

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

**MINISTRY OF POWER**



**CEYLON ELECTRICITY BOARD**

**REQUEST FOR PROPOSAL  
FOR THE DEVELOPMENT OF SECOND 300MW LNG  
COMBINED CYCLE POWER PLANT AT KERAWALAPITIYA  
ON BOOT BASIS**

RFP NO.: CEB/AGM(TR)/DGM(PPD)/LNG2-2020  
International Competitive Bidding (ICB)

**VOLUME IV  
DRAFT IMPLEMENTATION AGREEMENT**

**JUNE 2021**



# **IMPLEMENTATION AGREEMENT**

## **FOR THE DEVELOPMENT OF SECOND 300 MW LNG COMBINED CYCLE POWER PLANT AT KERAWALAPITIYA ON BOOT BASIS**

**Dated .....2021**

**between**

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

**and**

**..... {The Company Name}**



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This **Implementation Agreement** is made and entered in to 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**

----- **{The Company Name}** (the "Company"), a company duly incorporated under  
the Companies Act No. 7 of 2007 with limited liability, bearing company registration number -----  
----- and having its registered office at -----, Sri Lanka

**WHEREAS**

- A** The Ceylon Electricity Board , a body corporate established by Act No. 17 of 1969, has invited,  
with the authority and approval of the Government, proposals for the finance, design,  
engineering, construction, commissioning, operation and maintenance of 300MW combined  
cycle power generating Facility at Kerawalapitiya in the Gampaha District, Western Province,  
12 km North of Colombo, Sri Lanka on a build-own-operate-transfer basis;
- B** The Company was selected following a competitive tendering process to develop the Project;
- C** The Company is incorporated for the purpose of financing, designing, engineering, building,  
owning, operating and maintaining the Facility during the term of the Power Purchase  
Agreement;
- D** The Company and the CEB are willing to enter into the Lease, and the Power Purchase  
Agreement and the Company and CPC are willing to enter into the Liquid Fuel Supply  
Agreement and subsequently the Company is required to enter into the Gas Fuel Supply  
Agreement with the Gas Fuel Supplier (upon terms mutually acceptable to the Gas Fuel  
Supplier and the Company); and
- 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, in accordance with the terms and conditions of this Agreement  
subjected to the applicable law;

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

## **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 Schedule 1 (Definitions) 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" are to be construed as being at all times followed by the words "without limitation";
- 1.1.5 Negative Obligations: any obligation not to do anything includes an obligation not to permit or cause that thing to be done;
- 1.1.6 Party and Parties: each of the Party to this Agreement are individually referred to as "Party" and collectively as "Parties" and includes their permitted successors, assigns and transferees;
- 1.1.7 Persons: references to persons include references to individuals, companies, corporations, partnerships, consortiums, firms, joint ventures, associations, trusts, organizations, governmental or other regulatory bodies or authorities or any other legal entities and their permitted successors and assigns;
- 1.1.8 Plural and Singular: words importing the singular number include the plural and vice versa where the context requires;
- 1.1.9 Masculine and Feminine: words importing the masculine include the feminine and neuter and vice versa where the context requires; and
- 1.1.10 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**

This Agreement (other than for Clause 6 which shall take effect from the date of the Construction Notice) shall take effect on the date of this Agreement and subject to the terms of any Direct Agreement under Clause 3.4, will remain in effect until the earlier of the expiry or termination of the Power Purchase Agreement, unless otherwise earlier terminated in accordance with the provisions of this Agreement; except that, the provisions of Clause 3.2 hereof shall remain in effect until all payment obligations under the Power Purchase Agreement and the Fuel Supply Agreements 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, licences, consents, customs clearances and approvals and insurance as the case may be, provide all reasonable assistance to the Company:

- 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 Generation Licence and the Environmental Requirements and other conditions relevant to other licences permits or consents:
- (i) the Generation Licence, no later than the end of the Preliminary Period;
  - (ii) the Environmental Protection Licence, no later than the end of the Preliminary Period;
  - (iii) to obtain the rights related to the Fuel Supply Corridor if applicable; and
  - (iv) all other licences, permits or consents required by any Competent Authority to build, own, operate and maintain the Facility in accordance with the Power Purchase Agreement and under the Liquid Fuel Supply Agreement and the Gas Fuel Supply 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;
- 3.1.4 to import, purchase, store and transport to the Facility, through authorised suppliers, any lubrication oils to be consumed in the Facility;
- 3.1.5 in obtaining insurance in connection with the Power Purchase Agreement, the Liquid Fuel Supply Agreement, the Gas Fuel Supply Agreement, the Turnkey Contract and the Operation and Maintenance Agreement in relation to the Facility without giving rise to any cost or liability on the part of the Government, the CEB or the CPC;
- 3.1.6 to make arrangements for the availability of Gas Fuel at the site boundary to operate the Facility from the second (2<sup>nd</sup>) contract Year onwards and to ensure that the terms of the Gas Fuel Supply Agreement shall be no less favourable to the Company than the terms of the Liquid Fuel Supply Agreement.

