

**Government of  
Democratic Socialist Republic of Sri Lanka**

**Ministry of Power & Energy**

**CEYLON ELECTRICITY BOARD**

**Request for Proposals**

**Development of 100 MW<sub>AC</sub> Solar Park Facility at  
Siyambalanduwa on Build, Own and Operate (BOO) Basis and  
Construction of 132 kV Transmission Facility on Turnkey Basis**

**VOLUME IV**

**DRAFT CONTRACT FOR DEVELOPMENT OF TRANSMISSION  
FACILITY**

Issued on: 22<sup>nd</sup> August 2022  
Bid No.: TR/RED&PM/ICB/2022/002/C  
Employer: Ceylon Electricity Board  
Country: Sri Lanka

Ceylon Electricity Board  
P.O. Box 540,  
Colombo 02,  
Sri Lanka.

**Contract for Development of Transmission Facility**

**between**

**the Ceylon Electricity Board**

**and**

**xxxxxxx (pvt) ltd**

**132 kV Transmission Line from proposed collector sub-station at Solar Park in  
Siyambalanduwa to existing Monaragala Grid Sub-station, Siyambalanduwa Collectotr Sub-  
station and Upgrading of Monaragala Grid Sub-station**

ref: .....

This Contract for Development of Transmission Facility (hereinafter called "Transmission Agreement") is made on this day .....of .....2021, at Colombo in Sri Lanka

**BY and BETWEEN**

THE CEYLON ELECTRICITY BOARD (hereinafter called "CEB"), a body corporate established under the Ceylon Electricity Board Act, 1969 (Act No. 17 of 1969) and having its head office at 50, Sir Chittampalam A Gardiner Mawatha, Colombo 2, Sri Lanka, acting through its duly authorized representative [insert]; the party of the First Part;

AND

.....PRIVATE LIMITED (hereinafter called "Project Company"), a company with limited liability and incorporated under the Companies Act No. 7 of 2007 of Sri Lanka having its registered office at ....., acting through its authorized representative [insert], authorized vide board resolution dated [insert] annexed as Exhibit 1.1; the party of the Second Part.

**WHEREAS**

- A. CEB has been established by the Government for the development and co-ordination of the generation, transmission and distribution of electrical energy in Sri Lanka, and is presently engaged in the generation, transmission, distribution and sale of electrical energy in Sri Lanka;

- B. The CEB, with the authority and approval of the Government, has invited proposals through international competitive bidding for;
- B1. the finance, design, engineering, construction, commissioning, operation and maintenance of a 100 MW (AC capacity) Solar PV power plant at Siyambalanduwa in the Monaragala District, Uva Province, Sri Lanka on a build-own-operate basis, and
  - B2. the finance, design, supply, construction, testing, commissioning and handover of 2 × 63 MVA, 33/132 kV step up transformers and all other grid components of Siyambalanduwa collector sub-station, 132 kV overhead transmission line of approximately 25 km from Solar Park to CEB grid sub-station at Monaragala and necessary upgrades at Monaragala grid sub-station for interconnection, on Turnkey basis, hereinafter referred to as the “**Transmission Facility**”. The package will be developed on Turnkey basis,
- C. (...the Bidder (company or the consortium of the companies.....) has responded to the CEB’s invitation by submitting a proposal to CEB for;
- C1. the finance, design, engineering, construction, commissioning, operation and maintenance of a 100 MW Solar PV plant at Siyambalanduwa in the Monaragala District, in the Uva Province, Sri Lanka on a build-own-operate (BOO) basis and CEB has accepted the Project Company’s proposal in accordance with the terms and conditions set forth in the Power Purchase Agreement of even date (“Power Purchase Agreement”) between CEB and the Project Company (“Solar Park Facility”); and
  - C2. the Finance, design, supply, construction, testing, commissioning and handover of 2 × 63 MVA, 33/132 kV step up transformers and all other grid components of Siyambalanduwa collector sub-station, 132 kV overhead transmission line of approximately 25 km from Solar Park to CEB grid sub-station at Monaragala and necessary upgrades at Monaragala grid sub-station and CEB has accepted the Project Company’s proposal in accordance with the terms and conditions set forth in this Transmission Agreement.
- D. (...the Bidder company or the consortium of the company.....) has duly incorporated the Project Company under the Companies Act No. 7 of 2007 for;
- D1 the purpose of development and construction of the Transmission Assets, and
  - D2. the finance, design, engineering, construction, commissioning, operation and maintenance of a 100 MW (AC capacity) Solar PV power plant at Siyambalanduwa in the Monaragala District, Uva Province, Sri Lanka on a build-own-operate basis.
- E. The Preliminary Obligations Bond in favour of CEB was issued by..... on

..... on behalf of the Project Company in respect of the Solar Park Facility and the Transmission Assets.

- F. The Transmission Assets are planned to meet CEB's Long Term Transmission Development Plan (LTTDP). Generally, CEB's transmission plans are published every 2 (two) years. Public Utility Commission of Sri Lanka (PUCSL) (established by the Public Utility Commission of Sri Lanka Act of 2002) has granted approval to CEB as 'Transmission Licensee' order to proceed with the development of the Transmission Assets.

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Transmission Agreement the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following.

**NOW IT IS HEREBY AGREED** as follows.

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Transmission Agreement unless the context otherwise requires:

**1.1.1 Agree:** provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;

**1.1.2 Definitions:** words, phrases and expressions defined in Schedule 1 (Definitions) shall have the defined meaning in the whole of this Transmission Agreement including the recitals;

**Headings:** the headings in this Transmission Agreement are for ease of reference only and shall not be deemed part of or be taken into consideration in the interpretation or construction of this Transmission Agreement;

**1.1.3 Include and Including:** the words "include" and "including" is to be construed as being at all times followed by the words "without limitation";

**1.1.4 Negative Obligations:** any obligation not to do anything includes an obligation not to permit or cause that thing to be done;

**1.1.5 Party and Parties:** each of Party to this Transmission Agreement are individually referred to as "Party" and collectively as "Parties" and unless contrary to the context or meaning hereof also mean their respective permitted successors, assigns and transferees;

**1.1.6 Persons:** references to persons include references to individuals, companies, corporations, partnerships, consortiums, firms, joint ventures,

associations, trusts, organizations, governmental or other regulatory bodies or authorities or any other legal entities and their respective permitted successors and assigns;

- 1.1.7 Plural and Singular:** words importing the singular number include the plural and vice versa where the context requires;
- 1.1.8 Masculine and Feminine:** words importing the masculine include the feminine and neuter and vice versa where the context requires;
- 1.1.9 Schedule:** the schedules to this Transmission Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Transmission Agreement;
- 1.2 Schedules, Clauses and Paragraphs:** references to Schedules, Clauses and Paragraphs are references to Schedules, Clauses and Paragraphs of this Transmission Agreement;
- 1.3 Transmission Agreement, Other Agreements or Document:** reference to this Transmission Agreement or to any other agreement or document shall include references to this Transmission Agreement or to such other agreement or document (including recitals and schedules) as may be amended, varied, supplemented, replaced and/or restated in any manner from time to time;
- 1.4 Statutes and Regulation:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it;
- 1.5 Technical Meanings:** words not otherwise defined herein shall have the meanings as commonly used in the English Language. Words that have well-known generally accepted technical or trade meanings in prudent utility practice are used in this Transmission Agreement in accordance with such recognized meanings;
- 1.6 Time:** references herein to time are to Sri Lankan time: and
- 1.7 “Hereof”, “Herein”, and “Hereunder”:** the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Transmission Agreement shall refer to this Transmission Agreement as a whole and not to any particular provision of this Transmission Agreement unless followed by the number of a specific part of the Clause.

## **2. DEVELOPMENT OF TRANSMISSION FACILITY AND HANDOVER**

### **2.1 Development of Transmission Facility**

The Project Company shall undertake the finance, design, supply, construction, testing, commissioning and handover of  $2 \times 63$  MVA, 33/132 kV step up transformers and all other grid components of Siyambalanduwa collector sub-station, 132 kV overhead transmission line of approximately 25 km from Solar Park to CEB grid sub-station at Monaragala and necessary upgrades at Monaragala grid sub-station on the terms and conditions set out in this Transmission Agreement.

### **2.2 Interconnection**

Project Company shall undertake the finance, design, supply, construction, testing and commissioning of the Interconnection; both the Solar Park Facility side of the common coupling and the Transmission Facility side of the common coupling, as shown in the Drawing No. TD/CE/1/211/D/00/01-B of Volume VII Schedule 2. The Project Company shall take account of the cost of the Transmission Facility side of the Interconnection in the cost of Transmission Facility and the cost of the Solar Park Facility side of the Interconnection in the cost of the Solar Park Facility.

## **3. TERM**

### **3.1 Duration and Validity**

The duration and validity of this Transmission Agreement (hereinafter referred to as the "Term") shall commence on the Execution Date and shall continue for a period of ten (10) years from the Commercial Operation Date (COD) of the Project Facility, unless earlier terminated in accordance with this Transmission Agreement and the Implementation Agreement.

### **3.2 Scheduled Commercial Operation Date and Extension of the Commercial Operation Date**

#### **3.2.1 Scheduled Commercial Operation Date**

The scheduled commercial operations date for the Project shall be the date falling twenty-four (24) months from the Construction Notice ("Scheduled Commercial Operation Date").

#### **3.2.2 Extension of time to achieve Commercial Operation Date**

The Project Company's obligation to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date shall be extended to Day where the Project Company has suffered a delay in designing, constructing and/or testing any part of the Transmission Facility, and the Project Company furnishes evidence that these items have delayed

their critical path as set forth in the Programme of Works, solely as a result of:

(i) Any request made by CEB to defer an inspection or test pursuant to Minimum Functional Specifications; and/or

(ii) delay or failure by CEB in performing any of its obligations under this Transmission Agreement or the Right of Way Agreement.

**3.2.3** The Project Company shall not be entitled to the benefit of Clause 3.2.2 where, and to the extent that, a delay or failure by CEB in performing its obligations under this Agreement and/or the Right of Way Agreement as applicable, results from a delay or default or act of commission or omission on the part of the Project Company or is concurrent with a delay or default or act of commission or omission on the part of the Project Company in respect of any obligation of the Project Company under any Project Agreement.

**3.2.4** The Project Company shall give CEB prompt notice reasonably in advance of any periods of an extension of the Scheduled Commercial Operation Date pursuant to its rights hereunder and shall use all reasonable endeavors to reduce such delays.

#### **4. THE PRELIMINARY PERIOD AND THE OBLIGATIONS OF THE PARTIES**

##### **4.1 CEB's Obligations during the Preliminary Period**

During the Preliminary Period, CEB shall, at its sole cost and expense

**4.1.1** use all reasonable efforts to negotiate with the Prospective Finance Parties and enter into the Direct Agreement within sixty Days of receipt of a draft thereof, provided that a failure by the CEB to enter into the Direct Agreement shall not be construed as a breach of its obligations under this Clause 4.1.1;

**4.1.2** provide the Project Company with all reasonable assistance for the Project Company to obtain and maintain in accordance with the Laws of Sri Lanka, all Governmental Approvals required during the Preliminary Period to be obtained and maintained by the Project Company for the financing, design, construction of the Transmission Assets and for upgrades at Monaragala grid sub-station ("Monaragala Grid Sub-station Upgrade"). The reasonable assistance to be provided by the CEB to the Project Company will generally be in the form of providing, at the Project Company's request, correspondence to the relevant Competent Authority to support the Project Company's application to obtain or maintain such Governmental Approval. Notwithstanding the foregoing, the Project Company shall be solely

responsible for the procurement of each Government Approval required, except as expressly stated otherwise in the Transmission Agreement;

- 4.1.3** grant approvals which are required to be issued by CEB as applicable provided that the Project Company has fulfilled all requirements necessary for obtaining such approvals;
- 4.1.4** obtain and maintain in accordance with the Laws of Sri Lanka, all Governmental Approvals as are required to be obtained and maintained by the CEB to perform its obligations during the Preliminary Period in accordance with this Transmission Agreement;
- 4.1.5** make the Transmission Line Corridor and Monaragala Grid Sub-station Site available for relevant investigations;
- 4.1.6** within twenty-one Days of receiving any written request from the Project Company, provide any such available information as the Project Company may reasonably require including information relating to the supply of electricity during the Construction Period under Clause 5.11, for the purpose of preparing the Programme of Works. During the same period the CEB may make reasonable requests for other information to be incorporated into the Programme of Works;
- 4.1.7** within thirty Days of receipt from the Project Company of the draft Programme of Works, provide its reasonable comments (if any) and discuss and agree the Programme of Works (which shall be incorporated in the Programme) which the Project Company shall take account of in accordance with Clause 4.2.6;
- 4.1.8** within thirty Days of receipt from the Project Company of the preliminary designs of both the Interconnection Facilities and associated protection measures, provide its reasonable comments (if any) and discuss and agree the preliminary designs. The CEB shall not be entitled to unreasonably withhold its agreement. After expiration of such thirty Day period, such preliminary designs shall be deemed approved by the CEB, unless the CEB has, within such thirty Day period, notified the Project Company that it withholds its approval to such designs, giving reasons therefore. Agreement of CEB under the Power Purchase Agreement shall be deemed approval for the purposes of this Transmission Agreement;
- 4.1.9** provide any information in the possession of the CEB reasonably required by the Project Company for the purpose of securing financing for the Transmission Facility including information reasonably required by the



Prospective Finance Parties proposing to provide finance to the Project Company for the Project provided that the CEB is legally entitled to do so. The foregoing shall not oblige CEB to furnish any information that CEB deems is 'sensitive';

- 4.1.10** within fifteen Days of the date of this Transmission Agreement, deliver to the Project Company copies of the resolutions of the Board Members of the CEB authorizing the execution, delivery and performance of this Transmission Agreement, duly certified as being true copies by the Secretary to the Board of the CEB;
- 4.1.11** within fifteen Days of the date of this Transmission Agreement, provide a legal opinion from the CEB's counsel in form and substance reasonably satisfactory to the Project Company with respect to the due authority, execution, delivery, performance and enforceability of this Transmission Agreement; and
- 4.1.12** ensure that any information received by the CEB under Clause 4 shall be used by the CEB solely for the purposes of this Transmission Agreement.

