majeure Event affecting only STELCO occurs and continues for one hundred and eighty (180) Days (subject to the delivery of notice of a Force Majeure Event under Article 12.5(a)(i)), such that STELCO is unable to purchase the Electric Energy from any Facility or the Project, STELCO shall pay the Seller for the concerned Facility, from the date falling immediately after expiry of one hundred and eighty (180) Days until (i) termination of this Agreement in accordance with Article 13.5(b) hereof; or (ii) the cessation of the Natural Force Majeure Event affecting STELCO, as the case may be, an amount calculated as the Contract Energy for the concerned Facility for such period multiplied by the Tariff.

#### **4.8 Title and Risk of Loss**

As between the Parties, Seller shall be deemed to be in control of the Electric Energy generated by the Facility up to and until delivery and receipt at its Delivery Point and STELCO shall be deemed to be in control of the Electric Energy from and after delivery and receipt at such Delivery Point. Title and risk of loss of the Products shall transfer from Seller to STELCO at each respective Delivery Point.

#### **4.9 Exclusivity**

Seller shall not deliver or sell to any Person other than STELCO any electric capacity, electric energy, ancillary services, or other products or services, including any Product, generated or produced at or associated with the Facility, unless otherwise approved by STELCO in writing.

**ARTICLE 5**  
**METERING, BILLING AND PAYMENT**

**5.1 Meter Reading**

On the Business Day immediately succeeding the last Day of each Billing Period, STELCO shall read the Metering Devices to record the quantity of Electric Energy (inclusive of both active and reactive power) delivered by Seller at each Delivery Point, for billing purposes, unless the quantity of Electric Energy generated in a Billing Period can be automatically recorded and transmitted to STELCO on real time basis by means as described in Schedule 6. Unless the quantity of Electric Energy delivered by the Seller to STELCO is recorded automatically on real-time basis, STELCO shall inform the Seller in writing, with at least seven (7) Days prior notice, of the time at which the Metering Devices shall be read by STELCO, and the Seller shall have the right to designate one of its employees or agents to be present at the time the Metering Devices are being read by STELCO.

**5.2 Installation of Meters**

The Metering Devices shall be obtained and installed, calibrated and tested, at Seller's expense, by the Seller, but as part of STELCO's Interconnection Facilities, as provided in Schedule 6 and the Interconnection Requirements. The Metering Device shall have coefficient suitable for the quantities of Electric Energy to be measured under this Agreement, and shall be of a class 0.1. The Seller shall obtain the approval of the type and performance of the Metering Devices from the MEA and STELCO, prior to its installation. Seller shall, at Seller's expense, complete the initial installation, calibration, and testing of such Metering Devices, and get the same certified by an independent third party consultant appointed by STELCO, on a schedule mutually agreed to by the Parties; provided, that such activities shall be completed by Seller at least thirty (30) Days prior to synchronization. The Metering Devices shall be readily capable of automatic metering by powerline carrier or radio technology.

**5.3 Invoicing**

(a) Information

Within five (5) Business Days of the end of any Billing Period, STELCO shall provide to the Seller details of the Electric Energy delivered based on the reading of Metering Devices in accordance with Article 5.1. STELCO shall promptly following the end of each Billing Period, make such information available to the Seller as may be reasonably required to enable the Seller to prepare an invoice respecting the Products delivered by Seller hereunder, including hourly records of Electric Energy actually delivered by the Project and any outages or deratings of the Project. If agreed by the Parties, such information may be provided by electronic means, through tele-metering of data available from the Metering Devices or remote terminal units, or as may be provided by such other methods as agreed in the Project Management Procedures.

(b) Invoices

Promptly following the end of each Billing Period, Seller shall prepare and deliver to STELCO an invoice (the “Invoice”) meeting the requirements set forth in Article 5.3(c).

Provided that any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take into account any Billing Period of less than thirty (30) Days, in the case of the first and last Billing Periods of the Contract Term.

All Invoices shall be accompanied by such documents as STELCO may reasonably request from the Seller by a written notice delivered at least forty five (45) Days in advance from the end of any Billing Period.

(c) Itemization

Each Invoice shall be in the format set forth in Exhibit C, or in such other form and format as the Parties may mutually agree in writing and, without limitation on the foregoing, shall state:

- (i) the amount of Electric Energy delivered to each Delivery Point by Seller during each hour of such Billing Period, as contemplated by Article 4.2;
- (ii) the Products, other than Electric Energy, delivered by Seller at each Delivery Point during such Billing Period in accordance with this Agreement;
- (iii) the amount of shortfall in payment after reconciliation of Invoices in accordance with Article 4.2;
- (iv) the amount of Deemed Generation Charges for such Billing Period, as contemplated by Article 4.7;
- (v) cost incurred by STELCO in paying for the independent third party consultant appointed for meter calibration, as provided in Article 5.2; and
- (vi) any other charges or adjustments expressly set forth in this Agreement.

(d) Test Energy

Test Energy delivered by Seller to a Delivery Point in accordance with the terms of this Agreement, in each calendar month or portion thereof prior to and including the Commercial Operation Date, shall be invoiced by Seller and paid by STELCO in accordance with the procedures set forth in this Article 5, *mutatis mutandis*.

**5.4 Payment of Invoices**

Unless otherwise specified herein, payments due under this Agreement shall be due and payable in Rufiyaa equivalent of Dollars on or before the forty fifth (45th) Day following

receipt of the Invoice. All such payments to Seller shall be made to the depositary account designated by Seller, by notice to STELCO, and at Seller's request shall be made by wire transfer to such account, and shall be deemed to have been made only on the Day the payment is credited into the Seller's account.

Provided that if STELCO fails to make any payment due on or before the forty fifth (45th) Day following receipt of an Invoice, in accordance with the provisions of this Article 5.4, Seller shall have the right to have recourse to funds held in the Escrow Account in satisfaction of such payment, in accordance with provisions, and upon meeting the conditions and requirements set forth in the Escrow Agreement. In the event that the Seller has recourse to any funds held in the Escrow Account, STELCO shall replenish the Escrow Account in accordance with the Escrow Agreement.

Provided further that before making any payment to the Seller, STELCO may adjust from such payment, any undisputed sum that is due from the Seller to STELCO, including any liquidated damages payable by the Seller to STELCO in accordance with Article 6.3(e) and any sums credited to the Seller from the Escrow Account, to the extent such sums have been subsequently proved to have been wrongly credited.

## **5.5 Invoice Disputes**

In the event of a *bona fide* dispute about the correctness of an Invoice, STELCO shall: (a) notify the Seller within fifteen (15) Days of the date of receipt of the Invoice, in writing of the nature of the dispute, clearly setting forth in such written notice the date of the subject Invoice and the amount of the portion thereof which is being disputed, and (b) pay any undisputed amount in accordance with Article 5.3 pending the resolution of the dispute. Additional amounts owed by STELCO or refunds due to STELCO upon resolution of the billing dispute shall accrue interest at an annual rate equal to Reference Rate plus two percent (2%) starting from the expiry of the forty fifth (45<sup>th</sup>) Day from the date of the receipt of the invoice by STELCO and payable until the date such additional amount owed by STELCO or refund due to STELCO is paid by STELCO or the Seller, as the case may be.

**ARTICLE 6**  
**TESTING, START-UP, AND COMMERCIAL OPERATION**

**6.1 Initial Performance Tests**

(a) Test Schedule

Seller shall submit its proposed start-up and test schedule for the Project for STELCO's review at least sixty (60) Days prior to the proposed start-up and testing to establish the Commercial Operation Date as contemplated by Article 3.3 and Schedule 1. Upon receipt of the proposed schedule, STELCO shall within ten (10) Business Days of receipt of the schedule (i) accept the same; or (ii) propose such modifications as it reasonably requires to the schedule submitted by the Seller, and such revised schedule suggested by STELCO shall be the start-up and test schedule for the Project. In the event that STELCO does not intimate the Seller of the proposed modifications as stated above, STELCO shall be deemed to have accepted the original schedule submitted by Seller.

(b) Synchronisation

In order to carry out testing of the Facilities, Seller shall notify STELCO of its intention to achieve the synchronization of each Facility with at least thirty (30) Days' advance notice in writing. Upon receipt of the notice and within seven (7) Days thereafter, STELCO shall provide the Seller with the required information for initial synchronization of the Facility with STELCO's Electric System. Seller shall achieve synchronization of all the Facilities constituting the Project on or before the Scheduled Commercial Operation Date.

(c) Initial Performance Tests

Seller shall conduct the initial performance tests for each Facility to establish the Commercial Operation Date (the "Initial Performance Tests") pursuant to Schedule 1, which Initial Performance Tests shall be comprised of the tests set forth on Schedule 5 (the "Performance Tests"). If after the Initial Performance Test of all the Facilities, the Seller fails to achieve the Minimum Project Capacity, it shall cure such deficiency in capacity in its Facilities and undertake subsequent Performance Test (such subsequent Performance Test to be the new "Initial Performance Test") to demonstrate at least the Minimum Project Capacity.

(d) Test Energy

Seller shall coordinate with STELCO for the production and delivery of Electric Energy during the construction, start-up, testing, and commissioning of each Facility after initial synchronization of such Facility with STELCO's Electric System and prior to the Commercial Operation Date ("Test Energy"). STELCO shall reasonably cooperate with Seller to facilitate Seller's testing of each Facility (at Seller's expense) and shall accept delivery of all Test Energy at its Delivery Point and purchase and pay for such Test Energy in accordance with Article 4.2. STELCO shall not be required to accept or purchase Test Energy which is generated at a rate exceeding the Expected Capacity of a Facility in any

period.

## **6.2 Performance Testing After Commercial Operation Date**

In the event that, for three (3) consecutive Calendar Months, the Electric Energy delivered by a Facility is less than the Contract Energy for the said Facility, or after an Extended Outage, STELCO by notice to Seller may, at the cost of the Seller, require new Performance Tests of any Facility or the Project by notice in writing to the Seller at least thirty (30) Days in advance.

## **6.3 Adjustments to Facility Capacity, and Project Capacity**

### **(a) Initial Determination of Facility Capacity**

The Facility Capacity of each Facility after the Initial Performance Tests shall be the Electric Capacity of the solar PV systems, inverters, and related equipment, systems, components, fixtures, and facilities of such Facility that pass such Performance Tests of such Facility conducted immediately prior to the Commercial Operation Date and otherwise meet the requirements for commercial operation set forth on Schedule 1.

### **(b) Initial Determination of Project Capacity**

The Project Capacity of the Project after the Initial Performance Tests shall be the aggregate Electric Capacity of all Facilities that pass the Initial Performance Tests and otherwise meet the requirements for commercial operation set forth on Schedule 1.

### **(c) Determination of Facility Capacity and Project Capacity after Commercial Operation Date**

The Facility Capacity of each Facility after a Performance Test conducted after Commercial Operation Date, as contemplated by Article 6.2, shall be the Electric Capacity of the solar PV systems, inverters, and related equipment, systems, components, fixtures, and facilities of such Facility that pass such Performance Tests of such Facility. The Project Capacity of the Project after such a Performance Test shall be the aggregate Electric Capacity of all Facilities after such Performance Test (including Electric Capacity determined on the basis of any past Performance Test of the Facilities that have not undergone the new Performance Test).

### **(d) Limitation on Capacity; Modifications to Facilities or Project**

Except in the event of termination of this Agreement with respect to any Facility in accordance with Article 13.5 and Article 13.6, without the written consent of STELCO in its sole discretion, (i) the Project Capacity established as of the Commercial Operation Date or in any Performance Test conducted after the Scheduled Commercial Operation Date shall not be less than the Minimum Project Capacity, and (ii) Seller shall not modify any Facility in a manner that would result in any reduction to the Facility Capacity or the Project Capacity as established as of the Commercial Operation Date.

Provided that the Parties may, at any stage, by an agreement in writing modify the Expected

Capacity of a Facility and/or of the Project, set out in Schedule 3, in which event Schedule 3 shall be amended to reflect such revised Expected Capacity of the Facility and the Project.

(e) Liquidated damages for Capacity Deficit

If upon annual reconciliation of Invoices in accordance with Article 4.2, STELCO determines that the Seller has failed to deliver to STELCO Electric Energy equal to at least ninety per cent (90%) of the Contract Energy (calculated by assuming the Electric Capacity to be equal to Expected Capacity) for the Project for such twelve (12) Billing Periods taken as a whole, for such deficit in Electric Energy (i.e. difference between Electric Energy delivered and the Contract Energy (calculated by assuming the Electric Capacity to be equal to Expected Capacity)), the Seller shall pay to STELCO, liquidated damages calculated as 0.5 multiplied by the Tariff multiplied by the deficit.

Provided that in the event the Agreement is terminated for any particular Facility, the Contract Energy shall be adjusted by reducing the Expected Capacity of the Facility in respect of which the Agreement has been terminated.

