

# **GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**Ministry of Energy**



**Ceylon Petroleum Corporation**

**REQUEST FOR PROPOSALS**

**FOR**

**CONSTRUCTION OF A RE-GASIFIED LIQUEFIED NATURAL  
GAS (R-LNG) PIPELINE SYSTEM FROM FLOATING  
STORAGE REGASIFICATION UNIT (FSRU) LOCATED  
AROUND 5 KM OFF THE KERAWALAPITIYA COASTAL  
BELT TO EXISTING AND FUTURE KELANITISSA AND  
KERAWALAPITIYA POWER PLANTS ON BUILT OWN  
OPERATE AND TRANSFER (BOOT) BASIS**

**BID NO: B/12/2021**

**International Competitive Bidding (ICB)**

**Volume IV- Implementation Agreement**

**February 2021**

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INFORMATION COPY NOT FOR BIDDING

This Implementation Agreement (hereinafter called "Agreement") pertaining to the Project for design, finance, supply, delivery, erection, testing, commissioning, operation & maintenance and transfer of Natural Gas transmission onshore and offshore pipeline system which includes Pipeline End Manifold **(PLEM)**, offshore pipeline from PLEM to Landfall point, Landfall Point, Onshore Pipeline from Landfall Point to Onshore Receiving Facility **(ORF)**, ORF, Onshore Pipeline network from ORF to power plants at Kerawalapitiya and Kelanitissa with associated instrumentation, metering, safety and other auxiliary systems is made on this day.....of.....2021, at Colombo in Sri Lanka

**BY and BETWEEN**

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

**AND**

..... **(PRIVATE) LIMITED** (the "Company"), a company with limited liability and incorporated under the Companies Act No 7 of 2007 and having its registered office at .....

**WHEREAS**

- A.** The Ceylon Petroleum Corporation ("CPC"), a body corporate established by Act No 28 of 1961, has invited, with the authority and approval of the Government, proposals for the finance, design, engineering, construction, commissioning, operation and maintenance of Pipeline System from the custody transfer point [i.e. upstream flange of the Pipeline End Manifold (PLEM)] to Power plants of Kerawalapitiya and Kelanitissa, Sri Lanka on a build-own-operate-transfer (BOOT) basis.
- B.** The Company was selected following a competitive tendering process to develop the Project.
- C.** The Company is incorporated with foreign participation, for the purpose of financing, designing, engineering, building, owning, operating, maintaining and upon the expiry or termination of the Pipeline System (PS) Agreement, transferring to the CPC the Facility.
- D.** The Company and the CPC are willing to enter into the PS Agreement.
- E.** The Government is willing to provide certain concessions, incentives and undertakings to the Company in respect of the business of the Company in constructing, commissioning, owning and operating this facility, subject to and in accordance with the terms and conditions of this Agreement.

**NOW IT IS HEREBY AGREED as follow:**

# 1. DEFINITIONS AND INTERPRETATION

**1.1** In this Agreement unless the context otherwise requires:

**1.1.1 Agree:** provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;

**1.1.2 Definitions:** words, phrases and expressions defined in Volume –I and Volume - III shall have the defined meaning in the whole of this Agreement including the recitals.

**1.1.3 Headings:** the headings in this Agreement are for ease of reference only and shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement.

**1.1.4 Include and Including:** the words “include” and “including” is to be construed as being at all times followed by the words “without limitation”;

**1.1.5 Party and Parties:** each of Party to this Agreement are individually referred to as “Party” and collectively as “Parties” and includes their permitted successors, assigns and transferees;

**1.1.6 Persons:** means any natural person, legal person, or corporate or unincorporated body (whether or not having separate legal personality);

**1.1.7 Plural and Singular:** words importing the singular number include the plural and vice versa where the context requires;

**1.1.8** reference to any gender includes reference to all genders;

**1.1.9 Schedule:** the schedules to this Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Agreement;

**1.2 Schedules, Clauses and Paragraphs:** references to Schedules Clauses and Paragraphs are references to Schedules, Clauses and Paragraphs of this Agreement;

**1.3 Agreement, Other Agreements or Document:** reference to this Agreement or to any other agreement or document shall include references to this Agreement or to such other agreement or document (including recitals and schedules) as may be amended, varied, supplemented, replaced and/or restated in any manner from time to time:

**1.4 Statutes and Regulation:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

- 1.5 Technical Meanings:** Words not otherwise defined herein shall have the meanings as commonly used in the English Language. Words that have well-known generally accepted technical or trade meanings in prudent utility practice are used in this Agreement in accordance with such recognized meanings;
- 1.6 Time:** references herein to time are to Sri Lankan time; and
- 1.7 Hereof, "Herein, and Hereunder:** the words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless followed by the number of a specific part of the Clause.

## **2. TERM**

### **2.1. Term of this Agreement**

Unless otherwise earlier terminated in accordance with the provisions of this Implementation Agreement, this Agreement shall take effect on the date of this Agreement and subject to the terms of any Direct Agreement under clause 3.5, will remain in effect until the expiry or termination of the PS Agreement; except that, the provisions of Clause 3.3 hereof shall remain in effect until all payment obligations under the PS Agreement and guaranteed thereby, are fully paid and settled.

## **3. OBLIGATIONS OF THE GOVERNMENT**

### **3.1. Assistance to be provided by the Government to the Company**

The Government shall, subject to the Laws of Sri Lanka and provided the Company is liable for and pays for all fees, impost, premiums and costs of obtaining the visas, permits, licenses, consents, customs clearances and approvals and insurance as the case may be, provide all reasonable assistance to the Company provided that the company submits necessary details/information timely:

- 3.1.1. to secure visas and work permits for its foreign personnel wholly, directly and necessarily engaged on the Project for the period they are so engaged;
- 3.1.2. in obtaining, subject to the Company complying with the conditions for the grant of the Environmental Requirements:
  - i. the Environmental License, no later than the end of the Preliminary Period; and
  - ii. all other licenses, permits or consents required by any Competent Authority to build, own, operate and maintain the Facility in accordance with the PS Agreement during the term of this Agreement;

3.1.3. in obtaining customs clearances and approvals for the importation of all equipment, materials and spare parts necessary for the Project; ensure that the Governmental Approvals when issued by the relevant Competent Authority have an effective period at least equal to the Term or, if issuance of a Governmental Approval for the Term is in contravention of the Laws of Sri Lanka, have an effective period equal to the maximum permissible period under the Laws of Sri Lanka and that such period will be subsequently extended from time to time for the duration of the Term.

