

**GOVERNMENT OF SRI LANKA  
MINISTRY OF POWER AND ENERGY  
CEYLON ELECTRICITY BOARD**

**REQUEST FOR PROPOSALS  
FOR THE ESTABLISHMENT OF WIND POWER PLANTS**

**December 2002**

**VOLUME III**

**MODEL POWER PURCHASE  
AGREEMENT**

**Ceylon Electricity Board**

**No. 50, Sir Chittampalam A. Gardiner Mawatha, COLOMBO 00200, SRI LANKA**



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## **POWER PURCHASE AGREEMENT**

This POWER PURCHASE AGREEMENT dated as of..... (the "Agreement") entered into between....., a company incorporated with limited liability under the Companies Act No. 17 of 1982, and having its registered office at..... (the "Company", which expression shall, unless repugnant to the context, mean and include the Company's successors and permitted assigns) and Ceylon Electricity Board, a body corporate established by Act No. 17 of 1969, as amended and having its head office at No. 50, Sir Chittampalam A. Gardiner Mawatha, Colombo 2. (the "CEB", which expression shall, unless repugnant to the context, mean and include CEB's successors and permitted assigns).

### **WITNESSETH**

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

WHEREAS, the Company has been duly incorporated for the purpose of constructing, owning, operating and maintaining .....MW Wind Power Station at ....., Sri Lanka, as described in the First Schedule;

AND WHEREAS, the Company wishes to sell and CEB is willing to purchase electrical energy generated by the Facility, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I      DEFINITIONS**

### **Section 1.1    Definitions**

Except as otherwise provided herein, in this Agreement and in the recitals, the following terms shall have the meanings set forth below.

**"Affiliate"** means in relation to any party, a person that controls, is controlled by, or is under common control with such party. As used in this definition, the terms "control" means with respect to a person that is a company, the ownership, directly or indirectly, of more than 50% of the voting securities of such person or control in the management or appointment of directors in such person, and with respect to a person that is not a company, the power to direct the management or policies of such person, whether by operation of law, by contract or otherwise.

**"Agent"** shall have the meaning set forth in Section 11.3(b).

**"Annual Energy Amount" (AEA)** shall mean ..... kWh of electrical energy.

**"Back Up Meter"** shall have the meaning set forth in Section 6.1(c).

**"BOI Agreement"** means the agreement dated ..... entered into pursuant to Board of Investment Law, between the Board of Investment of Sri Lanka and the Company, as may be amended from time to time.

**"Board of Investment Law"** means the Board of Investment of Sri Lanka Law No. 4 of 1978 as amended.

**"BOI Status"** means the concessions and the privileges enjoyed by the Company subject to the terms and conditions set out in the BOI Agreement.

**"Business Day"** means any Day other than a Saturday, public holiday or a bank holiday in Sri Lanka. For the purpose of this Agreement, any action required to be performed on any Day that is not a Business Day, or any period for giving notice or taking any action or otherwise that ends on Day that is not a Business Day, shall be deemed to be duly taken, given or performed if taken, given or performed on a Day that is the next Business Day.

**"Buyout"** shall have the meaning set forth in Schedule Nine.

**"CEB LC Bank"** means the licensed commercial bank in Sri Lanka reasonably acceptable to the Company, which issues the CEB Letters of Credit.

**"CEB LC Certificate"** means the certificate substantially in the form of Exhibit F to be presented by the Company to the CEB LC Bank in terms of Section 4.5.

**"CEB Letter of Credit"** shall have the meaning set forth in Section 4.5.

**"Change in Law"** shall mean, subsequent to the date hereof, a change in or in the binding interpretation of or adoption, promulgation, amendment, modification or repeal of any Laws of Sri Lanka or the introduction, amendment or modification of any of the terms and conditions applicable to the Project by any Governmental Instrumentality of Sri Lanka in connection with the issuance or renewal of any Governmental Approvals not arising however from any action or inaction by the Company.

**“Change in Law Event”** shall have the meaning set forth in Section 8.6(a).

**“Commercial Operation”** means the generation of electrical energy by the Facility, on and after the Final Completion Date.

**“Commissioning Period”** means the period during which commissioning of the Facility will be carried out.

**“Commissioning Schedule”** shall have the meaning set forth in the Third Schedule.

**“Company LD Bank”** means licensed commercial bank in Sri Lanka reasonably acceptable to the CEB which issues the Company Liquidated Damages Bond

**“Curtailement”** means the failure or inability of the CEB to accept electrical energy for reasons other than Forced Outage or Force Majeure.

**“Day”** means a 24-hour period beginning immediately after and ending at 12.00 midnight Sri Lanka time.

**“Deemed Generation Charge”** shall have the meaning set forth in the Fourth Schedule.

**“Deemed Generation”** shall mean the kWh calculated in terms of the Fourth Schedule.

**“Designee”** means a person appointed by the Lenders who (i) is a reputable wind power plant operator with demonstrable financial standing and technical experience to operate and maintain the Facility (ii) shall have necessary financial standing and technical experience and shall have contractually undertaken to cure all defaults of the Company under this Agreement, including the payment of all amounts if any then due and payable to CEB under this Agreement (iii) shall have expressly assumed in writing for the benefit of CEB all the obligations of the Company under this Agreement, including but not limited to the obligation of the Company to maintain and operate the Facility in accordance with the provisions of this Agreement and (iv) is approved by the Government of Sri Lanka and CEB, which approval shall not be unreasonably withheld or delayed.

**“Dispatch Instructions”** means the issue of instructions to the Company from CEB’s system control centre to commence, increase, decrease or cease the supply of electrical energy under this Agreement, subject to the obligations of the Parties under this Agreement and having regard to the Prudent Utility Practices.

**“Dollars”, “dollars” or “US\$”** denotes lawful currency of the United States of America.

**“Dollar Denominated Payments”** means the Dollar component of the Tariff and other amounts denominated in Dollars, which are required to be paid under this Agreement.

**“Due Date”** means with respect to any invoice including Monthly Invoice(s), the Day that is the thirtieth (30<sup>th</sup>) Day from the date of such invoice, whether such invoice is raised by the Company or CEB.

**“Energy Charge”** shall have the meaning set forth in the Fourth Schedule.

**“Environmental Law”** means all Laws of Sri Lanka for the protection of the environment for the time being in force.

**"Environmental License"** means any approvals, permits, consents and clearances granted under Environmental Law.

**"Exhibits"** mean the Exhibits attached to this Agreement and forming an integral part hereof.

**"Expert"** shall have the meaning set forth in Section 14.1(b).

**"Facility"** means all plant, equipment and transmission lines necessary for the generation and transmission of electrical energy up to the Interconnection Point but excluding the Interconnection Facilities of CEB, as more fully set out in the First Schedule.

**"Financing Agreements"** mean the agreements between the Company and the Lenders for making available to the Company credit facilities, the security documents pursuant thereto and other ancillary undertakings in favour of the Lenders entered into in connection with such agreements, on or before the expiry of the Preliminary Period and any refinancing arrangements thereof.

**"Final Completion"** shall have the meaning set forth in Section 8.2(g).

**"Final Completion Date"** means the Day occurring immediately after the Day on which the Facility has achieved Final Completion.

**"Force Majeure"** shall have the meaning set forth in Article XIII.

**"Force Majeure Energy Amount"** means for any Year the electrical energy the Company is unable to deliver under this Agreement due to Force Majeure or Sri Lanka Force Majeure affecting either Party.

**"Forced Outage"** means the failure or inability of the Company to generate or deliver electrical energy under this Agreement except where such failure or inability is solely due to Curtailment or Force Majeure.

**"Generation License"** means the license issued to the Company by the Minister of Power & Energy of the Government of Sri Lanka, under the applicable law to build, own, operate and maintain the Facility.

**"Government"** or **"Government of Sri Lanka"** means the Government of the Democratic Socialist Republic of Sri Lanka.

**"Governmental Approvals"** means all approvals, consents, permits, required to be taken, or obtained from the Government of Sri Lanka or any Governmental Instrumentality of Sri Lanka in connection with this Agreement or the Project, including to those approvals, consents, permits and licenses set forth in Exhibit C.

**"Government Guarantee"** shall mean the guarantee provided by the Government of Sri Lanka under section 4.4 of the Implementation Agreement.

**"Governmental Instrumentality"** shall mean any ministry, department, political subdivision, instrumentality, agency, provincial or municipal council, authority, body or entity, corporation or commission under the control of the government of any country excluding Sri Lanka.



**“Governmental Instrumentality of Sri Lanka”** shall mean any ministry, department, political subdivision, instrumentality, agency, provincial or municipal council, authority, body or entity, corporation or commission under the control of the Government of Sri Lanka.

**"Guaranteed Plant Capacity"** or "GPC" means 20 MW or such lower capacity as declared pursuant to Section 8.2 (f).

**“Identified Project Shareholder”** is the shareholder of the Project Company who has demonstrated experience of reaching financial closure (on BOO/BOT basis), in wind power projects in last 5 years, where total project cost of any one such project exceeded US\$ 10 million and has agreed to hold at least 10% of the Project equity until at least the fifth anniversary of the Final Completion Date.

**“Implementation Agreement”** means the agreement dated as of the date of this Agreement between the Government of Sri Lanka and the Company.

**“Independent Engineer”** shall mean the engineer selected by the Lenders in terms of the Financing Agreements as the Lenders’ engineer from the list of engineers specified in the Tenth Schedule hereto or such other person mutually agreed between the Parties and the Lenders to be the Independent Engineer for the purpose of this Agreement.

**“Input Sales Taxes”** means any and all forms of sales and value added taxes, imposts, duties and levies of whatever kind and nature which any other person is, by the Laws of Sri Lanka obligated to collect on its sales to or services provided to the Company.

**"Interconnection Completion Date"** means that Day which is 30 Days prior to Scheduled Completion Date.

**"Interconnection Facility"** means all equipment beyond the Interconnection Point, enabling CEB to receive Guaranteed Plant Capacity of the Facility, constructed and installed by CEB for the purpose of interconnecting the Facility with CEB's existing transmission and distribution system including relay and switching equipment, protective devices and safety equipment.

**"Interconnection Point"** means the .... kV connection stud of the Interconnection Facility located....., depicted as "J" in Exhibit A.

**"kV"** means kilovolts.

**"kW"** means kilowatt.

**"kWh"** means one kilowatt hour.

**"Laws of Sri Lanka"** means the constitution, any act, statute, ordinance, law, rule, regulation, gazette notification, directive, decree, order, by-law having the binding force of law in Sri Lanka.

**“LD Certificate”** means the certificate substantially in the form of Exhibit H to be presented by CEB to the Company LD Bank in terms of Section 4.7 (c).

**“Lead Member”** is the identified shareholder of the Project Company having written authority of other shareholder of the Project Company and agreed to hold at least 15% of the Project equity until at least the fifth anniversary of the Final Completion Date.

**“Lenders”** mean any person providing credit facilities to the Company for the purposes of the Project pursuant to the Financing Agreements.

**“Lender Cure Rights”** shall have the meaning set out in Section 11.3(c).

**“Liquidated Damages Bond”** shall have the meaning set forth in Section 4.7(c).

**“Loan Period”** means a period of (tenure of the loan repayment period to be inserted) Years commencing from the Final Completion Date.

**“Loss”** means any loss, damage, liability, payment, claim, cost or penalty (excluding any indirect or consequential loss, damage, profit, liability, payment or obligation) or reasonable expense related thereto (including reasonable legal fees).

**“Main Meter”** shall have the meaning set forth in Section 6.1(a).

**“Meters”** means the Main Meter and the Back Up Meter.

**“Metered Sales”** means electrical energy delivered by the Company to CEB during a Month under the terms and conditions of this Agreement, metered and measured at the Metering Point in accordance with Article VI hereof.

**“Metering Point”** means the point at the Interconnection Point (marked as “M” in Exhibit A) where electrical energy delivered by the Company is metered and measured.

**“Milestone Schedule”** shall have the meaning set out in Section 8.2(a).

**“Minimum Energy Amount”** shall mean for any year 50% of the difference between Annual Energy Amount and the aggregate of Force Majeure Energy Amount and Curtailment (if any).

**“MW”** means a megawatt.

**“Month”** or **“month”** means a calendar month.

**“Monthly Invoice”** shall have the meaning set out in Section 4.2(a).

**“Party”** means CEB or the Company, as the case may be.

**“Parties”** shall mean CEB and the Company.

**“Performance Bond”** means the performance bond no..... issued by .....or any replacement thereof.

**“Preliminary Obligations”** means the obligations of the parties defined in Sections 2.1 and 2.2 herein.

**“Preliminary Period”** means the period commencing on the date of this Agreement and, unless extended in accordance with Section 2.4, ending on 2400 Hours on the Day falling 180 Days thereafter or the date on which parties make joint certification under Section 2.6 whichever is earlier.

**“Preliminary Termination Notice”** means a preliminary notice of termination given by the Company or CEB pursuant to Section 11.1 or 11.2, as the case may be.

**"Prime Rate"** means:

- (a) for any amount denominated in Dollars, on any Day, the rate per annum which is publicly announced from time to time as its prime rate by Citibank N.A., New York, or any other bank mutually acceptable to the Parties, and in force on such date and, for the purposes of this Agreement, a change in any such rate shall be effective on or from the date on which it is announced or, if such announcement provides for such change to come into effect on a later date, on and from such later date.
- (b) for any amount denominated in Rupees, the weighted average prime lending rate as announced from time to time by the Central Bank of Sri Lanka for Rupee amounts, and in force on such date and for the purposes of this Agreement, a change in any such rate shall be effective on and from the date on which it is announced or, if such announcement provides for such change to come into effect on a later date, on and from such later date.

**“Project”** means the project comprising the design, engineering, financing, construction, owning, testing, commissioning, operation, management and maintenance of the Facility in compliance with the Project Documents.

**“Project Documents”** means this Agreement, the Implementation Agreement, and the BOI Agreement and any other agreements as the Parties shall from time to time agree in writing to recognise as “Project Documents”.

**"Prudent Utility Practices"** means accepted international practices and standards, engineering and operational considerations, including manufacturers' recommendations generally followed in designing, constructing, testing, commissioning, operation and maintenance of facilities similar to the Facility.

**“Reference Wind Mast”** means the wind mast, electronic recorder and wind data storage device installed at the Site and located according to IEC 61400-12.

**"Reimbursable Taxes"** means expenses directly, necessarily and actually borne by the Company for the performance of its obligations under this Agreement in relation to the Project on account of any and all taxes, including gross receipts, business turnover, use, consumption, property, franchise, occupational, excise duties, customs duties, defence levy, however imposed, withheld, levied, or assessed in relation to the Company's business in the Project, by the Government of Sri Lanka, or any Governmental Instrumentality of Sri Lanka or any other taxation authority in Sri Lanka, but excluding Input Sales Taxes, Sales Taxes, and all taxes, imposts, duties or levies of whatever kind or nature however imposed that the Company may become liable to due to the sole default of the Company in maintaining the tax concessions available to the Company under the BOI Agreement or liable after the lapse of the applicable tax holiday under the BOI Agreement or in respect of which the Company is entitled to a credit or receives an input credit.

**“Required Equity”** means not less than 20% of the total cost of the financing, design, engineering, development, manufacturing, construction, testing and commissioning of the Facility to be invested by way of equity investment.

**"Rupees" or "Rs"** denotes lawful currency of Sri Lanka.

**“Rupee Denominated Payments”** means the Rupee component of the Tariff and other amounts denominated in Rupees, which are required to be paid under this Agreement.

**“Sales Taxes”** means any and all forms of sales and value added taxes, imposts duties and levies of whatever kind and nature which the Company by the Laws of Sri Lanka is obligated to collect on its sales.

**"Scheduled Completion Date"** means that date on which the Facility is expected to be capable of Commercial Operation as declared by the Company under Section 8.2 (a), as may be extended pursuant to Section 8.2 (b) and (d).

**"Schedules"** mean the Schedules attached to this Agreement and forming an integral part of this Agreement.

**"Site"** means the location of the Facility including the rights of way for the Transmission Line up to the Interconnection Point.

**"Specifications"** means the specifications of the Facility, including relevant extracts from the technical specifications of the Facility set forth in the First Schedule.

**"Sri Lanka"** means the Democratic Socialist Republic of Sri Lanka.

**“Suspension Period”** means the suspension period under Section 11.3 or Section 11.4 as the case may be.

**"Tariff"** means the rate payable by CEB for the purchase of each kWh of electrical energy under this Agreement, as described in the Fourth Schedule.

**“Taxes”** means any and all Reimbursable Taxes, Sales Taxes and Input Sales Taxes.

**"Term"** shall have the meaning set forth in Section 15.1.

**"Termination Date"** means the Day on which this Agreement shall expire or terminate.

**“Termination Notice”** shall mean a termination notice issued under Section 11.3(e) or 11.4(b) as the case may be.

**“Termination Point”** means the connection stud of the line isolator depicted as “T” in the Exhibit A.

**“Transmission Line”** means the transmission line, which connects the Termination Point to the Interconnection Point enabling the Company to deliver electrical energy generated by the Wind Power Station to CEB.

**“Wind Power Station”** means the group of Wind Turbine Generating Set(s) including the power transmission lines up to the Termination Point.

**“Wind Speed Data”** means the hourly average velocity of wind, measured by the Wind Speed Sensor, expressed in meters per second.

**“Wind Speed Sensor”** means the cup anemometer(s) calibrated in accordance with IEC 61400-12, installed on the nacelle of the respective Wind Turbine Generating Set.

**“Wind Turbine Generating Set(s)”** means the wind turbine generator(s) installed at the Site.

**“Year”** means the period starting from the Final Completion Date or each subsequent anniversary thereof, as the case may be, ending at 2400 hrs on the Day prior to the Day of the following anniversary of the Final Completion Date.

**Section 1.2 Interpretation:**

In this Agreement (including the recitals), unless the context otherwise requires:

- (a) words, phrases and expressions set out in Section 1.1 shall have the meanings given to them in that Section;
- (b) words importing persons or parties shall include firms and corporations and all references to Parties shall include their permitted assigns and successors;
- (c) words importing the singular only shall include the plural and vice versa, where the context requires;
- (d) words importing the masculine gender shall include the feminine gender and neuter gender and vice versa;
- (e) the headings in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- (f) the words “include” and “including” are to be construed without limitation;
- (g) all references to Articles, Sections, Exhibits, Schedules (and Paragraphs) shall be construed as references to articles, exhibits, sections and schedules of (and paragraphs to schedules of) this Agreement; and
- (h) references to this Agreement or to any other agreement or document shall include references to this Agreement or such other agreement or document (including any recitals or schedules thereto) as may be amended, varied, supplemented, replaced and/or restated in any manner from time to time.

