

BIDDING DOCUMENT FOR SUPPLY OF COAL



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FOR

LAKVIJAYA POWER PLANT

CEYLON ELECTRICITY BOARD



For the period of December 2018 to March 2019

Spot Tender (ST) No: LCC/18-19/ST/12/1

SECTIONS

- SECTION 1 - INVITATION FOR BIDS**
- SECTION 2 - INSTRUCTIONS TO BIDDERS**
- SECTION 3 - CONDITIONS OF CONTRACT**
- SECTION 4 - PROPOSED COAL SUPPLY AGREEMENT**
- SECTION 5 - SCHEDULES**
- SECTION 6 - ANNEXURES**
- SECTION 7 - DEFINITIONS**

Table of Contents

1.0 SECTION 1 - INVITATION FOR BIDS	7
1.1. INVITATION	8
1.2. INTRODUCTION	8
1.3. BIDDING DOCUMENTS	8
1.4. SUBMISSION OF BIDS	8
1.5. LATE BIDS	8
1.6. BID SECURITY	8
1.7. BID OPENING	9
1.8. BIDDING PROCEDURE	9
2.0 SECTION 2 - INSTRUCTIONS TO BIDDERS (ITB)	10
2.1. BID DATA SHEET (BDS)	11
2.2. INTRODUCTION	12
2.2.1 SOURCE OF FUNDS	12
2.2.2 QUANTITY AND PRICE	12
2.2.3 PAYMENT TERMS	12
2.2.4 QUALITY	12
2.2.5 DELIVERY SCHEDULE	12
2.2.6 COST OF BIDDING	14
2.3 THE BIDDING DOCUMENTS	14
2.3.1 LIST OF BIDDING DOCUMENTS	14
2.3.2 CLARIFICATION OF BIDDING DOCUMENTS	14
2.4. PREPARATION OF BIDS	14
2.4.1 LANGUAGE OF BID	14
2.4.2 CONFIDENTIALITY OF BIDDING	14
2.4.3 DOCUMENTS TO BE SUBMITTED BY BIDDERS	15
2.4.4 BID AND PRICE PROPOSAL	15
2.4.5 BID PRICE	15
2.4.6 BID CURRENCY	15
2.4.7 BID SECURITY	15
2.4.8 VALIDITY OF BIDS	16
2.4.9 FORMAT AND SIGNING OF BID	16
2.5 SUBMISSION OF BIDS	17
2.5.1 SUBMISSION, SEALING AND MARKING OF BIDS	17
2.5.2 DEADLINE FOR SUBMISSION OF BIDS	17

2.5.3 LATE BIDS	17
2.5.4 MODIFICATION AND WITHDRAWAL OF BIDS	17
2.6 BID OPENING AND EVALUATION	17
2.6.1 OPENING OF BIDS	17
2.6.2 CLARIFICATION OF BIDS	17
2.6.3 EVALUATION OF BIDS	17
2.6.4 MAJOR DEVIATIONS	18
2.6.5 CONTRACTUAL AND COMMERCIAL ALTERNATIVES	19
2.6.6 CONTACTS WITH LCC	19
2.7 AWARD OF CONTRACT	19
2.7.1 ACCEPTABILITY	19
2.7.2 NOTIFICATION OF ACCEPTANCE AND SIGNING OF THE CONTRACT	19
2.7.3 PERFORMANCE SECURITY	19
3.0 SECTION 3 - CONDITIONS OF CONTRACT	21
3.1 SHIPPING AND TRANSPORT ARRANGEMENTS AND PLACE OF ORIGIN	22
3.2 WEIGHT	22
3.3 TRANSFER OF TITLE AND RISK OF LOSS	22
3.3.1 FOBT BASIS	22
3.3.2 INCOTERMS	22
3.4 QUALITY	22
3.4.1 UNIFORM QUALITY; NO FOREIGN MATTER	23
3.4.2 HANDLING CHARACTERISTICS	23
3.4.3 FAILURE TO MEET SPECIFICATION	23
3.4.4 ORGANIC CONTAMINANTS	23
3.4.5 RESPONSIBILITY	24
3.5 DETERMINATION OF QUALITY OF COAL DELIVERED	24
3.5.1 AT PORTS	24
3.5.2 DETERMINATION OF QUALITY	24
3.5.3. DISCREPANCIES	25
3.5.4 COST OF SAMPLING	25
3.5.5 <i>PROVISION OF ANALYSIS</i>	25
3.6 INVOICING	25
3.6.1 PAYMENT	26
3.7 FORCE MAJEURE	26
3.7.1 DEFINITION	26
3.7.2 EFFECTS OF FORCE MAJEURE	27

3.7.3	CERTAIN DELAYS NOT EXCUSED	27
3.7.4	NOTICE OF FORCE MAJEURE; PROCEDURE	27
3.8	FAILURE TO DELIVER	27
3.8.1	DELAYS AND FAILURE TO DELIVER COAL	27
3.8.2	SUBSTITUTE COAL	28
3.8.3	ADDITIONAL COSTS	28
3.9	WARRANTIES AND COVENANTS	28
3.9.1	WARRANTIES BY SELLER	28
3.9.2	WARRANTIES BY BUYER	29
3.9.3	WARRANTY AGAINST CONTINGENT FEES AND BENEFITS	29
3.10	EVENTS OF DEFAULT	30
3.10.1	SELLER EVENTS OF DEFAULT	30
3.10.2	BUYER EVENTS OF DEFAULT	31
3.11	TERMINATION	31
3.12	CONSEQUENCES OF DEFAULT	31
3.13	LIMITS OF LIABILITY	32
3.13.1	NO CONSEQUENTIAL LOSS	32
3.14	SITE VISITS	32
3.15	CONFIDENTIALITY	32
3.16	ENVIRONMENTAL CONSIDERATIONS	32
3.17	PERFORMANCE SECURITY	33
3.18	NO ASSIGNMENT	33
3.19	MUTUAL COLLABORATION	33
3.20	DISPUTES AND ARBITRATION	33
3.21	GOVERNING LAW	34
3.22	NO WAIVER; CUMULATIVE REMEDIES	34
3.23	NO PARTNERSHIP OR AGENCY	34
3.24	COSTS	34
4.0	SECTION 4 – PROPOSED COAL SUPPLY AGREEMENT	35
4.1	CONDITIONS PRECEDENT	36
4.2	TERMS OF THE AGREEMENT	36
4.3	DOCUMENT CONSTITUTING THE COAL SUPPLY AGREEMENT	36
4.4	DETERMINATION AND ADJUSTMENT OF PRICE OF COAL	37
4.5	DELIVERY SCHEDULE REFERENCE	37
4.6	NOTICES	37
4.7	ENTIRE AGREEMENT	37

4.8	SEVERABILITY	38
4.9	SURVIVAL	38
5.0	SECTION 5 - SCHEDULES	40
	SCHEDULE 1 - PART A : LCC'S SPECIFICATIONS FOR COAL	41
	SCHEDULE 1 - PART B : LCC REJECT VALUES FOR COAL	42
	SCHEDULE 1 - PART C : APPROVED MEASUREMENT STANDARDS	43
	SCHEDULE 2 - PART A : PRICE VARIATION	44
	SCHEDULE 2 - PART B : QUALITY PRICE ADJUSTMENTS	45
	SCHEDULE 3 - SHIPPING TERMS	49
	SCHEDULE 4 - FORM FOR SELLERS PERFORMANCE SECURITY	55
	SCHEDULE 5 - DOCUMENTS REQUIRED FOR LC	56
	SCHEDULE 5A - ADDITIONAL CONDITIONS FOR LETTER OF CREDIT	56
	SCHEDULE 5B - DOCUMENTS REQUIRED FOR FIRST PAYMENT	58
	SCHEDULE 5C - DOCUMENTS REQUIRED FOR FINAL PAYMENT	59
	SCHEDULE 6 - LETTER OF CONFIRMATION FOR FIRST PAYMENT	60
	SCHEDULE 7 - LETTER OF ACCEPTANCE	61
6.0	SECTION 6 - ANNEXURES	62
	ANNEXURE 1 : FORM OF BID	63
	ANNEXURE 2 : SPECIMEN FORM OF BID SECURITY	64
	ANNEXURE 3 : FORM OF POWER OF ATTORNEY	65
	ANNEXURE 4 : REMEDY FOR FALSE STATEMENTS	66
	ANNEXURE 5 : PRICE PROPOSAL	67
7.0	SECTION 7 - DEFINITIONS	68

SECTION 1

INVITATION FOR BIDS (TENDER)

DATE OF ISSUE : 26 November 2018

TENDER NUMBER : LCC/18-19/ST/12/1

INVITATION FOR BIDS (TENDER)

1.0 INVITATION FOR BIDS (TENDER)

1.1 INVITATION

Chairman, Special Standing Cabinet Appointed Procurement Committee (SSCAPC) of Ministry of Power and Renewable Energy, invites you amongst others to submit a Bid for the supply of 360,000 MT \pm 10% of Bituminous coal for the 900MW Lakvijaya Coal Power Plant (the Plant). This invitation is extended on behalf of Lanka Coal Company (Private) Limited hereinafter referred to as "LCC".

1.2 INTRODUCTION

LCC is the authorized agency for supply of coal for 3x300MW Lakvijaya Coal Power Plant located in the west coast of Sri Lanka. LCC was incorporated in January 2008 for the procurement of coal to meet full requirement of coal for all coal-fired power stations in the Country. Shares of the Company are held by the Ceylon Electricity Board, Ministry of Finance and Planning, Sri Lanka Ports Authority and Ceylon Shipping Corporation Ltd. LCC is a fully Government owned company.

1.3 BIDDING DOCUMENTS

In addition to this Invitation for Bids, please find enclosed the Bidding Documents: Section 2, Instruction to Bidders (ITB), Section 3, Conditions of Contract, Section 4, Proposed Coal Supply Agreement, Section 5 its Schedules, Section 6, Annexures and Section 7, Definitions.

1.4 SUBMISSION OF BIDS

Bids shall be submitted by hand or sent by courier to:

**Chairman SSCAPC
C/O Chairman
Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off-Dutugemunu Street,
Kohuwala/Dehiwala, Sri Lanka.**

Bids will be received up to 18th December 2018 on the date mentioned in the Bid Data Sheet (BDS) in Section 2 – "Instruction to Bidders"(ITB).

1.5 LATE BIDS

Bids received after the deadline for submission of bids stipulated in Clause 1.4 will be returned unopened to the bidder.

1.6 BID SECURITY

Each Bid shall be accompanied by a Bid Security to the value of USD 350,000 (Three Hundred Fifty Thousand).

The Bid Security in the form of a bank guarantee shall be issued by:

- a bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or
- a bank in another country and the Bid security confirmed by a bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.

1.7 BID OPENING

Bids will be opened in the presence of the bidders or their representatives at the time, date and at the address named in the Bid Data Sheet (BDS) as detailed in Section 2, Instruction to Bidders.

1.8 BIDDING PROCEDURE

A single stage, single envelope, bidding procedure will be adopted. Bidding Procedure applicable to this invitation is given in Section 2, Instructions to Bidders.

SECTION 2

INSTRUCTIONS TO BIDDERS (ITB)

2.0 INSTRUCTIONS TO BIDDERS (ITB)

2.1. BID DATA SHEET (BDS)

This Bid Data Sheet provides information in a tabular form to assist Bidders with Bid preparation and shall be attached to the Bid.

Name of Contract: Supply of Coal for Lakvijaya Power Plant, Sri Lanka for 2018-2019 Season

Tender Number : LCC/18-19/ST/12/1

Estimated Quantity of Coal to be purchased under this Contract: 360,000 ±10 % Metric Tons at Buyer's option

Period of Supply: Date to be changed as per the Delivery Schedule mentioned in Clause 2.2.5.

Item No.	Reference Clause	Data	
1		Name of the Buyer Address of the Buyer Telephone No. Telefax. No. Email Address.	Lanka Coal Company (Private) Limited Chairman, Lanka Coal Company (Private) Limited 51/3, Suranimala Place, Off-Dutugemunu Street, Kohuwala/Dehiwala, Sri Lanka. +94 11 2824681/ +94 11 2824682 +94 11 2824689 sujantha.pm@lankacoal.lk
2	2.4.5	Price	Price shall be quoted as per the ANNEXURE 5, per MT basis in USD
3	2.4.7	Amount of Bid Security	USD 350,000 (United States Three Hundred Fifty Thousand)
4	2.4.7	Period of validity of Bid Security	7 weeks from the closing date of the Bid
5	2.4.8	Period of Validity of Bids	5 weeks from the closing date of the Bid
7	2.5.1	The Bid and any modifications shall be submitted in 1 Original and 1 Copy	
8	2.5.2	Deadline for Bid Submission Place at which Bids will be received	10.00 am. (Sri Lanka Standard Time) on 18 th December 2018 At the address mentioned in Item 1 above.
9	2.6.1	Time, Date and Location for Bid Opening	10.00 am. (Sri Lanka Standard Time) on 18 th December 2018 at the address mentioned in Item 1 above
10	2.7.3	Performance Security	10% of the Awarded Price X 360,000 MT in USD
11	3.5.4	Cost of Sampling and Analysis at the Jetty of the Plant	USD 0.0688 plus local taxes applicable per MT (This amount has to be shared equally between the Seller and the Buyer)

2.2 INTRODUCTION

2.2.1 SOURCE OF FUNDS

LCC will utilize funds allocated by CEB which is a body incorporated by Act No. 17 of 1969 by Parliament of Sri Lanka, for eligible payments under the coal supply contract. Provisions of Public Contract Act No.3 of 1987 shall be applicable for this procurement.

2.2.2 QUANTITY AND PRICE

This tender is to select one (01) coal supplier for the Ceylon Electricity Board Lakvijaya Coal Power Plant of 900 MW. Quantity to be supplied as per the Bid Data Sheet (clause 2.1) and the details of delivery schedule (clause 2.2.5).

