

Annex-E of RFP (Exhibit III)

LAND LEASE AGREEMENT

BY AND BETWEEN

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

AND

[NAME OF COMPANY]

- RELATING TO-

A [INSERT CAPACITY] MW (NET) POWER GENERATION FACILITY

AT

KERANIGANJ, BANGLADESH

Dated as of ____ 2011

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Land Lease Agreement

THIS LAND LEASE AGREEMENT (this “**Lease Agreement**”) is entered into as of this ____ day of _____, 2011, 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 wherever the terms so admit or imply 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 wherever the terms so admit or imply shall include its successors, representatives and permitted assigns.

RECITALS

WHEREAS, the Company has agreed to design, engineer, manufacture, finance, construct, complete, permit, test, commission, insure, own, operate and maintain a dual fuel (HFO/Gas) power station located at Keraniganj, Bangladesh, to provide [insert capacity] MW (net) of electric power generation capacity to BPDB under a Power Purchase Agreement (as defined hereinafter).

WHEREAS, BPDB has obtained, under agreement dated _____, 20[11], with the GOB (as hereinafter defined), a certain parcel of land comprising approximately [95] acres, about 10 km south of Dhaka in Keraniganj Dist., which land was acquired by the GOB pursuant to its Notification dated _____, 20[10] and which parcel includes the Demised Premises (as hereinafter defined) comprising approximately 10 acres, the Access Road Corridor (each as hereinafter defined) as well as any appurtenances, rights-of-way and access to and from public road.

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

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, they shall have the meanings given to such terms below:

“**Access Road**” bears the meaning ascribed thereto in Section 3.4(a);

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

“**Bank Rate**” bears the meaning ascribed thereto in Section 1 of 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 Section 1 of 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 Communication Facilities**” bears the meaning ascribed thereto in the Gas Supply Agreement;

“**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);

“**Company Transportation Facilities**” bears the meaning ascribed thereto in the Gas Supply Agreement;

“**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;

“**Contractor(s)**” bears the meaning ascribed thereto in Section 1 of 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;

“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;

“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);

“Electrical Interconnection Facilities” bears the meaning ascribed, thereto in Section 11 of PPA;

“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 Section 1 of the Power Purchase Agreement;

“**Financial Closing**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

“**Financial Closing Date**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

“**Financing Documents**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

“**Force Majeure Event**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

“**Foreign Investor(s)**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

“**Gas**” means natural gas;

“**Gas Supplier**” bears the meaning ascribed thereto in the Gas Supply Agreement;

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

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

“**Government Authority**” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement;

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

- (a) BPDB under the Power Purchase Agreement,
- (b) the Gas Supplier under the Gas Supply Agreement;
- (c) 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);

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

“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 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 Section 1 of the Implementation Agreement;

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

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

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

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

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

“Parties” means both BPDB and the Company;

“Party” means either BPDB or the Company;

“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 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, and includes any amendment of it made 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, the Implementation Agreement, the Gas Supply Agreement, and the Power Purchase Agreement;

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

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

“Required Financial Closing Date” bears the meaning ascribed thereto in Section 1 of the Implementation Agreement;

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

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

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

“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);

“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);

“Transferee” bears the meaning ascribed thereto in Section 6.2(d); and

“Transportation Facilities” bears the meaning ascribed thereto in the Gas Supply Agreement.

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 earliest 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 and non-exclusive, free and unfettered use of the Access Road on or before the date that is no later than the Required Financial Closing Date (the “**Scheduled Possession Date**”). The delivery of 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 and non-exclusive, free and unfettered use of the Access Road 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 Section 3.5;

SECTION 3: OBLIGATIONS OF THE COMPANY AND BPDB

3.1 Demise and Registration

(a) **Demise**

In consideration of the Rent hereinafter reserved and the covenants of the Company hereinafter contained, BPDB hereby demises to the Company the Demised Premises and grants to the Company non-exclusive, free and unfettered use of the Access Road (following the completion and hand over of possession of the road by the Company to BPDB pursuant to Sections 3.4(a) and (b)) 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 and the grant of non-exclusive, free and unfettered use of the Access Road Corridor (and, following the hand over of the completed Access Road by the Company to BPDB pursuant to Sections 3.4(a) and (b)), the Access Road, 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 Access Road

(a) The Company shall within three (3) months of the Possession Date construct at its own cost and in accordance with the Access Road Specifications, an access road (the "**Access Road**") on the Access Road Corridor starting from the nearest public road up to the Demised Premises. Upon completion of the Access Road, the Company shall hand over the completed Access Road to BPDB and risk and responsibility for the Access Road shall pass to BPDB from the time of the hand over.