Parties acknowledge that the liquidated damages above are a reasonable pre-estimate of the damages that STELCO shall suffer in such event, and the same are not by way of penalty.

**6.4 Observation; Reporting**

(a) Observation

STELCO and its representatives shall have the right to have representatives present for start-up and testing. Seller shall notify STELCO not less than three (3) Business Days, and not more than fourteen (14) Days, prior to commencing such start- up and testing.

(b) Reporting

Promptly (and in any event not later than five (5) Business Days) after completion of any Performance Tests, Seller shall provide to STELCO a certificate setting out and confirming the Performance Test results and attaching such back-up information as reasonably may be required by STELCO to evaluate and verify such results.

(c) Effective Test

The latest Performance Tests shall be deemed to be the effective test at any time, whether or not successful, and the Facility Capacity or Project Capacity demonstrated by such latest test shall be deemed to be the Facility Capacity or Project Capacity, as applicable.

## **ARTICLE 7 INTERCONNECTION**

### **7.1 Interconnection**

Each Facility shall interconnect with STELCO's Electrical System at or near the applicable Delivery Point on STELCO's Electric System indicated on Exhibit B, or such other location as may be determined in accordance with the Interconnection Requirements. Seller shall comply with the requirements set forth in the Interconnection Requirements, at least thirty (30) Days prior to the Commercial Operation Date of any Facility.

### **7.2 Interconnection Facilities**

Seller shall be responsible for the development, design, permitting, engineering, procurement, construction, installation, completion, and testing of the various portions of the Interconnection Facilities, as set forth in the Interconnection Requirements. Seller shall use commercially reasonable efforts to complete such work within the time frame determined in the Interconnection Requirements. Seller will be solely responsible for the costs of development, design, permitting, engineering, procurement, construction, installation, completion and testing of the Interconnection Facilities, consistent with the Interconnection Requirements. Upon the completion of the Interconnection Facilities, but no later than the Commercial Operation Date, Seller shall transfer to STELCO full ownership and control, including any required Permits and Approvals, of STELCO's Interconnection Facilities.

### **7.3 Operation and Maintenance Obligations**

#### **(a) Operation and Maintenance**

Seller shall be responsible for the maintenance and operation of Seller's Interconnection Facilities in accordance with the Interconnection Requirements, as applicable. STELCO shall be responsible for the maintenance and operation of STELCO's Interconnection Facilities, at its own expense, in accordance with the Interconnection Requirements.

#### **(b) Meteorological Data**

For each Facility that has an Expected Capacity greater than 50 kW, Seller shall install and maintain at such Facility's Site a meteorological station to monitor and report solar irradiance and meteorological data for such Facility. Seller shall also provide a two (2) year pre-paid remote communication package for each such meteorological station (to be renewed biannually) and shall provide STELCO with real-time electronic access to the meteorological data collected at such Facility. Seller shall be responsible for maintaining and paying the costs associated with the meteorological station for each Facility that has an Expected Capacity greater than 50 kW. Either Party may install and maintain such equipment at its own cost for any other Facility. STELCO shall have the right to inspect the meteorological station installed at the Sites, with prior written notice of at least one (1) Business Day.

(c) Electric System Emergencies

STELCO shall notify Seller promptly by telephone, or as may be agreed in the Project Management Procedures, when it becomes aware of an Electric System Emergency that affects STELCO's Interconnection Facilities or STELCO's Electric System that may reasonably be expected to affect Seller's operation of a Facility or Seller's Interconnection Facilities. Seller shall notify STELCO promptly by telephone, or as may be agreed in the Project Management Procedures, when it becomes aware of an Electric System Emergency that affects a Facility or Seller's Interconnection Facilities that may reasonably be expected to affect STELCO's Electric System or STELCO's Interconnection Facilities. To the extent such information is known, the notification shall describe the Electric System Emergency, the extent of the damage or deficiency, the expected effect on the operation of Seller's or STELCO's facilities and operations, its anticipated duration and the corrective action taken or to be taken. The initial notice shall be followed as soon as practicable with written notice. For avoidance of doubt, the provisions of this Article 7.3(c) shall not limit the obligations of the Parties with respect to Electric System Emergencies set forth in the Interconnection Requirements, as applicable.

**7.4** Site Access

In order to help ensure the continuous, safe, reliable and compatible operation of each Facility with STELCO's Electric System, Seller hereby grants STELCO for the period of interconnection, the reasonable right of ingress and egress, consistent with safe operation of each Facility, over property leased or otherwise controlled or used by Seller for the Project, to the extent STELCO deems such ingress and egress reasonably necessary in order to examine, test, calibrate, coordinate, operate, maintain, or repair any interconnection equipment involved in the parallel operation of the Facilities and STELCO's Electric System, including the Metering Devices and any STELCO meteorological equipment. Seller, in the Roof Lease Agreements, shall secure for STELCO such rights of ingress and egress. Except in the event of actual or pending Electric System Emergency, or as otherwise provided in the Interconnection Requirements, as applicable, STELCO shall give reasonable prior notice to Seller prior to such ingress or egress.

**ARTICLE 8**  
**OPERATION AND MAINTENANCE**

**8.1 Forecasting**

- (a) For each Facility, Seller shall, not more than fifteen (15) Days prior to the end of each quarter of STELCO Fiscal Year, provide STELCO with an anticipated monthly forecast of the Electric Energy to be produced during each month of the immediately following quarter.
- (b) The forecasts provided pursuant to Article 8.1(a) shall be made by Seller in good faith based on information available to it at such time. As long as Seller acts in good faith such forecasts shall not be binding on Seller nor shall Seller be liable for any inaccuracies in such forecasts.

**8.2 Capacity and Outage Reporting**

Seller shall notify STELCO as soon as practicable, but in no event later than twenty-four (24) hours, after the Electric Energy generated in a Day, by a Facility falls below sixty percent (60%) of the Facility's Contract Energy. Seller shall notify STELCO promptly (and in any event not more than one (1) Business Day) after (i) any emergency or unplanned outage or significant partial outage at any Facility, or (ii) the occurrence of any event that reasonably could be expected to reduce the Electric Capacity, production of Electric Energy compared to Contract Energy, or Availability Factor of any Facility or the Project by forty percent (40%) or more during any Billing Period.

**8.3 Operations Schedule**

(a) Expected Operation and Maintenance Schedule

At least ninety (90) Days prior to the then-anticipated Commercial Operation Date, and at least ninety (90) Days prior to the end of each STELCO Fiscal Year thereafter during the Contract Term, Seller shall provide in writing to STELCO, for STELCO's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, a schedule of: (i) its planned Scheduled Maintenance Outages for the immediately succeeding STELCO Fiscal Year, (ii) the expected operation schedule of the Project for such immediately succeeding STELCO Fiscal Year, and (iii) its good faith, non-binding, estimate of the amount of Electric Energy to be generated by the Project and delivered to STELCO in each Billing Period of such immediately succeeding STELCO Fiscal Year. Seller shall exercise all reasonable efforts to coordinate Scheduled Maintenance Outages with STELCO to avoid overlap with STELCO's planned outages of its generating units, and shall undertake its Scheduled Maintenance Outages in accordance with its schedule as shall have been approved by STELCO in accordance with the preceding sentence.

(b) Scheduling

Seller may reschedule a Scheduled Maintenance Outage only upon STELCO's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Seller shall not schedule any Scheduled Maintenance Outages, except for Scheduled Maintenance Outages actually taken in accordance with the approved schedule in Article 8.3(a), without

the prior written approval of STELCO.

#### **8.4 Operation and Maintenance**

Seller shall operate and maintain each Facility in accordance with Good Engineering and Operating Practice, the Codes and Standards, and Applicable Laws, including applicable Environmental Laws.

#### **8.5 Operating Representatives**

- (a) Not later than ten (10) Days after the Contract Date, each Party shall appoint a nominee and an alternate nominee as operating representatives and provide written notice of such appointments to the other Party ("Operating Representatives"). Such appointments may be changed at any time by similar written notice. The respective Operating Representatives shall meet as necessary at mutually agreeable times and places upon prior written notice. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of, in the case of STELCO, STELCO's Electric System and, in the case of Seller, the Project.
- (b) The duties of the Operating Representatives shall include such duties as may be delegated to them by mutual agreement of the Parties; provided, that such Operating Representatives shall not have the authority to amend this Agreement.
- (c) Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter that may be delegated to them in accordance with this Agreement, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions made by the Operating Representatives or principals shall be evidenced in writing.

#### **8.6 Project Management Procedures**

The Parties may, from time to time, agree in writing on standing procedures, consistent with this Agreement, respecting such matters as coordination, scheduling, or rescheduling of planned outages of their respective facilities; metering; reporting; and such other matters as may be contemplated by this Agreement or the Parties otherwise may agree therein (the "Project Management Procedures"). In the event of any conflict between the provisions of this Agreement and the Project Management Procedures, this Agreement shall prevail.

#### **8.7 Environmental Attributes and Other Products**

##### **(a) Environmental Attributes and Renewable Energy Benefits**

The Parties acknowledge that current Applicable Laws, as well as future Change in Law, may create value in the ownership, use or allocation of Environmental Attributes. To the extent applicable, STELCO shall own or be entitled to claim, and Seller for no additional consideration hereby conveys, or upon the award, registration, certification, or other allocation of such Environmental Attributes shall convey, to STELCO fifty per cent (50%) of

the economic value of all Environmental Attributes resulting from Seller's generation at or delivery of Electric Energy or Electric Capacity from the Project during the Contract Term.

STELCO shall be entitled to claim any benefit or credit from the generation of electricity at the Project under any renewable energy, clean energy, or other similar requirements that may be imposed on STELCO by Applicable Laws or otherwise, subject to the entitlement of the Seller to fifty per cent (50%) of the economic value in the Environmental Attributes.

(b) Other Products

STELCO shall be entitled to claim any Capacity Benefits, ancillary products, and other Products resulting from the generation of electricity at the Project under any requirements that may be imposed or become available under Applicable Laws or otherwise.

(c) Qualification for Benefits

Seller shall use commercially reasonable efforts to cause the Facilities to qualify for any Environmental Attributes, Capacity Benefits, or other Products or to meet any clean energy standards, renewable portfolio standards, installed capacity resource adequacy, or other similar benefits, standards or requirements, and, if requested by STELCO and at the cost of STELCO, shall take all further measures reasonably necessary to allow STELCO to qualify for, claim, register, certify, or be allocated such benefits or credits.

## **ARTICLE 9 SECURITY**

- 9.1 On the Contract Date or within thirty (30) Days thereafter, Seller shall provide two (2) performance bank guarantees from a bank acceptable to STELCO in the form substantially similar to the format annexed as Exhibit D for an aggregate amount of Dollars one hundred eighty (\$180) per kW 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 is extended in accordance with this Agreement, 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.
- 9.2 STELCO shall be entitled to invoke the Construction Security in the following circumstances, without notice to the Seller:
- (a) on termination of the Agreement before the Commercial Operation Date, by STELCO for Seller's Event of Default, STELCO shall be entitled to encash the whole of the Construction Security (i.e both the first and the second Construction Security);
  - (b) on failure of the Seller to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, STELCO 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;
  - (c) on failure of the Seller in achieving the Commercial Operation Date by the one hundred eightieth (180th) Day from the Scheduled Commercial Operation Date, STELCO 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
  - (d) on delay by the Seller of upto one hundred eighty (180) Days in achieving the Commercial Operation Date from the Scheduled Commercial Operation Date, STELCO shall be entitled to invoke on or after the Commercial Operation Date, in addition to the first Construction Security in accordance with Article 9.2(b), the second Construction Security upto such amount calculated by (i) multiplying the Expected Capacity of the Project (in kW) with the the number of Days of delay, minus (ii) the amount of the first Construction Security.

**ARTICLE 10**  
**RECORDS AND THIRD PARTY RIGHTS**

**10.1 Operating Records**

Seller and STELCO shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required under Applicable Law or by Governmental Authorities. STELCO reserves the right to audit any records necessary to evaluate and verify Seller's compliance with this Agreement and STELCO's business ethics policies as may be provided from time to time by STELCO to Seller.

**10.2 Operating Log**

Seller shall maintain an accurate and up-to-date operating log, in electronic format with records of real production for each hour; changes in operating status; scheduled maintenance and forced outages; and any unusual conditions found during inspections. Seller shall maintain accurate and up-to-date logs of delivered energy, including Test Energy, and other records needed in order to comply with this Agreement.

**10.3 Billing and Payment Records**

To facilitate payment and audit, Seller and STELCO shall keep all books and records necessary for billing and payments in accordance with this Agreement. Seller shall advise STELCO in writing of the location at which such records are maintained, and of any change in its location within thirty (30) Days of such change.

