

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

Ministry of Energy



Ceylon Electricity Board

Request for Proposals

**Development of 2 x 50 MW Wind Farm Facility at
Mullikulam on Build, Own and Operate (BOO) Basis**

RFP Document

Volume III of VI

Draft Power Purchase Agreement (Lot – 1 / Lot – 2)

Issued on: 20th March 2025
Bid No: TR/REP&PM/ICB/2025/001/C
Employer: Ceylon Electricity Board

Ceylon Electricity Board
P.O. Box 540
Colombo 02.

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This Power Purchase Agreement made on this ___ day of _____ 2025, at Colombo in Sri Lanka

BY and BETWEEN

CEYLON ELECTRICITY BOARD, a body corporate established under the Ceylon Electricity Board Act No. 17 of 1969 and having its head office at 50, Sir Chittampalam A Gardiner Mawatha, Colombo 00200, Sri Lanka;

AND

_____, a company duly incorporated with limited liability bearing company registration number _____ and having its registered office at _____;

WITNESSES THAT

WHEREAS

- A. CEB has been established by the Government for the development and co-ordination of the generation, transmission and distribution of electrical energy in Sri Lanka, and is presently engaged in the generation, transmission, distribution and sale of electrical energy in Sri Lanka;
- B. The CEB on behalf of Cabinet Appointed Negotiation Committee, with the authority and approval of the Government, invited proposals;
- C. for the finance, design, engineering, construction, commissioning, operation and maintenance of the Wind Farm Facility on a build-own-operate basis;
- D. The Wind Farm Facility is planned to meet CEB's Long Term Generation Expansion Plan and the Public Utilities Commission of Sri Lanka (established by the Public Utilities Commission of Sri Lanka Act No. 35 of 2002) has granted the necessary approval to the Transmission Licensee, being the CEB to proceed with the procurement of electrical energy from the Wind Farm Facility;
- E. The consortium comprising _____
_____ responded to the aforesaid CEB's invitation by submitting a proposal to CEB which has been accepted;

- F. The aforesaid consortium duly incorporated the Project Company;
- G. for the purpose of financing, designing, engineering, building, owning, operating and maintaining the Wind Farm Facility;
- H. The Project Site for the Wind Farm Facility is provided by CEB, which is to be leased to the Project Company pursuant to the Lease entered or to be entered into on or around the Execution Date;
- I. An Environmental Impact Assessment of the Project has already been carried out and completed by the CEB, the Environmental Clearance Certificate has been granted for the Project, and the Environmental Management Plan has been approved by the project approving agency, identifying the respective obligations and activities to be performed by the relevant parties identified therein;
- J. The Implementation Agreement between the Government and the Project Company is entered or to be entered into on or around the Execution Date;
- K. The Project Company wishes to sell and the CEB is willing to purchase the electrical energy output of the Wind Farm Facility on the terms of this Agreement;
- L. The Project Company has already submitted the Preliminary Obligations Bond bearing number _____, dated _____ 2025 and issued by _____, in favour of the General Manager of the CEB;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement the sufficiency and adequacy of which are hereby acknowledged;

NOW IT IS HEREBY AGREED BY THE PARTIES as follows.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Definitions:** the capitalised words, phrases and expressions specifically defined in this Agreement or defined in Schedule 1 (Definitions) shall have the defined meaning in the whole of this Agreement including the recitals;

1.2 In this Agreement unless the context otherwise requires:

- 1.2.1 **Agree:** provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- 1.2.2 **Headings:** the headings in this Agreement are for ease of reference only and shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.3 **Include and Including:** the words "include" and "including" are to be construed as being at all times followed by the words "without limitation";
- 1.2.4 **Negative Obligations:** any obligation not to do anything includes an obligation not to permit or cause that thing to be done;
- 1.2.5 **Party and Parties:** each of Party to this Agreement are individually referred to as "Party" and collectively as "Parties" and unless contrary to the context or meaning hereof also mean their respective permitted successors, assigns and transferees;
- 1.2.6 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, consortiums, firms, joint ventures, associations, trusts, organizations, governmental or other regulatory bodies or authorities or any other legal entities and their respective legal representatives, successors and permitted assigns;
- 1.2.7 **Plural and Singular:** words importing the singular number include the plural and vice versa where the context requires;
- 1.2.8 **Masculine and Feminine:** words importing the masculine include the feminine and neuter and vice versa where the context requires;
- 1.2.9 **Schedule:** the schedules to this Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Agreement;

1.3 Schedules, Clauses and Paragraphs:

- 1.3.1 The words “Schedule” and “Annexure” are used in this Agreement to refer to any schedule or annexure of this Agreement unless a specific reference is made to a schedule or annexure in any other document. The schedules and annexures to this Agreement and the provisions and conditions contained in the said schedules and annexures have the same effect as if set out in the body of this Agreement; provided however that, where there is any inconsistency between a Schedule or Annexure and any Clause in this Agreement, such Clause will prevail over such Schedule or Annexure, and where there is any inconsistency between a Schedule and any Annexure in this Agreement, such Schedule will prevail over such Annexure;
- 1.3.2 The word “Clause” is used in this Agreement to refer to any section in the body of this Agreement unless a specific reference is made to a clause in any other document; and
- 1.3.3 The word “Paragraph” is used in this Agreement to refer to any section in the Schedules of this Agreement unless a specific reference is made to a paragraph in any other document;
- 1.4 Agreement, Other Agreements or Document:** reference to this Agreement or to any other agreement or document shall include references to this Agreement or to such other agreement or document (including recitals and schedules) as may be amended, varied, supplemented, replaced and/or restated in any manner from time to time;
- 1.5 Statutes and Regulation:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it;
- 1.6 Technical Meanings:** words of common usage not otherwise defined herein shall have the meanings as commonly used in the English Language. Words that have well-known generally accepted technical or trade meanings in prudent utility practice are used in this Agreement in accordance with such recognized meanings;

1.7 Time: references herein to time are to Sri Lankan time: and

1.8 Hereof, Herein, and Hereunder: the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless followed by the number of a specific part of the Clause.

2. SALE AND PURCHASE OF ENERGY AND AVAILABLE CAPACITY

2.1 Sale

The Project Company shall make available, sell and deliver the Metered Output to CEB on the terms set out in this Agreement.

2.2 Purchase

CEB shall purchase, take delivery of the Metered Output and pay the Project Company the Energy Charge for such Metered Output and other amounts, subject to and in accordance with the terms of this Agreement.

2.3 Commitment of Project Company and the CEB

The Project Company undertakes that commencing on and from the Commercial Operation Date, the Wind Farm Facility shall achieve the Guaranteed Annual Plant Availability of 95% (“Guaranteed Annual Plant Availability”) and the Project Company acknowledges that Project Company is liable for liquidated damages in failing to achieve the Guaranteed Annual Plant Availability as per Schedule 9.

Without prejudice to the foregoing, CEB acknowledges that the Metered Output may fluctuate or be intermittent and may not be continuous as it is conditional upon weather conditions that are outside the control of the Project Company.

2.4 Carbon Credit

Carbon credits generated by, arise from or otherwise be created in the generation and sale of electricity from the Wind Farm Facility shall be fully owned by the Government of Sri Lanka, and the Project Company shall not be entitled for obtaining any kind of benefit through the Greenhouse Gas (GHG) emission reduction benefits attributable to the Wind Farm Facility.

2.5 Interconnection Facilities

The Project Company shall undertake the finance, design, supply, construction, testing and commissioning of the Interconnection Facilities, both the Wind Farm Facility side of the common coupling and the Transmission Facility side of the common coupling, as shown in the Drawings of Schedule 2.

3. TERM

3.1 Duration and Validity

The term of this Agreement (hereinafter referred to as the “Term”) shall commence on the Execution Date and will expire at the end of the Operational Period, unless extended, reduced or earlier terminated in accordance with the provisions of this Agreement.

3.2 Extension or Reduction of Operational Period

- 3.2.1** The Operational Period shall be extended due to Force Majeure in accordance with Clause 12 in which event such period shall end at 2400 Hours of the last Day of the period of such extension; and
- 3.2.2** The Operational Period shall be reduced by each Day by which the Commercial Operation Date is delayed beyond the Scheduled Commercial Operation Date for which the Project Company is not liable to pay CEB the Project Company Delay Charge in accordance with Clause 5.10.3 by reason only of the Project Company delays exceeding the limit of liability for the Project Company Delay Charge specified in Clause 10.1.1.

4. THE PRELIMINARY PERIOD AND THE OBLIGATIONS OF THE PARTIES

4.1 CEB’s Obligations during the Preliminary Period

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

- 4.1.1** use all reasonable efforts to negotiate with the Prospective Finance Parties and enter into the Direct Agreement within sixty Days of receipt of a draft thereof, provided that a failure by the CEB to enter into the Direct Agreement shall not

be construed as a breach of its obligations under this Clause 4.1.1 and provided further that where the Direct Agreement has not been executed during the Preliminary Period, the expiry of the Preliminary Period shall not relieve the CEB of its obligation to negotiate with the prospective Finance Parties and enter into the Direct Agreement, as soon as reasonably practicable;

- 4.1.2 provide the Project Company with reasonable assistance for the Project Company to obtain and maintain in accordance with the Laws of Sri Lanka, Governmental Approvals required during the Preliminary Period for the financing, design, construction and ownership of the Wind Farm Facility. Such assistance to be provided by the CEB to the Project Company will generally be at the Project Company's request, provision of a written request, to the relevant Competent Authority to support the Project Company's application to obtain or maintain such Governmental Approval. Notwithstanding the foregoing, the Project Company shall be solely responsible for the procurement of such Government Approval required to be obtained by the Project Company, at its cost except as expressly stated otherwise in the Agreement;
- 4.1.3 grant approvals which are required to be issued by CEB, provided that the Project Company has fulfilled all requirements and paid all charges necessary for obtaining such approvals;
- 4.1.4 obtain and maintain in accordance with the Laws of Sri Lanka, all Governmental Approvals as are required to be obtained and maintained by the CEB to perform its obligations during the Preliminary Period in accordance with this Agreement;
- 4.1.5 shall facilitate the availability of the Project Site and the carrying out of investigations by the Project Company at the Project Site, including subsurface geotechnical investigations, surveys, soil testing and other similar activities which the company may have to consider prior to the commencement of the Construction Period;
- 4.1.6 within twenty-one Days of receiving any written request from the Project Company, provide any such available information as the Project Company may reasonably require including information relating to the supply of electricity during the Construction Period under Clause 5.11, for the purpose of preparing

the Programme of Works. During the same period the CEB may make reasonable requests for other information to be incorporated into the Programme of Works (such requests to be consistent with achieving COD by the Scheduled Commercial Operation Date);

- 4.1.7 within thirty Days of receipt from the Project Company of the draft Programme of Works, provide its reasonable comments (if any) and discuss and agree the Programme of Works (which shall be incorporated in the Programme) which the Project Company shall take account of in accordance with Clause 4.2.6;
- 4.1.8 within thirty Days of receipt from the Project Company of the preliminary designs of both the Interconnection Facilities and associated protection measures, provide its reasonable comments (if any) and the Parties shall discuss and the CEB shall approve the preliminary designs. The CEB shall not be entitled to unreasonably withhold its approval. After expiration of such thirty Day period, such preliminary designs shall be deemed approved by the CEB, unless the CEB has, within such thirty Day period, notified the Project Company that it withholds its approval to such designs, giving reasons therefore;
- 4.1.9 provide any information in the possession of the CEB reasonably required by the Project Company for the purpose of securing financing for the Project including information reasonably required by the Prospective Finance Parties proposing to provide finance to the Project Company for the Project provided that the CEB is legally entitled to do so. The foregoing shall not oblige CEB to furnish any information that CEB deems is 'sensitive';
- 4.1.10 within fifteen Days of the Execution Date, deliver to the Project Company copies of the resolutions of its Board Members of the CEB authorizing the execution, delivery and performance of this Agreement, duly certified as being true copies by the Secretary to the Board of the CEB;
- 4.1.11 within fifteen Days of the Execution Date, provide a legal opinion from the CEB's counsel in form and substance reasonably satisfactory to the Project Company with respect to the due authority, execution, delivery, performance and enforceability of this Agreement;

- 4.1.12 provide reasonable assistance to the Project Company at its request, for the Project Company to obtain approval to open and operate off shore bank accounts for the purposes of this Agreement, if so required by the Finance Parties;
- 4.1.13 construct a motorable access roads to the Project Site in a timely manner to enable the Project Company to commence construction as contemplated by this Agreement, provided however, any further development of access roads for transportation during Construction Period is a responsibility of the Project Company;
- 4.1.14 ensure that any information received by the CEB under Clause 4 shall be used by the CEB solely for the purposes of this Agreement.

4.2 The Project Company's Obligations during the Preliminary Period

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

- 4.2.1 appoint as the Turnkey Contractor a contractor from the list in Part 1 of Schedule 4 (Contractors, Engineers & Equipment) and inform the CEB within ten Days of such appointment. If the Project Company wishes to appoint a contractor who is not on the list in Part 1 of Schedule 4 (Contractors, Engineers and Equipment), the contractor must have equivalent or better qualifications than those on the list and in order for the CEB to assess whether the contractor has equivalent or better qualifications than those on the list, the Project Company shall submit to the CEB a completed form similar to the form given in the Part 5 of Schedule 4 of this Agreement. If in CEB's reasonable opinion, the contractor does not have equivalent or better qualifications than those on the list, the Project Company shall select another contractor and submit a completed form similar to the form given in the Part 5 of Schedule 4 of this Agreement for consideration by the CEB and this process shall be repeated until in CEB's reasonable opinion, the contractor proposed has equivalent or better qualifications than those on the list;
- 4.2.2 appoint the O&M Contractor from the list in Part 2 of Schedule 4 (Contractors Engineers and Equipment) if the Project Company does not wish to do the

operation and maintenance and inform the CEB within ten Days of such appointment. If the Project Company wishes to appoint a contractor who is not on the list in Part 2 of Schedule 4 (Contractors, Engineers and Equipment), the contractor must have equivalent or better qualifications than those on the list and in order for the CEB to assess whether the contractor has equivalent or better qualifications than those on the list, the Project Company shall submit to the CEB a completed form similar to the form given in the Part 6 of Schedule 4 of this Agreement. If in CEB's reasonable opinion, the contractor does not have equivalent or better qualifications than those on the list, the Project Company shall select another contractor from a completed form similar to the form given in the Part 6 of Schedule 4 of this Agreement for consideration by the CEB and this process shall be repeated until in CEB's reasonable opinion, the contractor proposed has equivalent or better qualifications than those on the list

- 4.2.3 appoint the Engineer from the list in Part 3 of Schedule 4 (Contractors, Engineers and Equipment) with the consent of Finance Parties and inform the CEB within ten Days of such appointment. If the Project Company or the Finance Parties wish to appoint an engineer who is not on the list in Part 3 of Schedule 4 (Contractors, Engineers and Equipment), the Project Company or the Finance Parties as the case may be shall submit relevant information about the engineer to the CEB in order for the CEB to assess in its reasonable opinion whether the proposed engineer has equivalent or better qualifications than those on the list;
- 4.2.4 obtain and furnish the CEB with copies of the Energy Permit and all other Governmental Approvals which are required by the Project Company for the financing, design, construction and ownership of the Wind Farm Facility;
- 4.2.5 deliver to the CEB for consideration a copy of the preliminary design and technical specifications contained in the Turnkey Contract which shall conform to the Minimum Functional Specification. The CEB shall not be entitled to object except on the grounds of non-conformity with the Minimum Functional Specifications and or Good Design, Engineering and Construction Practices and Prudent Utilities Practice. Unless the CEB notifies the Project Company of its objections, if any within 30 Days of delivery of the preliminary design

and technical specifications, the CEB will be deemed to have no objection to the same;

