

**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 V**

**DRAFT LIQUID FUEL SUPPLY AGREEMENT**

**JUNE 2021**

---



# **LIQUID FUEL SUPPLY AGREEMENT**

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

**Dated .....2021**

**between**

**THE CEYLON PETROLEUM CORPORATION**

**and**

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

---



## CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	1
2	TERM .....	3
3	PRELIMINARY PERIOD OBLIGATIONS.....	3
4	LIQUID FUEL SUPPLY .....	3
5	PRICE, INVOICES AND TAXES .....	10
6	RECORDS AND BANK ACCOUNTS.....	14
7	FORCE MAJEURE.....	14
8	LIABILITIES AND INDEMNITIES.....	17
9	TERMINATION.....	18
10	MISCELLANEOUS .....	21
11	DISPUTES .....	27
12	INDEPENDENT INSPECTORS.....	28
13	LAW.....	28
	SECTION 1 DEFINITIONS.....	29
	SECTION 2 MEASUREMENT AND TESTING .....	39
	SECTION 3 PRICE OF LIQUID FUEL .....	42
	SECTION 4 DISPUTE RESOLUTION PROCEDURE .....	44
	SECTION 5 INDICATIVE PLAN OF THE LIQUID FUEL PIPELINE .....	48
	SECTION 6 LIST OF APPROVED INDIPEND INSPECTORS.....	49
	SECTION 7 BANK GUARANTEE FORMAT .....	50

---

This **LIQUID FUEL SUPPLY AGREEMENT** dated the ..... day ..... of ..... 2021 at Colombo in Sri Lanka.

**BETWEEN CEYLON PETROLEUM CORPORATION** (the "CPC"), a body corporate established by Act No 28 of 1961 and having its Head office at 609, Dr Danister de Silva Mawatha, Colombo 00900, Sri Lanka;

**AND** {the Company Name} (the "Company"), a company with limited liability and duly incorporated under the Companies Act No. 7 of 2007 and amendments thereafter and 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, with the authority and approval of the Government of Sri Lanka, invited proposals for the financing, designing, engineering, construction, commissioning, operation and maintenance of 300 MW  $\pm 10\%$ , dual Fuel (Liquid Fuel & Gas Fuel) combined cycle power generating facility at Kerawalapitiya in the Gampaha District, Western Province, approximately 12 km North of Colombo, Sri Lanka on build-own-and-operate 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, maintaining and upon termination of the Power Purchase Agreement, transferring the Facility to the CEB;
- D The Company wishes to purchase, and the CPC is willing to sell to the Company, Liquid Fuel for this Facility, subject to and in accordance with the terms and conditions of this Liquid Fuel Supply Agreement.
- E The Company has or will on or before the day of this Liquid Fuel Supply Agreement, have entered into the Power Purchase Agreement, the Implementation Agreement and the Land Lease Agreement.

**WITNESSES AS FOLLOWS**

**1 DEFINITIONS AND INTERPRETATION**

In this Liquid Fuel Supply Agreement unless the context indicates otherwise:

- 1.1 Agree: provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;**

- 1.2 Definitions:** words, phrases and expressions defined in Schedule 1 (Definitions) shall have the defined meaning in the whole of this Liquid Fuel Supply Agreement including the recitals.
- 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.
- 1.4 Include and Including:** the words “include” and “including” is to be construed as being at all times followed by the words “without limitation”;
- 1.5 Negative Obligations:** any obligation not to do anything includes an obligation not to permit or cause that thing to be done;
- 1.6 Party and Parties:** each party to this Liquid Fuel Supply Agreement are individually referred to as “Party” and collectively as “Parties” and includes their permitted successors, assigns and transferees;
- 1.7 Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or any other legal entities and their permitted successors and assigns;
- 1.8 Plural and Singular:** words importing the singular number include the plural and vice versa where the context requires;
- 1.9 Schedules:** the schedules to this Liquid Fuel Supply Agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this Liquid Fuel Supply Agreement;
- 1.10 Schedules, Clauses and Paragraphs:** references to schedules clauses and paragraphs are references to schedules, clauses and paragraphs of this Liquid Fuel Supply Agreement;
- 1.11 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;
- 1.12 Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.
- 1.13 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;
- 1.14 Time:** references herein to time are to Sri Lankan time; and
- 1.15 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.**

## **2 TERM**

### **2.1 Term of this Liquid Fuel Supply Agreement**

This Liquid Fuel Supply Agreement (other than for Clause 7 which shall take effect from the date of the Construction Notice) shall take effect on the date of this Liquid Fuel Supply Agreement and 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 Liquid Fuel Supply Agreement.

## **3 PRELIMINARY PERIOD OBLIGATIONS**

### **3.1 Obligations of the Parties**

3.1.1 The Company shall, within fifteen (15) Days of the date of this Liquid Fuel Supply Agreement, deliver to the CPC copies of the:

- (i) Company's articles of association; and
- (ii) resolutions of its board of directors authorising the execution, delivery and performance of this Liquid Fuel Supply Agreement,

duly certified as being true copies by the company secretary or other authorised officer of the Company.

3.1.2 The CPC shall, within fifteen (15) Days of the date of this Liquid Fuel Supply Agreement, deliver to the Company copies of the resolutions of its board members authorising the execution, delivery and performance of this Liquid Fuel Supply Agreement, duly certified as being true copies by the secretary to the board of the CPC.

3.1.3 Each party shall, within fifteen (15) Days of the date of this Liquid Fuel Supply Agreement, provide a legal opinion from its counsel, in form and substance reasonably satisfactory to the other party with respect to the due authority, execution, delivery, performance and enforceability of this Liquid Fuel Supply Agreement.

## **4 LIQUID FUEL SUPPLY**

### **4.1 Pipeline and Delivery Facilities**

4.1.1 The CPC shall deliver Liquid Fuel to the Pipeline Receiving Point or, as permitted under Clause 4.17, to the Tanker Receiving Point and the Company shall, at no cost to the CPC, provide the CPC with all access reasonably required by the CPC:

- (i) to review the design for the construction of the Intake Tanks, the Liquid Fuel Pipeline and the road tanker unloading facilities (which design shall incorporate such reasonable amendments to such design and construction as may be requested by the CPC in order that the Intake



Tanks, the Liquid Fuel Pipeline and road tanker unloading facilities conform to Good Design, Engineering and Construction Practices and the Laws of Sri Lanka);

- (ii) to survey the Site and inspect the Intake Tanks, the Liquid Fuel Pipeline and road tanker unloading facilities; and to enable the CPC to make Liquid Fuel deliveries under Clause 4.17 by road tanker;

**4.1.2 The Company shall:**

- (i) serve a copy of the Construction Notice on the CPC within five (5) Days of serving the Construction Notice on CEB; and
- (ii) no later than sixty (60) Days after a copy of the Construction Notice is served on the CPC pursuant to Clause (i) above, provide the CPC with the Connection Flange Design.
- (iii) obtain the full and free right, liberty and licence for the Company and other persons authorised by the Company to go, return, pass and re-pass in, along and over the Liquid Fuel Supply Corridor together with the right to lay drainage, Liquid Fuel and Gas Fuel pipelines and other necessary appliances and contrivances of whatsoever kind or nature and install the Fuel Pipeline, no less than ninety (90) Days prior to the Scheduled Open Cycle Operation Date, with the prior approval of and Notice to the CPC; and
- (iv) maintain the Liquid Fuel Pipeline in accordance with Good Design, Engineering and Construction Practices and Prudent Utilities Practice and internationally accepted standards and specifications for such pipelines.
- (v) The Company shall maintain storage of Liquid Fuel sufficient for at least seven (7) days of continuous operation at Net Dependable Capacity at its premises.

**4.1.3 The CPC shall:**

- (i) within thirty (30) Days of receipt of the Connection Flange Design, approve such design or propose an alternative design having due regard to the Connection Flange Design and the Company's technical and operational requirements;
- (ii) provide the Company with all reasonable assistance for the Company to obtain the necessary Governmental Approvals for the Company to secure the rights to the Liquid Fuel Supply Corridor to enable the Company to install the Liquid Fuel Pipeline;
- (iii) Maintain the CPC Pipeline in accordance with Good Design, Engineering and Construction Practices and Prudent Utilities Practice and internationally accepted standards and specifications for such pipelines, subject to applicable law; and

**4.1.4 The Pipeline Receiving Point and the Company's receiving pipe work shall be designed, constructed and maintained so as to permit visual inspection of Liquid Fuel being delivered to the Facility through the Liquid Fuel Pipeline.**

## **4.2 Warranty of Title in Liquid Fuel**

- 4.2.1** The CPC represents and warrants that it will have title to the Liquid Fuel supplied under this Liquid Fuel Supply Agreement immediately prior to passing title in the Liquid Fuel to the Company at a Receiving Point.
- 4.2.2** The CPC shall supply the Liquid Fuel to the Company free and clear of all liens, encumbrances and claims whatsoever and the CPC will indemnify, defend and hold the Company harmless against all claims for damages, costs, losses and expenses arising prior to the time for delivery of Liquid Fuel at a Receiving Point (whether or not such claim has been made at such time) from or out of adverse claims to title to the Liquid Fuel by any third party or parties, including claims by any third party or parties for any royalties, taxes, licence fees or charges applicable to the Liquid Fuel.

## **4.3 Passing of Title and Risk in Liquid Fuel**

Title and risk in the Liquid Fuel supplied by the CPC shall pass from the CPC to the Company when delivered by the CPC to the Company at a Receiving Point pursuant to the terms and conditions of this Liquid Fuel Supply Agreement.

## **4.4 Quarterly and Yearly Nominations**

No later than sixty (60) Days prior to the start of each Quarter, commencing with the Quarter in which the Company first requires a supply of Liquid Fuel, the Company shall advise the CPC by notice of its good faith best estimate requirement for Liquid Fuel for that Quarter and the next succeeding three Quarters. Such estimate shall include details of the total quantity of Liquid Fuel required during each Month of such four Quarters.

The Company shall be liable to the CPC for any claims, losses or damages arising from or out of its failure to provide Quarterly and Yearly Nominations in terms of this Clause.

## **4.5 Monthly Nominations**

No later than sixty (60) Days prior to the start of each Month commencing with the Month in which the Company first requires a supply of Liquid Fuel, the Company shall advise the CPC by notice of its requirements for Liquid Fuel to be supplied in such Month. Such notice shall identify the total quantity of Liquid Fuel in kilo litres required in that Month (Nominated Liquid Fuel Quantity) and in each Week of that Month and shall identify the Day in each Week when the required quantity of Liquid Fuel is to be delivered ("Indicative Nominated Delivery Day").