## **ARTICLE II PRELIMINARY PERIOD AND THE OBLIGATIONS OF PARTIES**

### **Section 2.1 Preliminary Obligations of the Company**

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

- (a) obtain the BOI Status, and the Governmental Approvals listed in Section A of Exhibit B.
- (b)
  - (i) deliver to CEB certified copies of its memorandum and articles of association, and
  - (ii) deliver to the CEB, copies of resolutions adopted by the board of directors or similar governing body of the Company authorising the execution, delivery and performance of this Agreement, certified by the secretary of the Company.
- (c) deliver to CEB, plant and equipment specifications, names of manufacturers and type test certificates with respect to wind turbines, generators, transformers, switch-gear, and their auxiliaries.
- (d) satisfy all the Preliminary Period obligations of the Implementation Agreement other than those have been waived in accordance with such agreements.
- (e) submit a certificate duly endorsed by or on behalf of the Lenders confirming that the financing for the Facility has been committed in accordance with the provisions of the Financing Agreements and that all preliminary obligations to the initial disbursement under the Financing Agreements (other than a preliminary obligations relating to the effectiveness of this Agreement and the Implementation Agreement) shall have been either satisfied or waived.
- (f) provide CEB with a legal opinion of the legal counsel of the Company in such form as may be agreed by the Parties certifying:
  - (i) that the Company has the power and authority to execute, deliver and perform its obligations under this Agreement;
  - (ii) that the execution and delivery of this Agreement and the performance by the Company of the obligations hereunder does not violate any provision of Laws of Sri Lanka or any provision of any judgement, decree or order of any Governmental Instrumentality of Sri Lanka;
  - (iii) that this Agreement has been duly executed and delivered by the Company and constitutes legal, valid and binding obligations of the Company and is enforceable against the Company in accordance with its terms.
- (g) acquire the necessary rights relating to the Site and submit details thereof to CEB.
- (h) provide to CEB a certificate confirming that each of its representations and warranties contained in this Agreement are true and accurate in all material respects on the date of this Agreement and on the date of such certification.

## **Section 2.2 Preliminary Obligations of the CEB**

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

- (a) deliver to the Company, copies of resolutions adopted by the board of directors or similar governing body of the CEB authorising the execution, delivery and performance of this Agreement, certified by the secretary of the CEB.
- (b) provide the Company with the legal opinion of the chief legal officer of CEB in such form as may be agreed by the Parties certifying:
  - (i) that CEB has the power and authority to execute, deliver and perform its obligations under this Agreement;
  - (ii) that the execution and delivery of this Agreement and the performance by CEB of the obligations hereunder does not violate any provision of Laws of Sri Lanka or any provision of any judgement, decree or order of any Governmental Instrumentality of Sri Lanka;
  - (iii) that this Agreement has been duly executed and delivered by CEB and constitutes legal, valid and binding obligations of CEB and is enforceable against CEB in accordance with its terms.
- (c) provide any information in the possession of CEB reasonably required by the Company for the purpose of securing financing for the Project including information reasonably required by the Lenders or any prospective lenders proposing to provide finance to the Company for the Project provided that CEB is legally entitled to do so;

## **Section 2.3 Waivers**

The obligations set out in Sections 2.1 and 2.2 above may only be waived in writing by the other Party.

## **Section 2.4 Failure to satisfy the Preliminary Obligations**

In the event that any of the Preliminary Obligations above are not satisfied or are not waived by (6 months), this Agreement shall, subject to Section 2.5 terminate without any liability whatsoever to either Party; provided that the Parties may agree to an extension of the Preliminary Period for a further period not exceeding 365 Days from such date, for the satisfaction or waiver of the Preliminary Obligations. Provided further, where an event described in this Agreement as Force Majeure adversely affects a Party in satisfying any Preliminary Obligations by such date, such Party shall have an additional period equal to the period such Party was so affected. If any Preliminary Obligations herein is not satisfied or waived by the end of such extended period, subject to Section 2.5, this Agreement shall terminate without any liability whatsoever to either Party.

## **Section 2.5 Recourse to the Performance Bond**

If at the time this Agreement is terminated pursuant to Section 2.4 above, the Company has failed to use its reasonable endeavours to fulfil the Preliminary Obligations set out in Section 2.1 above, nothing contained in this Agreement shall be construed as affecting the right of recourse of CEB to the Performance Bond; provided that in the event that this Agreement is terminated in terms of Section 2.4 above due to failure by the Company to satisfy Section 2.1 (e) above and the Company establishes by way of a

certificate duly endorsed by the Lenders that the financing for the Facility is available to the Company, CEB shall not exercise its rights of recourse under the Performance Bond.

### **Section 2.6 Delivery of Certificates**

Upon the satisfaction and waiver of any of the Preliminary Obligations described in Section 2.1 and 2.2 by the respective Parties, the Parties shall jointly certify that the Preliminary Obligations have been fulfilled or waived to their satisfaction. The Preliminary Period shall thereupon expire.

## **ARTICLE III SALE AND PURCHASE OF ENERGY**

### **Section 3.1 CEB's obligations to make Tariff payments**

- (a) Subject to the terms and conditions of this Agreement, from the Final Completion Date and during the Term, CEB shall accept and pay the Tariff for each kWh of electrical energy delivered by the Company under this Agreement., CEB shall be under no obligation to accept power in excess of 20 MW.

### **Section 3.2 Company's Obligations**

- (a) From the Final Completion Date and during the Term of this Agreement, the Company shall use its reasonable endeavours to supply to the CEB each Year the Annual Energy Amount of the quality as set out in Second Schedule, subject to the terms and conditions of this Agreement.
- (b) The Company shall operate, maintain, modify and repair the Facility in accordance with Prudent Utility Practices and shall ensure the safety of personnel and property at all times. Nothing contained in this Agreement shall be construed to require the Company to operate the Facility, at any time, including during an emergency, in any manner, inconsistent with Prudent Utility Practices and the Laws of Sri Lanka.
- (c) The Company shall install and maintain Reference Wind Mast during the Term of the Agreement
- (d) The Company shall submit to CEB during the Term with its Monthly Invoice an electronic copy of Wind Speed Data pertaining to that Month in a spreadsheet in an agreed version of Microsoft Excel format in respect of each Wind Turbine Generating Set and the Reference Wind Mast.
- (e) The Company shall invest the Required Equity in the Project on or before the Final Completion Date and shall give to the CEB evidence thereof in the form of a certificate or a letter of confirmation from the Company's Auditors satisfactory to the CEB.
- (f) The Company shall comply with all Laws of Sri Lanka including Environmental Laws applicable to the Facility during the Term of this Agreement.



## **ARTICLE IV TARIFF; BILLING PROCEDURES; SECURITY**

### **Section 4.1 Payments**

- (a) CEB shall make payment of the Energy Charge and the Deemed Energy Charge (where applicable) during the Term subject to the terms and conditions of this Agreement. The Dollar component of the Tariff shall be paid to the Company in equivalent Rupees. The Rupee component of the Tariff under this Agreement shall be paid to the Company in Rupees.
- (b) The quantities of electrical energy delivered to CEB by the Company from time to time shall be monitored, measured and recorded in accordance with the provisions of Article VI.
- (c) **Reimbursable Taxes**  
The Company shall be entitled to include in the Monthly Invoice and charge CEB for Reimbursable Taxes incurred by the Company within such Month. The Company shall submit with the Monthly Invoice such material establishing the liability of the Company for and the payment of such Reimbursable Taxes.

The Company shall be entitled to include in such Monthly Invoice only such Taxes as are incurred by the Company for the purposes of maintaining plant availability and generating electrical energy under this Agreement.

The Company shall, if requested by the CEB, provide a certificate from a tax consultant that the Company has taken adequate measures to pay taxation in an optimal manner.

- (d) **Sales Taxes**  
The Company shall be entitled to include in the Monthly Invoice and charge CEB for Sales Taxes. All amounts payable under this Agreement shall be calculated net of Sales Taxes payable in respect of such payments, where applicable, and such Sales Taxes shall then be calculated and added to such payments separately indicating such calculations.
- (e) **Input Sales Taxes**  
The Company shall be entitled to include in the Monthly Invoice and charge CEB for Input Sales Taxes directly, necessarily and actually borne by the Company within such Month for the performance of its obligations under this Agreement in relation to the Project, to the extent that the Company is not entitled to any credit or input credit within such Month or at a future date, under the Laws of Sri Lanka. The Company shall submit with the Monthly Invoice such material establishing the liability of the Company for and the payment of such Input Sales Taxes.

### **Section 4.2 Billing Procedures**

- (a) The Company shall invoice (each such invoice, a "Monthly Invoice") CEB within five Days of commencement of each Month (commencing with the Month following the Month in which the Final Completion Date of the Facility occurs), and each Monthly Invoice shall show intermediate calculations and shall itemize the following (in each case for the preceding month) showing their sub components separately, where applicable:

- (i) The Energy Charge for the preceding Month
- (ii) Sales Taxes
- (iii) Reimbursable Taxes and Input Sales Taxes if applicable in terms of Section 4.1 (c)
- (iv) any other sums then due and payable by either Party to the other Party under this Agreement, including those in respect of, Change in Law adjustment.
- (v) Deemed Generation Charge if applicable.
- (vi) the total sum payable by CEB.

(A sample Monthly Invoice setting out the intermediate calculations is set forth in Part A of the Fifth Schedule)

- (b) CEB shall be entitled to submit invoices to the Company in respect of any payments due by the Company to CEB under this Agreement. All such invoices shall show intermediate calculations in reasonable detail.
- (c) If the invoiced Party disputes the amount specified in any invoice, it shall inform the invoicing Party in writing within seven Days of the receipt of such invoices. If the invoiced Party does not dispute the contents of such invoice as aforesaid, it shall be deemed to be undisputed by the Parties. If the dispute is not resolved by the Due Date, the invoiced Party shall pay the undisputed amount on or before such date and the Parties shall make best efforts to resolve such dispute within 14 Days of the Due Date for such invoice failing which such dispute shall be submitted for resolution under Section 14.2. Any sum owing to either CEB or to the Company, as the case may be, shall be paid with interest accruing from the Due Date to the date of payment at the interest rate(s) specified in Section 4.4, as applicable.

### **Section 4.3 Place, Manner and Currency of Payment**

- (a) (i) All invoices including Monthly Invoices shall be paid by CEB by the Due Date. All amounts payable by CEB to the Company under this Section 4.3 shall be paid to the bank account nominated by the Company in the Eighth Schedule ("Nominated Bank Account").
- (ii) The Dollar Denominated Payments due to the Company shall be paid to the Company in equivalent Rupees in accordance with Section 4.3 (b). In the event it is permissible for CEB under the Laws of Sri Lanka to pay in Dollars, CEB may elect to pay Dollar Denominated Payments in Dollars. The Rupee Denominated Payments due to the Company shall be paid to the Company in Rupees in accordance with Section 4.3 (b).
- (b) All payments shall be made in Colombo, Sri Lanka, as specified by the Company, in same-Day value funds not later than 11:00 hr. Sri Lanka time, on the Due Date. Bank charges incurred on account of conversion of Rupees to Dollars shall be for the account of the Company.
- (c) (i) The Parties agree that on immediate conversion into Dollars of the Dollar Denominated Payments received by the Company in terms of this

Section 4.3, the Company should be in no less favourable a position than it would have been had the Company received payment in Dollars.

- (ii) If upon conversion by the Company as set out in Section 4.3(c)(i) above, the Company is in less favourable a position, then CEB shall pay to the Company under the next Monthly Invoice, the amount of the difference between the amount so received upon conversion and the amount that the Company should have received had the Company converted immediately the amounts received upon compliance with Section 4.3 (b) above.
- (iii) If upon conversion by the Company as set out in Section 4.3(c)(i) above, the Company is in a more favourable a position, then the Company shall account to CEB by way of deduction from sums due to the Company under the next Monthly Invoice the difference between the amount so received upon conversion and the amount that the Company should have received had the Company converted immediately the amounts received upon compliance with Section 4.3(b) above.
- (d) CEB shall not be held liable or responsible in any manner whatsoever, if upon conversion the Company is in a less favourable position than it would have been had the conversion been immediate upon receipt of payment under Section 4.3, and such position is due to any action or inaction on the part of the Company, its Nominated Bank, Agent or representative.
- (e)
  - (i) All amounts payable to CEB shall be paid to CEB's bank account nominated by CEB in the Eighth Schedule and shall be made, in same day value funds not later than 11:00 hr. Sri Lanka time on the Due Date.
  - (ii) The Dollar Denominated Payments due from the Company under this Agreement shall be paid to CEB in Dollars. The Rupee Denominated Payments due from the Company under this Agreement shall be paid to CEB in Rupees.

#### **Section 4.4 Late Payments**

If any amount payable by CEB or the Company under this Agreement is not paid on or before the Due Date for any reason, CEB or the Company, as the case may be, shall pay interest thereon for any payment due at the Prime Rate, prevailing on the Due Date plus two percent per annum from the Due Date until the date of actual payment.

#### **Section 4.5 CEB Letter of Credit**

- (a) At least 30 days prior to the Scheduled Completion Date, CEB shall establish in favour of the Company, two unconditional, irrevocable, stand-by letters of credit valid for a period not less than 365 days in the form of Exhibit E hereto (the "CEB Letters of Credit") issued by the CEB LC Bank one to be denominated in Dollars (the "CEB Dollar Letter of Credit") and one to be denominated in Rupees (the "CEB Rupee Letter of Credit"). The CEB Dollar Letter of Credit shall have a stated amount equal to the aggregate amount of the Dollar component of the Tariff payable by CEB on 3/12th of the **Annual Energy Amount**, assuming the Tariff then in effect and the CEB Rupee Letter of Credit shall have a stated amount equal to the aggregate amount of the Rupee component of the Tariff payable by CEB on 3/12th of the **Annual Energy Amount** assuming the Tariff then in effect. The CEB Letters of Credit shall be in effect every Year from the

Final Completion Date and during the Term of this Agreement and shall be renewed 30 days prior to their expiration. The amount of the CEB Letters of Credit shall be adjusted every Year to reflect the variation in the components of the Tariff. The Company shall have the right to draw upon the CEB Dollar Letter of Credit in the amount of the Dollar component of any invoice and the CEB Rupee Letter of Credit in the amount of the Rupee component of any invoice respectively against presentation by the Company of the CEB LC Certificate, if any such invoice submitted by the Company to CEB remains unpaid by CEB on the Due Date of payment, provided that where CEB disputes any invoice, the Company shall only be entitled to draw the undisputed amount payable by CEB in terms of Section 4.2(c).

- (b) CEB shall be discharged from payment of any amounts due under this Agreement only to the extent the Company actually receives payment under the CEB Letters of Credit. Within 15 days of any drawing under the CEB Letter of Credit, CEB shall reinstate the level of the CEB Letters of Credit to that required under Section 4.5(a) above.
- (c) If the CEB Letters of Credit are not renewed 21 days prior to their expiration or are not replenished within 15 days of any drawal thereon, then the Company shall, thereafter give at least 7 days notice in writing of its intention to draw on the full amount of the CEB Letters of Credit and upon presentation of the CEB LC Certificate to the CEB LC Bank be entitled to draw the full amount of CEB Letters of Credit. If the Company draws the full amount of the CEB Letters of Credit, the Company shall hold the amount drawn in an interest bearing Dollar and Rupee account as security for CEB's obligations until such time as new CEB Letters of Credit are put in place, and in which event the Company shall promptly on demand return to CEB the amount drawn together with all accrued interest thereon less any amount recoverable by the Company under the CEB Letters of Credit, had they been in force.
- (d) It is clarified that the Company shall also have the right to draw upon the CEB Letters of Credit pursuant to an arbitral award pertaining to any invoice.

#### **Section 4.6 CEB's Obligations to make Payments**

Notwithstanding any other term or provision of this Agreement, if the Company is unable to undertake and complete the testing and commissioning of the Facility or any part of it (on a date nominated by the Company in the Commissioning Schedule) solely as a result of CEB's failure to provide Interconnection Facilities as agreed or to provide electrical energy or load to the Facility, during the testing and Commissioning Period as specified in the Commissioning Schedule, CEB shall pay to the Company a sum, equivalent to the product of the Tariff and  $1/365^{\text{th}}$  or  $1/366^{\text{th}}$  (if such Year has 366 Days), as the case may be of Annual Energy Amount for each Day of delay in commissioning from the Scheduled Completion Date as result of such failure for a number of Days not exceeding the number of Days actually delayed by CEB , provided that the Company is in a position to demonstrate its ability to commission the Facility on the Scheduled Completion Date.

#### **Section 4.7 Liquidated Damages**

- (a) The Company shall pay to CEB liquidated damages as set forth in the Seventh Schedule,

- (i) for each Day the achievement of the Final Completion Date is delayed beyond the Scheduled Completion Date; and/or
  - (ii) for each MW where the Plant Capacity is less than 20 MW, if the Company fails to achieve a plant capacity of 20MW.
- (b) To the limited extent set forth in this Agreement, the Parties have agreed on sums that the Parties agree are reasonable as liquidated damages, as set forth in this Section 4.7 and the Seventh Schedule and agree that the payment of such damages shall be in lieu of actual damages for any of the occurrences described herein and shall not be deemed a penalty.
- (c) Liquidated Damages Bond
  - (i) Not later than 7 Days prior to the Scheduled Completion Date, the Company shall establish in favour of CEB, an unconditional, irrevocable stand-by letter of credit in the form of Exhibit G hereto (the "Liquidated Damages Bond") issued by the Company LD Bank. The Liquidated Damages Bond shall be denominated in Dollars and shall have a stated amount equal to US \$ ....., and shall be valid initially for a period of not less than 30 Days after the Scheduled Completion Date. The Liquidated Damages Bond shall continue to be in effect until 30 Days after the achievement of the Final Completion Date or the termination of this Agreement, whichever occurs earlier. CEB shall have the right to draw upon the Liquidated Damages Bond against the presentation by CEB of the LD Certificate to the extent that the liquidated damages pursuant to Section 4.7(a) are not paid by the Company, provided that, where a dispute exists with respect to the amount of liquidated damages, CEB shall only be entitled to draw the undisputed amount of liquidated damages, until the resolution of such dispute.
  - (ii) If the Liquidated Damages Bond is not renewed 14 days prior to its expiration CEB shall thereafter give at least 7 days notice in writing of its intention to draw on the full amount of the Liquidated Damages Bond. In such an event CEB may, upon presentation of the LD Certificate to the Company LD Bank be entitled to draw the full amount of the Liquidated Damages Bond. CEB shall hold the amount drawn in an interest bearing account as security for the Company's obligations until such time as a new Liquidated Damages Bond is established in which event CEB shall promptly on demand return to the Company the amount drawn together with all accrued interest thereon.
  - (iii) It is clarified that CEB shall also have the right to draw upon the Liquidated Damages Bond pursuant to an arbitral award pertaining to liquidated damages.
  - (iv) Within 7 Business Days of the Company establishing the Liquidated Damages Bond, CEB shall return to the Company the Performance Bond subject to the Company achieving Final Completion on the Scheduled Completion Date. In the event of the Company failing to achieve the Final Completion by the Scheduled Completion Date, the Performance Bond shall be returned to the Company 3 Business Days after the Company achieving Final Completion.

## **Section 4.8 Records**

- (a) CEB and the Company shall each keep properly stored and maintained, in the case of CEB, at its office in Colombo, and in the case of the Company, at the Facility, or in Colombo, as the case may be, and shall make available, on reasonable notice, for inspection and examination by the other Party, its authorised employees, agents or representatives at all reasonable times, such records as are required by this Agreement, for a minimum period of three Years from the date that such records as are kept under this Agreement. However, where there is a dispute in respect of any matter, all records pertaining or relating to such dispute shall be preserved by each Party until the resolution of the dispute.
- (b) Certified Copies of such records as are required to be maintained shall be made available by either Party to the other at the cost and expense of the Party requiring such copies. Such Party shall maintain complete confidentiality in respect of such copies and should not use them except for purposes connected with this Agreement.

## **ARTICLE V DELIVERY; DISPATCH**

### **Section 5.1 Title to energy**

Delivery of electrical energy shall be completed when electrical energy meeting the specifications as set out in Second Schedule hereof is received at the Metering Point, and the title to such electrical energy will pass to CEB upon delivery.

### **Section 5.2 Dispatch**

Subject to the terms and conditions of this Agreement, CEB shall be entitled to issue Dispatch Instructions to the Company Such Dispatch Instructions shall be confirmed in writing by the CEB.