2.2.3 PAYMENT TERMS

Payment will be made by an irrevocable, unconfirmed documentary Letter of Credit established only at the "Peoples Bank of Sri Lanka" more fully described in Clause 3.6 of the Conditions of Contract. All bank charges outside Sri Lanka, if any, will be for the account of the Beneficiary (Seller). Eighty Per centum (80%) of the adjusted total invoice value will be paid upon submission of the required documents specified in the SCHEDULE 5B. Balance Twenty Per Centum (20%) will be paid upon submission of required documents specified in SCHEDULE 5C.

2.2.4 QUALITY

LCC's Specifications and Reject Values for Coal to be supplied to the Plant can be found in SCHEDULE 1 PART A and SCHEDULE 1 PART B attached to this document. LCC's Specifications for Coal are given for the purpose of all Bidders to quote for coal of one specific quality for the comparison of prices. However Bidders are not restricted to supply coal only to the quality specified in the LCC's Specifications but allowed to supply coal within the range of LCC specifications and shall be accepted by the Buyer at an adjusted price in accordance with schedule 2 Part A. The Coal, which specifications beyond the "LCC Reject Values for Coal" shall be liable for rejection by LCC. Also please refer Clause 3.5.2 of the Conditions of Contract.

2.2.5 DELIVERY SCHEDULE

LCC Requirement of Laycan Schedule for January 2018 to February 2019 only from the load ports given below.

1. South Kalimantan – Indonesia
2. East Kalimantan – Indonesia
3. RBCT – South Africa
4. Vostochny - Russia

Therefore, it is the responsibility of the supplier to do the loading of coal accordingly. Supplier is liable for the demurrages at the port of loading as described in Schedule 3 of Draft Coal Supply Agreement. Bidder shall not be responsible for any delays in sailing time.

Supplier shall liaise with CSCL / LCC in respect of confirmation of laycans and nomination of ships. Supplier shall responsible for any changes made by the supplier of the load port laycans after the confirmation.

Details on Shipping Terms can be found in Schedule 3 of Section 5.

Estimated Laycan Schedule for 06 Spot Shipments for Delivery between January to March

Assumptions 1: Each vessel arriving at the load port on the Middle Day of the Laycan

Assumptions 2: Parcel size 60,000 ±10%

Assumptions 3: Subject to weather permitted

Laycan No.	RBCT Laycan Subject to RBCT Guideline		Laycan Spread	Quantity MT	Load rate MT pwwd shinc
21	15-Jan-19	24-Jan-19	10	60,000	As per RBCT Guideline
22	20-Jan-19	29-Jan-19	10	60,000	
23	25-Jan-19	3-Feb-19	10	60,000	
24	30-Jan-19	8-Feb-19	10	60,000	
25	4-Feb-19	13-Feb-19	10	60,000	
26	9-Feb-19	18-Feb-19	10	60,000	
Total				<u>360,000</u>	

Laycan No.	South Kalimantan Laycan		Laycan Spread	Quantity MT	Load rate MT pwwd shinc
21	17-Jan-19	26-Jan-19	10	60,000	10,000
22	22-Jan-19	31-Jan-19	10	60,000	10,000
23	27-Jan-19	5-Feb-19	10	60,000	10,000
24	1-Feb-19	10-Feb-19	10	60,000	10,000
25	6-Feb-19	15-Feb-19	10	60,000	10,000
26	11-Feb-19	20-Feb-19	10	60,000	10,000
Total				<u>360,000</u>	

Laycan No.	East Kalimantan Laycan		Laycan Spread	Quantity MT	Load rate MT pwwd shinc
21	15-Jan-19	24-Jan-19	10	60,000	10,000
22	20-Jan-19	29-Jan-19	10	60,000	10,000
23	25-Jan-19	3-Feb-19	10	60,000	10,000
24	30-Jan-19	8-Feb-19	10	60,000	10,000
25	4-Feb-19	13-Feb-19	10	60,000	10,000
26	09-Feb-19	18-Feb-19	10	60,000	10,000
Total				360,000	

Laycan No.	Vostochny Laycan		Laycan Spread	Quantity MT	Load rate MT pwwd shinc
21	6-Jan-19	15-Jan-19	10	60,000	10,000
22	11-Jan-19	20-Jan-19	10	60,000	10,000
23	16-Jan-19	25-Jan-19	10	60,000	10,000
24	21-Jan-19	30-Jan-19	10	60,000	10,000
25	26-Jan-19	4-Feb-19	10	60,000	10,000
26	31-Jan-19	9-Feb-19	10	60,000	10,000
Total				360,000	

2.2.6 COST OF BIDDING

The Bidder shall bear all costs associated with the preparation and submission of its Bid and LCC will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the Bidding process. By participating in the bidding, each Bidder agrees and acknowledges that in no event shall it be entitled to make a claim of any kind against LCC or LCC's officers, employees, or consultants arising out of, relating to, or in any way connected with the Bidder's bid or LCC's consideration thereof.

2.3 THE BIDDING DOCUMENTS

2.3.1 LIST OF BIDDING DOCUMENTS

The Bidding Documents include:

- ❖ SECTION 1, INVITATION FOR BIDS
- ❖ SECTION 2, INSTRUCTIONS TO BIDDERS
- ❖ SECTION 3, CONDITIONS OF CONTRACT
- ❖ SECTION 4, PROPOSED COAL SUPPLY AGREEMENT
- ❖ SECTION 5, SCHEDULES 1 TO 7
- ❖ SECTION 6, ANNEXURES 1 TO 5
- ❖ SECTION 7, DEFINITIONS

The Bidder is expected to examine Invitation for Bids, Instructions to Bidders, Annexures, Conditions of Contract, and Proposed Coal Supply Agreement, Schedules, Specifications and other information in the Bidding Document. Failure to furnish all information required by the Bidding Document or submission of a Bid not substantially responsive to the Bidding Document will be at the Bidder's risk and may result in rejection of Bid.

2.3.2 CLARIFICATIONS OF BIDDING DOCUMENT AND PRE BID MEETING - NOT APPLICABLE

2.4 PREPARATION OF BID

2.4.1 LANGUAGE OF BID

The language of this bid is English. Any document submitted in another language will be considered for evaluation only when submitted accompanying with English translation. If any document in a language other than English, accompanying with English Translation, such translation shall be attested by a Sworn Translator to be true and accurate translation. Any discrepancy in the Original and the Translation may result in disqualification of the Bidder.

2.4.2 CONFIDENTIALITY OF BIDDING

The prices in the Bidder's PRICE PROPOSAL must be determined independently, without consultation, communication, or agreement with any other Bidder or potential Bidders.

The prices that have been quoted in the Bidder's PRICE PROPOSAL must not and will not knowingly be disclosed by the Bidder directly, or indirectly, to any other Bidder or potential Bidder prior to the time of Bid opening. Bidder warrants that no attempt has been made, directly or indirectly, to induce any other persons or firms to submit or not to submit a Bid for the purpose of restricting competition.

The Bidder shall not disclose the Bid Documents to any third party who is not directly related with the preparation of the Bid proposal.

2.4.3 DOCUMENTS TO BE SUBMITTED BY BIDDERS

When submitting a Bid in accordance with Clause 2.5, the Bidder shall submit the following documents in the format and manner prescribed in Clauses 2.4.9 and Clauses 2.5.1 respectively.

Following documents shall be initialled by the person or persons signing the Bid.

- (i) FORM OF BID (ANNEXURE 1) duly completed and signed by the Bidder;
- (ii) BID SECURITY (ANNEXURE 2, specimen form attached)
- (iii) POWER OF ATTORNEY (ANNEXURE 3)
- (iv) REMEDY FOR FALSE STATEMENT (ANNEXURE 4)
- (v) PRICE PROPOSAL (ANNEXURE 5) duly completed and signed by the Bidder
- (vi) CONDITIONS OF CONTRACT
- (vii) PROPOSED COAL SUPPLY AGREEMENT
- (viii) PCA 3 Form.

Please note that PCA-3 form is a prescribed form under the Public Contracts Act No.3 of 1987, which specifies the persons to be required to register with the Registrar of Public Contracts.

This act is available for your reference at
http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes_1956_2006/indexs/Vol2/1987YOVOC3A.html

2.4.4 FORM OF BID AND PRICE PROPOSAL

The Bidder shall complete the FORM OF BID, (ANNEXURE 1) and the PRICE PROPOSAL, (ANNEXURE 5), in the manner and details indicated therein, following the requirements of Clause 2.4.5 and Clause 2.4.6.

2.4.5 BID PRICE

The Fixed Price quoted in ANNEXURE 5 will be taken for evaluation purposes (Clause 2.6.3).

The bidders are required to quote the FOBT fixed price in USD per MT for the supply of coal strictly complying with LCC Specifications (SCHEDULE 1 Part A) and Reject Values (SCHEDULE 1 Part B). Bids not complying with the LCC Specifications shall be rejected.

2.4.6 BID CURRENCY

Bidder's PRICE PROPOSAL shall be made in United State Dollar (USD).

PRICE PROPOSALS based on other currencies will be rejected.

2.4.7 BID SECURITY

All Bids must be accompanied by a Bid Security in the amount and currency and validity as specified in the Bid Data Sheet. The Bid Security, in the form provided in ANNEXURE 2, shall be a Bank Guarantee issued by

- A Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or
- A Bank in another country and the Bid security "confirmed" by a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.

Any Bid not secured as aforesaid shall be rejected as non-responsive.

Unsuccessful Bidder's Bid Security will be discharged/returned as promptly as possible following provision of performance security by the successful Bidder. The successful Bidder's Bid Security will be discharged upon the signing the Coal Supply Agreement, pursuant to Clause 2.7.2, and fulfilling the conditions precedent of the Conditions of Contract.

The Bid Security may be forfeited:

- (a) If a Bidder:
 - i) Withdraws its Bid during the period of Bid Validity specified in Clause 2.4.8;
 - ii) Refuses to accept the arithmetical correction made according to Clause 2.6.3;
 - iii) Found at fault as per ANNEXURE 4, REMEDY FOR FALSE STATEMENT
 - iv) is found to have submitted any false or fraudulent document
 - v) is found to have made any false statement in the Bid Document
 - vi) is in breach of utmost good faithor
- (b) In case of a successful Bidder, if the Bidder fails:
 - (i) To sign the Contract in accordance with Clause 2.7.2;
 - (ii) To furnish Performance Security in accordance with Clause 2.7.3.

2.4.8 VALIDITY OF BIDS

Bids shall remain valid for a period as specified in Bid Data Sheet. A Bid valid for a shorter period shall be rejected as non-responsive.

In exceptional circumstances, LCC may solicit Bidder's consent to an extension of the period of validity of their Bids. The request and responses thereto shall be made in writing or by email or telefax. If a Bidder accepts to prolong the period of validity, the Bid Security shall also be extended accordingly. A Bidder may refuse the request without affecting his Bid Security. Any Bidder accepting the request will not be required nor permitted to modify its Bid.

2.4.9 FORMAT AND SIGNING OF BID

The Bidder shall prepare one original and one copy of the Bid, clearly marking each one as "Original" and "Copy", as appropriate. In the event of any discrepancy between the Original and Copy, the Original shall govern.

The Original and the copy of the Bid, each consisting of the documents listed in Clause 2.4.3 above, shall be typed, written or otherwise reproduced in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract. The latter authorization shall be indicated by written power-of-attorney accompanying the Bid and submitted as ANNEXURE 3 to the Bid. All pages of the Bid shall be initialled by the person or persons signing the Bid.

The Bid shall not contain any interlineations, erasures or overwriting except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

2.5 SUBMISSION OF BIDS

2.5.1 SUBMISSION, SEALING AND MARKING OF BIDS

Both "Original" and the "Copy" shall be sealed and:

- (a) Addressed to Chairman SSCAPC on behalf of Lanka Coal Company
51/3, Suranimala Place. Off-Dutugemunu Street, Kohuwala/Dehiwala, Sri Lanka.
- (b) Bear the Tender Name, the TENDER number, and the Words "DO NOT OPEN BEFORE (Time of Bid Opening) HOURS ON (Date of Bid Submission)" in accordance with Bid Data Sheet and Clause 2.5.2.

The envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in the case it is declared as "late". If the envelopes are not sealed and not marked as mentioned above, LCC will assume no responsibility for the misplacement or premature opening of the Bid.

2.5.2 EXTENSION FOR SUBMISSION OF BIDS – NOT APPLICABLE

2.5.3 LATE BIDS

Any Bid received by LCC after the deadline for submission of Bids as specified in Bid Data Sheet will be rejected and returned unopened to the Bidder.

2.5.4 MODIFICATIONS AND WITHDRAWALS OF BIDS - NOT APPLICABLE

2.6 BID OPENING AND EVALUATION

2.6.1 OPENING OF BIDS

Original Bids will be opened at the time of Bid Opening and at the location stated in the Bid Data Sheet.

Bidder's representatives may attend the opening and those who are present shall sign a register evidencing their attendance.

The Bidder's name, Bid Price, Discounts if any, availability of Bid Security and such other details considered as important, will be announced and recorded at the opening. No alternative offers will be accepted. The Bidder's representatives who are present shall be requested to sign the schedule prepared by the opening committee. A copy of the record shall be distributed to all Bidders who submitted Bids in time.

2.6.2 CLARIFICATION OF BIDS

As appropriate

2.6.3 EVALUATION OF BIDS

The evaluation will be based on the FOBT price quoted for Specifications given in the schedule 1 Part A and the price adjustments pursuant to the quality of coal will not be considered in evaluation of Bids. The price given by the bidders in the Annexure 5 will stand as quoted final price for award of contract. No adjustment/s according to the quality parameters or changes in price are allowed in evaluation and award of contract.

The supply of coal shall adhere to the quality requirement / parameters mentioned in LCC Specifications specified in Schedule 1, Part A. The offers for alternative specifications for coal with different quality standards shall not be considered for further evaluation and shall be rejected. Reject values for Coal are given in Schedule 1 Part B in Section 5.