(b) BPDB hereby grants to the Company the right to the non-exclusive, free and unfettered use of the Access Road Corridor (following the hand over of the completed Access Road by the Company to BPDB pursuant to Sections 3.4(a) and (b)) the Access Road, throughout the Term.

(c) BPDB shall throughout the Term maintain clear, unencumbered title (free of all mortgages and Liens) to the Access Road.

- (d) Following the hand over of the completed Access Road by the Company to BPDB pursuant to Sections 3.4(a), BPDB shall at its own cost throughout the Term maintain the Access Road each to a standard sufficient for the purposes for which the Company intends to use it and in accordance with the terms of this Lease Agreement.

3.5 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 ninety (90) days following the Project Effective Date. After the Take-Over, 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 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.

3.6 Permitted Use, Development and Remedy of Defects

(a) **Permitted Use**

The Company shall use the Demised Premises, the Access Road Corridor, and the Access Road 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, the Access Road Corridor and maintain the Demised Premises including, without limitation, clearing, leveling, compacting and filling of the Demised Premises, the Access Road Corridor and building the Facility, the Access Road, roads, waterways and wells on, through, above and below the ground or on any part of it on which the Facility, the Access Road or any part of them is to be built, including without limitation providing any materials, facilities or equipment which may be required by the Company and its Contractor(s) for carrying out work and for accommodation of the Company and its Contractor(s).

(c) **Compliance with Law**

The Company agrees that it will not use or permit any person to use the Demised Premises, the Access Road Corridor, 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 and the Access Road Corridor 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 Contractor(s) 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 otherwise provided 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 Access Road Corridor or 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 or the Access Road Corridor as the case may be, 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 Contractor(s) in connection with the clearance of contamination and the removal and destruction of unexploded ordnance.

(g) **Site Safety**

The Company shall, and shall ensure that its employees, representatives and Contractor(s) and other persons allowed on to the Demised Premises, the Access Road Corridor by it shall comply with the safety and site requirements applicable from time to time.

3.7 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.

3.8 Quiet Enjoyment

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

3.9 Easement Rights

(a) **Electrical Interconnection Facilities**

BPDB shall, upon request by the Company which shall not be made earlier than one hundred and twenty (120) Days after the Project Effective Date, grant to the Company easements and rights of way as necessary to install, operate, maintain the Electrical Interconnection Facilities, tele-metering and telecommunication facilities and any other facilities that may be required for connecting the Facility to the interconnection and transmission facilities.

(b) **Easements and Rights-of-Way for Transportation Facilities**

BPDB shall, upon request by the Company which shall not be made earlier than one hundred and twenty (120) Days after the Project Effective Date, grant to the Company such, easements and rights-of-way above and beneath the Access Road Corridor as may be necessary for the purposes incidental to the construction and/or the operation of the Transportation Facilities, the Company Transportation Facilities and the Company Communication Facilities.

(c) **Additional Easements**

BPDB shall, upon request by the Company which shall not be made earlier than one hundred and twenty (12) Days after the Project Effective Date, grant to the Company such additional easements and rights-of-way as may be necessary for purposes incidental to the construction and/or the operations of the Facility, including but not limited to drainage and construction of water out-take channels (to the extent not affecting the operation of the second power plant to be constructed in Keraniganj complex).

(d) **No Additional Consideration**

Consideration for such rights (for both the Company and BPDB in this Section 3.9) shall be the execution of this Lease Agreement and no other consideration shall be required.

