

Instructions to Private Sector Participants: Volume 1 — Eligibility Documents

COMPETITIVE SELECTION FOR THE
JOINT VENTURE DEVELOPMENT OF THE
PHILIPPINE NATIONAL OIL COMPANY
LIQUEFIED NATURAL GAS HUB PROJECT

These Instructions to Private Sector Participants (“**IPSP**”) Volume 1 — Eligibility Documents describe the procedures that shall be followed in connection with the competitive selection by the Philippine National Oil Company (“**PNOC**”) of its private partner in a joint venture (“**JV**”) for the Liquefied Natural Gas (“**LNG**”) Hub Project. It will entail financing, design and engineering, establishment, construction and development, and operation and maintenance of the LNG terminal.

The project will address the coming natural gas demand-supply gap in the wake of the depletion of the Malampaya gas field. To ensure security and sustained supply of energy source, the LNG Terminal is envisioned to supply the natural gas requirements of the existing five natural gas power plants in Batangas and for future gas-based power plants in Luzon and potentially in neighboring islands.

The LNG Terminal is also envisioned to supply the natural gas requirements for the industrial, transportation and household sectors. Moreover, the Philippines being strategically located in the Asia Pacific Region, close to major LNG users such as Japan, China and Taiwan, the Philippines could also become a potential gas source for these countries in the future.

The IPSP is issued in two (2) volumes: Volume 1 — Eligibility Documents; and Volume 2 — Competitive Selection Documents. This Volume 1 details the requirements for interested private sector participants (“**PSP**”) to become eligible to submit technical and financial proposals for the Project. Those PSPs that have been declared eligible shall receive Volume 2 – Competitive Selection Documents. Volume 2 will detail the requirements and procedures for the submission of technical and financial proposals for competitively selecting the Joint Venture partner.

PNOC reserves the right to amend or supplement this IPSP: Volume 1 at any time prior to the deadline set for the submission of the Eligibility Documents by interested PSPs.

Pursuant to the Revised Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities issued by the National Economic and Development Authority (the “**NEDA Guidelines**”), PNOC is issuing this IPSP: Volume 1 — Eligibility Documents to prospective PSPs in connection with the Project.

**INSTRUCTIONS TO PRIVATE SECTOR PARTICIPANTS:
VOLUME 1 — ELIGIBILITY DOCUMENTS**

1. Governing Law and Definitions

1.1. Governing Law and Rules

The provisions of the NEDA Guidelines, and other applicable Philippine laws and rules shall govern all matters not specifically covered by this IPSP: Volume 1 — Eligibility Documents and the Invitation Documents.

1.2. Definitions

The following words or terms shall have the following meanings in this IPSP: Volume 1 — Eligibility Documents:

“**ADB**” means the Asian Development Bank.

“**Affiliate**” means a corporation or entity effectively Controlled by or Controlling the PSP or associated with the PSP under common ownership and Control.

“**BIR**” refers to the Bureau of Internal Revenue.

“**Competitive Selection Process**” or “**Competitive Selection**” means the process beginning from the publication of the IAESP until the signing of the JV Agreement.

“**Conflict of Interest**” is defined in Section 18.

“**Consortium**” means an unincorporated association of legal persons bound by contract or law, solidarily undertaking by mutual written agreement a common enterprise which is to participate in the Pre-Selection and in the Competitive Selection Process of the Project. In this IPSP, the term “solidarily” is synonymous with the term “joint and several” and means an undertaking by each Consortium Member to be liable for the entire obligation of the Consortium, and PNOC is entitled to demand the whole obligation of the Consortium against any one of the Consortium Members or some or all of them simultaneously.

“**Consortium Member**” means any legal person or group of persons comprising a Consortium, each having a definite interest in the common undertaking, solidarily liable with respect to the bid for the Project, and whose interest will be converted into an equivalent equity participation in the corporation that will become the JV Partner if the Consortium is awarded the Project.

“**Construction**” means all aspects of construction work and activities relating to the LNG Terminal, as provided in the JV Agreement.

“**Control**” (including, with correlative meanings, the terms “**Controlling**”, “**Controlled by**” and “under common **Control with**”) as used with respect to any corporation, partnership or other legal entity, means the possession, directly or

indirectly, of the power to direct or cause the direction of the management or policies of such corporation, partnership or other legal entity, whether through:

- (a) ownership, whether directly or indirectly, of at least fifty percent plus one share (50%+1) of the outstanding voting shares; or
- (b) ownership, whether directly or indirectly, of at least twenty percent (20%) of the outstanding voting shares and (i) possession of at least fifty percent plus one share (50%+1) of the voting rights through voting trust or other voting agreements; or (ii) the ability to elect a majority of the members of the Affiliate's board of directors; or
- (c) any legal agreement or arrangement.

For this purpose, the term "voting shares" includes partnership contribution, membership interests, units of participation, and other similar forms of ownership which are entitled to vote.

"Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice" are each defined in Section 17.

"day" means a calendar day, unless otherwise specified.

"Eligible Period" means a period of ten (10) years prior to the Eligibility Documents Submission Date.

"Eligible Project" means energy infrastructure project with minimum capital costs of at least two hundred fifty million US dollars (US\$250,000,000.00).

"Eligible PSP" means a PSP, which passed Pre-Selection and is, therefore, allowed to submit a bid for the Project.

"Eligibility Documents" mean the documents required to be submitted by the PSP during the Pre-Selection stage as provided in Section 4.

"Eligibility Documents Submission Date" means the day to be set by the PNOC for submission of the Eligibility Documents as indicated in Section 8.

"EPF" means eligibility proposal form.

"Eligibility Requirements" means the criteria that a PSP must meet in order to be eligible to submit a bid for the Project and includes Legal Capacity Requirements, Technical Capability Requirements, and Financial Capability Requirements.

"Financial Capability Requirement" refers to the eligibility requirements that must be met, as provided in Section 3.3.

"Government" means the Government of the Republic of the Philippines and any agency or instrumentality thereof, including the PNOC.

“**IAESP**” means the Invitation to Apply for Eligibility and Submit a Proposal published by the JVSC.

“**Invitation Documents**” refers to the IAESP, this IPSP: Volume 1 — Eligibility Documents, its Annexes, and any supplemental notices and special bid bulletins issued by the JVSC from the date of first publication of the IAESP until the Eligibility Documents Submission Date.

“**IPSP**” means the Instructions to Private Sector Participants.

“**JV**” means joint venture.

“**JV Agreement**” means the contract to be executed between PNOG and the JV Partner for the Project.

“**JV Partner**” means the counter-party of the PNOG under the JV Agreement, which is a duly qualified and selected private entity to undertake the Project, being the Winning PSP and/or a wholly-owned entity formed by the Winning PSP whose obligations under the JV Agreement are fully guaranteed by the Winning PSP.

“**JVSC**” means the Joint Venture Selection Committee.

“**Key Member**” means, for a PSP that is a Consortium, any Consortium Member with at least ten percent (10%) equity interest in the Consortium.

“**Lead Member**” means, for a PSP that is a Consortium, the Consortium Member having the highest percentage of equity interest in the Consortium, which should not be less than thirty-three percent (33%) and having been designated in writing as such by the other Consortium Members.

“**Legal Capacity Requirements**” refers to the eligibility requirements that must be met, as provided in Section 3.1.

“**LNG**” means liquefied natural gas.

