

Annex- of RFP (Exhibit II)

# **LAND LEASE AGREEMENT**

**BY AND BETWEEN**

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

**AND**

**[NAME OF COMPANY]**

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**- RELATING TO-**

**3 MWP GRID TIED SOLAR POWER PLANT**

**AT**

**Sarishabari, Jamalpur,, BANGLADESH**

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**DATED AS OF \_\_\_ SEPTEMBER 2012**

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**SCHEDULE I: SITE DESCRIPTION**

**SCHEDULE II: RENT PAYMENT TERMS**

***Land Lease Agreement***

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**THIS LAND LEASE AGREEMENT** (this "**Lease Agreement**") is entered into as of this \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_, 2012 in Dhaka, Bangladesh

**BY AND BETWEEN**

**BANGLADESH POWER DEVELOPMENT BOARD**, with its registered office located at \_\_\_\_\_,  
Dhaka, Bangladesh, and hereinafter referred to as the "**BPDB**", which expression includes its successors,  
representatives or assigns;

**AND**

**[Name of Company]**, with its registered office located at \_\_\_\_\_, Dhaka, Bangladesh, and  
hereinafter referred to as the "**Company**", which expression includes its successors, representatives and  
permitted assigns (BPDB and the Company are sometimes hereinafter referred to individually as a  
"**Party**" and, collectively, as the "**Parties**").

**RECITALS**

**WHEREAS**, the Company has agreed to design, engineer, manufacture, finance, construct, complete,  
permit, test, commission, insure, own, operate and maintain a 3 MWp Grid Tied Solar Power Plant  
located at Sarishabari, Jamalpur, Bangladesh, to provide electric power to BPDB under a Power  
Purchase Agreement (as defined hereinafter).

**WHEREAS**, BPDB has acquired a parcel of land comprising eight (8) acres at Sarishabari, Jamalpur and  
has also acquired all necessary rights-of-way and access to and from such parcel

**WHEREAS**, BPDB is in exclusive possession of an approximately eight (8) acre parcel of the land  
described in Schedule 1 (the "Demised Premises", as hereinafter defined) and has agreed to lease the  
Demised Premises to the Company for the Site (as hereinafter define) to be used for the construction,  
operation and maintenance of the Facility for the term of this Agreement.

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

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**SECTION 1: DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

“**Access Road**” means the existing access road from the [N2] highway to the Site, as shown on Annexure II to Schedule I;

“**Agent**” bears the meaning ascribed thereto in Section 7.4(b)(i);

“**Bank Rate**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**BPDB Event of Default**” bears the meaning ascribed thereto in Section 7.2(a);

“**BPDB Notice of Default**” bears the meaning ascribed thereto in Section 7.1(a);

“**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;

“**Centre**” bears the meaning ascribed thereto in Section 9.4(a);

“**Commercial Operations Date**” bears the meaning ascribed thereto in the Power Purchase Agreement;

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

“**Company Event of Default**” bears the meaning ascribed thereto in Section 7.1(a);

“**Company Notice of Default**” bears the meaning ascribed thereto in Section 7.2(a);

“**Contract Year**” means (a) in respect of the first Contract Year, the period commencing at the beginning of the Possession Date and ending as of the end of the Day immediately preceding the first anniversary of the Possession Date, and (b) thereafter, the period commencing at the beginning of each consecutive anniversary of the Possession Date and ending as of the end of the last Day preceding the next anniversary of the Possession Date;

“**Contractors**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Convention**” bears the meaning ascribed thereto in Section 9.4(a);

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

“**Demised Premises**” means the parcel of land described as such in Part A of Schedule I and shown in Annexure I to Schedule I;

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

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

“**Election Notice**” bears the meaning ascribed thereto in Section 7.4(d)(ii);

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

“**Environmental Liabilities**” means all losses, damages, and expenses (including, without limitation, the reasonable costs of investigation, testing, containment, removal, cleanup, abatement or remediation and reasonable attorneys’ fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials attributable to the Facility or the Site from the Possession Date to the end of the Term (or, if earlier, the first to occur of the surrender of the Demised Premises by the Company to BPDB, the termination of this Lease Agreement, the assignment of this Lease Agreement to the GOB, or the date of transfer of the Facility to the GOB or its designee), or the violation by the Company, its agents or employees of any environmental Laws of Bangladesh or the Environmental Guidelines;

“**Environmental Matters**” means any of the following:

- (a) any release, emission, entry or introduction into the air, including the air within buildings and other natural or man-made structures above ground of any Hazardous Material or any material or substance regulated under the Environmental Guidelines,
- (b) any discharge, release or entry into water, including into any river, watercourse, lake or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the river bed or of other land supporting such waters, ground waters, sewer or the sea of any Hazardous Material or any material or substance regulated under the Environmental Guidelines,
- (c) any deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Material or any material or substance regulated under the Environmental Guidelines (including, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it reusable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled),
- (d) the conservation, preservation or protection of the natural or man-made environment or any living organisms supported by the natural or man-made environment, or
- (e) any other matter whatsoever directly affecting the environment or any part of it;

