

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

Ministry of Power & Energy

CEYLON ELECTRICITY BOARD

Request for Proposals

**Development of 100 MW_{AC} Solar Park Facility at
Siyambalanduwa on Build, Own and Operate (BOO) Basis and
Construction of 132 kV Transmission Facility on Turnkey Basis**

**VOLUME V
DRAFT IMPLEMENTATION AGREEMENT**

Issued on: 22nd 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.

Implementation Agreement

This Implementation Agreement (hereinafter called "Agreement") is made on this dayof2021, at Colombo in Sri Lanka

BY and BETWEEN

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA (the "Government" or "GOSL"), acting through Secretary, Ministry of Power;

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

AND

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 registered office at 50, Sir Chittampalam A Gardiner Mawatha, Colombo 2, Sri Lanka, acting through its duly authorized representative [insert];

GOSL, Project Company and CEB may hereinafter collectively be referred to as 'Parties' and individually as 'Party'.

WHEREAS

- A CEB has invited, with the authority and approval of the Government, proposals for the,
- i) finance, design, engineering, construction, Commissioning, operation and maintenance of a 100 MW Solar PV generating facility at Siyambanlanduwa in the Monaragala District, Uva Province, Sri Lanka on a build-own-operate (BOO) basis, (hereinafter referred to as "Solar Park") and

ii) finance, design, engineering, construction, Commissioning on turnkey basis a 132 kV overhead transmission line (estimated length: 25 km), from the Project Site to the CEB grid sub-station in Monaragala, 33/132 kV step-up transformers and necessary upgrading of Monaragala grid substation for interconnection of 100 MW solar PV power to the national electricity grid (hereinafter referred to as “Transmission Facility”)

- B** The Project Company was selected following a competitive tendering process to develop the Project (i.e., the Solar Park and Transmission Facility).
- C** The Project Company is incorporated with foreign participation, for the purpose of financing, designing, engineering, building, owning, operating, maintaining the Solar Park in accordance with the Power Purchase Agreement entered or to be entered into with CEB, and for the purpose of financing, designing, engineering, building, and Commissioning of Transmission Facility on a turnkey basis in accordance with the Turnkey Contract for Development of Transmission Assets entered or to be entered into with CEB.
- D** The Project Company and Sri Lanka Sustainable Energy Authority shall or have already entered into a sub-lease agreement with respect to the Project Site (“Sub-Lease Agreement”).
- E** The Government is willing to provide certain concessions, incentives and undertakings to the Beneficiaries in respect of the business of the Project Company in the implementation of the Project, subject to and in accordance with the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this 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 Agreement including the recitals.

- 1.1.3 Headings:** the headings in this 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 Agreement.
- 1.1.4 Include and Including:** the words “include” and “including” means “including, without limitation,” and cognate terms shall be construed accordingly; and the ejusdem generis rule of construction shall not apply to this Agreement and general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class or examples of acts, matters or things;
- 1.1.5 Negative Obligations:** any obligation not to do anything includes an obligation not to permit or cause that thing to be done;
- 1.1.6 Party and Parties:** each Party to this Agreement are individually referred to as “Party” and collectively as “Parties” and includes their permitted successors, permitted assigns and permitted transferees;
- 1.1.7 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 permitted successors and permitted assigns;
- 1.1.8 Plural and Singular:** words importing the singular number include the plural and vice versa where the context requires;
- 1.1.9 Gender:** reference to any gender includes reference to all genders;
- 1.1.10 Schedule:** the schedules to this Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Agreement;
- 1.1.11** in the computation of periods of time from a specified day or Day to a later specified day or Day;
- (i) ‘From’ means ‘from and including’ and ‘until’ and ‘to’ means ‘to and including’; and
 - (ii) Any requirement that an action may or shall be taken within the number of Days so specified starting at 06:00 hours on the Day on which the requirement to take such action arose;
- 1.1.12** references to ‘conduct’ include any omission, statement or undertaking, whether or not in writing;

- 1.1.13** references to ‘writing’ include a facsimile transmission, electronic mail and any means of reproducing words in a tangible and permanently visible form;
- 1.1.14** references to ‘judgment’ include any binding order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- 1.1.15** references to ‘law’ include common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, convention or other legislative measure, in each case of any jurisdiction whatsoever (and ‘lawful’ and ‘unlawful’ shall be construed accordingly; and
- 1.1.16** references to any authority (including a Competent Authority), association or body whether statutory or otherwise shall, if that authority, association or body ceases to exist or is reconstituted, renamed or replaced, or if the powers or functions of that authority, association or body are transferred to any other authority, association or body, be deemed to refer respectively to the authority, association or body which is established or constituted instead of it or which, as nearly as may be, succeeds to the powers and functions exercised by it.
- 1.2 Schedules, Clauses and Paragraphs:** references to Schedules, Clauses and Paragraphs are references to Schedules, Clauses and Paragraphs of this Agreement;
- 1.3 Agreement, Other Agreements or Document:** reference to this Agreement or to any other agreement or document shall include references to this 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, except as otherwise provided herein;
- 1.4 Statutes, Regulation and others:** references to any publication, statute, rule, regulation, treaty, legislative provision or act, instrument or standard, or to a provision contained in any of these means the same as amended, supplemented, extended or replaced from time to time;
- 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 Agreement in accordance with such recognized meanings;
- 1.6 Time:** references herein to time are to Sri Lankan time;
- 1.7 Hereof, “Herein, and Hereunder:** the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless followed by the number of a specific part of the Clause;

- 1.8 Thereunder and Thereto:** the words “thereunder” and “thereto” and similar words in relation to an agreement other than this Agreement refer to such entire agreement and not any particular subdivision of such agreement;
- 1.9** The use of the expression ‘and/or’ shall mean both ‘and’ and ‘or’ (e.g., ‘A and/or B’ shall mean ‘A or B’ or ‘both A and B’). The use of ‘and/or’ within a list shall mean all or any combination of the listed terms (e.g., ‘X, Y and/or Z’ shall mean ‘X’ or ‘Y’ or ‘Z’ or ‘X and Y’ or ‘Y and Z’ or ‘X and Z’ or ‘X and Y and Z’);
- 1.10** An English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction, any publication, statute, rule, regulation, treaty, legislative provision or act, instrument or standard, or to a provision contained in any of these means the same as amended, supplemented, extended or replaced from time to time;
- 1.11** Expressions in this Agreement appropriate to directors, officers, constitutional documents or organs of companies, when used in relation to any Person of a type other than a company, shall be construed as references to the most nearly corresponding persons, officers, documents or organs (as the case may be) appropriate to Persons of that type; and
- 1.12** No provision of this Agreement shall be interpreted or construed against a Party because that Party or its legal representative drafted the provision.