## **4.6 Confirming Nominations**

- 4.6.1** No later than thirty five (35) Days prior to each Indicative Nominated Delivery Day, the Company shall confirm whether it still requires the quantity of Liquid Fuel indicated in the Monthly Nomination under Clause 4.5 to be delivered on such indicative Nominated Delivery Day and shall confirm the quantity of Liquid Fuel required in a month ("Firm Nominated Liquid Fuel Quantity") and the day on which such quantity shall be delivered ("Nominated Delivery Day").

4.6.2 Sum of the Firm Nominated Liquid Fuel Quantity (FNFQ) in relation to a particular month shall be within the +/-5% of the Nominated Liquid Fuel Quantity which shall be no greater than the Maximum Delivery Amount (105% of Nominated Liquid Fuel Quantity) and no less than the Minimum Delivery Amount (95% of Nominated Liquid Fuel Quantity)

4.6.3 [Not Used]

#### **4.7 The Company's Dispatch Arrangements**

4.7.1 under Clauses 0, 4.5 and 4.6, the Company shall provide the CPC with copies of the Monthly estimated dispatch notice given by the CEB pursuant to the provision of the Power Purchase Agreement sixty (60) Days in advance, to facilitate the CPC's planning and scheduling requirements; and

4.7.2 under Clauses 4.6.2 and 4.8, the Company shall use its best efforts to give the CPC prompt notice of any change in its requirements for Liquid Fuel.

#### **4.8 Obligations to supply and to take delivery of the Firm Nominated Liquid Fuel Quantity**

4.8.1 No later than twenty four (24) hours prior to any Nominated Delivery Day, either party may give notice to the other party if it is unable to deliver (in the case of notice by the CPC) or receive (in the case of notice by the Company) the Firm Nominated Liquid Fuel Quantity on such Day and shall indicate an alternative Day (being either the first or second Day immediately after such Nominated Delivery Day) on which it proposes to deliver or receive such Liquid Fuel. A party receiving such notice shall as soon as is reasonably practicable thereafter inform the other party whether such alternative Day is convenient. If no such Day for delivery and receipt can be agreed, the Firm Nominated Liquid Fuel Quantity shall be delivered on the latest Day suggested by either party provided that such Day falls no later than two Days after the relevant Nominated Delivery Day.

4.8.2 Subject to the provisions of Clause 4.11,

the CPC shall supply and deliver each Firm Nominated Quantity at the Receiving Point on the Agreed Delivery Day, and the Company shall be obliged (subject to an event of Shortfall) to accept such amount on such Day, provided that the CPC may deliver an amount equal to:

- (i) no more than two and one half per cent (2.5%) greater than the Firm Nominated Quantity, and the Company shall accept and pay for that amount; or
- (ii) no more than two and one half per cent (2.5%) less than such Firm Nominated Liquid Fuel Quantity, which amount shall not constitute Shortfall.

#### **4.9 The Company's Failure to take Firm Nominated Liquid Fuel Quantity and Demurrage on vessels**

4.9.1 Where the Company fails to accept any Firm Nominated Liquid Fuel Quantity on the Agreed Delivery Day (other than by reason of Shortfall or a breach by the CPC of its obligations under this Liquid Fuel Supply

Agreement), the CPC shall have no further obligation to supply such amount of Liquid Fuel and, the Company shall indemnify the CPC in respect of any Demurrage incurred by the CPC in relation to that quantity of Liquid Fuel, storage cost for the quantity failed to lift and the relevant stock holding cost.

- 4.9.2 In any case where the CPC will or is likely to incur liability for demurrage, storage cost for the quantity failed to take by the Company and the relevant stock holding cost, the CPC shall notify the Company accordingly and the Company shall use reasonable endeavours to reduce the period and amount of demurrage once demurrage payments become due, additional storage cost and relevant stock holding cost. The Company shall however pay the CPC the actual demurrage incurred by the CPC, additional storage cost and relevant stock holding cost incurred by CPC.

#### **4.10 Quantities**

Quantities of Liquid Fuel supplied shall be finally determined under the measurement provisions of Part 1 of Schedule 2 (Measurement and Testing).

#### **4.11 Minimum and Maximum Liquid Fuel Quantities**

No delivery may be requested for a month of a quantity of Liquid Fuel which is less than "Minimum Delivery Amount" or greater than "Maximum Delivery Amount", provided that the CPC shall comply with requests by the Company for the supply of Liquid Fuel in quantities outside of these parameters during any period of four Weeks prior to, or during, the testing or Commissioning of any Generating Set.

#### **4.12 [Not Used]**

#### **4.13 The CPC's Right to Not Deliver Liquid Fuel**

- 4.13.1 Notwithstanding any other provision of this Liquid Fuel Supply Agreement, the CPC shall be entitled not to make delivery of any Firm Nominated Liquid Fuel Quantity (or any amount thereof) if, on the Agreed Delivery Day any amount due and payable under an outstanding invoice remains unpaid (other than an amount which may be withheld pursuant to Clause 5.2.3) beyond seven (7) Days following delivery of a Notice thereof by the CPC to the Company, provided that as soon as such amount is paid (excluding such withheld amounts) the CPC shall, at the request of the Company, resume deliveries of Liquid Fuel in accordance with the terms of this Liquid Fuel Supply Agreement.
- 4.13.2 The CPC shall be entitled not to make delivery of any Firm Nominated Liquid Fuel Quantity if the CPC determines, acting reasonably, that the operation of the storage facilities at the Site or the pipelines and other facilities for handling and carrying Liquid Fuel at the Site causes hazard to the safety of persons or material hazard to property (including the property of the CPC) in relation to the receipt and use of the Liquid Fuel.
- 4.13.3 Where the CPC exercises its right under either Clause 4.13.1 or Clause 4.13.2 not to make a delivery of any Firm Nominated Liquid Fuel Quantity, the CPC shall, either cancel such order or if required by the Company agree with the Company to deliver such Liquid Fuel at a later date as soon as the

foregoing conditions cease to exist. Subject to Clause 4.9, the Company shall indemnify the CPC in respect of any demurrage charges, additional storage cost and relevant stock holding cost incurred by the CPC as a result of its not delivering such Liquid Fuel.

#### **4.14 Fuel Quality and the Company's Right to Reject Fuel**

- 4.14.1 Fuel supplied by the CPC under this Liquid Fuel Supply Agreement shall at the Receiving Point conform to the Specifications indicated in PART 2 of Schedule 2.
- 4.14.2 The compliance of Fuel with the Specifications and delivery requirements of this Liquid Fuel Supply Agreement shall be determined pursuant to Part 1 of Schedule 2 (Measurement and Testing).
- 4.14.3 Subject to Clauses 4.14.1 or 4.14.2, the Company shall conduct visual inspection of the Fuel at regular intervals as it passes through the Pipeline Receiving Point and upon detecting any obvious discolouration or other imperfection the Company shall immediately notify the CPC so that the CPC may take steps to suspend such delivery and identify the source of the contamination, provided that the Company shall have no liability for its failure to so notify the CPC and such failure shall in no way relieve the CPC of its obligations under this Liquid Fuel Supply Agreement.
- 4.14.4 If the results of any test carried out in accordance with the delivery requirements referred to in Clause 4.14.2, show that Liquid Fuel to be delivered by the CPC does not comply with the Specification, the Company and the CPC shall meet to discuss the terms, if any, upon which the Company will accept such non-complying Fuel, such terms to include:
  - (i) in the case of Fuel having an average gross calorific value of less than 10,300 kcal/kg, a pro rata decrease in the purchase price of that Fuel and increase in the corresponding quantity of Shortfall to be attributed to that delivery; and
  - (ii) in the case of Fuel having an average gross calorific value of more than 10,300 kcal/kg, a pro rata increase in the purchase price of that Fuel and decrease in the corresponding quantity of Shortfall to be attributed to that delivery; and
  - (iii) in the case of Fuel that does not comply with the Specifications for reasons other than due to calorific value, such decrease in the purchase price and increase in corresponding quantity of Shortfall and other terms as the parties may agree.
- 4.14.5 If the parties cannot agree within twenty four (24) Hours of receiving the results of the relevant test carried out in accordance with the delivery procedures referred to in Clause 4.14.2, the Company shall be entitled to reject such Fuel and the rejected Fuel shall constitute Shortfall unless the situation is rectified by the CPC within forty eight (48) hours, after rejection.
- 4.14.6 An agreement by the Company to accept fuel which does not comply with the Specifications or which was not delivered in accordance with the

requirements of this Liquid Fuel Supply Agreement shall not in any way modify the Specifications or delivery requirements or bind the Company at any future time to accept any fuel that does not comply with the Specifications or delivery requirements.

#### **4.15 The CPC Delays and Default**

Where, for any reason other than breach by the Company of its obligations under this Liquid Fuel Supply Agreement, the CPC delays the delivery of all or any part of a Firm Nominated Liquid Fuel Quantity on the relevant Agreed Delivery Day therefor, such undelivered quantity shall constitute Shortfall and the Company shall be entitled on Notice to the CPC either to accept the delay in the supply or cancel such undelivered quantity of Liquid Fuel.

#### **4.16 Shortfall**

**4.16.1** Subject to Clause 4.16.3, where a Scheduled Operation Date is adjusted for delay pursuant to Clause 5.6.1(iv) of the Power Purchase Agreement, the CPC shall pay to the Company:

- (i) Rupees seven million two hundred thousand (Rs. 7,200,000.00) for each such Day or part Day of such adjustment to the Scheduled Open Cycle Operation Date until the Open Cycle Operation Date, up to a limit not exceeding Rupees two hundred and sixteen million (Rs. 216,000,000.00); or
- (ii) Rupees sixteen million two hundred thousand (Rs. 16,200,000.00) for each such Day or part Day of such adjustment to the Scheduled Combined Cycle Operation Date until the Combined Cycle Operation Date, up to a limit not exceeding Rupees four hundred and eighty six million (Rs. 486,000,000.00).

**4.16.2** Subject to Clause 4.16.3, if during the Operational Period there is a reduction in the capacity at which the Facility can be Dispatched as a result of an event of Shortfall, the CPC shall in respect of each such Shortfall pay to the Company by way of liquidated damages for a maximum period of thirty (30) Days, the Capacity Charges which the Company would otherwise have been entitled to receive under the Power Purchase Agreement but for such reduction ("Shortfall Capacity Charges"). The Company however shall have no claim for Shortfall, if the Company receives Capacity Charges pursuant to Clause 12.3.6 of the Power Purchase Agreement.