**3.2. The Government's Assistance with regard to the CPC**

Subject to the Laws of Sri Lanka, the Government shall provide all reasonable assistance to facilitate CPC to fulfil its obligations under the PS Agreement;

**3.3. The Government's Guarantee**

The Government Guarantees the performance of obligations of the CPC to make payments of all undisputed payment obligations of the CPC under the PS Agreement; provided that, the Company shall have first exercised all remedies and proceedings for payment available to the Company in the respective agreements (including but not limited to payment under letters of credit, if available), and shall have failed to obtain payment.

For the avoidance of doubt, it is hereby clarified that a payment obligation of the CPC shall be deemed to be undisputed if;

- i. an invoice of the Pipeline Company or any part thereof is not disputed by the CPC; and
- ii. a final determination or award in respect of such disputed amount, is rendered pursuant to the applicable dispute resolution procedures, where any invoice or part thereof is disputed by CPC.

**3.4. Information**

The Government shall respond within 21 (twenty one) days or such longer period as the parties may agree, to all reasonable requests for information relating to the status and ownership of the CPC, and the implementation of the Project, provided that for the purposes of the implementation of the Project, the Company shall at its sole cost and risk investigate the need for and obtain all necessary licenses, consents, approvals and certificates of whatever kind and nature which are required from time to time by any Competent Authority.

### **3.5. Government to enter into Direct Agreements with Lenders and Pipeline Company**

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

- 3.5.1. the Direct Agreement shall take effect on or after the Company giving to the CPC the Construction Notice of the PS Agreement;
- 3.5.2. the Government shall agree to the Lenders taking security over the receivables of the Pipeline Company under the PS Agreement and shall acknowledge the right of the Lenders to cure any default of the Pipeline Company under the PS Agreement or step – in to the Project, as provided in such agreements or any direct agreement relating thereto;
- 3.5.3. the Government shall agree to give the Lenders notice within 14 (fourteen Days) of the Government becoming aware of any default of the Pipeline Company under this Agreement, and at least 5 (five) Days' notice before the Government terminates this Implementation Agreement under Clause 7.2;
- 3.5.4. where the Lenders exercise any right to step in to the PS Agreement, or appoint a third party operator (s) consented to by CPC to replace the Pipeline Company in relation to the project, then there shall be a cure period not exceeding 45 (Forty - five) Days' from the date of the first notice of such step in or appointment during which period any right of the Government to terminate this Agreement shall be suspended. If during the cure period the Lenders or such third party operator (s) do not assume the obligations of the Pipeline Company under this Agreement, the Government's obligations under this Agreement shall be similarly suspended;
- 3.5.5. if the Lenders continue to exercise rights of step in after the cure period or the Project Agreements are assigned to a third party operator(s) consented to by CPC, then the Government's rights of termination under this Agreement shall be restored both with respect to continuing rights of termination from the earlier of the date on



which the Lenders gave notice of continuance (or any assignment), or the end of the cure period;

- 3.5.6. the Direct Agreement shall provide for exemption from the Exchange Control Act and acknowledge that payments received by the Company under the Project Agreements shall remain convertible into United States Dollars and that the Company shall have authority to open accounts with foreign currency banking units of local commercial banks in favour of the Lenders in relation to the Project; and where necessary the Government shall facilitate such convertibility and the opening of such accounts;
- 3.5.7. The Government shall not, without prior written consent of the lenders (such consent not to be unreasonably withheld or delayed) amend the PS Implementation Agreement;
- 3.5.8. the Direct Agreement shall automatically terminate on the expiry or termination of this Agreement, except where any obligations of the Government under Clause 3.3 hereof are outstanding, and in such event, the Direct Agreement shall continue to be valid and effective until all such obligations are settled in full;
- 3.5.9. the Direct Agreement shall be governed by the Laws of Sri Lanka and disputes not first amicably resolved shall be the subject of a disputes resolution procedure adopting the principles of Schedule 2 (Disputes Resolution Procedure); and
- 3.5.10. without prejudice to the foregoing principles, the Direct Agreement may contain such other principles or terms as may be agreed between the Government, the Lenders and the Pipeline Company.

**Note:**

The procedure to be followed by the Lenders with respect to the Direct Agreement is described in Schedule 3.

## **4. OBLIGATIONS OF THE GOVERNMENT WITH REGARD TO THE BOI**

### **4.1. The Company's BOI Status**

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

## **5. OBLIGATIONS OF THE COMPANY**

### **5.1. Fund its Costs of Entering into and Complying with the Project Agreements**

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

- 5.1.1. negotiate and enter into the Project Agreements and dutifully perform its obligations arising under or in connection with the Project Agreements;
- 5.1.2. arrange all necessary financing for the design, development, construction, completion testing, Commissioning, operation and maintenance of the Facility and any necessary working capital in order to perform its obligations under the Project Agreements;
- 5.1.3. use its reasonable endeavors to procure that the Lenders or their representatives to enter into a Direct Agreement under Clause 3.5.
- 5.1.4. provide all information and supporting documentation required by any Competent Authority in any application for the grant of or under any licence, permit or consent in respect of building, owning, operating and maintaining the Facility; and
- 5.1.5. comply with the Environmental Requirements and shall be responsible for the compliance by its officers, employees, directors, agents and Affiliates with the Environmental Requirements applying to them in relation to their undertaking duties relating to the Facility and the business of the Company relating to the Facility.