### **Section 5.3 Curtailment**

The Company shall promptly notify in writing to CEB any Curtailment For avoidance of doubt it is clarified that the Company shall be entitled to claim for any electrical energy not generated or delivered due to Curtailment as Deemed Generation in the Monthly Invoice.

### **Section 5.4 Monthly Reports**

The Company shall confirm to CEB the occurrence of any Curtailment, Force Majeure, and Forced Outages in a Monthly Report substantially in the form, attached in Exhibit D (the "Monthly Report") and with each Monthly Invoice. If CEB does not dispute the contents of any Monthly Report within 7 Days of the date of submission, such Monthly Report shall be deemed to have been agreed by the Parties.

## **ARTICLE VI MEASUREMENT AND RECORDING**

### **Section 6.1 Metering**

- (a) The Company shall at its cost and expense supply, install and maintain meters and related equipment ("Main Meter") to be used for measurement of electrical energy delivered to CEB in accordance with Section 6.2. Meter sites are set forth in Exhibit A.
- (b) The Company shall at CEB's cost and expense supply, install a set of back up meters and related equipment ("Back Up Meter") for measurement of electrical energy in accordance with Section 6.2. CEB shall maintain the Back Up Meter.

### **Section 6.2 Measurement**

- (a) To verify the quantity of electrical energy delivered by the Company to CEB in each Month, CEB and the Company shall at noon or at such other time agreed by CEB and the Company on the last Business Day of each Month, record the readings of the Meters. Such readings shall be signed and dated by the representatives of the both Parties, provided, that if any Party is not present at the relevant Meter, at the agreed time, such recordings shall be taken by the Party present and shall be binding on the Party absent. Three photographs, of the readings of the Meters recording the supply of electrical energy to CEB shall be taken, two copies of which shall be provided to the Company and one to CEB. The photographs shall be signed by representatives of both Parties, provided, that if any Party is not present at the relevant Meters at the agreed time, such photographs shall be taken and signed by the Party present and shall be binding on the other Party.
- (b) The Meters installed under this Agreement by each Party shall be tested by such Party at its expense each Year and may be witnessed by the other Party. Each Party shall give the other Party at least seven Days notice of such tests. Additional tests may be conducted at any reasonable time upon request by either Party, at the requesting Party's expense; provided however, if the test results show that the relevant Meter is in error by more than the stipulated limit, the Party responsible for maintenance of such Meter shall bear the expense of such testing. The results of any test conducted by either Party shall be deemed final and conclusive for the purposes of this Article VI, unless the other Party objects to such results within seven Days of their completion. If the Parties are unable to reach agreement on the results of any test, either Party may retain an independent third party acceptable to both Parties to carry out the tests at the requesting Party's expense; provided however, if the results of the test carried out by the independent third party show that the relevant Meter is in error by more than the stipulated limit, the Party responsible for maintenance of such Meter shall bear the expense of such testing as well as the test carried out previously by itself if the costs have been paid by the other Party.
- (c) Meters shall be in accordance with Specifications set forth in the First Schedule. Meters shall have an accuracy of plus or minus 0.2%. Meters found to be inaccurate shall be repaired, adjusted or replaced by the Party maintaining such Meter to ensure that the accuracy of such Meter is within such specified limits. For so long as the Main Meter functions within such specified limits the Main Meter shall be used for the measurement of electrical energy delivered to CEB. If the Main Meter inaccuracy exceeds the specified limits then the readings of

the Back Up Meter shall be used for measurement of electrical energy delivered to CEB until such time as the Main Meter is repaired, adjusted or replaced. If the inaccuracy of the Back Up Meter exceeds the specified limits, then the readings of Meters shall be adjusted to compensate for the inaccuracy and the median of such adjusted readings shall be deemed to be the correct amount of electrical energy delivered during the period of inaccuracy. Adjustment for Meter inaccuracy shall cover only that particular Month of the Year in which the Meter inaccuracy occurs.

- (d) After the completion of each test of the Meters, such Meters shall be secured with seals by both Parties using their individual identification marks.

## **ARTICLE VII INTERCONNECTION**

### **Section 7.1 Interconnection Costs**

- (a) CEB agrees to design and install at its cost, the Interconnection Facilities at CEB's existing system at a voltage level of .... kV. CEB shall bear all costs for any and all modifications to CEB's existing system, maintenance and other direct and indirect costs. Company shall deliver electrical energy to the Interconnection Point provided by CEB. All changes, relocations, additions or modifications whatsoever to the Interconnection Facilities or to CEB's system, or any rearrangements or reinforcement of the Interconnection Facilities or CEB's system that may become necessary to meet the changing requirements or conditions solely required due to the operation of the Facility from the Specifications set forth in First and Second Schedules shall be at the Company's expense.
- (b) The Company shall supply, install and maintain, at Company's side of Interconnection Point, all protective devices and installations necessary in accordance with Prudent Utility Practice for protection of the Facility at its cost and expense. CEB shall not be responsible for any loss or damage arising out of the failure of the Company to install and maintain such protective devices and installations or for the failure of such protective devices and installations.
- (c) CEB shall supply, install and maintain, at CEB's side of Interconnection Point, all protective devices and installations necessary in accordance with Prudent Utility Practice for protection of CEB system at its cost and expense. The Company shall not be responsible for any loss or damage arising out of the failure of CEB to install and maintain such protective devices and installations or for the failure of such protective devices and installations.

### **Section 7.2 Construction of Interconnection Facilities**

CEB shall complete and certify the Interconnection Facilities not later than the Interconnection Completion Date. From the Interconnection Completion Date and During the Term of this Agreement, CEB shall ensure that the Interconnection Facilities:

- (i) comply with all applicable safety and electrical codes;
- (ii) conform to and are maintained in accordance with Prudent Utility Practices; and



- (iii) are operational and otherwise comply with the Specifications set forth in paragraph 3 of the Second Schedule.

## **ARTICLE VIII OPERATION**

### **Section 8.1 Construction Electricity**

CEB shall use its best efforts to ensure that electrical energy necessary for construction and completion of the Facility in accordance with the Specifications are made available in a timely manner. All costs and expenses that similar consumers pay for the use of such services shall be borne by the Company.

### **Section 8.2 Milestones and Schedules**

- (a) Within 30 Days after the expiry of the Preliminary Period, the Company shall deliver to CEB schedules describing the principal milestones and dates by which the following events are expected to occur (“Milestone Schedule”):
- ◆ Start of construction
  - ◆ Arrival of wind turbines, generators, transformers etc. at site.
  - ◆ Erection of wind turbine generators, transformers, any .....kV bus bar arrangement, transmission line or .....kV circuit breakers and other necessary equipment, up to the Interconnection Point
  - ◆ Commencement and completion of commissioning of Facility
  - ◆ Scheduled Completion Date.
- (b) CEB shall have 15 Days to review and comment on the Milestone Schedule. The Company shall endeavour to amend the Milestone Schedule to accommodate the reasonable comments of CEB. Where CEB fails to comment within 15 Days of such submission, the Milestone Schedule shall be in full force and effect for the purpose of this Agreement. The Milestone Schedule may however be amended and/or updated from time to time by mutual agreement of the Parties. Where however mutual agreement cannot be reached between Parties on any amendment or update, the existing Milestone Schedule shall be in full force and effect for the purpose of this Agreement.
- (c) Subject to Section 8.2(d) below, the Scheduled Completion Date shall be no later than ..... Days after the Preliminary Period.
- (d) The dates specified in the Milestone Schedule, including the Scheduled Completion Date, shall be extended:
- (i) by a period equal to that during which the Company was affected by Force Majeure;
  - (ii) in proportion to the extent of time or delay by which the Company is affected as a result solely due to an act or omission of either CEB, or any Governmental Instrumentality of Sri Lanka.
- (e) Upon the substantial completion of the Facility, the Facility shall be tested according to Section 8.3 and Third Schedule hereof.

- (f) If the Company fails to achieve a plant capacity of [.....]MW by the Scheduled Completion Date, the Company may elect to declare a capacity lower than .....MW as the plant capacity and shall pay liquidated damages in accordance with Section 4.7 above, in respect of (i) each Day the achievement of the Final Completion Date is delayed beyond the Scheduled Completion Date; and (ii) each MW of the difference between .....MW and such lower capacity declared by the Company as the plant capacity in the amounts set out in Seventh Schedule. Such declared plant capacity shall thereupon be deemed to be the Guaranteed Plant Capacity of the Facility. In the event that the Company is unable to demonstrate the capacity of a Wind Turbine Generating Set due to insufficient wind speed, the turbine power curve set out on Annex A of First Schedule shall be applied to ascertain the capacity of such Wind Turbine Generating Sets.
- (g) Upon testing of the Facility in accordance with Section 8.3 and the Third Schedule hereof, and upon certification by the Independent Engineer that the Facility has satisfied the commissioning tests set out in the Third Schedule, the Facility shall be deemed to have achieved final completion ("Final Completion").

### **Section 8.3 Testing and Commissioning**

- (a) The procedures and a program for testing and commissioning of the Facility is set forth in the Third Schedule. The Company shall provide CEB with the results of such tests carried out by the Company under this Agreement, duly certified by the Independent Engineer.
- (b) The Company shall give to CEB not less than 14 Days (or such lesser period as the Parties may agree) notice of its intention to commence any such testing. CEB shall have the right to attend, observe and witness such tests. Upon serving the necessary notice to CEB, all testing may proceed as scheduled, whether or not CEB attends, observes and witnesses such tests.

### **Section 8.4 Progress Meetings**

- (a) The Parties shall hold periodic progress meetings, before the Final Completion Date to review matters relating to the construction and commissioning of the Facility and after the Final Completion Date, to review matters relating to the operation of the Facility and other matters arising from time to time in relation to the Facility.
- (b) during the Construction Period, the Company shall submit to CEB:
  - (i) a progress report each month summarising progress of the Project (which report may comprise any report prepared for the Lenders by the consultants and not previously provided to CEB, summarising progress of construction of the Works) and highlighting by reference to key activities and milestone dates and the critical path for the development of the Project all actual or potential departures from the programme of works or delays to execution of the works. Each such report shall also state the proposed measures to be taken by the Company to mitigate or overcome such departures or delays; and
  - (ii) such other information as CEB may reasonably require to be furnished by the Company to enable CEB to ascertain whether the Company is in compliance with the technical specification and such other matters relating to the co-ordination between the obligations of the Company

pursuant to this Agreement and the obligations of CEB hereunder during the Construction Period;

#### **Section 8.5 Compliance with Laws**

- (a) CEB may, at the request of the Company, assist the Company for the Company to obtain:
  - (i) all environmental permits and certificates necessary for the operation of the Facility;
  - (ii) all Governmental Approvals ;
  - (iii) all customs clearances and Governmental Approvals for the importation of all equipment, materials and spare parts necessary for the design, construction, operation and maintenance of the Facility;
  - (iv) all necessary visas and work permits from any Governmental Instrumentality of Sri Lanka to enable the Company's expatriate officers and staff to work in Sri Lanka for the duration of their assignment. Where CEB grants such assistance, the Company shall ensure that the grantee of such visas or work permits shall work exclusively for the Project and shall not violate any of the conditions subject to which such visas or work permits were granted.
- (b) CEB shall incur no liability if any certificates, consents, licenses, permits, clearances, regulations, visas or work permits or other similar Government Approvals referred to in this Section 8.5 are not granted to the Company.
- (c) Any assistance granted by CEB to the Company under this Section 8.5 shall be at the entire cost and expense of the Company.

#### **Section 8.6 Changes in Law**

- (a) The Tariff reflect the Company's cost of financing, developing, designing, engineering, constructing, commissioning, operating, maintaining and owning the Facility based on the Laws of Sri Lanka at the date of this Agreement. A Change in Law after that date shall constitute a change in law event (a "Change in Law Event") if such Change in Law:
  - (i) relates to environmental requirements applicable to the Facility;
  - (ii) relates to the construction of, or any capital modifications and improvements to the Facility or changes to the design and construction, maintenance or operation of the Facility or technical or safety standards applicable to the Facility;
  - (iii) relates to the ability of CEB to accept electrical energy in accordance with paragraph 2 and paragraph 3 of the Second Schedule.
  - (iv) relates to the concessions, benefits, exemptions and privileges granted to the Company under the Board of Investment Law;
  - (v) relates to taxes (including income tax, dividend taxes, capital gains taxes and withholding taxes) other than Taxes;

- (vi) affects the rights or obligations of the Lenders or the Company under Financing Agreements, including the cost of financing the Facility, through the imposition of exchange controls, additional fees and expenses associated with regulatory requirements and currency restrictions;
- (vii) results in any change or amendment to the Implementation Agreement or the Government Guarantee as set out in the Implementation Agreement which materially and adversely affects the Company's rights and obligations under this Agreement, the Implementation Agreement or the Government Guarantee;
- (viii) results in the Company being required to obtain any Governmental Approvals not previously required from, or the amendment or modification of existing Governmental Approvals by, any Governmental Instrumentality of Sri Lanka, with respect to the performance of its obligations under this Agreement.

For the avoidance of doubt it is clarified that any change relating to Reimbursable Taxes, Sales Taxes or Input Sales Taxes shall not constitute a Change in Law Event.

- (b) (i) If a Change in Law Event results in a material increase or decrease in the Company's cost of financing, developing designing, engineering, constructing, commissioning, operating, maintaining and owning the Facility there shall be an equitable adjustment of the Tariff and/or the making of other appropriate payments and/or amendment to the other appropriate terms of this Agreement, to correct such material increase or decrease as the case may be, so that subject to Section 8.6 (b)(ii), the Company shall be in no less or no more favourable financial position than the Company was prior to such Change in Law Event.
- (ii) For purposes of this Section 8.6 (b) a change in cost, excluding Taxes, shall be deemed to be material if the amount of that change exceeds US \$ 6000 per Year which amount shall be increased each Year, beginning from the first anniversary of the Final Completion Date by the percentage increase in the United States Consumer Price Index for the preceding Year.
- (c) If there is a bona fide basis on which a Change in Law Event may be challenged or contested, so long as the Tariff has been adjusted and/or other appropriate payments made and/or other appropriate adjustments made to this Agreement to reflect the change in the costs, the Company agrees that it will challenge or contest such Change in Law Event at the direction and expense of CEB.

### **Section 8.7 Validity of the Performance Bond**

The Company shall ensure that the Performance Bond shall remain valid until 30 days after Final Completion is achieved. In the event of the Company failing to achieve Final Completion by the Scheduled Completion Date and where Company fails to extend the Performance Bond two weeks prior to the expiry of such Bond, the CEB shall give at least 7 days notice in writing of its intention to draw on the full amount of the Performance Bond. In such an event, CEB may, upon presentation of the Performance Bond to the issuing bank of such Bond, be entitled to draw the full amount of the Performance Bond. CEB shall hold the amount drawn in an interest bearing account as

security for the Company's obligations until such time as a new Performance Bond being established in which event CEB shall promptly on demand return to the Company the amount drawn together with all accrued interest thereon.

## **ARTICLE IX ACCESS**

### **Section 9.1 Access During Construction**

Upon reasonable notice, the Company shall permit employees and representatives of CEB to visit the Facility during construction. CEB shall comply with applicable construction site rules and limitations.

### **Section 9.2 Access to the Facility during Operations**

Upon reasonable notice, Company shall permit employees and representatives of CEB, when properly identified, to visit the Facility during Term of the Agreement. Such employees and representatives of CEB shall not interfere with the normal operation and shall comply with any applicable safety rules.

### **Section 9.3 Access to CEB facilities**

Upon reasonable notice, CEB shall permit employees and representatives of the Company, when properly identified, to visit CEB facilities during normal business hours to read Meters and perform maintenance on Company's equipment (if any), to conduct such operating tests as are necessary to ascertain that protective devices function properly, to examine and test the Main Meter and examine the Back Up Meter, and to examine all other services and equipment related thereto, provided that Company's employees and inspectors shall not interfere with CEB's normal operations and shall comply with CEB's safety and related standards and conditions. Where however, any emergency occurs in connection with Company's equipment, Company's employees and representatives shall be promptly granted access to CEB facilities.

### **Section 9.4 Visits by CEB, not to be construed as an endorsement**

- (a) Visits to the Facility by CEB's employees and representatives shall not be construed as an endorsement by CEB of the construction, operation and maintenance procedure employed by the Company at the Facility nor as a warranty by CEB of the safety, durability or reliability of the Facility.
- (b) Visits to CEB's facility by the Company's employees and representatives shall not be construed as an endorsement by the Company of the operation and maintenance procedure employed by CEB at such facility nor as a warranty by the Company of the safety, durability or reliability of such facility.

### **Section 9.5 Easements**

The Company shall grant in favour of CEB such easements or rights-of-way with respect to the Site as are necessary to construct, operate, maintain, replace and remove all or any portion of the Interconnection Facilities, or any other plant or equipment of CEB.

## **ARTICLE X      LIMITATION OF LIABILITY**

### **Section 10.1 Limitation on Consequential, Incidental and Indirect Damages**

Neither CEB nor the Company, nor their respective officers, directors, agents employees, nor their parent, subsidiaries, Affiliates or their respective officers, directors, agents or employees shall be liable to the other Party or their parent, subsidiaries, Affiliates, officers, directors, agents employees, successors or assigns, for claims for incidental, indirect or consequential damages connected with or resulting from any performance or non-performance of this Agreement, including without limitation, claims in the nature of lost revenues, income or profits irrespective of whether such claims are based upon warranty, negligence, strict liability, contract, operation of law or otherwise.

### **Section 10.2 Indemnification**

- (a) CEB shall defend and indemnify the Company and its directors, officers, agents and employees against, and hold the Company and its directors, officers and employees harmless from, at all times after the date hereof, any Loss incurred, suffered, sustained, or required to be paid, directly or indirectly, by the Company and its directors, officers, agents and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of CEB in connection with this Agreement.
- (b) The Company shall defend and indemnify CEB and its members, officers, agents and employees against, and hold CEB and its members, officers, agents and employees harmless from, at all times after the date hereof, any Loss incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, CEB and its members, officers, agents and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the Company in connection with this Agreement.
- (c) The provisions of this Section 10.2 shall survive for a period of one (1) Year following the termination of this Agreement.

### **Section 10.3 Notice of Proceedings**

Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which it is or may be entitled to indemnification under Section 10.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding.

### **Section 10.4 Defense of Claims**

- (a) The indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defense of any claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obligated to indemnify the other Party hereunder; provided, it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defense.

- (b) Notwithstanding the provisions of Section 10.4(a), unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 10.4(a), the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- (c) Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party. Where such compromise or settlement is made without such consent, the indemnifying Party shall be released and discharged from all obligations under this Section 10.4 with respect to such settled or compromised claim, loss, suit, action or cause of action.
- (d) Following the acknowledgement of the indemnification and the assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless:
- (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party;
  - (ii) the indemnified Party has reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action;
  - (iii) the indemnifying Party has not employed independent counsel to assume the defense of such action and such fact has been notified by the indemnified Party; or
  - (iv) the indemnified Party has reasonably concluded and specifically notified the indemnifying Party that there may be specific defences available to it that are different from or additional to those available to the indemnifying Party.

