

# **POWER PURCHASE AGREEMENT**

**BY AND BETWEEN**

**BANGLADESH POWER DEVELOPMENT BOARD**

**(Constituted under the Bangladesh Power Development Board's Order, 1972  
(P.O. No. 59 of 1972))**

**AND**

**[NAME OF COMPANY]**

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**- RELATING TO-**

**250 MW (NET) POWER PURCHASE  
OF ELECTRIC POWER FROM INDIA**

**Dated ....., 2015**

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**TABLE OF CONTENTS**

Section 1: DEFINITIONS AND INTERPRETATION	5
1.1    Definitions	5
1.2    Interpretation	12
Section 2: SCOPE OF THE AGREEMENT	13
Section 3: SALE AND PURCHASE OF CAPACITY AND ENERGY	14
3.1    Energy and Capacity	14
Section 4: TERM, DEFAULTS, AND REMEDIES	15
4.1    Term of Agreement	15
4.2    Company Events of Default - Termination by BPDB	15
4.3    BPDB Events of Default - Termination by the Company	16
4.4    Rights and Remedies Upon an Event of Default	17
4.5    Notice to the GOB of BPDB's Default	18
Section 5: COVENANTS, REPRESENTATIONS AND WARRANTIES	20
5.1    Company Covenants	20
5.2    Company Representations and Warranties	20
5.3    BPDB Representations and Warranties	20
Section 6: PRE-OPERATIONAL PERIOD	22
6.1    Permits, Licenses and Approvals	22
6.2    Operating Procedures	22
6.3    Satisfaction of conditions subsequent by the Company	22
Section 7: LIQUIDATED DAMAGES	23
7.1    Delay in Supply Commencement Date	23
7.2    Security Deposits	23
7.3    Payments of Liquidated Damages	26
Section 8: DISPATCH AND OUTAGE NOTIFICATION	27
8.1    Operating Procedures	27
8.2    Dispatch	27
8.3    Scheduling of Capacity and Energy	27
8.4    Recording of Voice Communications	28
Section 9: JOINT COORDINATING COMMITTEE	29
9.1    Membership	29
9.2    Duties	29
9.3    Decision Making	29
9.4    Agreement to Prevail	30
Section 10: Electrical Interconnection Facility (EIF)	31
10.1    Power Evacuation	31

Section 11: METERING	32
11.1 Metering	32
11.2 Reading of Meters	32
Section 12: TARIFF, BILLING AND PAYMENT	33
12.1 Commercial Terms	33
12.2 Billing and Payment	33
12.3 Guarantee	37
12.4 Change in Law	38
12.5 Relief for Change in Law	38
Section 13: FORCE MAJEURE	39
13.1 Definition of Force Majeure	39
13.2 Force Majeure Exclusions	39
Section 14: TAXES AND CLAIMS	41
Section 15: CHOICE OF LAW AND RESOLUTION OF DISPUTES	42
15.1 Governing Law	42
15.2 Amicable Settlement and Dispute Resolution	42
15.3 Commercial Acts; Sovereign Immunity; Jurisdiction	43
15.4 Company's Consent to Jurisdiction	43
Section 16: NOTICES	44
16.1 Addresses and Notices	44
16.2 Changes of Address	45
Section 17: MISCELLANEOUS PROVISIONS	46
17.1 Amendment	46
17.2 Third Parties	46
17.3 No Waiver	46
17.4 Relationship of the Parties	46
17.5 Survival	46
17.6 Language	46
17.7 Entirety	46
17.8 Assignments and Charges	47
17.9 Confidentiality	47
17.10 Severability	47
17.11 Counterparts	47
17.12 Compliance with Qualification Requirements	47
Schedule 1: FORM OF BPDB LETTER OF CREDIT .....	49
Schedule 2: FORM OF PERFORMANCE SECURITY DEPOSIT .....	51
Schedule 3: FORM OF OPERATIONS SECURITY DEPOSIT .....	53
Schedule 4: TARIFF .....	55
Schedule 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER.....	63

Schedule 6: ESCALATION INDEX.....	64
Schedule 7: QUOTED TARIFF.....	65
Schedule 8: LIST OF BANKS.....	66
Schedule 9: FORM OF GUARANTEE.....	67
Schedule 10: PROFORMA FOR MONTHLY INVOICE.....	74
Schedule 11: PROFORMA FOR INCENTIVE/PENALTY INVOICE.....	79

## **POWER PURCHASE AGREEMENT**

**THIS POWER PURCHASE AGREEMENT** (this “Agreement”) is entered into as of this ..... day of ..... [insert month and year], 2015, by and between the Bangladesh Power Development Board (hereinafter referred to as “BPDB”), with its registered office located at ....., Dhaka, Bangladesh, and ..... [Insert Name of Company] (hereinafter referred to as the “Company”), with registered office located at \_\_\_\_\_, India (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, 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 supply & delivery of 250 MW electric power at Interconnection Point from Indian power plant owner/supplier/trader;

**WHEREAS**, the Sponsor (as hereinafter defined) was selected as the entity to supply of electric power through a competitive tendering process and has submitted the Performance Security Deposit as per the format specified in the RFP, and hereinafter referred to as the “Company” to ensure supply of power;

**WHEREAS**, the Company has agreed to supply electric power, and to sell electric capacity and net electric energy to BPDB in accordance with the terms and conditions set forth in this Agreement;

**WHEREAS**, BPDB has agreed to purchase the electric capacity and electric energy 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:

**“Act or Electricity Act 2003”** shall mean the Electricity Act, 2003 of India and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time

**“Agreement”** means this Power Purchase Agreement (“PPA”) 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;

**“Appropriate Commission”** shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;

**“Availability Based Tariff” or “ABT”** shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement

**“Availability Factor (AF<sub>m</sub>) or Availability”**– shall have the same meaning as ascribed thereto in ABT.

**“Bank Rate”** – means the standard rate that Bangladesh Bank shall make public from time to time at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under the Bangladesh Bank Order - 1972;

**“Bid Date”** means ....., 2015;

**“BPDB”** means the Bangladesh Power Development Board, constituted under the Bangladesh Power Development Board's 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 1 as provided by BPDB to the Company pursuant to Section 12.2(f);

**“BPDB Letter of Credit Amount”** means, as of the relevant date, an amount equal to the aggregate of the three (3) Months of Tariff Payments (as adjusted in each case for inflation in accordance with Section 12.1 to the determination date) determined as at the Supply Commencement Date on the basis of the Contracted Capacity, computed every 365 Days starting from the Supply Commencement Date (in accordance with Section 12.2(f));

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

**“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 Charges”** shall have meaning ascribed thereto in Schedule 4;

**“Capacity Payment”** bears the meaning ascribed thereto in Section 12;

**“Central Transmission Utility” or “CTU”** shall mean the utility notified by the Central Government of India under Section -38 of the Electricity Act 2003;

**“CERC”** means the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;

**“Change in Law”** means ascribed under Section 12.4 of this Agreement;

**“Company”** – means the Sponsor company who has been selected through tendering process and incorporated under Indian Companies Act, with its registered office located in India, and its permitted successors and assignees and who has submitted the Performance Security Deposit to BPDB;

**“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;

**“Contracted Capacity”** means the net electric capacity on a continuous basis that the Company commits to deliver hereunder, which is 250 MW (measured at Interconnection Point);

**“Control Center”** means National Control Center of PGCB 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 PGCB, shall issue Dispatch Instruction;

**“Contract Year”** means (a) in respect of the first Contract Year, the period commencing at the beginning of the Supply Commencement Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the PPA.

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

**“Declaration Deadline”** bears the meaning ascribed thereto in Section 8.3(e);

**“Declared Capacity”** means, for each hour, the net capacity to be delivered at the Interconnection Point on and after the Supply Commencement Date and notified to the Control Center by the Company pursuant to Section 8.3(e) which shall equal Contracted Capacity less any reductions due to Outage;

**“Delivery Point”** – means the location at the 400 kV side at Bohrampur Substation, Murshidabad, India at which the Net Energy Output is measured and transferred from Company to BPDB;

**“Dispatch” or “Dispatch Instruction”** means an instruction issued directly by the Control Center to the Company in accordance with the terms of this Agreement;

**“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;

**“Due Date”** shall mean the thirty fifth (35<sup>th</sup>) day after a monthly invoice or a supplementary invoice is received and duly acknowledged by BPDB or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such monthly invoice or a supplementary invoice is payable by BPDB;

**“Economic Dispatch”** means the distribution of the total energy needs of BPDB among available sources based upon the marginal cost to BPDB for requesting the next increment of energy, and will be dispatched by Control Centre from the lowest in incremental cost to the highest in incremental cost, considering all relevant factors, including the capabilities of the Grid System at the time of dispatch;

**“Effective Date”** means the date on which this Agreement is executed by each of the Parties thereto and the Agreement so executed has not been terminated by a Party thereto;

**“Energy Charge(s)”** shall have the meaning ascribed to this term under Schedule 4 of this Agreement;

**“Energy Payment”** bears the meaning ascribed thereto in Section 12;

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

**“Force Majeure Event”** bears the meaning ascribed thereto in Section 13.1;

**“Fuel”** - means Coal or Gas, as applicable.

**“Fuel Supply Agreement”** shall mean the agreement(s) entered into between the ..... [Insert “Sponsor” if Sponsor is NOT a Trading Licensee, or “Developer” if Sponsor is a Trading Licensee] and the fuel supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Generation Station.

In case the transportation of the Fuel is not the responsibility of the fuel supplier, the Fuel Supply Agreement shall also include the separate agreement between the ..... [Insert “Sponsor” if Sponsor is NOT a Trading Licensee, or “Developer” if Sponsor is a Trading Licensee] and the fuel transporter for the transportation of Fuel in addition to the agreement between the ..... [Insert “Sponsor” if Sponsor is NOT a Trading Licensee, or “Developer” if Sponsor is a Trading Licensee] and the fuel supplier for the supply of the Fuel.