### **5.2. Abide by the Conditions which attach to its Incentives**

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

### **5.3. Not agree to amendments to the PS Agreement without the Consent of the Government**

The Company shall not agree to any material amendment of the PS Agreement without the prior written approval of the Government.

#### **5.4. Compliance with Law**

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

### **6. LIABILITIES AND INDEMNITIES**

#### **6.1. Limit of the Government's Liability**

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

#### **6.2. Consequential Loss**

Despite anything to the contrary in this Agreement, neither party shall be liable to the other for the other's Consequential Loss, provided that Consequential Loss shall not include any express obligation to make payment (including the payment of interest) or any express obligation to provide an indemnity under any of the other provisions of this Agreement.

### **7. TERMINATION**

#### **7.1. Termination at end of Preliminary Period**

Where at or following the end of the Preliminary Period the PS Agreement is terminated in accordance with respective clauses of the PS Agreement and this Agreement terminates in consequence (under clause 2) and then no party shall have any liability to the other for the other's losses, costs and expenses (including legal and consultative expenses), howsoever arising under or in connection with this Agreement by virtue of such termination, or in respect of any losses, costs and expenses (including legal and consultative expenses) incurred prior to the date of termination of this Agreement, including those related to negotiation, due diligence or its obligation under this Agreement and arranging finance.

#### **7.2. The Government's Right to Early Termination**

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

7.2.1. where breaches of the obligation of this Agreement by the Company which might affect materially to this Agreement and such breach (where capable or remedy), has

- been notified to the Company and has not been remedied within a period of thirty (30) Days of notification, provided that such breach is not due to a breach of the Implementation Agreement by a party other than the Company;
- 7.2.2. where breaches of the obligation of this Agreement by the Company which might affect materially to this Agreement and such material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Company);
- 7.2.3. where breaches of the obligation of the PS Agreement by the Company which might affect materially to the PS Agreement and such breach (where capable of remedy) has been notified to the Pipeline Company and not been remedied within the terms of the PS Agreement as the case may be; provided that the Governments right to terminate pursuant to this Clause 8.2.3 shall not apply where such material breach of the PS Agreement is due to breach by CPC; or,
- 7.2.4. where
- i. any proceeding (including the appointment of a provisional liquidator) is instituted by or against the Company seeking to adjudicate the Company as bankrupt or insolvent or to wind-up the Company (and such proceeding is not disputed in good faith by the Company within 30 (thirty) days of such proceeding first being instituted);
  - ii. a court makes an order adjudicating the Company as bankrupt or insolvent;
  - iii. a resolution is adopted for the voluntary winding-up of the Company;
  - iv. a receiver or a trustee is appointed over the whole or any part of the assets of the Company and such appointment is not vacated within seventy five Days;
  - v. the Company makes an assignment for the benefit of its creditors;
  - vi. Lenders exercise any right over the Facility or any right of step in and have not entered into a Direct Agreement under clause 3.7; or
  - vii. the Company is generally unable to pay its debts as they become due; except where such inability to pay debts has arisen due to a failure to pay any sum of money on the due date therefor by the CPC under the PS Agreement
  - viii. following termination of the PS Agreement by the CPC, in each case pursuant to the respective provisions thereof.

### **7.3. The Pipeline Company's Right to Early Termination**

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

- 7.3.1. where the Government is in material breach of any of its obligations under this Agreement and such breach (where capable of remedy) has been notified to the Government and has not been remedied within a period of sixty Days of notification;
- 7.3.2. where the Government is in material breach of this Agreement which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Government);
- 7.3.3. following termination by the Company of the PS Agreement in each case, pursuant to the respective provisions thereof.

**7.4. Sole Grounds for Termination**

The provisions of this clause 8 shall be the sole and exclusive grounds on which the parties may terminate this Agreement.

**7.5. Antecedent Rights**

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

**7.6. Survival**

In the event of the termination of this Agreement, for a period of sixty Months following termination, the provisions of this Agreement as they relate to the payment of any sum due by one party to the other , the confidential provisions set out in Clause 9.2, this Clause 7.6 and the Disputes Resolution Procedure shall survive termination and continue to have effect in the terms of this Agreement (and in respect of any continuing arbitration commenced prior to the lapse of such sixty Month period, this Agreement shall survive solely in respect of the matter in arbitration) and the provisions of Clause 3.3 hereof shall survive and continue to have effect in the terms thereof, for the period set out therein.

**7.7. Notices of Termination**

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

## **8. RESTRUCTURINGS**

- 8.1. Obligations of the Government under Restructuring of Industry or the CPC  
the obligations of the Government under this Agreement shall survive notwithstanding:

- 8.1.1. any reorganization or restructuring of the import, export and distribution of Petroleum products in Sri Lanka; or
- 8.1.2. the restructuring, reorganization, recapitalization, sale divestiture, merger, consolidation, amalgamation, privatization, change of ownership or other similar transaction involving the CPC; and
- the Government shall cause the relevant entity surviving the CPC, to adopt and become fully liable to perform the CPC's obligations under the PS Agreement.

## **9. MISCELLANEOUS**

### **9.1. Notices**

- 9.1.1. Unless otherwise expressly provided for, all notices, requests, claims, consents, approvals, certificates or other communication under this Agreement (each a "Notice") shall be in legible writing in the English language and signed by a person duly authorized by the sender. A written communication must be marked for the attention or office holder (if any) whom the recipient designates for the purpose.
- 9.1.2. All notices, requests, claims, consents, approvals, certificates or other communication under this Agreement will be:
- i. delivered personally; or
  - ii. sent by prepaid registered post; or
  - iii. sent by facsimile transmission (and promptly confirmed by prepaid registered post);
- addressed to the recipient at the address or facsimile number set out below (as applicable) or to any other address or facsimile number that a party may notify to the other parties by like notice.
- iv. If to the Government:  
To:  
Address:  
Facsimile:  
For:  
With a copy to:  
Address:  
Facsimile:  
For:

v. If to the Company:

To: [ ] (Private) Limited

Address:

Facsimile:

For:

With a copy to:

Address:

Facsimile:

For:

9.1.3. No written communication will be effective until received by the intended recipient. Without limiting any other ways for a party to prove that another party has received a notice, a notice or other written communication under this Agreement, will be treated as received:

- i. if delivered personally, when left with an apparently responsible person at the recipient's address;
- ii. if sent by registered post, on acknowledgment of receipt by or on the recipient's behalf;
- iii. if sent by facsimile, on the sender's receipt of a transmission report indicating that the facsimile was sent in its entirety to the recipient's facsimile number;  
but, if the delivery or receipt is not on a Banking Day or after 2.00pm (local time) on any Banking Day, the notice will be treated as received by the recipient at 9.00am (local time) on the next Business Day.