If Section 10.4(d) (ii), Section 10.4 (d) (iii) or Section 10.4 (d) (iv) shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## **ARTICLE XI    TERMINATION; REMEDIES**

### **Section 11.1    CEB Rights**

CEB may give Preliminary Termination Notice of this Agreement upon the occurrence of any of the following events:

- (a) The Company fails to establish, reinstate or fails to keep in full force and effect in accordance with the terms and conditions of this Agreement the Liquidated Damages Bond.
- (b) The Company fails to make any payment which has become due and payable under this Agreement to CEB and such failure continues for at least 14 Days following receipt of written notice from CEB to the Company of such non-payment following the Due Date for such payment.
- (c) The Company wrongfully makes a demand under CEB Letters of Credit unless such demand is the result of a mistake or is otherwise done in good faith, and such amounts are promptly returned to CEB upon discovery of the mistake.
- (d) The 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 Company and has not been remedied within a period of 60 days of notification or such longer period as the CEB shall in its reasonable discretion allow for the remedy of such breach .
- (e) Any proceeding is instituted by or against the Company seeking to declare the Company as bankrupt or insolvent or to wind up the Company under the Laws of Sri Lanka and the court declares the Company as bankrupt, or insolvent or makes order winding up the Company, or appoints a receiver or and such declaration or appointment is not stayed or vacated within 75 Days from the date thereof or the Company makes an assignment for the benefit of its creditors or is generally unable to pay its debts as they become due.
- (f) Any representation or warranty made by the Company under this Agreement was false or misleading in any material respect when made.
- (g) The Company fails to deliver the Milestone Schedule within 60 Days of the expiry of the Preliminary Period.
- (h) The Company fails to achieve the Final Completion Date within 180 days of the Scheduled Completion Date.
- (i) Where electrical energy delivered by the Company in any two consecutive Years or in any three Years is less than MEA.
- (j) Where after the Final Completion Date and during the Term, no electrical energy has been delivered for a continuous period of 180 Days or where less than 50% of AEA has been delivered for a period of 360 Days under this Agreement due to Sri Lanka Force Majeure affecting either Party; provided however, that if the Company notifies CEB in writing prior to the expiry of such 180 Days or 360 Days, as the case may be, that CEB is relieved of its obligations to make payment of the Deemed Generation Charge with respect to electrical energy not delivered pursuant to such Sri Lanka Force Majeure affecting either Party for the



rest of the duration of such Sri Lanka Force Majeure affecting either Party, CEB shall not be entitled to issue a Preliminary Termination Notice in respect of such Sri Lanka Force Majeure affecting either Party.

- (k) Where after the Final Completion Date and during the Term, no electrical energy has been delivered for a continuous period of 180 Days or where less than 50% of AEA has been delivered for a period of 360 Days under this Agreement due to Force Majeure under Section 13.1 (a)(i) affecting CEB; provided however, that if the Company notifies CEB in writing prior to the expiry of such 180 Days or 360 Days, as the case may be, that CEB is relieved of its obligations to make payment of the Deemed Generation Charge with respect to electrical energy not delivered pursuant to such Force Majeure under Section 13.1(a)(i) affecting CEB for the rest of the duration of such Force Majeure under Section 13.1 (a)(i) affecting CEB, CEB shall not be entitled to issue a Preliminary Termination Notice in respect of such Force Majeure under Section 13.1 (a)(i) affecting CEB.
- (l) Where after the Final Completion Date and during the Term, no electrical energy has been delivered for a continuous period of 300 Days or where less than 50% of AEA has been delivered for a period of 480 Days under this Agreement due to Force Majeure (excluding Sri Lanka Force Majeure) affecting the Company, provided however, that where prior to the expiry of such 300 Days or 480 Days, as the case may be, (i) the Company submits to CEB, a detailed restoration plan for reconstruction of the Facility and a written undertaking that it will complete reconstruction of the Facility within 180 Days from the expiry of such 300 Days or 480 Days, as the case may be, (ii) conditions for the first draw down of financing for such reconstruction have been fulfilled or waived and (iii) the Company has already commenced such reconstruction of the Facility, CEB shall not be entitled to issue a Preliminary Termination Notice; provided further however, where the Company fails to complete reconstruction within such period of 180 Days, CEB shall be entitled to issue a Preliminary Termination Notice.
- (m) Prior to Final Completion Date, the Company is unable to proceed with the construction or commissioning of the Facility for a period of not less than 270 consecutive Days due to Sri Lanka Force Majeure.
- (n) Prior to Final Completion Date, the Company is unable to proceed with the construction of the Facility or commissioning for a period of not less than 360 consecutive Days due to Force Majeure (excluding Sri Lanka Force Majeure) affecting the Company; provided however, that where prior to the expiry of such 360 Days,
  - (i) the Company submits to CEB, a detailed restoration plan for reconstruction of the Facility and a written undertaking that it will complete reconstruction of the Facility within 180 Days from the expiry of such 360 Days,
  - (ii) conditions for the first draw down of financing for such reconstruction have been fulfilled or waived and
  - (iii) the Company has already commenced such reconstruction of the Facility, CEB shall not be entitled to issue a Preliminary Termination Notice; provided further however, where the Company fails to complete reconstruction within such period of 180 Days, CEB shall be entitled to issue a Preliminary Termination Notice

- (o) Any sale or diversion by the Company of electrical energy generated by the Facility to any person other than CEB .

### **Section 11.2 Company Rights**

The Company may give Preliminary Termination Notice of this Agreement upon the occurrence and during the continuation of any of the following events:

- (a) CEB fails to establish, reinstate or keep in full force and effect in accordance with the terms and conditions of this Agreement the CEB Letters of Credit.
- (b) CEB fails to make any payment which has become due under this Agreement to the Company and such failure continues for at least 14 Days following receipt of written notice from the Company to CEB of such non-payment following the Due Date for such payment.
- (c) CEB wrongfully encashes or makes a demand under the Liquidated Damages Bond established under this Agreement unless such demand is the result of a mistake or is otherwise made in good faith and such amounts are promptly returned to the Company upon discovery of the mistake.
- (d) The CEB is in material breach of any of its obligations under this Agreement and such breach (where capable of remedy) has been notified to the CEB and has not been remedied within a period of 60 days of notification or such longer period as the Company shall in its reasonable discretion allow for the remedy of such breach .
- (e) Any proceeding is instituted by or against CEB seeking to declare CEB as bankrupt or insolvent or to wind up CEB, a court or any Governmental Instrumentality of Sri Lanka declares CEB as bankrupt, or insolvent or makes order winding up CEB or appoints a receiver or trustee and such appointment or declaration is not vacated or stayed within 75 Days, from date thereof or CEB makes an assignment for the benefit of its creditors, or is generally unable to pay its debts as they become due.
- (f) Any representation or warranty made by CEB under this Agreement was false or misleading in any material respect when made.
- (g) Where after the Final Completion Date and during the Term, no electrical energy has been delivered to CEB for a continuous period of 240 Days or **less than 50% of AEA** to CEB under this Agreement for a continuous period of 450 Days by reason of Sri Lanka Force Majeure affecting either Party.
- (h) Where after the Final Completion Date and during the Term, no electrical energy has been delivered to CEB for a continuous period of 240 Days or less than **50% of AEA** to CEB under this Agreement for a continuous period of 450 Days by reason of Force Majeure under Section 13.1(a)(i) affecting CEB.
- (i) Where after the Final Completion Date and during the Term, no electrical energy has been delivered to CEB for a continuous period of 300 Days or less than 50% of AEA to CEB under this Agreement for a continuous period of 480 Days due to Force Majeure (excluding Sri Lanka Force Majeure) affecting the Company; provided however, that where prior to the expiry of such 300 Days or 480 Days, as the case may be, (i) the Company submits to CEB, a detailed restoration plan for reconstruction of the Facility and a written undertaking that it

will complete reconstruction of the Facility within 180 Days from the expiry of such 300 Days or 480 Days, as the case may be, (ii) conditions for the first draw down of financing for such reconstruction have been fulfilled or waived and (iii) the Company has already commenced such reconstruction of the Facility, Company shall not be entitled to issue a Preliminary Termination Notice under this Section 11.2(i) in respect of such termination event.

- (j) Prior to Final Completion Date, as a result of Sri Lanka Force Majeure, the Company is unable to proceed with the construction or commissioning of the Facility for a period of 270 consecutive Days.
- (k) Prior to Final Completion Date, as a result of Force Majeure affecting the Company (excluding Sri Lanka Force Majeure), the Company is unable to proceed with the construction of the Facility for a period of 360 consecutive Days; provided however, that where prior to the expiry of such 360 Days, (i) the Company submits to CEB, a detailed restoration plan for reconstruction of the Facility and a written undertaking that it will complete reconstruction of the Facility within 180 Days from the expiry of such 360 Days, (ii) conditions for the first draw down of financing for such reconstruction have been fulfilled or waived and (iii) the Company has already commenced such reconstruction of the Facility, Company shall not be entitled to issue a Preliminary Termination Notice under this Section 11.2(k) in respect of such termination event.
- (l) Where as a result of a Change in Law Event after the date of this Agreement:
  - (i) the making of any payment by the Company under the Financing Agreements becomes or will become illegal or unenforceable under the Laws of Sri Lanka;
  - (ii) the performance of any obligation (other than the obligation to make payment in the case of CEB or the Government of Sri Lanka) under the Project Documents or the Financing Agreements become or will become illegal or (unless the obligation is owed to the Government of Sri Lanka or CEB) unenforceable, in each case under the Laws of Sri Lanka;
  - (iii) the enforcement of such rights as the Company or the Lenders may have in connection with the Project against assets of CEB situated in Sri Lanka becomes or will become illegal, or those rights become or will become unenforceable, under the Laws of Sri Lanka;
  - (iv) the performance of any payment obligation by CEB and the Government of Sri Lanka under the Project Documents becomes or will become illegal or unenforceable under the Laws of Sri Lanka.

and in the case of Sections 11.2 (l) (i), Section 11.2 (l) (ii) (except as regards performance by the Company of its obligations under the Financing Agreements), Section 11.2 (l) (iii) (except as regards enforcement of the Lender's rights), and Section 11.2 (l) (iv) above, the illegality or unenforceability of the rights or obligations in question materially prejudices:

- (x) the enjoyment by the Company or the Lenders of their respective rights under this Agreement, the Project Documents or the Financing Agreements;

- (y) the performance by the Company or the Lenders, of their respective obligations pursuant to the Project Documents or the Financing Agreements; or
  - (z) the ability of the Company to convert Rupees into Dollars and repatriate such Dollars by way of dividends to its shareholders outside Sri Lanka, pursuant to the BOI Status.
- (m) Where as a result of a Change in Law Event after the date of this Agreement, the Company loses its ability to convert Rupees into Dollars and repatriate such Dollars by way of dividends to its shareholders outside Sri Lanka, pursuant to its BOI Status.
- (n) Where the Company is materially and adversely effected by a Change in Law Event which cannot be remedied in terms of Section 8.6 (b) of this Agreement or which does not constitute Sri Lanka Force Majeure in terms of Section 13.1(a)(ii), and such material and adverse effect is not remedied within 60 days of the Company's notice to CEB to so remedy.
- (o) Where the Government of Sri Lanka is in material breach of its obligations under the Government Guarantee.
- (p) Where the Company has terminated the Implementation Agreement pursuant to its provisions for a material breach of the obligation of the Government of Sri Lanka thereunder or where the Company has terminated the BOI Agreement pursuant to its provisions for a material breach of the obligation of the BOI thereunder.

### **Section 11.3 Termination Procedures during Loan Period**

- (a) (i) Subject to Section 11.3(a)(ii), during the Loan Period each Preliminary Termination Notice shall be in writing and specify in reasonable detail the grounds for termination. The giving of a Preliminary Termination Notice by either Party shall commence a Suspension Period of 180 Days or such other period as the Parties may agree in writing; provided, however, that the Party who receives the Preliminary Termination Notice may waive the Suspension Period with regard to a Preliminary Termination Notice given by the other Party. No rescission or termination of this Agreement shall be valid or binding without the expiration of the Suspension Period.
- (ii) In the event CEB gives a Preliminary Termination Notice under Section 11.1 (j) or 11.1 (m), such Preliminary Termination Notice shall constitute a notice of termination of this Agreement and thereupon this Agreement shall terminate.
- (b) Each Preliminary Termination Notice shall be copied to the Lenders. If there is more than one Lender, the Lenders will designate in writing to CEB an agent ("Agent") for the service of such notice and any notice required hereunder may be delivered to such Agent. Upon delivery to the Agent, such notice shall be deemed to have been delivered to each of the Lenders. Each Preliminary Termination Notice may be delivered to the Lender or the Agent (i) By personal delivery (ii) By facsimile transmission to the number specified in accordance with the procedure set forth below, (iii) By International Courier or (iv) By tendering by registered post. Any notice given by facsimile under this Section 11.3 shall be

confirmed in writing, delivered personally or sent by registered post, but failure to so confirm shall not make void or invalidate the original notice if it was in fact received by the Lender or the Agent. The address and facsimile number for the Lender or Agent shall be provided to CEB by the Company at financial closing. Any subsequent change of same shall be duly notified to CEB at the address or facsimile number for CEB provided in Section 16.5 (or at such other address or facsimile number subsequently delivered to the Lender or the Agent in accordance with this Section 11.3) and otherwise in accordance with the requirements of Section 16.5.

- (c) The Lenders may, (but shall be under no obligation to,) make any payment or perform or cause to be performed any act required to be performed by the Company, with the same effect as if made or performed by the Company. If at any time during the Suspension Period, the Lenders perform or cause to be performed all those unperformed obligations that gave rise to the Preliminary Termination Notice, the Preliminary Termination Notice shall be revoked, all rights of CEB to cease this Agreement pursuant thereto shall terminate and this Agreement shall continue in full force and effect. The rights of the Lenders under this Section 11.3 (c) are referred to herein as the "Lender Cure Rights".
- (d) In addition, during the Suspension Period the Lenders or their Designee will have the right, but not the obligation, to assume this Agreement and all of the Company's rights and obligations hereunder, provided however that, any such assumption of this Agreement shall be subject to the undertaking to cure any breaches of the Company as at the date of an assumption of this Agreement by the Lenders or their Designee. Any breach that is non-curable by nature except a breach of Section 16.2.1 (b) shall be deemed to be cured by virtue of the assumption of this Agreement pursuant to the provisions hereof by the Lenders or their Designee. If CEB has not objected to the proposed Designee within 30 Days of the Lenders' or the Agent's notice of that designation, which notice shall include a reasonably detailed description of the proposed Designee, CEB shall be deemed to have consented to the assumption by the proposed Designee of this Agreement. If the Lenders or their proposed Designee assume this Agreement in accordance with this Section 11.3(d), and all breaches which gave rise to the Preliminary Termination Notice have been cured or deemed to have been cured, the Preliminary Termination Notice shall be revoked, all rights of CEB to terminate this Agreement pursuant thereto shall cease and this Agreement shall continue in full force and effect. The rights of the Lenders under this Section 11.3(d) are referred to herein as the "Lender Step-in Rights". Where the Lenders exercise the Lender Step- in Rights under this Section 11.3(d) the Company shall cease to have any right, title or interest whatsoever under this Agreement.
- (e) Upon the expiry or waiver of the Suspension Period and unless the Parties have otherwise agreed or the circumstances giving rise to the Preliminary Termination Notice have ceased to exist, the Party that gave the Preliminary Termination Notice may terminate this Agreement by giving a Termination Notice to the other Party and copied to the Lender or the Agent, as the case may be; provided, however, that if CEB is satisfied that the Lenders are diligently attempting to cure the breach(es) of the Company that gave rise to the Preliminary Termination Notice and demonstrable progress toward affecting such cure is being made, CEB may in its sole discretion grant the Lenders an additional period to effect such cure before CEB gives a Termination Notice. Subject to the rights of the Parties pursuant to Article XIV, this Agreement shall terminate on the date of the Termination Notice.

#### **Section 11.4 Termination Procedures after Loan Period**

- (a) (i) Subject to Section 11.4(a)(ii), after the Loan Period each Preliminary Termination Notice shall be in writing and specify in reasonable detail the grounds for termination. The giving of a Preliminary Termination Notice by either Party shall commence a Suspension Period of 30 Days (or such other period as the Parties may agree in writing); provided, however, that either Party may waive the Suspension Period with regard to a Preliminary Termination Notice given by the other Party. No rescission or termination of this Agreement shall be valid or binding without the expiration of the Suspension Period.
- (ii) In the event CEB gives a Preliminary Termination Notice under Section 11.1 (j) or 11.1 (m), such Preliminary Termination Notice shall constitute a notice of termination of this Agreement and thereupon this Agreement shall terminate.
- (b) Upon the expiry or waiver of the Suspension Period and unless the Parties have otherwise agreed or the circumstances giving rise to the Preliminary Termination Notice have ceased to exist, the Party that gave the Preliminary Termination Notice may terminate this Agreement by giving a Termination Notice to the other Party. Subject to the rights of the Parties pursuant to Article XIV, this Agreement shall terminate on the date of the Termination Notice.
- (c) If all breaches which gave rise to the Preliminary Termination Notice have been cured or the circumstances giving rise to such Preliminary Termination Notice have ceased to exist, the Preliminary Termination Notice shall be revoked and all rights to terminate this Agreement pursuant to the Preliminary Termination Notice shall cease to exist within such 30 day period and this Agreement shall continue in full force and effect.

#### **Section 11.5 Suspension of Rights during the Suspension Period**

- (a) Notwithstanding anything to the contrary in this Agreement, all the obligations under this Agreement of the Party issuing the Preliminary Termination Notice, including but not limited to the obligations relating to Sri Lanka Force Majeure invoked by either Party or Force Majeure invoked by CEB shall be suspended commencing on the date on which Preliminary Termination Notice is issued, provided however that such Party shall not be excused from any accrued obligations, including payment obligations existing on the date on which the Preliminary Termination Notice is issued.
- (b) Notwithstanding the suspension of obligations pursuant to Section 11.5(a) above, where CEB accepts electrical energy delivered by the Company CEB shall pay Company for such the electrical energy at the agreed Tariff.

Where the Preliminary Termination Notice is revoked or where circumstances giving rise to the Preliminary Termination Notice has ceased to exist this Agreement shall continue in full force and effect and pursuant to the provisions of this Agreement, all obligations of the Parties shall resume.

### **Section 11.6 Sole Grounds for Termination**

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

### **Section 11.7 Other Rights and Remedies**

Upon the breach by either Party of any covenant or warranty hereunder, the Party affected by any such default or breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with Article XIV to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy) or to seek any other appropriate legal or equitable remedy by the other Party of such other Party's obligations under this Agreement, provided that (i) the right of either Party to seek damages is subject to the limitations on damages set forth in this Agreement and (ii) neither Party shall be entitled to terminate this Agreement except as expressly provided for in this Agreement.

### **Section 11.8 Consequences of Termination**

If either Party serves a Termination Notice pursuant to Section 11.3 or Section 11.4 as the case may be, the Ninth Schedule shall apply.

### **Section 11.9 Performance Bond**

Where CEB terminates this Agreement pursuant to Section 11.1 (d), Section 11.1 (e), Section 11.1 (f), Section 11.1 (g) and Section 11.1 (h) above, CEB shall be entitled to pursue its rights under the Performance Bond.

## **ARTICLE XII INSURANCE**

### **Section 12 Insurance**

The Company shall ensure that there is in effect insurance as described in the Sixth Schedule and shall provide evidence of such insurance upon request by CEB.