A Bid may be disqualified and excluded from further consideration for any valid reason including but not limited to, the reasons listed below:

- I. Failure to submit under the required package or envelope as described in Clause 2.5 above.
- II. Receipt of the Bid after the Closing Date.
- III. Failure to submit all documents, including the supporting documentation or any other clarification or any documents requested within the required time frame.
- IV. Failure to provide the Bid Security.
- V. Willful misrepresentations in the Bid.
- VI. Illegal conduct or attempts to influence the GOSL, LCC, CEB, TEC or SSCAPC in evaluation of a Bid.

Arithmetical errors will be rectified on the following basis. If there is a discrepancy between words and figures (numerical value), the amount in words will prevail. If the Bidder does not accept the correction of errors, Bid will be rejected.

2.6.4 MAJOR DEVIATIONS

The following events, the list of which is not meant to be exhaustive should be considered as major deviations:

- (a) non-submission of bid security;
- (b) insufficient bid security ;
- (c) failure to provide sufficient validity period of the bid;
- (d) unsigned Bid or not signed by an authorized person/s;
- (e) failure to bid on specified documents;
- (f) bidder requires price fluctuation whereas bidding document specifies otherwise;
- (g) deviation from bid documents which affects the bid price but cannot be given monetary value;
- (h) departure from technical specifications of critical nature;
- (i) bidder proposes to subcontract major components of the work against the conditions provided;
- (j) absence of documents intended to substantiate the legitimacy of the bid (i.e. that the Bid is not a 'speculative', 'exploratory' or 'wait-and-see' Bid) or proof of reliability of the equipment offered;
- (k) conditional bids, that is, subject to prior sale, availability of components in the market;
- (l) unacceptable technical features;
- (m) bids which are not responsive to critical, technical or commercial requirements in the Bidding Document.
- (n) Not availability of PCA 3 form.

2.6.5 CONTRACTUAL AND COMMERCIAL ALTERNATIVES - NOT APPLICABLE

2.6.6 CONTACTS WITH LCC

Subject to Clause 2.6.2, no Bidder shall contact LCC or any other person or organization involved on any matter relating to its Bid, from the time of the opening of Bids to the time the Contract is awarded.

Any effort by a Bidder to influence LCC in LCC's Bid evaluation, Bid comparison or Contract Award decisions may result in rejection of the Bid.

2.7 AWARD OF CONTRACT

2.7.1 ACCEPTABILITY

After negotiations by the SSCAPC on behalf of the LCC, while taking in to account the proposed Contract Price and Delivery Schedule, SSCAPC will determine to its satisfaction whether the Bidder selected by the evaluation process as having submitted the responsive Bid at the favourable evaluated FOBT Bid Price as described in Clause 2.6.3 in Evaluation Procedure is qualified to satisfactorily perform the Contract. SSCAPC reserves the right to accept or reject any Bid, and to cancel the Bidding process and reject all Bids at any time prior to the issuance of the letter of award, without thereby incurring any liability to the Bidders or any obligation to inform the Bidders of the grounds for SSCAPC's action.

2.7.2 NOTIFICATION OF ACCEPTANCE AND SIGNING OF THE CONTRACT

After determining the successful Bidder in accordance with the Clause 2.7.1 and prior to the expiration of the period of Bid validity, LCC will notify the successful Bidder by way of a Letter of Award by registered letter or electronically by email or telefax and confirmed in writing by registered letter, that his Bid has been accepted.

LCC will also send the Bidder, the proposed Coal Supply Agreement provided in the Bid Documents.

Upon receipt of the Letter of Award and the proposed Coal Supply Agreement, the successful Bidder shall enter into an agreement with LCC and the date for signing the Agreement will be notified.

2.7.3 PERFORMANCE SECURITY

Within seven (7) days of receipt of the Letter of Award, the successful Bidder shall furnish the Performance Security in the form of Bank Guarantee for amount given in the Bid Data Sheet.

A Specimen Form is given as Schedule 4.

The Performance Security in the form of a bank security shall be issued by:

1. A bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka, or
 2. A bank in another country, but the security confirmed by a bank operating in Sri Lanka approved by the Central Bank of Sri Lanka.
- The validity of the performance Security shall valid for be ninety (90) days from the date of successful completion of the final delivery of last shipment of the contract.

- Performance Security shall be forfeited due to any breach of the contractual conditions of the Agreement by the Seller even though the seller has delivered the full quantity of Coal ordered by the Buyer.

Failure of the successful Bidder to comply with the requirements of Clause 2.7.2 or Clause 2.7.3 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.

SECTION 3

CONDITIONS OF CONTRACT

3.0 CONDITIONS OF CONTRACT

3.1 SHIPPING AND TRANSPORT ARRANGEMENTS AND PLACE OF ORIGIN

Coal shall be supplied FOBT basis, upon the terms more particularly set out in Schedule 3.

A certificate of origin according to paragraph 7 in Schedule 3, shall be issued to confirm the origin of each shipment of coal. This document will be part of the shipping documents described in Schedule 3 sent by courier within seven (7) days after departure of each vessel from the load port.

3.2 WEIGHT

The weight of each shipment of Coal shall be determined at the Port of Loading and the Discharging Anchorage.

The draft survey for weight determination shall be carried out by an Independent Marine Surveyor acceptable to both the Buyer and the Seller and shall be binding on both parties. The cost of weight determination at the Port of Loading shall be for the Seller's account and the cost of such weight determination at the discharging anchorage shall be shared equally by the buyer and the seller.

The Independent Marine Surveyor shall also inspect all holds of the vessel at the Port of Loading to ensure that they have been thoroughly cleaned and are suitable for carrying that shipment of Coal, and shall issue a hold cleaning inspection certificate also.

The Seller shall promptly provide via electronic transmission to the Buyer certificates of weight determination issued by the Independent Marine Surveyor. The originals shall accompany each invoice prepared and submitted in accordance with Clause 3.6

The weight determined at the Port of Loading shall be considered as the quantity of coal in each shipment unless the weight determined at the Discharging Anchorage differ by more than 0.5%. In the event the difference of weight, differ more than 0.5% then the weigh/ quantity at the Discharging Anchorage of each shipment shall be taken as the final weight for the purpose of invoicing.

3.3 TRANSFER OF TITLE AND RISK OF LOSS

3.3.1 FOBT BASIS

Risk of loss of Coal shall pass from the Seller to the Buyer as the Coal loaded and trimmed on board the nominated carrying vessel at the Port of Loading and title to the Coal shall pass from the Seller to the Buyer upon receipt by the Buyer the shipping documents more particularly described in Schedule 3;

3.3.2 INCOTERMS

Incoterms 2010 or the latest edition currently available at the date of the relevant shipment shall apply to each shipment of Coal. However for the purpose of interpretation, priority shall be always given to the Agreement.

3.4 QUALITY

The Coal supplied by the Seller shall meet the specifications set out in SCHEDULE 1 PART A of the Section 5. Coal not conforming to the Specifications in SCHEDULE 1 PART A but not falling within the reject values in SCHEDULE 1 PART B shall be accepted by the Buyer at an adjusted Price in accordance with Part B of SCHEDULE 2.

3.4.1 UNIFORM QUALITY; NO FOREIGN MATTER

The Seller shall ensure that each shipment is free from foreign matter which might damage or interfere to a material extent with the operation of Vessels or the Plant's (Ceylon Electricity Board) Coal Unloading and Handling Facilities.

3.4.2 HANDLING CHARACTERISTICS

The Seller shall ensure that all Coal has appropriate handling characteristics, which enable reasonable discharge and transport to coal yard of the plant.

3.4.3 FAILURE TO MEET SPECIFICATION

If one or more parameter of coal delivered falls within the LCC (Buyer) reject values stated in SCHEDULE 1 PART B, within 72 hours after receiving the binding certificate of analysis of load port provided pursuant to Clause 3.5.2, LCC reserve the right to either:

- (a) Reject such coal, in which case the Seller shall promptly at the Buyer's request remove such coal at the Seller's cost if practicable and to the extent that such coal is rejected, the Seller shall be obliged to offer Substitute Coal which no parameters which have Reject Values stipulated in the SCHEDULE 1 PART B is within the specified Reject Values; or.
- (b) In the event, the Buyer does not reject such Coal as per Clause 3.4.3(a) above, it is deemed to have accepted such coal (which acceptance shall be without prejudice to the Buyer's right to reject future deliveries of coal which is of similar quality to that Delivered) subject to double the quality price adjustment (2 times of the applicable quality price adjustments as mentioned in **SCHEDULE 2: PART B QUALITY PRICE ADJUSTMENT**)
- (c) In the event of the coal is rejected and the Seller provides substitute coal, the Seller is not exempted from paying any Liquidated Damages on account of any delays and the provisions of Clause 3.8.1 shall be applicable, considering the delay till such substitute Coal is loaded and trimmed on board the nominated carrying vessel at the Port of Loading.
- (d) In the event the **Sulphur** content of coal delivered falls within the LCC reject values stated in SCHEDULE 1 PART B, the Buyer may, within 72 hours after receiving the binding certificate of analysis of load port provided pursuant to Clause 3.5.2, LCC shall reject such Coal subject to clause 3.4.3(a).

3.4.4 ORGANIC CONTAMINANTS

The Buyer reserves the right to randomly request that shipments be analysed by the Independent Surveyor to determine with presence of organic contaminants including but not limited to petroleum coke, pitch, pitch coke, tar sludge or other petroleum by-product-related solids. Seller's approval to have shipments undergo such testing shall not be unreasonably withheld. Testing shall be performed in accordance with the relevant ASTM standard and results of such testing shall be final, conclusive and binding on the Parties.

If the results of such testing report the presence of such organic contaminants, the cost of testing shall be for the Seller's account and Buyer reserves all remedies available under law including, but limited to, termination of the Agreement.

If the results of such testing are negative with regard to the presence of organic contaminants, the cost of testing shall be for the Buyer's account.

3.4.5 RESPONSIBILITY - NOT APPLICABLE

3.5 DETERMINATION OF QUALITY OF COAL DELIVERED

3.5.1 AT PORTS

Each shipment of Coal will be sampled at the Port of Loading and at the Jetty of the Plant as applicable in accordance with the ASTM standards (Approved Measurement Standards).

3.5.2 DETERMINATION OF QUALITY

(a) The analysis of samples will be carried out by the Independent Surveyors acceptable to buyer and seller in accordance with the Approved Measurement Standards as specified in Schedule 1 Part C. One (1) representative sample of Coal shall be taken by the Seller at the Port of Loading and one (1) representative sample of Coal shall be taken by the Buyer at the Jetty of the Plant, in each case in accordance with the Approved Measurement Standards and under the supervision of Independent Surveyors. Each sample shall be divided into two (2) parts, with one (1) such part to be used for the analysis of the sample by the Independent Surveyor. The remaining part shall be available as a reference (umpire) sample and shall be retained by the party taking such sample in a suitable airtight container, properly labelled and sealed, for not less than ninety (90) days from the BL date. In the event of the Buyer unable to take samples as specified in this as specified above, the analysis of the sample taken at the Port of Loading be deemed conclusive.

However, the Buyer may appoint another Independent Surveyor, acceptable to the Seller, who shall be permitted to supervise the sampling at the Port of Loading. In such event, the reference sample taken at the Port of Loading shall be sealed, by the Independent Surveyor responsible for analysis of the sample and the Independent Surveyor appointed by the Buyer, in a suitable air tight container and retained by the Independent Surveyor appointed by the Buyer for period not less than ninety (90) days from the BL date.

Similarly the Seller may appoint another Independent Surveyor, acceptable to the Buyer, who shall be permitted to supervise the sampling at the Port of Jetty of the Plant. In such event, the reference sample taken at the Jetty of the Plant shall be sealed, by the Independent Surveyor responsible for analysis of the sample and the Independent Surveyor appointed by the Seller, in a suitable air tight container and retained by the Independent Surveyor appointed by the Seller for period not less than ninety (90) days from the BL date.

(b) The Seller shall provide via electronic transmission to the Buyer certificates of analysis, from the Independent Surveyor, within Seven (07) working days after completion of the relevant Coal being loaded at the Port of Loading. The certificates of analysis taken at the Port of Loading shall be binding on both parties other than in the case of demonstrable error or fraud, and except as provided in Clause 3.5.3

(c) Two (2) authorized representatives of the buyer shall be permitted to supervise the sampling & analysis process at the Port of Loading in random timing approximately one (1) visit for each spot tender basis and the seller shall facilitate to the above process.

3.5.3 DISCREPANCIES

If the GCVar (Gross Calorific Value as received basis) value of the sample taken at the Jetty of the Plant is recorded less than 1.5% when compared with the GCVar result of sample obtained at the loading port, then the Buyer may request umpire sample taken at the port of loading and retained with the surveyor for further analysis (umpire sample) by an Independent surveyor appointed by buyer.

For the parameters other than GCV, If a discrepancy shall occur between the results of the two analyses taken at the Port of Loading and the Jetty of the Plant, which may effect to the Plant performance or environment, then the Buyer or Seller may request that Coal from the umpire sample taken at the Port of loading be further analysed by an Independent surveyor appointed by the buyer.

The results of the Umpire sample Analysis shall become as Binding and conclusive.

3.5.4 COST OF SAMPLING

The cost of sampling and analysis at the Port of Loading and / or Discharging Anchorage / at the Jetty of the plant will be for the Seller's account and the cost of such sampling and analysis at the Jetty of the Plant will be shared equally by the buyer and the seller. In the event of a further analysis by the Independent Surveyor, the cost shall be borne by the party requesting such analysis. In the event the request for analysis of Umpire Sample is made by the Buyer and the Umpire Analysis Certificate indicates that the results is not within the tolerances allowed by the Standard and the result of the Umpire sample Analysis Certificate shall become the Binding Result as per Clause 3.5.3 above, the Seller shall reimburse the cost of analysis of umpire Sample to the Buyer. The cost of Independent Surveyors appointed by the Buyer or Seller for the purpose of sealing and retaining reference samples shall be to the account of the respective party.

3.5.5 PROVISION OF ANALYSIS

The Seller shall provide to the Buyer copies of the results of the Analysis of samples taken at the Port of Loading. Such provision shall be made electronically; however, originals of the relevant test such shall accompany each Commercial Invoice prepared and submitted in accordance with Clause 3.6. as applicable to the country of origin.