“**LNG Terminal Development Experience Requirement**” refers to the Technical Capability Requirements consisting of the Development Experience that must be met, as provided in Section 3.2.2.

“**LNG Purchase Experience Requirement**” refers to the Technical Capability Requirements consisting of the LNG Purchase Experience that must be met, as provided in Section 3.2.3.

“**LNG Terminal Operation and Maintenance Experience Requirement**” refers to the Technical Capability Requirements consisting of the Operation and Maintenance Experience that must be met, as provided in Section 3.2.4.

“**Lock-Up Period**” is defined in Section 13.

“**Lock-Up Rules**” is defined in Section 13.

“**NEDA**” refers to the National Economic and Development Authority.

“**NEDA Guidelines**” shall refer to the 2013 Revised Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities issued by the National Economic and Development Authority issued by NEDA.

“**Net Worth**” means with respect to any person, corporation, partnership, or other legal entity, such person or entity’s total assets minus total liabilities calculated in accordance with generally accepted accounting principles.

“**Nominated Contractor**” means for the purpose of Pre-Selection the contractor as proposed by the PSP to comply with either (i) the construction component of the LNG Terminal Development Experience eligibility requirement and to undertake the construction of the LNG Terminal or (ii) the LNG Terminal Operation and Maintenance Experience Requirement.

“**Notice of Award**” means the document issued by the PNOC to the Winning PSP instructing it to comply with conditions precedent for the execution of the JV Agreement and to submit compliance statements with regard thereto.

“**Outstanding Dispute with Government**” is defined in Section 19.

“**Parent Company**” means a corporation or juridical entity Controlling another entity.

“**PNOC**” refers to the Philippine National Oil Company.

“**PNOC Board**” refers to the Board of Directors of PNOC.

“**PNOC Supplied Information**” means the documents that PNOC will provide to PSPs solely to provide background information on the Competitive Selection and the Project.

“**Pre-Eligibility Conference**” is defined in Section 2.10.

“**Pre-Selection**” means the first stage of the Competitive Selection Process involving the submission, opening, and evaluation of the Eligibility Documents submitted by the prospective PSPs.

“**Project**” means the financing, design and engineering, establishment, construction and development, and operation and maintenance of the Liquefied Natural Gas Regasification Terminal and the associated infrastructure and activities.

“**Project Completion Requirement**” refers to the Technical Capability Requirement defined in Section 3.2.1.

“**Proposal**” means the bid letter, the additional requirements for Consortium with new members, the technical proposal, and the financial proposal to be submitted by the Eligible PSPs pursuant to IPSP: Volume 2 — Competitive Selection Documents.

“**Proposals Submission Date**” is the date set in IPSP: Volume 2 — Competitive Selection Documents as the date of the Eligible PSPs’ submission of their Proposal.

“Provisionally-Eligible PSP” means any PSP that undertakes to submit notarized and/or authenticated documents no later than the Proposals Submission Date, if, based on the Eligibility Documents submitted on the Eligibility Documents Submission Date, it meets all of the Eligibility Requirements enumerated under Section 3 of this document.

“PSP” means a private sector participant which must be a partnership, corporation, other legal entity or Consortium that intends to submit an application to be determined as meeting the Eligibility Requirements for the Project pursuant to this IPSP: Volume 1 — Eligibility Documents.

“SEC” refers to the Securities and Exchange Commission.

“SPA” means Sales and Purchase Agreement.

“Substitution” is defined in Section 13.2.2.

“Technical Capability Requirements” refers to the eligibility requirements that must be met, as provided in Section 3.2.

“Unsatisfactory Performance Record” means any of the following:

- a. Within the last five (5) years:
 - (i) failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
 - (ii) repudiation, rescission, termination or suspension of any of its projects or contracts due to breach of its obligations; or
 - (iii) material violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
- b. inclusion in a blacklist issued by any governmental agency of the Philippines whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- c. Involvement in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice or having Conflicts of Interest.

“VAT” means value-added tax.

“Winning PSP” means the PSP whose bid is determined by the JVSC as the most advantageous proposal and, thus, granted a Notice of Award for the Project.

“Withdrawal” is defined in Section 13.2.1.

2. The Competitive Selection Process

2.1. The JVSC

The JVSC for the LNG Hub Project created by PNOG on September 14, 2018 pursuant to the NEDA Guidelines shall administer the Competitive Selection Process for the Project. It shall be responsible for the preparation of the Invitation Documents, publication of the IAESP, determination of eligibility of the PSPs, conduct of pre-eligibility and pre-selection conferences and issuance of supplemental notices, interpretation of rules regarding the Competitive Selection Process, conduct of the Competitive Selection Process, evaluation of financial and technical proposals, and resolution of disputes between PSPs.

2.2. Transaction Advisor

The ADB has been appointed by PNOG to act as its transaction advisor for the Competitive Selection together with other technical and legal advisors. As the transaction advisor, ADB will assist PNOG in conducting a fair, transparent, and competitive process for the selection of the joint venture partner.

2.3. Revisions and Clarifications to the Invitation Documents

The JVSC reserves the right to amend, revise, modify, or clarify any section of the Invitation Documents at any stage of the Competitive Selection Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated, in writing, through special bid bulletins issued by the JVSC to all parties who purchased the Invitations Documents. Upon notice or communication to PSPs regarding the issuance of a bid bulletin by the JVSC, the same shall automatically be incorporated into and made an integral part of the particular document to which it relates. Any such notice or communication shall be deemed given when so sent by electronic mail in the electronic mail addresses provided by the PSPs.

2.4. Interpretation of IPSP

In case of ambiguities or discrepancies within the IPSP, the following rules of interpretation shall apply:

- (a) between two or more Sections of the IPSP, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
- (b) between the Sections of the IPSP and the Annexes, the Sections shall prevail;
- (c) between any two Annexes, the Annex relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail.

The rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply.

2.5. Responsibility of PSPs

Notwithstanding any information and any additional communication given by the PNOC or its JVSC, including supplemental notices and special bid bulletins, it is the sole responsibility of any interested party and PSP to:

- (a) be fully acquainted with the laws, requirements, terms, and conditions of the Competitive Selection Process;
- (b) examine all the Invitation Documents and other PNOC Supplied Information, including all instructions, forms, schedules, terms, specifications, and drawings;
- (c) familiarize itself with all existing laws, decrees, acts, rules, and ordinances of the Philippines, whether national or local, which may affect the Competitive Selection or the Project; and
- (d) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the LNG Terminal; the terrain, geological, meteorological, and hydrological conditions related to the LNG Terminal; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; and risks and contingencies that may affect the cost, duration, execution and completion of the LNG Terminal.

PSPs (including any Consortium Members, their Affiliates, or Nominated Contractors) shall not be entitled to and shall not make any claim against PNOC, its JVSC, officers, employees, agents and transaction adviser or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the following grounds:

- (a) any misunderstanding or misapprehension in respect of the Invitation Documents, the Project and other PNOC Supplied Information; or
- (b) any incorrect or insufficient information relating to the Invitation Documents, the Project and other PNOC Supplied Information given to them by PNOC, or any other associated party.

By submitting Eligibility Documents, a PSP acknowledges and warrants that it has fully discharged its responsibilities above and contained elsewhere in the Invitation Documents and that it has examined and accepted all the terms and conditions in all of the Invitation Documents and other PNOC Supplied Information.