## **3.2 The Government's Guarantee**

The Government Guarantees:

- 3.2.1 the performance of obligations of the CEB to make payment of all undisputed payment obligations of the CEB, including Capacity Charges, Energy Charges and the Buy-Out Price under the Power Purchase Agreement; and
- 3.2.2 the obligation of the Fuel Suppliers to make payment of all undisputed payment obligations of the respective Fuel Suppliers, including liquidated damages in respect of Shortfall under the Fuel Supply Agreements;

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 CEB or the Fuel Suppliers, as the case may be, shall be deemed to be undisputed if;

- (i) an invoice of the Company or any part thereof is not disputed by the CEB or the Fuel Suppliers as the case may be, in terms of the invoice disputing process applicable respectively under the Power Purchase Agreement or the Fuel Supply Agreements; or
- (ii) an agreement, a final determination or an award in respect of such disputed amount, is rendered pursuant to the applicable dispute resolution procedures, where any invoice or part thereof is disputed in terms of such invoice disputing process.

### **3.3 Information**

The Government shall respond within twenty one (21) Days to all reasonable requests for information relating to the status and ownership of the CEB, and the implementation of the Project which are required for the company to carryout it's obligations under the PPA, FSA and IA, 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 licences, consents, approvals and certificates of whatever kind and nature which are required from time to time by any Competent Authority.

### **3.4 Government to enter into Direct Agreements with Lenders**

The Government acknowledges that the Lenders will require their financing to be secured in relation to the Project, and in relation to this Agreement 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:

- 3.4.1 the Direct Agreement shall take effect on or after the Company giving to the CEB the Construction Notice under Clause 4.6 of the Power Purchase Agreement, as agreed therein;
- 3.4.2 the Government shall acknowledge the right of the Lenders to cure any default of the Company under the Power Purchase Agreement or any Fuel

Supply Agreement or step – in to the Project, as provided in such agreements or any direct agreements relating thereto;

- 3.4.3 the Government shall agree to give the Lenders notice within fourteen (14) Days of the Government becoming aware of any default of the Company under this Agreement, and as much notice as reasonably practicable of any intention of the Government to terminate this Agreement under Clause 8.2, provided that in either case failure to do so shall be without prejudice to the Government's right to terminate this Agreement under Clause 8.2 where the Government promptly copies its notice of termination to the Lenders or their representative;
- 3.4.4 the Lenders shall agree to give the Government notice within fourteen (14) Days of the Lenders becoming aware of any default under the Financing Agreements and as much notice as reasonably practicable of any intention of the Lenders to exercise any rights to step in to the Project or to appoint a third party operator to replace the Company in relation to the Project, provided that in any such case failure to do so shall be without prejudice to the Lenders' right to step in to the Project or appoint a third party operator to replace the Company in relation to the Project, where the Lenders or their representative promptly copy to the Government the notices to the CEB, CPC and the Company actually exercising such rights to step in or appoint a third party operator;
- 3.4.5 in relation to this Agreement the Lenders shall have the right to step in to the Project or to appoint a third party operator to replace the Company acceptable to CEB, in relation to the Project, where:
  - (a) the Government gives notice of termination under Clause 8.2 and the Lenders give the Government notice exercising such a right within twenty one (21) Days of the date of the Government's notice of termination, to which end the effect of such notice of termination shall be suspended for twenty one (21) Days commencing on the date of the notice; or
  - (b) the Lenders give notice under Clause 3.4.4 of a step in or appointment of a third party operator to replace the Company in relation to the Project;
- 3.4.6 where the Lenders exercise any right to step in to the Project or appoint a third party operator to replace the Company in relation to the Project, then there shall be a cure period not exceeding one hundred and eighty (180) 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 do not assume the obligations of the Company under this Agreement, the Government's obligations under this Agreements shall be similarly suspended;

- 3.4.7 no later than twenty one (21) Days prior to the end of the cure period stated in Clause 3.4.6, 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 Project Agreements, and:
- (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 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;
- 3.4.8 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;
- 3.4.9 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, then the Government's rights of termination under this Agreement shall be restored both with respect to earlier and 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;
- 3.4.10 the Direct Agreement shall provide for exemption from Exchange Control Act and authority to open accounts with foreign currency banking units of local commercial banks in favour of the Lenders in relation to the Project subjected to the applicable law;
- 3.4.11 the Direct Agreement shall automatically terminate on the expiry or termination of this Agreement, except where any obligations of the Government under Clause 3.2 hereof are outstanding, and in such event, the Direct Agreement shall continue to be vaild and effective until all such obligations are settled in full;

3.4.12 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);

3.4.13 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 Company.

#### **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 shall assist the Company to enter into the BOI Agreement with BOI which will provide the Company with BOI Status and with the incentives as currently applicable in respect of the business of the Company in constructing, commissioning, owning and operating the Facility only, provided that, the 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 procure that the Lenders or their representatives to enter into a Direct Agreement under Clause 3.4;

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 Agreement.