3.6 INVOICING

Invoices for Coal which has been delivered to the Buyer and has not been rejected by the Buyer pursuant to Clause 3.5.3 shall be issued in the manner hereinafter set out for each shipment in required number of copies;

There shall be two commercial invoices (First invoice for Payment for 80% and the second invoice for the Final Payment for 20%) for each shipment shall contain the following details:

- (i) Name of the Seller
- (ii) Invoice No. and date
- (iii) Coal Season / Shipment Number
- (iv) Identification of the Coal
- (v) Date(s) of delivery
- (vi) Vessel Name / Number or Voyage Name / Number

- (vii) Tonnage for the relevant shipment
- (viii) Fixed FOBT Price per MT as per clause 2.6.3
- (ix) Invoice Value/Amount due (value of coal after quality adjustment)
- (x) The Buyer contract (Tender) reference number
- (xi) LC reference No.
- (xii) BL No. and Date

The Invoice shall be set out as follows:

Total = (Tonnage) x (Applicable Awarded Price per MT less Quality Price Adjustments)

Applicable Awarded Price and Quality Price Adjustments (Gross Calorific value, ash content, sulphur content, moisture, Size and volatile matter) shall be in accordance with Price Proposal, Annexure 5 and Part B, Schedule 2 of Section 5.

Each invoice shall be accompanied by all such supporting documentation as the parties shall agree are required to enable the Buyer to establish the accuracy of the amounts claimed in the relevant Commercial Invoice.

3.6.1 PAYMENT

The Letter of Credit (LC) will be issued to the Seller within seven (7) days from the Expected Time of Arrival (ETA) of the carrying vessel at the Port of Loading. The value of the LC will be determined based on the Proforma invoice issued by the seller before seven (7) days prior to the first date of Laycan scheduled at the Port of Loading.

All payments under the Agreement shall be made to the Seller by means of an irrevocable, unconfirmed documentary Letter of Credit payable at sight open only with the Peoples Bank of Sri Lanka. All bank charges outside Sri Lanka, if any, will be on account of the Seller. Eighty per centum (80%) of the adjusted total invoice value will be paid upon submission of the required documents for First Payment Specified in "Schedule 5B" to this agreement. The Balance Twenty per centum (20%) will be released on submission of the required documents for Final Payment specified in "Schedule 5C".

Required documents to draw the letter of credit payment by the seller, is described in under the "**DOCUMENTS REQUIRED FOR FIRST PAYMENT** in **SCHEDULE 5B**" and "**DOCUMENT REQUIRED FOR FINAL PAYMENT**" in **SCHEDULE 5C** of "**SECTION 5**" in **Bidding Document**.

3.7 FORCE MAJEURE

3.7.1 DEFINITION

An **Event of Force Majeure** shall mean any circumstances not within the reasonable control, directly or indirectly, of the party affected, but only if and to the extent that (i) such circumstances despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such party, (ii) such event materially adversely affects the ability of the affected party to perform its obligations under the Agreement, and the affected party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the affected party's ability to perform its obligations under the Agreement and to mitigate the consequences thereof, (iii) such event is not the direct or indirect result of the failure of such party to perform any of its obligations under the Agreement and (iv) such party has given the other

party prompt notice describing such events, the effect thereof and the actions being taken in order to comply with this Clause provided that Events of Force Majeure shall not include strikes, lockouts or other industrial action by non-manual personnel of the party seeking to invoke that Event of Force Majeure or of such party's agents or contractors.

3.7.2 EFFECTS OF FORCE MAJEURE

Except as otherwise provided herein or may further be agreed between the parties, either party shall be excused from performance and shall not be construed to be in default in respect of any obligations hereunder for so long as failure to perform such obligations shall be due to an Event of Force Majeure.

3.7.3 CERTAIN DELAYS NOT EXCUSED

Notwithstanding that an Event of Force Majeure otherwise exists, this Clause shall not excuse:

- (a) Late payment of money;
- (b) Late delivery of Coal caused by negligent acts or omissions on the part of Seller, its contractors or any subcontractor to its contractors, except any such late delivery otherwise arising from an Event of Force Majeure shall be excused if it arose from a negligent act or omission of a contractor or a subcontractor which a reasonable and prudent business person would not have anticipated from a qualified contractor or subcontractor;
- (c) Late performance by Seller or its contractors or any subcontractor to its contractors;
- (d) Delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground or sea conditions unless the affected party has taken reasonably prudent steps to prevent or mitigate the effects of such conditions.

3.7.4 NOTICE OF FORCE MAJEURE; PROCEDURE

As soon as possible following the commencement of any Event of Force Majeure, if either party desires to invoke such Event of Force Majeure as a cause for delay in the performance of any obligation (other than the payment of money) hereunder it shall advise the other party in writing of such date and the nature and expected duration of such Event of Force Majeure. As soon as possible and in any event within twenty-four (24) hours following the termination of such Event of Force Majeure, the party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other party reasonable proof of the nature of such delay and its effect upon the time of performance. The parties;

- (a) shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate acceptable sources of coal, services, equipment and materials; and
- (b) shall use their best efforts to ensure resumption of normal performance after the termination of any Event of Force Majeure and shall perform their obligation to the maximum extent practicable agreed between the parties.

3.8 FAILURE TO DELIVER

3.8.1 DELAYS AND FAILURE TO DELIVER COAL

If the Seller fails to load and trim the cargo on board the nominated performing vessel at the port of loading, which has arrived at the port of Loading and tendered Notice of Readiness

as per the governing charter party agreement and / or Rules and Regulations of the loading port, the Seller shall pay to the Buyer, by way of Liquidated Damages, an amount equal to the 0.5% of the total "CIF Jetty" value of the consignment per day or part thereof such delay.

In the event that the delays occurred in more than two (2) occasions (shipments) exceeding seven (07) days, the Buyer reserves the rights to terminate the Contract considering as the breach of the Agreement by the Seller Under the provision in the Clause 3.11 of the Conditions of Contract.

The time of delay will be calculated after a grace period of 24 hours from the time of expiry of the "Turn Time" as per the governing charter party agreement and / or Rules and Regulations of the loading port.

3.8.2 SUBSTITUTE COAL

If the Seller cannot meet its supply obligations under the Agreement (save to the extent that such inability is caused by an Event of Force Majeure) the Seller shall be obliged to be supplied coal of a similar quality and tonnage meeting all other provisions of the Agreement from other sources.

3.8.3 ADDITIONAL COSTS

Subject to Clause 3.8.2, the Seller shall bear in full any additional costs of supplying coal from another source as specified above. If Buyer has to purchase coal from an alternative source (**Qualifying Alternative Coal**) as a result of the non-performance of the Seller, the Seller shall bear any additional costs reasonably incurred by the Buyer in connection with the purchase of Qualifying Alternative Coal.

3.9 WARRANTIES AND COVENANTS

3.9.1 WARRANTIES BY SELLER

The Seller hereby represents and warrants to the Buyer that:

- (a) It is a duly incorporated company with limited liability/joint venture and validly existing under the laws of(*insert country of incorporation of the company*);
- (b) the documents which contain or establish its constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for it to sign and deliver, and perform the obligations contemplated in, the Agreement and the Agreement constitutes valid and binding obligations of it enforceable in accordance with the terms hereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;
- (c) Neither the signing and delivery of the Agreement nor the performance of any of its obligations hereunder does or will contravene or constitute a default under, or cause to be exceeded any limitation on it or the powers of its directors imposed by or contained in:

- (i) Any law by which it or any of its assets is bound or affected;
 - ii) Any document which contains or establishes its constitution; or
 - (iii) Any agreement to which it is a party;
- (d) It will have good title to all Coal, free from all liens, security interests and adverse claims, when title to that Coal is to pass to the Buyer pursuant to Clause 8;
- (e) It has obtained all licences, permits, certificates, full title and other documents necessary to sell and Deliver Coal as required by the Agreement; and
- (f) It has all necessary experience and qualifications in order to perform its obligations under the Agreement.

3.9.2 WARRANTIES BY BUYER

The Buyer hereby represents and warrants to the Seller that:

- (a) It is a duly incorporated company with limited liability and validly existing under the laws of the Democratic Socialist Republic of Sri Lanka;
- (b) The documents which contain or establish its constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for it to sign and deliver, and perform the obligations contemplated in, the Agreement and the Agreement constitutes valid and binding obligations of it enforceable in accordance with the terms hereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;
- (c) Neither the signing and delivery of the Agreement nor the performance of any of its obligations hereunder does or will contravene or constitute a default under, or cause to be exceeded any limitation on it or the powers of its directors imposed by or contained in:
 - (i) Any law by which it or any of its assets is bound or affected;
 - (ii) Any document which contains or establishes its constitution; or
 - (iii) Any agreement to which it is a party; and,

3.9.3 WARRANTY AGAINST CONTINGENT FEES AND BENEFITS

Seller represents and warrants that no person has been employed or retained to solicit or secure the Agreement or one or more shipments of Coal, and that no person will be employed or retained to administer the Agreement or one or more shipments of Coal, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide full time employees employed by Seller for the purpose of securing or administering business and no such commission, percentage, brokerage or contingent fee has been or will be paid, provided that this warranty shall not be deemed to be breached by the payment of a commission, percentage, brokerage or contingent fee by owner/producer to Seller in consideration of Seller's performance of its duties as sales agent if owner/producer, not Seller, owns and/or operates Seller's Mine and Seller is functioning as owner / producer's sales agent. Upon Seller's breach of this warranty, Buyer, in addition to any other remedies available to it, may rescind, cancel, or

terminate the Agreement without liability, holding Seller liable for any and all resulting losses, damages and costs, and may deduct from the contract price, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Seller represents and warrants that no officials or employees of the Government of Sri Lanka, including any subdivision or branch thereof, no employees of Buyer and no consultants (or employees of a consultant) retained by Buyer whose services are in any way related to Buyer's selection of coal, coal mines or coal producers have been or will be admitted, directly or indirectly, to any share or part of the Agreement or of any one or more shipments of Coal or to any benefit that may arise therefrom. Breach of this warranty will subject Seller to penalties according to the laws of Sri Lanka as well as give Buyer the right to rescind, cancel or terminate the Agreement without liability, holding Seller liable for any and all resulting losses, damages and costs, and to deduct from the contract price, or otherwise recover, the full amount of consideration or benefit to which any party has been admitted in breach of this warranty.

3.10 EVENTS OF DEFAULT

3.10.1 SELLER EVENTS OF DEFAULT

Each of the following events, acts, occurrences or conditions shall constitute a ***Seller Event of Default***.

- (a) A breach of any materials term(s) of the Agreement;
- (b) If coal Delivered or tendered for Delivery by two (2) consecutive Shipments; is beyond the Buyer's Range set forth in SCHEDULE 1 PART B;
- (c) Any unexcused failure by the Seller to Deliver Coal for a consecutive period of ten days (10) days commencing on the scheduled Delivery date for a shipment of such Coal;
- (d) The Seller ceases to possess all necessary licences, permits and authorisations for the extraction, shipment and or sale of coal and, in any such case, the Seller fails to comply with its obligation to deliver substitute coal as referred to in Clause 3.8.2;
- (e) In case when Seller is a joint venture of two or more persons, change of the composition or constitution of the joint venture without prior consent of the Buyer; or
- (f) The ownership or control of the Seller or of an intermediate or the ultimate holding company of the Seller passes to a third party which is unacceptable to the Buyer, if in the opinion of the Buyer, that the change will impact on the seller's ability to perform the Agreement. For the purposes of this sub-paragraph (e), none of the following shall of itself constitute a change in ownership or control which is unacceptable to the Buyer:
 - I. the sale of a minority shareholding such that the acquirer obtains a total holding of not more than 20 per cent of the issued equity share capital of the relevant company;
 - II. the sale of shares in the relevant company to the public by way of a public offering; or,
 - III. the transfer of shares in the Seller between persons who are shareholders of the Seller at the date of the Agreement or a transfer of shares in the Seller to any affiliate of any such person, provided always that such transferee shall not cease to be an affiliate of any such person unless by not later than the time the

transferee ceases to be such an affiliate it shall have retransferred the shares in the Seller to a person which is an affiliate of such person;

3.10.2 BUYER EVENTS OF DEFAULT

Each of the following events, acts, occurrences or conditions shall constitute a **Buyer Event of Default**:

- (a) A breach of any material term(s) of the Agreement;
- (b) The Buyer fails to pay when due any amounts required to be paid to the Seller under the Agreement and such failure continues for thirty (30) days following the Seller's demand for such payment;
- (c) Plant is generally suspended or abandoned for a period of 365 consecutive days, in each case other than to the extent that such failure to commence, suspension or abandonment is attributable to an Event of Force Majeure.

3.11 TERMINATION

This Agreement may be terminated by giving fifteen (15) days notice by either party, upon the occurrence of an Event of Default by the other party provided that any such termination may not occur if the circumstances on the basis of which the notice of termination is given is altered, cured or remedied within the termination date specific in such notice.

If the Agreement is terminated due to Seller's breach, Buyer will encash the Performance Security and will cancel all the payments after the termination for products not yet delivered. In addition, the Seller shall also indemnify Buyer for any expenses or losses thus incurred.

If the Agreement is terminated due to Buyer's breach, Buyer shall, release the Performance Security forthwith and indemnify Seller for any direct expenses or losses thus incurred.

3.12 CONSEQUENCES OF DEFAULT

The byer may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Seller, terminate the contract in whole or part (at the option of the Buyer) if:

The Seller fails to deliver any or all of the goods within the time period(s) specified in the Contract or any extension thereof granted by the Buyer; or (b) the Seller fails to perform any other obligation(s) under the Contract.

In the event the Buyer terminates the contract in whole or in part, pursuant to above, the Buyer may procure, upon such terms and in such manner as it deems appropriate, coal of similar specifications and the seller shall be liable to the Buyer for any excess costs for such similar coal. However, the seller shall continue performance of the Contract to the extent not terminated.

the aforementioned right of termination shall be without prejudice to any other rights and remedies that the Buyer has under the Contract or in law including but not limited to claiming liquidated damages on account of delay in delivery of coal to the Port of loading.