2.6. Costs and Expenses of Participation

PSPs shall bear all costs associated with their participation in the Competitive Selection Process including the preparation and submission of their Eligibility Documents, and all possible losses or damages resulting thereto. PNOC or its advisors and consultants shall not be held responsible or liable in any way for such costs regardless of the results of the Competitive Selection Process.

2.7. Queries and Supplemental Notices

All parties who purchase the Invitation Documents may ask any query on any aspect of these documents, which should be in writing and sent by personal delivery and electronic mail to PNOC at the following address and e-mail address:

Glenda G. Martinez
The Chairperson
JVSC for the LNG Hub Project
Philippine National Oil Company
PNOC Building 6
Energy Center, Rizal Drive, Bonifacio Global City, Taguig City
E-mail: lng_jvsc@pnoc.com.ph
Telephone: (02) 789-7662

While the JVSC will attempt to respond to all reasonable queries received up to twenty (20) days before the Eligibility Documents Submission Date, it is under no obligation to do so. Responses to queries and any modifications to the Invitation Documents will be done in writing through Supplemental Notices or Bid Bulletins issued by the JVSC and sent to all parties that purchased the Invitation Documents.

No communication, information or response shall be binding on the PNOC unless made in writing and issued through a Supplemental Notice or Bid Bulletin issued by the JVSC.

2.8. Ownership of Documents

All documents submitted in response to the Invitation Documents, including Eligibility Documents and their attachments, shall become the property of PNOC, and any information obtained by PNOC from such documents may be reasonably used by PNOC subject to the confidentiality clause in Section 2.11.

2.9. Language and Foreign Documents

- (a) The Eligibility Documents and all submissions to JVSC shall be prepared and written in the English language. Any document written in a foreign language shall be accompanied by an English translation and authenticated by a Philippine consular official. The authentication of such document should follow the authentication rules of the relevant Philippine consular office. In case of conflict, the English translation shall prevail.
- (b) All documents issued by foreign authorities and any and all documents executed outside of the Philippines, which are required to be notarized, shall be

authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue or execution.

- (c) If the document was issued by a foreign authority, the PSP must also submit a certified true copy of such document issued by the same authority, in addition to the authentication by the relevant Philippine consular official.
- (d) For purposes of determining the eligibility of the PSP, the JVSC will accept foreign documents that are not yet notarized and/or authenticated but shall be subject to compliance with the following conditions:
 - (i) a photocopy of the foreign document must be submitted to the JVSC, together with proof that such foreign document had been submitted to and received by the relevant Philippine consulate;
 - (ii) the notarized and/or authenticated foreign document must be submitted to the JVSC no later than the Proposals Submission Date;
 - (iii) the notarized and/or authenticated foreign document submitted to the JVSC must be identical to the photocopy of the foreign document previously submitted by the PSP; and
 - (iv) the foreign document must be listed in **Annex EPF-10**.
- (e) If a PSP undertakes to submit notarized and/or authenticated documents no later than the Proposals Submission Date, it may be provisionally qualified if, based on the Eligibility Documents it submits on the Eligibility Documents Submission Date, it meets all of the Eligibility Requirements enumerated under Section 3 of this IPSP: Volume 1 — Eligibility Documents. As a Provisionally-Eligible PSP, it shall receive the IPSP: Volume 2 — Competitive Selection Documents. However, a Provisionally-Eligible PSP shall be automatically disqualified if:
 - (i) it fails to submit the notarized and/or authenticated documents within the prescribed period in Section 2.9(d)(ii); or
 - (ii) there are differences between the contents of the documents submitted on the Eligibility Documents Submission Date and the subsequently notarized and/or authenticated documents.
- (f) In foreign countries where there is no Philippine embassy/consulate, the document issued or executed therein may be notarized by a notary public in the said foreign country and then legalized by the relevant department in the foreign country's Ministry of Foreign Affairs, who must also state in the same document that there is no Philippine embassy/consulate in that foreign country.

2.10. Pre-Eligibility Conference

The JVSC will conduct a Pre-Eligibility Conference to further clarify the Invitation Documents and to answer any additional questions from interested parties and PSPs. The details of the Pre-Eligibility Conference will be announced in a bid bulletin to be issued by the JVSC.

No provisions, terms, or conditions in the Invitation Documents shall be modified by statements made at the Pre-Eligibility Conference unless these are made in writing and contained in a Supplemental Notice or Bid Bulletin issued by the JVSC.

2.11. Confidentiality and Non-Reliance

The Invitation Documents and any PNOC Supplied Information are made available to PSPs only in connection with the Competitive Selection for the Project and may not be disclosed or used other than for the purposes of the PSP preparing the Eligibility Documents. Information relating to the examination, clarification, evaluation, and comparison of Eligibility Documents shall not be disclosed to any of the PSPs or other persons not officially involved in the Competitive Selection Process; provided that the PNOC, through the JVSC, shall not have the obligation to keep any information submitted by a PSP confidential after award of the Project.

By accepting the Invitation Documents and other PNOC Supplied Information, each PSP warrants that:

- (a) it has not relied and will not rely upon any of PNOC Supplied Information as being proper, accurate, adequate, suitable or complete for any purpose;
- (b) it will make its own independent evaluation, inspection, and investigation of all PNOC Supplied Information and will fully satisfy itself as to any matter or thing disclosed by any PNOC Supplied Information in connection with the Project, including (but not limited to) the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, geotechnical investigations, opinions, recommendations, findings, summaries, design or other information; and
- (c) it will not rely upon (or allow any other person assisting or advising it to rely upon) the PNOC Supplied Information in connection with any aspect of the Competitive Selection Process or the Project until it has satisfied itself as to the accuracy, adequacy, suitability and completeness of the Information.

2.12. Acceptance of Criteria and Waiver of Rights to Enjoin Project

By submitting the Eligibility Documents, a PSP thereby unequivocally accepts the Eligibility Requirements established by the JVSC of the PNOC and irrevocably waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order, or any other similar remedy or course of action intended to have similar effect, in any jurisdiction, against PNOC or the JVSC to prevent or restrain the holding of pre-selection proceedings, the holding of the Competitive Selection, the award of the contract to the Winning PSP, and the carrying out of the awarded contract.

3. Eligibility Requirements

3.1. Legal Capacity Requirements

- 3.1.1. If the PSP is a partnership or corporation, it must be registered with the SEC. If the PSP is a foreign partnership or corporation, it must be

registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign partnership or corporation was registered for creation or recognition of its juridical personality or capacity. The PSP must certify that it and the Nominated Contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Capability Requirements or Financial Capability Requirements have no Unsatisfactory Performance Record.

- 3.1.2. If the PSP is a Consortium, its Consortium Members must be partnerships or corporations registered with the SEC. If any member of the Consortium is a foreign partnership or corporation, such member must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. Each Consortium Member must certify that it and its Nominated Contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Capability Requirements or Financial Capability Requirements have no Unsatisfactory Performance Record.
- 3.1.3. The PSP and, in the case of a Consortium, all Consortium Members should list all contracts over five (5) years from Eligibility Documents Submission Date that resulted in:
 - (a) litigation or arbitration proceedings which are pending, decided with finality or settled, with an indication of the matters in dispute, the parties involved, the amounts in dispute and the outcome, where available; and
 - (b) termination, with an indication of the causes of the termination and the parties involved.

3.2. Technical Capability Requirements

To be considered eligible to submit a bid for the Project, the PSP must meet the following technical requirements:

- (a) Project Completion Requirement;
- (b) LNG Terminal Development Experience;
- (c) LNG Purchase Experience; and
- (d) LNG Terminal Operation and Maintenance Experience.