**5.3** Not agree to amendments to the PPA and FSAs without the Consent of the Government

The Company shall not agree to any material amendment of the Power Purchase Agreement and the Fuel Supply Agreements 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. FORCE MAJEURE**

**6.1** Meaning of Force Majeure

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

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

and, for the avoidance of doubt, whether or not events or circumstances of the kind referred to in Clause 6.1.2.

6.1.2 Force Majeure may include exceptional events or circumstances of the kind listed below, so long as conditions set out in Clause 6.1.1 are satisfied:

- (i) Wars (declared or undeclared), sabotage, terrorism, blockades, riots, any civil commotion, insurrections in each case in Sri Lanka, expropriation, requisition, compulsory acquisition, confiscation or nationalisation in Sri Lanka, closing of harbours, docks or airports or other restrictions on travel within or from Sri Lanka, restrictions in the import or export of equipment, goods or supplies into or from Sri Lanka resulting from any action without legally justifiable cause by any Competent Authority, strikes, lockouts or other industrial disturbances that are of a political nature (excluding such events which are Site specific and attributable to the Company);
- (ii) any Change in Law Event adversely affecting the performance of the Company of its obligations under this Agreement or under any of the Project Agreements whenever and to the extent that the parties are not otherwise compensated for the effect of such change;
- (iii) any denial or unreasonable delay in the grant, or revocation, of any Governmental Approval, despite the Company complying with the conditions for the grant thereof and due application therefor; and
- (iv) acts of God, landslides, lightning, earthquakes, floods, fires, tsunamis, tempest, volcanic eruptions, epidemics, pandemics, wars, sabotage, terrorism, blockades, riots, insurrections, civil war, ionising radiation or contamination by radio-activity, strikes, lockouts, or other industrial disturbances (excluding such events which are Site specific and attributable to the Company).

6.1.3 In addition to the events set out above in this Clause 6:

- (i) an event of Force Majeure under the Power Purchase Agreement, Liquid Fuel Supply Agreement, Gas Fuel Supply Agreement or the Lease (as such expression is defined in those documents) shall be deemed to be an event of Force Majeure for the purposes of this Agreement; and
- (ii) the Company agrees that no amendment shall be made to the Clauses dealing with Force Majeure in the Power Purchase Agreement, Liquid Fuel Supply Agreement, Gas Fuel Supply Agreement.

6.1.4 Force Majeure shall expressly not include the following:

- (i) lack of funds or any failure to pay any amounts or charges due and payable under this Agreement. However the inability to use available funds, due to any reason set out in Clause 6.1, shall be regarded as Force Majeure; and
- (ii) a change in corporate taxes or Sales Tax following the date of this Agreement.

6.1.5 None of the following shall constitute an event of Force Majeure unless the existence of such event is the result of an event of Force Majeure under any of the Liquid Fuel Supply Agreement, Gas Fuel Supply Agreement, Turnkey Contract, O&M Agreement and the relevant Project Agreement which is analogous to an event of Force Majeure defined in this Clause 6:

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

## 6.2 Procedure for Claiming Force Majeure:

6.2.1 The party claiming Force Majeure will as soon as is reasonably practicable but no later than two (2) Business Days after the date on which the party knew or should reasonably have known of the occurrence of the event or circumstances claimed to be Force Majeure, give written notice to the other party of the occurrence of the event or circumstances. If such notice is given more than two (2) Business Days after that date, it shall not retroactively excuse the performance of the affected party for the period starting two (2) Business Days before the date of such notice. The notice shall be headed in bold print: **FORCE MAJEURE NOTICE – IF NOT DISPUTED WILL BE DEEMED TO BE ACCEPTED**. The notice will provide full particulars of the event or circumstances and the manner in which such event or circumstances are causing its failure to perform its obligations under this Agreement. The notice will also give an estimate of the period of time required to remedy the failure (if the remedy is deemed practicable). Failure



to give notice will prevent the party from claiming that the event or circumstances are Force Majeure.

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

6.2.3 The party receiving the notice referred to in Clause 6.2.1 will, within fourteen (14) Days of receipt of receiving the notice, notify the other party in writing whether it accepts that a situation of Force Majeure exists or whether it wishes to dispute the claim. If a party wishes to dispute the claim then the dispute will be resolved in accordance with Clause 11 of this Agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.

### 6.3 Consequences of Force Majeure:

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

6.3.2 Any suspension of a party's performance under this Clause 6 will be limited to the period during which the Force Majeure renders a party unable to perform, in whole or in part, an obligation under this Agreement.

6.3.3 In the case of Force Majeure affecting the Company at any time on or after the Open Cycle Operation Date (but excluding the Combined Cycle Commissioning Period) in circumstances where there is no adjustment of the Scheduled Combined Cycle Operation Date in accordance with Clause 5.6.1 of the Power Purchase Agreement in consequence thereof, the Combined Cycle Operational Period shall be extended in accordance with Clause 12.3.3 of the Power Purchase Agreement.

