

IMPLEMENTATION AGREEMENT

BY AND BETWEEN

**THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF BANGLADESH**

AND

[Company Name]

- Relating to-

[50 MW (AC) GRID TIED SOLAR POWER PROJECT]

AT

[A Site Near to Netrokona 132/33 kV Grid Substation]

JUNE, 2019

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Implementation Agreement

THIS IMPLEMENTATION AGREEMENT (this “**Agreement**”) is entered into as of this ____ day of, 2019 in Dhaka, Bangladesh

BY AND BETWEEN

THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH represented by **THE MINISTRY OF POWER, ENERGY AND MINERAL RESOURCES** (hereinafter referred to as the “**GOB**”);

AND

[**Company Name**], with its registered office located at [Address] (hereinafter referred to as the “**Company**”, which expression shall include its permitted successors and permitted assigns) (each of the **GOB** and the **Company** is hereinafter referred to as a “**Party**” and, collectively, as the “**Parties**”).

RECITALS

WHEREAS, the **GOB** as a matter of policy has decided to involve the private sector in the generation of electricity for delivery to the national grid;

WHEREAS, the Project Sponsor (now, the Initial Investor[s]) (as hereinafter defined) was selected as the entity to implement the Project through a competitive bidding process, and has registered the **Company** in the Joint Stock Companies, Bangladesh to implement the Project;

WHEREAS, the **Company** has agreed to design, engineer, manufacture, insure, finance, acquire, construct, complete, permit, test, commission, own, operate a Solar Power Project with a capacity of 50 MW (AC) of electric power generation capacity, located at a Site Near to Netrokona 132/33 kV Grid Substation, Bangladesh to supply electric power to the Bangladesh Power Development Board (hereinafter referred to as the “**BPDB**”);

WHEREAS, the **Company** has entered into a Power Purchase Agreement (as hereinafter defined) with **BPDB**;

WHEREAS, the **GOB** and the **Company** are entering into this Agreement so that the **Company**’s agreement to build the Facility (as hereinafter defined) may be implemented in a manner that reflects the close cooperation between the public and private sectors in the generation of electricity in Bangladesh for sale on the national grid.

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



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SECTION 1: DEFINITIONS

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

“**Abandonment**” means the voluntary cessation of construction or operation, as the case may be, of the Facility, and the withdrawal of all, or substantially all, personnel by the Company from the Site for reasons other than the acts or omissions of the GOB, BPDB or a Force Majeure Event or Political Event or Change in Law under (and as defined in) the Power Purchase Agreement; *provided* that the Company shall not have Abandoned the Facility so long as it is using all reasonable efforts to regain control of the Facility, cure such Force Majeure Event or Political Event, or reinstate such construction or operation;

“**Agent**” bears the meaning ascribed thereto in Section 13.5(b);

“**Agreement**” means this Implementation Agreement between the GOB and the Company, together with all of the schedules, dated as of the date first above written, as may be amended by the Parties from time to time;

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

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

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

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

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

“**Clearance Certificate**” bears the meaning ascribed thereto in Section 7.2(a);

“**Change in Law**” bears the meaning ascribed thereto in Section 11A.1.2;

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

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

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

“**Company**” means [Company Name], a Private limited company incorporated and registered under the laws of Bangladesh, with registered office located at [Company Address] and its successors and permitted assigns;

“**Company Event of Default**” bears the meaning ascribed thereto in Section 13.1;

“**Company Notice of Default**” bears the meaning ascribed thereto in Section 13.2;

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

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

“**Construction Start Date**” bears the meaning ascribed thereto in the Power Purchase Agreement;

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

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

“**Critical Government Authorizations**” means those Government Authorizations identified as “Critical Government Authorizations” in Schedule 1 - Part 1-A;

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

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

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

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

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

“**Equivalent Dependable Capacity Test or Dependable Capacity Test**”- bears the meaning ascribed thereto in Schedule 2.3 of the PPA.

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

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

“**Election Notice**” bears the meaning ascribed thereto in Section 13.5(d) (ii);

“**Electrical Interconnection Facilities**” bears the meaning ascribed thereto in the Power Purchase Agreement;

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

“**Escrow Account**” means the escrow account or accounts, including retention or other similar accounts, to be established by the Company under the Escrow Agreement as required by the Lenders;

“**Escrow Agreement**” means the escrow agreement or agreements to be executed by and between the Company and the Lenders pursuant to the terms of or as part of the Financing Documents;

“**Evaluation Period**” bears the meaning ascribed thereto in Section 13.5(d) (i);

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

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“**Expert**” shall include the person or an entity having appropriate academic background, technical knowhow and professional expertise in respective field acceptable to the Parties;

“**Facility**” means the Solar power station, capable of 50 (AC) of capacity (net, at Delivery Point under 1000 W/m² global solar irradiance) to be owned and constructed by the Company at a Site Near to Netrokona 132/33 kV Grid Substation, whether completed or at any stage of its construction, including without limitation or regard to level of development, the land, engineering and design documents and Construction Contract, all energy producing equipment and its auxiliary equipment and all transmission facilities on the Company’s side of the Delivery Point, water intake and discharge facilities (if any), water treatment facilities, equipment on the Company’s side, the Metering System, the Electrical Interconnection Facilities, together with the residential facilities (if any) made available to certain employees of the Company, the Contractor(s) and any subcontractors;

“**Foreign Exchange Regulations Act**” bears the meaning ascribed thereto in Section 8.1;

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

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

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

“**Force Majeure Events**” bears the meaning ascribed thereto in Section 11.1;

“**Foreign Currency**” means any currency other than the Taka;

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

“**GOB Event of Default**” bears the meaning scribed thereto in Section 13.2;

“**GOB Notice of Default**” bears the meaning scribed thereto in Section 13.1;

“**Government Authorizations**” means all such approvals, consents, authorizations, acknowledgements, licenses or permits required to be issued by any Government Authority to the Company for the establishment of the Company or to the Company or the Contractors for the construction, financing, ownership, operation, and maintenance of the Facility by the Company or the Contractors, including, without limitation, those Government Authorizations listed in Schedule 1;

“**Government Authority**” means:

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

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

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“**Guarantee**” means the guarantee by the GOB of the payment obligations of BPDB under the Power Purchase Agreement;

substantially in the form set out in Schedule 3, as 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;

“**Initial Cure Period**” bears the meaning ascribed thereto in Section 13.5(a);

“**Initial Shareholder[s]**” means the initial shareholders of the Company, who are also the project sponsor.

“**Investor**” means any holder from time to time of Ordinary Share Capital, as well as the holder of any securities that are convertible at the option of such holder into Ordinary Share Capital;

“**Joint Coordinating Committee**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Lapse of Consent**” means any Government Authorizations:

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

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

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

“**Lead Shareholder**” – means means

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

“**Lien**” means any encumbrance, lien, charge or security interest upon or in the Facility;

“**Loss**” means any loss, damage, liability, payment, claim, action, cost, penalty or obligation (excluding any profit or any indirect or consequential loss, damage, liability, payment, obligation, claim, action, cost or penalty), and all expenses (including reasonable legal fees) related thereto;

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

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

“**Net Energy Output**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Non-Restoration Event**” bears the meaning ascribed thereto in Section 11B.1(f);

“**Notice of Intent to Terminate**” bears the meaning ascribed thereto in Section 13.3(a)(i);

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

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“**O&M Contractor**” means any power generation facility operation and maintenance company or companies, and any successor thereto, appointed or to be appointed by the Company and not objected to by the GOB prior to such appointment in accordance with Section 5.2(c);

“**Operating Shareholder**” means,

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

“**Ordinary Share Capital**” means any issued and outstanding shares of the Company with voting or other rights of management and control and any outstanding securities of the Company that are convertible into such shares at the option of the holder;

“**Pass-Through Items**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**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 of the Site or relevant part thereof or have arisen only in the ordinary course of business and consistent with normal utility practices;

“**PGCB**” means Power Grid Company of Bangladesh

“**Plant Factor**” means $\text{Net Energy Output} / (365 * 24 * \text{Dependable Capacity})$

“**Political Event**” bears the meaning ascribed thereto in Section 11A.1.1;

“**Power Purchase Agreement**” means the agreement, to be executed by and between BPDB and the Company for the sale of Net Energy Output by the Company to BPDB from the Facility, and also includes any amendment of it made from time to time by the parties thereto;

“**Preliminary Estimate**” bears the meaning ascribed thereto in Section 11B.1 (a);

“**Prescribed Fee**” means, with respect to a particular Government Authorization, the charge or fee, if any, prescribed by the Laws of Bangladesh;

“**Prescribed Form**” means, with respect to a particular Government Authorization the form, if any, (including all information and details) prescribed by the Laws of Bangladesh for the application for, or renewal of, such Government Authorization;

“**Principal Payments**” bears the meaning ascribed thereto in Section 5A.2;

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

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

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

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

“**Prudent Electrical Practices**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Prudent Utility Practices**” bears the meaning ascribed thereto in the Power Purchase Agreement;

“**Relevant Authority**” means the department, authority, instrumentality or agency from which a Government Authorization is to be obtained and any authority, body or other person having jurisdiction under the Laws of Bangladesh with respect to the Company, the Facility or the financing, construction, operation or maintenance of the Facility (other than BPDB (or a subsidiary of BPDB when responsibilities are assigned to it by BPDB) and when exercising their rights or performing their obligations under the Power Purchase Agreement, respectively);

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“**Report**” bears the meaning ascribed thereto in Section 11B.2(a);

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

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

“**Restoration**” bears the meaning ascribed thereto in Section 11B.1 (a);

“**Restoration Cost Estimate**” bears the meaning ascribed thereto in Section 11B.1 (a)(i);

“**Restoration Schedule**” bears the meaning ascribed thereto in Section 11B.1(a)(ii);

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

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

“**Security Package**” means:

- a) This Agreement;
- b) Power Purchase Agreement;
- c) O&M Agreement, if any;
- d) Construction Contract;
- e) Shareholders’ Agreement, if any;
- f) Financing Documents;
- g) Escrow Agreement;
- h) Insurance policies;
- i) Guarantee;
- j) Consents to and acknowledgments of assignments and direct agreements in favor of Lenders in respect of the documents assigned as security to the Lenders under the Financing Documents;

“**Site**” means the land to be arranged by the Company, at a Site Near to Netrokona 132/33 kV Grid Substation, Bangladesh at its own cost or responsibility in connection with the construction and/or operations of the Facility, on which the Facility or any part thereof is to be built;

“**Sonali Bank**” means Sonali Bank Limited, a public limited banking company incorporated on 3 June 507 pursuant to the Bangladesh Bank (Nationalisation) Order No. 1972 (PO No. 26 of 1972), with its principal office at 35-42, 44 Motijheel Commercial Area, Dhaka, Bangladesh, together with its successors;

“**Succession Notice**” bears the meaning ascribed thereto in Section 9.2(b);

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

“**Tariff or Reference Tariff**” means the price of electricity charged by the Company to BPDB in accordance with Schedule 3 of the Power Purchase Agreement.

