

Annex-E of RFP (Exhibit II)

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

[NAME OF COMPANY]

- RELATING TO-

[INSERT CAPACITY] MW (NET) COMBINED CYCLE POWER GENERATION FACILITY

AT

BHOLA, BANGLADESH

Dated as of ____ 2011

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”) is entered into as of this ___ day of [insert month and year], by and between the Bangladesh Power Development Board (hereinafter referred to as “BPDB”), with its registered office located at _____, Dhaka, Bangladesh, and [Name of Company] (hereinafter referred to as the “Company”), with registered office located at _____, Dhaka, Bangladesh (BPDB 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, BPDB is a public utility engaged in the generation, transmission, distribution and sale of electric capacity and energy in the People’s Republic of Bangladesh (“Bangladesh”);

WHEREAS, BPDB issued a Request for Proposals for the design, engineering, manufacture, financing, construction, completion, permitting, testing, commissioning, insurance, ownership, operation and maintenance (collectively, the “Project,” as hereinafter defined) of a Gas fired combined cycle power station located at Bhola, Bangladesh to provide [insert capacity] MW (net) of electric power generation capacity (the “Facility,” as hereinafter defined);

WHEREAS, the Project Sponsor [insert name of Project Sponsor] was selected as the entity to implement the Project through a competitive tendering process, and has established the Company to implement the Project;

WHEREAS, [Insert Company name] formed by [Project Sponsor] has agreed to implement the Project, and to sell Dependable Capacity (as hereinafter defined) and 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 is entering into an Implementation Agreement with the Government of Bangladesh and the Power Grid Company of Bangladesh, the Land Lease Agreement with BPDB, Gas Supply Agreement with Gas Suppliers and

WHEREAS, BPDB has agreed to purchase the Dependable Capacity and Net Energy Output 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” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

“Agent” bears the meaning ascribed thereto in Section 4.5(b);

“Agreement” means this Power Purchase Agreement between BPDB 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;

“All Risks Insurance” bears the meaning ascribed thereto in Section 14.1(c);

“Assumptions” bears the meaning ascribed thereto in Section 13.1(e);

“Availability” – means the annual availability of the Dependable Capacity of the Facility for Dispatch by the Control Centre, calculated in accordance with the following formula:

$$A = \frac{DC \times 8760 - \left(\sum MO_{cap} \times MOH + \sum FO_{cap} \times FOH + \sum SO_{cap} \times SOH \right)}{DC \times 8760}$$

Where:

A	=	equivalent annual availability
DC	=	Dependable Capacity of the Facility per the PPA
MO _{cap}	=	capacity reduction during Maintenance Outage
MOH	=	Maintenance Outage hours
FO _{cap}	=	capacity reduction during Forced Outage
FOH	=	Forced Outage hours
SO _{cap}	=	capacity reduction during Scheduled Outages
SOH	=	Scheduled Outages hours

“Average Capacity Price” bears the meaning ascribed thereto in Section 8.3(d);

“Average Dependable Capacity” means an amount equal to:

- (a) the sum of each Dependable Capacity in effect during a Contract Year multiplied by the number of hours that each such Dependable Capacity was in effect during such Contract Year; divided by
- (b) the number of hours in the Contract Year;

provided, that periods during which Force Majeure Events exist shall be excluded from each determination of the number of hours in clause (a) and clause (b) of the preceding formula;

“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;

“Bangladesh Treasury” means the Treasury and Debt Management and Administration Division within the Finance Division of the Government of Bangladesh’s Ministry of Finance, and any successor or substitute agency of the GOB;

“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;

“Bid Date” means [insert date], 2011;

“Bid Exchange Rate (X₀)” – means 1 USD = Taka 73.00.

“BPDB” means the Bangladesh Power Development Board, constituted under the Bangladesh Power Development Boards Order, 1972 (P.O. No. 59 of 1972) and its successors and permitted assigns;

“BPDB Event of Default” has the meaning ascribed thereto in Section 4.3;

“BPDB Letter(s) of Credit” means the unconditional and irrevocable letter of credit from a bank in the form of Schedule 5 as provided by BPDB to the Company pursuant to Section 13.2(i);

“BPDB Letter of Credit Adjustment Day” bears the meaning ascribed thereto in Section 13.2(i)(i)(E);

“BPDB Letter of Credit Amount” means, as of the relevant date, an amount equal to the aggregate of the next two (2) Months of Capacity Payments plus the next two (2) Months of Variable Operation and Maintenance Payments (as adjusted in each case for exchange rate and inflation in accordance with Section 13.1 through the last Day of the Month immediately prior to the required delivery date) determined as at the Commercial Operations Date on the basis of the Contracted Facility Capacity assuming that the Facility will be Dispatched at eighty-five percent (85%) of Contracted Facility Capacity at all times during that two Month period and, thereafter, computed every 365 Days starting from the Commercial Operations Date (in accordance with Section 13.2(i)) on the basis of then-prevailing Dependable Capacity and assuming that the Facility will be Dispatched at eighty-five percent (85%) of the then-prevailing Dependable Capacity at all times during that two Month period;

“BPDB Notice of Default” has the meaning ascribed thereto in Section 4.2;

“BPDB True-Up Payment” bears the meaning ascribed thereto in Section 13.1(d)(ii);

“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 declared by the GOB;

“Capacity Factor Amount” bears the meaning ascribed thereto in Section 8.3(c);

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

“Carrying Cost” means the interest accruing on the then-outstanding principal amount of the debt incurred to construct the Facility under the Financing Documents and any guarantee fees accruing thereunder;

“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 BPDB, and that such delay in testing would not have occurred but for such deferral by BPDB;

“Change in Law” means:

- (a) the adoption, promulgation, amendment, modification, repeal or reinterpretation after [insert Bid date], 2011¹ by any Government Authority of any Law of Bangladesh; or
- (b) the imposition by a Government Authority of any material condition in connection with the issuance, renewal, extension, replacement or modification of any Government Authorisation after [insert Bid date], 2011²,

that in either case establishes requirements for the construction, operation or maintenance of the Facility that are materially more restrictive or more onerous than the most restrictive or most onerous requirements (x) in effect under the Laws of Bangladesh on [insert Bid date], 2011³ and (y) agreed to by the Company in any agreement in the Security Package;

““Combined-Cycle Unit” – means the equipment and machinery consisting of one or more gas turbine-generators, one or more heat recovery steam generators (HRSGs), one steam turbine-generator and all related supplementary equipment for generating electric power;

“Commercial Operations Date” means the date following the Day on which the Facility is Commissioned;

“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 either in Simple Cycle or Combined Cycle in accordance with, and meeting the minimum requirements stated in, Schedule 3 and, for the purposes of this Agreement, the Facility shall be Commissioned as of the date specified in a certificate issued by the Engineer as the date that such testing was completed and such minimum requirements were met;

¹ Insert date of bid.

² Insert date of bid.

³ Insert date of bid.

“Commissioning” means carrying out the Commercial Operations Test of the Facility as a Combined Cycle Unit;

“Company True-Up Payment” bears the meaning ascribed thereto in Section 13.1(d)(i);

“Construction Contract” means the agreement(s) entered into between the Company and the Construction Contractor(s) for the design, engineering, procurement, construction, completion, start-up, testing, and Commissioning of the Facility and also includes any amendment to such agreement(s) made from time to time;

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

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

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

“Construction Contractor(s)” means the construction company(ies), and any successor or successors thereto, appointed or to be appointed by the Company in connection with the construction of the Facility and not objected to by the GOB prior to such appointment pursuant to Section 5.2(b) of the Implementation Agreement;

“Construction Start Date” means the date on which the “notice to proceed” is issued by the Company to the Construction Contractor in accordance with the provisions of the Construction Contract authorizing the Construction Contractor to commence the activities under the Construction Contract and the release of funds of not less than seven percent (7%) of the Construction Contract Price by the Company to the Construction Contractor;

“Contract Year” means (a) in respect of the first Contract Year, the period commencing at the beginning of the Commercial Operations Date and ending as of the end of the Day immediately preceding the first anniversary of the Commercial Operations Date and (b) thereafter, the period commencing 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;

“Contracted Simple Cycle Capacity”– means the net electric power generating capacity (without the use of supplemental firing) of the Facility at Reference Site Conditions on a continuous basis that the Bidder commits to deliver, which shall be [insert MW] (adjusted to Reference Site Conditions and Power Factor Adjustment).

“Contracted Facility Capacity” means the net electric power generating capacity of the Facility operating as a Combined Cycle Unit on a continuous basis that the Company commits to deliver hereunder, which is [insert MW] (adjusted to Reference Site Conditions and Power Factor Adjustment);

“Contractor(s)” means the Construction Contractor(s) and the O&M Contractor(s) and any of their direct sub-contractor(s) integrally involved in the Project;

“Contractor All Risk Policy” bears the meaning ascribed thereto in Section 14(b)(iii);

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

“Customs Authority” shall bear the meanings ascribed thereto in Section 1 of the Implementation Agreement;

“Custom Duties and VAT” shall bear the meaning ascribed thereto in Section 1 of the Implementation Agreement;

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

“Declaration Deadline” bears the meaning ascribed thereto in Section 9.3(e);

“Declared Capacity” means, for each hour, the net capacity of the Facility on and after the Commercial Operations Date (adjusted to and stated at Reference Site Conditions) and notified to the Control Center by the Company pursuant to Section 9.3(e) which shall equal then-prevailing Dependable Capacity less any reductions due to any Scheduled Outage, Forced Outage, or Maintenance Outage, as the case may be;

“Deemed Forced Outage” means the inability of the Company to achieve the Dispatch level within the greater of (a) the time allowed by the Technical Limits based on ramp rate schedule or the start-up curves as provided in the Technical Limits; or (b) ten (10) minutes, which “Deemed Forced Outage” shall equal (a) if the Net Energy Output is less than the Dispatched net electrical energy (adjusted to Reference Site Conditions), the Declared Capacity for the relevant hour less the Net Energy Output (in each case, adjusted to Reference Site Conditions) for the relevant hour multiplied by the period in hours that the Deemed Forced Outage continues or (b) if the Net Energy Output is equal to the Dispatched net electrical energy (adjusted to Reference Site Conditions), zero (0);

“Delivery Point” means the location at the 230 kV side of the generator transformer at which the net capacity and Net Energy Output is measured and transferred from the Company to BPDB;

“Dependable Capacity” means at any given time the net amount of capacity of the Facility; either in Simple Cycle or in Combined Cycle (adjusted to Reference Site Conditions in accordance with Section 13.1 and Power Factor Adjustment), expressed in kW, as determined by the most recent Dependable Capacity Test;

“Dependable Capacity Test” bears the meaning ascribed thereto in Schedule 3;

“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 Net Energy Output (and Reactive Power) delivered to the Grid System;

“Dispute” means any dispute, difference or disagreement of any kind whatsoever between BPDB 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;

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

“Economic Dispatch” means the distribution of the total energy needs of BPDB among available sources of generation based upon the marginal cost to BPDB for requesting the next increment of energy, where plants will be dispatched by BPDB 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;

“Election Notice” bears the meaning ascribed thereto in Section 4.5(d)(ii)(A);

“Electrical Interconnection Facilities” or **“EIF”** bears the meaning ascribed thereto in Section 11 of this Agreement;

“Emergency” means a condition or situation that, in the reasonable opinion of BPDB (or PGCB, as the case may be), materially and adversely:

- (a) affects the ability of BPDB (or PGCB) to maintain safe, adequate and continuous electrical service to BPDB’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)(ii);

“Engineer” means the consulting engineering firm selected and appointed by the Company (at its own cost and expense) and the identity of which notified in writing to BPDB, PGCB and the Gas Supplier not later than one hundred and eighty (180) Days after the Financial Closing Date from the list of independent consulting engineering firms set out in Schedule 7, for the purposes of monitoring the construction, Commissioning and participating as a member of the Testing and Commissioning Committee;

“Environmental Guidelines” means the environmental guidelines and occupational health and safety standards of the World Bank Group as in effect on [insert Bid date], 2011⁴;

“Equivalent Forced Outages Energy” means the sum of the products of (a) the reduction in the generating capability of the Facility (from the then-prevailing Dependable Capacity) as a result of each Forced Outage occurring during the relevant Contract Year, expressed in MW; multiplied by (b) the number of hours that each such Forced Outage was in effect during the relevant Contract Year;

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

“Evaluation Period” bears the meaning ascribed thereto in Section 4.5(d)(i);

“Event of Default” means a Company Event of Default or a BPDB Event of Default;

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

“Facility” means the Gas fired combined cycle power station comprising of gas turbine and steam turbine generators, capable of 150-225 MW of capacity (net, without supplemental firing, at Reference Site Conditions) to be owned and constructed by the Company near Bhola, 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, water intake and discharge facilities, water treatment facilities, solid waste disposal facilities, fuel (Gas) receiving facilities and equipment on the Company’s side of the Point of Delivery, the Metering System, Electrical Interconnection Facilities together with the residential facilities (if any) made available to certain employees of the Company, the Contractor(s) and any subcontractors;

⁴ Insert date of bid.

“Financial Closing” means (a) the execution and delivery of the Financing Documents between the Company and Lenders (with copies of the Financing Documents having been delivered to BPDB) that (together with equity commitments) evidence sufficient financing for the construction, testing, completion, and Commissioning of the Facility and evidence of commitments for such equity as is required by the Company to satisfy the requirements of the Lenders, (b) the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents; provided, that, with BPDB’s written approval, “Financial Closing” shall be deemed to have occurred upon the occurrence of (a) Construction Start, (b) delivery to BPDB of written assurance satisfactory to BPDB demonstrating that the Company has the financial resources available to it necessary to complete the construction of the Facility without interruption.

“Financial Closing Date” means the date on which Financial Closing occurs;

“Financing Documents” means the loan agreements, notes, indentures, security agreements, guarantees, and other documents relating to the construction and permanent financing (including refinancing) of the Facility and any material part thereof, executed in accordance with Section 9.3 of the Implementation Agreement;

“FM Ratio” bears the meaning ascribed thereto in Section 16.5;

“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, on or after the Commercial Operations Date, that is not the result of:

- (a) a request by BPDB made in accordance with this Agreement;
- (b) a Scheduled Outage or a Maintenance Outage;
- (c) a Force Majeure Event;
- (d) a condition caused by BPDB or PGCB;
- (e) non-availability of Gas resulting from (i) Political Force Majeure Events (such term as defined in the Gas Supply Agreement) affecting the Gas Supplier up to fifteen (15) Days in a Contract Year; (ii) Other Force Majeure Events (such term as defined in the Gas Supply Agreement) affecting the Gas Supplier up to thirty (30) Days in a Contract Year or (iii) excused outages or interruption of the supply of Gas by the Gas Supplier under Section 13.1 of the Gas Supply Agreement (during periods which would not have been periods of Forced Outage had such outages or interruptions of supply not occurred) for up to a maximum of ninety six (96) hours in any Contract Year which outages or interruption do not coincide with a Maintenance Outage or Scheduled Outage

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

“Foreign Investors” means shareholders of the Company who are foreigners or non-residents of Bangladesh holding dual nationalities;

“Gas or Natural Gas” – means the energy contained in the hydrocarbons that are found in the Gaseous state either in free form or associated with crude oil.

“Gas Supplier” means Sundarban Gas Company Ltd., a public limited company incorporated and registered under the laws of Bangladesh, with its registered office located at Dhaka, Bangladesh and its successors and permitted assigns;

“Gas Supply Agreement” means the agreement datedby and between the Gas Supplier and the Company for the supply of Gas to be used as fuel by Company at the Facility to generate electric power, as may be amended by the parties thereto from time to time with the prior written approval of BPDB;

“Gas Price” - means the price ascribed in Gas Supply Agreement (GSA).

“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 Contractor(s) for the construction, financing, ownership, operation and maintenance of the Facility by the Company or the Contractor(s), including, without limitation, those Government Authorisations listed in Schedule 1 of the Implementation Agreement;

“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, BPDB, PGCB, Bangladesh Bank and the Gas Supplier;
- (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 Contractor(s), 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 BPDB;

“Guarantee” means the guarantee by the GOB of the payment obligations of:

- (a) BPDB under this Agreement;
- (b) BPDB under the Land Lease Agreement;
- (c) Gas Supplier under Gas Supply Agreement; and
- (d) PGCB under the Implementation Agreement

substantially in the form set out in Schedule 3 of the Implementation Agreement, as may be amended from time to time by agreement of the GOB and the Company;

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

“ICC Rules” bears the meaning ascribed thereto in Section 19.4(b);

“ICSID Rules” bears the meaning ascribed thereto in Section 19.4(a);

“Implementation Agreement” means the Implementation Agreement datedby and between the GOB, and the Company in connection with the Project, and also includes any amendment of it made from time to time;

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

“Inflation True-up Payment” bears the meaning ascribed thereto in Section 13.1(d)(ii);

“Initial Cure Period” bears the meaning ascribed thereto in Section 4.5(a);

“Initial Dependable Capacity” – means, at the Commercial Operations Date or Simple Cycle Commercial Operations Date, the maximum net capacity that the Facility capable of delivering at the Delivery Point (adjusted to Reference Site Conditions and Power Factor Adjustment), as determined by the initial Dependable Capacity Test. Provided that Initial Dependable Capacity can never be exceeded Contracted Facility Capacity and in case of Simple Cycle, Contracted Simple Cycle Capacity.

“Initial Shareholder(s)” means the initial shareholder(s) of the Company, who are also the Project Sponsors;

“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);

“Interconnection and Transmission Facilities or ITF” bears the meaning ascribed thereto in the Implementation Agreement;

“ITF Committee” bears the meaning ascribed thereto in Section 5A.2(b) of the Implementation Agreement;

“Joint Coordinating Committee” means the committee established pursuant to Section 10 for the purposes described therein;

“Kilojoule (KJ)” means 10^3 Joule;

“kW” means Kilowatt;

“kWh” means Kilowatt-hour;

“Land Lease Agreement” means the agreement datedby and between BPDB and the Company for the lease of land by BPDB to the Company for the location of the Facility, as may be amended from time to time by the parties thereto;

“Lapse of Consent” means any Government Authorisation:

- (a) ceasing to remain in full force and effect; or
- (b) not being issued or renewed upon application having been properly and timely made and diligently pursued; or
- (c) being made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Company’s ability to perform its obligations under any document included within the Security Package,

in each of the above instances despite the Company’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” (as explained in Section 2.1(a)(vii) of the Implementation Agreement) manner;

“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” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

“Lenders” means the financial institutions that are parties to the Financing Documents, together with their respective successors and assignees;

“Lenders Cure Period” has the meaning ascribed thereto in Section 4.5(e);

“Letter of Intent” means the letter issued by BPDB to signify the selection of the Project Sponsor to develop the Project and granting the right to develop the Project on the terms specified in the Request For Proposals and their Proposal;

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

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

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

“Loss” means any loss, damage, liability, payment, claim, action, cost, penalty or obligation (excluding any profit or any indirect or consequential loss, damage, liability, payment, obligation, claim, action, cost or penalty), and all expenses (including without limitation reasonable legal fees) related thereto;

“Maintenance Months” means two sets of four (4) Months, being (a) November, December, January and February; and (b) July, August, September and October; or in either case, any other four (4) Months in a Year (in place of either (a) or (b)), at least three (3) of them consecutive Months, designated by BPDB in accordance with Section 9.3(a); provided that there shall at all times be eight (8) separate Maintenance Months in each Year;

“Maintenance Outage” means an interruption or reduction of the Facility’s generating capability, on or after the Commercial Operations Date, that is not a Scheduled Outage and has been scheduled under Section 9.4 for the purpose of performing work on specific components, which should not, in the reasonable opinion of the Company, be postponed until the next Scheduled Outage;

“Maintenance Outages Energy” means the sum of the products of (i) the reduction in the Facility’s generating capability (from the Contracted Facility Capacity) as a result of each Maintenance Outage occurring during the relevant Contract Year, expressed in MW; multiplied by (ii) the number of hours that such Maintenance Outage was in effect during the relevant Contract Year;

“Major Maintenance Year” bears the meaning ascribed thereto in Section 8.3.

“Metering System” means all meters and metering devices (including current transformers and potential transformers) owned by the Company and used to measure Dependable Capacity and the delivery by the Company and receipt by BPDB of 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 the net electrical energy expressed in kWh that is generated by the Facility and delivered to 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;

“**Non-Escalable Capacity Payment**” bears the meaning ascribed thereto in Section 13.1(b)(i) ;

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

“**O&M Agreement**” means the agreement(s), if any, between the Company and the O&M Contractor for the operation and maintenance of the Facility, as may be amended or superseded from time to time;

“**O&M Contractor(s)**” means the power generation facility operation and maintenance company(ies), and any successor(s) thereto, appointed or to be appointed by the Company;

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

“**Operating Shareholder**” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

“**Operations Security Deposit**” shall bear the meaning ascribed thereto in Section 8.6(c);

“**Ordinary Share Capital**” shall have the meaning ascribed thereto in Section 1 of the Implementation Agreement;

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

“**Other Shareholder**” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

“**Parties**” means both BPDB and the Company;

“**Party**” means either BPDB or the Company, as the case may be;

“**Pass-Through Items**” means certain costs or charges identified as Pass-Through Items in Section 13.1(h) and Section 14.5(a), as applicable;

“**Performance Security Deposit**” means the unconditional bank guarantee in an amount equal to (a) thirty six thousand Dollars (US\$ 36,000.00) multiplied by (b) the Contracted Facility 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 obligations hereunder, including its obligations to deliver the Operations Security Deposit and to pay liquidated damages hereunder and to achieve Financial Closing by no later than the Required Financial Closing Date;

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

“**Plant Factor**” bears the meaning ascribed thereto in Section 13.1;

“**Point of Delivery**” bears the meaning ascribed thereto in Section 1 of the Gas Supply Agreement;

“**Political Force Majeure Event**” bears the meaning ascribed thereto in Section 16.1(a);

“Power Factor Adjustment (PF_{adj})” means 0.85/average lagging power factor found at Delivery Point during Initial Dependable Capacity Test and Dependable Capacity Test, which shall be applicable if $PF_{adj} < 1$;

“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 Effective Date” means the date on which the last of Project Agreements is executed and delivered by each of the parties thereto and none of the agreements so executed have terminated or been terminated by a party thereto;

“Project Agreements” means, collectively, this Agreement, the Implementation Agreement, the Gas Supply Agreement and the Land Lease Agreement;

“Project Sponsor(s)” means the Bidder (in case of single firm) or the Lead Shareholder, Operating Shareholder and other Shareholder (in case of Consortium);

“Proposal Security” means the unconditional bank guarantee in the amount of [insert amount] million Dollars (US\$) 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 delivered to BPDB to secure (a) the obligations of the Project Sponsor to maintain its Proposal in effect until the award of contract and (b) thereafter, the obligations of the Company to execute and deliver the Project Agreements within fifteen (15) Days of issuance of the Letter of Intent;

“Protected Assets” bears the meaning ascribed thereto in Section 19.5(a)(i);

“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 BPDB’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 Capacity Price” bears the meaning ascribed thereto in Section 13.1(a) ;

“Reference Date” means [insert Bid date], 2011⁵;

“Reference Energy Price” bears the meaning ascribed thereto in Section 13.1(a) ;

“Reference Foreign Escalable Capacity Price” bears the meaning ascribed thereto in Section 13.1(a)(iii)(B);

“Reference Foreign Variable Operation and Maintenance Price” bears the meaning ascribed thereto in Section 13.1(a)(iv)(A);

“Reference Gas Price” bears the meaning ascribed thereto in Section 13.1(a)(iv)(B);

“Reference Heat Rates” bears the meaning ascribed thereto in Section 13.1(a)(iv)(B);

“Reference Local Escalable Capacity Price” bears the meaning ascribed thereto in Section 13.1(a)(iii)(B);

“Reference Local Variable Operation and Maintenance Price” bears the meaning ascribed thereto in Section 13.1(a)(iv)(A);

“Reference Non-Escalable Capacity Price” bears the meaning ascribed thereto in Section 13.1(a)(iii)(A);

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

“Reference Tariff” means the Reference Capacity Price and the Reference Energy Price;

“Reference Variable Operation and Maintenance Price” bears the meaning ascribed thereto in Section 13.1(a)(iv)(A);

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

“Reference Heat Rates” bears the meaning ascribed thereto in Section 13.1(a)(iv)(B);

“Required Simple Cycle Commercial Operations Date” means the date that is twenty (20) Months following the Project Effective 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(s) or pursuant to Section 7.5 ; or (b) under Sections 4.5 and 7.2 of the Implementation Agreement or as a result of a Force Majeure Event(s) thereunder; (c) on a Day-for-Day basis for the number of Days that (i) the Possession Date occurs after or is delayed beyond the Scheduled Possession Date (each as defined in the Land Lease Agreement) or (ii) the Scheduled Commercial Operations Date is adjusted as a result of the discovery of the items listed in Sections 3.6(d) and 3.6(f) of the Land Lease Agreement;

“Required Commercial Operations Date” means the date that is twenty six (26) Months following the Project Effective 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(s) or pursuant to Section 7.5 ; or (b) under Sections 4.5 and 7.2 of the Implementation Agreement or as a result of a Force Majeure Event(s) thereunder; (c) on a Day-for-Day basis for the number of Days that (i) the Possession Date occurs after or is delayed beyond the Scheduled Possession Date (each as defined in the Land Lease Agreement) or (ii) the Scheduled Commercial Operations Date is adjusted as a result of the discovery of the items listed in Sections 3.6(d) and 3.6(f) of the Land Lease Agreement;

⁵ Insert date of bid.