## **ARTICLE XIII FORCE MAJEURE**

### **Section 13.1**

- (a) "Force Majeure" shall mean any event or circumstance or combination of events and circumstances (including the effects thereof) which materially and adversely affects the ability of a party to perform, in whole or in part, any obligation under this Agreement, but only to the extent that such events or circumstances or the effects thereof were beyond such Party's reasonable control and which the Party affected could not have prevented or overcome with reasonable diligence and foresight and using Prudent Utility Practices. Subject to the foregoing, each of the events, matters or things particularised in Section 13.1(a) (i) and Section 13.1(a) (ii) which materially and adversely affects the performance by a Party of its obligations under or pursuant to this Agreement is referred to in this Agreement as "Force Majeure." In addition, each of the events, matters, or things particularised in only Section 13.1(a)(ii) which materially and adversely

affects the performance by a Party of its obligations under or pursuant to this Agreement is referred to in this Agreement as “Sri Lanka Force Majeure.”

- (i) Except as specified in Section 13.1(a)(ii) below, any war (declared or not), hostilities, blockade, revolution, insurrection, riot or public disorder; expropriation, requisition, confiscation, or nationalisation; sabotage; export or import restrictions by any Governmental Instrumentality; closing of harbours, docks, canals or related facilities for shipping or navigation of or within any place; rationing, whether imposed by law, decree or regulations by or by compliance of industry at the insistence of any Governmental Instrumentality; fire, explosion, unusual flood, earthquake, storm, cyclones, lightning, tide (other than normal tides) or tidal wave; perils of the sea, accidents of navigation, breakdown or injury of vessels or accidents to harbours, docks, canals or related facilities for shipping or navigation; epidemic, plague, quarantine; strikes or combination of workmen, lockouts or other labour disturbances; or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the Party affected thereby and which the affected Party could not prevent or overcome with reasonable diligence and foresight by using Prudent Utility Practices;
  
- (ii) Any war (declared or not), revolution, hostilities, insurrection, riot or civil commotion or public disorder within Sri Lanka; expropriation, requisition, or confiscation or nationalisation by Sri Lanka; sabotage as a consequence of civil or political disturbance or terrorist action within Sri Lanka; curfews, closing of airports or restrictions in respect of air traffic in Sri Lanka; closing of harbours, docks, or related facilities for shipping or navigation of or within Sri Lanka; restrictions in respect of air traffic or blockades involving Sri Lanka imposed pursuant to a decision of International Organisations; export or import restrictions by any Governmental Instrumentality of Sri Lanka; all strikes, combination of workmen, lockouts or other labour disturbances, in each case, that occur in Sri Lanka by reason of any act of Governmental Instrumentality of Sri Lanka or which is political in nature but not resulting from any action or inaction by the Company; rationing, whether imposed by law, decree or regulations by or by compliance of industry at the insistence of any Governmental Instrumentality of Sri Lanka; any delay in the importation of equipment or supplies into Sri Lanka resulting from any action or failure to act without legally justifiable cause by any Governmental Instrumentality of Sri Lanka; a Change in Law Event; any action or failure to act without legally justifiable cause by any Governmental Instrumentality of Sri Lanka (including any action or failure to act without legally justifiable cause by any duly authorized agent of any such Governmental Instrumentality of Sri Lanka) including without limitation, the denial or delay without legally justifiable cause in the granting of any Governmental Approval upon due application therefore and diligent effort by the Company to obtain such Governmental Approval and the failure without legally justifiable cause of any such Governmental Approval once granted to remain in full force and effect and the withdrawal or revocation without justifiable cause of any such Governmental Approval once granted;

In this Section 13.1(a)(ii), an International Organisation shall mean an international organisation of which Sri Lanka is a member country.



- (b) Notwithstanding Section 13.1(a), CEB shall not be relieved of its obligations to make payment of the Deemed Generation Charge on the occurrence of:
- (i) any Force Majeure pursuant to Section 13.1 (a) (i) affecting CEB;
  - (ii) Sri Lanka Force Majeure whether affecting or invoked by the Company or CEB.
- (c) If the Company invokes Force Majeure under Section 13.1 (a) (i) in respect of any failure to deliver electrical energy under this Agreement, the Company shall not be entitled to claim and CEB shall not be bound to make payments to the Company under this Agreement for any electrical energy not delivered by the Company in such circumstances.
- (d) The Party invoking Force Majeure shall:
- (i) notify the other Party in writing as soon as is reasonably practicable of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected Party's obligation under this Agreement, and
  - (ii) resume performance of its obligations as soon as reasonably possible once the Force Majeure conditions no longer exist.
- (e) The Parties will consult with each other and take all reasonable steps to minimise the losses of either Party resulting from Force Majeure.
- (f) If any event of Force Majeure described in Section 13.1(a)(i) occurs which causes damage to the Facility, the Company shall with the consent of CEB appoint an independent assessor who shall assess the extent and nature of the damage caused to the Facility and determine the cost of reinstatement of the Facility. In such an event, the Company shall, if the insurance proceeds are adequate to complete the restoration of the Facility and unless otherwise directed by CEB be obliged to reinstate and restore the Facility diligently and as soon as reasonably practicable. Insurance proceeds in such an event shall be for the account of the Company. However, if the insurance proceeds are found to be inadequate for the purpose of restoring the Facility as assessed above, the Company shall be obliged to reinstate and restore the Facility only if CEB has made good such inadequacy of cost.
- (g) Subject to Section 13.1(h), if any event of Sri Lanka Force Majeure occurs which causes damage to the Facility then the Company shall not be obliged to reinstate the Facility, or rebuild it, until the Parties have agreed upon the terms for such reinstatement or completion.
- (h) If at any time after the Final Completion Date any Sri Lanka Force Majeure results in physical damage to the Facility, the Parties shall immediately invoke the conciliation procedure set forth in Section 14.1(a) and determine the amount and the time necessary to repair such physical damage. Upon such determination, CEB may elect to pay such amount to the Company and/or agree with the Company such other terms and conditions on which such physical damage will be repaired and thereupon the Company shall be obligated to repair and restore the Facility diligently and in a timely manner. In such circumstances, the Company shall not be entitled to terminate this Agreement under Section 11.2(g) in respect of such event of Sri Lanka Force Majeure.

- (i) No event caused by or resulting from the Company's or CEB's action, inaction or failure to operate and maintain their respective facilities in accordance with Prudent Utility Practices shall be deemed to be an event of Force Majeure.
- (j) In addition to the events set forth in Section 13.1(a) above, to the extent that the Company is materially and adversely affected in the performance of its obligations under this Agreement (i) a force majeure event under any of the Project Documents shall be deemed to be Force Majeure with respect to the Company for purposes of this Agreement and (ii) a "Sri Lanka Force Majeure" event under the Implementation Agreement, or a breach by the Government of Sri Lanka or BOI, under the Implementation Agreement or BOI Agreement as applicable, shall be deemed to be Sri Lanka Force Majeure with respect to the Company for purposes of this Agreement.
- (k) Notwithstanding anything to the contrary elsewhere in this Agreement, the liability of CEB hereunder to pay the Deemed Generation Charge in respect of any event of Force Majeure pursuant to Section 13.1 (a) (i) affecting CEB or Sri Lanka Force Majeure shall only be to the extent that the Company is not entitled to receive proceeds of insurance pursuant to the Sixth Schedule in respect of lost income or profits relating to such events. If the Company receives proceeds of insurance for lost income or profits in respect of any event of Force Majeure and CEB has continued making payments to the Company as described herein, the Company shall, pay to CEB the proceeds of such insurance within 15 Days of receipt of such proceeds.
- (l) Notwithstanding that an event of Force Majeure otherwise exists, the provisions of this Article XIII shall not excuse any delay in payment of money due under this Agreement, to either Party.

## **Section 13.2**

No failure or omission to carry out or observe any obligation arising under or in connection with this Agreement by reason of Force Majeure shall give rise to any claim (except to the extent expressly provided in this Agreement) for payment, losses, costs, damages and expenses under, or be deemed to be a breach of, this Agreement.

## **ARTICLE XIV DISPUTE RESOLUTION**

### **Section 14.1 Conciliation; Expert Resolution**

- (a) Subject to Section 14.3, the Parties agree that if there is any dispute or difference between them arising out of or in connection with this Agreement (or any Schedule or Exhibit hereto), including the breach, validity or interpretation of any of the provisions hereof (a "Dispute"), duly authorised representatives of the Parties shall meet in an effort to resolve such Dispute by discussion between them during a 15-Day period (the "Conciliation Period") commencing on the date of one Party's written notice to the other Party of such Dispute arising.
- (b) If agreement cannot be reached during the Conciliation Period, and the Parties do not agree to proceed immediately under Section 14.2, then the Parties shall refer the Dispute to a mutually agreeable Expert with experience in similar projects involving utilities, power generation or related fields (the "Expert"). If the Parties have not mutually agreed upon an Expert within 10 Days after expiry of

the Conciliation Period, then either Party may request that the Ceylon Chamber of Commerce to appoint such Expert within 7 Days of such request.

- (c) During a 30 Day period commencing after the later of the expiration of the Conciliation Period or the appointment of the Expert, as the case may be, two (2) persons from each Party who are knowledgeable about the Dispute shall meet with the Expert to answer questions and provide any information requested by the Expert for purposes of resolving the Dispute. Within 45 Days after the later of the expiration of the Conciliation Period or the appointment of Expert, as the case may be, the Expert shall issue a decision which shall be binding on the Parties hereto, except where either Party rejects such decision within seven (7) Days of the communication thereof. Where such decision is rejected as aforesaid or where any Dispute is not settled or resolved at the end of such 45 Day period under this Section 14.1 (c), then the Dispute shall be exclusively settled under the provisions of Section 14.2. Provided however, the above shall not be construed to preclude in any manner whatsoever the right of either Party to obtain from a Court of competent jurisdiction such interim relief as is appropriate in the circumstances.
- (d) Each Party shall share equally the costs of the Expert.

#### **Section 14.2 Arbitration**

- (a) Any Dispute that is not resolved under Section 14.1 or if the Parties elect not to have recourse to Section 14.1 in respect of any Dispute, such Dispute may be submitted by either Party to arbitration for final settlement. Each of the Parties submits to arbitration under this Section 14.2 before a panel of three arbitrators under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force (the "Rules"), as modified by this Section 14.2. The proceedings shall be conducted, and the award shall be rendered, in the English language. The seat and place of arbitration shall be Colombo unless any other location is agreed to by the Parties.
- (b) Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator. The third arbitrator shall be the chairman of the arbitral tribunal. If either Party fails to appoint an arbitrator or if the two Party-appointed arbitrators fail to agree upon a third arbitrator, then such arbitrator shall, at either Party's written request, be appointed by the "appointing authority" within fifteen (15) days of such request. The "appointing authority" shall be the London Chamber of International Arbitration (LCIA) with the Rules adopted by the UNCITRAL for selecting an arbitrator.
- (c) Any award rendered by a majority of the arbitral tribunal shall be final and binding and judgment thereon may be entered and may be enforced in any court of competent jurisdiction. Any monetary award shall be made in reasonable time and as the arbitral tribunal may consider appropriate. The arbitral tribunal shall be authorized in its discretion to grant pre-award and or post-award interest as the case may be. Any costs, fees, or taxes incidental to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.
- (d) Subject to right of any Party to obtain any appropriate interim relief from any court of competent jurisdiction, an arbitration award under this Section 14.2 shall be a condition precedent to the commencement of action, suit, or claim in any court or other judicial forum.

- (e) 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, including payment 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.

### **Section 14.3 Expedited Resolution**

In the event, a Dispute with respect to any amount invoiced by the Company or CEB as the case may be or any payments due from one Party to the other Party is not resolved within the time set forth in Section 4.2 (c), the Parties shall immediately submit such Dispute for resolution pursuant to Section 14.2 and shall proceed to resolve such Dispute as expeditiously as is permitted under the Rules, but in any event requiring that first hearing be held within forty five (45) days of such submission and the award be rendered no later than forty five (45) days following the appointment of the last of the three arbitrators. Notwithstanding the periods of time specified in this Section 14.3, the failure to hold the first hearing or to render the award within such specified periods of time shall not render illegal such arbitration proceedings or the award.

### **Section 14.4 Consolidation of Arbitral Proceedings**

After an Arbitral tribunal (the "Tribunal") has been appointed, either Party may give a further notice of arbitration to the other Party and to the Tribunal referring to any other dispute arising out of or in connection with this Agreement to those arbitral proceedings. If the other Party does not consent within 30 Days notice of receipt of such notice (determined in accordance with Section 16.4) to any such other dispute being so referred the Tribunal may, as it considers appropriate, order either :

- (i) that the other dispute should be referred to and consolidated with the same arbitral proceedings ; or
- (ii) that the other dispute should not be so referred

### **Section 14.5 Commercial Acts**

CEB unconditionally and irrevocably represents to the Company that it is subject to suit in Sri Lanka with respect to its obligations under this Agreement, to engage in an Expert determination or to engage in arbitration, or with respect to any action in aid of arbitration, or with respect to enforcement of an award resulting from an arbitration or Expert determination held pursuant to this Agreement.

## **ARTICLE XV TERM**

### **Section 15.1 Term**

This Agreement shall become effective on execution and shall continue in effect till the twentieth anniversary of the Final Completion Date, which may be extended by written agreement of the Parties or in accordance with express provisions of this Agreement (the "Term") unless this Agreement is terminated earlier by either Party in accordance with the terms and conditions herein contained. The expiration or termination of this

Agreement shall be without prejudice to the rights and obligations of the Parties accrued under this Agreement prior to expiration or termination.

## **ARTICLE XVI MISCELLANEOUS**

### **Section 16.1 Representations and Warranties**

Each Party represents and warrants to the other that:

- (a) It is duly incorporated 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.
- (b) Entry into and performance of this Agreement does not violate any provision of any law statute, rule, regulation, judgement, writ, injunction, decree or order applicable to such Party;
- (c) The execution, delivery and performance of this Agreement does not conflict with such Party's memorandum or articles of association or similar organisation documents or conflict or result in breach or termination of any provision of, or constitute a breach under, any mortgage, loan, contract or other undertaking binding on such Party;
- (d) No suit, action or arbitration or legal, administrative or other proceeding is pending against such Party that would affect the validity or enforceability of this Agreement or the ability of such Party to fulfil its obligations under this Agreement;
- (e) This Agreement has been duly authorised, executed and delivered by it, and constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms; and
- (f) in carrying out their obligations and duties under this Agreement each Party shall have an implied obligation of good faith.

### **Section 16.2 Assignment and Transfers of Interest**

#### **Section 16.2.1**

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

- (a) CEB may not sell, assign or otherwise transfer all or part of its rights, benefits or obligations under this Agreement without the Company's prior written consent, such consent not to be unreasonably withheld or delayed, provided that, upon thirty Days' prior notice from CEB to the Company, CEB may assign or transfer all or part of its rights, benefits or obligations under this Agreement without the Company's prior consent in the event of:
  - (i) the restructuring of CEB's assets; or
  - (ii) the changing of CEB's ownership; or

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

Provided that the surviving entity to whom the assignment or transfer is made assumes and becomes fully liable to perform CEB's obligations under this Agreement and the Government Guarantee is in full force and effect.

- (b) The Company may not sell, assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without CEB's prior written consent, such consent not to be unreasonably withheld or delayed, except that, for the purpose of the Financing Agreements, the Company may without CEB's prior written consent assign or create a security interest over its rights and interests under or pursuant to this Agreement to the Lenders.
- (c) Any actual, attempted or purported sale, assignment or other transfer by a Party of any of its rights or obligations or interests in, under or pursuant to this Agreement that does not comply with the terms of this Section 16.2 shall be null, void and of no force and effect.

#### **Section 16.2.2**

- (a) The Company shall give CEB 30 Days notice in writing of any pending change of control or management of the Company, or where 25% or more of the outstanding and issued share capital of the Company is acquired by any single third party after the date hereof (by a single transaction or a series of related transactions); provided however, where CEB objects to such transfer of shares or any change of control or management of the Company on reasonable grounds within 21 days of receipt of such notice, such transfer of shares or change of control or management of the Company shall not be permitted by the Company. Where CEB does not object within the stipulated 21 days period, the Company shall be free to complete such transaction.
- (b) The Company shall give CEB 30 Days notice in writing of any pending change in the shareholding of the Lead Member in the Company. When the CEB objects to such transfer of shares on the grounds that such transfer shall result in the Lead Member holding less than 15% of the issued share capital of the Company, the Company shall not permit such transfer of shares and such transfer shall not be registered in the share register of the Company, provided that the CEB may not raise such objection after the expiry of 5 years from the Final Completion date. Where CEB does not object within the stipulated 21 days period, the Company shall be free to complete such transaction.
- (c) The Company shall give CEB 30 Days notice in writing of any pending change in the shareholding of the Identified Project Shareholder in the Company. When the CEB objects to such transfer of shares on the grounds that such transfer shall result in the Identified Project Shareholder holding less than 10% of the issued share capital of the Company, the Company shall not permit such transfer of shares and such transfer shall not be registered in the share register of the Company, provided that the CEB may not raise such objection after the expiry of 5 years from the Final Completion date. Where CEB does not object within the stipulated 21 days period, the Company shall be free to complete such transaction.

### **Section 16.2.3**

CEB hereby consents, subject to prior notice, to the assignment of the Company's rights hereunder to the Lenders pursuant to the Financing Agreements and agrees, if required by such Financing Agreements, to make payments owing from CEB to the Company directly into a collateral security account thereunder (and the Company hereby consents to such payment being made); subject to Section 11.3(d), to accept in the event of a breach under the Financing Agreements, as a substitute for the Company under this Agreement, the Agent for the Lenders or any Designee and to afford the Lenders an opportunity to cure any breach prior to giving effect to any termination of this Agreement as described in Article XI hereof. The Company acknowledges and agrees that any assignment to a secured party pursuant to the Financing Agreements shall not relieve the Company of its performance obligations to CEB under this Agreement. CEB acknowledges and agrees that no such assignee shall be liable for the performance of the Company's obligations hereunder, provided, however, that the exercise by any such assignee of any rights hereunder shall be subject to the terms of this Agreement. Any obligation of CEB to make payments directly to such a collateral security account shall be subject to any claims or rights CEB may have against the Company hereunder.

### **Section 16.3 Entire Agreement**

This Agreement and the Schedules and Exhibits attached hereto, constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof, provided, that in interpreting this Agreement, the Parties acknowledge that the Implementation Agreement may be referred to, to clarify the intent of each of the Parties to such agreements.

### **Section 16.4 Prohibition on Resale of Electrical Energy by the Company**

The Company may not sell electrical energy generated at the Facility to any person other than CEB except that, in the event of a material breach by CEB of this Agreement resulting in CEB being unable to accept electrical energy from the Company pursuant to this Agreement, the Company may sell electrical energy generated at the facility to any person subject to the prior consent of any relevant Competent Authority and the Laws of Sri Lanka (including payment to any relevant Competent Authority of any applicable wheeling charges).

### **Section 16.5 Notices and Other Documentation**

All notices, invoices and other communications or documentation hereunder shall be in writing (and shall be deemed given upon receipt) if delivered personally by courier (which is confirmed) or mailed by registered mail to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

- (a) If to CEB:  
General Manager  
Ceylon Electricity Board  
50, Sir Chittampalam A Gardiner Mawatha  
Colombo 02  
Sri Lanka.

Fax: 94-1-449572

(g) If to the Company, to

### **Section 16.6 Severability**

If any article, provision or section of this Agreement is rendered invalid by any court of competent jurisdiction, the invalidity of such article, provision or section shall not affect any of the remaining provisions of this Agreement; provided only where such remaining article, provision or section is entirely independent of the article, provision or section that is rendered invalid and in any such case the parties will negotiate in good faith with a view to agreeing on one or more provisions to be substituted therefore which are not invalid, illegal or unenforceable and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

### **Section 16.7 Amendment and Waiver**

This Agreement may be amended, modified or superseded and any of the terms hereof may be waived, only by a written instrument executed by both Parties or, in the case of waiver, by the Party waiving compliance. The failure of either Party to require performances of any provision of this Agreement shall not affect the right at a later time to enforce such provision. No waiver by either Party of any condition or of any breach of any term of this Agreement shall be construed as a further or continuing waiver of any such condition or breach or as waiver of any other condition or of any breach of any other term.