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

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

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

“**Termination Notice**” means a written notice issued by the GOB or the Company, as the case may be, terminating this Agreement, under Section 13.3(c);

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“**Threshold Amount**” bears the meaning ascribed thereto in Section 11B.1(g);

“**Transaction Day**” bears the meaning ascribed thereto in Section 8.4(b);

“**Transferee**” bears the meaning ascribed thereto in Section 9.2(c);

“**Year**” shall mean a year reckoned according to the British Calendar.

SECTION 2: INTERPRETATION

2.1 Interpretation

In this Agreement:

- (a) The headings are for convenience only and shall be ignored in construing this Agreement;
- (b) The singular includes the plural and vice versa;
- (c) References to Articles, Sections, and Schedules are, unless stated to the contrary, references to Articles and Sections of, and Schedules to, this Agreement;
- (d) the words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they be given the effect of, limiting the generality of any preceding words;
- (e) unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from any other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (f) In carrying out their obligations and duties under this Agreement, each Party shall have an implied obligation of good faith; and
- (g) the use of the terms “non-discriminatory” and “discriminatory” herein is not intended to prohibit or limit in any way the GOB or any Government Authority from making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the GOB or Government Authority or of a Government Authorization. They are intended, however, to prohibit the use of governmental authority, over, for example, permits and licenses, so as to deprive the Company of the benefits of this Agreement or the Power Purchase Agreement by the application of a higher standard to the Company (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or so as to gain commercial or political advantage.

All capitalized words under this Agreement, unless otherwise defined herein, shall bear the same meaning as prescribed in the Power Purchase Agreement accordingly

SECTION 3: TERM

3.1 Term of Agreement

This Agreement shall commence and be effective on the date first above written and shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect until the last Day of the term of the Power Purchase Agreement (as such agreement may be extended) (the “Term”).

3.2 Expiration or Termination without Prejudice

The expiration or termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such expiration or termination, but otherwise the Parties shall have no further obligations hereunder following such expiration or termination except for obligations which survive such expiration or termination pursuant to this Agreement, including, without limitation, the obligation to pay liquidated damages.

SECTION 4: GOVERNMENT AUTHORIZATION FOR PROJECT

4.1 Applications by the Company for Government Authorizations

- (a) The Company shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Government Authorizations in the Prescribed Form and with the Prescribed Fee to the appropriate Relevant Authorities and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and all such information and all designs, structures, undertakings, activities, construction and other matters proposed, described or identified therein shall satisfy the substantive and procedural requirements of the applicable Laws of Bangladesh applied in a “non-discriminatory” manner.
- (b) Within 60 (sixty) Days of the execution of this Agreement, the Company shall make application for all Government Authorizations specified in Schedule 1 and for which application is capable of being made under the Laws of Bangladesh by the end of such period, having due regard for the information available to the Company (which the Company shall use all reasonable efforts to obtain at the earliest possible date); *provided*, that for any such Government Authorizations for which application cannot be made within such 60 (sixty) Day period, application for each such Government Authorization shall be made within 7 (seven) Days of the first date on which application for such Government Authorization is capable of being made under the Laws of Bangladesh, having due regard for the information available to the Company. In respect of the Government Authorizations in Schedule 1, in the event that any Relevant Authority is not satisfied with the form or substance of the application or with the information supplied in the application for a Government Authorization or if the required fees or charges are not paid in accordance with the applicable requirements under the Laws of Bangladesh, including without limitation non-compliance with or non-satisfaction of any of the substantive or procedural requirements of the Laws of Bangladesh, such Relevant Authority may deliver notice thereof to the Company within 7 (seven) Business Days of the receipt by such Relevant Authority of such application (or with respect to any required fees or charges, within 7 (seven) Business Days following the date by which such fees and charges are required to be paid). If the Relevant Authority does not notify the Company of the non-acceptance of such application in writing within either such 7 (seven) Business Day period, it shall be deemed at the expiry of such 7 (seven) Business Day periods that the application was complete in all respects.

4.2 Reporting Requirement

- (a) The Company shall make or cause to be made, at least Monthly prior to the Commercial Operations Date, and at least quarterly thereafter, reports listing its schedule for submitting Government Authorization application forms or renewal application forms, the status of any Government Authorization applications then outstanding, notifications of the granting or denial of any Government Authorization or renewal of Government Authorization, and notifications of any violations of any Government Authorization. Each report shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any material Government Authorization or Government Authorization application that may affect the Company’s performance under this Agreement, the Power Purchase Agreement.
- (b) In the event of any Lapse of Consent, the Company shall submit a report pursuant to this Section 4.2 within 3 (three) Days after becoming aware thereof.

4.3 Government Support to Obtain Government Authorizations

- (a) Subject to the Company’s timely submission of the reports required by Section 4.2, upon request of the Company, the GOB shall support and use all reasonable efforts to expedite the consideration of the Company’s applications for the Government Authorizations or reissuance thereof filed pursuant to and in accordance with Section 4.1, and the timely issuance thereof or reissuance of a Government Authorization subject to a Lapse of Consent by the Relevant

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Authorities. The GOB shall use all reasonable efforts under the circumstances to ensure that the Government Authorizations when issued by Relevant Authorities have an effective period of the Term or, if issuance of a Government Authorization for the Term is in contravention of the Laws of Bangladesh, for the maximum permissible period under the Laws of Bangladesh and that period is subsequently extended from time to time for the duration of the Term; *provided*, that the GOB shall have no obligations hereunder where the issuance of a Government Authorization for an effective period of less than the maximum permissible period is supported by the relevant facts and circumstances involved, including but not limited to the location of the Facility, its size and age, the technology used, the purposes and objectives that the Government Authorization is intended to achieve, and the practices of the Relevant Authority in connection with the issuance of similar consents to third parties.

- (b) Any request for support under this Section 4.3 shall be accompanied with copies of the application for the relevant Government Authorization, any notice that the issuance or reissuance of the Government Authorization was denied or deferred, and a statement of the Company's efforts in obtaining the issuance or reissuance of the Government Authorization to date.
- (c) If the Company and the Contractors comply with all applicable Laws of Bangladesh, the GOB will ensure that the Relevant Authority expeditiously grants work permits, employment passes, visas, and other permits, as are necessary for individuals involved in the Project, following application therefore by the Company and the Contractors.

Notwithstanding the foregoing, however, the GOB or the Relevant Authority may, in any individual case, decline to grant an application, or expel a person previously admitted, to protect the national security interests and public health and safety of Bangladesh, as determined by the GOB or the Relevant Authority.

4.4 Conditions to Government Authorizations

- (a) The GOB or any Relevant Authority may attach such "non-discriminatory" terms and conditions to the issuance or renewal of any of the Government Authorizations as are under the Laws of Bangladesh, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the GOB, a Force Majeure Event under Section 11.1 or Political Event under Section 11A.1.1 or Change in Law under Section 11A.1.2 or a GOB Event of Default under Section 13.2.
- (b) The Company and the Contractors shall abide by all such "non-discriminatory" terms and conditions. If the Company or any of the Contractors fails to abide by any terms or conditions of any Government Authorization, then the exercise by the GOB or any Relevant Authority of a power pursuant to the Laws of Bangladesh in respect of such failure shall not of itself constitute a breach of this Agreement by the GOB, a Force Majeure Event under Section 11 or Political Event under Section 11A.1.1 or Change in Law under Section 11A.1.2, or a GOB Event of Default under Section 13.2.

4.5 Remedies for Government Nonperformance

- (a) If the Company and its Contractors have complied and are in compliance with Section 4.1 and Section 4.2 and any Government Authorization specified in Schedule 1, Part 1-B is not received within 60 (sixty) Days following the later of the date of this Agreement or the filing of the application therefore or if any Critical Government Authorization is not received within 30 (thirty) Days, or, in the case of Government Authorizations 1 (d) and (e) in Schedule 1, Part 1-A and Government Authorization 6 in Schedule 1, Part 2, within 30 (thirty) Business Days following the later of the date of this Agreement or the filing of the application therefore, or, subsequent to its issuance but prior to Financial Closing, if a Government Authorization specified in Schedule 1 - Part 1-B or a Critical Government Authorization ceases to remain in full force and effect or is made subject to any terms or conditions that materially and adversely affect the Company's ability to perform its obligations under any document within the Security Package (despite the Company's compliance with the applicable procedural and substantive requirements of the Government Authorization or the application

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therefore), then the Required Financial Closing Date and the Required Commercial Operations Date shall be extended on a Day-for-Day basis for each Day that any such Government Authorization or Government Authorizations cease to remain in full force or effect or continue to be subject to any such material adverse terms or conditions (despite compliance with the applicable procedural and substantive requirements of such Government Authorization or Government Authorizations) following the expiration of such 30 (thirty) Day period, 30 (thirty) Business Day period or 60 (sixty) Day period, as the case may be; *provided*, that during any period where more than 1 (one) Government Authorization remains outstanding (following the end of the 30 (thirty) Day period, 30 (thirty) Business Day period or 60 (sixty) Day period, as the case may be), the Company shall be entitled to only 1 (one) Day of extension for each 1 (one) Day in such period. For the purposes of this Section 4.5(a) the references to “Government Authorization or Government Authorizations remains outstanding” shall be deemed to include any Government Authorization or Government Authorizations not issued or renewed and, following issuance, any Government Authorization or Government Authorizations ceasing to remain in full force and effect or made subject to any terms or conditions that materially and adversely affect the Company’s ability to perform its obligations under any document within the Security Package (despite the Company’s compliance with the applicable procedural and substantive requirements of the Government Authorization or the application therefore).

- (b) If such outstanding Government Authorization or Government Authorizations have not been issued or renewed by the end of 6 (six) Months beginning on the last Day of the aforesaid 30 (thirty) Day, 30 (thirty) Business Day or 60 (sixty) Day period, as the case may be, or if, subsequent to its issuance, any such Government Authorization ceases to remain in full force and effect or is made subject to any terms or conditions that materially and adversely affect the Company’s ability to perform its obligations under any document within the Security Package (despite the Company’s compliance with the applicable procedural and substantive requirements of the Government Authorization or the application therefore), then the Company shall be permitted to terminate this Agreement and the Power Purchase Agreement with no further obligations to the GOB, BPDB respectively. Upon such termination, notwithstanding any provision to the contrary in this Agreement, the GOB shall procure the following (and such obligations shall survive the termination of this Agreement):
- (i) the return of the Bid Security (undrawn) to the Company by BPDB (and in the event that there has been any drawing(s) thereon, the full amount(s) drawn shall be contemporaneously returned to the Company in the same currency); and
 - (ii) the unconditional agreement from BPDB for termination of the Power Purchase Agreement with effect from the date of termination of this Agreement, without any cost to the Company and upon terms that would ensure that the Company will, upon such termination, have no further obligation under the Power Purchase Agreement towards BPDB and this Agreement towards PGCB or the GOB.