2. TERM

2.1 Term of this Agreement

This Agreement (other than for clause 6 (*Force Majeure*) which shall take effect from the date of the Construction Notice) shall take effect on the date of this Agreement and subject to the terms of any Direct Agreement under clause 3.6, will remain in effect until the earlier of the expiry or termination of the Power Purchase Agreement, unless otherwise earlier terminated in accordance with the provisions of this Agreement.

3. OBLIGATIONS OF THE GOVERNMENT

3.1 Assistance to be Provided by the Government

The Government shall, subject to the Laws of Sri Lanka and provided the Project Company is responsible for and ensures the payment of all fees, impost, premia and costs of obtaining the visas, permits, licences, consents, customs clearances and approvals and insurance as the case may be, provide all reasonable assistance: :

- 3.1.1** to the Beneficiaries to secure visas and work permits for its foreign personnel wholly, directly and necessarily engaged on the Project for the period they are so engaged;
- 3.1.2** to the Project Company in obtaining, subject to the Project Company complying with the conditions for the grant of the Energy Permit, Generation Licence and the Environmental Requirements:
 - (i) the Energy Permit no later than the end of the Preliminary Period
 - (ii) the Generation Licence, no later than the end of the Preliminary Period
 - (iii) all other licences, permits or consents required by any Competent Authority to implement the Power Purchase Agreement and the Turnkey Contract for Development of Transmission Assets;
- 3.1.3** to the Beneficiaries in obtaining customs clearances and approvals for the importation of all equipment, materials and spare parts necessary for the Project;
- 3.1.4** to the Beneficiaries to import, purchase, store and transport to the Project, through authorised suppliers; and
- 3.1.5** to the Project Company in obtaining insurance pursuant to the Power Purchase Agreement and Turnkey Contract for Development of Transmission Assets without giving rise to any cost or liability on the part of the Government or the CEB.

3.2 The Government's Assistance with regard to the CEB

Subject to the Laws of Sri Lanka, the Government shall provide all reasonable assistance to facilitate:

3.2.1 the CEB to fulfil its obligations under the Power Purchase Agreement, Turnkey Contract for Development of Transmission Assets and the Sub-Lease Agreement;

3.3 The Government's Guarantee

3.3.1 The Government hereby:

- (i) guarantees the performance of obligations of the CEB to make payment of undisputed Energy Charges and any other undisputed payment obligation under the Power Purchase Agreement, and the undisputed payments under the Turnkey Contract for Development of Transmission Assets, provided that, the Project Company shall have first exercised all remedies and proceedings for payment available to the Project Company under the respective agreements (including but not limited to payment under letters of credit), and shall have failed to obtain payment.
- (ii) agrees with the Project Company that if any obligation guaranteed by the Government is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligor indemnify the Project Company within 60 (sixty) Days of demand in writing against any cost, loss or liability the Finance Party incurs as a result of CEB not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by CEB under the Power Purchase Agreement and or the Turnkey Contract for Development of Transmission Assets on the date when it would have been due. The amount payable by the Government under this indemnity will not exceed the amount it would have had to pay under this Clause 3.3.1 if the amount claimed had been recoverable on the basis of a guarantee.

3.3.2 Waiver of defences

Subject to Clause 5.3, the obligations of the Government under this Clause will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause including (without limitation and whether or not known to it or the Project Company):

- (i) any time, waiver or consent granted to, or composition with, any Person;
- (ii) the release of CEB or any other Person under the terms of any composition or arrangement with any creditor;
- (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of any Person;

- (iv) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (v) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Person;
- (vi) any amendment of any of the Project Agreements or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any obligations under any of the Project Agreements or other document or security;
- (vii) any unenforceability, illegality, invalidity or non-provability of any obligation of any Person under any of the Project Agreements or any other document or security; or
- (viii) any insolvency, resolution or similar proceedings.

3.3.3 Amendments to the Project Agreements

- (i) Without limiting to Clause 3.3.2 above but subject to Clause 5.3, the Government acknowledges that any of the Project Agreements may be amended from time to time.
- (ii) The Government confirms its intention that subject to Clause 5.3:
 - a) any amendment to the Project Agreements is within the scope of this guarantee; and
 - b) This guarantee extends to any amount payable by CEB under or in connection with the Project Agreements as amended.

3.3.4 Additional Security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Project Company.

3.4 Non Discrimination

3.4.1 The Government shall not seek to impose obligations or standards on the Project Company which are unduly and without good reason more onerous than those relating to any other power station of similar capacity and electrical output connected to the CEB System and which are privately financed on a similar build-own-operate-own basis by a Person other than the CEB.

3.4.2 Subject to compliance by the Project Company with all applicable laws and contractual terms, the Government shall not, and shall ensure that no Competent Authority takes any action which materially and adversely affects the Project or the performance of the Project Company's obligations or the enjoyment of its rights under the relevant Project Company.

3.5 Information

The Government shall respond within 21 (twenty one) Days to all reasonable requests for information relating to the status and ownership of the CEB, and the implementation of the Project, provided that for the purposes of the implementation of the Project, the Project Company shall at its sole cost and risk investigate the need for and obtain all necessary licences, consents, approvals and certificates of whatever kind and nature which are required from time to time by any Competent Authority.