**10.4 Financial Management, Audit and Inspection**

- (a) 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.
- (b) Seller shall have the right, upon reasonable notice and during normal business hours, to audit relevant information provided by STELCO for Seller's preparation of any Invoice(s).
- (c) During the Contract Term and for five (5) years thereafter, STELCO shall have the right, upon reasonable notice and during normal business hours, to audit relevant electric generation and other information relevant to the performance of Seller's obligations hereunder and the calculation of any amounts payable by STELCO hereunder and all the information required to be maintained hereunder. The Parties shall provide each other with copies of records in computer – readable format as well as hard copies. In the event that STELCO's audit uncovers overcharges in excess of one percent (1%) of any Invoice, Seller shall reimburse STELCO for the costs incurred in connection with such audit.

**10.5 Third Party Rights**

- (a) The Seller shall, as and when required by Government or the World Bank, get 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.
- (b) The Seller shall enable and permit Government and the World Bank to inspect the Project, and any records and documents in relation to the Project.
- (c) 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 11 INSURANCE**

### **11.1 Evidence of Insurance**

- (a) Seller shall, on or before that date (the “Insurance Date”) that is (i) with respect to the commercial general liability insurance, not later than the date five (5) Business Days after execution of the Roof Lease Agreement for each Site, and (ii) with respect to each other policy, not later than the earlier of (A) the date ten (10) Business Days prior to commencement of work on such Site, or (B) the date set forth on Schedule 4, and on or before June 1 of each year following such earlier date, provide STELCO with two (2) copies of evidence of insurance as provided in Schedule 4 documenting that insurance coverage for the Project are in compliance with the specifications for insurance coverage set forth in Schedule 4. Such evidence of insurance shall be in compliance with the requirements set forth in Schedule 4.
- (b) Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein.
- (c) STELCO shall have the right, at times deemed appropriate to STELCO during the Contract Term, to request Seller to modify the insurance minimum limits specified in Schedule 4 in order to maintain reasonable coverage amounts consistent with then-current industry standards and to the extent such limits are commercially available at commercially reasonable rates. Seller shall make all commercially reasonable efforts to comply with any such request.
- (d) For any insurance required under Schedule 4, Seller shall be responsible for all deductibles, retentions, coinsurance, and the difference between any sub-limits and the limits set out in Schedule 4.

### **11.2 Term and Modification of Insurance**

All insurance required under this Agreement shall cover occurrences arising on and after the applicable Insurance Date and continuing during the Contract Term; provided, that the commercial general liability insurance required under Schedule 4 shall cover occurrences during the Contract Term and for a period of two (2) years after the expiration of the Contract Term. In the event that any insurance as required herein is commercially available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the applicable Insurance Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Contract Term.

### **11.3 Application of Proceeds of Insurance**

- (a) If the insurance proceeds are claimed by the Seller, except in the case of a Force Majeure Event affecting the Seller,

- (i) except in case of total loss, proceeds of insurance with respect to the breakdown, damage or destruction of structures, plant and equipment comprised in the Facility or the Project shall be promptly applied to the repair and replacement (temporary or permanent) of the Facilities, or any part thereof, or shall otherwise be adjustable from the price payable to the Seller upon purchase of the Facilities or Project by STELCO, in accordance with this Agreement;
  - (ii) in the case of total loss, which is caused by a reason other than Force Majeure Event, the insurance proceeds shall, at the option of STELCO be applied towards either replacement of the Facilities or payment of any liabilities that the Seller may have towards STELCO.
- (b) In the event of a Force Majeure Event, the application of insurance proceeds shall be subject to the provisions of Article 13.5.

**ARTICLE 12**  
**FORCE MAJEURE EVENT AND CHANGE IN LAW**

**12.1 Force Majeure Event**

The term “Force Majeure Event”, as used in this Agreement, shall subject to Article 12.4 mean any circumstance, event or condition (or combination thereof) beyond the reasonable control, directly or indirectly, of the Affected Party but only to the extent that:

- (a) such circumstance, event or condition, despite the, exercise of due care, diligence and application of Good Engineering and Operating Practices, could not be prevented, avoided or overcome by the Affected Party;
- (b) such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- (c) the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- (d) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement;
- (e) such circumstance, event or condition is not as a result of the fault or negligence of the Affected Party; and
- (f) the Affected Party has given the other Party notice in accordance with Article 12.5(a),

and shall consist of “Natural Force Majeure” and “Political Force Majeure”, provided that (i) an event shall be classified as a Natural Force Majeure Event or a Political Force Majeure Event only to the extent that such event, circumstance or combination of events and circumstances satisfy the conditions set out in this Article 12.1, and (ii) a drop in or absence of irradiation shall not be considered a Force Majeure Event.

**12.2 Natural Force Majeure Event**

The term “Natural Force Majeure Event” as used in this Agreement shall mean a Force Majeure Event which is not a Political Force Majeure Event, including earthquake, cyclone, volcanic eruption or ash cloud, lightning, fire, explosion, landslide, collapse, hurricane, storm, flood, drought, strong winds, extreme weather or environmental conditions (except where the only effect of such extreme weather or environmental conditions is a reduction in solar irradiation), meteorite, loss or damage in the course of marine, rail, road or other transit, or other sudden acts of the elements).

**12.3 Political Force Majeure Event**

The term “Political Force Majeure Event” as used in this Agreement shall mean any one or more of the following that occurs in Maldives, is caused by the Government or directly affects Maldives:

- (a) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade;
- (b) acts of rebellion, seize, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature;
- (c) radioactive contamination or ionizing radiation originating from a source in Maldives or resulting from any event, circumstance or combination of both events or circumstances in paragraphs (a) and (b) above;
- (d) strikes, lock-outs, social unrest, slow down of work or other similar actions associated with trade unions which do not solely or exclusively affect the Seller;
- (e) any act of expropriation, nationalization, or takeover of the assets of the Sellers by the Government;
- (f) any action or failure to act by a Government Authority that results in any Permits and Approvals:
  - (i) ceasing to remain in full force and effect; or
  - (ii) not being issued or renewed in a timely manner upon due application having been properly made,provided that the exercise of any rights of a Government Authority pursuant to any Permit or Approval shall not constitute Political Force Majeure; and
- (g) significant archaeological discoveries on or within the Site if officially recognized by any Government Authority.

#### **12.4 Certain events not Force Majeure Events**

Notwithstanding that a Force Majeure Event occurrence may otherwise exist, the provisions of this Article 12 shall not excuse at least the following:

- (a) failure to make a payment of money in accordance with the Party's obligations under this Agreement;
- (b) any failure by the Seller or its contractors to obtain or maintain any Permits and Approvals due to negligence or default by the Seller or such contractor;
- (c) any failure to take into account prevailing conditions at the Site;
- (d) any failure by a contractor of the Seller which results in the failure or inability of the Seller to perform its obligations under this Agreement where the cause of such failure by the contractor does not arise out of a Force Majeure Event under this Agreement;

- (e) late performance by the Seller or any of its contractors caused by the failure of the Seller or such contractor to engage or hire qualified or adequate number of sub-contractors, suppliers, personnel or labour;
- (f) late delivery of equipment, machinery, plant or materials caused by negligent acts or omissions on the part of the Seller or any of its contractors;
- (g) inability to obtain or maintain adequate funding for the Project;
- (h) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which the equipment, machinery or plant has been operated or maintained;
- (i) delays resulting from reasonably foreseeable unfavourable weather or sea conditions or other similar reasonably foreseeable adverse conditions; and
- (j) submission of documents and/or drawings for approval by STELCO at a time which does not leave reasonably sufficient time for review thereof by STELCO.

## **12.5 Obligations**

- (a) If a Party ("Affected Party") desires to invoke Force Majeure Event as a cause for delay or failure in performance of any of its obligations under this Agreement (other than payment of money), it shall:
  - (i) as soon as reasonably practicable and, in any event, no later than fourteen (14) Days of becoming aware, give notice to the other Party of the circumstance, event or condition which it alleges constitutes Force Majeure Event and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of this Article 12;
  - (ii) within thirty (30) Days of the date of a notice issued pursuant to Article 12.5(a)(i), provide a report concerning Force Majeure Event and its effects, including particulars of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and a statement of the actions to be taken in order to comply with its obligations under this Article 12; and
  - (iii) at weekly intervals in the first month and fortnightly intervals thereafter for the duration of the Force Majeure Event, provide updates as to the matters set out in Article 12.5(a)(ii).
- (b) The Affected Party shall:
  - (i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by a Force Majeure Event, including recourse to alternate sources of services, equipment and materials;

- (ii) as soon as reasonably possible, and in accordance with Good Engineering and Operating Practices, ensure the resumption of normal performance of this Agreement after the cessation of the Force Majeure Event or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this Article 12; and
- (iii) within five (5) Days following the cessation of a Force Majeure Event, submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of its obligations under this Agreement.

## **12.6 Effects of Force Majeure Events Generally**

- (a) The Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event, provided that no relief shall be granted to the Affected Party pursuant to this Article 12 to the extent that such failure or delay:
  - (i) would have nevertheless been experienced by the Affected Party had Force Majeure Event not occurred; or
  - (ii) was caused by the failure of the Affected Party to comply with its obligations under Article 12.5(b)(i).
- (b) If a Force Majeure Event occurs that affects either Party, such event may be invoked only with respect to any Facility or Facilities affected by such event and not with respect to any other Facility or other part of the Project not so affected, provided that, the Facilities not so affected are capable of independent or partial operation in accordance with Good Engineering and Operating Practices.
- (c) Save as provided in this Agreement, the Party not claiming Force Majeure Event shall not bear any liability for any loss or expense suffered by the Affected Party as a result of a Force Majeure Event.

## **12.7 Effects of Force Majeure Events**

- (a) If prior to the Commercial Operation Date, a Force Majeure Event occurs which results in material damage to or loss of a Facility or Facilities or a delay in achieving the Commercial Operation Date by the Scheduled Commercial Operation Date or the extended Scheduled Commercial Operation Date (as the case may be):
  - (i) the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Article 12.5(a) concerning the effect of such Force Majeure Event upon the Commercial Operation Date, and the Scheduled Commercial Operation Date shall be adjusted equitably taking into account the effect which the Affected Party reasonably demonstrates is properly attributable to such Force Majeure Event and the ability of such Party to reschedule its activities to minimise the overall delays to the Commercial Operation Date resulting from such event; and

- (ii) if the Parties are unable to agree upon the equitable adjustment to the Scheduled Commercial Operation Date within a period of thirty (30) Days from the date the notice referred to in Article 12.5(a) is received, the Dispute shall be resolved in the manner set out in Article 16.
- (b) If the effects of a Natural Force Majeure Event continue for more than one hundred eighty (180) Days such that either Party is unable to fulfill its obligations under this Agreement, either Party may terminate this Agreement in accordance with Article 13.5(a) or Article 13.5(b), with respect to the Facilities affected by such Natural Force Majeure Event. Provided that if a Natural Force Majeure Event affecting STELCO only continues for more than one hundred eighty (180) Days, without prejudice to the rights of either Party under Article 13.5(b), STELCO shall pay Deemed Generation Charges to the Seller in accordance with Article 4.7(e) or Article 4.7(f), as the case may be.
- (c) If due to a Political Force Majeure Event a Site becomes unavailable to the Seller, STELCO shall pay Deemed Generation Charges to the Seller in accordance with Article 4.7.
- (d) If the effects of a Political Force Majeure Event continue for more than one hundred eighty (180) Days, such that either Party is unable to fulfill its obligations under this Agreement, the Seller shall be entitled to Deemed Generation Charges in accordance with Article 4.7, and either Party may terminate this Agreement in accordance with Article 13.5, with respect to the Facilities affected by such Political Force Majeure Event.

## **12.8 Extension of Term**

Due to the occurrence or effects of a Force Majeure Event and provided this Agreement is not terminated earlier than the original Contract Term in accordance with this Agreement, the Term shall be extended on a day-for-day basis for each Day of delay due to the occurrence or effects of such Force Majeure Event.

## **12.9 Payment Obligations Not Excused by Force Majeure**

No event, whether or not it constitutes Force Majeure Event, shall excuse STELCO or the Seller from its obligation to make any payment due under this Agreement.

## **12.10 Change in Law or relocation of the Site affecting Financial Return**

- (a) In the event of a Change in Law, other than on account of the circumstances set out in Article 8.7:
  - (i) from which the Seller is not exempt; and
  - (ii) which materially and/or adversely reduces the expected revenue of the Seller and/or increases the costs relating to the Project; and
  - (iii) the adverse effect of such Change in Law is not of an ongoing nature and affects the expected revenue of the Seller and/or the costs of the Project only once,

subject to the limits set out in Article 12.10(d), STELCO shall pay under this Agreement such amount as is necessary to compensate the Seller for, and make the Seller whole with respect to, any loss in excess of Dollars [●]<sup>2</sup> per Contract Year suffered as a result of such material and/or adverse impact, and subject to a maximum cap of Dollars [●]<sup>3</sup> per Contract Year (“Supplemental Charge”). Provided that if the Parties are unable to agree on the Supplemental Charge, the same shall be determined by an Expert appointed in accordance with Article 16.3.

