

POWER PURCHASE AGREEMENT

BY AND BETWEEN

**[THE BANGLADESH POWER DEVELOPMENT BOARD
(Constituted under the Bangladesh Power Development Boards Order, 1972
(P.O. No. 59 of 1972))],**

AND

_____ **POWER COMPANY LIMITED**

- RELATING TO-

PURCHASE OF POWER FROM COMMERCIAL POWER GENERATION FACILITY

AT

_____, **BANGLADESH**

Dated as of _____ 201_

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”) is entered into as of this ___ day of _____ 201_ by and between the [**Bangladesh Power Development Board or any Distribution Licencee**] (hereinafter referred to as the “**Off-Taker**”), with its registered office located at _____, 1000, Bangladesh and _____ **Power Company Limited** (hereinafter referred to as the “**Company**”, with its registered office located at _____, _____, Bangladesh (the Off-Taker and the Company, each of which reference includes their respective successors and permitted assigns, are sometimes hereinafter referred to individually as a “**Party**” and, collectively, as the “**Parties**”).

RECITALS

WHEREAS, the Off-Taker is a public utility engaged in the generation/distribution in the People’s Republic of Bangladesh (“Bangladesh”);

WHEREAS, in response to a Request for Expressions of Interest, dated ___ _____ 201_, issued by the Power Cell (as hereinafter defined) for the design, engineering, financing, construction, completion, permitting, testing, commissioning, insurance, ownership, operation and maintenance (collectively, the “Project,” as hereinafter defined) of a coal-fired, [type of technology] power station located at _____, Bangladesh, the Project Sponsor (as hereinafter defined) has proposed to develop a power generation facility with a Net Generation Capacity of _____ MW (net, at Reference Site Conditions and Power Factor Adjustment (as hereinafter defined));

WHEREAS, the Project Sponsor was selected as the entity to implement the Project through a tendering process and has been issued a “Notice of Award (NOA)” by Power Cell, and has established the Company to implement the Project;

WHEREAS, (Insert name of Company) formed by the Project Sponsor has agreed to implement the Project, and to sell Net Energy Output (as hereinafter defined) of the Facility to BPDB in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, the Company has agreed to implement the Project, and to sell the Net Energy Output (as hereinafter defined) equivalent to maximum thirty percent (30%) of the Net Generation Capacity of the Facility to the Off-Taker in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Off-Taker has agreed to purchase the Net Energy Output equivalent to maximum 30% of the Net Generation Capacity of the Facility from the Company in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the Parties hereby agree as follows:

Section 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

Whenever the following capitalized terms appear in this Agreement, including the schedules hereto, whether in the singular or plural, past, present or future tense, they shall have the meanings given to such terms below:

“Abandonment” means the voluntary cessation of construction or operation, as the case may be, of the Facility, and the withdrawal of all, or substantially all, personnel by the Company from the Site for reasons other than the acts or omissions of the Off-Taker or a Force Majeure Event; *provided* that the Company shall not be deemed to have Abandoned the Facility so long as it is using all reasonable efforts to regain control of the Facility, cure such Force Majeure Event, or reinstate such construction or operation;

“Agreement” means this Power Purchase Agreement between the Off-Taker and the Company, together with all schedules attached hereto, dated as of the date first above written, as may be amended by the Parties from time to time;

“Annual Delivered Electricity” means the aggregate annual sum of the quantity of electricity delivered to the Off-Taker through the Delivery Point by the Company in the relevant Contract Year;

“Annual Power Delivery Obligation” means a quantity of electricity, in kWh, equal to [Net Generation Capacity in KW x 8760 x 0.3] ___ kWh;

“Back-Up Metering System” means any meters and metering devices installed, owned and maintained by the Company as backup to the Metering System;

“Bangladesh Bank” means the bank established under Article 3 of the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) for the purpose of carrying on the business of central banking and also includes its successors;

“Bank Rate” means the most recent applicable weighted average yield for one-year Bangladesh Treasury notes (expressed as a rate per annum), such yield established in the auction arranged by the Bangladesh Bank from time to time; *provided*, that if such auction is discontinued or withdrawn by Bangladesh Bank or otherwise such yield becomes unavailable for any reason, then the Parties shall agree (or if not agreed, as determined by the Expert pursuant to Section 19.3) and use a the rate that reflects the cost of one-year borrowing of the GOB from commercial lenders;

“Business Day” means any Day that is not (a) a Day on which banks in Bangladesh are legally permitted to be closed for business (including partial Days) and (b) an official holiday established or declared by the GOB;

“Certification Date” means the date as of which the Testing and Commissioning Committee certifies in writing that the Facility is ready to commence the Commercial Operations Test and there is no reason to believe that the Facility would not successfully pass such tests, and that such tests are being delayed only due to a deferral of such tests by the Off-Taker, and that such delay in testing would not have occurred but for such deferral by the Off-Taker;

“Coal” means sub-bituminous Coal with a heating value of 8,000-10,500 Btu/lb on GAR basis, having sulphur content 0.3% to 0.9%, moisture content 15% to 35%, ash content 4% to 9% and carbon content 35% to 45%;

“Coal Supplier” – means the company or other entity appointed by the Company from time to time to supply Coal to the Facility in accordance with the Coal Supply Agreement and any successors thereto;

“Coal Supply Agreement” – means the agreement or agreements to be entered into by and between the Coal Supplier and the Company for the supply of Coal to the Facility, as such agreement may be amended by the parties thereto or superseded from time to time;

“Commercial Operations Date” means the date following the Day on which the Facility is Commissioned at the Net Generating Capacity of the facility;

“Commercial Operations Test” bears the meaning ascribed thereto in Schedule 3;

“Commissioned” means the successful completion of the Commercial Operations Test for the Commissioning of the Facility, in accordance with and meeting the minimum requirements stated in Schedule 3;

“Commissioning” means carrying out the Commercial Operations Test of the Facility;

“Company” means _____ Power Company Limited, a public/private limited company incorporated and registered under the laws of Bangladesh, with its principal offices located in _____, [Dhaka], Bangladesh, and its successors and permitted assigns;

“Company Event of Default” bears the meaning ascribed thereto in Section 4.2;

“Company Notice of Default” bears the meaning ascribed thereto in Section 4.3;

“Construction Contractor” means the construction company or companies, and any successor or successors thereto, appointed or to be appointed by the Company in connection with the construction of the Facility;

“Contract Year” means each period commencing at the beginning of the Commercial Operations Date and at the beginning of each consecutive anniversary of the Commercial Operations Date and ending as of the end of the Day preceding the next anniversary of the Commercial Operations Date;

“Contractors” means the Construction Contractor and the O&M Contractor and any of their direct sub-contractors integrally involved in the Project;

“Control Center” means the Off-Taker’s or PGCB’s, as the case may be, National Control Center located in Dhaka, or such other Control Center designated by the Off-Taker from time to time (but not more than one at any time) from which the Off-Taker or PGCB’s, as the case may be, shall Dispatch the Facility;

“Customs Authority” means the Relevant Authority with jurisdiction over the collection of Customs Duties and VAT on goods, machinery and equipment imported into Bangladesh and the clearance or release thereof under the Laws of Bangladesh;

“Customs Duties and VAT” means customs duty levied under the Customs Act, 1969 (Act IV of 1969) value added tax levied under the Value Added Tax (VAT) Act, 1991 (Act XXII of 1991), imposed under the Laws of Bangladesh and any import licence fees and other taxes or levies, imposed under the Laws of Bangladesh, but excludes fees and charges of a commercial nature associated with the importation of goods;

“Day” means the twenty-four (24) hour period beginning and ending at 12:00 midnight Bangladesh Time;

“Declared Available Energy” means, on and after the Commercial Operations Date, the Net Energy Output of the Facility for each Hour of the following Day notified to the Control Center by the Company pursuant to Section 9.3(b);

“Delivery Point” means the location at the high voltage side of the generator transformer at which the Facility Net Energy Output is measured and transferred from the Company to the Off-Taker;

“Dispatch” or **“Dispatch Instruction”** means an instruction issued directly by the Control Center to the Company in accordance with the terms of this Agreement, including without limitation, the Technical Limits, to schedule and control the generation of the Facility in order to commence, increase, decrease or cease the Facility Net Energy Output (and Reactive Power) delivered to the Grid System;

“Dispute” means any dispute, difference or disagreement of any kind whatsoever between the Off-Taker and the Company in connection with or arising out of this Agreement, including, without limitation, any dispute or difference concerning the existence, validity or enforceability of this Agreement or any provision hereof;

“Distribution Licencee” means the entity holding a licence from the Regulator granting the right to distribute and supply electricity within the territory in which the Facility or the facilities of the Third Party Purchaser is located.

“Dollars” or **“US\$”** means the lawful currency of the United States of America;

“Economic Dispatch” means the distribution of the total energy needs of the Off-Taker among available sources of generation based upon the marginal cost to the Off-Taker for requesting the next increment of energy, where plants will be dispatched by the Off-Taker from the lowest in incremental cost to the highest in incremental cost, considering all relevant factors, including each available plant’s technical limits and availability and the capabilities of the Grid System at the time of dispatch;

“Effective Date” means the date on which this Agreement has been signed;

“Electrical Interconnection Facilities” or **“EIF”** means all of the facilities and equipment described in Section 11 of this Agreement;

“Electricity Equivalent Capacity” means a quantity of electric generation capacity, in MW, equal to $[\text{Net Generation Capacity in KW} \times 0.3]$ _____ MW;

“Emergency” means a condition or situation that, in the reasonable opinion of the Off-Taker, materially and adversely:

- (a) affects the ability of the Off-Taker to maintain safe, adequate and continuous electrical service to the Off-Taker’s customers, having regard to then-current standard of electrical service provided to its customers; or
- (b) presents a physical threat to persons or property or the security, integrity or reliability of the Grid System;

“Energy Payment” bears the meaning ascribed thereto in Section 13.1(b);

“Environmental Guidelines” means the environmental guidelines and occupational health and safety standards of the World Bank as in effect on the Reference Date;

“Event of Default” means a Company Event of Default or a the Off-Taker Event of Default;

“Execution Date” means the date on which all of the Parties have signed this Agreement;

“Expert” means an expert appointed under and in accordance with Section 19.3;

“Facility” means the coal-fired, [type of technology] power station consisting of _____, capable of approximately ___ MW of Facility Net Generation Capacity (at Reference Site Conditions) to be owned and constructed by the Company near _____, Bangladesh, whether completed or at any stage of its construction, including without limitation or regard to level of development, the land, engineering and design documents and Construction Contract, all energy producing equipment and its auxiliary equipment and all transmission facilities on the Company’s side of the Delivery Point, water intake and discharge facilities, water treatment facilities, solid waste disposal facilities, coal receiving and handling facilities and equipment on the Company’s side of the Point of Delivery, including the coal transportation facilities, the Metering System, the Electrical Interconnection Facilities for the period before such facilities have been conveyed by the Company to PGCB pursuant to this Agreement, together with the residential facilities (if any) made available to certain employees of the Company, the Contractors and any subcontractors;

“Facility Net Energy Output” means the net electrical energy expressed in kWh that is generated by the Facility and delivered through the Delivery Point, as measured by the Metering System or the Back-Up Metering System, as the case may be, in accordance with the terms of this Agreement;

“Force Majeure Event” bears the meaning ascribed thereto in Section 16.1;

“Forced Outage” means an interruption or a reduction in the generating capability of the Facility (whether declared or undeclared) on or after the Commercial Operations Date, that is not the result of:

- (a) a request by the Off-Taker made in accordance with this Agreement;
- (b) a Scheduled Outage or a Maintenance Outage;
- (c) a Force Majeure Event; or
- (d) a condition caused by (i) the Off-Taker or PGCB or (ii) the Grid System;

“Fuel” means heavy fuel oil, as defined in and as delivered by the Fuel Supplier under the Fuel Supply Agreement for use as fuel at the Facility;

“Fuel Cost Payment” bears the meaning ascribed thereto in Section 13.1(b);

“Fuel Supplier” – means the company or other entity appointed by the Company from time to time to supply Fuel to the Facility in accordance with the Fuel Supply Agreement and any successors thereto;

“Fuel Supply Agreement” – means the agreement or agreements to be entered into by and between the Fuel Supplier and the Company for the supply of Fuel to the Facility, as such agreement may be amended by the parties thereto or superseded from time to time;

“GOB” means the Government of the People’s Republic of Bangladesh;

“Government Authorisations” means all such approvals, consents, authorisations, acknowledgements, licenses or permits required to be issued by any Government Authority to the Company for the establishment of the Company or to the Company or the Contractors for the construction, financing, ownership, operation and maintenance of the Facility by the Company or the Contractors;

“Government Authority” means:

- (a) the GOB or any entity subject to the overall control or direction as to matters of policy of the GOB or which is otherwise under and controlled by the GOB, including without limitation, but only for so long as they are under the control of the GOB, the Off-Taker, and PGCB;
- (b) any local governmental authority or any subdivision of any of the foregoing;
- (c) any Bangladesh court or tribunal with jurisdiction over the Company, the Facility, the Contractors, the Lenders or the Project or any part thereof; and
- (d) any department, authority, regulatory agency, instrumentality, agency, body or corporation or other entity controlled by any of the foregoing;

“Grid System” means the transmission or distribution facilities owned by PGCB through which the Net Energy Output of the Facility will be received and distributed by the Off-Taker;

“Hour” means each period of sixty (60) minutes beginning at 12:00 midnight Bangladesh time or any sixty (60) minutes interval thereafter;

“Indexation Date” bears the meaning ascribed thereto in Section 13.1(b)(i);

“Invoice Dispute Notice” bears the meaning ascribed thereto in Section 13.2(h)(i);

“Issuing Bank” bears the meaning ascribed thereto in Section 13.2(i)(i);

“kW” means Kilowatt;

“kWh” means Kilowatt-hour;

“Laws of Bangladesh” means, in relation to this Agreement, all laws in force in Bangladesh, and includes all rules, regulations, orders, directives, notifications made or issued by any Government Authority with authority over the Company, the Facility or the Project pursuant to or under any such law, and any decree or judicial decision given or pronounced by any court of competent jurisdiction in Bangladesh;

“Lead Shareholder” means _____ Power Company Limited, a company incorporated under the laws of Bangladesh, with its registered office located at _____, Dhaka, Bangladesh;

“Liquidated Damages Due Date” bears the meaning ascribed thereto in Section 8.7;

“Liquidated Damages Notice” bears the meaning ascribed thereto in Section 8.7;

“Local Inflation Indexation Factor” bears the meaning ascribed thereto in Section 13.1(b)(B)(i);

“Metering System” means all meters and metering devices (including current transformers, potential transformers and the Back-Up Metering System) owned by the Company and used to measure the facility net generation capacity and Facility Net Energy Output;

“Minimum Functional Specifications” means the minimum functional specifications (adjusted to Reference Site Conditions in accordance with Section 13.1) for the construction of the Facility as set forth in Schedule 1;

“**Month**” means a calendar month according to the Gregorian calendar;