3.6 Government to enter into Direct Agreements with Finance Parties

The Government acknowledges that the Finance Parties will require their financing to be secured in relation to the Project, and in relation to this Agreement the Government (if required by the Prospective Finance Parties), shall enter into a Direct Agreement with the Finance Parties (or their representative) and the Project Company not later than the end of the Preliminary Period, which Direct Agreement shall be consistent with the following principles:

- 3.6.1** the Direct Agreement shall take effect on the Project Company giving to the CEB the Construction Notice under clause 4.6 of the Power Purchase Agreement;
- 3.6.2** the Government shall agree to the Finance Parties taking security over all of the assets of the Project Company and the Project;
- 3.6.3** the Government shall agree to give the Finance Parties notice within 14 (fourteen) Days of the Government becoming aware of any default of the Project Company under this Agreement, and as much notice as reasonably practicable of any intention of the Government to terminate this Agreement under Clause 8.2, provided that in either case failure to do so shall be without prejudice to the Government's right to terminate this Agreement under clause 8.2 where the Government promptly copies its notice of termination to the Finance Parties or their representative;

3.6.4 the Finance Parties shall agree to give the Government notice within 14 (fourteen) Days of the Finance Parties becoming aware of any default under the Financing Agreements and as much notice as reasonably practicable of any intention of the Finance Parties to exercise any rights to step in to the Project or to appoint a third party substitute to replace the Project Company in relation to the Project, provided that in any such case failure to do so shall be without prejudice to the Finance Parties' right to step in to the Project or appoint a third party substitute to replace the Project Company in relation to the Project, where the Finance Parties or their representative promptly copy to the Government the notices to the CEB and the Project Company actually exercising such rights to step in or appoint a third party operator;

3.6.5 in relation to this Agreement the Finance Parties shall have the right to step in to the Project or to appoint a third party substitute to replace the Project Company, in relation to the Project, where:

(i) the Government gives notice of termination under Clause 8.2 and the Finance Parties give the Government notice exercising such a right within 21 (twenty one) Days of the date of the Governments' notice of termination, to which end the effect of such notice of termination shall be suspended for 21 (twenty one) Days commencing on the date of the notice; or

(ii) the Finance Parties give notice under clause 3.6.4 of a step in or appointment of a third party substitute to replace the Project Company in relation to the Project;

3.6.6 where the Finance Parties exercise any right to step in to the Project or appoint a third party substitute to replace the Project Company in relation to the Project, then there shall be a cure period not exceeding 180 (one hundred and eighty) Days from the date of the first notice of such step in or appointment during which period any right of the Government to terminate this Agreement shall be suspended. If during the cure period the Finance Parties or such third party substitute do not

assume the obligations of the Project Company under this Agreement, the Government's obligations under this Agreement shall be similarly suspended;

3.6.7 no later than 21 (twenty one) Days prior to the end of the cure period stated in clause 3.6.6, the Finance Parties shall give notice to the Government whether or not they wish to continue to exercise their rights of step in or have assigned to any third party substitute the Project Agreements, and:

- (i) if they do, then the Finance Parties or the third party substitute (as the case may be) shall assume all outstanding and continuing liabilities of the Project Company under the Project Agreements and the Government's obligations under this Agreement shall resume;
- (ii) but if they do not, then this Agreement and the Direct Agreement shall terminate forthwith at the earlier of the date on which Finance Parties gave any notice that there shall be no continuance (or requirement for assignment), or the end of the cure period;

3.6.8 in the case of the assignment of the Project Agreements to a third party substitute and in relation to this Agreement, the Finance Parties shall first obtain the consent of the Government to such assignment which shall not unreasonably be withheld or delayed where the Government is satisfied that such proposed assignee has the appropriate experience, expertise and financial backing;

3.6.9 if the Finance Parties continue to exercise rights of step in after the cure period or the Project Agreements are assigned to a third party substitute, then the Government's rights of termination under this Agreement shall be restored both with respect to earlier and continuing rights of termination from the earlier of the date on which the Finance Parties gave notice of continuance (or any assignment), or the end of the cure period;

- 3.6.10** the Direct Agreement shall provide for exemption from the Exchange Control Act and authority to open accounts with foreign currency banking units of local commercial banks in favour of the Finance Parties in relation to the Project;
- 3.6.11** the Direct Agreement shall automatically terminate on the expiry or termination of this Agreement;
- 3.6.12** the Direct Agreement shall be governed by the Laws of Sri Lanka and disputes not first amicably resolved shall be the subject of a disputes resolution procedure adopting the principles of Schedule 2 (Disputes Resolution Procedure); and
- 3.6.13** without prejudice to the foregoing principles, the Direct Agreement may contain such other principles or terms as may be agreed between the Government, the Finance Parties and the Project Company.

3.7 Obligations of the Government with regard to the BOI

3.7.1 The Project Company's BOI Status

Subject to the BOI Act and the regulations pertinent thereto, and not later than the end of the Preliminary Period, the Government shall assist the Project Company to enter into the BOI Agreement with BOI which will provide the Project Company with BOI Status and with the incentives as currently applicable in respect of the business of the Project Company in constructing, Commissioning, owning and operating the Solar Park and in constructing and Commissioning the Transmission Facility only, provided that, the Project Company satisfies the corresponding conditions attaching to the grant of such incentives.

4. OBLIGATIONS OF THE PROJECT COMPANY

4.1 Fund its Costs of Entering into and Complying with the Project Agreements

The Project Company shall at its sole cost, risk and expense (including but not limited to the costs of legal and other advisers):

- 4.1.1** negotiate and enter into the Project Agreements and dutifully perform its obligations arising under or in connection with the Project Agreements;
- 4.1.2** arrange all necessary financing for the design, development, construction, completion testing, Commissioning, operation and maintenance of the Solar Park, and all necessary financing for the design, development, construction, completion testing, and Commissioning of the Transmission Facility and any necessary working capital in order to perform its obligations under the Project Agreements;
- 4.1.3** procure that the Finance Parties or their representatives to enter into a Direct Agreement under Clause 3.6.
- 4.1.4** provide all information and supporting documentation required by any Competent Authority in any application for the grant of or under any licence, permit or consent in respect of building, owning, operating and maintaining the Solar Park, and in respect of design, development, construction, completion testing, and Commissioning of the Transmission Facility; and
- 4.1.5** comply with the Environmental Requirements and shall be responsible for the compliance by its officers, employees, directors, agents and Affiliates with the Environmental Requirements applying to them in relation to their undertaking duties relating to the Project and the business of the Project Company relating to the Project.

4.2 Abide by the Conditions which attach to its Incentives

The Project Company shall unconditionally, fully and dutifully abide by the corresponding conditions attaching to the Government incentives and as arise under the BOI concession.

4.3 Not agree to amendments to any of the Project Agreements without the Consent of the Government

The Project Company shall not agree to any material amendment of any of the Project Agreements without the prior written approval of the Government. Any amendment which results in any additional obligation (whether financial or otherwise) on CEB shall be deemed to be a 'material amendment'.

4.4 Compliance with Law

The Project Company shall at all times comply with the Laws of Sri Lanka and shall be responsible for the compliance with these laws by its officers, employees, directors, agents and Affiliates.