“**Evaluation Period**” bears the meaning ascribed thereto in Section 7.4(d)(i);

“**Event of Default**” means a Company Event of Default or a BPDB Event of Default, as the case may be;

“**Expert**” means an expert appointed pursuant to Section 9;

“**Facility**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Financial Closing**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Force Majeure Event**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Foreign Investors**” bears the meaning ascribed thereto in the Power Purchase Agreement;

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

“**Government Authority**” bears the meaning ascribed thereto in the Power Purchase Agreement;

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

- (a) BPDB under the Power Purchase Agreement,
- (b) BPDB under this Lease Agreement; and

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

“**Hazardous Materials**” means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive or radioactive materials regulated under, or subject to, any Laws of Bangladesh;

“**ICC Rules**” bears the meaning ascribed thereto in Section 9.4(b);

“**ICSID Rules**” bears the meaning ascribed thereto in Section 9.4(a);

“**Incremental Costs**” bears the meaning ascribed thereto in Section 9.4(c);

“**Initial Cure Period**” bears the meaning ascribed thereto in Section 7.4(a);

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

“**Lease Agreement**” means this Land Lease Agreement between BPDB and the Company, together with all schedules attached hereto, dated as of the date first above written, and includes any amendment of it made by the Parties from time to time;

“**Lenders**” bears the meaning ascribed thereto in the Implementation Agreement;

“**Lenders Cure Period**” bears the meaning ascribed thereto in Section 7.4(e)(i);

“**Lien**” bears the meaning ascribed thereto in the Implementation Agreement;

“**Notice of Intent to Terminate**” bears the meaning ascribed thereto in Section 7.3(a)(i);

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

“**Party**” means either BPDB or the Company;

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**“Permitted Liens”** means minor imperfections of title and encumbrances that in the aggregate are not substantial in amount, do not detract from the value of the property subject thereto or impair the ownership, possession, use or operation of the Facility, and existed at the date of acquisition or have arisen only in the ordinary course of business and consistent with normal utility practices;;

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

**“Possession Date”** bears the meaning ascribed thereto in Section 2.3;

**“Power Purchase Agreement”** means the Power Purchase Agreement executed or to be executed between BPDB and the Company for the sale of Dependable Capacity and Net Energy Output (as each term is defined therein) by the Company to BPDB from the Facility, as such agreement may be amended by the parties thereto from time to time;

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

**“Project Agreements”** means, collectively, this Lease Agreement and the Power Purchase Agreement;

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

**“Protected Assets”** bears the meaning ascribed thereto in Section 9.5(a)(i);

**“Rent”** bears the meaning ascribed thereto in Schedule II;

**“Scheduled Possession Date”** bears the meaning ascribed thereto in Section 2.2;

**“Site”** means the land described as such in Schedule I;

**“Succession Notice”** bears the meaning ascribed thereto in Section 6.2(b);

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

**“Take-Over”** bears the meaning ascribed thereto in Section 3.5(a);

**Take-Over Date”** means the date on which the Take-Over occurs.

**“Taxes and Charges”** means the general or special rates, taxes, Value Added Tax (VAT), charges, duties, assessments, impositions, imposts, levies, charges or outgoings whatsoever that are levied by any Government Authority in accordance with the Laws of Bangladesh on and after the Possession Date upon the Demised Premises or upon the owner or occupier in respect thereof or upon the Facility or upon the owner or occupier in respect thereof, including without limitation rates and taxes for the provision of water, sewage and electricity, value-added taxes and any other services or utilities under the Laws of Bangladesh;

**“Term”** bears the meaning ascribed thereto in Section 2.1;

**“Termination Notice”** means a written notice issued by BPDB or the Company, as the case may be, terminating this Lease Agreement, under Section 7.3(c);



**1.2 Rules of Interpretation**

In this Lease Agreement,

- (a) the headings are for convenience only and shall be ignored in construing this Lease Agreement;
- (b) the singular includes the plural and vice versa;
- (c) references to Sections and Schedules are, unless stated to the contrary, references to Sections and Schedules of this Lease 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 hereunder 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 Lease Agreement, each Party shall have an implied obligation of good faith.

**SECTION 2: TERM**

**2.1 Term**

This Lease Agreement shall be effective upon the Project Effective Date and shall, unless terminated earlier in accordance with the terms of this Lease Agreement, continue in full force and effect until the earlier of (i) the last Day of the term of the Power Purchase Agreement (as such agreement may be extended), and (ii) the date upon which the Facility is transferred to the GOB or its designee pursuant to Section 14.1 of the Implementation Agreement (the “**Term**”).

**2.2 Scheduled Possession Date**

BPDB shall deliver to the Company exclusive and continuing possession of the Demised Premises on or before the date that is not later than fifteen (15) Days following the Project Effective Date (the “**Scheduled Possession Date**”). The delivery of possession and use of the Demised Premises shall be made in accordance with, and subject to, Section 3.5 and the other provisions of this Lease Agreement.