“Required Financial Closing Date” means the date that is nine (9) Months following date Project Effective Date, provided that, such date may be extended upto maximum 3 (three) Months in accordance with the Section 8.6 of this Agreement; provided, that such date shall be extended on a Day-for-Day basis for the number of Days that (a) the registration of the Land Lease Agreement is delayed beyond the date set out in Section 3.1(b) of the Land Lease Agreement;

“Revised Dispatch Instruction” bears the meaning ascribed thereto in Section 9.3(f);

“SCADA System” means the Supervisory Control and Data Acquisition System which is composed of all telemetering and remote terminal units (“RTU”) at the Facility and associated with the Grid System or BPDB’s Control Center;

“Scheduled Commercial Operations Date” means the date advised to BPDB by the Company on or prior to the Financial Closing Date as the Scheduled Commercial Operations Date, which date shall initially not be later then the Required Commercial Operations Date, as such Scheduled Commercial Operations Date may be revised from time to time based on the Company’s scheduled construction program for the completion of Commissioning of the Facility;

“Scheduled Possession Date” bears the meaning ascribed thereto in Section 1 of the Land Lease Agreement;

“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;

“Scheduled Outage Energy” means the sum of the products (a) reduction in the Facility’s generating capacity (from the Contracted Facility Capacity) as a result of each Scheduled Outage during the relevant Contract Year, expressed in MW, multiplied by (b) the number of hours that such Scheduled Outage was in effect during the relevant Contract Year;

“Scheduled Simple Cycle Commercial Operations Date” means the date advised to BPDB by the Company on or prior to the Financial Closing Date as the Scheduled Simple Cycle Commercial Operations Date, which date shall initially not be later then the Required Simple Cycle Commercial Operations Date, as such Scheduled Simple Cycle Commercial Operations Date may be revised from time to time based on the Company’s scheduled construction program for the completion of Commissioning of the Facility;

“Security Package” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

“Simple Cycle Commercial Operation Date” – means the date following the Day on which the Facility is Commissioned at the Contracted Simple Cycle Capacity or, if Commissioned at less than the Contracted Simple Cycle Capacity, liquidated damages have been paid by the Company for the Dependable Capacity less than the Contracted Simple Cycle Capacity as provided in Section 8.2 of the PPA.

“Site” means the land to be leased to the Company by BPDB in 'as is' condition, 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;

“**Start-Up**” means a Hot Start-Up, a Cold Start-Up or a Warm Start-Up; where

- (a) “**Hot Start-Up**” bears the meaning ascribed thereto in Schedule 2;
- (b) “**Cold Start-Up**” bears the meaning ascribed thereto in Schedule 2;
- (c) “**Warm Start-Up**” bears the meaning ascribed thereto in Schedule 2;

“**Start-Up Payments**” means compensation payable by BPDB to the Company for Start-Up pursuant to Section 13.1(f) or Section 13.2(e);

“**STC Reference Date**” bears the meaning ascribed thereto in Section 13.1(g)(iv);

“**Supplemental Tariff**” means additional tariff payable by BPDB to the Company as determined pursuant to Section 13.1(g) and Section 11.7 of the Implementation Agreement;

“**Supplemental Tariff Payments**” means payments for the Supplemental Tariff in accordance with the payment schedule agreed to by the Company and BPDB, which shall be designed to permit the Company to recover the Supplemental Tariff as provided in Section 13.1(g) ;

“**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;

“**Terminal Point**” means the location located in the EIF where the EIF is to be connected to the ITF;

“**Termination Notice**” means a written notice issued by BPDB 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 BPDB, one (1) member from PGCB, three (3) members from the Company and one (1) member from the Engineer, 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;

“**Threshold Capacity**” means (a) during the period until the end of the first ten (10) Contract Years, ninety percent (90%) of the Contracted Facility Capacity and Contracted Simple Cycle Capacity and (b) during the period from the end of the tenth (10th) Contract Year until the end of the Term, eighty-five percent (85%) of the Contracted Facility Capacity;

“**Transferee**” bears the meaning ascribed thereto in Section 22.9(d);

“Transportation Facilities” bears the meaning ascribed thereto in Section 1 of the Gas Supply Agreement;

“Variable Operation and Maintenance Payment” bears the meaning ascribed thereto in Section 13.1(b)(ii);

“Unit Start-Up Charge” bears the meaning ascribed thereto in Section 13.1(f)(ii);

“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

General

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.
- (g) All capitalized words under this Agreement, unless otherwise defined herein, shall bear the same meaning as prescribed in the Gas Supply Agreement, Implementation Agreement and/or the Land Lease Agreement accordingly.

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 BPDB and for the purchase by BPDB from the Company of Net Energy Output and to deliver and purchase Dependable Capacity, and the rights and obligations of the Parties in relation thereto. For this purpose, the Company will build, own, Commission, operate, insure, maintain the Facility in accordance with this Agreement and the Technical Limits.

Section 3: SALE AND PURCHASE OF CAPACITY AND ENERGY

3.1 Energy and Capacity

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 exclusively to BPDB, and BPDB agrees to accept and purchase from the Company, for the consideration described in Section 13, the Dependable Capacity and, to the extent Dispatched, the Net Energy Output.

3.2 No Sales to Third Parties

Except to the extent that electric energy is required for the operation of any part of the Facility, the Parties agree that, during the Term, the Company shall not, without the prior written consent of BPDB:

- (a) sell or deliver electric energy produced by the Facility to any other person or entity than BPDB; or
- (b) confer upon any entity other than BPDB any right in or to Dependable Capacity.

Section 4: TERM, DEFAULTS, AND REMEDIES

4.1 Term of Agreement

- (a) This Agreement shall become effective upon execution and delivery hereof by the Parties and shall terminate twenty two (22) 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 BPDB

BPDB may give a notice of default under this Agreement (a "BPDB 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 BPDB of this Agreement or the Land Lease Agreement, (b) by the GOB of the Implementation Agreement or the Guarantee; (c) by the Gas Supplier of the Gas Supply Agreement, or (ii) occurs as a result of or during a Force Majeure Event pursuant to Section 16 during the period provided pursuant to Section 16.4:

- (a) any failure by the Company to deliver and maintain the Performance Security Deposit in full force and effect;
- (b) the failure of the Company to achieve the Financial Closing Date by the Required Financial Closing Date;
- (c) the failure of the Company to achieve the Construction Start Date within ninety (90) Days after the Financial Closing Date ;
- (d) (i) the failure of the Company to achieve the Simple Cycle Commercial Operations Date within six (6) Months after the Required Simple Cycle Commercial Operations Date;
(ii) the failure of the Company to achieve the Commercial Operations Date within six (6) Months after the Required Commercial Operations Date
- (e) after the Construction Start Date, but prior to the achievement of the Commercial Operations Date, the Abandonment of the Facility by the Company or 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, BPDB (in either case, other than as a result of BPDB's acts or omissions);
- (f) the failure of the Company to submit the Operations Security Deposit within thirty (30) Days after the Commercial Operations Date or to maintain the Operations Security Deposit, in either case, in accordance with Section 8.6(c);
- (g) 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 BPDB;

- (h) 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 BPDB's service to its customers is adversely affected that is not remedied within thirty (30) Days after the delivery of written notice from BPDB 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;
- (i) except for the transfer of the Facility to the GOB pursuant to the terms of the Implementation Agreement and the assignment to and by the Lenders contemplated under Section 9.2 of the Implementation Agreement and Section 22.10:

 - (i) the assignment or transfer of the Company's rights or obligations in the assets of the Facility without the prior consent of BPDB; or
 - (ii) the transfer, conveyance, loss or relinquishment to any person or entity of the Company's right to own and/or operate the Facility or any material part thereof, or to occupy the Site, without the prior written approval of BPDB;
- (j) 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;
- (k) 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;
- (l) any material breach by the Company of this Agreement that is not remedied within thirty (30) Days after notice from BPDB 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;
- (m) the occurrence of a Company Event of Default (as defined in the Implementation Agreement, the Land Lease Agreement or the Gas Supply Agreement) which has not been waived by the other party to the applicable agreement or remedied by the Company within the applicable cure period provided to the Company (or the Lenders) therein;

- (n) except for payments in respect of which security is then available to satisfy such payment obligation in full pursuant to Section 8.6, 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;
- (o) after the Commercial Operations Date, the failure by the Facility to achieve a Dependable Capacity which is equal or greater than the Threshold Capacity upon annual testing of Dependable Capacity pursuant to Section 7.2(a), and the applicable Rectification Period set out and defined in Section 7.2(d) has expired without the Facility achieving a Dependable Capacity which is equal or greater than the Threshold Capacity during a Dependable Capacity Test carried out during such Rectification Period; or

4.3 BPDB 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 (“BPDB Event of Default”) unless such BPDB Event of Default (i) results from a breach by the Company of this Agreement, the Implementation Agreement, the Gas Supply Agreement or the Land Lease Agreement, or (ii) if it occurs as a result of or during a Force Majeure Event pursuant to Section 16 during the period provided pursuant to Section 16.4:

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

in each case where:

- (A) (1) the GOB, without interruption, guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee; or (2) such other commercial security is provided for the obligation of the succeeding entity that in the reasonable business judgment of the Company provides an adequate alternative to the Guarantee, and
 - (B) all of BPDB’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 BPDB in the making of any payment or payments required to be made by it within thirty (30) Days of the due date therefor and then, upon notice to the GOB, any default or defaults by the GOB in the making of any payment or payments in accordance with the terms of the Guarantee which continues unpaid for five (5) Business Days;
 - (c) any statement, representation or warranty made by BPDB 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 BPDB’s ability to perform its obligations under this Agreement;

- (d) any material breach by BPDB of this Agreement, which is not remedied within thirty (30) Days after notice from the Company to BPDB 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)
 - (i) the occurrence of a GOB Event of Default (as defined in the Implementation Agreement) or of a Gas Supplier Event of Default (as defined in the Gas Supply Agreement) or a BPDB Event of Default (as defined in the Land Lease Agreement) which has not been waived or remedied within the applicable cure period provided therein; or
 - (ii) any change in any Laws of Bangladesh making:
 - (A) unenforceable, invalid, or void any material undertaking of BPDB under this Agreement; or
 - (B) it unlawful for the Company, its Lenders or the investors to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement or any other documents in the Security Package; or
 - (C) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right unenforceable, invalid or void as a result of any such change in law.
- (f) the failure of BPDB to permit Commissioning or testing of the Facility as provided in Section 7.1 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 7.1 as such date have been be adjusted by the Company in accordance with Section 7.1;
- (g) the failure by BPDB to establish and maintain the BPDB Letter of Credit as required under Section 13.2(i); or
- (h) the failure by BPDB to return any undrawn portion of the Performance Security Deposit to the Company in accordance with Section 8.6(b)(ii) within three (3) Business Days after the date required thereunder has occurred.

4.4 Rights and Remedies Upon an Event of Default

- (a) Notice of Intent to Terminate
 - (i) Upon the occurrence of a BPDB 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 BPDB 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) forty-five (45) Days in case of a failure by either Party to make payments when due; and
 - (B) ninety (90) 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) In the event that the Facility is transferred to the GOB or its designee under the terms of the Implementation Agreement, this Agreement shall immediately terminate and the Company shall have no further obligations to BPDB 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 BPDB 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 Facility is transferred to the GOB or its designee for the consideration provided pursuant to the Implementation Agreement and the payment to BPDB of amounts due under Section 8 (if any), that such transfer and the payment of such consideration pursuant to the Implementation Agreement and the payment under Section 8 (if any) is reasonable and constitutes liquidated damages to BPDB in such event; and the transfer of the Facility and payment of such consideration pursuant to the Implementation Agreement and payments to BPDB 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 BPDB following such termination of this Agreement; and

- (B) if this Agreement is terminated pursuant to Section 4.2(b), BPDB may draw on the Performance Security Deposit and it is agreed that such drawing is reasonable and constitutes liquidated damages to BPDB in such event and the drawing on such Proposal Security shall be the sole remedy of BPDB following such termination of this Agreement.

4.5 Notice to Lenders of Company Event of Default

(a) No Termination without Notice to Lenders

Notwithstanding anything in this Agreement, from and after the occurrence of the Financial Closing Date, BPDB shall not seek to terminate this Agreement without first giving to the Lenders a copy of any notices given to the Company under Sections 4.2 and 4.4, such notice to be coupled with a request to the Lenders to cure any such default within the cure period specified in Section 4.4(b) (the "Initial Cure Period"), which period shall commence upon delivery of each such notice to the Lenders.

(b) Designation of Agent and Notification Procedure

- (i) The Lenders will designate in writing to BPDB an agent (the "Agent") and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders.
- (ii) Each such notice shall be in writing and shall be deemed to have been delivered:
 - (A) when presented personally to the Lenders or the Agent;
 - (B) when transmitted by BPDB and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below; or
 - (C) 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 Lenders at the address indicated at Financial Closing (or such other address or to the Agent at such address as the Lenders may have specified in written notice delivered in accordance herewith).

Any notice given by facsimile under this Section 4.5 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lenders or the Agent.

- (iii) Notwithstanding the foregoing, if the address of the Lenders or the Agent is outside Bangladesh, any notice delivered to the Lenders or Agent pursuant to this Section 4.5 shall be:
 - (A) presented personally or sent by international courier or facsimile; and
 - (B) if sent by facsimile, confirmed by international courier,

and the Initial Cure Period shall commence upon receipt by the Lenders or the Agent of the notice referenced above.

- (iv) The address and facsimile number for the Lender or the Agent shall be provided to BPDB by the Company at Financial Closing and thereafter may be changed by the Lenders or the Agent by subsequent delivery of a notice to BPDB at the address or facsimile number for BPDB provided in Section 21 (or at such other address or facsimile number subsequently delivered to the Lenders or the Agent in accordance with this Section 4.5(b)(iv)) and otherwise in accordance with the requirements of Section 21.

(c) Termination Not Valid without Notice to Lenders

- (i) From and after Financial Closing no rescission or termination of this Agreement by BPDB (other than a Company Event of Default under Section 4.2(c)) shall be valid or binding upon the Lenders without such notice, and the expiration of:
 - (A) the Initial Cure Period;
 - (B) the Evaluation Period provided in Section 4.5(d); and
 - (C) if applicable, the Lenders Cure Period, provided in Section 4.5(e), as such Lenders Cure Period may be extended.
- (ii) The Lenders may make, but shall be under no obligation to make any payment or perform or procure the performance of any act required to be made or performed by the Company, with the same effect as if made or performed by the Company.

(d) Failure of Lenders to Cure Default

If the Lenders fail to cure or are unable or unwilling to cure any Company Event of Default that is required to be cured prior to the expiration of the periods referred to above in this Section 4.5, BPDB shall have all the rights and remedies with respect to such default as set forth in this Agreement; provided, that:

- (i) upon the expiration of the Initial Cure Period, the Lenders shall have a further period (an "Evaluation Period") during which the Lenders may evaluate such Company Event of Default, the condition of the Facility and other matters relevant to the actions to be taken by the Lenders concerning such Company Event of Default; and
- (ii) the Evaluation Period shall end on the earlier of:
 - (A) the delivery by the Lenders to BPDB of a notice that the Lenders have elected to procure the cure of such Company Event of Default or otherwise pursue their remedies under the Financing Documents (an "Election Notice"); and
 - (B) thirty (30) Days following the end of the Initial Cure Period.

During the Evaluation Period BPDB's rights and remedies with respect to a Company Event of Default shall be suspended.

(e) Delivery of Election Notice

- (i) Upon the delivery of the Election Notice, the Lenders shall be permitted an additional period of one hundred and eighty (180) Days to cure any Company Event of Default (the "Lenders Cure Period").

- (ii) During the Lenders Cure Period, BPDB's right to terminate this Agreement shall be suspended so long as the Lenders are diligently:
 - (A) attempting to procure (other than by the Company, unless the Company is acting at the direction of the Lenders) the cure of such default; or
 - (B) pursuing the enforcement of their rights and remedies under the Financing Documents against the Company.
- (f) Expiry of Cure Period

In the event that the Lenders fail to cure any Company Event of Default on or before the expiration of the Lenders Cure Period BPDB may exercise its rights and remedies with respect to such default set forth in this Agreement and BPDB may immediately terminate this Agreement, and such termination shall be effective on delivery to the Lenders or the Agent of notice of such termination.

4.6 Notice to the GOB of BPDB's Default

(a) No Termination without Notice to GOB

Notwithstanding anything in this Agreement, the Company shall not seek to terminate this Agreement as a result of any default of BPDB without first giving a copy of any notices given to BPDB under Sections 4.3 and 4.4 to the GOB, such notices to be coupled with a request to the GOB to cure any such default within the same cure period as provided to BPDB hereunder and such cure period to commence upon delivery of each such notice to the GOB.

(b) Notification Procedure

- (i) Each such notice shall be deemed to have been delivered:
 - (A) when presented personally to the GOB;
 - (B) when transmitted by facsimile; or
 - (C) 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 GOB, at the address indicated in Section 17 of the Implementation Agreement (or such other address as the GOB may have specified by written notice delivered in accordance therewith).

Any notice given by facsimile under this Section 4.6 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the GOB.

(c) Termination Not Valid without Notice to GOB

- (i) No rescission or termination of this Agreement by the Company shall be of any effect without such notice and expiration of such cure period.
- (ii) The GOB may make or perform, but shall be under no obligation to make any payment (other than as required under the Guarantee) or to perform any act required of BPDB hereunder with the same effect as if the payment or act had been made or performed by BPDB.

- (d) Failure to Cure Default
 - (i) If the GOB fails to cure or is unable or unwilling to cure a BPDB Event of Default within the cure periods provided to BPDB under this Agreement, the Company shall have all its rights and remedies with respect to such default as set forth in this Agreement.
 - (ii) Provided, that if the GOB is diligently attempting to cure such default, other than a payment default of BPDB, and demonstrable progress toward effecting such cure is being made, the GOB shall be granted an additional period not exceeding ninety (90) Days to effect such cure before the Company may exercise its rights and remedies with respect to such default set forth in 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 BPDB to:

- (a) Until the Financial Closing Date, use all reasonable efforts to obtain all necessary debt and equity financing in an amount (including reasonable contingencies and working capital requirements) sufficient for the implementation of the Project in the manner contemplated by this Agreement;
- (b) Until the Financial Closing Date, use all reasonable efforts to negotiate and execute the Construction Contract with the Contractor(s) and the Financing Documents;
- (c) Engage only such 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, in such a manner as to provide a reasonable likelihood, with proper maintenance and operation, that the useful life of the Facility will be at least equal to the Term;
- (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 BPDB Covenants

BPDB hereby covenants to and agrees with the Company to:

- (a) Cooperate with all appropriate third parties so as to facilitate the Company's having unrestricted access to the Site;
- (b) Cooperate with all appropriate third parties so as to facilitate the lease to the Company of the Site and any and all other real estate rights which the Company may require in order to construct and operate the Facility as contemplated hereby;
- (c) Cooperate, upon the request of the Company, with the Company to obtain electrical energy for construction, Commissioning and Start-Up, in accordance with Section 6.3;
- (d) Cooperate with all appropriate third parties and take such steps as are within its control to facilitate all infrastructure and utilities (including, without limitation, road access, cooling water pipeline, water drainage and sewage services, telephone, telecopier, and electricity interconnections) necessary for construction and operation of the Facility to be provided as contemplated hereby;
- (e) Cooperate in good faith with the Company in obtaining Government Authorisations, permits and licences, including, but not limited to, construction, water, air, other environmental, import and transportation permits and licences and

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 BPDB 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, judgement, 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 BPDB Representations and Warranties

BPDB hereby represents and warrants that:

- (a) BPDB 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) The execution, delivery and performance by BPDB of this Agreement have been duly authorised by all necessary BPDB or GOB action, and do not and will not:
 - (i) require any consent or approval of BPDB's board of members, officers, or officials other than those which have been obtained (evidence of which shall be, if it has not been, delivered to the Company upon its request); and
 - (ii) to the best of its knowledge, violate or breach any provisions of, or constitute a default under BPDB's charter or bylaws, 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, judgement, injunction, decree, determination, or award presently in effect having applicability to BPDB.
- (c) This Agreement is a valid and binding obligation of BPDB.
- (d) There is no pending or, to the best of BPDB's knowledge, threatened action or proceeding against BPDB before any court, Government Authority, or arbitrator that could reasonably be expected to affect materially and adversely the ability of BPDB 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, pursuant to Section 4 of the Implementation Agreement, 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 and the Electrical Interconnection Facilities to enable it to perform its obligations under this Agreement.
- (b) BPDB, 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 BPDB, the Interconnection and Transmission Facilities and the Electrical Interconnection Facilities in order to enable it to perform its obligations under this Agreement.

6.2 Documents to be Submitted by Company

Subject to Section 22.12, the Company shall provide the following documents to BPDB:

- (a) EPC Contract

On or before the Construction Start Date, a copy of the contractual documents covering the engineering, procurement and construction, including all schedules thereto, and complete plans and specifications for the construction of the Facility:

provided, that the Company shall be permitted to delete from the Construction Contract delivered to BPDB all specific references to prices payable by the Company thereunder. The confidentiality provisions contained in this Agreement shall apply to BPDB with respect to the Construction Contract.

- (b) 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.

- (c) O&M Agreement

Not later than sixty (60) Days after execution of any O&M Agreement and in any event not less than one hundred and twenty (120) Days before the then-prevailing Scheduled Commercial Operations Date, a copy of the Company's plan for the operation and maintenance of the Facility or an O&M Agreement entered into by the Company; provided, that if the Company provides the O&M Agreement it shall be permitted to delete from the O&M Agreement all specific references to amounts payable by the Company thereunder. The confidentiality provisions contained in this Agreement shall apply to BPDB with respect to the O&M Agreement.

- (d) Testing Procedure and Protocols

- (i) At least one hundred and twenty (120) Days before the scheduled commencement of the testing and Commissioning of the Facility, the Company shall submit to BPDB detailed procedures and protocols to be used during the corresponding testing.

(ii) The Engineer and BPDB shall have the opportunity to provide written comments on the proposed procedure and protocols within thirty (30) Days of receipt from the Company of said documentation, and the three Parties will reach an agreement on the procedures and protocols to be used for testing not later than sixty (60) Days prior to the scheduled commencement of the respective testing and Commissioning; provided, that:

(A) if BPDB fails to submit written comments to the Company within the thirty (30) Days stipulated above, it shall be deemed to have accepted the detailed procedure and protocols provided by the Company; and

(B) if the Parties fail to reach agreement on the procedures and protocols within sixty (60) Days prior to the scheduled commencement of the respective testing and Commissioning,

the matter may be referred to the Engineer by either Party, and the Engineer shall make the decision on the protocol and procedures within the five (5) Days of the matter being referred to it, and such decision shall be binding on the Parties.

(e) Start-up and Test Schedules

At least ninety (90) Days before the scheduled commencement of testing and Commissioning of the Facility as a Combined Cycle Unit, the intended Start-Up and test schedule for such unit.

(f) Insurances

(i) Construction Insurance

(A) By the Construction Start Date, a copy of the Contractor's All Risk Insurance Policy; and

(B) As soon as available, but in any event on or before the Commercial Operations Date, and as and when updated, copies of all other insurance policies and certificates of insurance or other evidence of insurance for policies related to construction detailed in Section 14.1(b).

(ii) Operations Insurance

As soon as available, but not later than the Commercial Operations Date, copies of all insurance policies and certificates of insurance related to operations obtained pursuant to Section 14.1(c).

(iii) Other Insurances

As soon as available, copies of all insurance policies and certificates of insurance detailed in Section 14.1(d).

(g) Test Results

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

(h) Plans and Drawings

As soon as available, plans and specifications and as-built drawings for the Facility including the civil and architectural works.

(i) Quality Control Programs

(i) On or before the date which is ninety (90) Days after the Financial Closing Date, the Company shall develop and furnish to BPDB a quality control program based on Prudent Utility Practices covering all aspects of the design, engineering, equipping and construction of the Facility.