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, the Access Road Corridor, 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, the Access Road Corridor;
- (ii) the Demised Premises and the Access Road Corridor 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, the Access Road Corridor 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, the Access Road Corridor 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, the Access Road Corridor;
- (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, the Access Road Corridor 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 Contractor(s) 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 Contractor(s) 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 Contractor(s), 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 Contractor(s) 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 Contractor(s) or the failure of the Company or its Contractor(s) 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 Contractor(s) 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 Contractor(s) (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 upto the expiry or early termination of this 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 hundred thousand Dollars (US\$100,000), 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 Access Road Corridor and the Access Road, (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 Access Road Corridor, 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 Access Road Corridor, 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 shall have the right to assign this Lease Agreement to any other entity or entities assuming all or part of BPDB’s rights and obligations pursuant to the Power Purchase Agreement; 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**") unless such Company Event of Default results from a breach (a) by BPDB of this Lease Agreement or the Power 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 3.4(a) and (b) in accordance with the times specified therein for such performance save to the extent that such failure is attributable to the occurrence of a Force Majeure Event;
 - (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 the Rent or other 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**") unless such BPDB Event of Default results from a breach by the Company of this Lease Agreement, the Power Purchase Agreement, the Implementation Agreement or the Gas Supply 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) the Possession Date does not occur within one hundred and eighty (180) Days of the Financial Closing Date; or
- (iv) a termination of the Implementation Agreement due to a GOB Event of Default or a termination of the Power Purchase Agreement due to a BPDB Event of Default thereunder or a termination of the Gas Supply Agreement due to a Gas Supplier 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**

- (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 Lease Agreement, the Company shall have all its rights and remedies with respect to such default as set forth in this Lease 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 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 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 Governing Law

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

9.2 Resolution by Parties

(a) **Mutual Discussions**

- (i) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party gives written notice of the Dispute to the other Party identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute.
- (ii) If the Dispute involves the amount of an invoice and after ten (10) Business Days of mutual discussion either Party has determined that further discussion is not likely resolve the Dispute to its satisfaction, such Party may immediately refer the matter to the Expert for consideration pursuant to Section 9.3.

(b) **Referral to Chief Executive Officer**

- (i) In the event that the Dispute is not resolved in accordance with Section 9.2(a), either Party may refer the Dispute to the chief executive officer or chief operating officer of the Company and the designated representative for system operations of BPDB (or such other official authorised by BPDB) for further consideration.
- (ii) In the event that such individuals are unable to reach agreement within fifteen (15) Days, or such longer period as they may agree, then either Party may refer the matter to an Expert in accordance with Section 9.3 or, if the Dispute is not of a type required to be referred to an Expert under Section 9.3, commence arbitration of the Dispute in accordance with Section 9.4.

9.3 Mediation by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 9.2, then either Party, in accordance with this Section 9.3, may refer the Dispute to an Expert for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution of the Dispute.

- (b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The other Party shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of ten (10) Days to agree upon a person to be the Expert. If the Parties are unable to agree within such ten (10) Day period, the Expert shall be selected by the International Chamber of Commerce following a request of either Party.

- (c) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by the Expert submitting to both the Expert and the other Party written materials setting forth:
 - (i) a description of the Dispute;

 - (ii) a statement of the Party's position; and

 - (iii) copies of records supporting the Party's position.

- (d) Within ten (10) Days of the date that a Party has submitted the materials described in Section 9.3(c), the other Party may submit to the Expert:
 - (i) a description of the Dispute;

 - (ii) a statement of the Party's position; and

 - (iii) copies of any records supporting the Party's position.

- (e) The Expert shall consider any such information submitted by the responding Party within the period provided in Section 9.3(d) and, in the Expert's discretion, may consider any additional information submitted by either Party at a later date.

- (f) The Parties shall not be entitled to apply for discovery of documents, but shall be entitled to have access to the other Party's relevant records and to receive copies of the records submitted by the other Party.

- (g) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert.

- (h) Except as provided in Section 9.3(j) with respect to the payment of costs, the proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply. Except as expressly provided otherwise in this Agreement or unless the Parties agree in writing signed by both Parties at the time the Expert is selected stating that the decision of the Expert will be binding (in which case the determination of the Expert shall be binding), the determination of the Expert shall not be binding.

