

## POWER PURCHASE AGREEMENT

This Power Purchase Agreement is entered into and executed at \_\_\_\_\_ on this day of \_\_\_\_\_

### BETWEEN

-----, a company incorporated under the ['Companies Act of The Republic of Maldives'], and having its registered office at -----  
----- (hereinafter referred to as the "**Consumer**" which expression shall, where the context so requires or admits, be deemed to include its successors and permitted assigns) of the first part

### AND

-----, a company incorporated under the ['Companies Act of the Republic of Maldives'], and having its registered office at -----  
----- (hereinafter referred to as "**Company**" which expression shall, where the context so requires or admits, be deemed to include its successors and permitted assigns) of the second part.

The Consumer and Company are, hereinafter, collectively referred to as "**Parties**" and individually as a "**Party**".

WHEREAS:

- A. The Consumer is a power utility supplying power in \_\_\_\_\_ *<enter supply the area and jurisdiction of the utility>*
- B. The Consumer has invited offers to supply, build, own, operate and maintain a \_\_\_ MW [insert technology] based power generating plant.

Or

The Consumer has entered into a mutual agreement with the Company to supply, build, own, operate and maintain a \_\_\_ MW [insert technology] based power generating plant.

*<Please choose whichever is applicable from the clauses mentioned in point B>*

- C. The Company has submitted an offer in response to such invitation;

Or

The Company wishes to enter into an agreement with the Consumer through this agreement;

*<Please choose whichever is applicable from the clauses mentioned in point C above>*

and

agrees to deliver "Contracted Capacity" and corresponding energy generated by the Plant to the Consumer and the Consumer agrees to purchase such capacity and energy in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN, THE PARTIES AGREE AS FOLLOWS:**

## 1.1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms and expressions shall have the meanings assigned to them herein:-

**“Agreement”** means this Power Purchase Agreement along with its Annexure, as may be amended, supplemented or modified from time to time in accordance with terms and conditions hereof.

**“Billing Period”** means the following:

- i. The first Billing Period shall commence with the Commercial Operations Date and end at 12:00 hrs on the 15th Day of the calendar month in which the COD occurs, or if the COD occurs after the 15<sup>th</sup> day of the calendar month, the last day of such calendar month;
- ii. The subsequent Billing Periods, except the last Billing Period, shall mean each period of 15 days commencing from the end of the immediately preceding Billing Period;
- iii. The last Billing Period shall commence from the end of the immediately preceding Billing Period and end with the day of the expiry or termination of this Agreement.

**“Change-in-Law”** means any change in Applicable Law and applicable rules, regulations thereto and Government Policy including the enactment, amendment, modification, revocation or interpretation thereof.

**“Commercial Operations Date” or “COD”** means the date on which the Plant shall commence its commercial operations as notified by Company to the Consumer in accordance with Clause 2(b) of this Agreement.

**“Conditions Precedent”** has the meaning set forth in Clause 3.1.

**“Contracted Capacity”** has the meaning set forth in Clause 2(a).

**“Consumer Facilities”** means the Consumer’s facilities located at \_\_\_\_\_.

**“Consumer Infrastructure Facilities”** means the consumer electrical infrastructure facilities as described in Annexure IV.

**“Delivery Point”** means the point at which the energy meters are installed on the XX kV *<please fill in the appropriate voltage level>* voltage level incoming lines/cables from the Company in to the Consumer’s premises.

**“Effective Date”** is as defined in Clause 4 (a)

**“EPC Contracts”** means all applicable contracts for construction of power plant & switchyard & transmission system for generation of electricity & for delivery of electricity so generated

**“Emergency”** means a condition or situation, which if left unattended, is likely to endanger the safety or the security of the Plant or part thereof or the dedicated transmission lines or the life of any person.

**“Fixed Charge”** means the amount set forth as fixed charges in Annexure II, as the same may be adjusted from time to time pursuant to and in accordance with the terms of this Agreement.

**“Financing Agreements”** means all the loan agreements, notes, indentures, security agreements, letters of credit, and other documents relating to the financing or re-financing of the Plant.

**“Financial Closure”** means the date on which the initial disbursement under or pursuant to the Financing Agreements has occurred from the lenders to the Company.

**“Force Majeure Events”** has the meaning set forth in Clause 12.

***(Remove the following two definitions if not applicable)***

**“Fuel Supplier”** means *XX <enter name of the entity, if a primary supplier exists>* or any other entity supplying liquid fuel to the Plant

**“FSA”** means the fuel supply agreement together with the annexures and amendments thereto with the Fuel Supplier for the supply of liquid fuel for the Plant.

**“Generator’s Infrastructure Facilities”** means the company’s generation facility configuration and specifications as described in Annexure V.

**“Lenders”** means the financing institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Company under any of the Financing Agreements.

**“Metering Date”** for a Billing Period means 12:00 hrs as per the Maldives Standard Time on the last day of each Billing Period.