### **Section 16.8 Counterparts**

This Agreement is executed in two or more counterparts, each of which shall be considered one and the same agreement.

### **Section 16.9 Publicity**

The following provisions shall apply to confidentiality and publicity:

- (a) each Party shall keep confidential and shall not disclose to any third Party any information provided by the other Party in connection with the negotiation or performance of this Agreement without the prior consent of the other Party which may not be unreasonably withheld or delayed, provided that this restriction shall not apply :
  - (i) to any information which at the time of disclosure is in the public domain or thereafter become part of the public domain other than as a consequence of a breach by either Party of its obligations under this Section 16.9 ; or
  - (ii) to disclosure of information as required by law or to any government department or any governmental or regulatory agency having jurisdiction or by lawful subpoena or other process or to the extent required by the



applicable rules or regulations of any recognised stock exchange or securities regulatory body ; or

- (iii) where reasonably necessary to effect the purpose of this Agreement or any other Project Agreements or financing agreements including disclosure to :
- a Party's professional advisors ;
  - prospective lenders or actual lenders and
  - prospective purchases or actual purchases of the shares in or assets of the Company;

In each case, providing such persons have entered in to binding confidentiality agreements agreeing to be bound by the provisions of the confidentiality undertaking set out in this Section 16.9.

- (b) neither Party shall issue or cause the publication of any press release or other public announcement in relation to the Facility or this Agreement without the prior approval of the other party, such approval not to be unreasonably withheld.

#### **Section 16.10 Survival**

In the event of the Termination of this Agreement, for period of 36 months following the Termination the provision of this Agreement relating to Dispute Resolution and Publicity shall survive Termination and continue to have effect in terms of this Agreement.

#### **Section 16.11 Several Obligations**

Except as otherwise set forth herein, the duties, obligations and liabilities of the Parties hereto are intended to be several and not joint or collective and nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture amongst the Parties hereto and each Party shall be liable individually and severally for its own obligations under this Agreement.

#### **Section 16.12 Governing Law; Language**

- (a) This Agreement shall be governed by and construed in accordance with the laws (whether substantive or procedural) of Sri Lanka. The Parties agree that no provision of this Agreement shall be interpreted in a manner which would circumvent the laws of Sri Lanka.
- (b) This Agreement has been executed by the Parties in English which shall be the operative language of this Agreement.

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

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

and )  
)  
)  
who attest the sealing thereof )

Witnesses:

1. \_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)

2. \_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)

**The Common Seal of** )

Witnesses:

1. \_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)

2. \_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)

## FIRST SCHEDULE - DESCRIPTION OF THE FACILITY

### **Part A Plant Characteristics**

The plant supplied by the Company shall be new and unused and of the following characteristics.

#### **Section 1 Functional specifications of the plant**

Installed capacity  
Rated capacity  
Rated power factor

Alternator voltage and frequency variations during operation shall be in accordance with IEC 34-1 standard specification. PQ diagram is depicted in Annex A-3. The Facility shall be capable of operating within the normal operating limits and the short term tolerance limit set out in the Second Schedule. The Facility shall also be capable of tolerating CEB power system fault level set out in the Second Schedule.

#### **Section 2 Basic design data of the Facility**

##### **A. Wind Turbine Generator**

The Company shall submit the wind turbine power curve(s) at site conditions (at average site air density 1.170 kg/m<sup>3</sup>) in the format appearing in Annex A of the First Schedule.

##### **B. Protection Schemes**

The Facility shall have the following minimum protection schemes

Earth fault protection  
Differential protection  
Over Voltage Protection  
Reverse Power Protection  
Over current and short circuit protection  
Loss of excitation protection

##### **C. Step-up Transformers**

Rated capacity  
Rated voltage  
Tap changer  
Frequency 50 Hz  
Standard IEC 76  
Connection

##### **D. Meters**

Type	Precision Accuracy Type Poly-phase Energy Meters
Standard	IEC 60687
Current rating	1 A
Accuracy class	0.2
Measurement range	20 – 100% of rated current

Burden	3.2 VA
Rated voltage	$16.5/\sqrt{3}$ V
Measure range	90 to 110 % of the rated voltage

The Meters shall be capable of constantly recording and storing the power delivered by the Facility over any period of time in kW.

**E. Reference Wind Mast (Meteorological mast)**

Distance to Reference Wind Mast from the closest wind turbine	-
Anemometer installation height(s)	-
Data acquisition system	-

**Part B: Transmission Line**

Construction of this transmission line shall comply with the "CEB: DCS - 4:1997" standards in case of a concrete pole line. If a tower line is chosen instead of a concrete pole line, construction and material selection shall comply with applicable international standards, and such chosen standards shall be notified to CEB prior to construction.

**ANNEX A**

**Power Curve of the Proposed Wind Turbine**

Wind Turbine Model No.    -----  
Rated Power                    -----  
Hub height                      -----

Wind speed m/s	Turbine Electrical Power output in kW at site conditions (1.17 kg/m <sup>3</sup> air density)
0	
0.5	
1.0	
1.5	
2.0	
2.5	
3.0	
3.5	
4.0	
4.5	
5.0	
5.5	
6.0	
6.5	
7.0	
7.5	
8.0	
8.5	
9.0	
9.5	
10.0	
10.5	
11.0	
11.5	
12.0	
12.5	
13.0	
13.5	
14.0	
14.5	
15.0	
15.5	
16.0	
16.5	
17.0	
17.5	
18.0	
18.5	

19.0	
19.5	
20.0	
20.5	
21.0	
21.5	
22.0	
22.5	
23.0	
23.5	
24.0	
24.5	
25.0	

## **SECOND SCHEDULE - TRANSMISSION AND SYSTEM SPECIFICATIONS**

### **1. Wind Resource**

For the purpose of calculation of Deemed Generation Charge in Section 5.2 of Fourth Schedule the frequency distributions of identified location [*Puttalam/Hambantota*] appear in Annex A-1 [A-2] of this Schedule.

### **2. System Fault Level**

The maximum short circuit effect at the [*Puttalam/Hambantota*] grid substation will be ..... MVA.

### **3. Voltage and Frequency Limitations**

Grid variation limits of the voltage at 33 kV or 132 kV, as applicable, and the frequency are as follows:

#### **Normal operation limits**

##### Voltage

Nominal	33kV	
Variation	33 kV	± 6%

Nominal	132kV	
Variation	132 kV	± 10%

##### Frequency

Nominal	50 Hz
Variation	± 1%

#### **Short-term variations**

##### Voltage

33kV	+6% -10% up to 5 sec.
132kV	+6% -10% up to 5 sec.

#### **Under frequency operation**

Under frequency 33kV feeder relay setting shall be set by CEB at 47 Hz delayed by 250 ms. Machine under frequency shall be set by the Company at 47 Hz delayed in excess of 2 sec to trip.

### **4. Current Transformers**

Standard	IEC 185 (1987)
Number of phases	Single
Location	Outdoor
Highest system voltage	36 kV/145 kV (as applicable)
Rated system voltage	33 kV/132 kV (as applicable)

Rated frequency	50 Hz
Burden	15VA
Transformer cores	(i) Class 5P20, Ratio: (...) / 1A for over current and earth fault protection. (ii) Class 0.2P20, Ratio: (...) / 1A for metering

## 5. Voltage Transformers

Standard	IEC 186
Type	Capacitor/Wound
Burden per phase	15VA
Location	Outdoor
Highest system voltage	36 kV/145 kV (as applicable)
Rated system voltage	33 kV/132 kV (as applicable)
Rated frequency	50 Hz
Maximum Ratio error	± 1 % (as per IEC 186, Clause 25)
Maximum phase angle error	40 Min/1.2 Centi-radians (as per IEC 186, Clause 25)
Voltage Ratio	132,000/ $\sqrt{3}$ or 33,000/ $\sqrt{3}$ (as applicable): 110/ $\sqrt{3}$ : 110/ $\sqrt{3}$ : 110/ $\sqrt{3}$ V
Accuracy Class	0.2P20



**Annex A - 1**

**Frequency Distribution**

Location:- Puttalam

Frequency distribution hrs

Wind speed bin centre	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0.0	0	2	0	4	0	0	0	0	0	0	0	0
0.5	0	7	4	12	0	7	0	0	0	4	5	0
1.0	0	20	11	19	0	2	0	0	0	6	11	1
1.5	2	22	10	30	0	6	0	0	0	15	6	3
2.0	2	52	17	53	0	0	0	0	0	18	21	2
2.5	5	56	29	72	0	3	1	0	0	30	34	6
3.0	6	92	52	93	1	4	4	0	0	34	30	10
3.5	20	65	43	75	3	5	5	1	0	34	57	26
4.0	37	70	48	90	3	5	8	6	1	30	67	43
4.5	89	66	54	61	7	4	8	1	0	27	62	69
5.0	108	56	65	48	16	5	13	5	1	36	76	104
5.5	95	69	58	52	8	5	18	3	7	29	63	120
6.0	114	50	58	36	7	6	26	15	8	24	48	101
6.5	88	32	55	24	10	16	27	27	14	16	50	98
7.0	87	21	51	20	16	11	50	16	24	23	41	65
7.5	51	10	46	10	18	6	43	23	46	34	25	41
8.0	25	2	46	14	32	15	38	22	62	44	28	28
8.5	8	4	35	2	37	23	38	48	64	67	14	12
9.0	7	0	18	2	69	40	80	64	75	80	8	7
9.5	0	0	10	1	85	53	93	71	88	56	15	5
10.0	0	0	12	0	98	69	62	118	79	39	16	2
10.5	0	0	8	2	110	102	43	121	62	24	17	1
11.0	0	0	8	0	85	94	32	106	50	19	14	0

11.5	0	0	0	0	2	0	0	64	61	33	47	47	19	8	0
12.0	0	0	0	49	4	0	0	49	69	26	34	29	13	1	0
12.5	0	0	0	11	0	0	0	11	48	28	10	19	12	1	0
13.0	0	0	0	2	0	0	0	2	37	23	3	11	8	2	0
13.5	0	0	0	5	0	0	0	5	13	16	2	13	1	0	0
14.0	0	0	0	2	0	0	0	2	9	16	0	14	1	0	0
14.5	0	0	0	6	0	0	0	6	2	5	1	1	1	0	0
15.0	0	0	0	0	0	0	0	0	0	5	0	2	0	0	0
15.5	0	0	0	0	0	0	0	0	0	1	0	3	0	0	0
16.0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0
16.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

**Annex A - 2**

**Frequency Distribution**

Location:- Hambantota

Frequency distribution hrs

Wind speed bin centre	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0.0	0	3	1	1	2	0	4	0	0	0	8	8
0.5	1	3	6	4	20	0	5	1	0	1	35	27
1.0	2	5	6	15	14	0	9	2	0	8	36	30
1.5	3	7	13	16	24	0	3	4	0	8	40	48
2.0	4	15	14	35	35	1	14	5	1	28	56	63
2.5	18	30	26	47	30	1	14	7	9	42	50	60
3.0	19	35	40	67	41	4	24	15	13	81	57	86
3.5	34	45	66	100	43	5	18	25	35	95	72	103
4.0	54	54	62	81	36	27	25	28	89	118	65	89
4.5	72	59	99	88	45	33	38	64	113	93	52	78
5.0	128	71	104	61	65	55	57	80	83	65	38	60
5.5	106	73	80	27	62	82	67	82	59	58	41	32
6.0	89	69	51	46	72	70	68	68	56	45	29	31
6.5	59	52	26	26	52	77	73	59	37	44	24	15
7.0	42	45	21	28	34	63	54	48	34	21	24	9
7.5	36	27	22	20	28	61	31	40	44	22	33	1
8.0	18	30	21	15	17	48	39	40	49	10	16	4
8.5	21	17	25	14	21	48	33	38	35	5	7	0
9.0	12	15	21	12	23	34	44	37	22	0	11	0
9.5	19	12	15	10	24	33	39	34	20	0	11	0
10.0	3	4	12	3	25	32	33	30	14	0	7	0
10.5	3	1	8	2	22	25	23	15	4	0	5	0
11.0	1	0	2	2	8	16	16	12	3	0	1	0

11.5	0	0	0	0	0	1	1	1	4	7	8	0	0	0	0	2	0
12.0	0	0	0	0	0	1	0	0	4	4	2	0	0	0	0	0	0
12.5	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
13.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25.0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

## **THIRD SCHEDULE - COMMISSIONING AND TESTING**

Testing of the Facility shall be carried out in accordance with the procedures set forth below. CEB shall have the right to attend and observe those tests identified below which have a potential safety or operational impact on CEB's system, and may participate in performance of these tests.

All Wind Turbine Generating Set(s) and their appurtenant equipment shall be tested and commissioned according to manufactures standards and calculated according to the latest edition of applicable ISO Standards.

### **Part A: Commissioning Tests**

#### **GENERAL**

Commissioning tests shall be performed during start-up operations to ensure that the Wind Power Station will perform in conformance with the specified requirements set forth below and that all the designated functions of the equipment referenced are proven. Only after successful completion of these tests the Wind Power Station will be considered to be successfully commissioned.

During all Commissioning tests the Company's start -up and operating personnel shall be present and shall be responsible for the operation of the units.

The Company shall provide a report to CEB certifying that the plant commercial operations tests have been successfully completed. The report shall include the results of tests conducted to verify:

1. Auxiliaries:
  - A. The safe operation of all auxiliaries in accordance with their respective design specifications and manufacturer's recommendations;
  - B. That the mechanical and electrical protective devices function properly at their correct settings, interlock, and over current devices operate properly.
2. Grid Connection Checks

Before synchronizing and running in parallel with the CEB system the Company shall carry out all tests on controls and safety systems to ensure it is safe to do so and shall follow agreed procedures during synchronizing and parallel running.

Tests reasonably required to assure safe synchronization of each wind turbine generator may be witnessed by CEB who shall be satisfied that all the instruments associated with the synchronizing operation are functioning correctly.

3. Electrical Protective Devices

All electrical protective systems, circuits, devices and instruments shall be tested on Site to demonstrate settings and proper functioning.

#### 4. Mechanical Protective Devices

Tests on mechanical protective devices shall be carried out to prove the effectiveness of their operation.

#### **Part B: Performance Tests**

##### 1. Turbine power curve verifications

As part of commissioning, power curve verification shall be completed on at least one of the wind turbines. The power curve measurements shall be conducted in accordance with the requirements of IEC 61400-12.

##### 2. Reactive capacity - leading / lagging

This test will be done for the Wind Power Station With the Active power (P) set at 100% and the power factor set at ..... (lagging) and ..... (leading).

##### 3. Power quality

As a part of the commissioning tests, the power quality from Wind Power Station will be verified in accordance with IEC 868-0; 1991, IEC868; 1986, IEC 1000-2-2, IEC 1000-3-2 and any other relevant standards.

## FOURTH SCHEDULE – TARIFF

The Tariff (T) comprises of a Sri Lanka Rupee Component ( $T_R$ ) and an United States Dollar Component ( $T_D$ ).

$$T = T_R + T_D$$

Sri Lanka Rupee Component comprises of two subcomponents namely; Escalable and Non-Escalable. The escalation of the components will be calculated according to the method and indexation described below.

$$T_R = T_{RE} + T_{RNE}$$

For the purposes of calculating various components of the Tariff, the indices used herein shall be calculated on an annual basis using the GCCPI of December of the year prior to the year of the Final Completion Date. For purposes of this Fourth Schedule “GCCPI” means the Greater Colombo Consumer Price Index periodically published by the Central Bank of Sri Lanka.

### 1. Sri Lanka Rupee Component ( $T_R$ )

Sri Lanka Rupee Component ( $T_R$ ) will comprise of two subcomponents namely; Escalable ( $T_{RE}$ ) and Non-Escalable ( $T_{RNE}$ ).

$T_{RE}$  applicable for any year “y” ( $T_{REy}$ ) shall be determined according to the following formula.

$$T_{REy} = T_{REbase} \times \frac{GCCPI_y}{GCCPI_{base}}$$

Where

$GCCPI_{base}$  = Greater Colombo Consumer Price Index as published by the Central Bank of Sri Lanka as applicable in [closing date of proposals]

$GCCPI_y$  = Greater Colombo Consumer Price Index as published by the Central Bank of Sri Lanka as applicable in December of the year prior to year ‘y’

$T_{REbase}$  =  $T_{RE}$  as given in the Annex A for the year ‘y’

The Non-Escalable Component ( $T_{RNE}$ ) of the Tariff is set out in the Annex A to this Schedule and shall not be escalable during the Term.

### 2. United States Dollar Component ( $T_D$ )

United States Dollar Component ( $T_D$ ) of the Tariff is set out in Annex A to this Schedule and is not escalable during the Term.

**3. Rounding**

All intermediate calculations to ascertain any applicable price or charge under this Schedule shall be made using a commercially available spreadsheet. Figures required for the intermediate calculation shall be to at least eight significant figures. Final monetary sums shall be rounded to the nearest US Dollar or Rupees, as the case may be, using the “round” function supplied with the spreadsheet.

**4. Energy Charge**

Energy Charge shall be the product of Tariff and Metered Sales.

**5. Procedure for calculation of the Deemed Generation Charge**

Deemed generation arises where the Company is unable to deliver electrical energy due to Sri Lanka Force Majeure affecting either party or where the CEB is unable to accept electrical energy due to Force Majeure or Curtailment

Deemed Generation Charge will be calculated on the following basis:

5.1 Where Wind Speed Data is available and undisputed by the CEB, such shall be utilized for the purposes of calculating the Deemed Generation Charge on the following basis:

5.1.1 For calculation purposes the Wind Speed Data will be rounded-off to the nearest half integer. (eg: 7.0 m/s to 7.25 m/s rounded-off to 7.0 m/s and 7.26 m/s to 7.5 m/s rounded-off to 7.5 m/s).

5.1.2 The Deemed Generation for each Wind Turbine Generating Set shall be calculated based on the following formula.

$$DG_n = \sum_{h=1}^H P_h$$

Where

$DG_n$  = the electrical energy deemed to be generated by the Wind Turbine Generating Set (n) in the Relevant Circumstances

$P_h$  =Power out put of the Wind Turbine Generating Set (n) derived from applying the Wind Speed Data at hour (h) to the corresponding wind speed set out in Annex A of First Schedule .

$H$  =Number of hours during a Month that the Wind Turbine Generating Set (n) has not delivered electrical energy due to the Relevant Circumstances

5.1.3 Where more than one Wind Turbine Generating Set has not delivered electrical energy due to the Relevant Circumstances the Deemed Generation shall be calculated based on the following formula.



$$DG_{Total} = \sum_{n=1}^N DG_n.$$

Where

$DG_{Total}$  = the total electrical energy deemed to be generated by the Wind Turbine Generating Sets

$N$  = the total number of Wind Turbine Generating Sets that have not delivered electrical energy due to the Relevant Circumstances

The circumstances referred to as the Relevant Circumstances in this Schedule are the circumstances where the Company has not delivered electrical energy to CEB due to Sri Lanka Force Majeure affecting either party, Force Majeure affecting CEB or Curtailment ("Relevant Circumstances")

5.1.4 Where the period the Company has not delivered electrical energy due to the Relevant Circumstances is less than a month, the Deemed Generation shall be calculated to the nearest Date on a pro-rata basis.