Further, any termination of the Contract shall be without prejudice to any rights and remedies that have accrued prior to the termination of the Contract.

3.13 LIMITS OF LIABILITY

3.13.1 NO CONSEQUENTIAL LOSS

The liability of either party in respect of any claim brought by the other based on a failure of the first party to fulfil its obligations under the Agreement shall be limited to liability for loss directly suffered by the party aggrieved. Such liability shall exclude loss of profit and expectation of profit and all indirect or consequential loss or damage to the party aggrieved.

3.14 SITE VISITS

The Buyer and its designated representatives shall be entitled on reasonable notice to make site visits to the Mine, Testing Laboratory, Port of Loading and each of the Seller's other facilities used in or associated with the supply of Coal to view the Seller's operations. The Seller agrees to co-operate with such site visits and provide all such assistance and information (subject always to Clause 3.18) to the personnel engaged in such site visits as those persons may reasonably expect.

3.15 CONFIDENTIALITY

The terms of the Agreement, any information provided by one party to another in the course of negotiation of the Agreement or pursuant to Clause 3.18, any further negotiations among the parties, and any further terms agreed among the parties (collectively the Confidential Information) shall remain confidential to the parties and shall not be disclosed, or used otherwise than for the performance of the parties respective obligations under the Agreement, without the specific written agreement of both parties, provided that:

- (a) A party may disclose the Confidential Information to the extent required by law;
- (b) A party may disclose the Confidential Information to persons providing (or with a view to providing) shipping services, finances or other support to the relevant party to enable it to perform its obligations in relation to the Plant of the subject matter of the Agreement provided that such person is subject to an equivalent obligation or confidentiality .

The provisions of this Clause 3.19 shall survive any termination of the Agreement.

3.16 ENVIRONMENTAL CONSIDERATIONS

If any change in law shall occur in the applicable environmental laws or guidelines relating to the design, construction, operation or maintenance of the Plant, the Buyer shall be entitled to review the specifications for Coal set out herein and the volume of Coal to be supplied. If, having regard to the changed environmental laws or guidelines or the revised specification for Coal, the coal to be supplied by the Seller is no longer suitable to be used as fuel for the Plant, or to be used to the same extent, on technical, environmental or economic grounds, the Buyer shall be entitled to reduce the volume of Coal to be supplied. The Seller shall have the opportunity, prior to any such reduction, to offer, on a pricing basis to be mutually agreed between the Buyer and the Seller, suitable coal from an alternative source to permit it to continue to supply coal in the volumes originally provided for under the Agreement.

3.17 PERFORMANCE SECURITY

Within seven (7) days of receipt of the Letter of Acceptance, the seller shall furnish a Performance Security as per the clause 2.7.3.

3.18 NO ASSIGNMENT

Except to the extent that a party may agree in writing, the other party shall not assign the Contract or any part of his obligations under the Agreement.

3.19 MUTUAL COLLABORATION

Seller and Buyer shall recognize that circumstances may arise which have not been foreseen at the signing of the Agreement and agree that they shall use their best efforts to solve any problems due to such unforeseeable circumstances in a spirit of mutual understanding and collaboration.

3.20 DISPUTES AND ARBITRATION

If a dispute of any kind whatsoever arises between the buyer and the seller, then every effort will be made by the parties to settle such dispute amicably before the commencement of Arbitration.

If amicable settlement has not been reached, then all such disputes arising out of the contract agreement shall be dealt in accordance with the provisions of Arbitration Act No. 11, 1995 of Sri Lanka. The language for the Arbitration shall be English and the place of arbitration shall be Sri Lanka. The following procedure shall be followed:

- (a) Any dispute, controversy or claim arising out of or relating to this Contract, or the breach termination or invalidity thereof ["Dispute"] may be submitted by either Party to arbitration for final settlement. Each of the Parties submits to arbitration under this Clause before a panel of three arbitrators under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force (the "Rules"), as modified by this Clause. The proceedings shall be conducted, and the award shall be rendered, in the English language. The seat and place of arbitration shall be Colombo, Sri Lanka unless any other location is agreed to by the Parties.
- (b) Each Party shall appoint one arbitrator, and the two arbitrators, so appointed shall appoint a third arbitrator. The third arbitrator shall be the chairman of the arbitral tribunal. If either Party fails to appoint an arbitrator or if the two Party-appointed arbitrators fail to agree upon a third arbitrator, then such arbitrator shall be appointed in terms of the Arbitration Act No. 11 of 1995 or such other law that governs Arbitration proceedings as in force in Sri Lanka.
- (c) Any award rendered by a majority of the arbitral tribunal shall be final and binding and judgment thereon may be entered and may be enforced in any court of competent jurisdiction. Any monetary award shall be made in reasonable time and as the arbitral tribunal may consider appropriate. The arbitral tribunal shall be authorized in its discretion to grant pre-award and or post-award interest as the case may be. Any costs, fees, or taxes incidental to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.
- (d) Subject to right of any Party to obtain any appropriate interim relief from any court of competent jurisdiction, an arbitration award under this Clause shall be a condition precedent to the commencement of action, suit, or claim in any court or other judicial forum.
- (e) Except, as expressly provided in this Contract, pending the award in any arbitration proceeding hereunder (i) this Contract and the rights and obligations of the Parties shall

remain in full force and effect and (ii) each of the Parties shall continue to perform their respective obligations, including payment obligations, under this Contract. The termination of this Contract shall not result in the termination of any arbitration proceeding pending at the time of such termination nor otherwise affect the rights and obligations of the Parties under or with respect to such pending arbitration.”

3.21 GOVERNING LAW

The Agreement shall be governed by and construed in accordance with the laws of Sri Lanka.

3.22 NO WAIVER; CUMULATIVE REMEDIES

The failure of either Party to enforce at any time any of the provisions of the Agreement, or to require at any time performance by the other Party of any of the provisions thereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement, or any part thereof, or the right of either Party thereafter to enforce each and every provision of the Agreement.

All remedies afforded under the Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for in the Agreement or otherwise available to a Party.

3.23 NO PARTNERSHIP OR AGENCY

Nothing in the Agreement (or any of the arrangements contemplated hereby) shall be deemed to constitute a partnership between the parties nor, save as may be expressly set out herein, constitute either party the agent of the other party for any purpose.

3.24 COSTS

Each of the parties shall pay its own costs, charges and expense incurred in connection with the preparation and implementation of the Agreement and the transactions contemplated by it.

SECTION 4

PROPOSED COAL SUPPLY AGREEMENT

4.0 PROPOSED COAL SUPPLY AGREEMENT

This AGREEMENT ("the Agreement") is made and entered into, for the supply of 360,000 ±10% MT of Bituminous Coal at buyer's option, on this..... day of, 201x between

LANKA COAL COMPANY (PRIVATE) LIMITED, a company duly incorporated and registered under the Companies Act, No 7 of 2007 and bearing registration Number PV 62636 and having its registered office at No 51/3, Dutugemunu Street, Dehiwala, Sri Lanka (hereinafter sometimes known and referred to as "Buyer " which term shall where the context so required and admits mean and include the said LANKA COAL COMPANY (PRIVATE) LIMITED its successors and permitted assigns) of the FIRST PART

and

....., a company incorporated and registered under and by virtue of the law of (country), bearing company No. and having its registered/principal office at (.....address.....) (hereinafter sometimes known and referred to as "Seller " which term shall where the context so required and admits mean and include the said its successors and permitted assigns) of the second PART

WITNESSETH

In consideration of the mutual covenants and agreements made by and between them, the Parties hereby agree as follows:

4.1 CONDITIONS PRECEDENT

The obligations of the seller to sell and deliver and for the buyer to purchase coal pursuant to this Agreement shall become effective on the date when the seller has furnished the Performance Security in accordance with Clause 2.7.3.

4.2 TERM OF THE AGREEMENT

The term of the Agreement shall be for a period commencing on the date of the Agreement and ending(180 days), unless terminated earlier.

Extension beyond the end of the Agreement shall be subject to the mutual agreement of both Parties.

4.3 DOCUMENTS CONSTITUTING THE COAL SUPPLY AGREEMENT

Following documents shall form part and parcel of this agreement

- (a) This Contract Agreement and the Addendums hereto.
- (b) Performance Security as per the Schedule 4 of the Bid Document.
- (c) The Letter of Award and its acknowledgement.
- (d) The Power of Attorney as per the Annexure 3 of the Bid Document.

- (e) Conditions of Contract as per the Section 3 of the Bid Document.
- (f) The complete set of Bidding Documents and Price Proposal submitted by the bidder for this contact.

These documents collectively shall refer as the Agreement.

4.4 DETERMINATION AND ADJUSTMENT OF PRICE OF COAL

- a) The initial Awarded Price of Coal shall be as per the LCC Specifications in SCHEDULE 1 PART A. of the Bidding Document.

FOBT (Port of Loading) [USD] _____/MT;

(In words)

- b) The initial Awarded Price shall be further adjusted if the quality of the Coal varies from the Specifications (SCHEDULE 1 PART A of the Bidding Document) resulting deviations with regard to GCVar, Ash content, Sulphur content, Moisture, Volatile Matter and Size consist. Then the Price adjustment for quality variations shall be made according to Schedule 2 Part B.

4.5 DELIVERY SCHEDULE REFERENCE – Delivery schedule

4.6 NOTICES

Unless mutually agreed or specifically provided otherwise, all notices given or to be given by a Party shall be in writing and sent to the other Party's address specified below or to such other address as the other Party may specify, and shall be deemed to be properly given: (i) if delivered by hand, upon receipt; (ii) if sent by registered mail (air mail, if international), postage prepaid, upon receipt; and (iii) if given by electronic transmission telefax, telegram, on the day (which is a business day at place of addressee) immediately following the date on which the electronic transmission, telefax, telegram is sent; provided that, in the case of notice by, it was given with confirmed answerback.

To Seller

.....

.....

.....

To Buyer: Chairman,
Lanka Coal Company (Private) Limited,
51/3, Suranimala Place, Off Dutugemunu Street Dehiwala, Sri Lanka
Telefax: +94 112 824689

4.7 ENTIRE AGREEMENT

This Agreement, its schedules and appendices constitute the entire agreement of the Parties with respect to the subject matter thereof and supersede any prior expression of intent or understanding with respect to the transactions contemplated in the Agreement. The Agreement may be amended or modified only by a writing signed by the duly authorized representatives of the Parties.

4.8 SEVERABILITY

If any of the provisions of the Agreement shall held to be illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.

4.9 SURVIVAL

The parties' rights and obligations under this Agreement a crude during the subsistence of the Agreement shall survive any form of termination of this Agreement or the expiry of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Coal Supply Agreement to be duly executed by their respective authorized representatives.

FOR BUYER:

FOR SELLER:

1. **LANKA COAL COMPANY (PVT) LTD.**

2.

By:

By:

Name:

Name:

Title: **CHAIRMAN**

Title:

Date:

Date:

Place:

Place:

WITNESSED:

WITNESSED:

By:

By:

1.

1.

Name:

Name:

2.

2.

Name:

Name:

SECTION 5

SCHEDULES

SCHEDULE 1 - PART A : SPECIFICATIONS FOR COAL**TENDER No. : LCC/18-19/ST/12/1**

The Lakvijaya Power Plant will be operated as a base load unit, fuelled by low sulphur coal having standard properties (the LCC's Specifications) given below.

LCC'S SPECIFICATIONS FOR COAL

PROXIMATE (%)	UNIT	As Received BASIS
GCV (kcal/kg)	kcal/kg	6,150
Total Moisture	% wt	12.0 or below
Volatile Matter	% wt	31
Fixed Carbon	% wt	49.5
Sulphur	% wt	0.5 or below
Ash	% wt	11.0 or below
HGI	° H	50
Grain Size above 50 mm	% wt	3.0% or below
Grain Size below 2 mm	% wt	15.0% or below
ULTIMATE (%)		As Received
Moisture	% wt	12.0
Carbon	% wt	65.0
Hydrogen	% wt	3.8
Nitrogen	% wt	1.5
Oxygen	% wt	6.2
Sulphur	% wt	0.5
Ash	% wt	11.0
ASH (%)		Dry Basis
SiO ₂	% wt	61.0
Al ₂ O ₃	% wt	25.0
Fe ₂ O ₃	% wt	4.0
CaO	% wt	3.5
MgO	% wt	0.7
Na ₂ O	% wt	0.3
K ₂ O	% wt	0.6
TiO ₂	% wt	1.3
P ₂ O ₅	% wt	0.9
SO ₃	% wt	2.7
ASH FUSION (° C)		Reducing
IDT	° C	1,250
Fluid	° C	1,325

SCHEDULE 1 - PART B : LCC REJECT VALUES FOR COAL

(as received basis)

(Proximate analysis - as received basis)

Parameter	LCC REJECT VALUES
Gross Calorific Value	Less than 5,900 kcal / kg
Total Moisture	More than 16 % by weight
Ash Content	More than 16 % by weight
Volatile Matter	Less than 22 %, More than 39.9 % by weight
Sulphur Content	More than 1.0 % by weight
Size Consist : a) Above 50 mm	More than 5 % by weight
b) Below 2 mm	More than 30 % by weight
HGI	Less than 40, More than 59
Ash Fusion Temperature <i>R</i>	
<i>IDT (Deformation)</i>	Less than 1,150°C, More than 1300 °C
F.T (Fluid)	Less than 1,250°C, More than 1500 °C

Note: *R equals Reducing Atmosphere*

SCHEDULE 1 - PART C

: APPROVED MEASUREMENT STANDARDS (ASTM)

	ASTM Standard Number
Sampling	D 2013 D 2234 D 7430
Total Moisture	D 3302
Proximate Analysis	
Moisture of Analysis Sample	D 3173
Fixed Carbon	D 3172
Ash	D 3174
Volatile Matter	D 3175
Gross Calorific Value	D 5865
Hardgrove Grindability Index	D 409
Ash Fusion Characteristics	D 1857
Size Consist	D 4749
Ultimate Analysis	
Carbon	D 3178, D 5373
Hydrogen	D 3178, D 5373
Nitrogen	D 3179, D 5373
Total Sulphur	D 3177, D 4239
Oxygen	D 3176, D 5373
Ash Analysis	
Silicon	D 4326
Aluminium	D 4326
Iron	D 4326
Calcium	D 4326
Magnesium	D 4326
Sodium	D 4326
Potassium	D 4326
Phosphorus	D 4326
Titanium	D 4326
Manganese	D 4326
Sulphur	D 1757

Note: or latest revised/ equivalent test adopted by ASTM

SCHEDULE 2 - PART A : PRICE VARIATION - NOT APPLICABLE

SCHEDULE 2 - PART B : QUALITY PRICE ADJUSTMENTS

The fixed (FOBT)_f price shall re-adjusted according to the Coal Quality adjustments as per the mentioned below. The quality adjustment parameters are based on the proximate analysis “as received basis”.