5. FORCE MAJEURE

5.1 Meaning of Force Majeure

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

and, for the avoidance of doubt, whether or not events or circumstances of the kind referred to in Clause 5.1.2.

5.1.2 Force Majeure may include exceptional events or circumstances of the kind listed below, so long as conditions set out in Clause 5.1.1 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 nationalisation 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 Project Site specific 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 Agreement or under any of the Project Agreements;
- (iii) acts of God, landslides, lightning, earthquakes, floods, fires, tsunami, tempest, volcanic eruptions, epidemics, wars, sabotage, terrorism, blockades, riots, insurrections, civil war, ionising radiation or contamination by radio-activity, strikes, lockouts, or other industrial disturbances (excluding such events which are Project Site specific and attributable to the Project Company) and are not primarily motivated by a desire to improve compensation or working conditions of those involved.

5.1.3 In addition to the events set out above in this Clause 5:

- (i) an event of Force Majeure under any of the Project Agreements (as such expression is defined in those documents) shall be deemed to be an event of Force Majeure for the purposes of this Agreement; and

- (ii) an event of Sri Lanka Force Majeure under the Project Agreements (as such expression is defined in those documents) or breach by the CEB under the Sub-Lease Agreement (provided the Project Company is in compliance with the terms thereof), shall be deemed to be an event of Sri Lanka Force Majeure with respect to the Project Company for the purposes of this Agreement.

5.1.4 Force Majeure shall expressly not include the lack of funds or any failure to pay any amounts or charges due and payable under this Agreement although the inability to use available funds, due to any reason set out in Clause 5.1, shall be regarded as Force Majeure.

5.1.5 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 Development Contract, O&M Agreement and the relevant Project Agreement which is analogous to an event of Force Majeure or as the case may be, Sri Lanka Force Majeure defined in this Clause 5:

- (i) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts or consumables for the Project;
- (ii) a delay or default in the performance of any contractor, subcontractor or supplier, including the Development Contractor and the O&M Contractor;
- (iii) non performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and
- (iv) non performance caused by or connected with the non performing party's negligent or intentional acts, errors or omissions.

5.2 Procedure for Claiming Force Majeure

5.2.1 The Party claiming Force Majeure will as soon as is reasonably practicable but no later than 2 (two) 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 Parties of the occurrence of the event or circumstances. If such notice is given more than 2 (two) Days after that date, it shall retroactively excuse the performance of the affected party for the period starting 2 (two) 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 under this 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.

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

5.2.3 The Parties receiving the notice referred to in clause 5.2.1 will, within 14 (fourteen) Days of receipt of receiving the notice, notify the party issuing the notice, 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 11 of this Agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.

5.3 Consequences of Force Majeure:

5.3.1 A Party will be relieved from liability under this Agreement excluding the obligation to pay money, except to the extent expressly provided for in this

Agreement, if performance of any of this Agreement's terms or conditions is prevented or delayed due to Force Majeure.

5.3.2 Any suspension of a Party's performance under this Clause 5 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 Agreement.

5.3.3 In the case of Non-Sri Lanka Force Majeure affecting the Project Company at any time on or after the Commercial Operation Date in circumstances where there is no adjustment of the Scheduled Commercial Operation Date in accordance with clause 5.6.1 of the Power Purchase Agreement in consequence thereof, the Operational Period shall be extended in accordance with Clause 12.3.3 of the Power Purchase Agreement.

5.3.4 In the case of Non-Sri Lanka Force Majeure resulting in damage to the Project or any part thereof or requiring a material modification or a material capital addition to the Project to restore it to an agreed operating level ("**Restoration**"), the Government shall be informed of negotiations between the CEB and the Project Company to agree on:

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

In the event that the CEB and the Project Company are unable to agree on the matter(s) set out in the above sub-clauses (i) and/or (ii) of this Clause 5.3.4 within 60 (sixty) Days, the Government shall be informed by the Project Company of the decision of the expert to whom this matter would have been referred.

5.3.5 Subject to Clause 5.3.1, in the case of Sri Lanka Force Majeure affecting the ability of the CEB to receive electrical energy from, or the ability of the Project

Company to generate electrical energy at the Solar Park, the Government shall be entitled to claim Force Majeure under this Agreement.

- 5.3.6** In the case of Sri Lanka Force Majeure resulting in damage to the Project or requiring a material modification or a material capital addition to the Project to restore it to an agreed operating level, the Government shall be informed of the negotiations between the CEB and the Project Company to determine and agree on the costs of Restoration and the schedule for such Restoration. In the event that the CEB and the Project Company are unable to agree on the costs of Restoration and/or schedule for Restoration within 60 (sixty) Days, the Government shall be informed by the Project Company of the decision of the expert to whom the matter would have been referred.
- 5.3.7** No Force Majeure will relieve a Party of any duty or obligation under this Agreement including the obligation to pay money, which had arisen or been incurred before the Force Majeure.
- 5.3.8** 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.
- 5.3.9** Where Force Majeure prevents a Party from carrying out any obligations under this Agreement for a continuous period of 365 (three hundred sixty five) Days then this Agreement may be terminated by the other Party or Parties giving 60 (sixty) Day's written notice to the Party affected by the Force Majeure situation and the provisions of Clause 7 will apply.

6. LIABILITIES AND INDEMNITIES

6.1 Limit of the Government's Liability

The limit of the Government's liability howsoever arising under or in connection with this Agreement whether in relation to the default of any Party (including the Government) to the Project Agreements or otherwise in relation to the negligence or breach of any duty in law of any such Party shall be limited to the conditions given by the Government under Clause 3.3.

6.2 Consequential Loss

Despite anything to the contrary in this Agreement, no Party shall be liable to the other for the other's Consequential Loss, provided that in no circumstances shall Consequential Loss include any express obligation to make payment (including the payment of costs and damages) or any express obligation to provide an indemnity under any of the other provisions of this Agreement.

7. TERMINATION

7.1 Termination at end of Preliminary Period

Where at or following the end of the Preliminary Period the Power Purchase Agreement is terminated in accordance with clause 4.7 of the Power Purchase Agreement and this Agreement terminates in consequence (under clause 2.1), then no Party shall have any liability to the other for the other's losses, costs and expenses (including legal and consultative expenses), howsoever arising under or in connection with this Agreement by virtue of such termination, or in respect of any losses, costs and expenses (including legal and consultative expenses) incurred prior to the date of termination of this Agreement, including those relating to negotiation, due diligence or its obligations under this Agreement and arranging finance.