**2.3 Possession Date**

The date on which BPDB delivers to the Company exclusive and continuing possession of the Demised Premises in accordance with the provisions of this Lease Agreement shall be the “**Possession Date**”, *provided*, that the Possession Date shall not occur unless and until Take-Over has occurred in accordance with, and the Company has complied with the requirements of, Section 3.5;

**SECTION 3: OBLIGATIONS OF THE COMPANY AND BPDB**

**3.1 Demise and Registration**

(a) **Demise**

In consideration of the Rent paid and the covenants of the Company hereinafter contained, BPDB hereby demises to the Company the Demised Premises for the duration of the Term in accordance with the terms and conditions set out in this Lease Agreement.

(b) **Registration**

BPDB shall procure the registration of this Lease Agreement under the Registration Act, 1908 (Act XVI of 1908) and provide to the Company, by no later than the date ten (10) Days prior to the Required Financial Closing Date, satisfactory evidence that such registration has been completed. BPDB acknowledges that the Company is exempted from any registration fees and duties and stamp duties pursuant to Section 12.1 of the Implementation Agreement and, accordingly, such registration shall be at no cost to the Company.

**3.2 Rent**

In consideration for the lease by BPDB to the Company of the Demised Premises during the Term, the Company agrees and covenants to pay the Rent to BPDB during the Term in the amount and on the terms set forth in Schedule II.

**3.3 Payment of Taxes and Charges**

The Company shall promptly and regularly pay to the appropriate Government Authority all Taxes and Charges payable in connection with the Demised Premises or the Facility on and from the Possession Date until the expiry of the Term.

**3.4 Take-Over**

(a) BPDB shall, after a joint inspection with the Company, hand over the Demised Premises to the Company (the "**Take-Over**") no later than fifteen (15) days following the Project Effective Date. After the Take-Over and prior to occurrence of the Possession Date, the Company shall install permanent posts to demarcate the boundary of the Demised Premises and install a security fence on the perimeter of the Demised Premises.

(b) At any time, on and after the Take-Over Date and prior to the Possession Date, the Company shall be entitled to enter the Demised Premises for the purpose of carrying out such surveys, site investigations and other inspections as the Company considers necessary; *provided* that the Company has given BPDB reasonable advance written notice of such intention to enter the Demised Premises.

**3.5 Permitted Use, Development and Remedy of Defects**

(a) **Permitted Use**

The Company shall use the Demised Premises for the purposes of the Project and for the generation and sale of electric generation capacity or electric energy or both and uses reasonably incidental thereto.

(b) **Permitted Development and Maintenance Work by the Company**

The Company shall, during the Term, carry out work to develop the Demised Premises and maintain the Demised Premises including, without limitation, clearing, leveling, compacting and filling of the Demised Premises, waterways and wells on, through, above and below the ground or on any part of it on which the Facility, including without limitation providing any materials, facilities or equipment which may be required by the Company and its Contractors for carrying out work and for accommodation of the Company and its Contractors.

(c) **Compliance with Law**

The Company agrees that it will not use or permit any person to use the Demised Premises, or any portion thereof, in a manner that contravenes any provision of the Laws of Bangladesh.

(d) **Articles of Value**

All fossils, coins, articles of value or antiquity structures and any other remains of geological or archaeological interest discovered on the Demised Premises shall, as between BPDB and the Company be deemed to be the absolute property of BPDB, and the Company shall at its own expense take all necessary precautions to prevent its employees, representatives and Contractors or other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof, and before removal, acquaint BPDB with such discovery, comply with all requirements of the Laws of Bangladesh pertaining to the same or, if no such requirements relate, comply with the reasonable instructions of BPDB as to the disposal or preservation of the same.

(e) **Repairs and Maintenance**

Except as may be provided to the contrary in this Lease Agreement, BPDB shall not be required to make any repairs or improvements to the Demised Premises during the Term, or in any manner to supply maintenance for the Demised Premises or any improvements thereon.

(f) **Unexploded Ordnance and Contamination**

If unexploded ordnance or other contamination likely to be harmful is discovered on the Demised Premises, the Company will, without prejudice to the Company's right to indemnification from BPDB pursuant to Section 5.2(a), at its own cost and in accordance with the Environmental Guidelines and the Laws of Bangladesh, be responsible for rendering safe the Demised Premises, by the clearance of the contamination or the removal and the subsequent destruction or by in situ destruction of any unexploded ordnance. BPDB shall use reasonable efforts to assist the Company and any Contractors in connection with the clearance of contamination and the removal and destruction of unexploded ordinance.

(g) **Site Safety**

The Company shall, and shall ensure that its employees, representatives and Contractors and other persons allowed on to the Demised Premises, shall comply with the safety and site requirements applicable from time to time.

**3.6 Insurance**

- (a) The Company shall at all times while the Power Purchase Agreement is in effect obtain and maintain insurance in accordance with Section 14 of the Power Purchase Agreement.
- (b) The Company will name BPDB as an additional insured to the extent of BPDB's insurable interest under the insurance policies required to be maintained pursuant to Section 3.7(a) as required under Section 14 of the Power Purchase Agreement.