LCC’s Specifications are mentioned in the **SCHEDULE 1 - PART A**

1. Gross Calorific Value - (GCV_{ar})

(a) Price Adjustment

If the actual GCV_{ar} of a given shipment of Coal is less than the LCC Specifications for GCV_{ar}, the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$i) \quad (-) \text{ Price Adjustment} = [(FOBT)_f * 1.25] \times \frac{\text{LCC Specifications} - \text{Actual GCV}_{ar}}{\text{LCC Specifications}}$$

Example - Assumed (FOBT)_f is 50 USD per MT and Actual GCV_{ar} = 6000

$$(-) \text{ Price Adjustment} = 50 \times 1.25 \times \frac{(6150 - 6000)}{6150} = \underline{1.52 \text{ USD/MT}}$$

No price adjustment shall be applied in case of measured GCV_{ar} above the LCC Specifications value of 6150 kcal/kg

2. Sulphur Content

If the actual sulphur percentage of a given shipment is greater than the LCC Specifications for sulphur percentage then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$i) \quad (-) \text{ Price Adjustment} = 0.4\% \times (FOBT)_f \times \frac{\text{Actual sulphur \%} - \text{LCC Specifications \%}}{0.1 \%}$$

ii) If Sulphur content is >1.0%, shipment or delivered Coal shall be rejected as clause 3.4.3(d)

Specimen Calculation

Example 1 - Assumed (FOBT)_f is 50 USD per MT and Actual sulphur is 1%

$$(-) \text{ Price Adjustment} = 0.4\% \times 50 \times \frac{(1 \% - 0.5 \%)}{0.1 \%} = \underline{1.00 \text{ USD/MT}}$$

No price adjustment shall be applied in case of measured Sulphur content below the LCC Specifications value of 0.5%.

3. Ash Content

If the actual ash percentage of a given shipment is greater than the LCC Specifications for ash percentage then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula:

$$(-) \text{ Price Adjustment} = 0.4\% \times (FOBT)_f \times \frac{\text{Actual ash \%} - \text{LCC Specifications \%}}{1.0 \%}$$

Specimen Calculation

Example 1 - Assumed (FOBT)_f is 50 USD per MT and Actual Ash % is 16%

$$\text{(-) Price Adjustment} = 0.4\% \times 50 \times \frac{(16\% - 11\%)}{1.0\%} = \underline{\underline{1.00 \text{ USD/MT}}}$$

No price adjustment shall be applied in case of measured Ash content below the LCC Specifications value of 11%.

4. Moisture Content

If the actual total moisture percentage of a given shipment is greater than the LCC Specifications for total moisture percentage then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

TM – Total Moisture

$$\text{i) (-) Price Adjustment} = 0.1\% \times (\text{FOBT})_f \times \frac{(\text{Actual TM \%} - \text{LCC Specifications \%})}{1.0\%}$$

Specimen Calculation

Example 1 - Assumed (FOBT)_f is 50 USD per MT and Actual TM is= 16 %

$$\text{(-) Price adjustment} = 0.1\% \times 50 \times \frac{(16\% - 12\%)}{1.0\%} = \underline{\underline{0.20 \text{ USD}}}$$

No price adjustment shall be applied in case of measured total moisture content below the LCC Specifications value of 12%.

5. Grain Size.

5.1 Grain Size above 50mm

If for a given shipment of Coal, the actual percentage of grain size above 50 mm exceeds 3% by weight the Price shall be reduced in accordance with the following formula:

$$\text{i) (-) Price Adjustment} = 0.05\% \times (\text{FOBT})_f \times \frac{\text{Actual Percentage (> 50mm grain size)\%} - 3\%}{1.0\%}$$

Specimen Calculation

Example 1 - Assumed (FOBT)_f is 50 USD per MT and Actual % above 50mm size is= 5 %

$$\text{(-) Price Adjustment} = 0.05\% \times 50 \times \frac{(5\% - 3\%)}{1.0\%} = \underline{\underline{0.05 \text{ USD/MT}}}$$

No price adjustment shall be applied in case of measured grain size 50mm below the LCC Specifications value of 3%.

5.2 Grain Size below 2mm

If for a given shipment of Coal, the actual percentage of grain size less than 2 mm exceeds **15%** by weight, then the unit Price shall be reduced in accordance with the following formulas.

$$\text{i) (-) Price Adjustment} = \text{MF} \times (\text{FOBT})_f \times \frac{\text{Actual Percentage (< 2mm)\%} - 15\%}{1.0\%}$$

The value of the Multiflication Factor (MF) given in the below table. Please refer the specimen calculation for details.

	Multiflication Factor (MF)
Less or equal than to 15% by weight	0
More than 15% and less or equal 20% by weight	0.01
More than 20% and less or equal 30% by weight	0.012

In case of more than 20% and less than 30% by weight the following two formulas should be applied.

$$a). (-) \text{ Price Adjustment} = \text{MF} \times (\text{FOBT})_f \times \frac{(20\% (< 2\text{mm})\% - 15\%)}{1.0\%}$$

$$b). (-) \text{ Price Adjustment} = \text{MF} \times (\text{FOBT})_f \times \frac{\{(30\% - 20\%) (< 2\text{mm})\% - 20\% \}}{1.0\%}$$

Therefore Total unit price adjustment is **(a + b)**

Specimen Calculation

Example 1 - Assumed (FOBT)_f is 50 USD per MT and Actual % less than 2mm size is= 19 %

$$(-) \text{ Price Adjustment} = 0.01 \times 50 \times \frac{(19\% - 15\%)}{1.0\%} = \underline{2.00} \text{ USD/MT}$$

Example 2 - Assumed (FOBT)_f is 50 USD per MT and Actual % less than 2mm size is= 25 %

$$a) (-) \text{ Price Adjustment} = 0.01 \times 50 \times \frac{(20\% - 15\%)}{1.0\%} = \underline{2.50} \text{ USD/MT}$$

$$b) (-) \text{ Price Adjustment} = 0.012 \times 50 \times \frac{(25\% - 20\%)}{1.0\%} = \underline{3.00} \text{ USD/MT}$$

Therefore unit price adjustment { a + b } = 5.50 USD/MT

No price adjustment shall be applied in case of measured grain size 2mm below the LCC Specifications value of 15%.

6. Volatile Matter

If for a given shipment of coal, the actual Volatile Matter percentage between 25 and 35 by weight (including 25 and 35) there will be no penalty for a shipment of Coal.

6.1 Volatile Matter less than 25% by weight

If the actual Volatile matter percentage of a given shipment is less than 25% by weight, then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

$$(-) \text{ Price Adjustment} = 0.1\% \times (\text{FOB})_f \times \frac{25\% - \text{Actual Volatile Matter}}{1.0\%}$$

Specimen Calculation

Example 1 - Assumed (FOB)_f is 50 USD per MT and Actual Volatile Matter 23 %

$$(-) \text{ Price Adjustment} = 0.1\% \times 50 \times \frac{25\% - 23\%}{1.0\%} = \underline{0.10} \text{ USD/MT}$$

6.2 Volatile Matter greater than 35% by weight

If the actual Volatile Matter percentage of a given shipment is greater than 35% by weight, then the Price of that shipment of Coal shall be reduced by an amount in accordance with the following formula.

$$(-) \text{ Price Adjustment} = 0.1\% \times (\text{FOB})_f \times \frac{\text{Actual Volatile Matter \%} - 35\%}{1.0\%}$$

Specimen Calculation

Example 1 - Assumed (FOB)_f is 50 USD per MT and Actual Volatile Matter 37 %

$$(-) \text{ Price Adjustment} = 0.1\% \times 50 \times \frac{37\% - 35\%}{1.0\%} = \underline{0.10} \text{ USD/MT}$$

SCHEDULE 3 : SHIPPING TERMS

SHIPPING AND TRANSPORT TERMS ON FOBT BASIS

1. SHIPPING ARRANGEMENTS

The following provisions shall govern the shipping arrangements on FOBT terms:

1.01 Buyer's Right to Designate Vessel Type AND SIZE

The Buyer shall have the right at his sole discretion to nominate vessels of suitable type and size to load the Coal at the Port of Loading and the Vessel shall be geared subject to provisions in the Clause 2.2.5. in the Bidding Document.

1.02 Delivery Schedule

Seller shall Deliver Coal according to the shipping schedule of the Buyer pursuant to Clause 2.2.5.

1.03 Seller's Responsibilities

Seller shall arrange Coal to be loaded, stowed and trimmed to the master's satisfaction in respect of sea-worthiness, in free of risk, expense and responsibility to the Vessel and Buyer.

1.04 Buyer's Responsibilities

Buyer shall be solely responsible for the ocean transportation of the Coal and shall arrange for single deck bulk carriers suitable to enter and leave the nominated anchorage of the Port of Loading. Buyer shall ensure that each Vessel designated by him for the carriage of the Coal will:

- (a) Provide Seller with free use of winches and related electricity power required by Seller during loading, trimming and stowage of the Coal on board such Vessel; and
- (b) Have lighting facilities and crew available during the loading operation. . However, loading, stowing and trimming shall be done by the stevedores appointed by the seller at their cost and time. Any machinery (pay loaders) if required for trimming shall be supplied and paid for by the seller.

1.05 Buyer's Shipment Instructions

Vessel Nominations & ETA Notices at Load Port to be given by the Buyer to the Seller

(a) Buyer shall nominate vessels with following details and the demurrage rate for the respective intended vessel or substitute, ten (10) days before the first day of each laycan mentioned in the final laycan for the month agreed upon by the Buyer and the Seller under Clause 2.2.5 in the Bidding Document.

- (i) The name and the particulars of the vessel;
- (ii) Estimated time of arrival (ETA) of said Vessel at the Port of Loading; and

- (iii) The quantity of Coal to be loaded on board said vessel with ten percent (10%) more or less at shipmaster's option;
- (b). Seller shall within one (01) working day after receipt of such notice, confirm to Buyer that the vessel specified by Buyer is acceptable and shall designate a safe anchorage for vessel to load.
- (c). In case Seller decides to reject the nomination, Seller shall inform the Buyer of the rejection of the nominated vessel stating reasons for such rejection, within 01 working day after the receipt of the nomination. Within 01 working day after the receipt of the rejection intimation from Seller, Buyer shall nominate another suitable vessel within 01 working day. Seller shall confirm acceptance of the vessel within one (01) working day after receipt of such notice from the Buyer.

The Buyer shall have the right to substitute the vessel accepted by the Seller, if the need arises.

- (d). Not later than seven (07) days before the estimated time of arrival at the port of loading, Master of the final nominated performing vessel shall advise the ETA of the vessel by written notice by telefax or email to the Seller's agent together with the Stowage Plan and the Loading Sequence of Coal that the vessel could load with a variation of +/- 10% for making loading arrangements:
- (e). Thereafter, the Buyer shall ensure that the Master of each relevant vessel shall provide not less than five (5) and three (3) days' notice, and not less than twenty four (24), eight (8), three (3) and one (1) hours' notice, of that vessel's estimated time of arrival at the Load Port.

1.06. NOTICE OF READINESS AND THE LAYTIME AT THE PORT OF LOADING

- (a). Master of the vessel shall tender Notice of Readiness (NOR) to load at any time day or night Saturday, Sunday, holidays including, by telefax/email, after safely anchoring at the designated anchorage and is in all respects ready to load the cargo, whether customs cleared or not and whether in free pratique or not to the Seller/Seller's agent.
- (b). For Notice of Readiness purposes, if a vessel tenders NOR without having ISPS clearance, then the Notice of Readiness is to be re-tendered once ISPS clearance is received.
- (c). Lay time shall commence twelve (12) consecutive hours after NOR is tendered by the Master. However, if loading commences before the expiry of such 12 hour period, lay time shall commence to run upon commencement of loading.

- (d). Laytime shall cease to count after cargo loading is completed. Time taken for the initial and final draft surveys shall not count as laytime.
- (e). In case the vessel loads alongside a berth at a coal loading terminal, the time taken from anchor aweigh or pilot on board, whichever is earlier, until the vessel is all fast alongside, and ready in all respects to load including hatches passed, customs clearance and free pratique, if applicable, shall not count as laytime or time on demurrage.
- (f). If the vessel is ordered by the Port Authorities or Terminal to wait for anchorage, all such time shall be counted as laytime used.
- (g). Time required for loading of Vessel's bunkers and lubricants shall not be included in the laytime except to the extent that the loading of the Coal is carried out concurrently.
- (h). Duration of breakdown of ship's cranes during loading operation shall not be counted as laytime. The time of breakdown of ship's cranes shall be calculated on a pro rata basis in accordance with the number of Vessel's cranes in breakdown to the total number of Vessel's cranes. (i) If shifting between anchorages or berths is necessary after the Vessel has anchored or berthed at the point of loading, the time required therefore shall be included in the lay time and the costs required for the shifting shall be borne by Seller.

However, if the shipmaster decides to shift the Vessel after it has anchored or berthed for any reason other than the request, order or recommendation from Seller or the port authorities, the time required for shifting shall not be included in the laytime and the costs required therefore shall be for Buyer's account.