**“MEA”** shall mean the Maldives Energy Authority, constituted in April 2006 under .....

**“Minimum Payment Obligation”** has the meaning set forth in Clause 10 (c).

**“Plant”** means \_\_\_\_\_ MW \_\_\_\_\_ based power generating plant at \_\_\_\_\_ and the transmission lines/cables laid down for the transmission of power to the Consumer and also includes all plant and equipment, machinery and tools, land, buildings and other related and associated facilities within the Plant site.

**“PLF”** has the meaning as set forth in Annexure II.

**“Prudent Utility Practices”** means those practices, methods, techniques and standards as prevalent from time to time, that are generally accepted internationally for use in electrical utility industries (taking into account conditions prevalent in Maldives) and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of size, service and type as that of the Plant and that generally conform to manufacturers’ operation and maintenance guidelines.

**“Scheduled Commercial Operations Date”** means the currently expected Commercial Operations Date, which is to occur on or before \_\_\_\_\_, or such date as may be revised from time to time in accordance with the provisions hereof.

**“Scheduled Shutdown”** means a planned shutdown, interruption of or reduction in the Plant’s generating capability and / or capability of Transformer or Transmission Lines, to transmit the electricity so generated, that has been scheduled and communicated in writing in advance by the Company to the Consumer and is for inspection, testing, maintenance, repairs and / or replacement.

**“Security Amount”** means amount as described in clause 11 C

**“Transmission Line”** means the XX kV line/cables that interconnect the Plant with the Consumer’s Premises.

**“Variable Charge”** means the amount set forth as variable charges in Annexure II, as the same may be adjusted from time to time pursuant to and in accordance with the terms of this Agreement.

#### **Table of Annexure:**

Annex I: Assumption for Tariff Computation and Variables

Annex II: Tariff Computation

Annex III: Disincentives based on average power factor

Annex IV: Description of Consumers Infrastructure Facilities

Annexure V: Description of Company’s Generation Facility and Infrastructure

## 1.2 INTERPRETATION

In this Agreement

- a) The words importing singular shall include plurals and vice versa as may be necessary.
- b) The Annexure referred to in the body of this Agreement form an integral part of this Agreement and will be in full force and effect as though contents thereof were expressly set out in the body of this Agreement.
- c) The words/expressions used in this Agreement but not defined herein, unless repugnant to the context, shall have the same meaning as assigned to them in the context in which these have been used in the Agreement provided that the respective meanings, if any, assigned to such undefined words/expressions in the Public Utilities Law 4/96 (the Act), the Presidential decrees under the provisions of the Act and the regulations specified by the Maldives Energy Authority (MEA) from time to time, shall also be taken into consideration for harmonious interpretation of the Agreement.

## 2. DELIVERY AND OFF-TAKE

- a) On and from the Commercial Operations Date and subject to the terms of this Agreement, the Company shall deliver and the Consumer shall purchase the electrical energy for its consumption, and subject to a maximum capacity of \_\_\_\_\_MW (the "**Contracted Capacity**"), the Company agrees to deliver and bill to the Consumer and the Consumer agrees to accept at the Delivery Point and pay for the electrical energy from the Plant on and from the Commercial Operations Date, in accordance with the terms hereof.
- b) The Scheduled Commercial Operations date shall occur no later than \_\_\_\_\_ days from the date that the last of the Condition Precedents specified in Clause 3.1 are either satisfied or waived in accordance with Clause 3.2 of this Agreement. In the event of any revision in the Scheduled COD, the Company shall notify the revised COD to the Consumer, at least 30 days prior to the scheduled COD.

## 3. CONDITIONS PRECEDENT

### 3.1. Conditions Precedent to the Parties Obligations

The obligations of the Company and the Consumer under this Agreement are subject to the satisfaction or waiver in writing of the following Conditions Precedent:

- (a) The Company shall have obtained all requisite technical, statutory, regulatory and other approvals, clearances, licenses, permits and other consents required by applicable law from the relevant authorities, which are necessary for financing, construction and operation of the Plant and the distribution and delivery of electrical energy;
- (b) The Consumer shall have obtained all requisite technical, statutory regulatory and other approvals and permits from the concerned authorities, necessary for receiving the power from the Plant
- (c) Financial Closure of the Plant shall have occurred;

### **3.2. Satisfaction of Conditions Precedent**

Both Consumer and the Company shall use reasonable endeavors to procure the satisfaction or waiver in writing from respective Parties on or **before** \_\_\_\_\_ date of the conditions precedent as set out in Clause 3.1 hereinabove, when and insofar as the subject matter of the relevant conditions falls within the scope of its respective obligations under this Agreement.