“**MW**” means megaWatt;

“**MWh**” means megaWatt-hour;

“**MVAR**” means megavar;

“**Net Energy Output**” means net electrical energy expressed in kWh and is equal to 30% of the Facility Net Energy Output;

“**Net Generation Capacity**” means net electric power generating capacity of the Facility expressed in kW, net at Reference Site Conditions and at a power factor of 0.85 lagging measured at Delivery Point;

“**Notice of Award**” means the letter issued by Power Cell to signify the commitment of the Off-Taker to purchase the specified quantity of electricity on the terms specified in the Request For Expressions of Interest and the EOI;

“**Notice of Intent to Terminate**” bears the meaning ascribed thereto in Section 4.4(a);

“**O&M Contractor**” means the power generation facility operation and maintenance company or companies, and any successors thereto, appointed or to be appointed by the Company;

“**Off-Peak Period**” bears the meaning ascribed thereto in Section 3.1;

“**Off-Taker Event of Default**” bears the meaning ascribed thereto in Section 4.3;

“**Off-Taker Notice of Default**” bears the meaning ascribed thereto in Section 4.2;

“**Off-Taker’s Margin**” means an amount in kWh equal to the difference between the then-prevailing electricity tariff per kWh for power sold by the Off-Taker to industrial customers and the Tariff payable to the Company per kWh of Delivered Electricity;

“**Operating Procedures**” bears the meaning ascribed thereto in Section 6.4;

“**Other Force Majeure Events**” bears the meaning ascribed thereto in Section 16.1(c);

“**Parties**” means, collectively, the Off-Taker and the Company;

“**Party**” means any of the Off-Taker or the Company, as the case may be;

“**Peak Period**” bears the meaning ascribed thereto in Section 3.1;

“**Performance Security Deposit**” means the unconditional bank guarantee in an amount equal to (a) five thousand Dollars (US\$ 5,000) multiplied by (b) the Electricity Equivalent Capacity, issued by a scheduled bank in Bangladesh or by a foreign bank which has been authenticated by a scheduled bank in Bangladesh and shall by its terms be encashable at a bank in Dhaka, Bangladesh, provided by the Company as security for the Company’s obligation to achieve the Commercial Operations Date by the Required Commercial Operations Date and to pay liquidated damages hereunder;

“**PGCB**” means the Power Grid Company of Bangladesh Ltd, and its successors or assigns;

“**Power Cell**” means the Power Cell, Ministry of Power, Energy & Mineral Resources, Government of Bangladesh, and any successor agency thereto;

“**Project**” means the development, design, engineering, manufacture, financing, construction, permitting, start-up, testing, completion, insurance, Commissioning, ownership, operation and maintenance of the Facility, and all activities incidental thereto;

“**Project Sponsor**” means the Lead Shareholder, Operating Shareholder and other shareholder (if applicable);

“**Prudent Electrical Practices**” means the use of equipment, practices or methods, as required to comply with applicable industry codes, standards, and regulations in Bangladesh:

- (a) to protect the Off-Taker’s system, employees, agents, and customers from malfunctions occurring at the Facility; and
- (b) to protect the Facility and the Company’s employees and agents at the Facility, from malfunctions occurring on the Grid System;

“**Prudent Utility Practices**” means the prudent utility practices applicable from time to time to the international electric utility industry, having regard to engineering and operational considerations, including manufacturers’ recommendations and, as relates to the Company, having regard to the fact that the Company is a private power producer selling electric energy to an integrated public utility, but these practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts employed by electric utilities and private power producers which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety;

“**Reactive Power**” means the wattless component of the product of voltage and current, which the Facility shall provide to or absorb from the Grid System within the Technical Limits and which is measured in MVAR;

“**Reference Date**” means ____ 201_ [insert date that Tariff was announced by BERG];

“**Reference Energy Price**” bears the meaning ascribed thereto in Section 13.1;

“**Reference Fuel Cost Component**” bears the meaning ascribed thereto in Section 13.1;

“**Reference Non-Fuel Cost Component**” bears the meaning ascribed thereto in Section 13.1;

“**Reference Site Conditions**” means the conditions for barometric pressure, ambient air temperature, and relative humidity specified in Schedule 1;

“**Reference Tariff**” means the Reference Energy Price;

“**Regulator**” means the Bangladesh Energy Regulatory Commission, and its successor agencies or authorities with authority over the Parties.

“**Relevant Utility**” bears the meaning ascribed thereto in Section 6.3;

“**Request for Expressions of Interest**” means the Request for Expressions of Interest dated ____ 201_ issued by Power Cell in relation to the Project, as thereafter amended by the Power Cell on ____ 2011_;

“**Required Commercial Operations Date**” means the date that is fifteen (15) months following the Execution Date; *provided*, that such date shall be extended: (a) in accordance with the terms of this Agreement as a result of a Force Majeure Event;

“**SCADA System**” means the Supervisory Control and Data Acquisition System which is composed of all telemetering and remote terminal units at the Facility and associated with the Grid System or the Off-Taker’s Control Center;

“**Scheduled Commercial Operations Date**” means the date advised by the Company to the Off-Taker from time to time as the dated on which the Commercial Operations Date is then reasonably expected to occur, which date shall initially not be later than the Required Commercial Operations Date, as such Scheduled Commercial Operations Date shall be revised from time to time based on the Company’s scheduled construction program for the completion of Commissioning of the Facility;

“**Scheduled Outage**” means a planned interruption of the Facility’s generating capability on or after the Commercial Operations Date that has been scheduled under Section 9.4 and is for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Facility;

“**Site**” means the land to be arranged and developed by the Company at its own cost, in connection with the construction and/or operation of the Facility, on which the Facility or any part thereof is to be built;

“**Sonali Bank**” means Sonali Bank Limited, a public limited banking company incorporated on 3 June 2007 pursuant to the Bangladesh Bank (Nationalisation) Order No. 1972 (PO No. 26 of 1972), with its principal office at 35-42, 44 Motijheel Commercial Area, Dhaka, Bangladesh, together with its successors;

“**Taka**” or “**Tk.**” means the lawful currency of Bangladesh;

“**Taxes**” means any and all taxes, duties, imposts and fees (other than fees of a commercial nature or for the provision of services), whenever imposed and applicable under the Laws of Bangladesh;

“**Technical Limits**” means the limits and constraints described in Schedule 2 relating to the operation and maintenance of the Facility;

“**Term**” means the term of this Agreement as specified in Section 4.1;

“**Termination Notice**” means a written notice issued by the Off-Taker or the Company, as the case may be, terminating this Agreement, under Section 4.4(c);

“**Testing and Commissioning Committee**” means a committee comprised of three (3) members from the Off-Taker, one (1) members from the Company and one (1) member from the PGCB, which shall be formed within fifteen (15) Days following delivery of a notice requesting the formation of such committee by either Party; *provided*, that, if for any reason the Testing and Commissioning Committee is not formed within such fifteen (15) Day period, until such time as the committee is formed, the Engineer shall act as the sole member of the Testing and Commissioning Committee and make any determination and deliver any certificate which is to be made or delivered by the Testing and Commissioning Committee hereunder;

“**Week**” means each period of seven (7) consecutive Days beginning at 12:00 midnight Bangladesh time falling between a Friday and a Saturday;

“**World Bank**” means the International Bank for Reconstruction and Development having its head office in Washington D.C, United States of America; and

“**Year**” means each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the Term;

1.2 Interpretation

In this Agreement,

- (a) The headings are for convenience only and shall be ignored in construing this Agreement;
- (b) The singular includes the plural and vice versa;
- (c) References to Sections, Recitals and Schedules are, unless stated to the contrary, references to Sections of, and Schedules and Recitals to, this Agreement;
- (d) The words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they be given the effect of, limiting the generality of any preceding words;
- (e) Unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed; and
- (f) In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

Section 2: SCOPE OF THE AGREEMENT

The purpose of this Agreement is to establish the terms and conditions for the supply by the Company to the Off-Taker and for the purchase by the Off-Taker from the Company of Net Energy Output and the rights and obligations of the Parties in relation thereto. For this purpose, the Company will build, own, Commission, operate, insure, and maintain the Facility in accordance with this Agreement and the Technical Limits.

Section 3: SALE AND PURCHASE OF ENERGY

3.1 Delivery of Energy

Subject to and in accordance with the terms and conditions of this Agreement, the Company agrees to maintain the Facility in accordance with the Technical Limits, Prudent Utility Practices and Prudent Electrical Practices and to make available and deliver to Off-Taker, and Off-Taker agrees to accept and purchase from the Company, for the consideration described in Section 13, to the extent Dispatched, the Net Energy Output. Off-Taker will purchase electricity from the Facility as per their (Off-Taker) demand upto the Annual Power Delivery Obligation of the Company. The Power Company shall schedule its generation from the Facility according to the requirement and direction of the Off-Taker. The Off-Taker shall have the option not to take power at any time including holiday's & winter season and during off-peak period i.e. between 11 P.M. and 5 P.M. of next day or any other period when there is no demand.

Section 4: TERM, DEFAULTS, AND REMEDIES

4.1 Term of Agreement

- (a) This Agreement shall become effective upon execution by the Parties and shall terminate five (5) years after the Commercial Operations Date, unless extended or earlier terminated pursuant to the provisions of this Agreement.
- (b) The expiration or termination of this Agreement shall be without prejudice to all rights and obligations of the Parties arising under this Agreement prior to such expiration or termination, but otherwise the Parties shall have no further obligations hereunder following such expiration or termination except for obligations which survive such expiration or termination pursuant to this Agreement, including, without limitation, the obligation to pay liquidated damages pursuant to Section 8 or elsewhere hereunder.

4.2 Company Events of Default - Termination by the Off-Taker

The Off-Taker may give a notice of default under this Agreement (an "Off-Taker Notice of Default") upon the occurrence of any of the following events ("Company Event of Default") unless such Company Event of Default (i) results from a breach (a) by the Off-Taker of this Agreement; or (ii) occurs as a result of or during a Force Majeure Event pursuant to Section 16:

- (a) the failure of the Company to deliver the Performance Security Deposit on or before the Execution Date, or any failure thereafter by the Company to maintain the Performance Security in full force and effect until the occurrence of the Commercial Operations Date;
- (b) the failure of the Company to achieve the Commercial Operations Date within six (6) months after the Required Commercial Operations Date;
- (c) prior to the achievement of the Commercial Operations Date, the failure of the Company to prosecute the Facility in a diligent manner for a period of thirty (30) consecutive Days without the prior written notice to, and prior written consent of, the Off-Taker (in either case, other than as a result of the Off-Taker's acts or omissions);
- (f) the Abandonment by the Company of the operation of the Facility after the Commercial Operations Date for a consecutive period of twenty five (25) Days without prior notice to, and the prior written consent of the Off-Taker;
- (g) failure by the Company to operate, maintain, modify, or repair the Facility in accordance with Prudent Utility Practices and Prudent Electrical Practices, such that the safety of persons and property, the Facility or the Off-Taker's service to its customers is adversely affected that is not remedied within thirty (30) Days after the delivery of written notice from the Off-Taker to the Company stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in question in reasonable detail and demanding remedy thereof;
- (h) the assignment or transfer of any of the Company's material rights in the Facility without the prior consent of the Off-Taker;

- (i) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:
 - (i) the passing of a resolution by the shareholders of the Company for the winding up of the Company;
 - (ii) the voluntary filing by the Company of a petition of bankruptcy, moratorium, or other similar relief;
 - (iii) the appointment of a liquidator in a proceeding for the winding up of the Company after notice to the Company and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
 - (iv) the making by a court with jurisdiction over the Company of an order winding up the Company which is not stayed or reversed by a court of competent authority within ninety (90) Days;
- (j) any statement, representation, or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation, or warranty having a material and adverse effect on the Company's ability to perform its obligations under this Agreement;
- (k) any material breach by the Company of this Agreement that is not remedied within thirty (30) Days after notice from the Off-Taker stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in question in reasonable detail and demanding remedy thereof;
- (l) any default or defaults by the Company in making of any undisputed payment or payments required to be made by it hereunder within thirty (30) Days following the due date therefor;
- (m) after the Commercial Operations Date, the failure by the Company to declare its availability to deliver aggregate Net Energy Output equal to or greater than (1) in any Contract Year, sixty percent (60%) of the Annual Power Delivery Obligation or (2) in any two (2) consecutive Contract Years, seventy-five percent (75%) of the Annual Power Delivery Obligation;

4.3 Off-Taker Events of Default - Termination by the Company

The Company may give a notice of default under this Agreement ("Company Notice of Default") upon the occurrence of any of the following events ("Off-Taker Event of Default") unless such Off-Taker Event of Default (i) results from a breach by the Company of this Agreement or (ii) if it occurs as a result of or during a Force Majeure Event pursuant to Section 16:

- (a) the dissolution, pursuant to law, of the Off-Taker, except for:
 - (i) the privatisation of the Off-Taker's thermal power stations; or
 - (ii) an amalgamation, reorganisation, reconstruction, corporatisation or further privatisation of the Off-Taker,

in each case where all of the Off-Taker's obligations under this Agreement have been assigned pursuant to law or contractually assumed, through a novation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations;

- (b) any default or defaults by the Off-Taker in the making of any payment or payments required to be made by it within thirty (30) Days of the due date;
- (c) any statement, representation or warranty made by the Off-Taker herein proving to have been incorrect, in any respect, when made or when deemed to have been made and such failure or incorrect statement, representation or warranty having a material adverse effect on the Off-Taker's ability to perform its obligations under this Agreement;
- (d) any material breach by the Off-Taker of this Agreement, which is not remedied within thirty (30) Days after notice from the Company to the Off-Taker stating that a material breach of the Agreement has occurred that could result in the termination of the Agreement, identifying the material breach in reasonable detail and demanding remedy thereof;
- (e) the failure of the Off-Taker to permit Commissioning or testing of the Facility as provided in Section 7 within thirty (30) Days of the date on which such Commissioning or testing is scheduled by the Company in its final schedule for testing delivered pursuant to Section 7 as such date have been be adjusted by the Company in accordance with Section 7;

4.4 Rights and Remedies Upon an Event of Default

- (a) Notice of Intent to Terminate
 - (i) Upon the occurrence of an Off-Taker Event of Default or a Company Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting party may, at its option, initiate termination of this Agreement by delivering a notice (a "Notice of Intent to Terminate") of its intent to terminate this Agreement to the defaulting Party.
 - (ii) The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or the Off-Taker Event of Default, as the case may be, giving rise to such Notice of Intent to Terminate.
- (b) Consultation
 - (i) Following the delivery of a Notice of Intent to Terminate, the Parties shall consult in good faith for a period of:
 - (A) fifteen (15) Days in case of a failure by either Party to make payments when due; and
 - (B) thirty (30) Days with respect to any other Event of Default (or such longer period as the Parties may mutually agree, as to what steps shall be taken with a view to resolving or mitigating the consequences of the relevant Event of Default.
 - (ii) Notwithstanding any such consultations, during the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 4.4(c), then the non-defaulting party shall have no right to terminate this Agreement in respect of such cured default.