3.2.1. Project Completion Requirement

The PSP must have completed at least one Eligible Project either as an owner, concessionaire, operator, contractor, or developer during the Eligible Period.

The PSP and, in the case of a Consortium, each Consortium Member shall submit a statement of all its ongoing and completed government and private contracts similar or related to the Project over the last ten (10) years, including projects which have been awarded but not yet started, if any, using the form in **Annex EPF-11**. In case the PSP is a Consortium, its technical capability shall be based on the overall capability of the Consortium to undertake the Project.

3.2.2. LNG Terminal Development Experience

- (a) The PSP is required to demonstrate that any of the entities mentioned in Section 3.2.2(c) has participated as an equity participant with the highest equity ownership interest in the development of at least one (1) LNG import terminal project with a capacity of at least two (2) million tons per annum (“**Qualifying LNG Terminal Development Project**”).

For this purpose, “**development**” shall be comprised of two elements: (1) the management, supervision, arrangement of a reference project; (2) supervision of construction, commissioning, and acceptance of such reference project.

- (b) All the Qualifying LNG Terminal Development Projects must have reached successful financial close within the last ten (10) years, of which at least one (1) shall have achieved commercial operation at least one (1) year prior to the Eligibility Documents Submission Date.
- (c) The entity which fulfills this requirement may be:
- (i) if the PSP is a partnership or corporation:
 - a. the PSP itself; and/or
 - b. Nominated Contractors with respect to the construction aspect of the development;
 - (ii) if the PSP is a Consortium:
 - a. the Lead Member; and/or
 - b. a Key Member; and/or
 - c. Nominated Contractors with respect to the construction aspect of the development.
- (d) Each entity whose Qualifying LNG Terminal Development Project(s) are being submitted to fulfill the LNG Terminal Development Experience Requirement must certify that they have no Unsatisfactory Performance Record.
- (e) The PSP may propose at least one and at most three Nominated Contractors to meet the construction aspect of the LNG Terminal Development Experience, and each Nominated Contractor must by itself satisfy the construction aspect of the LNG Terminal Development Experience. Any Nominated Contractor must also provide a statement of willingness to participate in, and capacity to undertake, the requirements of the Project. After determination of eligibility, the Nominated Contractors may be asked to reiterate their willingness to participate in, and capacity to undertake, the requirements of the Project during Proposals Submission Date.

- (f) The entity or entities proposed to meet the LNG Terminal Development Experience Requirement, which are declared eligible by the JVSC, will be identified in the JV Agreement. The JV Partner shall use the declared and identified eligible entity or entities without need for further consent from PNOC. The use of any entity or Nominated Contractor other than those declared and identified eligible will require the prior written consent of PNOC and will be subject to the JV Partner's demonstration that the proposed entity or each Nominated Contractor meets the requirements in this Section 3.2.2.

3.2.3. LNG Purchase Experience

- (a) The PSP is required to demonstrate that any of the entities mentioned in Section 3.2.3(b) has bought at least two (2) million tons of LNG in the last three (3) years immediately prior to the Eligibility Documents Submission Date under one or several LNG SPA(s) with LNG producer(s) or international LNG trader(s) ("**Qualifying LNG SPA**").
- (b) The entity which fulfills this requirement may be:
 - (i) if the PSP is a partnership or corporation, the PSP or its Affiliate.
 - (ii) if the PSP is a Consortium:
 - a. the Lead Member or its Affiliate; or
 - b. Key Members or their Affiliate.
- (c) Each entity whose experience is being submitted to fulfill the LNG Purchase Experience must certify that it has no Unsatisfactory Performance Record.
- (d) The PSP, in the case of a consortia, must propose the Lead Member or at least one and at most three Key Members to meet the LNG Purchase Experience, and each nominated entity must by itself or through an Affiliate satisfy the LNG Purchase Experience.
- (e) The entity or entities proposed to meet the LNG Purchase Experience Requirement which are declared eligible by the JVSC will be identified in the JV Agreement. The JV Partner shall use the declared and identified eligible entity or entities without need for further consent from PNOC. The use of any entity other than those declared and identified eligible will require the prior written consent of PNOC and will be subject to the JV Partner's demonstration that the proposed contractor meets the requirements in this Section 3.2.3.

3.2.4. LNG Terminal Operation and Maintenance Experience

- (a) The PSP is required to demonstrate that any of the entities mentioned in Section 3.2.4(c) has been involved either as the operator or as an equity participant with the highest equity ownership interest in at least one (1) LNG import terminal project with a capacity of at least two (2) million tons per annum (“**Qualifying LNG Operation Project**”).
- (b) All Qualifying LNG Operation Projects must have been in operation for no less than one (1) year prior to the Eligibility Documents Submission Date and within the last five (5) years.
- (c) The entity which fulfills this requirement may be:
 - (i) if the PSP is a partnership or corporation:
 - a. the PSP itself; or
 - b. Nominated Contractors;
 - (ii) if the PSP is a Consortium:
 - a. the Lead Member; or
 - b. Key Member; or
 - c. Nominated Contractors.
- (d) Each entity whose experience is being submitted to fulfill the LNG Terminal Operation and Maintenance Experience must certify that it has no Unsatisfactory Performance Record.
- (e) The PSP may propose at least one and at most three (3) Nominated Contractors to meet the LNG Terminal Operation and Maintenance Experience, or, in case the PSP is a consortia, the Lead Member or at least one and at most three (3) Key Members to meet the LNG Terminal Operation and Maintenance Experience, and each nominated entity must by itself satisfy the LNG Terminal Operation and Maintenance Experience. Any Nominated Contractor must also provide a statement of willingness to participate in, and capacity to undertake, the requirements of the Project. After determination of eligibility, the Nominated Contractors may be asked to reiterate their willingness to participate in, and capacity to undertake, the requirements of the Project during Proposals Submission Date.
- (f) The entity or entities proposed to meet the LNG Terminal Operation and Maintenance Experience Requirement which are declared eligible by the JVSC will be identified in the JV Agreement. The JV Partner shall use the declared and identified eligible entity or entities without need for further consent from PNO. The use of any entity other than declared

and identified eligible will require the prior written consent of PNOC and will be subject to the JV Partner’s demonstration that the proposed contractor meets the requirements in this Section 3.2.4.

3.2.5. Qualified Key Personnel

- (a) The PSP, its Lead Member, or Key Member, must have among their personnel, individuals with the following required qualifications and experience:

Table 1. Minimum Qualifications and Experience of Key Personnel

| Position | Minimum Qualifications and Type of Experience Required | Years of Experience Required |
|---------------------|--|-------------------------------------|
| Development Manager | Bachelor’s degree from a recognized institution and (if applicable) recognized professional qualification or license in engineering with individual development experience on at least two (2) projects involving LNG facilities. | At least ten (10) years |
| Operations Manager | Bachelor’s degree from a recognized institution and (if applicable) recognized professional qualification or license in engineering with individual operational management experience on at least two (2) projects involving LNG facilities. | At least ten (10) years |

The personnel identified in Table 1 may be employed or engaged by the PSP, the Lead Member, or a Key Member of the Consortium.