**4.16.3** The CPC's liability to pay liquidated damages under Clause 4.16.1 or Shortfall Capacity Charges under Clause 4.16.2 shall, in respect of each event of Shortfall, arise the later of:

- (i) 00:00 Hours on the fifteenth (15<sup>th</sup>) Day following the event of Shortfall; or
- (ii) the date and time at which the Shortfall results in the Company being delayed in achieving the relevant Operation Date or a reduction in the capacity at which the Facility can be Dispatched.

#### **4.17 Delivery by Road Tanker**

- 4.17.1 With the prior consent of the Company, which consent shall not to be unreasonably withheld or delayed, the CPC may deliver Liquid Fuel to the Tanker Receiving Point by road tanker during periods:
- 4.17.2 of repair or maintenance or operational restrictions of the CPC Pipeline, provided that such periods of repair or maintenance do not exceed those applicable to Good Design, Engineering and Construction Practices and Prudent Utilities Practice; or
- 4.17.3 where, by reason of Force Majeure, the CPC Pipeline is so damaged that in order to meet its obligation to supply any quantity of Liquid Fuel to the Company under this Liquid Fuel Supply Agreement the use of road tankers is necessary; or
- 4.17.4 where the supply of Liquid Fuel through the CPC Pipeline is hindered due to any other reason or event.

#### **4.18 Allocation of Supply Among the CPC's Customers**

If, due to Force Majeure, the CPC is unable to procure sufficient Liquid Fuel to meet its obligations under this Liquid Fuel Supply Agreement and to its other customers, then without prejudice to its obligation to pay liquidated damages under Clause 4.16, the CPC shall allocate the Liquid Fuel which it has been able to procure pro rata based on average weekly sales in the previous six months among the customers with whom it had and still has contracts for the sale of Liquid Fuel provided that the CPC shall not be obligated to so allocate such fuel where it determines that to do so would be prejudicial to the security interests of Sri Lanka. Where the CPC, acting reasonably, determines that it would be prejudicial to the security interests of Sri Lanka, the CPC shall not be obligated to provide evidence to the Company that it is complying with this Liquid Fuel allocation obligation.

### **5 PRICE, INVOICES AND TAXES**

#### **5.1 Price**

Subject to Clause 4.14.4, during the term of this Liquid Fuel Supply Agreement the Company shall pay to the CPC a price in Rupees for Liquid Fuel supplied by the CPC as calculated in accordance with Schedule 3 (Price of Liquid Fuel).

#### **5.2 Invoices**

Commencing with the Week following the first Week in which Liquid Fuel was delivered under this Agreement and in each Week thereafter, the CPC shall submit invoices to the company per every Bowser load or every pipeline transfer for Liquid Fuel supplied to the company to the Tanker Receiving Point or from the "Liquid Fuel supplying point" of CPC / CPSTL at the location nominated by CPC as the case may be and each such Invoice shall show details such as applicable prices for each delivery/ transfer and quantity in litres and kilograms (kg), applicable taxes, if any, etc., as more fully described in Paragraph 3.1(iv) of Schedule 3. In case of bowser delivery, the invoices will be raised and issued at the "Time of Delivery" (after loading on to the bowser for delivery to the company) and in case of pipeline transfer, the invoices will be raised and issued at the "Time of completion of each delivery". The

Company shall acknowledge receipt of the Invoice by signing the acknowledgement of receipt accompanying each Invoice and returning it to the respective location nominated by CPC. The Company shall pay the invoiced amount (less any amount which is disputed pursuant to Clause 5.2.3) to the CPC on or before seven (7) Days of the date of Delivery or issue of each invoice whichever comes earlier.

5.2.1 Any party to whom damages are owed pursuant to Clause 4.9, Clause 4.13.3 or Clause 4.16 shall deliver to the other party a statement of damages ("LD Statement") which shall show all relevant data and intermediate calculations used by the party to determine the damages payable by the other party, and the total amount of the other party's liability there under. The owing party shall pay the amount owing (less any amount which is disputed pursuant to Clause 5.2.3) to the other party within seven (7) Days of receipt of such statement. The Company shall have the right to set-off damages due to it under Clause 4.16 against amounts due by it to the CPC (whether in respect of each Invoice or otherwise).

5.2.2 Subject to Clause 5.2.3, if any amount payable by the CPC or the Company under this Liquid Fuel Supply Agreement is not paid on or before the due date thereof for any reason, the party in default of its payment obligation shall pay interest thereon for the total outstanding amount calculated at the rate mentioned below (compounded monthly) from the due date until the date on which such amount is received by the CPC.

For any payments due in Rupees, at a rate equal to the Sri Lanka Prime Rate plus two percent per annum.

5.2.3 If any amount stated in the Invoice or a LD Statement is in good faith disputed by the party from whom payment is sought (each amount being a "Disputed Amount"), then that party shall:

- (i) Within seven (7) Days of receipt of such invoice or such statement, as the case may be, give notice of the dispute and details of the Disputed Amount to the other party; and
- (ii) Pay any undisputed sum in that Invoice or LD Statement on or before the due date thereof.

5.2.4 If, pursuant to Clause 5.2.3, either party disputes any amount, the parties shall, in accordance with the procedure set out in Clause 11, use reasonable endeavours to resolve that dispute within fourteen (14) Days of receipt of the notice under Clause (i).

5.2.5 Subject to Clause 5.2.6, if a dispute under Clause 5.2.3 is not resolved within the fourteen (14) Day period specified in Clause 5.2.4, then in accordance with Clause 11 such dispute shall be submitted for resolution by a Mediation process pursuant to Part 1 of Schedule 4 (Disputes Resolution Procedure).

5.2.6 Where either party disputes the amount due to the other party pursuant to any Invoice or LD Statement, the party disputing the amount shall forthwith pay the Disputed Amount into the Rupee Escrow Account pending the resolution of the dispute.



5.2.7 Amounts paid by either party into the Rupee Escrow Account and any interest thereon, shall be distributed to the parties upon final resolution of the dispute in accordance with the terms of the Expert's decision or terms otherwise agreed in writing by the parties.

5.2.8 If the Company disputes any amount specified in any Invoice more than three times in any Contract Year, or more than three times in any period of six consecutive Months, the parties shall meet to discuss whether the CPC's billing procedures and the Company's payment procedure are working satisfactorily.

### **5.3 Method of Payment**

5.3.1 All payments made hereunder by the Company to the CPC shall be paid in the currency in which the CPC made its invoice, in accordance with the provisions of this Clause 5.3, in immediately available funds by direct bank transfer or equivalent transfer of funds to the account nominated by the CPC no later than 1200 Hours on or before seven (7) Days from the date of delivery of the Liquid Fuel of an Invoice or LD Statement, as the case may be.

5.3.2 All payments made hereunder by the CPC to the Company shall be paid in Rupees in accordance with the provisions of this Clause 5.3, in immediately available Rupee funds by direct bank transfer or the Rupee Ordinary Account, as appropriate, no later than 1200 Hours on or before seven (7) Days from the date of delivery of Liquid Fuel or invoice whichever comes earlier from the Company.

### **5.4 Taxes**

The Company shall be liable for all taxes, levies, duties and imposts to which the Company may at any time becomes subject in relation to the performance of its obligations under this Liquid Fuel Supply Agreement and its purchase of Liquid Fuel under this Liquid Fuel Supply Agreement.

### **5.5 Bank Guarantee / Letters of Credit**

5.5.1 The following provisions shall apply to the giving of the Bank Guarantee / Letters of Credit:

- (i) no later than two (2) Days before:
  - a) The Open Cycle Operation Date; and
  - b) each Contract Year,

the Company shall establish in favour of the CPC the Bank Guarantee or irrevocable and unconditional standby letters of credit ("the Letter of Credit") issued by a bank in Sri Lanka reasonably acceptable to the CPC and in the form set out in Part 1 of Schedule 7 (Bank Guarantee Format), to be denominated in Rupees for Rupees two thousand million (Rs. 2,000,000,000.00) ("the Bank Guarantee" / "Rupee Letter of Credit"). Each Bank Guarantee / Letter of Credit shall cover all outstanding payments due under this Agreement pursuant to Clause 5.2.2 and shall be available to be drawn for a period of not less than

twelve (12) Months from its first stated date of validity and the Company shall cause the Bank Guarantee / Letters of Credit to be renewed or replaced by the Bank Guarantee / letters of credit in the same form not later than thirty (30) Days prior to their respective expiry;

- (ii) the CPC may draw upon the Bank Guarantee / Letters of Credit provided the CPC gives the Company seven (7) Days prior notice in writing that the amount is due and owing:
  - a) in any amount which the Company fails to pay (not being a Disputed Amount) three (3) Days following the date of the notice; and
  - b) in full, if the Bank Guarantee / Letters of Credit are not renewed or replaced in accordance with Clause (i);
- (iii) if the CPC draws the full amount of any of the Bank Guarantee / Letters of Credit pursuant to Clause (ii)(b), the CPC shall deposit the whole of such drawn amounts into an interest bearing account, denominated in Rupees, established with a reputable bank in Sri Lanka and notified by the CPC to the Company by no later than Open Cycle Operation Date and which shall be used solely for this purpose by the CPC and designated "Ceylon Petroleum Corporation, re the Bank Guarantee / Letters of Credit", ("Bank Guarantee/L/C Deposit Accounts"). The CPC shall not charge or otherwise grant security interests in favour of any person over, or in respect of, deposits held in the B/G or L/C Deposit Accounts. Details (including supporting bank statements) of the B/G or L/C Deposit Accounts and of any payment into or from, and the balances from time to time on, such accounts shall be provided to the Company upon its request. The CPC shall hold any amounts so drawn and credited to the B/G or L/C Deposit Accounts to be applied first in payment of amounts (not being Disputed Amounts) then due and payable by the Company to the CPC under this Liquid Fuel Supply Agreement and the balance, if any, shall remain on deposit in the B/G or L/C Deposit Accounts as security for the Company's performance of its obligations under this Liquid Fuel Supply Agreement and such amounts held in such B/G or L/C Deposit Accounts may only be used by the CPC in the same circumstances as those allowing the CPC to draw upon the Bank Guarantee OR Letters of Credit pursuant to Clauses (ii)(a). The remaining balance (if any) together with accrued interest shall be returned to the Company (or paid in accordance with the Company's directions) promptly after the Company has re-established the Bank Guarantee / Letters of Credit.