## **4. TERM, EFFECT OF EXECUTION; EFFECTIVE DATE AND TERM; EXTENSION OF TERM**

- (a) Clauses 1.1, 1.2, 3, 4(a) and (b), 7(a), 13,15, 16, 17, 18, 19 and 20 of this Agreement shall become effective upon the date of its execution (the "Effective Date") by the Parties while the remaining Clauses shall not become effective until the Conditions Precedent specified in Clause 3.1 are either satisfied or waived in accordance with Clause 3.2 of this Agreement by the parties hereto acting jointly in this regard.
- (b) This Agreement shall continue to be in force and its provisions in effect until the XX *<specify tenure of agreement based on technology>* anniversary of the Commercial Operations Date of the Project, unless terminated earlier in accordance with the terms of this Agreement or extended as mutually agreed between the Parties in writing.
- (c) Either Party may propose to extend the term of this Agreement by giving a notice in writing to the other Party, six months prior to expiry of the term of

this Agreement. Subject to availability of power for sale by the Company and the requirement of power by the Consumer, the Company and the Consumer may decide to extend the term of the Agreement for such further periods and on such terms as may be mutually agreed between the Parties.

## **5. COVENANTS OF THE COMPANY**

- (a) The Company shall obtain, renew and keep in force during the entire term of this Agreement the requisite technical, statutory, regulatory and other approvals, clearances, licenses, permits and other covenants required by applicable law from the relevant authorities, which are necessary for financing, construction and operation of the Generator's Infrastructure Facilities including the Plant and the delivery of electrical energy up to the Delivery Point;
- (b) The Company shall deliver electrical energy, from the Plant to the Consumer as per the requirements set out in this Agreement subject however to the other terms and conditions of this Agreement.
- (c) The Company shall keep the Consumer informed about any modifications or amendments in the FSA (if applicable) as are likely to affect the supply of electrical energy to the Consumer in accordance with the terms of this Agreement.
- (d) The Company shall as soon as possible send a written notice to the Consumer upon the occurrence of an Emergency. The Company shall provide reasonable details of the Emergency in such written notice.

## **6. COVENANTS OF THE CONSUMER**

- (a) The Consumer undertakes to use its best efforts to complete the Consumer Infrastructure Facilities required at its end for off-take of power including but not limited to substation and necessary protections at and internal cabling to load centers at least 30 days prior to the Scheduled COD or the revised COD as the case may be.

If the commencement of the commercial operations of the Plant is delayed due to the failure of the Consumer to complete the aforesaid Consumer Infrastructure Facilities, the Consumer shall, notwithstanding anything contrary contained herein, be liable for the Minimum Payment Obligations from such Scheduled COD until such time that Consumer completes the Consumer Infrastructure Facilities.



## 7. MUTUAL COVENANTS

- (a) Each of the Parties hereby unconditionally undertakes to ensure compliance with all the applicable laws and regulations which relate to performance of their respective obligations under this Agreement.
- (b) **Notice of Demand:** Electrical energy will be delivered at a single point for the entire premises of the Consumer's Facilities. Subject to Contracted Capacity, the Consumer shall notify the Company of the maximum annual demand in KW and the load pattern for each financial year specifying the maximum expected demand for each month, at least 30 days prior to the start of each financial year. The Consumer shall submit a fresh notice of the maximum demand and the load pattern for each month at least 15 days prior to the relevant month in case there is a change in the consumption pattern indicated in the forecast given by the Consumer.
- (c) **Notice of Scheduled Shutdown:** The Company shall at least 1 month prior to COD and each anniversary year thereafter inform the Consumer in writing of its tentative program for Scheduled Shutdowns to perform its maintenance on the Plant, Transformer and Transmission Lines
- (d) The Consumer shall seek prior consent from the Company for any drawl of electrical energy in excess of the Contracted Capacity and in variance from the schedule of drawl as stated in Clause 7(b). In case, the Consumer without the Company's prior consent in writing draws excess electrical energy (i.e. more than its Contracted Capacity) in a Billing Period, the Consumer shall be liable to pay for excess electrical energy at, the applicable charges set forth in Annex II. (Note: This clause shall apply only when the capacity is shared among various utility or non-utility consumers)
- (e) The Company shall at all times after the COD and throughout the term of this Agreement operate and maintain the Plant in a manner consistent with Prudent Utility Practices, and as per technical codes specified by the MEA. In the event the consumer is not able to receive the electricity due to its failure to maintain the Consumer Infrastructure Facilities so required for receiving electrical energy under this Agreement, as per the latest IS standards / practices or standards notified by the MEA from time to time, the consumer nevertheless shall be liable to pay the charges as applicable under Minimum Payment Obligation.
- (f) Each Party shall work with and cooperate in good faith with the other Party with respect to the other Party's obligations and rights, hereunder.
- (g) Upon receipt of the Company's notice under Clause 5(d), the Consumer and the Company shall meet to discuss the consequences of the Emergency and the course of action to be taken to mitigate the effects thereof or to be adopted in the circumstances. Upon the occurrence of an Emergency the

Company shall have the right to immediately shut down supply of electrical energy to the Consumer.

- (h) The Consumer shall not transfer or assign its rights and obligations under this Agreement except for any change in law or other similar governing condition.