(c) Termination Notice

Subject to the provisions of Section 4.5 or 4.6, as the case may be, upon expiration of the consultation period described in Section 4.4(b) and unless the Parties shall have otherwise agreed or unless the Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, subject to Section 4.5 or Section 4.6, as the case may be, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivery of a Termination Notice to the other Party, whereupon this Agreement shall immediately terminate immediately upon delivery of such notice to such other Party.

(d) Obligations upon Termination

- (i) This Agreement shall immediately terminate and the Parties shall have no further obligations to the other Parties hereunder, except those obligations which arose prior to or upon the termination of this Agreement and those obligations which survive termination of this Agreement.
- (ii) Notwithstanding the provisions of Section 4.7, the Parties agree that the Off-Taker may be damaged in an amount that may be difficult or impossible to determine in the event that this Agreement is terminated due to a Company Event of Default under Section 4.2. The Parties, therefore, have agreed that:
 - (A) if this Agreement is terminated due to a Company Event of Default under Section 4.2 and the compensation is paid by the Company to the Off-Taker as provided under Section 8 (if any), that such payment under Section 8 (if any) is reasonable and constitutes liquidated damages to the Off-Taker in such event; and payments to the Off-Taker of amounts due under Section 8 (if any) is in lieu of actual damages in respect of such occurrence and the collection of such sums is the sole remedy of the Off-Taker following such termination of this Agreement; and
 - (B) if this Agreement is terminated pursuant to Section 4.2(b), the Off-Taker shall draw on the Performance Security Deposit and it is agreed that such drawing is reasonable and constitutes liquidated damages to the Off-Taker in such event and the drawing on such Performance Security Deposit shall be the sole remedy of the Off-Taker following such termination of this Agreement.

4.5 Compensation Upon Termination

In the event that the Off-Taker terminates this Agreement pursuant to Section 4.2 as a result of any Company Event of Default prior to the occurrence of the Commercial Operations Date, the Off-Taker shall be entitled to encash in full the Performance Security and retain the proceeds therefrom.

4.6 Obligations Upon Termination

Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Agreement.

4.7 Other Remedies

Except where expressly provided otherwise in this Agreement: (a) the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law; and (b) remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

Section 5: COVENANTS, REPRESENTATIONS AND WARRANTIES

5.1 Company Covenants

The Company hereby covenants to and agrees with the Off-Taker to:

- (a) Use all reasonable efforts to obtain all necessary debt and equity financing in an amount (including reasonable contingencies and working capital requirements) sufficient to construct the Facility in the time and manner contemplated by this Agreement;
- (b) Use all reasonable efforts to negotiate and execute the Construction Contract with the Contractor;
- (c) Engage only such Engineers, advisors, representatives and experts as are experienced in the development, construction and financing of power stations similar to the Facility;
- (d) Design, engineer, construct and complete the Facility in accordance with:
 - (i) the plans and specifications prepared in accordance with this Agreement;
 - (ii) the Minimum Functional Specifications;
 - (iii) all Laws of Bangladesh; and
 - (iv) sound engineering and construction practices, Prudent Utility Practices and Prudent Electrical Practices;
- (e) Design, engineer, construct and complete the Facility in a good workman-like manner, only with materials and equipment that are new and of international utility-grade quality;
- (f) Engage only internationally recognised Contractors that have significant experience in the engineering, procurement and construction of power generating-stations;
- (g) Provide at its own risk and expense the necessary facilities and services for the safety and protection of its personnel and, in that regard, comply with all applicable Laws of Bangladesh;
- (h) After the Commercial Operations Date, operate and maintain the Facility, in accordance with:
 - (i) Prudent Utility Practices and Prudent Electrical Practices;
 - (ii) the Operating Procedures developed pursuant to Section 6.4;
 - (iii) Dispatch;
 - (iv) the Laws of Bangladesh; and
 - (v) the Technical Limits set forth in Schedule 2;
- (i) Be responsible at its own risk and expense for ensuring that the construction and operation of the Facility comply with all environmental and safety requirements of the Laws of Bangladesh and the Environmental Guidelines, as applicable, and to be responsible for the disposal and treatment of waste in connection with the Facility as provided in Section 18.

5.2 Off-Taker Covenants

The Off-Taker hereby covenants to and agrees with the Company to:

- (a) Cooperate, if requested by the Company, with the Company to obtain electrical energy for construction of the Facility in accordance with Section 6.3; and
- (b) Cooperate with all appropriate third parties and take such steps as are within its control to facilitate electricity interconnection to the Grid as contemplated hereby;

5.3 Company Representations and Warranties

The Company hereby represents and warrants that:

- (a) The Company is a company validly existing and in good standing under the laws of Bangladesh, and the Company has all requisite corporate power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (b) The execution, delivery and performance by the Company of this Agreement have been duly authorised by all necessary corporate action, and do not and will not:
 - (i) require any consent or approval of the Company's board of directors, shareholders or partners other than those which have been obtained (evidence of which shall be, if it has not been, delivered to the Off-Taker upon its request); and
 - (ii) to the best of its knowledge, violate or breach any provisions of or constitute a default under the Company's corporate charter or bylaws or other organic documents, any material indenture, contract, or agreement to which it is a party or by which it or its properties may be bound, or any material law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to the Company.
- (c) This Agreement is a valid and binding obligation of the Company.
- (d) There is no pending or, to the best of the Company's knowledge, threatened action or proceeding against the Company before any court, Government Authority, or arbitrator that could reasonably be expected to materially adversely affect the ability of the Company to perform its obligations hereunder, or which could reasonably be expected to affect the legality, validity or enforceability of this Agreement, or any material part hereof.

5.4 Off-Taker Representations and Warranties

The Off-Taker hereby represents and warrants that:

- (a)** it is a public utility duly established under the laws of Bangladesh and:

 - (i) has all requisite corporate power and authority to execute and deliver and perform its obligations under this Agreement;
 - (ii) has complied with all requirements under the Laws of Bangladesh in relation to its execution and delivery of this Agreement; and
 - (iii) has all material permits, licences and approvals required by any Government Authority to conduct its business, to own its properties, and to execute, deliver, and, to the extent obtainable at the present time, perform its obligations under this Agreement.
- (b)** This Agreement is a valid and binding obligation of the Off-Taker.
- (c)** There is no pending or, to the best of the Off-Taker's knowledge, threatened action or proceeding against the Off-Taker before any court, Government Authority, or arbitrator that could reasonably be expected to affect materially and adversely the ability of the Off-Taker to perform its obligations hereunder, or which could reasonably be expected to affect the legality, validity or enforceability of this Agreement or any material part hereof.

Section 6: PRE-OPERATIONAL PERIOD

6.1 Permits, Licenses and Approvals

- (a) The Company, at its sole cost and expense shall use reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all Government Authorities, and local agencies, commissions and authorities with jurisdiction over the Company, the Facility to enable it to perform its obligations under this Agreement.
- (b) The Off-Taker, at its sole cost and expense, shall use reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all Government Authorities with jurisdiction over the Off-Taker to enable it to perform its obligations under this Agreement.

6.2 Documents to be Submitted by Company

The Company shall provide the following documents to the Off-Taker:

(a) Permits and Licences

As soon as available, copies of all permits, licenses, approvals and other Government Authorisations that have been issued to the Company for the design, financing, construction, operation and maintenance of the Facility.

(b) Testing Procedure and Protocols

- (i) At least thirty (30) Days before the scheduled commencement of the testing and Commissioning of the Facility, the Company shall submit to the Off-Taker detailed procedures and protocols to be used during the corresponding testing.
- (ii) The Off-Taker shall have the opportunity to provide written comments on the proposed procedure and protocols within fifteen (15) Days of receipt from the Company of said documentation, and the Parties will reach an agreement on the procedures and protocols to be used for testing not later than twenty one (21) Days prior to the scheduled commencement of the respective testing and Commissioning; *provided*, that:

(c) Start-up and Test Schedules

At least thirty (30) Days before the scheduled commencement of testing and Commissioning of the Facility, the intended Start-Up and test schedule for the Facility.

(d) Test Results

Not later than thirty (30) Days after the date of its Commissioning, copies of all test results, for all Commercial Operations Tests performed on the Facility.

(e) Quality Control Programs

Not later than thirty (30) Days prior to the Commercial Operations Date, the Company shall develop and furnish to the Off-Taker a quality control program based on Prudent Utility Practices in relation to the operation and maintenance of the Facility.

6.3 Company's Purchase of Power

- (a)** The Company shall obtain the supply of all electrical energy and any capacity required for the purpose of construction of the Facility (excluding activities covered in Section 6.3(b) below) either by generating it with the Company's own facilities and/or purchasing it from the relevant electricity utility (the "Relevant Utility") having jurisdiction under the laws of Bangladesh to provide such electrical energy to the Company at the Site. If, following the Effective Date, the Off-Taker is requested by the Company, the Off-Taker shall use its reasonable efforts to provide or cause the Relevant Utility to provide, subject to availability and the Off-Taker's or the Relevant Utility's, as the case may be, ability to deliver to the Facility, at the sole cost and expense of the Company, electrical energy for construction, testing, and Commissioning of the Facility. If at any time after the Effective Date the Off-Taker or the Relevant Utility supplies electrical energy to the Facility, the Company shall pay the Off-Taker or the Relevant Utility, as the case may be, for such electrical energy in accordance with the published tariff then charged by the Off-Taker or the Relevant Utility, as the case may be, to its large industrial customers for the provision of electrical energy to such class of customers in effect at the relevant time. Separate meters shall be installed for the measurement of electrical energy delivered by and supplied to the Facility.
- (b)** The Off-Taker shall pay the Company for Net Energy Output delivered during testing and Commissioning in accordance with the provisions of Section 13.

6.4 Operating Procedures

- (a)** Not later than sixty (60) Days before the then-prevailing Scheduled Commercial Operations Date, the Company shall provide the Off-Taker with draft operating procedures dealing with all operation interfaces between the Off-Taker and the Company including, but not limited to:
- (i) method of Day-to-Day communication;
 - (ii) key personnel list;
 - (iii) clearances and switching practices;
 - (iv) outage scheduling;
 - (v) capacity and energy reporting;
 - (vi) operating log; and
 - (vii) reactive power support,

which shall be consistent with this Agreement, the designs of the Facility (including the Metering System), the Technical Limits and Prudent Utility Practices (together, the "Operating Procedures").

- (b) Within thirty (30) Days after the Off-Taker's receipt of the draft Operating Procedures, the Off-Taker shall notify the Company of any requested deletions, amendments or additions.
- (c) The Company shall make any deletions, amendments or additions that the Off-Taker reasonably requests unless they would be inconsistent with this Agreement, the Technical Limits, the designs of the Facility (including the Metering System), or Prudent Utility Practices.

6.5 Off-Taker Observation Visits

- (a) The Off-Taker shall, at its own cost, have the right to have its agents or employees at the Site at any reasonable time, subject to giving reasonable prior notice to the Company (except that no notice shall be required during an Emergency) to observe the progress of the construction, testing and Commissioning of the Facility in accordance with Section 7, and the operation of the Facility.
- (b) All persons visiting the Facility on behalf of the Off-Taker shall comply with the reasonable instructions and directions of the Company or its Contractors. Such visits to the Facility shall not be construed as an endorsement by the Off-Taker of the design, construction or operation of the Facility nor as a warranty by the Off-Taker of the safety, durability or reliability of the Facility.

6.6 Company Progress Reports

- (a) Beginning with the date of the execution of this Agreement and continuing up to the Commercial Operations Date, the Company shall submit progress reports to the Off-Taker and prior to the fifteenth (15th) Day of each Month. Such reports shall cover the progress in the development, permitting, financing, construction, and operation of the Facility for the preceding Month.

Section 7: TESTING

7.1 The Facility will be tested to determine the Net Generation Capacity of the Facility prior to Commercial Operation Date and thereafter annually.

7.1.1 Notification and Scheduling for Net Generation Capacity Test

Not less than fifteen (15) Days prior to testing of Facility, the Company will deliver to the Off-Taker in writing the final program for Commercial Operation Test as per Schedule 3 of this Agreement and annual Net Generation Capacity test of the Facility.

7.1.2 Commercial Operations Test

The Company shall notify the Off-Taker, the expected duration of the testing programs and a tentative schedules for conducting all relevant tests required by Schedule 3 for Commercial Operation Test. The Company shall be entitled to attempt as many Commercial Operations Tests of the Facility as are necessary to satisfy the minimum criteria (as set out in Schedule 3) for achieving the Commercial Operations Date. The Company shall give the Off-Taker not less than forty-eight (48) hours notice of each additional Commercial Operations Test it desires to attempt

7.1.3 Annual Net Generation Capacity Test

After Commercial Operation Date Facility will be tested annually for Net Generation Capacity.

7.2 ***Notice of and Compliance with Testing Procedures***

The Off-Taker shall use its reasonable efforts to comply promptly with all reasonable requests by the Company for assistance carrying out such testing and Commissioning. The Off-Taker shall be given prior written notice of the testing or Commissioning procedure in accordance with Sections 7.1.1 and shall be entitled to be present and observe any such testing and Commissioning.

7.3 ***Copies of Test Results***

The Company shall provide the Off-Taker upon request with copies of the test results of all tests performed pursuant to Section 7 and Schedule 3. The Off-Taker shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

7.4 ***Damages for Off-Taker Delay***

Should the Off-Taker defer any Commercial Operations Test beyond ten (10) Days from the date on which the tests were originally scheduled and such failure results in a delay in the then-prevailing Scheduled Commercial Operations Date, then either Party may, by notice to the other Party, require the formation of the Testing and Commissioning Committee and, provided that the Certification Date has occurred:

- (a) the Required Commercial Operations Date shall be extended on a Day-for-Day basis by the number of Days that the testing was deferred (such number of Days to be hereinafter referred to as the "Testing Delay Duration"); and

7.5 ***Testing Disputes***

If either Party disagrees with the certification made by the Testing and Commissioning Committee, pursuant to this Section 7, such Party may refer the matter as a Dispute to an Expert and the provisions of Section 19 shall apply; *provided* that all payments due between the Parties which became due following such certification shall be paid by the paying Party as they fall due (as if there were no such Dispute) notwithstanding the referral of such Dispute to the Expert.

Section 8: LIQUIDATED DAMAGES

8.1 Delay in Commercial Operations

If the Commercial Operations Date has not occurred by the Required Commercial Operations Date (as such date may have been extended as a consequence of a Force Majeure Event), the Company shall pay the Off-Taker, Monthly in arrears until the Commercial Operations Date, as liquidated damages for delays in Commissioning of the Facility, an amount equal to the product of (a) \$ 50.00 and (b) the Electricity Equivalent Capacity in MW for each Day (or any fraction thereof) of delay of the Commercial Operations Date beyond the Required Commercial Operations Date. In no event shall the total amount of damages assessed under this Section exceed twelve (12) Months of liquidated delay damages.