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

**“Government Instrumentality”** shall mean the Government of India or the Government of Bangladesh, as applicable, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Bangladesh, any political sub-division of any of them including any court or appropriate commission(s) or tribunal or judicial or quasi-judicial body in India or Bangladesh, as applicable, but excluding the Company and BPDB;

**“IEGC ”** shall mean the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 specified by CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act 2003 and as amended from time to time;

**“Grid System”** means the transmission or distribution facilities owned by PGCB, through which the Net Energy Output will be received and distributed by BPDB;



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

**“Injection Point”** shall mean the ..... [Insert Injection Point]. as specified by the Successful Bidder in Format 13 of the Selected Bid;

**“Interconnection Point”** shall mean the point where the power from the Power Generation Station switchyard bus of the Company is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Generation Station with the interstate/intrastate transmission system);

**“Invoice Dispute Notice”** bears the meaning ascribed thereto in Section 12.2(h)(i);

**“Joint Coordinating Committee”** means the committee established pursuant to Section 9 for the purposes described therein;

**“kW”** means Kilowatt;

**“kWh”** means Kilowatt-hour;

**“Laws of Bangladesh”** means, in relation to this Agreement (if applicable), 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 or the supply of electricity pursuant to or under any such law, and any decree or judicial decision given or pronounced by any court of competent jurisdiction in Bangladesh;

**“Laws of India”** means, in relation to this Agreement (if applicable), all laws in force in India, and includes all rules, regulations, orders, directives, notifications made or issued by any GOI authority with authority over the Company or the supply of electricity pursuant to or under any such law, and any decree or judicial decision given or pronounced by any court of competent jurisdiction in India;

**“Letter of Intent”** means the letter issued by BPDB to signify the selection of the Sponsor and granting the right to supply electric power on the terms specified in the PPA;

**“Liquidated Damages Due Date”** has the meaning ascribed thereto in Section 7.3;

**“Liquidated Damages Notice”** has the meaning ascribed thereto in Section 7.3;

**“Meters”** or **“Metering System”** means all meters and metering devices (including current transformers and potential transformers) owned by the Company and used to measure Contracted Capacity and the delivery by the Company and receipt by BPDB of Net Energy Output in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations 2006, Central Electricity Authority (Installation and Operation of Meters) Amendment Regulations, 2010, IEGC and ABT, as amended from time to time;

**“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 delivered to the Delivery Point, in accordance with the terms of this Agreement;

**“Normative Availability”** shall mean ninety percent (90%) Availability of the Contracted Capacity at the Interconnection Point on Contract Year basis;

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

**“Operating Procedures”** shall bear the meaning ascribed thereto in Section 6.2;

**“Operations Security Deposit”** shall bear the meaning ascribed thereto in Section 7.2(c);

**“Outage”** – means reduction in capacity (not due to Dispatch Instruction) from the Contracted Capacity.

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

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

**“Performance Security Deposit”** means the unconditional bank guarantee in an amount equal to US\$ 4.5 Million, calculated on the basis of (a) eighteen thousand Dollars (US\$ 18,000.00) multiplied by (b) the Contracted 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;

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

**“Power Generation Station”** shall mean .....[Insert name of power station] of installed capacity .....MW [Insert capacity] located at .....[Insert location] in India;

**“Proposal Security”** means the unconditional bank guarantee in the amount of 1.25 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 Sponsor to maintain its Proposal in effect until the award of contract and submission of Performance Security Deposit and (b) thereafter, the obligations of the Company to execute the Power Purchase Agreement within thirty (30) Days or any other day notified by BPDB after the issuance of the Letter of Intent;

**“Provisional Bill”** shall have the same meaning as ascribed thereto in Article 12.2 of this Agreement

**“Qualification Requirements”** shall mean the qualification requirements as set forth in Clause 4.12 of the Request for Proposal under which the Company was selected to execute this PPA.

**“Quoted Capacity Charges”** shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges;

**“Quoted Energy Charges”** shall mean the sum total of Quoted Non Escalable Energy Charges and Quoted Escalable Energy Charge;

**“Quoted Escalable Capacity Charges”** shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement;

**“Quoted Escalable Energy Charges”** [In case of Fuel being domestic coal] shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement;

[In case of Fuel being imported coal] shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement];

**Quoted Non Escalable Capacity Charges**” shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement;

**Quoted Non Escalable Energy Charges**” [In case of Fuel being domestic coal] shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement;

[In case of Fuel being imported coal] shall have the meaning as ascribed thereto in [insert column no.] of Schedule 7 of this Agreement];

**“Quoted Tariff”** shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;

**“REA”** shall have the same meaning as in the IEGC and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;

**“Rebate”** shall have the same meaning as ascribed thereto in Article 12.2 of this Agreement;

**“Reference Date”** means ..... [insert Bid Date, 2015];

**“Revised Dispatch Instruction”** bears the meaning ascribed thereto in Section 8.3(c);

**“Required Supply Commencement Date”** – means the August 01, 2016 , which date may be extended for certain specified events and delays (for example, due to Force Majeure Events) pursuant to the Power Purchase Agreement;

**“RPC”** shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

**“Scheduled Supply Commencement Date”** –means the date advised to BPDB by the Company as the Scheduled Supply Commencement Date, which date shall initially not be later than the Required Supply Commencement Date, as such Scheduled Supply Commencement Date may be revised from time to time based on the Company’s scheduled program for supply of power;

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

**“Settlement Period”;** shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;

**“SIAC Rules”** bears the meaning ascribed thereto in Section 15.2;

**“Sponsor”** means [\_\_\_\_], a company organised and existing under the laws of [\_\_\_\_], with its principal place of business in [\_\_\_\_];

**“Supply Commencement Date”** – means the date on which the Company commences the supply of electric power at Delivery Point;

**“STU” or “State Transmission Utility”** shall mean the board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

**“Tariff”** shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;

**“Taxes”** means any and all taxes, duties, imposts and fees, whenever imposed and applicable under the Laws of India;

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

**“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);

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

**“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.

## **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 at the Delivery Point corresponding to a Contracted Capacity of 250 MW at the Interconnection Point, and the rights and obligations of the Parties in relation thereto.

The Company shall be wholly responsible for arranging transmission access from the Interconnection Point to the Delivery Point. It shall initiate immediate action for the development of the requisite transmission system, where applicable, from the Injection Point to the Delivery Point by co-coordinating with the CTU and from the Interconnection Point to the Injection Point with the concerned STU in accordance with the relevant regulations of the Appropriate Commission.

The Company shall be wholly responsible to arrange transmission access from the Interconnection Point to the Delivery Point. Non-availability of transmission access for any period during the Term of this Agreement, shall be deemed as a failure of the Company to supply power and will be accounted as a corresponding reduction in the Availability of the Company.

## **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 make available and deliver to BPDB, and BPDB agrees to accept and purchase from the Company, for the consideration described in Section 12, the Contracted Capacity and, to the extent dispatched, the Net Energy Output.

## **Section 4: TERM, DEFAULTS, AND REMEDIES**

### **4.1 Term of Agreement**

- (a) This Agreement shall become effective upon execution hereof by the Parties and shall remain valid initially up to July 31, 2031 from 00:00 hours of the Supply Commencement Date, unless otherwise terminated earlier provided however, that this Agreement may be extended beyond the initial period on such terms and conditions and for such period as the parties may mutually agree from time to time.
- (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 7 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 by BPDB of this Agreement; or (ii) occurs as a result of or during a Force Majeure Event pursuant to Section 13:

- (a) any failure by the Company to submit and maintain the Performance Security Deposit in full force and effect;
- (b) the failure of the Company to achieve the Supply Commencement Date within three (3) Months after the Required Supply Commencement Date;
- (c) the failure of the Company to submit the Operations Security Deposit within thirty (30) Days after the Supply Commencement Date or to maintain the Operations Security Deposit, in either case, in accordance with Section 7.2(c);
- (d) the assignment or transfer of the Company's rights or obligations under this Agreement without the prior consent of BPDB;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) after the Supply Commencement Date, the interruption of power supply by the Company for a continuous period of sixty (60) Days.
- (i) after the Supply Commencement Date, the Company fails to achieve Normative Availability for three (3) consecutive years under the PPA.
- (j) 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 thereof; or
- (k)
  - i) the occurrence of a Company Event of Default which has not been waived or remedied within the applicable cure period provided therein; or
  - ii) any change in any Laws of India making unenforceable, invalid, or void any material undertaking of the Company under this Agreement;

#### ***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, or (ii) if it occurs as a result of or during a Force Majeure Event pursuant to Section 13:

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

in each case where 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 which has not been waived or remedied within the applicable cure period provided therein; or
  - (ii) any change in any Laws of Bangladesh making unenforceable, invalid, or void any material undertaking of BPDB under this Agreement;
- (f) the failure of BPDB to permit supply & delivery of Contracted Capacity or evacuate power after ninety (90) Days following the Required Supply Commencement Date;
- (g) the failure by BPDB to establish and maintain the BPDB Letter of Credit as required under Section 12.2(f); or
- (h) the failure by BPDB to return any undrawn portion of the Performance Security Deposit to the Company in accordance with Section 7.2(b)(ii) within ten (10) 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, 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, 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**

Upon termination, 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.

Provided that in the event of termination due to Company's Event of Default, the Capacity Charges of the Company shall be reduced by 20% for the period of Company's Event of Default. Further, in addition to the reduction of Capacity Charges as provided in this para, the Company shall be liable to pay to BPDB, charges equivalent to twelve (12) months Capacity Charges calculated at Normative Availability. Such payment shall be made by the Company to BPDB within thirty (30) days of the termination of the Agreement. In case of inability of the Company to make such payment within the stipulated time period of thirty (30) days, BPDB shall have the right to encash the Operations Security Deposit, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Company. Any amount remaining unpaid on the part of the Company shall be considered as a material breach and BPDB shall have the right to enforce such claim as per the provisions of the Law.

Provided further that in the event of termination due to BPDB's Event of Default, BPDB shall be liable to make payments of Capacity Charges based on Normative Availability to the Company for one(1) year or upto the end of the Term of this Agreement whichever is earlier. Provided further that in such period, if the Company is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce Capacity Charge payments from BPDB

**4.5 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 the Section 16.

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.

## **Section 5: COVENANTS, REPRESENTATIONS AND WARRANTIES**

### **5.1 Company Covenants**

The Company hereby covenants to and agrees with BPDB to:

Supply & deliver electric power to BPDB, in accordance with:

- (i) the Operating Procedures developed pursuant to Section 6.2; and
- (ii) Dispatch instruction;

### **5.2 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 India, 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:  
  
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
- (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, Indian 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.

### **5.3 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 of this Agreement; and
  - (iii) has all material permits, licences and approvals required by any government authority of Bangladesh 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) All discretions to be exercised and directions, approvals, consents and notices to be given, and action to be taken under these presents, unless otherwise expressly provided herein, shall be exercised and given by the parties to this Agreement or by duly authorized representative(s) that each party may nominate in this behalf in writing to the other party.
- (b) Each of the parties shall act with determination and due diligence to obtain from its respective country, and try to keep in force, all licenses and authorization necessary for the export and import of energy. Each party shall notify the other party when all of the Government Authorizations and approvals required by that party to implement this Agreement have been obtained.
- (c) Each party hereto shall cooperate with other in the furnishing of technical and other information, data or other matters may reasonably be required concerning authorization related to this Agreement.