## 8. LIQUIDATED DAMAGES AND PARAMETERS OF ELECTRICAL ENERGY

- (a) Delay in Full Commercial Operation –If the full Commercial Operation Date of the Plant shall not occur on or prior to the date which is [10 (ten)] months from the Effective Date as such date has been extended by Agreement of the Parties or as provided for in Clause 13, the Company shall pay to the Consumer as liquidated damages for delays in achieving Commercial Operation date a sum equal to \_\_\_\_\_ per day or fraction thereof up to a maximum of 60 days. After this period the Consumer will have the right to terminate the agreement and forfeit the Performance Bond herewith.

(b) **Electrical energy**

- i. The Company shall ensure following parameters of electrical energy, to the Consumer at the Delivery Point
- (a) Alternating current
  - (b) 3 Phases
  - (c) Voltage: 11 KV  $\pm 10\%$
  - (d) Frequency : 50Hz  $\pm 5\%$

*<The above aspects to be reviewed and modified on a case by case basis, depending on the particulars>*

- ii. The Company shall assure availability of electrical energy at the Delivery Point at a minimum annual average availability of [XX%] of the electrical energy contracted in Clause 2.a. Such minimum annual average availability will be maintained during the entire term of this Agreement as per the provisions herein. In the event the Company fails to meet the minimum annual average availability as stated in clause 8(b) (ii) above, the Company shall be liable to pay to Consumer by way of liquidated damages an amount of \_\_\_\_\_ per MW of contracted capacity for each full percentage point reduction below [XX%]. The minimum annual average availability for the purpose of liquidated damages shall be calculated at the end of each operating year. Provided further that the Company shall not be liable to pay any damages, in the event that the Company fails to provide the minimum annual average availability as described above for reasons of: (i) any event of Force Majeure affecting Consumers and/ or the Company or

the fuel supplier or (ii) scheduled or unscheduled disruption in the fuel supply.

- (c) Performance Bond –Within 15 days after the Effective Date, the Company shall provide the consumer a performance bond which shall be continuing security, for an amount of \_\_\_\_\_ to ensure the Company's obligations hereunder including its obligation to pay Liquidated Damages.
- (d) Overall Aggregate Liability

Notwithstanding anything contained herein above, the Company's aggregate liability in each year to pay liquidated damages under this agreement including for reasons of failure to provide minimum annual average availability or any of the parameters stated in 8(b) shall not exceed RF-----  
-----/-----.

## 9. FACILITIES AND MEASUREMENTS

- (a) The facilities including the required metering facilities up to the Delivery Point shall be constructed, operated and maintained by the Company at its own risk and cost. Similarly, the facilities (i.e. Consumer Infrastructure Facilities) from the Delivery Point onwards shall be constructed, operated and maintained by the Consumer at its own risk, cost and consequences.
- (b) The Company shall take the meter reading of the meter installed at the Delivery Point on the Metering Date. The Company shall raise the tariff memo/ the supplementary memo for the consumption of the electrical energy based on the said meter readings as agreed in Annexure II. The Consumer may give notice of any discrepancy in the said meter readings or dispute any readings within 7 (seven) days of the receipt of the tariff memo and/or supplementary memo and the Company shall reply to such discrepancy or disputed reading within 2 (two) days of the receipt of such notice in writing from the Consumer.

In the event the Parties disagree on any such discrepancy/disputed readings and are unable to resolve the dispute arising from such disagreement within a period of 3 days from the date of the Company's reply as set forth above, the Parties shall use their best efforts to resolve the dispute in accordance with Clause 17 hereof. Payments, which are based on disputed meter readings and are due to the Company under Clause 10 of this Agreement, shall be paid to the Company in accordance with Clause 10 and the time stipulated there under.

- (c) Accuracy of all the metering facilities such as PTs and CTs shall be **equal to Class 0.2**. There shall be a main energy meter and a back-up energy meter at the Delivery Point. There will be one time meter installation fee of \_\_\_\_\_/\_\_\_\_\_ that shall be paid by the Consumer to the Company for

installing such energy meters at the Delivery Point on the day the last of the Condition Precedents have been satisfied or waived. This meter will be maintained and annually tested by the Company.

- (d) The Consumer shall install the necessary protection relays / interlocking in their system to clear the electrical faults in its premises. Any modification in the receiving end substation shall be mutually agreed to maintain the delivery system in proper condition.
- (e) Inspection: The Consumer shall allow the Company or its authorized agents access to the metering facilities at the Delivery Point at all reasonable times. Delivery Point meter shall be jointly inspected and sealed on behalf of both Parties and shall not be interfered with, except in the presence of authorized representatives of both the Parties. For testing and calibration of meters a notice of five days shall be given by the Party requesting testing, to enable authorized representatives of both the Parties to be present.

## 10. TARIFF

- (a) In consideration of the Contracted Capacity made available and electrical energy delivered by the Company to the Consumer, the Consumer shall pay to the Company the tariff, which shall comprise of the aggregate charges inclusive of the Fixed Charges and Variable as stipulated in Annexure – II.
- (b) In the event of any changes in relation to the assumptions set forth in Annexure I, the tariff shall be adjusted in accordance with Annexure I.
- (c) Without prejudice to the Consumer's obligation to pay for the electrical energy delivered to the Consumer in the event the Consumer consumes electrical energy which is less than electrical energy equivalent to 60% PLF in any Billing Period for any reason whatsoever other than on account of short supply below 60% PLF as a result of (a) on account of default of the Company, or (b) Force Majeure affecting the Company or Consumer;

the Consumer shall nevertheless be liable to pay the aggregate Fixed Charges and Variable Charges for electrical energy which is equivalent to at least 60% PLF ("**Minimum Payment Obligation**") as per Annexure -II.