8.2 Failure to Provide Required Annual Quantity of Electricity.

In the event that, following the occurrence of the Commercial Operations Date, in any Contract Year the Annual Delivered Electricity is less than the Annual Power Delivery Obligation, the Company shall pay to the Off-Taker as liquidated damages therefor an amount equal to the Off-Taker's Margin [equal to the difference between the then-prevailing electricity tariff per kWh for power sold by the Off-Taker to industrial customers and the Tariff payable to the Company per kWh of Delivered Electricity] multiplied by the Annual Power Delivery Obligation minus Annual Delivered Electricity [the quantity of electricity delivered to the Off-Taker during the relevant Contract Year.

8.3 Security Deposits

(a) Performance Security Deposit

- (i) On or before the Execution Date the Company shall deliver to the Off-Taker the Performance Security.
- (ii) The Performance Security shall be encashed by the Off-Taker to satisfy any obligation of the Company hereunder while the Performance Security Deposit is then in effect.

(b) Termination of the Agreement

Upon termination of this Agreement:

- (i) The Off-Taker shall be entitled to retain or collect, as the case may be, from the Performance Security Deposit, any damages or monies then due or reasonably expected to be due to the Off-Taker by the Company, which have not otherwise been paid by the Company;
- (ii) The remainder of the Performance Security Deposit, after making the drawings in clause (i), above, shall be paid or returned to the Company without further draws or deductions within ten (10) Business Days following such termination of this Agreement.

(c) Procedural Provisions of the Performance Security Deposits

- (i) The Performance Security Deposit (a "Security Deposit") shall have a term of not less than three hundred and sixty-five (365) Days.

- (ii) Not less than thirty (30) Days prior to the expiration of the Security Deposit, the Company shall extend the validity of such Security Deposit for an additional term of not less than twelve (12) Months, provided that in the case of the Performance Security Deposit, such term shall not extend beyond thirty (30) Days after the Commercial Operations Date.
- (iii) Security Deposit provided pursuant to this Section 8.3 shall be maintained in accordance with the terms of this Agreement and shall be reinstated to the full required amount within thirty (30) Days of any draw (other than wrongful drawings) thereon by the Off-Taker.
- (iv) If at any time there remains less than twenty (20) Days to the effective term of an existing Security Deposit and the Company has not extended the validity of such Security Deposit, the Off-Taker may encash the then-existing Security Deposit in full; *provided*, that:
 - (A) the Off-Taker may make withdrawals from such bank account only in such amounts and in such circumstances contemplated by this Agreement; and
 - (B) if the Company subsequently provides a replacement Security Deposit equal to or greater than the amount of the Security Deposit then required to be in place, an amount equal to the amount of the Security Deposit encashed pursuant to this Section 8.3 shall promptly be returned to the Company by the Off-Taker.

8.4 Payments of Liquidated Damages

(a) Computation and Payments

- (i) Within:
 - (A) fourteen (14) Days after the end of each Month, in the case of Sections 8.1;
 - (B) sixty (60) Days after the end of each Contract Year in the case of Section 8.2;

subject to the Company's review, the Off-Taker shall compute and advise the Company by written notice (a "Liquidated Damages Notice") of the amount of liquidated damages due to the Off-Taker pursuant to this Agreement for the preceding Month or Contract Year, as the case may be.

- (ii) The Company shall pay to the Off-Taker the amount of liquidated damages shown on the Liquidated Damages Notice, less any amounts disputed by the Company, within twenty-five (25) Days of the date of the Liquidated Damages Notice (the "Liquidated Damages Due Date"), and interest shall accrue on any unpaid amount (except for any part of such amount which is disputed by the Company) from the Liquidated Damages Due Date at the rate per annum of the Bank Rate plus four (4) percent compounded semi annually and shall be computed for the actual number of Days on the basis of a three hundred and sixty-five (365) Day year.

Unless the entire amount of liquidated damages notified on the Liquidated Damages Notice, is paid to the Off-Taker by the Company, the unpaid amount of such undisputed liquidated damages plus accrued interest due to the Off-Taker shall be set off against amounts owed to the Company by the Off-Taker from the Performance Security Deposit or from the monthly invoice, as appropriate.

(b) Improper Drawings

Without prejudice to the Company's other rights under this Agreement or otherwise, in the event that the Off-Taker draws against the Performance Security Deposit or from the monthly invoice provided and it is subsequently determined that the Off-Taker was not entitled to do so, then the Off-Taker shall repay such amount to the Company.

(c) Disputes

Disputes regarding payment of any amount specified in a Liquidated Damages Notice shall be resolved pursuant to the provisions of Section 19.

Section 9: CONTROL AND OPERATION OF THE FACILITY

9.1 Operating Procedures

- (a) The Parties shall comply with the Operating Procedures established pursuant to Section 6.4.
- (b) The Facility shall be operated and maintained in accordance with the Operating Procedures, Dispatch, Prudent Utility Practices and Prudent Electrical Practices and the plan presented by the Company. The Joint Coordinating Committee will be responsible for monitoring and coordinating and settling disputes that may arise from the compliance with these guidelines.

9.2 Dispatch

- (a) The Off-Taker shall have the right to Dispatch the Facility from the Commercial Operations Date, provided that:
 - (i) Dispatch of the Facility must at all times be consistent with the Technical Limits and the Operating Procedures;
 - (ii) during an Emergency, the Off-Taker shall have the right to Dispatch the Facility in accordance with the provisions of Section 9.5 and
 - (iii) except as provided in Section 9.5, the Off-Taker shall Dispatch the Facility in accordance with Economic Dispatch and Section 3.1 of this Agreement.
- (b) The Company shall have the right to determine the operating modes (including but not limited to the determination of how to load each generating unit of the Facility).
- (c) Nothing contained in this Agreement shall be construed to require the Company to operate the Facility at any time, including during an Emergency, in any manner inconsistent with the Technical Limits or the laws of Bangladesh.
- (d) The Off-Taker will provide the Company with at least five (5) minutes advance notice of changes in operating levels to be achieved by the Facility, or such greater period as may be required by the Technical Limits.
- (e) The Company agrees to comply with the instructions it receives from the Off-Taker pursuant to this Section 9.2 and Section 3.1 of this Agreement. In the event that the Company is unable to comply for reasons other than the instructions being inconsistent with the Technical Limits, the Off-Taker's sole remedy shall be as provided in Section 8.2 of this Agreement.

9.3 Scheduling of Energy

The Off-Taker and the Company shall cooperate in establishing the following scheduling for the Facility's Net Energy Output on and after the Commercial Operations Date:

(a) Week-Ahead Notification by the Off-Taker

Not less than forty-eight (48) hours before each Week, the Off-Taker through LDC, PGCB shall provide to the Company estimated requirements, on an hour by hour basis, for Net Energy Output during that Week and also, provisionally, during the following Week but shall not be bound by these figures.

(b) Notification of Available Energy by the Company

(i) Not later than 00:00 hours on the Commercial Operations Date, the Company shall notify the Off-Taker of the Declared Available Energy for each following hour of the Commercial Operations Date.

(ii) Not later than sixteen (16) hours prior to the beginning of each Day (the "Declaration Deadline") following the Commercial Operations Date, the Company shall notify the Off-Taker (or revise any such information previously given) of the Declared Available Energy for each hour of the following Day. If the Company fails to give such notice on or before the Declaration Deadline, the Declared Available Energy for each hour of such Day shall be deemed to be equal to the Declared Available Energy for each hour declared by the Company for the immediately previous Day.

(c) Dispatch Instructions and Revised Dispatch Instructions

(i) Not later than seven (7) hours prior to the beginning of each Day, the Off-Taker through LDC, PGCB shall notify the Company, through a Dispatch Instruction, of its requirements for Net Energy Output and Reactive Power on an hourly basis for such Day.

(ii) Off-Taker through LDC, PGCB may notify the Company of any upward or downward revision to any Dispatch Instruction (a "Revised Dispatch Instruction") at any time, and the Company shall comply with such Revised Dispatch Instruction not later than five (5) minutes before the beginning of any hour to which such revision relates (or such later time following the Revised Dispatch Instruction as may be demonstrated to be required by the Technical Limits).

(iii) the Company shall comply with Dispatch Instructions and Revised Dispatch Instructions prevailing at the start of the relevant hour; provided, that such Dispatch Instructions and Revised Dispatch Instructions:

(A) are consistent with the Technical Limits; and

(B) do not require the Company to operate the Complex at a level exceeding the Declared Available Energy prevailing for the relevant Hour.

9.4 Scheduled Outages and Maintenance Outages

9.4.1 Scheduled Outages

- (a) The Company shall submit its desired schedule of Scheduled Outage periods (including the duration of each such period) to the Off-Taker six (6) Months before the Scheduled Commercial Operations Date of the Facility and on the date falling every six (6) Months after the Commercial Operations Date for each subsequent twelve (12) Month period.
- (b) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to Sections 9.4.1(a) and (b) above, the Company may request a rescheduling of any Scheduled Outage upon ninety (90) Days prior written notice to the Off-Taker. The Off-Taker shall respond to such request within ten (10) Business Days and shall not unreasonably withhold its permission for such rescheduling.

9.4.2 Maintenance Outages

- (a) When the need arises for a Maintenance Outage, the Company shall advise the Off-Taker / LDC, PGCB of such need, and of the commencement and estimated duration of such work. The Company shall be allowed to schedule such Maintenance Outage at a time and within a period of time that is reasonable in light of its need for energy from the Facility and the necessity of the Maintenance Outage but in any event not to exceed the time consistent with Prudent Utility Practices.
- (b) The Company shall use all reasonable efforts to conduct such Maintenance Outage during Off-Peak Hours. The Company may advise the Off-Taker orally (or in writing) of the above matters; and the Off-Taker shall respond orally (or in writing) within twenty-four (24) hours of such notice; and if such communication has been given orally, it shall be confirmed in writing within three (3) Days of such oral notice.

9.5 Emergencies

The Company shall cooperate with the Off-Taker in establishing agreed Emergency plans for the Facility at least ninety (90) Days before the Scheduled Commercial Operations Date including, without limitation, recovery from a local or widespread electrical blackout and voltage reduction in order to curtail load. The Company shall, during an Emergency, provide support and assistance to the Off-Taker and supply such power as the Facility is able to generate within the Technical Limits; *provided*, however, that the Company shall not be obligated to operate the Facility beyond the then-prevailing Declared Available Energy, or beyond the limits which the Company believes are reasonable under the circumstances.

9.6 Maintenance

Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among, but not limited to, other records and data required hereby or elsewhere in this Agreement, the Company shall maintain an accurate and up-to-date operating log at the Facility with records of:

- (a) Facility Net Energy Output production for each Hour at the Delivery Point, bus voltage at all times (for this purpose the Company shall design a computerised system that will maintain a data base of all pertinent parameters, as determined by the Joint Coordinating Committee);
- (b) Changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages; and
- (c) Any unusual conditions found during inspections.

All such records shall be maintained for a minimum of sixty (60) Months after the creation of such record or data or for any additional length of time required by Government Authorities with jurisdiction over either Party; *provided*, however, that the Parties shall not dispose of or destroy any such records after such sixty (60) Month period without giving thirty (30) Days prior written notice to the other Party generally describing the records to be destroyed or disposed of, and the Party receiving such notice does not object thereto in writing within ten (10) Days. Either Party shall have the right, upon ten (10) Days prior written notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation and Dispatch of the Facility at any time during normal office hours during the period such records and data are required hereunder to be maintained.

9.7 Annual Report

The Company shall deliver to the Off-Taker an annual report for each Contract Year within one (1) Month following the expiration of each Contract Year. Such annual report must include the operation and maintenance report for the prior year and the anticipated operation and maintenance plan and emergency plan for the upcoming year.

9.8 Recording of Telephoned Communications

Each Party hereby authorises the other Party to tape record all telephone voice communications relating to Declared Available Electricity and Dispatch of the Facility received from the other Party pursuant to this Agreement and shall supply, at the request of the other Party, a copy of transcript of any such recording.

9.9 Off-Taker Reporting Requirements

The Off-Taker and PGCB, as the case may be, shall submit to the Company within:

- (a) thirty (30) Days after receipt of a written request from the Company, information on the Grid System and the minimum specification for the protective devices for the interconnection equipment of the Company's side of the Delivery Point reasonably necessary for the Company to design, construct, operate and maintain the Facility;
- (b) thirty (30) Days after receipt of a written request from the Company, Dispatch and communication procedures currently in use by the Off-Taker; and
- (c) thirty (30) Days prior to their implementation, any planned changes to the Dispatch and communication procedures then in effect.

Section 10: JOINT COORDINATING COMMITTEE

10.1 Membership

- (a) Not later than one hundred and eighty (180) Days prior to the then-Scheduled Commercial Operations Date, the Parties shall establish a Joint Coordinating Committee of six (6) members, with the Company appointing three (3) members and the Off-Taker appointing three (3) members (one of whom shall be designated by PGCB) .
 - (i) Each party shall also appoint two (2) substitutes for each of its members.
 - (ii) The substitutes must be appointed at least thirty (30) Days prior to being able to substitute for one of the members.
 - (iii) Substitutes may attend the committee meetings but cannot participate in them unless they are replacing a regular member.
 - (iv) Meetings of the Joint Coordinating Committee shall be held at least once a Month.
- (b) The chairmanship of the Joint Coordinating Committee shall rotate each year between the Parties, and the first chairman shall be appointed by the Off-Taker. The Joint Coordinating Committee shall develop procedures for holding meetings, keeping minutes of meetings, maintaining records and appointing and operating sub-committees as may be required.

10.2 Duties

The Joint Coordinating Committee shall serve as a point of co-ordination and negotiation for the two Parties. It will establish procedures relating to the interaction of the Facility (including the Metering System), the Interconnection and Transmission Facilities, the EIF and the remainder of the Grid System.

The duties and authority of the Joint Coordinating Committee shall be:

- (a) coordination of the respective programs of the Parties for the construction, testing and Commissioning and operation of the Facility and the Metering System, and agreement where necessary upon the respective Commissioning procedures;
- (b) discussion of the steps to be taken upon the occurrence of any Force Majeure Event or the shutdown or reduction in capacity of the Facility due to a Force Majeure Event or for any other reason;
- (c) coordination and modification, if required, of operating procedures, including Day-to-Day communications, dispatching procedures, and emergency plans and procedures;
- (d) coordination of Scheduled Outages, scheduled maintenance programs and scheduling and acceptance of performance tests and periodic tests;
- (e) review of maintenance records, including the results of periodic tests, for compliance with manufacturers' maintenance instructions and recommendations;
- (f) coordination of annual, Monthly, weekly, and daily forecasts or requirements from the Facility;

- (g) developing, monitoring, and auditing the procedures to record capacity, reliability, energy, ambient Site conditions, and any other parameters that may influence the billing or liquidated damages arising from operation of the Facility;
- (h) consultation on the insurance program to be undertaken by the Company for the purposes of this Agreement;
- (i) review and coordination of safety matters affecting the Facility and the Contractors;
- (j) consultation on Emergency plans developed by the Parties for recovery from a local or widespread electrical blackout;
- (k) review of metering and protective schemes and devices;
- (l) review of the Company's record keeping, including, but not limited to, drawings, specifications, manuals, spare parts inventories, and operating records; and
- (m) any other mutually agreed matter affecting the operation or maintenance of the Facility and its interconnection with the Grid System.