### **6.2 Operating Procedures**

- (a) Not later than ninety (90) Days before the then prevailing Scheduled Supply Commencement Date, the Company shall provide BPDB with draft operating procedures dealing with all operation interfaces between BPDB and the Company as per the provisions laid out in the IEGC, Unscheduled Interchange (UI) Regulations, Long Term Open Access (LTOA) Regulations, and Point of Connection (POC) Charges regulations of CERC and these Regulations will supersede in case of any conflict with the provisions of this PPA.
- (b) Within forty five (45) 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 and provide such revised draft to BPDB not later than thirty (30) Days before the then prevailing Scheduled Supply Commencement 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.
- (e) Either Party may, from time to time, request revisions to the Operating Procedures subject to agreement from the other Party.

### **6.3 Satisfaction of conditions subsequent by the Company**

The Company shall apply for the open access booking of transmission corridor, from the Injection Point to the Delivery Point, well in advance for the Contracted Capacity. The Company shall be fully responsible for the timely filing of the open access application before the nodal RLDC/SLDC so as to get timely booking of open access corridor. Any delay in the Required Supply Commencement Date on account of delay in obtaining open access by the Company shall result in the Liquidated Damages payable by the Company as specified in Section 7:

## **Section 7: LIQUIDATED DAMAGES**

### **7.1 Delay in Supply Commencement Date**

- i) If the Supply Commencement Date has not occurred by the Required Supply Commencement Date (but not due to BPDB Event of Default or as such date may have been extended as a consequence of a Force Majeure Event), the Company shall pay BPDB, in arrears until the Supply Commencement Date, as liquidated damages for delays in achieving Supply Commencement Date, an amount calculated as follows.

The sum total of the liquidated damages payable by the Company to BPDB shall be calculated as follows:

$$\text{SLDb} = [\text{CC} * \text{d} * \text{DR1}], \quad \text{if } \text{d} \leq 60$$

$$\text{SLDb} = [\text{CC} * 60 * \text{DR1}] + [\text{CC} * (\text{d} - 60) * \text{DR2}], \quad \text{if } \text{d} > 60$$

where:

- a) “SLDb” are the liquidated damages payable by the Company for delay in achieving Supply Commencement Date beyond the Required Supply Commencement Date;
- b) “CC” is the Contracted Capacity;
- c) “d” is the number of days or a fraction thereof delayed for achieving the Supply Commencement Date beyond the Required Supply Commencement Date;
- d) “DR1” is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case “d” is equal to or less than 60 days and “DR2” is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case “d” is more than 60 days

In no event shall the total amount of damages assessed under this Section 7.1 exceed twelve (12) Months of liquidated delay damages.

- ii) If the Supply Commencement Date has not occurred within 30 days after the Required Supply Commencement Date (but not due to Company Event of Default), the Company shall be deemed to have the Contracted Capacity and, be deemed to have been providing supply of power with effect from 30 days following the Required Supply Commencement Date and BPDB shall be liable to make payment to the Company the Capacity Charges for the Contracted Capacity calculated on Normative Availability for and during the period of such delay.

### **7.2 Security Deposits**

**(a) Proposal Security**

The Sponsor 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 before signing of PPA.



- (ii) The Performance Security Deposit shall terminate upon the delivery to BPDB of the Operations Security Deposit pursuant to Section 7.2(c) and any undrawn portion of the Performance Security Deposit shall be released and returned to the Company by no later than ten (10) Business Days following the delivery to BPDB of the Operations Security Deposit pursuant to Section 7.2(c).
  - (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 due to Company Event of Default.
- (c) Operations Security Deposit
  - (i) Not later than thirty (30) Days after the Supply Commencement Date, the Company shall provide to BPDB a security deposit (the "Operations Security Deposit") in an amount equal to six (6) Months of Capacity Payments based on Contracted Capacity to ensure the proper supply & delivery of electric power to BPDB.
  - (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 7.3; 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 12, 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;
- (ii) The Dispute amount shall be settled in accordance with Section 15 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), 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.

**(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 or up to the Term of the PPA whichever is earlier, provided that in the case of the Performance Security Deposit, such term shall not extend beyond thirty (30) Days after Supply Commencement Date.
- (iii) Each Security Deposit provided pursuant to this Section 7.2 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 7.2(e)(iv) shall promptly be returned to the Company by BPDB.

### **7.3 Payments of Liquidated Damages**

**(a) Computation and Payments**

Within:

- (A) thirty (30) Days after the Supply Commencement Date in the case of Section 7.1.(i). BPDB shall compute and advise the Company by written notice (a "Liquidated Damages Notice") of the amount of liquidated damages due to BPDB. Provided that the payment of Liquidated Damages, for the amount computed and specified by BPDB as per the provisions of Section 7.1 (i), shall be made by the Company within thirty five (35) days of receipt of such notice by the Company from BPDB. The Company shall wire transfer such amounts to BPDB as per the provisions of this Agreement. In the event of non-payment of any amounts due under the aforesaid notice, BPDB shall have the right to invoke such amounts from the Performance Security Deposit.
- (B) sixty (60) Days after the Supply Commencement Date in the case of Section 7.1.(ii) Company shall compute and advise BPDB by written notice (a "Liquidated Damages Notice") of the amount of liquidated damages due to Company. Provided that the payment of Liquidated Damages, for the amount computed and specified by the Company as per the provisions of Section 7.1 (ii), shall be made by BPDB within thirty five (35) days of receipt of such notice by BPDB from the Company. BPDB shall wire transfer such amounts to the Company as per the provisions of this Agreement.

**(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 12.2(e), mutatis mutandis.

## **Section 8: DISPATCH AND OUTAGE NOTIFICATION**

### **8.1 Operating Procedures**

- (a) The Parties shall comply with the Operating Procedures established pursuant to Section 6.2 and the plan for the supply & delivery of electric power presented by the Company.
- (b) The Joint Coordinating Committee will be responsible for monitoring and coordinating and settling disputes that may arise from the compliance with these guidelines.

### **8.2 Dispatch**

- (a) PGCB shall have the right to provide Dispatch instruction to the Company from the Supply Commencement Date, provided that:
  - (i) Dispatch must at all times be consistent with the Operating Procedures;
  - (ii) Dispatch shall not exceed at any time the then-prevailing Declared Capacity;
  - (iii) PGCB shall issue Dispatch Instruction in accordance with Economic Dispatch.
- (b) The Company agrees to comply with the instructions it receives from PGCB through NLDC, PGCB pursuant to this Section 8.2.

### **8.3 Scheduling of Capacity and Energy**

BPDB and the Company shall cooperate in establishing the following scheduling for the Power Generation Station's capacity and Net Energy Output on and after the Supply Commencement Date:

#### **(a) Year Ahead Notification**

Not less than ninety (90) Days before the Scheduled Supply Commencement 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, PGCB shall provide to the Company estimated requirements in writing, 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 Supply Commencement Date, the Company shall notify PGCB of the Declared Capacity for each following hour of the Supply Commencement Date.
- (ii) Not later than fourteen (14) hours prior to the beginning of each Day (the "Declaration Deadline") following the Supply Commencement Date, the Company shall notify PGCB (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.

**(f) Dispatch Instructions and Revised Dispatch Instructions**

- (i) Not later than seven (7) hours prior to the beginning of each Day, subject to Section 8.3(c)(ii), PGCB shall notify the Company, through a Dispatch Instruction, of its requirements for active power and reactive power on a hourly basis for such Day.
- (ii) PGCB may notify the Company of any upward or downward revision to any Dispatch Instruction (a "Revised Dispatch Instruction") at any time, and the Company shall comply with such Revised Dispatch Instruction not later than five (5) minutes before the beginning of any hour to which such revision relates.
- (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 8.3(c)(i) and 8.3(c)(ii); and
  - (B) do not require the Company to Dispatch at a level exceeding the Declared Capacity prevailing for the relevant hour.

- (g)** Power will be scheduled in line with CERC Long Term Open Access Regulations and these Regulations will supersede in case of any conflict with the provisions of this PPA.

PGCB and the Company shall cooperate in establishing the following scheduling for the dispatch of capacity and Net Energy Output on and after the Supply Commencement Date.

**8.4 Recording of Voice 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 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.

## **Section 9: JOINT COORDINATING COMMITTEE**

### **9.1 Membership**

- (a) Within ninety (90) Days after the Effective 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.

### **9.2 Duties**

The Joint Coordinating Committee shall serve as a point of co-ordination and negotiation for the two Parties.

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

- (a) discussion of the steps to be taken upon the occurrence of any Force Majeure Event or the reduction in capacity due to Force Majeure Event(s) or for any other reason;
- (b) coordination and modification, if required, of operating procedures, including Day-to-Day communications, dispatching procedures, and emergency plans and procedures;
- (c) coordination of Outages;
- (d) coordination of annual, monthly, weekly, and daily forecasts or requirements at the Delivery Point;
- (e) developing, monitoring, and auditing the procedures to record capacity, energy, and any other parameters that may influence the billing or liquidated damages; and
- (f) any other mutually agreed matters.

### **9.3 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 15 shall be initiated and followed at the request of a Party.

**9.4 Agreement to Prevail**

- (a) Notwithstanding the other provisions of this Section 9, in the event of any conflict between the duties and authority of the Joint Coordinating Committee set out in this Section 9 (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 9 of this Agreement.

## **Section 10: Electrical Interconnection Facility (EIF)**

### ***10.1 Power Evacuation***

The evacuation of electric power delivered at Bohrampur Substation, Murshidabad, India, will be through the two 400 kV circuits to Bheramara 400/230 kV substations owned by PGCB.



## **Section 11: METERING**

### **11.1 Metering**

- (a) The metering installation and operating procedures shall be in line with the CEA (Installation & Operation of Meters) Regulations 2006, CEA (Installation and Operation of Meters) Amendment Regulations, 2010, IEGC & ABT in India and these Regulations will supersede in case of any conflict with the provisions of this PPA.
- (b) The Metering System used at the Interconnection Point shall be ensured by the Company to be in compliance with provisions of CEA (Installation & Operation of Meters) Regulations 2006, CEA (Installation and Operation of Meters) Amendment Regulations, 2010, as amended from time to time.