#### **4.2 The Project Company's Obligations during the Preliminary Period**

During the Preliminary Period the Project Company shall, at its sole cost and expense

- 4.2.1** appoint as the Turnkey Contractor a contractor from the list in Part 1 of Schedule 4 (List of Contractors and Engineers) and inform the CEB within ten Days of such appointment. If the Project Company wishes to appoint a contractor who is not on the list in Part 1 of Schedule 4 (List of Contractors and Engineers), the contractor must have equivalent or better qualifications than those on the list and in order for the CEB to assess whether the contractor has equivalent or better qualifications than those on the list, the Project Company shall submit to the CEB a completed form Schedule 4 Volume VII of the Request for Proposals. If in CEB's reasonable opinion, the contractor does not have equivalent or better qualifications than those on the list, the Project Company shall select another contractor and submit a completed form of Schedule 4 of Volume VII of the Request for Proposals for consideration by the CEB and this process shall be repeated until in CEB's reasonable opinion, the contractor proposed has equivalent or better qualifications than those on the list;
- 4.2.2** obtain and furnish the CEB with copies of all Governmental Approvals which are required by the Project Company for the financing, design and construction of the Transmission Assets and undertaking the Monaragala Grid Sub-station Upgrade. Provided however, the CEB shall be responsible for applying and procuring the approval for construction of Lattice Towers;

- 4.2.3** deliver to the CEB for non-objection a copy of the technical specifications contained in the Turnkey Contract which shall conform to the Minimum Functional Specification. The CEB shall not be entitled to object except on the grounds of non-conformity with the Minimum Functional Specifications and or Good Design, Engineering and Construction Practices. Unless the CEB notifies the Project Company of its objections within 30 Days of delivery of the technical specifications, the CEB will be deemed to have no objection;
- 4.2.4** submit to the CEB pursuant to Clause 4.1.7, the Programme of Works (which shall be incorporated in the Programme) to amongst other things implement the Plans and Drawings, and any reasonable requests submitted to the Project Company by the CEB pursuant to Clause 4.1.7, provided such requests do not require the Project Company to perform its obligations other than in accordance with Good Design, Engineering and Construction Practices;
- 4.2.5** submit to the CEB for agreement pursuant to Clause 4.1.8, preliminary designs of both the Interconnection Facilities and associated protection measures, which designs shall take into account, to the extent consistent with the Minimum Functional Specification, any reasonable requests submitted to the Project Company by the CEB pursuant to Clause 4.1.8, provided they do not require the Project Company to perform its obligations other than in accordance with Good Design, Engineering and Construction Practices. Performance by Project Company with requirements under the Power Purchase Agreement in this regard shall be deemed performance for the purposes of this Transmission Agreement;
- 4.2.6** deliver to the CEB evidence in the form of a certificate endorsed by the Project Company and all its shareholders confirming that the Required Equity shall be invested in the Project Company, on or before the Construction Notice including details of by whom and through which persons such Required Equity shall be invested;
- 4.2.7** deliver to the CEB evidence of Financial Closure in the form of a certificate, endorsed by the Project Company and the Finance Parties, confirming that financing for the Transmission Facility has been secured in keeping with the terms of this Transmission Agreement and that, in accordance with the provisions of the Financing Agreements, the conditions required for first drawdown of funds thereunder have either been satisfied or waived by the Finance Parties;
- 4.2.8** use all reasonable efforts to work with the CEB and the Prospective Finance Parties in the negotiation of and entry into the Direct Agreement;

- 4.2.9** deliver to the CEB copies of the Project Company's Articles of Association, duly certified as being true copies by the Company Secretary or other authorized officer of the Project Company within fifteen Days of the date of this Transmission Agreement;
- 4.2.10** deliver to the CEB copies of the resolutions of its Board of Directors authorizing the execution, delivery and performance of this Agreement, duly certified as being true copies by the Company Secretary or other authorized officer of the Project Company at the time of executing the Transmission Agreement on the Execution Date;
- 4.2.11** provide a legal opinion from the Project Company's legal counsel in form and substance reasonably satisfactory to the CEB with respect to the due authority, execution, delivery, performance and enforceability of this Transmission Agreement at the time of executing the Transmission Agreement on the Execution Date;
- 4.2.12** at all times ensure that reasonable safety precautions are taken to safeguard the Parties or third parties, or their property, from damage, loss or injury arising out of or in connection with any investigations with respect to Transmission Line Corridor and Monaragala Grid Sub-station Site;
- 4.2.13** take necessary precautions to adhere to conditions stipulated in Environmental Management Plan during the Construction Period;
- 4.2.14** no later than 10 Days after execution of the Turnkey Contract provide the CEB a copy of the Turnkey Contract entered into between the Turnkey Contractor and the Project Company;
- 4.2.15** conduct investigations and studies as listed in Schedule 19 (which shall form part of the Proposal) to derive information about the Transmission Facility sufficient to, inter alia, obtain permits, secure financing and facilitate effective warranties of Turnkey Contractor performance;
- 4.2.16** carry out all that is required to perform in accordance with its Proposal unless the obligation, undertaking or requirement is superseded by a Clause in this Transmission Agreement; and
- 4.2.17** ensure that any information received by the Project Company under Clause 4 shall be used by the Project Company solely for the purposes of this Transmission Agreement.

#### **4.3 Exchange of Information**

Each Party shall keep the other informed in writing of the progress being made in respect of its obligations under this Clause 4 on the reasonable request of the other Party.

#### **4.4 Waiver of Obligation**

A Party shall only be relieved of any of its obligations under Clause 4.1 or Clause 4.2, as the case may be, with the prior agreement of the other Party.

#### **4.5 Extension of Preliminary Period**

Subject to the Project Company extending the validity of the Preliminary Obligation Bond until the Construction Notice is issued and the Construction Performance Bond has been provided, the Preliminary Period shall stand extended;

**4.5.1** upon the prior agreement of the Parties; or

**4.5.2** by the period of delay in performance of either Party's obligations under this Clause 4 as a result of Force Majeure subject to a maximum extension of one hundred and eighty Days; or

**4.5.3** subject to a maximum extension of one hundred and eighty Days, by the period of any delay in the performance of the Project Company's obligations under this Clause 4 caused directly by;

- (i) breach by the CEB under this Transmission Agreement or the Right of Way Agreement; or
- (ii) breach (which the Project Company shall notify to the CEB as soon as practicable after the occurrence thereof) by the Government of their obligations to the Project Company under the Implementation Agreement.
- (iii) delay in obtaining Governmental Approvals, when this delay is not attributable to the Project Company.

**4.5.4** subject to a maximum extension of one hundred and eighty Days by the period of delay in achieving the Financial Closure by the Project Company beyond the end of the Preliminary Period caused by delay in entering into of the Direct Agreement when this delay is not attributed to the Project Company.

#### **4.6 Construction Notice**

If, on or before the end of the Preliminary Period, the Parties fulfil their respective obligations under Clauses 4.1 and 4.2 or as waived under Clause 4.4, the Project Company shall promptly issue to the CEB the Construction Notice.

#### **4.7 Termination of this Transmission Agreement at the end of the Preliminary Period**

**4.7.1** If, at the end of the Preliminary Period, a Party shall have not fulfilled its obligations arising under this Clause 4 or the unfulfilled obligations have not been waived in accordance with Clause 4.4, the other Party may terminate this Transmission Agreement at any time thereafter forthwith on notice to the other.

**4.7.2** Subject to Clause 4.8.2, in the event of termination in accordance with Clause 4.7.1, neither Party shall be liable to the other for any losses, costs and expenses (including legal and consultative expenses) of the other howsoever arising under or in connection with this Transmission Agreement by virtue of such termination or in respect of any other losses, costs and expenses (including legal and consultative expenses), including those relating to negotiation, due diligence, arranging finance and its other obligations under this Clause 4.

#### **4.8 Preliminary Obligation Bond**

**4.8.1** The Preliminary Obligation Bond shall be valid until the Construction Performance Bond is delivered to the CEB pursuant to Clause 5.3.2(i). If the terms of the Preliminary Obligation Bond specify its expiry date, and the Project Company has not issued a Construction Notice by that expiry date and the Construction Performance Bond has not been provided to the CEB, the Project Company shall extend the validity of the Preliminary Obligation Bond until the Construction Notice is issued and the Construction Performance Bond has been provided. In the event that the Preliminary Obligation Bond is not so extended within five Business Days before the expiry date of the bond, the CEB shall have the right to call on the Bond and in such event, the CEB shall pay the proceeds into a special purpose bank account. The CEB shall be entitled to withdraw funds from that account to satisfy any default by the Project Company in the same manner as if the Bond was in place. All interest accruing from the account shall belong to the CEB. The CEB shall return to the Project Company the balance of monies in the account after a new Preliminary Obligation Bond is delivered to the CEB.

**4.8.2** Subject to Clause 4.8.3, if;

- (i) this Transmission Agreement is terminated by the CEB under Clause 4.7.1 in respect of an obligation of the Project Company which the Project Company has not fulfilled; and
- (ii) such non-fulfilment is not due to the CEB not having fulfilled any of its obligations under Clause 4.1 or breach by the Government of their obligations to the Project Company under the Implementation Agreements,

CEB shall be entitled to draw the full amount of the Preliminary Obligation Bond upon presentation to the issuer of such Bond of a certificate signed by the General Manager of the CEB or any officer authorized by the General Manager of the CEB stating that the CEB is entitled to draw on the Preliminary Obligation Bond in accordance with this Clause 4.8.2.

**4.8.3** If this Transmission Agreement is terminated by the Project Company under Clause 4.7.1 in respect of an unfulfilled obligation of the CEB, the CEB shall forthwith upon such termination return to the Project Company the Preliminary Obligations Bond without making any drawing thereunder.

**4.8.4** Project Company acknowledges that the Preliminary Obligation Bond under the Power Purchase Agreement and this Transmission Agreement is common, and therefore, consequences in respect thereof under the Power Purchase Agreement may have affect under this Transmission Agreement.

#### **4.9 Site Inspection and Works Due Diligence**

The following provisions shall apply to inspection of the Transmission Line Corridor, Siyambanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site and due diligence in preparation for the Works;

**4.9.1** the Project Company shall be deemed, prior to executing this Transmission Agreement, to have;

- (i) inspected and examined the Transmission Line Corridor and the Monaragala Grid Sub-station Site and its surroundings;
- (ii) satisfied itself as to the nature of the climatic, hydrological and general conditions of the Transmission Line Corridor, Siyambanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site, the nature of the ground and subsoil, the form and nature of the Transmission Line Corridor, Siyambanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site, the nature of materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for execution of the Works;
- (iii) satisfied itself as to the access to and through the Transmission Line Corridor and the Monaragala Grid Sub-station Site and the accommodation it may require and the possibility of interference by third parties with access to or use of the Transmission Line Corridor, Siyambanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site or execution of the Works at the Transmission Line Corridor and the Monaragala Grid Sub-station Site;
- (iv) satisfied itself as to the nature and limitations of the existing electrical grid and requirements of the CEB Grid Code; and
- (v) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the completion of the Works and its obligations to design, construct complete, commission, and test the Transmission Facility and its other obligations in respect of the Transmission Facility under this Transmission Agreement.

- 4.9.2** unless expressly provided in this Transmission Agreement, the Project Company shall not be relieved from any risks or obligations imposed on or undertaken by it in relation to the Works on the grounds that;
- (i) any designs, plans, documents or other materials (including the Programme of Works) had been provided to or made available to the CEB; or
  - (ii) it did not, or could not, foresee any matter that may affect or have affected the design, construction, completion, testing and Commissioning of the Transmission Facility or the meeting of its obligations in respect of the Works under this Transmission Agreement.

## **5. THE CONSTRUCTION PERIOD AND OBLIGATIONS OF THE PARTIES**

### **5.1 Access and Occupation**

**5.1.1** The CEB shall provide for the Project Company access to and use of the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site in accordance with the Right of Way Agreement.

**5.1.2** The Project Company shall be responsible for transportation of all plant, equipment and materials to the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site, as the case may be, and shall meet the costs of all Works save those expressly stated in this Transmission Agreement as being the responsibility of other Party. The Project Company, in preparing its Proposal is deemed to have informed itself of the access routes and all issues and costs involved in performing its responsibilities and has included in its Proposal the cost of all temporary and permanent works reasonably required for transporting all loads to the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site, as the case may be.

### **5.2 The Project Company's Warranties**

The Project Company warranties that

**5.2.1** it has fully considered and accepts the Minimum Functional Specification; and

**5.2.2** the design of the Works and each part of the Works and the Transmission Facility once completed will in all respects meet the requirements of this Transmission Agreement, the Minimum Functional Specification and, without limiting the generality of the foregoing, Good Design, Engineering and Construction Practices and Prudent Utilities Practice.