- (d) Average power factor in the billing cycle of the electrical energy consumed by the Consumer shall not be less than [80%] lagging. The average power factor shall mean the ratio expressed as percentage of total kWh to total kVAh delivered during the month. The ratio shall be rounded up to two figures. If the average power factor falls below [80%] lagging, disincentives shall be applicable on the Consumer. The disincentives shall be determined in accordance with Annexure III.

- (e) The assumptions & variables set forth in Annexure I do not include any taxes, electricity duty, any other duties or cess, etc on the generation, delivery or consumption of electrical energy, that may be levied or payable from time to time. These charges/taxes/duties, if any, shall be payable and borne by the Consumer in addition to the tariff of the electrical energy consumed. In the event such charges are paid by the Company, the Consumer shall reimburse the same to the Company

## 11. PAYMENT

- a) The Company shall raise a tariff memo or a supplementary memo within 2 days from the Metering Date of each Billing Period for the electrical energy delivered or deemed to be delivered during that Billing Period and deliver such tariff memo to the Consumer along with the meter reading statement. The tariff memo shall separately indicate amounts payable by the Consumer on account of the aggregate Fixed Charges and the aggregate Variable Charges for such Billing Period and any other charges which may be payable by the Consumer (including any charges which may be payable by the Consumer on account of the power factor disincentives or for additional drawl or surcharge or for any taxes or duties). The Consumer shall make the payment of the tariff/supplementary memo in full within 5 days of the receipt of such tariff/supplementary memo from the Company. Where there is a discrepancy/dispute which relates to a certain part of the tariff/supplementary memo then the Consumer shall bring to the notice the discrepancy or dispute and both parties will resolve the same within 7 days of bringing it to the notice. If any refund or adjustment as may be applicable will be completed within 7 days of resolution of the dispute.
- b) If any payment which is due and payable is not made by the Consumer on or before the due date of payment as specified in this Agreement or if no due date is specified, within 5 days from the date of receipt of demand from the Company, the Consumer shall be liable to pay interest on all such delayed payments which shall be 2.5% (two point five percent) over and above the [insert name of Bank] Prime Lending Rate per annum on the outstanding amount.
- c) The Consumer shall, 90 days before the Scheduled COD procure an irrevocable standby revolving letter of credit in favour of the Company from a scheduled bank as a security of its payment obligations in terms of this Agreement. Such letter of credit shall be for an amount of 2 months of Fixed and Variable Charges at a 100% PLF ("**Security Amount**").

The following draw conditions shall apply to the letter of credit:

- (i) a Customer Event of Default
- (ii) failure to make payment as per clause 10 (a)
- (iii) termination of the Agreement by Customer for convenience.
- (iv) Failure by consumer to renew L/C 14 days before the expiry of the same.

The Consumer shall ensure that each letter of credit shall have an expiry date of twelve (12) months from the date of its issue and that successive letters of credit shall thereafter be issued for successive periods of twelve (12) months each, each such letter of credit shall be for an amount not less than the Security Amount. The Consumer shall arrange to keep the L/C valid and enforceable throughout the term of this Agreement.

The cost of procuring such letter of credit, confirmation charges and keeping it valid & enforceable throughout the term of this agreement shall be to the account of the Consumer.

## 12. FORCE MAJEURE

- a) For the purpose of this Agreement, Force Majeure shall mean any of the events or circumstances or a combination thereof that prevents or delays either Party in the performance of its obligations under the Agreement and, which is beyond the reasonable control of the affected Party and could not have been avoided even if the affected Party had taken reasonable care, and shall include but not be limited to Change in Law, flood, atmospheric disturbance, lightning, storm, typhoon, tornado, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other act of God; wars (whether declared or undeclared), fire, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbance, a force majeure event under the Fuel Supply Agreement (if applicable), a force majeure event under the Plant engineering, procurement and construction contract; and any non-discriminatory acts of Government or compliance with such acts, rules regulations which directly affect the Company's ability to perform its obligations under this Agreement. For the avoidance of doubt it is agreed that any unforeseen event which results in prohibiting the Company from operating the Plant and or the Transmission Line shall be considered to be an event of Force Majeure under this Agreement.
- b) **Exclusions to Force Majeure:** The following events shall not constitute Force Majeure except to the extent that they result directly from an event of Force Majeure:
  - (i) Late delivery to the Company of machinery, equipment, materials, spare parts or consumables
  - (ii) A delay in the performance of the Contractor
  - (iii) Normal wear and tear or breakdown in equipment; or