**3.7 Quiet Enjoyment**

BPDB covenants that, *provided* that the Company complies with the terms of this Lease Agreement, the Company shall not be impaired or otherwise prevented by BPDB from using the Demised Premises for the purposes set out in this Lease Agreement and may peaceably enjoy the Demised Premises from the Possession Date until the end of the Term.

**SECTION 4: REPRESENTATIONS, WARRANTIES AND COVENANTS**

**4.1 Representations, Warranties and Covenants of BPDB**

- (a) BPDB represents and warrants that:
- (i) it has all requisite corporate power and authority to grant the lease, licenses, easements and other rights envisaged under this Lease Agreement and to execute, deliver and perform its obligations under this Lease Agreement;
  - (ii) the execution, delivery and performance of this Lease Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorised by BPDB and no other proceedings on the part of BPDB are necessary for the grant of this Lease Agreement;
  - (iii) this Lease Agreement has been duly and validly executed and delivered by BPDB and constitutes a valid and binding commitment of it;
  - (iv) there is no investigation, inquiry or proceeding concerning any Environmental Matter relating to or affecting the Demised Premises, and so far as BPDB is aware none is pending or threatened nor is there any fact or circumstance existing which might give rise to any of the foregoing;

(b) Covenants of BPDB

BPDB covenants that, as of the Possession Date:

- (i) it shall have clear, unencumbered, title (free and clear of all mortgages and Liens other than Permitted Liens) to the Demised Premises;
- (ii) the Demised Premises shall not be subject to any adverse estate, right, interest, covenant, restriction, easement, option, right of pre-emption, wayleave, irrevocable license or other right or arrangement in favour of any third party (whether in the nature of a public or private right or obligation or otherwise), nor is there any agreement to give or create any of the foregoing, and all rights of light, air, water and support associated with the Demised Premises, are enjoyed fully by BPDB as of right;
- (iii) there shall not be any outstanding actions, disputes, claims or demands between BPDB and any third party or between the GOB and any third party affecting BPDB's title to the Demised Premises, or its right or ability to enter into this Lease Agreement;
- (iv) there shall not be any Environmental Matters relating to or affecting the Demised Premises;
- (v) it has provided adequate compensation (as required under the Laws of Bangladesh and the then-applicable guidelines of the World Bank Group) to all persons:
  - (A) who may have been displaced;
  - (B) whose land may have been acquired; or
  - (C) whose livelihood may have been affected,

when the Demised Premises was acquired.

BPDB further covenants that all representations and warranties set out in Section 4.1(a) shall be true and correct, mutatis mutandis, on the Possession Date.

#### **4.2 Representations, Warranties and Covenants of the Company**

(a) Representations and Warranties of the Company

The Company represents and warrants to BPDB that:

- (i) It is a company validly existing and in good standing under the laws of Bangladesh, and it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Lease Agreement;
- (ii) the execution, delivery and performance by it of this Lease Agreement have been duly authorised by all necessary corporate action, and do not and will not:
  - (A) require any consent or approval of its 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
  - (B) to the best of its knowledge, violate or breach any provisions of or constitute a default under its corporate charter or bylaws or other organic documents, any material indenture, contract, or agreement to which it is a party or by which it or its properties may be bound or any material law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to the Company.
- (iii) this Lease Agreement is a valid and binding obligation of the Company; and
- (iv) there is no pending or, to the best of the its knowledge, threatened action or proceeding against it before any court, Government Authority, or arbitrator that could reasonably be expected to materially adversely affect the ability of the Company to perform its obligations hereunder, or which could reasonably be expected to affect the legality, validity or enforceability of this Lease Agreement, or any material part thereof.

(b) Covenants of the Company

The Company covenants that, as of the Possession Date:

- (i) The Company shall have in full force and effect and continue thereafter to maintain insurance in accordance with Section 14 of the Power Purchase Agreement.

The Company further covenants that all representations and warranties set out in Section 4.2(a) shall be true and correct, mutatis mutandis, as of the Possession Date.

**SECTION 5: LIABILITY AND INDEMNIFICATION**

**5.1 Limitation of Liability**

Except as required by Section 5.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Lease Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Lease Agreement or any activity not contemplated by this Lease Agreement.

**5.2 Indemnification**

- (a) BPDB shall bear responsibility for (i) loss of or damage to property, death or injury to person (or any claim against the Company or its Contractors or their respective officers, directors and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the Company or its Contractors or its respective officers, directors and employees in connection with the Facility resulting from any negligent or intentional act or omission of BPDB (or its officers, directors, members (of the board) and employees), without recourse to the Company or its Contractors, and (ii) any Loss arising out of or in connection with any Hazardous Material or any Environmental Matter which was present at the Demised Premises prior to the Possession Date or any failure by BPDB to comply with the Laws of Bangladesh (insofar as they relate to Environmental Matters), or the Environmental Guidelines. BPDB will hold the Company or its Contractors fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of the Company or its Contractors or the failure of the Company or its Contractors to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 5.2(a) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the Company or its Contractors are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (b) The Company shall bear responsibility for (i) loss of or damage to property, death or injury to person (or any claim against BPDB or its respective officers, directors, members (of the board) and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by BPDB or its respective officers, directors, members (of the board) and employees in connection with the Facility resulting from any negligent or intentional act or omission of the Company or its Contractors (or its respective officers, directors and employees), without recourse to BPDB, and (ii) any Loss arising out of or in connection with any Environmental Liabilities arising as a result of any act or omission by the Company or any failure by the Company to comply with the Laws of Bangladesh (insofar as they relate to Environmental Matters), or the Environmental Guidelines. The Company will hold BPDB fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of BPDB or the failure of BPDB to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 5.2(b) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, BPDB is compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (c) In the event that any Loss results from the joint or concurrent negligent or intentional acts of the Parties, each shall be liable under this indemnification in proportion to its relative degree of fault.