- 5.2.3** The equipment for the Meters, Transmission Assets, Siyambalanduwa Collector Sub-station Site, Monaragala Grid Sub-station Site, and related equipment and their installation, commissioning and testing furnished under this Transmission Agreement, and the use thereof by CEB in accordance with the terms and conditions of this Transmission Agreement, will not infringe (whether directly, contributorily, by inducement or otherwise), misappropriate or violate any patent, designs, trademark, copyright, trade secret, know how or any other intellectual property right of any third-party, or violate the laws, regulations or orders of any governmental or judicial authority.
- 5.2.4** its performance of any installation, commissioning and testing, will be of a professional quality, be provided by an adequate number of qualified individuals with suitable training, education, experience and skill in performing such kind of services, conform to the Good Design, Engineering and Construction Practices and Prudent Utilities Practice, and that its performance of such services shall conform to the, timeframes, electricity outage requirements, specifications and descriptions agreed between the Parties. CEB for the purpose of this Transmission Agreement relies on the skill of the Project Company as a necessary condition for the fulfilment of this Transmission Agreement.
- 5.2.5** there shall be a defects liability period of one year, for which the Project Company is liable to remedy any defects of the entire Transmission Facility at no cost to the CEB. In case of a defect of the Transmission Facility within this defects liability period, installments payments for the Transmission Facility shall be withheld until the defects are remedied in accordance with the relevant technical standards

### **5.3 The Project Company's Obligations during the Construction Period**

- 5.3.1** The Project Company shall have the following principal obligations at its sole cost and expense in respect of construction of the Transmission Facility;
- (i) The Project Company shall be responsible for the finance, design, construction, completion, testing and Commissioning of the Transmission Facility such that the Transmission Facility satisfies the Minimum Functional Specification and, without limiting the generality of the foregoing, shall do so in strict accordance with this Transmission Agreement, Good Design, Engineering and Construction Practices and Prudent Utilities Practice, and, notwithstanding any examination, inspection, receipt of information, attendance at meetings, or approval or non-objection by or on behalf of the CEB, the Project Company's responsibilities



under this Transmission Agreement shall not be relieved or absolved or otherwise modified; and

- (ii) The Works will comprise only materials and goods which are new, of a quality that renders them fit for their purpose and comply with the Minimum Functional Specification and all workmanship shall be in accordance with Good Design, Engineering and Construction Practices.

**5.3.2** Without limiting the generality of the Project Company's obligations under Clause 5.3.1 during the Construction Period, the Project Company shall;

- (i) Simultaneous with the issuance of the Construction Notice, deliver the Construction Performance Bond and copies of the Financing Agreements to the CEB. The Project Company shall ensure that the Construction Performance Bond is maintained at the designated level at all times and is valid and enforceable until the Project Company has executed and completed the Works, and remedied any defects. If the Construction Performance Bond is called upon, the Project Company shall have ten Days to replenish the Construction Performance Bond so as to return it to the original level. In the event that the Construction Performance Bond is not extended or replenished as the case may be, the CEB shall have the right to call on the bond and in such event, the CEB shall pay the proceeds into a special purpose bank account. The CEB shall be entitled to withdraw funds from that account to satisfy any default by the Project Company in the same manner as if the bond was in place. All interest accruing from the account shall belong to the CEB. The CEB shall return to the Project Company the balance of monies in the accounts after a new Construction Performance Bond is delivered to the CEB. Project Company acknowledges that the Construction Performance Bond under the Power Purchase Agreement and this Transmission Agreement is common, and therefore, consequences in respect thereof under the Power Purchase Agreement may have affect under this Transmission Agreement;
- (ii) not permit the Turnkey Contractor to sub-contract the whole or substantially the whole of the Works to a single contractor without the prior written consent of the CEB, which consent shall not be unreasonably withheld. The Project Company shall furnish to the CEB sufficient information of the experience and qualifications of the contractor to whom the Turnkey Contractor is proposing to sub-contract the whole or substantially the whole of the Works when seeking such consent. The CEB shall give its response within

fifteen Days of receipt from the Project Company of a request for such consent provided that if no such consent is received by the Project Company within such fifteen Day period, the CEB shall be deemed to have granted such consent unless the CEB notifies the Project Company within such fifteen Days of receiving such request for consent that it reasonably withholds its consent, giving reasons therefor;

- (iii) not terminate the Turnkey Contract without prior written notice to the CEB of such termination giving reasons therefor;
- (iv) ensure that reasonable safety precautions are taken to safeguard persons or property of the Parties or third parties from damage, loss or injury arising out of or in connection with the construction of the Transmission Facility;
- (v) adhere to the conditions stipulated in the Environment Clearance Certificate and EIA report, which shall have been procured by CEB;
- (vi) in accordance with local standards for such Works;
  - (a) provide reasonable security for the Works including the erection and maintenance of security fencing and access points; and
  - (b) ensure that the security of the Works can be maintained independently of adjoining areas and the public roads; and at all times take into consideration and cooperate with any security arrangements that the Government may put in place;
- (vii) be responsible for the safe storage and safe removal and disposal of all toxic, hazardous and dangerous materials brought on to the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and/or the Monaragala Grid Sub-station Site for the purposes of the construction and Commissioning of the Transmission Facility;
- (viii) not later than one hundred and eighty Days prior to the Scheduled Commercial Operation Date of the Transmission Facility, develop and furnish to the CEB a quality control programme acceptable to the CEB covering all aspects of the operation and maintenance of the Transmission Facility;
- (ix) deliver to the CEB authenticated copies of manufacturers' test certificates of PV panels, power inverters, transformers, and electricity metering equipment and other plant equipment included in the Transmission Facility;
- (x) not later than 60 Days from the Execution Date, submit to the CEB for approval pursuant to Clause 5.9, the final design of the Interconnection Facilities which shall comply in all material respects with the preliminary design for the Interconnection

Facilities approved by the CEB pursuant to Clause 4.1.7 and shall accommodate any reasonable requests submitted to it by the CEB pursuant to Clause 5.9 to the extent such requests are consistent with the Minimum Functional Specification including the CEB's Grid Code, Guide for Grid Interconnection of Embedded Generators and such preliminary design previously approved by the CEB;

- (xi) in addition to those technical specifications previously delivered to the CEB under Clause 4.2.5, deliver to the CEB copies of all technical specifications relating to the Transmission Facility which are available to the Project Company, including plant layout, final design data and specifications for the Transmission Facility together with descriptions of manufacturers' plant and equipment, and auxiliary equipment for the Transmission Facility, all of which are to conform with the Minimum Functional Specification;
- (xii) provide to CEB any requested electricity outage timeframes at least 60 days prior to any outage and comply with any electricity outage requirements agreed to or imposed by CEB;
- (xiii) take all steps to provide and maintain independent surface water drainage at the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site so as to safeguard the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site, and any other adjoining land against the risk of flooding;
- (xiv) maintain the conditions of the Environmental License in accordance with Environmental Law and comply with the requirements of the Environmental Approval;
- (xv) comply with the requirements of the approval for construction of the Lattice Towers;
- (xvi) obtain and maintain all Governmental Approvals (to the extent not already obtained) which can be obtained prior to the commencement of the Operational Period and which are required by the Project Company for Commissioning of the Transmission Facility;
- (xvii) provide all relevant information and assistance to the CEB as may be required by CEB to obtain all Governmental Approvals (to the extent not already obtained) in relation to the operation and maintenance of the Transmission Facility;
- (xviii) carry out all that is required to perform in accordance with its Proposal unless the obligation, undertaking or requirement is superseded by a Clause in this Agreement; and
- (xix) comply with the Laws of Sri Lanka.

### **5.3.3 Compliance with the CEB Grid Code and Applicable Regulations for Transmission Systems**

The Project Company shall comply with the CEB's Grid Code and Guide for Grid Interconnection of Embedded Generators and the ESQC Regulations as it relates to the Transmission Facility, subject to any variation there from previously granted to the Project Company by CEB in writing.

## **5.4 Progress Reports and Meetings**

The following provisions shall apply to progress reports and meetings;

**5.4.1** during the Construction Period, the Project Company shall submit to the CEB;

- (i) a progress report prior to the fifteenth of each month summarising progress of the Works preferably using MS Project Scheduling software (which report may comprise any report prepared for the Finance Parties by the Engineer and not previously provided to the CEB, summarising progress of construction of the Interconnection Facilities and the Works) and highlighting by reference to key activities, outage dates and milestone dates and the critical path for the development of the Transmission Facility all actual or potential departures from the Programme of Works or delays to execution of the Works. Each such report shall also state the proposed measures to be taken by the Project Company to mitigate or overcome such departures or delays and if any steps taken by the Project Company to meet its obligations under this Clause causes the CEB to incur additional costs, such costs shall be recoverable from the Project Company by the CEB, and may be deducted by the CEB from any monies due, or to become due, to the Project Company; and
- (ii) such other information as the CEB may reasonably require to be furnished by the Project Company to enable the CEB to ascertain whether the Project Company is in compliance with the Minimum Functional Specification and Good Design, Engineering and Construction Practices and Prudent Utilities Practice and such other matters relating to the co-ordination between the obligations of the Project Company pursuant to this Agreement and the obligations of the CEB hereunder during the Construction Period.

**5.4.2** during the Construction Period, the Parties shall hold progress meetings each month and, during periods of intense construction activity at the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site or the Monaragala Grid Sub-station Site, as the case may be, at more regular intervals as the CEB may reasonably request to review matters relating to

the construction of the Transmission Facility, such meetings to be held at such times as may be agreed by the Parties; and

- 5.4.3** the CEB shall provide such information as may reasonably be requested by the Project Company in relation to the CEB's obligations during the Construction Period under this Transmission Agreement.

## **5.5 Access and Facilities for the CEB**

The following provisions shall apply to the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and Monaragala Grid Sub-station Site access and facilities for the CEB during the Construction Period;

- 5.5.1** the Project Company shall provide the CEB and its duly authorised representatives access during normal working hours (and outside normal working hours if reasonably required in the opinion of the CEB) to all parts of the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and the Monaragala Grid Sub-station Site and to any site or workshop where materials are being manufactured for the Works for the purposes of general inspection, attending any test or investigation being carried out in respect of the Works and determining the progress of the Works, provided that;

- (i) all relevant safety procedures are complied with;
- (ii) reasonable advance notice has been given to the Project Company;
- (iii) execution of the Works shall not be disrupted by such access; and
- (iv) in the case of access to sensitive areas of manufacture, the personnel having access to such areas shall sign such individual confidentiality agreements as the relevant manufacturer may reasonably require.

- 5.5.2** the Project Company shall;
- (i) give the CEB not less than three Business Days notice of any progress meetings at the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site and/or the Monaragala Grid Sub-station Site, as the case may be, with the Turnkey Contractor required to be held pursuant to the Turnkey Contract, including all such meetings at which the Engineer or any representative thereof proposes to attend, and shall ensure that the

CEB and its duly authorised representatives shall have the right to attend such meetings; and

- (ii) where any other progress meetings (of a substantial nature) are convened with the Turnkey Contractor to discuss issues having a significant impact on the Programme of Works, notify the CEB of such meeting within such time as is practicable in the circumstances and the CEB and its duly authorised representatives shall have the right to attend, in person or on remote basis, any such meeting;

## **5.6 Extension of Time for Completion of the Works**

**5.6.1** Subject to this Clause 5.6, the Project Company shall be entitled to give notice of its request to have the Scheduled Commercial Operation Date fairly and reasonably adjusted to a later date by any period for which achievement of the Commercial Operation Date by the Project Company is or will be delayed solely by reason of;

- (i) Sri Lanka Force Majeure;
- (ii) Non-Sri Lanka Force Majeure;
- (iii) breach by the CEB of its obligations under this Transmission Agreement or the Right of Way Agreement (provided such breach is not attributable to any act of omission or commission by the Project Company);
- (iv) any delay, impediment or prevention caused by or attributable to the CEB, or the CEB's personnel;
- (v) breach by the Government of its obligations under the Implementation Agreement (provided such breach is not attributable to any act of omission or commission by the Project Company);

in each case to the extent that such delay is not overcome by the Project Company complying with Clause 5.6.6.

**5.6.2** If the Project Company considers itself to be entitled to an extension of time, the Project Company shall give notice in writing to the CEB describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty-eight Days after the Project Company became aware, or should have become aware, of the event or circumstance. If the Project Company fails to give notice of a claim within such period of twenty-eight Days, neither the Scheduled Commercial Operation Date be extended, nor shall the Project Company be entitled to additional payment, and the CEB shall be discharged from all liability in connection with the claim;

**5.6.3** Not later than fourteen Days after giving notice in accordance with Clause 5.6.2, the Project Company shall submit full written supporting details to the CEB, which shall include;

- (i) a statement identifying which of Clauses 5.6.1(i) to (v) (inclusive) gives rise to any adjustment of the Scheduled Commercial Operation Date;
- (ii) a detailed explanation of the events or circumstances giving rise to any delay referred to in Clause 5.6.1;
- (iii) details of the resulting delay to achievement of the Scheduled Commercial Operation Date by reference to the Programme of Works, the key milestone dates and the critical path for the development of the Transmission Facility as determined preferably using MS Project Scheduling software, which details shall identify any period by which the progress of the Works had already been delayed due to reasons not referred to in Clause 5.6.1;
- (iv) details of the evidence, including contemporary records, reports and other such data, which the Project Company may maintain in respect of such delay and the consequences thereof and the CEB shall be given reasonable access to such evidence so as to allow the CEB to verify the information provided by the Project Company pursuant to this Clause 5.6.3; and
- (v) details of any measures which the Project Company has adopted or proposes to adopt in compliance with Clause 5.6.6 to mitigate the consequences of such delay.

**5.6.4** Upon receipt by the CEB of a notice of a claim for extension of time and the details referred to in Clause 5.6.3, the CEB shall investigate the claim. If

- (i) the CEB determines that the Project Company is not entitled to an extension of time, the CEB shall notify the Project Company as soon as practicable and in any event within fourteen Days of receipt by the CEB of the details referred to in Clause 5.6.3;
- (ii) the claim is found to be valid, the CEB shall so notify the Project Company of the extension to be granted to the Company within fourteen Days of receipt by the CEB of the details referred to in Clause 5.6.3 which extension shall be fair and reasonable. If the Project Company disagrees with the extension granted the Parties shall meet within 7 days of the Project Company receiving the extension granted by CEB to consider in good faith the period of the extension to be granted to the Project Company. The CEB and the Project Company shall act fairly, impartially and reasonably in relation to all matters under this Clause.