(ii) Not later than ninety (90) Days prior to the Commercial Operations Date, the Company shall develop and furnish to BPDB 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 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 having jurisdiction under the laws of Bangladesh to provide such electrical energy (the "Relevant Utility") to the Company at the Site. If the Company elects to purchase such electrical energy from the Relevant Utility, upon the Company's request to BPDB, BPDB shall act as a facilitator so that the Facility receives from the Relevant Utility, at the relevant tariff and related costs then charged by such utility, reliable electrical supply at the Site at available capacity and voltage, for the Company to carry out the construction, testing and Commissioning of the Facility.

(b) BPDB shall provide the Facility with electrical energy for testing and Commissioning. Such electrical energy provided by BPDB shall be netted off against the Net Energy Output for the purpose of calculating the Energy Payment pursuant to Section 13.

(c) BPDB shall accept and receive all Net Energy Output generated during testing and Commissioning of the Facility.

6.4 Operating Procedures

(a) Not later than one hundred and eighty (180) Days before the then prevailing Scheduled Commercial Operations Date, the Company shall provide BPDB with draft operating procedures dealing with all operation interfaces between BPDB 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 ninety (90) Days after BPDB's receipt of the draft Operating Procedures, BPDB shall notify the Company of any requested deletions, amendments or additions.

- (c) The Company shall make any deletions, amendments or additions that BPDB 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 and provide such revised draft to BPDB not later than forty-five (45) Days before the then prevailing Scheduled Commercial Operations Date.
- (d) Disagreement between the Parties over the revised draft Operating Procedures shall be referred for resolution to the Joint Coordinating Committee within seven (7) Days from the date the Company submits the draft Operating Procedure under subsection (c) above.
 - (i) If the Joint Coordinating Committee has not been formed on or before the date of such referral, the Dispute shall be referred to the Engineer.
 - (ii) If not resolved by the Joint Coordinating Committee within thirty (30) Days of such referral, the Dispute will be referred for resolution to the Engineer who shall be directed to render his decision by no later than thirty (30) Days prior to the then-prevailing Scheduled Commercial Operations Date.
 - (iii) If the Engineer has not rendered his decision by the time stipulated in Section 6.4(d)(ii) above, the Operating Procedures, as proposed by the Company shall be used for operating the Facility pending the decision of the Engineer, and such delay by the Engineer in rendering its decision shall not postpone the Commercial Operations Date. Upon the decision being rendered by the Engineer, the Operating Procedures for the Facility shall be modified accordingly.
 - (iv) The decision rendered by the Engineer pursuant to this Section 6.4(d) shall be final and binding upon both Parties.
- (e) Either Party may, from time to time, request revisions to the Operating Procedures subject to agreement from the other Party.

6.5 BPDB Observation Visits

- (a) BPDB 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 BPDB 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 BPDB of the design, construction or operation of the Facility nor as a warranty by BPDB of the safety, durability or reliability of the Facility.
- (c) BPDB shall indemnify and hold harmless the Company from and against any and all Losses in respect of damage to the Facility or any part thereof and in respect of personal injury or death to any such person visiting the Facility resulting from the negligence or willful misconduct of BPDB or any persons visiting the Facility on its behalf, but only to the extent that such Loss is not covered by insurance maintained for the benefit of, inter alia, the Company.

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 BPDB and (following the appointment of the Engineer) the Engineer prior to the fifteenth (15th) Day of each Month. Such reports shall cover progress in the development, permitting, financing, construction, and operation of the Facility for the preceding Month.
- (b) On the Financial Closing Date and once during each Month thereafter, the Company shall give BPDB written notice of the Scheduled Commercial Operations Date and thereafter any changes thereto.

Section 7: TESTING AND CAPACITY RATINGS

7.1 Testing of the Facility Prior to the Commercial Operations Date

7.1.1 Notification and Scheduling

- (a) The Company will use its best efforts to provide BPDB on an on-going basis with relevant information regarding its program for testing the Simple Cycle Unit and Combined Cycle Unit. Not less than thirty (30) Days prior to testing of the Simple Cycle Unit and Combined Cycle Unit, the Company will deliver to BPDB in writing the final program for testing, including the expected duration of the testing program and a tentative schedule for conducting all relevant tests required by Schedule 3. The Company shall advise BPDB in writing of its final schedule for the testing program not less than seven (7) Days prior to the commencement of the tests required by Section 4.1 of Schedule 3. If the schedule for any test required by Schedule 3 is adjusted after the Company has provided BPDB with the final testing program schedule, the Company shall advise BPDB not less than twenty-four (24) hours prior to the commencement of any such test. On each Day beginning with the Day on which testing commences, the Company shall provide BPDB with a schedule of the tests to be conducted on the following Day or Days if such test will continue for more than one (1) Day. All testing of the Facility shall satisfy the applicable requirements provided in Schedule 3.
- (b) If BPDB is unable to accommodate the schedule for such test or tests as provided by the Company in the final schedule for the program of tests pursuant to the foregoing Section 7.1.1(a) (whether by reason of BPDB's failure to deliver electrical energy to or receive Net Energy Output from the Facility pursuant to Section 6.3, or otherwise), BPDB will give the Company notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral of any test or tests and the Parties will mutually agree on a date for any deferral test or program of tests; provided, however, that any such delays shall be subject to the provisions of Section 7.5 below.

7.1.2 Commercial Operations Test

- (a) The Company shall be entitled to attempt as many Commercial Operations Tests as are necessary to satisfy the minimum criteria (as set out in Schedule 3) for achieving the Commercial Operations Date in Simple Cycle and Combined Cycle. The Company shall give BPDB not less than forty-eight (48) hours notice of each additional Commercial Operations Test it desires to attempt.
- (b) If the results of a Commercial Operations Test satisfy the minimum performance criteria (as set out in Schedule 3) to achieve the Commercial Operations Date (both in Simple Cycle and Combined Cycle) then:

 - (i) Provided that the Facility has demonstrated a Dependable Capacity greater than the Threshold Capacity, if the Company is satisfied with the Dependable Capacity achieved in such Commercial Operations Test, subject to the payment of any liquidated damages due under Section 8.2, the Company shall notify BPDB that the Company has designated such test as the Commercial Operations Test for the purposes of establishing the Commercial Operations Date or Simple Cycle Commercial Operations Date; or

- (ii) if the Company is not satisfied with the Dependable Capacity achieved in such Commercial Operations Test, the Company may, without prejudicing the achievement of the Commercial Operations Date or Simple Cycle Commercial Operations Date, conduct up to three (3) Dependable Capacity Tests to establish the Dependable Capacity, provided, that BPDB is given at least forty eight (48) hours notice prior to the commencement of each such test, and provided, further, that the Commercial Operations Date or Simple Cycle Commercial Operations Date shall not occur and BPDB shall have no obligation to commence the payment to the Company of any Capacity Payments until the date on which the Company has notified BPDB in writing that the most-recently performed Dependable Capacity Test (carried out pursuant to this Section 7.1.2(b)) has demonstrated a Dependable Capacity not less than the Threshold Capacity, the Company has designated the then-most recently performed Dependable Capacity Test (carried out pursuant to this Section 7.1.2(b)) as being a part of the Commercial Operations Test for the purpose of establishing the Commercial Operations Date or Simple Cycle Commercial Operations Date and paid the required liquidated damages, if any, pursuant to Section 8.2.

The Commercial Operations Test shall be completed for the purpose of establishing the Commercial Operations Date or Simple Cycle Commercial Operations Date when the Company notifies BPDB of its designation of the Commercial Operations Test in Section 7.1.2(b)(i) or its designation of the Dependable Capacity Test in Section 7.1.2(b)(ii), as the case may be (such Dependable Capacity Test which is part of the Designated Commercial Operations Test pursuant to Section 7.1.2(b)(i) or designated pursuant to Section 7.1.2(b)(ii) shall hereinafter be referred to as the "Initial Dependable Capacity").

- (c) The Initial Dependable Capacity shall not exceed, and, if greater, shall be deemed to be equal to the Contracted Facility Capacity.

7.2 Testing of Dependable Capacity of the Facility after Commercial Operations Date

- (a) After the Commercial Operations Date, the Dependable Capacity shall be tested in accordance with Schedule 3.2(a) annually at times mutually agreed upon by the Company and BPDB for the Facility as a Combined Cycle Unit; provided, that such Dependable Capacity Test shall to the extent possible be conducted within one (1) Month after the completion of a Scheduled Outage; and provided, further, that, subject to any rights of retest provided herein, a Dependable Capacity Test shall in any event be carried out on the Facility not later than four hundred (400) Days following the last Dependable Capacity Test (or retest thereof, as the case may be). The Company may within seventy-two (72) hours of completion of an annual test, reject the test and may conduct a retest in respect of any one rejected test, provided, however, that the Company cannot conduct more than two retests. The Company shall give BPDB at least twenty-four (24) hours' notice of any such retest and the retest shall be conducted within seven (7) Days of the completion of the rejected test.
- (b) If, as the result of a Dependable Capacity Test carried out pursuant to Section 7.2(a) above or Section 7.2(c) or (d) below, the new tested capacity is shown to be:
 - (i) above the Dependable Capacity in effect prior to such test, the Company shall set the Dependable Capacity at the new tested capacity (which shall not exceed the Contracted Facility Capacity), effective from the beginning of the Day following the Day on which such test is completed.
 - (ii) below the Dependable Capacity in effect prior to such test, the Dependable Capacity shall be reduced to the newly tested value, effective from the beginning of the Day following the Day on which such test is completed; provided, that the result of any rejected test shall be ignored in determining the Dependable Capacity.

- (c) Between annual tests, BPDB may request two Dependable Capacity Tests if BPDB believes that the currently established Dependable Capacity does not accurately reflect the capacity available to BPDB. The Company shall be entitled to two retests of any such test provided that it rejects the test within seventy-two (72) hours of completing the test. The test and, as appropriate, the retest shall be conducted in accordance with Schedule 3, within seven (7) Days of its request or, as the case may be, the rejection, and the Company shall give BPDB not less than twenty-four (24) hours notice of its intention to perform the test.
- (d)
 - (i) If any annual test carried out by the Company for determining the Dependable Capacity pursuant to Section 7.2(a) above results in a Dependable Capacity lower than the Threshold Capacity, the Dependable Capacity shall be reduced to the newly tested value and the Company shall be entitled to carry out as many Dependable Capacity Tests as it may choose to carry out during the applicable Rectification Period (as defined below) until it has demonstrated a Dependable Capacity equal to or greater than the Threshold Capacity; provided, that in no event shall the Company be permitted to carry out more than one (1) test in any seven (7) Day period, and provided, further, that BPDB shall have been given by the Company at least twenty-four (24) hours' prior notice of each such retest.
 - (ii) In respect of any annual test referred to in Section 7.2(d)(i), above, the Rectification Period shall be an eighteen (18) month period commencing from the Day following the date on which such annual test was carried out.
- (e) Notwithstanding anything to the contrary expressed or implied herein, if a Dependable Capacity Test is required and the Company has not carried out such a test by the last date on which such test is required to have been carried out herein, BPDB shall, in addition to any other right available to it hereunder, have the right on not less than twenty-four hours' prior notice to notify the Company of the designated 6 hour testing period during which the Facility will undergo a Dependable Capacity Test. During such testing period, as notified by BPDB, the Facility shall be deemed to be Dispatched at full load and the Net Energy Output delivered during such testing period, as measured by the Metering System, shall be used to determine the Dependable Capacity effective from the Day following such test until such time as the Company has carried out a Dependable Capacity Test in accordance with this Agreement.

7.3 Notice of and Compliance with Testing Procedures

The Company shall carry out Commissioning of the Facility and testing of the Initial Dependable Capacity and Dependable Capacity of the Facility in accordance with Sections 7.1, 7.2, and Schedule 3. BPDB shall use its reasonable efforts to comply promptly with all reasonable requests by the Company for assistance carrying out such testing and Commissioning. BPDB shall be given prior written notice of the testing or Commissioning procedure in accordance with Sections 7.1 and 7.2 and shall be entitled to be present and observe any such testing and Commissioning.

7.4 Copies of Test Results

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

7.5 Damages for BPDB Delay

- (a) For reasons not caused by PGCB, should BPDB 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:
- (i) 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
 - (ii) from and after the Scheduled Commercial Operations Date prevailing on the Certification Date, BPDB shall pay to the Company each Month (and pro rated for any portion of a Month) an amount equal to the Carrying Cost plus fifty (50%) of the Escalable Payment that would have been due and payable had the Commercial Operations Date occurred on the Scheduled Commercial Operations Date prevailing on the Certification Date to the Company from BPDB computed based on the assumption that Dependable Capacity equals the Contracted Facility Capacity (and such amount to be adjusted for exchange rate changes and inflation to the date of payment on the same basis as is set out in Section 13 applied mutatis mutandis). In addition, BPDB shall pay to the Company, within twenty-five (25) Days of demand by the Company, which demand shall not be delivered to BPDB more than twenty-seven (27) Days prior to the date or dates upon which the corresponding principal repayments that are then due and payable from the Company to the Lenders under the terms of the Financing Documents, an amount equal to the principal repayments required to be paid by the Company to the Lenders under the Financing Documents which are deemed to have accrued during the period beginning on and including the Scheduled Commercial Operations Date prevailing on the Certification Date and continuing for a period equal in length to the duration of the Testing Delay Duration.

For the purpose of this Section 7.5, principal payments under the Financing Documents shall be deemed to accrue on a daily basis in accordance with the following formula:

$$A = R / P$$

WHERE:

- A** = the amount of principal deemed to accrue on the relevant Day;
- R** = the total amount of principal to be repaid by the Company on the next scheduled principal repayment date after the relevant Day under the Financing Documents; and
- P** = the number of Days in the period beginning on the previous scheduled principal repayment date under the Financing Documents and ending on such next scheduled principal repayment date (or, in the case of the first principal repayment, beginning on the Scheduled Commercial Operations Date prevailing on the Certification Date and ending on the first scheduled principal repayment date under the Financing Documents).

Any amounts in respect of such principal repayments so paid by BPDB to the Company pursuant to the above provisions of this Section 7.5 are hereinafter referred to as “**Principal Payments**”.

All amounts payable under this Section 7.5 by BPDB shall be further adjusted for changes in the value of the Taka against the Dollar from the exchange rate used to prepare the relevant invoice pursuant to Section 13.3(a) to the exchange rate prevailing on the first Business Day after the date that the relevant amount is received by the Company from BPDB on the same basis as is set out in Section 13.1(d) applied mutatis mutandis and any payment due from BPDB to the Company as a result of such adjustment shall be paid at the time provided in Section 13.1(d) mutatis mutandis. Such payments shall continue for a period equal in length to the Testing Delay Duration. The Company shall repay the any Principal Payments paid in accordance with this Section 7.5 in equal Monthly amounts over a period beginning on the Commercial Operations Date and equal to five (5) times the Testing Delay Duration, plus interest on the outstanding balance of any such Principal Payments at the weighted average interest rate prevailing on the loans (adjusted for the change in the value of the Taka against the Dollar) under the Financing Documents on which the principal repayment was made until the Principal Payments have been repaid to BPDB in full. Such schedule shall provide for Monthly payments (to be made immediately following the Company’s scheduled debt service payments, if any):

provided, that payments from the Company to BPDB under this Section 7.5 are fully subordinated to amounts due and payable to the Lenders under the Financing Documents, so that if and to the extent that funds for such payments are not available to the Company from cash flow from the Project less amounts paid or due for operating costs, taxes, and debt service, such payment will be deferred with interest at the above-stated rate, and the failure of the Company to make any part or all of any such payment shall not constitute a late payment or a Company Event of Default under this Agreement.

7.6 Testing Disputes

The Engineer shall certify all test results arising out of or in connection with Commissioning and determination of the Initial Dependable Capacity pursuant to this Section 7.1.2 and Schedule 3.

- (a) If either Party disagrees with the certification made by the Engineer or the certification of the Testing and Commissioning Committee, as the case may be, 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 and the provisions of Section 13.2(i) shall apply.
- (b) In the event of a Dispute (other than those falling within Section 7.6(a) above) relating to the testing and Commissioning provisions set out in this Section 7 or Schedule 3 (or both), the Expert shall be the Engineer and the relevant provisions of Section 19 shall apply and the decision of the Engineer (acting as the Expert) made in accordance with Section 19 shall, in the absence of manifest error, be final and binding on the Parties.

Section 8: LIQUIDATED DAMAGES

8.1 Delay in Commercial Operations

- (i) If the Simple Cycle Commercial Operations Date has not occurred by the Required Simple Cycle Commercial Operations Date (as such date may have been extended as a consequence of a Force Majeure Event), the Company shall pay BPDB, Monthly in arrears until the Simple Cycle Commercial Operations Date, as liquidated damages for delays in Commissioning as a Simple Cycle Unit, an amount equal to the product of (a) \$50.00 and (b) the Contracted Simple Cycle Capacity in MW for each Day (or any fraction thereof) of delay of the Simple Cycle Commercial Operations Date beyond the Required Simple Cycle Commercial Operations Date. In no event shall the total amount of damages assessed under this Section 8.1 exceed twelve (12) Months of liquidated delay damages.
- (ii) 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 BPDB, Monthly in arrears until the Commercial Operations Date, as liquidated damages for delays in Commissioning of the Facility as a Combined Cycle Unit, an amount equal to the product of (a) \$100.00 and (b) the Contracted Facility 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 8.1 exceed twelve (12) Months of liquidated delay damages.

8.2 Failure to Meet Contracted Facility Capacity.

- (a) In the event that upon completion of the Dependable Capacity Tests used to establish the Initial Dependable Capacity of the Facility, the Initial Dependable Capacity is less than the Contracted Facility Capacity but is greater than the Threshold Capacity, provided that the Company pays the liquidated damages provided in Section 8.2(b) on or before the Commercial Operations Date, the Company shall, pursuant to Section 7.1.2, have the option for a period of up to three (3) Months to undertake any necessary actions to increase the Initial Dependable Capacity up to the Contracted Facility Capacity at its own cost and any increase in the Initial Dependable Capacity shall be demonstrated through testing carried in accordance with Section 7.1.2, including the obligation to give BPDB not less than twenty-four (24) hours advance notice of any such test to be carried out and to give BPDB the opportunity to be present and to observe any such test being carried out. Capacity Payments shall be made on the basis of the Initial Dependable Capacity then in effect, and if any increase in the Initial Dependable Capacity is demonstrated, Capacity Payments will be adjusted from and after the Day following such demonstration.
- (b)
 - (i) On or before the occurrence of the Simple Cycle Commercial Operations Date, If the Initial Dependable Capacity is set at a level that is below the Contracted Simple Cycle Capacity, the Company shall pay to BPDB as liquidated damages an amount equal to one thousand Dollars (US\$ 1,000) per kW times the difference between the Contracted Simple Cycle Capacity and Initial Dependable Capacity; provided, that such a difference does not exceed an amount equal to ten per cent (10%) of the Contracted Simple Cycle Capacity.
 - (ii) On or before the occurrence of the Commercial Operations Date, If the Initial Dependable Capacity is set at a level that is below the Contracted Facility Capacity, the Company shall pay to BPDB as liquidated damages an amount equal to one thousand Dollars (US\$ 1,000) per kW times the difference between the Contracted Facility Capacity and Initial Dependable Capacity; provided, that such a difference does not exceed an amount equal to ten per cent (10%) of the Contracted Facility Capacity.

8.3 Forced Outages and Maintenance Outages

- (a) In the event that the sum of:
- (i) the Equivalent Forced Outages Energy for the Facility (“a”); plus
 - (ii) the Maintenance Outages Energy (“b”); plus
 - (iii) the Scheduled Outages Energy (“c”),

shall exceed Ω MWh in any Contract Year and during simple cycle operation, where Ω MWh equals the Average Dependable Capacity for that Contract Year multiplied by:

- (1) One thousand three hundred and seventy six (1376) hours in the third Contract Year (the “Major Maintenance Year”) and every third Contract Year after the Major Maintenance Year; provided, that the Company may at its sole discretion elect that the Major Maintenance Year shall occur in the Contract Year immediately preceding or immediately following any such Contract Year (instead of such Contract Year) and each subsequent Major Maintenance Year shall be adjusted accordingly; and
- (2) Eight hundred and seventy six (876) hours in all Contract Years including simple cycle operation period other than those Contract Years referred to in sub paragraphs (a)(1) above,

then, the Company shall owe BPDB, as liquidated damages, the Capacity Factor Amount multiplied by $((a + b + c) - \Omega)$ for that Contract Year.

- (b) In computing liquidated damages payable by the Company for the first Contract Year and during simple cycle operation, the sum of $(a + b + c)$ in this Section 8.3 shall be adjusted by multiplying $(a + b + c)$ by 0.75. There shall be no adjustment in any subsequent Contract Year.
- (c) The Capacity Factor Amount in any Contract Year “n” shall be equal to the product of (i) Average Capacity Price_n (as defined in Section 8.3(d) below) and (ii) 1.522.
- (d) In respect of this Section 8.3, the Average Capacity Price_n in Taka per kW – Month for Contract Year, n, shall be calculated as follows to determine any liquidated damages payable under this Section:

$$\text{Average Capacity Price}_n = \sum \left(\left(\text{RNECP}_n + \text{RECP}(\text{US})_n \times \text{FIIF}_{qm} \right) \times \text{CE}_{\text{invoicem}} + \left(\text{RECP}(\text{Tk})_{mn} \times \text{LIIF}_{qm} \right) \right) / 12$$

$$m = 1 \text{ to } 12$$

where,

RNECP_n, RECP(US)_n, RECP(Tk)_n, FIIF_{qm}, LIIF_{qm} and CE_{invoicem} shall have the meanings set out in Section 13.

8.4 Deleted

8.5 Waiver of Defenses

The Parties agree that BPDB may be substantially damaged in amounts that may be difficult or impossible to determine in the event that:

- (a) the Commercial Operations Date is not achieved by the Required Commercial Operations Date;
- (b) the Facility is not capable of achieving the required Initial Dependable Capacity;
- (c) the Facility cannot minimise the number of Forced Outages or Maintenance Outages or Scheduled Outages; or
- (d) the Facility cannot achieve the Dispatched operating levels.

Therefore:

- (x) the Parties have agreed on the amounts specified herein which the Parties agree are reasonable as liquidated damages and it is further understood and agreed that the payment of liquidated damages is in lieu of actual damages for such occurrences and the collection of the damages provided for in this Section 8 (subject to the limits set out in this Agreement), plus any interest that may be due thereon, is the sole remedy of BPDB in the event of any such failure by the Company (except for BPDB's remedy pursuant to Section 4.2(d) and Section 4.2(o)).
- (y) the Company hereby waives, to the fullest extent permitted by applicable law, any defense as to the validity of any liquidated damages in this Agreement on the grounds that such damages are void as penalties.

8.6 Security Deposits

- (a) Proposal Security
 - (i) The Project Sponsor (now, the Initial Shareholder[s]) delivered to BPDB the Proposal Security on the Bid Date.
- (b) Performance Security Deposit
 - (i) the Company shall deliver to BPDB the Performance Security Deposit on or before signing of PPA.
 - (ii) The Performance Security Deposit shall terminate upon the delivery to BPDB of the Operations Security Deposit pursuant to Section 8.6(c) and any undrawn portion of the Performance Security Deposit shall be released and returned to the Company by no later than five (5) Business Days following the delivery to BPDB of the Operations Security Deposit pursuant to Section 8.6(c). The Company shall maintain the Performance Security Deposit at the designated level at all times; provided that the Company may have fifteen (15) Days to replenish the Performance Security Deposit so as to return it to the required level, in the event that BPDB retains or collects funds from the Performance Security Deposit.