## 9.2. Confidentiality and Publicity

Subject to Laws of Sri Lanka;

9.2.1. all information (including contracts) provided by one party to the other in connection with the negotiation or performance of this Agreement will be treated as confidential and will not be disclosed to any third party (except to Lenders and competent authorities that are authorized by Law to call for such information) without the other party's prior written consent, which consent may not be unreasonably withheld.

9.2.2. unless the law or the listing requirements of any relevant stock exchange require a party to do so, no party will disclose or publicise the existence or contents of this

Agreement or any other transaction or document evidence or contemplated by it (except to Lenders and competent authorities that are Authorized by Law to call for such information), without the other party's prior written consent, which consent shall not be unreasonably withheld.

- 9.2.3. none of the Parties to this Agreement shall publish or allow third parties to be informed about the sensitive information with respect to the terms and conditions of this Agreement, and/or any sensitive information relating to the Project or any part of it.
- 9.2.4. none of the Parties to this Agreement shall, and shall procure that other third parties do not, make or release any announcements or issue or release any publications, notifications, or correspondence (whether to the media, public or otherwise) regarding this Agreement, unless the relevant Party has obtained the prior written consent of the other party to this Agreement.
- 9.2.5. each of the parties to this Agreement may communicate the aforementioned information to their directors, employees, advisors, agents and consultants on a need-to-know basis if their involvement in this Agreement or the Project or any part of it if so required, or to current or prospective lenders, insurers, finance and security providers and their agents or representatives (including, without limitation, multi-lateral agencies and export credit agencies (and their respective governments), guarantors, trustees, hedge counterparties, credit rating agencies or account banks), provided that each of the parties to this Agreement (as applicable), procures that such third parties are subject to an equally onerous obligation of confidentiality.

### **9.3. Amendments**

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

### **9.4. Waiver**

- 9.4.1. A party's waiver of any failure to comply strictly with any of this Agreement's terms will not operate as a waiver of strict compliance with any of this Agreement's terms now or in the future.
- 9.4.2. A party's failure or delay in exercising any right, power, privilege or remedy under this Agreement will not operate as a waiver of it.



- 9.4.3. A waiver of any obligation by either party shall only be effective if in writing and signed by the authorized official of the Government and the chief executive officer of the Company.
- 9.4.4. A single or partial exercise of any right or remedy will not prevent its further or full exercise. The rights and remedies in this Agreement are cumulative and do not exclude any other remedies to which either party may be lawfully entitled.

**9.5. Assignment and Transfers of Interests**

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

- 9.5.1. The Government may not assign or otherwise transfer all or part of its rights, benefits or obligations under this Agreement without the Company's prior consent, such consent not to be unreasonably withheld or delayed.
- 9.5.2. The Company may not sell, assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the Government's prior consent, such consent not to be unreasonably withheld or delayed,.
- 9.5.3. Save where Lenders exercise rights in terms of the Direct Agreements and save where otherwise agreed by the CPC pursuant to a request from the Company, upon 30 (thirty) Days' prior notice, at all times after the date of this Agreement until the 5<sup>th</sup> (fifth) anniversary of the Operation Date, the Company shall be Controlled by .....

**9.6. Severability**

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

**9.7. No Partnership or Other Relationship**

- 9.7.1. Nothing in this Agreement makes either party the other party's partner, agent or representative or creates any trust or commercial partnership.
- 9.7.2. No party may act for, or incur any obligation or liability on the other party's behalf unless expressly stated in this Agreement.
- 9.7.3. Each party indemnifies the other party and (as appropriate) the other party's subsidiaries, directors, officers, employees and representatives against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind arising out of any act of, or any assumption of any obligation by, the party

on the other party's behalf, except as expressly provided for by this Agreement or to the other party's prior written consent.

**9.8. Good Faith**

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

**9.9. Further Assurances**

Each party will, at its own cost and when the other party requests, promptly do everything reasonably required to give full effect to this Agreement and the transactions contemplated by this Agreement. Each party will take all practical steps to make its Affiliates, if any, and all relevant third parties do the same.

**9.10. Representations and Warranties**

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

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

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

- i. it is duly incorporated or constituted and organized under the Laws of Sri Lanka and has full power and authority, corporate or otherwise, to enter into and perform its obligations and to conduct its business as presently or as proposed to be conducted, and this Agreement has been duly authorized, executed and delivered by it, and constitutes legal, valid and binding obligations of such party;
- ii. entry into and performance of this Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and
- iii. there are no actions, suits, proceedings or investigations pending or, to the Company's knowledge, threatened against it at law or in equity before any court or before any governmental department, commission, board, agency

or instrumentality (whether or not covered by insurance) which individually or in the aggregate would affect the validity or enforceability of this Agreement or could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the Company or in any impairment of its ability to perform its obligations under this Agreement;

- iv. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any governmental department, commission, board, agency or instrumentality which may result in any such materially adverse effect or such impairment.
- v. the execution, delivery and performance of this Agreement does not conflict with the Company's memorandum and articles of association or conflict or result in the breach or termination of any provision of or constitute a default under, any mortgage, loan, contract or other undertaking binding on the Company;
- vi. it has the required authority, ability, skills, experience and capacity to perform, and shall perform all its obligations in connection with the Project in accordance with the terms of this Agreement;
- vii. it has the knowledge of all the legal requirements and business practices in Sri Lanka that must be followed in performing its obligations under this Agreement and its obligations shall be performed in conformity with such requirements and practices; and
- viii. it has reviewed the requirements of this Agreement, familiarized itself with all the relevant matters specific to Sri Lanka and/or the Facility and/or the Site and all other relevant matters, and utilizing its experience and skills has made adequate provision for everything necessary to fulfil its obligations, whether specified and/or described or not in the PS Agreement.