4.6 Procurement of Government Authorization

The Company shall apply and obtain:

- (i) all Government Authorization as required by the Lenders for the achievement of Financial Closing on or prior to the Financial Closing Date; and
- (ii) all Government Authorizations including, but not limited to, those listed in Schedule 1 of this Agreement other than those provided in paragraph (a) above on or prior to the Commercial Operations Date.

SECTION 5: SITE ACQUISITION, CONSTRUCTION AND OPERATION

5.1 Acquisition of Site

The Company shall obtain adequate water supplies for the Facility, make arrangements for delivery and receipt at port facilities in Bangladesh of equipment and materials necessary to construct the Facility, and make arrangements for transport to the Site of all such equipment and materials from the port facilities. The Company shall complete these activities in compliance with the terms of this Agreement and the Power Purchase Agreement.

5.2 Construction and Operation of Facility

(a) Appointment of Contractors

The Company shall design, finance, construct, install, test, Commission, own, operate and maintain the Facility in accordance with the provisions of this Agreement, the Power Purchase Agreement and the Laws of Bangladesh and, to the extent not inconsistent therewith, the Environmental Guidelines; *provided*, that the Company may contract with the Construction Contractor to design, construct, install, and Commission the Facility and the O&M Contractor to operate and maintain the Facility; *provided*, further, that the appointment of the Construction Contractor and the O&M Contractor by the Company shall not relieve the Company of any of its obligations or potential liability regarding the design, financing, insuring, acquisition, construction, completion, Commissioning, operation, or maintenance of the Facility.

(b) Construction Contractor

The Company shall deliver to the GOB a certificate of a duly authorized officer of the Company setting out the name and nationality of the Construction Contractor (and any replacement or substitute thereto) and any major subcontractor (and any replacement or substitute thereto) not later than 30 (thirty) Business Days prior to the execution of the Construction Contract. If no objection is raised by the GOB by the end of such 30 (thirty) Business Day period, such certificate shall be deemed to be not objected to by the GOB. Such certificate shall also identify in detail (with such supporting documents as may be reasonably requested by the GOB) the total cost of spare parts (cost plus transportation cost) then expected to be imported by the Company or the Construction Contractor under the Construction Contract and the total cost (cost plus transportation cost) of all of the equipment then expected to be supplied under the Construction Contract for incorporation into the Facility. The Company shall provide the actual cost (cost plus transportation cost) of all spare parts and the actual cost (cost plus transportation cost) of all equipment imported for incorporation into the Facility as of the Commercial Operations Date in a certificate delivered to the GOB within 30 (thirty) Days following the occurrence of the Commercial Operations Date (with such supporting documents as may be reasonably requested by the GOB).

(c) O&M Contractor

The Company shall deliver to the GOB a certificate of a duly authorized officer of the Company setting out the name and nationality of any O&M Contractor (and any replacement or substitute thereto) and any major subcontractor (and any replacement or substitute thereto) not later than 15 (fifteen) Business Days prior to the execution of any O&M Agreement, which O&M Agreement may be entered into by the Company if the GOB does not object to the O&M Contractor or any major subcontractor (or any replacement or substitute thereto). If no objection is raised by the GOB by the end of such 15 (fifteen) Business Day period, such certificate shall be deemed to have been not objected to by the GOB.

(d) Operation of the Facility by the Company

Notwithstanding anything contained in this Section 5 to the contrary, the Company shall be entitled, upon notice to the GOB and BPDB, to engage its own personnel and operate the Facility or, in the case where the O&M Agreement then in effect has been terminated by the Company in accordance with its terms, engage some or all of the personnel of the former O&M Contractor and operate the Facility, in either case with prior written notice to the GOB.

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5.3 Facility Security

The Company shall provide security personnel for the protection and security of the Facility. From time to time, the Company may request additional security forces from the GOB to meet unusual security requirements. All such additional security forces shall remain under the exclusive control and direction of the GOB. All actual expenses incurred by the GOB in providing such security forces requested by the Company shall, within 5 (five) Business Days of delivery of demand by the GOB to the Company, be reimbursed to the GOB by the Company as and when incurred by the GOB. No such request by the Company shall preclude a claim under any provisions of Section 11 by the Company, nor shall the GOB's provision of such security forces be deemed of itself an admission or agreement by the GOB that any of the events described in Section 11 has occurred.

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SECTION 5A: INTERCONNECTION FACILITIES

5A.1 Electrical Interconnection

The evacuation of electric power to be generated by the Facility will be through Netrokona 132/33 KV Grid Substation. The proposed power plant will be connected to the 132 kV bus of Netrokona 132/33 KV Grid Substation by a 132 kV single circuit overhead or underground line (Interconnection line).

This said interconnection line from the Facility to Netrokona 132/33 KV Grid Substation will be implemented by the company at its own cost including arrangement of necessary right of way. The company will also construct necessary 132kV bay (GIS or AIS) at Netrokona 132/33 KV Grid Substation including obtaining of necessary land with its own responsibility.

In addition to that the sponsor will install, operate and maintain separate 132 kV interfacing breaker for its machine at the high voltage side of step-up Transformer and also construct the connecting lines for connection. The required 132 kV bay extension including circuit breaker, CT, PT, LA, panel etc. of Netrokona 132/33 KV Grid Substation will be implemented by the Company at its own cost and responsibility. The EIF will be completed in consultation and approval of PGCB.

The Company shall be responsible to maintain, operate and repair (including any replacement of the equipment) of the Electric Interconnection Facility ascribed in this Section at its own cost and responsibility during the Term of the this Agreement.

The Company shall be capable to generate matching MVARh corresponding to maintain the power factor 0.85 lagging at delivery point, so that there is no adverse effect on the Grid System. To satisfy the aforesaid requirement, the company shall install required reactive support equipments at the facility in consultation with PGCB.

5A.2 System Study:

Before connection of this solar power plant to the national grid the project sponsor should perform a Detailed Impact Analysis including Voltage control, Reactive power compensation, Harmonic compensation, Fault ride-through control, Active Power Curtailment by a technical expert organization.

An expert team from BPDB, PGCB and BUET shall verify whether the installation matches with the specification of mitigation measures recommended by the technical expert.

Consequently, after the consultant proposed mitigation measures found from the detail impact analysis, the Solar Power Plant will be connected with the National Grid.

5A.3 Requirements for Protection System:

The Company shall provide a complete and comprehensive protection system for the generators/generator transformers/service transformers, transmission lines and the station electrical distribution systems at the power plant end. The Company shall undertake the installation of panels for control and protection system for transmission line at the PGCB end also with all necessary annunciations, Protective relays, auxiliary and tripping relays. Testing and commissioning of all equipments, control and Protection system at Power Plant end as well as PGCB end shall be carried out by the Power Plant Company. For line protection, following requirements need to be fulfilled:

1. As per standard practice for 132kV level, the line protection should be established by Main protection and Back-up protection schemes, implemented together.
2. Main Protection should be Distance Protection or Line Differential Protection based on ***IEEE Std C37.113-1999***.
3. Distance protection relay should have at least three forward zones and one reverse zone with Switch On To Fault (SOTF) protection, VT failure, Power Swing Block (PSB) and Load Encroachment functions. The protective relays should be equipped with event recorder and

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fault recorder with capability of time synchronization. Differential relays should be connected with dedicated communication channel.

4. Fault level study needs to be performed and necessary steps has to be taken by the company in case of exceeding the Short Time Current rating of the existing switchyard equipment of the PGCB grid substation
5. All relay settings have to be calculated by the company and approved by BPDB/PGCB. Calculations of CT selection and earthing have to be approved by PGCB
6. Integration with existing SAS (if any), BBP (if any), DFDR (if any) with necessary supply, installation, testing and commissioning has to be performed by the company.
7. In power plant end, there should be separate bus bar arrangements and necessary switchgears have to be installed by the company. In power plant end, Line directly connected from the grid substation to the Generator step-up transformer would not be allowed. Synchronization has to be done in Generator circuit breaker.

All DC signals including tripping, alarm, status etc. have to be connected between grid substation and power plant with control wire instead of optical fiber for a very short line. DC voltage drop between the substations has to be calculated by the company and necessary measures need to be taken to ensure healthy DC circuit. The inter-tripping of line differential relay should be provided through optical fiber cable. DC and AC supply for the extended power plant feeders have to be taken from separate spare MCBs and subjected for the approval of respective substation.

5A.4 SCADA system requirement for integration of new station to NLDC:

Field Equipment Requirement:

1. Field equipment (RTU or SAS/DCS Gateway) for the respective station required with the following features:
 - a. IEC 60870-5-104 compatible
 - b. Have to report both in Master Station, NLDC (02 Nos. of Communication Server, connected with VPN) and Back-up Station, Bidyut Bhaban (01 No of Communication Server, connected with routed network) simultaneously.
 - c. Separate manageable Switch to connect with Communication equipment is required.
 - d. Firewall device required to isolate the equipment for NLDC system security.
2. Field equipment (RTU or SAS/DCS Gateway Extension/Modification) for the nearest SCADA connected Substation from which respective station is radially connected is required.
3. Field equipment should be configured according to NLDC System required signal and configuration.

Master Station Requirement:

1. Modification, Upgradation and On-Lining of existing NLDC database along with related software to integrate the new station with NLDC.
2. Modification, Upgradation and On-Lining of existing Master Station Communication System required.

5A.5 Communication System

The Company shall provide the Communication/SCADA-EMS facilities to proposed solar power plant; the power plant authority shall ensure the followings-
Optical Fiber connectivity from Netrokona substation control room to Power Plant Control room/SAS room/DCS room.

- a) Fiber optic Type- Single mode (9/125 μ m)
- b) Connector type- FC/PC in ODF, LC/PC in Equipment.
- c) Nos of optical Core (ODF to ODF) -24.

Optical Multiplexer SDH & PDH shall be installed in power plant and those to be connected with Netrokona substation's existing SDH & PDH for:

- a) Voice communication (2-wire & IP telephony both).

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- b) RTU/SAS/DCS Communication (IEC-104 Protocol)
- c) Tele protection.
- d) LAN Services (Video Conferencing, CC Camera Central Monitoring, DFDR central monitoring etc.)