- (iii) The Performance Security Deposit will be encashed by BPDB to satisfy any obligation of the Company hereunder while the Performance Security Deposit is then in effect. The Performance Security shall be forfeited without any notice, demand, or other legal process upon termination of the PPA and IA due to Company Event of Default.
 - (iv) If at any time prior to Commercial Operation Date (COD) the Performance Security Deposit (PSD) will expire within thirty (30) Days and the Company does not extend the period of effectiveness of the PSD for a period of not less than three (3) Months, BPDB shall be entitled immediately to encash the PSD in full. The PSD, among other things secures the Company's obligation to achieve Financial Closing in accordance with the terms of this Agreement. If the Company will not achieve Financial Closing on or before the Required Financial Closing Date, then the Required Financial Closing Date may be extended upto maximum three (3) Months. In such case, at any time prior to thirty (30) Days before the Required Financial Closing Date, the Company shall deliver to BPDB a request in writing for the extension of Required Financial Closing Date with an additional PSD at the rate of USD 4,000 per MW per Month or any fraction thereof.
- (c) Operations Security Deposit
- (i) Not later than thirty (30) Days after the Commercial Operations Date, the Company shall provide to BPDB a security deposit (the "Operations Security Deposit") in an amount equal to two (2) Months of Capacity Payments to ensure the proper operation and maintenance of the Facility.
 - (ii) Upon and following the delivery of the Operations Security Deposit, the Company shall maintain the Operations Security Deposit at the designated level at all times during the Term; provided that the Company may have thirty (30) Days to replenish the Operations Security Deposit so as to return it to the required level in the event that BPDB retains or collects funds from the Operations Security Deposit.
 - (iii) The Operations Security Deposit shall consist of an unconditional irrevocable bank guarantee 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.
 - (iv) The Operations Security Deposit may be applied to:
 - (A) the payment of liquidated damages and accrued interest thereon in accordance with Section 8.7; and
 - (B) the payment of other damages, interest or other amounts that the Company shall be required to pay to BPDB hereunder,less (in either case) any amount disputed by the Company; provided that BPDB may, at its sole option, demand payment of any and all amounts due and payable hereunder directly from the Company, deduct such amounts from the Operations Security Deposit or offset all or a portion of such amounts against any payments due to the Company pursuant to Section 13, or any combination of the foregoing, and apply the Operations Security Deposit to any amount thereof remaining.

(d) Termination of the Agreement

Upon termination of this Agreement:

- (i) BPDB shall be entitled to retain or collect, as the case may be, from the Performance Security Deposit or the Operations Security Deposit, any damages or monies then due or reasonably expected to be due to BPDB by the Company, which have not otherwise been paid by the Company, less (in either case) any amounts disputed by the Company, which disputed amounts shall be dealt with in accordance with paragraph (ii) below;
- (ii) In addition, BPDB shall be entitled to draw on the Performance Security Deposit or the Operations Security Deposit in an amount equal to the disputed amounts referred to in paragraph (i), above; provided that any amounts drawn under such circumstances shall be deposited in a separate interest-bearing bank account established with a bank notified by BPDB to the Company and any such bank account shall be secured by a security or escrow agreement entered into (at the sole cost of the Company) by the Company, BPDB and such bank, which agreement shall provide that the amount held in such account shall be paid out only as agreed by the Parties or after the Dispute has been settled in accordance with Section 19 and shall be paid in accordance with the final decision determined in accordance therewith.
- (iii) The remainder of the Performance Security Deposit or the Operations Security Deposit, if any, after making the drawings in clause (i) and (ii), 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.
- (iv) Prior to Financial Closing, BPDB shall forfeit the Proposal Security.

(e) Procedural Provisions of the Performance and Operations Security Deposits

- (i) Each of the Operations Security Deposit and the Performance Security Deposit (each, 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 relevant 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 Commercial Operations Date.
- (iii) Each Security Deposit provided pursuant to this Section 8.6 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 BPDB.
- (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, BPDB may encash the then-existing Security Deposit in full; provided, that:
 - (A) any amounts drawn in these circumstances shall be deposited in a separate bank account established with such bank as is notified by BPDB to the Company;
 - (B) BPDB may make withdrawals from such bank account only in such amounts and in such circumstances contemplated by this Agreement; and
 - (C) 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 8.6(e)(iv) shall promptly be returned to the Company by BPDB.

8.7 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) fourteen (14) Days after the end of three (3) Months from the end of the Month in which the Commercial Operations Date occurs, in the case of Section 8.2; and
- (C) sixty (60) Days of the end of each Contract Year, in the case of Section 8.3,

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

- (ii) The Company shall pay to BPDB 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.
- (iii) Unless the entire amount of liquidated damages reflected on the Liquidated Damages Notice, is paid to BPDB by the Company, the unpaid amount of such undisputed liquidated damages plus accrued interest due to BPDB shall be set off against amounts owed to the Company by BPDB on the next statements(s) submitted to BPDB pursuant to Section 13.
- (iv) If the undisputed amount of the liquidated damages plus accrued interest due to BPDB is greater than the amount which can be set off against the next three (3) consecutive statements, the Company shall, within fourteen (14) Days after the date of service of the third statement, pay to BPDB any unpaid amount of undisputed liquidated damages plus accrued interest.
- (v) If the Company does not then pay to BPDB the unpaid undisputed amount plus accrued interest, BPDB may immediately deduct this sum from the Performance Security Deposit or the Operations Security Deposit, as appropriate, upon presentation of a Liquidated Damages Notice to the Company.

(b) Improper Drawings

Without prejudice to the Company's other rights under this Agreement or otherwise, in the event that BPDB draws against the Performance Security Deposit or the Operations Security Deposit provided and it is subsequently determined that BPDB was not entitled to do so, then BPDB shall repay such amount, Dollar for Dollar, to the Company, together with all costs and expenses incurred by the Company in connection with such drawing, plus interest thereon from the date of the draw through the date of repayment at the Bank Rate plus four (4) per cent per annum, compounded semi-annually.

(c) Disputes

Disputes regarding payment of any amount specified in a Liquidated Damages Notice shall be resolved pursuant to the provisions of Section 13.2(h), mutatis mutandis.

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 and the plan for the operation and maintenance of the Facility presented by the Company pursuant to Section 6.2(c).
- (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 pursuant to Section 6.2(c). 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) BPDB 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) Dispatch shall not exceed at any time the then-prevailing Declared Capacity corrected from Reference Site Conditions to average ambient site conditions using correction factors provided pursuant to Section 13.1(b);
 - (iii) during an Emergency, BPDB shall have the right to Dispatch the Facility in accordance with the provisions of Section 9.5 and
 - (iv) except as provided in Section 9.5, BPDB shall Dispatch the Facility in accordance with Economic Dispatch.
- (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 (gas turbine or steam turbine)) 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) BPDB 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 BPDB pursuant to this Section 9.2. In the event that the Company is unable to comply for reasons other than the instructions being inconsistent with the Technical Limits, BPDB's sole remedy shall be as provided in Section 8.3, 9.3(e).

9.3 Scheduling of Capacity and Energy

BPDB and the Company shall cooperate in establishing the following scheduling for the Facility's capacity and Net Energy Output on and after the Commercial Operations Date:

(a) Year Ahead Notification

Not less than ninety (90) Days before the Scheduled Commercial Operations Date and thereafter not less than ninety (90) Days before the beginning of each Contract Year, BPDB shall provide to the Company estimated requirements on a Monthly basis, for the Net Energy Output during that Contract Year, but shall not be bound by these figures. BPDB will also designate the maximum capacity required for the same period and have the right to revise the Months that shall be the Maintenance Months; provided, that such revision by BPDB shall only be made in connection with long range planning of load requirements.

(b) Quarter-Ahead Notification

Not less than sixty (60) Days before each Contract Year quarter, BPDB shall provide to the Company estimated requirements on a week-by-week basis for Net Energy Output and maximum capacity during that quarter and also provisionally for the following quarter, but shall not be bound by these figures.

(c) Month-Ahead Notification

Not less than fourteen (14) Days before each Month, BPDB shall provide to the Company estimated requirements on a Day-by-Day basis, for Net Energy Output and maximum capacity required during that Month and also provisionally for the following Month, but shall not be bound by these figures.

(d) Week-Ahead Notification

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

(e) Notification of Declared Capacity and Revised Declared Capacity

(i) Not later than 00:00 hours on the Commercial Operations Date, the Company shall notify BPDB of the Declared Capacity 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 BPDB (or revise any such information previously given) of the Declared Capacity for each hour of the following Day. If the Company fails to give such notice on or before the Declaration Deadline, the Declared Capacity for each hour of such Day shall be deemed to be equal to the Declared Capacity for each hour declared by the Company for the immediately previous Day.

- (iii) When making notifications of Declared Capacity or Revised Declared Capacity, subject to the Technical Limits and Prudent Utility Practices, the Company shall not withhold available generating capacity.
 - (iv) The actual ambient Site conditions shall be measured at the air intake structure of the Combined Cycle Unit. The Company shall advise BPDB periodically, but not less than once each hour, of the difference between the Reference Site Conditions and the actual ambient Site conditions and the effect that such difference will have on the Declared Capacity. The Company shall keep a written record of the ambient Site conditions at the Facility on an hourly basis and deliver such record for the relevant Month to BPDB along with the invoice for Dependable Capacity for such Month.
- (f) Dispatch Instructions and Revised Dispatch Instructions
- (i) Not later than seven (7) hours prior to the beginning of each Day, subject to Section 9.3(f)(ii), BPDB shall notify the Company, through a Dispatch Instruction, of its requirements for Net Energy Output and Reactive Power on a hourly basis for such Day.
 - (ii) BPDB 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) have been issued in accordance with Section 9.3(f)(i) and 9.3(f) (ii);
 - (B) are consistent with the Technical Limits; and
 - (C) do not require the Company to operate the Complex at a level exceeding the Declared Capacity 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 BPDB six (6) Months before the Required 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.
 - (i) The Company shall schedule Scheduled Outage periods only during Maintenance Months.

- (ii) The Company shall reasonably endeavor to make each such Scheduled Outage period of relatively short duration consistent with the Technical Limits, Prudent Utility Practices, and the recommendations of the Construction Contractor(s) and the manufacturers of the various components of the Facility.
 - (iii) Within thirty (30) Days of receipt of such schedule, BPDB shall notify the Company in writing as to the acceptability of such schedule.
 - (iv) When establishing the proposed schedule of Scheduled Outage periods, the Company may propose that Scheduled Outages of individual generating units may be staged or staggered within the Maintenance Months.
- (b) If BPDB does not accept any one or more of the above requested Scheduled Outage periods, BPDB shall advise the Company within thirty (30) Days of the receipt of the Company's notification in accordance with Section 9.4.1(a) above of the acceptable period during Maintenance Months when BPDB determines any such unacceptable Scheduled Outage can be rescheduled.
- (i) The rescheduled time shall be as close as reasonably practicable to the requested time, shall comply with the Technical Limits, shall be consistent with Prudent Utility Practices and the recommendations of the Construction Contractor(s) and the manufacturers of the various components of the Facility, and shall be of one continuous period of equal duration as the requested period.
 - (ii) If BPDB fails within the allowed period to object to any Scheduled Outage for which it receives notice pursuant to Section 9.4.1(a) above or fails within such period to advise the Company of a substitute time, the Company may schedule the Scheduled Outage(s) as initially requested.
- (c) The Company shall schedule Scheduled Outages only at times determined as aforesaid; provided, however, that BPDB may not require the Company to schedule Scheduled Outages in a manner or time which is outside the Technical Limits, is inconsistent with Prudent Utility Practices or the recommendations of the Construction Contractor(s) and the manufacturers of the various components of the Facility.
- (d) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to Sections (a) and (b) above, BPDB may, upon at least ninety (90) Days prior written notice and upon agreeing to pay the documented increased cost, if any, to the Company resulting therefrom, require the Company to reschedule a Scheduled Outage during the Maintenance Months; provided, however, that:
- (i) BPDB shall not require such Scheduled Outage to be rescheduled for a period of shorter or longer duration or in a manner or time that is outside the Technical Limits, or inconsistent with Prudent Utility Practices or the recommendations of the Construction Contractor(s) and the manufacturers of the various components of the Facility;
 - (ii) BPDB shall not require that a single Scheduled Outage period be split into two or more periods without compensating the Company for any additional costs imposed thereby; and
 - (iii) BPDB shall not require that a Scheduled Outage be brought forward any earlier than sixty (60) Days from the date of such notice without the consent of the Company.

- (e) 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 BPDB. BPDB shall respond to such request within ten (10) Business Days and shall not unreasonably withhold its permission for such rescheduling.
- (f) All scheduling and rescheduling pursuant to Sections 9.4.1(a), (b), (c), (d) and (e) above shall be done without adverse distinction by BPDB between the Facility and all other plants providing electric capacity and/or energy to the Grid System.

9.4.2 Maintenance Outages

When the need arises for a Maintenance Outage:

- (a) The Company shall advise BPDB of such need, and of the commencement and estimated duration of such work;
- (b) BPDB shall allow the Company 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;
- (c) The Company shall use all reasonable efforts to conduct such Maintenance Outage during off-peak hours;
- (d) The Company may advise BPDB orally (or in writing) of the above matters; and
- (e) BPDB shall respond orally (or in writing) within twenty-four (24) hours of such notice; and
- (f) if such communication has been given orally, it shall be confirmed in writing within three (3) Days of such oral notice.

9.5 Emergencies

- (a) The Company shall cooperate with BPDB 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.
- (b) After the Commercial Operations Date, the Company shall, during an Emergency, upon BPDB's request, 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 Capacity, or beyond the limits which the Company reasonably believes that as a result of such operation there is a likelihood that the Facility may experience a trip.
- (c) If a Scheduled Outage or Maintenance Outage occurs or would occur coincident with an Emergency, the Company, upon consultation with BPDB and at BPDB's sole cost and expense, shall make all reasonable efforts to reschedule the Scheduled Outage or Maintenance Outage or, if the Scheduled Outage or Maintenance Outage has begun, expedite the completion of the work to restore power supply as soon as possible.

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) Net Energy Output production for each demand period 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 BPDB 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 Capacity and Net Energy Output 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 BPDB Reporting Requirements

BPDB 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 Terminal Point reasonably necessary for the Company to design, 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 BPDB; 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) Within ninety (90) Days after the Financial Closing Date the Parties shall establish a Joint Coordinating Committee of six (6) members, with the Company appointing three (3) members and BPDB 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 BPDB. 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 Force Majeure Event(s) 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 Power Evacuation

The evacuation of electric power generated by the Facility will be through the two 230 kV circuits to Barisal 230/132 kV substations to be constructed & owned by PGCB. The Facility will be connected to the 230 kV switchyard to be constructed by the Company at its own cost and shall have the provision for termination of two 230 kV lines from Barisal. The Company will also install a 230/33 kV transformer of capacity 70 MVA at the switchyard for drawing start up power before commissioning & to supply power to Bhola 33 kV network after commissioning of the Facility. The 230 kV switchyard along with 230/33 kV 70 MVA transformer and interconnection line between 230 kV switchyard and dead end tower of 230 kV Barisal- Borhanuddin transmission line (the "Electrical Interconnection Facility or EIF") shall be constructed by the Company and will be handed over to PGCB at no cost after commissioning of the Facility. After handing over, PGCB will operate & maintain the EIF. In addition to that the Company will install, operate & maintain separate 230 kV synchronizing breaker for each units at the high voltage side of step-up Transformer and also construct the connecting lines (U/G or O/H) for connection of the individual units and to take the auxiliary supply. Switchyard and line design standards should be as per Functional Specification.

11.2 Control of Switchyard

Line relays and controls at the switchyard shall be provided by the Company. Provision and installation of all control and signal cables between the switchyard and the Facility shall be responsibility of the Company. An interface panel shall be provided within the switchyard control facility for receiving the signals from PGCB grid control. It shall be responsibility of the Company to lay and terminate these cables at the interface panel. All circuit breakers and disconnect switches shall be capable of being electrically controlled from the three control positions as follows:

- (i) Local Control:** Located adjacent to switching devices, to facilitate maintenance, inspection, and emergency operation.
- (ii) Remote Control:** Located at the switchyard control room, where switching devices are controlled by direct wire.
- (iii) Supervisory Control:** Located at the Load Dispatch Centre (NLDC) 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.

11.3 Electrical Protection, Communication and Instrument Systems

The Company shall provide a complete and comprehensive protection system for the generators/generator transformers/service transformers, transmission lines and the station electrical distribution systems. The Company shall undertake the installation of the protection relay panels within the control room, wiring between panels and switchyard equipment, and commissioning tests of the protection schemes.

Communication, control, monitoring and voice channels shall be provided between the power station and PGCB's National/Regional Control Center by the Company in consultation with PGCB.

The Company shall provide communication links to the power grid SCADA system including adequate Remote Terminal Unit (RTU) points to accommodate the PGCB and the National Load Dispatch Center (NLDC) requirements. SCADA, communication, telemetry, fiber optical terminal, and teleprotection equipment shall be supplied and installed by the Company and shall be compatible with PGCB equipment and systems. The wiring of all signaling and control circuits required for the system shall be cabled out to interface marshalling cubicles by the Company. The Company shall supply and install necessary cabling and cubicles. Cabling between the Company's cubicles and PGCB' LDC equipment shall be provided and installed by the Company.

The Company shall provide the following tele-control facilities required at the LDC:

- Control of the 230 kV circuit switches and reset of trip relays.
- Control of generator active MW and reactive MVAR.
- Indications of 230 kV switches and trip relays activated.
- Measurement of 230 kV circuit MW, MVAR, and voltage quantities.
- Alarm facilities in the event of any 230 kV circuit tripping and protection-operated and communication equipment failure

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 230 kV side of each generators transformer at which the net capacity and Net Energy Output is measured and transferred from the Company to BPDB.

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 BPDB representatives and provide at least thirty (30) days notice of such testing.

- (c) The Company shall inspect, test, and calibrate the Metering System upon installation. The Company shall provide BPDB with reasonable advance notice of, and allow a representative of BPDB to witness and verify, such inspections, tests, and calibrations. Thereafter, BPDB 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. BPDB shall allow a representative of the Company to witness and verify all inspections, tests, and inspections carried out by BPDB in accordance with this Section 12.
- (d) Upon written request by the Company, BPDB 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 BPDB. The Company shall be notified by BPDB 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.
- (e) 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.
- (f) 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%.
- (g) When on site, BPDB 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 BPDB's negligence or wilful 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 Net Energy Output of the Plant. Measurements of the 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 utilised 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 BPDB 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 BPDB;
- (c) In the event that BPDB and the Company fail to agree upon an estimate for the correct reading, BPDB 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 BPDB 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 BPDB 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 BPDB 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 each Contract Year in the Term as set forth in Table A and Table C of Schedule 6. For each Contract Year, the Reference Tariff is composed of two components:
 - (A) Reference Capacity Price; and
 - (B) Reference Energy Price.
- (ii) From and after the Commercial Operations Date, the Capacity Payment and Energy Payment payable to the Company for Dependable Capacity and Net Energy Output, respectively, in any period, during the Term shall be calculated based on the Reference Capacity Price and the Reference Energy Price, as provided in this Section 13.1. From and after the Simple Cycle Commercial Operations Date, the Capacity Payment and Energy Payment payable to the Company for Dependable Capacity and Net Energy Output, respectively, in any period, during the simple cycle operation before Commercial Operations Date shall be calculated based on the Reference Capacity Price which is 50% of the 1st Contract Year and the Reference Energy Price, as provided in this Section 13.1(b).
- (iii) The Reference Capacity Price for each Contract Year is made up of two components:
 - (A) the reference non-escalable component (the "Reference Non-Escalable Capacity Price"); and
 - (B) the reference escalable component consisting of the reference foreign escalable capacity price (the "Reference Foreign Escalable Capacity Price") and the reference local escalable capacity price (the "Reference Local Escalable Capacity Price").
- (iv) The Reference Energy Price is made up of two components:
 - (A) the reference variable operation and maintenance component consisting of the reference foreign variable operation and maintenance component (the "Reference Foreign Variable Operation and Maintenance Price") and the local variable operation and maintenance component (the "Reference Local Foreign Variable Operation and Maintenance Price") (together defined as the "Reference Variable Operation and Maintenance Price"); and
 - (B) the price payable by BPDB for 1 (one) kWh of Net Energy Output for the Gas consumed at the net heat rate for various Plant Factors (PF_h) set out in Schedule 6 (such heat rates referred to as the "Reference Heat Rates") (the "Reference Gas Price").
- (v) The Reference Non-Escalable Capacity Price, the Reference Foreign Escalable Capacity Price, the Reference Local Escalable Capacity Price, and the Reference Foreign Variable Operation and Maintenance Price, the Reference Local Variable Operation and Maintenance Price for each Contract Year are provided in Table A of Schedule 6.

(b) Capacity and Energy Payments

(i) Capacity Payment

From and after the Commercial Operations Date, BPDB shall pay to the Company, for each Month, a Capacity Payment, in accordance with Section 13.2(a), for making available the Dependable Capacity in such Month, which shall be calculated as follows:

$$CP_{mn} = CPNE_{mn} + CPE_{mn}$$

where:

CP_{mn} = Capacity Payment payable for Month “m” of Contract Year “n” in Taka.

$CPNE_{mn}$ = Non-Escalable Capacity Payment payable for Month “m” of Contract Year “n” in Taka and calculated as set out in subsection (A) below.

CPE_{mn} = Escalable Capacity Payment payable for Month “m” of Contract Year “n” in Taka and calculated as set out in subsection (B) below.

(A) Calculation of CPNE

$CPNE_{mn}$ = Non-Escalable Capacity Payment payable for Month “m” of Contract Year “n” in Taka and calculated as follows:

$$CPNE_m = RNECP_m \times CE_m \times DC_m \text{ (for combined cycle operation)}$$

$$CPNE_m = (0.5 \times RNECP_m) \times CE_m \times DC_m \text{ (for simple cycle operation and the value of RNECP shall be for first Contract Year)}$$

Where:

$RNECP_n$ = Reference Non-Escalable Capacity Price as set forth in Column 2 of Table A of Schedule 6 for Contract Year “n” denominated in Dollars per kW-Month.

CE_m = the rate at which Sonali Bank sells one Dollar in exchange for Taka, as published in the Exchange Rates Bulletin or any latest official letter or circular to the “Authorised Dealers” (as that expression is used by Sonali Bank) or defined in any publication of Sonali Bank) in Bangladesh, on the first Day of the Month immediately following the Month “m” (each such date shall be defined as the “Indexation Date”).

DC_m = the quotient of which the numerator is (a) sum of (i) each Dependable Capacity in effect during the Month “m” multiplied by (ii) the number of hours that each such Dependable Capacity was in effect during such Month “m”, and the denominator is (b) the total number of hours in such Month “m”;

provided, that Dependable Capacity shall only be determined by a test conducted pursuant to Section 7 and shall not be reduced or adjusted as a result of Scheduled Outages, Maintenance Outages, Forced Outages or Partial Forced Outages except through testing required by a Party; provided, further, that notwithstanding the foregoing, if a test is not undertaken within the time required therefor, BPDB may (a) conduct a provisional Dependable Capacity Test pursuant to Section 7.2(e). If an anniversary of the Commercial Operations Date occurs on a date which is not the first Day of the Month, then for Month “m” in which the anniversary of the Commercial Operations Date occurs each Year, the Non-Escalable Capacity Payment shall be calculated as follows:

$$CPNE_{m(n, n+1)} = \frac{((RNECP_n \times D + RNECP_{(n+1)} \times (M-D))/M) \times CE_m}{\times DC_m}$$

where:

$CPNE_{m(n, n+1)}$ = Non-Escalable Capacity Payment in Month “m” in which Contract Year “n” ends and Contract Year “n+1” starts, respectively.

“n” and “n+1” = Two consecutive Contract Years which end and start in Month “m” respectively.

$RNECP_n$ = This element shall have the meaning as specified above.

$RNECP_{(n+1)}$ = Reference Non-Escalable Capacity Price as set forth in Column 2 of Table A of Schedule 6 for Contract Year “n+1” denominated in Dollars per kW-Month.

D = Number of Days in Month ‘m’ of Contract Year “n”.

M = Number of Days in Month “m”.

(B) Calculation of CPE

CPE_{mn} = Escalable Capacity Payment payable for Month “m” of Contract Year “n” in Taka and calculated as follows:

$$CPE_{mn} = CPE(US)_{mn} + CPE(Tk)_{mn}$$

where:

$CPE(US)_{mn}$ = Foreign Escalable Capacity Payment denominated in Dollars and payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$CPE(US)_m = RECP(US)_m \times CE_m \times FIIF_m \times DC_m \text{ (for combined cycle operation)}$$

$$CPE(US)_m = (0.5 \times RECP(US)_m) \times CE_m \times FIIF_m \times DC_m \text{ (for simple cycle operation and the value of RECP(US) shall be for first Contract Year)}$$

$CPE(Tk)_{mn}$ = Local Escalable Capacity Payment denominated in Taka and payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$CPE(Tk)_m = RECP(Tk)_m \times LIIF_m \times DC_m \text{ (for combined cycle operation)}$$

$$CPE(Tk)_m = (0.5 \times RECP(Tk)_m) \times LIIF_m \times DC_m \text{ (for simple cycle operation and the value of RECP(TK) shall be for first Contract Year)}$$

where:

$RECP(US)_n$ = Reference Foreign Escalable Capacity Price denominated in Dollars per kW-Month for Contract Year “n” as set forth in Column 3 of Table A of Schedule 6.

CE_m = This element shall have the meaning as specified above.