- (d) The provisions of this Section 5.2 shall survive for a period up to the expiry or early termination of this Lease Agreement.

### **5.3 Assertion of Claims**

Neither Party shall be entitled to assert any claim for indemnification until such time as all claims of such Party for indemnification under this Lease Agreement exceed an amount equal to the sum of one fifty lakh taka (Taka 50,00,000), in the aggregate, at which time all claims of such Party for indemnification under this Lease Agreement may be asserted; *provided, however*, that when such claims have been asserted the same rule shall apply in respect of future claims. Notwithstanding the preceding sentence, either Party may assert a claim for indemnification regardless of amount upon the expiry or earlier termination of this Lease Agreement or if such claim would otherwise be barred by the applicable statute of limitations.

### **5.4 Defence of Claims**

- (a) Each Party shall promptly notify the other Party of any loss of, or damage to property, death or injury to person (or any claim or proceeding in respect thereof) in respect of which it is or may be entitled to indemnification under Section 5.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such loss, damage, death or injury (or any claim or proceeding in respect thereof);
- (b) The indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder *provided, however*, that if the indemnifying Party acknowledges in writing its obligations to indemnify the indemnified Party in respect of loss to the full extent provided by Section 5.2, the indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying party of such defence.
- (c) Neither Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided*, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the prior approval of the indemnified Party.
- (d) Notwithstanding the foregoing, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred unless:
  - (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party;
  - (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action;

- (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party; or
  - (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Lease Agreement.
- (e) If paragraph (ii), (iii) or (iv) of subparagraph (d) above shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**SECTION 6: ASSIGNMENT AND SECURITY**

**6.1 Assignment**

This Lease Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing.

**6.2 Creation of Security**

(a) Notwithstanding the foregoing, for the purpose of financing the Facility, the Company may assign to, or grant a security interest in favour of, the Lenders in its rights and interests under or pursuant to: (i) this Lease Agreement, (ii) any agreement or document included within the Security Package, (iii) the Demised Premises, (iv) the Extended Access, (v) the movable, immovable and intellectual property of the Company, or (vi) the revenues or any of the rights or assets of the Company. The Company shall not create any security over its rights and interests under this Lease Agreement without the prior written consent of BPDB except as already provided above.

(b) The Lenders shall have no obligation to BPDB under this Lease Agreement until such time as the Lenders or their designees succeed to the Company's interests under this Lease Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give written notice of such succession (a "**Succession Notice**") to BPDB and assume liability for all of the Company's obligations under this Lease Agreement, including without limitation payment of any amounts due and owing to BPDB for payment defaults by the Company under this Lease Agreement (other than, so long as the liability insurance required by Section 3.7 has been and is in effect), damages or penalties incurred by the Company under Section 5.2(b), arising during the period prior to the Lenders' or such designees' succession to the Company's interests in and under this Lease Agreement, *provided that* any liability of the Lenders or their designees shall be strictly limited to the Lenders' interest in the Demised Premises, the Extended Access Road, the Access Road.

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

(c) Upon notification by the Lenders or the Agent to BPDB of the occurrence and continuance of an event of default under the Financing Documents and the succession of the Lenders to the Company's interests in and under this Lease Agreement, the Lenders shall have the right, among others, to: (i) take possession of the Demised Premises and use the same and the Access Road, the Extended Access Road, for the purposes permitted under this Lease Agreement; and (ii) cure any continuing Company Event of Default under this Lease Agreement as provided in Section 7.1(a).

Notwithstanding the foregoing, upon the delivery of a Succession Notice, the Lenders shall have no obligation to cure any Company Event of Default occurring before the delivery of such Succession Notice that is not capable of being cured and no right will exist for BPDB to terminate this Lease Agreement based upon such Company Event of Default occurring prior to the delivery of the Lenders' Succession Notice.

Without the requirement of obtaining any further consent from BPDB, upon the exercise by the Lenders or their designees of any of the remedies set forth in the Financing Documents, the Lenders may assign their rights and interests and the rights of the

Company under this Lease Agreement to a Transferee acceptable to the GOB so long as such Transferee shall assume all of the obligations of the Company under this Lease Agreement.