#### **9.11. Entirety of Agreement**

This Agreement constitutes the entire Agreement between the parties. It replaces all of the parties' earlier discussions and agreements. No party will be bound by any conditions, definitions, warranties or representations except those stated in this Agreement or agreed in writing after this Agreement's date and properly signed by or on behalf of the party to be bound by them.

## **10. DISPUTES**

### **10.1. Disputes**

In the event of any dispute or difference of whatever nature between the parties arising under or in connection with this Agreement (including any dispute or difference in connection with the existence or validity of this Agreement or any provision hereof) which is not first amicably resolved between the parties to this Agreement by good faith mutual discussions within 30 (thirty) Days or such longer periods as the parties may agree, or, in the case of a dispute involving insurance or any disputed invoice, 14 (fourteen) Days, after the date that the disputing party gives notice of the dispute to the other party identifying the dispute in reasonable detail and requesting consultations between the parties to resolve the dispute, then the Disputes Resolution Procedure set out in Schedule 2 (Disputes Resolution Procedure), shall apply.

## **11. LAW**

### **11.1. Governing Law**

This Agreement and the transactions and any non-contractual obligations arising out of or in connection with them shall be governed by laws of Sri Lanka..

## **12. BANK ACCOUNTS; FOREIGN EXCHANGE**

### **12.1. Use of Offshore Accounts**

All transactions relating to the Project or any part of it that are denominated in Foreign Currency, including debt servicing, repatriation of earnings and payments to contractors and service providers, may be initiated through bank accounts of Pipeline Company located in or outside of Sri Lanka in accordance with Laws of Sri Lanka issued thereunder.

### **12.2. Governmental Approval for Dollar Accounts**

The Government shall ensure that the Pipeline Company obtain the relevant consents for the opening and operation of Dollar bank accounts, including, without limitation, bank accounts necessary to implement the Project in or outside of Sri Lanka, and transfer any funds from or to its accounts in Sri Lanka, to or from its accounts maintained outside Sri Lanka, to implement and carry out the Project, with such exemptions as may be necessary to give effect to the provisions of this Clause 13 as per the applicable laws of Sri Lanka.

### **12.3. Transfer and Repatriation of Necessary Funds**

- a. The exchange of Rupee into Dollars and the transfer outside Sri Lanka of all Dollars received in connection with the Project is governed by Monetary Law 37 of 1974 (as amended) and Foreign Exchange Act No. 12 of 2017.

- b. The Government permits the free and immediate transfer of all funds and other financial settlements or receipts in Dollars (or converted from Rupee into Dollars) necessary to implement and carry out the Project or any part of it and perform its obligations under the PS Agreement, with such exemptions as may be necessary to give effect to the provisions of this Clause 13, and shall ensure full, timely, and unencumbered repatriation rights with respect to all funds and other financial settlements or receipts in Dollars including all Dollar denominated payments by the Government under this Agreement (or converted from Rupee into Dollars, whether converted through the interbank foreign exchange market or by any other financial institution). Such transfers shall however be subject to the Laws of Sri Lanka.

#### **12.4. Availability of Dollars**

12.4.1. The Pipeline Company shall be permitted to purchase Dollars through normal commercial banking channels (and to hold in an account of the Pipeline Company) in the amount necessary for or in respect of:

- a. meeting Pipeline Company's Foreign Currency payment obligations under Project Agreement (other than the Finance Documents, for which paragraph (e) shall apply);
- b. the repatriation by Pipeline Company of any capital contributions, shareholder loans, dividends or other distributions to foreign Investors and repatriation of proceeds from sales of shares in Pipeline Company and proceeds of sale upon dissolution or liquidation;
- c. the Foreign Currency expenses of the Project or any part of it (including, without limitation, payment of any contractor and the Finance Parties and, where applicable, fees, expenses, salaries and other monetary emoluments of their employees, agents, and direct foreign collaborators, advisers, experts, suppliers, the purchase of spare parts), the payment of premiums and fees to offshore/onshore insurers and reinsurers;
- d. all payments into, or out of, any reserve or other accounts required by the Finance Parties under the Financing Agreements or by CPC under the PS Agreement that require Foreign Currency; and
- e. meeting Pipeline Company's payment obligations in any Foreign Currency under the Financing Agreements, including, without limitation, repayments of principal (whether scheduled or accelerated by Finance Parties), interest (including default interest), commissions, fees (including, without limitation, guarantee, commitment

and arrangement fees), expenses, costs, hedging costs, premiums, break costs and other pre- payment costs, and the realization of remedies under the guarantee or indemnity pursuant to this PS Implementation Agreement.

## **13. IMPORT CONTROLS**

### **13.1. Right to Import**

Subject to provisions stipulated in Laws of Sri Lanka and the provisions of PS Agreement;

13.1.1. Pipeline Company shall be entitled to import without restriction and in its discretion:

- a. all piping and other items required for the design, procurement, development, construction, completion, testing, commissioning, repair, operation and maintenance of the Facility, including, without limitation, spare parts and replacements to the spare parts inventory,

(the Facility Materials, and those Facility Materials not including LNG, the Non-LNG Facility Materials)].

13.1.2. All Facility Materials will be allowed (as applicable) temporary importation facilities, without restriction, on a re-exportable basis under Customs Ordinance (and any other written law applicable pursuant to Schedule B thereof) and Imports and Export (Control) Act No. 1 of 1969 (as amended), as in existence on the date of this Implementation Agreement.