## **6 RECORDS AND BANK ACCOUNTS**

### **6.1 Records**

- 6.1.1 The CPC and the Company shall each keep properly stored and maintained at their offices in Colombo and Kerawalapitiya, respectively, and shall make available, on reasonable notice, for inspection and examination of the other party, its authorised employees, agents or representatives at all reasonable times, such records as are required by this Liquid Fuel Supply Agreement for a minimum period of six (6) Years from the date that such records as are kept under this Liquid Fuel Supply Agreement.
- 6.1.2 If any Dispute arises between the parties, all records relating to such Dispute shall be preserved until the resolution of such Dispute.
- 6.1.3 Certified copies of such records as are required to be maintained by this Liquid Fuel Supply Agreement shall be made available by either party to the other at the cost and expense of the party requiring such copies.

### **6.2 Bank Accounts**

- 6.2.1 Details of the Company Nominated Bank shall be notified by the Company to the CPC for the CPC's approval, together with details of the Rupee Ordinary Account no later than thirty (30) Days prior to the first Nominated Delivery Day and thereafter no later than thirty (30) Days before any proposed change in those details.
- 6.2.2 The CPC shall notify the Company of details of the CPC Rupee Account no later than thirty (30) Days prior to the first Nominated Delivery Day and thereafter no later than thirty (30) Days prior to any proposed change in those details.

## **7 FORCE MAJEURE**

### **7.1 Meaning of Force Majeure**

- 7.1.1 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 Liquid Fuel Supply Agreement;
  - (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 are of the kind referred to in Clause 7.1.2.
- 7.1.2 Force Majeure may include exceptional events or circumstances of the kind listed below, so long as conditions set out in Clause 7.1.1 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 parties of its obligations under this Liquid Fuel Supply 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 delay in the grant, or revocation, of any Governmental Approvals, despite the Company duly complying with the conditions for the grant thereof and due application therefor;
- (iv) acts of God, landslides, lightning, earthquakes, floods, fires, 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).

**7.1.3** In addition to the events set out above in this Clause 7:

- (i) an event of Force Majeure under the Implementation Agreement, The Power Purchase 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 Liquid Fuel Supply Agreement; and
- (ii) the Company agrees that no amendment shall be made to the Clauses dealing with Force Majeure in the Power Purchase Agreement, Implementation Agreement, Gas Fuel Supply Agreement.

**7.1.4** 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 Liquid Fuel Supply Agreement although the inability to use available funds, due to any reason set out in Clause 7.1, shall be regarded as Force Majeure; and
- (ii) a change in corporate taxes or Sales Tax following the date of this Agreement.

**7.1.5** None of the following shall constitute an event of Force Majeure unless the existence of such event is the result of an event of Force Majeure under the Turnkey Contract, O&M Agreement and the relevant Project Agreements which is analogous to an event of Force Majeure defined in this Clause 7:

- (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 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.

## **7.2 Procedure for Claiming Force Majeure:**

- 7.2.1 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 only 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 causing its failure to perform its obligations under this Liquid Fuel Supply 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.
- 7.2.2 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.
- 7.2.3 The party receiving the notice referred to in Clause 7.2.1 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 Liquid Fuel Supply Agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.

## **7.3 Consequences of Force Majeure:**

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

- 7.3.2 Any suspension of a party's performance under this Clause 7 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 Liquid Fuel Supply Agreement.
- 7.3.3 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.
- 7.3.4 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 CPC 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 Liquid Fuel Supply 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 7.3.4 within sixty (60) Days, the CPC shall be informed by the Company of the decision of the Expert to whom this matter would have been referred.
- 7.3.5 No Force Majeure will relieve a party of any duty or obligation under this Liquid Fuel Supply Agreement including the obligation to pay money, which had arisen or been incurred before the Force Majeure.
- 7.3.6 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.
- 7.3.7 Where Force Majeure prevents a party from carrying out any obligations under this Liquid Fuel Supply Agreement for a continuous period of three hundred and sixty five (365) Days then this Liquid Fuel Supply Agreement may be terminated by the other party giving sixty (60) Day's written notice to the party affected by the Force Majeure situation and the provisions of Clause 9 will apply.

## **8 LIABILITIES AND INDEMNITIES**

### **8.1 The CPC's Indemnity for Persons and Damage to Property**

The CPC agrees to indemnify, defend and hold the Company, its Affiliates, officers, directors, employees and agents harmless against any and all claims (including all expenses of litigation, court costs and attorneys' fees) for damages, costs, losses

and expenses incurred, suffered, sustained or required to be paid directly or indirectly by the Company, its Affiliates, officers, directors, employees and agents for bodily injury to or death of any person or damage to property arising out of the delivery of Liquid Fuel by the CPC under this Liquid Fuel Supply Agreement resulting from the negligence of, or breach of statutory duty by, the CPC, except to the extent caused by the negligence of, or breach of statutory duty by, the Company or an act of negligence of, or breach of statutory duty by, an officer, director, employee, agent or Affiliate of the Company, its successors or assigns.

## **8.2 The Company's Indemnity for Persons and Damage to Property**

The Company agrees to indemnify, defend and hold the CPC, its Affiliates, officers, directors, employees and agents harmless against any and all claims (including all expenses of litigation, court costs and attorneys' fees) for damages, costs, losses or expenses incurred, suffered, sustained or required to be paid directly or indirectly by the CPC, its Affiliates, officers, directors, employees and agents for bodily injury to or death of any person or damage to property arising out of the construction of the Facility, generation or delivery of electrical energy by the Facility or arising out of the receipt of Liquid Fuel under this Liquid Fuel Supply Agreement resulting from the negligence of, or breach of statutory duty by, the Company except to the extent caused by the negligence of, or breach of statutory duty by, the CPC or an act of negligence of, or breach of statutory duty by an officer, director, employee, agent or Affiliate of the CPC, its successors or assigns.

## **8.3 Consequential Loss**

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

## **8.4 Right to Defend Actions**

The Indemnifying Party may, upon notice to the other party, assume the defence of any claim referred to in Clauses 8.1 or 8.2. A party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the Indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such party in the defence of such claim. The foregoing obligations, indemnities and liabilities assumed by the parties hereunder shall not be limited by any limits on insurance contained in this Liquid Fuel Supply Agreement.

## **8.5 Indemnified Party not to Compromise**

Where either party has an obligation under Clauses 8.1, 8.2 or 8.3 to indemnify the other party, such other party (the "Indemnifying Party") shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express consent of the Indemnifying Party and, where such consent is not obtained prior to such compromise or settlement, the Indemnifying Party shall be released and discharged from all obligations under this Clause 8.

# **9 TERMINATION**

## **9.1 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 Power Purchase Agreement and this Liquid Fuel Supply 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 but not limited to the costs of legal and other advisers) howsoever arising under or in connection with this Liquid Fuel Supply Agreement by virtue of such termination or in respect of any losses, costs and expenses (including but not limited to the cost of legal and other advisers) incurred prior to the date of termination of the Power Purchase Agreement, including but not limited to those relating to negotiation, due diligence or its obligations under this Liquid Fuel Supply Agreement and arranging finance.

## **9.2 The CPC's Right to Early Termination**

This Liquid Fuel Supply Agreement may be terminated by the CPC at any time after the Preliminary Period forthwith on notice to the Company:

- 9.2.1 where the Company is in material breach of any of its obligations under this Liquid Fuel Supply Agreement 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;
- 9.2.2 where the Company is in material breach of this Liquid Fuel Supply Agreement which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the Company);
- 9.2.3 where the Company is in material breach of any of its obligations under the Power Purchase Agreement, the Implementation Agreement or the Lease and such breach (where capable of remedy) has not been remedied within the terms of the Power Purchase Agreement, the Implementation Agreement or the Lease as the case may be;
- 9.2.4 if the Company has failed to pay any sum due and payable to the CPC (not being a Disputed Amount) for a period of at least thirty (30) Days following the due date for payment; or
- 9.2.5 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 very 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; or



- (vi) where the Company is generally unable to pay its debts as they become due.

9.2.6 following:

- (i) breach by the Company of Clause 10.7.2;
- (ii) failure by the Company to establish the Letters of Credit in accordance with Clause (i).

9.2.7 following termination of the:

- (i) Implementation Agreement by the Government; or
- (ii) the Power Purchase Agreement or the Lease by the CEB;

in each case, pursuant to the provisions thereof.

### **9.3 The Company's Right to Early Termination**

This Liquid Fuel Supply Agreement may be terminated by the Company at any time after the Preliminary Period forthwith on notice to the CPC:

9.3.1 where the CPC is in material breach of any of its obligations under this Liquid Fuel Supply Agreement and such breach (where capable of remedy) has been notified to the CPC and has not been remedied within a period of sixty (60) Days of notification;

9.3.2 where the CPC is in material breach of this Liquid Fuel Supply Agreement which material breach is not capable of remedy (but excluding breaches relating to the time for giving notices by the CPC);

9.3.3 if the CPC has failed to pay any sum due and payable to the Company (not being a Disputed Amount) for a period of at least thirty (30) Days following the due date for payment, provided that following such due date for payment the Company shall have first exercised all available rights of set-off in respect of any amounts owing by the Company to the CPC;

9.3.4 where:

- (i) any proceeding (including for the appointment of a provisional liquidator) is instituted by or against the CPC seeking to adjudicate the CPC as bankrupt or insolvent or to wind up the CPC [and such proceeding is not disputed by the CPC within forty five (45) days];
- (ii) a court makes an order adjudicating the CPC as bankrupt or insolvent;
- (iii) a resolution is adopted for the voluntary winding up of the CPC;
- (iv) a receiver or a trustee is appointed over the whole or any part of the assets of the CPC and such appointment is not vacated within seventy five (75) Days; or
- (v) the CPC makes an assignment for the benefit of its creditors;

9.3.5 where, in any twelve Month period, the CPC fails to deliver (other than due to a breach by the Company of its obligations under this Liquid Fuel Supply Agreement) an aggregate amount of Liquid Fuel to the Receiving Point

greater than fifty percent of the aggregate Firm Nominated Liquid Fuel Quantity in respect of that period; or

- 9.3.6 termination by the Company of the Implementation Agreement, the Power Purchase Agreement or the Lease, in each case pursuant to the provision thereof.

#### **9.4 Sole Grounds for Termination**

Subject to the parties mutually agreeing to terminate this Liquid Fuel Supply Agreement for any reason, the provisions of this Clause 9 shall be the sole and exclusive grounds on which the parties may terminate this Liquid Fuel Supply Agreement.