- (i) When consideration of the Dispute by an Expert is initiated, the Expert shall be requested to provide a recommendation within fifteen (15) Days after the ten (10) Day response period provided in Section 9.3(d) above has run. If the Expert's recommendation is given within such fifteen (15) Day period, or if the Expert's recommendation is given at a later time and neither Party has at such time initiated any other proceeding concerning the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.

- (j) If a Party does not accept the recommendation of the Expert with respect to the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, it may initiate arbitration proceedings in accordance with Section 9.4; provided, that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party) and all out-of-pocket costs of the other Party. Similarly if the Expert has not submitted its recommendation within the time period provided in Section 9.3(i), a Party may initiate arbitration proceedings in accordance with Section 9.4, provided that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party). Notwithstanding the foregoing provisions of this Section 9.3(j), the Parties shall be bound by the decision of the Expert pending resolution of the Dispute by arbitration and shall not be excused from performance or be entitled to additional time for performance by reason of the Expert's decision and any discrepancy in respect thereof or the instigation of such arbitration.

- (k) Except as provided in Section 9.3(j), the costs of engaging an Expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.

9.4 Arbitration

- (a) The Parties agree to use their best efforts to resolve any dispute or difference arising under, out of, in connection with or relating, to this Agreement, including, without limitation, any dispute or difference concerning the existence, validity or enforceability or interpretation of this Agreement or any provision hereof or the obligations or performance of a Party hereunder or under any provision hereof, or as to whether this Agreement or any provisions hereof (including agreements contained in this Article 9.4) are invalid, illegal or unenforceable (each a "Dispute") through consultation between the Parties. If any such Dispute has not been resolved within ninety (90) Days of the delivery by a Party to the other Party of a written notice, identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute, such Dispute shall be resolved exclusively by means of arbitration in accordance with the Bangladesh Arbitration Act 2001 and the place of arbitration shall be at Dhaka, Bangladesh.
- (b) Any arbitral proceeding under this Article 9.4 shall be carried out at Dhaka, Bangladesh.
- (c) The Parties agree that the arbitral tribunal constituted in pursuance of a request for arbitration made under Article 9.4(a) shall consist in a sole arbitrator, who shall be a person who has held judicial office for a period of not less than three (3) years in a court of record in Bangladesh or in a jurisdiction whose laws are substantially derived from the common law of Bangladesh. The Parties further agree that, except in the case of an appointment made by the Chairman of the Administrative Council, any person appointed as sole arbitrator need not be a person designated to serve on the Panel of Arbitrators.
- (d) No arbitrator appointed pursuant to this Article 9.4 shall be any shareholder or group of shareholders owning directly or indirectly five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business of or in, any Party or such person.
- (e) Each Party hereby irrevocably undertakes (i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Article 9.4 as final and binding and (ii) undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay.

- (f) Until such time as any arbitral proceedings begun in pursuant of Article 9.4(a) have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), except for proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by an arbitral tribunal duly constituted hereunder, each Party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of Bangladesh or before any judicial or other authority arising under, out of, in connection with or relating to this Agreement, the arbitration agreements set forth in this Article 9.4, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Article 9.4(a)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Article 9.4(a), including without limitation (i) proceedings brought with a view to recourse or appeal against or revision or the annulment of any arbitral award or procedural order made by the arbitral tribunal or (ii) proceedings in which relief or remedy is sought by way of injunction or other judicial order (interlocutory or final) which would have the effect (directly or indirectly) of restraining or impeding the maintenance or prosecution by either Party of any arbitral proceeding initiated in pursuance of Article 9.4(a).
- (g) The language of the arbitration shall be in English.

9.5 Commercial Acts; Sovereign Immunity; Jurisdiction

- (a) BPDB unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Lease 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 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 (collectively, the "**Protected Assets**") to enforce any award or decision of any arbitrator(s) who were duly appointed under this Lease 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 Bangladesh in connection with any such proceedings; and
- (iii) it consents generally to the jurisdiction of any court of Bangladesh for any action filed by the Company to enforce any award or decision of any arbitrator who was duly appointed under this Lease Agreement to resolve any Dispute between the Parties (including without limitation, the making, enforcement or execution against or in respect of any of its assets (other than the Protected Assets) regardless of its use or intended use) and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. BPDB agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

9.6 Company's Consent to Jurisdiction

- (a) The Company hereby unconditionally and irrevocably consents generally to the jurisdiction with respect to itself and all of its assets and property that it now has or may thereafter acquire of the courts of Bangladesh, for any action or proceeding filed by BPDB to enforce any award or decision of any arbitrator(s) or Expert who were duly appointed under this Lease Agreement to resolve any Dispute between the Parties. The Company waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 9.6 and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Company irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of Bangladesh.