### **11.2 Reading of Meters**

- (a) As per the CEA (Installation and Operation of Meters) Amendment Regulations 2010, reading of all meters interfacing with the State or Central transmission system, shall be the responsibility of the appropriate State or Central Transmission Utility, which shall also record the metered data, maintain database of all the information associated with the interface meters and verify the correctness of metered data and furnish the same to various agencies as per the procedure laid down by the Appropriate Commission in India. .
- (b) It shall be the responsibility of the Company to obtain due access to such meter reading information and provide a copy of the same to BPDB, along with the monthly invoice. Costs incurred by the Company to access or obtain such information, including those pertaining to nodal agency charges in India, shall be borne solely by the Company and shall not be separately reimbursed by BPDB.
- (c) If BPDB requests access to electronic meter reading data, the Company shall liaise with the CTU or the respective STU in India to have the same provided to BPDB.

## **Section 12: TARIFF, BILLING AND PAYMENT**

### **12.1 Commercial Terms**

From the Supply Commencement Date, BPDB shall pay the Company the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Section 12 and the Schedule 4.

#### **(a) 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 Tariff or any additional charges.

### **12.2 Billing and Payment**

#### **(a) Invoices and Payments**

(i) Invoices shall be on a Monthly basis. The invoices 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 forty five (45) Days (the Due Date) after date of issuance of the relevant invoice. Mode of delivery of invoice by the Company to BPDB shall be agreed in writing and the delivery to BPDB should not exceed four (4) Business Days from its issuance. Soft copy of the invoices shall be electronically issued to a nominated email account of BPDB on the date of its issuance. 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 12.2.

(aa) BPDB shall pay to the Company through 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 date shall be considered as date of payment of credit.

Provided that in case of a Dispute, BPDB shall be obligated to make payments that are lower of (a) an amount equal to simple average of last three (3) months paid invoices (being the undisputed portion of such three Months invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

(bb) If the Company has failed to receive payment pursuant to Section 12.2(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 12.2(e).

- (iii) As set forth in Section 7.3(a), any unpaid and undisputed (or determined pursuant to Section 15 to be owed) amount of liquidated damages plus accrued interest due to BPDB pursuant to Section 7 may be set off against amounts owed to the Company by BPDB as invoiced pursuant to this Section 12.1.

**(b) Late Payment**

Any amount due from BPDB pursuant to this Agreement and remaining unpaid after the Due Date shall bear interest charges at the rate of 1.25% per month on the amount outstanding for the period of non-payment beyond 60 days of invoice date. Interest shall be calculated on daily basis and shall be compounded monthly.

**(c) Capacity Payments**

From and after the Supply Commencement Date, BPDB shall pay the Capacity Payment to the Company, in accordance with Section 12.2(a). If the Supply Commencement Date occurs on a date which is not the first Day of a Month, the Capacity Payment for the period from the Supply Commencement Date through the last Day of the Month in which the Supply Commencement 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 Supply Commencement 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**

Energy Payments shall be computed as per the provisions of REA. BPDB shall pay the Energy Payment in accordance with Section 12.2(a).

**(e) 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.
- (ii) In the event of a Dispute, either Party may seek resolution of the Dispute in accordance with Section 15. Upon the determination in accordance with Section 15.2.3(i) and that all or any portion of a disputed amount is owed by a Party, such Party shall, not later than five (5) Business Days following the date of determination in accordance with Section 15.2.3(i), 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 fifth (5<sup>th</sup>) Business Day shall be subject to interest pursuant to Section 12.2(a)(ii) from the Day following the fifth (5<sup>th</sup>) Business Day through (but not including) the date of payment. If a Party does not accept the determination in accordance with Section 15.2.3(i), it shall notify the other Party of its intent to submit the Dispute to arbitration in accordance with the provisions of Section 15.2.3(ii) and the provisions of Section 12.2(e)(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 fifth (5<sup>th</sup>) 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 fifth (5<sup>th</sup>) Business Day. Any amount determined to be owed that remains unpaid after such fifth (5<sup>th</sup>) Business Day shall be subject to interest pursuant to Section 12.2(a)(iii) from the Day following the fifth (5<sup>th</sup>) Business Day through (but not including) the date of payment.
- (f) BPDB Security
  - (i) BPDB Letter of Credit
    - (A) Before 30 (Thirty) days from the Scheduled Supply Commencement Date, BPDB shall cause any scheduled bank (the "Issuing Bank") in Bangladesh and provide to the Company an irrevocable and revolving BPDB Letter of Credit (the "Issuing Bank") , 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. Provided that, if the Company desire to confirm the Letter of Credit, any charges required to be paid for confirmation by a Scheduled Commercial Bank in India shall be borne by the Company
    - (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 1 hereto and meets the requirements of this Section 12.2(f).
    - (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 Supply Commencement 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 three hundred and sixty five (365) Days after the Supply Commencement Date and every three hundred and sixty five (365) 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 12.2(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 Supply Commencement 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) Quarterly and Annual Reconciliation

The parties acknowledge that all payments made against the Invoices shall be subject to quarterly reconciliation within 30 (thirty) Business Days of the end of the quarter of each Contract Year and annual reconciliation within 30 (thirty) Business Days of the end of each Contract Year.

The parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the BPDB and the Company shall jointly sign such reconciliation statement. Provided that the joint signing of such reconciliation statement shall be conducted in India and Bangladesh on alternate basis or as mutually agreed between the Parties. After signing of a reconciliation statement, the Company shall make appropriate adjustments in the following Invoice, with interest, as applicable. Interest shall be payable in such a case from the date on which such payment had been made to the invoicing party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions mentioned above.

(iv) 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.

**(g) Rebate**

For payment of any Bill before Due Date, the following Rebate shall be paid by the Company to the BPDB in the following manner;

- a) Applicable rate of Rebate shall be based on the date on which payment has been actually credited to the Company's account. Any delay in transfer of money to the Company's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the BPDB;
- b) Two percent (2%) Rebate shall be provided for credit of payment to the Company's account made within one (1) day of the presentation of Monthly Invoice;
- c) For credit to Company's account made on other days the Rebate on Monthly Invoice shall be as under;

Number of days before Due Date of monthly invoice	Rates of Rebate applicable
44	Two percent (2.00%)
Each day thereafter up to the 30 <sup>th</sup> Day from issuance of the monthly invoice	Two percent (2%) less $[0.033\% \times \{\text{number of days measured from the 2nd day from the issuance of the invoice when payment is made by BPDB}\}]$
31 <sup>st</sup> Day from the issuance of the monthly invoice to the Due Date	Zero.

- d) The above Rebate will be allowed only to BPDB when it credits to the Company's account the full Monthly Bill;
- e) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;

**12.3 Guarantee**

In case of failure by BPDB to make payment to the Company under this Agreement shall be duly secured by the Guarantee of GoB in the format as enclosed as Schedule 9 of this Agreement. The aforesaid Guarantee shall be made available to the Company thirty (30) days prior to the Scheduled Supply Commencement Date.

#### **12.4 Change in Law**

“Change in Law” means the occurrence of any of the following events after the Effective Date resulting into any additional recurring / non-recurring expenditure by the Company or any income to the Company applicable for sale of power to BPDB:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any law, including rules and regulations framed pursuant to such law;
- a change in the interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such law, or any Competent Court of law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the BPDB;
- Any change in tax or introduction of any new tax, but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Company, or (ii) any change on account of regulatory measures by the CERC including calculation of availability.

Provided that the effect of any change in law caused by change in laws of Bangladesh shall be to BPDB's account and if such change in law caused by Government of Bangladesh results in any liability to the Company or the Generator from which the Company has entered into an Agreement for further sale of electricity to BPDB, the Company shall be entitled to claim such liabilities from BPDB through the supplementary bill as and when such liabilities are actually settled, and such supplementary bill shall be raised and paid in the same manner as an invoice under Section 12.2.

#### **12.5 Relief for Change in Law**

Any tariff implications for changes in law after the Bid Date shall be to the account of BPDB. It is clarified here that implications resulting due to Change in Law shall be determined by and implemented under the approval of CERC or any other relevant authority as mutually agreed between BPDB and the Company.

## **Section 13: FORCE MAJEURE**

### **13.1 Definition of Force Majeure**

A “**Force Majeure Event**” means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays any party (Affected Party) in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care in performing its obligations:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo; revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible;
- c) Radioactive contamination or ionizing radiation or
- d) Expropriation, requisition, confiscation, nationalization, export or import restriction requirements, action or omissions to act on the part of any Government Instrumentality or any person controlled by a Government Instrumentality.

Provided that an event of Force Majeure affecting the transmission facilities from the Power Generation Station to the Delivery Point shall be deemed to an event of Force Majeure affecting the Company.

### **13.2 Force Majeure Exclusions**

13.2.1 Force Majeure Event shall not include (i) any event or circumstance which is within the reasonable control of the parties and (ii) the following conditions,:

- a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- b. Strikes at the facilities of the Affected Party;
- c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- d. Non-performance caused by, or connected with, the Affected Party's:
  - (i) Negligent or intentional acts, errors or omissions;
  - (ii) Failure to comply with an Indian law; or
  - (iii) Breach of, or default under this Agreement.



### **13.2.2 Notification of Force Majeure Event**

13.2.2.1 The Affected Party shall give notice to the other party of any Force Majeure Event as soon as reasonably practicable, but not later than seven (7) Business Days after the date on which such party knew or should reasonably have known of the commencement of the Force Majeure Event. If any Force Majeure Event results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Affected Party shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than 1 (one) Business Day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the Force Majeure Event, its effects on the party claiming relief and the remedial measures proposed. The Affected Party shall give the other party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the Force Majeure Event.

13.2.2.2 The Affected Party shall give notice to the other party of (i) the cessation of the relevant Force Majeure Event; and (ii) the cessation of the effects of such Force Majeure Event on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

### **13.2.3 Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 13.1, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

### **13.2.4 Available Relief for a Force Majeure Event**

Subject to this Article 13.0:

- (a) No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;
- (c) For avoidance of doubt, either Party's obligation to make payments of money due or payable prior to occurrence of Force Majeure events under this Agreement shall not be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party;
- (d) Provided that no payments shall be made by either party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

## **Section 14: TAXES AND CLAIMS**

Within the territory of India, the Company shall be responsible for payment of all statutory taxes, levies, duties, royalty, fees and any other kind of levies imposed/charges by Government of India or any State Government(s) in India, as applicable, for the supply of electricity at Bohrompur Substation, Murshidabad, India.