- 4.2.6 submit to the CEB pursuant to Clause 4.1.7, the Programme of Works (which shall be incorporated in the Programme) to amongst other things implement the Plans and Drawings, which shall accommodate, to the extent consistent with achievement of Commercial Operation Date on or before the Schedule Commercial Operation Date, any reasonable requests submitted to the Project Company by the CEB pursuant to Clause 4.1.7, provided such requests do not require the Project Company to perform its obligations other than in accordance with Good Design, Engineering and Construction Practices and Prudent Utilities Practice;
- 4.2.7 submit to the CEB for approval pursuant to Clause 4.1.8, preliminary designs of both the Interconnection Facilities and associated protection measures, which designs shall take into account, to the extent consistent with the Minimum Functional Specification, any reasonable requests submitted to the Project Company by the CEB pursuant to Clause 4.1.8, provided they do not require the Project Company to perform its obligations other than in accordance with Good Design, Engineering and Construction Practices and Prudent Utilities Practice;
- 4.2.8 deliver to the CEB evidence in the form of a certificate endorsed by the Project Company and all its shareholders confirming that the Required Equity shall be invested in the Project Company, on or before the Scheduled Commercial Operation Date including details of by whom such Required Equity shall be invested;
- 4.2.9 deliver to the CEB evidence of Financial Closure in the form of a certificate, endorsed by the Project Company and the Finance Parties, confirming that financing for the Project has been secured in keeping with the terms of this Agreement and that, in accordance with the provisions of the Financing Agreements, the conditions required for first drawdown of funds thereunder have either been satisfied or waived by the Finance Parties;
- 4.2.10 to open offshore bank accounts for the purposes of this Agreement, if so required by the Finance Parties;

- 4.2.11 provide reasonable assistance to CEB in respect of the negotiation of and finalization of the Direct Agreement within sixty (60) Days of the date set out in Clause 4.1.1;
- 4.2.12 deliver to the CEB copies of the Project Company's Articles of Association, duly certified as being true copies by the Project Company Secretary or other authorized officer of the Project Company within fifteen Days of the Execution Date;
- 4.2.13 deliver to the CEB copies of the resolutions of its Board of Directors authorizing the execution, delivery and performance of this Agreement, duly certified as being true copies by the Company Secretary or other authorized officer of the Project Company within fifteen Days of the Execution Date;
- 4.2.14 provide a legal opinion from the Project Company's legal counsel in form and substance reasonably satisfactory to the CEB with respect to the due authority, execution, delivery, performance and enforceability of this Agreement within fifteen Days of the Execution Date;
- 4.2.15 at all times ensure that reasonable safety precautions are taken to safeguard the Parties or third parties, or their property, from damage, loss or injury arising out of or in connection with any Project Site investigations;
- 4.2.16 take necessary precautions to adhere to conditions stipulated in Environment Management Plan;
- 4.2.17 no later than 10 Days after execution of the Turnkey Contract provide the CEB a copy of the Turnkey Contract entered into between the Turnkey Contractor and the Project Company
- 4.2.18 conduct investigations and studies as listed in Grid Impact Study and the Protection Study under Schedule 19 and conduct investigations and studies to derive information about the Project sufficient to, inter alia, obtain permits, secure financing and facilitate effective warranties of Turnkey Contractor performance;
- 4.2.19 shall take account of any adjacent power plant developments and:
- i) take reasonable steps to ensure compatibility of station layouts and designs;

- ii) co-operate with the other developer to ensure that the neighbouring power plant is not detrimentally affected by the Works;
 - iii) afford reasonable opportunities for the other developer to execute its work;
 - iv) co-ordinate access within the common corridors for Interconnection Facilities;
 - v) attend all coordinating meetings called by the CEB and work faithfully with the CEB and the other developer to resolve matters that relate to the development of both facilities that may adversely affect one or both facilities; and
 - vi) comply with reasonable requests from the other developer in connection with the development and operation of its facility;
- 4.2.20 payment of success fee payment amounting to US Dollars 1.5 million to CEB as compensation for the preliminary Project development activities.
- 4.2.21 carry out all that is required to perform in accordance with its Proposal unless the obligation, undertaking or requirement is superseded by a Clause in this Agreement;
- 4.2.22 act in compliance with the laws, rules and regulations in existence in Sri Lanka; and
- 4.2.23 ensure that any information received by the Project Company under Clause 4 shall be used by the Project Company solely for the purposes of this Agreement.

4.3 Exchange of Information

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

4.4 Waiver of Obligation during the Preliminary Period

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

4.5 Extension of Preliminary Period

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

4.5.1 upon the prior agreement of the Parties; or

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

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

(i) breach by the CEB under this Agreement; or

(ii) the delay or failure of the CEB to enter into the Lease or a breach by the CEB of the Lease; or

(iii) the delay or failure of the Government to enter into the Implementation Agreement or the breach (which the Project Company shall notify to the CEB as soon as practicable after the occurrence thereof) by the Government of their obligations to the Project Company under the Implementation Agreement; or

(iv) delay in obtaining Governmental Approvals, when this delay is not attributable to the Project Company.

4.5.4 subject to a maximum extension of three hundred and sixty five Days, by the period of delay in achieving the Financial Closure by the Project Company caused by delay in entering into of the Direct Agreement or the direct agreement as contemplated under the Implementation Agreement or the direct agreement as contemplated under the Lease, when this delay is not attributed to the Project Company.

4.6 Construction Notice

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

4.6.2 Early Construction during Preliminary Period

Nothing in this Agreement shall be construed as preventing the Project Company from commencing construction activity at its sole cost and expense prior to commencement of the Construction Period, and such commencement of construction activity shall not in any way prejudice any right of the CEB to terminate this Agreement in accordance with Clause 4.7 and CEB shall have no liability to the Project Company whatsoever for any costs or expenses incurred or losses suffered by the Project Company.

4.7 Termination of this Agreement at the end of the Preliminary Period

4.7.1 If, at the end of the Preliminary Period;

- i) a Party has not fulfilled its obligations arising under this Clause 4 except those which are waived under Clause 4.4, the other Party may terminate this Agreement at any time thereafter forthwith on notice to the other within fourteen days from end of the Preliminary Period.
- ii) For any circumstances set out in Clauses 4.5.3 or 4.5.4, the Project Company may terminate this Agreement at any time thereafter forthwith on notice to the CEB within fourteen days from end of the Preliminary Period.

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

4.8 Preliminary Obligation Bond

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

4.8.2 Subject to Clause 4.8.3, if;

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

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

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

4.9 Project Site Inspection and Works Due Diligence

The following provisions shall apply to inspection of the Project Site and due diligence in preparation for the Works;

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

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

4.9.2 unless expressly provided in this Agreement, the Project Company shall not be relieved from any risks or obligations imposed on or undertaken by it in relation to the Works on the grounds that;

- (i) any designs, plans, documents or other materials (including the Programme of Works) had been provided to or made available to the CEB; or
- (ii) it did not, or could not, foresee any matter that may affect or have affected the design, construction, completion, testing and Commissioning of the Wind Farm Facility or the meeting of its obligations in respect of the Works under this Agreement.

5. THE CONSTRUCTION PERIOD AND OBLIGATIONS OF THE PARTIES

5.1 Access and Occupation

5.1.1 The CEB shall provide Project Company access to and occupation of the Project Site in accordance with the Lease and this Agreement.

5.1.2 The Project Company shall be responsible for transportation of all plant, equipment and materials to the Project Site and shall meet the costs of all Works save those expressly stated in this Agreement as being the responsibility of other Party. The Project Company, in executing this Agreement is deemed to have informed itself of the access routes and all issues and costs involved in performing its responsibilities and has included in the Capital Cost of Wind Farm Facility the cost of all temporary and permanent works reasonably required for transporting all loads to the Project Site.

5.2 The Project Company's Warranties

The Project Company warranties that

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

5.2.2 the design of the Works and each part of the Works and the Wind Farm Facility once completed will in all respects meet the requirements of this Agreement, the Minimum Functional Specification and, without limiting the generality of

the foregoing, Good Design, Engineering and Construction Practices and Prudent Utilities Practice.

5.2.3 The metering equipment, Wind Farm Facility and related equipment and their installation, commissioning, testing, operation and maintenance furnished under this Agreement, and the use thereof by CEB in accordance with the terms of this Agreement, will not infringe (whether directly, contributorily, by inducement or otherwise), misappropriate or violate any patent, layout, designs, trademark, copyright, trade secret, know how or any other intellectual property right of any third-party, or violate the laws, regulations or orders of any governmental or judicial authority; and

5.2.4 its performance of any installation, commissioning, testing, operation and maintenance services will be of a professional quality, be provided by an adequate number of qualified individuals with suitable training, education, experience and skill in performing such kind of services, conform to the Good Design, Engineering and Construction Practices and Prudent Utilities Practice, and that its performance of such services shall conform to the specifications and descriptions agreed between the Parties. CEB for the purpose of this Agreement relies on the skill of the Project Company as a necessary condition for the fulfilment of this Agreement.

5.3 The Project Company's Obligations during the Construction Period

5.3.1 The Project Company shall have the following principal obligations at its sole cost and expense in respect of construction of the Wind Farm Facility;

- (i) The Project Company shall be responsible for the finance, design, construction, completion, testing and Commissioning of the Wind Farm Facility such that the Wind Farm Facility satisfies the Minimum Functional Specifications and, without limiting the generality of the foregoing, shall do so in strict accordance with this Agreement, Good Design, Engineering and Construction Practices and Prudent Utilities Practice, and, notwithstanding any

examination, inspection, receipt of information, attendance at meetings, or approval or non-objection by or on behalf of the CEB, the Project Company's responsibilities under this Agreement shall not be relieved or absolved or otherwise modified; and

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

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

- (i) Simultaneous with the issuance of the Construction Notice, deliver the Construction Performance Bond and copies of the Financing Agreements to the CEB. The Project Company shall ensure that the Construction Performance Bond is maintained at the designated level at all times and is valid and enforceable until the Project Company has executed and completed the Works, and remedied any defects. If the Construction Performance Bond is called upon, the Project Company shall have ten Days to replenish the Construction Performance Bond so as to return it to the original level. In the event that the Construction Performance Bond is not extended or replenished as the case may be, the CEB shall have the right to call on the bond and if CEB makes such call on the Bond, the CEB shall deposit the proceeds into a special purpose bank account. The CEB shall be entitled to withdraw funds from that account to satisfy any default by the Project Company in the same manner as if the said bond was in place. All interest accruing from the account shall belong to the Project Company. The CEB shall return to the Project Company the balance of monies if any, in the accounts after a new Construction Performance Bond is delivered to the CEB;

- (ii) not permit the Turnkey Contractor to sub-contract the whole or substantially the whole of the Works to any contractor without the prior written consent of the CEB, which consent shall not be unreasonably withheld. The Project Company shall furnish to the CEB sufficient information of the experience and qualifications of the contractor to whom the Turnkey Contractor is proposing to sub-contract the whole or substantially the whole of the Works when seeking such consent. The CEB shall give its response within fifteen Days of receipt from the Project Company of a request for such consent. If no such consent is received by the Project Company within such fifteen Day period, the CEB shall be deemed to have granted such consent unless the CEB notifies the Project Company within such period that it reasonably withholds its consent, giving reasons therefor;
- (iii) not terminate the Turnkey Contract without prior written notice to the CEB of such termination giving reasons therefor
- (iv) ensure that reasonable safety precautions are taken to safeguard persons or property of the Parties or third parties from damage, loss or injury arising out of or in connection with the construction of the Wind Farm Facility
- (v) take all reasonable precautions to adhere the conditions applicable to the Project Company, stipulated in the Environment Clearance Certificate and EIA report, which shall have been procured by the CEB.
- (vi) in accordance with local standards for such Works;
 - (a) provide reasonable security for the Works including the erection and maintenance of security fencing and access points; and
 - (b) ensure that the security of the Works can be maintained independently of adjoining areas and the public roads; and at all times take into consideration and cooperate with any

security arrangements that the Government may put in place;

- (vii) be responsible for the safe storage and safe removal and disposal of all toxic, hazardous and dangerous materials brought on to the Project Site for the purposes of the construction and Commissioning of the Wind Farm Facility;
- (viii) not later than one hundred and twenty Days prior to the Scheduled Commercial Operation Date of the Wind Farm Facility, develop and furnish to the CEB a quality control programme acceptable to the CEB covering all aspects of the operation and maintenance of the Wind Farm Facility;
- (ix) deliver to the CEB authenticated copies of manufacturers' test certificates of wind turbine generators, power inverters, transformers, and electricity metering equipment and other plant equipment included in the Wind Farm Facility
- (x) not later than 28 Days prior to the Scheduled Commercial Operation Date, submit to the CEB for approval pursuant to Clause 5.9, the final design of the Interconnection Facilities which shall comply in all material respects with the preliminary design for the Interconnection Facilities approved by the CEB and shall accommodate any reasonable requests submitted to the Project Company by the CEB pursuant to Clause 5.9 to the extent such requests are consistent with the Minimum Functional Specifications including the CEB Grid Code, and such preliminary design previously approved by the CEB;
- (xi) in addition to those technical specifications previously delivered to the CEB under Clause 4.2.5, deliver to the CEB copies of all technical specifications relating to the Wind Farm Facility which are available to the Project Company, including plant layout, final design data and specifications for the Wind Farm Facility together with descriptions of manufacturers' plant and equipment, including type and data for the wind turbine generators, power inverters,

transformers, and auxiliary equipment for the Wind Farm Facility, all of which are to conform with the Minimum Functional Specification

- (xii) take all steps to provide and maintain independent surface water drainage at the Project Site so as to safeguard the Project Site, against the risk of flooding
- (xiii) maintain the conditions of the Environment Management Plan in accordance with Environmental Law and comply with the requirements of the Environmental Approval;
- (xiv) obtain and maintain the Energy Permit and Generation License;
- (xv) not later than thirty Days after execution of the O&M Agreement and in no case not less than one hundred and eighty Days before the Scheduled Commercial Operation Date, provide the CEB with a copy of the Project Company's plan for the operation and maintenance of the Wind Farm Facility and the O&M Agreement entered into by the Project Company, if applicable;
- (xvi) provide to the CEB (or procure that the O&M Contractor provides to the CEB in the event of having an O&M Agreement) the proposed minimum qualification requirements for the manager of the Wind Farm Facility, the operations manager and the maintenance manager for non-objection by the CEB. The CEB shall, within fifteen Days of receipt of such details, give notice of its non-objection unless it reasonably objects in which event it shall notify the Project Company, within such fifteen Days, of its reasons for withholding its approval whereupon the Project Company shall make such amendments as it considers appropriate and resubmit such details (as amended) for non-objection by the CEB within fifteen Days of receipt thereof. Where the CEB fails to give notice of its objection or non-objection (including any details amended pursuant to the foregoing) within such fifteen Days, the CEB's non-objection to such details shall be deemed to have been given and the details provided by the Project Company shall constitute the

"Personnel Requirements". The Project Company may employ as manager of the Wind Farm Facility, the operations manager and maintenance manager only such persons who meet the Personnel Requirements. Upon selection by the Project Company of any person as manager of the Wind Farm Facility, the operations manager or maintenance manager, the Project Company shall submit to the CEB for non-objection the qualifications of each of the person(s) selected. The CEB shall within fifteen Days of receipt of such qualifications give notice of its non-objection unless it reasonably objects in which event it shall notify the Project Company within such fifteen Days provided that the CEB shall not be entitled to object if the qualifications of such selected person(s) meet the Personnel Requirements and further provided that if the CEB fails to give notice of its objection or non-objection within such fifteen Days, the CEB's non-objection to such selection shall be deemed to have been given

- (xvii) obtain and maintain all Governmental Approvals (to the extent not already obtained) which can be obtained prior to the commencement of the Operational Period and which are required by the Project Company for Commissioning and for the operation and maintenance of the Wind Farm Facility;
- (xviii) shall take account of any adjacent power plant developments and:
 - a) take reasonable steps to ensure compatibility of station layouts and designs;
 - b) co-operate with the other developer to ensure that the neighbouring power plant is not detrimentally affected by the Works;
 - c) afford reasonable opportunities for the other developer to execute its work;
 - d) co-ordinate access within the common corridors for Interconnection Facilities;
 - e) attend all coordinating meetings called by the CEB and work faithfully with the CEB and the other developer to resolve

matters that relate to the development of both facilities that may adversely affect one or both facilities; and

- f) comply with reasonable requests from the other developer in connection with the development and operation of its facility;
- (xix) carry out all that is required to perform in accordance with its Proposal unless the obligation, undertaking or requirement is superseded by a Clause in this Agreement; and
- (xx) comply with the Laws of Sri Lanka.