$FIIF_m$ = Foreign Inflation Indexation Factor applicable to the Month “m” which shall be equal to :

$$PI(US)_q / PI(US)_b$$

where:

$PI(US)_q$ = the value of the United States Consumer Price Index as published in the publication of the International Monetary Fund entitled “International Financial Statistics” for the first Month of the quarter “q” (i.e. January, April, July and October) in which the Month “m” appears:

$PI(US)_b$ = the value of the United States Consumer Price Index, as published in the publication of the International Monetary Fund entitled "International Financial Statistics", for the month of [insert Bid date], 2011.

$RECP(Tk)_n$ = Reference Local Escalable Capacity Price denominated in Taka per kW-Month for Contract Year "n" as set forth in Column 4 of Table A of Schedule 6.

$LIIF_m$ = Local Inflation Indexation Factor applicable to the Month "m" and shall be calculated as follows:

$$LIIF_m = PI(Tk)_q / PI(Tk)_b$$

where:

$PI(Tk)_q$ = the value of the Bangladesh Consumer Price Index as published in the publication of the International Monetary Fund entitled "International Financial Statistics" for the first Month of the quarter "q" (i.e. January, April, July and October) in which the Month "m" appears;

$PI(Tk)_b$ = the value of the Bangladesh Consumer Price Index as published in the publication of the International Monetary Fund entitled "International Financial Statistics", for the month in which the Reference Date falls, namely [..... 20xx].

DC_m = This element has the meaning as specified above.

(ii) Energy Payment

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

$$EP_{mn} = VOMP_{mn} + FP_{mn}$$

where:

- EP_{mn} = Energy Payment payable in Taka for Month “m” of Contract Year “n”.
- $VOMP_{mn}$ = Variable Operation and Maintenance Payment payable in Taka for Month “m” of Contract Year “n” and calculated as set out in subsection (A) below.
- FP_{mn} = Fuel Payment payable in Taka in Month “m” of Contract Year “n” and calculated as set out in subsection (B) below.

(A) Calculation of VOMP

- $VOMP_{mn}$ = Variable Operation and Maintenance Payment payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$VOMP_{mn} = VOMP(US)_{mn} + VOMP(Tk)_{mn}$$

where:

- $VOMP(US)_{mn}$ = Foreign Variable Operation and Maintenance Payment denominated in Dollars and payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$VOMP(US)_{mn} = ((RVOMP(US)_n \times CE_m \times FIIF_m) \times \sum_{h=1}^H NEO_h \times PFadj_m)$$

where:

- $RVOMP(US)_n$ = Reference Foreign Variable Operation and Maintenance Price denominated in Dollars per kWh for the Contract Year “n” as set forth in Column 5 of Table A of Schedule 6.
- CE_m = This element shall have the meaning as specified above.
- $FIIF_m$ = This element shall have the meaning as specified above.
- NEO_h = Net Energy Output measured in kWh during interval “h” in Month “m” in kWh.
- h = each 30 minute interval ending on an hour or half-hour during which the Net Energy Output was made available by the Company for sale to BPDB and purchased by BPDB pursuant to this Agreement.
- H = Total number of intervals “h” in Month “m”.

PFadj_m = Power factor Adjustment = 0.85/ave. power factor of the month “m” at Delivery Point and shall be applicable if PFadj_m<1

0.85 = Power factor lagging at Delivery Point

VOMP(Tk)_{mn} = Local Variable Operation and Maintenance Payment denominated in Taka and payable in Taka for Month “m” of Contract Year “n” and calculated as follows:

$$VOMP(Tk)_{mn} = ((RVOMP(Tk)_n \times LIIF_m) \times \sum_{h=1}^H NEO_h \times PFadj_m)$$

where:

RVOMP(Tk)_n = Reference Local Variable Operation and Maintenance Price denominated in Taka per kWh for the Contract Year “n” as set forth in Column 6 of Table A of Schedule 6.

LIIF_m = This element shall have the meaning as specified above.

NEO_h = This element shall have the meaning as specified above.

h = This element shall have the meaning as specified above.

H = This element shall have the meaning as specified above.

PFadj_m = Power factor Adjustment = 0.85/ave. power factor of the month “m” at Delivery Point and shall be applicable if PFadj_m<1

0.85 = Power factor lagging at Delivery Point

(B) Calculation of Fuel Payment

FP_{mn}(Natural Gas)=Fuel Payment payable in Taka in Month “m” of Contract Year “n” and calculated as:

$$FP_{mn}(\text{Natural Gas}) = \sum_{h=1}^H (TCE_{hm} \times (GP_h / (0.95 \times 1.055)))$$

where:

GP_h = Gas Price, as defined in the Gas Supply Agreement, applicable for the interval “h” in Month “m” and payable in Taka per MSCF (without applying any adjustment for the actual Btu content of the Gas above or below the assumed 950 Btu of HHV per SCF of Gas), where HHV, MSCF, Btu and SCF shall have the meanings ascribed thereto in the Gas Supply Agreement.

TCE_{hm} = Thermal consumption of energy for Gas based on the Reference Heat Rates during interval “h” in Month “m” measured in Gigajoule (GJ) and calculated as follows:

$$TCE_{hm} = ((HR_h \times NEO_h) / (1,000,000))$$

where:

HR_h = Reference Heat Rate (for simple cycle operation simple cycle heat rate) corresponding to the Plant Factor (PF_h) as set forth in Table B of Schedule 6 and expressed in kilo Joule (kJ) / kWh.

NEO_h = This element shall have the meaning as specified above.

where:

PF_h = Plant Factor, expressed as a percentage of Dependable Capacity, during the interval “h” in the Month “m” and calculated as follows:

$$PF_h = (AC_h / DC_h) \times 100$$

where:

DC_h = The Dependable Capacity in kW in effect during the interval “h” in the Month “m” as determined by the most recent Dependable Capacity Test prior to interval “h”.

AC_h = The actual average capacity in kW in effect during the interval “h” in the Month “m” after adjusting for the average ambient dry-bulb temperature, ambient relative humidity, ambient cooling water temperature and ambient barometric pressure existing during interval “h” to the Reference Site Conditions and calculated as follows:

$$AC_h = \frac{NEO_h}{(0.5 \times CF_{temp} \times CF_{wtemp} \times CF_{rh} \times CF_{bp})}$$

where:

CF_{temp} ,
 CF_{wtemp} ,
 CF_{rh} ,
 CF_{bp}

= Correction factors to be provided by the Company prior to the Financial Closing for adjusting the average measured capacity for average ambient dry-bulb temperature, ambient cooling water temperature, relative humidity and barometric pressure, respectively, existing during the time of such measurement, to the Reference Site Conditions.

(iii) Energy Payment During Commissioning

(A) Prior to the Simple Cycle Commercial Operations Date, BPDB shall pay to the Company, Monthly in arrears in accordance with Section 13.2(a), the Energy Payment for the Net Energy Output delivered during testing and Commissioning.

(B) Such Payment shall be calculated using:

(aa) the Reference Variable Operation and Maintenance Price and the inflation and exchange rate indices (F_{IIF_m} , L_{IIF_m} and CE_m) applicable to the Month "m" during which such Net Energy Output is delivered; and

(bb) the Reference Heat Rate for Simple Cycle Unit, set out in Schedule 6, and the prevailing Gas Price.

in the manner consistent with the calculation of the Energy Payment after the Commercial Operations Date (as set out in Section 13.1(b)(ii) applied mutatis mutandis) and assuming that:

(i) the Dependable Capacity is equal to the Contracted Simple Cycle Capacity; and

(ii) the concept of Contract Year shall be replaced by Year.

(c) Indexation Factors and Estimates

- (i) If at any time an index used to determine any index used herein, including CE, FIIF, PI(US), LIIF and PI(Tk), is withdrawn, becomes unavailable for any reason or becomes, in the reasonable opinion of BPDB or the Company, inappropriate as a basis for indexation pursuant to this Section 13.1(c)(i), then upon written notice from either Party, BPDB 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) True-Up for Exchange Rate

(i) Company True-Up Payment

In the event the Taka depreciates against the Dollar between the Indexation Date used in invoicing for any Month and the first Business Day following the payment date, the Company shall receive an additional payment on the fifth Business Day following the Day the invoice for Month “m” is paid by BPDB (the “Company True-Up Payment”). The Company True-Up Payment shall be calculated as follows:

$$T_{up} = \frac{(CPNE_{mn} + CPE(US)_{mn} + VOMP(US)_{mn} + STP_{mn} + SP_{mn})}{((CE_{invoicem} / CE_m) - 1)} \times$$

where:

$CE_{invoicem}$ = the rate at which Sonali Bank sells one Dollar in exchange for Taka, as determined by the Sonali Bank in the published Exchange Rates Bulletin or any latest official letter to the “Authorised Dealers” or publication, on the first Business Day following the payment of invoice of relevant Month “m”.

CE_m , $CPNE_{mn}$, $CPE(US)_{mn}$, $VOMP(US)_{mn}$, SP_{mn} shall have the meanings as defined in this Section 13.1. STP_{mn} shall mean dollar denominated Supplemental Tariff Payments due and payable pursuant to Section 13.1(g) for the Month “m” in Contract Year “n”. For the purposes of the calculation above, only the Dollar portion of SP_{mn} shall be applied.

(ii) BPDB True-Up Payment

In the event the Taka appreciates against the Dollar between the Indexation Date used in invoicing for any Month and the first Business Day following the payment date, BPDB shall receive a refund on the fifth Business Day following the Day the invoice for Month “m” is paid by BPDB (the “BPDB True-Up Payment”). The BPDB True-Up Payment shall be calculated as follows:

$$T_{up} = \frac{(CPNE_{mn} + CPE(US)_{mn} + VOMP(US)_{mn} + STP_{mn} + SP_{mn}) \times (1 - CE_{invoicem} / CE_m)}{CE_{invoicem}}$$

where:

$CE_{invoicem}$ = the rate at which the Sonali Bank sells one Dollar in exchange for Taka, as published in the Exchange Rates Bulletin or any latest official letter to the “Authorised Dealers” in Bangladesh, on the first Business Day following the payment of invoice of relevant Month “m”.

CE_m , $CPNE_{mn}$, $CPE(US)_{mn}$, $VOMP(US)_{mn}$, SP_{mn} shall have the meanings as defined in this Section 13.1. STP_{mn} shall mean dollar denominated Supplemental Tariff Payments due and payable pursuant to Section 13.1(g) for the Month “m” in Contract Year “n”. For the purposes of the calculation above, only the Dollar portion of SP_{mn} shall be applied.

(e) Changes in Assumptions

The Reference Tariff has been established based upon the following assumptions (the “Assumptions”) set out in paragraphs (i) to (xv) below:

- (i) The Facility will burn Gas delivered to the Facility by the Gas Supplier (after the availability of gas) under the Gas Supply Agreement and the Gas Price shall be the delivered price of Gas at the Facility set by the GOB under the Gas Supply Agreement from time to time, inclusive of all transportation charges and all Taxes (including octroi) and other charges.
- (ii) Expatriate employees of the Company shall be exempt from tax or withholding tax in Bangladesh payable on or deducted from their income received from the Company in connection with work on the Project for a period of three (3) years commencing on the date of each such employee’s first entry into Bangladesh as an employee of the Company.
- (iii) Where the Company maintains its existence as a company organised under the Laws of Bangladesh operating exclusively as a power generation company, the Company shall, commencing on the Commercial Operations Date and continuing until the fifteenth (15th) anniversary of the Commercial Operations Date, be exempt from taxation or withholding tax in Bangladesh (or withholding tax by BPDB, the Gas Supplier, BPDB (as lessor under the Land Lease Agreement) or the GOB) on its income from the sale of Dependable Capacity and Net Energy Output under the Power Purchase Agreement (or on any payments received by the Company in lieu thereof).
- (iv) Interest payments and fees payable to foreign Lenders under the Financing Documents shall be exempt from tax or withholding tax in Bangladesh during the term of the Power Purchase Agreement.

- (v) The Company and its Contractors:
 - (A) prior to the Commercial Operations Date shall be allowed to import plant and equipment (other than office and household equipment) to be permanently incorporated into the Facility or required for the construction, Commissioning, testing, operation and maintenance of the Facility without payment of any Taxes; and
 - (B) shall be exempt from the payment of any Taxes, including Custom Duties and VAT, on spare parts or repaired or refurbished parts imported during the period commencing on the date hereof and continuing until the twelfth (12th) anniversary of the Commercial Operations Date and incorporated from time to time into the Facility during the Term; provided, that the imported spare parts or repaired or refurbished parts exempted from Taxes hereunder shall have a cost (which in the case of repaired or refurbished parts shall be expressly limited to the cost of material and parts used or added to the repaired or refurbished part or parts in connection with such repair or refurbishment) plus transportation cost, of not greater than ten percent (10%) of the total equipment cost (cost plus transportation cost) for the construction of the Facility (excluding the cost plus transportation cost of spare parts).
- (vi) Deeds recorded in Bangladesh in connection with acquisition of the Site by the Company and documents and instruments recorded in Bangladesh in connection with the Financial Closing, in each case that are required to be registered under the laws of Bangladesh, shall be exempt from stamp duties, registration fees and other similar fees, duties or Taxes.
- (vii) The Company shall be exempt from any imposition of Taxes on the sale of Dependable Capacity or Net Energy Output to BPDB under this Agreement.
- (viii) Where the Company is a public limited company under the laws of Bangladesh, the Foreign Investors of the Company shall, so long as such Foreign Investors are also exempt from the payment of such capital gains taxes in the jurisdiction of their domicile, be exempt from the payment of capital gains tax in Bangladesh in respect of a transfer or disposal of Ordinary Share Capital of the Company during the term of the Power Purchase Agreement.
- (ix) Subject always to the other assumptions set out in this Section 13.1(e), the Foreign Investors of the Company will be governed by the bilateral tax treaties or other bilateral arrangements between the GOB and their respective countries of domicile as at [insert Bid date], 2011⁶ and thereafter from time to time; provided, that:
 - (A) the withholding taxes on the dividends received by it from the Company shall not exceed ten (10) percent of the dividend amount and in the event that the actual local withholding tax rate is lower, the lower local rate will apply;

⁶ Insert date of bid.

- (B) such treaties or arrangements are no less favourable towards the Foreign Investors than those applicable and in existence on [insert Bid date], 2011⁷, if any; and
- (C) if there is no bilateral tax treaty between Bangladesh and any Foreign Investors 's country of residence, the Foreign Investor will be taxed in accordance with the laws of Bangladesh as were applicable on [insert Bid date], 2011⁸.
- (x) Power generation has been declared by the GOB as an "industry" and, accordingly, the Company shall be eligible for all other concessions which were available to industrial projects in Bangladesh on [insert Bid date], 2011⁹ under and in accordance with the Laws of Bangladesh during the term of this Agreement.
- (xi) Any direct foreign collaborators, companies and experts of the Company involved in the Project shall be exempt from tax and withholding tax on such of their income as is paid to it by the Company as "royalties" or as "technical know how fees" or as "technical assistance fees" in connection with the Project during the term of the Power Purchase Agreement.
- (xii) The GOB shall permit remittance of up to fifty percent (50%) of the salary of the expatriate employees employed in Bangladesh by the Company or the Contractors and the GOB shall provide all requisite facilities for repatriation of their savings and retirement benefits at the time of their departure from Bangladesh.
- (xiii) Subject always to the other assumptions set out in this Section 13.1(e), the Company, Lenders and the Contractors shall be governed by the applicable double taxation treaties or other bilateral arrangements between the GOB and their respective countries of domicile as at [insert Bid date], 2011¹⁰ and thereafter from time to time; provided, that such treaties and arrangements are no less favourable than those applicable and in existence on [insert Bid date], 2011¹¹, if any, during the Term.
- (xiv) The GOB shall exempt the Company and the Contractor from purchasing any insurance or reinsurance for the Project from Sadharan Bima Corporation or any other local insurance company and allow the Company at its sole discretion to procure insurance and reinsurance from insurance companies outside Bangladesh for the Project.
- (xv) In addition to the exemptions from or reductions in the rate of Taxes payable in Bangladesh expressly provided in Sections (i) through (xiv), there shall be no change (whether by way of an increase in the rate of an existing Tax or duty or by way of an assessment of a Tax or duty not in existence on [insert Bid date], 2011¹², or otherwise) in the Taxes or sales or excise duties or withholding taxes,

⁷ Insert date of bid.

⁸ Insert date of bid.

⁹ Insert date of bid.

¹⁰ Insert date of bid.

¹¹ Insert date of bid.

¹² Insert date of bid.

from those in effect on [insert Bid date], 2011¹³, imposed directly upon the Company (including its employees) by any Government Authority or, where the Company is required to reimburse or compensate the Lenders, on the Lenders in connection with loans for the financing of the Project or where the Company is required to reimburse the Contractors (including its employee) or the other entities listed in Section 13.1(e)(xvi) below, on the Contractors (including its employees) in respect of the construction, operation or maintenance of the Facility or the entities listed in Section 13.1(e)(xvi) below, for any Year (or portion thereof) up to the Commercial Operations Date, and, thereafter, for any Year after the Commercial Operations Date that exceed Taka 2,500,000 (two million and five hundred thousand) (and for part of a Year such amount shall be reduced by multiplying Taka 2,500,000 by the number of Days remaining in such part Year and dividing by 365 Days).

(xvi) Consequences of Change in Assumptions

(aa) If and to the extent that any of the Assumptions in Section 13.1(e)(ii) through 13.1(e)(xv) shall be or shall become invalid or inapplicable or shall vary; and give rise (whether directly or indirectly) to an increase in expenditure or to any increase in withholding tax payable by (1) the Company; or (2) the Company's or Contractor's employees; or (3) the Contractors; or (4) the foreign Lenders or the entities listed in Section 13.1(e)(xi); (and as a result thereof, the Company is required to reimburse the Lenders or the Contractors or the entities listed in Section 13.1(e)(xi) under the Financing Documents or the Construction Contract or the O&M Agreement or any other agreements relating to the Project), such variations in expenditure or such amounts paid by way of withholding tax (net of any Tax refunds or rebates or Tax offsets received by or applicable to the Company, the Contractors or the foreign Lenders, and in the case of Section 13.1(e)(xv) after the Commercial Operations Date in excess of the threshold amount provided therein) shall be offset by an adjustment in the Reference Capacity Price.

(AA) For the purposes of this Section, any Tax payable by a Foreign Investor in the Company, in circumstances where any of the assumptions in Section 13.1(e)(viii) or 13.1(e)(ix) or 13.1(e)(xv) is invalid or inapplicable, shall be deemed to give rise to additional expenditure by the Company of an amount equal to the amount of such Tax.

(BB) If the Company files a consolidated tax return with any other company or entity, the reduction, if any, in tax liability of the consolidated companies to any government, whether inside or outside Bangladesh, resulting from the change in Assumptions (i.e. an increase in taxes payable in Bangladesh) shall be an offset in the determination of the adjustment of the Reference Capacity Price resulting from the operation of this Section 13.1(e)(xvi).

¹³ Insert date of bid.

- (CC) All changes (increase or decrease) in expenditure of the Company which are a result of changes in such Assumptions occurring prior to the Commercial Operations Date shall earn interest at the Company's average cost of funds under the Financing Documents for the period commencing from the date such amounts were paid (or saved, as the case may be) by the Company and ending on the Commercial Operations Date and such additional expenditure or saving (as the case may be) shall cause an adjustment in the Reference Capacity Price so as to recover such expenditure or saving over the twelve (12) Month period following the Commercial Operations Date.
 - (DD) Following the Commercial Operations Date, a change in Assumptions resulting in a one-time charge (or a one-time increase or decrease in a charge) shall cause an adjustment in the Reference Capacity Price so as to recover the assessment (or the change in a one-time assessment) over the twelve (12) Month period following the change in Assumptions.
 - (EE) The Reference Capacity Price shall be adjusted for periodic assessments (or a periodic change in a one-time assessment) resulting from a change in Assumptions so as to recover such assessment (or the periodic change in the assessment) over the period between assessments.
- (bb) Any change to the Assumptions set out in Section 13.1(e)(i) shall not fall within the provisions of Section 13.1(e)(xvi)(aa). Any change in the Assumptions in Section 13.1(e)(i) (i.e., any additional transportation charges or taxes added to the Gas Price delivered to the Facility) shall be added to the Gas Price and the Fuel Payment shall be calculated as provided in Section 13.1(b).
- (f) Start-Up Payments**
- (i) In addition to Capacity Payments for Dependable Capacity and Energy Payments for Net Energy Output, the Company shall be paid by BPDB a Unit Start-Up Charge (as defined below) for each Start-Up of a gas turbine necessarily resulting from any Dispatch by BPDB in excess of twenty (20) Start-Ups for each gas turbine in any Contract Year. A Unit Start-Up Charge shall remain payable by BPDB notwithstanding that the Dispatch is withdrawn by BPDB prior to the synchronisation of the gas turbine to the Grid System. Notwithstanding the foregoing, there shall be no Unit Start-Up Charge payable to the Company pursuant to this Section 13.1(f) for any Start-Up of a gas turbine following a Forced Outage, Maintenance Outage, Scheduled Outage or Other Force Majeure Event declared by the Company. Unit Start-Up Charge shall be calculated as provided in Section 13.1(f)(ii).
 - (ii) BPDB shall pay to the Company, for each Month, in arrears, Start-Up Payment, under Section 13.2(a), for complying with BPDB's Dispatch Instruction, which, when considered in conjunction with BPDB's immediately preceding Dispatch Instruction, to comply with such Dispatch Instruction necessarily requires a Start-Up of a gas turbine (excluding, however, following a Forced Outage, Scheduled Outage or Maintenance Outage, or Other Force Majeure Event, as the case may be) and shall be calculated as follows:

$$SP_{mn} = SC_{mn} \times SU_{mn}$$

where:

SC_{mn} = Start-Up Payment payable in Taka for the Month “m” in Contract Year “n”

SC_{mn} = Unit Start-Up Charge for the Month “m” in Contract Year “n” payable in Taka and calculated as follows:

$$SC_{mn} = SC_{mn(maint)} + SC_{mn(Gas)}$$

where:

$$SC_{mn(maint)} = 5000 \times CE_m \times FIIF_m$$

CE_m and $FIIF_m$ = These shall have the same meaning as in Section 13.1(b) above.

$$SC_{mn(Gas)} = 500 \times GP_{sup} / (0.95 \times 1.055)$$

where:

GP_{sup} = Gas Price, as defined in the Gas Supply Agreement, applicable for the duration of the Start-Up and payable in Taka per MSCF (without applying any adjustment for the actual Btu content of the Gas above or below the assumed 950 Btu of HHV per SCF of Gas), where HHV, MSCF, Btu and SCF shall have the meanings ascribed thereto in the Gas Supply Agreement.

SU_{mn} = Number of Start-Ups in Month “m” of Contract Year “n”, which number shall not include in its computation the twenty (20) free Start-Ups for each gas turbine in Contract Year “n”.

(g) Supplemental Tariff Payments

- (i) If, due to a Political Force Majeure Event or a Change in Law, a Supplemental Tariff Payment is due and payable to the Company from BPDB as provided in Sections 16.6 or 16.7, respectively, then, when any necessary restoration or modification to the Facility is complete and the Facility has returned to operation, the Supplemental Tariff Payment will be payable to the Company by BPDB.
 - (A) The Supplemental Tariff Payment shall be calculated in the same manner and basis as the Capacity Payments as provided in Section 13.1(b)(i) (on kW basis of Dependable Capacity with respect to additional capital costs) and the Energy Payment as provided in Section 13.1(b)(ii) (on kWh basis of Net Energy Output with respect to the additional operating costs including costs of additional consumables).
 - (B) Invoices for the Supplemental Tariff Payment shall be delivered by the Company for each Month in arrears in Taka, by applying the same exchange rate and inflation mechanism used for the Capacity Payment and Energy Payment, and paid by BPDB in accordance with Section 13.2(a).
- (ii) The Supplemental Tariff, will be structured to permit the Company:
 - (A) to recover costs of restoration or modification of the Facility over a reasonable term as approved by the GOB or otherwise determined in accordance with Section 11.7 of the Implementation Agreement, which term shall not be greater than the term of the debt, if any, secured by the Company to effect the restoration or modification of the Facility; and
 - (B) to adjust any increase or decrease in operating cost in each Contract Year including the cost of any increases or decreases in the quantity and or quality of consumables (including Gas) directly attributable to a Change in Law or to an event of damage and restoration.
- (iii) The Supplemental Tariff, to recover the costs of restoration or modification of the Facility, shall be fixed prior to the date the Facility returns to operation, or, if the Facility does not cease operation, at a date agreed by the Company and the GOB (in either case, the "STR Reference Date") and shall be denominated in Dollars per kW-Month and/or for Taka per kW-Month corresponding to the currency of funding for such restoration. Such costs of restoration or modification of the Facility shall be financed with debt or equity or both. Subject to approval of the GOB, up to all funds used to pay for a restoration or modification may consist of additional equity contributions. The Supplemental Tariff shall consist of two components similar to the Reference Capacity Price.
 - (aa) The component of the Supplemental Tariff to recover equity contributions shall be structured to provide an internal rate of return on equity of seventeen percent (17%) per annum in Dollar terms on a cash basis to the shareholders of the Company net of all Taxes. This component of the Supplemental Tariff shall be structured similarly to the Reference Foreign Escalable Capacity Price whereby it shall be indexed to Foreign Inflation Indexation Factor with the base date as the STR Reference Date. The Foreign Inflation Indexation Factor will apply prospectively on the date the Facility is restored to commercial operations following a Political Force Majeure Event or a Change in Law and on the first Day of each Month thereafter.