- (iv) Labor disputes, including strikes, works to rule, go-slows or lockdowns involving a dispute between a Party and its own employees regarding wages, working conditions and similar matters that are not part of an event described in Clause 12 (a)
- c) Upon the occurrence of an event of Force Majeure, the affected Party shall notify the other Party in writing within 10 days of the commencement thereof giving particulars and satisfactory evidence in support of its claim. For the avoidance of doubt it is clarified that the failure to give notice within 10 days of commencement of an event of Force Majeure shall not affect the right of the affected party to claim Force Majeure thereafter prospectively. Upon discontinuance of such event of Force Majeure, the affected Party shall, within 24 hours of such discontinuance, intimate the other Party of such termination.
- d) Except as expressly provided in this Agreement neither Party shall be responsible or liable for any breach of the provisions of this Agreement due to its failure or delay in performing its obligations hereunder due to the occurrence and continuance of an event of Force Majeure for such period as the effect of such an event of Force Majeure continues. The Company's and Consumers obligations under this Agreement shall be extended by a period equal to the duration of the Force Majeure (plus the consequences thereof). The affected Party shall be excused from performance of its obligations under the Agreement, for so long as the effects of the relevant event of Force Majeure continue and only to the extent that such Party's performance is prevented, hindered or delayed, provided that such affected Party shall use reasonable efforts to mitigate the effect of an event of Force Majeure upon the performance of its obligations under the Agreement.
- e) **Payment during Force Majeure:** Upon the occurrence of any Force Majeure Event after the Commercial Operation Date that affects the ability of the Company to make capacity available or the ability of the Consumer to take delivery of capacity, then during any Force Majeure event, the Consumer shall pay tariff corresponding to the net electrical output delivered to the Consumer during such Force Majeure event,
- f) If an event or circumstance meeting the aforesaid definition of Force Majeure affects the performance of the contractors of the Company in relation to this Agreement, the same shall be treated as an event of Force Majeure under this Agreement affecting the performance of the Company.
- g) Notwithstanding anything contained herein above, if an event of Force Majeure occurs and is likely to continue for a period in excess of 30 days, the Parties shall meet to discuss the consequences of such Force Majeure event and the course of action to be taken to mitigate the effects thereof or to be adopted in the circumstances.

- h) Notwithstanding anything contained anywhere in this Agreement, if an event of Force Majeure continues for more than 180 continuous days from the date of occurrence of such event, either Party can terminate this Agreement by giving a 30 days prior notice in writing of its intention to terminate in which event all the obligations of both the Consumer and the Company except as otherwise expressly set out in clause 14.5(a) hereinafter shall forthwith cease on such termination.

### **13. REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants as to itself that:

- a) It is a duly organized and validly existing entity under the laws of Maldives and has all requisite legal right, corporate power and authority to execute and deliver this Agreement and to carry out the terms, conditions and provisions hereof;
- b) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provisions of, or constitute a default under any other agreement or instrument to which it is a party or by which its property may be bound or does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, government authority or arbitrator applicable or relating to the Consumer, its assets or its business; or its Clauses of association, constitutional documents or any indenture, contract or agreement to which it is a party or by which it or its property is bound;
- c) this Agreement constitutes its valid, legal and binding obligation, enforceable in accordance with the terms hereof except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and the principles of equity in general; and
- d) there are no actions, suits or proceedings pending or to its knowledge, threatened against or affecting the Party before any court or administrative body or arbitral tribunal which might adversely affect its ability to carry out its obligations under this Agreement.

### **14. EVENTS OF DEFAULT AND TERMINATION**

#### **14.1. Consumer's Default**



The occurrence and continuation of any of the following events, unless any such event occurs as a result of Force Majeure or a breach by the Company of any of its obligations under the Agreement, shall constitute a **“Consumer Event of Default”**:

- a) the Consumer fails to pay any sum payable under this Agreement for 30 days from the due date for payment;
- b) the Consumer fails to take or stops accepting from the Plant, electrical energy, for a continuous period of 45 days;
- c) any dissolution of the Consumer, except where such dissolution is for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Consumer under this Agreement and provided that such resulting entity expressly assumes all such obligations;
- d) the Consumer assigns or purports to assign or transfer its rights and/or obligations hereunder, except where such transfer is pursuant to law and does not affect the ability of the transferee to perform all the obligations of the Consumer under this Agreement and provided that such transferee expressly assumes all such obligations;
- e) the Consumer commits a breach of this Agreement.