5.3.3 Compliance with the CEB Grid Code and Applicable Regulations for Renewable Energy Systems

The Project Company shall comply with the CEB Grid Code as it relates to the Wind Farm Facility, subject to any variation therefrom previously granted to the Project Company by CEB in writing.

5.4 Progress Reports and Meetings

The following provisions shall apply to progress reports and meetings;

- 5.4.1 during the Construction Period, the Project Company shall submit to the CEB;
 - (i) a progress report prior to the fifteenth of each month summarising progress of the Works preferably using MS Project Scheduling software (which report may comprise any report prepared for the Finance Parties by the Engineer and not previously provided to the CEB, summarising progress of construction of the Interconnection Facilities and the Works) and highlighting by reference to key activities 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 Project Company to mitigate or overcome such departures or delays and if any steps taken by the Project Company to meet its obligations under this Clause cause the CEB to incur additional costs, such costs

shall be recoverable from the Project Company by the CEB, and may be deducted by the CEB from any monies due, or to become due, to the Project Company; and

- (ii) such other information as the CEB may reasonably require to be furnished by the Project Company to enable the CEB to ascertain whether the Project Company is in compliance with the Minimum Functional Specifications and Good Design, Engineering and Construction Practices and Prudent Utilities Practice and such other matters relating to the co-ordination between the obligations of the Project Company pursuant to this Agreement and the obligations of the CEB hereunder during the Construction Period.

5.4.2 during the Construction Period, the Parties shall hold progress meetings each month and, during periods of intense construction activity at the Project Site, at more regular intervals as the CEB may reasonably request to review matters relating to the construction of the Wind Farm Facility, such meetings to be held at such times as may be agreed by the Parties; and

5.4.3 the CEB shall provide such information as may reasonably be requested by the Project Company in relation to the CEB's obligations during the Construction Period under this Agreement unless such information requested for are sensitive and confidential.

5.5 Access and Facilities for the CEB

The following provisions shall apply to Project Site access and facilities for the CEB during the Construction Period;

5.5.1 the Project Company shall provide the CEB and its duly authorised representatives access during normal working hours (and outside normal working hours if reasonably required in the opinion of the CEB) to all parts of the Project Site and to any site or workshop where materials are being manufactured or stored for the Works for the purposes of general inspection,

attending any test or investigation being carried out in respect of the Works and determining the progress of the Works, provided that;

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

5.5.2 the Project Company shall;

- (i) give the CEB not less than three Business Days' notice of any Project Site progress meetings with the Turnkey Contractor required to be held pursuant to the Turnkey Contract, including all such meetings at which the Engineer or any representative thereof proposes to attend, and shall ensure that the CEB and its duly authorised representatives shall have the right to attend such meetings; and
- (ii) where any other progress meetings (of a substantial nature) are convened with the Turnkey Contractor to discuss issues having a significant impact on the Programme of Works, notify the CEB of such meeting within such time as is practicable in the circumstances and the CEB and its duly authorised representatives shall have the right to attend, in person or on remote basis, any such meeting;

5.5.3 in view of the fact that the Site is part of a property owned by the CEB within a renewable energy development zone, Project Company shall, as specified in this Agreement or as instructed by the CEB, allow appropriate opportunities for carrying out work to:

- i) the CEB personnel;
- ii) any other contractors employed by the CEB;

- iii) other persons to whom the CEB has leased or sold land including the developer of the adjacent power developments, if any, referred to in Clause 5.3.2 (xviii); and
- iv) the personnel of the Government and any Competent Authority who may be employed in the execution.

5.6 Extension of Time for Completion of the Works

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

- (i) Sri Lanka Force Majeure;
- (ii) Non-Sri Lanka Force Majeure;
- (iii) breach by the CEB of its obligations under this Agreement or the Lease (provided such breach is not attributable to any act of omission or commission by the Project Company);
- (iv) any delay, impediment or prevention caused by or attributable to the CEB, or the CEB's personnel (provided that such delay results from a delay or default or act of commission or omission on the part of the Project Company or is concurrent with a delay or default or act of commission or omission on the part of the Project Company in respect of any obligation of the Project Company under any Project Agreement)
- (v) breach by the Government of its obligations under the Implementation Agreement (provided such breach is not attributable to any act of omission or commission by the Project Company);

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

(b) The Project Company shall not be entitled to the benefit of paragraph (a) above where, and to the extent that, a delay or failure by CEB in performing its obligations under this Agreement and/or under the Lease as applicable, results from a delay or default or act of commission or omission on the part of the Project Company or is concurrent with a delay or default or act of commission or omission on the part of the Project Company in respect of any obligation of the Project Company under any Project Agreement.

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

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

- (i) a statement identifying which of Clauses 5.6.1(i) to (vi) (inclusive) gives rise to any adjustment of the Scheduled Commercial Operation Date;
- (ii) a detailed explanation of the events or circumstances giving rise to any delay referred to in Clause 5.6.1;
- (iii) details of the resulting delay to achievement of the Scheduled Commercial Operation Date by reference to the Programme of Works, the key milestone dates and the critical path for the development of the Project as determined preferably using MS Project Scheduling software, which details shall identify any period by which the progress of the Works had already been delayed due to reasons not referred to in Clause 5.6.1;

- (iv) details of the evidence, including contemporary records, reports and other such data, which the Project Company may maintain in respect of such delay and the consequences thereof and the CEB shall be given reasonable access to such evidence so as to allow the CEB to verify the information provided by the Project Company pursuant to this Clause 5.6.3; and
- (v) details of any measures which the Project Company has adopted or proposes to adopt in compliance with Clause 5.6.6 to mitigate the consequences of such delay.

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

- (i) the CEB determines that the Project Company is not entitled to an extension of time, the CEB shall notify the Project Company as soon as practicable and in any event within fourteen Days of receipt by the CEB of the details referred to in Clause 5.6.3;
- (ii) the claim is found to be valid, the CEB shall so notify the Project Company of the extension to be granted to the Project Company within fourteen Days of receipt by the CEB of the details referred to in Clause 5.6.3 which extension shall be fair and reasonable.

If the Project Company disagrees with the extension granted the Parties shall meet within 7 days of the Project Company receiving the extension granted by CEB to consider in good faith the period of the extension to be granted to the Project Company. The CEB and the Project Company shall act fairly, impartially and reasonably in relation to all matters under this Clause.

5.6.5 If, under Clause 5.6.4, the CEB informs the Project Company that it is not entitled to an extension of time or the Parties are unable within such fourteen Days to reach agreement as to the period of any delay or extension, the matter shall be referred to Arbitration under Part 2 of Schedule 15 (Disputes Resolution Procedure) unless the Parties agree to refer the matter to an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

5.6.6 The Project Company shall take all reasonable steps to mitigate any delay referred to in Clause 5.6.1 and the Project Company shall not be entitled to any

extension of time unless it has taken proper and reasonable steps both to preclude the occurrence of the cause of the delay and/or to avoid or minimise the consequences thereof.

5.6.7 The Project Company shall have no claim against the CEB, including any claim for damages, costs, losses and expenses in respect of delay, except in respect of the delays arising due to the events set out in Clauses 5.6.1 (iii), (iv) and (v).

5.6.8 Notwithstanding that the Project Company has not given the required notices under this Clause 5.6, the CEB may, at any time, by notice to the Project Company, extend the Scheduled Commercial Operation Date, in the event that the CEB is of the opinion that, by reason of the effect of any one or more of the causes of delay referred to in Clause 5.6.1 or otherwise, the Works or any part of it has been delayed and the Project Company will by reason thereof need an extension of time within which to complete the Works or any part of it.

5.7 Testing, Commissioning and Completion of the Wind Farm Facility

5.7.1 Commissioning, Test Procedures and Test Results

(i) The Project Company shall be responsible for the testing and commissioning of the Project in accordance with the procedures set out in Schedule 6 (Testing and Commissioning Procedure for Wind Farm Facility) as applicable for impediment Facility and shall carry out all tests thereunder. No later than ninety (90) Days prior to the scheduled commencement of the Commissioning Tests, the Project Company shall provide CEB with a detailed Test Procedures in accordance with Schedule 6.

(ii) The Project Company shall provide to CEB, within fifteen (15) Days after the date of Commissioning, a report of all test results for the Commissioning Tests duly certified by Engineer.

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

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

- (i) details of the dates on which it wishes to commence Commissioning of the Wind Farm Facility (the "Commissioning Date") and each of the Commissioning Tests (each a "Test") in accordance with Paragraph 6.4 of Schedule 6; and
- (ii) in respect of each Day of each proposed Test (a "Proposed Testing Day"), a schedule (each such schedule of operation being a "Testing Schedule") detailing the proposed commencement and duration of the specific tests to be conducted and specifying for each Hour of a Proposed Testing Day the estimated quantity (each a "Testing Quantity") of the supply to and export from the Wind Farm Facility of Commissioning energy.

5.7.3 Within seven Days of receipt by the CEB of a Testing Schedule, the CEB shall notify the Project Company of any proposed amendments to such schedule and the CEB and the Project Company shall promptly consult in respect of such schedule. The Testing Schedule shall be promptly revised by the Project Company to incorporate amendments;

- (i) proposed by the CEB, provided that such amendments shall, in respect of each Test, be limited to specifying that the Testing Quantity for any Hour be changed to a different Hour on the same Proposed Testing Day or to an Hour on the immediately following Business Day; and
- (ii) such other amendments as may be agreed between the Parties, (changes in respect of any Testing Quantity allowed under the Clauses 5.7.3 (i) or (ii) is referred to as "Permitted Changes").

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

(i) is;

(a) no later than two Days after the Proposed Testing Day; or

(b) no earlier than two Days before the Proposed Testing Day.

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

(ii) is more than two Days but less than seven Days;

(a) after the Proposed Testing Day; or

(b) before the Proposed Testing Day but at least seven Days after such notice;

the CEB shall (subject to requiring Permitted Changes) as soon as reasonably practical and, in any event, within forty-eight hours of receipt of such notice confirm its approval to the Revised Testing Day. If the CEB cannot reasonably accommodate the Revised Testing Day, such Revised Testing Day shall be deemed to be the later of the Revised Testing Day or seven days after the date of receipt by the CEB of such notice.

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

in each case unless otherwise agreed by the Parties (acting reasonably).

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

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

5.7.6 If the incorporation of the CEB's amendments to the Testing Schedule pursuant to Clauses 5.7.3 or 5.7.5 delays the achievement of Commercial Operation Date beyond the relevant Scheduled Operation Date thereof, then the Scheduled Commercial Operation date shall be adjusted provided that;

- (i) in respect of any such delay, the CEB shall be liable to the Project Company for delay for the period commencing on the time when the Project Company proposed such Test to occur (in the case of amendments to a Testing Schedule proposed by the CEB in accordance with Clauses 5.7.3) or when the Test should have occurred (in the case of postponement in accordance with Clause 5.7.5) and ending at the earlier of the time when such Test is carried out or the Hour nominated by the CEB for the carrying out of such Test; and
- (ii) CEB shall have no liability to the Project Company under this Clause 5.7.6 except to the extent that the aggregate number of Days by which CEB has caused delay to the occurrence of Commercial Operation Date beyond the Scheduled Commercial Operation Date exceeds seven (7) Days.

5.7.7 Subject to the Project Company complying with its obligations under this Clause 5.7, the CEB shall accept all electrical energy delivered from the Wind

Farm Facility during Commissioning and the amount so delivered shall constitute Metered Output and be determined in accordance with Schedule 7 (Metering)

- 5.7.8 Without prejudice to the other provisions of this Clause 5.7, the Project Company shall give CEB not less than the twenty four Hours' notice of commencing Start-Up of the Wind Farm Facility for the first time following Pre-Synchronization Tests. Provided that the Project Company has provided a copy of the written proposal of the Engineer that the Facility has passed such Pre-Synchronization Tests, CEB shall permit the Project Company thereafter to commence Start-Up.
- 5.7.9 The CEB shall Dispatch the Wind Farm Facility in accordance with the agreed energy output levels specified in the relevant Testing Schedule as and when so requested by the Project Company.
- 5.7.10 On written certification by the Engineer (which shall be copied to the CEB and the Project Company) confirming that the Wind Farm Facility achieves all the requirements as contained in Schedule 6 (Testing and Commissioning Procedure for Wind Farm Facility) and the Schedule 5 (Minimum Functional Specifications) for commercial operation, the Project Company shall promptly issue to the CEB a completion certificate (the "Completion Certificate") certifying that the Wind Farm Facility is capable of commercial operation.
- 5.7.11 The Project Company shall provide the CEB with copies of the test results of all tests performed pursuant to this Clause 5.7.

5.8 Agreement of Final Design and Access

During the Construction Period, the CEB shall not unreasonably withhold or delay its approval of the final design of the Interconnection Facilities submitted to the CEB in accordance with Clause 5.3.2(x) and the Project Company shall be under no obligation to incorporate any changes to such final design proposed by the CEB, if the final design (submitted for approval pursuant to this Clause 5.8) is consistent with the preliminary design approved pursuant to Clause 4.1.8 and complies in all respects with the CEB Grid Code, Good Design, Engineering and Construction Practices and with Prudent Utilities Practice. If the CEB fails to notify the Project Company that it reasonably withholds its approval (giving details and reasons

therefore) within thirty (30) Days of the submission by the Project Company to the CEB of such final design, the CEB shall be deemed to have approved such final design.