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

- (d) As used herein, a “**Transferee**” shall be a person who: (i) is a company organized under the Laws of Bangladesh, (ii) either is an experienced and qualified power plant operator or who shall have agreed to engage the services of a person who is an experienced and qualified power plant operator, (iii) shall have paid all amounts, if any, then due and payable to BPDB under this Lease Agreement, and (iv) shall have expressly assumed in writing for the benefit of BPDB the ongoing obligations of the Company under this Lease Agreement.
- (e) At the request of the Company, delivered to BPDB not less than thirty (30) Days in advance, BPDB shall execute and deliver at the Financial Closing, all such acknowledgments to the Lenders or their designees of any security created in accordance with this Section 6.2 as are reasonably requested by the Company and the Lenders to give effect to the foregoing.
- (f) Notwithstanding the foregoing, BPDB’s rights and obligations under this Lease Agreement shall be assigned to and assumed by any other entity or entities that acquire through operation of land BPDB’s right and interest in the Demised Premises; *provided*, that the GOB without interruption guarantees the performance of PGCB or such other succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligations of the succeeding entity or entities that in the reasonable business judgment of the Company provides an adequate alternative to the Guarantee and all of BPDB’s obligations under this Lease Agreement are assigned pursuant to law to or contractually assumed, through a novation, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform such obligations.

**SECTION 7: TERMINATION**

**7.1 Company Events of Default -- Termination by BPDB**

- (a) BPDB may give notice of default under this Lease Agreement (a “**BPDB Notice of Default**”) upon the occurrence of any of the following events (“**Company Event of Default**”); *provided*, that any such event shall not be a Company Event of Default if it results from a breach (a) by BPDB of this Lease Agreement or the Power Purchase Agreement or the Share Purchase Agreement, (b) by the GOB of the Implementation Agreement or the Guarantee, or (c) by the Gas Supplier of the Gas Supply Agreement:
  - (i) any statement, representation or warranty by the Company in this Lease Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and the circumstances that cause such failure or incorrect statement, representation or warranty to be incorrect having a material and adverse effect on BPDB’s ability to perform its obligations under this Lease Agreement;
  - (ii) the failure of the Company to perform its obligations under Sections 3.2;
  - (iii) any other material breach by the Company of this Lease Agreement that is not remedied within thirty (30) Days after notice from BPDB stating that a material breach of this Lease Agreement has occurred and is continuing that could result in the termination of this Lease Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;
  - (iv) a termination of the Implementation Agreement as a result of any cause other than a GOB Event of Default or a termination of the Power Purchase Agreement as a result of any cause other than a BPDB Event of Default thereunder or a termination of the Gas Supply Agreement as a result of any cause other than a Gas Supplier Event of Default thereunder, and in either case the GOB acquires all of the Company’s rights, title and interests in and to the Facility pursuant to the provisions of the Implementation Agreement; or
  - (v) the failure by the Company to make any payment of any charges or payments required to be made by it hereunder within thirty-five (35) Days of the due date therefor.

**7.2 BPDB Events of Default --Termination by the Company**

- (a) The Company may give a notice of default under this Lease Agreement (a “**Company Notice of Default**”) upon the occurrence of any of the following events (“**BPDB Event of Default**”); *provided*, that any such event shall not be a BPDB Event of Default if it results from a breach by the Company of this Lease Agreement or the Power Purchase Agreement:
  - (i) any statement, representation or warranty by BPDB in this Lease Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and the circumstance that cause such failure or incorrect statement, representation or warranty to be incorrect having a material and adverse effect on the Company’s ability to perform its obligations under this Lease Agreement;
  - (ii) any material breach by BPDB of this Lease Agreement that is not remedied within thirty (30) Days after notice from the Company to BPDB stating that a

material breach of this Lease Agreement has occurred and is continuing that could result in termination of this Lease Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;

- (iii) a termination of the Power Purchase Agreement due to a BPDB Event of Default thereunder.

### **7.3 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 Lease Agreement by delivering a notice (a “**Notice of Intent to Terminate**”) of its intent to terminate this Lease Agreement to the defaulting Party.
- (ii) The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or BPDB Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate.

#### **(b) Consultation**

- (i) Following the delivery of a Notice of Intent to Terminate, the Parties shall consult 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 in each case such longer period as the Parties mutually may 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 7.3(c), then the non-defaulting Party shall have no right to terminate this Lease Agreement in respect of such cured default.

#### **(c) Termination Notice**

Subject to the provisions of Sections 7.4 and 7.6, as the case may be, upon expiration of the consultation period described in Section 7.3(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 7.4 or Section 7.6, as the case may be, the Party having given the Notice of Intent to Terminate may terminate this Lease Agreement by delivery of a Termination Notice to the other Party, whereupon this

Lease Agreement shall immediately terminate immediately upon delivery of such notice to such other Party.

**7.4 Notice to Lenders of Company Event of Default**

**(a) No Termination Without Notice to Lenders**

Notwithstanding anything in this Lease Agreement, from and after the occurrence of the Financial Closing Date, BPDB shall not seek to terminate this Lease Agreement without first giving to the Lenders a copy of any notices given to the Company under Sections 7.1 and 7.3, such notice to be coupled with a request to the Lenders to cure any such default within the cure period specified in Section 7.3(b) (the “**Initial Cure Period**”), which period shall commence upon delivery of each such notice to the Lenders.

**(b) Designation of Agent and Notification Procedure**

(i) The Lenders will designate in writing to BPDB an agent (the “**Agent**”) and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders.