- (bb) The component of the Supplemental Tariff to recover the debt contributions shall be structured to cover the cost and repayment of debt. This component of the Supplemental Tariff shall be structured similar to the Reference Non-Escalable Capacity Price whereby it shall not be indexed to any inflation related factor.
 - (iv) The Supplemental Tariff, to recover or adjust the increase or decrease in operating costs, including the costs of increase or decrease in consumables, shall be fixed prior to the date the Facility returns to operation, or, if the Facility does not cease operation, at a date agreed by the Company and the GOB (in either case, the "STC Reference Date") and shall be denominated in Dollars per kWh and indexed to the Foreign Inflation Indexation Factor (except where the consumable shall be Gas, it shall be denominated in Taka per kWh and adjusted to the relevant Gas Price applicable during the period when such Gas is consumed); provided, that:
 - (A) the base date shall be the STC Reference Date and the Foreign Inflation Indexation Factor will apply prospectively on the date the Facility is restored to commercial operations following a Political Force Majeure Event or a Change in Law and on the first Day of each Month thereafter; and
 - (B) in the event that as a direct result of the restoration or modification the Facility experiences increased or decreased parasitic load, this circumstance shall be treated as a consumable and shall be the basis for an adjustment in the Supplemental Tariff Payment amounts to return the Company to the condition that existed before the restoration or modification; that is, the increase or decrease in capacity and in the energy consumed in operation of the Facility resulting directly from any necessary modifications or restoration shall be accounted for in the determination of the Supplementary Tariff Payment.
 - (v) In the event that a Political Force Majeure Event or Change in Law requires any restoration or modification to the Facility, then until such restoration or modification is implemented by the Company pursuant to Section 11.5 of the Implementation Agreement, the Company shall receive compensation from BPDB, if BPDB elects to have the Company operate the Facility during such period prior to effecting the restoration or modification, for increases in operating costs, including increased Gas cost, if any, resulting from such Force Majeure Event or Change in Law, as the case may be.
 - (vi) For the avoidance of doubt, all Supplemental Tariff Payments recovered from BPDB or the GOB, as the case may be, shall not also be recoverable from the GOB under the Implementation Agreement or BPDC hereunder, as the case may be.
- (h) Pass-Through Items**
- (i) Pass-Through Items may be invoiced by the Company to BPDB on the basis of actual cost incurred by the Company and in the currency in which the cost is incurred at any time following the end of the Month in which such costs are incurred by the Company and any such invoice presented shall be due for payment within twenty-five (25) Days after delivery thereof.

- (ii) The reasonable costs incurred by the Company for modifications or expansion of the protective devices required by BPDB pursuant to Section 5A.2 of the Implementation Agreement shall constitute Pass-Through Items under this Agreement.
 - (iii) Custom Duties and VAT which are paid by the Company under protest in the circumstances envisaged by Section 12.1(b) of the Implementation Agreement and which are not refunded by the Custom Authority prior to the Commercial Operations Date shall constitute Pass-Through Items hereunder. The Company shall refund to BPDB any payment it shall receive from the Customs Authority, which has been paid by BPDB under this Agreement.
- (i) Right to Review

Either Party 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 any additional charges.

13.2 Billing and Payment

(a) Invoices and Payments

- (i) Invoices shall be on a Monthly basis for all charges incurred throughout a Month except for payments under Section 13.1(d) and Section 13.2(h)(ii), and Principal Payments under Section 7.5. The invoices for all charges identified in Sections 13.2(b) through 13.2(i) (except Section 13.2(h)(ii) and all amounts payable under Section 7.5 (except for Principal Payments, exchange rate and inflation adjustment therein) by BPDB to the Company shall be prepared by the Company and submitted to BPDB 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 BPDB to confirm the consistency of the invoice with the provisions of this Section 13.2.
 - (aa) BPDB shall pay to the Company by cheque or wire transfer 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. Payment will not be considered to have been received unless or until it is in then-available funds.
 - (bb) If the Company has failed to receive payment pursuant to Section 13.2(a)(i)(aa) by the due date mentioned therein, the Company shall be entitled to draw on the BPDB Letter of Credit for any amounts due under this Agreement, less any amounts which are subject to Dispute.
- (ii) BPDB 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 in accordance with Section 13.2(h).

- (iii) As set forth in Section 8.7(a), any unpaid and undisputed (or determined pursuant to Section 19 to be owed) amount of liquidated damages plus accrued interest due to BPDB pursuant to Section 8 may be set off against amounts owed to the Company by BPDB as invoiced pursuant to this Section 13.1.

(b) Estimates

So that invoices may be rendered promptly after the end of each Month, it may be necessary, from time to time, to use the last available value for certain indices used herein (including CE, FIIF, PI(US), LIIF and PI(Tk)), for calculating the Monthly bill. Adjustments for current values of such indices against previously used values shall be included in the invoice for the Month following the time when information becomes available to make such corrections or adjustments in the invoice for the preceding Month or Months.

(c) Capacity Payments

From and after the Simple Cycle Commercial Operations Date, BPDB shall pay the Capacity Payment to the Company for Dependable Capacity, in any period, during the simple cycle operation before Commercial Operations Date based on the Reference Capacity Price which shall be 50% of the Reference Capacity Price of 1st Contract Year as provided in 13.1(b).

From and after the Commercial Operations Date, BPDB shall pay the Capacity Payment to the Company, in accordance with Section 13.2(a). If the Commercial Operations Date occurs on a date which is not the first Day of a Month, the Capacity Payment for the period from the Commercial Operations Date through the last Day of the Month in which the Commercial Operations Date occurs, shall be multiplied by a fraction the numerator of which is the number of Days remaining in the Month from and including the Commercial Operations Date and the denominator of which is the number of Days in such Month. If the Term ends on a date which is not the last Day of a Month, the Capacity Payment for the Month in which the Term ends shall be calculated by multiplying the full Capacity Payment for that Month by a fraction, the numerator of which is the number of Days in the Month occurring on or prior to the Day the Term ends and the denominator of which is the number of Days in such Month.

(d) Energy Payments

From and after the Simple Cycle Commercial Operations Date, BPDB shall pay the Energy Payment to the Company, in any period, during the Simple Cycle Operation before Commercial Operations Date based on the Reference Energy Price and Reference Simple Cycle Heat Rate.

For each Month in which the Company delivers Net Energy Output to BPDB on or after the Simple Cycle Commercial Operations Date or 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)(ii), and BPDB shall pay the Energy Payment in accordance with Section 13.2(a).

For each Month in which the Company delivers Net Energy Output to BPDB prior to 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)(iii), and BPDB shall pay the Energy Payment in accordance with Section 13.2(a).

(e) Start-Up Payments

From and after the Commercial Operations Date, BPDB shall pay to the Company, Monthly in arrears, in accordance with the provisions of Section 13.2(a), the Start-Up Payment established in accordance with Section 13.1(f).

(f) Supplemental Tariff Payments

BPDB shall pay to the Company, Monthly in arrears, in accordance with the provisions of Section 13.2(a), the Supplemental Tariff Payments established in accordance with Section 13.1(g).

(g) Pass-Through Items, Company True-Up Payments

(i) BPDB shall pay to the Company, Monthly in arrears, in accordance with the provisions of Section 13.2(a), all Pass-Through Items incurred by the Company.

(ii) Payments owed by BPDB to the Company under Section 13.1(d) shall be paid in accordance with Section 13.1(d).

(h) 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) or other relevant provision, as the case may be; provided, that, notwithstanding any provision to the contrary herein, where such Dispute relates to the decision of the Testing and Commissioning Committee or the certification of the Engineer, BPDB shall pay the invoice (without deduction for any amount which is the subject of such Dispute) until resolution of such Dispute in accordance with Section 19.

(ii) In the event of a Dispute, either 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 three (3) 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 third (3rd) Business Day shall be subject to interest pursuant to Section 13.2(a)(iii) from the Day following the third (3rd) 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 three (3) 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 third (3rd) Business Day. Any amount determined to be owed that remains unpaid after such third (3rd) Business Day shall be subject to interest pursuant to Section 13.2(a)(iii) from the Day following the third (3rd) Business Day through (but not including) the date of payment.
- (i) BPDB Security
 - (i) BPDB Letter of Credit
 - (A) Within 10 (ten) Business Day after the Commercial Operations Date, BPDB shall cause Sonali Bank or any other scheduled bank (the "Issuing Bank") to issue and provide to the Company the BPDB Letter of Credit, which shall have an initial term which is not less than one (1) year and shall provide for annual renewal by the Issuing Bank immediately prior to each relevant expiry date for further period(s) of one year each until the last Day of the Term . Immediately upon each such renewal, the Issuing Bank shall confirm to BPDB that such renewal has occurred.
 - (B) In the case of any extension of this Agreement, BPDB shall, not less than thirty (30) Days prior to its expiration, procure that the BPDB Letter of Credit is renewed or replaced for a term not less than the extended term of this Agreement. BPDB shall procure that the BPDB Letter of Credit (which expression shall include any renewal or extension thereto) shall be in the form of Schedule 5 hereto and meets the requirements of this Section 13.2(i).
 - (C) The BPDB Letter of Credit shall permit presentation at a bank located in Dhaka, Bangladesh.
 - (D) The initial amount of the BPDB Letter of Credit shall be equal to the BPDB Letter of Credit Amount computed as at the Commercial Operations Date.
 - (E) The BPDB Letter of Credit Amount shall be recalculated and adjusted by BPDB and notified to the Company and the Issuing Bank on the date falling ninety (90) Days after the Commercial Operations Date and every ninety (90) Days thereafter (each such Day a "BPDB Letter of Credit Adjustment Day"). If as a result of any such recalculation on a BPDB Letter of Credit Adjustment Day, the BPDB Letter of Credit Amount as at such BPDB Letter of Credit Adjustment Day is higher than the amount of the BPDB Letter of Credit which is then capable of being drawn, BPDB shall within two (2) Business Days of such BPDB Letter of Credit Adjustment Day procure that the amount of the BPDB Letter of Credit is increased to such higher BPDB Letter of Credit Amount and that written evidence of such increase is provided to the Company.

- (F) The BPDB Letter of Credit shall provide for draws by the Company for the purposes of Section 13.2(a) in immediately available funds for any amounts due to the Company under this Agreement less any amounts disputed by BPDB, upon presentation of a certificate of an authorised officer of the Company stating that:
- (1) amounts shown in the invoice accompanying the certificate are due and payable by BPDB to the Company under this Agreement; and
 - (2) an invoice for such amount has been delivered to BPDB in accordance with this Agreement and either:
 - (a) no amount shown in the invoice has been disputed by BPDB; or
 - (b) a portion of the amount shown in the invoice has been disputed by BPDB, identifying such disputed amount.

The certificate shall be accompanied by the relevant invoice delivered to BPDB and any Invoice Dispute Notice delivered to the Company by BPDB.

- (G) The BPDB Letter of Credit shall be reinstated to the BPDB Letter of Credit Amount (as at the most recent BPDB Letter of Credit Adjustment Day or, prior to the first BPDB Letter of Credit Adjustment Day, as at the Commercial Operations Date) within fifteen (15) Business Days of any draw thereon by the Company.

(ii) Improper Drawings

Without prejudice to BPDB's other rights under this Agreement or otherwise, in the event that the Company draws against the BPDB Letter of Credit and it is subsequently determined that the Company was not entitled to do so, then the Company shall repay such amount to BPDB, together with all costs and expenses incurred by such other Party in connection with such drawing, plus interest thereon from the date of the draw through the date of repayment at the Bank Rate plus four (4) percent per annum, compounded semi-annually.

(iii) Termination of Agreement

Within ten (10) Business Days following any termination of this Agreement, the Company shall deliver to BPDB any then-outstanding BPDB Letter of Credit, without further draws thereon or encashment thereof except for any amounts that may be due and payable to the Company at the time of such termination.

(j) Suspension of Deliveries

Notwithstanding the late payment surcharge as provided in Section 13.2(a) or any other provisions of this Agreement:

- (i) BPDB's right to Dispatch the Facility shall be suspended and the Company's obligations, including its obligation to make available the Dependable Capacity and deliver the Net Energy Output, under this Agreement shall be permitted to be suspended at any time that any outstanding invoice or invoices (other than an amount in Dispute for which payment may be withheld pursuant to Section 13.2(i)) remain unpaid (either directly by BPDB or by draws against security provided by BPDB) in full (including any accrued interest thereon) beyond ten (10) Business Days following the due date specified in Section 13.2(a)(i).
- (ii) the Company shall be entitled during such suspension to receive Capacity Payment calculated on the basis of the Dependable Capacity existing immediately prior to such suspension.

Section 14: INSURANCE

14.1 Maintenance of Insurance Policies

(a) Obligations to Maintain Insurances

The Company at its sole cost and expense, subject to the provisions of Section 14.4, shall obtain and maintain or cause to be obtained and maintained, as and when appropriate for the policies to be in place depending upon the purpose and coverage of the insurance during the Term, the policies of insurance set forth below in this Section 14.1 with deductible amounts comparable to insurance carried by prudent contractors, operators and owners of similar facilities subject to availability on commercially reasonable terms and for the amounts of coverage set forth herein and during the periods mentioned therein; provided, however, that:

- (i) the insurance coverage set forth herein is the minimum insurance that the Company shall maintain during the Term; the Company shall obtain any additional coverage required by the Lenders and/or the Laws of Bangladesh and/or deemed necessary by the Company; and
- (ii) the Company shall not be in breach of its obligations if and to the extent that any particular insurance is unavailable to it on commercially reasonable terms and conditions.

(b) Insurances During the Construction Period (Prior to Commercial Operations Date)

(i) Marine and Air Cargo Insurance:

Coverage: Shall insure all materials, equipment machinery, spares and other items for incorporation into the Facility against all risks of physical loss or damage while in transit by sea or air from country of origin anywhere in the world to the Site in Bangladesh, or vice versa, from the time of the insured items leaving warehouse or factory for shipment to the Site. Cover to institute Cargo Clauses (Air), institute War Clauses (Air), (Sendings By Post), institute Strikes Clause (Cargo, Air Cargo) or equivalent.

Sum insured: An amount equal to cost and freight of any shipment.

Insured: The Company, the Contractors and suppliers to the Company and to the Contractors.

(ii) Delay in Start-Up (following Marine incident):

Coverage: Shall insure against additional cost following delay in reaching the Commercial Operations Date by the Required Commercial Operations Date as a direct result of physical loss or damage to the materials, equipment, machinery and other items in transit by sea or air to the Site to the extent covered under the Marine Cargo insurance.

Sum insured: An amount equal to the estimated debt service.

Indemnity Period: 12 Months.

Insured: The Company and the Lenders.

- (iii) Contractor's All Risk:
- Coverage: Shall insure all work executed and in the course of execution, materials and temporary works, while on the Site, against all risks of physical loss or damage other than war and kindred risks, nuclear risks, unexplained shortage, cost of replacing or repairing items which are defective in workmanship, material or design; penalties; consequential losses; cash; vehicles; vessels; aircraft. Cover shall provide the equivalent terms, conditions and perils/causes of loss provided under an All Risks Insurance policy.
- Sum insured: Coverage shall be no less than the maximum probable loss of property items covered.
- Period of Cover: Actual construction, testing and commissioning until expiry of the warranty period.
- Insured: The Company, the Contractors and all suppliers and consultants, GOB, BPDB and the Lenders.
- General: During the warranty period, cover shall be limited to the loss or damage for which the Construction Contractor is liable under the warranties of the Construction Contract. Cover shall include transit within Bangladesh of locally procured materials. Cover shall cease, and be transferred to operating period insurance, on the Day following the Commercial Operations Date.
- (iv) Delay in Start-up (following Contractors All Risk):
- Coverage: Shall insure against additional cost following delay in reaching the Commercial Operations Date by Required Commercial Operations Date as a direct result of physical loss of or damage to the works during construction or operational testing to the extent that such loss or damage is covered under the Contractors' All Risk policy.
- Sum insured: An amount equal to the estimated debt service.
- Indemnity Period: 12 Months.
- Insured: The Company, Lenders and O&M Contractor.
- Period of Cover: Actual construction, testing and commissioning periods of the Project from mobilisation of the Contractors until the Day following Commercial Operations Date.

(c) Insurances During the Operational Period (After Commercial Operations Date)

(i) All Risks Insurance:

Coverage: Shall include all building contents, machinery, stock, fixtures, fittings and all other personal property forming part of the Facility against "All Risks" of physical loss or damage, including (but not limited to) those resulting from fire, lightning, explosion, spontaneous combustion, storm, wind, tempest, flood hurricane, water damage, riot, strikes, malicious damage, earthquake, tsunami, collapse and/or loss of contents of tanks.

Sum insured: Full replacement value of the Facility.

Insured: The Company, the O&M Contractor, the GOB, BPDB and the Lenders.

(ii) Consequential Loss Following All Risks:

Coverage: Shall insure against loss of revenue due to loss of capacity and/or loss of output as a direct consequence of loss of or damage to the Facility and caused by a peril insured under All Risks insurance.

Sum insured: An amount equal to the estimated debt service which will be due during the Indemnity Period following the current period of the insurance policy.

Indemnity Period: 12 Months.

Insured: The Company, the O&M Contractor and the Lenders.

General: Rights of recourse against BPDB, the Lenders and O&M Contractor shall be waived.

(iii) Machinery Breakdown:

Coverage: Shall insure against all machinery, plant, boilers and ancillary equipment forming part of the Facility against sudden and unforeseen physical loss or damage resulting from mechanical and electrical breakdown or derangement, explosion or collapse of boilers and pressure vessels, electrical short circuits, vibration misalignment, excessive current or voltage, abnormal stresses, centrifugal forces, failure of protective or regulating devices, overheating, entry of foreign bodies, impact, collision another similar causes.

Sum insured: Full replacement value of all machinery, plant, boilers, etc.

Insured: The Company, the Lenders, BPDB and the O&M Contractor.

- (iv) Consequential Loss Following Machinery Breakdown:
- Coverage: Shall insure against loss of revenue due to loss of capacity and/or loss of output as a direct consequence of loss or damage to the Facility caused by a peril insured under Machinery Breakdown insurance.
- Sum insured: An amount equal to the estimated Debt Service which will be due during the Indemnity Period following the current period of the insurance policy.
- Indemnity Period: 12 Months.
- Insured: The Company, the O&M Contractor and the Lenders.
- General: Rights of recourse against BPDB, the Lenders and O&M Contractor shall be waived.
- Insurance pursuant to Section 14.1(c)(i) and (iii) may be covered under the same policy.

(d) Insurance Required During the Construction Period and the Operational Period

- (i) Public Liability
- Cover: Shall insure against legal liability to third parties for bodily injury or damage to property arising out of the construction, testing and commissioning and operation of the Facility in Bangladesh.
- Sum insured: For any one claim: US\$ 5,000,000.
- Insured: The Company, the Lenders, the Contractors, the O&M Contractor, all suppliers and consultants, GOB, and BPDB.
- Period of Cover: The actual construction, testing and commissioning of the Facility from mobilisation of the Contractors until the end of the Term.
- (ii) Workers Compensation and Employers Liability
- This coverage will include workers compensation, temporary disability and other similar insurance required by the Laws of Bangladesh.

14.2 Policy Endorsements

- (a) The commercial/general liability insurance shall contain the following endorsement items:
- (i) BPDB, its directors, officers and employees shall be additional insured under such policies with respect to claims arising out of or in connection with this Agreement;
- (ii) The insurance shall be primary with respect to the interest of BPDB, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;
- (iii) The insurance shall contain a cross liability clause;

- (iv) The insurer shall waive all rights of subrogation against BPDB, its officers, directors and employees; and
- (v) Notwithstanding any provision of the policy, the policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) Days, except in the case of non-payment, in which case it will be ten (10) Days, prior written notice to BPDB. All other terms and conditions of the policy shall remain unchanged.

14.3 Certificates of Insurance and BPDB as Additional Insured

- (a) The Company shall provide BPDB with certificates of insurance evidencing the policies and endorsements listed above. If the Company shall fail to procure or maintain any insurance required pursuant to this Section, then BPDB shall have the right to procure such insurance in accordance with the requirements of this Section and to charge the full cost thereof to the Company. The Company shall be named as the loss payee on any such insurance procured by BPDB subject to this Section 14.3.
- (b) To the extent that BPDB can be named as an additional insured on any fire, perils, casualty, and liability insurance policies covering the Facility, BPDB shall be so named by the Company, provided, that BPDB shall agree to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein.

14.4 Reporting Requirements

The Company shall cause its insurers or agents to provide BPDB with certificates of insurance evidencing the policies and endorsements listed above. The Company shall provide BPDB with copies of any underwriters' reports or other reports received by the Company from any insurer (if the disclosure is acceptable to such insurer); provided, that BPDB shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement or as may be required by any Government Authority having jurisdiction over BPDB and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

14.5 Effects of Force Majeure

- (a) Following a Political Force Majeure Event, to the extent that the insurance required by Section 14.1 is not available to the Company at commercially reasonable rates due to the occurrence of the Political Force Majeure Event, upon notice to BPDB by the Company, the additional cost of such insurance attributable to the occurrence of the Political Force Majeure Event shall be recoverable by the Company from BPDB and treated as a Pass-Through Item.
- (b) The additional compensation provided as a Pass-Through under Section 14.5(a) shall adjust over time to reflect then-applicable additional cost of insurance attributable to the Political Force Majeure Event. The additional compensation shall cease as soon as the Company's insurance premiums are no longer affected by the Political Force Majeure Event.
- (c) The additional cost of insurance identified in Section 14.5(a) shall be determined by an Expert in conformance with the provisions of Section 19.3. From time to time, at the request of BPDB or the Company, to provide for adjustments pursuant to Section 14.5(b), the Expert will determine the extent to which the Company's insurance rates are then affected by the Political Force Majeure Event (or the other event described above).

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) BPDB 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 intentional act or omission of BPDB (or its officers, directors, members (of the board) and employees), without recourse to the Company or its Contractors. BPDB 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 by any 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. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 15.2(a) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the Company or its Contractors are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (b) The Company shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against BPDB or its respective officers, directors, members (of the board) and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by BPDB or its respective officers, directors, members (of the board) and employees in connection with the Facility resulting from any negligent or intentional act or omission of the Company or its Contractors (or its respective officers, directors and employees), without recourse to BPDB. The Company will hold BPDB 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 by any act or omission of BPDB or the failure of BPDB to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 15.2(b) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, BPDB is compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (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) 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.

Force Majeure includes the following events and circumstances to the extent they, or their consequences, satisfy the above requirements.

- (a)** political events that occur inside or directly involve Bangladesh (“Political Force Majeure Events”), including, but not limited to:
 - (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) any Lapse of Consent that shall have itself existed for twenty-six (26) Days or more or for thirty (30) Days in the aggregate in any Year or for forty (40) Days in the aggregate in any two (2) Year period;
 - (iii) radioactive contamination or ionising radiation originating from a source inside Bangladesh or resulting from another Political Force Majeure Event; or
 - (iv) strikes, works to rule or go-slows that extend beyond the facilities of a Party (including, the Facility, or the EIF (after it has been transferred to PGCB by the Company)) and that are (A) widespread or nationwide or (B) of a political nature, such as, by way of example and not limitation, labour actions associated with or directed against the Company (or its Contractor(s)) as part of a broader pattern of labour actions against companies or facilities with foreign ownership or management;
- (b)** Changes in Law;
- (c)** Other events beyond the reasonable control of the affected Party (“Other Force Majeure Events”), including, but not limited to:
 - (i) uncontrollable events, including, but not limited to:
 - (A) lightning, earthquake, flood, tsunami, storm, cyclone, typhoon, or tornado;

- (B) fire, explosion or chemical contamination (other than resulting from an event described in Section 16.1(a), in which case it shall be a Political Force Majeure Event);
 - (C) epidemic or plague; or
 - (D) a Lapse of Consent unless such Lapse of Consent is a Political Force Majeure Event.
- (ii) political events that occur outside Bangladesh and do not directly involve Bangladesh, including, but not limited to:
- (A) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act of terrorism;
 - (B) radioactive contamination or ionising radiation originating from a source outside Bangladesh and not falling within Section 16.1(a)(iii); or
 - (C) strikes, works to rule, or go-slows that are widespread or nation-wide;
- (d) 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(s), the Gas Supplier or other supplier and the performance of its obligations under an agreement which would constitute a Force Majeure Event if such Contractor(s), the Gas Supplier or other supplier was a Party and such agreement were this Agreement (other than resulting from an event described in Section 16.1(a) or (b), in which case, if such event or circumstance affects the Gas Supplier or the Construction Contractor(s) or the O&M Contractor(s), it shall be a Political Force Majeure Event or a Change in Law, as the case may be for the Company):
- (i) late delivery of machinery, equipment, materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor(s) 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(s) as soon as practicable, but in any event, not later than three (3) Days after the occurrence of the Force Majeure Event(s) or six (6) hours after the resumption of any means of providing notice between the Company and BPDB, which ever is later; and
 - (ii) give the other Party a second notice, describing the Force Majeure Event(s) 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(s) 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(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) 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(s).