7.2 The Government's Right to Early Termination

This Agreement may be terminated by the Government at any time after the Preliminary Period forthwith on notice to the Project Company:

7.2.1 where the Project Company is in material breach of any of its obligations under this Agreement and such breach (where capable of remedy), has been notified to the Project Company and has not been remedied within a period of 60 (sixty) Days of notification, provided that such breach is not due to a breach of the Implementation Agreement by a party other than the Project Company;

7.2.2 where the Project Company is in material breach of this Agreement which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Project Company);

7.2.3 where the Project Company is in material breach of any of its obligations under any of the Project Agreements and such breach (where capable of remedy) has not been remedied within the terms of such Project Agreement; provided that the Government's right to terminate pursuant to this Clause 7.2.3 shall not apply where such material breach of the relevant Project Agreement is indirectly due to breach by the CEB;

7.2.4 where a dispute between the Parties has been submitted to arbitration under Clause 10 but remains unresolved for a period of 365 (three hundred sixty five) Days after appointment of the arbitrators under Schedule 2 and the continuance of such dispute beyond such 365 (three hundred sixty five) Day period would have a significant material adverse effect on the Government (such significant material adverse effect to be determined without regard to any award or other relief that may result from such arbitration); or

7.2.5 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 Project Company within 45 (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 75 (seventy five)Days;
- (v) the Project Company makes an assignment for the benefit of its creditors;
- (vi) Finance Parties exercise any right over the Project or any part thereof or any right of step in and have not entered into a Direct Agreement under clause 3.6; or
- (vii) where the Project Company is generally unable to pay its debts as they become due;

7.2.6 where Force Majeure has continued for a continuous period of 365 (three hundred sixty five) Days pursuant to clause 5.3.9;

7.2.7 following termination of any of the Project Agreements by the CEB, in each case pursuant to the respective provisions thereof.

7.3 The Project Company's Right to Early Termination

This Agreement may be terminated by the Project Company at any time after the Preliminary Period forthwith on notice to the Government:

7.3.1 where the Government is in material breach of any of its obligations under this Agreement and such breach (where capable of remedy) has been notified to the

Government and has not been remedied within a period of 60 (sixty) Days of notification;

7.3.2 where the Government is in material breach of this Agreement which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Government);

7.3.3 where a dispute between the Parties has been submitted to arbitration under Clause 10 but remains unresolved for a period of 365 (three hundred sixty five) Days after appointment of the arbitrators under Schedule 2 and the continuance of such dispute beyond such 365 (three hundred sixty five) Day period would have a significant material adverse effect on the Project Company (such significant material adverse effect to be determined without regard to any award or other relief that may result from such arbitration);

7.3.4 where Force Majeure has continued for a continuous period of 365 (three hundred sixty five) Days pursuant to Clause 5.3.9;

7.3.5 following termination by the Project Company of the Power Purchase Agreement or the Sub-Lease Agreement in each case, pursuant to the respective provisions thereof.

7.4 Sole Grounds for Termination

The provisions of this clause 7 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

7.5 Antecedent Rights

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

7.6 Survival

In the event of the termination of this Agreement, for a period of sixty (60) Months following termination, the provisions of this Agreement as they relate to the payment of any sum due by one Party to the other, the confidential provisions set out in Clause 9.2, this Clause 7.6 and the Disputes Resolution Procedure shall survive termination and continue to have effect in the terms of this Agreement (and in respect of any continuing arbitration commenced prior to the lapse of such sixty Month period, including arbitration referred to in Clauses 7.2.4 or 7.3.3 and any award there from, this Agreement shall survive solely in respect of the matter in arbitration).

7.7 Notices of Termination

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

8. RESTRUCTURINGS

8.1 Obligations of the Government under Restructuring of Industry or the CEB

the obligations of the Government under this Agreement shall survive notwithstanding:

8.1.1 any reorganisation or restructuring of the power generation, electricity transmission and distribution in Sri Lanka; or

8.1.2 the restructuring, reorganisation, recapitalisation, sale divestiture, merger, consolidation, amalgamation, privatisation, change of ownership or other similar transaction involving the CEB; and

the Government shall cause the relevant entity surviving the CEB, to adopt and become fully liable to perform the CEB's obligations under the Power Purchase Agreement and Turnkey Contract for Development of Transmission Assets.

Where the Government no longer has control by virtue of majority voting rights in the CEB or the relevant entity surviving the CEB, the concept of Sri Lanka Force Majeure shall be deleted and have no effect from the date the Government no longer has such majority voting rights.

9. MISCELLANEOUS

9.1 Notices

9.1.1 Unless otherwise expressly provided for, all notices, requests, claims, consents, approvals, certificates or other communication under this 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 or office holder (if any) whom the recipient designates for the purpose.

9.1.2 All notices, requests, claims, consents, approvals, certificates or other communication under this 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);

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

- (i) If to the Government:
To:

Address:

Facsimile:

For:

With a copy to:

Address:

Facsimile:

For:

(ii) If to the Project Company:

To: [] (Private) Limited

Address:

Facsimile:

For:

With a copy to:

Address:

Facsimile:

For:

9.1.3 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 Agreement, will be treated as received:

- (i) if delivered personally, when left with an apparently responsible Person at the recipient's address;
- (ii) if sent by registered post, on acknowledgment 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;

but, if the delivery or receipt is not on a Business Day or after 2.00 pm (local time) on any Business Day, the notice will be treated as received by the recipient at 9.00 am (local time) on the next Business Day.

9.2 Confidentiality and Publicity

9.2.1 All information (including contracts) provided by one Party to the other in connection with the negotiation or performance of this 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.

9.2.2 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 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.

9.3 Amendments

Any amendment to this 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 Agreement is executed.

9.4 Waiver

- 9.4.1** A Party's waiver of any failure to comply strictly with any of this Agreement's terms will not operate as a waiver of strict compliance with any of this Agreement's terms now or in the future.
- 9.4.2** A Party's failure or delay in exercising any right, power, privilege or remedy under this Agreement will not operate as a waiver of it.
- 9.4.3** A waiver of any obligation by any Party shall only be effective if in writing and signed by the chief executive officer of such Party.
- 9.4.4** A single or partial exercise of any right or remedy will not prevent its further or full exercise. The rights and remedies in this Agreement are cumulative and do not exclude any other remedies to which either party may be lawfully entitled.