Within the territory of Bangladesh, BPDB shall be responsible for payment of all applicable statutory taxes, levies, duties, AIT, VAT, royalty, fees or any other kind of levies imposed/charged by GoB and/or any other government bodies/authorities for the importation of electricity.

## **Section 15: CHOICE OF LAW AND RESOLUTION OF DISPUTES**

### **15.1 Governing Law**

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

### **15.2 Amicable Settlement and Dispute Resolution**

15.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim

15.2.2 The other Party shall, within thirty (30) Business Days of issue of the Dispute Notice issued under 15.2.1, furnish:

- (i) Counter-claim and defenses, if any, regarding the Dispute; and
- (ii) all written material in support of its defenses and counter-claim

15.2.3 (i) Within 30 (thirty) Business Days of issue of the Dispute Notice by any party pursuant to Article 15.2.1 if the other Party does not furnish any counter claim or defence under 15.2.2 or within 30 (thirty) Business Days from the date of furnishing counter claims or defence by the other Party, either of the Parties to the Dispute shall refer such Dispute to the Chairman of the Company and the Chairman of BPDB for discussion and resolving the issues.

- (ii) If the Dispute is not resolved within 30 (thirty) Business Days from the date of reference of such Dispute to the Chairman of the Company and the Chairman of BPDB, it shall be referred to and finally settled by arbitration in accordance with Rules of Arbitration of Singapore International Arbitration Centre ("SIAC Rules"). This Agreement and the rights and obligations of the Parties hereto shall remain in full force and effect, except in so far as such rights and obligations are the subject matter of the arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective. The seat and venue of the Arbitration shall be Singapore and the arbitration proceedings shall be conducted in English language. The Parties agree that the arbitration award shall be final and binding on both the Parties.

15.2.4 **Exclusivity:** Neither Party shall have any right to commence or maintain any legal proceedings concerning a Dispute relating to this Agreement until the Dispute has been resolved in accordance with Section 15.2 and then only can enforce or execute the award under such process.

**15.3 Commercial Acts; Sovereign Immunity; Jurisdiction**

- (a) BPDB unconditionally and irrevocably agrees that the execution 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 Board's, 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.

**15.4 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 India, for any action or proceeding filed by BPDB to enforce any award of any arbitrator(s) who were duly appointed under this Agreement to resolve any Dispute between the Parties.
- (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 15.3 or this Section 15.4 or both shall be referred for determination under Section 15.2 and shall fall within the definition of Dispute.

## **Section 16: NOTICES**

### **16.1 Addresses and Notices**

Except as otherwise expressly provided in this Agreement, all notices, correspondences including monthly invoices 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:

For the GOB:

Attention: Joint Secretary (Development), Power Division  
Address: Ministry of Power, Energy and Mineral Resources  
Government of the People's Republic Bangladesh  
Bangladesh Secretariat  
Abdul Gani Road  
Dhaka-1000, Bangladesh  
Facsimile: 880-2-861802]

If to the Company:

Attention: .....  
Address: [ ]

Attention: [ ]  
Facsimile: [ ]

If to BPDB:

Attention: Secretary, Bangladesh Power Development Board (BPDB)  
Address: 1st Floor, WAPDA Building  
Motijheel C/A  
Dhaka 1000, Bangladesh

**(a)** All notices shall be deemed delivered:

- (i) when presented personally;
- (ii) if received on a Business Day for the receiving Party when transmitted by facsimile to the receiving Party's facsimile number specified above; and if received on a Day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above;
- (iii) one (1) Business Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith); and

- (iv) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith).
- (b) Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

**16.2 *Changes of Address***

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

## **Section 17: MISCELLANEOUS PROVISIONS**

### **17.1 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.

### **17.2 Third Parties**

This Agreement is intended solely for the benefit of the Parties and, 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.

### **17.3 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.

### **17.4 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.

### **17.5 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.

### **17.6 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.

### **17.7 Entirety**

This 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 Contracted 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 Contracted Capacity and Net Energy Output hereunder are hereby abrogated and withdrawn.

## **17.8 Assignments and Charges**

### **17.8.1 Assignment**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Company seeks to transfer to any Affiliate all of its rights and obligations under this Agreement.

Provided further that, any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

### **17.8.2 Permitted Charges**

Neither party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

## **17.9 Confidentiality**

(a) Each of the Parties shall hold in confidence the agreements relating to the supply of electricity 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 supply of electricity and shall not save as required by law or appropriate regulatory authorities or investors, 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.

(b) The provisions of paragraph 17.10 (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.

## **17.10 Severability**

The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

## **17.11 Counterparts**

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

## **17.12 Compliance with Qualification Requirements**

The Company will be required to continue to maintain compliance with the Qualification Requirements till the Supply Commencement Date. Failure to comply with the aforesaid provision shall be considered a Company Event of Default under Section 4.2 of this Agreement.



IN WITNESS WHEREOF, the Parties have executed 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

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**Acknowledged by (on Behalf of GOB):**

By: \_\_\_\_\_  
Name:  
Title:

[ SEAL ]

WITNESS

\_\_\_\_\_

## **Schedule 1: 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: [1<sup>st</sup> 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 12.2 of this 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 (6<sup>th</sup> Revision)), International Chamber of Commerce, Publication No. 600.

*Authorised (Signature) on behalf of the Bank*

## **Schedule 2: FORM OF PERFORMANCE SECURITY DEPOSIT**

### **BANK GUARANTEE**

Secretary BPDB WAPDA Building (1 <sup>st</sup> 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 Contracted Capacity and Net Energy Output to Bangladesh Power Development Board (hereinafter referred to as "BPDB") from the Power Generation Station (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) 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 supply and delivery of power at Bohrampur Substation, Murshidabad, India.

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 Company.

This guarantee is non-transferrable and non-assignable.

Notwithstanding anything contained hereinbefore, our liability under this guarantee is restricted to [insert amount in USD] Only. This guarantee will expire on [insert date] at [insert time] Bangladesh time. All claims must be submitted in writing to [insert bank name, Bangladesh] in or before [insert date] at [insert time] Bangladesh time after which date the guarantee becomes null and void irrespective of whether or not the original guarantee is returned to the bank for cancellation.

[Name of Bank], as Guarantor

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Signature and bank seal

### **Schedule 3: FORM OF OPERATIONS SECURITY DEPOSIT**

#### **BANK GUARANTEE**

Secretary BPDB WAPDA Building (1 <sup>st</sup> 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 Contracted Capacity and Net Energy Output to Bangladesh Power Development Board (hereinafter referred to as "BPDB") from the Power Generation Station (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) as a bank guarantee of execution (hereinafter referred to as the "Operations Security Deposit") towards BPDB for the proper execution of the Company's commitments, in conformity to the requirements of the Power Purchase Agreement for supply and delivery of power at Bohrompur Substation, Murshidabad, India.

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 Operations 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 Operations 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 Operations Security Deposit shall remain valid and effective until [insert date]. The validity of this Operations 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 Operations Security Deposit or any subsequent extension thereof pursuant to the stipulation to extend this Operations Security Deposit, the Guarantor shall immediately extend the validity period of this Operations Security Deposit up to the date requested by Company.

This guarantee is non-transferrable and non-assignable.

Notwithstanding anything contained hereinbefore, our liability under this guarantee is restricted to [insert amount in USD] Only. This guarantee will expire on [insert date] at [insert time] Bangladesh time. All claims must be submitted in writing to [insert bank name, Bangladesh] in or before [insert date] at [insert time] Bangladesh time after which date the guarantee becomes null and void irrespective of whether or not the original guarantee is returned to the bank for cancellation.

[Name of Bank], as Guarantor

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Signature and Bank Seal

## **Schedule 4: TARIFF**

### **4.1 General**

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Tariff shall be paid in two parts comprising of Capacity Charge and Energy Charge as mentioned in this Schedule 4 duly escalated as provided in Schedule 6 for the applicable Contract Year.
- iii) For the purpose of payments, the Tariff will be Quoted Tariff as specified in Schedule 7 Schedule 3: duly escalated as provided in Scheduled 6 for the applicable Contract Year.
- iv) The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond Normative Availability (90%) as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Company as provided in this Schedule.

Interstate Transmission Charges & Losses from the Injection Point to the Delivery Point shall be as notified by CERC from time to time and the same shall be to the account of BPDB. BPDB shall reimburse the Interstate Transmission Charges paid by the Company on a monthly basis in INR.

Further, no transmission charges shall be payable to the Company from the Interconnection Point to the Injection Point pertaining to intra-state transmission, which shall be to the account of the Company.

All other incidental charges relating to scheduling and operation will have to be borne by the Company.

### **4.2 Monthly Tariff Payment**

#### **4.2.1 Components of Monthly Tariff Payment**

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Capacity Charge payment in accordance with Clause of this Schedule 4;
- ii) Monthly Energy Charge for Scheduled Energy in accordance with Clause 4.2.3 of this Schedule 4;
- iii) Incentive determined in accordance with Clause 4.2.4 of this Schedule 4;
- iv) Penalty determined in accordance with Clause 4.2.5 of this Schedule 4.
- v) Transmission Charges payable for the Interstate Transmission Charges (in INR)

#### **4.2.2 Monthly Capacity Charge Payment (Applicable for all categories of power generation source)**



4.2.2.1 The Monthly Capacity Charge payment for any Month m in a Contract Year n shall be calculated as below:

If  $CAAn \leq NA$ ,

$$FC_m = \{[FC * CC * Dm * 24] * CAA/NA\} - \sum FC(m-1)$$

Else,

$$FC_m = [FC * CC * Dm * 24] - \sum FC(m-1)$$

where:

- a)  $FC_m$  is the Capacity Charge payment for the Month m (in USD)
- b)  $FC(m-1)$  is the Capacity Charge payment for the Month “m-1” in the Contract Year “n” in which Month “m” occurs. For the first month in the Contract Year “n”, value of  $FC(m-1)$  shall be zero.
- c)  $FC$  is the Capacity Charge (in USD/ kWh) and is the sum of i) Payable Escalable Capacity Charges ( $ECC_n$ ) and ii) Payable Non Escalable Capacity Charges ( $NECC_n$ ) for the Month ‘m’ in the Contract Year ‘n’
- d)  $ECC_n$  is the Payable Escalable Capacity Charges for Month ‘m’ in Contract Year ‘n’ expressed in USD/kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 7 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$$ECC_n = QECC * p/q$$