3.3. Financial Capability Requirements

- (a) The PSP should have the capability to provide the minimum amount of equity to be used in financing the completion of the entire Project. The PSP, and in the case of a Consortium, all Consortium Members should submit the following:
 - (i) Audited financial statements for the past three (3) calendar years, stamped received by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country

where the foreign entity was registered for recognition or creation of its juridical personality or capacity;

- (ii) Testimonial letter(s), in the form set out in **Annex EPF-9C**, issued by a domestic universal or commercial bank duly licensed, or an international bank with a subsidiary/branch in the Philippines or an international bank recognized, by the Bangko Sentral ng Pilipinas attesting that the PSP or Consortium Members is banking with them and that it is in good financial standing and qualified to obtain credit facilities from such bank to finance the Project; and
- (iii) Latest business and income tax returns as described in Section 4.4.1(c).

The financial capability of the Consortium shall be determined based on the overall capability of the Consortium to undertake the Project.

- (b) To be eligible to bid for the Project, the PSP or a related entity as described below, must meet both the following Financial Capability Requirements:
 - (i) it has a current net worth of at least five hundred million US dollars (US\$500,000,000.00) for each year in the last three (3) years based on its audited financial statements (“**Net Worth Requirement**”).
 - (ii) it has a track record of raising corporate finance or project finance for two hundred fifty million US dollars (US\$250,000,000.00) in aggregate in the past ten (10) years from the Eligibility Documents Submission Date (“**Finance Raising Experience Requirement**”).
- (c) The entity which fulfills the Net Worth Requirement may be:
 - (i) If the PSP is a partnership or corporation:
 - a. the PSP itself; or
 - b. Parent Company of the PSP.
 - (ii) If the PSP is a Consortium:
 - a. the Lead Member (in which case the Lead Member shall be jointly and severally liable for the financial commitments of the Consortium Members); or
 - b. Key Members (including the Lead Member) on an aggregate basis (in which case the Key Members shall be jointly and severally liable for the financial commitments of the Consortium Members); or

- c. All the Consortium Members on a proportionate shareholding basis (For the avoidance of doubt the proportionate shareholding basis is for purposes of meeting the Net Worth Requirement only; but the Consortium Members shall be jointly and severally liable for the obligations under the contract.); or
 - d. Parent Company of any of the foregoing entities.
- (d) The entity which fulfills the Finance Raising Requirement may be:
- (i) If the PSP is a partnership or corporation, the PSP itself.
 - (ii) If the PSP is a Consortium, the Lead Member.

4. Eligibility Documents

On the Eligibility Documents Submission Date, the PSP must submit its Notarized Application to Qualify using the form in **Annex EPF-10**. The Notarized Application to Qualify consists of the following Eligibility Documents, using the relevant forms in the Annexes:

- 4.1. Business Structure** (using the form in **Annex EPF-1A** for partnerships, corporations or any other juridical entity, or in **Annex EPF-1B** for Consortia).

For Consortia, this document must show the Lead Member and all Consortium Members, such that the sum total of the percentage interest of all Consortium Members must add up to one hundred percent (100%).

The Business Structure must also indicate the entities that fulfill the Technical Capability and Financial Capability Requirements in Sections 3.2 and 3.3, and any Consortium Member or Nominated Contractors whose projects, experiences, or financial qualifications are being submitted to comply with the Eligibility Requirements.

4.2. Legal Capacity Documents

- 4.2.1. Basic Information Sheet (using the form in **Annex EPF-2**) to be submitted by all entities listed in all sections of the Business Structure.

a. Required attachments:

- (1) Certified true copy of its latest General Information Sheet (“**GIS**”), stamped “received” by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The certification may come from either the SEC or its equivalent in a foreign country, the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

If in a particular foreign jurisdiction there is no document equivalent to the GIS, an officer of the entity registered in such foreign jurisdiction may instead submit a notarized certification stating that there is no document equivalent to the GIS in the foreign country where it is registered. The notarized certification should also provide the information required under the GIS.

- (2) Certified True Copy of SEC Certificate of Incorporation, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The SEC Certificate of Incorporation or the equivalent document for a foreign entity must be certified by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

If in a particular foreign jurisdiction, the Certificate of Incorporation is issued by the registrar of the corporation, then the JVSC will accept a certified true copy of the Certificate of Incorporation issued by the registrar of the corporation.

- (3) Certified true copy of the latest Articles of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The Articles of Incorporation or the equivalent document for a foreign entity may be certified either by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly-authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

- (4) Certified true copy of the latest By-Laws or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The By-Laws or the equivalent document for a foreign entity may be certified either by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

- (5) If an officer other than the Corporate Secretary certifies the General Information Sheet, Certificate of Incorporation, Articles of Incorporation or By-Laws, a notarized certification authorizing such officer to certify the aforementioned documents must be submitted.

- 4.2.2. Notarized Certification of Absence of Unsatisfactory Performance Record (using the form in **Annex EPF-3**) to be submitted by all entities listed in all sections of the Business Structure.
- 4.2.3. Notarized Application to Qualify (using the form in **Annex EPF-10**) to be submitted by the PSP (if the PSP is a corporation or partnership) or the Consortium and all Consortium Members (if PSP is a consortium).
- 4.2.4. Statement of Contracts which resulted in Litigation, Arbitration Proceedings, or Termination (using the form in **Annex EPF-12**).

4.3. Technical Capability Documents

4.3.1. Statement of Ongoing and Completed Government and Private Projects (using the form in **Annex EPF-11**) to be submitted by the PSP and all Consortium Members if the PSP is a Consortium.

4.3.2. LNG Terminal Development Experience Requirement (using the form in **Annex EPF-4**) to be submitted by the entity or entities that fulfill the LNG Terminal Development Experience Requirement in Section 3.2.2, as identified in the Business Structure.

4.3.3. Required attachment for each reference project:

- a. Notarized Certificate of Project Completion from the project's owner, or an entity authorized to issue such certificate on behalf of the project's owner attesting to the date of financial close and date of commercial operation or equivalent documentary support.

A copy of the original Certificate of Project Completion will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the project owner or the relevant officer of the construction contractor that such copy is a true and faithful reproduction of the original Certificate of Project Completion.

- b. Notarized Certification of Absence of Unsatisfactory Performance Record in the form set out in **Annex EPF-3** issued by an authorized representative of the entity which fulfills the LNG Terminal Development Experience.
- c. Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of the Project (using the form in **Annex EPF-7**) to be submitted by the Nominated Contractor proposed by the PSP to meet the LNG Terminal Development Experience Requirement.

4.3.4. LNG Purchase Experience Requirement (using the form in **Annex EPF-5**) to be submitted by the entity that fulfills the LNG Purchase Experience Requirement in Section 3.2.3, as identified in the Business Structure.

4.3.5. Required attachments for each reference project:

- a. Notarized Certification from the LNG producer(s) or international LNG trader(s) of the amount of tons of LNG bought by the entity proposed to fulfill the LNG Purchase Experience and the date(s) when such LNG was delivered, or a copy of the said certification accompanied by a notarized certification issued by an authorized representative of the entity proposed to meet the LNG Purchase

Experience that such copy is a true and faithful reproduction of the original certification.

- b. Notarized Certification of Absence of Unsatisfactory Performance Record in the form set out in **Annex EPF-3** issued by an authorized representative of the entity proposed to fulfill the LNG Purchase Experience.

4.3.6. LNG Terminal Operation and Maintenance Experience Requirement (using the form in **Annex EPF-6**) to be submitted by the entity that fulfills the LNG Terminal Operation and Maintenance Experience Requirement in Section 3.2.4, as identified in the Business Structure.