5.9 Interconnection

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

- 5.9.1 the CEB shall install and complete by no later than thirty (30) Days prior to Scheduled Commercial Operation Date and maintain at its cost the 220kV outdoor bay at the Interconnection Point of the Mullikilam Metering Substation as shown in the Drawings of Schedule 2.
- 5.9.2 Interconnection Point and two (2) numbers of fully equipped 220 kV GIS Bays at the GIS Sub-Station as described in Schedule 5 (Minimum Functional Specification);
- 5.9.3 the Project Company shall, by the date specified in the Programme of Works, install, commission, complete, own and maintain at its cost the Interconnection Facilities so as at all times to comply with Schedule 5 (Minimum Functional Specification), Schedule 4 (List of Contractors, Engineers and Equipment) and the CEB shall give such access across its property in accordance with the Lease as will enable the Project Company to install, Commission, complete and maintain the Interconnection Facilities;
- 5.9.4 the Project Company shall include a summary of its progress in constructing the Interconnection Facilities in its monthly progress reports submitted to the CEB in accordance with Clause 5.4.1(i), shall complete the Interconnection Facilities in accordance with the Programme of Works and promptly obtain from the Engineer a certificate confirming that the Interconnection Facilities are functional and conform to Schedule 5 (Minimum Functional Specification), and making recommendations based on the results of the Grid Impact Study and the Protection Study. The Project Company shall give to the CEB a copy of such certificate;

5.10 Commercial Operation Date

- 5.10.1 The Project Company shall ensure that Commercial Operation Date occurs on or before the Scheduled Commercial Operation Date;
- 5.10.2 If the Project Company is unable to ensure that the Wind Farm Facility achieves the Commercial Operation Date on or before the Scheduled Commercial Operation Date, then, at its sole cost and expense, the Project Company shall take all such reasonable measures as the Project Company may determine to be necessary to achieve such Commercial Operation Date as soon as is reasonably practicable; and
- 5.10.3 If the Commercial Operation Date occurs after the Scheduled Commercial Operation Date (for the avoidance of doubt taking into account all adjustments thereto pursuant to Clause 5.6 and 5.7.6), the Project Company shall be liable to pay the CEB by way of liquidated damages the Project Company Delay Charge, calculated in accordance with Clause 10.1.1 and payable in accordance with Clause 8.2.3.

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

- 5.11.1 CEB shall supply electrical energy to the Project Company within ninety Days on receipt of an application from the Project Company for a supply of electrical energy from the CEB in such quantum as may be required for the purpose of construction of the Wind Farm Facility. The Project Company shall make the payments to the CEB for the electrical connection supply within a week on receipt of the invoice from the CEB. Such amounts of electrical energy shall be supplied and charged to the Project Company by CEB on the same terms including tariff applicable to supply of electrical energy by CEB to such category of consumers and shall be payable by the Project Company to CEB in accordance with such terms. Notwithstanding the foregoing, the Project Company shall be responsible for arranging electricity generator to meet the electricity requirements during the Construction Period. Insufficient or interrupted supply or failure to supply electrical energy by CEB to the Project Company shall not be considered a breach on the part of CEB.
- 5.11.2 CEB shall provide the Project Company with electricity for Start-Up, testing and Commissioning of the Wind Farm Facility from the Interconnection Date, subject to and in accordance with Clause 5.11.1;

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

5.12 Familiarisation with the CEB Dispatch Systems

During the Construction Period and on reasonable notice from the Project Company and for such periods as are reasonable, the CEB shall arrange for the shift charge engineer, or other personnel of the Project Company who will be responsible for the operation of the Wind Farm Facility, to meet with the CEB's senior staff responsible for the Dispatch of the Wind Farm Facility in order for the Wind Farm Facility personnel to become familiar with the operational actions regarding Dispatch.

5.13 Operational Interface Procedures

The following provisions shall apply to the operational procedures

5.13.1 No later than ninety (90) Days prior to the Scheduled Commercial Operation Date, the Project Company shall provide CEB with a draft copy of the proposed written operational procedures for the Wind Farm Facility, consistent with the CEB Grid Code, to serve as the basis for the Operating Interface Procedures to be jointly developed;

5.13.2 No later than sixty (60) Days prior to the Scheduled Commercial Operation Date, the Project Company and CEB shall jointly develop operating procedures addressing operational interfaces between the Parties, including the method of day-to-day communications, notification of key personnel lists, clearances and switching practices, outage scheduling, making energy forecasts, operations logging, giving Dispatch Instructions as well as procedures in relation to the Wind Farm Facility (hereinafter referred to as the "Operational Interface Procedures").

5.13.3 The Operational Interface Procedures shall:

- (i) take into proper account and be consistent with the design of the Wind Farm Facility and other requirements specified in Schedule 5 (Minimum Functional Specifications);

- (ii) be consistent with operating and maintenance procedures specified or recommended by the Wind Farm Facility equipment suppliers and manufacturers in their respective operating manuals;
- (iii) be consistent with the CEB Grid Code;
- (iv) be consistent with Prudent Utility Practice; and
- (v) provide comprehensive procedures for all operational interfaces between CEB and the Project Company.

5.13.4 No later than thirty (30) Days prior to the Scheduled Commercial Operation Date and having reasonable regard to the agreements reached between CEB and the Project Company under the Clause 5.13.3, the CEB shall issue a manual for the Operational Interface Procedures. Such manual may only be subsequently amended by the CEB; if

- (i) the CEB gives the Project Company reasonable prior opportunity to comment on such amendments and gives reasonable regard to the Project Company's comments; or
- (ii) the Project Company requests amendments and gives the CEB reasonable prior opportunity to comment on such amendments (and the CEB gives reasonable regard to the Project Company's comments);

and thereafter, the CEB will reissue such manual, as may be amended pursuant to the foregoing. Where the Project Company is given opportunity to prepare and submit comments or the CEB is required to reissue such manual in accordance with the foregoing, they shall each do so within thirty Days.

5.14 CEB's Liability for Delays

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

5.14.2 Where any amounts are due to CEB by the Project Company at the time CEB's liability for payment of such liquidated damages arises under this Clause 5.14, the liquidated damages so due by CEB pursuant to this Clause 5.14 shall to the extent possible be deducted by the Project Company from any amount due by the Project Company to CEB.

5.15 The CEB's Assistance with Consents

During the Construction Period the CEB shall

- 5.15.1 provide to the Project Company all reasonable assistance for the Project Company to obtain in accordance with the Laws of Sri Lanka, all Governmental Approvals required to be obtained and maintained by the Project Company for the construction, operation and maintenance of the Wind Farm Facility. The reasonable assistance to be provided by the CEB to the Project Company will generally be in the form of providing, at the Project Company's request, a written communication to the relevant Competent Authority to support the Project Company's application to obtain or maintain such Governmental Approval. Notwithstanding the foregoing, the Project Company shall be solely responsible for the procurement of each Governmental Approval required;
- 5.15.2 obtain and maintain, in accordance with the Laws of Sri Lanka, all Governmental Approvals as are required to be obtained and maintained by the CEB for the performance of its obligations during the Construction Period in accordance with this Agreement; and
- 5.15.3 Grant to the Project Company all CEB Approvals upon proper application made therefor, provided the Project Company satisfies the legal and other requirements for such CEB Approval to be granted

6. THE OPERATIONAL PERIOD AND THE OBLIGATIONS OF THE PARTIES

6.1 The CEB's Obligations during the Operational Period

The CEB shall, during the Operational Period, at its sole cost and expense unless otherwise specified in this Clause 6.1

- 6.1.1 purchase the Metered Output and pay Energy Charge and such other sums payable pursuant to Schedule 9 (Energy Charge) in accordance with this Agreement;
- 6.1.2 Dispatch the Wind Farm Facility in accordance with Dispatch Instructions as envisaged in Clause 7.2; and
- 6.1.3 Supply Metered Input to the Project Company from the CEB System at 220 kV at the Interconnection Point for the electrical load requirements of the Wind Farm Facility. Such amounts of Metered Input shall be supplied and charged by CEB and payable by the Project Company on the same terms (including tariff) applicable to supply of electrical energy at 220 kV by CEB at the rate applicable to the such category of consumers. Notwithstanding the foregoing, the Project Company shall be responsible for arranging electricity generator to meet the electricity requirements during the Operational Period. Insufficient or interrupted supply or failure to supply electrical energy by CEB to the Project Company shall not be considered a breach on the part of CEB.
- 6.1.4 CEB shall, during the Operational Period, accept any energy delivered from the Wind Farm Facility during the tests to be conducted in accordance with a schedule approved by CEB, detailing the proposed commencement and duration of the specific tests and specifying for each Hour of such tests the estimated quantity of electrical energy shall constitute Metered Output and payable as provided in the Clause 6.1.1
- 6.1.5 provide to the Project Company all reasonable assistance for the Project Company to obtain in accordance with the Laws of Sri Lanka, all Governmental Approvals required to be obtained and maintained by the Project Company for the operation and maintenance of the Wind Farm Facility. The reasonable assistance to be provided by the CEB to the Project Company will generally be in the form of providing, at the Project Company's request, a written communication to the relevant Competent Authority to support the Project Company's application to obtain or maintain such Governmental Approval. Notwithstanding the foregoing, the Project Company shall be solely responsible for the procurement of each Governmental Approval required; and

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

6.2 The Project Company's Obligations during the Operational Period

The Project Company shall, during the Operational Period at its sole cost and expense unless otherwise specified in this Clause 6.2 shall perform following obligations.

6.2.1 Project Company's Obligation to Furnish Specified Forecasts and Deliver Electrical Energy

In accordance with the terms of this Agreement and in consideration of CEB's agreement to purchase electrical energy output of the Wind Farm Facility from the Project Company on the terms described in Clause 8, the Project Company shall, on and from the Commercial Operation Date and thereafter during the Term operate, maintain and repair the Wind Farm Facility as required by Prudent Utility Practice, and all applicable Laws to ensure the Project Company shall;

- i) furnish energy, and capacity and irradiation level forecasts annually, weekly and at every 30-minute intervals in accordance with the Schedule 8 (Availability Forecasts and Wind Speed Reporting), and
- ii) subject to actual wind speed levels, deliver and transfer electrical energy to CEB at the Interconnection Point in accordance with Dispatch Instructions issued by CEB as provided in Clause 7.2 except in case of Forced Outage or Curtailment.

6.2.2 finance, operate, maintain, modify and repair the Wind Farm Facility in strict accordance with this Agreement (without limiting the generality of the foregoing in accordance with Good Design, Engineering and Construction Practices and Prudent Utilities Practice) so as to enable the Wind Farm Facility to conform to the Minimum Functional Specification;

6.2.3 without limiting the generality of the Project Company's obligations under Clause 6.2.2,

- (i) provide that the Wind Farm Facility is operated and maintained by the O&M Contractor in accordance with the plans and specifications prepared in accordance with this Agreement;
- (ii) not terminate the Operation and Maintenance Agreement without giving prior written notice to the CEB;
- (iii) Deliver to the CEB electrical energy in conformity with the Minimum Functional Specification and the CEB's Dispatch Instructions except where the Project Company is required, in accordance with the terms of this Agreement, to operate the Wind Farm Facility outside the Minimum Functional Specifications and ensure that the Wind Farm Facility shall be capable of continuously delivering Metered Output at any point between power factors and other factors as mentioned in the CEB Grid Code;
- (iv) ensure that the Interconnection Facilities;
 - (a) comply with the applicable safety and electrical codes specified in Schedule 5 (Minimum Functional Specification); and
 - (b) are operational and otherwise comply with the Minimum Functional Specification.
- (v) at all times ensure that reasonable safety precautions are taken to safeguard the Parties or third parties, or their property, from damage, loss or injury when operating, maintaining, modifying or repairing the Wind Farm Facility;
- (vi) maintain in good order, renew prior to expiry and comply with the terms of any Governmental Approvals (including the Generation License) and the Environmental Requirements to be met by the Project Company for the operation and maintenance of the Wind Farm Facility
- (vii) provide the CEB and its duly authorized representatives access to the Wind Farm Facility during normal working hours (and outside normal working hours if reasonably required) to all parts of the

Wind Farm Facility for the purposes of general inspection, observation, attending any test or investigation being carried out in respect to the operations and maintenance of the Wind Farm Facility, on the same terms as under Clause 5.5.1, provided that any visits to the Wind Farm Facility by the CEB or its duly authorised representatives shall not be construed as an endorsement by the CEB of the operation, maintenance, modification and repair procedures employed by the Project Company at the Wind Farm Facility and that CEB shall ensure the Project Company is not unduly impeded by virtue of any visits;

- (viii) provide the CEB with annual reports, audited financial statements and such information as the CEB may reasonably require as to the performance by the Project Company of its obligations under this Agreement, provided that receipt of such information shall not be construed as an endorsement by the CEB of any practice of the Project Company in its performance of its obligations under this Agreement;
- (ix) provide security for the Wind Farm Facility, including;
 - (a) the erection and maintenance of security fencing and access points
 - (b) ensure that the Wind Farm Facility's security can be maintained independently of adjoining areas and the public highway; and
 - (c) at all times take into consideration and cooperate with any security arrangements the Government may put in place.
- (x) ensure that sufficient competent staff are always on hand at the Wind Farm Facility;
- (xi) employ, or procure that the O&M Contractor employs, as far as practicable, qualified local personnel to operate the Wind Farm Facility;

- (xii) provide the CEB with the list of all personnel (who shall meet all rules, regulations and requirements relating to employment in force in Sri Lanka) engaged by the Project Company at the Wind Farm Facility and update such list to reflect any changes in personnel;
- (xiii) provide redundancy 400V AC auxiliary supply to the Mullikulam Metering Substation in the events of failure of primary auxiliary supply from the 33kV distribution network;
- (xiv) carry out all that is required to perform in accordance with its Proposal unless the obligation, undertaking or requirement is superseded by a Clause in this Agreement;
- (xv) Project Company shall, subject to complying with the applicable conditions in Clause 5.5.1, allow the CEB to carry out annual technical audits of the Wind Farm Facility with reasonable prior notice, during the Operation Period; and
- (xvi) comply with all Laws of Sri Lanka.

6.3 Title to Energy

6.3.1 Delivery of electrical energy shall be completed when electrical energy meeting the criteria set out in the Minimum Functional Specification is delivered at the Interconnection Point and is metered or otherwise determined in accordance with Clause 6.5, and title to such electrical energy will pass to the CEB on such delivery.

6.3.2 For the avoidance of doubt;

- (i) any loss of electrical energy at any point before the Interconnection Point shall be the loss and responsibility of the Project Company;
- (ii) the Project Company bears all risk until the electrical energy meeting the criteria set out in the Minimum Functional Specification is delivered at the Interconnection Point.

6.4 Scheduled Maintenance

The following provisions shall apply to the Scheduled Maintenance of the Wind Farm Facility

- 6.4.1 For any Contract Year the Project Company shall schedule and carry out as much maintenance as is possible during the night time and;
- (i) during the expected offseason periods of such Contract Year where such expected offseason periods have been discussed and agreed between the Parties in terms of long-term weather forecasting; or
 - (ii) where Scheduled Maintenance can be carried out and completed within a period of one Day, on any Day that is not a Business Day;
- 6.4.2 not later than ninety Days prior to each Contract Year, the Project Company shall provide the CEB with a draft proposal, in writing, of its proposed maintenance programme for each Contract Year and each proposed maintenance programme shall show in reasonable detail the nature of the maintenance which the Project Company proposes to carry out, the date or dates on which each item of maintenance is to begin, the time over which such maintenance is expected to take place. The maximum permitted maintenance period is ten Days per Contract Year, unless maintenance is carried out at night and does not affect the Wind Farm Facility's generation.