- 5.6.5** If, under Clause 5.6.4, the CEB informs the Project Company that it is not entitled to an extension of time or the Parties are unable within such fourteen Days to reach agreement as to the period of any delay or extension, the matter shall be referred to Arbitration under Part 2 of Schedule 15 (Disputes Resolution Procedure) unless the Parties agree to refer the matter to an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).
- 5.6.6** The Project Company shall take all reasonable steps to mitigate any delay referred to in Clause 5.6.1 and the Project Company shall not be entitled to any extension of time unless it has taken proper and reasonable steps both to preclude the occurrence of the cause of the delay and/or to avoid or minimize the consequences thereof.
- 5.6.7** Except as set out in Clauses 5.6.1(iii) and (iv), the Project Company shall have no claim against the CEB, including any claim for damages, costs, losses and expenses in respect of delay arising from the events referred to in Clause 5.6.1.
- 5.6.8** Notwithstanding that the Project Company has not given the required notices under this Clause 5.6, the CEB may, at any time, by notice to the Project Company, extend the Scheduled Commercial Operation Date, in the event that the CEB is of the opinion that, by reason of the effect of any one or more of the causes of delay referred to in Clause 5.6.1 or otherwise, the Works or any part of it has been delayed and the Project Company will by reason thereof need an extension of time within which to complete the Works or any part of it.

## **5.7 Testing, Commissioning and Completion of the Transmission Facility**

### **5.7.1 Commissioning and Test Procedures**

- (i) The Project Company shall be responsible for the testing and commissioning of the Transmission Facility in accordance with Schedule 6 (the “Test Procedures”) and shall carry out all acceptance tests thereunder. No later than ninety (90) Days prior to the scheduled commencement of the Commissioning Tests, the Project Company shall provide CEB with detailed Test Procedures in accordance with Schedule 6.
- (ii) The Project Company shall provide to CEB, within fifteen (15) Days after the Commercial Operation Date, a report of all test results for the Commissioning Tests duly certified by Engineer.

- 5.7.2** Not less than sixty (60) Days prior to the date on which the Project Company intends to begin Commissioning the Transmission Facility, the Project



Company shall prepare and submit to the CEB for its approval of the Commissioning Test, which approval shall not to be unreasonably withheld, a commissioning programme and a testing plan containing the following;

- (i) details of the dates on which it wishes to commence each individual Commissioning Test, (each a "Test") in accordance with Schedule 6 (Testing and Commissioning Procedure for Project Facility); and
- (ii) in respect of each Day of each proposed Test (a "Proposed Testing Day"), a schedule detailing the proposed commencement and duration of the specific tests to be conducted (each such schedule of operation being a "Testing Schedule").

**5.7.3** Within seven Days of receipt by the CEB of a Testing Schedule, the CEB shall notify the Project Company of any proposed amendments to such schedule and the CEB and the Project Company shall promptly consult in respect of such schedule. The Testing Schedule shall be promptly revised by the Project Company to incorporate amendments as may be agreed between the Parties, (referred to as "Permitted Changes").

**5.7.4** The Project Company shall promptly notify the CEB and provide the CEB with details of any change to the Testing Schedule specifying details of any change to any Proposed Testing Day (the "Revised Testing Day") during any Hour of any Revised Testing Day (such notice to be given as soon as reasonably practical after the Project Company becomes aware of the necessity for the change and, in any event, at least forty eight Hours before any Revised Testing Day). If the Revised Testing Day;

- (i) is;
  - (a) no later than two Days after the Proposed Testing Day; or
  - (b) no earlier than two Days before the Proposed Testing Day,

the CEB shall, as soon as reasonably practical and, in any event, within twenty four Hours of receipt of such notice, confirm its approval to the Revised Testing Day provided always that the CEB may require amendments to such changes which shall be limited to Permitted Changes;

- (ii) is more than two Days but less than seven Days;
  - (a) after the Proposed Testing Day; or
  - (b) before the Proposed Testing Day but at least seven Days after such notice;

the CEB shall (subject to requiring Permitted Changes) as soon as reasonably practical and, in any event, within forty-eight hours of

receipt of such notice confirm its approval to the Revised Testing Day provided that the CEB cannot reasonably accommodate the Revised Testing Day, such Revised Testing Day shall be deemed to be the later of the Revised Testing Day or seven days after the date of receipt by the CEB of such notice;

- (iii) is more than seven Days after the Proposed Testing Day, the CEB shall, subject to requiring Permitted Changes, as soon as reasonably practical and, in any event, within forty-eight Hours of receipt of such notice confirm its approval to such Proposed Testing Day;  
in each case unless otherwise agreed by the Parties (acting reasonably).

**5.7.5** If, for any reason affecting or attributable to the CEB, a Test (or any part of a Test) cannot be conducted, such Test (or part thereof) shall be carried out at the later of;

- (i) any Hour nominated by the CEB within seven Days of the Proposed Testing Day or the Revised Testing Day (as the case may be), such Hour to be as soon after such Day as the CEB can reasonably accommodate such Test;
- (ii) such later time as the Project Company may specify.

**5.7.6** If the incorporation of the CEB's amendments to the Testing Schedule pursuant to Clauses 5.7.4 or 5.7.5 delays the achievement of Commercial Operation Date beyond the Scheduled Commercial Operation Date, the Scheduled Commercial Operation Date shall be adjusted provided that;

- (i) in respect of any such delay, the CEB shall be liable to the Project Company for delay for the period commencing on the time when the Project Company proposed such Test to occur (in the case of amendments to a Testing Schedule proposed by the CEB in accordance with Clauses 5.7.4 or 5.7.5) or when the Test should have occurred (in the case of postponement in accordance with Clause 5.7.5) and ending at the earlier of the time when such Test is carried out or the Hour nominated by the CEB for the carrying out of such Test.

**5.7.7** On written certification by the Engineer (which shall be copied to the CEB and the Project Company) confirming that the Transmission Facility achieves all the requirements as contained in Schedule 5 and the Minimum Functional Specification for commercial operation the Project Company shall promptly issue to the CEB a completion certificate (each a "Completion Certificate") certifying that the Transmission Facility is capable of commercial operation.

**5.7.8** The Project Company shall provide the CEB with copies of the test results of all tests performed pursuant to this Clause 5.7.

**5.8 Energy During Tests**

Prior to the Commercial Operation Date of the Transmission Facility, CEB shall accept all energy injected to the Transmission Line at the Interconnection Point by the Solar Park Facility during the Commissioning Test. Project Company shall not be entitled to any charges in respect thereof. On and from the Commercial Operation Date of the Transmission Facility, CEB shall accept energy injected to the Transmission Line at the Interconnection Point during any test and such energy shall constitute Electrical Input for purposes of this Transmission Agreement.

**5.9 Interconnection**

The following provisions shall apply to the Interconnection Facilities during the Construction Period;

**5.9.1** the Project Company shall, by the date specified in the Programme of Works, install, commission and complete, at its cost the Interconnection Facilities so as at all times to comply with Schedule 5 (Minimum Functional Specification) and the CEB shall give such access across its property in accordance with the Right of Way Agreement as will enable the Project Company to install, Commission and complete the Interconnection Facilities;

**5.9.2** the Project Company shall include a summary of its progress in constructing the Interconnection Facilities in its monthly progress reports submitted to the CEB in accordance with Clause 5.4.1(i), shall complete the Interconnection Facilities in accordance with the Programme of Works and promptly obtain from the Engineer a certificate confirming that the Interconnection Facilities are functional and conform to Schedule 5 (Minimum Functional Specification), and the recommendations of the Grid Impact Study and the Protection Study. The Project Company shall give to the CEB a copy of such certificate;

**5.10 Commercial Operation Date**

**5.10.1** The Project Company shall ensure that Commercial Operation Date occurs on or before the Scheduled Commercial Operation Date;

**5.10.2** If the Project Company does not undertake the Works so that the Transmission Facility achieves the Commercial Operation Date on or before the Scheduled Commercial Operation Date, then, at its sole cost and expense, the Project Company shall take all such reasonable measures as the

Project Company may determine to be necessary to achieve such Commercial Operation Date as soon as is reasonably practicable;

- 5.10.3** If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date (for the avoidance of doubt taking into account all adjustments thereto pursuant to Clause 5.6), the Project Company shall be liable to pay the CEB by way of liquidated damages the Project Company Delay Charge, calculated in accordance with Clause 10.1 and payable in accordance with Clause 8.2.1.

## **5.11 The Project Company's Electricity Requirements during the Construction Period**

- 5.11.1** CEB may supply electrical energy to the Project Company within ninety Days on receipt of an application from the Project Company for a supply of electrical energy from the CEB System at 33 kV level in such quantum as may be required for the purpose of construction of Transmission Facility. The Project Company shall make the payments to the CEB for the electrical connection supply within a week on receipt of the invoice from the CEB. Such amounts of electrical energy shall be supplied and charged to the Project Company by CEB on the same terms and condition including tariff applicable to supply of electrical energy at 33 kV by CEB to its industrial consumers at the time of supply and shall be payable by the Project Company to CEB in accordance with such terms and conditions. Notwithstanding the foregoing, the Project Company shall be responsible for arranging electricity generator to meet the electricity requirements during the Construction Period. Insufficient or interrupted supply or failure to supply electrical energy by CEB to the Project Company shall not be considered a breach on the part of CEB.

- 5.11.2** The amount of electrical energy supplied by the CEB to the Project Company shall be determined in accordance with Schedule 7 (Metering).

## **5.12 Operational Procedures**

- 5.12.1** No later than ninety (90) Days prior to the Scheduled Commercial Operation Date, the Project Company shall provide CEB with a draft copy of the proposed written operational procedures for the Transmission Facility ("Operational Procedures"), consistent with the CEB Grid Code and Guide

for Grid Interconnection of Embedded Generators, to serve as the basis for the Operational Procedures to be developed by CEB.

**5.12.2** The Operational Procedures shall:

- (i) take into proper account and be consistent with the design of the Solar Park Facility and other requirements specified in Schedule 5;
- (ii) incorporate operating and maintenance procedures specified or recommended by the Transmission Facility equipment suppliers and manufacturers in their respective operating manuals;
- (iii) be consistent with the CEB Grid Code, the Guide for Grid Interconnection of Embedded Generators and the Technical Limits;
- (iv) be consistent with Prudent Utility Practice; and
- (v) provide comprehensive procedures for all operational interfaces between CEB and the Project Company.

**5.13 CEB's Liability for Delays**

**5.13.1** CEB shall be liable to pay the Project Company in respect of delays under Clause 5.6.1 (iii) and (iv), by way of liquidated damages calculated in accordance with Clause 10.1.2 and payable in accordance with Clause 8.2.

**5.13.2** Where any amounts are due to CEB by the Project Company at the time CEB's liability for payment of such liquidated damages arises under this Clause 5.13, the liquidated damages so due by CEB pursuant to this Clause 5.13 shall to the extent possible be deducted by the Project Company from any amount due by the Project Company to CEB.

**5.14 The CEB's Assistance with Consents**

During the Construction Period the CEB shall;

**5.14.1** provide to the Project Company all reasonable assistance to obtain in accordance with the Laws of Sri Lanka, all Governmental Approvals required to be obtained and maintained by the Project Company for the construction and commissioning of the Transmission Facility. The reasonable assistance to be provided by the CEB to the Project Company will generally be in the form of providing, at the Project Company's request, correspondence to the relevant Competent Authority to support the Project Company's application to obtain or maintain such Governmental Approval. Notwithstanding the foregoing, the Project Company shall be solely responsible for the procurement of each Governmental Approval required;

**5.14.2** obtain and maintain, in accordance with the Laws of Sri Lanka, all Governmental Approvals as are required to be obtained and maintained by the CEB for the performance of its obligations during the Construction Period in accordance with this Agreement; and

**5.14.3** grant to the Project Company all CEB Approvals upon proper application made therefore.

## **6. HANDOVER**

### **6.1 Handover**

**6.1.1** As on the Commercial Operation Date the Project Company shall complete the handover of the Transmission Facility to the CEB. Prior to the handover of the Transmission Facility, during the Construction Period, the Project Company shall hold in custody all the Works in respect of the Transmission Facility and upon completion, the Transmission Facility, for the benefit of the CEB. At no point in time shall the Project Company acquire any right, title, interest or claim in respect of the Works or the Transmission Facility.

**6.1.2** The handover of the Transmission Facility by the Project Company to the CEB shall occur as set forth in Schedule 11 (Handover Process).

## **7. TRANSMISSION FACILITY PAYMENT**

### **7.1 Payment by CEB**

**7.1.1** On and from the Commercial Operation Date the Project Company shall be entitled to payment of Transmission Facility Payment, and the CEB shall be liable to pay to the Project Company in accordance with this Paragraph 7 (Transmission Facility Payment), Paragraph 8 (Payment), and Schedule 10 (Financial Evaluation).

## **8. PAYMENT**

### **8.1 Project Company's Invoices**

**8.1.1** The Project Company shall submit an invoice to the CEB no later than 1200 Hours on the fifth Day of January and July (each being referred to as the "Payment Month") or, if such Day is not a Business Day, on the preceding Business Day commencing with the Payment Month following the Contract Month in which the Commercial Operation Date occurs, and such invoice which shall be submitted not less than one hundred fifty Days after the previous invoice (the "Semiannual Invoice") and shall state;

- (i) any other sums due and payable from the CEB to the Project Company under this Transmission Agreement; and
- (ii) the amount of any Sales Taxes, the applicable rate or rates at which Sales Taxes are calculated on the component elements of the amount invoiced and the total sum payable by the CEB inclusive and exclusive of any such Sales Taxes.

**8.1.2** The CEB shall make payment in respect of each Semiannual Invoice within thirty Days of receipt thereof by the CEB.