4.3.7. Required attachments for each reference project:

- a. Notarized Certification that the project is or was recently (within the last five (5) years) in operation or a copy thereof accompanied by a notarized certification issued by an authorized representative of the entity proposed to fulfill the LNG Terminal Operation and Maintenance Experience that such copy is true and faithful reproduction of the original certificate.

- b. Notarized Certification of Absence of Unsatisfactory Performance Record in the form set out in **Annex EPF-3** issued by an authorized representative of the entity proposed to fulfill the LNG Terminal Operation and Maintenance Experience.

4.3.8. List of Key Personnel (using the form in **Annex EPF-8**) to be submitted by the PSP. More than one name can be submitted for each position.

4.4. Financial Capability Documents

4.4.1. To be submitted by the PSP and all Consortium Members if the PSP is a Consortium:

- a. Certified true copies of Audited Financial Statements for the past three (3) calendar years, stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.

- b. Testimonial letter(s), in the form set out in Annex **EPF-9C**, issued by a domestic universal or commercial bank duly licensed, or an international bank with a subsidiary/branch in the Philippines or an international bank recognized, by the Bangko Sentral ng Pilipinas attesting that the PSP or Consortium Members is banking with them and that it is in

good financial standing and qualified to obtain credit facilities from such bank to finance the Project.

- c. Certified true copies of the latest business and income tax returns duly stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity, and duly validated with tax payment made thereon.

4.4.2. Notarized Statement of Net Worth (using the form in **Annex EPF-9A**) to be submitted by the entity that fulfills the Net Worth Requirement as identified in the Business Structure.

4.4.3. Required attachments:

- a. Certified true copies of Audited Financial Statements of the past three (3) fiscal years, stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The certification may be issued by an authorized representative of the entity proposed to meet the Net Worth Requirement.
- b. If the PSP, Lead Member, Key Member or Consortium Member (as the case may be) will use a parent company to comply with the Net Worth Requirement, evidence of affiliation must be submitted.
- c. Certified true copies of the latest business and income tax returns duly stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity, and duly validated with tax payment made thereon.

4.4.4. Notarized Finance Raising Experience (using the form in **Annex EPF-9B**) to be submitted by the entity that fulfills the Finance Raising Requirement as identified in the Business Structure.

4.4.5. Required attachments:

- a. Certified true copies of Audited Financial Statements of the past three (3) fiscal years, stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The certification may be issued by an authorized representative of the entity proposed to meet the Finance Raising Experience.

- b. Testimonial letter(s), in the form set out in **Annex EPF-9C**, issued by a domestic universal or commercial bank duly licensed, or an international bank with a subsidiary/branch in the Philippines or an international bank recognized, by the Bangko Sentral ng Pilipinas attesting that the entity fulfilling the Finance Raising Requirement is banking with them and that it is in good financial standing and qualified to obtain credit facilities from such bank to finance the Project.
- c. Certified true copies of the latest business and income tax returns duly stamped “received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity, and duly validated with tax payment made thereon.

5. One PSP, One Submission

Each PSP shall submit only one application to be declared as an Eligible PSP. A PSP shall not be a member of another Consortium, nor have an Affiliate that is a member of another Consortium. No Consortium Member shall be a member of more than one Consortium, nor have an Affiliate that is a member of another Consortium.

To ensure a level playing field and a competitive selection process, there are restrictions on the extent of affiliation and ownership between PSPs and members of different Consortia. These are described in greater detail in Section 18.

These restrictions, however, do not cover or limit the participation of proposed Nominated Contractors, which may be proposed by more than one PSP provided such Nominated Contractors: (a) are not themselves (or through their Affiliates) (i) PSPs, (ii) Consortium Members or (iii) Affiliates of any of the PSPs or Consortium Members, and (b) comply with the applicable requirements set forth in Section 18 with regard to Nominated Contractors.

6. Format and Signing of Eligibility Documents

- 6.1.** PSPs shall submit their Eligibility Documents through their duly authorized representative on or before the Eligibility Documents Submission Date.
- 6.2.** The Eligibility Documents shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the PSP.
- 6.3.** The Eligibility Documents must be printed in standard A4 paper and bound together in ring binders or folders of appropriate size. Documents must be paginated, and text must be at least font size twelve (12). The requirements relating to paper and font size shall only apply to prescribed forms provided in this IPSP: Volume 1 — Eligibility Documents and to any other documents, which may be reasonably made to comply with these requirements.

- 6.4. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the PSP.

7. Sealing and Marking of Eligibility Documents

- 7.1. Each PSP shall submit one (1) original and two (2) copies of its Eligibility Documents.
- 7.2. PSPs shall enclose their original Eligibility Documents described in Section 4, in a sealed envelope marked as “ORIGINAL — ELIGIBILITY DOCUMENTS” for the original set and the copy set enclosed in a sealed envelope marked as “COPY — ELIGIBILITY DOCUMENTS”. The words “ORIGINAL — ELIGIBILITY DOCUMENTS” and “COPY — ELIGIBILITY DOCUMENTS” shall be typed or written in indelible ink and shall be signed by the PSP’s duly authorized representative. The envelopes containing the original and the copies shall then be enclosed in one single envelope or box.
- 7.3. The PSP shall also submit five (5) clear electronic or scan copies of the Eligibility Documents in CDs/DVDs/USBs. The electronic copies of the Eligibility Documents must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of Eligibility Documents. Where practicable, the PSP shall also provide searchable PDF copies of its Eligibility Documents. The CDs/DVDs/USBs must be placed in a sealed envelope and marked “ELECTRONIC COPY – ELIGIBILITY DOCUMENTS”, and such envelope shall be placed in the envelope or box together with the original set.

- 7.4. All envelopes shall be labeled as follows:

- (a) marked in accordance with 7.2 above;
- (b) addressed to the PNOC – JVSC for LNG Hub Project:

Glenda G. Martinez
Chairperson
JVSC for the LNG Hub Project
PNOC Building 6, Energy Center
Rizal Drive, Bonifacio Global City, Taguig City

- (c) contain the name of the contract to be bid in capital letters and bear the specific identification of this Project:

PHILIPPINE NATIONAL OIL COMPANY
LIQUEFIED NATURAL GAS HUB PROJECT

- (d) bear the name and address of the PSP in capital letters;
- (e) bear a warning “**DO NOT OPEN BEFORE 2:00PM / 21 DEC 2018**” the time and date for the opening of Eligibility Documents.

- 7.5. If the Eligibility Documents are not sealed and marked as required, PNOC will assume no responsibility for its misplacement or premature opening, and the same may be a ground for disqualification.

8. Eligibility Documents Submission Date

Eligibility Documents must be received by the PNOC's JVSC on or before 21 December 2018 at 12:00PM.

9. Late Submission of Eligibility Documents

Any Eligibility Documents submitted after the Eligibility Documents Submission Date shall be declared "Late" and shall be returned unopened by the PNOC.