(ii) Each such notice shall be in writing and shall be deemed to have been delivered:

(A) when presented personally to the Lenders or the Agent;

(B) when transmitted by BPDB and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below; or

(C) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the Lenders at the address indicated at Financial Closing (or such other address or to the Agent at such address as the Lenders may have specified by written notice delivered in accordance herewith).

Any notice given by facsimile under this Section 7.4 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 Lender or the Agent.

(iii) Notwithstanding the foregoing, if the address of the Lenders or Agent is outside Bangladesh, any notice delivered to the Lender or Agent pursuant to this Section 7.4 shall be:

(A) presented personally or sent by international courier or facsimile; and

(B) if sent by facsimile, confirmed by international courier,

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

(iv) The address and facsimile number for the Lenders or Agent shall be provided to BPDB by the Company at Financial Closing and thereafter may be changed by the Lenders or the Agent by subsequent delivery of a notice to BPDB at the address or facsimile number of BPDB set out in Section 10.1(a) (or at such other

address or facsimile number in accordance with Section 7.4(b)(i)) and otherwise in accordance with the requirements of Section 10.1.

(c) **Termination Not Valid Without Notice to Lenders**

- (i) From and after Financial Closing no rescission or termination of this Lease Agreement by BPDB (other than as a result of a Company Event of Default under Section 7.1(a)(iv)) shall be valid or binding upon the Lenders without such notice, until the expiration of:
  - (A) the Initial Cure Period;
  - (B) the Evaluation Period provided in Section 7.4(d); and
  - (C) if applicable, the Lenders Cure Period, provided in Section 7.4(e), as such Lenders Cure Period may be extended.
- (ii) The Lenders may make, but shall be under no obligation to make any payment or perform or procure the performance of any act required to be made or performed by the Company, with the same effect as if made or performed by the Company.

(d) **Failure of Lenders to Cure Default**

If the Lenders fail to cure or are unable or unwilling to cure any Company Event of Default that is required to be cured prior to the expiration of periods referred to above in this Section 7.4, BPDB shall have all its rights and remedies with respect to such default as set forth in this Lease Agreement; *provided*, that:

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

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

(e) **Delivery of Election Notice**

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



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

(f) **Expiry of Cure Period**

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

**7.5 Notice to the GOB of BPDB's Default**

(a) **No Termination Without Notice to the GOB**

Notwithstanding anything in this Lease Agreement, the Company shall not seek to terminate this Lease Agreement as a result of any default of BPDB without first giving a copy of any notices given to BPDB under Sections 7.2 and 7.3 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**

Each such notice shall be deemed to have been delivered: (i) when presented personally to the GOB, (ii) when transmitted by facsimile, or (iii) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the GOB, at the address indicated in Section 17 of the Implementation Agreement (or such other address as the GOB may have specified by written notice delivered in accordance therewith).

Any notice given by facsimile under this Section 7.5 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the GOB.

(c) **Termination Not Valid Without Notice to the GOB**

- (i) No rescission or termination of this Lease 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**

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 Lease Agreement, the Company shall have

all its rights and remedies with respect to such default as set forth in this Lease Agreement; *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 Lease Agreement.

**SECTION 8: RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

**8.1 Obligations Upon Termination**

Upon expiration or termination of this Lease Agreement, the Company shall immediately surrender the Demised Premises and the Parties shall have no further obligations hereunder except for obligations that arose prior to such expiration or termination and that expressly survive such expiration or termination pursuant to this Lease Agreement. For each Day following the end of the Term that the Company has not surrendered possession of the Demised Premises, the Company shall be a holdover tenant, and the Company shall pay to BPDB the Rent deemed applicable to the last Contract Year of the Term, divided by three hundred and sixty-five (365) and multiplied by three (3). The Company irrevocably agrees that this rent is reasonable and constitutes liquidated damages to BPDB and is not and shall not be construed to be a penalty.

**8.2 Other Remedies**

**(a) Remedies Cumulative**

Except as otherwise provided herein:

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

**(b) Limitations of Damages of the Company**

Notwithstanding Section 8.2(a), the Parties agree that the Company may be damaged in amounts that may be difficult or impossible to determine in the event that this Lease Agreement is terminated by the Company as a result of a BPDB Event of Default. Therefore, the Parties have agreed that the termination of this Lease Agreement and the remedies provided therefor under the Implementation Agreement, including, if applicable, the termination of the Implementation Agreement by the Company under Section 13.2 of the Implementation Agreement (and the termination of this Lease Agreement under Section 7.2(a)(iii)) and the payment to the Company by the GOB of the compensation provided under Section 14.1 of the Implementation Agreement as a result thereof, is in lieu of actual damages and any other liquidated damages which may otherwise be payable under this Lease Agreement in respect of such termination and the collection of such amount (and, if applicable, the termination of the Implementation Agreement) is the sole remedy of the Company in respect of such termination. The provisions of this Section 8.2 shall be without prejudice to any right or remedy of the Company which arises prior to termination of this Lease Agreement.