(b) In the event of a Change in Law:

(i) from which the Seller is not exempt; and

(ii) which materially and/or adversely reduces the expected revenue of the Seller and/or increases the costs relating to the Project; and

(iii) the adverse effect of such Change in Law is of an ongoing nature, or

subject to the limits set out in Article 12.10(d), the Tariff shall be revised as necessary to compensate the Seller for, and make the Seller whole with respect to any ongoing reduction in revenue or increase in cost suffered as a result of, such material adverse impact (the “Revised Tariff”). Provided that if the Parties are unable to agree on the Revised Tariff, the same shall be determined in accordance with Article 16.

(c) Subject to the limits set out in Article 12.10(e), in the event of a Change in Law that directly and materially reduces the cost or increases the revenue of the Seller, other than on account of the circumstances set out in Article 8.7, the Seller shall credit to STELCO such amount as is necessary to provide the benefit of such increase in revenue to STELCO. STELCO shall be entitled to seek an audit(s) of the accounts of the Seller, and seek other information, such as financial model submitted to third party financial institutions for seeking borrowing for the Project, which the Seller shall provide to STELCO in good faith, as it may require to determine the impact of such Change in Law. STELCO shall also be entitled to adjust the undisputed portion of any amounts that it is entitled to claim under this Article 12.10(c) from any payments that it owes to the Seller.

(d) In the event of a Change in Law as set forth in Article 12.10(a) and Article 12.10(b), the Seller shall assume the cost of such Change in Law up to a limit of [●]<sup>4</sup> per Contract Year. In the event that the cost to the Seller of any individual Change in Law, exceeds [●]<sup>5</sup> per Contract Year then, in relation to sums exceeding this [●]<sup>6</sup> per Contract Year threshold, STELCO shall pay to the Seller the Supplemental Charge or the Revised Tariff as set forth

---

<sup>2</sup> Note: Values to be notified.

<sup>3</sup> Note: Values to be notified.

<sup>4</sup> Note: Values to be notified.

<sup>5</sup> Note: Values to be notified.

<sup>6</sup> Note: Values to be notified.

in Article 12.10(a) and Article 12.10(b) as the case may be, subject to a maximum of Dollars [●]<sup>7</sup> per Contract Year per Change in Law.

- (e) In the event of any Change in Law as set forth in Article 12.10(c), the Seller shall assume the benefit of the Change in Law upto a cumulative total of [●]<sup>8</sup> per Contract Year. In the event any individual Change in Law exceeds [●]<sup>9</sup> per Contract Year in benefit to the Seller, then the Seller shall credit to STELCO as set forth in Article 12.10(c) the amount that exceeds Article 12.10(c), subject to a maximum of Dollars [●]<sup>10</sup> per Contract Year.

### **ARTICLE 13 DEFAULT AND TERMINATION**

#### **13.1 Seller's Default**

STELCO may declare Seller in default under this Agreement if any of the following shall occur (each a "Seller's Event of Default"):

- (a) The Project Capacity as demonstrated by the latest Performance Tests is less than the Minimum Project Capacity, and the Seller fails to cure such deficiency, as demonstrated by the latest Performance Tests, within thirty (30) Days of the such last Performance Tests.
- (b) The Availability Factor of the Project for any rolling period, commencing on or after the first anniversary of the Commercial Operation Date, of twelve (12) consecutive Billing Periods, integrated over all hours of such period, is less than 0.75.
- (c) In any Contract Year, the Electric Energy delivered by Seller to STELCO from the Project, together with any Curtailed Product, is sixty percent (60%) or less of the Contract Energy.
- (d) Seller fails to pay undisputed amounts due to STELCO under this Agreement within thirty (30) Days following notice from STELCO, unless STELCO has adjusted the same from the payments that it needs to make to the Seller.
- (e) Seller fails to maintain solvency, including:
- (i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of Seller's property;
  - (ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against Seller under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;

---

<sup>7</sup> Note: Values to be notified.

<sup>8</sup> Note: Values to be notified.

<sup>9</sup> Note: Values to be notified.

<sup>10</sup> Note: Values to be notified.

- (iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which Seller approves of, consents to, or acquiesces in, any such proceeding; or
- (iv) the levy of any distress, execution, or attachment upon Seller's property which shall substantially interfere with Seller's performance hereunder; provided, that this form of insolvency shall not be deemed to have occurred if the insolvency is caused primarily by STELCO's failure to make any payment due pursuant to this Agreement within thirty (30) Days of when it becomes due and payable;
- (f) Seller fails to achieve the Commercial Operation Date on or prior to the expiry of one hundred and eighty (180) Days of the Scheduled Commercial Operation Date for any reason other than any failure of STELCO to perform its obligations hereunder, in a timely manner (regardless of whether such failure to perform is a result of an Force Majeure Event) or delay due to a Force Majeure Event.
- (g) Seller fails to maintain required insurance in accordance with Article 11 and Schedule 4 for a period of thirty (30) Business Days.
- (h) Abandonment of construction or operation of any Facility by the Seller.
- (i) Seller fails to perform any material obligation under this Agreement (other than the defaults addressed in (a) through (h) above) that remains uncured for thirty (30) Days after Seller receives notice from STELCO of such failure, 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 such thirty (30) Day cure period 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, so long as Seller promptly commences and diligently pursues such cure.
- (j) Seller is found to be in breach of any of the representations and warranties contained in Article 15.

### **13.2 STELCO Default**

Seller may declare STELCO in default under this Agreement if any of the following shall occur (each a "STELCO's Event of Default"):

- (a) STELCO fails to pay undisputed amounts due to Seller under this Agreement, and the Seller fails to collect the same from the Escrow Account despite making a valid claim on the Escrow Account in the manner set out in the Escrow Agreement.
- (b) STELCO fails to maintain solvency, including:
  - (i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of STELCO's property;

- (ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against STELCO under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;
  - (iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which STELCO approves of, consents to, or acquiesces in, any such proceeding; or
  - (iv) the levy of any distress, execution, or attachment upon STELCO's property which shall substantially interfere with STELCO's performance hereunder.
- (c) STELCO fails to perform any material obligation under this Agreement other than the defaults addressed in Articles 13.2(a), 13.2(b), 13.2(d), 13.2(e), and 13.2(f) that remains uncured for thirty (30) Days after STELCO receives notice from Seller of such failure, 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 such thirty (30) Day cure period but is reasonably capable of being cured, STELCO shall have such additional time, not to exceed sixty (60) Days, as is reasonably necessary to cure such non-performance, so long as STELCO promptly commences and diligently pursues such cure.
  - (d) The MEE and STELCO fail to enter into the Escrow Agreement with the Seller by the Scheduled Commercial Operation Date.
  - (e) STELCO fails to comply with its obligation under Article 5.4 and as a result the balance in the Escrow Account falls below an amount equal to the average monthly Contract Energy of the Project multiplied by the Tariff multiplied by two (2).
  - (f) STELCO fails to comply with its obligation under Article 5.4 and as a result the balance in the Escrow Account is fully depleted.

### **13.3 Rights of STELCO in Seller's Event of Default**

In case of Seller's Event of Default under Article 13.1, STELCO may, at its option, exercise one or more of the following remedies:

- (a) in the event of Seller's Event of Default set forth in Article 13.1(f) or Article 13.1(j), STELCO may terminate the Agreement with a written notice, such termination to take effect from the date of the notice;

provided that in the event of the Seller's Event of Default set forth in Article 13.1(f), STELCO may, in its sole discretion, grant additional time to the Seller to achieve Commercial Operation Date, instead of terminating the Agreement, on such additional terms and conditions, as STELCO may deem fit.

- (b) in the event of any of the Seller's Event of Default, other than the Seller's Event of Default set forth in Article 13.1(f) or Article 13.1(j), STELCO shall give the Seller a notice seeking

the Seller to rectify the Seller's Event of Default within sixty (60) Days of receipt of the notice, unless the Seller's Event of Default is of such nature that requires more time to be rectified, in which case the Seller shall be entitled to additional time, not exceeding one hundred eighty (180) Days from the date of the notice;

- (c) if the Seller fails to rectify the Seller's Event of Default within timeline set out in Article 13.3(b), STELCO may, at its option, terminate the Agreement with a written notice, such termination to take effect from thirty (30) Days of the date of receipt of the notice;
- (d) if STELCO terminates the Agreement for Seller's Event of Default, it shall have the right, but not the obligation, to purchase from the Seller, and the Seller shall have the obligation to sell to STELCO, in the manner set out in Schedule 7, any or all of the Facilities or the Project, for the fair market value of the Facilities constituting the Project less any insurance proceeds received by the Seller, which fair market value, in the absence of mutual agreement between the Parties, shall be determined by an Expert in the manner set out in Article 16.3; and
- (e) pursue and have recourse to any other right or remedy to which it may be entitled by law, at equity, or under this Agreement, including, but not limited to, specific performance, injunction, and the right to recover all damages, losses, costs and expenses (including reasonable attorney fees) incurred as a result of such default.

#### **13.4 Rights of the Seller in STELCO's Event of Default**

In case of STELCO's Event of Default, the Seller may, at its option, exercise one or more of the following remedies:

- (a) If the STELCO's Event of Default described in Article 13.2(e) occurs, the Seller may deliver a first termination notice (the "First Termination Notice") in writing to STELCO and the Government requiring STELCO and/or the Government to replenish the deficit in the Escrow Account within sixty (60) Days from the date of receipt of such written notice.
- (b) If: (i) notwithstanding the delivery of the First Termination Notice, the Escrow Account is not replenished, and (ii) the STELCO's Event of Default described in Article 13.2(a) or Article 13.2(f) occurs, then the Seller may deliver a second termination notice (the "Second Termination Notice") in writing to STELCO and the Government requiring STELCO and/or the Government to (A) pay any undisputed amounts due to the Seller, or (B) replenish the deficit in the Escrow Account, as the case may be, within forty five (45) Days from the date of receipt of such written notice.
- (c) If, notwithstanding the delivery of the Second Termination Notice, (i) the Escrow Account is not replenished, and (ii) STELCO and/or the Government fail to pay any undisputed amounts due to the Seller, then the Seller shall be entitled to terminate the Agreement by a notice in writing, and such termination shall take effect from the date of the receipt of the notice.
- (d) For STELCO's Event of Default not covered by Article 13.4(a) to Article 13.4(c), Seller shall have the right to give STELCO a notice seeking STELCO to rectify the STELCO's

Event of Default within one hundred twenty(120) Days of receipt of the notice, unless the STELCO's Event of Default is of such nature that requires more time to be rectified, in which case STELCO shall be entitled to additional time, not exceeding two hundred forty (240) Days from the date of the notice. If STELCO fails to rectify the STELCO's Event of Default within timeline set out in the immediately preceding sentence, Seller may, at its option, terminate the Agreement with a written notice, such termination to take effect from thirty (30) Days of the date of receipt of the notice.

- (e) If Seller terminates the Agreement for STELCO's Event of Default pursuant to Article 13.4(c) or Article 13.4(d), STELCO shall have the obligation to purchase the Project from Seller at one hundred percent (100%) of the Termination Cost in the manner set out in Schedule 7.

### **13.5 Termination rights in Force Majeure Events**

- (a) If the effect of a Natural Force Majeure Event affecting the Seller and STELCO continues for more than one hundred eighty (180) Days such that either Party is unable to fulfill its obligations hereunder, including Seller's obligation to achieve Commercial Operation Date within one hundred and eighty (180) Days of the Scheduled Commercial Operation Date, then subject to Article 12.7(a), either Party may by a notice in writing to the other Party, forthwith terminate this Agreement only with respect to the Facilities affected by such Natural Force Majeure Event, without any financial or other consequence to each other. The insurance proceeds, if any, for insurances obtained by the Seller for the Project shall be appropriated by the Seller;

provided that if a Natural Force Majeure Event affects only one or more Facilities, but not the whole Project and the Agreement has been terminated with respect to the affected Facilities, the Project Capacity and Contract Energy shall be adjusted to reflect the unaffected Facilities.