6.3.4 In the case of Force Majeure resulting in damage to the Facility or requiring a material modification or a material capital addition to the Facility to restore it to an agreed operating level ("**Restoration**"), the Government shall be informed of negotiations between the CEB and the Company to agree on:

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

In the event that the CEB and the Company are unable to agree on the matter(s) set out in the above sub Clauses (i) and/or (ii) of this Clause 6.3.4 within sixty (60) Days, the Government shall be informed by the Company of the decision of the expert to whom this matter would have been referred.

- 6.3.5 No Force Majeure will relieve a party of any duty or obligation under this Agreement including the obligation to pay money, which had arisen or been incurred before the Force Majeure.
- 6.3.6 If a party is affected by Force Majeure then the affected party will use all possible diligence and take all reasonable steps necessary to remedy or rectify the Force Majeure as quickly as possible and minimise any damage caused by it.
- 6.3.7 Where Force Majeure prevents a party from carrying out any obligations under this Agreement for a continuous period of three hundred and sixty five (365) Days then this Agreement may be terminated by the other party giving sixty (60) Days written notice to the party affected by the Force Majeure situation and the provisions of Clause 8 will apply.

## **7. LIABILITIES AND INDEMNITIES**

### **7.1 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 3.2.

### **7.2 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 in no circumstances shall Consequential Loss include any express obligation to make payment (including the payment of interest, costs and damages) or any express obligation to provide an indemnity under any of the other provisions of this Agreement.

## **8. TERMINATION**

### **8.1 Termination at end of Preliminary Period**

Where at or following the end of the Preliminary Period, the Power Purchase Agreement is terminated in accordance with Clause 4.7 of the PPA and this Agreement terminates in consequence (under Clause 2.1), then neither party shall have any liability to the other for the other's losses, costs and expenses (including legal and consultative expenses), howsoever arising under or in connection with this Agreement by virtue of such termination, or in respect of any losses, costs and expenses (including legal and consultative expenses) incurred prior to the date of termination of this Agreement, including those relating to negotiation, due diligence or its obligations under this Agreement and arranging finance.

### **8.2 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:

- 8.2.1 where the Company is in material breach of any of its obligations under this Agreement (including Clause 5) and such breach (where capable of remedy), has been notified to the Company and has not been remedied within a period of sixty (60) Days of notification, provided that such breach is not due to a breach of the Implementation Agreement by a party other than the Company;
- 8.2.2 where the Company is in material breach of this Agreement (including Clause 5) which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Company);
- 8.2.3 where the Company is in material breach of any of its obligations under the Power Purchase Agreement, Liquid Fuel Supply Agreement, Gas Fuel Supply Agreement or the Lease and such breach (where capable of remedy) has not been remedied within the terms of the Power Purchase Agreement, Liquid Fuel Supply Agreement, Gas Fuel Supply Agreement or the Lease 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 Power Purchase Agreement, Liquid Fuel Supply Agreement, or Gas Fuel Supply Agreement is due to breach by the CEB, CPC or the Gas Fuel Supplier, as the case may be;
- 8.2.4 where a dispute between the parties has been submitted to arbitration under Clause 11 but remains unresolved for a period of three hundred and sixty five (365) Days after appointment of the arbitrators under Schedule 2 and the continuance of such dispute beyond such three hundred and sixty five (365)

Day period would have a significant material adverse effect on the Government (such significant material adverse effect to be determined without regard to any award or other relief that may result from such arbitration); or

**8.2.5** 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 forty five (45) 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 (75) 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 3.4; or
- (vii) where 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 CEB, CPC or the Gas Fuel Supplier under the Power Purchase Agreement, Liquid Fuel Supply Agreement or the Gas Fuel Supply Agreement, as the case may be;

**8.2.6** where Force Majeure has continued for a continuous period of three hundred and sixty five (365) Days pursuant to Clause 6.3.7;

**8.2.7** following termination of the Power Purchase Agreement or the Lease by the CEB, in each case pursuant to the respective provisions thereof.

**8.3** The 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:

- 8.3.1 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 (60) Days of notification;
- 8.3.2 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);
- 8.3.3 where Force Majeure has continued for a continuous period of three hundred and sixty five (365) Days pursuant to Clause 6.3.7; or
- 8.3.4 following termination by the Company of the Power Purchase Agreement or the Lease in each case, pursuant to the respective provisions thereof.

#### **8.4 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.

#### **8.5 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.

#### **8.6 Survival**

In the event of the termination of this Agreement, for a period of sixty (6) 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 10.2, this Clause 8.6 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 (60) Month period, including arbitration referred to in Clauses 8.2.4 and any award there from, this Agreement shall survive solely in respect of the matter in arbitration] and the provisions of Clause 3.2 hereof shall survive and continue to have effect in the terms thereof, for the period set out therein.