6.5 Metering

The following provisions shall apply to metering, measurement and recording of Metered Output;

- 6.5.1 the Project Company shall purchase the metering equipment comprising a Main Meter and a Check Meter described in Schedule 7 (Metering) at its sole cost and expense and arrange for them to be tested and calibrated at the Project Company's sole cost and expense at such internationally recognised testing and calibration facility reasonably acceptable to the CEB. The Project Company shall obtain a warranty from the manufacturer of the metering equipment as to their accuracy, which warranty shall inure for the benefit of the CEB. The Project Company shall procure for the CEB the right to attend such tests (at the CEB's cost and expense) and shall give the CEB reasonable prior notice of such tests. Once it has been determined by such tests that the Meters meet the specification set out in Schedule

7 (Metering), the Meters shall be sealed by the Parties in accordance with Clause 6.5.8;

- 6.5.2 the Project Company shall be responsible for installing the Meters at the Metering Points at least thirty Days prior to the anticipated Commissioning Date (as notified by the Project Company to the CEB from time to time). The Project Company shall give to the CEB not less than seven Days notice of its intention to install the Meters. The CEB shall have the right to attend and observe such installation;
- 6.5.3 once the Meters have been installed, and at least fifteen Days prior to the anticipated Commissioning Date (as notified by the Project Company to the CEB, which may be from time to time) the Project Company shall arrange for them to be tested, in accordance with Prudent Utilities Practice, in the presence of both Parties. The test certificates shall expressly state whether the requirements of Schedule 7 have been met. The ownership of the Main Meter shall, without any additional charges being accrued to the CEB, be transferred by the Project Company to the CEB, along with all relevant test certificates and manufacturers' warranties, when the Main Meter has passed such tests. Thereafter, the CEB shall be responsible at its own expense for maintaining the Main Meter (including any replacement thereof pursuant to Clause 6.5.7) in accordance with Prudent Utilities Practice. The Check Meter shall be owned and operated by the Project Company. The Project Company may not take the Check Meter out of service at any time when the Main Meter is out of service. The Project Company shall be responsible at its own expense for maintaining the Check Meter in accordance with Prudent Utilities Practice;
- 6.5.4 the CEB shall arrange for the Main Meter, and the Project Company shall arrange for the Check Meter, to be tested including associated instrument transformers and, if necessary, re-calibrated or replaced at least once every Contract Year or whenever either Party has reason to believe that the equipment is no longer performing within the standards of accuracy prescribed by Schedule 7 (Metering) and has given notice to the other of such concern. The Party arranging the test shall give the other reasonable notice of any such test. Testing and re-calibration may be carried out in the presence of both Parties and the Parties shall have the right to send a duly authorised representative to attend any test of the other Party of which it has been given notice. If a Party believes any of the Meters are no longer

performing within the limits of accuracy prescribed in Schedule 7 (Metering), and requests a test to be performed on any Meters to demonstrate the same, the Party requesting the test shall only bear the cost and expense of such test when such Meter is found to be performing within such limits;

- 6.5.5 after completion of any testing in accordance with Clause 6.5.4, the Party which tested its Meter shall prepare and submit to the other Party a statement which shall record the results of the testing and the extent to which the Meter was performing outside the limits of accuracy prescribed by Schedule 7 (Metering);
- 6.5.6 the amount of Metered Output, Hourly Metered Output and Metered Input shall be measured using the Main Meter provided that the Check Meter shall be used where the Main Meter has been found to have performed outside the limits of accuracy prescribed by Schedule 7 (Metering) or, if the Check Meter is also found to be no longer performing within the standards of accuracy prescribed by Schedule 7 (Metering), the amount of Metered Output, Hourly Metered Output and Metered Input supplied shall be estimated as the Parties may agree or, failing agreement, by an Expert appointed in accordance with Part 1 of Schedule 15 (Disputes Resolution Procedure) provided that, if the period during which both of the Meters were found to be inaccurate cannot be accurately determined, such period shall be deemed to have begun at the mid-point of the period commencing on the date the Main Meter and/or the Check Meter (as the case may be) was found to be inaccurate and the date of the last Main Meter reading or Check Meter reading, as the case may be, was or is accepted by the Parties as accurate
- 6.5.7 if, at any time, it is determined by the CEB or the Project Company as a consequence of a test or as is otherwise manifestly necessary that a Meter should be replaced, the old Meter shall be replaced and a new Meter installed, tested and calibrated using the internationally recognised testing and calibration facility previously accepted by the CEB pursuant to Clause 6.5.1 at the sole cost and expense of the Party responsible therefor. Such Party shall give the other Party reasonable prior notice of such tests which must meet the specification set out in Clause 6.5.8 and the measuring accuracy set out in Schedule 7 (Metering). Once such replacement has passed such tests it shall be sealed in accordance with Clause 6.5.8;

- 6.5.8 the Main Meter and the Check Meter shall be jointly sealed by the Parties. Such seals shall be broken only by the CEB personnel (in the case of the Main Meter) and the Project Company personnel (in the case of the Check Meter) and each Party shall be given at least twenty-four Hours advance notice of the breaking of seals by the other Party and shall be entitled to attend at the stated time. For the purposes of this Clause 6.5 the IEC standard 687 shall be applied to the testing of the Meters;
- 6.5.9 the CEB shall give the Project Company access to its facilities for the purpose of installing, testing and taking readings of the Meters; and
- 6.5.10 the CEB and the Project Company shall on the first day of each Contract Month at a time agreed in advance between the Parties jointly read and record the readings of the Main Meter and Check Meter.

6.6 Emergencies

- 6.6.1 The Project Company shall cooperate with the CEB in establishing agreed emergency plans for the Wind Farm Facility at least ninety Days before the commencement of the Operational Period including, without limitation, recovery from a local or widespread electrical blackout or voltage reduction in order to curtail load.
- 6.6.2 CEB, during any Emergency, may by Dispatch Instructions require the Project Company to disconnect or reduce delivery of the available electric output from the Wind Farm Facility
- (i) if, in CEB's sole opinion, an Emergency exists; or
 - (ii) for so long as a disconnection or reduction in delivery of the available electric output is necessary to enable CEB to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Interconnection Facilities or the CEB System.

6.7 Contingency Plan

The Project Company shall implement and adhere to the backup plan as set out in Schedule 20 ('Contingency Plan') in order to ensure uninterrupted supply of electricity from the Wind Farm Facility.

7. ENERGY CHARGE

7.1 Quantity of Electrical Energy

7.1.1 Energy Charge for Electrical Energy Delivered during Normal Operation during Operational Period (Except Tests)

On and from the Commercial Operation Date and subject to Clauses 2.3 and 7.2.1, the Project Company shall deliver Metered Output to the CEB, and subject to Clause 7.1.3 the CEB shall pay to the Project Company, in arrears each Contract Month, under the Project Company's Monthly Invoices, the Energy Charge for the preceding Contract Month calculated in accordance with this Clause 7 (Energy Charge), Clause 8 (Payment), and Schedule 9 (Energy Charge).

7.1.2 Energy Charge for Pre-Commissioning and Commissioning Tests conducted prior to Commercial Operation Date

The Project Company shall be entitled to invoice for and the CEB shall pay the Project Company for electrical energy delivered during the Pre- Commissioning Tests and Commissioning Tests, at the time of making the payment of Energy Charge for the Wind Farm Facility for the first Contract Month following the Commercial Operation Date, calculated at the rate for Metered Output in accordance with the Schedule 9 (Energy Charge).

7.1.3 Energy Charge for Tests Conducted During Operational Period

CEB shall pay the Project Company for electrical energy delivered during any tests to be conducted as provided in Clause 6.1.4 during the Operational Period, in accordance with Clause 7.1.1

7.2 Dispatch and Curtailment

Subject to the provisions of Clause 6.4 and Schedule 8 (Availability Forecasts and Wind Speed Reporting), the following provisions shall apply to Dispatch of the Wind Farm Facility:

- 7.2.1 During the Operational Period, the CEB shall give the Project Company notice of the CEB's good faith best estimate of the Dispatch of the Wind Farm Facility on annual (30 Days prior to the start of the relevant Contract Year), monthly (04 Days

prior to the start of the relevant Contract Month) and weekly (02 Days prior to the start of the relevant Week) basis, indicating the maximum electrical power output in MW for each Contract Month, Day and 30-minute interval respectively.

7.2.2 CEB may Dispatch the Facility at any time (subject to the ramp rates of the Wind Farm Facility) on and after the Commercial Operation Date by the issue of a dispatch instruction ("Dispatch Instruction") under this Clause 7.2.2, which right shall not be limited by any prior notice to the Project Company of CEB's good faith best estimate of its Dispatch requirement, for the period of the Dispatch Instruction, subject to Clauses 7.2.3 and 7.2.4 of this Agreement.

The Parties acknowledge that there may be grid outages or constraints which restrict the output of the Wind Farm Facility.

7.2.3 The Parties acknowledge that the Dispatch may never exceed the Guaranteed Plant Capacity of the Wind Farm Facility at the Interconnection Point and that the actual output of the Wind Farm Facility will fluctuate based on the level of wind speed and other meteorological conditions, such that the Dispatch defines the maximum acceptable output of the Wind Farm Facility.

7.2.4 For any Curtailment during a Contract Month, the amount of Curtailed Monthly Output will be calculated in accordance with Schedule 9 (Energy Charge).

8. PAYMENT

8.1 Project Company's Monthly Invoices

8.1.1 The Project Company shall submit an invoice to the CEB no later than 1200 Hours on the tenth Day of each Contract Month (or, if such Day is not a Business Day, on the next Business Day) commencing with the Contract Month following the Contract Month in which the Commercial Operation Date occurs, and such invoice which shall be submitted not less than twenty one Days after the previous invoice (the "Monthly Invoice") shall show all intermediate calculations in reasonable detail so as to enable the amounts due to be verified and shall also state;

- (i) the applicable Energy Charge in US Dollars for the previous Contract Month for the Delivered Monthly Output, Curtailed Monthly Output and amounts of electrical

energy constituting Metered Output during tests, calculated according to Schedule 9 (Energy Charge);

- (ii) the applicable deductions for;
 - a) the amount of the latest unpaid invoice for Metered Input;
 - b) Liquidated Damages calculated in accordance with Clause 10.2;
 - c) any other sums due and payable by the Project Company to the CEB under this Agreement;
- (iii) Reimbursable Taxes incurred by the Project Company within such Contract Month. The Project Company shall submit with the Monthly Invoice such material establishing the liability of the Project Company for any such payment of Reimbursable Taxes;
- (iv) any other sums due and payable by the CEB to the Project Company under this Agreement;
- (v) the amount of any Sales Taxes, the applicable rate or rates at which Sales Taxes are calculated on the component elements of the amount invoiced and the total sum payable by the CEB inclusive and exclusive of any such Sales Taxes;
- (vi) the amount of any costs incurred by the Project Company in the previous Contract Month (and in the case of first Monthly Invoice for the First Contract Month, in the period from the Execution Date to the date of such invoice) and payable by CEB pursuant to Clause 9.2.1 to the extent that such amounts are not reimbursed to the Project Company by any other way;
- (vii) The Monthly Invoice shall clearly identify payable sums in US Dollars and in Rupees separately.

8.1.2 Method of payment

Save in respect of Disputed Amounts, the following provisions shall apply to the method of payment:

- (i) in respect of sums invoiced by the Project Company under a Monthly Invoice in US Dollars, CEB shall calculate the relevant Rupee amount at the Monthly Average

Selling Rate of Contract Month of which the Energy Charge is applicable (“Converted Rupee Amount”).

- (ii) CEB shall make payment of the Converted Rupee Amount in immediately available funds by direct bank transfer or equivalent transfer to the Rupee Ordinary Account, no later than 1200 Hours on or before thirty Days following the receipt of the Monthly Invoice.
- (iii) in respect of sums invoiced by the Project Company under a Monthly Invoice in Rupees, CEB shall make payment in immediately available funds by direct bank transfer or equivalent transfer to the Rupee Ordinary Account, no later than 1200 Hours on or before thirty Days following the receipt of the Monthly Invoice.
- (iv) in respect of sums payable by the Project Company to CEB under this Agreement which are not deducted from any amounts due to the Project Company from CEB under any Monthly Invoice, the Project Company shall make payment in Rupees (where applicable, in an amount calculated at the Monthly Average Selling Rate of Contract Month which the CEB’s invoice is applicable), in immediately available funds by direct bank transfer or equivalent transfer of funds to the CEB Rupee Account by no later than 1200 Hours on or before thirty Days following the receipt of CEB’s invoice of the sums due.

8.2 Invoices in Respect of Delay

8.2.1 The Project Company shall be entitled to submit an invoice to the CEB pursuant to Clause 5.14.1, in respect of any payment due from the CEB to the Project Company, provided that;

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

8.2.2 The CEB shall pay to the Project Company the amount so invoiced (not being Disputed Amounts) no later than 1200 Hours on or before thirty Days following the receipt of the invoice.

8.2.3 Pursuant to Clause 5.10.3, the CEB shall be entitled to submit an invoice to the Project Company in respect of any payment due from the Project Company to the CEB in respect

of delay in the achievement of the Commercial Operation Date, on or before Scheduled Commercial Operation Date, provided that;

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

8.2.4 The Project Company shall pay to the CEB the amount so invoiced (not being Disputed Amounts) no later than 1200 Hours on or before thirty Days following the receipt of the invoice.

8.3 Sales Tax

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

8.4 Withholding of Tax Sums

The CEB shall be entitled to withhold from the amounts due to the Project Company under this Agreement any amount which the CEB is obliged to withhold pursuant to the Laws of Sri Lanka, provided that the CEB promptly gives the Project Company the appropriate certificates showing all amounts withheld, remit such amount to the tax authorities to whom such amounts have to be paid and where the Project Company is entitled to a reimbursement, provides all reasonable assistance to the Project Company in obtaining such reimbursement.

8.4.1 The Project Company shall be entitled to withhold from the amounts due to the CEB under this Agreement any amount which the Project Company is obliged to withhold pursuant to the Laws of Sri Lanka, provided that the Project Company promptly gives the CEB the appropriate certificates showing all amounts withheld, remit such amount to the tax authorities to whom such amounts have to be paid and where the CEB is entitled to a reimbursement, provides all reasonable assistance to the CEB in obtaining such reimbursement.

8.5 Late Payment

Subject to Clause 8.6, if any amount payable by the CEB or the Project Company under this Agreement is not paid on or before the due date therefor or is not paid by the CEB under the CEB

Letters of Credit for any reason, the Party in default of its payment obligation shall pay interest thereon (compounded monthly) from the due date until the date of payment, at a rate equal to the Sri Lanka Prime Rate plus 2.0 percent per annum.

8.6 Disputed Payments

- 8.6.1 Each Party agrees it shall be only in good faith dispute amounts specified in any invoice delivered hereunder.
- 8.6.2 If the CEB disputes any amount specified in any invoice from the Project Company or the Project Company disputes any amount specified in any invoice from the CEB (a "Disputed Amount"), the CEB or the Project Company, as the case may be, shall;
- (i) within fourteen Days of receipt of such invoice, give notice to the other of the dispute and details of the Disputed Amount to the other Party; and
 - (ii) pay any undisputed amount in that invoice on or before the due date therefor.
- 8.6.3 Subject to Clause 8.6.5, if, pursuant to Clause 8.6.2, either Party disputes any amount, the Parties shall, in accordance with the procedure set out in Clause 16.1.1, use reasonable endeavours to resolve that dispute within fourteen Days of receipt of notice under Clause 8.6.2(i).
- 8.6.4 Subject to Clause 8.6.5, if a dispute under Clause 8.6.2 is not resolved within the fourteen Day period specified in Clause 8.6.3, then, in accordance with Clause 16.1.2, such dispute shall be submitted for resolution by an Expert pursuant to Part 1 of Schedule 15 (Disputes Resolution Procedure) unless the Disputed Amount is for a sum in excess of US Dollars 200,000 in which case it shall be referred to arbitration pursuant to Part 2 of Schedule 15 (Disputes Resolution Procedure).
- 8.6.5 Where the CEB disputes the amount specified in any Monthly Invoice or any invoice issued pursuant to Clause 8.2 or the Project Company disputes the amount due to the CEB pursuant to any invoice issued pursuant to Clause 8.2, the Party disputing the amount shall forthwith pay the Disputed Amount into an interest earning Rupee escrow account, established at a bank in Sri Lanka for that purpose by the Parties pursuant to the Escrow Agreement.
- 8.6.6 Amounts paid by either Party to any escrow account established under Clause 8.6.5 (and any interest thereon) shall be repaid as necessary to the Parties upon final resolution of the

dispute in accordance with the terms of the decision of the Expert or Tribunal as the case may be or terms otherwise agreed in writing by the Parties

8.6.7 If either Party disputes any amount specified in any invoice or Monthly Invoice as the case may be more than three times in any Contract Year, or more than three times in any period of six consecutive Contract Months, the Parties shall meet to discuss whether the either Party's billing or payment procedure are working satisfactorily.