Power Plant's SDH & PDH need to be integrated with existing Telecom NMS (FOXMAN/U2000).

Power Plant RTUs/SAS/DCS and extension BAY of Netrokona substation need to be integrated to NLDC Master Station &. Back-up Station as per approved signal list and configuration parameters from PGCB SCADA Division.

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SECTION 6: LIABILITY; INDEMNIFICATION AND INSURANCE

6.1 Limitation of Liability

Except as required by Section 6.2, no Party shall be liable to any other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. No Party shall have any liability to any other Party except pursuant to, or for breach of, this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

6.2 Indemnification

- (a) The GOB shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against the Company or its Contractors or their respective officers, directors and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the Company or its Contractors or its respective officers, directors and employees in connection with the Facility resulting from any negligent or intentional act or omission of the GOB (or its officers, directors, members (of the board) and employees), without recourse to the Company or its Contractors. The GOB 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 6.2(a) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the Company or its Contractors are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.
- (b) The Company shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against the GOB or their 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 the GOB, their 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 the GOB. The Company will hold the GOB 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 GOB or the failure of the GOB to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 6.2(c) shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, the GOB 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 Party shall be liable under this indemnification in proportion to its relative degree of fault.
- (d) The provisions of this Section 6.2 shall survive for a period up to the termination or expiration of the term of this Agreement.

6.3 Assertion of Claims

No Party shall be entitled to assert any claim for indemnification until such time as all claims of such Party for indemnification under this Agreement exceed an amount equal to the sum of one fifty thousand Dollars (US\$150,000), in the aggregate, at which time all claims of such Party for indemnification under this Agreement may be asserted; *provided, however*, that when such claims have been asserted the same rule shall apply in respect of future claims. Notwithstanding the preceding sentence, no Party may assert a claim for indemnification regardless of amount upon the expiry or

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earlier termination of this Agreement or if such claim would otherwise be barred by the applicable Laws of Bangladesh.

6.4 Defense of Claims

- (a) Each Party shall promptly notify the other Party of any loss of, or damage to property, death or injury to person (or any claim or proceeding in respect thereof) in respect of which it is or may be entitled to indemnification under Section 6.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, damage, death or injury (or any claim or proceeding in respect thereof).
- (b) The indemnified Party shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder; *provided, however*, that if the indemnifying Party acknowledges in writing its obligations to indemnify the indemnified Party in respect of loss to the full extent provided by Section 6.2, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying party of such defense.
- (c) No 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 authorized 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 defense of such action;
 - (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defense 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 defenses available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.
- (e) If paragraph (ii), (iii) or (iv) of subparagraph (d) above shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense 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.

6.5 Maintenance of Insurance Policies

The Company shall obtain and maintain insurance from Sadharon Bima Corporation in accordance with Section 14 of the Power Purchase Agreement. If and to the extent that the GOB can be named as

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an additional insured on any fire, perils, casualty, and liability insurance policies covering the Facility, the GOB shall be so named by the Company; *provided*, that the GOB shall agree to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein.

6.6 Exemption from National Insurance

- a) The Company shall obtain insurance from Sadharan Bima Corporation.
- b) If BPDB needs to purchase any insurance by itself under this Power Purchase Agreement it shall be obtained from Sadharan Bima Corporation according to the Insurance Corporation Act, 1973 as amended by the Ordinance No. L1 of 1984, (Substitution of section 23, Act VI of 1973).
- c) The company will not be allowed to procure insurance & reinsurance from insurance companies outside Bangladesh unless a certificate has been obtained from Insurance Development & Regulatory Authority (IDRA) to the effect that the risk cover cannot be insured in Sadharan Bima Corporation.

SECTION 7: IMPORT CONTROLS

7.1 Right to Import

- (a) The GOB encourages the Company and its Contractors to incorporate or consume as much locally produced material, equipment, and supplies as possible in the construction, Commissioning, operation and maintenance of the Facility. Nonetheless, the Company and its Contractors shall be entitled to import without restriction all items required for the design, construction, completion, operation and maintenance of the Facility, including, without exclusion and spare parts and replacements to the spare parts inventory, in each case in accordance with the terms set forth in Section 12.1.
- (b) Machinery, tools, implements and equipment that are necessary for the construction, erection, maintenance and testing of the Facility will be allowed temporary importation facilities, without restriction, on a re-exportable basis under the Customs Act, 1969 (Act IV of 1969), as in existence on **[Bid Date]**.
- (c) All items not consumed or incorporated into the Facility may be freely re-exported by the Company without incurring liability for Customs Duties and VAT in Bangladesh.
- (d) The GOB may, as provided by the Laws of Bangladesh, require the Company to re-export any items or equipment used in the construction of the Facility that are not reasonably required for the Company to operate and maintain the Facility, unless the Company agrees promptly to pay the normal Customs Duties and VAT for those items and equipment. The Company shall be afforded a reasonable time, but not less than 3 (three) Months following the Commercial Operations Date, to re-export any such items or equipment required by the GOB to be re-exported.

7.2 Customs Clearance

- (a) To expedite clearance by the Customs Authority of all plant and machinery imported into Bangladesh by the Company for installation into the Facility pursuant to this Section 7, the GOB (through BPDB) shall take all advance steps and issue such advance instructions and issue such certificates and documentation as may be necessary or reasonable under the circumstances to ensure such clearance. In particular, the GOB shall, not later than the eighth (8th) Business Day following the receipt from the Company of all information reasonably required by the GOB regarding such plant and machinery, issue to the Customs Authority, with a copy to the Company, a certificate as provided in S.R.O. No. 73-Law/97/1700/Customs, dated 19 March 1997 (the “**Clearance Certificate**”), confirming that all such plant and machinery are items which the Company may import without restriction and without payment of any Taxes, including, without limitation, Customs Duties and VAT.
- (b) If, notwithstanding compliance by the GOB with Section 7.2(a), from and after the later of the date the Clearance Certificate is delivered to the appropriate Customs Authority and the date that any plant and machinery are available to the Customs Authority for inspection, the Company experiences more than 20 (twenty) Business Days delay in clearance by the Customs Authority of any such plant and machinery imported into Bangladesh, the GOB (through BPDB) pursuant to this Section 7.2 shall take such steps or action or issue such documentation reasonable and appropriate under the circumstances to expedite such clearance.
- (c) If, following notice to BPDB in writing of a delay in clearance from customs of any equipment or machinery of a greater length than provided in Section 7.2(b), the Company experiences more than 7 (seven) Business Days of additional delay in clearance by the Customs Authority of any such plant and machinery imported by the Company into Bangladesh pursuant to this Section 7.2 or BPDB fails to issue to the Customs Authority the Clearance Certificate pursuant to Section 7.2(a) within the time period required therein, the Company shall be entitled to a Day-for-Day extension, commencing from the end of such 7 (seven) Business Day period or the Required Commercial Operations Date as applicable.

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7.3 Export and Re-import

The Company shall be entitled:

- (a) to export without restriction all items of plant and machinery imported by it under Section 7.1 for permanent installation in the Facility for the purpose of repair or refurbishment outside Bangladesh and to re-import the same without restriction and without the payment of any Taxes (including, without limitation Customs Duties and VAT); and
- (b) upon termination of this Agreement or the Power Purchase Agreement and except as otherwise expressly provided in this Agreement and the Power Purchase Agreement, to remove the plant and machinery or any portion thereof from the Site and export the same outside Bangladesh;

and the GOB shall, at the request of the Company, take reasonable measures to expedite the issuance of any Government Authorization required for the export and, where applicable, re-import of such plant and machinery.

SECTION 8: BANK ACCOUNTS; FOREIGN EXCHANGE

8.1 Use of Bangladesh Bank Accounts; Exceptions

All of the Company's transactions relating to the Project that require Foreign Currency, including debt servicing and repatriation of earnings, will be initiated through bank accounts in Bangladesh in accordance with the Foreign Exchange Regulations Act, 1947 (Act VII of 1947), as modified upto 9th September, 2015 (the "**Foreign Exchange Regulations Act**"); *provided*, that Foreign Currency provided by foreign Lenders, liquidated damages paid by foreign Contractors or vendors, proceeds of insurance and reinsurance by foreign insurers, and any other foreign sources that are used to pay foreign Contractors, vendors, insurers, reinsurers or Lenders may be paid directly to such persons through bank accounts of the Company located outside Bangladesh; *provided further*, that the Company shall make available to the GOB the statements and accounts reflecting all such transactions, transfers and payments.

8.2 Government Authorization to Taka and Dollar Accounts

The GOB shall ensure that the Bangladesh Bank gives the Company and its Contractors consent for the opening and operation of Taka and Dollar bank accounts, including bank accounts necessary to implement the Project (including any reserve or Escrow Accounts reasonably required by the foreign Lenders to be maintained under the Financing Documents) both inside Bangladesh (in the case of Taka and Dollar bank accounts), and, to the extent necessary, outside Bangladesh (in the case of Dollar bank accounts), and the accumulation of earnings and other receipts and the transfer of funds into and out of such accounts. The GOB shall ensure that the Bangladesh Bank gives the Company permission to open and maintain Dollar bank accounts necessary to implement the Project (including any reserve or Escrow Accounts required by the foreign Lenders to be maintained under the Financing Documents) outside Bangladesh, and transfer any funds from (to) its accounts in Bangladesh to (from) its accounts maintained outside Bangladesh to implement and carry out the Project in accordance with the Foreign Exchange Regulations Act prevailing on [Bid Date] or other applicable Laws of Bangladesh as in effect from time to time, with such exemptions as may be necessary to give effect to the provisions of this Section 8; *provided*, that nothing in this Agreement shall prevent the Company from opening, operating and retaining moneys in additional Dollar bank accounts outside Bangladesh from time to time if and to the extent that it is or becomes permitted under the Laws of Bangladesh.

8.3 Transfer and Repatriation of Necessary Funds

- (a) The exchange of Taka into Dollars and the transfer outside Bangladesh of all Dollars received in connection with the Project (including from any party to any of the documents in the Security Package) shall, except as provided in Sections 8.1 and 8.2, be governed by the Foreign Exchange Regulations Act.
- (b) The GOB shall permit the free and immediate transfer of all funds and other financial settlements or receipts in Dollars (or converted from Taka into Dollars) necessary to implement and carry out the Project and perform its obligations under the documents and agreements included in the Security Package, in accordance with the Foreign Exchange Regulations Act and Guidelines for Foreign Exchange Transactions (GFET), 2018 with such exemptions as may be necessary to give effect to the provisions of this Section 8, and shall ensure full, timely, and unencumbered repatriation rights with respect to all funds and other financial settlements or receipts in Dollars (or converted from Taka into Dollars, whether converted through the interbank foreign exchange market or by Sonali Bank, as provided in Section 8.4(b)).