## 5.2 Where Wind Speed Data is not available or disputed by CEB

5.2.1 Where a Wind Turbine Generating Set is affected due to SLFM or where the CEB disputes the accuracy of the Wind Speed Data of a Wind Turbine Generating Set, the Deemed Generation amount shall be calculated on the following basis

$$DG_n = \sum_{v=0}^V P_v \times f_v$$

Where

$DG_n$  = the electrical energy deemed to be generated by the Wind Turbine Generating Set (n)

$P_v$  = Power out put of the Wind Turbine Generating Set (n) derived from applying the Wind Speed Data of 'v' to corresponding wind speed set out in Annex A of First Schedule

$f_v$  = number of hours of the Month with Wind Speed Data of 'v'

$V$  = 25 m/s

5.2.2 Where more than one Wind Turbine Generating Set is affected due to SLFM affecting the Company and/or where the CEB disputes the accuracy of the Wind Speed Data of more than one Wind Turbine Generating Set in the Relevant Circumstances the

Deemed Generation amount shall be calculated, based on the following formula.

$$DG_{Total} = \sum_{n=1}^N DG_n$$

Where

$DG_{Total}$  = the total electrical energy deemed to be generated by the Wind Turbine Generating Sets

$N$  =The total number of Wind Turbine Generating Sets that have failed to deliver electrical energy due to SLFM and/or the number of Wind Turbine Generating Sets of which the CEB disputes the accuracy of their Wind Speed Data in the Relevant Circumstances

- 5.3 In a Month where situation 5.1 and 5.2 subsists Deemed Generation shall be the aggregate of the kWh derived by the applicable formula above.
- 5.4 The Deemed Generation Charge shall be the product of Deemed Generation and Tariff.
- 5.5 Where the CEB disputes the Wind Speed Data in the Relevant Circumstances, Article XIV shall apply.

## TARIFF

### Annex A

Year	$T_{RE}$ Rs/kWh	$T_{RNE}$ Rs./kWh	$T_D$ US\$/kWh
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

**FIFTH SCHEDULE - PART A- SAMPLE INVOICES**

Ceylon Electricity Board  
P.O. Box 540  
Sir Chittampalam A. Gardiner Mawatha  
Colombo 2

For the Attention of:.....  
Invoice No :-.....  
Date:.....

	Quantity kWh	Rate US\$/kWh	Rate Rs./kWh	Value US \$	Value Rs.
Power Purchase Agreement Dated;.....at.... ..... <b><u>1. Metered Sales</u></b> Energy Sales for the Month ending ...../20.. <i>[Main Meter Reading]</i>  Energy Sales for the Month ending ...../20.. <i>[Backup Meter Reading]</i>  <b><u>2. Deemed Generation</u></b>  Deemed Generation for the Month (DG <sub>Total</sub> )  <b><u>Sri Lanka Rupee Component (T<sub>R</sub>)</u></b>  Escalable Component (T <sub>RE</sub> )  Non-Escalable Component (T <sub>RNE</sub> )  <b><u>United State Dollar Component (T<sub>D</sub>)</u></b>  <b><u>Sales Taxes</u></b>  <b><u>Reimbursements</u></b> Reimbursable Taxes  Input Sales Taxes  <b><u>Any other (please specify)</u></b>					

<b>Total Due</b>				
US Dollars				
Sri Lanka Rupees				

.....  
*[Name and Address of the Company]*

.....  
*[Signature]*  
*[Name]*

**PART B - THE FORMAT OF THE INDEPENDENT ENGINEER'S CERTIFICATE**

I/We certify that the amount of energy indicated in the above invoice is the amount of energy delivered by the Company to CEB during the period from..... to ..... and that the relevant meter readings have been recorded by me/us. I/We further certify that the Meters have the accuracy required by Section 6.1 of the Agreement.

## **SIXTH SCHEDULE - INSURANCE**

### **1. Insurance during Construction**

From the commencement of construction of the Facility until the Final Completion Date, the Company shall, at its own expense, obtain and maintain in force the following insurance coverage (which coverage shall not, however, include coverage in respect of Sri Lanka Force Majeure).

- (a) Marine insurance in respect of plant and equipment to be imported into Sri Lanka for incorporation into the Facility as and when shipments occur during such period.
- (b) Construction All Risks insurance against all risks which are normally and can reasonably be insured for damage to the Facility in an amount not less than the full replacement cost of the Facility.
- (c) Third Party Liability insurance to cover legal liability for injury and or death to third party persons or damage to third party property caused by the construction of the Facility.
- (d) Workmen's Compensation and Employers' Liability insurance as required under applicable Laws of Sri Lanka.
- (e) Advance Consequential Loss insurance to provide an indemnity to the Company following indemnifiable loss or damage under the Construction All Risks insurance (as described in paragraph 1(b) above) in respect of certain of the Company's costs (with the proviso that the minimum coverage shall be loan interest and specified standing charges) for a period of at least 12 months after a reasonable deductible period.
- (f) Directors' and Officers' Liability insurance to provide cover in respect of personal liability of the Company's directors and officers arising out of the business and operations of the Company to the extent such coverage can normally and reasonably be obtained every year such coverage is applied for.

### **2. Insurance from the Final Completion Date until the end of the Term**

The Company shall at its own expense keep the Facility insured against all risks which are normally and can reasonably be insured including Property All Risks, Machinery Breakdown, Business Interruption, Third Party Liability and Directors' and Officers' Liability. In addition, Workmen's Compensation and Employer Liability insurance as required under applicable Laws of Sri Lanka will be obtained.

**SEVENTH SCHEDULE - LIQUIDATED DAMAGES PAYABLE BY THE COMPANY**

**1. Liquidated Damages for non-achievement of Guaranteed Plant Capacity of .....MW**

Where the Company fails to achieve a plant capacity of .....MW or elects to declare a capacity lower than .....MW as the plant capacity of the Facility pursuant to Section 8.2 (f) the Company shall pay CEB a sum of US\$ ..... per MW or part thereof in respect of each MW or part thereof not achieved by the Company or in respect of the difference between .....MW and such lower plant capacity declared by the Company as the plant capacity of the Facility. The maximum amount of liquidated damages payable by the Company for such failure to achieve plant capacity of .....MW shall be US \$ 82,000 x .....MW = US \$ .....

**2. Liquidated Damages for failing to achieve Final Completion Date by Scheduled Completion Date**

If the Company fails to achieve Final Completion Date by the Scheduled Completion Date, the Company shall pay CEB liquidated damages in an amount of US\$ ..... per day or part thereof, for each Day the achievement of the Final Completion Date is delayed beyond the Scheduled Completion Date, commencing from the Scheduled Completion Date until the achievement of the Final Completion Date or the termination of this Agreement, whichever occurs earlier. The maximum amount of liquidated damages payable by the Company for such delay shall be liquidated damages payable for 180 Days (i.e. US \$ ..... x 180 = US \$ .....).



## **EIGHTH SCHEDULE - BANK ACCOUNTS OF THE COMPANY**

The Company shall notify to CEB specific account number (s) within seven days of the Expiry of the Preliminary Period.

## **NINTH SCHEDULE - BUY-OUT**

### **1. Introduction**

- 1.0 This Schedule outlines the procedures and methodology for calculating the purchase price of the Facility (the “Buy-Out Price”) if a Buy-Out Event (as defined in Paragraph 2 hereof) occurs after the expiry of the Preliminary Period and a Buy-Out Notice (as defined below) is issued by the Company or CEB.
- 1.1 The provisions of this Schedule shall survive the expiry or termination of this Agreement.

### **2. Buy-Out Event**

- 2.1 Following the issuance of a Termination Notice under any of the following Sections of this Agreement, the Company shall have the option, but not the obligation of issuing a notice to CEB to implement a Buy-Out (the “Company Buy-Out Notice”) within seven (7) Days of the date of the Termination Notice; 11.1(j), 11.1(k), 11.1(m), 11.2 (a), 11.2 (b), 11.2 (c), 11.2 (d), 11.2 (e), 11.2 (f), 11.2 (g), 11.2 (h), 11.2 (j), 11.2 (l), 11.2 (m), 11.2 (n), 11.2 (o) and 11.2 (p)
- 2.2 Following the issuance of a Termination Notice under any of the following Sections of this Agreement, CEB shall have the option, but not the obligation of issuing a notice to the Company that it shall be implementing a Buy-Out (the “CEB Buy-Out Notice”) within seven (7) Days of the date of the Termination Notice; 11.1(a), 11.1(b), 11.1 (c), 11.1 (d), 11.1 (e), 11.1 (f), 11.1 (g), 11.1 (h), 11.1 (i), 11.1 (l), 11.1 (n), 11.1 (o), 11.2(i) and 11.2(k)
- 2.3 Following the issuance of a Company Buy-Out Notice under Paragraph 2.1 above, CEB shall be obliged to purchase the Facility from the Company, and the Company shall be obliged to transfer the Facility to CEB, in accordance with this Agreement at the Buy-Out price as set out in Paragraph 5 below.
- 2.4 Following the issuance of a CEB Buy-Out Notice under Paragraph 2.2 above, the Company shall be obliged to transfer the Facility to CEB, in accordance with this Agreement at the Buy-Out price as set out in Paragraph 5 below.
- 2.5 Notwithstanding any other provision contained in this Agreement, in the event that a Company Buy-Out Notice or a CEB Buy-Out Notice is issued prior to Final Completion Date, the Buy-Out Price shall be as determined by the valuer as set out in Paragraph 4 of this schedule.

### **3. Scope of the Buy-Out**

- 3.1 For the purposes of a Buy-Out, the Facility shall include all assets of the Company including, land, plant & machinery, transmission line, equipment and materials in transit, spare parts, drawings, all other consumables, O&M manuals, tools including all special maintenance tools, test equipment, maintenance records and such other documents and records and things as may be requested by CEB for the proper operation and maintenance of the Plant, except that cash in hand or in bank accounts and receivables accruing to the Company prior to the Transfer Date (as defined below), including the proceeds of any insurance or warranty claims made prior to the Transfer Date, shall remain for the benefit of the Company. The Company shall give no warranties

as to the condition of the property and assets of the Facility except that the Company will assign to CEB the benefit of any warranties from third parties existing at the Transfer Date.

- 3.2 The Company shall be responsible for all liabilities and obligations of the Company that have accrued prior to the Transfer Date unless expressly assumed by CEB.
- 3.3 The Company shall, if so required by CEB, use reasonable efforts to procure the novation (or failing that, assignment of the underlying rights held by the Company) to CEB of any relevant construction contract, all rights relating to the Site or other material contracts relating to the Facility.

#### **4. Valuers Estimate**

- 4.1 Upon the issuance of a Company Buy-Out Notice or a CEB Buy-Out Notice requiring, in accordance with Paragraph 2.5 above, a valuer's estimate, the Company shall select from among the firms of Chartered Accountants in Sri Lanka provided in Paragraph 8 below or any other firms of Chartered Accountants agreed by the Parties, an independent firm of chartered accountants (the "Appraiser") approved by CEB (such approval not to be unreasonably withheld or delayed) to conduct a valuation in accordance with this Paragraph 4 for the purpose of determining the Base Buy-Out Price (such determination, the "Valuation"). If CEB and the Company are unable to agree upon an Appraiser within five (5) days after the issuance of the Buy-Out Notice, then the Appraiser shall be nominated from among the firms of Chartered Accountants in Sri Lanka provided in Paragraph 8 below, by the President of the Institute of Chartered Accountants of Sri Lanka.
- 4.2 The Appraiser shall be selected and commence work within 10 Days from the date of the Company Buy-Out Notice or the CEB Buy-Out Notice (hereinafter each sometimes referred to as a "Buy-Out Notice"), as the case may be (or as soon as practicable thereafter). The Appraiser shall complete the Valuation within forty-five (45) days or such other date as maybe mutually agreed upon.
- 4.3 The Appraiser shall apply the following guidelines in conducting the Valuation:
  - (a) The Valuation shall be equal to the fair value of the Project as determined by the Appraiser, provided that the Valuation shall in no event exceed the total project cost as set out in Paragraph 4.3(d)(viii) below.
  - (b) The Appraiser shall determine the fair value of the Project as of the date of the Buy-Out Notice.
  - (c) The Appraiser shall determine the fair value of the Project on a historical cost basis unless he determines, in the exercise of his professional judgement based on generally accepted valuation principles, that historical cost basis is not an appropriate methodology under the circumstances. If the Appraiser decides not to utilize a historical cost basis methodology, the Appraiser may employ another generally accepted valuation methodology which the Appraiser determines, in the exercise of his professional judgement based on generally accepted valuation principles, is more appropriate under the circumstances. Notwithstanding the foregoing, the Appraiser shall not apply any

anticipated cash flow or other earnings based valuation methodology to the Valuation.

- (d) The fair value will be determined by the Appraiser as of the date of Buy-Out Notice, taking into account the following elements:
  - (i) civil engineering work in progress of the Facility as evidenced by certificates of completion, whether or not interim, given by the Engineer or as may be determined by the Appraiser.
  - (ii) equipment comprising the Facility (not being civil engineering works) as evidenced by certificates of completion, whether or not interim, given by the Engineer or as may be determined by the Appraiser.
  - (iii) equipment to be incorporated into the Facility that is in transit or manufacture or which has been ordered, less any recoverable revenue in respect of such equipment.
  - (iv) financing costs and interest payable by the Company under the Financing Agreements in relation to debt drawn down to finance the works on the Facility.
  - (v) Cost incurred in connection with land, spare parts for the Facility.
  - (vi) with respect to the foregoing elements, not so as to reimburse cost over run with respect to the Facility.
  - (vii) in calculating the fair value, the Appraiser shall have regard for the total project cost of Dollars ..... as may be adjusted pursuant to provisions of Section 8.6 of the Agreement.
- (e) In the course of the determining the fair value, the Appraiser shall from time to time consult with both Parties, keep both Parties informed about the progress of the determination of the fair value, and consider both Parties' comments in such regard. CEB and the Company shall provide the Appraiser from time to time with all data and information that the Appraiser deems necessary for the Valuation.
- (f) The Valuation will be calculated and stated in Dollars and paid in equivalent Rupees.
- (g) Any reduction in the value of the Project or any assets comprising the Project due to either Sri Lanka Force Majeure or the breach by CEB of its obligations under the Agreement shall not be for the account of the Company and shall not reduce the fair value from that which would have been determined if such Sri Lanka Force Majeure or breach had not occurred.
- (h) (i) Where before the Final Completion Date, a Company Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(m), 11.2 (a), 11.2 (b), 11.2 (c), 11.2 (d), 11.2 (e), 11.2 (f), 11.2 (j), 11.2 (l), 11.2 (m), 11.2 (n), 11.2 (o) and 11.2 (p), the Buy-Out Price will be 106% of the Valuation. In addition to the Buy-Out Price, Transfer Costs and Transfer Taxes shall be

borne by CEB.

- (ii) Where before the Final Completion Date, a CEB Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(a), 11.1(b), 11.1 (c), 11.1 (d), 11.1 (e), 11.1 (f), 11.1 (g) and 11.1 (h) the Buy-Out Price will be 94% of the Valuation. All Transfer Costs and Transfer Taxes shall be borne by the Company.
- (iii) Where before the Final Completion Date, a Company Buy Out Notice or a CEB Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(n) and 11.2(k), the Buy-Out Price will be the Valuation. All Transfer Costs and Transfer Taxes shall be borne by the Company.

**5. Buy-Out Price Schedule after the Final Completion Date**

5.1 Where after the Final Completion Date, a Company Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(j), 11.2(a), 11.2(b), 11.2(c), 11.2(d), 11.2(e), 11.2(f), 11.2(g), 11.2(l), 11.2(m), 11.2(n), 11.2(o) and 11.2(p), the Buy-Out Price will be determined by reference to the Buy-Out Price in the table below reckoned from the Final Completion Date corresponding to the Year in which the Company Buy-Out Notice is issued;

<b>Year</b>	<b><u>Buy-Out</u></b>
	<b>(US Dollars)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	0

In addition to the Buy-Out Price, Transfer Costs and Transfer Taxes shall be borne by CEB.

5.2 Where after the Final Completion Date, a CEB Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(a), 11.1(b), 11.1(c), 11.1(d), 11.1(e), 11.1(f), 11.1(h) and 11.1(i), the Buy-Out Price will be determined by reference to the Buy-Out Price in the table below reckoned from the Final Completion Date corresponding to the Year in which the CEB Buy-Out Notice is issued;

<b>Year</b>	<b><u>Buy-Out</u></b> <b>(US Dollars)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	0

All Transfer Costs and Transfer Taxes shall be borne by the Company.

- 5.3 Where after the Final Completion Date, a Company Buy Out Notice or a CEB Buy-Out Notice is issued pursuant to the issuance of a Termination Notice under Sections 11.1(k), 11.1(l), 11.2(h) and 11.2(i) the Buy-Out Price will be determined by reference to the Buy-Out Price in the table below reckoned from the Final Completion Date corresponding to the Year in which the Company Buy-Out Notice or the CEB Buy-Out Notice, as the case may be, is issued;

<b>Year</b>	<b><u>Buy-Out</u></b> <b>(US Dollars)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	0

In the event a Company Buy-Out Notice is issued pursuant to the issuance of a Termination Notice or a deemed Termination Notice under Sections 11.1(k) or 11.2(h) the Transfer Costs and Transfer Taxes shall be borne by CEB.

In the event a CEB Buy-Out Notice is issued pursuant to the issuance of a Termination Notice or a deemed Termination Notice under Sections 11.1(l) or 11.2(i) the Transfer Costs and Transfer Taxes shall be borne by the Company.

## **6. Transfer Costs and Taxes**

6.1 For the purpose of this schedule

- (a) "Transfer Taxes" shall mean all stamp and additional stamp duties and any other taxes (including any sales or value added taxes but not capital gains tax or income tax) and any registration fees that become due or payable by the Company as a result of the purchase of the Facility by CEB; and
- (b) "Transfer Costs" shall mean all costs and liabilities of the Company which are a result of the purchase of the Facility by CEB, including without limitation, the fees and out-of-pocket expenses of the Appraiser, Lenders' fees and out-of-pocket expenses for prepayment of any loans (including any winding up costs), any termination payments on contracts relating to the Facility which are reasonable and customary for private power projects such as the Facility or those fees which have been specifically approved by CEB, and all taxes including capital gains taxes and income taxes, but excluding Transfer Taxes as defined above.

## **7. Transfer of the Facility**

7.1 The Buy-Out shall take the form of a transfer of the Facility, free of all charges and liens (except as provided in paragraph 7.3 below), to CEB on receipt of the Buy-Out Price by the Company. Unless extended by mutual agreement of the Parties, such transfer shall occur (a) in the event of a Buy-Out Notice prior to the Final Completion Date, within fifteen (15) days after the date of the Valuation or (b) in the event of a Buy-Out Notice after the Final Completion Date, within thirty (30) days after the date of such notice (such date, the "Transfer Date"), in any case at a mutually agreeable time and place.

7.2 On the Transfer Date, (i) CEB shall, subject to Paragraph 7.3 below, pay the Buy-Out Price together with all other amounts due to the Company under this Agreement in immediately available funds and (ii) the Company shall transfer and assign to CEB all of its rights, title and interests in the Facility as set forth in Paragraph 3 (Scope of the Buy-Out). All payments pursuant to this Schedule shall be designated in Dollars and be paid in equivalent Rupees.