Where,

- i)  $QECC$  is the Quoted Escalable Capacity Charges (in USD/kWh) and taken as at the end of Contract Year (n-1);
  - ii)  $p$  is the Escalation Index as per Schedule 6 at the beginning of the Month ‘m’ (expressed as a number);
  - iii)  $q$  is the Escalation Index as per Schedule 6 (expressed as a number)
- e)  $NECC_n$  is the Payable Non Escalable Capacity Charges for the Month ‘m’ in Contract Year ‘n’ expressed in USD/kWh and is equal to the Quoted Non Escalable Capacity Charges as provided in Schedule 7 for the Contract Year in which such Month ‘m’ occurs;
  - f)  $CAAn$  is the cumulative Availability, as per REA, from the first day of the Contract Year “n” in which Month “m” occurs up to and including Month “m” (expressed in percentage)

i.e.  $CAAn = \sum_J AA$

- g) AA is the Availability, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage. For the purpose of information, an illustration is provided in Schedule 10 of this Agreement for availability computation.
- h)  $\sum$  is the summation of all the relevant values separately for each Settlement Period from the start of the Contract Year “n” in which Month “m” occurs up to and including Month “m”;
- i) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);
- j) Dm is the no. of days elapsed in the Contract Year “n” from the start of the Contract Year up to relevant month “m” for which the invoice is being raised;;
- k) NA Normative Availability; and

Provided, no Monthly Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Generation Station due to *[Insert “Company’s” if Company is NOT a Trading Licensee, or “Developer’s” if Company is a Trading Licensee]* failure to operate it as per the provisions of IEGC and such Settlement Period shall not be considered during calculation of Monthly Capacity Charge payment

#### **4.2.3 Monthly Energy Charges**

- 4.2.3.1 The Monthly Energy Charges to be paid to the Company shall be determined as detailed hereunder:

***[Select in case of Company has chosen domestic coal-based plants having captive coal block or linkage based coal, as source for its supply of power]***

- 4.2.3.2 The Monthly Energy Charges (in USD) for Month “m” shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

**where:**

- a)  $MEP_m$  is the Monthly Energy Charges for Month m (in USD);
- b)  $AEO_m$  is the Scheduled Energy as per the REA for the Month m (in kWh); and
- c)  $MEP_n$  is the Energy Charge, in USD/ kWh, and is expressed as below;

$MEP_n$  is equal to sum of the following: (i) Payable Escalable Energy Charges ( $MEEP_n$ ) and (ii) Payable Non Escalable Energy Charges ( $MNEEP_n$ ) for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

where:

$$MEEP_n = QMEEP_n * p/q$$

where:

- a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 7 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- c) q is the Escalation Index as per Schedule 6 (expressed as a number);

MNEEP<sub>n</sub> is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in USD/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 7.

***[Select in case of Company has chosen coal-based plants using imported coal, as generation source ]***

4.2.3.3 The Monthly Energy Charges (in USD) for Month “m” shall be calculated as under:

$$\text{MEP}_m = \text{AEOM} \times \text{MEP}_n$$

where:

- a) MEP<sub>m</sub> is the Monthly Energy Charges for Month m (in USD);
- b) AEOM is the Scheduled Energy for the Month m (in kWh); and
- c) MEP<sub>n</sub> is the Energy Charge, in USD/ kWh, and is expressed as below:

MEP<sub>n</sub> is the sum of the following:

- (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>) and,
- (ii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>),

for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

$$\text{MEEP}_n = \text{QMEEP}_n \times p/q$$

where:

- a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 7 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p is the Escalation Index at the beginning of the Month “m” and escalated as per Schedule 6;
- c) q is the Escalation Index as per Schedule 6;

$$MNEEP_n = QMNEEP_n$$

where:

- a)  $QMNEEP_n$  is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 7;

***[Select in case of Company has chosen blended coal (domestic coal-based plants having captive coal block or linkage based coal and imported coal), as source for its supply of power]***

4.2.3.4 The Monthly Energy Charges (in USD) for Month “m” ( $MEP_m$ ) in the year ‘n,’ shall be calculated as under:

$$MEP_m = MEP_{md} + MEP_{mi}$$

Where:

- a)  $MEP_{md}$  is the Monthly Energy Charges for Month m (in USD) for Domestic coal;
- b)  $MEP_{mi}$  is the Monthly Energy Charges for Month m (in USD) for Imported Coal;

**(A) For Domestic coal**

$$MEP_{md} = AEO_m * MEP_{nd}$$

where:

- c)  $AEO_m$  is the Scheduled Energy for the Month m (in kWh); and
- d)  $MEP_{nd}$  is the Energy Charge, in USD/ kWh, and is expressed as below:

$MEP_{nd}$  is the sum of the following:

- (i) Payable Escalable Energy Charges ( $MEEP_n$ ) and,
- ,
- (ii) Payable Non Escalable Energy Charges ( $MNEEP_n$ )

for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

where:

$$MEEP_n = QMEEP_n * p/q$$

where:

- e) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 7 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- f) p is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- d) q is the Escalation Index as per Schedule 6 (expressed as a number);
- e) MNEEP<sub>n</sub> is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in USD/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 7; and

**(B) For Imported Coal**

The Monthly Energy Charges (in USD) for Month “m” shall be calculated as under:

$$\text{MEP}_{mi} = \text{AEOM} * \text{MEP}_{ni}$$

where:

- a) AEOM is the Scheduled Energy for the Month m (in kWh); and
- b) MEP<sub>ni</sub> is the Energy Charge, in USD/ kWh, and is expressed as below:

MEP<sub>ni</sub> is the sum of the following:

- (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>) and,
- ,
- (ii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>),

for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

$$\text{MEEP}_n = \text{QMEEP}_n * p/q$$

where:

- a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 7 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p is the Escalation Index at the beginning of the Month “m” and escalated as per Schedule 6;
- c) q is the Escalation Index as per Schedule 6;

$$MNEEP_n = QMNEEP_n$$

where:

QMNEEP<sub>n</sub> is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 7;

**[Select in case of Company has chosen domestic gas-based plants as source for its supply of power]**

4.2.3.5 The Monthly Energy Charges (in USD) for Month “m” shall be calculated as under:

$$MEP_m = AEO_m * MEP_n$$

where:

- a) MEP<sub>m</sub> is the Monthly Energy Charges for Month m (in USD);
- b) AEO<sub>m</sub> is the Scheduled Energy as per the REA for the Month m (in kWh); and
- c) **MEP<sub>n</sub>** is the Energy Charge, in USD/ kWh, and is expressed as below;

MEP<sub>n</sub> is equal to sum of the following: (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>) and (ii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>) for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

where:

$$MEEP_n = QMEEP_n * p/q$$

where:

- a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 7 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- c) q is the Escalation Index as per Schedule 6 (expressed as a number);

*MNEEP<sub>n</sub> is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in USD/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 7.*

#### **4.2.4 Contract Year Energy Incentive Payment**

If and to the extent the Availability in a Contract Year exceeds Normative Availability, an incentive at the rate of forty (40%) of the Quoted Capacity Charges (in USD/kWh) for such Contract Year mentioned in Schedule 7 subject to a maximum of 0.0045 USD/kWh, shall be

allowed on the energy (in kWh) corresponding to the Availability in excess of ninety percent (90%).

**4.2.5 Contract Year Penalty (Liquidated Damages) for Availability below Normative Availability during the Contract Year**

In case the Availability for a Contract Year is less than the Normative Availability , the Company shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in USD/kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between ninety percent (90%)] and Availability during such Contract Year.

**4.3 Tariff for the period prior to date of commencement of supply of power**

The Tariff for the period prior to Required Supply Commencement Date shall be the Quoted Energy Charge as specified in Schedule 7. Provided that the commencement of supply of power, by the Company to BPDB, prior to the Required Supply Commencement Date shall be at the discretion of BPDB.

**Schedule 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER**

[To be reproduced exactly as in Format 10 of the Selected Bid of the Sponsor]



## **Schedule 6: ESCALATION INDEX**

**6.1** The index ("Escalation Index") to be applied for escalation of Quoted Escalable Capacity Charges and Quoted Escalable Energy Charges, shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled Supply Commencement Date (for Quoted Escalable Capacity Charges) or Supply Commencement Date, as the case may be, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges) and Scheduled Supply Commencement Date (for Quoted Escalable Capacity Charges) or Supply Commencement Date, as the case may be, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable (or indexed) Capacity Charge and Escalable Energy Charge, as per the provisions of this Agreement.

**6.2** For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e.  $100 * (1 + 0.047/12)$ ].

i.e. Escalation Index at the beginning of the first month 'm' i.e.  $p = 100$

and Escalation Index at the end of first month 'm' i.e.  $q = 100 * (1 + 0.047/12) = 100.3917$

The value of the Escalation Index at the end of the Nth Month after the Bid Deadline shall be calculated as:  $100 * (1 + N * 0.047 / 12)$  for Quoted Escalable Energy Charges. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the fourth decimal point.

**6.3** The different per annum escalation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:

- a) Quoted Escalable Capacity Charges;
- b) Quoted Escalable Energy Charges separately for captive-coal based, linkage based coal, and imported coal;

**Schedule 7: QUOTED TARIFF**

[Quoted Tariff from Format 13 of RFP of the Selected Bid to be inserted here]

## **Schedule 8: LIST OF BANKS**

1. BNP Paribas
2. Citi Bank N.A.
3. Deutsche Bank A.G.
4. The Hongkong and Shanghai Banking Corporation Ltd.
5. Standard Chartered Bank
6. ABN Amro Bank N.V.
7. UFJ Bank Ltd.
8. Sumitomo Mitsui Banking Corporation
9. Societe Generale
10. Barclays Bank
11. Bank of Novascotia

## **Schedule 9: FORM OF GUARANTEE**

THIS GUARANTEE (this “**Guarantee**”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2015,

### **BY AND BETWEEN:**

- (1) THE PEOPLE’S REPUBLIC OF BANGLADESH represented by THE POWER DIVISION, MINISTRY OF POWER, ENERGY AND MINERAL RESOURCES (the “**Guarantor**”); and
- (2) [Name of Company], a company incorporated under the Companies Act, 19..... (Act ..... of 19.....), whose registered office is located in ....., India (the “**Company**”).