8.7 Letters of Credit

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

(i) no later than two Days before:

(a) the Commercial Operation Date; and

(b) each Contract Year,

the CEB shall establish in favour of the Project Company an irrevocable and unconditional standby letter of credit (the “**CEB Letters of Credit**”) issued by a bank in Sri Lanka reasonably acceptable to the Project Company and in the form set out in Part A of Schedule 12 (Letter of Credit), to be denominated in Rupees. The CEB Letters of Credit shall have stated amounts calculated in accordance with Clause 8.7.1(iv) and CEB Letters of Credit shall be available to be drawn for a period of not less than twelve Contract Months from its first stated date of validity and the CEB shall cause the CEB Letters of Credit to be renewed or replaced by letters of credit in the same form not later than thirty Days prior to their respective expiry;

(ii) the Project Company may draw upon the CEB Letter of Credit, provided the Project Company gives the CEB at least seven Days prior notice in writing that the amount is due and owing:

(a) in any amount which the CEB fails to pay (not being a Disputed Amount) three Days following the date of the notice; and

(b) in full, if the CEB Letters of Credit are not renewed or replaced in accordance with Clause 8.7.1(i);

(iii) if the Project Company draws the full amount of any of the CEB Letter of Credit pursuant to Clause 8.7.1(ii) (b), the Project Company shall deposit the whole of such

drawn amount into an interest bearing account, denominated in Rupees and established with a reputable bank in Sri Lanka and notified by the Project Company to the CEB by no later than 2 days before the Commercial Operation Date and which shall be used solely for this purpose by the Project Company and designated "_____, the CEB Letter of Credit", ("L/C Deposit Account"). The Project Company shall not charge or otherwise grant security interest in favour of any person (other than the Finance Parties) over, or in respect of, deposit held in the L/C Deposit Account. Details (including supporting bank statements) of the L/C Deposit Account and of any payment into or from, and the balance from time to time on, such accounts shall be provided to the CEB upon its request. The Project Company shall hold any amount so drawn and credited to the L/C Deposit Account to be applied first in payment of amount (not being Disputed Amount) then due and payable by the CEB to the Project Company under this Agreement and the balance, if any, shall remain on deposit in the L/C Deposit Account as security for the CEB's performance of its obligations under this Agreement and such amount held in such L/C Deposit Account may only be used by the Project Company in the same circumstances as those allowing the Project Company to draw upon the CEB Letter of Credit pursuant to Clauses 8.7.1(ii)(a). The remaining balance (if any) together with accrued interest shall be returned to the CEB (or paid in accordance with the CEB's directions) promptly after the CEB has re-established the CEB Letters of Credit;

- (iv) the amount of Letter of Credit required to be maintained throughout the Operational Period shall have an amount (the "L/C Amount") equal to the three times of the average Metered Output Energy Charge payable by the CEB to the Project Company assuming the tariff then in effect and Monthly Average Selling Rate, and such Letter of Credit shall promptly be reinstated to its pre-existing amount following any drawdown by the Project Company.
- (v) in the event of any dispute at any time as to the calculation of the L/C Amount for CEB Letter of Credit, such dispute shall be resolved by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

8.8 The Project Company Bank Accounts

Details of the Project Company Nominated Bank shall be notified by the Project Company to the CEB, with details of the relevant Rupee Ordinary Account not

later than thirty Days prior to Scheduled Commercial Operation Date and thereafter no later than thirty Days before any proposed change in such details.

9. CHANGES IN LAW

9.1 Meaning of Change in Law Event

A Change in Law after the 28th Day prior to the Proposal closing shall constitute a change in law event (a "Change in Law Event") if such Change in Law:

- 9.1.1 causes the Project Company to meet more stringent Environmental Requirements applicable to the Wind Farm Facility; or
- 9.1.2 causes the Project Company to carry out any material capital improvements or other modifications to the Wind Farm Facility; or
- 9.1.3 materially increases or decreases the costs or revenues of the Project Company in connection with the design, construction, maintenance or operation of the Wind Farm Facility; or
- 9.1.4 affects the ability of the Project Company to deliver, or the CEB to accept electrical energy in accordance with the Minimum Functional Specification and/or CEB Grid Code; or
- 9.1.5 relates to the BOI Law and the regulations made thereunder or any other Laws of Sri Lanka pursuant to which the Project Company has been granted or become entitled to certain benefits, exemptions and privileges; or
- 9.1.6 affects the rights or obligations of the Finance Parties or the Project Company under the Financing Agreements, in relation to ability of the Project Company to finance or the cost of financing the Wind Farm Facility through the imposition of exchange controls or currency restrictions including the convertibility of currency, of the ability to remit foreign exchange, or the ability of the Finance Parties or the Project Company to maintain off-shore accounts for the purposes of the Wind Farm Facility; or
- 9.1.7 results in the Project Company requiring Governmental Approvals not previously required from any Competent Authority, or the amendment or modification of existing Governmental Approvals by any Competent Authority, with respect to the performance of its obligations under this Agreement; or

9.1.8 relates to taxes, charges, duties or levies including income tax, or any taxes charges, duties or levies of the nature of goods and services tax or VAT; or

9.1.9 affects any rights or obligations of the Project Company under this Agreement, the Implementation Agreement, the Lease, or of the Finance Parties under any direct agreement with the Government or CEB.

9.2 Consequences of Change in Law Event

9.2.1 If, from the 28th Day prior to the Proposal closing:

- (i) the effect of one or more Change in Law Events is to increase the costs of a capital cost nature paid or incurred by the Project Company during any Change in Law Period by more than US Dollars 100,000; or
- (ii) the net effect of one or more Change in Law Events is to reduce the revenue of the Project Company or to increase the Recurrent Costs paid or incurred by the Project Company in any Change in Law Period by more than US Dollars 100,000,

the Project Company shall provide the CEB with verifiable evidence of the reduction in revenue or an increase in such costs and/or the CEB in its reasonable opinion agreeing that there has been a reduction in revenue or an increase in such costs, the Parties shall agree on an equitable adjustment to the Energy Charge so that the Project Company shall be in no better or worse a financial position in respect of such amounts in excess of the threshold amount specified in Clause 9.2.1(i) and (ii) or the CEB shall at its option pay to the Project Company any such excess amounts in accordance with an invoice delivered by the Project Company in accordance with Clause 8.1.1(vi).

- 9.2.2 If, in any Change in Law Period, the net effect of one or more Change in Law Events is to increase the revenue of the Project Company or reduce the Recurrent Costs or Capital Cost of the Project paid or incurred by the Project Company by more than US Dollars 100,000 (in case of Recurrent Costs) and US Dollars 100,000 (in case of Capital Cost of the Project), the Parties shall agree on an equitable adjustment to the Energy Charge so that the Project Company shall be in no better or worse a financial position in respect of such costs in excess of the threshold amount specified in this Clause 9.2.2 or the Project Company shall pay to the CEB an amount equal to the amount that such increase in revenue or reduction exceeds the amounts stated above.
- 9.2.3 For the purposes of calculating the increase or reduction in costs incurred by or reduction in revenue of the Project Company due to a Change in Law Event such amounts shall be calculated:
- (i) in the case of any increase in costs or reduction in revenue, on the Day on which such additional costs are paid by the Project Company or the reduction in revenue occurred; or
 - (ii) in the case of any reduction in costs, the Day on which the relevant costs would have been payable by the Project Company were it not for such Change in Law Event,
 - (iii) in each case by reference to the amount in US Dollars (or the US Dollar equivalent of any Rupee amounts) on such date.
- 9.2.4 If the Parties cannot agree on any amount payable in accordance with Clause 9.2.1 or Clause 9.2.2, such amount shall be determined by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure) and in the event that the Parties disagree with the decision of the Expert, either Party may then refer the matter for final determination by the Arbitral Tribunal appointed under Part 2 of Schedule 15 (Disputes Resolution Procedure).

10. LIABILITIES AND INDEMNITIES

10.1 Delay Charge

10.1.1 The Project Company Delay Charge

If the Commercial Operation Date has not occurred on or before the Scheduled Commercial Operation Date, the delay charge to be paid by the Project Company in respect of delay under Clause 5.10.3 ("Project Company Delay Charge") shall be a sum in liquidated damages of LKR 7,500,000/- per Day that the Commercial Operation Date is delayed beyond the Scheduled Commercial Operation Date, subject to a limit not exceeding LKR 675,000,000/- which shall be the limit of the Project Company's liability to the CEB, and CEB's sole and exclusive remedy, in respect of such delays and such delays shall not entitle the CEB to terminate this Agreement in connection therewith other than pursuant to Clauses 13.1.2.

10.1.2 The CEB Delay Charge

If the Scheduled Commercial Operation Date is adjusted for delay pursuant to Clause 5.6.1 read with Clause 5.6.7, or pursuant to Clause 5.7.6, the delay charge to be paid by the CEB in respect of CEB's liabilities for delays pursuant to under Clause 5.14 ("CEB Delay Charge") shall be a sum in liquidated damages of LKR 7,500,000/- per Day that the Scheduled Commercial Operation Date is extended beyond the Original Scheduled Commercial Operation Date, subject to a limit not exceeding LKR 675,000,000/- which shall be the limit of the CEB's liability to the Project Company, and Project Company's sole and exclusive remedy, in respect of such delays and such delays shall not entitle the Project Company to terminate this Agreement in connection therewith other than pursuant to Clause 13.2.3.

10.2 The Project Company Liquidated Damages for Non-Achievement of Guaranteed Annual Plant Availability

If the Wind Farm Facility does not achieve the Guaranteed Annual Plant Availability in any Contract Year, the Project company becomes liable to pay Liquidated Damages to CEB pursuant to Paragraph 9.1.3 of Schedule 9 (Energy Charge).

The CEB shall deduct Liquidated Damages, the relevant amount in US Dollars calculated in accordance with Paragraph 9.1.3 of Schedule 9 from any amounts payable by CEB to the Project Company in the next Monthly Invoice, or from subsequent Monthly Invoices

to secure the recovery of Liquidated Damages at the earliest opportunity. These Liquidated Damages shall be the limit of the Project Company's liability to the CEB, and CEB's sole and exclusive remedy for underperformance.

10.3 CEB Indemnity for Persons and Damage to Property

Subject to Clauses 10.7 and 10.8, the CEB agrees to indemnify, defend and hold the Project Company, its Affiliates, officers, directors, employees and agents harmless against any and all Losses incurred, suffered, sustained or required to be paid directly or indirectly by the Project Company, its Affiliates, officers, directors, employees and agents for bodily injury to or death of any person or damage to property arising out of the receipt or delivery of electrical energy by the CEB under this Agreement or the operation of or failure to operate the CEB System resulting from the negligence of, or breach of statutory duty by, the CEB, except to the extent caused by the negligence of, or breach of statutory duty by, the Project Company or an act of negligence of, or breach of statutory duty by, an officer, director, employee, agent or Affiliate of the Project Company, its successors or assigns. Any monies received by the Project Company relating to this Clause shall be deducted from any payment that the CEB makes to the Project Company pursuant to this Clause.

10.4 The Project Company Indemnity for Persons and Damage to Property

Subject to Clauses 10.7 and 10.8, the Project Company agrees to indemnify, defend and hold the CEB, its Affiliates, officers, directors, employees and agents harmless against any and all Losses incurred, suffered, sustained or required to be paid directly or indirectly by the CEB, its Affiliates, officers, directors, employees and agents for bodily injury to or death of any person or damage to property arising out of the design, construction, operation or maintenance of the Wind Farm Facility, generation or delivery of, or failure to generate or deliver, to the Interconnection Point, electrical energy by the Wind Farm Facility, resulting from the negligence of, or breach of statutory duty by, the Project Company, except to the extent caused by the negligence of, or breach of statutory duty by, the CEB or an act of negligence or breach of statutory duty by an officer, director, employee, agent, or Affiliate of the CEB, its successors or assigns.

10.5 Pollution

Project Company shall be solely responsible for, and shall protect, defend, indemnify and hold harmless the CEB from and against any and all Losses, arising as a result of any pollution or contamination resulting from the negligence of, or breach of statutory duty by

the Project Company, except to the extent caused by the negligence of, or breach of statutory duty by, the CEB or an act of negligence or breach of statutory duty by an officer, director, employee, agent, or Affiliate of the CEB, its successors or assigns.

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

10.7 Right to Defend Actions

The Party having the obligation to indemnify ('Indemnifying Party', and the other Party being referred to as the 'Indemnified Party') may, upon notice to the other Party, assume the defence, where applicable, of any claim referred to in Clauses 10.3 to 10.5. A Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the Indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defence of such claim. The foregoing obligations, indemnities and liabilities assumed by the Parties hereunder shall not be limited by any limits on insurance contained in this Agreement.

10.8 Indemnified Party not to Compromise

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

10.9 No double Recovery

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

10.10 Consequential Loss

Notwithstanding any other provision in this Agreement, neither Party shall be liable to the other for the other's Consequential Loss.

11. INSURANCE BY THE PROJECT COMPANY

To the extent such insurances are available on commercially reasonable terms, the Project Company shall obtain and maintain the following insurances;

11.1 Persons and Property

Without limiting the Project Company's obligations and responsibilities under this Clause 11, the Project Company shall maintain or procure the maintenance of insurance from the date the Project Company commences any construction activity until the end of the Operational Period in the name of the Project Company and its contractors and sub-contractors against liabilities for the sickness of, death of or injury to any person (other than an employee of the Project Company or of any of its contractors or sub-contractors) arising out of the construction, operation or maintenance of the Wind Farm Facility or the Project Company's performance of this Agreement. The CEB shall be included as an additional loss payee in such the insurance policy obtained pursuant to this Clause.

11.2 The Project Company's Employees Compensation Insurance

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

11.2.1 the Project Company shall maintain insurance in respect of claims for the sickness of, death of, or injury to its employees arising out of and in the course of their employment and shall ensure that its contractors and sub-contractors maintain similar insurance in respect of their employees; and

11.2.2 the insurance referred to in Clause 11.2.1 shall include workers compensation, temporary disability insurance and other similar insurance required by the Laws of Sri Lanka and all relevant insurance policies shall include an endorsement with respect to voluntary compensation and employers' liability for employees not subject to the workers compensation under the Laws of Sri Lanka. Employers' liability coverage limits should be no less than that provided for under the Laws of Sri Lanka.