10. Modification and Withdrawal of Eligibility Documents

- 10.1. The PSP may modify its Eligibility Documents after it has been submitted; provided that the modification is received by the JVSC prior to the deadline specified in Section 8. The PSP shall not be allowed to retrieve its original Eligibility Documents, but shall be allowed to submit another set equally sealed, properly identified, linked to its original bid marked as "ELIGIBILITY MODIFICATION," and stamped "received" by the JVSC. Modifications received after the Eligibility Documents Submission Date shall not be considered and shall be returned to the PSP unopened.
- 10.2. A PSP may, through a letter of withdrawal, withdraw its Eligibility Documents after they have been submitted, for valid and justifiable reasons; provided that the letter of withdrawal is received by PNOC prior to the Eligibility Documents Submission Date.
- 10.3. Eligibility Documents requested to be withdrawn in accordance with this Section 10 shall be returned unopened to the PSP concerned. A PSP that withdraws its Eligibility Documents shall not be permitted to submit another set, directly or indirectly, for the same project.

11. Opening and Preliminary Examination of Eligibility Documents

- 11.1. The JVSC will open the envelopes containing the Eligibility Documents in the presence of the PSP's representatives who choose to attend the opening of Eligibility Documents at the PNOC Building 6, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City on 21 December 2018 at 2:00PM. The PSPs' representatives who are present shall sign a register evidencing their attendance.
- 11.2. Letters of withdrawal shall be read out and recorded during the opening of Eligibility Documents, and the envelope containing the corresponding withdrawn Eligibility Documents shall be returned unopened to the withdrawing PSP. If the withdrawing PSP's representative is present during the opening, the original Eligibility Documents and all copies thereof shall be returned to the representative during the opening of Eligibility Documents. If no representative is present, the Eligibility

Documents shall be returned unopened by registered mail.

- 11.3.** PNOB, through its JVSC, shall within fifteen (15) calendar days after the deadline set for the submission of the Eligibility Documents, complete the evaluation of the Eligibility Documents of the PSPs, and determine which among them are “eligible” and “ineligible.” Accordingly, the JVSC shall duly inform the Eligible PSP within seven (7) calendar days after the approval of their Eligibility Documents. Ineligible PSPs shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.
- 11.4.** PSPs determined as “ineligible” have seven (7) calendar days from receipt of the notice of eligibility to appeal their ineligibility to the PNOB Board. The PNOB Board shall act on the appeal within thirty (30) calendar days. The decision of the PNOB Board shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.
- 11.5.** The envelopes containing the Eligibility Documents, as well as their modifications, if any, shall be opened one at a time, and the following read out and recorded:

 - (a) the name of the PSP;
 - (b) whether there is a modification or substitution; and
 - (c) the presence or absence of each document comprising the Eligibility Documents vis-à-vis a checklist of the required documents.
- 11.6.** The eligibility of each PSP shall be assessed against the criteria for eligibility as set out in Section 3 and the documents required in Section 4 and rated on a “pass-or-fail” basis. The overall rating for the evaluation will be “eligible” if each criterion is rated “passed” and each required evaluation Eligibility Document and attachment is completely submitted. The overall rating will be “ineligible” if any criterion is rated “failed” or if any required Eligibility Document and attachment is missing.
- 11.7.** The JVSC reserves the right to seek clarifications from PSPs on the form and contents of their Eligibility Documents. PSPs must respond to the JVSC within five (5) days from receipt of the JVSC’s request for clarification. The JVSC also reserves the right to make inquiries with any person, government authority, client organization, Consortium Member, officer, director, employee or other agent of any PSP for the purpose of clarifying any matter included in its Eligibility Documents.
- 11.8.** A PSP may also be disqualified for any of the following reasons:

 - (a) late submission of the Eligibility Documents or any part thereof;
 - (b) material or willful misrepresentation in the pre-selection process;

- (c) any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice as described in Section 17;
- (d) any form of political or other lobbying with respect to the pre-selection process;
- (e) illegal conduct or attempt to influence the JVSC's evaluation of the Eligibility Documents or the pre-selection process;
- (f) any Conflict of Interest that would give it any unfair advantage in the pre-selection process as described in Section 18;
- (g) any Outstanding Dispute with Government as described in Section 19; or
- (h) failure to comply with any of the terms, conditions and instructions of the Invitation Documents.

11.9. Only Eligible PSPs may receive the IPSP: Volume 2 — Competitive Selection Documents for the preparation of technical and financial proposals.

12. Notification of Results of Evaluation of Eligibility Documents

It is anticipated that the JVSC will notify all PSPs as to whether they passed the eligibility stage not later than seven (7) days after the JVSC determines which PSPs are eligible or disqualified. All PSPs that pass the eligibility stage shall be known as Eligible PSPs.

If the PSP proposed more than one Nominated Contractor to fulfill the LNG Terminal Development Experience Requirement, the JVSC shall also notify said PSP as to which of the Nominated Contractors it proposed were passed.

13. Lock-Up Rules during the Competitive Selection Process

The following rules (“**Lock-Up Rules**”) shall apply from the Eligibility Documents Submission Date until the Proposals Submission Date (“**Lock-Up Period**”):

13.1. Corporation and Partnership

- 13.1.1. For a PSP that is a corporation, partnership or other legal entity, no restrictions shall be imposed on the ownership structure of such a PSP.

13.2. Consortium

- 13.2.1. A Consortium Member, except for the Lead Member, may leave the Consortium and not be replaced by any other entity (“**Withdrawal**”), subject to the following conditions and compliance with the requirements of Section 13.2.4:

- (a) A Consortium Member proposed to meet the Technical Capability Requirements cannot Withdraw from the Consortium, except in the event of a Substitution as provided in Section 13.2.2 below.
- (b) Withdrawing Consortium Members cannot join any other PSP that has been determined to be eligible to bid for the Project.

13.2.2. A Consortium Member, except for the Lead Member, may be replaced by another entity not previously identified in the Consortium's Business Structure under **Annex EPF-2B ("Substitution")**, subject to the following conditions and compliance with the requirements of Section 13.2.4:

- (a) If the Consortium Member leaving the Consortium is the only entity that is proposed to meet a particular Technical Capability Requirement, then the substitute should meet the particular Technical Capability Requirement that such Consortium Member was proposed to meet. In addition, if the Consortium Member leaving the Consortium was also proposed to meet the Financial Capability Requirement under Section 3.3(c)(ii)(b) or (c), then the Consortium should ensure that the Financial Capability Requirement is still met even after substitution. The substitute should also meet the Legal Capacity Requirements.
- (b) The substitute should not be a Consortium Member (or an Affiliate of such entities) identified in the Business Structure of another Eligible Private Proponent.

13.2.3. A Consortium Member may increase or reduce its committed percentage equity interest in the Consortium, subject to the following conditions and compliance with the requirements of Section 13.2.4.

Any Consortium Member can increase or reduce its committed percentage equity interest in the Consortium as specified in Business Structure, provided that, the Consortium Member fulfilling the Financial Capability Requirement shall not be allowed to reduce its committed percentage equity interest in the Consortium to a level below the minimum required.

13.2.4. In the event of a Withdrawal, Substitution, or change in equity interest in a Consortium, the following requirements must be met:

- (a) The Lead Member must always own the highest percentage interest in the Consortium.

- (b) No Consortium Member, on its own or together with its Affiliates, shall own a greater percentage interest in the Consortium than the Lead Member.
- (c) Any change in the composition of the Consortium or its ownership structure must be approved by the JVSC.
- (d) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. Together with its application, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements, and if such change does not delay the submission of proposals on the Proposals Submission Date.
- (e) In the event of a Withdrawal, the PSP must inform the JVSC in writing, and in accordance with Section 2.7, on or prior to the Proposals Submission Date.
- (f) If the proposed Consortium composition change is not approved by the JVSC in the JVSC's discretion, the applying PSP may revert to the original Consortium composition or proposed Consortium ownership structure, as provided in its Eligibility Documents.