### **WHEREAS:**

- (A) Bangladesh Power Development Board (hereinafter referred to as “**BPDB**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) constituted under the Bangladesh Power Development Board’s Order of 1972 (P.O. 59 of 1972), is engaged in the business of Generation, Distribution and Sale of Electricity and is a wholly owned undertaking of the Government of the People’s Republic of Bangladesh.
- (B) Pursuant to the above, a Power Purchase Agreement dated .....has been entered between the Company and BPDB (the “**Agreement**”), whereby the Company has agreed to supply 250 MW power from generating station(s) of India to enable the Company to sell such power to BPDB.
- (C) The Guarantor has agreed to enter into this Guarantee of the payment obligations of BPDB under the Agreement.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

### **1. DEFINITIONS AND INTERPRETATION**

For the purposes of this Guarantee, unless otherwise defined herein or unless the context otherwise requires, capitalized terms used but not defined herein shall have the meanings as set forth in the Agreement.

### **2. GUARANTEE**

#### **2.1 Guarantee**

In consideration of the Company entering into this Agreement with BPDB, the Guarantor hereby irrevocably and unconditionally guarantees and promises to pay the Company any and every sum of money BPDB is obligated to pay to the Company under or pursuant to the Agreement that BPDB has failed to pay when due in accordance with the terms of the relevant agreement, which obligation of the GOB shall include monetary damages arising out of any failure by BPDB to perform its obligations under the Agreement to the extent that any failure to perform such obligations gives rise to monetary damages, including any and all liabilities and obligations (whether actual or contingent, whether now existing or hereafter arising, whether or not for the payment of money, and including, without limitation, any obligation or liability to pay damages which, but for the application of bankruptcy or insolvency laws, would have accrued on the amounts in question), which are now or which may at any time and from time to time hereafter be due, owing, payable or incurred or be expressed to be due, owing, payable or incurred from or by BPDB to the Company under or in connection with the Documents.

## **2.2 Waiver of Defences**

The obligations of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all the covenants, terms, and agreements set forth in Agreement shall have been completely discharged and performed, unless waived by the Company in writing. The obligations of the Guarantor shall not be modified or impaired upon (and the Guarantor waives any defence to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- 2.2.1 The extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of BPDB set forth in the Agreement.
- 2.2.2 Amendments to the Agreement, if any.
- 2.2.3 The failure, omission, or delay by the Company to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Agreement or this Guarantee;
- 2.2.4 The bankruptcy, insolvency, or other failure or financial disability of BPDB;
- 2.2.5 The addition, or partial or entire release of any guarantor, maker or other Party (including BPDB) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Agreement or by any extension, waiver, amendment, or thing or circumstance whatsoever in law or in equity that may release or create a defence or discharge for a guarantor (other than complete performance in accordance with the terms of the Agreement);
- 2.2.6 Any failure of BPDB to comply with the requirements of any law, regulation or order;
- 2.2.7 The dissolution, privatisation, reorganisation or any other legal alteration of the legal structure of BPDB; and
- 2.2.8 Any assignment pursuant to the Agreement;
- 2.2.9 Any invalidity, illegality, or unenforceability of the Agreement, or any of their respective provisions, terms or conditions; and
- 2.2.10 Any other act (other than payment of amounts due), event or omission which, affect any of the obligations of the GOB under this Guarantee.

## **2.3 Continuing Guarantee**

This Guarantee shall be a continuing security and, accordingly, shall extend to cover (i) the balance due to the Company at any time from BPDB, under the Agreement. No demand made by the Company hereunder shall prejudice or restrict the right of the Company to make further or other demands.

## **2.4 Additional Security**

- 2.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Company may at any time hold in respect of the obligations of BPDB under the Agreement.

- 2.4.2 The Company may enforce this Guarantee notwithstanding that it may hold any other guaranty, lien, or security of or for the obligations of BPDB under the Agreement or have available to it any other remedy at law or equity.

## **2.5 Preliminary Demand**

- 2.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from the GOB, the Company agrees to make demand in writing for payment from BPDB, with a copy of such demand delivered by the Company to the Guarantor. After thirty (30) Days from the date payment was due, the Company may notify the GOB in writing that payment from BPDB, is past due and make a demand for payment from the GOB under this Guarantee, and the GOB shall make payment within thirty (30) Days thereafter. Late Payments hereunder shall bear interest at rate specified under Section 12.2(b).
- 2.5.2 Except as provided in Section 2.5.1, the Company shall not be obliged before taking steps to invoke this Guarantee to exercise any other remedies that may be available to it under or in respect of the Agreement or to initiate any proceedings or obtain judgment against BPDB thereon.

## **2.6 Certification**

Any demand for payment made pursuant to this Guarantee shall be made in person by a duly authorised officer of the Company at the Guarantor's offices provided in Section 6.1.1 of this Guarantee and shall be accompanied by a certificate signed by a duly authorised officer of the Company stating that:

"We hereby certify that (1) the demand on the GOB of the People's Republic of Bangladesh (the "Guarantor") in the amount of US Dollar [insert amount] in accordance with Section 1 of the Guarantee dated [ \_\_\_\_ 200\_], between the Guarantor and the Company; (2) the amount specified above is now due and payable by [Bangladesh Power Development Board ("BPDB")] under the [Agreement between the Company and BPDB] (3) demand in writing for payment from BPDB was made on the date payment was due and not less than 30 Days from the date hereof and (4) such amount, on the date hereof, remains unpaid by BPDB."

## **2.7 Subordination**

Any right that the Guarantor may at any time have to be indemnified by BPDB, in respect of sums paid out by the Guarantor in performance of this Guarantee shall be subordinated to the rights of the Company to recover from BPDB in full all sums that are then due and payable from BPDB, under the Agreement.

**2.8 No Set-off**

No set-off, counterclaim, reduction, or diminution of any obligation that the Guarantor has or may have against the Company shall be available to the Guarantor against the Company in connection with any obligation of the Guarantor to the Company under this Guarantee, except for the right to set-off amounts which are then due and payable by the Company to BPDB.

**2.9 Commercial Acts.**

The Guarantor unconditionally and irrevocably agrees that the execution, delivery, and performance by it of this Guarantee constitutes commercial acts.

**2.9.A Sovereign Immunity; Jurisdiction.**

(a) The Guarantor unconditionally and irrevocably:

- (i) agrees that should any proceedings be brought against it or its assets, other than its military aircraft, naval vessels, other defence properties, accounts of the Bangladesh Bank held outside of Bangladesh and other assets of a type for which diplomatic and consular privileges are afforded under the Immunity Act of the United Kingdom of 1978 or the Sovereign Immunities Act of 1976 of the United States of America or any analogous legislation (collectively, "**Protected Assets**") in any jurisdiction where such assets or property of the Guarantor are located to enforce any award or decision of any arbitrator who was 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 the Guarantor on behalf of itself or any of its assets (other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
- (ii) waives any right of immunity which it or any of its assets (other than Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
- (iii) consents generally to the jurisdiction of any court of competent jurisdiction for any action filed by the Company to enforce any award or decision of any arbitrator who has duly appointed under this Guarantee to resolve any Dispute between the Parties (including without limitation, the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use and specially waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees that service of process in any such action or proceeding may be affected in any manner permitted by the law applicable to the aforementioned court.

(b) 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.

### **3. TAXATION**

In addition to any amount then due and payable to the Company by BPDB under the Agreement, and payable by the Guarantor under the terms of this Guarantee, the Guarantor shall be liable for any Tax levied or imposed by a Government Authority or any political subdivision or authority thereof on or with regard to any payment hereunder unless the payment, if made by BPDB, would itself have caused the Company to become liable for the Tax. If under applicable law the Guarantor is unable to pay the Tax and the Company is required to pay the Tax, the amount to be paid to the Company hereunder shall be increased by an amount sufficient so that such payment, net of the Tax, would equal the payment the Company would have received from BPDB, net of any Taxes applicable to payment from BPDB to the Company.

### **4. UNDERTAKING**

#### **4.1 Duration**

This Guarantee shall remain in full force and effect from and after the date hereof until the termination of the initial term of the Agreement and for so long thereafter as any amount owed to the Company by BPDB in connection with such term is or may be outstanding.

### **5. NO WAIVER; REMEDIES CUMULATIVE**

#### **5.1 No Waiver**

No failure or delay by the Company to exercise any right or remedy under this Guarantee shall constitute a waiver of that right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Company shall be effective unless it is in writing.

#### **5.2 Remedies Cumulative**

The rights and remedies of the Company provided by this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

### **6. NOTICES**

#### **6.1 Address for Notices**

All notices or other communications (together, the “**Notices**”) to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by registered or certified mail or facsimile or courier. All Notices shall be deemed delivered (a) when presented personally, (b) if received on a Business Day of 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 of the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number specified above, (c) 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 notice delivered to the delivering Party at its address or facsimile number specified above) or (d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written Notice delivered to the delivering Party at its address or facsimile number specified above). 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. The address for service of each Party and its respective facsimile number shall be:



6.1.1 For the Guarantor:

[Attention: Joint Secretary (Development), Power Division  
Address: Ministry of Power, Energy and Mineral Resources  
Government of the People's Republic of Bangladesh  
Bangladesh Secretariat  
Abdul Gani Road,  
Dhaka-1000, Bangladesh.  
Facsimile: 880-2-9514177]

6.1.2 For the Company:

Attention: [ ]  
Address: [ ]  
Facsimile: [ ]

or such other addresses or facsimile numbers as either Party may have notified to the other Party in accordance with this Section 6.1.

Notwithstanding the foregoing, if the address of the Company is outside Bangladesh, any notice delivered to the Company pursuant to this Section 6.1 shall be sent by international courier or facsimile, and if sent by facsimile confirmed by international courier

**7. ASSIGNMENT**

**7.1 Assignment by the Guarantor**

The Guarantor may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Company.

**7.2 Assignment by the Company**

The Company may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor. Notwithstanding the provision of the immediately preceding sentence, for securitization of dues from BPDB, the Company may assign or create a security interest over its rights and interests in and to this Guarantee in favour of State Bank of India (SBI) or any other bank as nominated by the Company.

**7.3 Successors**

This Guarantee shall be binding upon and inure to the benefit of the Guarantor and the Company and the respective successors and permitted assigns of each.

**8. GOVERNING LAW**

The rights and obligations of the Parties under or pursuant to this Guarantee shall be governed by and construed according to the laws of England.

**9. MISCELLANEOUS**

**9.1 Severability**

If one or more provisions contained in this Guarantee is held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

**9.2 Representations and Warranties**

The Guarantor represents and warrants that:

- 9.2.1 it has the full power, authority and legal right to incur the obligation, to execute and deliver, and to perform the terms and provisions of this Guarantee;
- 9.2.2 this Guarantee constitutes legal, valid and binding obligations of the Guarantor in accordance with its terms; and
- 9.2.3 all necessary actions have been taken and all necessary approvals and consents have been obtained under the laws of Bangladesh to enable the Guarantor to perform its obligations hereunder.