#### **14.2. Company’s Default**

The occurrence and continuation of any of the following events, unless any such event occurs as a result of Force Majeure, Emergency or a breach by the Consumer of its obligations under the Agreement, shall constitute a **“Company Event of Default”**:

- a) the dissolution of the Company pursuant to law, except where such dissolution is for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Company under the Agreement and provided that such resulting entity expressly assumes all such obligations;
- b) the transfer, pursuant to law, of the rights and obligations of the Company hereunder or all or a substantial portion of the assets or undertakings of the Company, except where such transfer does not affect the ability of the transferee to perform all the obligations of the Company under the Agreement and provided that such transferee expressly assumes all such obligations;
- c) The Company fails to deliver electrical energy to the Consumer continuously for a period of 45 days; and

- d) The Company commits a breach of this Agreement that results in the Company not supplying electrical energy to the Consumer as agreed to under this Agreement.
- e) failure to provide or maintain the Letter of Credit as set out in Clause 11(c)

#### **14.3. Notice of default**

- a) Upon the occurrence of Consumer's Event of Default or Company's Event of Default, as the case may be, the Company or the Consumer, as the case may be, may deliver a notice in writing to the other Party ("**Notice of Default**") within a period of 15 days, which shall specify in reasonable detail the Consumer Event of Default or the Company Event of Default, as the case may be, giving rise to the Notice of Default.
- b) Following the issue of a Notice of Default, the Parties shall consult each other for a period up to 15 days having regard to all the circumstances as to what steps shall be taken with a view to mitigate the consequences of the relevant event and prevent the recurrence of the same.

#### **14.4. Notice of termination**

At the expiry of the period as provided in Clause 14.3(b), unless the Parties shall have otherwise agreed or in the event of default giving rise to the Notice of Default has been remedied during such period, the Party issuing the Notice of Default shall have a right to terminate this Agreement by giving [a 15 days prior]notice in writing of its intention to terminate and on expiry of which period of notice this Agreement shall stand terminated if the default is not remedied within such notice period. Till such time this Agreement is terminated in accordance with provisions hereof, the Company shall, except in case of Clause 14.1 (a) and b), continue to supply electrical energy and the Consumer shall be liable to pay in accordance with this Agreement for electrical energy actually supplied.

#### **14.5. Consequences of expiry or termination**

- a. Upon termination of this Agreement, except the provisions of Clauses 16 and 20(e) and the respective rights and obligations of the Parties which have come into existence before the date of such termination, all other provisions shall cease to have any effect, subject to the other provisions of this Clause 14.5.
- b. Termination of this Agreement for any reason shall not relieve or affect the rights or remedies of either Party in relation to any accrued rights or unperformed obligations, arising prior to or upon such termination. The

provisions of this Agreement relating to such rights and remedies and the exercise thereof, shall survive the termination of this Agreement.

- c. It is further clarified that notwithstanding sub-clause (a) above, in the event this Agreement is terminated for any reason due to a Consumer Event of Default, the Consumer shall continue to pay the Minimum Payment Obligation until the Consumer arranges an alternate off-taker, who agrees to off-take electrical energy from the Plant on similar terms and conditions as contained in this Agreement.

## **15. RIGHT TO ASSIGN**

Neither Party shall assign or transfer its rights or obligations under this Agreement in part or in whole to any third party except with the prior written consent of the other party except for as provided hereunder:

The Company may assign its rights and/or obligations under this Agreement to the Lenders without the prior consent of the Consumer in connection with the financing of the Plant and to enable Lenders to exercise their rights under the Financing Agreements;

and

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to their respective assigns as permitted herein.

## **16. CONFIDENTIALITY**

- a. Each of the Parties shall hold in confidence the very existence of this Agreement and all other agreements relating to the Plant and all documents and other information, whether technical or commercial which is confidential in nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of the Plant and shall not, without the consent of the other Party, save as required by law or appropriate regulatory authorities publish, otherwise disclose to third parties or use the same for its own purpose otherwise than as may be required to perform its obligations under this Agreement.
- b. The provisions of paragraph (a) above shall not apply to (i) any information in the public domain otherwise than by breach of the Agreement; (ii) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; (iii) information obtained from

a third party who is free to divulge the same and which is not obtained under any obligation of confidentiality and (iv) disclosure to any regulatory authority, prospective lenders or investors in the Company or to the professional advisors of the Parties hereto or of such lenders or investors.

## **17. RESOLUTION OF DISPUTES**

### **17.1. Good Faith Negotiations**

In the event of a dispute, disagreement or difference (a "Dispute"), arising out of or relating to the Agreement, between the Parties, either Party may give to the other Party a written notice setting out the material particulars of the Dispute and requiring the senior executives of the Consumer and the Company, to meet personally, within 10 days of the date of receipt of such notice by the relevant Party, to attempt in good faith negotiation and using their best endeavors at all times, to resolve the Dispute; and if the Dispute is not resolved within a period of 20 days from the first meeting of the senior executives of the Parties or senior executives of the Parties do not meet within the aforesaid period to resolve the Dispute, then the provisions of Clause 17.2 shall apply.

### **17.2. Arbitration**

- a) All Disputes arising out of or in any manner relating to this Agreement, unless specifically excluded or resolved as per Clause 17.1, shall be settled exclusively and finally by arbitration. It is specifically understood and agreed that any Dispute that cannot be resolved between the Parties shall be submitted to arbitral tribunal in accordance with the provisions of this PPA or any statutory modifications or re-enactment thereof.
- b) The arbitration tribunal shall consist of three Arbitrators. Each Party shall appoint one Arbitrator, and the third Arbitrator shall be appointed by the aforesaid two Arbitrators so appointed by the Parties. If within 30 days of the receipt of a party's notification of the appointment of an Arbitrator, the other party has not notified the first party of the Arbitrator it has appointed, the first party may itself appoint the second Arbitrator. The third Arbitrator will be appointed by the two existing Arbitrators within 30 days of appointment of the second Arbitrator.
- c) The venue of Arbitration shall be Male unless otherwise mutually agreed to between the Parties.

d) The language to be used in the Arbitration shall be the English language.