- (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) in the case of a Force Majeure Event which damages the Facility, in no event shall the obligations of the affected Party under this Agreement to meet performance deadlines be extended for a period of time in excess of the Restoration Schedule (as defined in the Implementation Agreement) as determined in accordance with Sections 11.5 and 11.8 of the Implementation Agreement.
- (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

- (a) Upon the occurrence of any Force Majeure Event after the Commercial Operations Date, then during the Force Majeure Event, BPDB shall pay to the Company (A) Energy Payments for Net Energy Output delivered during such Force Majeure Event plus (B) Capacity Payments in an amount equal to the amount due to the Company pursuant to Section 13.2 immediately prior to such Force Majeure Event multiplied by the FM Ratio. For the purposes of this Section 16.5, the FM Ratio shall be:
 - (i) in the case of a Force Majeure Event (other than the first fifteen (15) of Gas Supplier Related Force Majeure Event(s) (herein defined), as applicable, in any given Contract Year in respect of which paragraph (iv) below shall apply) declared by the Company where the Facility is capable of partial operation, a fraction, the numerator of which is the Dependable Capacity as determined by testing in accordance with Section 7 as soon as practicable after the declaration of such Force Majeure Event, and the denominator of which is the Dependable Capacity determined by the most recent test prior to the Force Majeure Event conducted pursuant to Section 7;
 - (ii) in the case of Force Majeure Event (other than the first fifteen (15) Days of Gas Supplier Related Force Majeure Event(s) in any given Contract Year in respect of which paragraph (iv) below shall apply) declared by the Company where the Facility is not capable of operation, the FM Ratio shall be zero;
 - (iii) in the case of a Force Majeure Event declared by BPDB the FM Ratio shall be one (1); and
 - (iv) In the case of the first fifteen (15) Days of Gas Supplier Related Force Majeure Event(s) which result from the assertion by the Gas Supplier of the occurrence of a Political Force Majeure Event in any given Contract Year, the FM Ratio shall be one (1).

A "Gas Supplier Related Force Majeure Event(s)" means a Force Majeure Event or Force Majeure Events declared by the Company (whether the Facility is capable of partial operation or not capable of operation as a result of such Force Majeure Event(s)) that results from events or circumstances or a combination of events or circumstances in relation to the Gas Supplier referred to in Section 16.1(d).

- (b) During the Force Majeure Event, either Party may request that one or more Dependable Capacity Test(s) be performed to determine the FM Ratio applicable in Section 16.5(a)(i), and such FM Ratio shall be used to compute the Capacity Payment to be made by BPDB to the Company from the Day following such test; provided, however, that no more than two (2) tests may be requested by a Party within any thirty (30) Day period during such Force Majeure Event.

- (c) Except as provided in this Section 16.5, the Company shall not be entitled to any additional Energy Payments and Capacity Payments pursuant to Section 13.1 from BPDB arising during any Force Majeure Event.

16.6 Supplemental Tariff for Political Force Majeure Events

- (a) In the event that a Political Force Majeure Event results in damage to, or other adverse effects on, the Facility, which is repaired or otherwise remedied by the Company, and the Implementation Agreement is not terminated pursuant to Section 11.8(a) or 11.8(b) thereof, the Company shall be entitled to receive Supplemental Tariff Payments from BPDB in accordance with the procedures set forth in Section 13.1(g).
- (b) Such Supplemental Tariff Payments will allow the Company to recover the difference between the restoration costs approved in accordance with Section 11.7 of the Implementation Agreement and any insurance proceeds received by the Company as a result of the occurrence of the Political Force Majeure Event.

16.7 Supplemental Tariff for Change in Law

- (a) In the event of the occurrence of a Change in Law, including a Change in Law that becomes applicable to the Company because of damage to and the restoration of the Facility as described in Section 16.6, that requires a material modification or a material capital addition to the Facility, as such material modification or a material capital addition as provided in Section 11 of the Implementation Agreement, which is completed by the Company, or in lieu thereof or in addition thereto, an increase or decrease in the operating costs including use or quality of consumables (including Gas) by the Facility, in each case, as approved by the GOB, in the manner provided by the Implementation Agreement, and the Implementation Agreement is not terminated pursuant to Section 11.8(a) or Section 11.8(b) thereof, the Company will be entitled to receive Supplemental Tariff Payments from BPDB in accordance with the procedures set forth in Section 13.1.
- (b) Such Supplemental Tariff Payments will allow the Company to recover the costs of complying with the Change in Law, including:
 - (i) the cost of any material modifications or material capital additions to the Facility that are necessary for the Company to come into compliance with the Change in Law and are approved in accordance with Section 11.7 of the Implementation Agreement; and
 - (ii) additional costs of operating the Facility including the cost of additional quantities or higher quality of consumables (including Gas) that are directly attributable to compliance by the Company with the Change in Law. Any reduction in cost due to a decrease in the use or quality of consumables by the Facility shall be credited to BPDB.

Section 17: TAXES AND CLAIMS

- (a)** Except as otherwise provided herein or in the Implementation Agreement, 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 the Implementation Agreement that provide certain tax exemptions or 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 BPDB arising from or in connection with its rights and obligations under this Agreement shall be paid by BPDB 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 more restrictive or onerous requirements of:

- (a) the applicable Laws of Bangladesh; and
- (b) the Environmental Guidelines.

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 England and Wales.

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 that any Dispute that has not been resolved following the procedures described in Section 19.2 and 19.3 shall (subject only to the provisions of Section 19.4(b)) be finally settled by means of arbitration, which, except as provided in Section 19.4(b), shall be in accordance with the Rules of Procedure for Arbitration Proceedings, hereinafter referred to as the "ICSID Rules", from time to time, of the International Centre for the Settlement of Investment Disputes hereinafter referred to as the "Centre" established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965 hereinafter referred to as the "Convention", and, except as provided in Section 19.4(b), the Parties accordingly irrevocably and unconditionally agree to submit themselves and any such Dispute to the jurisdiction of the Centre. For the purposes specified in Articles 25(1) and 25(2)(b) of the Convention with respect to the jurisdiction of the Centre pursuant to the Convention, the Parties agree that (a) any such Dispute is a legal dispute arising directly out of an investment between a Contracting State and a national of another Contracting State and (b) the Company is and shall at all times remain a national of another Contracting State by reason of foreign control unless and until (by reason only of the voluntary sale or transfer of any part of the Ordinary Share Capital by Foreign Investors) the amount of the Ordinary Share Capital held by Foreign Investors amounts in aggregate to less than fifty-one (51%) of the Ordinary Share Capital of the Company. Where there is a reduction in the amount of Ordinary Share Capital other than by reason of such voluntary sale or transfer, such reduction shall not be included in the determination of the percentage ownership of Ordinary Share Capital by Foreign Investors.
- (b) In the event that (i) any request for arbitration made in pursuance of Section 19.4(a) and Article 6 of the Convention is not registered by the Secretary-General under Article 36(3) of the Convention or (ii) the Centre or the arbitral tribunal fails or refuses to assume or to exercise jurisdiction or to continue to exercise jurisdiction with respect to any Dispute referred to it or (iii) for any other reason the Dispute cannot be finally determined by arbitral proceedings pursuant to the ICSID Rules, then any such Dispute shall be determined by means of arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("the ICC Rules"); provided, that, notwithstanding the foregoing, any arbitration to be conducted in Dhaka, Bangladesh pursuant to this Section 19.4 shall be carried out under the provisions of Bangladesh Arbitration Act of 2001, (Act I of 2001).

- (c) Any arbitral proceeding under this Section 19.4 shall be conducted in Dhaka, Bangladesh; provided, that if the Company desires that the arbitration be conducted outside of Bangladesh, the arbitration shall be carried out at the seat of the Singapore International Arbitration Centre in the Republic of Singapore and the Company shall pay all of BPDB's costs of the arbitration, as and when incurred by BPDB, including the out of pocket costs of the arbitration of BPDB in excess of the costs that would have been otherwise incurred by BPDB had the arbitration been conducted in Dhaka, Bangladesh (the "Incremental Costs"). The arbitrator shall resolve any Disputes as to whether a cost would have been incurred in connection with the arbitration in Dhaka, Bangladesh or are Incremental Costs. The arbitrator may order that BPDB bear its own Incremental Costs in part or in full if he finds that BPDB's claim or defence in the arbitration was spurious and without any merit whatsoever, and BPDB shall pay the amount ordered; provided, however, that if a matter in Dispute involves a sum of ten million Dollars (US\$ 10,000,000) or more, or the legality, validity or enforceability of this Agreement, or the termination of this Agreement, the arbitration shall, unless otherwise agreed by the Parties, be conducted in Singapore, and, in such case, each Party shall pay its own costs of arbitration as and when incurred, unless such costs are ordered by the arbitrator to be paid by one Party, in which case they shall be paid by such Party.
- (d) The Parties agree that the arbitral tribunal constituted in pursuance of a request for arbitration made under Section 19.4(a) or (b), shall consist of 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 England or in a jurisdiction whose laws are substantially derived from the common law of England. The Parties further agree that, except in the case of an appointment made by the Chairman of the Administrative Council pursuant to Article 38 of the Convention and Rule 4(1) of the ICSID Rules, any person appointed as sole arbitrator need not be a person designated to serve on the Panel of Arbitrators constituted under Section 4 of Chapter I of the Convention.
- (e) No arbitrator appointed pursuant to this Section 19.4 shall be a national or resident of the jurisdiction of either Party or of 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 an employee or agent or former employee or agent of or have any material interest in the business of or in any Party or any such person.
- (f) Subject (in the case of arbitral proceedings under Section 19.4(a)) to the provision of Section 5 of Chapter IV of the Convention and Chapter VII of the ICSID Rules, each Party hereby irrevocably undertakes (i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Section 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.
- (g) Without prejudice to the provisions of Article 47 of the Convention and Rule 39 of ICSID Rules (in the case of any arbitral proceeding begun in pursuance of Section 19.4(a)), the Parties agree that the arbitral tribunal may, upon the application of either Party, order a Party or the Parties to take such interim measure or measures of protection as the arbitral tribunal may consider necessary with respect to the subject matter of the Dispute or any ancillary claim referred to it, the maintenance or efficient conduct of the arbitration or the preservation of the rights and interests of any Party under or with respect to this Agreement and the arbitration agreements set forth in this Section 19.4, including, without limitation, the making of an order requiring any Party to refrain from filing or pursuing or to terminate or withdraw any action, suit or proceeding in any court of competent jurisdiction or, to the extent not prohibited by law, other authority which has (directly or indirectly) a connection with the subject matter of the arbitral proceeding or jurisdiction relating to such subject matter, and the Parties agree to abide by and comply with such order(s).

- (h) Until such time as any arbitral proceedings begun in pursuance of Section 19.4(a) or (b) have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), each Party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of competent jurisdiction 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 Section 19.4, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Section 19.4(a) and (b)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Section 19.4(a) or (b), 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 proceedings 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 Section 19.4(a) or (b), except proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by the arbitral tribunal.
- (i) The language of the arbitration shall be English.

19.5 Commercial Acts; Sovereign Immunity; Jurisdiction

- (a) BPDB unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts. In furtherance of the foregoing, BPDB hereby irrevocably and unconditionally agrees that:
 - (i) should any proceedings be brought against BPDB in Bangladesh or in any jurisdiction where any material assets or property of BPDB is located or against BPDB's assets, other than electric generation assets and equipment, electric distribution assets, other assets necessary for the fulfillment of its duties and responsibilities under Bangladesh Power Development Boards, Order 1972 (P.O. No. 59 of 1972) and any assets protected by the diplomatic and consular privileges under the Immunity Act, 1978 of the United Kingdom or the Sovereign Immunities Act, 1976 of the United States or any analogous legislation (collectively, the "Protected Assets") to enforce any award or decision of any arbitrator(s) who were duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings will be claimed by or on behalf of BPDB on behalf of itself or any of its assets (other than the Protected Assets);
 - (ii) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) it consents generally to the jurisdiction of any court of competent jurisdiction (including courts in Bangladesh) for any action filed by the Company to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties (including without limitation, the making, enforcement or execution against or in respect of any of its assets (other than the Protected Assets) regardless of its use or intended use) and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. BPDB agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

19.6 Company's Consent to Jurisdiction

- (a) The Company hereby unconditionally and irrevocably consents generally to the jurisdiction with respect to itself and all of its assets and property that it now has or may thereafter acquire of the courts of any competent jurisdiction, including the courts in Bangladesh, for any action or proceeding filed by BPDB to enforce any award or decision of any arbitrator(s) or Expert who were duly appointed under this Agreement to resolve any Dispute between the Parties. The Company waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 19.6 and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Company irrevocably waives any and all rights it may have to enforce any judgement or claim against the Protected Assets in the courts of any jurisdiction.
- (b) For the avoidance of doubt any dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in Section 19.5 or this Section 19.6 or both shall be referred for determination under Section 19.3 and shall fall within the definition of Dispute.

Section 20: NO LIABILITY FOR REVIEW

No review and approval by BPDB 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, the Implementation Agreement and the other Project Agreements or any other agreement or instrument entered into by the Company in relation to the Project, nor shall BPDB 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: []
Attention: []
Facsimile: []
If to BPDB: Bangladesh Power Development Board
1st Floor, WAPDA Building
Motijheel C/A
Dhaka 1000, Bangladesh
Attention: [Secretary][Chairman]
Facsimile: 9554209, 9567350¹⁴
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 he 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.

¹⁴ BPDB to review and confirm address details.

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 BPDB.

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 communication written or otherwise between the Parties in connection with this Agreement shall be in English.

22.8 Entirety

This Agreement, together with the Land Lease Agreement and the Implementation Agreement, 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 and Dependable Capacity sold and purchased hereunder. All prior written or oral understandings, offers or other communications of every kind pertaining to the purchase by BPDB and the sale by the Company of Dependable Capacity and 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) any agreement or document included within the Security Package; (iii) the Facility; (iv) the Site; (v) the movable, immovable and intellectual property of the Company; or (vi) 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 BPDB except as already provided above.
- (c) The Lenders shall have no obligation to BPDB under this Agreement until such time as the Lenders or their designees succeed to the Company's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give written notice of such succession (a "Succession Notice") to BPDB and assume liability for all of the Company's obligations under this Agreement, including without limitation payment of any amounts due and owing to BPDB for payment defaults by the Company under this Agreement (other than, so long as the liability insurance required by Section 14.1 has been and is in effect), damages or penalties incurred by the Company under Section 15.2(b), arising during the period prior to the Lenders' or such designees' succession to the Company's interest in and under this Agreement, provided that any liability of the Lenders or their designees shall be strictly limited to the Lenders' interest in the Facility.

Except as otherwise set forth in the immediately preceding sentence, none of the Lenders or their designees shall be liable for the performance or observance of any of the obligations or duties of the Company under this Agreement, nor shall the assignment by the Company of this Agreement to the Lenders give rise to any duties or obligations whatsoever on the part of any of the Lenders owing to BPDB.

Upon notification by the Lenders or the Agent to BPDB of the occurrence and continuance of an event of default under the Financing Documents and the succession of the Lenders to the Company's interests in and under this Agreement, the Lenders shall have the right, among others, to: (i) take possession of the Facility and, prior to the Commercial Operations Date, complete construction of the Facility and operate the same and, after the Commercial Operations Date, operate the same; and (ii) cure any continuing Company Event of Default under this Agreement as provided in Section 4.5. Notwithstanding the foregoing, upon the delivery of a Succession Notice, the Lenders shall have no obligation to cure any Company Event of Default occurring before the delivery of such Succession Notice that is not capable of being cured including, but not limited to, a default under Section 4.2(j), (k), or (m) and no right will exist for BPDB to terminate this Agreement based upon such Company Events of Default occurring prior to the delivery of the Lenders' Succession Notice. Without the requirement of obtaining any further consent from BPDB, upon the exercise by the Lenders or their designees of any of the remedies set forth in the Financing Documents, the Lenders may assign their rights and interests and the rights of the Company under this Agreement to a Transferee acceptable to GOB (hereinafter defined) so long as such Transferee shall assume all of the obligations of the Company under this Agreement.

Upon such assignment and assumption, the Lenders shall be relieved of all obligations under this Agreement arising after such assignment and assumptions.

- (d) As used herein, a "Transferee" shall be a person who (i) is a company organised under the Laws of Bangladesh, (ii) either is an experienced and qualified power plant operator or who shall have agreed to engage the services of a person who is an experienced and qualified power plant operator, (iii) shall have paid all amounts, if any, then due and payable to BPDB under this Agreement, and (iv) shall have expressly assumed in writing for the benefit of BPDB the ongoing obligations of the Company under this Agreement (including the obligation of the Company to maintain and operate the Facility in accordance with the requirements of this Agreement).
- (e) At the request of the Company, delivered to BPDB not less than thirty (30) Days in advance BPDB shall execute and deliver at the Financial Closing, all such acknowledgements to the Lenders or their designees of any security created in accordance with this Section 22.10 as are reasonably requested by the Company and the Lenders to give effect to the foregoing.
- (f) Notwithstanding the foregoing, BPDB shall have the right to assign this Agreement to any other entity or entities assuming all or part of BPDB's rights and obligations in connection with the transmission or distribution of Net Energy Output; provided, that the GOB without interruption guarantees the performance of the PGCB or such other succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligations of the succeeding entity or entities that in the reasonable business judgment of the Company provides an adequate alternative to the Guarantee and all of BPDB's obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform such obligations.

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 Double Jeopardy

A final, non-appealable order issued in a proceeding initiated by the GOB and based on a claim of breach of the Implementation Agreement shall be with prejudice to any proceedings against the Company that BPDB could otherwise bring for breach by the Company of substantially the same obligations under this Agreement. Nothing in this Section shall prevent BPDB and the GOB from separately initiating proceedings to terminate this Agreement and the Implementation Agreement, respectively, pursuant to Section 4 and Section 13.1(a) and 13.2 of the Implementation Agreement.

22.13 Counterparts

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

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

Bangladesh Power Development Board:

[Name of the Company]

By: _____
Name:
Title:

By: _____
Name:
Title:

Seal

Seal

Witness

Witness

Schedule 1: FUNCTIONAL SPECIFICATIONS

CONTRACTED FACILITY CAPACITY = [insert Capacity] MW net electrical capacity of the Facility at Reference Site Conditions (specified below), with a power factor at the high voltage side of the main step-up transformer of 0.85 lagging.

Reference Site Conditions¹⁵ are as follows:

AMBIENT AIR TEMPERATURE	=	32°C
RELATIVE HUMIDITY	=	85 %
RIVER COOLING WATER TEMPERATURE	=	28.5°C
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%
RIVER COOLING WATER TEMPERATURE RANGE	=	18°C to 32°C
MAXIMUM WIND SPEED	=	200 km/h

¹⁵ To be reviewed and confirmed by BPDB.

1. FACILITY DESCRIPTION

The Facility consists of a Gas fired combined cycle power plant to be constructed on the Site which is located at Bhola, Bangladesh having capability of operating in island mode and synchronising with grid.

The main power block consists of [Note: to be revised in accordance with Technical Proposal][xx (x)] gas turbines (GTs), [xx (x)] gas turbine generators (GTGs), [yy] (y)] steam turbine (ST), [zz (z)] steam turbine generator (STG), [zz (z)] heat recovery steam generators (HRSGs), and [xx (x)] exhaust stacks. Other plant buildings and structures outside of the main power block include a water and waste water treatment facility, solid waste facilities, river water intake structures, (or alternative makeup water ground wells), cooling towers, control room, storeroom, maintenance facility, Electrical Interconnection Facilities, chemical and oil storage facility, and other associated buildings and structures that may be required for the balance of the Facility. The Facility shall be designed for a life of 30 years

2. MECHANICAL PLANT AND SYSTEMS

This section of the specification describes the particular technical requirements of the principal items of the Facility and the associated systems.

2.1 Gas Turbine

One or more gas turbine (insert manufacturer's name) of heavy duty, industrial type of proven design, directly coupled to the generator equipped with 50 Hz hydrogen or air cooled generators.

The gas turbine shall be:

- (a) installed with a standard acoustic, ventilated enclosure incorporating fire detection and protection facilities;
- (b) provided with all associated ancillary and auxiliary equipment and systems for the safe, efficient and reliable operation of these units in combined cycle mode. a simple cycle bypass stack shall be provided, the height of which shall be determined to ensure adequate dispersions of the exhaust gases in accordance with the required standards

2.2 Heat Recovery Steam Generator

- (a) The HRSGs (insert manufacturer's name) shall be multi-pressure natural or forced circulation units, designed in accordance with the manufacturers standard design. The unit shall be composed of economiser, evaporator, and superheater tube bank section(s) with finned tubing, as appropriate, to maximise heat transfer.
- (b) Thermal cycle shall be designed to suit the specific requirements of this project. The HRSG unit(s) shall be manufactured and tested in accordance with "ASME Boiler and Pressure Vessel Code, Section 1 Power Boilers" or equivalent.

- (c) Each HRSG shall exhaust through a separate or a common multi-flue exhaust stack, the height of which and the exit temperature of the exhaust gas shall be determined to ensure adequate dispersion of the exhaust gases in accordance with the requirements of the Laws of Bangladesh and the Environmental Guidelines, as applicable.

2.3 Steam Turbine

- (a) The steam turbine (insert manufacturer's name) shall be of a proven design, directly coupled to a 50 Hz generator. Design criteria shall be applied for a long creep life, cyclic duty and fast start-up. Last stage blade materials and exhaust steam wetness shall be selected with an objective to minimise blade erosion.
- (b) The steam turbine shall be installed with an acoustic, ventilated enclosure. If provided, the turbine house shall incorporate fire detection and protection facilities.
- (c) The steam turbine exhaust and condenser shall be in accordance with the manufacturer's standard design.

2.4 Turbine Condenser

The condenser shall be designed and constructed to HEI Standards, or equivalent, with sufficient margin and spare surface area for the maximum heat rejection duty under both normal and turbine bypass operating conditions for operation of the plant in the prescribed range of operation as defined in Schedule 2.

The condenser tube and sheet material shall be suitable for the cooling water quality.

2.5 Cooling System

Depending on the availability of water and other site condition, plant cooling system will have to be designed by the Company.

An auxiliary cooling system shall be provided for cooling turbine auxiliaries and other plant auxiliaries as required.

2.6 Water Treatment Plant

- (a) A water analysis panel and chemical feed skids will be located near the water analysis laboratory.
- (b) Chemical injection skids shall be provided for the HRSG pressure drums, and the cooling water system.
- (c) A water treatment plant shall be provided to treat raw water (river and/or ground well), that will provide plant cooling water makeup, service water, demineralised water for HRSG make-up and potable water. The water treatment plant will comprise both primary (sand and activated carbon filters or microfiltration) and secondary treatment (combination of reverse osmosis, mixed bed and/or ion exchange).

2.7 Fuel System

- (a) Facility will be operated using natural gas. The fuel gas system shall include provisions of check metering facilities, on-line analysis facilities, fuel gas separators, pressure reducers, heaters or other facilities required to treat the gas to meet the requirements of the gas turbine manufacturer.
- (b) Gas shall be delivered at the Point of Delivery by the Gas Supplier. The gas pipeline, regulation and metering system (RMS) and gas booster compressor shall be installed by the Company and turned over to the Gas Supplier at no cost to the Gas supplier.

2.8 Black Start

Facility shall be equipped with black start facility.