13.1.3. All Facility Materials can be freely re-exported by Pipeline Company without incurring liability for Taxes.

### **13.2. Customs Clearance**

Subject to provisions stipulated in Laws of Sri Lanka;

13.2.1. To expedite clearance by the Customs Authority of all Facility Materials imported into Sri Lanka by Pipeline Company, the Government (through CPC, any Competent Authority or otherwise) shall take all advance steps and issue such advance instructions and issue such certificates and documentations as necessary to ensure such clearance and shall further confirm to the Customs Authority that all such Facility Materials are items which the

Pipeline Company may import without restriction and without payment of any Taxes (the Clearance Document) provided that the Pipeline Company submit CPC all the necessary documents timely for issuing such clearance Document. In particular, the Government shall instruct Customs Authority to ensure that all Facility Materials imported into Sri Lanka are permitted to be cleared by Pipeline Company in conformity with the Clearance Document not more than 90 (ninety) Banking Days from the date of submission of Customs Declaration and endorse the delivery of Facility Materials on the Customs Declaration to the Pipeline Company.

- 13.2.2. If, notwithstanding compliance by the Government with Clause 14.2.1 above, from and after the later of the date on which the Clearance Document is delivered to the appropriate Customs Authority and the date that any Facility Materials are available to the Customs Authority for inspection, the Pipeline Company experiences more than 90 (ninety) Banking Days delay in clearance by the Customs Authority of any such Facility Materials imported into Sri Lanka, the Government pursuant to this Clause 14 must take all such other steps or action that may be necessary or issue such further documentation as necessary to expedite such clearance.
- 13.2.3. If, following notice to the relevant Pipeline Company in writing of a delay in clearance from Customs Authority of any Facility Materials of a greater length than provided in Clause 14.2.2, the Pipeline Company experiences more than 30 (thirty) Banking Days of additional delay in clearance by the Customs Authority of any such Facility Materials imported by Pipeline Company into Sri Lanka pursuant to this Clause 14.2 or to the Customs Authority (or any other relevant Competent Authority) fails to issue the Clearance Document pursuant to Clause 14.2.1 within the time period required therein, such event or circumstances shall constitute a Force Majeure Event under the PS Agreement.

### **13.3. Export and Re-Import**

Pipeline Company shall be entitled Subject to provisions stipulated in Laws of Sri Lanka;

- a. to export without restriction or the payment of any Taxes all Facility Materials imported by it under Clause 14 for the purpose of repair or refurbishment outside Sri Lanka and to re-import the same without restriction and without the payment of any Taxes; and
- b. upon termination of this PS Implementation Agreement or the PS Agreement in accordance with the provisions thereof and except as otherwise expressly provided in this Agreement and the PS Agreement, to remove the Facility Materials or any



portion thereof from the Site and export the same outside Sri Lanka without the payment of any Taxes,

and, in each case, the Government shall, at the request of the Pipeline Company, take reasonable measures to expedite the issuance of any Governmental Approvals required for the export and, where applicable, re-import of such Facility Materials.

## **14. TAXATION**

### **14.1 Foreign Taxation:**

The priced bid by the Company shall include all taxes, duties and other charges imposed outside Sri Lanka on the production, manufacture, sale and transport of the Company's Equipment, Plant, materials and supplies to be used on or furnished under the PS Agreement, and on the services performed under the PS Agreement.

### **14.2 Local Taxation:**

The Company will be exempted subject to the Laws of Sri Lanka from duties, taxes and other levies (other than those that fall under sub clause 15.3 below) payable by the Company to the Government of Sri Lanka, under the PS Agreement. Therefore, the Company shall not include duties, taxes and other levies in the rates and prices.

In case, if the Company has to pay any taxes duties and levies which do not fall under sub clause 15.3 below, CPC will reimburse such taxes, duties, and levies on submission of necessary documentation related to paid duties, taxes and levies.

### **14.3 Corporate and Personal Income Taxes:**

The Company will be liable to pay Corporate tax under the Laws and regulations applicable. The Company's staff, and labor will be liable to pay personal income taxes in Sri Lanka in respect of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Company shall perform such duties in regard to such deduction thereof may be imposed on the Company by such laws and regulations. The applicable rates for Corporate and Personal income taxes will be the rates prevail in Sri Lanka 28 days before the closing of this Tender.

(and the aggregate of all sums payable under this section shall be the "Tax Liability").



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

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

The Common Seal of \_\_\_\_\_

\_\_\_\_\_(PRIVATE) LIMITED

Is affixed hereto in the presence of \_\_\_\_\_ }

\_\_\_\_\_ two Directors of the Company }

who attest the sealing thereof \_\_\_\_\_

INFORMATION COPY NOT FOR BIDDING

## Schedule 1 - Definitions

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

<b>"Affiliate"</b>	means in relation to a party, any one of:  (a) a holding company of that party;  (b) a Subsidiary of that party;  (c) any other company which is a Subsidiary of that party's holding company;
<b>"Agreement"</b>	means this Implementation Agreement;
<b>"Banking Day"</b>	Means each day, except Saturday, Sunday and public holiday, when banks are generally open for business in all of: Colombo, Sri Lanka.
<b>"BOI"</b>	means the Board of Investment of Sri Lanka, as authorised under the BOI Act;
<b>"BOI Act"</b>	means the Board of Investment of Sri Lanka, Law No 4 of 1978, as amended;
<b>"BOI Status"</b>	means the tax incentives and concessions applicable to a company under the BOI Act
<b>"CPC"</b>	means the Ceylon Petroleum Corporation, a body corporate established by Act No 28 of 1961 and any successor and permitted assign;
<b>"CEB System"</b>	means the electric high voltage transmission system, including all transmission lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the CEB on the opposite side of the Interconnection Point to the Facility;