- (b) If the effect of a Natural Force Majeure Event affecting only STELCO continues for more than one hundred eighty (180) Days such that STELCO is unable to fulfill its obligations hereunder, then subject to Article 12.7(e), either Party may by a notice in writing to the other Party, forthwith terminate this Agreement with respect to the Project or the Facilities, in respect of which STELCO is unable to fulfill its obligations. If the Seller terminates this Agreement (either for the whole Project or with respect to one or more Facilities) owing to the effects of a Natural Force Majeure Event affecting only STELCO, such termination by the Seller shall be without any financial or other consequence to each other. The insurance proceeds, if any, for insurances obtained by the Seller for the Project or the Facilities, as the case may be, shall be appropriated by the Seller. If STELCO terminates this Agreement (either for the whole Project or with respect to one or more Facilities) owing to the effects of a Natural Force Majeure Event affecting only the STELCO, it shall purchase and the Seller shall sell the affected Facilities for which the Agreement has been terminated at one hundred percent (100%) of the Termination Cost, in the manner set out in Schedule 7.
- (c) If the effect of a Political Force Majeure Event affecting either the Seller or STELCO that continues for more than one hundred eighty (180) Days such that either Party is unable to fulfill its obligations hereunder, including Seller's obligation to achieve Commercial

Operation Date within one hundred and eighty (180) Days of the Scheduled Commercial Operation Date, then subject to Article 12.7(a), either Party may by a notice in writing to the other Party, forthwith terminate this Agreement only with respect to the Facilities that are affected by the Political Force Majeure Event;

provided that if a Political Force Majeure Event affects only one or more Facilities, but not the whole Project, and the Agreement has been terminated with respect to such affected Facilities, the Project Capacity and Contract Energy shall be adjusted to reflect the unaffected Facilities,

provided further that in the event a Political Force Majeure Event affects one or more Facilities, and, (i) if the Seller terminates the Agreement with respect to such affected Facilities, it shall be entitled to retain the insurance proceeds, if any, for insurances obtained by the Seller for such Facilities or the Project (but only to the extent attributable to such affected Facilities), and the salvage cost of the assets installed by it in the Facilities, and (ii) if STELCO terminates this Agreement prior to the Commercial Operation Date, it shall purchase, and the Seller shall sell, the assets installed by the Seller at each affected Facility, in the manner set out in Schedule 7, at the fair market value of such assets less any insurance proceeds received by the Seller, which fair market value, in the absence of mutual agreement between the Parties, shall be determined by an Expert in the manner set out in Article 16.3, and (iii) if STELCO terminates this Agreement after the Commercial Operation Date, it shall purchase and the Seller shall sell, the affected Facilities for which the Agreement has been terminated at one hundred percent (100%) of the Termination Cost, in the manner set out in Schedule 7.

### **13.6 Other Event of Termination**

- (a) If any Site becomes unavailable due to a Political Force Majeure Event, and the Seller has notified STELCO in writing of such unavailability in accordance with Article 12.5(a)(i), and the Government is unable to provide the Seller with an alternative site for lease in accordance with Article 4.2 of the Implementation Agreement, within a period of one hundred and eighty (180) Days from the earlier Site becoming unavailable, the Seller shall have the right to terminate the Agreement with respect to the Facility on such Site, by a notice in writing to STELCO, the termination shall take effect from the thirtieth (30<sup>th</sup>) Day from the date of receipt of the notice by STELCO if an alternative Site has not been made available to the Seller within such notice period. In the event of termination of the Agreement with respect to any one or more Facilities in accordance with this Article 13.6(a), the Project Capacity and Contract Energy, shall be adjusted to reflect the unaffected Facilities.
- (b) In the event of termination of the Agreement by the Seller in accordance with Article 13.6(a), STELCO shall purchase the Facility on the Site that is unavailable, at one hundred percent (100%) of the Termination Cost of the relevant Facility, in the manner set out in Schedule 7.
- (c) If the Seller has terminated the Agreement for one or more Facilities, such that the Project Capacity falls below fifty percent (50%) of the Project Capacity determined on the Commercial Operation Date based on the Initial Performance Test conducted on such Commercial Operation Date, either the Seller or STELCO may terminate the Agreement for

the entire Project, by a notice in writing to STELCO, the termination shall take effect from the thirtieth (30<sup>th</sup>) Day from the date of receipt of the notice by STELCO.

- (d) In the event of termination of the Agreement by the Seller in accordance with Article 13.6(c), STELCO shall purchase the Project, at one hundred percent (100%) of the Termination Cost, in the manner set out in Schedule 7.

### **13.7 Remedies Cumulative**

Except as provided in Article 14.4, each right or remedy of the Parties under this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided herein, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

**ARTICLE 14**  
**LIMITATION ON LIABILITY AND INDEMNIFICATION**

**14.1 Exclusion of Consequential Damages**

Without limiting any express remedy specifically provided in this Agreement, in no event, whether because of a breach of any provision contained in this Agreement or any other cause, whether based upon contract, negligence (including tort or strict liability), warranty, or otherwise, shall either Party be liable for or obligated in any manner to pay incidental, special, punitive, consequential, exemplary, or indirect damages of any nature whatsoever incurred by the other Party.

**14.2 Indemnification by Seller**

Seller agrees to indemnify and keep harmless STELCO and its officials, employees, agents, and contractors from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) to the extent caused by or resulting from (a) any negligent or willful act or omission of Seller, its directors, officers, employees, agents or contractors or (b) the breach by Seller of any covenants, representations, or warranties of Seller contained in this Agreement; provided, that Seller shall not indemnify STELCO or any of its officials, employees, agents, or contractors from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) to the extent caused by or arising out of any negligent or willful act or omission of, or the breach of this Agreement by, STELCO or any of its officials, employees, agents or contractors.

**14.3 Indemnification by STELCO**

STELCO agrees to indemnify and keep harmless Seller, its directors, officers, employees, agents, and contractors from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) to the extent caused by or resulting from (a) any negligent or willful act or omission of STELCO or its officials, employees, agents, or contractors, or (b) the breach by STELCO of any of the covenants, representations, or warranties of STELCO contained in this Agreement; provided, that STELCO shall not indemnify Seller, its directors, officers, employees, agents or contractors, from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit, and cost and expense incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) to the extent caused by or arising out of any negligent or willful act or omission of or breach of this Agreement by Seller, or any of its directors, officers, employees, agents, or contractors.

**14.4 Limitation on Liability**

(a) **STELCO's Liability**

STELC's liability to Seller under this Agreement with respect to any Contract Year, whether based on contract, warranty or tort, including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise, or any other claim or cause of action (excluding any claim or cause of action respecting any obligations under Article 4) shall not exceed Dollars Five Hundred (\$500) per kW of Project Capacity during such Contract Year, or the amount credited by STELCO or the Government into the Escrow Account, whichever is higher. For the avoidance of doubt, the limits set out in this Article 14.4(a) shall not apply where any amount is paid by STELCO to the Seller under Article 4.7 (as Deemed Generation Charges) or under Article 13 (as consideration for purchase of the Facility or Project or assets).

(b) Seller's Liability

Seller's liability to STELCO under this Agreement with respect to any Contract Year, whether based on contract, warranty or tort, including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise, or any other claim or cause of action (excluding any claim or cause of action respecting any obligations under Article 4) shall not exceed Dollars Five Hundred (\$500) per kW of Project Capacity during such Contract Year, or the Construction Security (to the extent the same has not been encashed), whichever is higher.

**ARTICLE 15**  
**REPRESENTATIONS AND WARRANTIES**

**15.1 Representations and Warranties of Seller**

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

- (a) Seller is a corporation duly organized and validly existing under the laws of [●], 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.
- (b) 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.
- (c) Neither the execution nor the delivery by Seller of this Agreement nor the performance by Seller of its obligations hereunder:
  - (i) will conflict with, violate, or result in a breach of any Applicable Law applicable to Seller; or
  - (ii) 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.
- (d) 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.
- (e) (i) The documents and information submitted, and the representation and warranties made in the Proposal are true and accurate; (ii) nothing has been omitted or concealed by the Seller which may have a material adverse effect on the Seller's ability to generate and sell Electric Energy in accordance with this Agreement, and (iii) the Seller undertakes that it shall source all equipments, materials and services for designing, building, financing, owning and operating the Project from eligible countries as defined in Guidelines for Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers, January 2011, available at: [http://siteresources.worldbank.org/INTPROCUREMENT/Resources/278019-1308067833011/Procurement\\_GLs\\_English\\_Final\\_Jan2011.pdf](http://siteresources.worldbank.org/INTPROCUREMENT/Resources/278019-1308067833011/Procurement_GLs_English_Final_Jan2011.pdf).

- (f) Part I of Schedule 8 lists all material Permits and Approvals required under Applicable Laws for Seller to execute, deliver, and perform its obligations under this Agreement. Except for those Permits and Approvals listed in Part I of Schedule 8 that Seller anticipates will be obtained by Seller in due course prior to the Commercial Operation Date, all Permits and Approvals required under Applicable Laws to authorize Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

## **15.2 Representations and Warranties of STELCO**

STELCO represents and warrants as of the date hereof as follows:

- (a) STELCO is a company wholly owned by the Government, duly established and validly existing under the constitution and laws of Maldives, is duly qualified to conduct business in Maldives, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) STELCO has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by STELCO and will constitute a legal, valid and binding obligation of STELCO, enforceable against STELCO in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium, and other laws affecting creditors rights generally.
- (c) Neither the execution nor the delivery by STELCO of this Agreement nor the performance by STELCO of its obligations hereunder: (i) will conflict with, violate, or result in a breach of any Applicable Laws of Maldives; 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 STELCO is a party or by which STELCO or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.
- (d) 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 STELCO, 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 STELCO in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by STELCO of its obligations hereunder or under such an agreement or instrument.
- (e) Part II of Schedule 8 lists all material Permits and Approvals required under Applicable Laws of Maldives for STELCO to execute, deliver, and perform its obligations under this Agreement. Except for those Permits and Approvals listed in Part II of Schedule 8 that STELCO anticipates will be obtained by STELCO in due course prior to the Commercial Operation Date, including approval of this Agreement by the MEE, all Permits and Approvals required under Applicable Laws of Maldives to authorize STELCO's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

## **ARTICLE 16 DISPUTE RESOLUTION**

### **16.1 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 16. 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 16; 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 16, then such Party shall be entitled to the payment of interest on any withheld amount, at an annual rate equal to Reference Rate plus two percent (2%), from the original due date for payment of such amount until the payment of such disputed amount.

### **16.2 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 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.

### **16.3 Expert Determination**

- (a) A Dispute may be referred to an expert (the “Expert”) if:
  - (i) the Parties are not able to agree under Article 16.2 (*Negotiation*) on an amicable resolution to such Dispute; and
  - (ii) 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.
  
- (b) Any Party to such a Dispute may initiate an Expert reference under this Article 16.3 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 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.

- (c) Unless otherwise provided in this Agreement, 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.
- (d) The Expert shall act as an expert and not as an arbitrator.
- (e) The Parties shall have the right to make representations and submissions to the Expert. There shall be no formal hearing.
- (f) 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 he 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 the timeframe set forth in Article 13.3(c).
- (g) 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.
- (h) If the Expert decides that a sum is due and payable by one Party to another Party then:
  - (i) any such sum shall be due and payable within seven (7) Days of receipt by the Parties of written notice of such decision, unless the Expert decides otherwise; and
  - (ii) interest shall accrue at the rate of Reference Rate plus two per cent (2%), compounded annually, from the date expiry of the period mentioned in Article 16.3(h)(i). Provided that if the sum specified in Article 16.3(h)(i) includes any interest, no interest shall be payable on such interest.
- (i) 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.

## **16.4 Arbitration**

### **(a) Selection of Arbitrators**

If the Parties are unable to resolve their Disputes through negotiation within thirty (30) Days of the Dispute Notice, 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:

- (i) 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.
- (ii) Where the Parties do not agree that the Dispute concerns a technical matter, the Seller and STELCO 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 ICC.
- (iii) If, in a Dispute subject to Article 16.4(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 the ICC 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.

(b) Rules of Procedure

Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

(c) 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.

(d) Nationality and Qualifications of Arbitrators

Each arbitrator appointed pursuant to Article 16.4(a)(i) to Article 16.4(a)(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:

- (i) the country of incorporation of the Seller or their parent companies;
- (ii) the country in which Seller’s principal place of business is located;
- (iii) the country of nationality of a majority of the Seller’s shareholders; or
- (iv) 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.

(e) Miscellaneous

In any arbitration proceeding hereunder:

- (i) proceedings shall, unless otherwise agreed by the Parties, be held in Singapore;
- (ii) the English language shall be the official language for all purposes; and
- (iii) 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.

**16.5 Governing Law, Jurisdiction and Service of Process**

(a) Governing Law

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

(b) Jurisdiction

Subject to Article 16.3 and Article 16.4, 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.

(c) Service of Process

Subject to the rules of ICC 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 18.5 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 16.4.

