









































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.

<b>"Affiliate"</b>	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;
<b>"Agreement"</b>	means this Implementation Agreement;
<b>"BOI"</b>	means the Board of Investment of Sri Lanka, as authorised under the BOI Act;
<b>"BOI Act"</b>	means the Board of Investment of Sri Lanka, Law No 4 of 1978, as amended;
<b>"BOI Status"</b>	means the tax incentives and concessions applicable to a company under the BOI Act;
<b>"Beneficiaries"</b>	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;
<b>"Business Day"</b>	means any day other than a Saturday, Sunday, public holiday or bank holiday in Sri Lanka;
<b>"CEB"</b>	means the Ceylon Electricity Board, a body corporate established by Act No 17 of 1969 and any successor and permitted assign;
<b>"CEB System"</b>	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;
<b>"Change in Law Event"</b>	has the meaning given to that term in Clause 9.1 of the Power Purchase Agreement;

<b>"Commercial Operation Date"</b>	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;
<b>"Commissioning"</b>	means the activities referred (Commissioning and Performance/Reliability Testing) as described in Schedule 5 of the Power Purchase Agreement;
<b>"Competent Authority"</b>	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.
<b>"Completion Certificate"</b>	means any of the certificates issued under Clause 5.7.8 of the Power Purchase Agreement;
<b>"Consequential Loss"</b>	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;
<b>"Construction Notice"</b>	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;
<b>"Day" or "day"</b>	means a period of 24 (twenty four) Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;
<b>"Development Contract"</b>	means the agreement between the Project Company and the Development Contractor for the design, engineering, construction, testing and Commissioning of the Project Facility;
<b>"Development Contractor"</b>	means the Development Contractor appointed by the Project Company under Clause 4.2.1 of the Power Purchase Agreement;

<b>"Energy Charge"</b>	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);
<b>"Environmental Approval"</b>	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;
<b>"Environmental Law"</b>	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;
<b>"Environmental Licence"</b>	means the licence required to be obtained from the Central Environment Authority under the Environmental Law in relation to the Project Facility;
<b>"Environmental Requirements"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(iii) <del>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;</del></li> <li>(iv) installing and operating on-line recorders at the Project Facility and, unless otherwise directed, in the offices of the relevant Competent Authority;</li> <li>(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</li> </ul>

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;

<b>"Lease"</b>	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;
<b>"Month"</b>	means a period beginning at 0000 Hours on the first (1 <sup>st</sup> ) 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;
<b>"MW"</b>	means a megawatt or 1000 kilowatts;
<b>"Non-Sri Lanka Force Majeure"</b>	means any event of Force Majeure which is not an event of Sri Lanka Force Majeure;
<b>"Notice"</b>	has the meaning given to that term in Clause 10.1.1;
<b>"Notice of Arbitration"</b>	has the meaning set out in Schedule 2 (Disputes Resolution Procedure);
<b>"O&amp;M Contractor"</b>	means the contractor appointed by the Project Company under the Operation and Maintenance Agreement
<b>"Operational Period"</b>	Operational Period has the meaning as set out in the Power Purchase Agreement;
<b>"Operation and Maintenance Agreement" or "O&amp;M Agreement"</b>	means the agreement between the Project Company and the O&M Contractor for the operation and maintenance of the Solar Park;
<b>"Power Purchase Agreement" or "PPA"</b>	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;
<b>"Preliminary Period"</b>	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"> <li>(i) 2400 Hours on the Day falling 180 (one hundred and eighty) Days thereafter; and</li> <li>(ii) 2400 Hours on the Day on which the Project Company gives the CEB the Construction Notice;</li> </ul>

<b>"Project"</b>	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;
<b>"Project Agreements"</b>	the Implementation Agreement, Power Purchase Agreement, Turnkey Contract for Development of Transmission Assets, the Lease, Direct Agreements and the BOI Agreement;
<b>"Project Company"</b>	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;
<b>"Project Facility"</b>	means the facility developed pursuant to the Project (i.e., the Solar Park and the Transmission Facility);
<b>"Project Site"</b>	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;
<b>"Prospective Finance Parties"</b>	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;
<b>"Prudent Utilities Practice"</b>	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;
<b>"Request for Proposals"</b>	means the request for proposals issued by the Government for this Project;
<b>"Rupees" or "Rs"</b>	means the lawful currency of Sri Lanka;
<b>"Sri Lanka"</b>	means the Democratic Socialist Republic of Sri Lanka;
<b>"Sri Lanka Force Majeure"</b>	means Force Majeure as a result of any of the events set out in Clauses 6.1.2(i) and 6.1.2(ii);
<b>"Subsidiary"</b>	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);

Information Copy - Not for Bidding

## **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).

Information Copy - Not for Bidding