## **8.2 Invoices in Respect of Delay**

**8.2.1** Pursuant to Clause 5.6.7 the Project Company shall be entitled to submit an invoice to the CEB in respect of any payment due from the CEB to the Project Company in respect of delay to achievement of the Commercial Operation Date, provided that;

- (i) the first such invoice shall be submitted to the CEB no earlier than seven Days after the Commercial Operation Date; and
- (ii) no invoice shall be submitted within seven Days of any other invoice in respect of such delay.

**8.2.2** The CEB shall pay to the Project Company the amount so invoiced (not being Disputed Amounts) within thirty Days of receipt of such invoice.

**8.2.3** Pursuant to Clause 5.10.3, the CEB shall be entitled to submit an invoice to the Project Company in respect of any payment due from the Project Company to the CEB in respect of delay to achievement of the Commercial Operation Date, provided that;

- (i) the first such invoice shall be submitted to the Project Company no earlier than seven Days after the Commercial Operation Date; and
- (ii) no invoice shall be submitted within seven days of any other invoice in respect of such delay.

**8.2.4** The Project Company shall pay to the CEB the amount so invoiced (not being Disputed Amounts) within thirty Days of receipt of such invoice.

## **8.3 Sales Tax**

For all payments made under this Transmission Agreement shall be calculated net of Sales Taxes that attach to such payments and (where payable) such Sales Taxes as attach to the payments shall then be added to such payments.

## **8.4 Withholding of Tax Sums**

The CEB shall withhold from the amounts due to the Project Company under this Transmission Agreement any amount which the CEB is obliged to withhold pursuant to the Laws of Sri Lanka on account of taxes (other than Corporate Taxes) payable by the Project Company, provided that the CEB promptly gives the Project Company the appropriate certificates showing all amounts withheld, the tax authorities to whom such amounts have been paid and where the Project Company is entitled to a reimbursement, provides all reasonable assistance to the Project Company in obtaining such reimbursement.

## **8.5 Late Payment**

Subject to Clause 8.6, if any amount payable by the CEB or the Project Company under this Transmission Agreement is not paid on or before the due date therefor or is not paid by the CEB under the CEB Letters of Credit for any reason, the Party in default of its payment obligation shall pay interest thereon (compounded monthly) from the due date until the date of payment calculated as follows.

**8.5.1** for any payments due to either Party in Foreign Currencies, at a rate equal to the Reference Interest Rate plus 1.5 percent per annum; and

**8.5.2** for any payments due to either Party in Rupees, at a rate equal to the Sri Lanka Prime Rate plus 1.5 percent per annum.

## **8.6 Disputed Payments**

**8.6.1** Each Party agrees it shall only in good faith dispute amounts specified in any invoice delivered hereunder.

**8.6.2** If the CEB disputes any amount specified in any invoice from the Project Company or the Project Company disputes any amount specified in any invoice from the CEB (a "Disputed Amount"), the CEB or the Project Company, as the case may be, shall;

- (i) within fourteen Days of receipt of such invoice, give notice to the other of the dispute and details of the Disputed Amount to the other Party; and
- (ii) pay any undisputed amount in that invoice on or before the due date therefor.



- 8.6.3** Subject to Clause 8.6.5, if, pursuant to Clause 8.6.2, either Party disputes any amount, the Parties shall, in accordance with the procedure set out in Clause 16.1.1, use reasonable endeavours to resolve that dispute within fourteen Days of receipt of notice under Clause 8.6.2(i).
- 8.6.4** Subject to Clause 8.6.5, if a dispute under Clause 8.6.2 is not resolved within the fourteen Day period specified in Clause 8.6.3, then, in accordance with Clause 16.1.2, such dispute shall be submitted for resolution by an Expert pursuant to Part 1 of Schedule 15 (Disputes Resolution Procedure) unless the Disputed Amount is for a sum in excess of US Dollars 200,000 in which case it will be referred to arbitration pursuant to Part 2 of Schedule 15 (Disputes Resolution Procedure).
- 8.6.5** Where the CEB disputes the amount specified in any Semiannual Invoice or any invoice issued pursuant to Clause 8.1 or the Project Company disputes the amount due to the CEB pursuant to any invoice issued pursuant to Clause 8.2, the Party disputing the amount shall forthwith pay the Disputed Amount into an interest earning Rupee escrow account established at a bank in Sri Lanka for that purpose by the Parties pursuant to the Escrow Agreement.
- 8.6.6** Amounts paid by either Party to any escrow account established under Clause 8.6.5 (and any interest thereon) shall be repaid as necessary to the Parties upon final resolution of the dispute in accordance with the terms of the decision of the Expert or Tribunal as the case may be or terms otherwise agreed in writing by the Parties.

## **8.7 Letters of Credit**

**8.7.1** The following provisions shall apply to the giving of the CEB Letters of Credit:

- (i) no later than two Days before:
  - (a) the Commercial Operation Date; and
  - (b) each Contract Year,

the CEB shall establish in favour of the Project Company two irrevocable and unconditional standby letters of credit (the "CEB Letters of Credit") issued by a bank in Sri Lanka reasonably acceptable to the Project Company and in the form set out in Part A of Schedule 12 (Form of CEB Irrevocable Standby Letters of Credit), one to be denominated in US Dollar (the "US Dollar Letter of Credit") and one to be denominated in Rupees (the "Rupee Letter of Credit"). The CEB Letters of Credit shall have stated amounts calculated in accordance with Clause 8.7.1(iv), each CEB Letter of Credit shall be available to be drawn for a period of not less than twelve Contract

Months from its first stated date of validity and the CEB shall cause the CEB Letters of Credit to be renewed or replaced by letters of credit in the same form not later than thirty Days prior to their respective expiry;

- (ii) the Project Company may draw upon the CEB Letters of Credit provided the Project Company gives the CEB at least seven Days prior notice in writing that the amount is due and owing:
  - (a) in any amount which the CEB fails to pay (not being a Disputed Amount) three Days following the date of the notice; and
  - (b) in full, if the CEB Letters of Credit are not renewed or replaced in accordance with Clause 8.7.1(i);
  
- (iii) if the Project Company draws the full amount of any of the CEB Letters of Credit pursuant to Clause 8.7.1(ii)(b), the Project Company shall deposit the whole of such drawn amounts into two interest bearing accounts, denominated respectively in Rupees and US Dollar, established with a reputable bank in Sri Lanka and notified by the Project Company to the CEB by no later than 2 Days from the date on which the Letters of Credit should have been renewed and which shall be used solely for this purpose by the Project Company and designated "[ ] (Private) Limited, re the CEB Letter of Credit", ("L/C Deposit Accounts"). The Project Company shall not charge or otherwise grant security interests in favour of any person (other than the Finance Parties) over, or in respect of, deposits held in the L/C Deposit Accounts. Details (including supporting bank statements) of the L/C Deposit Accounts and of any payment into or from, and the balances from time to time on, such accounts shall be provided to the CEB upon its request. The Project Company shall hold any amounts so drawn and credited to the L/C Deposit Accounts to be applied first in payment of amounts (not being Disputed Amounts) then due and payable by the CEB to the Project Company under this Transmission Agreement and the balance, if any, shall remain on deposit in the L/C Deposit Accounts as security for the CEB's performance of its obligations under this Agreement and such amounts held in such L/C Deposit Accounts may only be used by the Project Company in the same circumstances as those allowing the Project Company to draw upon the CEB Letters of Credit pursuant to Clauses 8.7.1(ii)(a). The remaining balance (if any) together with accrued interest shall be returned to the CEB (or paid in accordance with the CEB's directions) promptly after the CEB has re-established the CEB Letters of Credit;

- (iv) the amount of each US Dollar Letter of Credit and Rupee Letter of Credit required to be maintained throughout the Transmission Facility Payment Period shall have an amount (the "L/C Amount") equal to the US Dollar component and the Rupee component, of the Transmission Facility Payment.
- (v) in the event of any dispute at any time as to the calculation of the L/C Amount for any CEB Letter of Credit, such dispute shall be resolved by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

## **8.8 The Project Company Bank Accounts**

- 8.8.1** Details of the Project Company Nominated Bank shall be notified by the Project Company to the CEB for the CEB's approval, together with details of the Rupee Conversion Account and Rupee Ordinary Account not later than thirty Days prior to Scheduled Commercial Operation Date and thereafter no later than thirty Days before any proposed change in such details.
- 8.8.2** Any approval of the CEB required under Clause 8.8.1 shall not be withheld unless the Reference Exchange Rate and/or the rates of commissions and bank charges charged from time to time on the conversion of Rupees to US Dollar are materially more than the corresponding rates and/or charges available from other similar banks to the proposed Project Company Nominated Bank.

## **9. CHANGES IN LAW**

### **9.1 Meaning of Change in Law Event**

A Change in Law after the date of this Transmission Agreement shall constitute a change in law event (a "Change in Law Event") if such Change in Law:

- 9.1.1** causes the Project Company to meet more stringent Environmental Requirements applicable to the Transmission Facility;
- 9.1.2** causes the Project Company to have to carry out any material capital improvements or other modifications to the Transmission Facility;
- 9.1.3** affects the ability of the CEB to accept electrical energy in accordance with the Minimum Functional Specification and/or CEB Grid Code;

- 9.1.4** relates to the BOI Law and the regulations made thereunder pursuant to which the Project Company has been granted certain benefits, exemptions and privileges;
- 9.1.5** affects the rights or obligations of the Finance Parties or the Project Company under the Financing Agreements, in relation to the cost of financing the Transmission Facility through the imposition of exchange controls or currency restrictions; or
- 9.1.6** results in the Project Company requiring Governmental Approvals not previously required from any Competent Authority, or the amendment or modification of existing Governmental Approvals by any Competent Authority, with respect to the performance of its obligations under this Agreement.
- 9.1.7** relates to taxes including Income Tax, VAT, NBT and ESC.

## **9.2 Consequences of Change in Law Event**

- 9.2.1** If, from the date of this Transmission Agreement the effect of one or more Change in Law Events is to increase the Capital Cost of the Transmission Facility nature paid or incurred by the Project Company during any Change in Law Period by more than US Dollars 100,000 per year;
- (i) the Project Company shall provide the CEB with verifiable evidence of the increase and/or the CEB in its reasonable opinion agreeing that there has been an increase in such costs, the Parties shall agree on an equitable adjustment to the Transmission Facility Payment so that the Project Company shall be in no better or worse a financial position in respect of such costs in excess of the threshold amount specified in Clause 9.2.1(i) or the CEB shall at its option pay to the Project Company any such excess amounts in accordance with an invoice delivered by the Project Company in accordance with Clause 8.1.1(ii).
- 9.2.2** If, in any Change in Law Period, the net effect of one or more Change in Law Events is to reduce the Capital Cost of the Transmission Facility paid or incurred by the Project Company by more than US Dollars 100,000 per year, the Parties shall agree on an equitable adjustment to the Transmission Facility Payment so that the Project Company shall be in no better or worse a financial position in respect of such costs in excess of the threshold amount specified in this Clause 9.2.2 or the Project Company shall

pay to the CEB an amount equal to the amount that such reduction exceeds the amounts stated above.

**9.2.3** For the purposes of calculating the increase or reduction in costs incurred by the Project Company due to a Change in Law Event such amounts shall be calculated:

- (i) in the case of any increase in costs, on the Day on which such additional costs are paid by the Project Company; or
- (ii) in the case of any reduction in costs, the Day on which the relevant costs would have been payable by the Project Company were it not for such Change in Law Event,
- (iii) in each case by reference to the cost in US Dollars (or the US Dollar Equivalent of any Rupee amounts) on such date.

**9.2.4** If the Parties cannot agree on any amount payable in accordance with Clause 9.2.1 or Clause 9.2.2, such amount shall be determined by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure) and in the event that the Parties disagree with the decision of the Expert, either Party may then refer the matter to be determined by the Arbitral Tribunal appointed under Part 2 of Schedule 15 (Disputes Resolution Procedure).

## **10. LIABILITIES AND INDEMNITIES**

### **10.1 Delay Charge**

#### **10.1.1 The Project Company Delay Charge**

If the Commercial Operation Date has not occurred on or before the Scheduled Commercial Operation Date, the delay charge to be paid by the Project Company in respect of delay under Clause 5.10.3 ("Project Company Delay Charge") shall be a sum in liquidated damages of LKR 2,500,000 per Day that the Commercial Operation Date is delayed beyond the Scheduled Commercial Operation Date. These liquidated damages shall be the limit of the Project Company's liability to the CEB, and CEB's sole and exclusive remedy, in respect of such delays and such delays shall not entitle the CEB to terminate this Transmission Agreement in connection therewith other than pursuant to Clauses 13.1.2 and 13.1.3.

#### **10.1.2 The CEB Delay Charge**

If the Commercial Operation Date has not occurred on or before the Scheduled Commercial Operation Date, the delay charge to be paid by the CEB in respect of delay under Clause 5.13 ("CEB Delay Charge") shall be a sum in liquidated damages of LKR 2,500,000 per Day that the Commercial Operation Date is delayed beyond the Scheduled Commercial Operation Date. These liquidated damages shall be the limit of the CEB's liability to

the Project Company, and Project Company's sole and exclusive remedy, in respect of such delays, and such delays shall not entitle the Project Company to terminate this Agreement in connection therewith other than pursuant to Clauses 13.2.2 and 13.2.3.

## **10.2 Indemnification**

### **10.2.1 Personnel Indemnification**

Project Company shall be solely responsible for, and shall protect, defend, indemnify and hold all members of CEB Group harmless from and against any Losses (including legal expenses) arising out of any claims or causes of action for illness or injuries to or death of any employees of any member of Project Company's Group arising out of Works or in any manner occurring in connection with this Transmission Agreement and regardless of whether such illness, injury or death is caused in whole or in part by the active, passive, sole, joint or concurrent negligence of any member of CEB Group, strict liability and including pre-existing conditions or any other theory of liability.