**16.6 Commercial Acts: Waiver of Sovereign Immunity**

STELCO unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement and the other project documents to which it is a party constitute private and commercial acts. In furtherance of the foregoing, STELCO hereby irrevocably and unconditionally agrees that to the extent permitted by Applicable Laws, (a) should any proceedings be brought against STELCO or its assets (other than STELCO's

Electric System and equipment, its electric distribution assets, and 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 STELCO 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 17**  
**TAXES**

Seller shall be solely responsible for any and all present or future taxes relating to the construction, ownership or leasing, operation or maintenance of each Facility, or any components or appurtenances thereof and all *ad valorem* taxes relating to each Site or Facility, and Seller shall be obligated to pay all the applicable taxes imposed on or with respect to the generation or sale of electricity under this Agreement.

**ARTICLE 18**  
**MISCELLANEOUS**

**18.1**    **Assignment**

(a)    **Assignment**

Seller shall not assign or otherwise transfer this Agreement, except (i) for the collateral assignment to any lenders (only if such lenders are independent third party financial institutions) in connection with the provision of any financing for the Facility, or (ii) upon STELCO's prior written consent, such consent not to be withheld unreasonably; provided, that the Parties agree that it shall not be unreasonable for STELCO to withhold consent to any assignment or other transfer if such assignment or other transfer is to any Person that is not (x) a Qualified Owner, (y) experienced in the ownership or operation of facilities for the generation of electricity from solar PV systems, directly or through its Affiliates, unless the Facility is managed by, and is operated by, a qualified Person with such experience or by Seller or one of its subsidiaries after the subject assignment, and such Person is reasonably acceptable to STELCO, or (z) the owner or lessee of the Facility and Seller's Interconnection Facilities. STELCO may assign or otherwise transfer this Agreement to any agency, authority or other Person having similar responsibilities, authority, independence and financial creditworthiness as of the Contract Date.

(b)    **Sale of the Facility**

Any sale or other transfer of all or substantially all of the Project shall be deemed an assignment subject to STELCO's consent rights under Article 18.1(a).

(c)    **Lock-in, Change of Control**

The single largest shareholder in the Seller shall, hold and be in control of at least fifty-one percent (51%) equity shareholding (carrying equivalent voting rights) and the Board of the Seller for a period of three (3) years from the Commercial Operation Date ("Lock-in Period"). After the Lock-in Period, any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment subject to STELCO's consent rights under Article 18.1(a); provided, that the Parties agree that it shall not be unreasonable for STELCO to withhold consent of any such change of control if the transferee of the, direct or indirect, interest in Seller, successor, or other Person benefiting from the change of control is not a Qualified Owner, or experienced in the ownership or operation of facilities for the generation of electricity from PV systems, directly or through its Affiliates, unless the Facility is managed by, and is operated by, a Person with such experience, and such Person is reasonably acceptable to STELCO. For purposes of this Agreement, "change of control" shall include any transfer, assignment, acquisition, or other transaction by which any Person (or such Person and its Affiliates) becomes the legal or beneficial owner of more than fifty percent (50%) of the direct or indirect equity interests of Seller, in each case whether in a single transaction or in a series of transactions.

(d)    **Procedure**

Seller shall include with any notice requesting STELCO's approval of any assignment or deemed assignment a statement of the facts and circumstances of such proposed assignment or deemed assignment, in reasonable detail and with reasonable supporting documentation, and shall provide such other information with respect thereto as STELCO reasonably may request. STELCO shall reply to any request for such consent in a reasonable period of time. If STELCO does not consent to such assignment or deemed assignment, or notify Seller that it does not so consent, within thirty (30) Days of the provision of such request and information, Seller may notify STELCO requesting such response within ten (10) Business Days. If STELCO does not signify its response in writing (either consenting or denying such consent), by the date ten (10) Business Days after such second notice, STELCO shall be deemed to have consented to such assignment or deemed assignment on the terms so disclosed to STELCO.

### **18.2 Currency for payment**

All amounts reflected in this Agreement in Dollars shall be paid in their Ruffiya equivalent calculated on the date such payments are made at the applicable Dollars - Ruffiya 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).

### **18.3 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.

### **18.4 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.

### **18.5 Notices**

Any notices required to be given hereunder shall be deemed delivered when (a) sent by facsimile upon electronic confirmation of successful transmission; (b) deposited with an express courier service nationally recognized in Maldives 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:

- (i) If to STELCO:  
Name: [●]  
Designation: [●]  
Attn: [●]  
Address: [●]  
Email: [●]  
Fax: [●]

in each case with a copy to:

Ministry of Energy  
Name: [●]  
Designation: [●]  
Attn: [●]  
Address: [●]  
Email: [●]  
Fax: [●]

- (ii) If to Seller:  
Name: [●]  
Designation: [●]  
Attn: [●]  
Address: [●]  
Email: [●]  
Fax: [●]

## **18.6 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.

## **18.7 Survival**

Notwithstanding anything provided herein to the contrary, Article 2.2 (*Transfer of Project*), Article 10 (*Records and Third Party Rights*), Article 11.2 (*Term and Modification of Insurance*), Article 13.6 (*Remedies Cumulative*), Article 14 (*Limitation on Liability and Indemnification*), Article 16 (*Dispute Resolution*), Article 17 (*Taxes*), and Article 18 (*Miscellaneous*) (and, to the extent referenced in such provisions, the Exhibits and Schedules hereto) shall survive the termination of this Agreement.

**18.8 Third Party Rights**

Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons (except the Government and the World Bank) not parties to this Agreement.

**18.9 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.

**18.10 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.

**18.11 Entire Agreement**

All prior agreements, negotiations, representations, and understandings with respect thereto, including the RFP and the Proposal, are expressly superseded. No amendment, modification, or change to this Agreement or its Exhibits or Schedules shall be effective unless the same shall be in writing, duly executed, authorized and approved by the Parties. In the event of any conflict between the terms and conditions of this Agreement and that of any Exhibit, Schedule or other document referenced herein, this Agreement shall govern and control. This Agreement, the Implementation Agreement, the Roof Lease Agreements and the Escrow Agreement shall constitute the entire understanding between the Seller, STELCO and the Maldives on matters set out herein.

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 [SELLER]**

\_\_\_\_\_  
[Name]  
[Designation]

**For and on behalf of State Electricity Company Limited**

\_\_\_\_\_  
[Name]  
[Designation]

Witnessed by:

\_\_\_\_\_  
[Name]  
[Address]  
[Organisation]  
[Designation]

\_\_\_\_\_  
[Name]  
[Address]  
[Organisation]  
[Designation]

**EXHIBIT A**  
**DESCRIPTION AND DRAWINGS OF THE PROJECT**

[NOTE: To be provided by Seller, based on the Proposal, and agreed by STELCO. Description of each Facility should include, among other things, nameplate capacity of the Facility, major equipment and components of the Facility and interconnection, and interconnection location.]

A. Description of Each Facility.

B. Interconnection of Each Facility.

C. Preliminary Design Elements.

D. Location of Records.

**EXHIBIT B**  
**DESCRIPTION AND MAPS OF THE SITES**  
[To be provided by the Seller]

**EXHIBIT C**  
**FORM OF INVOICE**  
**(Supplier letterhead)**  
**Monthly Energy Invoice**  
**Power Purchase Agreements with [\_\_\_\_\_]**

<b>Facility:</b> _____ _____ _____	<b>Invoice</b>  <b>Billing</b>  <b>Invoice</b>	<b>Number:</b>  <b>Period:</b>  <b>Date:</b>
---	--	--

	Item		Total
1.	Electric Energy (§ 4.2)		\$ _____
	= Electric Energy Delivered (kWh)		
	*Tariff (\$ ___ / kWh)		
2.	Test Energy (if applicable) (§ 6.1(d))	+	\$ _____
	= Test Energy Delivered to Facility (kWh)		
	*Tariff (\$ ___ / kWh)		
3.	Deemed Generation Charges (§4.7(a), (b), (d), (f))	+	\$ _____
	= Contract Energy (kW)		
	*Tariff (\$ ___ / kWh)		
4.	Deemed Generation Charges (§4.7(c) and (e))	+	\$ _____
	= Contract Energy (kW)		
	*Tariff (\$ ___ / kWh) *0.5		
5.	Shortfall on account of annual reconciliation (§4.2)	+	\$ _____
6.	STELCO's costs and expenses for meter calibration (§5.2, Schedule 6)	-	\$ _____
7.	Other Charges and Adjustments expressly set forth in the Agreement (if any) (describe, and identify applicable Article of Agreement)	+/-	\$ _____
	<b>Total Amount Due to Seller:</b>		\$ _____

**EXHIBIT D**  
**FORM OF CONSTRUCTION SECURITY**

State Electricity Company Limited

[Address]

Attention: Mr. [●]

**WHEREAS:**

- (A) The Government of Maldives (“Government”), with support from the Strategic Climate Fund and International Development Association, has initiated a programme called Accelerating Sustainable Private Investment in Renewable Energy (“ASPIRE”) for inviting private sector generators to develop roof top solar photovoltaic projects in Maldives on DBFOOT (i.e. design, build, finance, own, operate and transfer) basis. The electrical energy generated from such projects is proposed to be purchased by State Electricity Company Limited, a company incorporated and existing under the laws of the Republic of Maldives (“STELCO”).
- (B) The Government invited bids vide an RFP 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 roof top solar PV power project.
- (C) Seller and STELCO entered into a Power Purchase Agreement dated [●] (“PPA”), whereby Seller has agreed to develop the Project and sell and deliver to STELCO, and STELCO has agreed to purchase and accept from Seller, the electric energy produced by the Project.
- (D) Pursuant to the terms and conditions of the PPA, the Seller is required to furnish a performance bank guarantee of amount aggregating to USD [●] to secure the Seller’s obligation under the PPA.
- (E) We, ..... through our Branch at .....(the “Bank”) have agreed to furnish this Performance Bank Guarantee (“Guarantee”).
- (F) 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 PPA 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 STELCO, 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 upto an aggregate sum of the Guarantee Amount as STELCO shall claim, without STELCO being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein

2. A letter from STELCO, under the hand of an officer not below the rank of [●] in STELCO, that the Seller failed to meet its obligations under the PPA and has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the PPA, shall be conclusive, final and binding on the Bank. The Bank further agrees that STELCO shall be the sole judge as to whether the Seller is in default in due and faithful performance of its obligations under the PPA and its decision that the Seller is in default shall be final, and binding on the Bank, notwithstanding any differences between STELCO 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 STELCO 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 STELCO to proceed against the Seller before presenting to the Bank its demand under this Guarantee.
5. STELCO 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 PPA 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 PPA or to postpone for any time , and from time to time, any of the rights and powers exercisable by STELCO against the Seller and either to enforce or forbear from enforcing any of the terms and conditions contained in the PPA and/ or the securities available to STELCO, and the Bank shall not be released from its liability and obligation under these presents by any exercise by STELCO 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 STELCO 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 STELCO in respect of or in relation to the PPA or for the fulfillment, compliance and/ or performance of all or any of the obligations of the Seller under the PPA.
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 190<sup>th</sup> day from the Scheduled Commercial Operation Date]* and unless a demand or claim in writing is made by the STELCO on the Bank under this Guarantee, on the date of expiry of this Guarantee, all right of STELCO 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 STELCO 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 STELCO that envelope was so posted shall be conclusive.

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:**

- (i) 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.

**SCHEDULE 1**  
**REQUIREMENTS FOR COMMERCIAL OPERATION DATE**

The Project shall achieve Commercial Operation Date when Seller has certified to STELCO, and STELCO has accepted, that the following conditions have been satisfied:

- (a) The Project has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Project to operate as intended hereunder) in accordance with the Permits and Approvals, Interconnection Requirements, any operating agreements for the Project, any engineering, procurements and construction contracts for the Project, the financing documents, and the manufacturers' specifications.
- (b) Environmental investigations of each Site have been completed as required by Article 3.7(a), as applicable.
- (c) Seller has provided copies of all major Project contracts to STELCO as required by Article 3.7(c).
- (d) Certificates of insurance evidencing the coverage required by Article 11 have been obtained and submitted to STELCO.
- (e) All Permits and Approvals required to construct or operate the Project in compliance with Applicable Laws and this Agreement have been obtained and are in full force and effect.
- (f) Seller has successfully completed all Performance Tests for each Facility, and the Project Capacity is not less than the Minimum Project Capacity.
- (g) The Project has achieved initial synchronization with STELCO's Electric System, and has demonstrated the reliability of its communications systems and communications with STELCO's system scheduling coordinator.
- (h) The Interconnection Facilities have been constructed, completed, energized and the interconnection of the Facilities to STELCO's Electric System has been accomplished in accordance with the Interconnection Requirements.
- (i) Seller has provided a Completion Notification that it is in compliance with its obligations under this Agreement and the Interconnection Requirements, if any.
- (j) Each Facility has commenced delivering Electric Energy to STELCO at its Delivery Point as contemplated by this Agreement and the Interconnection Requirements, if any.