10.3 Decision Making

Decisions of the Joint Coordinating Committee shall be made by agreement of not less than a majority of the committee members and shall not be binding on the Parties unless such decision is affirmed in writing by a duly authorised representative of each Party. If agreement is not achieved, the dispute settlement procedure outlined in Section 19 shall be initiated and followed at the request of a Party.

10.4 Agreement to Prevail

- (a) Notwithstanding the other provisions of this Section 10, in the event of any conflict between the duties and authority of the Joint Coordinating Committee set out in this Section 10 (or any decision of the Joint Coordinating Committee made pursuant thereto) and any other provision of this Agreement, such other provision of this Agreement shall prevail (and the duties and authority of the Joint Coordinating Committee shall be limited accordingly).
- (b) It is also agreed that, unless otherwise agreed by the Parties, the Joint Coordinating Committee shall only make decisions or determinations that are expressly provided for in Section 10 of this Agreement.

Section 11: Electrical Interconnection Facility (EIF)

11.1 [400/230] kV Substation

The Company shall build a required switchyard to connect the Facility with the nearest PGCB Grid Substation. The mode of connection will be radial. This switchyard at the Site shall be designed, purchased and constructed by the Company. The Company, in coordination with PGCB, shall design and provide all control and protection of the switchyard and protection of transmission line connecting the switchyard. The Company shall provide communication links to the power grid SCADA system, including adequate remote terminal unit points to accommodate the PGCB and the National Load Dispatch Center (LDC) requirements.

The Company shall be responsible for construction of the interconnections between the switchyard and the PGCB Grid Substation. Line relays and controls at the [insert Site] switchyard shall be provided by the Company. Company will provide relays and controls at the other substations and switchyards involved and the Company shall coordinate design with PGCB as required.

11.2 Interconnection of the Facility to the Grid System

(a) Electrical Interconnection Facilities (EIF)

The Company shall procure the design, construction, installation, commissioning, operation and maintenance of the Electrical Interconnection Facilities in accordance with the terms of this Agreement, and, from and after the testing and commissioning of the Electric Interconnection Facilities, the Electrical Interconnection Facilities on PGCB's side (EIF on PGCB's side means from substation gantry to inward bay & other structures of the PGCB substation except interconnection lines.) of the Delivery Point shall be transferred to PGCB at no cost. After such transfer, PGCB shall own, operate and maintain the Facility .

(b) Data Necessary for Construction of Electrical Interconnection Facilities

PGCB shall, within thirty (30) Days of a request therefore by the Company, provide all additional information reasonably requested by the Company connection with its design, construction and completion of the Electrical Interconnection Facilities or the switchyard.

(c) Easements and Rights-of-Way

(i) The Company shall do the needful for all necessary easements and rights-of-way necessary to install, operate, maintain, replace and/or remove the Electrical Interconnection Facilities. The Company shall execute such easements, rights-of-way, licenses and other documents in a form as PGCB may reasonably require to record any and all of the above rights.

(ii) Consideration for such rights and for the EIF so transferred shall be the execution of this Agreement and no other consideration shall be required.

(iii) Insofar as it shall be consistent with the laws of Bangladesh, all easements, rights-of-way, licences and other rights under this Agreement shall survive termination or expiration of this Agreement. Revocable licenses, if any, granted to PGCB pursuant to this Section 5A.1(c) shall include such reasonable further term, not to exceed one hundred and eighty (180) Days beyond the Term, to allow PGCB to remove the Electrical Interconnection Facilities transferred to it by the Company.

- (iv) Except as may be provided to the contrary in Section 5.1(c)(i), the Company, at its expense, shall be responsible for obtaining all rights-of-way, easements and other real or personal property interests necessary to construct, operate and maintain the Electrical Interconnection Facilities during the Term.

(d) Construction of Electrical Interconnection Facilities

- (i) The Company shall, at its sole expense except as provided in Section 5.1(c)(i), construct, test and commission the Electrical Interconnection Facilities no later than four (4) Months prior to the Required Commercial Operations Date.
- (ii) The Company shall provide to the Off-Taker and PGCB Monthly reports on the progress of the design and construction of the Electrical Interconnection Facilities (including the milestones for such construction and any material variations therefrom in the construction of such facilities).
 - (aa) PGCB and the Off-Taker, at each of their sole expense, be allowed by the Company to observe the progress of the construction, testing and commissioning of the Electrical Interconnection Facilities at the reasonable request of either of the Off-Taker or PGCB, as the case may be.
 - (bb) When on the Company's property, the Off-Taker or PGCB, as the case may be, shall comply with all reasonable instructions of the Company and its contractors relating to observing the progress of the Electrical Interconnection Facilities.
- (iii)
 - (aa) The Company shall procure the design and construction of the Electrical Interconnection Facilities substantially in accordance with Schedule 5, the construction requirements of this Agreement, Prudent Electrical Practices, Prudent Utility Practices and all applicable Laws of Bangladesh.
 - (bb) The Company, at its sole cost and expense, shall use reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all federal, provincial and local agencies, commissions and authorities with jurisdiction over the Company and the Electrical Interconnection Facilities to enable it to perform its obligations under this Agreement.
 - (cc) Following transfer to PGCB, PGCB shall operate and maintain the Facilities on its side of the Delivery Point in accordance with the Operating Procedures and in such a manner so as not to have a material adverse effect on the Facility or the ability of the Facility to operate within the Technical Limits and vice versa (to the extent it would otherwise be able to do so), in accordance with Prudent Electrical Practices and Prudent Utility Practices.
 - (dd) PGCB, at its sole cost and expense, shall use reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all federal, provincial and local agencies, commissions and authorities with jurisdiction over the PGCB and the PGCB's part of Facilities to enable it to perform its obligations under this Agreement.

(ee) The Company shall provide in a timely manner (1) all relevant information, including but not limited to information concerning social impact such as land acquisition, and consequential resettlement; and (2) all necessary assistance as may be reasonably requested by the Off-Taker or PGCB from time to time for the purpose of the design, construction and testing of the Electrical Interconnection Facilities, including completing the environmental impact study (in so far as it relates to the construction of the Interconnection and Transmission Facilities).

(e) No Obligation on the Off-Taker or PGCB until EIF is Transferred to PGCB

Notwithstanding anything to the contrary expressed or implied in this Agreement, in no event shall the Off-Taker have any obligation to purchase or pay for Net Energy Output or shall PGCB have any obligation to transport electricity from the Delivery Point to the Point of delivery until such time as the Electrical Interconnection Facilities have been constructed, tested and commissioned and the portion of the Electrical Interconnection Facilities on PGCB's side of the Delivery Point have been transferred to BPDB, all in accordance with the requirements of this Agreement.

(f) Interconnection Equipment on Company's Side of Delivery Point

The Company shall be responsible, at the Company's expense, for designing, constructing, installing and maintaining all auxiliary and interconnecting equipment on the Company's side of the Delivery Point and the Company shall own all such auxiliary and interconnection equipment.

(g) Protective Devices

- (i) The Company shall design, procure and install protective devices for the interconnection equipment including line on both sides of the EIF prior to the commissioning of the EIF.
- (ii) Subject to giving the Company reasonable notice, the Off-Taker or PGCB may from time to time after the Commercial Operations Date require the Company to modify or expand the requirements for protective devices. Following approval by the Off-Taker or PGCB, as the case may be, of the costs of such modification or expansion, the Company shall perform such modification or expansion and the Off-Taker or PGCB, as the case may be, shall reimburse the Company for agreed reasonable costs incurred for such modifications or expansions, as a "Pass-Through" Item.
- (iii) Together with an invoice for reimbursement, the Company shall provide written documentation of the expenses incurred in modifying or expanding the protective devices. Payments shall be due twenty five (25) Days after delivery of the invoice by the Company. In case of any Dispute, the Dispute shall be referred to an Expert and the provisions of Section 13.2(i) of the Power Purchase Agreement shall apply mutatis mutandis. Such work shall be completed within a reasonable time under the circumstances. BPDB or PGCB, as the case may be, shall be notified in advance of, and shall have the right to observe, all work on the protective devices.
- (iv) Each of the Company and PGCB shall notify the other in advance of any changes to either the Facility or the Grid System that may affect the proper coordination of protective devices between the two systems.

(h) Testing

Each of the Company and PGCB shall cooperate in testing and commissioning the Interconnection Facilities in accordance with the schedule developed by the Joint Coordinating Committee, and at such other times thereafter as either the Company or PGCB may reasonably require.

11.3 Control of Switchyard, Communications, Instrumentation

(a) The Company shall provide, install and commission all the facilities and equipment for telemetering, communication, control, and monitoring, including voice channels, which may be required for the Facility to interface with the [Off-Taker's/BPDB's] communication system, including any remote terminal units within the Facility, and all control and signal cables between the switchyard and the Facility. An interface panel shall be provided within the switchyard control facility for receiving the signals from PGCB's grid control. It shall be responsibility of the Company to lay and terminate these cables at the interface panel.

(b) All circuit breakers and disconnect switches shall be capable of being electrically controlled from the three control positions as follows:

- (1) Local Control: Located adjacent to switching devices, to facilitate maintenance, inspection, and emergency operation.
- (2) Remote Control: Located at the switchyard control room, or the on-site power plant control room (CCR), where switching devices are controlled by direct wire or communication connections.
- (3) Supervisory Control: Located at the Load Dispatch Centre (LDC) at Dhaka, for remote control and supervision via the tele-control systems to be supplied by the Company.

The Company shall provide all the necessary control-selector switches, position-indicating contacts, and interposing relays.

(c) The Company shall provide all line relay equipment and LDC communication equipment, and remote terminal units. The specifications of such relays, remote terminal units and communication equipment shall conform with the existing equipment currently being used by PGCB. During the Term, the Company shall be responsible for the control of the Net Energy Output of the Facility in response to Dispatch instructions from the Off-Taker.

(d) A central on-Site switchyard control room shall be provided by the Company so that operators can supervise the generators, perform switching and load dispatch. Also, a distributed control system shall be provided to coordinate the control and supervision of the generator control systems, power plant auxiliary systems and high voltage switchyard.

Section 12: METERING

12.1 Metering

- (a) The standards for performance measurement systems and testing are specified in Schedule 4.
- (b) The Metering System used to measure Net Energy Output pursuant to this Agreement, and to monitor and coordinate operation of the Facility, shall be purchased, installed and maintained by the Company according to the specifications in Schedule 4. The location of the Metering System shall be at the location on the high voltage side of generator transformer at which the Net Generation Capacity and Facility Net Energy Output is measured.
- (c) All Metering System, Back-Up Metering System, current and voltage transformers will be tested at the manufacturer's premises following manufacture. The Company shall arrange, at its own expense, for such testing to be witnessed by the Off-Taker representatives and provide at least thirty (30) days notice of such testing.
- (d) The Company shall inspect, test, and calibrate the Metering System upon installation. The Company shall provide the Off-Taker with reasonable advance notice of, and allow a representative of the Off-Taker to witness and verify, such inspections, tests, and calibrations. Thereafter, the Off-Taker shall test the Metering System at intervals of not less than one hundred and eighty (180) Days, unless otherwise agreed by the Joint Coordinating Committee, after providing the Company with no less than fourteen (14) Days advance notice. The Off-Taker shall allow a representative of the Company to witness and verify all inspections, tests, and inspections carried out by the Off-Taker in accordance with this Section 12.
- (e) Upon written request by the Company, the Off-Taker shall perform additional inspections, tests, or calibrations of the Metering System within fourteen (14) Days following the date of such written request. The actual expense of any such requested additional inspection, tests, or calibration shall be borne by the Company, unless, upon such inspection, tests or calibration, a metering device is found to register inaccurately by more than one-half of a percent (0.5%), in which event the expense of the requested additional inspection or testing shall be borne by the Off-Taker. The Company shall be notified by the Off-Taker of the time of any such additional inspections, tests, or calibrations of the Metering System and shall be allowed to be present at and observe such inspections, tests, or calibrations of the Metering System.
- (f) The Company may elect to install and maintain, at its own expense, a Back-Up Metering System at the Delivery Point in addition to (and identical to) those installed and maintained by the Company, which installation and maintenance by the Company shall be in accordance with Prudent Utility Practices.
- (g) The Metering System and the Back-Up Metering System shall be designed and constructed based on Prudent Utility Practices providing a measured accuracy of +/- 0.5%. Individual components, where applicable, shall have an accuracy of +/- 0.2%.
- (h) When on Site, the Off-Taker shall follow all reasonable instructions of the Company and the Contractors and, notwithstanding any other provision in this Agreement to the contrary and shall indemnify and hold the Company and the Contractors harmless from any loss or damage sustained by virtue of the Off-Taker's negligence or willful misconduct in the performance of its obligations pursuant to Section 12(b) and (c) but only to the extent that such loss or damage is not covered by insurance.

12.2 Reading of Meters

- (a) The Metering System shall continuously read the Facility Net Energy Output of the Plant. Measurements of the Facility Net Energy Output (active & reactive), MW, frequency, voltage etc. shall be electronically recorded on half hourly basis and shall be used for preparing monthly invoice (unless otherwise mutually agreed upon) . In the event the Metering System is not in service due to repair, testing or maintenance by Company, then the electronic record of the Net Energy Output from the Back-Up Metering System shall be used and the Company shall deliver a copy of the Back-Up Metering System record to BPDB with the relevant Monthly invoice(s).
- (b) Verifications and true-up of the Metering System and the Back-Up Metering System records shall be carried out at the next Monthly reading of the Metering System. BPDB, at its discretion may, by giving forty-eight (48) hours notice to the Company, request joint recording of the reading of the Metering System for verifying the electronically obtained readings provided such requests cannot be for more than two joint recording of the readings in any Month.

12.3 Adjustment for Inaccurate Meters

If the Metering System fails to register, or if the measurement made by the Metering System is found upon testing to be inaccurate by more than one-half of a percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering System for the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (a) First, the readings of the Back-Up Metering System, if any, may be used to calculate the correct amount of Net Energy Output, unless a test of such Back-Up Metering System, as required by either Party, reveals that the Back-Up Metering System is inaccurate by more than one-half of a percent (0.5%) or is otherwise functioning improperly;
- (b) If there is no Back-Up Metering System or if the Back-Up Metering System is found to be inaccurate by more than one-half of a percent (0.5%) or is otherwise functioning improperly, then the Company and the Off-Taker shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to between the Company and the Off-Taker;
- (c) In the event that the Off-Taker and the Company fail to agree upon an estimate for the correct reading, the Off-Taker shall make any payments to the Company required as a result of its estimate of the correct reading, which shall not in any event be greater than the last meter reading known to be correct, and the matter may be referred by either Party for determination by Expert pursuant to Section 19.3; and
- (d) The difference between the previous payments by the Off-Taker for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date which is midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus one-half of a percent (0.5%) and not otherwise functioning improperly.