8.4 Availability of Dollars

- (a) The Company shall be permitted to purchase Dollars through normal commercial banking channels (and to hold in an account of the Company permitted under Section 8.2) in the amount necessary for or in respect of:
 - (i) meeting the Company's Foreign Currency payment obligations under any agreement that constitutes a part of the Security Package (other than the Financing Documents, for which clause (viii) shall apply);

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- (ii) the repatriation by the Company of any capital contributions or dividends to Foreign Investors and repatriation upon conversion of Dollar proceeds from sales of Ordinary Share Capital purchased with Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation;
 - (iii) the Foreign Currency expenses of the Project (including remuneration of the Construction Contractor, O&M Contractor and Lenders and, where applicable, fees, salaries and other monetary emoluments of its employees, agents, and direct foreign collaborators, experts and suppliers and the purchase of spare parts), the payment of premiums and fees to offshore insurers and reinsurers;
 - (iv) all payments into, or out of, any reserve or Escrow Accounts required by the Lenders under the Financing Documents or by BPDB under the Power Purchase Agreement that require Foreign Currency, in accordance with Section 8.3(a);
 - (v) any compensation payments to be made by the GOB in the event of a termination of this Agreement;
 - (vi) in the event of a Restoration or modification of the Facility pursuant to Section 11, any financing provided by the GOB in Taka and payable to foreign contractors of any kind;
 - (vii) any payments of liquidated damages by BPDB to the Company in connection with the Power Purchase Agreement;
 - (viii) meeting the Company's payment obligations in any Foreign Currency under the Financing Documents, including, without limitation, repayments of principal (whether scheduled or accelerated by Lenders), interest (including default interest), commissions, fees (including without limitation commitment and guarantee fees), expenses, costs, Lender make-whole payments, and other pre-payment costs, and the realization of remedies under the Guarantee.
- (b) Upon receipt by the GOB of an application in the Prescribed Form from the Company or its nominated commercial bank, the GOB shall, not later than the 6th (sixth) Business Day (the "**Transaction Day**") following the date of such application, cause Sonali Bank to provide to the Company's nominated commercial bank, such Dollars in the requested amount as are necessary to meet the expenditures or satisfy the transactions referred to in Section 8.4(a), at Sonali Bank's stated rate for purchases of Dollars (of like-amount to the requested amount) by "Authorized Dealers" (as such term is used in Exchange Rate Circulars issued by Sonali Bank) in Bangladesh on the Transaction Day.

8.5 Bangladesh Bank Government Authorizations

The GOB shall ensure that the Bangladesh Bank gives any general or specific permission or Government Authorization required under the Foreign Exchange Regulations Act and Guidelines for Foreign Exchange Transactions (GFET), 2018 to authorize any of the accounts, transfers, conversions or transactions expressly provided in this Section 8.

SECTION 9: ASSIGNMENT AND SECURITY

9.1 Assignment

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

9.2 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 favor of, the Lenders in its rights and interests under or pursuant to: (i) this Agreement, (ii) any agreement or document included in the Security Package, (iii) the Facility, (iv) the movable, immovable and intellectual property of the Company, and (v) the revenues or any of the rights or assets of the Company. The Company shall not create any security over its rights and interests under this Agreement without the prior written consent of the GOB except as already provided above.
- (b) The Lenders shall have no obligation to the GOB under this Agreement until such time as the Lenders or their designees succeed to the Company's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give written notice of such succession (a "**Succession Notice**") to the GOB and assume liability for all of the Company's obligations under this Agreement, including without limitation payment of any amounts due and owing to the GOB for payment defaults by the Company under this Agreement (other than, so long as the liability insurance required by Section 6.5 has been and is in effect), damages or penalties incurred by the Company under Section 6.2(b), arising during the period prior to the Lenders' or such designees' succession to the Company's interest in and under this Agreement, provided that any liability of the Lenders or their designees shall be strictly limited to the Lenders' interest in the Facility.

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

Upon notification by the Lenders or the Agent to the GOB of the occurrence and continuance of an event of default under the Financing Documents and the succession of the Lenders to the Company's interests in and under this Agreement, the Lenders shall have the right, among others, to: (i) take possession of the Facility and, prior to the Commercial Operations Date, complete construction of the Facility and operate the same and, after the Commercial Operations Date, operate the same; and (ii) cure any continuing Company Event of Default under this Agreement as provided in Section 13.5. Notwithstanding the foregoing, upon the delivery of a Succession Notice, the Lenders shall have no obligation to cure any Company Event of Default occurring before the delivery of such Succession Notice that is not capable of being cured and no right will exist for the GOB to terminate this Agreement based upon such Company Events of Default occurring prior to the delivery of the Lenders' Succession Notice. Without the requirement of obtaining any further consent from the GOB, upon the exercise by the Lenders or their designees of any of the remedies set forth in the Financing Documents, the Lenders may assign their rights and interests and the rights of the Company under this Agreement to a Transferee acceptable to the GOB so long as such Transferee shall assume all of the obligations of the Company under this Agreement.

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

- (c) 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 the

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GOB under this Agreement, and (iv) shall have expressly assumed in writing for the benefit of the GOB the ongoing obligations of the Company under this Agreement (including the obligation of the Company to maintain and operate the Facility in accordance with the requirements of this Agreement).

- (d) At the request of the Company, delivered to the GOB not less than 30 (thirty) Days in advance, the GOB shall execute and deliver at the Financial Closing, all such acknowledgements to the Lenders or their designees of any security created in accordance with this Section 9 as are reasonably requested by the Company and the Lenders to give effect to the foregoing.

9.3 Delivery of Financing Documents; Evaluation of Principal Repayment Schedule

- (a) The Company shall deliver to the GOB a schedule or a copy of a reference term sheet related to the Financing Documents setting forth a principal repayment schedule reasonably consistent with the Tariff, together with the maximum principal amounts and interest rate or rates, and any schedules or formulae that will be included in the Financing Documents for the computation of fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents not later than 45 (forty-five) Days prior to Financial Closing. The GOB may evaluate the principal repayment schedule and other principal financial terms to ensure that the other principal financial terms are consistent with the principal repayment schedule, and that the principal amount, principal repayment schedule and the interest rate are reasonably consistent with the Tariff and to evaluate the impact of the terms of the Financing Documents on the GOB's obligations upon any termination of this Agreement. If the GOB has any objections to the terms specified in such term sheet or schedule, it shall inform the Company thereof within 15 (fifteen) Business Days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms, and the Company shall be entitled thereafter to execute Financing Documents containing those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by the GOB. Each loan agreement constituting part of the Financing Documents will provide that any liquidated damages received by the Company from its Construction Contractor for capacity or other testing shortfalls shall be used either to reduce the outstanding principal amount of debt under such loan agreement or in an effort to correct such shortfalls. The Company shall provide the GOB with a copy of the loan agreements executed on the date of the Financial Closing Date not later than 15 (fifteen) Business Days after Financial Closing. The Company shall provide the GOB and BPDB, the relevant document in support of at least 70% (seventy) of the Total Facility Cost as foreign investment.
- (b) The Company shall deliver to the GOB copies of all non-material amendments to the executed Financing Documents within 10 (ten) Days after the execution of each such document. The Company shall not execute any material amendment or modification related to the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) without submitting to the GOB not less than 15 (fifteen) Business Days prior to execution of the loan documents a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. The GOB shall notify the Company of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule or material modifications as soon as reasonably possible. If the GOB does not object to the principal repayment schedule, the GOB shall be deemed not to object to refinancing on those terms. The GOB shall not object to a material amendment or modification or a refinancing or the terms thereof so long as the principal repayment schedule and other principal financial terms are consistent with the Tariff and does not increase in any material respect the obligations of the GOB arising upon termination of this Agreement.

SECTION 10: RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES OR ASSETS

10.1 Assurance Against Discriminatory Action

The GOB shall ensure that no Government Authority takes any discriminatory action which materially and adversely affects the Project or the performance of the Company's obligations or the enjoyment of its rights or the interests of the Investors or Lenders under the Security Package or expropriates or, except as hereinafter provided, acquires the Facility or the Company, whether in whole or in part. Nothing in the foregoing shall apply to any actions taken by the GOB or BPDB or any other Government Authority pursuant to their respective rights and obligations arising under this Agreement, the Power Purchase Agreement or any other document that constitutes a part of the Security Package.

10.2 Acquisition of Shares or Assets

- (a) The GOB undertakes to the Company that neither it nor BPDB, BPDB, nor any Government Authority will expropriate, compulsorily acquire nationalize, or otherwise compulsorily procure any Ordinary Share Capital or assets (except for the exercise of the GOB's rights pursuant to Section 14.1 to acquire the rights, title and interests of the Company in the Facility
- (b) The GOB further undertakes to the Company that during the term of this Agreement neither it nor BPDB, any Government Authority nor any corporation or company directly or indirectly owned or controlled by the GOB and/or any Government Authority will acquire any Ordinary Share Capital if the result would be for the GOB and/or any Government Authority and/or any corporation or company directly or indirectly owned or controlled by the GOB or any Government Authority or both to own or control 26% (twenty-six percent) or more of the issued Ordinary Share Capital.
- (c) Notwithstanding Sections 10.2(a) and (b), nothing in this Agreement shall be construed as a waiver by the GOB or BPDB of BPDB's exercise of its power of eminent domain so long as it is exercised under the Laws of Bangladesh and the effect of such exercise does not materially and adversely affect the Company's ability to perform its obligations under and enjoy the benefits of the Power Purchase Agreement or, without just and adequate compensation, adversely affect its use and enjoyment of the Site.

10.3 Restriction on Transfer of Shares

- (a) The Company shall, in respect of the transfer of the registered ownership of any Ordinary Share Capital, make appropriate provisions in its articles of association to ensure compliance with the following provisions of this Section 10.3 and shall include appropriate legends on all share certificates evidencing Ordinary Share Capital of the Company to put prospective purchasers of such Ordinary Share Capital on notice of the restrictions in the following provisions and, to the extent permitted by the Laws of Bangladesh, shall not register or give effect to any purported transfer of Ordinary Share Capital that is not in compliance with such restrictions or do not bear such legend.
- (b) The Company shall decline to register the transfer of issued Ordinary Share Capital to persons of a nationality that is specifically proscribed in any notice delivered by the GOB to the Company for the period specified in such notice or until such time that the Company is notified that the proscription is revised or rescinded. The GOB undertakes that it shall not proscribe any nationalities other than those nationalities that the GOB considers in its sole discretion to be prejudicial to the national security interest of Bangladesh for persons having such nationality to hold Ordinary Share Capital. The Company shall use reasonable means under the circumstances to investigate the declaration of nationality stated on any application for registration or transfer of Ordinary Share Capital if, as a result of such transfer, the Investor making such application would hold 5% (five percent) or more of the issued Ordinary Share Capital of the Company. In all other cases, the Company shall be entitled to rely on such declaration to determine whether registration is permitted under this Section 10.3(b). Where any such declaration discloses that the prospective purchaser is a national of Bangladesh or the nationality of a state not proscribed by the GOB in its notice to the Company, then the Company shall be at liberty to register the transfer or issue of the shares.