**SCHEDULE 2**  
**ELECTRIC ENERGY SPECIFICATIONS**

The Electric Energy supplied at each Delivery Point shall have the following characteristics:

- (a) The operating frequency of Seller's equipment shall meet the requirements of the Interconnection Requirements, and shall allow low frequency ride through for any deviation from a fifty (50) hertz base +/- 0.5 hertz.
- (b) Seller shall operate each Facility within the voltage range specified in the Interconnection Requirements, as applicable, and allow low voltage ride through a nominal fluctuation of  $\pm$  five percent (5%).
- (c) The Electric Energy shall also have the characteristics set forth in the Interconnection Requirements, as applicable.




**SCHEDULE 4  
INSURANCE REQUIREMENTS FOR THE PROJECT**

<b>A. Liability and workers Compensation Insurance Requirements</b>					
Seller and any subcontractor thereof, shall have in place prior to commencement of any work, and at all times maintain, the below liability and worker's compensation insurance					
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
1.	Commercial General Liability	*\$200,000/MW	Combined single limit per occurrence and in the aggregate where applicable	\$20,000/per MW	Per occurrence
2.	Employers Liability	*\$200,000/ MW	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$20,000/per MW	Each accident or employee (for disease)
3.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
4.	Professional Liability**	*\$200,000/ MW	Per occurrence and in the aggregate	\$20,000/per MW	Per occurrence
* Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount					
** Applicable to architects, engineers and other parties that provide professional services in conjunction with the Seller's responsibilities hereunder.					
<b>Liability Insurance Terms and Conditions</b>					
	a.	Completed Operations	The Seller and any subcontractors' General Liability coverage in place during construction shall include Completed Operations coverage, which coverage is to continue for a minimum of one year following completion of the work.		
<b>B. Requirements Applicable to All Liability and Worker's Compensation Insurance Policies</b>					
	1.	Insurance Company Rating	All insurance companies shall be rated [A-] or better by A.M. Best Company. Should an insurance company's rating fall below [A-], Seller shall replace that insurance company with a qualifying		

			insurance company within sixty (60) Days.
	2.	Notice of Cancellation	Each insurance company shall provide written notification to the STELCO sixty (60) Days prior to the effective date of any cancellation.
	3.	Evidence of compliance with insurance requirements at insurance date	<p>Seller shall provide STELCO with an original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate shall show:</p> <ul style="list-style-type: none"> <li>• the insurance company;</li> <li>• the policy period;</li> <li>• the policy number;</li> <li>• the description of the property;</li> <li>• the name of the contractor/ policyholder; and</li> <li>• the 60 Days cancellation notice</li> </ul>
	4.	Evidence of Renewal or Replacement Policies	Seller shall advise the STELCO of any renewals or replacements of the required insurances by providing the same documentation required in B.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.

**C. Property Insurance Requirements**

Seller shall provide property insurance on the Sites and Facilities. Property insurance shall be on an "all risk" basis, including coverage for PV module and machinery (machinery breakdown) perils to the extent those perils are present. The property insurance must be in place prior to the Commercial Operation Date and shall remain in force during the Contract Term.

<b>1.</b>	Builder's Risk Property Insurance				
	<b>Coverage Type</b>	<b>Minimum Limit</b>	<b>Maximum Deductible or Retentions</b>		
	Earth Movement including earthquake, volcanic activity, and subsidence.	Replacement/ reinstatement value of insurable real and personal property	Annual Aggregate	5% of replacement value	Per occurrence
	Hurricane/ windstorm		Annual Aggregate	5% of replacement value	Per occurrence
	Flood including tsunamis		Annual Aggregate	5% of replacement value	Per occurrence
	Debris removal	20% of replacement/	Per occurrence	Included	

		reinstatement value of insurable real and personal property			
	Ordinance or Law	10% of replacement/reinstatement value of insurable real and personal property	Per occurrence	Included	
	Expediting expense	20% of replacement value of insurable real and personal property	Per occurrence	Included	
	All other perils (including PV module and machinery perils where applicable)	Replacement value of insurable real and personal property	Per occurrence	\$20,000/MW	Per occurrence
	Soft costs	100% of costs which would be incurred again following a total loss at the end of construction.		45 Days	Per occurrence
<b>2.</b>	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders' Risk coverage (see C. 1.))				
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
	Earth Movement including earthquake, volcanic activity, and subsidence.	To be determined from time to time based on values, exposure to loss and insurance market conditions.	Annual Aggregate	5% of replacement/reinstatement value	Per occurrence
	Hurricane/windstorm		Annual Aggregate	5% of replacement/reinstatement value	Per occurrence
	Flood including tsunamis		Annual Aggregate	5% of replacement/reinstatement	Per occurrence

				value	
	Debris removal	\$ 40,000/MW	Per occurrence	Included	
	Ordinance or law	\$ 40,000/ MW	Per occurrence	Included	
	All other perils (including boiler and machinery perils where applicable)	Replacement value of insurable real and personal property	Per occurrence	\$ 10,000/ MW	Per occurrence
	Extra Expense/ Expediting Expense Combined	\$	Per occurrence	Included	
	Terrorism	Replacement value of insurable real and personal property	NA	NA	
<b>D</b>	<b>Requirements Applicable to All Property Insurance Policies</b>				
	1.	Waiver of Subrogation	Each property policy must contain a standard waiver of subrogation clause waiving the insurance company's right of subrogation against any insured party.		
	2.	Coinsurance	No property policy may contain a coinsurance clause.		
	3.	Insurance Company Rating	All insurance companies shall be rated [A-] or better by A.M. Best's. Should an insurance company's rating fall below [A-], Seller shall replace that insurance company with a qualifying insurance company within 60 days.		
	4.	Notice of Cancellation	Each insurance company shall provide written notification to STELCO 60 days prior to the effective date of any cancellation or non-renewal.		
	5.	Evidence of compliance with insurance requirements at insurance date	Evidence of coverage is to be on in the form of a certificate signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: <ul style="list-style-type: none"> <li>• The name of the insurance company</li> <li>• The policy period</li> <li>• The policy number</li> <li>• The description of the property</li> <li>• The Named Insured</li> <li>• STELCO as an additional insured and loss payee</li> <li>• The 60 days cancellation notice</li> </ul>		
	6.	Evidence of renewal or	Seller shall advise STELCO of any renewals or replacements of the required insurances by providing the same documentation required		

*Draft for discussion purposes only*  
*Attorney-Client privileged communication*

		replacement policies	in D.5 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.
--	--	----------------------	---

## **SCHEDULE 5 TESTING REQUIREMENTS**

- (i) The tests that are conditions to commencement of commercial operations of the Project under the Permits and Approvals, the Interconnection Requirements, if any, any engineering, procurements and construction contracts for the Project, any operating agreements for the Project, Seller's financing documents for the Project, and any manufacturers' warranties.
- (ii) Metering: inspections and acceptance:
  - *Schedule 6 : Metering*
  - Functionality and calibration tests as per STELCO requirements
- (iii) AC side of the facility installation (low voltage and medium voltage): visual inspections, tests and standards:
  - *Maldives Energy Authority: Electrical Installation Standards*
- (iv) DC side of PV installation: visual inspections and standards:
  - *IEC 62548 Ed.1: Installation and safety requirements for photovoltaic (PV) generators*
  - *IEC 60364-7-712 Electrical installations of buildings – Part 7-712: Requirements for special installations or locations – Solar photovoltaic (PV) power supply systems*
  - *IEC 60364-9-1: Low-voltage electrical installations - Part 9-1: installation, design and safety requirements for photovoltaic systems (PV).*
    - Once published IEC 60364-9-1 Ed.1.0 will cancel and replace IEC 60364-7-712 Ed.1.0. and IEC 62548 Ed.1.0).
    - IEC 60364-9-1 is a combination of IEC TS 62548, and IEC 60364-7-712. 60364-7-7xx series of documents give the requirements which supplement, modify or replaced certain of the general requirements contained in parts 1-6 of IEC 60364 whereas this document makes specific references to certain general requirements contained in parts 1-6 of IEC 60364. While this document assumes a good knowledge of the IEC 60364 series of documents, it is designed to be readable without constant cross referencing to clauses within the IEC 60364 series. The area of photovoltaic systems is rapidly developing and with that there will be a need to keep this document under constant review hence a short maintenance cycle enabling it to keep pace with developments in the industry and to maintain the highest level of safety of these systems.
- (v) System commissioning: documentation, insulation tests, array string performance tests:
  - *IEC 62446: Grid connected PV systems - Minimum requirements for system documentation, commissioning tests and inspection*
- (vi) Rating of the PV system facility:
  - *IEC 61724 Ed 1: PV System Performance Monitoring Guidelines for measurement, data exchange and analysis.* (to be superseded by Ed 2). This is a performance ratio test.

- (vii) Monitoring and data management system: functionality per plant and in control room
- Functionality as per STELCO requirements
  - *IEC 61724 Ed 1: PV System Performance Monitoring Guidelines for measurement, data exchange and analysis*

## **SCHEDULE 6 METERING**

- (a) Seller shall install solid state Metering Devices as part of STELCO's Interconnection Facilities. The Metering Device shall be maintained by STELCO at its own cost. Seller shall provide STELCO with reasonable advance notice of, and STELCO shall permit Seller's representatives to verify, inspect and test such Metering Devices at least once in every Contract Year; provided, that Seller shall not unreasonably interfere with or disrupt STELCO's activities and shall comply with all of STELCO's safety standards. Upon Seller's reasonable request, and at Seller's expense, STELCO shall perform additional inspections or tests of any Metering Device and shall permit a qualified representative of Seller to inspect or witness the testing of any such device; provided, that Seller shall not unreasonably interfere with or disrupt STELCO's activities and shall comply with all of STELCO's safety standards. If upon such repeat inspection or testing a Metering Device is found to register inaccurately by more than one percent (1%), the expense of the requested additional inspection or testing shall be borne by STELCO. If requested by Seller in writing, STELCO shall provide copies of any inspection or testing reports to Seller.
  
- (b) Seller may elect to install and maintain, at its own expense, solid state backup metering devices ("Seller's Back-Up Metering") in addition to Metering Device installed as part of STELCO's Interconnection Facilities, which installation and maintenance shall be performed in a manner acceptable to STELCO. Seller, at its own expense, shall inspect and test Seller's Back-Up Metering upon installation and at least annually thereafter. Seller shall provide STELCO with reasonable advance notice of, and permit a representative of STELCO to witness and verify, such inspections and tests; provided, that STELCO shall not unreasonably interfere with or disrupt Seller's activities and shall comply with all of Seller's safety standards. Upon STELCO's reasonable request and at STELCO's expense, Seller shall perform additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified representative of STELCO to inspect or witness the testing of Seller's Back-Up Metering; provided, that STELCO shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. If upon such inspection or testing, Seller's Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Agreement, the expense of the requested additional inspection or testing shall be borne by Seller. If requested by STELCO in writing, Seller shall provide copies of any inspection or testing reports to STELCO.
  
- (c) If any Metering Devices, or Seller's Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.
  
- (d) If a Metering Device, or Seller's Back-Up Metering, fails to register, or if the measurement made by a Metering Device, or Seller's Back-Up Metering, is found upon testing to be inaccurate by more than the lesser of the industry standard or one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering Device, or Seller's Back-Up Metering, for both the amount of the inaccuracy and

the period of the inaccuracy, in the following manner:

- (i) In the event that any Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Back-Up Metering, if installed, to determine the amount of such inaccuracy, provided, that Seller's Back-Up Metering has been tested and maintained in accordance with the provisions of this Agreement. If Seller's Back-Up Metering is installed on the low side of Seller's step-up transformer, the Seller's Back-Up Metering data shall be adjusted for losses (which losses shall be determined in accordance with the manufacturer's guidelines). In the event that Seller did not install back-up metering, or Seller's Back-Up Metering is also found to be inaccurate by more than the lesser of the industry standard or one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of net power and energy from the Project during periods of similar operating conditions when the Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.
- (ii) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Metering Device to be defective or inaccurate.
- (iii) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by STELCO, STELCO shall use the corrected measurements as determined in accordance with this Schedule 6 to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments by STELCO for such period from such recomputed amount. If the difference is a positive number, the difference shall be paid by STELCO to Seller; if the difference is a negative number, that difference shall be paid by Seller to STELCO, or at STELCO's discretion, may take the form of an offset to payments due Seller by STELCO. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless STELCO elects payment via an offset.
- (iv) At the request of either Party, STELCO, at Seller's expense, may install (or STELCO may require Seller to install) telecommunications equipment to record or transmit metering data, or real-time production data on a continuous basis, directly to STELCO, through a SCADA system or by other means, in a manner consistent with Good Engineering and Operating Practices.
- (v) At Seller's expense, the metered data shall be telemetered to one or more locations designated by STELCO; provided, that unless otherwise agreed by the Parties in the Project Management Procedures, for invoicing purposes, actual reading of the meter located at each Delivery Point shall be taken by STELCO once a month in accordance with Article 5.1.