#### **8.7 Notices of Termination**

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

## 9. RESTRUCTURINGS

### 9.1 Obligations of the Government under Restructuring of Industry or the CEB

the obligations of the Government under this Agreement shall survive notwithstanding:

- 9.1.1 any reorganisation or restructuring of the power generation, electricity transmission and distribution sector in Sri Lanka; or
- 9.1.2 the restructuring, reorganisation, recapitalisation, sale divestiture, merger, consolidation, amalgamation, privatisation, change of ownership or other similar transaction involving the CEB; and

the Government shall cause the relevant entity surviving the CEB, to adopt and become fully liable to perform the CEB's obligations under the Power Purchase Agreement.

## 10. MISCELLANEOUS

### 10.1 Notices

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

10.1.2 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 within Sri Lanka; 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: -----

10.1.3 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 Business Day or after 2.00pm (local time) on any Business Day, the notice will be treated as received by the recipient at 9.00am (local time) on the next Business Day.

## **10.2 Confidentiality and Publicity**

10.2.1 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 with a proper need for the relevant information) without the other party's prior written consent, which consent may not be unreasonably withheld.

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

## **10.3 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.

## **10.4 Waiver**

10.4.1 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.

10.4.2 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.

10.4.3 A waiver of any obligation by either party shall only be effective if in writing and signed by the chief executive officer of such party.

10.4.4 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.

## **10.5 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:

- 10.5.1 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.
- 10.5.2 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, except that, for the purpose of the Financing Agreements, the Company may assign or create a security interest over its rights and interests under or pursuant to this Agreement to the Lenders.
- 10.5.3 Any change including without limitation a change in shareholding which results in a change in the effective ownership, management or control of the Company will be deemed to be an assignment and will require a written consent of the Government, which consent shall not be unreasonably withheld.
- 10.5.4 Save where Lenders exercise rights in terms of the Direct Agreements and save where otherwise agreed by the GOSL pursuant to a request from the Company, upon thirty (30) Days' prior notice, at all times after the date of this Agreement until the fifth anniversary of the Operation Date, the Company shall be Controlled by .....[insert name]

## **10.6 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.

## **10.7 No Partnership or Other Relationship**

- 10.7.1 Nothing in this Agreement makes either party the other party's partner, agent or representative or creates any trust or commercial partnership.
- 10.7.2 No party may act for, or incur any obligation or liability on the other party's behalf unless expressly stated in this Agreement.

10.7.3 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.

## **10.8 Good Faith**

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

## **10.9 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.

## **10.10 Representations and Warranties**

10.10.1 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.

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

- (i) it is duly incorporated or constituted and organised under the Laws of Sri Lanka and has full power and authority, corporate or otherwise, to enter into and perform its obligations and to conduct its business as presently or as proposed to be conducted, and this Agreement has been duly authorised, executed and delivered by it, and constitutes legal, valid and binding obligations of such party;

- (ii) entry into and performance of this Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and
- (iii) there are no actions, suits, proceedings or investigations pending or, to the 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, familiarised itself with all the relevant matters specific to Sri Lanka and/or the Facility and/or the Site and all other relevant matters, and utilising its experience and skills has made adequate provision for everything necessary to fulfil its obligations, whether specified and/or described or not in the Project Agreements.

#### **10.11 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.

### **11. DISPUTES**

#### **11.1 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 thirty (30) Days, or, in the case of a dispute involving insurance or any disputed invoice, fourteen (14) Days, after the date that the disputing party gives notice of the dispute to the other party identifying the dispute in reasonable detail and requesting consultations between the parties to resolve the dispute, or, after such periods by discussions between a senior official of the Government and the chief operating officer of the Company within a further period of fifteen (15) Days (or such longer period as the parties may agree) then the Disputes Resolution Procedure set out in Schedule 2 (Disputes Resolution Procedure), shall apply.

## 12. LAW

### 12.1 Governing Law

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

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

\_\_\_\_\_  
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA acting herein ....., The Secretary, Ministry of Finance.

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

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

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

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

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

## SCHEDULE 1 - DEFINITIONS

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

"Actual Available Capacity"	is calculated in the manner set out in Paragraph 8.2 of Schedule 8 of the PPA and is expressed as a percentage;
"Affiliate"	means in relation to a party, any one (1) 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;
"Agreement"	means this Implementation Agreement;
"BOI"	means the Board of Investment of Sri Lanka, incorporated by the BOI Act;
"BOI Act"	means the Board of Investment of Sri Lanka, Law No. 4 of 1978, as amended;
"BOI Status"	means the tax incentives and concessions applicable to a company under the BOI Act;
"Business Day"	means any day other than a Saturday, Sunday, public holiday or bank holiday in Sri Lanka;
"Buy-Out"	means the purchase of the Facility by the CEB upon the occurrence of a Buy-Out Event;
"Buy-Out Event"	means a CEB Buy-Out Event or a Company Buy-Out Event;
"Buy-Out Price"	means the price paid by the CEB to the Company upon transfer of ownership of the Facility to the CEB following a Buy-Out Event, as calculated in accordance with Schedule 11 (Buy-Out) of the PPA;
"Capacity Charge"	means the capacity charge payable by the CEB to the Company for the Actual Available Capacity of the Facility, as calculated in accordance with Schedule 8 (Actual Available Capacity) and Schedule 9 (Capacity Charge and Energy Charge), of the PPA;
"CEB"	means the Ceylon Electricity Board, a body corporate established by Act No. 17 of 1969 and any successor and permitted assign;
"CEB Buy-Out Event"	has the meaning given to that term in Paragraph 11.1 of Schedule 11 (Buy-Out) of the PPA;