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- (c) The Lead Shareholder may not effect any transfer of the Ordinary Share Capital owned, directly or through one or more wholly-owned subsidiary companies or corporations, by it which would result (i) in the Lead Shareholder owning less than 51% (fifty-one percent) of the Ordinary Share Capital at any time prior to the Commercial Operations Date or (ii) in the Lead Shareholder owning less than 40% (forty percent) of the Ordinary Share Capital at any time following the Commercial Operations Date and prior to 6th (sixth) anniversary of the Commercial Operations Date, except for:
- (i) subject to the national interests of Bangladesh, as such interests shall be determined in the discretion of the GOB, a transfer to a wholly-owned affiliate corporation of the Lead Shareholder that continues as such wholly-owned affiliate corporation;
 - (ii) a transfer required under any Laws of Bangladesh or by the operation of the Laws of Bangladesh or by order of a court, tribunal, or governmental authority or agency having appropriate jurisdiction;
 - (iii) a transfer resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Security Package;
 - (iv) a transfer to which the GOB has given its prior written approval; or
 - (v) a transfer as part of a public offering.
- (d) The Operating Shareholder may not effect any transfer of the Ordinary Share Capital owned directly or through one or more wholly-owned subsidiary companies or corporations by it which would result (i) in the Operating Shareholder owning less than 20% (twenty percent) of the Ordinary Share Capital at any time prior to the Commercial Operations Date or (ii) in the Operating Shareholder owning less than 11% (eleven percent) of the Ordinary Share Capital at any time following the Commercial Operations Date and prior to 6th (sixth) anniversary of the Commercial Operations Date, except for:
- (i) subject to the national interests of Bangladesh, as such interests shall be determined in the discretion of the GOB, a transfer to a wholly-owned affiliate corporation of the Operating Shareholder that continues as such wholly-owned affiliate corporation;
 - (ii) a transfer required under any Laws of Bangladesh or by the operation of the Laws of Bangladesh or by order of a court, tribunal, or governmental authority or agency having appropriate jurisdiction;
 - (iii) a transfer resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Security Package;
 - (iv) a transfer to which the GOB has given its prior written approval; or
 - (v) a transfer as part of a public offering.

SECTION 11: FORCE MAJEURE

11.1 Definition

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

Force Majeure Event includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirements, uncontrollable events, including, but not limited to:

- (i) lightning, earthquake, flood, tsunami, storm, cyclone, typhoon, or tornado, solar irradiance below 80 W/m²;

11.2 Notification Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
 - (i) give each other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than 3 (three) Days after the occurrence of the Force Majeure Event(s) or 6 (six) hours after the resumption of any means of providing notice between the Company and the GOB, whichever is later; and
 - (ii) give each other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than 7 (seven) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party. When appropriate or when reasonably requested to do so by any other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event(s).
- (b) The affected Party shall also provide notice to each other Party of:
 - (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event; and
 - (ii) its ability to recommence performance of its obligations under this Agreement,as soon as possible, but in any event, not later than 7 (seven) Days after the occurrence of each of (i) and (ii) above.

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- (c) Failure by the affected Party to give notice of a Force Majeure Event to the other Parties within the 3 (three) Day period or 6 (six) hour period required by Section 11.2(a) shall not prevent the affected Party from giving such notice at a later time; *provided*, that in such case, the affected Party shall not be excused pursuant to Section 11.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Section 11.2(a)(i) has been given; and if such notice is given within the 3 (three) Day period or 6 (six) hour period as required by Section 11.2(a)(i), the affected Party shall be excused for such failure or delay pursuant to Section 11.4 from the date of commencement of the relevant Force Majeure Event.

11.3 Duty to Mitigate

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

11.4 Delay Caused by Force Majeure

- (a) So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 11.3 and continues to so comply, then:
 - (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement during the existence of a Force Majeure Event; and
 - (ii) Any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; *provided*, that:
 - (A) no relief, including without limitation, the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 11.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party, as a result of a breach by the affected Party of this Agreement, had the Force Majeure Event not occurred; and
 - (B) in the case of a Force Majeure Event which damages the Facility, in no event shall the obligations of the affected Party under this Agreement to meet performance deadlines be extended for a period of time in excess of the Restoration Schedule as determined in accordance with Sections 11B.1 and 11B.4.
- (b) Without prejudice to amounts payable pursuant to this Section 11 or Section 14, the unaffected Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event.

SECTION 11A: POLITICAL EVENT AND CHANGE IN LAW

11A.1.1 Definition of Political Event

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

- (a) Political Event includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirements, including, but not limited to:
- (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, state or organization, blockade or Economic Sanctions, embargo, revolution, riot, insurrection, civil commotion, political act or act of terrorism;
 - (ii) any Lapse of Consent that shall have itself existed for twenty-six (26) Days or more or for thirty (30) Days in the aggregate in any Year or for forty (40) Days in the aggregate in any two (2) Year period or for sixty (60) Days in the aggregate in any three (3) Year period;
 - (iii) radioactive contamination or ionising radiation originating from a source inside Bangladesh or resulting from another Political Event; or
 - (iv) strikes, works to rule or go-slows that extend beyond the facilities of a Party (including, the Facility) and that are (A) widespread or nationwide or (B) of a political nature, such as, by way of example and not limitation, labour actions associated with or directed against the Company (or its Contractor(s)) as part of a broader pattern of labour actions against companies or facilities with foreign/local ownership or management.
- (b) Political Event shall expressly not include the following conditions, except (in the case of (b)(i) or (ii) below only) to the extent that they result directly from any event or circumstance or combination of events or circumstances in relation to a Contractor(s), or other supplier and the performance of its obligations under an agreement which would constitute a Political Event if such Contractor(s), or other supplier was a Party and such agreement were this Agreement (other than resulting from a Force Majeure Event described in Section 11.1, in which case, if such event or circumstance affects the Construction Contractor(s) or the O&M Contractor(s); it shall be a Force Majeure Event for the Company):
- (i) late delivery of machinery, equipment, materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor(s) or supplier to either of the Parties; and
 - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment;

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11A.1.2 Definition of Change in Law

In this Agreement, “Change in Law” shall mean:

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

that in either case establishes requirements for the construction, financing, operation or maintenance of the Facility that are materially more restrictive or more onerous than the most restrictive or most onerous requirements (1) in effect under the Laws of Bangladesh on [Bid Date] and (2) agreed to by the Company in any agreement in the Security Package;

11A.2 Notification Obligations

- (a) If by reason of a Political Event or Change in Law a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
 - (i) give each other Party notice of the Political Event or Change in Law as soon as practicable, but in any event, not later than three (3) Days after the affected Party became aware, or should have become aware, of the occurrence of the Political Event or Change in Law or six (6) hours after the resumption of any means of providing notice between the Company and the GOB, whichever is later; and
 - (ii) give each other Party a second notice, describing the Political Event or Change in Law in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Political Event or Change in Law is given by the affected Party. When appropriate or when reasonably requested to do so by any other Party, the affected Party shall provide further notices to the other Party more fully describing the Political Event or Change in Law and its cause and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Political Event or Change in Law.
- (b) The affected Party shall also provide notice to each other Party of:
 - (i) with respect to an ongoing Political Event or Change in Law the cessation of the Political Event or Change in Law; and
 - (ii) its ability to recommence performance of its obligations under this Agreement, as soon as possible, but in any event, not later than seven (7) Days after the occurrence of each of (i) and (ii) above.
- (c) Failure by the affected Party to give notice of a Political Event or Change in Law to the other Parties within the ten (10) Day period or one (1) Business Day period required by Section 11A.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, that in such case, the affected Party shall not be excused pursuant to Section 11A.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Section 11A.2(a)(i) has been given; and if such notice is given within the three (3) Day period or six (6) hour period as required by Section 11A.2(a)(i), the affected

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Party shall be excused for such failure or delay pursuant to Section 11A.4 from the date of commencement of the relevant Political Event or Change in Law.

11A.3 Duty to Mitigate

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

11A.4 Delay Caused by Political Event or Change in Law

- (a) So long as the affected Party has at all times since the occurrence of the Political Event or Change in Law complied with the obligations of Section 11A.3 and continues to so comply, then:
 - (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement during the existence of a Political Event or Change in Law ; and
 - (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; provided, that:
 - A. no relief, including without limitation, the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 11A.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party, as a result of a breach by the affected Party of this Agreement, had the Political Event or Change in Law not occurred; and
 - B. in the case of a Political Event which damages the Facility, in no event shall the obligations of the affected Party under this Agreement to meet performance deadlines be extended for a period of time in excess of the Restoration Schedule as determined in accordance with Sections 11B.1 and 11B.4.
- (b) Without prejudice to amounts payable pursuant to this Section 11A or Section 14, the unaffected Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Political Event or Change in Law.
- (c) Notwithstanding the foregoing, the GOB and PGCB shall not in any event be entitled to claim for itself any excuse for the nonperformance of its obligations hereunder as a result of the occurrence of a Political Event or Change in Law.

SECTION 11B: RESTORATION, COMPENSATION, TERMINATION

11B.1 Restoration; Compensation

- (a) In the event that a Political Event or Change in Law results in material damage to the Facility that requires a material modification or a material capital addition or material repair to the Facility necessary to return the Facility to its performance capability or its physical state immediately preceding the occurrence of the Political Event or that compliance by the Company with a Change in Law requires a material modification or a material capital addition to the Facility (in each case, a “**Restoration**”), the Company shall, within twenty-eight (28) Days after the date by which it was first required to provide notice to the GOB under Section 11A.2(a), except if the Political Event or Change in Law, has not ended by the time of such notice, in which case within twenty-eight (28) Days of the notice required by 11A.2(b)(i), develop and deliver to the GOB a preliminary written estimate (the “**Preliminary Estimate**”) of:
- (i) the projected range of cost of the Restoration less any insurance proceeds available or likely to become available to the Company (the “**Restoration Cost Estimate**”); and
 - (ii) a preliminary schedule for the completion of the Restoration, such schedule to include a period for solicitation of engineering services to effect the Restoration and negotiation and execution of a contract therefore and, if the Restoration Cost Estimate will be less than the Threshold Amount (as defined in Section 11B.1(g)), a reasonable period to arrange the financing, whether such financing is in the form of debt or equity or some combination thereof (such schedule and each such schedule contained in the Report to be delivered pursuant to Section 11B.1(d) in connection with a Force Majeure Event shall be referred to herein as a “**Restoration Schedule**”).