7.3 CEB shall pay the Buy-Out Price directly to an account designated by the Lenders unless CEB has received written notice from the Lenders that they have been paid in full. Upon receipt of such payment, the Lenders shall release any liens charges or any other such interest that they may have over any of the assets of the Company in respect of which CEB shall assume control of as a result of the Buy-Out.

7.4 If the Company is entitled to receive or receives compensation from the Government of Sri Lanka or through other international trade assurances (e.g. multi-lateral trade guarantees) as a result of the events giving rise to any Buy-Out Notice, then CEB shall be entitled to receive the benefit of such compensation, in the form of a refund or where the Company has received such compensation prior to the Transfer Date in the form of a deduction from or offset against the applicable Buy-Out Price, only to the extent the Company receives such compensation. Provided however, that this Paragraph does not limit or exclude the subrogation right of the Insurer.

**8. Firms of Chartered Accountants**

1. Arthur Anderson
2. Ernst & Young
3. KPMG Ford, Rhodes, Thornton & Co.
4. Price Waterhouse Coopers

**9. Nature of the Buy-Out Payment**

The payment of the Buy-Out Price herein provided is in lieu of the right of either Party to claim damages from the other Party for breach of contract and the Parties shall not be entitled to claim any damages for breach of contract upon payment of the Buy-Out Price, provided however, that nothing herein contained shall be construed as restricting or limiting the right of a Party to recover accrued payments from the other Party. Where either Party elects not to exercise the option to issue a Buy-Out Notice available to it under Paragraphs 2.1 or 2.2 above, it shall not thereafter be entitled to claim from the other Party any damages for breach of contract, provided however, that nothing herein contained shall be construed as restricting or limiting the right of a Party to recover accrued payments from the other Party.

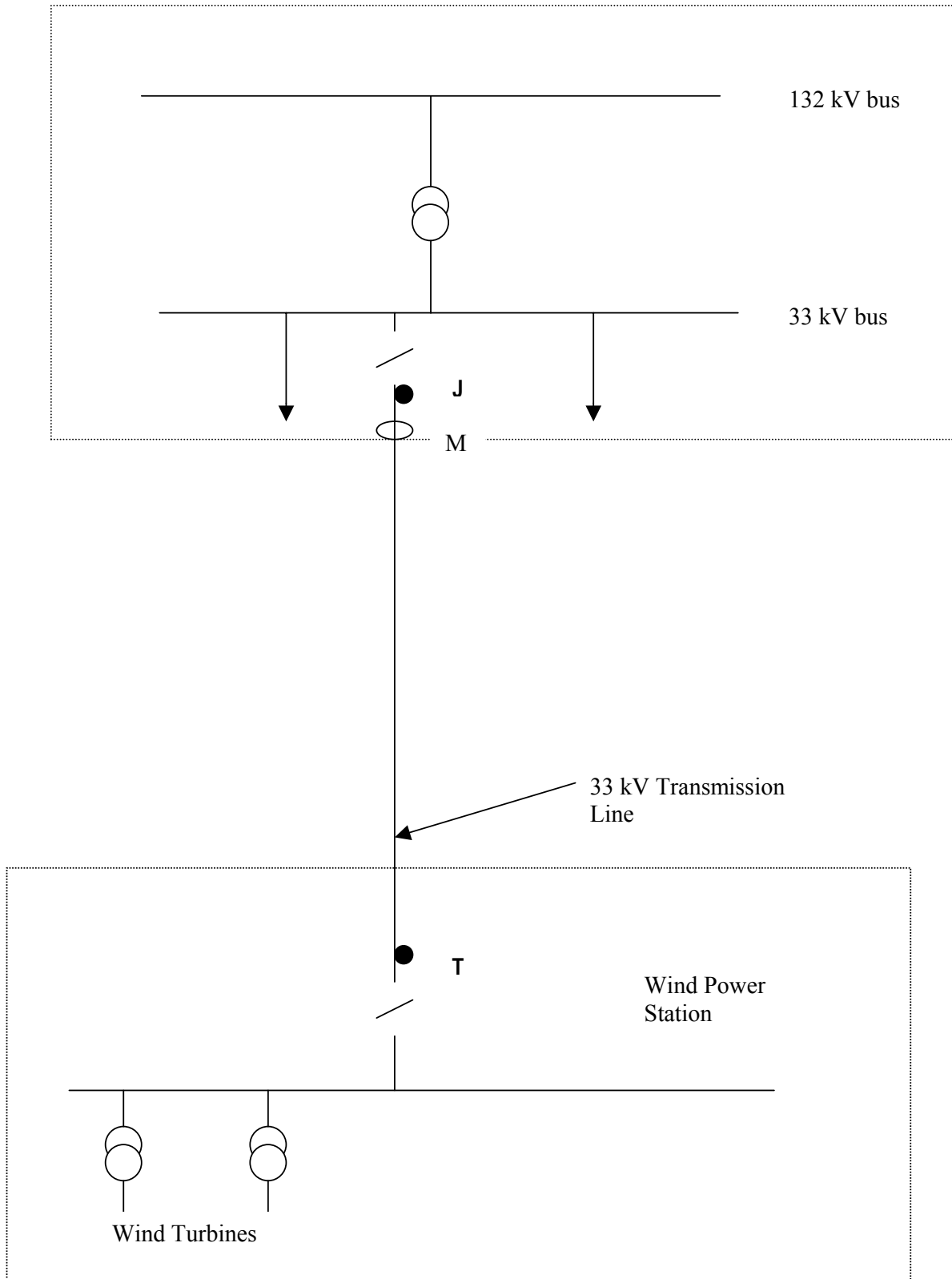


**TENTH SCHEDULE - LIST FOR SELECTION OF THE INDEPENDENT ENGINEER**

1.

# EXHIBIT A - SINGLE LINE DIAGRAM

CEB Grid Substation



## **EXHIBIT B**

### **GOVERNMENTAL APPROVALS**

#### **Section A**

##### **TO BE OBTAINED DURING THE PRELIMINARY PERIOD**

1. Generation Licence issued to the Company by the Minister of Power & Energy under Section 2 of the Electricity Act No. 19 of 1950, as amended.
2. The Environmental Approval Letter required for the Facility.

#### **Section B**

##### **TO BE OBTAINED PRIOR TO THE FINAL COMPLETION DATE**

1. Issuance of visas and work permits for foreign personnel properly employed in connection with the project by the Company for the period such personnel are so employed.
2. The Environmental Protection License.
3. All necessary Governmental Approvals required for the Final Completion of the Facility.
4. All necessary building and construction approvals, consents, permits and licenses.

**EXHIBIT C**

**FORMAT OF THE GENERATION LICENCE**

DRAFT

**GENERATION LICENCE TO BE ISSUED TO THE COMPANY UNDER SECTION 2  
OF THE ELECTRICITY ACT NO.19 OF 1950, AS AMENDED**

.....(the “Company”) is hereby licensed to build, own, operate and maintain an installation located at ..... Sri Lanka for the generation of electrical energy (the “Facility”) as described in Scheduled A attached hereto for the purpose of transmitting or distributing such energy to Ceylon Electricity Board or its successors and assigns, subject to the terms and conditions set forth in Schedule A.

**MINISTER OF POWER & ENERGY  
GOVERNMENT OF SRI LANKA**

**SCHEDULE A**

**TERMS AND CONDITIONS APPLICABLE TO THE GENERATION LICENSE  
GRANTED TO .....  
UNDER SECTION 2 OF THE ELECTRICITY  
ACT NO.19 OF 1950, AS AMENDED.**

.....(‘Company’ and or the ‘Licensee’) has been duly incorporated with foreign participation for the purpose of building, owning, operating and maintaining a .....MW wind power generating facility, with .....wind turbine generating set(s) at ..... as described in the First Schedule to the Power Purchase Agreement dated as of .....2003 (‘Power Purchase Agreement’) between the Company and the Ceylon Electricity Board (‘CEB’). Under the Power Purchase Agreement the Company wishes to sell and CEB is willing to purchase, electrical energy not exceeding ..... MW each year generated by the Facility. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Power Purchase Agreement.

This license is granted under the provisions of Electricity Act No.19 of 1950, (Chapter 205 of the revised legislative enactments of Ceylon 1956) and directives and regulations enacted thereunder (the ‘Electricity Act’) and subject to the conditions of the Ceylon Electricity Board Act. All the rights and powers under this license are hereby vested in the Licensee subject to the terms and conditions specified herein.

## Terms and Conditions

1. This license shall be in full force and effect as of ..... [date to be determined] for a period of eleven years. Any application for an extension of the existing license or a new license in substitution of this license shall be submitted prior to the expiration of this license.
2. This license shall only be transferred or assigned with the prior written consent of the Minister of Power & Energy.
3. Information relating to the works necessary for generating electrical energy is described in the Power Purchase Agreement. The Licensee shall regularly inspect the Facility and maintain such Facility in accordance with Prudent Utility Practices to ensure safety. All items and instruments to be used for generating electrical energy should comply with British Standards specifications or equivalent standards at the time of their erection, installation and operation.
4. The Tariff for the supply of Electrical energy is as set forth in the Fourth Schedule to the Power Purchase Agreement.
5. This license shall confer upon the Company all rights granted under the Electricity Act and applicable Laws of Sri Lanka necessary for the fulfilment of the purposes and objectives of this License, including the right to:
  - (a) use natural water supplies;
  - (b) construct waterways and pipelines;
  - (c) erect buildings and plant;
  - (d) break and open up streets; or
  - (e) erect or lay aerial lines or underground cables.
6. This license is issued pursuant to the Power Purchase Agreement and the implementation agreement dated as of ..... 2003 ('Implementation Agreement') between the Government of Sri Lanka and the Company and may only be revoked or otherwise terminated in accordance with the terms and conditions of the Electricity Act.
7. The provisions of section 13 of the Electricity Act, the Factories Ordinance and other applicable Laws of Sri Lanka, requiring any approvals or consents of CEB with respect to the construction and operation of the Facility shall be deemed to have been complied with by the Company, pursuant to the Power Purchase Agreement.
8. The Licensee will pay the license fee in accordance with applicable Laws of Sri Lanka (i.e. Rs. 100/= per year). The Licensee shall pay a security deposit not exceeding US \$ ..... as determined by the Minister of Power in accordance with the Electricity Act.
9. The electricity generated by the Licensee shall be sold to CEB and should not be transmitted or distributed to any place other than the Interconnection Point. The electricity so generated shall not be sold to any other individual or institution in bulk or retail.

10. The electricity generated by the Licensee under the Power Purchase Agreement shall be in conformity with the Electricity Act and the terms and conditions enacted thereunder.
11. The Licensee must submit annually the accounts and statistical reports in regard to the energy generated by the Facility to the Chief Electrical Inspector ("CEI") from a date stipulated by the CEI on forms obtained from the CEI.

**FOR AND ON BEHALF OF THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

By .....

**Minister of Power & Energy**  
-----

**EXHIBIT D - MONTHLY PERFORMANCE REPORT**

Project Location:-

Year:-

Month:-

1. Turbine capacity:-
2. No. of turbines:-
3. Turbine model:-
4. Date of commissioning:-
5. Total installed capacity:-
6. Total machine hrs.:-

**(A) WIND POWER STATION PERFORMANCE**

Date	Daily Generation in kWh	Generator hrs.	Down Time hours					Total	Remarks
			Inadequate Wind Speed	Machine		Grid			
				Fault	Shutdown/Maintenance	Fault	Shutdown/Maintenance		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									

28									
29									
30									
31									
Total									

Total monthly generation (kWh):-

Plant factor for the month (%):-

Availability factor for the month (%):-

Cumulative generation since commissioning:-

Generation in the same month in the previous year (kWh):-

**(B) INDIVIDUAL MACHINE PERFORMANCE**

Machine No.	Monthly generation (kWh)	Generation hours	Inadequate wind speed hrs.	Monthly machine downtime hrs.	Monthly grid downtime hrs.
1					
2					
3					
4					
5					
.					
.					



**EXHIBIT E**  
**FORM OF CEB LETTERS OF CREDIT**

Number: .....

Amount: Rupees/Dollars .....

Validity Period: Three Hundred and sixty five (365) Days from Commencement Date

Commencement Date: .....

Expiry Date: .....

Account Party: Ceylon Electricity Board

Beneficiary: .....

Address: [ , Colombo in Sri Lanka]

We hereby establish our irrevocable, unconditional, Standby Letter of Credit Number..... in your favour for the account of the Ceylon Electricity Board (the "**Account Party**") for an amount not exceeding a total of [Rupees/Dollars (Rs./\$ )] (the "**L/C Amount**") available by draft on us at sight drawn by two of your duly authorised officers, accompanied by a certificate signed by two of your duly authorised officers in the form attached hereto.

One draft and one certificate shall be presented for each drawing hereunder and the draft shall be in the amount specified in the accompanying certificate.

The original of this Letter of Credit shall be presented for each drawing hereunder. The L/C Amount shall be automatically reduced by the amount of any drawing hereunder.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit shall automatically terminate on the earlier to occur of (i) the Expiry Date and (ii) the date the drawing(s) made by you under this Letter of Credit equal in aggregate the L/C Amount.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not, in any way, be modified, amended, amplified, or limited by reference to any document, instrument or agreement referred to herein, except only the certificate referred to herein; and any such references shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate.

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honoured on due presentation at our office at ....., Attention: ....., specifically referring thereon to this Letter of Credit by number.

*This credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication No.500.*

[LETTER OF CREDIT BANK]

By : .....

Name:

Title:

**EXHIBIT F**

<b>FORM OF CEB LC CERTIFICATE</b>
-----------------------------------

[Letter of Credit Bank]

.....

.....

Attention: Letter of Credit Department

Re: Irrevocable Standby Letter of Credit No.

The undersigned, each an authorised officer of .....(the "**Beneficiary**"), each hereby certifies to the [Letter of Credit Bank] that:

1. Unless otherwise defined herein, all capitalised terms used herein and defined in the above referenced Letter of Credit (the "**Letter of Credit**") shall be used herein as so defined.
2. ....is the Beneficiary under the Letter of Credit and the persons executing this certificate on behalf of the Beneficiary are duly authorised to do so.
3. [CHOOSE ONE OF THE FOLLOWING BRACKETED OPTIONS]  
[The Beneficiary is making a drawing under the Letter of Credit in the amount of ....., which amount is the unpaid amount [s] of Invoice No. [s]..... submitted by the Beneficiary to the Ceylon Electricity Board ("**CEB**") on..... Such amount has not been disputed by CEB and remains unpaid as of the date hereof] [The Beneficiary is making a drawing under the Letter of Credit in the amount of ....., which amount is the entire stated amount of the Letter of Credit which has not been drawn at the date of this Drawing Certificate (the "**Available Amount**"). Such Available Amount is being drawn in full because the Letter of Credit has not been renewed at least 21 days prior to its Expiry Date and the Beneficiary has given the Ceylon Electricity Board 7 days notice in writing of the Beneficiary's intention to draw on the Available Amount] [The Beneficiary is making a drawing under the Letter of Credit in the amount of ....., which amount is the entire stated amount of the Letter of Credit which has not been drawn at the date of this Drawing Certificate (the "**Available Amount**"). Such Available Amount is being drawn in full because the Letter of Credit has not been replenished within 15 days of a drawal thereon and the Beneficiary has given the Ceylon Electricity Board 7 days notice in writing of the Beneficiary's intention to draw on the Available Amount].
4. [REQUIRED ONLY IF CHOICE ONE IN 3 ABOVE IS ELECTED]  
Upon its receipt of the amount demanded under the Letter of Credit, the Beneficiary will apply the same directly to the satisfaction of CEB's obligations under the invoice referenced in paragraph 3 above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Drawing Certificate as of the ..... day of....., 20.....

[Beneficiary]

By:.....

Name:.....

Title: .....

Name.....

Title.....

**EXHIBIT G**

**FORM OF LIQUIDATED DAMAGES BOND**

Number: .....

Amount: Dollars .....

Validity Period:

Commencement Date: .....

Expiry Date: .....

Account Party: .....

Beneficiary: Ceylon Electricity Board

Address: [ , Colombo Sri Lanka]

We hereby establish our irrevocable, unconditional Standby Letter of Credit Number..... in your favour for the account of .....(the "**Account Party**") for an amount not exceeding a total of Dollars .....(\$.....) (the "**L/C Amount**") available by draft on us at sight drawn by two of your duly authorised officers, accompanied by a certificate signed by two of your duly authorised officers in the form attached hereto.

One draft and one certificate shall be presented for each drawing hereunder, and the draft shall be in the amount specified in the accompanying certificate.

The original of this Letter of Credit shall be presented for each drawing hereunder. The L/C Amount shall be automatically reduced by the amount of any drawing hereunder.

Partial drawings are permitted under this Letter of Credit.

This Letter of Credit is not assignable or transferable.

This Letter of Credit shall automatically terminate on the earlier to occur of (i) the expiry of the validity Period and (ii) the date the drawing(s) made by you under this Letter of Credit equal in aggregate the L/C Amount.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not, in any way, be modified, amended, amplified, or limited by reference to any document, instrument or agreement referred to herein, except only the certificate referred to herein; and any such references shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate.

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honoured on due presentation at our office at. ...., Attention: ....., specifically referring thereon to this Letter of Credit by number.

*This credit is subject to Uniform Customs and Practice for Documentary Credits (1993*

*Revision), International Chamber of Commerce, Publication No.500.*

[LETTER OF CREDIT BANK]

By :.....

Name:

Title:

--

**EXHIBIT H**  
**FORM OF LIQUIDATED DAMAGES BOND CERTIFICATE**

[Letter of Credit Bank]

.....

.....

Attention: Letter of Credit Department

Re: Irrevocable Letter of Credit No.

The undersigned, each an authorised officer of Ceylon Electricity Board (the "**Beneficiary**"), hereby each certifies to the [Letter of Credit Bank] that:

1. Unless otherwise defined herein, all capitalised terms used herein and defined in the above referenced Letter of Credit (the "**Letter of Credit**") shall be used herein as so defined.
2. The CEB is the Beneficiary under the Letter of Credit and each of the persons executing this certificate on behalf of the Beneficiary is duly authorised to do so.
3. [CHOOSE ONE OF THE FOLLOWING BRACKETED OPTIONS]  
  
[Attached is a statement prepared by the Beneficiary, demonstrating that certain amounts are due and owing from the .....(the "**Company**") to the Beneficiary pursuant to Section 4.7(a) of that certain Power Purchase Agreement, dated ..... 2003, between the Beneficiary and the Company (the "**PPA**"). The Beneficiary is making a drawing under the Letter of Credit in the amount of ....., which amount is the amount due to the Beneficiary from the Company under Section 4.7(a) of the PPA. Such amount has not been disputed by the Company and remains unpaid as of the date hereof] [The Beneficiary is making a drawing under the Letter of Credit in the amount of ....., which amount is the entire amount of the Letter of Credit which has not been drawn at the date of this Drawing Certificate (the "**Available Amount**"). Such Available Amount is being drawn in full because the Letter of Credit has not been renewed at least 21 days prior to its Expiry Date].
4. [REQUIRED ONLY IF CHOICE ONE IN 3 ABOVE IS ELECTED]  
  
Upon its receipt of the amount demanded under the Letter of Credit, the Beneficiary will apply the same directly to the satisfaction of the Company's obligations under Section 4.7 of the PPA.

IN WITNESS WHEREOF Beneficiary has executed and delivered this Drawing Certificate as of the ..... day of....., 20.....

Ceylon Electricity Board (Beneficiary)

By:.....

Name:.....

Title: .....

Name:.....

Title.....