3. ELECTRICAL REQUIREMENTS

3.1 Generators (insert manufacturer's name)

- (a) The generators shall comply with IEC 34: 1994 and shall be rated to match the gas turbine and the steam turbine output over the full range of ambient temperatures. Generator and exciter windings shall possess insulation that is non-hydroscopic and of Class F type in accordance with IEC 85 standard.
- (b) Anti-condensation heaters shall be provided for the air circuits, generator windings, excitation system, and control cubicles. Heaters shall be capable of maintaining the air temperature above that of dew point to prevent condensation. These heaters shall automatically switch on when the generator is taken out of service. In lieu of installing anti-condensation heaters, alternative equipment and methods may be employed to prevent condensation, as per manufacturers' standard practices or design.
- (c) The quality management of the generators and accessories shall be in accordance with the requirements of ISO 9001, EN 29001 or BS 5750 Part 1 or such other equivalent international quality standards and Prudent Utility Practices.
- (d) Temperature detectors shall be provided to monitor the maximum operating temperature of the machine.
- (e) The generators shall be capable of operating within 48.5 Hz and 51.5 Hz and +/- 5% of nominal rated voltage within the power factor range 0.8 lagging and 0.95 leading at the Delivery Point.
- (f) Generators shall have a minimum short circuit ratio of 0.5, except that if the generator size is greater than 200 MVA, the short circuit ratio shall comply with IEC 34.

3.2 Excitation System

- (a) A continuous fast acting automatic excitation control system of proven design shall be provided to control each generator's voltage without hunting or instability over the entire operating range of the generators.

- (b) The excitation system shall be provided with a fast acting MVAR limiter so as to prevent the generator output falling below safe limits. A power system stabiliser shall be incorporated in the excitation system of each generator. BPDB shall provide the settings for the power system stabiliser. The AVR shall be provided with but not limited to Quadrature Droop Compensation and Cross Current Compounding. Protection features, as part of the system shall include overvoltage, overcurrent, voltage transformer (VT) fuse failure, diode failure, overfluxing, and AVR power supply failure. A field shorting or discharge switch feature shall be included in the system as protection against over stressing the generator insulation in the event of a fault.
- (c) Manual excitation control facilities shall be provided as back up to the automatic channel, and shall have an adequate range to allow for control of excitation for testing purposes. A true null balance shall be provided to allow for smooth excitation transfer between manual and automatic control.

3.3 Power and Auxiliary Transformers

The Facility shall include a main transformer for each generator, together with all protection, busbars and disconnectors where required. These main transformers shall be equipped with on-load tap changers and shall be of OFAF (forced oil, forced air) or ODAF (oil direct, forced air cooled) type rated for the full continuous output of the generator with sufficient margin.

All service station auxiliary transformers shall be OFAF, ODAF or ONAN cooled if located outside, or resin type design if situated inside the buildings.

3.4 Control and Supervision

- (a) Supervisory control, monitoring, and data acquisition information shall comply with BPDB's system control concept and proposed/current system. BPDB shall provide all supervisory control, monitoring, and data acquisition circuits from BPDB's National/Regional Control Center, all of which shall conform to the Company's requirements.
- (b) Manual synchronising facilities, with such check facilities shall be provided as a minimum for all circuits except for station/service transformer circuits.
- (c) The Facility shall be provided with a central on-site control room (CCR) so that operators can control the generators and perform switching and load dispatch duties. A Distributed Control System (DCS) shall be provided to coordinate the control and supervision of the Facility including half hourly Dependable Capacity correction for Reference Site Condition.
- (d) The Facility shall be equipped with automatic generation control (AGC) to allow control from the BPDB load dispatch center.

3.5 Electrical Protection, Communication Instrument Systems

The Facility shall incorporate a complete and comprehensive protection system for generators, generator transformers, service transformers, and station electrical distribution systems.

Communication, control, monitoring, and voice channels will be provided between the Facility and BPDB's National/Regional Control Center by BPDB. The Company shall provide interconnection within the Facility for all such communication circuits/channels.

3.6 Power Tariff Metering

- (a) The Metering System to be installed at the Facility shall include tariff metering and indicative metering.
- (b) For each unit, the measurements, which are used for calculation of the main tariff metered energy, are taken at the high voltage side of each generator's transformer. This accurately reflects the actual energy transmitted from the Facility generators to the BPDB grid. The tariff meters installed on the high voltage side of each generator transformer will measure the net energy production of the respective generators. The total Facility energy output shall be the sum of the measurements on the respective tariff meters. As provided in Section 12.1, the Back-Up Metering System shall also be of the same type and identical to the Metering System.
- (c) The tariff meters shall have separate facilities for recording the net inflow to the Facility and net outflow of energy from the Facility, and the aggregate of these parameters. This information shall be available for transmission to remote locations via the communication circuit to be provided by BPDB.
- (d) Sufficient indicative metering facilities will be installed to allow efficient normal operating and maintenance procedures and automatic control functions to be conducted at the Facility. The metering shall be logged by the Facility's DCS.

4. CIVIL REQUIREMENTS

The civil works shall be designed to have a minimum working life of 30 (thirty) years.

5. ENVIRONMENTAL REQUIREMENTS

The Facility shall be designed to be capable of complying with the Laws of Bangladesh and the Environmental Guidelines, as applicable.

Schedule 2: TECHNICAL LIMITS AND CONTRACTED CHARACTERISTICS

1. DESIGN LIMITS

1.1 Start- Ups

The notice required by the Company to synchronise the gas turbine generator to the Grid System will vary according to the length of time the Facility has been shutdown. Table 2 below shows the length of notice required against various classifications of starts. In the event such notice cannot be given to the Company by BPDB within the time periods indicated in Table 1, the Company shall use reasonable efforts to accommodate BPDB's Dispatch request.

Table 1

Classification of Start	Notice Required to Synchronise a Gas Turbine Generator ¹⁶
Hot Start	[] minutes
Warm Start	[] minutes
Cold Start	[] minutes

- (a) For the purposes of this Schedule, Start Up of the Facility is classified as follows:
- (i) "Hot Start" - A start following a continuous shutdown of a gas turbine for a period of 8 hours or less.
 - (ii) "Warm Start" - A start following a continuous shutdown of a gas turbine for a period between 8 and 48 hours.
 - (iii) "Cold Start" - A start following a continuous shutdown of a gas turbine for a period more than 48 hours.
- (b) The notice required to synchronise the gas turbine generator for a Hot Start shall apply provided the previous shutdown was not the result of a trip.
- (c) For the purpose of this Schedule, a Start-Up shall be deemed to have occurred upon synchronisation of a gas turbine generator to the Grid System.

1.2 Facility Loading

The Facility load ramping rate is the steady rate at which the load can be raised. Manufacturer provided Start-Up curves indicating maximum load ramping rates and temperature stabilisation periods for a Hot Start, Warm Start and Cold Start shall be submitted to BPDB by the Company prior to Financial Closing and shall thereon be considered as part of this Schedule 2.

¹⁶ To be finalized based on technical proposals from bidders.

Table 2 indicates the time periods required following synchronisation of a gas turbine to the Grid System for the Facility to reach the load in accordance with a given Dispatch order. The definitions as listed in 1.1 (a) above for Hot Start, Warm Start, and Cold Start shall apply.

Table 2

Classification of Start	Time to Reach Load in Dispatch Order
Hot Start	[] minutes
Warm Start	[] minutes
Cold Start	[] minutes

- (a) Facility load percentages in this Schedule refer to the load as a percentage of Dependable Capacity.
- (b) Step changes in Dispatch load are allowable, provided that the Facility load is greater than 25% of Dependable Capacity as adjusted to Reference Conditions, but in no case can such step change result in operation of the Facility below 25% of Dependable Capacity. After such a step change the Facility load must be held constant for at least 30 minutes for stabilisation purposes. Load ramping rates for such step changes in Dispatch load shall follow the manufactures recommended load ramping rate(s).
- (c) The Facility shall be capable of withstanding a full load rejection and remain in a safe condition. The Facility gas turbine can be re-synchronised within one hour, provided the Facility auxiliaries are operated continuously and that the reason for the load rejection has been removed and operation of the Facility can be maintained within the manufacturer's recommended levels for safe operation.
- (d) Each gas turbine generator shall be capable of full load rejection at Reference Conditions without tripping. The gas turbine generator will be capable of operating at synchronous idle speed for sustained periods following a full load rejection while supporting Facility auxiliaries. The time period for operation of the gas turbine generator at synchronous idle speed shall be in accordance with Prudent Utility Practices.
- (e) The Facility minimum continuous loading shall be 25% of the Facility's Dependable Capacity. The Facility shall be capable of automatic operation and control from the Dependable Capacity of the Facility to 25% of Dependable Capacity.
- (f) The Facility shall be equipped with black start capabilities.

1.3 Frequency, Power Factor and Voltage Limits

- (a) At rated voltage and frequency, the Facility will operate at 100% load with a power factor in the range 0.85 lagging to 0.95 leading at the Delivery Point, which range shall not be exceeded. The curves from the manufacture(s) showing the Reactive Power capability of the generators form part of Schedule 2.

- (b) The Facility will operate within the line voltage range used in practice by BPDB and in no case shall the Facility be required to operate more than +10% or less than -20% on the 230 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 3.

Table 3

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

1.4 General

The Company shall advise BPDB of any temporary operating constraints and limits, which may from time to time apply to the Facility.

2. EXPECTED MAINTENANCE INTERVALS

Table 4 lists the frequency of Scheduled Outages for each gas turbine.

Table 4

	Approximate Frequency (months)	Recommended Interval (actual or equivalent operating hours)
Combustion	[]	[]
Hot Gas Path	[]	[]
Major Overhaul	[]	[]

Table 5 lists the frequency of Scheduled Outages for all other major maintenance activities.

Table 5

Inspection Type	Approximate Frequency (months)	Recommended Interval (actual or equivalent operating hours)
Facility Maintenance	[]	[]
Steam Turbine Inspection	[]	[]
HRSG Inspection	[]	[]

3. 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 as a Combined Cycle Unit:

- (a) automatic voltage regulator setting and adjusting in stand-still condition and with the generator running at no load;
- (b) turbine 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 BPDB 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 intertripping circuits between the Facility and BPDB equipment will be proved.

3.2. Commissioning Tests

The following tests shall be carried out by the Company for Commissioning of the Facility after completing the tests set out in Section 3.1 of Schedule 3 insofar as these tests can be accommodated within the Grid System:

(a) **Dependable Capacity Test**

The Dependable Capacity Test shall be carried out to determine the Dependable Capacity. This test shall comply with ASME or ISO standards and shall be carried out as part of the Reliability Run (set out in (b) below) except where such test is carried out pursuant to Section 7.1.2(b). For the purpose of achieving the Commercial Operations Date (both in Simple Cycle and Combined Cycle), the Dependable Capacity shall be equal or greater than the Threshold Capacity.

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 (“Dependable Capacity 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. Dependable Capacity shall be determined by dividing summation of twelve (12) corrected capacity data by 12 and thereafter corrected to Power Factor Adjustment. Throughout the test period, BPDB shall Dispatch the Facility at the maximum generating capability of the Facility.

(b) **Reliability Run**

As a minimum requirement to demonstrate the reliability of the Facility (as a Combined Cycle Unit or Simple Cycle Unit), the Company shall carry out a reliability run for a period of one hundred and sixty eight (168) hours during which time the Facility shall operate continuously (without interruption) for seventy-two (72) continuous hours at then demonstrated Dependable Capacity. The output during the remaining ninety six (96) hours of the test will be as requested by BPDB in accordance with the Dispatch provisions outlined in Section 9.2 (excluding Section 9.2(a)(iii)) as if such provisions were applicable during the period prior to the Commercial Operations Date. This test shall

have been satisfactorily completed if the reliability run continues without interruption (arising out of factors internal to the Facility) for not less than one hundred and sixty eight (168) hours. In the event that the reliability run is interrupted for reasons external to the Facility, the accumulated testing time prior to such interruption shall be deemed acceptable for testing purposes. The Company shall be required to carry out the reliability run only for such remaining period after such interruption ceases and the reliability runs carried out during the period prior to the interruption and the period after the interruption shall be deemed as one continuous period as if such interruption had not occurred.

(c) Automatic Voltage Regulator (“AVR”) Droop Test

The AVR will be demonstrated to control the steam turbine generator voltage over its entire set range.

(d) Steam Turbine Governor Operation Test

The operation of the steam turbine speed governor will be demonstrated over its range, the droop being adjusted from 2.0 percent to 8.0 percent.

(e) Reactive Capacity Test

This test will demonstrate the capability of the Facility (as a Combined Cycle Unit or Simple Cycle Unit) to operate at rated voltage and frequency at power factors and under reactive conditions in accordance with the manufacturers generator rating curves to be provided by the Company, insofar as these tests can be accommodated within the Grid System.

(f) Minimum Load Capability Test

This test will demonstrate the capability of the Facility (as a Combined Cycle Unit or Simple Cycle Unit) to be operated at twenty five percent (25%) of the Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit) while the gas turbines, the steam turbine, the heat recovery steam generators, and auxiliaries remain in a stable and controlled condition. This test will demonstrate the Facility’s automatic control capabilities from Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit) to twenty five (25%) of Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit).

(g) Response of Facility to Step Load Changes

The Facility (as a Combined Cycle Unit or Simple Cycle Unit) shall be demonstrated to be capable of a step change in load in accordance with the manufacturer(s) load ramping rate(s) to be provided by the Company, provided the Facility load is greater than twenty five percent (25%) of the Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit). The Facility (as a Combined Cycle Unit or Simple Cycle Unit) shall also be demonstrated to be capable of withstanding a sudden loss of demand of ten percent (10%) of Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit) from any load in the range thirty five percent (35%) to hundred percent (100%) of the Dependable Capacity (as a Combined Cycle Unit or Simple Cycle Unit) insofar as such test can be accommodated within the Grid System. The gas turbines must not trip and must otherwise remain in a safe condition.

(h) Full Load Rejection

This test shall demonstrate the ability of the Facility (as a Combined Cycle Unit or Simple Cycle Unit) and its auxiliaries to withstand full and part load rejection and remain in a safe condition.

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%
Capacity (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 Capacity
- (b) Dependable Capacity
- (c) Contracted Facility Capacity

4. Technical Specifications of programmable Tariff Meter (to be compatible with BPDB 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	$I_n (I_{max}) = 5(6) A$ or $5(10) A$ or $I_n (I_{max}) = 1(1.2) A$ or $1(2) A$ 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	$1 = 5(6) A:100000 \text{ imp/kWh (kvarh)}$ or $1 = 1(1.2) A:500000 \text{ imp/kWh (kvarh)}$
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, power factor etc.

iii) Data Storage:

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

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 have to provide.

ix) Memory Storage:

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

x) Number of Digit:

Minimum 5 Integers 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.
 - (b) 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 BPDB's personnel input a restricted security code every time that this access is required.
8. The meter must be capable to display & 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: FORM OF BPDB LETTER OF CREDIT

[ISSUED ON ISSUING BANK LETTERHEAD SHOWING FULL NAME AND ADDRESS]

Date and Place of Issue:

Applicant

Name: The Bangladesh Power Development Board

Address: [1st Floor, WAPDA Building
Motijheel C/A, Dhaka 1000, Bangladesh]

Advising and Negotiating Bank

Name:

Address:

Beneficiary

Name: [_____]

Address: [_____]

Attention: [_____]

We hereby issue our documentary credit as follows:

Type of Credit:

Irrevocable, Divisible, and Transferable Letter of Credit

Letter of Credit Number:

[XXXXXXX]

Date and Place of Expiration:

[Valid for twelve (12) months from the date of issue but to be renewed in accordance with the terms provided herein]

L/C Amount

Such amount (the "L/C Amount") as the Applicant shall notify to the [Issuing Bank and the Advising and Negotiating Bank] from time to time as being the BPDB Letter of Credit Amount as defined in and calculated (and recalculated from time to time) in accordance with the provisions of the Power Purchase Agreement dated [] between the Applicant and the Beneficiary.

Credit Available with: [Advising and Negotiating Bank], by negotiation against presentation of the documents detailed herein and of your draft(s) at sight drawn on Issuing Bank accompanied by a certificate signed on your behalf by a Person describing himself therein as your duly authorised officer stating that:

“(1) This drawing in the amount of [currency and amount] is being made under this Letter of Credit No. [] pursuant to the Power Purchase Agreement (the “Agreement”) between [] (the “Company”) and BPDB as a result of BPDB’s failure to perform in accordance with Section 13.2 of the Agreement; (2) amount shown in the invoice accompanying this certificate are due and payable by BPDB, less any amount disputed by BPDB, to Company under the Agreement; and (3) an invoice for amount has been delivered to BPDB in accordance with the Agreement and either (aa) no amount shown in such invoice has been disputed by BPDB or (bb) a portion of the amount shown in the invoice has been disputed by BPDB, identifying such disputed amount.”

Presentation of either of the above certificates and all communications in writing with respect to this Letter of Credit shall be addressed to us at [Issuing Bank name and address] referencing Letter of Credit No. _____, Attention: _____, or at [Advising and Negotiating Bank name and address] referencing Letter of Credit No. _____, Attention: _____.

This Letter of Credit shall be automatically and immediately reinstated to the full L/C Amount on any draw thereon and shall be renewed annually by the Issuing Bank immediately prior to the relevant expiry date for further periods of one (1) year each until the last Day of the Term under the PPA. Upon such renewal, the Issuing Bank shall confirm to the Applicant that such renewal has occurred.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited, or amplified by reference to any document, instrument, or agreement referred to herein, except only the certificates and draft referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificates.

This Letter of Credit is transferable. Transfer may be effected only by Issuing Bank upon our receipt of an acceptable application for transfer accompanied by the original Letter of Credit and payment of our transfer commission in effect at the time of transfer.

Partial drawings are allowed.

Tested telex reimbursement is allowed.

Drafts drawn under this Letter of Credit must bear the clause:

“Drawn under [Issuing Bank] Letter of Credit No.[xxxxxxx], dated [__ _____] 20xx]”

We hereby engage with you that drafts drawn strictly in compliance with the terms of this credit and amendments shall meet with due honor upon presentation. This credit is subject to “Uniform Customs and Practice for Documentary Credits” (2007 (6th Revision)), International Chamber of Commerce, Publication No. 600.

Authorised (Signature) on behalf of the Bank

Schedule 6: REFERENCE TARIFF

Table A Reference Tariff

Contract Year	Reference Capacity Price			Reference Energy Price (See Note 1)		
	Reference Non-Escalable Capacity Price (Dollar/kW-Month) (RNECP_n)	Reference Foreign Escalable Capacity Price (Dollar/kW-Month) (RECP(US)_n)	Reference Local Escalable Capacity Price (Taka/kW-Month) (RECP(Tk)_n)	Reference Foreign Variable Operation and Maintenance Price (US Dollar /kWh) (RVOMP(US)_n)	Reference Local Variable Operation and Maintenance Price (Taka/kWh) (RVOMP(Tk)_n)	Reference Fuel Price (Taka/kWh)
1	[•]	[•]	[•]	[•]	[•]	
2	[•]	[•]	[•]	[•]	[•]	
3	[•]	[•]	[•]	[•]	[•]	
4	[•]	[•]	[•]	[•]	[•]	
5	[•]	[•]	[•]	[•]	[•]	
6	[•]	[•]	[•]	[•]	[•]	
7	[•]	[•]	[•]	[•]	[•]	
8	[•]	[•]	[•]	[•]	[•]	
9	[•]	[•]	[•]	[•]	[•]	
10	[•]	[•]	[•]	[•]	[•]	
11	[•]	[•]	[•]	[•]	[•]	
12	[•]	[•]	[•]	[•]	[•]	
13	[•]	[•]	[•]	[•]	[•]	
14	[•]	[•]	[•]	[•]	[•]	
15	[•]	[•]	[•]	[•]	[•]	
16	[•]	[•]	[•]	[•]	[•]	
17	[•]	[•]	[•]	[•]	[•]	
18	[•]	[•]	[•]	[•]	[•]	
19	[•]	[•]	[•]	[•]	[•]	
20	[•]	[•]	[•]	[•]	[•]	
21	[•]	[•]	[•]	[•]	[•]	
22	[•]	[•]	[•]	[•]	[•]	

Note 1: The Reference Fuel Price shall be the price payable by BPDB for one (1) kWh of Net Output based on the Reference Heat Rate (provided in Table B below) corresponding to a particular Plant Factor (as a % of Dependable Capacity) calculated over a half hour interval and based on then prevailing Gas Price.

Table B: Reference Heat Rates

Plant Factor (PF _h) (% of Dependable Capacity) <small>(See Note 1)</small>	Reference Heat Rates (kJ/kWh) (HHV)	
	Facility Operating in Simple Cycle Mode	Facility Operating in Combined Cycle Mode
100%	[•]	[•]
95%	[•]	[•]
90%	[•]	[•]
85%	[•]	[•]
80%	[•]	[•]
75%	[•]	[•]
70%	[•]	[•]
65%	[•]	[•]
60%	[•]	[•]
55%	[•]	[•]
50%	[•]	[•]
45%	[•]	[•]
40%	[•]	[•]
35%	[•]	[•]
30%	[•]	[•]
25%	[•]	[•]

Note 1: Reference Heat Rates shall be interpolated for Plant Load Factors between the specified points above. That is, if a Plant Load Factor PF_h is not listed above and falls between two consecutive Plant Load Factors PF₁ and PF₂ listed above with Reference Heat Rates of RHR₁ and RHR₂, respectively, then the Reference Heat Rate RHR_h corresponding to the Plant Load Factor PF_h shall be calculated as follows:

$$RHR_h = RHR_1 + \left[\left(\frac{RHR_2 - RHR_1}{PF_2 - PF_1} \right) \times (PF_h - PF_1) \right]$$

Schedule 7: AGREED LIST OF ENGINEERS

[TO BE AGREED]

- [1. Shaw Group
245 Summer Street
Boston, Massachusetts 02210, USA
Tel: +1 617.589.5111
Fax: +1 617.589.2156

2. Black & Veatch
PO Box 8405
8400 Ward Parkway
Kansas City, MO 64114, USA
Tel: +1 913.458.2000
Fax: +1 913.458.2934

3. Sargent & Lundy
55 East Monroe Street
Chicago, IL 60603-5780, USA
Tel: +1 312.269.2000

4. Fluor Corporation
6700 Las Colinas Blvd
Irving, Tx 75039 U.S.A.
Tel: +1 949.341.0480

5. Merz & McLellan
PB Asia Ltd.
16th Floor, Unit 21/22
Thai Wah Tower II
21/99 South Sathorn Road
Bangkok 10120
Thailand
Tel: +66 2.679.1455
Fax: +66 2.679.1458

6. KEMA
Utrechtseweg 310
6812 AR Arnhem
The Netherlands
Tel: +31 26.3.563.392
Fax: +31 26.3.517.362

7. Kennedy & Donkin Power
13th Floor, New Town Tower,
10-18 Pak Hok Ting Street.
Shatin, NT, Hong Kong
Tel: +852 2601.0822
Fax: +852 2692.4527

8. Washington Group
501 Orchard Road
Wheelock Place
Singapore
Tel: +65 734.9271

9. Burns & McDonnell
4800 East 63rd Street,
P. O. Box 419173
Kansas City, Missouri 64141, USA
Tel: +1 816.333.4375

10. Mott Ewbank Preece
Victory House, Trafalgar Place
Brighton BN1 4FY
United Kingdom
Tel: +44 1273.365.176
Fax: +44 1273.365.100

11. Parsons Brinkerhoff
Hong Kong Office
Devon House, Quarry Bay
Hong Kong
Tel: +852 2579.8899
Fax: +852 2856.9902

12. Bechtel Group
5275 Westview Drive
Frederik, MD 21703-8301
Tel: +1 301.228.6000]

13. R.W. Beck
Corporate Office
1001 Fourth Ave., Suite 2500
Seattle, WA 98154-1004
Tel: +800 285 2325

14. Burns and Roe
800 Kinderkamack Rd.
Oradell, NJ 07649
Tel: +201 265 2000

Schedule 8: FORM OF PERFORMANCE SECURITY DEPOSIT

BANK GUARANTEE

Secretary BPDB WAPDA Building (1 st floor) Motijheel C/A, Dhaka-1000. Bangladesh. FAX : 880-2-9564765, 880-2-9551344. E-mail : Tel. No. : 8802-9554209, 9567350	Date: Bank Guarantee No. Issuing Date: Amount: Expiry Date: Issued on Request of: [Name and Address of the Company]
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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 Dependable Capacity and Net Energy Output to Bangladesh Power Development Board (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 BPDB 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 BPDB, 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 BPDB 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.

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 BPDB, without protest or demur and without reference, notice or recourse to the Company or any other person, without requiring BPDB to prove or to show grounds or reasons for such demand and hereby expressly waive all rights to deny its obligations to BPDB irrespective of any dispute, difference or disagreement between the Company and BPDB 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 BPDB through the Company for an additional period until such time as the Operations Security Deposit has been delivered to BPDB by the Company. 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 BPDB.

If following such request by BPDB, 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 BPDB, without further notice to or action by the Company, to BPDB's bank account as notified to the Guarantor by BPDB in writing.

[Name of Bank], as Guarantor

Signature and bank seal