1.07 SELLER'S Delivery Obligation and Loading Rate

Seller shall cause and ensure that:

- (a) The amount of Coal for each shipment under the Agreement shall be as specified by Buyer in its notice given under Clause 1.05 of this Schedule (subject to adjustment at shipmaster's option pursuant to Clause 1.05.(d) of this Schedule) and shall be available and ready for loading by ship's crane, floating crane or shore crane at the nominated loading anchorage/berth; and
- (b) Load rate per weather working day of twenty-four (24) consecutive hours, Saturdays, Sundays, and holidays included, shall be as follows.
 - South Africa : as per RBCT Guidelines
 - Indonesia anchorage ports : 10,000 MT
 - Tanjung Bara Coal Terminal : 25,000 MT
 - Vanino, Russia : 20,000 MT

- Vostochny, Russia : 9,000 MT

2. Demurrage and Dispatch

- (a) In the event that Seller is unable to complete the loading, trimming and stowage of a shipment of Coal on board the Vessel within the laytime allowed, Seller shall pay to Buyer demurrage at the rate to be intimated by the Buyer as stated in the Clause 1.0.5.(a) of this Schedule.

If the average Trip Charter Market Daily Earnings rate for Supramax / Panamax vessels for the preceding month to the month, which includes the first date of each laycan, as reported in the Clarkson / PLATTS Shipping Intelligence Weekly Reports, is below USD 13,000, demurrage rate shall be USD 13,000 per day or pro rata for part of a day (including vessel's idling bunker costs).

If the aforesaid average Trip Charter Market Daily Earnings rate is above USD 13,000 per day, demurrage rate shall be the relevant average Trip Charter Market Daily Earnings rate plus the compensation towards the vessel's idling bunker cost estimated as USD 2,500 per day or pro rata for part of a day for vessels up to 55,000 MT deadweight and USD 3,000 per day or pro rata for part of a day for vessels above 55,000 MT deadweight.

Maximum demurrage rate shall be USD 23,000 per day (including vessel's idling bunker costs).

- (b) In the event that the loading of a shipment of coal is completed before the expiry of the laytime allowed, the Seller shall pay to Buyer dispatch money at 50% of the demurrage rate for the all laytime saved.
- (c) All claims for demurrage or dispatch money for the load port, as the case may be shall be settled and paid within 30 days after the completion of loading of that shipment of coal. If any amount on account of Demurrage or Dispatch money payable in terms of Clause 2 above remains unsettled by the seller, the Buyer shall have the right to deduct such amounts and interest from the earliest available invoice of the Seller, including but not limited to second payment of 20% of the total invoice value.
- (d) The Statement of Facts of loading for presentment to Buyer as one of the documents required hereof shall be signed by the supervisor of the stevedores and the Master of the ship.

3. Overtime

The expenses required for overtime work shall be borne by the Party who has requested the same. If overtime work is ordered by the port authorities, the expenses therefore shall be borne by Seller; provided, however, the expenses for overtime of the officers and crew of the Vessel shall always be borne by Buyer.

4. Costs of Delivery

Seller shall bear all of the costs and expenses of and relating to the loading of the Coal on the Vessel, wharfage, export and other taxes, imposts and other charges imposed by any government or its agencies, as well as other similar costs which are normally considered to be for Seller's account. Buyer shall bear the shipping agency, berthage, pilotage, tugboat and line handling fees, port charges and other similar costs which normally are considered to be for the Vessel's account. If there is doubt as to which Party should bear particular costs or expenses, costs or expenses related to the Vessel shall be borne by Buyer, with all other costs and expenses shall be borne by Seller.

5. Seller's Shipment Default

In the event that the amount of Coal which Seller has for any shipment under the Agreement is insufficient to meet Buyer's requirements for that shipment stated in Clause 1.4 of the Agreement (after taking into account the effect of any action by the shipmaster in accordance with Sub Clause 1.05(d) of this Schedule), or in the event constituting "Detention of Vessel" due to Seller's default, then Seller shall pay for any and all losses, damages, and costs (including, without limitation, dead freight and other expenses claimed by the shipping company) suffered by Buyer arising from such insufficiency or such detention damages claimed by the shipping company (or Buyer), and Seller shall, in addition to the payment of demurrage, pay for any and all losses, damages, and costs arising from or relating to any delay by Seller in loading that shipment of Coal. In such event, the losses, damages, and costs shall be calculated in accordance with the time charter rate reported by Clarkson Research Services Ltd. on the B/L date or the demurrage rate as specified in this Agreement, whichever is higher. In the event that no relevant time charter rate has been reported on B/L date, then the immediate succeeding report shall be applied.

6. Stevedore Damage

Buyer shall not be responsible for stevedore damage which the Vessel sustains at the Port of Loading. Seller shall indemnify and hold Buyer harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person or damage to property of whatsoever nature of any person arising out of or incident to the performance of the work to load cargo onto the Vessel at the Port of Loading by Seller (including but not limited to Seller's employees, agents, subseller, stevedore and other designated by Seller to perform the loading work or service in, about or attendant to the loading work).

The Master shall inform stevedores, agents and the buyer as soon as the damage is sustained during loading. The master shall endeavour to obtain stevedores' written acknowledgement of liability. Owners or Master shall give written notice to stevedores of damage claimed before the vessel sail from the loading port.

Any time lost due to stevedore damage shall count as laytime.

7. SHIPPING DOCUMENTS

Within 5 working days after departure of each vessel from the Load Port Seller shall electronically send following shipping documents.

1. Commercial Invoice
2. Bill of Lading
3. Certificate of Analysis
4. Draft Survey Report
5. Certificate of Weight
6. Certificate of Hold Cleanliness
7. Certificate of Origin

The Seller shall send the originals of those documents in following numbers through seller's Bank to Buyer.

- | | |
|------------------------------------|--------------------------|
| 1. Commercial Invoice | (2 originals + 2 copies) |
| 2. Bill of Lading | (3 originals + 2 copies) |
| 3. Certificate of Analysis | (1 original +2 copies) |
| 4. Draft Survey Report | (1 original +2 copies) |
| 5. Certificate of Weight | (1 original +2 copies) |
| 6. Certificate of Hold Cleanliness | (1 original +2 copies) |
| 7. Certificate of Origin | (1 original +2 copies) |

8. ASIAN GYPSY MOTH FREE CERTIFICATES

In case any shipments are loaded from the ports of Vanino or Vostochny in Russia, during high risk Asian Gypsy Moth months (from 1st July to 31st October, every year), the costs of obtaining the Asian Gypsy Moth Free Certificates for the ships to be incurred by the Buyer shall be reimbursed by the Seller on actual basis.

SCHEDULE 4 : FORM FOR SELLERS PERFORMANCE SECURITY

[On the letterhead of the issuing bank]

[Date]

To: [Buyer]

Dear Sirs,

[Issuing Bank]

Account: Seller

1. We, the undersigned Issuing Bank, understand that:
 - (a) You, the Buyer, has issued a letter of Award dated to ; and
 - (b) as per the Bid Conditions the seller must provide to you a performance security which is the conditions precedent to the execution to the Coal supply agreement “a draft of which has been provided to us”.

At the request of the Seller, we ----- [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ----- [amount in figures] (-----) [amount in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Seller is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the day of, 20.. [insert date, 28 days beyond the scheduled contract completion date] and any demand for payment under it must be received by us at this office on or before that date.

[Signature]

SCHEDULE 5 : DOCUMENTS REQUIRED FOR LC

1. Manually signed Commercial Invoice – 2 originals and 2 copies (for provisional drawing)
2. Manually signed Final Commercial Invoice – 2 originals and 2 copies (for final drawing)
3. Original Clean on Board or Charter Party Bill of Lading
4. Certificate of Origin -1 original and 2 copies
5. Certificate of weight
6. Certificate of Analysis of Quality
7. Draft Survey Report
8. Certificate of Hold Cleanliness
9. Beneficiary's Certificate Certifying that
10. Copy documents have been sent direct to buyer by courier
11. Original Statement of Facts, Ship's Stowage Plan, Cargo Manifest and Notice of Readiness have been sent to the buyer by courier
12. Letter of Confirmation
13. Letter of Acceptance

SCHEDULE 5A : ADDITIONAL CONDITIONS FOR LETTER OF CREDIT:

1. Quality adjustment (if any) shown on invoice allowed.
2. Plus Three (3) percent or minus Three (3) percent in quantity and value is acceptable.
3. Third party documents except commercial invoice and draft are acceptable.
4. LC under drawn due to quality adjustment is acceptable.
5. Charter party bills of lading are acceptable.
6. Bills of lading showing charter party date which may be prior to the date of the LC and different from bills of lading is acceptable.
7. Typographical and spelling errors shall not be considered as discrepancies except on amount, date and quality.
8. Applicable rules UCP latest version.
9. Documents presented later than 30 days from Bill of Lading date but within LC validity are acceptable.
10. All bank charges outside Sri Lanka for beneficiary's account.
11. All alterations on documents to be authenticated by issuing authority

12. Photocopies in lieu of copies acceptable.
13. Documents presented with different headers/titles but serving the same purpose are acceptable.
14. Certificate of sampling and analysis in the standard format of independent inspection agency is acceptable.
15. Cargo marine insurance to be covered by the applicant.
16. Required certificates not showing the wordings 'independent inspector' but showing specific name of them is acceptable.
17. The number, date of credit and the name of our bank must be quoted on draft and invoice.
18. Certificate of Analysis in the standard format of independent inspection agency and also showing results for other parameters is acceptable.
19. Partial and multiple drawing are allowed.

SCHEDULE 5B : DOCUMENTS REQUIRED FOR – FIRST PAYMENT

For First Drawing at Sight:

1. Seller's manually signed Commercial Invoice in Two originals and Two copies showing FOBT, HS code No. 2701.12 and certifying that the shipment and its value conform in all respects to supplier's Proforma Invoice No. dated 20xx and the contract No. LCC/X/ST/X signed between Lanka Coal Company (Pvt.) Ltd and the Coal Supplier.
2. Full set of 3/3 original Clean on Board Bills of Lading (BL) and 3 non-negotiable copies marked as "Freight payable as per charter party " made out to order and endorsed to the order of People's Bank showing the following as the notify party.

NOTIFY PARTY:

Chairman and Managing Director
Lanka Coal Company (Private) Limited
51/3, Suranimala Place, Off Dutugemunu Street
Dehiwala, Sri Lanka

3. Certificate of Origin in One original and Two copies – acceptable to LCC and issued by the appropriate authority of the relevant country. *Eg. Chamber of Commerce* (combined certificate of origin and invoice acceptable).
4. Certificate of Weight in One original and Two (2) copies issued by an internationally accepted independent inspector at the load port.
5. Beneficiary's Certificate certifying that copy documents and original Statement of Facts, Ship's Stowage Plan, Cargo Manifest and Notice of Readiness have been sent to applicant by courier.
6. Certificate of Hold Cleanliness
7. Load port Certificate of Analysis of Quality in One original and Two copies issued by an internationally accepted independent inspector at the load port.
8. Draft Survey Report issued by an internationally accepted independent inspector at the load port.
9. Applicant's Letter of Confirmation as per Schedule 06. This will be issued within 72 hours from the receipt of the above documents.

SCHEDULE 5C : DOCUMENTS REQUIRED FOR – FINAL PAYMENT

For the Final Drawing at Sight:

1. Manually signed Final Commercial Invoice in Two originals and Two copies for Final amount payment after deducting the Provisional Invoice amount.
2. Certificate of sampling and Analysis in Two original and Two copies issued by an internationally accepted independent inspector at discharging port showing/evidencing analysis result of samples drawn at discharge port.
3. Certificate of Weight at Discharging port
4. Applicant's letter of acceptance for the adjusted value of the invoice value as per schedule 07. This will be issued within 72 hours from the receipt of copies of the above documents.

SCHEDULE 6 : LETTER OF CONFIRMATION FOR FIRST PAYMENT

**LETTER OF CONFIRMATION FOR FIRST PAYMENT
PRICE ADJUSTMENT IN COMMERCIAL INVOICE (80%) ON QUALITY OF COAL BASED ON LOADING PORT
ANALYSIS REPORT (FOBT)**

(Suppliers name and address).

DATE: xxxxxxxxx 201x

SERIAL NO.: LCC/18-19/xx/x/x/xxx/LOC/xx

TENDER REF. NO: LCC/17-18/xx/x/x

PARTICULARS OF CONSIGNMENT

1. Letter of Credit No.	BL No.	BL Date
xxx	RBCT/PUT/18-19/xx	xx/xx/201x
2. Name of Beneficiary		
3. Total weight of coal (MT)		
Name of the vessel		
4. Beneficiary's Commercial invoice		
a. Number		
b. Date		
c. Amount US \$		
5. Awarded Price US \$/MT		
6. Quality Adjustment of Coal (Per MT)		
a. Gross Calorific Value ... (if >5900 and <6150 kcal (-))		
b. Sulphur US\$ - (0.5% – 1.0%) (-) by weight		
c. Ash US\$ - (11% – 16%) (-) by weight		
d. Moisture US\$ - (12% – 16%) (-) by weight		
e. Volatile Matter US\$ - (22% to 25 %) or (35% to 39.9%<) (-) by weight		
f. Size	Above 50 mm 3% to 5% (-)	
	Below 2 mm 15% to 30% (-)	
7. TOTAL ADJUSTMENT FOR QUALITY (a+b+c+d+e+f)		
8. NET UNIT PRICE AFTER QUALITY ADJUSTMENT US\$/MT (5+7)		
9. Acceptance on loading port quality Analysis report (Yes/No)		
10. Summary of Payment		
a. Total Shipment Value after quality adjustment US\$ (No. 3 X 8)		
b. First Payment (80%) US\$		
c. Other Recoveries (if any)		
a. Loading Port Demurrage		
b. 50% of unloading port sampling cost		
c. agreed deduction on quality of previous shipments		
d. Balance Amount (Subject to Conditions of Contract)		

Please release the following payment for the above Letter of Credit.