<p><b>"Change in Law"</b></p>	<p>means any of the following occurring after the date of this Agreement as a result of any action by any Competent Authority:</p> <p>(a) an amendment to or repeal of any existing Law in force in Sri Lanka (including subsidiary legislation, rules, regulations, orders and directives made or issued by such Competent Authority pursuant to or under any such Law) and any decree or judicial decision given or pronounced by any court of competent jurisdiction;</p> <p>(b) an enactment or making of new legislation, and</p> <p>(c) a change in the manner in which any of the Laws of Sri Lanka are applied or interpreted in relation to the Project except where such change results from noncompliance by the Company with any Laws of Sri Lanka in force at the date of this Agreement,</p> <p>provided a change in any law regarding tax, including VAT, import duties and levies, after the date of this Agreement shall not be a Change in Law pursuant to this Agreement;</p>
<p><b>"Company"</b></p>	<p>means the project company which is a party to this Agreement, being a limited liability special purpose vehicle incorporated in Sri Lanka and established for the purpose of financing, designing, construction and operating the Project;</p>
<p><b>"Competent Authority"</b></p>	<p>means the Government or any authority, ministry or department under the control of the Government; but shall not include the Public Utilities Commission of Sri Lanka set up by Act No. 35 of 2002.</p>

<b>"Consequential Loss"</b>	means all loss of production, loss of profit, loss of income, loss of goodwill, loss of business, loss of anticipated saving, and any special, indirect or consequential damage or loss;
<b>"Custom Authority"</b>	Means the Department of Customs which has Authority over the collection of Customs duties and value added taxes on goods, machinery and equipment imported into Sri Lanka and the clearance or release thereof under the Laws of Sri Lanka;
<b>"Construction Notice"</b>	means the notice issued by the Company to the CPC pursuant to Clause 42 of Schedule 12 of the PS Agreement which signals the end of the Preliminary Period and the commencement of the Construction Period;
<b>"Day" or "day"</b>	means a period of twenty four Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;
<b>"Direct Agreement"</b>	means the agreement to be entered into if required by the Lenders, by the Government, the Lenders and the Company consistent with the principles referred to in Clause 3.5;
<b>"Dispute Resolution Procedure"</b>	means the procedure for the resolution of disputes set out in Schedule 2 (Disputes Resolution Procedure);

<b>"Environmental Approval"</b>	means the environmental approval issued by the relevant Competent Authority in respect of the terms of the environmental clearance for the Facility;
<b>"Environmental Law"</b>	means the National Environment Act No 47 of 1980, as amended, any regulations thereunder, as amended from time to time, and all other enactments, statutes, laws rules and regulations for the protection of the environment for the time being in force in Sri Lanka;
<b>"Environmental License"</b>	means the license required to be obtained from the Central Environment Authority under the Environmental Law in relation to the Facility;
<b>"Environmental Requirements"</b>	<p>means:</p> <p>(i) complying with or exceeding the requirements of the Environmental Approval, the Environmental Licence, the Environmental Law, all applicable environmental quality standards, regulations and directives of the relevant Competent Authorities;</p> <p>(ii) establishing environmental management systems and facilities to ensure that the Environmental Law, applicable regulations, standards and lawful directives referred to in (i) above are complied with or exceeded;</p> <p>(iii) unless otherwise directed by the relevant Competent Authority, installing and operating a suitable continuous emission and ambient air monitoring system including at least four monitoring stations at appropriate locations within a 10 kilometre radial distance from the Facility;</p>

	<p>(iv) installing and operating on-line recorders at the Facility and, unless otherwise directed, in the offices of the relevant Competent Authority;</p> <p>(v) providing an annual report on all relevant aspects of the Company's environmental facilities, activities and performance no later than 30 Days following each 12 month period from the commencement of the Construction Period to the end of the Operational Period. The annual report on environmental performance shall contain a statement of assurance stating that the Environmental Approval, the Environmental Licence, the Environment Law and all applicable regulations and lawful directives have been complied with or, where this is not the case, shall contain details of any failure to so comply and actions instituted to prevent such failures recurring.</p>
<p><b>"Facility"</b></p>	<p>means the Regasified LNG Pipeline to be built from FSRU to Power plants at Kerawalapitiya and Kelanitissa, whether completed or at any stage of development and construction, and including without limitation land, buildings, engineering and design documents, Gas producing equipment, auxiliary equipment, fuel handling and storage infrastructure, water treatment facilities, solid waste disposal facilities and all other installations;</p>
<p><b>"Financing Agreements"</b></p>	<p>means any and all of the agreements executed between the Company and the Lenders for the making available to the Company of debt financing for construction and completion of the Facility up and until the Pipeline Operation Date, and the security documents and other ancillary undertakings in favour of the Lenders entered into in connection with such agreements;</p>

<b>"Government"</b>	means the Government of the Democratic Socialist Republic of Sri Lanka;
<b>"Governmental Approval"</b>	means any approval, licence, permit or consent from any Competent Authority required by the Laws of Sri Lanka for the purpose of any party carrying out its obligations under the PS Agreement, including those listed in Schedule 4 of this Agreement;
<b>"Hour"</b>	means each continuous period of sixty minutes commencing with the first minute of each of the twenty four denominated Hours of any Day;
<b>"Laws of Sri Lanka"</b>	Means any Act of Parliament, any Law enacted by any Legislature at any time prior to the commencement of the Constitution and includes an Order in Council, subordinate legislation and includes Orders, Proclamations, Rules, By-laws and Regulations made or issued by anybody or person having power or authority under any law to make or issue the same ;
<b>"Lease"</b>	means the agreement between the CPC and the Company for the lease of the Site entered into on or before the date of the PS Agreement but taking effect on the date of the Construction Notice;
<b>"Lenders"</b>	means the banks and/or financial institutions and/or other persons (including [ <i>insert relevant lending institutions</i> ] or any Subsidiary thereof) party to the Financing Agreements;
<b>"Minister of Energy"</b>	means the Minister of the Government in charge of the subject of energy;
<b>"Month"</b>	means a period beginning at 0000 Hours on the first Day of a calendar month and ending at 2400 Hours on the last Day of that calendar
<b>"Notice"</b>	has the meaning given to that term in Clause 9.1.1;