#### **9.5 Antecedent Rights**

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

#### **9.6 Survival**

In the event of termination of this Liquid Fuel Supply Agreement, for a period of sixty (60) Months following termination, the provisions of this Liquid Fuel Supply Agreement as they relate to the payment of any sum due by one party to the other, the confidentiality provisions set out in Clause 10.4, this Clause 9.6 and the Disputes Resolution Procedure shall survive termination and continue to have effect in the terms of this Liquid Fuel Supply Agreement (and in respect of any continuing arbitration commenced prior to the lapse of such sixty (60) Months period this Liquid Fuel Supply Agreement shall survive solely in respect of the matter in arbitration).

#### **9.7 Notices of Termination**

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

### **10 MISCELLANEOUS**

#### **10.1 Representations and Warranties**

10.1.1 Each party represents and warrants to the other that, as at the date of this Liquid Fuel Supply 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 Liquid Fuel Supply 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 Liquid Fuel Supply Agreement does not violate any provisions of any law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to such party; and

- (iii) there are no actions, suits, proceedings or investigations pending or, to the party's knowledge, threatened against it at law or in equity before any court or before any governmental department, commission, board, agency or instrumentality (whether or not covered by insurance) which individually or in the aggregate would affect the validity or enforceability of this Liquid Fuel Supply Agreement or could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the party or in any impairment of its ability to perform its obligations under this Liquid Fuel Supply 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.

10.1.2 The Company represents and warrants to the CEB that, as at the date of this Liquid Fuel Supply Agreement:

- (i) the execution, delivery and performance of this Liquid Fuel Supply 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;
- (ii) it has the required authority, ability, skills, experience and capacity to perform, and shall perform all its obligations in connection with the Project in accordance with the terms of this Liquid Fuel Supply Agreement;
- (iii) it has the knowledge of all the legal requirements and business practices in Sri Lanka that must be followed in performing its obligations under this Liquid Fuel Supply Agreement and its obligations shall be performed in conformity with such requirements and practices; and
- (iv) it has reviewed the requirements of this Liquid Fuel Supply 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 this Liquid Fuel Supply Agreement.

10.1.3 The CPC represents and warrants to the Company that, as at the date of this Liquid Fuel Supply Agreement, the execution, delivery and performance of this Liquid Fuel Supply Agreement does not conflict with the Incorporation Act or conflict or result in the breach or termination of any provision of or constitute a default under any mortgage, loan, contract or other undertaking binding the CPC.

## **10.2 Obtaining and Maintaining Governmental Approvals**

The parties shall act so as to obtain and maintain all Governmental Approvals necessary for each party to perform its respective obligations under this Liquid Fuel Supply Agreement and each party shall use reasonable endeavours to assist the other party to comply with its obligation to obtain and maintain such Governmental Approvals.

## **10.3 Notices**

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

**10.3.2** All notices, requests, claims, consents, approvals, certificates or other communication under this Liquid Fuel Supply Agreement will be:

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

To: Ceylon Petroleum Corporation

Address: 609, Dr. Danister de Silva Mawatha, Colombo 00900, Sri Lanka

Facsimile:

For: Managing Director

With a copy to: Operations Manager

Address: 609, Dr. Danister de Silva Mawatha, Colombo-00900, Sri Lanka

Facsimile: 011-5455432

- (v) If to the Company:

To: [ ] (Private) Limited

Address:

Facsimile:

For: Project Director

With a copy to:

Address:

Facsimile:

For:

**10.3.3** 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 Liquid Fuel Supply Agreement, will be treated as received:

- (i) if delivered personally, when left with a person, it is necessary to provide the designation of such person at the recipient's address;
- (ii) if sent by prepaid post, (if posted within Sri Lanka) upon the earlier of actual receipt and seven (7) Days after the date of posting;
- (iii) if sent by registered post, on acknowledgement of receipt by or on the recipient's behalf;
- (iv) 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 5.00pm (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.

#### **10.4 Confidentiality and Publicity**

**10.4.1** All information (including contracts) provided by one party to the other in connection with the negotiation or performance of this Liquid Fuel Supply 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.

**10.4.2** 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 Liquid Fuel Supply 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.

#### **10.5 Amendments**

Any amendment to this Liquid Fuel Supply 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 Liquid Fuel Supply Agreement is executed.

## **10.6 Waiver**

- 10.6.1 A party's waiver of any failure to comply strictly with any of this Liquid Fuel Supply Agreement's terms will not operate as a waiver of strict compliance with any of this Liquid Fuel Supply Agreement's terms now or in the future.
- 10.6.2 A party's failure or delay in exercising any right, power, privilege or remedy under this Liquid Fuel Supply Agreement will not operate as a waiver of it.
- 10.6.3 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.
- 10.6.4 A single or partial exercise of any right or remedy will not prevent its further or full exercise. The rights and remedies in this Liquid Fuel Supply Agreement are cumulative and do not exclude any other remedies to which either party may be lawfully entitled.

## **10.7 Assignment and Transfers of Interests**

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

- 10.7.1 The CPC may not assign or otherwise transfer all or part of its rights, benefits or obligations under this Liquid Fuel Supply Agreement without the Company's prior consent, such consent not to be unreasonably withheld or delayed, provided that, upon thirty (30) Days prior notice from the CPC to the Company, the CPC may assign or transfer all or part of its rights, benefits or obligations under this Liquid Fuel Supply Agreement without the Company's prior consent in the event of:
  - (i) the restructuring of the CPC's assets; or
  - (ii) the changing of the CPC's ownership; or
  - (iii) the merger or consolidation of the CPC with any other entity; or
  - (iv) the CPC's conversion into a company organised and incorporated under the Companies Act pursuant to any privatisation, restructuring or similar process implemented pursuant to the Laws of Sri Lanka, provided that the surviving entity to whom the assignment or transfer is made assumes and becomes fully liable to perform the CPC's obligations under this Liquid Fuel Supply Agreement.
- 10.7.2 The Company may not sell, assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the CPC's prior consent, such consent shall not be unreasonably withheld or delayed.
- 10.7.3 Subject to Clause 10.7.1, any change including without limitation a change in shareholding which results in a change in the effective ownership, management or control of a party to this Liquid Fuel Supply Agreement will be deemed to be an assignment and will require a written consent of the other party, which consent shall not be unreasonably withheld.

## **10.8 Severability**

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

## **10.9 No Partnership or Other Relationship**

**10.9.1** Nothing in this Liquid Fuel Supply Agreement makes either party the other party's partner, agent or representative or creates any trust or commercial partnership.

**10.9.2** No party may act for, or incur any obligation or liability on the other party's behalf unless expressly stated in this Liquid Fuel Supply Agreement.

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

## **10.10 Good Faith**

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

## **10.11 Further Assurances**

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

## **10.12 Liquidated Damages**

Where in this Liquid Fuel Supply Agreement a party is expressed to be liable for liquidated damages the parties agree that such liquidated damages represent a genuine pre-estimate of loss for the party entitled to claim such liquidated damages.

## **10.13 Sovereign Immunity**

If the CPC may in any jurisdiction claim for itself or its assets or revenues immunity in respect of its obligations under this Liquid Fuel Supply Agreement from service of process, suit, execution, jurisdiction of any court, judgement, order (including any injunction or specific performance and whether final or interlocutory), award, execution, attachment (whether in aid of execution, before judgement or otherwise), set-off or other legal process and if in any such jurisdiction there may be attributed to it or its assets or revenues such immunity (whether or not claimed), the CPC

agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

#### **10.14 The CPC Liability and Power Purchase Agreement**

Where, under Clause 4.16, the CPC has a liability in liquidated damages to the Company by reference to values in the Power Purchase Agreement, the Company shall not agree to any amendment of the Power Purchase Agreement in respect of such values as are expressly identified in Clause 4.16.1 without the prior consent of the CPC, which shall not be unreasonably withheld or delayed.

#### **10.15 Entirety of Agreement**

This Liquid Fuel Supply 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 Liquid Fuel Supply Agreement or agreed in writing after this Liquid Fuel Supply Agreement's date and properly signed by or on behalf of the party to be bound by them.

#### **10.16 Language**

This agreement has been executed by the parties in English which shall be the operational language of this agreement.

### **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 Liquid Fuel Supply Agreement (including any dispute or difference in connection with the existence or validity of this Liquid Fuel Supply Agreement or any provision hereof) which is not:

11.1.1 first amicably resolved between the parties to this Liquid Fuel Supply Agreement by good faith mutual discussions within thirty (30) Days, or, in the case of a dispute involving insurance or any Disputed Amount, 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 the chief operating officers of the Company and the CPC (or such other official authorised by the CPC) within a further period of fifteen (15) Days (or such longer period as the parties may agree); or

11.1.2 a dispute which the parties have agreed should be the subject of a Mediation under Part 1 of Schedule 4 (Disputes Resolution Procedure), then the Disputes Resolution Procedure set out in Part 2 of Schedule 4 (Disputes Resolution Procedure), shall apply.



## **12 INDEPENDENT INSPECTORS**

### **12.1 Review of the List of Approved Independent Inspectors**

At least two (2) weeks prior to the Open Cycle Operation Date and prior to each anniversary of the Open Cycle Operation Date the parties shall meet to review the List of Approved Independent Inspectors. If the parties mutually agree, they may revise the List of Approved Independent Inspectors. If the parties are unable to mutually agree upon such revisions, the previous List of Approved Independent Inspectors shall continue to be in effect.

### **12.2 The Preferred Independent Inspector**

Any activities to be undertaken by an independent inspector under Part 1 of Schedule 2 (Measurement and Testing) shall be undertaken by an independent inspector designated by the parties at the relevant time from the List of Approved Independent Inspectors (the "Preferred Independent Inspector"). If the Preferred Independent Inspector is unable or unwilling to act within thirteen (13) Hours after being required hereunder to do so, the parties shall designate an alternative independent inspector as the Preferred Independent Inspector to undertake these activities. If the parties are unable to reach agreement as to the designated Preferred Independent Inspector within twelve (12) Hours of being required to do so hereunder the Preferred Independent Inspector shall be chosen by lot from the List of Approved Independent Inspectors.

## **13 LAW**

### **13.1 Governing Law**

This Liquid Fuel Supply Agreement shall be governed by and construed in accordance with the laws (whether substantive or procedural) of Sri Lanka. The parties agree that no provision of this Agreement shall be interpreted in a manner which would circumvent the laws of Sri Lanka.

**IN WITNESS WHEREOF** the parties have executed this Liquid Fuel Supply Agreement in two original copies as of the date first written above.