#### **10.1.1 Third Party Indemnification**

The Project Company shall be solely responsible for, and shall protect, defend, indemnify and hold all members of CEB Group harmless from and against any Losses (including legal expenses) arising from the actions, proceedings, claims, demands, costs, expenses, whatsoever arising out of or in connection with the works and all actions, proceedings, claims, demands, costs, expenses which may be made directly or indirectly against CEB for or in respect of or arising out of any failure by the Project Company in the performance of its obligations under this Transmission Agreement.

#### **10.1.2 Property Indemnification**

Project Company shall be solely responsible for, and shall protect, defend, indemnify and hold members of CEB Group harmless from and against any Losses (including legal expenses) arising out of any claims or causes of action for or in connection with damage to of the Works, property, equipment and materials owned or leased by any member of Project Company's Group, irrespective of the cause thereof or reason therefor and regardless of whether such loss or damage is caused in whole or in part by the active, passive, sole, joint or concurrent negligence of any member of CEB Group, strict liability and including pre-existing conditions or any other theory of liability.

#### **10.1.3 Pollution**

Project Company shall be solely responsible for, and shall protect, defend, indemnify and hold harmless all members of CEB Group from and against any and all Losses (including legal

expenses), arising as a result of any pollution or contamination created by or arising or emanating from the Works.

## **10.2 Right to Defend Actions**

The Party having the obligation to indemnify ('Indemnifying Party', and the other Party being referred to as the 'Indemnified Party') may, upon notice to the other Party, assume the defense, where applicable, of any claim referred to in Clauses 10.3 to 10.6. A Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the Indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defense of such claim. The foregoing obligations, indemnities and liabilities assumed by the Parties hereunder shall not be limited by any limits on insurance contained in this Transmission Agreement.

Obligations and rights accrued during the validity of this Transmission Agreement under Paragraph 10 shall survive the termination of this Transmission Agreement.

## **10.3 Indemnified Party not to Compromise**

The Indemnified Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express consent of the Indemnifying Party and, where such consent is not obtained prior to such compromise or settlement, the Indemnifying Party shall be released and discharged from all obligations to indemnify under relevant provision.

## **10.4 No double Recovery**

The Indemnifying Party shall not be liable to provide an indemnity under this Transmission Agreement to the extent that the Indemnified Party has recovered amounts in connection with a matter covered by this Transmission Agreement, under the Power Purchase Agreement or any insurance the Indemnified Party has obtained, it being the intention of the Parties that the Indemnified Party may only recover once in respect of the same liability. If the Indemnified Party is indemnified by the Indemnifying Party and subsequently receives payment in respect of the same liability under such insurance, the Indemnified Party shall immediately pay such amount to the Indemnifying Party.

# **11 INSURANCE BY THE PROJECT COMPANY**

## **11.1 Persons and Property**

Without limiting the Project Company's obligations and responsibilities under this Clause 11, the Project Company shall maintain or procure the maintenance of insurance from the date the Project Company commences any construction activity until the end of the Construction Period

in the name of the Project Company and its contractors and sub-contractors against liabilities for the sickness of, death of or injury to any person (other than an employee of the Project Company or of any of its contractors or sub-contractors) arising out of the construction or commissioning of the Transmission Facility, or the Project Company's performance of this Transmission Agreement. The CEB Group shall be included as loss payee in such the insurance policy obtained pursuant to this Clause.

## **11.1 The Project Company's Employees Compensation Insurance**

The following provisions shall apply to the Project Company's employees compensation insurance:

- 11.1.1 the Project Company shall maintain insurance in respect of claims for the sickness of, death of, or injury to its employees arising out of and in the course of their employment and shall ensure that its contractors and sub-contractors maintain similar insurance in respect of their employees; and
- 11.1.2 the insurance referred to in Clause 11.2.1 shall include workers compensation, temporary disability insurance and other similar insurance required by the Laws of Sri Lanka and all relevant insurance policies shall include an endorsement with respect to voluntary compensation and employers' liability for employees not subject to the workers compensation under the Laws of Sri Lanka. Employers' liability coverage limits should be no less than that provided for under the Laws of Sri Lanka.

## **11.2 The Project Company's Comprehensive Insurance**

- 11.2.1 The Project Company shall, in the name of the Project Company and, as the case may be, the Finance Parties, maintain substantially on the terms set out in Schedule 16 (Minimum Insurance to be Maintained by the Project Company):
  - (i) comprehensive structure, plant and equipment insurance including contractor's all risks insurance and all risk marine insurance covering breakdown, damage or destruction of materials, equipment and the Works;
  - (ii) motor vehicle liability insurance in respect of vehicles, trailers and the like belonging to or under the care, custody or control of the Project Company and the Turnkey Contractor in connection with execution of the Work;
  - (iii) insurance against breakdown, damage or destruction resulting from civil commotion and riot in Sri Lanka and to the extent (subject to Clause 11.3.2) that such insurance is available to it on commercially reasonable terms and conditions. To the extent that such insurance is available in accordance with the foregoing, such insurance shall



be no less than fifteen per cent of the capital value of the Transmission Facility from time to time (such capital value to be agreed by the Parties at the date such insurance is being taken out or the relevant policy is renewed or, in the absence of agreement determined, by an Expert appointed in accordance with Part 1 of Schedule 15 (Disputes Resolution Procedure)).

The CEB Group shall be included as loss payee in such the insurance policy obtained pursuant to this Clause.

- 11.2.2 Where the Project Company determines that the insurance referred to in Clause 11.3.1(iii) is either not available or is not available on commercially reasonable terms and conditions, the Project Company shall provide the CEB with a written summary of why the Project Company has made such determination together with copies of quotations (or responses indicating that the required insurance is not available) received from at least two reputable insurance brokers.
- 11.2.3 Notwithstanding the foregoing, the Project Company shall not be entitled to determine that it has not received any responsive quotations or that there were no quotations offered on commercially reasonable terms and conditions as a result of any breach by the Project Company of its obligations under this Transmission Agreement or the Right of Way Agreement.
- 11.2.4 If there is a dispute between the Parties as to the availability or commercial reasonableness of the terms and conditions of the insurance required to be maintained pursuant to Clause 11.3.1(iii), the dispute shall be referred to an Expert in accordance with the provisions of Part 1 of Schedule 15 (Disputes Resolution Procedure).
- 11.2.5 The Project Company shall ensure that all contractors, subcontractors and vendors providing professional services, effect and maintain in terms acceptable to the CEB professional indemnity insurance covering the work of the contractors, subcontractors and vendors for an amount of 10% of their fee for professional services, whichever is the lesser, for any one claim or series of claims arising from one occurrence.

### **11.3 General Insurance Obligations**

The following provisions shall apply to the Project Company's insurance obligations:

- 11.3.1 subject to the provisions of Clause 11.3, any insurance required to be maintained pursuant to this Clause 11 shall be effected with insurers and in terms agreed in consultation with the CEB and in amounts first discussed by the Parties from time to time or, failing agreement, as shall be determined by an Expert (who shall be appointed in accordance with Part 1 of Schedule 15 (Disputes Resolution Procedure)) to be prudent having regard to the cost and availability of insurance in the market and the Project Company's ability to meet its obligations under this Transmission Agreement without insurance;

- 11.3.2 the insurances shall provide that in the event of a claim, the amount of the cover shall be automatically reinstated to the full cover required by this Transmission Agreement;
- 11.3.3 if the Project Company fails to provide evidence when required that the insurance referred to in Clauses 11.1, 11.2 and 11.3 are in force, the CEB may itself take out such insurance and pay such premiums as may be necessary to maintain it in force. From time to time, the CEB may recover any amount so paid as a debt owed by the Project Company and the CEB may set-off such amount against any payments due from the CEB to the Project Company;
- 11.3.4 the Project Company shall ensure that the interest of the CEB is endorsed on any policy of insurance which provides cover in relation to any liabilities arising out of the performance of the Project Company's obligations under this Transmission Agreement;
- 11.3.5 the insurance policies maintained pursuant to Clauses 11.1, 11.2 and 11.3 shall apply separately to each joint insured as though a separate policy had been issued for each of the joint insured;
- 11.3.6 the Project Company shall make no alterations to the terms of any insurance without the prior written approval of the CEB;
- 11.3.7 The Project Company shall ensure that any policy or policies of insurance obtained by the Project Company pursuant to this Transmission Agreement, shall provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against CEB Group;
- 11.3.8 the Project Company shall promptly supply to underwriters and insurers all documentation and information which they may reasonably require to effect and maintain the insurance required by this Clause 11;
- 11.3.9 to the extent permitted by law, the Project Company shall ensure that all insurance policies place an obligation on the insurer to notify the CEB of the amount of any and all payments made to the Project Company;
- 11.3.10 The Project Company shall provide reinsurance package acceptable to CEB.

#### **11.4 Application of Proceeds of Insurance**

- 11.4.1 The Project Company shall diligently pursue any claims on insurance and shall fulfil the conditions precedent to any such claim.
- 11.4.2 All proceeds of those insurances set out in Clause 11.3.1(i) and (iii), and paragraphs 1 and 2 of Part 1 and paragraphs 1 and 3 of Part 2 of Schedule

16 (Minimum Insurance to be Maintained by the Project Company) shall following receipt thereof by or on behalf of the Project Company be applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment.

11.4.3 In the event of an Early Handover Event, there shall be deducted from the Early Handover Charges:

- (i) all proceeds of those insurances set out in Clause 11.3.1(i) and (iii) and which are received by the Project Company to the extent those proceeds have not been applied in accordance with Clause 11.5.2; and
- (ii) all anticipated proceeds of those insurances set out in Clause 11.3.1(i) and (iii) (as determined by the loss adjuster appointed on behalf of the Project Company or, if such determination is disputed by the CEB, as determined by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure)) in respect of any claims under any insurance policies outstanding at the time of such Early Handover Event unless the rights to such proceeds have been absolutely assigned to the CEB and the Project Company has provided the CEB with all evidence and assistance necessary to pursue any such claim.

11.4.4 Where, following payment of the Early Handover Charges:

- (i) proceeds of those insurances set out in Clause 11.3.1(i) and (iii) are subsequently received by the Project Company from the insurer, then to the extent there has been no deduction of such insurance proceeds pursuant to Clause 11.5.3(ii), the Project Company shall promptly pay those proceeds to the CEB; or
- (ii) any insurance policy set out in Clause 11.3.1(i) and (iii) is avoided by the insurer due to breach by the Project Company of the terms of such policy, the Project Company shall pay to the CEB an amount equal to the insurance proceeds which the CEB should reasonably have received had such policy not been avoided as a result of such breach.

## **12 FORCE MAJEURE**

### **12.1 Meaning of Force Majeure**

12.1.1 The term "Force Majeure" means any exceptional event or circumstance or a combination of exceptional events or circumstances:

- (i) which is beyond a Party's control;

- (ii) which the Party claiming Force Majeure could not reasonably have provided against before entering into this Transmission Agreement;
- (iii) which such Party could not reasonably have avoided or overcome despite all reasonable efforts to prevent it or mitigate its effects.

12.1.2 Force Majeure may include exceptional events or circumstances of the kind listed below, so long as conditions set out in Clause 12.1.1 are satisfied:

- (i) Wars (declared or undeclared), sabotage, terrorism, blockades, riots, any civil commotion, insurrections in each case in Sri Lanka, expropriation, requisition, compulsory acquisition, confiscation or nationalization in Sri Lanka, closing of harbours, docks or airports or other restrictions on travel within or from Sri Lanka, restrictions in the import or export of equipment, goods or supplies into or from Sri Lanka resulting from any action without legally justifiable cause by any Competent Authority, strikes, lockouts or other industrial disturbances that are of a political nature (excluding such events which are specific to the Transmission Line Corridor, or Monaragala Grid Sub-station Site and attributable to the Project Company) and are not primarily motivated by a desire to improve compensation or working conditions of those involved;
- (ii) any Change in Law Event adversely affecting the performance of the Project Company of its obligations under this Transmission Agreement or under any of the Project Agreements whenever and to the extent that the Project Company is not otherwise compensated for the effect of such change;
- (iii) acts of God, landslides, lightning, earthquakes, floods, tsunamis, tempest, fires, volcanic eruptions, epidemics, ionising radiation or contamination by radio-activity, strikes, lockouts, or other industrial disturbances (excluding such events which are specific to the Transmission Line Corridor, Siyambalanduwa Collector Sub-station Site or Monaragala Grid Sub-station Site and attributable to the Project Company) and are not primarily motivated by a desire to improve compensation or working conditions of those involved.

12.1.3 In addition to the events set out above in this Clause 12:

- (i) an event of Force Majeure under the Right of Way Agreement (as such expression is defined in such agreement) shall be deemed to be an event of Force Majeure for the purposes of this Transmission Agreement;
- (ii) an event of Sri Lanka Force Majeure under the Right of Way Agreement (as such expression is defined in such agreement) shall be deemed to be an event of Sri Lanka Force Majeure with respect

to the Project Company for the purposes of this Transmission Agreement; and

- (iii) an event of Non-Sri Lanka Force Majeure under the Right of Way Agreement (as such expression is defined in such agreement) shall be deemed to be an event of Non-Sri Lanka Force Majeure for the purposes of this Transmission Agreement.

12.1.4 Force Majeure shall expressly not include the following:

- (i) lack of funds or any failure to pay any amounts or charges due and payable under this Transmission Agreement. However, the inability to use available funds, due to any reason set out in Clause 12.1, shall be regarded as Force Majeure; or
- (ii) a change in Corporate Taxes or Sales Tax following the date of this Transmission Agreement.
- (iii) Hacking.

12.1.5 None of the following shall constitute an event of Force Majeure unless the existence of such event is the result of an event of force majeure under the Turnkey Contract and the relevant Project Agreement which event is analogous to an event of Force Majeure defined in this Clause 12:

- (i) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts or consumables for the Transmission Facility;
- (ii) a delay or default in the performance of any contractor, subcontractor or supplier including the fuel supplier or the Turnkey Contractor; and
- (iii) non-performance caused by or connected with the non performing Party's negligent or intentional acts, errors or omissions.