USD (in figure): XX XXX XXX United States Dollars.....

Thanking You,

Yours Faithfully,

LANKA COAL COMPANY (PVT) LTD.

Chairman / Managing Director

SCHEDULE 7 : LETTER OF ACCEPTENCE FOR THE FINAL PAYMENT

LETTER OF ACCEPTENCE FOR THE FINAL PAYMENT

**FINAL COMMERCIAL INVOICE (20%) ON QUALITY OF COAL BASED ON LOADING PORT ANALYSIS REPORT
(FOBT) SUBJECT TO ACCEPTANCE OF DISCHARGING PORT QUALITY ANALYSIS REPORT**

(Suppliers name and address).

Date:

SERIAL NO.:

TENDER REF. NO:

PARTICULARS OF CONSIGNMENT

1. Letter of Credit No.					
2. Name of Beneficiary					
3. Name of the vessel					
a. BL No.					
b. BL Date					
4. Total weight of Coal (MT)					
Is there a weight difference more than 0.5% between loading and discharging port weight certificates? If yes, adjusted weight in MT					
5. Beneficiary's Commercial Invoice (Final Commercial Invoice)					
a. Number					
b. Date					
c. Amount US \$					
6. Total Shipment Value after quality adjustment US\$ (RATE x WT)					
7. Acceptance on Discharge port quality Analysis report	Reject Value	Load Port Value	Discharge Port Value	Acceptable Yes/No	
a. Gross Calorific Value (kcal/kg)	< 5,900				
b. Sulphur (%) by weight	> 1 %				
c. Ash (%) by weight	> 16 %				
d. Moisture (%)by weight	>16 %				
e. Volatile Matter (%)by weight	<22%->39.9 %				
f. Size (as per loading port) Above 50mm	>5 %				
g. Size (as per loading Port) Below 2mm	>30 %				
8. Summary of Payment					
a. First Payment (80%) US\$					
b. Final Payment (20%) US\$					
c. Other Adjustments (if any)					No Adjustment
Copies of invoices recovered under other Adjustments (If any) USD/MT					
a) Demurrages / Dispatches stipulated in Clause Schedule 3 – Part C Clause 10.2					
b) Sellers share (50%) of cost of sampling and analysis at discharging port stipulated in Clause 3.5.4					
c) Different amounts in respect of quality adjustment of reference sample stipulated in Clause 3.5.3.					
d) Weight difference as per clause 3.2					

Please release the following payment for the above Letter of Credit.

USD : (United State Dollars)

Chairman/Managing Director
LANKA COAL COPANY (PVT) LTD

SECTION - 6

ANNEXURES

ANNEXURE 1 : FORM OF BID
TENDER No. : LCC/18-19/ST/12/1
REFERENCE : CLAUSE 2.4.3 (i), INSTRUCTIONS TO BIDDERS

To: _____ (LCC) _____ This document presents response of _____ (Bidder) _____ to the INVITATION FOR BIDS NO. LCC/18-19/ST/12/1 of Lanka Coal Company (Private) Limited (“LCC”).

Along with our PRICE PROPOSAL submitted herewith, this document represents our firm’s binding offer to supply coal to LCC at the FOB price US \$ Per MT as indicated in the PRICE PROPOSAL on the Terms and conditions specified herein and in the INSTRUCTIONS TO BIDDERS, CONDITIONS OF CONTRACT and the PROPOSED COAL SUPPLY AGREEMENT. If selected for award, we shall be bound to supply coal to LCC pursuant to (a) an executed COAL SUPPLY AGREEMENT (b) the PRICE PROPOSAL, in each case, as accepted by LCC.

We agree to abide by this Form of Bid until _____ (date) and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that all documents submitted with our Bid shall form part of this Form of Bid.

Unless and until the COAL SUPPLY AGREEMENT is executed, this Form of Bid, together with LCC’s written acceptance thereof, shall constitute a binding contract between LCC and us.

We understand that LCC is not bound to accept the lowest or any Bid LCC may receive.

BIDDER:

Company Name : _____
 By : _____ (Authorized Signature)

(Please affix company seal here)

Name : _____
 Title : _____
 Date : _____

ANNEXURE 2 : SPECIMEN FORM OF BID SECURITY
REFERENCE : CLAUS E 2.4.7 INSTRUCTIONS TO BIDDERS
TENDER No. : LCC/18-19/ST/12/1

Name and address of Beneficiary_____ (LCC)
_____ (whom the Bid documents define as the Buyer).

We have been informed that _____ (hereinafter called the "Bidder") is submitting a Bid for a contract for supply of coal in response to your invitation under Invitation for Bids No._____, and that the conditions of your invitation which are set out in a document entitled Instructions to Bidders require its Bid to be supported by a Bid security.

At the request of the Bidder, we (*name of bank*) _____ hereby irrevocably undertake to pay you, the Beneficiary/Buyer, any sum or sums not exceeding in total the amount of _____ (say: _____) upon receipt by us of your demand in writing and your written statement (in the demand) stating that:

- (a) the Bidder has, without your agreement, withdrawn its Bid after the latest time specified for its submission and before the expiry of its period of validity, or
- (b) the Bidder has refused to accept the correction of errors in its Bid in accordance with such conditions of invitation, or
- (c) Having been notified of acceptance of its Bid during the validity period of bid validity;
 - (i) the Bidder fails or refuses to execute the coal supply agreement or
 - (ii) the Bidder fails or refuses to furnish the Performance Security, in accordance with Instructions to Bidders

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or beforewhen this guarantee shall expire and be returned to us.

This guarantee is personal to you and is not assignable. This Bid Security shall be governed by the laws of Sri Lanka.

Date _____ Signature(s) _____

ANNEXURE 3 : FORM OF POWER OF ATTORNEY

REFERENCE : CLAUSE 2.4.9, INSTRUCTIONS TO BIDDERS

Note:

The Bidder shall attach a Power of Attorney, duly authorised*, indicating that the person(s) (with Specimen Signature) and the signing the Bid have the authority to sign the Bid and that the Bid is binding upon the Bidder during the full period of its validity.

**Duly authorised means the person who is signing the BID/ Agreement has to be authorised by a Board Resolution.*

ANNEXURE 4 :REMEDY FOR FALSE STATEMENT
REFERENCE : CLAUSE 2.4.3, INSTRUCTIONS TO BIDDERS
TENDER NO : LCC/18-19/ST/12/1

Dear Sirs,

REMEDY FOR FALSE STATEMENT

If any false or misleading information is provided or false or misleading certification is made in or in connection with this PROPOSAL which may have influenced the decision of the TEC to Award the tender to the Bidders, LCC shall, without limitation as to other possible remedies, have the right to rescind, cancel or terminate without further liability any contract awarded in response to this proposal and to forfeit the related Bid Security or Performance Security.

BIDDER:

Company Name : _____

Authorized Signature : _____

Name : _____

Title : _____

Address : _____

Telephone No : _____

Telefax No : _____

Email Address : _____

Date : _____

Please affix company seal here.

ANNEXURE 5 : PRICE PROPOSAL

REFERENCE : CLAUSE 2.4.5, INSTRUCTIONS TO BIDDERS - INVITATION FOR BIDS NO: LCC/18-19/ST/12/1

Bidder's Name : -----

This document presents the Bidder's PRICE PROPOSAL in response to and based upon LCC's INVITATION FOR BIDS NO. LCC/18-19/ST/12/1 herewith sealed in a single envelope it constitutes a firm and binding offer to supply LCC with coal at the price indicated herein on the terms and conditions specified in the Coal Supply Agreement.

PRICE OFFER

BIDDING QUANTITY	PORTOF LOADING	FIXED PRICE FOBT AT LOAD PORT
360,000 ± 10% MT Bituminous Coal		USD per MT (in words, USD.....)

Bidders should include the FOBT (Port of Loading) price of coal, for the quality complied with the LCC's Specifications Value as per SCHEDULE 1 PART A.

I/We understand that this offer is irrevocable within the Bid Validity Period and LCC may accept this offer at any time prior to the date indicated in the Bid Data Sheet.

Signature : _____
(Authorized Signature of the Bidder)

Company Seal : _____

Name : _____

Title : _____

Date : _____
(Please affix company seal here)

Witnessed by : _____

1.) Name : _____

Title : _____

2.) Name : _____

Title : _____

SECTION 7
DEFINITIONS

7.0 DEFINITIONS

The terms and expressions used in the Agreement shall have the following meanings **respectively** assigned to them unless the context shall otherwise require:

- 1.1 Anticipated Base Load** means, in relation to any Quarter of a Contract Year, the base load level of dispatch of the Plant, measured in MWh, anticipated by the Buyer for the relevant Quarter, as notified by the Buyer to the Seller in the respective Final NQQ Notice.
- 1.2 Applicant** means Lanka Coal Company (LCC)
- 1.3 Approved Measurement Standards** means the ASTM standards for the sampling and analysis of Coal more particularly set forth in Schedule 1.
- 1.4 ASTM** means the American Society for Testing and Materials.
- 1.5 Base Price** means the base price per tonne of Coal in accordance with Clause 3.10.
- 1.6 Beneficiary** means Coal Supplier
- 1.7 Business Day** means any day excluding Saturday, Sunday or any day which shall be in Sri Lanka, a Public holiday or a day on which banking institutions are permitted to be closed.
- 1.8 Buyer** means Lanka Coal Company (Private) Limited (LCC).
- 1.9 Buyer Event of Default** has the meaning ascribed to it in Clause 3.10.2.
- 1.10 Calendar Year or Year** means a period of twelve (12) consecutive calendar months commencing on 1st January and ending on 31st December.
- 1.11 Coal** means bituminous coal to be supplied to Buyer by Seller having quality characteristics as agreed in the Agreement.
- 1.12 Coal Supply Agreement or Agreement** means this agreement for the supply of coal entered into by the Buyer with the Seller.
- 1.13 Confidential Information** has the meaning ascribed to it in Clause 2.4.2.
- 1.14 Contract Year** means a period of twelve (12) months commencing from 1st September and each anniversary of that date.
- 1.15 CIF** means delivery Cost, Insurance and Freight, including lightering in accordance with INCOTERMS 2010 or the latest edition available.
- 1.16 CIF up to the Jetty of the plants** means FOBT (Port of Loading) and Sea freight up to the Puttlum Anchorage and Lightering up to the Jetty of the Plant and Insurance up to the Jetty of the Plant at Lakvijaya Power Plant plus Taxes
- 1.17 Delivery** means on CIF (Jetty of the Plant) basis crossing of the Vessel's rail at the Jetty of the Plant.
- 1.18 Delivery [Alternative wording for FOBT delivery]:** means on FOBT basis loading and trimming of the relevant Coal on board the nominated carrying vessel.] **Deliver** and **Delivered** shall be interpreted accordingly.
- 1.19 Delivery Completion Date** means the date on which the loading and trimming of the relevant coal is completed. **Delivery Point** means on board the nominated carrying vessel at the port of loading.
- 1.20 Discharging Anchorage** means the coal carrier anchoring/mooring point (approximately around N 8o-2', E 79o-43') located 125km north of Colombo in the Indian Ocean.
- 1.21 Event of Force Majeure** has the meaning ascribed to it in Clause 3.7.4.
- 1.22 FOBT** means delivery Free on Board (FOB) in accordance with INCOTERMS 2010 or the latest edition available and including trimming work.

- 1.23** *Foreign Currency or FC* means the lawful currency for Seller's PRICE PROPOSAL and accepted for defining the Base Price according to Clause 3.10.
- 1.24** *Independent Marine Surveyor* means such reputable independent marine survey organization as shall be acceptable to both Buyer and Seller.
- 1.25** *Independent Surveyor* means such reputable independent commercial testing organization as shall be acceptable to both Buyer and Seller.
- 1.26** *ISO* means International Organization for Standardization.
- 1.27** *Jetty of the Plant* means the barge berthing and unloading facility of the Buyer at the Plant.
- 1.28** *kcal* means kilocalorie(s) as defined in the "International System of Units".
- 1.29** *kg* means kilogram(s) as defined in the "International System of Units".
- 1.30** *Letter of Credit* means of an irrevocable, unconfirmed documentary letter of credit
- 1.31** *mm* means millimetre(s) as defined in the "International System of Units".
- 1.32** *Offtaker* means Ceylon Electricity Board.
- 1.33** *Parties* means the Buyer and the Seller.
- 1.34** *Plant* means the Lakvijaya Power Plant located in Sri Lanka.
- 1.35** *Port of Loading or Load Port* means [port designated by supplier]
- 1.36** *Pratique* means permission to do business at a port by a ship that has complied with all applicable government regulations for the purposes of health & safety evaluations and customs compliance.
- 1.37** *Price* means the price per tonne of Coal to be payable by the Buyer to the Seller in respect of Coal nominated for supply in a Contract Year pursuant to Clause 11 or otherwise agreed to be supplied in that Contract Year, as such price may be determined and adjusted as described in the Agreement.
- 1.38** *Qualifying Alternative Coal* has the meaning ascribed to it in Clause 3.8.3.
- 1.39** *Quarter* means a period of three consecutive months, the first Quarter starting from and including 1st September, the second Quarter starting from 1st December the third Quarter starting from 1st March of succeeding year.
- 1.40** *Seller Event of Default* has the meaning ascribed to it in Clause 3.10.1
- 1.41** *Successful Deliver* means the date of the Bill of Lading (B/L) all contractual obligations are completed
- 1.42** *Term* means the period commencing upon the date of the Agreement and ending on the last day of the period of supply of Coal to the Buyer as more particularly described in Clause 3.2.
- 1.43** *Tonne(s) or MT* means metric ton(s) as defined in the "International System of Units".
- 1.44** *"Turn Time"* means the grace period between receipt of Notice of Readiness and the commencement of laytime
- 1.45** *Vessel* means the Ship used in connection with transporting Coal from Load Port to Transshipment Port, Puttalam.
- 1.46** *Working day* means a day upon which business is regularly transacted in the country of the Party charged with acting within a specified time. Unless expressly specified otherwise, the term "*day*" shall be deemed to mean "*calendar day*".