- (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 9.5 or this Section 9.6 or both shall be referred for determination under Section 9.3 and shall fall within the definition of Dispute.

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: 1st 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.

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 Project Site is located besides the Dholeshwari river which is at a distance of 10 km approximately from Dhaka. Approximately 10 (ten) acres land will be provided in "as is" condition for the Facility. Required land development including leveling filling to the final elevation, soil compaction, river bank protection (if applicable) will be performed by the Company.

PART B. DESCRIPTION OF THE ACCESS ROAD

An access road will be required to be constructed by the Company to connect the Demised Premises with the public road. The Access Road will need to be elevated above the highest flood level.

SCHEDULE II: RENT PAYMENT TERMS

1. The rent payable for the Demised Premises (the "**Rent**") shall be Taka four million (Tk. 4,000,000) 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 1st Day of the relevant Contract Year and the other on the 1st Day of the seventh (7th) month of each Contract Year; provided always that the first payment of Rent shall be made by the Company only 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.

SCHEDULE III: ROAD SPECIFICATIONS

ACCESS ROAD

1.0 General

The Access Road connecting the Demised Premises shall be a bitumen-paved road.

2.0 Baseline Criteria

- (i) Overall width of the Access Road shall be 7.0 m.
- (ii) Design speed of the Access Road shall be 70 km/hr.
- (iii) The elevation of the Access Road embankment shall be at a minimum elevation of 1.0 m above the HFL.
- (iv) Road lighting shall be required to be provided.
- (v) Road drainage shall be required to be provided.

3.0 Design

The Access Road shall be built based on the following:

- (i) Surface type = paved
- (ii) Carriage-way width = 5m
- (iii) Shoulder width = 1.0 m
- (iv) Maximum gradient = 10%
- (v) Terrain / Design Speed = Level / 70 Km/h.

3.1 Geometric Design for the Road

- (i) **Elevation of the Road:** The elevation of the Access Road surface shall be 1 meter above the HFL of last 25 years.
- (ii) **Crossfall:** Crossfall should be sufficient to provide adequate surface drainage whilst not being so great as to be hazardous by making steering difficult. Crossfall for the surface will be 3% (including the shoulders of Access Road).
- (iii) **Radius of Curvature:** The radius of curvature for the road shall be derived from the following equation :

$$R = \frac{V^2}{127 \times (c + f)}$$

Where :

- R = Radius of curvature (meters)
- V = Speed of vehicles (km/h), 70Km/h
- c = Cross-fall of road (meters per meter)
- f = Coefficient of side friction force developed between the vehicle tires and road pavement

According to Overseas Road Note 6, c=0.03, f=0.15-0.33, when V=70Km/h, f=0.2.

This gives R=167.75m

Hence R=200m is proposed

3.2 Drainage Design for the Road

Since the pavement of the road will be designed to shed water completely, there is no need to provide drainage for pavement. But drainage for the Access Road shall be installed to protect the Access Road from erosion.

Abbreviations

Abbreviations used in this Schedule

The following abbreviations are used in this schedule

FL:	Finished Level
HFL:	Highest Flood Level
MHWL:	Mean Highest Water Level
MHFL:	Mean Highest Flood Level
MLWL:	Mean Lowest Water Level
MLFL:	Mean Lowest Flood Level
NLWL:	Normal Lowest Water Level
PWD:	Public Works Datum
mm	millimetre
mm²	square millimetre
m	meter
m²	square meter
m³	cubic meter
km	kilometre
°C	degree Centigrade
%	percent
kg	kilogram
Nr	number
L	litre
s	second
hr	hour
N	Newton
KN	kilo Newton
Ha	hectare
t	tonne
dia	Diameter