**THE COMMON SEAL of [ ] CEYLON PETROLEUM CORPORATION  
(PRIVATE) LIMITED**

in the presence of

is affixed hereto in the presence of

\_\_\_\_\_

Title:

two directors of the Company who attest  
the sealing thereof \_\_\_\_\_

\_\_\_\_\_

Title:

## SCHEDULE 1 – DEFINITIONS

"Actual Available Capacity"	is calculated in the manner set out in Paragraph 8.2 of Schedule 8 ( <i>Actual Available Capacity</i> ) and is expressed as a percentage;
"Affiliate"	means in relation to a party, any one of: <ul style="list-style-type: none"> <li>(a) a holding company of that party;</li> <li>(b) a Subsidiary of that party;</li> <li>(c) any other company which is a Subsidiary of that party's holding company;</li> </ul>
"Agreed Delivery Day"	means, in respect of any Firm Nominated Liquid Fuel Quantity if: <ul style="list-style-type: none"> <li>(i) a party has given notice pursuant to Clause 4.8.1, the Day for delivery and receipt of that Firm Nominated Liquid Fuel Quantity determined in accordance with Clause 4.8.1; or</li> <li>(ii) no party has given notice pursuant to Clause 4.8.1, the Nominated Delivery Day;</li> </ul>
"Agreement"	means this Liquid Fuel Supply Agreement;
"Bank Guarantee/Letters of Credit"	means the Bank Guarantee or letters of credit established by the Company in accordance with Clause 5.5;
"B/G or L/C Deposit Accounts"	has the meaning given to that term in Clause 5.5.1(iii);
"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 Agreement"	means the agreement between the BOI and the Company;
"Business Day"	means any day other than a Saturday, Sunday, public holiday or bank holiday in Sri Lanka;
"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 ( <i>Actual Available Capacity</i> ) and Schedule 9 ( <i>Capacity Charge and Energy Charge</i> );
"CEB"	means the Ceylon Electricity Board, a body corporate established by Act No. 17 of 1969 and any successor and permitted assign thereto;
"Change in Law"	means any of the following events occurring after the date of this Agreement as a result of any action by any Competent Authority:

	<p>(a) an amendment to or repeal of any existing Laws of Sri Lanka (including subsidiary legislation, rules, regulations, orders and directives made or issued by such Competent Authority pursuant to or under any such Law);</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, 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 Power Purchase Agreement;
"Combined Cycle Commissioning Period"	has the meaning given to that term in the Power Purchase Agreement;
"Combined Cycle Operation Date" or "CCOD"	means Combined Cycle (L) Operation Date or CCLOD;
"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 Power Purchase Agreement;
"Combined Cycle Operational Period"	<p>Means the period commencing at 0000 Hours on the Combined Cycle (L) Operation Date and expiring at 2400 Hours on the first (1<sup>st</sup>) day which is thirty (30) Days after the twenty fifth (25<sup>th</sup>) anniversary thereof as such period may be:</p> <p>(i) extended in accordance with Clause 6.9.1; or</p> <p>(ii) reduced in accordance with Clause 6.9.2;</p> <p>of the Power Purchase Agreement;</p>
"Companies Act"	means the Sri Lanka Companies Act No. 7 of 2007, as amended from time to time or any statutory re-enactment thereof;
"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 Nominated Bank"	means the bank in Colombo selected by the Company at which the Company shall maintain the Rupee Conversion Account as notified by the Company to the CPC and approved by the CPC in accordance with Clause 6.2.1;

"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 Power Purchase Agreement;
"Connection Flange Design"	the design for the flange connecting the CPC Pipeline and isolation valve to the Liquid Fuel Pipeline at the Pipeline Receiving Point;
"Consequential Loss"	means all losses, costs or financial harm in respect of loss of contract, loss of use of machinery or property, loss or 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 Liquid Fuel Supply Agreement however caused (including the default of the other party of a breach of any duty owed in law by the other party), and whether or not foreseeable at the date of this Liquid Fuel Supply Agreement provided however that in no circumstances shall Consequential Loss include any express obligation to make payment (including the payment of costs and damages and payment pursuant to Clauses 4.9, and 5) or any express obligation to provide an indemnity under any of the provisions of this Liquid Fuel Supply Agreement;
"Construction Notice"	means the notice issued by the Company to the CEB pursuant to Clause 4.6 of the Power Purchase Agreement which signals the end of the Preliminary Period and the commencement of the Construction Period;
"Contract Year"	means the period commencing on 0000 Hours on the Combined Cycle (L) Operation Date and expiring at 2400 Hours on the Day before the anniversary thereof and, thereafter, each period commencing at 0000 Hours on each anniversary of the Combined Cycle Operation Date and expiring at 2400 Hours on the Day before the next anniversary thereof; In the Contract Year in which the Commissioning with Gas Fuel occurs, the Contract Year ends at 2400 Hours on the Day before one Month after the anniversary thereof and, thereafter, each period commencing at 0000 Hours on the Day before the one Month after the each anniversary of the Combined Cycle Operation Date and expiring at 2400 Hours on the Day before the one Month after the next anniversary thereof;
"CPC"	means the Ceylon Petroleum Corporation and any successor and permitted assign;

"CPC Nominated Bank"	means the Peoples Bank, having its head office at 75, Sir Chittampalam A Gardiner Mawatha, Colombo 00200, Sri Lanka, at which the CPC shall maintain the CPC Rupee Account;
"CPC Pipeline"	means any pipeline owned or operated by the CPC including the submarine pipeline and single point buoy mooring system through which Liquid Fuel is supplied, or is to be supplied, to the Liquid Fuel Pipeline;
"CPC Rupee Account"	means the CPC's Rupee denominated bank account with the CPC Nominated Bank, as notified by the CPC to the Company pursuant to Clause 6.2.2;
"CPC Tanks"	has the meaning given to that term in Paragraph 2.1 of Part 1 of Schedule 2 (Measurement and Testing);
"Day" or "day"	means a period of twenty four (24) Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;
"Demurrage"	means the penalties or damages payable by CPC to a third party in relation to an importation of Liquid Fuel where the unloading of Liquid Fuel gets delayed due to insufficient ullage in tanks at the Termination Company's storage facilities due to not accepting a confirmed nomination by the Company, and the cost of storage of the Firm Nominated Liquid Fuel Quantity at the CPC's storage facilities for the total period until that Liquid Fuel is delivered to the Company and any other related costs by CPC;
"Demurrage Liability Period"	means the period of three hundred and sixty five (365) Days following the first Agreed Delivery Date and each successive period of three hundred and sixty five (365) Days thereafter;
"Disputed Amount"	has the meaning given to that term in Clause 5.2.3;
"Facility"	means the combined cycle power plant having a nominal rating of <i>[nominal rating as stated in the Power Purchase Agreement]</i> 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, Liquid Fuel handling and storage infrastructure, water treatment facilities, solid waste disposal facilities, switchyards and all other installations;
"Firm Nominated Liquid Fuel Quantity"	has the meaning given to that term in Clause 4.6.1;

"Force Majeure"	has the meaning given to that term in Clause 7.1;
"Generating Set"	means each of the [ ] generating sets incorporating a turbine, with a nominal rating of approximately [ ] MW in the case of the gas turbine and [ ] MW in the case of the steam turbine, and which are part of the Facility;
"Good Design, Engineering and Construction Practices"	<p>means the relevant practices, methods, standards and acts generally followed or approved by the international petroleum industry which the Company shall identify prior to commencement with respect to the planning, design, construction, commissioning, testing and repair of work with characteristics comparable to those of the Facility, including the location of the Facility and includes the performance of the work:</p> <ul style="list-style-type: none"> <li>(i) in a sound and workmanlike manner, with due care and skill and applying generally accepted engineering, construction and management practices and procedures;</li> <li>(ii) with due expedition and without unnecessary or unreasonable delay;</li> <li>(iii) using appropriate internationally accepted standards for materials and workmanship applicable to works having characteristics comparable to those of the Facility; and</li> <li>(iv) with all materials and workmanship suitable for their respective purposes and properly certified where appropriate.</li> </ul>
"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 purpose of any party carrying out its obligations under this Liquid Fuel Supply Agreement or the Project,
"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;
"Implementation Agreement"	means the agreement between the Government and the Company entered into on or before the date of this Liquid Fuel Supply Agreement and relating to the Project;
"Indemnifying Party"	has the meaning given to that term in Clause 8.5;
"Independent Inspector"	means any independent inspector on the List of Approved Independent Inspectors;

"Indicative Nominated Delivery Day"	has the meaning given to that term in Clause 4.5;
"Initial Measurement Period"	has the meaning given to that term in Paragraph 2.5 of Part 1 of Schedule 2 (Measurement and Testing);
"Intake Tanks"	means each of the receiving and storage tanks designated as such by the Company;
"Interconnection Point"	has the meaning given to that term in Paragraph 5.3.16 of Schedule 5 (Minimum Functional Specification) of the Power Purchase Agreement;
"Interim Invoice"	has the meaning given to that term in Paragraph 2.3 of Schedule 3 (Price of Liquid Fuel);
"kCal/Kg"	means kilo calories per unit of kilogram;
"Laws of Sri Lanka"	means, in relation to this Liquid Fuel Supply Agreement, all laws in force in Sri Lanka (including any political subdivision 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;
"LD Statement"	has the meaning given to that term in Clause 5.2.1;
"Lease"	means the agreement between CEB and the Company for the lease of the Site entered into on or before the date of the Power Purchase Agreement but taking effect on the date of the Construction Notice;
"List of Approved Independent Inspectors"	means the list of approved independent inspectors attached as Schedule 6 (List of Approved Independent Inspectors);
"Liquid Fuel"	means: where the Company enters into the Liquid Fuel Supply Agreement, Liquid Fuel comply with the specification set out in Schedule 2 (Measurement and Testing);
"Liquid Fuel Pipeline"	means the Company's transfer pipeline and associated fittings, constructed by the Company in accordance with the Good Design, Engineering and Construction Practices and incorporating an isolation valve immediately on the Company's side of the Pipeline Receiving Point. The Liquid Fuel Pipeline shall connect the Pipeline Receiving Point to the Company's receiving pipe work;
"Liquid Fuel Supply Corridor"	means the servitudinal rights and appurtenances described in Schedule 5 over all that and those allotments of land in Schedule 5 in which is installed the Liquid Fuel Pipeline from the CPC boundary to the Site;
"Maximum Delivery Amount"	has the meaning given to that term in Clause 4.6.2 ;