11.3 The Project Company's Comprehensive Insurance

11.3.1 The Project Company shall, in the name of the Project Company and, as the case may be, the Finance Parties, maintain substantially on the terms set out in Schedule 16 (Minimum Insurance to be Maintained by the Project Company):

- (i) comprehensive structure, plant and equipment insurance including contractor's all risks insurance and all risk marine insurance covering breakdown, damage or destruction of materials, equipment, the Works and the Wind Farm Facility;
- (ii) insurance against the loss of revenue resulting from breakdown, damage or destruction during the Operational Period and to the extent that such insurance is available to it on commercially reasonable terms;
- (iii) motor vehicle liability insurance in respect of vehicles, trailers and the like belonging to or under the care, custody or control of the Project Company, the Turnkey Contractor and the O&M Contractor in connection with execution of the Work and operation of the Wind Farm Facility;
- (iv) insurance against breakdown, damage or destruction resulting from civil commotion and riot in Sri Lanka and to the extent (subject to Clause 11.4.1) that such insurance is available to it on commercially reasonable terms. To the extent that such insurance is available in accordance with the foregoing, such insurance shall be the lower of the maximum limit commercially available or fifteen per cent of the capital value of the Wind Farm Facility from time to time (such capital value to be agreed by the Parties at the date such insurance is being taken out or the relevant policy is renewed or, in the absence of agreement determined, by an Expert appointed in accordance with Part 1 of Schedule 15 (Disputes Resolution Procedure) and shall not include cover against loss of revenue resulting from such breakdown, damage or destruction or business interruption cover.

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

11.3.2 The Project Company shall ensure that all contractors, providing professional services, effect and maintain in terms acceptable to the CEB professional indemnity insurance covering the work of the contractors, for an amount of 10% of their fee for professional services

11.4 General Insurance Obligations

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

11.4.1 Where the Project Company determines that the insurance referred to in Clause 11.1 to 11.3 are either not available or is not available on commercially reasonable terms, the Project Company shall provide the CEB with a written summary of why the Project Company has made such determination together with copies of quotations (or responses indicating that the required insurance is not available) received from at least two reputable insurance brokers.

11.4.2 Notwithstanding the foregoing, the Project Company shall not be entitled to determine that it has not received any responsive quotations or that there were no quotations offered on commercially reasonable terms as a result of any breach by the Project Company of its obligations under this Agreement or the Lease.

11.4.3 If there is a dispute between the Parties as to the availability or commercial reasonableness of the terms of the insurance required to be maintained pursuant to Clause 11.1 to 11.3, the dispute shall be referred to an Expert in accordance with the provisions of Part 1 of Schedule 15 (Disputes Resolution Procedure).

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

- 11.4.5 the insurances shall provide that in the event of a claim, the amount of the cover shall be automatically reinstated to the full cover required by this Agreement;
- 11.4.6 if the Project Company fails to provide evidence when required that the insurance referred to in Clauses 11.1, 11.2 and 11.3 are in force, the CEB may itself take out such insurance and pay such premiums as may be necessary to maintain it in force. From time to time, the CEB may recover any amount so paid as a debt owed by the Project Company and the CEB may set-off such amount against any payments due from the CEB to the Project Company. Such recovery amount will carry interest at a rate equal to the Sri Lanka Prime Rate plus 1.5 percent per annum thereon (compounded monthly) from the payment date until the date of set-off the amount.;
- 11.4.7 the Project Company shall ensure that the interest of the CEB is endorsed on any policy of insurance which provides cover in relation to any liabilities arising out of the performance of the Project Company's obligations under this Agreement;
- 11.4.8 the insurance policies maintained pursuant to Clauses 11.1, 11.2 and 11.3 shall apply separately to each joint insured as though a separate policy had been issued for each of the joint insured;
- 11.4.9 the Project Company shall make no alterations to the terms of any insurance without the prior written approval of the CEB;
- 11.4.10 the Project Company shall ensure that any policy or policies of insurance obtained by the Project Company pursuant to this Agreement, shall provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against CEB;
- 11.4.11 the Project Company shall promptly supply to underwriters and insurers all documentation and information which they may reasonably require to effect and maintain the insurance required by this Clause 11; and
- 11.4.12 to the extent permitted by law, the Project Company shall ensure that all insurance policies place an obligation on the insurer to notify the CEB of the amount of any and all payments made to the Project Company.
- 11.4.13 The Project Company shall provide a reinsurance package acceptable to CEB

11.5 Application of Proceeds of Insurance

11.5.1 The Project Company shall diligently pursue any claims on insurance and shall fulfil the conditions precedent to any such claim.

11.5.2 All proceeds of those insurances set out in Clause 11.3.1(i) and (iv), and Paragraphs 16.1.1, 16.1.2, 16.2.1 and 16.2.3 of Schedule 16 (Minimum Insurance to be Maintained by the Project Company) shall following receipt thereof by or on behalf of the Project Company be applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment

11.5.3 In the event of a Buy-Out, there shall be assigned to the CEB:

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

11.5.4 Where, following payment of the Buy-Out Price:

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

12. FORCE MAJEURE

12.1 Meaning of Force Majeure

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

- (i) which is beyond a Party's control;
- (ii) which affects the performance of the obligations under this Agreement of the Party affected thereby
- (iii) which the Party claiming Force Majeure could not reasonably have provided against before entering into this Agreement;
- (iv) which such Party could not reasonably have avoided or overcome despite all reasonable efforts to prevent it or mitigate its effects.

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

- (i) Wars (declared or undeclared), sabotage, terrorism, blockades, riots, any civil commotion, insurrections in each case in Sri Lanka, expropriation, requisition, compulsory acquisition, confiscation or nationalisation in Sri Lanka, closing of harbours, docks or airports or other restrictions on travel within or from Sri Lanka, restrictions on or unavailability of foreign exchange, restrictions in the import or export of equipment, goods or supplies into or from Sri Lanka resulting from any action by any Competent Authority, strikes, lockouts or other industrial disturbances that are of a political nature (excluding such events which are Project Site specific and attributable to the Project Company);
- (ii) any Change in Law Event adversely affecting the performance of the Project Company of its obligations under this Agreement or under any of the Project Agreements whenever and to the extent that the Project Company is not otherwise compensated for the effect of such change;

- (iii) any denial or unreasonable delay in the grant, or revocation, of any Governmental Approval, despite the Project Company duly complying with the conditions for the grant thereof and due application therefor; or
- (iv) acts of God, landslides, lightning, earthquakes, floods, tsunami, tempest, fires, volcanic eruptions, epidemics, pandemic, war, sabotage, terrorism, blockade riots, insurrection, civil war, ionising radiation or contamination by radio-activity, strikes, lockouts, or other industrial disturbances (excluding such events which are Project Site specific and attributable to the Project Company).

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

- (i) an event under the Lease which event is analogous to an event of Force Majeure under this Agreement, shall be deemed to be an event of Force Majeure for the purposes of this Agreement;
- (ii) an event under the Lease which event is analogous to an event of Sri Lanka Force Majeure under this Agreement, shall be deemed to be an event of Sri Lanka Force Majeure with respect to the Project Company for the purposes of this Agreement.
- (iii) an event under the Lease which event is analogous to an event of Non-Sri Lanka Force Majeure under this Agreement, shall be deemed to be an event of Non-Sri Lanka Force Majeure for the purposes of this Agreement;
- (iv) an event of Force Majeure under the Implementation Agreement (as such expression is defined in that document) shall be deemed to be an event of Force Majeure for the purposes of this Agreement;
- (v) an event of Sri Lanka Force Majeure under the Implementation Agreement (as such expression is defined in that document) shall be deemed to be an event of Sri Lanka Force Majeure for the purposes of this Agreement;
- (vi) an event of Non-Sri Lanka Force Majeure under the Implementation Agreement (as such expression is defined in that document) shall

be deemed to be an event of Non-Sri Lanka Force Majeure for the purposes of this Agreement;

12.1.4 Force Majeure shall expressly not include the following.

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

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

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

12.2 Procedure for Claiming Force Majeure

12.2.1 The Party claiming Force Majeure will as soon as is reasonably practicable but no later than 14 Business Days after the date on which the Party knew or should reasonably have known of the occurrence of the event or circumstances claimed to be Force Majeure, give written notice to the other Party of the occurrence of the event or circumstances. If such notice is given more than 14 Business Days after that date, it shall only retroactively excuse the performance of the affected Party for the period starting 14 Business Days before the date of such notice. The notice shall be headed in bold print: **FORCE MAJEURE NOTICE – IF NOT**

DISPUTED WILL BE DEEMED TO BE ACCEPTED. The notice will provide full particulars of the event or circumstances causing its failure to perform its obligations, and how the Force Majeure impacts the performance of its obligations under this Agreement. The notice will also give an estimate of the period of time required to remedy the failure (if the remedy is deemed practicable). Failure to give notice will prevent the Party from claiming that the event or circumstances are Force Majeure.

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

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

12.3 Consequences of Force Majeure

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

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

12.3.3 In the case of Non-Sri Lanka Force Majeure affecting the Project Company at any time on or after the Commercial Operation Date, the Operational Period shall be extended by the number of Days equal to the number of Days during which the CEB was wholly or partially unable to receive electrical energy from the Wind Farm Facility or the Project Company was wholly or partially unable to deliver electrical energy from the Wind Farm Facility, by virtue of such Non-Sri Lanka Force Majeure (the "Affected Period"), provided that, where the Project Company

was partially able to deliver electrical energy, such extension shall be reduced by a proportion equal to the proportion which the availability of the Wind Farm Facility for Dispatch during the Affected Period bears in relation to the availability of the Wind Farm Facility for Dispatch which would have been achieved but for such Non-Sri Lanka Force Majeure (as determined by agreement of the Parties) within seven (7) Days of cessation thereof and, in the absence of agreement, as determined by an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

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

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

In the event that the Parties agree that Restoration is not Feasible it shall lead to a Company Buy Out Event as per 12.3.9(iii).

In the event that the Parties are unable to agree on the matter(s) set out in the above sub-Clauses (i) and/or (ii) of this Clause 12.3.4 within sixty Days, the Parties shall submit the matter(s) for resolution to an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure).

12.3.5 During Non-Sri Lanka Force Majeure affecting the Project Company and any resulting Restoration, the Project Company shall not be entitled to receive payments for the Energy Charge from the CEB provided that if the Non-Sri Lanka Force Majeure affects only part of the Wind Farm Facility, then the Energy Charge shall be payable during such Non-Sri Lanka Force Majeure in respect of Delivered Monthly Output. For the purposes of this Agreement, the agreed Restoration schedule shall be extended to account for any delays due to any of the causes referred to in Clauses 5.6.1(a) (i), 5.6.1(a) (ii), 5.6.1(a) (iii), 5.6.1(a) (iv), 5.6.1(a) (v), and 5.6.1 (a) (vi).

12.3.6 In the case of Sri Lanka Force Majeure affecting the CEB or the Project Company, or where Non-Sri Lanka Force Majeure affects the CEB, the CEB shall, continue to be liable to pay and the Project Company shall be entitled to receive Energy Charges for Curtailed Monthly Output calculated in terms of Schedule 9 (Energy Charge), until the earlier of:

- (i) discontinuance of the effects of such Force Majeure; or
- (ii) termination of this Agreement pursuant to Clause 13;

provided however, if the Project Company has taken out insurance in relation to loss of revenue pursuant to Clause 11.3.1, the amount of Energy Charges payable by the CEB to the Project Company shall be reduced by the amount of insurance proceeds received by the Project Company under Clause 11.3.1.

12.3.7 In the case of Sri Lanka Force Majeure resulting in damage to the Wind Farm Facility or requiring a material modification or a material capital addition to the Wind Farm Facility to restore it to an agreed operating level, the Parties shall negotiate in good faith to determine and agree on the costs of Restoration, the schedule for such Restoration and the adjustments to the Energy Charge necessary (after taking into consideration any insurance proceeds available or to become available for such Restoration) to compensate the Project Company for such costs. In the event that the Parties are unable to agree on the costs of Restoration and/or schedule for Restoration within sixty (60) Days (or such further time as the Parties may agree), the Parties shall submit the matter(s) for resolution to an Expert appointed under Part 1 of Schedule 15 (Disputes Resolution Procedure). In the event that the Parties agree that Restoration is not Feasible it shall lead to a Company Buy Out Event as per 12.3.9(ii).

12.3.8 In the case of Force Majeure covered in Clauses 12.3.4 or 12.3.7

- (i) the CEB shall have the right to proceed with the Restoration as agreed by the Parties or determined by the Expert; or
- (ii) notwithstanding the agreement by Parties or the determination of the Expert that Restoration is feasible, CEB shall have the right to elect to terminate this Agreement;

12.3.9 If following Force Majeure, the Wind Farm Facility is destroyed and the Parties agree or the Expert Determination is that Restoration is not feasible, or this Agreement is terminated by the CEB in terms of Clause 12.3.8(ii), then the following provisions shall apply to determine the Buy-Out Price to be paid by the CEB to the Project Company:

- (i) if following Sri Lanka Force Majeure or Non-Sri Lanka Force Majeure, the Parties agree or the Expert Determination is that Restoration is feasible, but the CEB elects to terminate this Agreement in terms of Clause 12.3.8(ii), this shall be a CEB Buy-Out Event and the CEB shall pay the Project Company the Buy Out Price set forth in item 8 of the Compensation Table in Schedule 13 Annex 1;
- (ii) If following Sri Lanka Force Majeure, the Wind Farm Facility is destroyed and the Parties agree or the Expert Determination is that Restoration is not feasible, this shall be considered a Project Company Buy-Out Event and in the event the Project Company issues a Project Company Buy Out Notice, the CEB shall pay the Project Company the Buy Out Price set forth in item 9 of the Compensation Table in Schedule 13 Annex 1;
- (iii) If following Non-Sri Lanka Force Majeure, the Wind Farm Facility is destroyed and the Parties agree or the Expert Determination is that Restoration is not feasible, this shall be considered a Project Company Buy-Out Event and in the event Project Company issues a Project Company Buy Out Notice, the CEB shall pay the Project Company the Buy Out Price set forth in item 10 of the Compensation Table in Schedule 13 Annex 1.

12.3.10 No Force Majeure will relieve a Party of any duty or obligation under this Agreement including the obligation to pay money which had arisen or been incurred before the Force Majeure.

12.3.11 If a Party is affected by Force Majeure, then the affected Party will use all possible diligence and take all reasonable steps necessary to remedy or rectify the Force Majeure as quickly as possible and minimise any damage caused by it.

12.3.12 Where Force Majeure prevents a Party from carrying out any obligations under this Agreement for a continuous period of 365 Days, except where pursuant to Clause 12.3.4 or 12.3.7;

- i) discussions relating to the Restoration is ongoing between the Parties;
- ii) a matter relating to Restorations has been referred to an Expert;
- iii) a Restoration schedule has been agreed by the Parties; or
- iv) a Restoration Schedule has been decided by the Expert;

this Agreement may be terminated by the other Party giving 60 Days' written notice to the Party affected by the Force Majeure situation and the provisions of Clause 13 will apply.

12.3.13 If as a result of Force Majeure, the Project Company receives both insurance proceeds and an extension of the Term, the Project Company shall account to the CEB where the Project Company is deemed to have been compensated for more than the loss of revenue suffered. If the Parties cannot agree on whether the Project Company has been compensated for more than the loss of revenue suffered, the matter shall be determined by an Expert appointed under Part I of Schedule 15 (Disputes Resolution Procedure).

13 TERMINATION

13.1 The CEB's Right to Terminate

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

13.1.1 in accordance with Clause 4.7;

13.1.2 if the Commercial Operation Date has not occurred by the date falling 1 Year from the Scheduled Commercial Operation Date;

13.1.3 if the Project Company has failed to pay any sum due and payable to the CEB (not being a Disputed Amount) for a period of at least thirty Days following the due date for payment.