**SCHEDULE 7  
TERMINATION PAYMENTS AND MANNER OF PURCHASE OF FACILITIES**

**1. Calculation of Termination Cost**

Termination Cost shall be determined as follows:

- (a) The Parties shall jointly appoint an Expert in accordance with Article 16.3 to determine the residual life of the Facilities that are subject matter of sale ("Residual Life"). The Expert's opinion regarding the Residual Life of the Facilities shall be final.
- (b) The independent expert shall arrive at the present value of the receivables of each Facility that is subject matter of sale, calculated by multiplying the Contract Energy for the Residual Life of each Facility or the outstanding Contract Term, whichever is lower, with the Tariff, and discounting the same by using a discounting factor of fifteen percent (15%) ("Present Value"). The Present Value shall be calculated in Dollars. If more than one Facility is subject matter of the sale, the Present Value of all such Facilities that are subject matter of sale shall be added to arrive at the aggregate Present Value ("Aggregate Present Value").
- (c) All amounts due, but not paid by either Party to the other Party, including (i) the amounts due, but not paid or recovered from the Escrow Account, for the Electric Energy delivered by the Seller to STELCO, and (ii) deemed generation charge payable under Article 4.7, shall be calculated and factored into arrive at the net outstanding receivables of the Seller ("Outstanding Receivables").
- (d) Termination Cost shall be the difference between (i) the sum of Aggregate Present Value and Outstanding Receivables, and (ii) insurance proceeds received by the Seller for such Facilities sought to be purchased or sold.

**2. Manner of transfer of a Facility**

- (a) In the event STELCO is required or chooses to purchase a Facility, the Seller shall provide STELCO with (i) the details of systems, inverters, equipments, components, fixtures and other tangible and intangible assets forming part of the Facility, (ii) copies of all the documents showing the proof of ownership of the Seller in the Facility and its parts, (iii) details of outstanding agreements, warranties, guarantees, indemnities, covenants and obligations of any third party that the Seller is entitled to in relation to, any part constituting the Facility (iv) details of third party contracts for the operation and/or maintenance of the Facility.
- (b) Within thirty (30) Days from the receipt of the information set out in para 2(a) of this Schedule 7 from the Seller, STELCO shall by a notice in writing to the Seller ("STELCO Notice"), (i) provide the Seller details of any defects in the ownership of any part of the Facility that it wishes rectified before purchasing the Facility, (ii) indicate to the Seller the third party agreements, warranties, guarantees, indemnities, covenants and

obligations, to which the Seller is entitled to in relation to the Facility that STELCO wishes to be assigned in the favor of STELCO, (iii) provide a draft of the agreement for the purchase of the Facility.

- (c) The Parties shall in good faith negotiate, finalise, execute and perform the agreement for purchase of the Facility by STELCO within sixty (60) Days from the receipt of the STELCO Notice, on the following principles:
- (i) the Facility shall be sold on as is where is basis, and Seller undertakes that no part of the Facility that formed the basis of determination of Residual Life of the Facility by the Expert shall be removed by the Seller;
  - (ii) upon receipt by the Seller in full of the applicable consideration/ Termination Cost, the Seller shall, at such date as may be specified by the STELCO, transfer all its assets, rights, title, and interest and benefit to the STELCO or its nominee free and clear from any charges, mortgages, encumbrances, liens or security interests of any kind;
  - (iii) the Seller shall ensure that STELCO receives the benefits of all third party agreements, warranties, guarantees, indemnities, covenants and obligations that the Seller was entitled to in relation to the Facilities, on the terms and conditions which are not inferior to the terms and conditions available to the Seller.

### **3. Manner of transfer of assets constituting the Facility**

- (a) In the event STELCO is required to purchase assets installed at a Facility under Article 13.5(c), the Seller shall provide STELCO with (i) the details of assets, (ii) copies of all the documents showing the proof of ownership of the Seller in the assets, (iii) details of outstanding agreements, warranties, guarantees, indemnities, covenants and obligations of any third party that the Seller is entitled to in relation to the assets, (iv) details of third party contracts for the operation and/or maintenance of the assets.
- (b) Within thirty (30) Days from the receipt of the information set out in para 3(a) of this Schedule 7 from the Seller, STELCO shall by a notice in writing to the Seller (also a “STELCO Notice”), (i) provide the Seller details of any defects in the ownership of any the assets that it wishes rectified before purchasing the assets, (ii) indicate to the Seller the third party agreements, warranties, guarantees, indemnities, covenants and obligations, to which the Seller is entitled to in relation to the assets that STELCO wishes to be assigned in the favor of STELCO, (iii) provide a draft of the agreement for the purchase of the assets.
- (c) The Parties shall in good faith negotiate, finalise, execute and perform the agreement for purchase of the assets by STELCO within sixty (60) Days from the receipt of the STELCO Notice, on the following principles:
- (i) the assets shall be sold on as is where is basis;
  - (ii) upon receipt by the Seller in full of the applicable consideration, the Seller shall, at

*Draft for discussion purposes only*  
*Attorney-Client privileged communication*

such date as may be specified by STELCO, transfer all the assets, rights, title, and interest and benefit to the STELCO or its nominee free and clear from any charges, mortgages, encumbrances, liens or security interests of any kind;

- (iii) the Seller shall ensure that STELCO receives the benefits of all third party agreements, warranties, guarantees, indemnities, covenants and obligations that the Seller was entitled to in relation to the assets, on the terms and conditions which are not inferior to the terms and conditions available to the Seller.

## **SCHEDULE 8 PERMITS AND APPROVALS**

### **I. Seller Permits**

- (a) Business registration.
- (b) Foreign contractor registration.
- (c) Employee permits.
- (d) Endorsement of interconnection and all safety installation (single line diagrams) by an (local) MEA licensed engineer.
- (e) Environmental clearances where applicable (ESMF to guide).
- (f) Registration as an independent power producer at MEA (requires endorsed electrical designs, copy of signed PPA, Roof Lease Agreements, environmental clearance and any other documents) in accordance with the applicable rules and regulations made by the MEA.
- (g) Special access permits from Maldives National Defence Force for screening of individuals entering the Sites.
- (h) Metering approval certificate from STELCO.
- (i) Compliance of AC side of the facility installation from MEA.
- (j) Compliance of DC side of the PV system facility installation.
- (k) PV facility rating certificate.
- (l) Monitoring and data management system.

### **II. STELCO Permits and Approvals**

Any approval required by STELCO from Maldives Monetary Authority or any other Governmental Authority for repatriation of any amount in Dollars under this Agreement.

## SCHEDULE 9 INTERCONNECTION REQUIREMENTS

The Seller shall be required to comply with the MEA Regulations with respect to grid connection. The key aspects covered by the MEA Regulations are provided below:

- a) **Frequency:** Rated frequency shall be 50 Hz
- b) **Classification of Interconnection:** Interconnection classification shall be selected in accordance with the following table. However the required classification might be changed due to capacity constraint of existing facilities or other technical issues examined by STELCO.

**Table: Classification of Interconnection**

Based Output of PV System (kW)	Breaker Capacity (A)	Interconnection Voltage
<7	40A	LV (1P, 230V)
7-35	63A	LV (3P, 400V)
35-175	315A	LV(3P, 400V)
175>	-	MV(3P, 11kV)

- c) **Metering Methods :** As per MEA Regulations
- d) **Power Factor:** As per MEA Regulations
- e) **Protection Relays:** As per MEA Regulations
- f) **Islanding Operation Detection:** As per MEA Regulations
- g) **Automatic Recovering Function:** As per MEA Regulations
- h) **Automatic Load Limiting and Power Generation Suppression:** As per MEA Regulations

### **Isolation devices at STELCO transformer and point of connection**

For LV connection systems, a disconnection device shall provide a means of isolating from the utility interface in order to allow for safe maintenance of the transformers and network. The disconnection device shall be three-pole for a three-phase delta-connected cable, and a four-pole for a three-phase star-connected cable. The grid supply side shall be wired as the source.

The breaking capacity of the isolation circuit-breaker closest to the point of utility connection shall have a minimum fault current level of 6 kA in accordance with IEC 60947-2.

- This isolator shall be securable in the OFF position using a simple padlock.
- This switch is to be labelled “PV system –STELCOAC isolator” and must be clearly labelled as such with ON and OFF positions clearly marked.

## **SCHEDULE 10**

### **QUALIFIED OWNER**

A Person satisfying the following conditions shall be considered a Qualified Owner:

- (a) A Person who has not been determined to be ineligible by the World Bank in accordance with the World Bank Anti-Corruption Guidelines.
- (b) A Person, who is not a resident of a country that:
  - (i) as a matter of law or official regulation, Maldives prohibits commercial relations with that country, provided that the World Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required; or
  - (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Maldives prohibits any import of goods or contracting of works or services from that country or any payments or persons or entities in that country.
- (c) A Person who fulfils the following requirements as to financial capacity:
  - (i) **Internal Resource Generation (IRG):** The maximum internal resource generated by such Person during any one of the most recent three years of business operations shall not be less than one million dollars (\$ 1,000,000) per MW Electric Capacity of the Project or equivalent in any other currency as reflected in the audited accounts of such Person. For this purpose, the most recent year of business operation shall be the most recent financial year defined by the regulatory agency of the respective country of business registration of such Person.
  - (ii) **Net Worth:** The Net worth of such Person shall not be less than two million dollars (\$ 2,000,000) per MW of the Electric Capacity of the Project or equivalent in any other currency. For this purpose, such Person's Net Worth is defined as the average of the net worth reflected in the audited annual accounts of the most-recent three years of business operations. For this purpose, the most recent year of business operation shall be the most recent financial year defined by the regulatory agency of the respective country of business registration of such Person.
  - (iii) **Annual Turnover:** The annual turnover of such Person shall not be less than four million dollars (\$ 4,000,000) per MW of the Electric Capacity of the Project or equivalent in other currency. For this purpose, such Person's Annual Turnover is defined as the average turnover as reflected in the audited annual accounts of the most-recent three years of business operations. For this purpose, the most recent year of business operation shall be the most recent financial year defined by the regulatory agency of the respective country of business registration of such Person.

The above financial capability requirements shall be defined and computed in following manner:

- (i) Internal Resource Generation (IRG)
  - IRG = Profit after Tax (PAT), but adjusted as follows.
  - Add: Decrease in Net Current Assets (excluding cash)
  - Add: Depreciation and Amortization

Add: Any other non-cash expenditure (including deferred tax)  
Subtract: Scheduled Loan repayments and increase in Net Current Assets  
(excluding cash)

Provided when an existing loan has been repaid through the proceeds of the new loan, then to the extent the proceeds of the new loan have been used to repay the existing loan, such repayment of existing loan shall not be considered for the purposes of computation of Internal Resource Generation.

(ii) Net Worth

Net worth = Equity share capital

Add: Reserves

Subtract: Revaluation Reserves

Subtract: Intangible Assets

Subtract: Miscellaneous Expenditures to the extent not written off and carry forward losses.

(d) A Person who fulfils the following requirements as to technical capacity:

Such Person must meet the technical requirement of possessing experience in “Developing Projects” (ground mounted/rooftop projects) in the solar energy industry as per the following:

	Minimum experience required
Cumulative in last three years	5 MW
At least one project of minimum capacity	2 MW

Where,

- (i) “Developing a Project” means successful commissioning of a project and declaring commercial operation, in which such Person– (i) was a contractor for engineering, procurement and construction; or (ii) held an equity stake of not less than fifty one percent (51%) at the time of declaring commercial operation; or (iii) developed the project on its own balance sheet.
- (ii) Persons, who procured renewable energy projects after their respective commercial operation date, are not eligible to claim such projects to have been developed by such Persons.
- (iii) Such Person must demonstrate that it has at least three (3) years operations and maintenance experience and has successfully conducted operations and maintenance services on at least two (2) solar power projects of at least cumulative one (1) MW capacity in the previous seven (7) years.

- (e) A Person who:
- (i) does not have a history of non-performing contracts, i.e. non-performance of a contract by such Person has not occurred as a result of such Person's default since 1st January 2011. Non-performance, as decided by the STELCO, shall include all contracts where (A) non-performance was not challenged by such Person, including through referral to the dispute resolution mechanism under the respective contract, or (B) contracts that were so challenged but fully settled against such Person; but non-performance shall not include contracts where the decision was overruled by the dispute resolution mechanism. Non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to such Person have been exhausted.
  - (ii) does not have a consistent history of court/arbitral award decisions against such Person since 1st January 2011.
  - (iii) has sound financial position and prospective long term profitability still sound according to criteria set out in paragraph (c) of this Schedule 10 above after assuming that all pending litigation will be resolved against such Person.