13.2.5. No change in Control or the Lead Member of a Consortium shall be permitted without the prior written approval of the JVSC.

13.3. Nominated Contractors

13.3.1. None of the Nominated Contractors fulfilling the LNG Terminal Development Experience Requirement or the LNG Terminal Operation and Maintenance Experience Requirement may withdraw from a PSP during the Lock-Up Period, unless:

- (a) If the Nominated Contractor withdrawing from the PSP is the only entity which is proposed to meet a particular LNG Terminal Development Experience Requirement or LNG Terminal Operation and Maintenance Experience Requirement, then the PSP shall nominate a replacement contractor that meets or exceeds the particular LNG Terminal Development Experience Requirements or LNG Terminal Operation and Maintenance Experience Requirement, which such withdrawing Nominated Contractor was proposed to meet.
- (b) If the Nominated Contractor withdrawing from the PSP is not the only entity which is proposed to meet a particular LNG Terminal Development Experience Requirement or the LNG Terminal Operation and Maintenance Experience

Requirement, then the other Nominated Contractors proposed by the PSP to meet the applicable LNG Terminal Development Experience Requirement or the LNG Terminal Operation and Maintenance Experience Requirement shall confirm in writing that they remain willing to participate in the Competitive Selection for the Project with the applicable PSP.

- (c) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements and the other terms and conditions in this IPSP: Volume 1 — Eligibility Documents, and if such change does not delay the submission of proposals on the Proposals Submission Date.

13.4. Additional Consortium Members and Nominated Contractors

Other than in connection with a Withdrawal or Substitution as provided in Section 13.2 above or the withdrawal of a Nominated Contractor as provided in Section 13.3 above, in the event that any PSP adds a Nominated Contractor, or any Consortium adds additional Consortium Members, an application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. Together with its application, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements and the other terms and conditions in this IPSP: Volume 1 — Eligibility Documents, and if such change does not delay the submission of the proposals on the Proposals Submission Date.

13.5. Consequence of Violation of Lock-Up Rules

Any violation of the Lock-Up Rules shall be a ground for disqualification.

14. Failure of Pre-Selection Process

If only one PSP submits its Eligibility Documents or if there is only one Eligible PSP, after the evaluation of Eligibility Documents, the JVSC may, in its sole discretion, declare the Pre-Selection Process a failure, and the Competitive Selection Process may be cancelled, suspended, or re-launched, at the JVSC's discretion.

15. Right to Reject Eligibility Documents, Waive Minor Defects, and Not Proceed with the Competitive Selection

The PNOC reserves the right to accept or reject all or any Application to Qualify without assigning any reason whatsoever.

The PNOC reserves the right to waive any minor defects in the Eligibility Documents of any PSP.

At any time, the PNOOC reserves the right not to proceed with the Pre-Selection or Competitive Selection Process and the execution of the JV Agreement without prior notice or liability, and without any obligation to give any reason not to proceed.

16. General Conditions and Prohibitions

By submitting Eligibility Documents and participating in the Pre-Selection Process, the PSP acknowledges and agrees that:

- a. it, including all Consortium Members, Nominated Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the entirety of the Competitive Selection Process;
- b. it, including all Consortium Members, proposed Nominated Contractors, their Affiliates, and their respective officers, employees, agents, and advisers will not engage in any form of political or lobbying with respect to the Competitive Selection or attempt to influence the outcome of the Competitive Selection;
- c. it accepts all the terms and conditions of the Eligibility Documents; and
- d. the JVSC has the right to amend, revise, modify or clarify any of the Eligibility Documents at any time.

17. Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice

The following terms shall have the meaning hereinafter respectively assigned to them:

- a. **“Corrupt Practice”** means any behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the Competitive Selection or in contract execution; this also includes similar acts punishable under the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- b. **“Fraud”** means a misrepresentation of facts in order to influence the Competitive Selection to the detriment of the government, and includes collusive practices among PSPs (prior to or after bid submission) designed to establish financial offers or prices at artificial, non-competitive levels and to deprive the government of the benefits of a free, transparent and open competition;
- c. **“Collusion”** means a scheme or arrangement between two or more PSPs, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels;

- d. **“Coercion”** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Competitive Selection Process, or affect the execution of the JV Agreement;
- e. **“Undesirable Practice”** means (i) establishing contact with any person connected with, employed or engaged by PNOC or any member of the JVSC with the objective of canvassing, lobbying or (ii) in any manner influencing or attempting to influence the Competitive Selection Process, the evaluation of Eligibility Documents or proposals, or the implementation of the JV Agreement; and
- f. **“Restrictive Practice”** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among PSPs, Consortium Members, or Nominated Contractors with the objective of restricting, subverting or manipulating a full and fair competition in the Competitive Selection Process.

Aside from being disqualified from the Competitive Selection, any person found to be engaging in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice shall incur civil and criminal liability under the applicable laws and regulations and shall be prohibited from participating in any bidding or competitive selection conducted by PNOC.

18. Conflict of Interest

PSPs, Consortium Members, including their Nominated Contractors, must not have any Conflicts of Interest. Any of the following will be considered a **“Conflict of Interest”**:

- a. A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium.
- b. A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is proposed/nominated as Nominated Contractor of another PSP.
- c. A PSP, any Consortium Member, or any of their Affiliates (of either a PSP or of the Consortium Member) has ownership interest of twenty percent (20%) or more in any other PSP, any Consortium Member of any other PSP, or any of its Affiliates that is nominated to fulfill any of the Eligibility Requirements.
- d. A member of the board of directors, partner, officer, employee, or agent of a PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates, who is directly involved in any capacity related to the Competitive Selection Process of such PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates is also directly involved in any capacity related to the Competitive Selection Process for the Project

for another PSP, any Consortium Member of another PSP, or any of their Affiliates.

The phrase “**directly involved in any capacity**” shall refer to actual participation in the deliberations and/or decision-making for the Competitive Selection Process of the PSP or access to the documents related thereto, that would give the director, partner, officer, employee, or agent knowledge or information regarding the bid of such PSP, including the act of voting on any matter related to the Competitive Selection Process of two or more PSPs, such as but not limited to the approval of the relevant entity’s participation in the Competitive Selection.

The same conflict of interest arises for consulting firms acting as professional advisors, Nominated Contractors, in each case, to the extent such entities are engaged by more than one PSP in any capacity related to the Competitive Selection Process, unless said Nominated Contractor, or professional advisor discloses such fact in writing to each relevant PSP, submits a conflict management plan to such PSPs and submits to PNOC a written consent from each such PSP stating that such PSP has been notified of the potential conflict of interest, has reviewed and approved the conflict management plan prepared by such Nominated Contractor or professional adviser and the parties consent to such Nominated Contractor or professional adviser’s engagement by the other relevant PSP.

Each affected PSP must secure the written consent of PNOC stating that the conflict management plan is sufficient prior to proposing or nominating such Nominated Contractor in its Eligibility Documents or seeking professional advisory services from said professional advisor.

19. Outstanding Dispute with Government

An “**Outstanding Dispute with Government**” refers to any pending dispute or alternative dispute before the courts or arbitral tribunal, including suspension or blacklisting proceedings, between the PSP, any Consortium Member, or their Affiliates, on the one hand, and the PNOC, on the other, in connection with any project or contract of the PNOC or its subsidiaries.

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