12.4 Sealing of Metering System

The Metering System and the Back-Up Metering System shall comply with the specifications in Schedule 4 and shall be jointly sealed. Such seals shall be broken only by the Off-Taker personnel. The Company shall be given at least fourteen (14) Days advance notice of the breaking of seals on the Metering System or the Back-Up Metering System; provided, however, that no such notice will be necessary when the breaking of a seal is necessitated by the occurrence of an Emergency. Such notice will specify the time at which a meter seal will be broken by the Off-Taker and the Company will be given the opportunity to be present when such seals are broken.

12.5 Repair, Replacement or Recalibration of Metering System

When any component of the Metering System or the Back-Up Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly (whether or not within the accuracy and repeatability tolerances set forth in Table 6.1 of Schedule 4), the Company shall forthwith repair, recalibrate or replace such component of the Metering System at its expense. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Back-Up Metering System, the metering system shall be jointly sealed.

Section 13: TARIFF, BILLING AND PAYMENT

13.1 Commercial Terms

(a) Reference Tariff

- (i) The Reference Tariff is specific for the Term as set forth in Table A of Schedule 6. For each Commercial Contract Year, the Reference Tariff is composed of the Reference Energy Price.
- (ii) From and after the Commercial Operations Date, the Energy Payment payable to the Company for Net Energy Output for each Month during the Term shall be calculated based on the Reference Energy Price, as provided in this Section 13.1 and Schedule 6.
- (iii) The Reference Energy Price is made up of two components:
 - (A) the Reference Fuel Cost Component (“FCC”), and
 - (B) the Reference Non-Fuel Cost Component (“NFCC”).

(b) Energy Payments

From and after the Commercial Operations Date, the Off-Taker shall pay to the Company, for each Month, the Energy Payment in accordance with Section 13.2(a) for Net Energy Output supplied to the Off-Taker which shall be calculated as follows:

$$EP_{mn} = FCP_{mn} + NFCC_{mn}$$

where:

- EP_{mn} = Energy Payment payable in Taka for Month “m” of Contract Year “n”.
- FCP_{mn} = Fuel Cost Payment payable in Taka for Month “m” of Contract Year “n” and calculated as set out in subsection (A) below.
- $NFCC_{mn}$ = Non-Fuel Cost Payment payable in Taka in Month “m” of Contract Year “n” and calculated as set out in subsection (B) below.

(A) Calculation of Fuel Cost Payment

- FCP_{mn} = Fuel Cost Payment payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$FCP_{mn} = [FCC_{Ref} \times FCAF_{mn}] \times NEO$$

where:

FCC_{Ref} = the Reference Fuel Cost Component for Coal, as provided in Table A of Schedule 6,

NEO = Net Energy Output in kWh and

$FCAF_{mn}$ = the Fuel Cost Adjustment Factor = Fuel or Coal price/base Fuel or Coal price = FP_a/FP_b

(a) for imported Coal

Coal Price_n = FP_a = Coal price delivered to the Facility (in Taka/kg to include costs of Coal mentioned herein and indexed to FOB,

Where,

(i) FOB: 3 days rolling average (immediate two days prior to B/L Date, day of B/L) of Coal mean of platts or any other international agency acceptable to Off-Taker for Australian/Indonesian/Indian Sub-bituminous Coal (as per specification provided in the definition of Coal).

+

(ii) Custom Duties and VAT taxes, fees, surcharges and any Government charges as paid in actual to any GOB authority (if applicable).

+

(iii) Freight upto seaport in Bangladesh which shall be as per Baltic Dry Index (BDI) or any other applicable index acceptable to the Off-Taker.

+

(iv) transportation cost upto the Facility and such cost shall be as determined by the appropriate authority of GOB.

(b) For local Coal, the price of Coal shall be as determined by the appropriate authority of GOB.

(B) Calculation of NFCP

$NFCP_{mn}$ = Non Fuel Cost Payment, payable in Taka, for Month “m” of Contract Year “n” and calculated as follows:

$$NFCP_{mn} = [NFCC_{Ref}] \times NEO_n \times PFadj_m$$

where:

$NFCC_{Ref}$ = the Reference Non Fuel Cost Component, as provided in Table A of Schedule 6, and

PF_{adj_m} = Power factor Adjustment = $0.85/\text{average power factor of the Month "m" at Delivery Point}$ and shall be applicable if $PF_{adj_m} < 1$

0.85 = Power factor lagging at Delivery Point.

(ii) Energy Payment During Commissioning

(A) Prior to the Commercial Operations Date, the Off-Taker shall pay to the Company, Monthly in arrears in accordance with Section 13.2(a), the Fuel Cost Payment for the Net Energy Output delivered to the Delivery Point during testing and Commissioning of the Facility.

(B) Such Payment shall be calculated in the manner consistent with the calculation of the Energy Payment after the Commercial Operations Date (as set out in Section 13.1(b)(A) applied *mutatis mutandis*).

(c) Indexation Factors and Estimates

(i) If at any time an index used to determine any payment of Tariff component is withdrawn, becomes unavailable for any reason or becomes, in the reasonable opinion of the Off-Taker or the Company, inappropriate as a basis for indexation pursuant to this Section 13.1(c)(i), then upon written notice from either Party, the Off-Taker and the Company shall:

(A) use their best endeavours to identify a mutually acceptable alternative index.

(B) if after fourteen (14) Days the Parties are unable to agree on an alternative index to be substituted for the index that requires replacement, the Parties shall appoint an Expert pursuant to Section 19.3, who shall specify an alternative index or determine that the presently used index continues to be appropriate for the purposes of this Agreement.

(ii) Pending the substitution of an alternative index, no indexation adjustment shall be made with respect to the relevant index. Upon the substitution of an alternative index, the Parties shall make the indexation adjustment with the alternative index retrospectively to the date when the relevant adjustment would otherwise have been made.

(d) Right to Review

A Party receiving an invoice hereunder may at any time seek to verify the computation or application of any index and may require the other Party, where appropriate, to provide to it copies of its calculations, with reasonable supporting detail to enable that Party to verify the result of either computing an indexation factor or applying an indexation factor to a component of the Reference Tariff or the Reference Wheeling Charge, as the case may be, or any additional charges.

13.2 Billing and Payment

(a) Invoices and Payments for Electricity

- (i) Invoices shall be on a Monthly basis for all charges incurred throughout the relevant Month. The invoices for electricity sold to the Off-Taker shall be prepared by the Company and submitted to the Off-Taker no sooner than seven (7) Days after the end of the Month for which such invoice is applicable and shall show the due date of the invoice to be thirty (30) Days after date of issuance of the relevant invoice. Such invoices shall present all information and calculations, in reasonable detail, required to permit the Off-Taker to confirm the consistency of the invoice with the provisions of this Section 13.2.
- (ii) The Off-Taker shall pay to the Company by cheque or wire transfer in then-available funds all amounts due under this Agreement, less any amounts that are subject to Dispute. Payment shall be made no later than the due date of the relevant amount.
- (iii) The Off-Taker has the right to review an invoice or statement prepared by the Company and, if it disagrees with the amount payable under such invoice, it may Dispute all or any portion of such invoice or request clarification and substantiation of such invoice, and if it is not satisfied with such clarification or substantiation, it may Dispute all or any portion of such invoice and so advise the Company in writing.
- (iv) Late payments shall bear interest at a rate per annum equal to the Bank Rate per annum and shall be computed for the actual number of Days on the basis of a three hundred sixty-five (365) Day year.
- (v) Any unpaid and undisputed (or determined pursuant to Section 19 to be owed) amount of liquidated damages plus accrued interest due to the Off-Taker pursuant to Section 8 may be set off against amounts owed to the Company by the Off-Taker as invoiced pursuant to this Section 13.1.

(b) Energy Payments

For each Month in which the Company delivers Net Energy Output to the Off-Taker on or after the Commercial Operations Date, the Company shall compute the Energy Payment, based on the reading electronically recorded by the Metering System, in accordance with Section 13.1(b), and the Off-Taker shall pay the Energy Payment in accordance with Section 13.2(a).

For each Month in which the Company delivers Net Energy Output to the Off-Taker prior to the Commercial Operations Date, the Company shall compute the Fuel Cost Payment, based on the reading electronically recorded by the Metering System, in accordance with Section 13.1(b)(A), and the Off-Taker shall pay the Energy Payment in accordance with Section 13.2(a).

(c) Payment Disputes

- (i) At any time prior to one hundred and eighty (180) Days after either Party receives an invoice, notice or demand for payment under this Agreement, the Party receiving such invoice may serve notice (an "Invoice Dispute Notice") to the invoice or demand delivering Party that the amount or any portion of such amount shown in such invoice or demand is disputed by the receiving Party.

Each Invoice Dispute Notice shall specify the invoice concerned, the amount of the Dispute and the basis therefor in reasonable detail. If any amount or any portion of such amount or any item shown in an invoice is disputed by the receiving Party, such Party shall pay the undisputed amount of the invoice or demand in accordance with Section 13.2(a) until resolution of such Dispute in accordance with Section 19.

- (ii) In the event of a Dispute, a Party may seek resolution of the Dispute in accordance with Section 19. Upon the determination by the Expert appointed under Section 19.3 that all or any portion of a Disputed amount is owed by a Party, such Party shall, not later than fifteen (15) Business Days following the date of determination by the Expert, pay such amount to the other Party plus interest at the Bank Rate plus two percent (2%) from the date the amount in Dispute was due under the invoice until (but excluding) the date of payment. Any amounts remaining unpaid after such fifteenth (15th) Business Day shall be subject to interest pursuant to Section 13.2(a)(iii) from the Day following the fifteenth (15th) Business Day through (but not including) the date of payment. If a Party does not accept the determination of the Expert, it shall notify the other Party of its intent to submit the Dispute to arbitration in accordance with the provisions of Section 19 and the provisions of Section 13.2(h)(iii) shall apply.
- (iii) Upon the resolution of the Dispute, any amount determined to be owing which has not been paid or is determined to have been improperly paid and is to be repaid, as the case may be, shall be paid by the owing Party to the other Party within fifteen (15) Business Days of the resolution of the Dispute, together with interest equal to the Bank Rate plus two percent (2%) from the date payment was originally due or from the date paid for any amount to be repaid until the earlier of (but excluding) the date paid or such fifteenth (15th) Business Day. Any amount determined to be owed that remains unpaid after such fifteenth (15th) Business Day shall be subject to interest pursuant to Section 13.2(a)(iii) from the Day following the fifteenth (15th) Business Day through (but not including) the date of payment.

(d) Improper Drawings

Without prejudice to the Off-Taker's other rights under this Agreement or otherwise, in the event that the Company is paid an amount which is subsequently determined that the Company was not entitled to such amount, then the Company shall repay such amount to the Off-Taker.

(e) Termination of Agreement

Within ten (10) Business Days following any termination of this Agreement, the Company shall deliver to the Off-Taker any then-outstanding that may be due and payable to the Company at the time of such termination.

Section 14: INSURANCE

14.1 Maintenance of Insurance Policies

The Company, at its sole cost and expense, shall obtain and maintain during the Term, all appropriate and necessary policies of insurance to protect the Facility as comprehensively as possible against all risks that can be reasonably anticipated. Such policies of insurance shall include, but not necessarily be limited to, the following during the term:

- (i) Up to the Commercial Operation Date:
 - a) Marine and Air Cargo
 - b) Loss of revenue (following marine incident)
 - c) Contractors All Risks
 - d) Loss of Revenue (Following Construction All Risk)
 - e) Public Liability

- (ii) From the Effective Date until the end of the Term:
 - a) All Risks Insurance for Fixed Assets
 - b) Consequential Losses following All Risks
 - c) Machinery Breakdown
 - d) Consequential Losses following Machinery Breakdown
 - e) Public Liability

Section 15: LIABILITY AND INDEMNIFICATION

15.1 Limitation of Liability

Except as required by Section 15.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

15.2 Indemnification

- (a) The Off-Taker shall indemnify in full, defend, and hold harmless the Company and its Contractors and their respective officers, directors, and employees and the Off-Taker shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against the Company or its Contractors or their respective officers, directors and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the Company or its Contractors or its respective officers, directors and employees in connection with the Facility resulting from any negligent or wrongful act or omission of the Off-Taker (or its officers, directors, and employees), without recourse to the Company or its Contractors. The Off-Taker will hold the Company or its Contractors fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused or contributed to by any negligent or wrongful act or omission of the Company or its Contractors or the failure of the Company or its Contractors to take reasonable steps in mitigation thereof.
- (b) The Company shall indemnify in full, defend, and hold harmless the Off-Taker and its contractors and each of its officers, directors, and employees and the Company shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against the Off-Taker or its contractors or either of its respective officers, directors, and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the Off-Taker or its contractors or either of its respective officers, directors, and employees in connection with the Facility resulting from (i) any negligent or wrongful act or omission of the Company or its Contractors (or its respective officers, directors, or employees), without recourse to the Off-Taker. The Company will hold the Off-Taker fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused or contributed to by any negligent or wrongful act or omission of the Off-Taker or its contractors or the failure of the Off-Taker or its contractors to take reasonable steps in mitigation thereof.
- (c) In the event that any Loss results from the joint or concurrent negligent or intentional acts of the Parties, each shall be liable under this indemnification in proportion to its relative degree of fault.
- (d) No Party shall be entitled to indemnification under this Section 15.2 if and to the extent that a Party has received payment in full in respect of a Loss or proceeding under the indemnities contained in any insurance policy, in respect of the relevant act or omission; *provided* that, nothing herein shall be deemed to require a waiver of subrogation rights by any insurer of a Party or the assets of a Party, including the Facility.
- (e) The provisions of this Section 15.2 shall survive for a period upto the expiry or early termination of this Agreement.

15.3 Assertion of Claims

Neither Party shall be entitled to assert any claim for indemnification until such time as all claims of such Party for indemnification under this Agreement exceed an amount equal to the sum of one hundred thousand Dollars (US\$100,000), in the aggregate, at which time all claims of such Party for indemnification under this Agreement may be asserted; *provided*, however, that when such claims have been asserted the same rule shall apply in respect of future claims. Notwithstanding the preceding sentence, either Party may assert a claim for indemnification regardless of amount upon the expiry or earlier termination of this Agreement or if such claim would otherwise be barred by the applicable statute of limitations.