"Measurement Procedures"	has the meaning given to that term in Paragraph 2.5(ii) of Part 1 of Schedule 2 (Measurement and Testing);
"Measurements"	has the meaning given to that term in Paragraph 2.1 of Part 1 of Schedule 2 (Measurement and Testing);
"Minimum Delivery Amount"	has the meaning given to that term in Clause 4.6.2;
"Month" or "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;
"MW"	means a megawatt or 1000 kilowatts;
"m <sup>3</sup> "	means cubic metres;
"Net Dependable Capacity"	means, Net Dependable Capacity at Combined Cycle Operation with Liquid Fuel NDC <sub>CL</sub> ;
"NDC <sub>CL</sub> "	means [.....] kW;
"Nominated Delivery Day"	has the meaning given to that term in Clause 4.6.1;
"Nominated Liquid Fuel Quantity"	has the meaning given to that term in Clause 4.5;
"Notice"	has the meaning given to that term in Clause 10.3.1;
"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 Power Purchase Agreement;
"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 Power Purchase Agreement;
"Operation Date"	means the Open Cycle Operation Date or the Combined Cycle Operation Date (as the case may be);
"Pipeline Receiving Point"	means the Company Pipeline flange linking the CPC Pipeline to the Liquid Fuel Pipeline located within CPC's boundary;
"Power Purchase Agreement" or "PPA"	means the agreement between the Company and CEB entered on or before the date of this Liquid Fuel Supply Agreement pursuant to which the Company has agreed to sell to CEB, and CEB has agreed to purchase from the Company, electricity generated by the Facility;
"Preferred Independent Inspector"	has the meaning given to that term in Clause 12.2;
"Preliminary Period"	means the period commencing on the date of the Power Purchase Agreement and, save as extended in



	<p>accordance with Clause 4.5 of the Power Purchase Agreement thereof, ending on the earlier of:</p> <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 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 Agreements, Gas Fuel Supply Agreement, Land Lease Agreement, Direct Agreements and the BOI Agreement;
"Prudent Utilities Practice"	means the accepted international practice and standard which the Company shall identify prior to the Operational Period, and engineering and operational 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 supply of Liquid Fuel or the operation and maintenance of facilities and Liquid Fuel pipelines similar to the Facility or the CPC Pipeline, as the case may be;
"Quarter"	means any period of three calendar months commencing on 1 <sup>st</sup> January, 1 <sup>st</sup> April, 1 <sup>st</sup> July or 1 <sup>st</sup> October;
"Receiving Point"	means the Road Tanker (Bowser) unloading point (Tanker Receiving Point) at the Facility or the Company Pipeline flange connected to the CPC/CPSTL terminal out gate (as the case may be);
"Request for Proposals"	means the request for proposals issued by the CEB for the Project;
"Restoration"	has the meaning given to that term in Clause 7.3.4;
"Rupees" or "Rs"	Means the lawful currency of Sri Lanka;
"Rupee Escrow Account"	means the interest earning Rupee escrow account, established by the parties in their joint names at a bank in Sri Lanka no later than the Agreed Delivery Day in respect of the first Firm Quantity of Liquid Fuel delivered pursuant to the terms of this Liquid Fuel Supply Agreement;
"Rupee Bank Guarantee / Letter of Credit"	has the meaning given to that term in Clause 5.5.1;

"Rupee Ordinary Account"	means the Rupee denominated account opened and maintained by the Company at the Company Nominated Bank for the purpose of receiving sums payable by the CPC in Rupees, as notified by the Company to the CPC pursuant to Clause 6.2.1;
"Scheduled Combined Cycle Operation Date"	means the date that is thirty three (33) months from the date of the Power Purchase Agreement, as may be adjusted from time to time under Clause 5.6.1 of the Power Purchase Agreement;
"Scheduled Open Cycle Operation Date"	means the date that is twenty one (21) months from the date of the Power Purchase Agreement, as may be adjusted from time to time under Clause 5.6.1 of the Power Purchase Agreement;
"Scheduled Operation Date"	means the Scheduled Open Cycle Operation Date or the Scheduled Combined Cycle Operation Date (as the case may be);
"Site"	means the area of land more particularly described in the Lease where the Facility is located;
"Shortfall"	means any Firm Nominated Liquid Fuel Quantity, expressed in litres, which the CPC is contractually obliged to deliver to a Receiving Point and which, as a result of any of the following is not duly delivered by the CPC <ul style="list-style-type: none"> <li>(i) under Clause 4.14.4,</li> <li>(ii) under Clause 4.14.5,</li> <li>(iii) under Clause 4.15, or</li> <li>(iv) due to any other breach by the CPC of its obligations under this Liquid Fuel Supply Agreement,</li> </ul> An "event" of Shortfall shall mean any event giving rise to or causing Shortfall;
"Shortfall Capacity Charges"	has the meaning given to that term in Clause 4.16.2;
"Specifications"	means the specifications (including the Liquid Fuel delivery pressure) for Liquid Fuel set out in Part 2 of Schedule 2 (Measurement and Testing);
"Sri Lanka"	means the Democratic Socialist Republic of Sri Lanka;
"Sri Lanka Prime Rate"	means latest Average Weighted Prime Lending Rate (AWPLR) published by Central Bank of Sri Lanka on monthly basis;
"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</li> </ul>

	the casting of votes at shareholders' meetings of that company; or
	(iii) which, or whose board of directors, normally acts in accordance with the instructions of another company;
"Tankage Report"	has the meaning given to that term in Paragraph 2.8 of Part 1 of Schedule 2 (Measurement and Testing);
"Tanker Receiving Point"	means the flanges at the unloading header on the Site;
"Terminal Company"	has the meaning given to that term in Paragraph 1.2 of Schedule 3 (Price of Liquid Fuel);
"Tonnes"	means metric tonnes;
"Tribunal"	has the meaning given to that term in paragraph 4.7 of Part 2 of Schedule 4 (Disputes Resolution Procedure);
"Turnkey Contractor"	means the Turnkey Contractor appointed by the Company under Clause 4.2.1 of the Power Purchase Agreement;
"Week"	means a period of seven (7) Days beginning at 0000 Hours on Monday and ending at 2400 Hours on the following Sunday;
"Year"	means a year according to the Gregorian calendar.

## **SCHEDULE 2 - MEASUREMENT AND TESTING**

### **2 Measurement and Testing**

#### **PART 1**

#### **MEASUREMENT AND TESTING**

**2.1 Measurement of quantities of Liquid Fuel delivered by the CPC to the Company and the compliance of that Liquid Fuel with the Specifications and other delivery requirements under this Liquid Fuel Supply Agreement shall be based on:**

- (i) manual dip measurements and measurements of density and temperature; and**
- (ii) testing conducted pursuant to the test methods indicated in Part 2 of Schedule 2 (Measurement and Testing);**
- (iii) (collectively, the "Measurements"), conducted at the storage tanks involved in the delivery at the CPC's installations (the "CPC Tanks") after the Initial Measurement Period.**

**2.2 In the case of deliveries of Liquid Fuel by the CPC to the Company by road tanker, certain Measurements shall, in accordance with the Measurement Procedures, be conducted by sampling and tank dipping each road tanker immediately after loading Liquid Fuel, and before sealing the relevant road tanker, at the CPC's Liquid Fuel loading facility. Each road tanker shall also be subject to the Measurement Procedures as soon as reasonably practicable after its arrival at the Tanker Receiving Point and in any event prior to unloading of the relevant Liquid Fuel at the Tanker Receiving Point, in each case carried out by the CPC or the Company, as appropriate, in the presence of representatives of both parties and the road tanker driver. In the event of any discrepancy between Measurements taken prior to sealing any road tanker before departure from the CPC's loading facilities and the corresponding Measurements subsequently taken of such road tanker at the Tanker Receiving Point, the Company shall serve a Liquid Fuel discrepancy notice upon the CPC, which shall be countersigned by the driver of the relevant tanker, giving full details of such discrepancy. Where the parties are unable to identify the cause of the discrepancy either party may require the Preferred Independent Inspector to determine which Measurements (if any) should prevail, the reasons for the discrepancy, and a method or recommendations for avoiding such discrepancies in future.**

**2.3 Not more than fifteen (15) Days prior to the first Nominated Delivery Day, the Intake Tanks shall be calibrated. Re-calibration of the Intake Tanks and the CPC Tanks shall occur as agreed by the parties from time to time or as recommended by the Preferred Independent Inspector. Following any such calibration the Company shall promptly deliver to the CPC a certified copy of the certified tank calibration charts. The CPC shall provide to the**

Company certified copies of the certified tank calibration charts for the relevant the CPC Tanks not more than fifteen (15) Days prior to the first Nominated Delivery Day and subsequently upon any re-calibration.

- 2.4 The CPC shall give the Company at least twenty four (24) Hours prior notice of any Measurements to be carried out at the CPC Tanks pursuant to this Part 1 of Schedule 2 (Measurement and Testing). Measurements at the Intake Tank shall be conducted within twelve (12) Hours of the delivery to the Company of the relevant quantity of Liquid Fuel. Representatives of the Company and the CPC shall be entitled to be present to witness all Measurements, but the failure by a party's representatives to witness Measurements shall not invalidate them.
- 2.5 Within twenty four (24) Hours of each delivery of Liquid Fuel by the CPC to the Company, the CPC shall prepare a tankage report using the tank dip readings of the delivery tank for pipeline delivery and the manual dip of the bowser at the delivery point at the CPC (the "Tankage Report") indicating the quantity of Liquid Fuel delivered by the CPC. Such Tankage Report shall be considered as the delivered quantity of Liquid Fuel to the Company for invoicing purposes. Within a maximum of four (4) Hours of receipt of the Tankage Report, the Company shall inform CPC of a discrepancy, if any, between the Tankage Report and the amount received by the Company and the parties shall jointly investigate the cause for, the discrepancy. If the parties cannot agree within twenty four (24) Hours of starting the investigation, the matter will be considered a dispute for the purpose of paragraph 2.9.
- 2.6 Any dispute arising with respect to an Interim Invoice, Measurements or the preparation of a Tankage Report may be referred by either party to the Preferred Independent Inspector within twenty four (24) Hours of the delivery by the CPC to the Company of the relevant Interim Invoice, the conduct of the Disputed Measurements or the end of the period by which the CPC was to have prepared the relevant Tankage Report. In the case of a dispute as to Measurements taken at the CPC Tanks, such period of twenty four (24) Hours shall commence from the time of completion of the corresponding Measurements at the Intake Tanks, but shall be completed as soon as practicably possible so as to minimise disruption to the CPC's use of the CPC Tanks in respect of other fuel deliveries. The determination of the Preferred Independent Inspector pursuant to the inquiry shall be final and binding on both parties. The cost and expense of such inquiry and the Preferred Independent Inspector shall be shared by the parties equally or borne by the party at fault, as determined by the Preferred Independent Inspector. Where, in any determination, the Preferred Independent Inspector recommends amendment of the Measurement Procedures, such recommendations shall constitute an amendment to the Measurement Procedures and the Measurement Procedures shall be deemed to be amended accordingly from the date of such determination. The provisions of Schedule 4 (Disputes Resolution Procedure) shall not apply to any dispute referred to in this paragraph.