<b>"Notice of Arbitration"</b>	has the meaning set out in Schedule 2 (Disputes Resolution Procedure);
<b>"O&amp;M Operator"</b>	has the meaning given to in the PS Agreement;
<b>"Operation and Maintenance Agreement" or "O&amp;M Agreement"</b>	means the agreement between the Company and the O&M Operator for the operation and maintenance of the Facility;
<b>"Gas Purchase Agreement" or "GPA"</b>	means the Gas Purchase Agreement between the Terminal Company and the CEB, of even date as this Agreement pursuant to which the Company has agreed to sell to the CEB, and the CEB has agreed to purchase from the Company, LNG produced by the Facility;
<b>"Preliminary Period"</b>	means the period commencing on the date of the PS Agreement and, save as extended in accordance with the PS Agreement, ending on the earlier of:  (i) 2400 Hours on the Day falling 180 (One Hundred and Eighty) Days thereafter; and  (ii) 2400 Hours on the Day on which the Company gives the CPC the Construction Notice;
<b>"Project"</b>	means the design, financing, procurement, construction, testing, commissioning, completion, ownership, management, long-term operation, repair, maintenance and transfer of the Facility in accordance with the Project Agreements;
<b>"Project Agreements"</b>	This PS Implementation Agreement and PS Agreement;
<b>"Prospective Lenders"</b>	means one or more of the financial institutions approved by the CPC;



<b>"Prudent Utilities Practice"</b>	means the accepted international practice and standard which the Company shall identify prior to the Operational Period, and engineering and operation considerations, including manufacturers' recommendations and the exercise of that degree of reasonable skill, diligence, foresight and prudence that would be exercised or generally followed by a skilled and experienced operator in the operation and maintenance of facilities similar to the Facility;
<b>"Request for Proposals"</b>	means the request for proposals issued by the Government for this Project;
<b>"Restoration"</b>	has the meaning given to that term in Clause 6.3.4;
<b>"Rupees" or "Rs"</b>	means the lawful currency of Sri Lanka;
<b>"Scheduled Financial Closure"</b>	means the estimated date under the Project Milestone Schedule of FSRU&M Agreement when all the conditions of the Financing Agreements are fulfilled before initial disbursement of funds. Financial closure shall occur within 180 (one hundred and eighty) days from the signing of Project Agreements.
<b>"Senior Debt"</b>	means the debt financing provided by the Lenders to the Company pursuant to the Financing Agreements;
<b>"Site"</b>	means the area of land more particularly described in the Lease where the Facility is located and shall include the necessary easements and corridors for the carrying out of the Project and any other places as may be specified in the Project Agreements as forming part of the Site;
<b>"Sri Lanka"</b>	means the Democratic Socialist Republic of Sri Lanka;
<b>"Subsidiary"</b>	means a company:

	<ul style="list-style-type: none"> <li>(i) of which the majority of its issued share capital is held by another company; or</li> <li>(ii) in respect of which another company has the right to control the composition of the board of directors or the casting of votes at shareholders' meetings of that company; or</li> <li>(iii) which, or whose board of directors, normally acts in accordance with the instructions of another company;</li> </ul>
<b>"Turnkey Contract"</b>	means the agreement between the Company and the Turnkey Contractor for the design, engineering, construction, testing and Commissioning of the Facility;
<b>"Turnkey Contractor"</b>	means the Turnkey Contractor appointed by the Company
<b>"UNCITRAL Rules"</b>	has the meaning given to that term in paragraph 1.2 (a) of Schedule 2 (Disputes Resolution Procedure);

## **Schedule 2 - Disputes Resolution Procedure**

### **Arbitration**

#### **1.1. References to Arbitration**

All dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this Schedule 2, a Dispute), shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission on International Trade Law (the "**UNCITRAL Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this Clause.

#### **1.2. Notices of Arbitration**

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

#### **1.3. Place and Language of Arbitration**

The seat or legal place of the arbitration shall be Singapore. The language of the arbitration shall be English and any award shall be rendered in English.

#### **1.4. Arbitral Tribunal**

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

#### **1.5. Consolidation of Disputes under this Agreement**

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

## **1.6. Conduct of Arbitration**

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

## **1.7. Awards**

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

## **1.8. Costs of Enforcement**

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

## **1.9. Parties Obligations During Arbitral Proceedings**

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

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

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

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

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

### **Schedule 3 – Principles to be followed by Lenders**

- 3.1. The Lenders shall agree to give the Government notice within 14 (fourteen Days) of the Lenders becoming aware of any default under the Financing Agreements and at least 45 (forty five) Days' notice before the Lenders to exercise any rights to step in to the Project or to appoint a third party operator acceptable to CPC and agreement with Government to replace the Pipeline Company in relation to the Project.
- Prior to the appointment of a third party operator, the Lender should obtain the prior written approval of CPC & GOSL
- 3.2. The Lenders shall have the right to step in to the Project or to appoint a third party operator to replace the Pipeline Company, in relation to the Project, where:
- (i) the Government gives notice of Termination under clause 7.2 and the Lenders give the Government notice exercising such a right within 30 (thirty) days of the date of the Government's notice Termination, to which end the effect of such notice of termination shall be suspended for 45 (forty five) days commencing on the date of the notice; or
  - (ii) the Lenders give notice under paragraph 3.1. of this Schedule, of a step in or appointment of a third party operator to replace the Company in relation to the Project subject to the prior written approval of CPC & GOSL.
- 3.3. no later than twenty one (21) Days prior to the end of the cure period stated in paragraph 3.2 of this Schedule, the Lenders shall give notice to the Government whether or not they wish to continue to exercise their rights of step in or have assigned to any third party operator / the PS Agreements:
- (i) if they do, then the Lenders or the third party operator (as the case may be) shall assume all outstanding and continuing liabilities of the Company under the PS/Project Agreements and the Government's obligations under this Agreement shall resume;
  - (ii) but if they do not, then this Agreement and the Direct Agreement shall terminate forthwith at the earlier of the date on which Lenders gave any notice that there shall be no continuance (or requirement for assignment), or the end of the cure period;

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

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