**(c) Limitations of Damages of BPDB**

Notwithstanding the foregoing or any other provision of this Lease Agreement, the Parties agree that, in the event that BPDB terminates this Lease Agreement as a result of a Company Event of Default under Section 7.1(a)(iii) and the GOB elects to purchase the Facility and the Company transfers the Facility to the GOB pursuant to Section 14.1 of the Implementation Agreement, upon such transfer and payment by the GOB of the compensation provided under Section 14.1 of the Implementation Agreement, any claims by BPDB against or liability of the Company under this Lease Agreement (except as provided in Section 8.1) shall be fully extinguished and BPDB shall have no further claim or recourse against the Company under this Lease Agreement. The provisions of this Section 8.2 shall be without prejudice to any right or remedy of the Company which arises prior to termination of this Lease Agreement.

**SECTION 9: RESOLUTION OF DISPUTES**

**9.1 Resolution of Disputes:**

- (a) BPDB and the Company shall use their best efforts to settle amicably all disputes arising out of or in connection with this contract or its interpretation.
- (b) If the Parties are unable to reach a settlement as per Article 19.2(a) within 28 days of the first written correspondence on the matter of disagreement, then either party may give notice to the other party of its intention to commence arbitration in accordance with Article 19.2 (c).
- (c) The arbitration shall be conducted in accordance with the Arbitration Act (Act No. 1 of 2001) of Bangladesh as at present in force. The place of arbitration shall be in Dhaka, Bangladesh.

**SECTION 10: MISCELLANEOUS PROVISIONS**

**10.1 Notices**

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

If to the Company: [ ]  
Address: [ ]  
Attention: [ ]  
Facsimile: [ ]

If to BPDB: [Bangladesh Power Development Board  
Address: 1<sup>st</sup> Floor, WAPDA Building, Motijheel C/A  
Dhaka-1000, Bangladesh  
Attention: Secretary  
Facsimile: (880) 2-956-6765]

With a copy to: [ ]

- (b) All notices shall be deemed delivered when
- (i) 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).
- (c) 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.
- (d) 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.

**10.2 Amendment**

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

**10.3 Third Parties**

This Lease Agreement is intended solely for the benefit of the Parties and, except for rights expressly granted to the Lenders, nothing in this Lease 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.

**10.4 No Waiver**

- (a) The failure or delay of either Party to enforce at any time any of the provisions of this Lease 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 Lease 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 Lease 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.

**10.5 Survival**

Cancellation, expiration, termination of this Lease 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.

**10.6 Language**

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

**10.7 Entirety**

This Lease Agreement and the Schedules attached hereto are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof. All prior written or oral understandings, offers or other communications of every kind are hereby abrogated and withdrawn.

**10.8 Successors and Assigns**

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

**10.9 Double Jeopardy**

A final, non-appealable order issued in a proceeding initiated by the GOB and based on a claim of breach of the Implementation Agreement shall be with prejudice to any proceedings against the Company that BPDB could otherwise bring for breach by the Company of substantially the same obligations under this Lease Agreement. Nothing in this Section 10.9 shall prevent BPDB and the GOB from separately initiating proceedings to terminate this Lease Agreement and the Implementation Agreement, respectively, pursuant to Section 7.4 and Sections 13.1 and 13.3 of the Implementation Agreement.

**10.10 Counterparts**

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

**10.11 Comments/Vetting**

The Comments/Vetting to be provided by the Ministry of Law & Parliamentary Affairs, Ministry of Commerce and National Board of Revenue will be a part of this Contract.

***Land Lease Agreement***

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

**BANGLADESH POWER DEVELOPMENT BOARD**

**[NAME OF COMPANY]**

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

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

[ SEAL ]

[ SEAL ]

WITNESS

WITNESS

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE I: SITE DESCRIPTION**

**PART A. DESCRIPTION OF THE DEMISED PREMISES**

The Demised Premises consist of approximately 8 (eight) acres of land, which will be provided in "as is" condition. Any and all required leveling, filling to the final elevation, soil compaction, and river bank protection (if applicable) will be performed by the Company of its own cost.



**SCHEDULE II: RENT PAYMENT TERMS**

1. The rent payable for the Demised Premises (the "**Rent**") shall be Taka two million (Tk. 2,000,000) per Contract Year for the first five (5) Contract Years commencing on the Possession Date. At the end of each fifth Contract Year thereafter, the Rent payable for the next five (5) Contract Years shall be automatically increased by an amount equal to twenty percent (20%) of the Rent payable in each of the immediately preceding five (5) Contract Years. The increased Rent amount shall be applicable (without any further increase until the expiry of another five (5) Contract Years thereafter) for the next five (5) Contract Years.
2. The Rent for each Contract Year shall be payable by the Company in two equal semiannual installments, one on the 1<sup>st</sup> Day of the relevant Contract Year and the other on the 1<sup>st</sup> Day of the seventh (7<sup>th</sup>) month of each Contract Year; provided that the first payment of Rent shall be made by the Company not later than seven (7) Days after the Possession Date.
3. In case of default in paying any installment or installments, the Company shall pay interest at the Bank Rate plus four percent (4%) per annum until full realization.