**9.3 Counterparts**

This Guarantee may be executed in any number of counterparts and by different parties thereto on separate counterparts and any single counterparts signed, in either case, by all the parties hereto shall be deemed to constitute a full original agreement for all purposes but all counterparts shall constitute but one and the same instrument.

**9.4 Further Assurance**

The Guarantor hereby covenants with the Company that it shall from time to time promptly sign, seal, execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other acts and things as may be required by law or reasonably requested the Company from time to time in order to give full effect to this Guarantee and each of the other Guarantee Documents or to establish, maintain, protect or preserve the rights of the Company under this Guarantee and each of other Guarantee Documents or to enable any of them to obtain the full benefits of this Guarantee Documents and to exercise and enforce the rights and remedies under this Guarantee and each of the other Guarantee Documents, if any.

**IN WITNESS WHEREOF**, this Guarantee has been executed the day first above written.

**THE GOVERNMENT OF THE PEOPLE'S REPUBLIC  
OF BANGLADESH REPRESENTED BY  
THE POWER DIVISION, MINISTRY OF POWER, ENERGY  
AND MINERAL RESOURCES**

**[NAME OF COMPANY]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Seal

Seal

## **Schedule 10: PROFORMA FOR MONTHLY INVOICE**

The Invoice shall be prepared by the Company in complying with the formats prescribed herein, or as amended by mutual Agreement by both Parties in writing.

<b>Form 1: Summary of monthly invoice for the month of _____2xxx in the Contract Year 2xxx-2xxx</b>	
<b>Particulars</b>	<b>Amount in USD</b>
Monthly Capacity Charge (A) from Form 2	
Monthly Energy Charge (B) from Form 4	
Energy Incentive (C) from Form 5	
Penalty for annual availability less than 90% (D) from Form 5	
<b>Total of monthly invoice (A+B+C-D)</b>	

Mandatory Enclosures:

- Copy of the relevant Regional Energy Account or its equivalent.
- Copy of the Order / Notification of the Appropriate Commission showing the applicable intra-state and inter-state transmission losses.
- Copy of the schedule energy & revised schedule energy delivered by PGCB.
- Day wise 15 minutes block implemented schedule published by POSOCO/NLDC India in their website.

**Form 2: Monthly Capacity Charge Computation for month of \_\_\_\_\_ 2xxx in the Contract Year 2xxxx-2xxxx**

SI No.	Month	Days	Hours of the Month	Contracted Capacity	Availability for the Month(from From 3))			Cumulative Availability upto the Month
				in KW	in MU	in KW	in %	in %
		Dm	X=Dm*24	CC	Y	Z=Y*10 <sup>6</sup> /X	AA=Z/CC	CAAn
1.				250,000				
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
	Total =							

NA= Normative Availability i.e. 90%

**ECCn=Escalable Capacity Charge Component**

QECC=Quoted Escalable Capacity Charge for the Contract Year (n-1) (QECC) in USD/kWh  
Escalation index "p" for the end of the month computed in accordance with Schedule 4 and 6 of the PPA  
Escalation index "q" at the beginning of the month computed in accordance with Schedule 4 and 6 of the PPA  
 $ECCn = QECC * p/q$

**NECCn=Non- Escalable Capacity Charge Component**

Quoted Non-escalable Capacity Charge for the Contract Year (NECCn) in USD/kWh

**FC = Quoted Capacity Charge for the month m i.e. USD /kWh**

FC for the month = ECCn+NECCn in USD/kWh

**FCm= Capacity Charge for the month m**

if CAAn<=90% then  $FCm=(FC*CC*Dm*24*CAAn/NA) - \sum FC(m-1)$   
else  $FCm=(FC*CC*H) - \sum FC(m-1)$

Form 3: Availability Computation for the billing month of Contract Year 2xxx-2xxx							
Number of Days in the month _____							
Date	Transmission Loss for intra-state system (%)	Transmission Loss for inter-state system (%)	Contracted Quantity at Interconnection Point (M U)	Scheduled Energy at Delivery Point as per REA (M U)	Scheduled Energy at the Interconnection Point (M U)	Energy not requisitioned by BPDB (M U)	Availability of the Company (M U)
	A	B	C	D	$E = D / [(1-A) * (1-B)]$	F	$G = E + F$
1-xxx-2xxx			6.0000				
2-xxx-2xxx			6.0000				
3-xxx-2xxx			6.0000				
4-xxx-2xxx			6.0000				
5-xxx-2xxx			6.0000				
6-xxx-2xxx			6.0000				
7-xxx-2xxx			6.0000				
8-xxx-2xxx			6.0000				
9-xxx-2xxx			6.0000				
10-xxx-2xxx			6.0000				
...							
...							
...							
<b>Total</b>			$\Sigma C$	$\Sigma D$	$\Sigma E$	$\Sigma F$	$\Sigma G$
<b>Availability for the month in percentage (AA)</b>							$\Sigma G / \Sigma C * 100$
<b>Cumulative Availability for the Contract Year up to end of the month in percentage (%) (CAAn)</b>							

<b>Form 4: Monthly Energy Charge Computation for month of _____ 2xxx in the Contract Year 2xxxx-2xxxx</b>	
Contracted Capacity (CC)	250,000 kW
Normative Availability (NA)	90%
Scheduled Energy Charges at the Interconnection Point from Form 3 (AEOm) in kWh	
Cumulative Availability (from Form 3) = CAA	
<b>For Domestic Coal (Insert if applicable)</b>	
<b>Escalable Energy Charge Component (For Domestic Coal)</b>	
Quoted Escalable Energy Charge (QMEEPn) as per Schedule 7 or for the Contract Year (n-1) in USD/kWh, as applicable	
Escalation index "p" at the beginning of the month computed in accordance with Schedule 4 and 6 of the PPA	
Escalation index "q" computed in accordance with Schedule 4 and 6 of the PPA	
Escalable Energy Charge for the month (MEEPn) in USD/kWh	
$MEEPn = QMEEPn * p/q$	
<b>Non-Escalable Energy Charge Component (For Domestic Coal)</b>	
Quoted Non Escalable Energy Charges for the month (MNEEPn) (in USD/kWh)	
<b>Monthly Energy Charges (in USD) (For Domestic Coal)</b>	
$MEPmd = (MEEPn + MNEEPn) * AEOm$	
<b>For Imported Coal (Insert if applicable)</b>	
<b>Escalable Energy Charge Component (For Imported Coal)</b>	
Quoted Escalable Energy Charge (QMEEPn) as per Schedule 7 or for the Contract Year (n-1) in USD/kWh, as applicable	
Escalation index "p" at the beginning of the month computed in accordance with Schedule 4 and 6 of the PPA	
Escalation index "q" computed in accordance with Schedule 4 and 6 of the PPA	
Escalable Energy Charge for the month (MEEPn) in USD/kWh	
$MEEPn = QMEEPn * p/q$	
<b>Non-Escalable Energy Charge Component (For Imported Coal)</b>	
Quoted Non Escalable Energy Charges for the month (MNEEPn) (in USD/kWh)	
<b>Monthly Energy Charges (in USD) (For Imported Coal)</b>	
$MEPmi = (MEEPn + MNEEPn) * AEOm$	
<b>[Insert further in case of blended coal] Total Monthly Energy Charges = Monthly Energy Charges (for Domestic Coal in USD) + Monthly Energy Charges (for Imported Coal in USD)</b>	
<b>For Domestic Gas (Insert if applicable)</b>	
<b>Escalable Energy Charge Component (For Domestic Gas)</b>	
Quoted Escalable Energy Charge (QMEEPn) as per Schedule 7 or for the Contract Year (n-1) in USD/kWh, as applicable	

Escalation index “p” at the beginning of the month computed in accordance with Schedule 4 and 6 of the PPA	
Escalation index “q” computed in accordance with Schedule 4 and 6 of the PPA	
Escalable Energy Charge for the month (MEEPn) in USD/kWh	
$MEEPn = QMEEPn * p/q$	
<b>Non-Escalable Energy Charge Component (For Domestic Gas)</b>	
Quoted Non Escalable Energy Charges for the month (MNEEPn) (in USD/kWh)	
<b>Monthly Energy Charges (in USD) (For Domestic Gas)</b>	
$MEPmd = (MEEPn + MNEEPn) * AEOM$	

## Schedule 11: PROFORMA FOR INCENTIVE/PENALTY INVOICE

The Invoice shall be prepared by the Company or BPDB as the case may be in complying with the formats prescribed herein, or as amended by mutual Agreement by both Parties in writing.

Form 5:					
Part A: Incentive invoice for the Contract Year 2xxx to 2xxx[ If Availability > 90%(from Form 6)]					
Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Contracted Capacity (MU) (from Form 6)	Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Normative Availability(MU )	Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Availability of Company (MU) (from Form 6)	Total Energy in excess of Normative Availability (MU)	Incentive Rate (0.0045 USD/kWh)	Incentive Amount (USD)
A	B=0.9*A	C	D=B-C	E	F=D*E
				Total=	
Part B: Penalty invoice for the Contract Year 2xxx to 2xxx[ If Availability < 90%(from Form 6)]					
Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Contracted Capacity (MU) (from Form 6)	Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Availability of Company (MU) (from Form 6)	Total Energy in the Contract Year 2xxx to 2xxx Corresponding to 90% Availability(MU )	Total Energy less than 90% Availability (MU)	Penalty Rate (20%*(Total Capacity Payment in the Contract Year 2xxx to 2xxx / Total Schedule Energy in the Contract Year 2xxx to 2xxx (MU) )( USD/kWh)	Penalty Amount (USD)
A	B	C=0.9*A	D=B-C	E	F=D*E
				Total=	



<b>Form 6: Annual Availability Calculation</b>							
<b>Sl No.</b>	<b>Month</b>	<b>Number of days in a month</b>	<b>Monthly Energy Corresponding to Availability of Company (MU)</b>	<b>Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Availability of Company (MU)</b>	<b>Monthly Energy Corresponding to Contract Capacity (MU)</b>	<b>Total Energy in the Contract Year 2xxx to 2xxx Corresponding to Contract Capacity (MU)</b>	<b>Annual Availability of Company in the Contract Year 2xxx to 2xxx(in%)</b>
	A	B	C	$D = \sum C$	$E = (250MW * B * 24h / 1000)$	$F = \sum E$	$G = (D/F) * 100$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
<b>Total:</b>			$\sum C$		$\sum E$		