9.5 Assignment and Transfers of Interests

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

- 9.5.1** The Government may not assign or otherwise transfer all or part of its rights, benefits or obligations under this Agreement without the Project Company's prior consent, such consent not to be unreasonably withheld or delayed.
- 9.5.2** The Project Company may not sell, assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the Government's prior consent, such consent not to be unreasonably withheld or delayed, 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 Agreement to the Finance Parties.
- 9.5.3** Any change including without limitation a change in shareholding which results in a change in the effective ownership, management or control of the Project

Company will be deemed to be an assignment and will require a consent of the Government, which consent shall not be unreasonably withheld.

9.6 Severability

If any of this Agreement's terms are or become void or unenforceable, then those terms will be severed from this 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 Agreement will remain valid and enforceable.

9.7 No Partnership or Other Relationship

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

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

9.7.3 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 Agreement or to the other Party's prior written consent.

9.8 Good Faith

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

9.9 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 Agreement and the transactions contemplated

by this Agreement. Each Party will take all practical steps to make its Affiliates, if any, and all relevant third parties do the same.

9.10 Representations and Warranties

9.10.1 The Government represents and warrants to the Project Company that, as at the date of this Agreement:

- (i) the execution and performance by the Government of this Agreement constitutes a private and commercial act of the Government and not a public or governmental act;
- (ii) entry into and performance of this Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to the Government.

9.10.2 The Project Company represents and warrants to the Government that, as at the date of this 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 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 Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and
- (iii) there are no actions, suits, proceedings or investigations pending or, to the Project Company'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 Agreement or could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the Project Company or in any impairment of its ability to perform its obligations under this Agreement;

- (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.
- (v) the execution, delivery and performance of this 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;
- (vi) it has the required authority, ability, skills, experience and capacity to perform, and shall perform all its obligations in connection with the Project in accordance with the terms of this Agreement;
- (vii) 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 Agreement and its obligations shall be performed in conformity with such requirements and practices; and

- (viii) it has reviewed the requirements of this Agreement, familiarised itself with all the relevant matters specific to Sri Lanka and/or the Project 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 the Project Agreements.

9.11 Entirety of Agreement

This 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 Agreement or agreed in writing after this Agreement's date and properly signed by or on behalf of the Party to be bound by them.

9.12 Counterparts

This Agreement may be executed in counterparts, and each counterpart shall be deemed to be an original, and all so executed counterparts shall constitute one agreement binding on the Parties.

10. DISPUTES

10.1 Disputes

In the event of any dispute or difference of whatever nature between the Parties arising under or in connection with this Agreement (including any dispute or difference in connection with the existence or validity of this Agreement or any provision hereof) which is not first amicably resolved between the Parties to this Agreement by good faith mutual discussions within 30 (thirty) Days, or, in the case of a dispute involving insurance or any disputed invoice, 14 (fourteen) Days, after the date that the disputing party gives notice of the dispute to the other parties identifying the dispute in reasonable detail and requesting consultations between the parties to resolve the dispute, or, after such periods by discussions between a senior official of the Government, senior official of CEB and the chief operating officer of the Project Company within a further period of 15 (fifteen) Days

(or such longer period as the parties may agree) then the Disputes Resolution Procedure set out in Schedule 2 (Disputes Resolution Procedure), shall apply.

11. LAW

11.1 Governing Law

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

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA (the Government)

The Common Seal of _____
_____(PRIVATE) LIMITED

Is affixed hereto in the presence of _____ }
_____ two Directors of the Company }
who attest the sealing thereof _____

The Common Seal of CEB
is affixed hereto in the presence of _____ }
_____ CEB }
who attest the sealing thereof _____ }

Schedule 1 - Definitions

Except as otherwise provided in this Agreement, the following terms in this Agreement shall have the meanings set out below.

"Affiliate"	means in relation to a Party, any one of: (a) a holding company of that Party; (b) a Subsidiary of that Party; (c) any other company which is a Subsidiary of that Party's holding company;
"Agreement"	means this Implementation Agreement;
"BOI"	means the Board of Investment of Sri Lanka, as authorised under the BOI Act;
"BOI Act"	means the Board of Investment of Sri Lanka, Law No 4 of 1978, as amended;
"BOI Status"	means the tax incentives and concessions applicable to a company under the BOI Act;
"Beneficiaries"	means the Project Company, and any Person to whom the Project Company has delegated its obligations in accordance with the Power Purchase Agreement and or the Turnket Contract for Development of Transmission Assets, as the case may be;
"Business Day"	means any day other than a Saturday, Sunday, public holiday or bank holiday in Sri Lanka;
"CEB"	means the Ceylon Electricity Board, a body corporate established by Act No 17 of 1969 and any successor and permitted assign;
"CEB System"	means the electric high voltage transmission system, including all transmission lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the CEB on the opposite side of the Interconnection Point to the ProjectFacility;
"Change in Law Event"	has the meaning given to that term in Clause 9.1 of the Power Purchase Agreement;

"Commercial Operation Date"	means the Day following the date of receipt by the CEB of the Completion Certificate certifying that the Solar Park is capable of operation in accordance with the Power Purchase Agreement;
"Commissioning"	means the activities referred (Commissioning and Performance/Reliability Testing) as described in Schedule 5 of the Power Purchase Agreement;
"Competent Authority"	means the Government or any authority, ministry or department under the control of the Government and any court or tribunal in Sri Lanka; but shall not include the Public Utilities Commission of Sri Lanka set up by Act No. 35 of 2002.
"Completion Certificate"	means any of the certificates issued under Clause 5.7.8 of the Power Purchase Agreement;
"Consequential Loss"	means all losses, costs and financial harm in respect of loss of contract, loss of use of machinery or property, loss of production, loss of profit or loss of revenue or any other economic loss, cost or claim of whatever kind and nature suffered by a party under or in connection with this Agreement however caused (including the default of the other party or a breach of any duty owed in law by the other party), and whether or not foreseeable at the date of this Agreement provided that in no circumstances, shall Consequential Loss include any express obligation to provide an indemnity under any of the provisions of this Agreement;
"Construction Notice"	means the notice issued by the Project Company to the CEB pursuant to Clause 4.6 of the Power Purchase Agreement which signals the end of the Preliminary Period and the commencement of the Construction Period;
"Day" or "day"	means a period of 24 (twenty four) Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;
"Development Contract"	means the agreement between the Project Company and the Development Contractor for the design, engineering, construction, testing and Commissioning of the Project Facility;
"Development Contractor"	means the Development Contractor appointed by the Project Company under Clause 4.2.1 of the Power Purchase Agreement;