## PART 2

### LIQUID FUEL SPECIFICATION

Specification for the Liquid Fuel shall be within the following limits:

Technical Specification for Auto Diesel

S Property/Test	Method(ASTM-D)	Specifications
Appearance		Clear & free from water and impurities
Density @ 15°C kg/m <sup>3</sup>	1298/4052	820 - 860
Colour ASTM	1500	Max. 2.0
Distillation	86	
IBP °C		Report
T10 °C		Report
T50 °C		Report
T90 °C		Max 370
Recovery @ 315 °C		Min 50
Recovery @ 350 °C		Min 80
Cetane Index or	976	Min 45 (Note1)
Cetane Number	613	Min 49
CFPP °C		Max 10
Sulphur Content mg/kg	4294	Max. 3000
Flash Point °C	93	Min 60
Viscosity Kin @ 37.8 °C cst	445	1.5 -5.0
Water Content mg/kg	95	Max 500
Cu Strip corrosion 3 hrs @ 50 °C	130	Max 1
Ash % m/m	482	Max 0.02
Carbon residue % m/m	524/4530	Max 0.3
Total Acid No. mg KOH/g	974/664	Max 0.2
Caloric value gross kCal/kg	240	Min 10500

Note 1 : N/A if any cetane improver additive is present

## **SCHEDULE 3 - PRICE OF LIQUID FUEL**

### **3 Price of Fuel**

#### **3.1 LIQUID FUEL SUPPLY – CONTRACTUAL AND COMMERCIAL FRAMEWORK**

This Schedule 3 sets out the method of calculating the payments to be made by the Company to CPC for Liquid Fuel.

#### **3.2 LIQUID FUEL PAYMENTS**

3.2.1 Pursuant to Clause 5 of this Liquid Fuel Supply Agreement, CPC shall submit Invoices to the Company for Liquid Fuel supplied for the period required. The following paragraphs specify the basis on which the amounts payable in respect of Liquid Fuel delivered in the relevant billing period is determined and is without limitation to the generality of the Clauses of this Liquid Fuel Supply Agreement and the specific provisions that follow in this Schedule 3.

3.2.2 The price of Liquid Fuel hereunder shall not include any demurrage costs; which costs may only be charged to the Company pursuant to Clause 4.9. The price of Liquid Fuel shall however include any transport costs up to the Receiving Point.

3.2.3 Within three (3) Days of each delivery of Liquid Fuel by the CPC to the Company, the CPC shall deliver to the Company an invoice indicating the quantity of Liquid Fuel delivered by the CPC as determined pursuant to the Tankage Report and the price of that Liquid Fuel (each being a final invoice). Final Invoices shall be conclusive evidence of the quantities and price of Liquid Fuel delivered by the CPC to the Company, unless Disputed by the Company within seven (7) Days of receipt pursuant to Paragraph 2.9 of Part 1 of Schedule 2 (Measurement and Testing).

#### **3.3 CALCULATION OF LIQUID FUEL PAYMENTS**

##### **3.3.1 Liquid Fuel Charges**

Liquid Fuel will be priced by CPC as follows

- (i) At the Government approved selling price applicable at the relevant time, plus
  - the cost incurred for the transportation of Liquid Fuel and other relevant costs incurred for such delivery or transfer of the product.
- (ii) Where there is no such approved price, the price of the Liquid Fuel oil to be supplied by CPC under this agreement shall be determined by the gross amount paid by CPC in respect of the imported Liquid Fuel and shall be comprised of the previous month average of the daily published FOB Singapore platts prices for Diesel. premium, freight and insurance, all duties, taxes and levies, port charges, cost of independent inspection, loading and unloading charges, sampling and laboratory charges, charges related to transit losses, bank charges (

L/C commission and confirmation charges, debt taxes, telex charges, stamp charges etc), finance charges, stock holding charges for thirty (30) Days, interest if any, exchange loss for thirty (30) Days, terminal charges, transport charges, any other reasonably incurred overhead costs and reasonable profit margin.

- (iii) The Liquid Fuel price in 1 above, is based on the observed temperature at the respective bowser loading point.
- (iv) CPC shall provide a detail invoice and a test report for each and every parcel delivered. Pertaining to the each and every parcel of delivery CPC shall indicate below parameters at minimum and the indicate other relevant parameters which is inline with standard delivery procedure in CPC.
  - a) Gross Observed volume
  - b) Mass of the Liquid Fuel transferred
  - c) Price of the Liquid Fuel transferred or price of a unit volume
  - d) Calorific value at HHV (kJ/kg) and other relevant parameters as indicated in the Liquid Fuel specification in Schedule 2 Part II.

In the event the Company in good faith disputed a Test Report provided by CPC, the Parties shall agree to obtain a test report from an independent test laboratory acceptable to both Parties and the results of the latter shall prevail.

- (v) In combination to the above (vi) all parties shall agree on a "Measurement Protocol" for the delivery of Liquid Fuel before commencing the delivery and this document will be a part of the Liquid Fuel Supply Agreement under this Schedule.



## **SCHEDULE 4 - DISPUTES RESOLUTION PROCEDURE**

### **4 Disputes Resolution Procedure**

#### **PART 1 MEDIATION**

##### **4.1 Request for Mediation**

In the event of any dispute arising out of or in connection with the Agreement, which are not first amicably resolved between the parties, shall then refer the dispute to mediation under the rules of CCC-ICLP Alternative Dispute Resolution Centre. (The centre which Collaboration between Ceylon Chamber of Commerce and the Institute for the Development of Commercial Law and Practice). If the dispute has not been settled pursuant to the said rules within sixty (60) Days following the filing of a Request for Mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled under the procedure set out in the part 2 of the under the Dispute Resolution Procedure.

##### **4.2 Determination**

If the parties are amicably resolve the dispute through the Mediation, the determination of the Mediator (Mediation award) shall be final and binding upon the parties.

The determination of the Mediator shall be made in writing setting out the reasons for such determination.

##### **4.3 Costs and Expenses**

Each party shall bear all costs incurred by the Mediation with the cost and expenses of the Mediator shall be appointed equally between the parties.

## **PART 2**

### **ARBITRATION**

#### **4.4 References to Arbitration**

Any dispute or difference of whatever nature between the parties arising out of or in connection with this Liquid Fuel Supply Agreement [which are not first amicably resolved between the parties or are not resolved by Mediation in accordance with Part 1 of this Schedule 4 (Disputes Resolution Procedure)] 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 Part 2 of Schedule 4 (Disputes Resolution Procedure).

#### **4.5 Notices of Arbitration**

Either of the parties to this Liquid Fuel Supply 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.

#### **4.6 Place and Language of Arbitration**

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

#### **4.7 Arbitral Tribunal**

The Arbitral Tribunal (the "Tribunal") shall be composed of three arbitrators. Each party shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Tribunal in accordance with Article 7 of the UNCITRAL Rules.

#### **4.8 Consolidation of Disputes under this Liquid Fuel Supply 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 Liquid Fuel Supply Agreement to those arbitral proceedings. If the other party consents within thirty (30) Days of receipt of such notice (determined in accordance with Clause 10.3) 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.

#### **4.9 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.

#### **4.10 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.

#### **4.11 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.

#### **4.12 Parties Obligations during Arbitral Proceedings**

4.12.1 Except as expressly provided in this Liquid Fuel Supply Agreement, pending the award in any arbitration proceeding hereunder

- (i) this Liquid Fuel Supply 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 Liquid Fuel Supply Agreement.

The termination of this Liquid Fuel Supply 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.

4.12.2 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 4 (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 4 (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 4 (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 4 (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).

Information Copy - Not for Submission

## **SCHEDULE 5 – INDICATIVE PLAN OF THE LIQUID FUEL PIPELINE**

[Description of land constituting the Liquid Fuel Supply Corridor]

Information Copy - Not for Submission

## **SCHEDULE 6 - LIST OF APPROVED INDEPENDENT INSPECTORS**

(The list to be inserted here with the agreement of successful Project Proponent before signing the LFSA)

Information Copy - Not for Submission

## SCHEDULE 7 – BANK GUARANTEE FORMAT

### SPECIMEN BANK GUARANTEE

The Ceylon Petroleum Corporation  
No. 609, Dr Danister De Silva Mawatha  
Colombo 09.

Date: .....

Dear Sir,

**LETTER OF GUARANTEE NO..... FOR RS.....**

At the request of Mr.....  
Of..... we do hereby guarantee to pay the  
Ceylon Petroleum Corporation on demand at Colombo all monies not exceeding  
Rupees..... (Rs.....) which may become due to you  
by the said Mr..... On account of the value of Petroleum Products,  
Agro Chemicals and Lubricant etc., supplied by you to the said Mr. ....  
..... and other charges during the period from 1<sup>st</sup> January .....  
to 31<sup>st</sup> December .....

The term "and other charges", shall mean monies due to Ceylon Petroleum Corporation on dishonoured  
cheques which are tendered for purchase of Petroleum Products and Lubricants monies due to Ceylon  
Petroleum Corporation as transport charges on Petroleum Products delivered in bowsers but returned  
undelivered, Equipment and Hoist Rentals, under payments ..... on invoices, damages to  
Corporation's property and equipment and expenses incurred by the Corporation in attending to repairs  
and other services of equipment and property installed at, the retail supply point, interest on overdue  
invoices and interest due on out standings on dishonoured cheques and whatever other expenditure  
incurred on account of the dealer/customer of this Corporation.

This Guarantee will remain in force from 1<sup>st</sup> January ..... to 31<sup>st</sup> December ..... (Both  
days Inclusive) unless cancelled by us in writing after notice of such cancellation, of, not less than one  
month is given to you by registered post.

Our liability under this Guarantee is restricted to Rs. ....  
(Rs. ....) and shall not extend beyond 31<sup>st</sup> December, .....

All claims under this Guarantee must be presented to the .....  
..... Within ..... Months from the date of expiry  
of this Guarantee.

Every payment made by us in response to such claims will be made in Colombo shall be deemed to be in  
discharge Pro-tanto of our liability.

.....  
Affix Rs.10/= stamp And sign  
by two authorized  
Signatories of the Bank

.....  
Signed by two authorized signatures of the Bank  
under the seal of the Bank