13.1.4 following:

- (i) breach by the Project Company of Clauses 15.6 or 15.7.2;
- (ii) failure by the Project Company to deliver to the CEB or replenish the Construction Performance Bond pursuant to Clause 5.3.2 (i);
- (iii) Material breach by Project Company of its obligations under this Agreement for which no specific sole and exclusive remedy is provided in this Agreement, and such material breach (where capable of remedy) has been notified to the Project Company and has not been remedied within a period of sixty Days of notification, provided that the CEB's right to terminate pursuant to this Clause shall not apply where such material breach is due to breach by the CEB under this Agreement, or under the Lease, or the Government pursuant to the Implementation Agreement, or the Project Company is otherwise excused pursuant to Clause 12.

13.1.5 in the case of Force Majeure;

- (i) pursuant to Clauses 12.3.4 or 12.3.7 where the Parties determine or the Expert Determination is that Restoration is not feasible; or
- (ii) the CEB terminates in accordance with Clause 12.3.8(ii);

13.1.6 where Force Majeure has prevented the Project Company from carrying out its obligations under this Agreement for a continuous period of 365 Days, in the circumstances set out in Clause 12.3.12.

13.1.7 where:

- (i) any proceeding (including the appointment of a provisional liquidator) is instituted by or against the Project Company seeking to adjudicate the Project Company as bankrupt or insolvent or to wind-up the Project Company and such proceeding is not disputed in good faith by the Project Company within one hundred and eighty days of such proceeding first being instituted. For the avoidance of doubt, where an answer, objections or similar pleadings are filed in such proceedings by or on behalf of the Project

Company, such proceedings shall be deemed to be disputed in good faith by the Project Company;

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

Provided however that the CEB's right to terminate pursuant to Clauses 13.1.8 (i), (ii), (iv) and (v), shall not apply if the primary cause for such event is any failure by CEB to make payments in accordance with this Agreement.

13.1.8 following termination of the:

- (i) Implementation Agreement by the Government for a material breach by the Project Company thereunder; or
- (ii) Lease by the CEB for a material breach by the Project Company thereunder;

in each case pursuant to the respective provisions thereof provided that the CEB's right to terminate pursuant to this Clause shall not apply where such material breach is due to breach by the CEB under this Agreement, or the Lease, or the Government pursuant to the Implementation Agreement, or the Project Company is otherwise excused pursuant to Clause 12.

13.2 The Project Company's Right to Terminate

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

13.2.1 in accordance with Clause 4.7;

13.2.2 if the CEB has failed to pay any sum due and payable to the Project Company (not being a Disputed Amount) for a period of at least thirty Days following the due date for payment under any Monthly Invoice, provided the Project Company is unable to recover such amounts under any CEB Letters of Credit in accordance with the provisions thereof.

13.2.3 where the CEB is in material breach of any of its obligations under this Agreement for which no specific sole and exclusive remedy is provided in this Agreement, and such breach (where capable of remedy) has been notified to the CEB and has not been remedied within a period of sixty Days of notification provided that the Project Company's right to terminate pursuant to this Clause 13.2.3 shall not apply where such material breach is directly due to breach by the Project Company under this Agreement, or the CEB is otherwise excused pursuant to Clause 12;

13.2.4 where, notwithstanding Clauses 8.7.1(ii)(b) and 8.7.1(iii):

- (i) the CEB fails to establish any of the CEB Letters of Credit pursuant to Clause 8.7.1; or
- (ii) the CEB fails to renew or replace any of the CEB Letters of Credit in accordance with the requirements of Clause 8.7.1 and the Available Amount at the last Day for such renewal or replacement after deduction of all amounts due and payable by the CEB at such time, is less than one third of the L/C Amount applicable to any such Letters of Credit.

13.2.5 where Force Majeure has prevented the CEB from carrying out its obligations under this Agreement for a continuous period of 365 Days, in the circumstances set out in Clause 12.3.12

13.2.6 where:

- (i) any proceeding (including the appointment of a provisional liquidator) is instituted by or against the CEB seeking to adjudicate the CEB as bankrupt or insolvent or to wind-up the CEB (and such proceeding is not disputed by the CEB within sixty days of such proceeding first being instituted);

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

13.2.7 where the Government or the CEB, as the case may be is in material breach of the Implementation Agreement or the Lease, or any direct agreement entered into between the Finance Parties and the Government, or the CEB, as the case may be

13.2.8 Following termination by the Project Company of the Implementation Agreement or the Lease, in each case, pursuant to the respective provisions thereof or by the counter-party to any such agreement for any reason other than a material breach by the Project Company under the respective agreement, or where any such agreement becomes invalid, void or unenforceable.

13.2.9 where any Change in Law:

- (i) affects the convertibility of currency, of the ability to remit foreign exchange or the ability of the Finance Parties or the Project Company to maintain offshore accounts for the purposes of the Project; or
- (ii) affects any rights or obligations of the Project Company under this Agreement, the Implementation Agreement, the Lease, or Financing Agreements; or of the Finance Parties under any direct agreement with the Government, or CEB or under the Financing Agreements

provided the Project Company having made reasonable efforts during a period of thirty (30) Days following such Change in Law, has failed to obtain a removal of such effect or has not obtained a cure in accordance with Clause 9.2. For the avoidance of doubt, it is clarified that such reasonable action does not include initiating legal proceedings challenging such Change in Law in judicial or administrative proceedings.

13.3 Sole Grounds for Termination

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

13.4 Antecedent Rights

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

13.5 Survival

In the event of termination of this Agreement, for a period of sixty months following termination, the provisions of this Agreement as they relate to the payment of any sum due by one Party to the other, any right to payment under a bond, the Buy-Out of the Wind Farm Facility, the confidentiality provisions set out in Clause 15.3, this Clause 13.5 and the Disputes Resolution Procedure shall survive termination and continue to have effect in the terms of this Agreement (and in respect of any continuing arbitration commenced prior to the lapse of such sixty month period, this Agreement shall survive solely in respect of the matter in arbitration).

13.6 Notices of Termination

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

14 BUY-OUT AND TRANSFER

14.1 Buy-out by the CEB

14.1.1 The CEB shall be required to purchase the Wind Farm Facility in the case of a CEB Buy-Out Event in accordance with Schedule 13 (Buy-Out).

14.1.2 The CEB shall have the option to purchase the Wind Farm Facility at the expiry of the Operational Period ("CEB Expiry Buy-Out Event") in accordance with Schedule 13 (Buy-Out).

14.2 At the Project Company's Option

The Project Company shall have the option to require the CEB to Buy-Out the Wind Farm Facility in the case of a Project Company Buy-Out Event in accordance with Schedule 13 (Buy-Out).

14.3 Transfer

The provisions of Schedule 13 (Buy-Out) shall apply to any Buy-Out of the Wind Farm Facility under Clauses 14.1 and 14.2. Without limitation to the generality of Schedule 13 (Buy-Out):

- 14.3.1 the Project Company shall, at the time of payment of the Buy-Out Price, transfer to the CEB as soon as reasonably practicable all of the assets comprised in the Wind Farm Facility as stipulated in Paragraph 13.8 of Schedule 13 (Buy-Out) free of all charges and liens in accordance with Schedule 13 (Buy-Out);
- 14.3.2 the Project Company shall ensure that all its rights under all material contracts entered into by the Project Company with respect to the Project with third parties or the benefit of any licences, permits, consents, warranties, performance or other guarantees or intellectual property rights made or given in favour of the Project Company in connection with the construction, operation or maintenance of the Wind Farm Facility are freely assignable at the option of the CEB to the CEB or any person nominated by the CEB upon such Buy-Out.

14.4 Pre-Transfer Familiarisation

In the event of either a CEB Buy-Out Notice or a Project Company Buy-Out Notice, and at no cost or expense to the CEB, the Project Company shall promptly afford the CEB, its personnel or other advisors all opportunity at reasonable times to become familiar with the operation of the Wind Farm Facility, the operational practices of the Project Company and the current maintenance schedule for the Wind Farm Facility. The Project Company shall further provide the CEB free of charge complete copies of all prevailing operating and maintenance manuals and instructions in respect of the Wind Farm Facility and all relevant operational and maintenance records in respect of the Wind Farm Facility and an in depth operations and maintenance training session at the Wind Farm Facility for the CEB's operations staff.

15.1 Representations and Warranties

15.1.1 Each Party represents and warrants to the other that, as at the Execution Date:

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

15.1.2 The Project Company represents and warrants to the CEB that, as at the Execution Date:

- (i) the execution, delivery and performance of this Agreement does not conflict with the Project Company's memorandum and articles of association or conflict or result in the breach or termination of any

provision of or constitute a default under, any mortgage, loan, contract or other undertaking binding on the Project Company;

- (ii) it has the required authority, ability, skills, experience and capacity to perform, and shall perform all its obligations in connection with the Project in accordance with the terms of this Agreement;
- (iii) it has the knowledge of all the legal requirements and business practices in Sri Lanka that must be followed in performing its obligations under this Agreement and its obligations shall be performed in conformity with such requirements and practices; and
- (iv) it has reviewed the requirements of this Agreement, familiarised itself with all the relevant matters specific to Sri Lanka and/or the Wind Farm Facility and/or the Project Site and all other relevant matters, and utilising its experience and skills has made adequate provision for everything necessary to fulfil its obligations, in this Agreement

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

15.2 Notices

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

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

- (i) delivered personally; and or
- (ii) sent by prepaid registered post within Sri Lanka; and or

- (iii) sent by facsimile transmission (and promptly confirmed by prepaid registered post) or email transmission with subject line “Notice under [insert name of Agreement with date]”

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

- (iv) If to the CEB:

To: Ceylon Electricity Board
Address: No. 50, Sir Chittampalam A. Gardiner Mawatha, PO
Box 540, Colombo 00200, Sri Lanka.
Facsimile: 011 232 3935
Email ID: gm@ceb.lk
For: General Manager

With a copy to:

Address: No. 50, Sir Chittampalam A. Gardiner Mawatha, PO
Box 540, Colombo 00200, Sri Lanka.
Facsimile: 011 232 9902
Email ID: agmtr@ceb.lk
For: Additional General Manager (Transmission – Non
Wired Operation)

- (v) If to the Project Company:

To:
Address:
Facsimile:
Email ID:
For:

With a copy to:

Address:
Facsimile:
Email ID:
For:

15.2.3 No written communication will be effective until received. Without limiting any other ways for a Party to prove that another Party has received a notice, a notice or other written communication under this Agreement, will be treated as received:

- (i) if delivered personally, when left with an apparently responsible person at the recipient's address and person of the addressee acknowledges receipt in writing;
- (ii) if sent by registered post, on acknowledgement of receipt by or on the recipient's behalf;
- (iii) if sent by facsimile, on the sender's receipt of a transmission report indicating that the facsimile was sent in its entirety to the recipient's facsimile number, and if sent by email upon receipt of acknowledgment by the recipient;

but, if the delivery or receipt is not on a Business Day or after 14.00 hrs (local time) on any Business Day, the notice will be treated as received by the recipient at 9.00 hrs (local time) on the next Business Day.

15.3 Confidentiality and Publicity

15.3.1 All information (including contracts) provided by one Party to the other in connection with the negotiation or performance of this Agreement will be treated as confidential and will not be disclosed to any third party (except to Finance Parties and competent authorities with a proper need for the relevant information) without the other Party's prior written consent, which consent may not be unreasonably withheld.

15.3.2 Unless the law or the listing requirements of any relevant stock exchange require a Party to do so, no Party will disclose or publicise the existence or contents of this Agreement or any other transaction or document evidenced or contemplated by it (except to Finance Parties and competent authorities with a proper need for the relevant information), without the other Party's prior written consent, which consent shall not be unreasonably withheld.

15.3.3 Each of the Parties to this Agreement may communicate the aforementioned information to their directors, employees, advisors, agents and consultants on a need-to-know basis if their involvement in this Agreement or the Project or any

part of it is required, or to current or prospective lenders, insurers, finance and security providers and their agents or representatives (including, without limitation, multi-lateral agencies and export credit agencies (and their respective governments), guarantors, trustees, hedge counterparties, credit rating agencies or account banks), provided that each of the Parties to this Agreement (as applicable), procures that such third parties are subject to an equally onerous obligation of confidentiality.

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

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

15.4 Amendments

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

15.5 Waiver

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

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

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

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

15.6 Ownership of the Project Company

15.6.1 Save where Finance Parties exercise rights in terms of the Direct Agreements and save where otherwise agreed by the CEB pursuant to a request from the Project Company upon thirty Days' prior notice in accordance with Clause 15.6.3, at all times after the Execution Date:

- (i) until the fifth anniversary of the Commercial Operation Date, the [_____] shall maintain not less than 26% (twenty six percent) of the issued, subscribed and paid up equity capital of the Project Company; and the members of the consortium (_____) shall collectively maintain not less than 51% (fifty one percent) of the issued, subscribed and paid up equity capital of the Project Company till for a period of not less than 5 (five) years from the Commercial Operation Date. This shall be included in the articles of association of the Project Company.
- (ii) other than as set forth in Clause 15.6, no third party directly or indirectly, whether by itself or by or together with one or more third parties connected to such third party by way of shareholdings or otherwise, may own twenty-five per cent or more of the issued, subscribed and paid up share capital of the Project Company, provided always that where the Project Company requests the CEB's consent to such third party owning twenty-five per cent or more, the CEB's consent shall not be unreasonably withheld.

15.6.2 The Project Company shall, invest the Required Equity on or before the Scheduled Commercial Operation Date and shall give to the CEB satisfactory evidence thereof in the form of a certificate or letter of confirmation from an independent third party reasonably satisfactory to the CEB

15.7 Assignment and Transfers of Interest

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

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

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

provided that the surviving entity to whom the assignment or transfer is made assumes and becomes fully liable to perform the CEB's obligations under this Agreement and the Implementation Agreement with the Government and the respective direct agreements shall continue to be in force.

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

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

15.8 Severability

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

15.9 No Partnership or Other Relationship

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

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

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

15.10 Good Faith

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

15.11 Further Assurances

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

15.12 Liquidated Damages

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

15.13 Entirety of Agreement

This Agreement constitutes the entire Agreement between the Parties. It replaces all of the Parties' earlier discussions and agreements. No Party will be bound by

any conditions, definitions, warranties or representations except those stated in this Agreement or agreed in writing after this Agreement's date and properly signed by or on behalf of the Party to be bound by them.

16 DISPUTE RESOLUTION

16.1 Disputes

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

16.1.1 first amicably resolved between the Parties to this Agreement by good faith mutual discussions within thirty Days, or, in the case of a dispute involving insurance or any Disputed Amount, fourteen Days, after the date that the disputing Party gives notice of the dispute to the other Party identifying the dispute in reasonable detail and requesting consultations between the Parties to resolve the dispute, or, after such periods by discussions between the chief operating officer of the Project Company and the designated representative for system operations of the CEB (or such other official authorised by the CEB) within a further period of fifteen Days (or such longer period as the Parties may agree); or

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

17 GOVERNING LAW

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

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

The Common Seal of the **CEYLON ELECTRICITY BOARD** is affixed hereto in the presence _____, Chairman and _____, Vice Chairman of the Ceylon Electricity Board, who attest the sealing thereof

Witnesses:

1. _____ (Signature)

_____ (Name)

2. _____ (Signature)

_____ (Name)

The Common Seal of the _____ is affixed hereto in the presence of _____ and _____ two directors of the _____, who attest the sealing thereof

Witnesses:

1. _____ (Signature)

_____ (Name)

2. _____ (Signature)

_____ (Name)

SCHEDULES

Information Copy - Not for Bidding