"Energy Charge"	means the energy charge payable by the CEB to the Project Company for the Metered Output, as calculated in accordance with Schedule 9 of the Power Purchase Agreement (Capacity Charge and Energy Charge);
"Environmental Approval"	means the environmental approval issued by the Central Environmental Authority in favour of the Project Company in respect of the terms of the environmental clearance for the Project Facility;
"Environmental Law"	means the National Environment Act No 47 of 1980, as amended, any regulations thereunder, as amended from time to time, and all other enactments, statutes, laws rules and regulations for the protection of the environment for the time being in force in Sri Lanka;
"Environmental Licence"	means the licence required to be obtained from the Central Environment Authority under the Environmental Law in relation to the Project Facility;
"Environmental Requirements"	<p>means:</p> <ul style="list-style-type: none"> (i) complying with or exceeding the requirements of the Environmental Approval, the Environmental Licence, the Environmental Law, all applicable environmental quality standards, regulations and directives of the relevant Competent Authorities; (ii) establishing environmental management systems and facilities to ensure that the Environmental Law, applicable regulations, standards and lawful directives referred to in (i) above are complied with or exceeded; (iii) unless otherwise directed by the relevant Competent Authority, installing and operating a suitable continuous emission and ambient air monitoring system including at least four monitoring stations at appropriate locations within a 10 kilometre radial distance from the Project Facility; (iv) installing and operating on-line recorders at the Project Facility and, unless otherwise directed, in the offices of the relevant Competent Authority; (v) providing an annual report on all relevant aspects of the Project Company's environmental facilities, activities and performance no later than 30 (thirty) Days following each 12 month period from the commencement of the Construction Period to the end of the Operational Period. The annual report on environmental performance shall contain a statement of assurance stating that the Environmental Approval, the

Environmental Licence, the Environment Law and all applicable regulations and lawful directives have been complied with or, where this is not the case, shall contain details of any failure to so comply and actions instituted to prevent such failures recurring.

"Financing Agreements"

means any and all of the agreements executed between the Project Company and the Finance Parties for the making available to the Project Company of debt financing for construction and completion of the Project Facility up and until the Operation Date, and the security documents and other ancillary undertakings in favour of the Finance Parties entered into in connection with such agreements;

"Finance Parties"

means the banks and/or financial institutions and/or other Persons (including [*insert relevant lending institutions*] or any Subsidiary thereof) party to the Financing Agreements;

"Force Majeure"

has the meaning given to that term in Clause 6.1;

"Generation Licence"

means the licence required to be obtained by the Project Company under the Electricity Act № 20 of 2009 or applicable statute, as amended, to establish, operate and maintain the Project for the generation of electrical energy in Sri Lanka;

"Government"

means the Government of the Democratic Socialist Republic of Sri Lanka;

"Hour"

means each continuous period of 60 (sixty) minutes commencing with the first minute of each of the twenty four denominated Hours of any Day;

"Laws of Sri Lanka"

means, in relation to this Agreement, all laws in force in Sri Lanka (including any political sub-division thereof) and includes subsidiary legislation (including all rules, regulations, orders and directives) made or issued by any Competent Authority pursuant to or under any such law, and any decree or judicial decision given or pronounced by any court of competent jurisdiction;

"Lease"	means the agreement between the CEB and the Project Company for the lease of the Project Site entered into on or before the date of the Power Purchase Agreement but taking effect on the date of the Construction Notice;
"Month"	means a period beginning at 0000 Hours on the first (1 st) Day of a calendar month and ending at 2400 Hours on the last Day of that calendar month pursuant to the definition of "month" as given in Schedule 1 of the Power Purchase Agreement;
"MW"	means a megawatt or 1000 kilowatts;
"Non-Sri Lanka Force Majeure"	means any event of Force Majeure which is not an event of Sri Lanka Force Majeure;
"Notice"	has the meaning given to that term in Clause 10.1.1;
"Notice of Arbitration"	has the meaning set out in Schedule 2 (Disputes Resolution Procedure);
"O&M Contractor"	means the contractor appointed by the Project Company under the Operation and Maintenance Agreement
"Operational Period"	Operational Period has the meaning as set out in the Power Purchase Agreement;
"Operation and Maintenance Agreement" or "O&M Agreement"	means the agreement between the Project Company and the O&M Contractor for the operation and maintenance of the Solar Park;
"Power Purchase Agreement" or "PPA"	means the Power Purchase Agreement between the Project Company and the CEB, of even date as this Agreement pursuant to which the Project Company has agreed to sell to the CEB, and the CEB has agreed to purchase from the Project Company, electricity generated by the Project;
"Preliminary Period"	means the period commencing on the date of the Power Purchase Agreement and, save as extended in accordance with Clause 4.5 of the Power Purchase Agreement, ending on the earlier of: <ul style="list-style-type: none"> (i) 2400 Hours on the Day falling 180 (one hundred and eighty) Days thereafter; and (ii) 2400 Hours on the Day on which the Project Company gives the CEB the Construction Notice;

"Project"	means the design, financing, procurement, construction, testing, Commissioning, completion, ownership, management, long-term operation, repair, maintenance and transfer of the Project Facility in accordance with the Project Agreements;
"Project Agreements"	the Implementation Agreement, Power Purchase Agreement, Turnkey Contract for Development of Transmission Assets, the Lease, Direct Agreements and the BOI Agreement;
"Project Company"	means the project company which is a party to this Agreement, being a limited liability special purpose vehicle incorporated in Sri Lanka and established for the purpose of financing, designing, construction and operating the Project;
"Project Facility"	means the facility developed pursuant to the Project (i.e., the Solar Park and the Transmission Facility);
"Project Site"	means the area of land more particularly described in the Lease where the Project is located and shall include the necessary easements and corridors for the carrying out of the Project and any other places as may be specified in the Project Agreements as forming part of the Project Site;
"Prospective Finance Parties"	means one or more of the financial institutions named in Volume 2 Schedule J of the Request for Proposals or such other financial institution approved by the CEB;
"Prudent Utilities Practice"	means the accepted international practice and standard which the Project Company shall identify prior to the Operational Period, and engineering and operation considerations, including manufacturers' recommendations and the exercise of that degree of reasonable skill, diligence, foresight and prudence that would be exercised or generally followed by a skilled and experienced operator in the operation and maintenance of facilities similar to the Project Facility;
"Request for Proposals"	means the request for proposals issued by the Government for this Project;
"Rupees" or "Rs"	means the lawful currency of Sri Lanka;
"Sri Lanka"	means the Democratic Socialist Republic of Sri Lanka;
"Sri Lanka Force Majeure"	means Force Majeure as a result of any of the events set out in Clauses 6.1.2(i) and 6.1.2(ii);
"Subsidiary"	means a company:

- (i) of which the majority of its issued share capital is held by another company; or
- (ii) in respect of which another company has the right to control the composition of the board of directors or the casting of votes at shareholders' meetings of that company; or
- (iii) which, or whose board of directors, normally acts in accordance with the instructions of another company;

"Tribunal"

has the meaning given to that term in paragraph 3.4 of Schedule 2 (Disputes Resolution Procedure);

"UNCITRAL Rules"

has the meaning given to that term in paragraph 2.1 of Schedule 2 (Disputes Resolution Procedure);

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Schedule 2 - Disputes Resolution Procedure

Arbitration

2.1 References to Arbitration

Any dispute or difference of whatever nature between the parties arising out of or in connection with this Agreement (which are not first amicably resolved between the parties) including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade (the "**UNCITRAL Rules**") for the time being in force, which rules are deemed to be incorporated by reference to this clause save as may be amended by this Schedule 2 (Disputes Resolution Procedure).

2.2 Notices of Arbitration

Either of the parties to this Agreement who wishes to initiate an arbitration shall give a notice of arbitration to the other party in accordance with Article 3 of the UNCITRAL Rules.

2.3 Place and Language of Arbitration

The place of the arbitration shall be Colombo. The language of the arbitration shall be English and any award shall be rendered in English.

2.4 Arbitral Tribunal

The Arbitral Tribunal (the "**Tribunal**") shall be composed of a sole arbitrator appointed by agreement of the parties within 21 (twenty one) Days of receipt of Notice of Arbitration (or such longer period as the parties may agree) and, in the absence of such agreement, each party shall appoint one arbitrator and the two arbitrators shall choose the third arbitrator who will act as the presiding arbitrator of the Tribunal in accordance with Article 7 of the UNCITRAL Rules. The arbitrator shall not be a citizen or resident of Sri Lanka.

2.5 Consolidation of Disputes under this Agreement

2.5.1 Each party agrees that for the purposes of the UNCITRAL Rules, the arbitration agreement set out in this Schedule 2 and the arbitration agreement contained in the Project Agreements shall together be deemed to be an arbitration agreement that binds each party to this Agreement and each party to the Project Agreements.

2.5.2 After a Tribunal has been appointed, either party may give a further notice of arbitration to the other party and to the Tribunal referring any other dispute arising out of or in connection with this Agreement to those arbitral proceedings. If the other party consents within 30 (thirty) Days of receipt of such notice (determined in accordance with Clause 10.1) to any such other dispute being so referred, the Tribunal may, as it considers appropriate, order that the other dispute should be referred to and consolidated with the same arbitral proceedings.

2.6 Conduct of Arbitration

In accordance with Article 15 of the UNCITRAL Rules, the Tribunal may (subject to the UNCITRAL Rules) conduct the arbitration in such manner as it considers appropriate. In all matters not expressly provided for herein or in the UNCITRAL Rules, the Tribunal shall act in accordance with the spirit of the UNCITRAL Rules bearing in mind, in particular, that there may be more than two parties to the proceedings and that there may be more than one set of proceedings.

2.7 Awards

All and any awards or other decisions of the Tribunal shall be made in accordance with the UNCITRAL Rules in writing and shall be binding on the parties who exclude all and any rights of appeal from all and any awards insofar as such exclusion can validly be made in connection with any question of fact or law arising in the course of the arbitration or with respect to any award. The final award shall be made within six months from the appointment of the Tribunal, but insofar as it is impractical to do so, shall be made as soon as possible. All and any awards or other decisions of the Tribunal shall be made in US Dollars (unless the Tribunal determines that the obligation or liability in respect of which an award is made should be compensated in Rupees) free of any tax, deduction or set off and the Tribunal shall be authorised in its discretion to grant pre-award and post-award interest at commercial rates.

2.8 Costs of Enforcement

Any costs, fees, or taxes incident to enforcing any award shall to such extent as is permitted by law, be charged against the party resisting such enforcement.

2.9 Parties Obligations During Arbitral Proceedings

2.9.1 Except as expressly provided in this Agreement, pending the award in any arbitration proceeding hereunder (i) this Agreement and the rights and obligations of the parties shall remain in full force and effect and (ii) each of the parties shall continue to perform their respective obligations under this Agreement. The termination of this Agreement shall not result in the termination of any arbitration proceeding pending at the time of such termination nor otherwise affect the rights and obligations of the parties under or with respect to such pending arbitration.

2.9.2 Each party irrevocably agrees not to initiate any suit or other proceedings:

- (i) in any court of competent jurisdiction arising out of or in relation to any dispute requiring to be determined by an arbitral proceeding in accordance with this Schedule 2(Disputes Resolution Procedure) until any such dispute has been concluded by means of a final decision of the Tribunal; or
- (ii) in which relief or remedy is sought by way of an injunction or other judicial order (interlocutory or final) which would have the effect (directly or indirectly) of restraining or impeding the maintenance or prosecution by

either party of any arbitral proceeding initiated in accordance with this Schedule 2(Disputes Resolution Procedure);

provided that a party may initiate a suit or proceeding for the purpose of:

- (a) enforcement of any procedural order made by the Tribunal or the arbitration agreement set forth in this Schedule 2 (Disputes Resolution Procedure); or
- (b) granting of any relief by way of interlocutory injunction or other interim relief or remedy sought exclusively in aid of a claim which is a subject matter of an arbitral proceeding brought pursuant to this Schedule 2(Disputes Resolution Procedure) (including without limitation injunctive or other interim relief or remedy with a view to preventing or restraining the removal or dissipation of the assets of the respondent to the claim for such relief or remedy from Sri Lanka or other place where those assets are situated).

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