"CEB System"	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;
"Change in Law"	<p>means any of the following events occurring after the date of this Agreement as a result of any action by any Competent Authority:</p> <ul style="list-style-type: none"> <li>(a) an amendment to or repeal of any existing Laws of Sri Lanka;</li> <li>(b) an enactment or making of new legislation [including by any political sub-division thereof (including subsidiary legislation, rules, regulations, orders and directives made or issued by such Competent Authority pursuant to or under any such Law)]; and</li> <li>(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.</li> </ul> <p>provided a change in any law regarding tax, excluding Sales Tax, import duties and levies, after the date of this Agreement shall not be a Change in Law pursuant to this Agreement;</p>
"Change in Law Event"	has the meaning given to that term in Clause 9.1 of the PPA;
"Combined Cycle Commissioning Date"	means Combined Cycle (L) Commissioning Date;
"Combined Cycle (L) Commissioning Date"	means the date when the Commissioning of the Facility occurs and is referred to in Clause 5.8.1(i)(a) of the PPA;
"Combined Cycle Commissioning Period"	means the period commencing at 0000 Hours on the Combined Cycle Commissioning Date and ending at 0000 Hours on the Combined Cycle Operation Date;
"Combined Cycle Operation Date"	means the Day following the date of receipt by the CEB of the Completion Certificate certifying that the Facility is capable of operation of combined cycle mode in accordance with Clause 5.8.9 of the PPA;
"Combined Cycle (L) Operation Date" or "CCLOD"	means the Day following the date of receipt by the CEB of the Completion Certificate certifying that the Facility is capable of combined cycle operation (with Liquid Fuel) in accordance with Clause 5.8.9 of the PPA;
"Commissioning"	means the activities referred to in Paragraphs 6.3, 6.4, 6.5 and 6.6 of Schedule 6 (Commissioning and Performance/Reliability Testing ) of the PPA;

"Company"	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;
"Company Buy Out Event"	has the meaning given to that term in Paragraph 11.1 of Schedule 11 (Buy-Out) of the PPA;
"Competent Authority"	means the Government or any authority, ministry or department or Statutory Board under the control of the Government of Sri Lanka;
"Completion Certificate"	means any of the certificates issued under Clause 5.8.9 of the PPA;
"Consequential Loss"	means all losses, costs and financial harm in respect of loss of contract, loss of use of machinery or property, loss of production, loss of profit or loss of revenue or any other economic loss, cost or claim of whatever kind and nature suffered by a party under or in connection with this Agreement however caused (including the default of the other party or a breach of any duty owed in law by the other party), and whether or not foreseeable at the date of this Agreement; provided that in no circumstances, shall Consequential Loss include any express obligation to provide an indemnity under any of the provisions of this Agreement;
"Construction Notice"	means the notice issued by the Company to the CEB pursuant to Clause 4.5 of the PPA which signals the end of the Preliminary Period and the commencement of the Construction Period;
"Construction Period"	means the period commencing at 0000 Hours on the Day following the Day on which the CEB receives the Construction Notice and ending at 0000 Hours on the Combined Cycle Operation Date;
"CPC"	means the Ceylon Petroleum Corporation and any successor and permitted assign;
"Day" or "day"	means a period of twenty four Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;
"Direct Agreement"	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 3.4;
"Dispute Resolution Procedure"	means the procedure for the resolution of disputes set out in Schedule 2 (Disputes Resolution Procedure);
"Energy Charge"	means the energy charge payable by the CEB to the Company for the Metered Output, as calculated in accordance with Schedule 9 (Capacity Charge and Energy Charge) of the PPA;



"Environmental Approval"	means the environmental approval issued by the Central Environmental Authority in favour of the Company in respect of the terms of the environmental clearance for the Facility;
"Environmental Law"	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;
"Environmental Protection Licence"	means the licence required to be obtained from the Central Environment Authority under the Environmental Law in relation to the Facility;
"Environmental Requirements"	<p>means:</p> <ul style="list-style-type: none"> <li>(i) complying with or exceeding the requirements of the Environmental Approval, the Environmental Protection Licence, the Environmental Law, all applicable environmental quality standards, regulations and directives of the relevant Competent Authorities;</li> <li>(ii) establishing environmental management systems and facilities to ensure that the Environmental Law, applicable regulations, standards and lawful directives referred to in (i) above are complied with or exceeded;</li> <li>(iii) unless otherwise directed by the relevant Competent Authority, installing and operating a suitable continuous emission and ambient air monitoring system including at least four (4) monitoring stations at appropriate locations within a ten (10) kilometre radial distance from the Facility;</li> <li>(iv) installing and operating on-line recorders at the Facility and, unless otherwise directed, in the offices of the relevant Competent Authority;</li> <li>(v) providing an annual report on all relevant aspects of the Company's environmental facilities, activities and performance no later than thirty (30) Days following each twelve (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 Protection 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.</li> </ul>
"Facility"	means the combined cycle power plant having a nominal rating [nominal rating to be as stated in the PPA] to be built at Kerawalapitiya, whether completed or at any stage of