The Company shall make the Preliminary Estimate as comprehensive and as complete as possible under the circumstances and the GOB and the Company shall meet within fifteen (15) Days of the delivery of the Preliminary Estimate to discuss the conclusions set forth therein. As used in this Section “material damage,” a “material modification”, a “material capital addition” or a “material repair” means damage, modification, capital addition or repair that requires, as a result thereof, a Restoration with a cost of four hundred and fifty thousand Dollars (US\$450,000) or more.

Payments Due to Political Event or Change in Law

If there occurs such a Political Event or Change in Law as described in this Section 11B.1(a) above):

- A. prior to the Commercial Operation Date, the GOB shall, within twenty-five (25) Days of demand from the Company, pay the Company, for each Month (or portion thereof) of the Carrying Cost Period (as defined below) an amount equal to the Carrying Cost.
- B. after the Commercial Operations Date, the GOB shall, within 25 (twenty-five) Days of demand from the Company, pay to the Company, for each Month (or portion thereof) of the Carrying Cost Period (as defined below) an amount equal to the 25% of Tariff Payment considering 18.5% Plant factor that would have been due and payable to the Company by BPDB pursuant to the Power Purchase Agreement had the Political Event or Change in Law not occurred computed based on the assumption that Dependable Capacity during the Carrying Cost Period equals the Dependable Capacity prevailing immediately prior to the occurrence of such Political Event or Change in Law (and as adjusted for exchange rate in accordance with Section 13.1(i) of the Power Purchase Agreement to the date of payment) (but only to the extent that the Payment is not paid to the Company by BPDB as a result of the Political Event or Change in Law).

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For the purpose of this Section 11B.1(a):

“**Carrying Cost Period**” shall mean the period beginning with the onset of the Political Event or Change in Law, (unless a timely notice was not given under Section 11A.2(a)(i), in which case from the time such notice was given) and ending on:

- (1) if no termination results, the earlier of the date the Company is able to resume performance of its obligations under this Agreement to the level of performance, immediately prior to the occurrence of such Political Event or Change in Law, as the case may be, as specified in the notice given pursuant to Section 11A.2(b)(ii), or the last Day of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or Political Event or Change in Law or pursuant to Section 11B.4(b)); or
- (2) if termination does result, the Day that compensation is paid coincident with or following termination under Sections 11B and 13.

In addition to the payments in (A) and/or (B) above, the GOB shall pay to the Company, within twenty-five (25) Days of demand by the Company, which demand shall not be delivered to BPDB more than twenty-seven (27) Days prior to the date or dates upon which the corresponding principal repayments that are then due and payable from the Company to the Lenders under the terms of the Financing Documents, an amount equal to any principal repayments required to be paid by the Company to the Lenders under the Financing Documents which are deemed to have accrued for the purpose of this Section 11B.1(a) on a daily basis in accordance with the following formula during the Carrying Cost Period:

$$A = R/P$$

where:

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

All amounts in respect of such principal repayments so paid by the GOB to the Company are hereinafter referred to in this Section 11B.1 and Section 11B.4 as “Principal Payments”.

Notwithstanding any contrary provision of this Agreement or the Power Purchase Agreement, all amounts payable under this paragraph are to be paid to the Company not later than the Day the compensation amount determined in accordance with Section 14 is paid. All amounts payable hereunder this Section 11B.1(a) by the GOB shall be further adjusted for changes in the value of the Taka against the Dollar from the exchange rate used to prepare the relevant Monthly invoice pursuant to this Section 11B.1(a) to the exchange rate prevailing on the first Business Day after the date that the relevant amount is received by the Company from the GOB on the same basis as is set out in Section 13.1(i) of the Power Purchase Agreement applied, *mutatis mutandis*, and any payment due from the GOB to the Company as a result of such adjustment shall be paid at the time provided in Section 13.1(i) of the Power Purchase Agreement *mutatis mutandis*. In the event that the GOB has made any Principal Payments to the Company during or following a Political Event or Change

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in Law, the GOB and the Company will agree on a schedule for repayment of those Principal Payments, beginning on the Commercial Operations Date plus interest, on the outstanding balance of any such Principal Payments at the weighted average interest rate prevailing on the loans (adjusted for the change in the value of the Taka against the Dollar) under the Financing Documents on which the principal repayment was made until the Principal Payments have been repaid in full. Such schedule shall provide for Monthly payments (to be made immediately following the Company's scheduled debt service payments) and shall be based on repayment in full within five (5) years following the Commercial Operations Date; provided, that payments under this Section 11B.1(a) are fully subordinate to amounts due and payable to the Lenders under the Financing Documents, so that if and to the extent that funds for such payments are not available to the Company from cash flow from the Project less amounts paid or due for operating costs, taxes, and debt service and other amounts payable under the Financing Documents, such payments will be deferred with interest at the above-stated rate, and the failure of the Company to make any part or all of any such payment shall not constitute a late payment or a Company Event of Default under this Agreement.

- (b) (i) If the Company concludes that the Restoration Cost Estimate will be less than the Threshold Amount and the GOB, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Company shall, subject to Section 11B.1(f), proceed with the Restoration in accordance with the Restoration Schedule.
- (ii) If:
- A. the Company concludes that the Restoration Cost Estimate will be less than the Threshold Amount and the GOB, within fifteen (15) Days of its receipt of the Preliminary Estimate, notifies the Company that the GOB disagrees with the Company's conclusion and/or that it disagrees with the Restoration Schedule; or
 - B. the Company concludes that the Restoration Cost Estimate will be greater than the Threshold Amount and the GOB, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with such conclusion, then the Company shall proceed with the preparation of a Report and the provisions of Section 11B.1(c) shall apply.
- (iii) If the Company concludes that the Restoration Cost Estimate will be greater than the Threshold Amount and the GOB, within fifteen (15) Days of its receipt of the Preliminary Estimate, disagrees with the Preliminary Estimate, such matter (and any disagreement regarding the Restoration Schedule) shall be referred to the Expert for resolution pursuant to Section 11B.2(c) within twenty (20) Days of the date the GOB delivers notice to the Company that the GOB disagrees with the Restoration Cost Estimate. If the Expert concludes that the Restoration Cost Estimate is less than the Threshold Amount, the provisions of the immediately preceding paragraph (i) of this Section 11B.1(a) shall apply. If the Expert concludes that the Restoration Cost Estimate is greater than the Threshold Amount, then the Company shall proceed with the preparation of a Report and the provisions of Section 11B.1(c) shall apply.
- (c) If a Report is required to be prepared, then at the conclusion of the meetings of the GOB and the Company to discuss the Report (as contemplated by Section 11B.2(b)), the GOB and the Company shall either agree or disagree with respect to the matters addressed therein. If the GOB and the Company disagree, the matter shall be referred to the Expert for resolution pursuant to Section 11B.2(c). If the GOB and the Company agree or the Expert determines that a Restoration of the Facility is not technically and economically feasible, this Agreement shall immediately terminate and the provisions of Section 14.1(e)(ii) shall apply. If the GOB and the Company reach agreement on such matters, or, in the case of a disagreement, after resolution by the Expert pursuant to Section 11B.2(c), and Restoration of the Facility is agreed by the GOB and the Company or determined by the Expert to be technically and economically feasible, the GOB shall, within fifteen (15) Days of such agreement or resolution, provide the Company with a written notice of its election to either (i) terminate this Agreement pursuant

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to Section 11B.3(a) and pay the applicable compensation pursuant to Section 14.1(e)(i), or (ii) authorize the Company to proceed with Restoration, in which case the following provisions shall apply:

- (i) the Company shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Company and the GOB. If the Company is unable to obtain binding commitments for such financing within two hundred and forty (240) Days of receipt of the GOB's notice authorizing the Company to proceed with Restoration then unless the Company receives funding commitments from the third parties to provide financing and/or additional equity from Investors in an amount and on such terms agreed with the GOB and/or the GOB commits to provide financing on such terms for the Restoration within the next thirty (30) Days and provides such funds to the Company within another ninety (90) Days, the failure to secure financing shall be treated as an election by the GOB to terminate this Agreement pursuant to Section 11B.3(a), in which case the GOB will be required to pay the applicable compensation pursuant to Section 14.1(e)(iii);
 - (ii) if financing/funding for the Restoration has been secured from third parties and/or additional equity from the Investors or funding from the GOB, then the Company shall proceed with the Restoration in accordance with the Restoration Schedule and, upon completion of the Restoration, the Company shall be entitled to special compensation pursuant to Sections 11B.3(a)(i) or 11B.3(a)(ii), as the case may be;
 - (iii) the Company shall provide the GOB with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work.
- (d) If the Facility or any part thereof is damaged as a result of a Force Majeure Event and the Company fails to restore the operation of the Facility within thirty (30) Days following the commencement of that Force Majeure Event, then the Company shall prepare and deliver a Report pursuant to Section 11B.2.
- (i) If the Company concludes that the Facility can be restored such that the Company can continue to meet its obligations under the Power Purchase Agreement, the Company shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report. The cost of the Restoration shall be the sole responsibility of the Company and no special compensation shall be paid to the Company.
 - (ii) If the Company concludes that the Facility can be restored such that the Company can continue to meet its obligations under the Power Purchase Agreement but the GOB does not agree with the Restoration Schedule contained in the Report, then the GOB shall notify the Company within fifteen (15) Days of the receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The Company and the GOB shall try, in good faith, to agree upon a revised Restoration Schedule. If the GOB and the Company cannot agree upon a revised Restoration Schedule within the fifteen (15) Day period following the notice, then either Party may submit the matter to the Expert pursuant to Section 11B.2(c) to determine the proper Restoration Schedule. Notwithstanding the foregoing, the Company shall, subject to satisfying any of the conditions or requirements of the entity providing the financing for the Restoration (including any insurance company paying a claim to the Company), have the option to proceed with the Restoration while the issue of the Restoration Schedule is being resolved.
 - (iii) If the Company concludes that the Facility cannot be restored such that the Company can continue to meet its obligations under the Power Purchase Agreement, then the Company shall have the right to terminate this Agreement, in which case the Company shall not be entitled to any compensation from the GOB and the GOB shall have no further rights to or interest in the Facility; provided, however, that in this event the GOB and the Company will enter into good-faith negotiations concerning the terms on which and the price at which the Facility would be sold to the GOB, subject, however, to the salvage rights of any insurance companies and subject to the security interests of the Lenders.