15.4 Defense of Claims

- (a) Each Party shall promptly notify the other Party of any loss of, or damage to property, death or injury to person (or any claim or proceeding in respect thereof) in respect of which it is or may be entitled to indemnification under Section 15.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, damage, death or injury (or any claim or proceeding in respect thereof).
- (b) The indemnified Party shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying party hereunder; *provided*, however, that if the indemnifying party acknowledges in writing its obligations to indemnify the indemnified party in respect of loss to the full extent provided by Section 15.2, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying party of such defense.
- (c) Neither Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided*, that after agreeing in writing to indemnify the Indemnified Party, the Indemnifying Party may settle or compromise any claim without the prior approval of the Indemnified Party.
- (d) Notwithstanding the foregoing, the indemnified party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred unless:
 - (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party;
 - (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action;
 - (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party; or
 - (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.
- (e) If paragraph (ii), (iii) or (iv) of subparagraph (d) above shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

Section 16: FORCE MAJEURE

16.1 Definition of Force Majeure

In this Agreement, "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances (including the effects of such events and circumstances or combination of events or circumstances) referred to in this section that materially and adversely affects the performance by a Party of its obligations under this Agreement, but only if and to the extent that such events and circumstances are not within the reasonable control of the affected Party; *provided*, that an event or circumstance or combination of events or circumstances (including the effects of such events and circumstances or combination of events or circumstances) shall not be construed as a Force Majeure Event unless such material and adverse effect could not have been prevented, overcome, or remedied in whole or in part by the affected Party through the exercise of reasonable diligence and care, it being understood and agreed that reasonable diligence and care includes acts or activities to protect the Parties facilities from a casualty event, which are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures.

- (a) Force Majeure Events include the following events and circumstances to the extent they, or their consequences, satisfy the above requirements.
- (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, political act, or act of terrorism;
 - (ii) fire, explosion, chemical or radioactive contamination or ionising radiation;
 - (iii) strikes, works-to-rule or go-slows that extend beyond the facilities of a Party;
 - (iv) lightning, earthquake, flood, tsunami, storm, cyclone, typhoon, or tornado;
 - (v) epidemic or plague.
- (b) Force Majeure Events shall expressly not include the following conditions, except (in the case of (i) or (ii) only) to the extent that they result directly from any event or circumstance or combination of events or circumstances in relation to a Contractor and the performance of its obligations under an agreement which would constitute a Force Majeure Event if such Contractor, was a Party and such agreement were this Agreement, in which case, if such event or circumstance affects the Construction Contractor or the O&M Contractor, at such time as it affects the performance of the Company hereunder, it shall be a Force Majeure Event for the Company:
- (i) late delivery of machinery, equipment, materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor or supplier to either of the Parties; and
 - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

16.2 Notification Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
- (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, not later than three (3) Days after the occurrence of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Company and the Off-Taker, which ever is later; and
 - (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event and its cause or causes and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effects thereof; and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (b) The affected Party shall also provide notice to the other Party of:
- (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event; and
 - (ii) its ability to recommence performance of its obligations under this Agreement,
- as soon as possible, but in any event, not later than seven (7) Days after the occurrence of each of (i) and (ii) above.
- (c) Failure by the affected Party to give notice of a Force Majeure Event to the other Party within the three (3) Day period or six (6) hour period required by Section 16.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, that in such case, the affected Party shall not be excused pursuant to Section 16.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Section 16.2(a)(i) has been given; and if such notice is given within the three (3) Day period or six (6) hour period as required by Section 16.2(a)(i), the affected Party shall be excused for such failure or delay pursuant to Section 16.4 from the date of commencement of the relevant Force Majeure Event.

16.3 Duty to Mitigate

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

16.4 Delay Caused by Force Majeure

- (a) So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 16.3 and continues to so comply, then:
 - (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement during the existence of a Force Majeure Event; and
 - (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; *provided*, that:
 - (A) no relief, including without limitation, the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 16.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party, as a result of a breach by the affected Party of this Agreement, had the Force Majeure Event not occurred; and
- (b) Without prejudice to amounts payable pursuant to Section 13.2, Section 7, Section 8, or this Section 16, the unaffected Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event.

16.5 Payments During Force Majeure Event

Upon the occurrence of any Force Majeure Event after the Commercial Operations Date, then during the Force Majeure Event, the Off-Taker shall pay to the Company Energy Payments for Net Energy Output delivered during such Force Majeure Event. The Company shall not be entitled to any additional Energy Payments pursuant to Section 13.1 or any other payments of any kind or nature from the Off-Taker arising during any Force Majeure Event.

Section 17: TAXES AND CLAIMS

- (a)** Except as otherwise provided herein, or in "Part IX, of the Policy Guidelines for Enhancement of Private Participation In The Power Sector, 2008", the Company shall be responsible for payment of all taxes, contributions, rates, charges, and fees payable to any Government Authority (whether payable in Bangladesh or otherwise) arising in connection with the construction, ownership, operation, and maintenance of the Facility. Nothing herein, however, shall in any way limit or override any provisions of this Agreement that allow certain taxes and charges to be reimbursed to the Company in accordance with Section 13.1.
- (b)** All present and future lawful taxes, duties, levies, or other impositions applicable to the Off-Taker arising from or in connection with its rights and obligations under this Agreement shall be paid by the Off-Taker in due time.

Section 18: ENVIRONMENTAL REGULATIONS

With respect to matters of health, safety and protection of the environment as they may be affected by the Project, the Company shall comply with the applicable Laws of Bangladesh.

Section 19: CHOICE OF LAW AND RESOLUTION OF DISPUTES

19.1 Governing Law

This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed and governed by the Laws of Bangladesh.

19.2 Resolution by Parties

- (a) Mutual Discussions
 - (i) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party gives written notice of the Dispute to the other Party identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute.
 - (ii) If the Dispute involves the amount of an invoice and after ten (10) Business Days of mutual discussion either Party has determined that further discussion is not likely resolve the Dispute to its satisfaction, such Party may immediately refer the matter to the Expert for consideration pursuant to Section 19.3.
- (b) Referral to Chief Executive Officer
 - (i) In the event that the Dispute is not resolved in accordance with Section 19.2(a), either Party may refer the Dispute to the chief executive officer or chief operating officer of the Company and the designated representative for system operations of BPDB (or such other official authorised by BPDB) for further consideration.
 - (ii) In the event that such individuals are unable to reach agreement within fifteen (15) Days, or such longer period as they may agree, then either Party may refer the matter to an Expert in accordance with Section 19.3 or, if the Dispute is not of a type required to be referred to an Expert under Section 19.3, commence arbitration of the Dispute in accordance with Section 19.4.

19.3 Mediation by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 19.2, then either Party, in accordance with this Section 19.3, may refer the Dispute to an Expert for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution of the Dispute.
- (b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The other Party shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of ten (10) Days to agree upon a person to be the Expert. If the Parties are unable to agree within such ten (10) Day period, the Expert shall be selected by the International Chamber of Commerce following a request of either Party.
- (c) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by the Expert submitting to both the Expert and the other Party written materials setting forth:
 - (i) a description of the Dispute;
 - (ii) a statement of the Party's position; and
 - (iii) copies of records supporting the Party's position.

- (d) Within ten (10) Days of the date that a Party has submitted the materials described in Section 19.3(c), the other Party may submit to the Expert:
 - (i) a description of the Dispute;
 - (ii) a statement of the Party's position; and
 - (iii) copies of any records supporting the Party's position.
- (e) The Expert shall consider any such information submitted by the responding Party within the period provided in Section 19.3(d) and, in the Expert's discretion, may consider any additional information submitted by either Party at a later date.
- (f) The Parties shall not be entitled to apply for discovery of documents, but shall be entitled to have access to the other Party's relevant records and to receive copies of the records submitted by the other Party.
- (g) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert.
- (h) Except as provided in Section 19.3(j) with respect to the payment of costs, the proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply. Except as expressly provided otherwise in this Agreement or unless the Parties agree in writing signed by both Parties at the time the Expert is selected stating that the decision of the Expert will be binding (in which case the determination of the Expert shall be binding), the determination of the Expert shall not be binding.
- (i) When consideration of the Dispute by an Expert is initiated, the Expert shall be requested to provide a recommendation within fifteen (15) Days after the ten (10) Day response period provided in Section 19.3(d) above has run. If the Expert's recommendation is given within such fifteen (15) Day period, or if the Expert's recommendation is given at a later time and neither Party has at such time initiated any other proceeding concerning the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- (j) If a Party does not accept the recommendation of the Expert with respect to the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, it may initiate arbitration proceedings in accordance with Section 19.4; provided, that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party) and all out-of-pocket costs of the other Party. Similarly if the Expert has not submitted its recommendation within the time period provided in Section 19.3(i), a Party may initiate arbitration proceedings in accordance with Section 19.4, provided that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party). Notwithstanding the foregoing provisions of this Section 19.3(j), the Parties shall be bound by the decision of the Expert pending resolution of the Dispute by arbitration and shall not be excused from performance or be entitled to additional time for performance by reason of the Expert's decision and any discrepancy in respect thereof or the instigation of such arbitration.
- (k) Except as provided in Section 19.3(j), the costs of engaging an Expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.

19.4 Arbitration

- (a) The Parties agree to use their best efforts to resolve any dispute or difference arising under, out of, in connection with or relating, to this Agreement, including, without limitation, any dispute or difference concerning the existence, validity or enforceability or interpretation of this Agreement or any provision hereof or the obligations or performance of a Party hereunder or under any provision hereof, or as to whether this Agreement or any provisions hereof (including agreements contained in this Article 19.4) are invalid, illegal or unenforceable (each a "Dispute") through consultation between the Parties. If any such Dispute has not been resolved within ninety (90) Days of the delivery by a Party to the other Party of a written notice, identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute, such Dispute shall be resolved exclusively by means of arbitration in accordance with the Bangladesh Arbitration Act 2001 and the place of arbitration shall be at Dhaka, Bangladesh.
- (b) Any arbitral proceeding under this Article 19.4 shall be carried out at Dhaka, Bangladesh.
- (c) The Parties agree that the arbitral tribunal constituted in pursuance of a request for arbitration made under Article 19.4(a) shall consist in a sole arbitrator, who shall be a person who has held judicial office for a period of not less than three (3) years in a court of record in Bangladesh or in a jurisdiction whose laws are substantially derived from the common law of Bangladesh. The Parties further agree that, except in the case of an appointment made by the Chairman of the Administrative Council, any person appointed as sole arbitrator need not be a person designated to serve on the Panel of Arbitrators.
- (d) No arbitrator appointed pursuant to this Article 19.4 shall be any shareholder or group of shareholders owning directly or indirectly five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business of or in, any Party or such person.
- (e) Each Party hereby irrevocably undertakes (i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Article 19.4 as final and binding and (ii) undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay.
- (f) Until such time as any arbitral proceedings begun in pursuant of Article 19.4(a) have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), except for proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by an arbitral tribunal duly constituted hereunder, each Party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of Bangladesh or before any judicial or other authority arising under, out of, in connection with or relating to this Agreement, the arbitration agreements set forth in this Article 19.4, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Article 19.4(a)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Article 19.4(a), including without limitation (i) proceedings brought with a view to recourse or appeal against or revision or the annulment of any arbitral award or procedural order made by the arbitral tribunal or (ii) proceedings in which relief or remedy is sought by way of 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 pursuance of Article 19.4(a).
- (g) The language of the arbitration shall be in English.

Section 20: NO LIABILITY FOR REVIEW

No review and approval by the Off-Taker of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or failure to comply with the applicable Laws of Bangladesh with respect thereto, or to satisfy the Company's obligations under this Agreement or any other agreement or instrument entered into by the Company in relation to the Project, nor shall the Off-Taker be liable to the Company or any other person or entity by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

Section 21: NOTICES

21.1 Addresses and Notices

Except as otherwise expressly provided in this Agreement, all notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the persons indicated below and shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The addresses for service of the Parties and their respective facsimile numbers shall be:

If to the Company: _____ Company Limited
Address: _____

Dhaka 1215, Bangladesh
Attention: Chief Executive Officer
Facsimile: (880) 2-_____

If to the Off-Taker: [Bangladesh Power Development Board
1st Floor, WAPDA Building
Motijheel Commercial Area
Dhaka 1000, Bangladesh]
Attention: [Secretary]
Facsimile: [(880) 2-956-6765]
With a copy to: [_____]

- (a) All notices shall be deemed delivered:
- (i) when presented personally;
 - (ii) if received on a Business Day for the receiving Party when transmitted by facsimile to the receiving Party's facsimile number specified above; and if received on a Day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above;
 - (iii) one (1) Business Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith); and
 - (iv) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith).
- (b) Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

21.2 Changes of Address

Either Party may by not less than ten (10) days' prior written notice change the addressees and/or addresses to which such notices and communications to it are to be delivered or mailed.

Section 22: MISCELLANEOUS PROVISIONS

22.1 Amendment

This Agreement can be amended only by agreement between the Parties in writing, executed by a duly authorized representative of each of the Parties.

22.2 Third Parties

This Agreement is intended solely for the benefit of the Parties and, except for rights expressly granted to Lenders, nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action whatsoever, to any person not a Party.

22.3 No Waiver

- (a) The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any provision hereof, shall neither be construed to be a waiver of such provisions nor affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision.
- (b) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement:
 - (i) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
 - (ii) shall be effective unless in writing duly executed by a duly authorised representative of such Party.

22.4 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. The Company shall be solely responsible for the payment of salaries, wages and mandatory and fringe benefits of its employees, which will not have any relationship of any kind with the Off-Taker.

22.5 Periodic Reports

- (a) Each Party shall, as soon as available but in any event within ninety (90) Days after the end of each financial year, furnish to the other Party: (i) two (2) copies of its complete financial statement for such financial year (which are in agreement with its books of accounts and prepared in accordance with accounting principles which are generally accepted in Bangladesh and consistently applied), together with an audited report thereon; and (ii) a report by the auditors certifying that, based on its financial statements, the Party was in compliance with its financial obligations as of the end of the relevant financial year or, as the case may be, detailing any non-compliance.
- (b) Each Party shall, as soon as available but in any event within sixty (60) Days after the end of each six (6) Month period of each financial year, furnish to the other Party: (i) two (2) copies of the Party's complete financial statements for such six (6) Month period, all in accordance with accounting principles which are generally accepted in Bangladesh

and consistently applied, and if requested by the other Party, certified by an officer of the Party; and (ii) a report on any factors that materially and adversely affect the Party's business and operations or its financial condition.

22.6 Survival

Cancellation, expiration, termination of this Agreement or arbitration of disputes shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

22.7 Language

The language of this Agreement shall be English. All documents, notices, waivers and all other communications written or otherwise between the Parties in connection with this Agreement shall be in English.

22.8 Entirety

This Agreement (and with respect to the Proposal Security, until the delivery of the Performance Security, the Request for Expressions of Interest), is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the Net Energy Output sold and purchased hereunder. All prior written or oral understandings, offers or other communications of every kind pertaining to the purchase by the Off-Taker and the sale by the Company of Net Energy Output hereunder are hereby abrogated and withdrawn.

22.9 Assignment

- (a) This Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing.
- (b) Notwithstanding the foregoing, for the purpose of financing the Facility, the Company may assign to, or grant a security interest in favour of the lenders in its rights and interests under or pursuant to: (i) this Agreement; (ii) the Facility; (iii) the Site; (iv) the movable, immovable and intellectual property of the Company; or (v) the revenues or any of the rights or assets of the Company. The Company shall not create any security over its rights and interests under this Agreement without the prior written consent of the Off-Taker except as already provided above.