## 12.2 Procedure for Claiming Force Majeure

12.2.1 The Party claiming Force Majeure will as soon as is reasonably practicable but no later than 2 Business Days after the date on which the Party knew or should reasonably have known of the occurrence of the event or circumstances claimed to be Force Majeure, give written notice to the other Party of the occurrence of the event or circumstances. If such notice is given more than 2 Business Days after that date, it shall only retroactively excuse the performance of the affected Party for the period starting [2] Business Days before the date of such notice. The notice shall be headed in bold print: **FORCE MAJEURE NOTICE – IF NOT DISPUTED WILL BE DEEMED TO BE ACCEPTED**. The notice will provide full particulars of the event or circumstances causing its failure to perform its obligations, and how the Force Majeure impacts the performance of its obligations under this

Transmission Agreement. The notice will also give an estimate of the period of time required to remedy the failure (if the remedy is deemed practicable). Failure to give notice will prevent the Party from claiming that the event or circumstances are Force Majeure.

12.2.2 A Party claiming Force Majeure shall provide the other Party (at the sole cost and risk of the Party claiming) reasonable facilities for obtaining further information about the event or circumstance of Force Majeure, including the inspection of any relevant Works.

12.2.3 The Party receiving the notice referred to in Clause 12.2.1 will, within 14 Days of receiving the notice, notify the other Party in writing whether it accepts that a situation of Force Majeure exists or whether it wishes to dispute the claim. If a Party wishes to dispute the claim, then the dispute will be resolved in accordance with Clause 16 of this Transmission Agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.

### **12.3 Consequences of Force Majeure**

12.3.1 A Party will be relieved from liability under this Transmission Agreement excluding the obligation to pay money, except to the extent expressly provided for in this Agreement, if performance of any of this Transmission Agreement's terms or conditions is prevented or delayed due to Force Majeure.

12.3.2 Any suspension of a Party's performance under this Clause 12 will be limited to the period during which the Force Majeure renders a Party unable to perform, in whole or in part, an obligation under this Transmission Agreement.

12.3.3 In the case of Non-Sri Lanka Force Majeure resulting in damage to the Works or requiring a material modification or a material capital addition to the Works to restore it to an agreed level ("Restoration"), the Parties shall meet and agree on:

- (i) the work necessary to be carried out in order for the Works to be restored such that the Project Company can continue to meet its obligations under this Transmission Agreement; and
- (ii) the schedule for Restoration.

In the event that the Parties are unable to agree on the matter(s) set out in the above sub-Clauses (i) and/or (ii) of this Clause 12.3.3 within sixty Days, the Parties shall submit the matter(s) for resolution to an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

- 12.3.4 In the case of Force Majeure covered in Clauses 12.3.3, the CEB shall have the right to:
- (i) proceed with the Restoration as agreed by the Parties or determined by the Expert; or
  - (ii) terminate this Transmission Agreement if the CEB disagrees with the determination of the Expert.
- 12.3.5 If this Transmission Agreement is terminated by the CEB as a result of Force Majeure covered by Clauses 12.3.3, then the following provisions shall apply to determine whether compensation is to be paid by the CEB to the Project Company:
- (i) if following Sri Lanka Force Majeure, the Parties agree that Restoration is feasible, but the CEB elects to terminate this Transmission Agreement, this shall be considered a Project Company Early Handover Event and the CEB shall pay the Project Company the compensation amount set forth in item 5 of the Compensation Table in Schedule 14 Annex 1;
  - (ii) if following Sri Lanka Force Majeure, the Works are destroyed and the Parties agree that Restoration is not feasible, this shall be considered a Project Company Early Handover Event and the CEB shall pay the Project Company the compensation amount set forth in item 9 of the Compensation Table in Schedule 14 Annex 1;
- 12.3.6 No Force Majeure will relieve a Party of any duty or obligation under this Transmission Agreement including the obligation to pay money, which had arisen or been incurred before the Force Majeure.
- 12.3.7 If a Party is affected by Force Majeure then the affected Party will use all possible diligence and take all reasonable steps necessary to remedy or rectify the Force Majeure as quickly as possible and minimise any damage caused by it.
- 12.3.8 Where Force Majeure prevents a Party from carrying out any obligations under this Transmission Agreement for a continuous period of 365 Days then this Transmission Agreement may be terminated by the other Party giving 60 Days' written notice to the Party affected by the Force Majeure situation and the provisions of Clause 13 will apply.
- 12.3.9 If as a result of Force Majeure, the Project Company receives both insurance proceeds and an extension of the Term, the Project Company shall account to the CEB where the Project Company is deemed to have been compensated for more than the loss of revenue suffered. If the Parties cannot agree on

whether the Project Company has been compensated for more than the loss of revenue suffered, the matter shall be determined by an Expert appointed under Part I of Schedule 15 (Disputes Resolution Procedure).

## 13 TERMINATION

### 13.1 The CEB's Right to Terminate

Subject to Clause 14, the CEB may terminate this Transmission Agreement forthwith on notice to the Project Company:

- 13.1.1 in accordance with Clause 4.7;
- 13.1.2 if either the Commercial Operation Date has not occurred by the date falling 1 (one) year from the Scheduled Commercial Operation Date; or
- 13.1.3 if the Project Company has failed to pay any sum due and payable to the CEB (not being a Disputed Amount) for a period of at least thirty Days following the due date for payment provided that the CEB shall have recovered any amounts available under the Preliminary Obligations Bond or the Construction Performance Bond in accordance with the provisions thereof.
- 13.1.4 following:
  - (i) breach by the Project Company of Clauses 15.6 or 15.7.2;
  - (ii) failure by the Project Company to deliver to the CEB or replenish the Construction Performance Bond pursuant to Clause 5.3.2(i);
- 13.1.5 in the case of Force Majeure pursuant to Clauses 12.3.3 where the Parties determine that Restoration is not feasible or the CEB disagrees with the determination of the Expert as provided for in Clause 12.3.6(ii);
- 13.1.6 if the Transmission Facility is destroyed prior to handover in accordance with Clause 6.1;
- 13.1.7 where Force Majeure has prevented the Project Company from carrying out its obligations under this Agreement for a continuous period of 365 Days pursuant to Clause 12.3.8;
- 13.1.8 where:
  - (i) any proceeding (including the appointment of a provisional liquidator) is instituted by or against the Project Company seeking to adjudicate the Project Company as bankrupt or insolvent or to



wind-up the Project Company (and such proceeding is not disputed in good faith by the Company within forty five days of such proceeding first being instituted);

- (ii) a court makes an order adjudicating the Project Company as bankrupt or insolvent;
- (iii) a resolution is adopted for the voluntary winding-up of the Project Company;
- (iv) a receiver or a trustee is appointed over the whole or any part of the assets of the Project Company and such appointment is not vacated within seventy five Days; or
- (v) the Project Company makes an assignment for the benefit of its creditors;

13.1.9 following termination of the:

- (i) Power Purchase Agreement; or
- (ii) Implementation Agreement by the Government; or
- (iii) Right of Way Agreement by the CEB; or
- (iv) Turnkey Contract,

in each case pursuant to the respective provisions thereof.

13.1.10 The CEB may terminate this Transmission Agreement forthwith on notice to the Project Company in the event of wrongful termination of the Transmission Agreement by the Project Company.

## **13.2 The Project Company's Right to Terminate**

Subject to the provisions of Clause 14, the Project Company may terminate this Transmission Agreement forthwith on notice to the CEB:

13.2.1 in accordance with Clause 4.7;

13.2.2 if the CEB has failed to pay any sum due and payable to the Project Company (not being a Disputed Amount) for a period of at least thirty Days following the due date for payment under any Semiannual Invoice provided that the Project Company shall have recovered any amounts available under any CEB Letters of Credit in accordance with the provisions thereof;

13.2.3 where the CEB is in material breach of any of its obligations under this Transmission Agreement and such breach (where capable of remedy) has been notified to the CEB and has not been remedied within a period of sixty Days of notification provided that the Project Company's right to terminate pursuant to this Clause 13.2.3 shall not apply where such material breach is

directly due to breach by the Project Company under this Transmission Agreement, or the CEB is otherwise excused pursuant to Clause 12;

- 13.2.4 where, notwithstanding Clauses 8.7.1(ii)(b) and 8.7.1(iii):
- (i) the CEB fails to establish any of the CEB Letters of Credit pursuant to Clause 8.7.1; or
  - (ii) the CEB fails to renew or replace any of the CEB Letters of Credit in accordance with the requirements of Clause 8.7.1 and the Available Amount at the last Day for such renewal or replacement after deduction of all amounts due and payable by the CEB at such time, is less than one third of the L/C Amount applicable to any such Letters of Credit; or
  - (iii) the CEB Letter of Credit expires and has not been renewed or replaced prior to expiry;

13.2.5 where Sri Lanka Force Majeure has prevented the CEB from carrying out its obligations under this Transmission Agreement for a continuous period of 365 Days pursuant to Clause 12.3.8;

13.2.6 where:

- (i) any proceeding (including the appointment of a provisional liquidator) is instituted by or against the CEB seeking to adjudicate the CEB as bankrupt or insolvent or to wind-up the CEB (and such proceeding is not disputed by the CEB within forty five days of such proceeding first being instituted);
- (ii) a court makes an order adjudicating the CEB as bankrupt or insolvent;
- (iii) a resolution is adopted for the voluntary winding-up of the CEB;
- (iv) a receiver or a trustee is appointed over the whole or any part of the assets of the CEB and such appointment is not vacated within seventy-five Days; or
- (v) the CEB makes an assignment for the benefit of its creditors;

13.2.7 following termination by the Project Company of the Power Purchase Agreement, Implementation Agreement or the Right of Way, in each case, pursuant to the respective provisions thereof.

### **13.3 Sole Grounds for Termination**

The provisions of this Paragraph 13 shall be the sole and exclusive grounds on which the Parties may terminate this Transmission Agreement.

### **13.4 Antecedent Rights**

The termination of this Transmission Agreement shall be without limitation of or prejudice to any other antecedent right, relief or remedy of either Party under or in connection with this Transmission Agreement.

**13.5 Survival**

In the event of termination of this Transmission Agreement, for a period of sixty months following termination, the provisions of this Transmission Agreement as they relate to the payment of any sum due by one Party to the other, any right to payment under a bond, the Early Hand Over Event, the confidentiality provisions set out in Clause 15.4, this Clause 13.5 and the Disputes Resolution Procedure shall survive termination and continue to have effect in the terms and conditions of this Transmission Agreement (and in respect of any continuing arbitration commenced prior to the lapse of such sixty month period, this Transmission Agreement shall survive solely in respect of the matter in arbitration).

**13.6 Notices of Termination**

Any notice of termination under this Transmission Agreement shall be valid only if prominently and clearly titled "NOTICE OF TERMINATION".

**14 TERMINATION AND HANDOVER**

**14.1 Termination on or after Commercial Operation Date**

**14.1.1** In the event the Transmission Agreement is terminated in accordance with this Transmission Agreement, any time after the occurrence of the Commercial Operation Date, the outstanding Transmission Facility Payment shall become due to the Project Company immediately. This provision shall not affect the handover of the Transmission Facility in accordance with Paragraph 6 (*Handover*).

**14.1.2** The outstanding Transmission Facility Payment falling due in accordance with Clause 14.1.1 ("Outstanding Transmission Facility Payment"), shall become payable by the CEB to the Project Company within 90 Days of the date of termination of the Transmission Agreement.

**14.2 Termination prior to the Commercial Operation Date**

**14.2.1** In the event the Transmission Agreement is terminated in accordance with this Transmission Agreement, any time prior to the occurrence of the Commercial Operation Date, the Project Company shall become entitled to

Termination Charges and the CEB shall become entitled to require handover or dismantlement of the Works in accordance with Clause 14.2.2.

**14.2.2** Within 28 Days of the termination of the Transmission Agreement in accordance with this Transmission Agreement, CEB shall communicate in writing with the Project Company whether it wishes the Project Company to dismantle the Works or handover the Works to the CEB. In the event, CEB fails to communicate to the Project Company within the said 28 Days, it shall be deemed that the CEB wishes to take handover of the Works.

**14.2.3** The provisions of Schedule 11 (Handover Process) and Schedule 14 (Termination Charges) shall apply in the event of termination of the Transmission Agreement as set forth in Clause 14.2.1.

## **15 MISCELLANEOUS**

### **15.1 Representations and Warranties**

15.1.1 Each Party represents and warrants to the other that, as at the date of this Transmission Agreement:

- (i) it is duly incorporated or constituted and organised under the Laws of Sri Lanka and has full power and authority, corporate or otherwise, to enter into and perform its obligations and to conduct its business as presently or as proposed to be conducted, and this Transmission Agreement has been duly authorised, executed and delivered by it, and constitutes legal, valid and binding obligations of such Party;
- (ii) entry into and performance of this Transmission Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to such Party;
- (iii) there are no actions, suits, proceedings or investigations pending or, to the Party's knowledge, threatened against it at law or in equity before any court or before any governmental department, commission, board, agency or instrumentality (whether or not covered by insurance) which individually or in the aggregate would affect the validity or enforceability of this Transmission Agreement or could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the Party or in any impairment of its ability to perform its obligations under this Transmission Agreement; and
- (iv) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any

governmental department, commission, board, agency or instrumentality which may result in any such materially adverse effect or such impairment.