	development and construction, and including without limitation land, buildings, engineering and design documents, power producing equipment, auxiliary equipment, fuel handling and storage infrastructure, water treatment facilities, solid waste disposal facilities, switchyards and all other installations;
"Financing Agreements"	means any and all of the agreements executed between the Company and the Lenders for the making available to the Company of debt financing (including bridging financing) for construction and completion of the Facility up and until the Combined Cycle Operation Date, and the security documents hedging agreements, swap agreements and other ancillary undertakings in favour of the Lenders entered into in connection with such agreements and any refinancing agreements relating thereto;
"Force Majeure"	has the meaning given to that term in Clause 6.1;
"Fuel"	means Liquid Fuel or Gas Fuel as applicable;
"Fuel Supplier"	means the CPC or the Gas Fuel Supplier;
"Fuel Supply Agreement" or "FSA"	means the Liquid Fuel Supply Agreement or the Gas Fuel Supply Agreement, as the case may be;
"Gas Fuel Supplier"	means the party selected by the Government for the supply of Gas Fuel to power generation facilities including the Facility and notified to the Company;
"Gas Fuel Supply Agreement" or "GFSA"	means the agreement to be entered into pursuant to this Agreement between the Gas Fuel Supplier and the Company relating to the purchase and sale of Gas Fuel for the Facility;
"Generation Licence"	means the licence required to be obtained by the Company under the Electricity Act № 20 of 2009 or applicable statute, as amended, to establish, operate and maintain the Facility for the generation of electrical energy in Sri Lanka;
"Government"	means the Government of the Democratic Socialist Republic of Sri Lanka;
"Governmental Approval"	means any approval, licence, permit or consent from any Competent Authority required by the Laws of Sri Lanka for the purposes of any party carrying out its obligations under the PPA, including those listed in Schedule 3 of this Agreement;
"Hour"	means each continuous period of sixty (60) minutes commencing with the first minute of each of the twenty four denominated Hours of any Day;
"Interconnection Point"	has the meaning given to that term in Paragraph 5.3.16 of Schedule 5 (Minimum Functional Specification) of the PPA;

"Laws of Sri Lanka"	means, in relation to this Agreement, all laws in force in Sri Lanka (including any political sub-division thereof) and includes subsidiary legislation (including all rules, regulations, orders and directives) made or issued by any Competent Authority pursuant to or under any such law;
"Lease"	means the agreement between the CEB and the Company for the lease of the Site entered into on or before the date of the PPA but taking effect on the date of the Construction Notice;
"Lenders"	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;
"Liquid Fuel Supply Agreement" or "LFSA"	means the agreement of even date as this Agreement between the CPC and the Company relating to the purchase and sale of Liquid Fuel for the Facility;
"Minister of Power"	means the Minister of the Government in charge of the subject of power;
"Month"	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 month pursuant to the definition of "month" as given in Schedule 1 of the PPA;
"MW"	means a megawatt or 1000 kilowatt;
"Notice"	has the meaning given to that term in Clause 10.1.1;
"Notice of Arbitration"	has the meaning set out in Schedule 2 (Disputes Resolution Procedure);
"O&M Contractor"	means the contractor appointed by the Company under the Operation and Maintenance Agreement pursuant to Clause 4.2.2 of the PPA;
"Operational Period"	means the period consisting of the Open Cycle Operational Period and the Combined Cycle Operational Period as those terms are defined in the PPA;
"Open Cycle Operation Date" or "OCOD"	means the Day following the date of receipt by the CEB of the Completion Certificate certifying that the Facility is capable of open cycle operation in accordance with Clause 5.8.9 of the PPA;
"Operation and Maintenance Agreement" or "O&M Agreement"	means the agreement between the Company and the O&M Contractor for the operation and maintenance of the Facility;
"Power Purchase Agreement" or "PPA"	means the Power Purchase Agreement between the 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, electricity generated by the Facility;
"Preliminary Period"	means the period commencing on the date of the PPA and, extended in accordance with Clause 4.5 of the PPA, ending on the earlier of: <ul style="list-style-type: none"> <li>(i) 2400 Hours on the Day falling two hundred and seventy (270) Days thereafter; and</li> <li>(ii) 2400 Hours on the Day on which the Company gives the CEB the Construction Notice;</li> </ul>
"Project"	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;
"Project Agreements"	the Implementation Agreement, Power Purchase Agreement, Liquid Fuel Supply Agreement / Gas Fuel Supply Agreement, the Lease, Direct Agreements and the BOI Agreement;
"Prospective Lenders"	means one or more of the financial institutions named in Schedule J of Volume II the Request for Proposals or such other financial institution approved by the CEB;
"Prudent Utilities Practice"	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;
"Receiving Point"	means the Tanker Receiving Point or the Pipeline Receiving Point (as the case may be) as those terms are defined in the LFSA;
"Request for Proposals"	means the request for proposals issued by the CEB for this Project;
"Restoration"	has the meaning given to that term in Clause 6.3.4;
"Rupees" or "Rs"	means the lawful currency of Sri Lanka;
"Scheduled Combined Cycle Operation Date"	means SCLOD;
"Scheduled Combined Cycle (L) Operation Date" or "SCLOD"	means the date that is 24 months from the date of the Construction Notice, as may be adjusted from time to time under Clause 5.6.1 of the PPA;