22.10 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.

22.11 Confidentiality

- (a) Each of the Parties and their contractors, consultants and agents shall hold in confidence the agreements relating to the Facility and all documents and other information, whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of the Facility and shall not save as required by law or appropriate regulatory authorities, prospective lenders or investors in the Project, permit the Company and their professional advisers, to publish, disclose or use the same for its

own purposes other than as may be required to perform its obligations under this Agreement.

Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other Agreements referred to herein and in agreements prepared and issued in connection with other projects.

- (b) The provisions of paragraph 22.11 (a) shall not apply to:
- (i) any information in the public domain otherwise than by breach of this Agreement;
 - (ii) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; and
 - (iii) information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality.

22.12 Counterparts

This Agreement is executed in English in counterparts and all so executed counterparts shall constitute one agreement binding on both Parties.

Power Purchase Agreement

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

[BANGLADESH POWER DEVELOPMENT BOARD]

By: _____
Name: _____
Title: [Secretary, BPDB]

_____ **POWER COMPANY LIMITED**

By: _____
Name: _____
Title: Chief Executive Officer

[SEAL]

[SEAL]

WITNESS

WITNESS

Schedule 1: FUNCTIONAL SPECIFICATIONS

[Assume, for example, a 100 MW (net) Facility]

Net Generation Capacity = [100] MW net electric power generating capacity of the Facility, net at Reference Site Conditions and at a power factor of 0.85 lagging measured at Delivery Point.

Electricity Equivalent Capacity = 0.30 X Net Generation Capacity = [30] MW.

Annual Power Delivery Obligation (in kWh) = Net Generation Capacity in KW x 0.9 x 8760 x 0.3
= [100 x 1000 x 0.9 x 8760 x 0.3] = [236,520,000] kWh

“Reference Site Conditions” are as follows:

AMBIENT AIR TEMPERATURE	=	32°C
RELATIVE HUMIDITY	=	85 %
BAROMETRIC PRESSURE	=	1.013 bar

Design Conditions for the Facility are as follows:

AMBIENT AIR TEMPERATURE RANGE	=	7°C to 42°C
RELATIVE HUMIDITY RANGE	=	40% to 100%
MAXIMUM WIND SPEED	=	200 km/h
SEISMIC ZONE per Bangladesh Building Code, 1976	=	Zone III
BASIC SEISMIC COEFFICIENT	=	0.25g

Schedule 2: TECHNICAL LIMITS AND CONTRACTED CHARACTERISTICS

1. Frequency, Power Factor and Voltage Limits

- (a) The Facility will operate with a power factor in the range of 0.85 lagging to 0.95 leading at the Delivery Point, which range shall not be exceeded.
- (b) The Facility will operate within the line voltage range used in practice by the Off-Taker and in no case shall the Facility be required to operate more than +10% or less than -20% on the 400 kV high voltage system.
- (c) The Facility shall operate within the frequency range 48.5 Hertz to 51.5 Hertz which range shall not be exceeded. The Facility shall be capable of continuous operation for the periods defined in Table 1.

Table 1

Frequency Range (Hz)	Minimum Sustainable Operation
48.5 to 51.5	Continuous
47.5 to 48.5	10 minutes
Less than 47.5	Trip Condition
Greater than 51.5	Trip Condition

2. PRUDENT UTILITY PRACTICES

Notwithstanding anything to the contrary, the Company shall operate and maintain the Facility in accordance with Prudent Utility Practices and Prudent Electrical Practices.

Schedule 3: COMMISSIONING AND TESTING

“Commercial Operations Test” means the tests referred to in Section 3.1 and Section 3.2 of Schedule 3.

3.1. Tests Prior to Synchronisation

The Company shall carry out the following tests prior to synchronisation of the Facility:

- (a) automatic voltage regulator setting and adjusting in stand-still condition and with the generator running at no load;
- (b) governor control checks, including a steam governor overspeed test;
- (c) open and short circuit tests on the generator;
- (d) functional testing and timing of high voltage switchgear in the sub-station of the Facility;
- (e) The Company and the Off-Taker shall verify that the protection level settings for switchyard protection equipment are as agreed by the Joint Coordinating Committee;
- (f) Voltage phasing checks will be carried out between the Grid System and the Facility; and
- (g) All inter-tripping circuits between the Facility and the Off-Taker equipment will be proved.

3.2. Commissioning Test

The following test shall be carried out by the Company for achieving Commercial Operation Date of the Facility after completing the test set out in Section 3.1 of this Schedule 3. After Commercial Operation Date Net Generation Capacity shall be tested annually.

Net Generation Capacity Test:

The Capacity Test shall be carried out to determine the Net Generation Capacity of the Facility. The delivered capacity of the Facility shall be measured at the Delivery Point (adjusted to Reference Site Conditions and Power Factor Adjustment), using calibrated test metering equipment mutually agreed upon. The test will be conducted for a minimum of 6(six) consecutive hours. The tested capacity shall be calculated by taking energy meter reading (electronically obtained) for each half an hour interval and correcting by correction factors corresponding to Reference Site Conditions. Net Generation Capacity of the Facility shall be determined by dividing summation of twelve (12) corrected capacity data by 12 and thereafter corrected to Power Factor Adjustment.

Schedule 4: METERING SYSTEM

1. Purpose

The metering system shall be capable of obtaining and interpreting readings and performing the adjustments, if required, to comply with the pertinent information concerning facility performance required in Articles 7, 12, and 13. The system may be part of the Facility's control and measurement installations, provided it complies with the criteria specified below.

2. Accuracy

The main components of the measurement system shall provide readings that are within the accuracies or repeatability tolerances shown in Table 6.1.

**Table 6.1
Maximum Allowable Errors**

Measured Parameter	Maximum Error
Ambient Temperature	± 1.6 °C
Ambient Relative Humidity	± 3.1%
Water Temperature (when applicable)	± 2.0%
Net Energy Output (kWh) meters	± 0.11%
(MW) meters	± 0.12%
Instrument transformers	± 0.10%
Time Reference	45 seconds per week-maximum

3. Site Conditions Correction Factors

Correction factors based on Site Conditions shall be applied to the following readings:

- (a) Declared
- (b) Dependable
- (c) Contracted Rental

4. Technical Specifications of programmable Tariff Meter (to be compatible with the Off-Taker automated meter reading system):

Accuracy Class:	Class 0.2
Measurement System	3 phase - 4 wire
Voltage	$U_n = 3 \times 110: \sqrt{3}/110 \text{ V}$ or $3 \times 110 \text{ V}$ Measuring range: 80-115% of U_n
Frequency	50 Hz
Auxiliary Voltage	220 V to 230 V AC

Current	$I_n (I_{max}) = 5(6) \text{ A or } 5(10) \text{ A}$ or $I_n (I_{max}) = 1(1.2) \text{ A or } 1(2) \text{ A}$ Starting current: 0.1% of I_n
Power Consumption	Current circuit <0.05 VA Voltage circuit < 0.05 VA Auxiliary voltage circuit < 4.0 VA
Pulse Outputs	As per IEC standard
Alarm Outputs	Alarm facilities of relevant electrical parameters
Local Communication	Through an optical port Protocol according to IEC 1107
Meter Constants	1= 5(6) A:100000 imp/kWh (kvarh) or 1=1(1.2) A:500000 imp/kWh (kvarh)
Display	Alphanumeric LCD, 2x16 characters Operated by two push-buttons
Temperature Ranges	-10°C to +50°C

5. Main Features:

The Tariff Meters should have the following features:

i) Power Polarity:

Meters shall be full quadrant (four quadrant) type for measuring power flow in any direction without variation of accuracy.

ii) Measurement Options:

Provisions for measuring two-directional active and reactive energy, voltage and current, active and reactive power, frequency, and power factor.

iii) Data Storage:

Should be capable of storing all critical data, including calibration, configuration and time of use, in battery backed up RAM and in non-volatile Flash RAM, which should retain the data indefinitely even when no auxiliary power supply is available.

iv) Internal Clock:

Should be fitted with real time clock/calendar chip used for all relevant meter readings round the clock with back up power facilities in case of power failure.

v) Alarms:

Auto-diagnostic alarm facilities for loss of memory, problems with batteries, including VT failure/tolerance, unbalanced power and advanced tampering.

vi) Security:

Provisions for highest security in communications, storing the data measured, overall operation of the meter, preventing unauthorized configuration, saving the data in non-volatile memory in the event of power failure and extended alarm function with self diagnostic features.

vii) Liquid Crystal (Back lit) Display:

Meter shall have liquid crystal display facilities.

viii) Configuration Software:

The tariff meters shall be configured and calibrated via the optical port using a PC. Configuration software of relevant tariff meters shall be provided.

ix) Memory Storage:

Load profile interval (kWh and kVarh received and delivered, phase voltage, phase current, power factor with 30 minutes interval)

x) Number of Digit:

Minimum 5 Integra with 3 decimals (programmable).

6. Communication Options:

i) Meter should be fitted with an optical port that is hardware compatible with IEC1107 FLAG™.

ii) RS-232/ RS-485 External Modems:

Provisions for RS232/485 modem interface port which can serve as a modem interface connecting to a standard data modem, which allows remote access to the units via the GPRS or other communications networks including Power Line Carrier, GSM and radio modems. The connection between the meter and the modem will be via a fully isolated RS232/485 port.

iii) SCADA:

Provisions for a SCADA port that enables connection with a SCADA system and a second simultaneous connection with PC or modem.

7. Security and Redundancy

(a) Full redundancy shall be provided for the central processing units (CPU) and for the communication links between them and the transducers, instruments, sensors, and other devices which detect measure and transmit the parameters used by the measurement system to apply correction factors to the capacities listed in Schedule 2.

Power Purchase Agreement

- (b) Rental Power Company shall not be able to gain access to any software application or programs that may be used to operate or calibrate the CPUs and the transducers, instruments, sensors, and other devices which detect, measure and transmit the parameters used by the measurement system unless the Off-Taker's personnel input a restricted security code every time that this access is required.

- 8. The meter must be capable to display and record meter ID, Program, C.T. Ratio, V.T Ratio, Total kWh, kVarh, kVah, kW, kVar, kVA, P.F.; per phase (voltage, current, phase angle); Load profile having minimum 16 channel storage data for minimum 90 days; Event log; power failure etc

Schedule 5: ELECTRICAL INTERCONNECTION FACILITIES

The [.....kV] switchyard and associated ancillary equipment shall be designed and constructed by the Company in accordance with the same standard specifications as PGCB's other transmission type [.....kV] substations. The substation shall include fittings and supporting structures suitable for the connection to [two] [.....kV] circuits overhead transmission lines, [.....kV] bays for connection to a [.....kV] transformer and [four][.....kV] circuits overhead transmission lines. The overhead lines include optical ground wires (OPGW) which will be terminated within the Facility site and connected to fiber optical terminal (FOT) equipment for the load dispatch control and communication facilities. The scope of work for the main overhead lines and OPGW/FOT equipment will be undertaken by PGCB, and the Company will construct the in-and-out lines from the main transmission lines. All in-and-out lines will be in the scope of work of the Company.

Schedule 6: REFERENCE TARIFFS

A. Reference Electricity Tariff

Table A Reference Energy Price

Contract Year	Reference Fuel Cost Component	Reference Non Fuel Cost Component
1 to 5	Tk. [●]	Tk. [●]

Schedule 7: FORM OF PERFORMANCE SECURITY DEPOSIT

BANK GUARANTEE

Off-Taker name	Date:
Off-Taker's address	Bank Guarantee No.
.....	Issuing Date:
.....	Amount:
	Expiry Date:
	Issued on Request of:
	[Name and Address of the Company]

Considering that our client [insert name of Company] (hereinafter referred to as the "Company", which expression shall mean and include its successors, executors, assigns, administrators and legal representatives whether jointly or severally) has undertaken, in pursuance of the Power Purchase Agreement (hereinafter called the "PPA") to sell Net Energy Output to Off-Taker (hereinafter referred to as "BPDB") from the Facility (as defined in the PPA) located at [insert Site];

AND WHEREAS it has been stipulated in the said PPA that the Company shall furnish you with an irrevocable and unconditional bank guarantee by a schedule Bank in Bangladesh or by a foreign Bank endorsed and authenticated by a schedule Bank in Bangladesh for the sum specified herein as security for compliance with the Company's performance obligations in accordance with the PPA;

On the request of the Company, we, the undersigned, responsible delegates and representative of the bank _____ in Bangladesh (hereinafter referred to as the "Bank" and the "Guarantor", which expression shall mean and include its successors, executors, assigns, administrators and legal representatives whether jointly or severally), authorized to sign and make decisions in its name, declare by the present letter, that the Guarantor will guarantee, up to an amount of [insert Amount] Million United States Dollars (USD) or equivalent taka on the date of claim as a bank guarantee of execution (hereinafter referred to as the "Performance Security Deposit") towards Off-Taker for the proper execution of the Company's commitments, in conformity to the requirements of the Power Purchase Agreement for the development of the power project at [insert Site].

We unconditionally commit ourselves to immediately pay the Off-Taker, upon first written request, any amount up to the above indicated amount without there being need for legal or administrative procedures and without need to prove Company's default.

Any payments made to Off-Taker on its request shall be net and free of and without any present or future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same.

Power Purchase Agreement

The undertakings in this Performance Security Deposit constitute direct, unconditional and irrevocable obligations of the Guarantor. The Guarantor hereby binds itself unconditionally and irrevocably and undertakes and guarantees to pay on first written demand of Off-Taker, without protest or demur and without reference, notice or recourse to the Company or any other person, without requiring Off-Taker to prove or to show grounds or reasons for such demand and hereby expressly waive all rights to deny its obligations to Off-Taker irrespective of any dispute, difference or disagreement between the Company and Off-Taker or contestation by any other party/person.

This Performance Security Deposit sets forth in full the terms of Guarantor's undertaking and this undertaking shall not be modified, amended, or amplified in any way by reference to any document, instrument or agreement referred to therein, and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement.

This Performance Security Deposit shall remain valid and effective until [insert date]. The validity of this Performance Security Deposit shall be extended upon request from Off-Taker through the Company for an additional period until such time as the Company achieves Commercial Operations Date plus thirty (30) days. Upon a written request from BPDB to do so on or before the date of expiration of this Performance Security Deposit or any subsequent extension thereof pursuant to the stipulation to extend this Performance Security Deposit, the Guarantor shall immediately extend the validity period of this Performance Security Deposit up to the date requested by Off-Taker.

If following such request by Off-Taker, the Company does not comply with the necessary formalities to ensure the extension of the validity of the present Performance Security Deposit before date of expiry of its validity, or if for any reason the Company is refused such extension of validity by the Bank, the Bank shall pay the amount indicated above, immediately on demand of the Off-Taker, without further notice to or action by the Company, to Off-Taker's bank account as notified to the Guarantor by Off-Taker in writing.

[Name of Bank], as Guarantor

Signature and bank seal