15.1.2 The Project Company represents and warrants to the CEB that, as at the date of this Transmission Agreement:

- (i) the execution, delivery and performance of this Transmission Agreement does not conflict with the Project Company's memorandum and articles of association or conflict or result in the breach or termination of any provision of or constitute a default under, any mortgage, loan, contract or other undertaking binding on the Project Company;
- (ii) it has the required authority, ability, skills, experience and capacity to perform, and shall perform all its obligations in connection with the Transmission Facility in accordance with the terms of this Transmission Agreement;
- (iii) it has the knowledge of all the legal requirements and business practices in Sri Lanka that must be followed in performing its obligations under this Transmission Agreement and its obligations shall be performed in conformity with such requirements and practices; and
- (iv) it has reviewed the requirements of this Transmission Agreement, familiarised itself with all the relevant matters specific to Sri Lanka and/or the Solar Park Facility and/or the Project Site and all other relevant matters, and utilising its experience and skills has made adequate provision for everything necessary to fulfil its obligations, whether specified and/or described or not in this Transmission Agreement.

15.1.3 The CEB represents and warrants to the Project Company that, as at the date of this Transmission Agreement, the execution, delivery and performance of this Transmission Agreement does not conflict with the Incorporation Act or conflict or result in the breach or termination of any provision of or constitute a default under, any mortgage, loan, contract or other undertaking binding the CEB.

## **15.2 Notices**

15.2.1 Unless otherwise expressly provided for, all notices, requests, claims, consents, approvals, certificates or other communication under this Transmission Agreement (each a "Notice") shall be in legible writing in the English language and signed by a person duly authorised by the sender. A written communication must be marked for the attention of office holder (if any) whom the recipient designates for the purpose and communicates as such to the other Party.

15.2.2 All notices, requests, claims, consents, approvals, certificates or other communication under this Transmission Agreement will be:

- (i) delivered personally; and or
- (ii) sent by prepaid registered post within Sri Lanka; and or
- (iii) sent by facsimile transmission (and promptly confirmed by prepaid registered post) or email transmission with subject line “Notice under [insert name of Transmission Agreement with date]”;

addressed to the recipient at the address or facsimile number or the two email IDs set out below (as applicable) or to any other address or facsimile number that a Party may notify to the other Party by like notice.

(iv) If to the CEB:

To: Ceylon Electricity Board

Address: No. 50, Sir Chittampalam A. Gardiner  
Mawatha  
PO Box 540  
Colombo 00200  
Sri Lanka

Facsimile:

Email ID:

For: The General Manager

With a copy to:

Address:

Facsimile:

Email ID:

For:

(v) If to the Project Company:

To: [ ] (Private) Limited

Address:

Facsimile:

Email ID:

For: Project Director

With a copy to:

Address:

Facsimile:

Email ID:

For:

15.2.3 No written communication will be effective until received. Without limiting any other ways for a Party to prove that another Party has received a notice,

a notice or other written communication under this Transmission Agreement, will be treated as received:

- (i) if delivered personally, when left with an apparently responsible person at the recipient's address and person of the addressee acknowledges receipt in writing;
  - (ii) if sent by registered post, on acknowledgement of receipt by or on the recipient's behalf;
  - (iii) if sent by facsimile, on the sender's receipt of a transmission report indicating that the facsimile was sent in its entirety to the recipient's facsimile number, and if sent by email upon receipt of acknowledgment by the recipient;
- but, if the delivery or receipt is not on a Business Day or after 14.00 hrs (local time) on any Business Day, the notice will be treated as received by the recipient at 9.00 hrs (local time) on the next Business Day.

### **15.3 Confidentiality and Publicity**

- 15.3.1 All information (including contracts) provided by one Party to the other in connection with the negotiation or performance of this Transmission Agreement will be treated as confidential and will not be disclosed to any third party (except to Finance Parties and Competent Authorities with a proper need for the relevant information) without the other Party's prior written consent, which consent may not be unreasonably withheld.
- 15.3.2 Unless the law or the listing requirements of any relevant stock exchange require a Party to do so, no Party will disclose or publicise the existence or contents of this Transmission Agreement or any other transaction or document evidenced or contemplated by it (except to Finance Parties and Competent Authorities with a proper need for the relevant information), without the other Party's prior written consent, which consent shall not be unreasonably withheld.
- 15.3.3 Each of the Parties to this Transmission Agreement may communicate the aforementioned information to their directors, employees, advisors, agents and consultants on a need-to-know basis if their involvement in this Transmission Agreement or the Project or any part of it is required, or to current or prospective lenders, insurers, finance and security providers and their agents or representatives (including, without limitation, multi-lateral agencies and export credit agencies (and their respective governments), guarantors, trustees, hedge counterparties, credit rating agencies or account banks), provided that each of the Parties to this Agreement (as applicable),

procures that such third parties are subject to an equally onerous obligation of confidentiality.

15.3.4 This obligation of confidentiality is not applicable if the information is already available to the general public (other than as a result of a breach of this Clause 15.3). This obligation of confidentiality is not applicable when expressly permitted by the Power Purchase Agreement or when expressly allowed by the relevant party disclosing the confidential information. If either Party is required by applicable laws, or a court or tribunal of competent jurisdiction, or by applicable regulatory requirements (including by any recognised stock exchange), to disclose the information to third parties, for example, on the basis of a legal obligation or within the framework of legal proceedings, the relevant party must (subject to the requirements of the applicable laws):

- (i) notify the other Party to this Transmission Agreement; and
- (ii) limit the information that is provided to third parties as much as possible.

#### **15.4 Amendments**

Any amendment to this Transmission Agreement must be in writing and signed by both Parties or their respective successors or permitted assigns in the same manner and with the same formality as this Transmission Agreement is executed.

#### **15.5 Waiver**

15.5.1 A Party's waiver of any failure to comply strictly with any of this Transmission Agreement's terms will not operate as a waiver of strict compliance with any of this Transmission Agreement's terms now or in the future.

15.5.2 A Party's failure or delay in exercising any right, power, privilege or remedy under this Transmission Agreement will not operate as a waiver of it.

15.5.3 A waiver of any obligation by either Party shall only be effective if in writing and signed by the Chief Executive Officer (or person at equivalent designation) of such Party.

15.5.4 A single or partial exercise of any right or remedy will not prevent its further or full exercise. The rights and remedies in this Transmission Agreement are cumulative and do not exclude any other remedies to which either Party may be lawfully entitled.

#### **15.6 Ownership of the Project Company**



15.6.1 The ownership of the Project Company and requirement to invest the Required Equity shall be in accordance with the relevant provision(s) of the Power Purchase Agreement.

## **15.7 Assignment and Transfers of Interest**

The following provisions shall apply to the assignment of this Transmission Agreement and for the transfer of interests in or of CEB and the Project Company:

15.7.1 The CEB may not assign or otherwise transfer all or part of its rights, benefits or obligations under this Transmission Agreement without the Project Company's prior consent, such consent not to be unreasonably withheld or delayed, provided that, upon thirty Days' prior notice from the CEB to the Project Company, the CEB may assign or transfer all or part of its rights, benefits or obligations under this Transmission Agreement without the Project Company's prior consent in the event of:

- (i) the restructuring of the CEB's assets; or
- (ii) the changing of the CEB's ownership; or
- (iii) the merger or consolidation of the CEB with any other entity; or
- (iv) the CEB's conversion into a company organised and incorporated under the Companies Act pursuant to any privatisation, restructuring or similar process implemented pursuant to the Laws of Sri Lanka,

provided that the surviving entity to whom the assignment or transfer is made assumes and becomes fully liable to perform the CEB's obligations under this Transmission Agreement provided always that if the Government no longer has control by virtue of majority voting rights in the CEB or the surviving entity as the case may be, the concept of Sri Lanka Force Majeure shall be deleted from the Transmission Agreement and have no effect from the date the Government no longer has such majority voting rights.

15.7.2 Except as contemplated by Clause 15.6.1 the Project Company may not, directly or indirectly, sell, assign or otherwise transfer all or any of its rights, benefits or obligations hereunder, except that, for the purpose of the Financing Agreements, the Project Company may assign or create a security interest over its rights and interests under or pursuant to this Transmission Agreement to the Finance Parties.

15.7.3 Subject to Clause 15.7.1 and Clause 15.7.2, any change including without limitation a change in shareholding which results in a change in the effective ownership, management or control of a Party to this Transmission Agreement will be deemed to be an assignment and will require a written consent of the other Party, which consent shall not be unreasonably withheld.

**15.8 Severability**

If any of this Transmission Agreement's terms are or become void or unenforceable, then those terms will be severed from this Transmission Agreement and replaced with terms which validly and enforceably accomplish (to the extent possible) those terms' objectives and in that case the rest of this Transmission Agreement will remain valid and enforceable.

**15.9 No Partnership or Other Relationship**

15.9.1 Nothing in this Transmission Agreement makes either Party the other Party's partner, agent or representative or creates any trust or commercial partnership.

15.9.2 No Party may act for, or incur any obligation or liability on the other Party's behalf unless expressly stated in this Transmission Agreement.

15.9.3 Each Party indemnifies the other Party and (as appropriate) the other Party's subsidiaries, directors, officers, employees and representatives against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind arising out of any act of, or any assumption of any obligation by, the Party on the other Party's behalf, except as expressly provided for by this Transmission Agreement or to the other Party's prior written consent.

**15.10 Good Faith**

The Parties undertake to act in good faith in relation to the performance and implementation of this Transmission Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.

**15.11 Further Assurances**

Each Party will, at its own cost and when the other Party requests, promptly do everything reasonably required to give full effect to this Transmission Agreement and the transactions contemplated by this Transmission Agreement.

**15.12 Liquidated Damages**

Where in this Transmission Agreement a Party is expressed to be liable for liquidated damages, the Parties agree that such liquidated damages represent a genuine pre-estimate of loss for the Party entitled to claim such liquidated damages.

**15.13 Indices**

If LIBOR, SLNCPI or US Consumer Price Index or any other index referred in this Transmission Agreement is rebased to a different year from that applying at the date

of this Transmission Agreement or the composition of items applied in calculating these indices is materially changed, so as to distort the effect of the index from that intended by the Parties at the date of this Transmission Agreement, or if the index should permanently cease to be published:

15.13.1 the Parties shall seek to agree such adjustment to, or substitution of, the index as will secure the closest continuing effect of the earlier index within ten Days of a Party giving notice to the other of the need for such adjustment or substitution under this Clause 15.13;

15.13.2 if the Parties fail to agree on any such adjustment or substitution, the necessary adjustment or substitution shall be determined by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure); and

15.13.3 pending agreement by the Parties or the determination by the Expert, the last values of the index prior to the need for adjustment or substitution shall be used for the purposes of this Agreement and, following the agreement of the Parties or the determination of the Expert, the adjusted index or substituted index shall be applied for the period following the need for the adjustment or substitution of the index, and in respect of any payments made under this Transmission Agreement in reliance on the earlier index during that period, an equitable reconciliation of payments on the basis of the adjusted or substituted index shall be undertaken by the Parties.

#### **15.14 Entirety of Agreement**

This Transmission Agreement constitutes the entire agreement between the Parties. It replaces all of the Parties' earlier discussions and agreements. No Party will be bound by any conditions, definitions, warranties or representations except those stated in this Transmission Agreement or agreed in writing after this Transmission Agreement's date and properly signed by or on behalf of the Party to be bound by them.

## **16 DISPUTE RESOLUTION**

### **16.1 Disputes**

In the event of any dispute or difference of whatever nature between the Parties arising under or in connection with this Transmission Agreement (including any dispute or difference in connection with any Early Handover Event or the existence or validity of this Transmission Agreement or any provision hereof) which is not:

**16.1.1** first amicably resolved between the Parties to this Transmission Agreement by good faith mutual discussions within thirty Days, or, in the case of a dispute involving insurance or any Disputed Amount, fourteen Days, after the date that the disputing Party gives notice of the dispute to the other Party identifying the dispute in reasonable detail and requesting consultations

between the Parties to resolve the dispute, or, after such periods by discussions between the chief operating officer of the Project Company and the designated representative for system operations of the CEB (or such other official authorised by the CEB) within a further period of fifteen Days (or such longer period as the Parties may agree); or

**16.1.2** a dispute which the Parties have agreed should be the subject of an Expert's determination under Part 1 of Schedule 15 (Disputes Resolution Procedure), then the Disputes Resolution Procedure set out in Part 2 of Schedule 15 (Disputes Resolution Procedure), shall apply.

**17 Governing Law**

This Transmission Agreement and the transactions contemplated by it are governed by the Laws of Sri Lanka.

IN WITNESS WHERE OF the Parties have executed this Transmission Agreement as of the date first written above.

The Common Seal of the )  
CEYLON ELECTRICITY BOARD )  
is affixed hereto in the presence of )

who attest the sealing thereof )

Witnesses :

1. (Signature)

(Name)

2. (Signature)

(Name)

The Common Seal of )  
[ ] (PRIVATE) LIMITED )  
is affixed hereto in the presence of )  
two directors of the Project Company who )  
attest the sealing thereof )

Witnesses :

1. (Signature)

(Name)

2. (Signature)

(Name)

### **List of Schedules**

Schedule 1 – Definitions

Schedule 2 – Plans and Drawings

Schedule 3 - Direct Agreement

Schedule 4 – List of Contractors and Engineers

Schedule 5 – Minimum Functional Specification

Schedule 6 – Testing and Commissioning Procedure for Project Facility

Schedule 7 - Metering

Schedule 8 - Available Capacity

Schedule 9 - Energy Charge

Schedule 10 - Transmission Facility Payments

Schedule 11 - Handover Process (Transmission Agreement)

Schedule 12 - Form of CEB Irrevocable Standby Letter of Credit

Schedule 13 - Buy-Out

Schedule 14 – Compensation Table and Termination Charges

Schedule 15 - Disputes Resolution Procedure

Schedule 16 - Minimum Insurance to be Maintained by the Project Company

Schedule 17 – Form of Escrow Agreement

Schedule 18 - Form of Construction Performance Bond

Schedule 19 – List of Investigations and Studies

Schedule 20 – Form of Undertaking Regarding Golden Share

Schedule 21 – Permits Matrix

Schedule 22 – Project Company Generation Model Report

Schedule 23 – Project Company Financial Model

Information Copy - Not for Bidding