17.3. Notwithstanding the proceedings contemplated in Clause 17.1 or Clause 17.2, the rights and obligations of each Party under the Agreement shall continue to be in full force. Each Party agrees and undertakes not to delay or withhold the payment of dues owing to the other Party during pendency of proceedings contemplated in Clause 17.1 or Clause 17.2.

**18. APPLICABLE LAW AND JURISDICTION**

This Agreement shall be governed by the laws and regulations of Maldives and subject to Clause 17.2, the courts in Male shall alone have the exclusive jurisdiction.

**19. NOTICES**

a) All notices, requests, consents, demands, waivers or other communications shall be in writing in the English language and shall be sent by hand delivery to the addresses set forth below, by courier, or facsimile (provided that confirmation of the transmission is received) to the addresses set forth below:

b) Notice to Consumer shall be delivered or addressed as follows:

Fax No.: -----  
Attention: -----  
-----,  
-----,  
-----,  
-----

Tel -----  
Fax: -----

c) Notice to the Company shall be delivered at address- as follows:

-----  
-----  
-----  
-----

Tel: -----  
Fax: -----

d) The Parties may at any time designate by like notice hereunder-other addresses to which notices and other communications should be transmitted.

- e) All notices shall be sent by registered speed post/reputed courier or through facsimile or electronic mail with proof of delivery/transmission. All notices shall be effective: (i) if sent by facsimile or electronic mail, on receipt of confirmation of the transmission; and (ii) if sent by registered or certified mail shall be deemed to be delivered on the fifth day from their posting.

## **20. MISCELLANEOUS**

- a) Third parties: This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement nor confer any right of suit or action whatsoever on any third party.

### **b) AMENDMENT AND WAIVER**

No amendment, modification or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Parties hereto. The failure of any Party to enforce any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way effect the right of any Party thereafter to enforce each and every provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other subsequent breach.

### **c) ENTIRE AGREEMENT**

This Agreement and its Annexures shall constitute the entire agreement between the Parties and shall supersede all prior negotiations, representations, proposals and agreement, whether oral or written, regarding the subject matter of this Agreement except for the Subscription Agreement.

### **d) SEVERABILITY**

The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement. In the event certain provisions of this Agreement are held invalid, the Parties agree to execute such amendments as would nearly give effect to the intention of the Parties, unless such invalidity and unenforceability substantially alters the underlying intent of this Agreement, or where the invalid or unenforceable clause or provision comprises an integral part of or are otherwise inseparable from the remainder of this Agreement.

### **e) LIMITATION OF LIABILITY**

Either Party disclaims any liability for matters not expressly covered in this Agreement. Save as otherwise expressly provided herein, either Party shall not be liable for any incidental, indirect, consequential losses connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including for any loss of revenues,

incomes or profits, any increased expenses or reduction in or loss of production.

**IN WITNESS WHEREOF**, the representatives of the Parties to this Agreement being duly authorized have hereunto set their hands and have executed these presents this

[ ], 201--.

Signed for an on behalf of  
-----,  
By:

-----  
-----

In the Presence of:

-----  
-----

Signed for an on behalf of  
-----

BY:

-----  
-----

In the Presence of:

-----

**Annexure I: Assumptions for Tariff Computation and Variables**

*To be inserted as appropriate for the plant/technology*

## ANNEXURE – II: Tariff Computation<sup>1</sup>

*To be inserted as appropriate for the plant/technology*

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<sup>1</sup> This should also cover payment structure when (the capacity is shared among various utility or non-utility consumers) and consumer draws in excess of its contracted capacity



### **Annexure III: Disincentives based on Average Power Factor**

#### Disincentives in case the average power factor falls below 90%

1. If the average monthly power factor falls below 80%, the Consumer shall, for each one percent by which the average monthly power factor falls below 70%, in addition pay a penalty of 1% (one percent) on the total amount billed under tariff memo.
2. If the average monthly power factor falls below 75%, the Consumer shall, for each one percent by which the average monthly power factor falls below 60%, in addition pay a penalty of 2% (two percent) on the total amount billed under tariff memo.
3. If the average monthly power factor falls below 70%, the Company reserves the right to discontinue the delivery of electrical energy till steps are taken to correct the same to the satisfaction of the Company

**Annexure IV – Description of Consumers Infrastructure Facilities**

*<Consumer to specify the details of the connection facilities available at the consumer premises for connecting with the Company's plant>*

**Annexure IV – Description of Generator’s Infrastructure Facilities**

*<Company to specify the details of the generation facilities available at the plant premises for connecting with the Customers Infrastructure Facilities>*