"Senior Debt"	means the debt financing provided by the Lenders to the Company pursuant to the Financing Agreements;
"Shortfall"	means any Firm Nominated Fuel Quantity, expressed in liters, which the CPC is contractually obliged to deliver to a Receiving Point and which, is not duly delivered by the CPC as a result of certain provisions provided for in the definition of Shortfall in the Liquid Fuel Supply Agreement;
"Site"	means the area of land more particularly described in the Lease where the Facility is located;
"Sri Lanka"	means the Democratic Socialist Republic of Sri Lanka;
"Subsidiary"	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>
"Tribunal"	has the meaning given to that term in Paragraph 3.4 of Schedule 2 (Disputes Resolution Procedure);
"Turnkey Contract"	means the agreement between the Company and the Turnkey Contractor for the design, engineering, construction, testing and Commissioning of the Facility;
"Turnkey Contractor"	means the Turnkey Contractor appointed by the Company under Clause 4.2.1 of the PPA;
"UNCITRAL Rules"	has the meaning given to that term in Paragraph 3.1 of Schedule 2 (Disputes Resolution Procedure);

## **SCHEDULE 2 - DISPUTES RESOLUTION PROCEDURE**

### **ARBITRATION**

#### **2.1** References to Arbitration

Any dispute or difference of whatever nature between the parties arising out of or in connection with this Agreement (which are not first amicably resolved between the parties) including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (the "**UNCITRAL Rules**") for the time being in force, which rules are deemed to be incorporated by reference to this Clause save as may be amended by this Schedule 2 (Disputes Resolution Procedure).

#### **2.2** Notices of Arbitration

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

#### **2.3** Place and Language of Arbitration

The place of the arbitration shall be Colombo. The language of the arbitration shall be English and any award shall be rendered in English.

#### **2.4** Arbitral Tribunal

The Arbitral Tribunal (the "**Tribunal**") shall be composed of three arbitrators. 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.

#### **2.5** 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 thirty (30) Days of receipt of such notice (determined in accordance with Clause 10.1) to any such other dispute being so referred, the Tribunal may, as it considers appropriate, order that the other dispute should be referred to and consolidated with the same arbitral proceedings.

## **2.6 Conduct of Arbitration**

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

## **2.7 Awards**

All and any awards or other decisions of the Tribunal shall be made in accordance with the UNCITRAL Rules in writing and shall be binding on the parties who exclude all and any rights of appeal from all and any awards insofar as such exclusion can validly be made in connection with any question of fact or law arising in the course of the arbitration or with respect to any award. The final award shall be made within six (6) months from the appointment of the Tribunal, but insofar as it is impractical to do so, shall be made as soon as possible. All and any awards or other decisions of the Tribunal shall be made in US Dollars (unless the Tribunal determines that the obligation or liability in respect of which an award is made should be compensated in Rupees) free of any tax, deduction or set off and the Tribunal shall be authorised in its discretion to grant pre-award and post-award interest at commercial rates and costs.

## **2.8 Costs of Enforcement**

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

## **2.9 Parties Obligations During Arbitral Proceedings**

2.9.1 Except as expressly provided in this Agreement, pending the award in any arbitration proceeding hereunder:

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

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

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

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

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



### **SCHEDULE 3 – GOVERNMENTAL APPROVALS**

- (i) the Generation License;
- (ii) the Environmental Approval;
- (iii) Rights related to the Fuel Supply Corridor, if applicable;
- (iv) BOI Approval
- (v) Coast Conservation Department Approval
- (vi) Urban Development Authority Approval
- (vii) Local Authority Approval
- (viii) Road Development Authority Approval (if applicable)
- (ix) Marine Environment Protection Authority Approval (if applicable)
- (x) Environmental Protection License
- (xi) Approval for VAT exemption for importation of plant & machinery during Construction Period in accordance with VAT Acts.
- (xii) all other licences, permits or consents required by any Competent Authority to build, own, operate and maintain the Facility in accordance with the Power Purchase Agreement and the Liquid Fuel Supply Agreement /or the Gas Fuel Supply Agreement during the term of this Agreement;