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- (e) In the event of the occurrence of:
- (i) a Force Majeure Event or Political Event or Change in Law affecting BPDB under the Power Purchase Agreement that prevents the operation or Commissioning of the Facility and in each such event the Facility is not able to operate for more than six (6) Months or the scheduled date for Commissioning of the Facility is delayed by more than six (6) Months, then either the Company or the GOB shall have the option to terminate this Agreement and, upon such termination, the GOB shall be required to pay to the Company the appropriate level of compensation as provided in Section 14.1(f); or
 - (ii) a Force Majeure Event affecting the Facility declared by the Company under the Power Purchase Agreement which, prior to the Commercial Operations Date, prevents the Company from achieving the Commercial Operations Date within six (6) Months following the Scheduled Commercial Operations Date prevailing immediately prior to such Force Majeure Event or, following the Commercial Operations Date, prevents operation of the Facility for a continuous period of four (4) Months or more, then, in either event, the GOB shall have the option to terminate this Agreement and, upon such termination, the GOB shall be required to pay to the Company the appropriate level of compensation as provided in Section 14.1(f).
- (f) Notwithstanding any provision of the Section 11, Section 11A and this Section 11B to the contrary, the Company shall not be obligated hereunder to proceed with any Restoration unless and until the Company has received all necessary Government Authorizations therefore. The Company shall use good faith efforts to obtain such Government Authorizations as soon as reasonably practicable. If, despite the Company's good faith efforts, the Company is unable for any reason other than its own fault to obtain any such Government Authorizations within a reasonable period of time not to exceed six (6) Months after the date that the Company becomes obligated to proceed with any Restoration, then either the Company or the GOB shall have the right to terminate this Agreement. Upon any such termination which is due to the Company's inability to obtain any Government Authorizations, the GOB shall be required to pay to the Company the applicable compensation pursuant to Section 14.1(g).

Upon the occurrence of, and during the continuance of, any Political Event or Change in Law that, does not require a Restoration, but, (a) prior to the Commercial Operations Date, results in a delay of the Commercial Operations Date or Commissioning of the Facility; or (b) after the Commercial Operations Date, results in a decrease of the Tariff Payment (in each case, a "**Non-Restoration Event**"), then the GOB shall pay to the Company, for the duration of the Carrying Cost Period, the following amounts:

- (i) if the Political Event or Change in Law occurred prior to the Commercial Operations Date, the same amounts, payable in the same manner and time, as described in Section 11B.1(a)(A), including for the avoidance of doubt Principal Payments under Section 11B.1(a); or
- (ii) if the Political Event or Change in Law occurred after the Commercial Operations Date, the same amounts, payable in the same manner and time, as described in Section 11B.1(a)(B), including for the avoidance of doubt Principal Payments under Section 11B.1(a).

The term "Carrying Cost Period" for purpose of this Section 11B.1(f) only shall have the same meaning as it bears in Section 11B.1(a), except without reference to the Restoration Schedule. All amounts payable hereunder this Section 11B.1(f) by the GOB shall be further adjusted for changes in the value of the Taka against the Dollar from the exchange rate used to prepare the relevant Monthly invoice pursuant to this Section 11B.1(f) to the exchange rate prevailing on the first Business Day after the date that the relevant amount is received by the Company from the GOB and any payments due from the GOB to the Company as a result of such adjustment shall be paid accordingly.

- (g) For purposes of this Section 11B, the term "**Threshold Amount**" shall mean an amount equal to: (i) ten percent (10%) of the Construction Contract price through the fifth (5th) anniversary

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of the Commercial Operations Date; (ii) seven and one-half percent (7.5%) of the Construction Contract price after the fifth (5th) anniversary of the Commercial Operations Date through the tenth (10th) anniversary of the Commercial Operations Date; or (iii) five percent (5%) of the Construction Contract price after the tenth (10th) anniversary of the Commercial Operations Date through the end of the Term. If more than one event that requires a Restoration occurs during the Term, the determination of whether the cost of Restoration exceeds the Threshold Amount shall aggregate amounts spent on Restoration, taking into account both past expenditures for this purpose and the amount estimated to be necessary for the Restoration under consideration, and the Threshold Amount shall equal fifteen percent (15%) of the Construction Contract price.

- (h) Notwithstanding anything herein to the contrary, in the event of:
- (i) the occurrence of a Political Event that continues for a period exceeding one hundred eighty (180) Days;
 - (ii) a series of related Political Event that continue in the aggregate for a period that exceeds one hundred eighty (180) Days during any Year; or
 - (iii) a Change in Law,

following which (1) the Expert determines that a Restoration or modification is not feasible or the GOB decides that the cost of Restoration or modification is not acceptable to the GOB and (2) the Facility does not operate for one hundred eighty (180) Days following such determination or decision, and during such period the Change in Law is not rescinded or modified in a way to permit the Restoration or modification, either the Company or the GOB shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other, and, upon such termination, the GOB shall be required to pay to the Company the compensation provided in Section 14.1(e)(v).

11B.2 Appraisal Report and Use of Expert

- (a) When required by Section 11B.1(a) or Section 11B.1(d), the Company shall commence the preparation of an appraisal report (the “**Report**”) within fifteen (15) Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the GOB within thirty (30) Days thereafter. The Report shall address, in such detail as is practicable under the circumstances and accompanied by reasonable supporting data, the following matters (to the extent applicable):
- (i) in the case of a Force Majeure Event or Political Event or Change in Law, covered by Section 11B.1(a) or Section 11B.1(c):
 - A. describe the Force Majeure Event or Political Event or Change in Law, as the case may be, and the damage to, and/or the other effects or impacts on, the Facility;
 - B. estimate in good faith the time it will take to restore the Facility (as much as it may be possible to do so) to its condition immediately prior to the Force Majeure Event or Political Event or Change in Law to bring the Facility into compliance with the Change in Law; and
 - C. propose a Restoration Schedule; or in the case of a Force Majeure Event or Political Event or Change in Law covered by Section 11B.1(a), provide a statement and explanation in good faith regarding whether restoration or modification of the Facility or necessary capital additions are technically feasible and financially viable, including the Company’s good faith estimate of:
 - (1) the costs to restore the Facility to its condition immediately prior to the Force Majeure Event or Political Event or Change in Law, as the case may be, and the associated delay costs or the costs to come into compliance with the Change in Law;

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- (2) a revised cash flow forecast for the Facility; and
 - (3) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied,
 - (ii) in the case of a Force Majeure Event or Political Event or Change in Law covered by Section 11B.1(a), describe the plan to finance the costs of the Restoration, how such financing will be coordinated with the current loans under the Financing Documents, and any special requirements of the Lenders for the Restoration;
 - (iii) in the case of a Force Majeure Event or Political Event or Change in Law covered by Section 11B.1(a), the projected modification to the tariff in the Power Purchase Agreement that would be required to pay special compensation under Section 11B.3; and
 - (iv) in the case of a Force Majeure Event or Political Event or Change in Law covered by Sections 11B.1(a), 11B.1(c) or 11B.1(d), provide certificates and reports of the Company's financial and technical advisers, as appropriate or as reasonably requested by the GOB, in support of the applicable matters referred to in this Section 11B.2(a).
- (b) Within fifteen (15) Days of the delivery of a Report to the GOB or such further time as the GOB and the Company may agree, the GOB and the Company shall meet to discuss the Report and any action(s) to be taken. In connection with the review by the GOB of a Report prepared by the Company, the Company shall provide promptly to the GOB such additional financial and related information pertaining to the Report and the matters described therein as the GOB may reasonably request.
- (c) The following disputes between the GOB and the Company shall be submitted to the Expert for resolution within the time periods specified: (A) with respect to disputes regarding any matter set forth in a Report, no later than twenty (20) Days after expiration of the period for review and consultation provided by Section 11B.2(b); (B) with respect to disputes pursuant to Section 11B.1, within the applicable period provided for in Section 11B.1; and (C) with respect to whether an item of cost incurred by the Company should be recovered as provided in Section 11B.3(b), within twenty (20) Days following the delivery of a written request to do so by either Party to the dispute.
 - (i) The Expert shall be an engineer with extensive experience in the construction and operation of electric power plants similar to the Facility. The Expert shall be chosen by the GOB and the Company or, failing agreement between the GOB and the Company, by the International Chamber of Commerce. Unless the GOB and the Company otherwise agree, the Expert shall not be an officer, employee or agent or former officer, employee or former agent of either Party to the dispute, nor a national of Bangladesh.
 - (ii) If the Company or the GOB reasonably believes that the cost of a Restoration is likely to exceed two-thirds (2/3) of the Threshold Amount, then the GOB and the Company shall cooperate in good faith to select an Expert each time that a Preliminary Estimate is to be prepared pursuant to Section 11B.1 and engage such Expert to be available in case a dispute will need to be resolved. The Expert shall be provided with a copy of the Preliminary Estimate and any other written materials prepared by the GOB and the Company and asked to read all materials that are provided. These initial costs to have the Expert available and prepared to resolve a dispute quickly shall be shared equally by the GOB and the Company.

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- (iii) Once a dispute is referred to the Expert, each of the Company and the GOB shall provide all materials in support of its position to the Expert and to the other Party within ten (10) Days of the Expert's selection and may, within five (5) Days of the date it receives information from such other Party, submit such additional information to the Expert in response to the information submitted. Each party shall use its best efforts to provide the Expert with any additional information the Expert requests. The Expert shall be charged with the responsibility to use his best efforts to render his decision regarding any referred matter within thirty (30) Days of the date of the referral. Each of the GOB and the Company shall be responsible to pay fifty percent (50%) of the costs of the Expert and to pay for its own cost; provided, that if the Expert determines that the position of a Party to the dispute had substantially no merit, the Expert, as part of his decision, may require that Party to pay for all of the costs of the other Party.
- (iv) Notwithstanding any other provision in this Agreement to the contrary regarding the role of Experts in resolving disputes, unless the GOB and the Company agree to the contrary in writing signed by both the GOB and the Company at the time the Expert is selected, the decision of the Expert as to any matter referred under Sections 11B.1 and 11B.2 shall not be final and binding on both the GOB and the Company and the decision of the Expert made hereunder shall be subject to appeal to arbitration under and pursuant to Section 15.4. The GOB and the Company expressly waive, to the fullest extent permitted by law, any and all rights that they may now have or may have in the future to contest the decision of the Expert before any court or administrative body.

11B.3 Special Compensation for Force Majeure Event or Political Events or Change in Law

- (a) In the case of a Force Majeure Event or Political Event or Change in Law that is covered by Sections 11B.1(a) or 11B.1(c), the GOB shall determine whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Sections 11B.3(a)(i) or 11B.3(a)(ii), as the case may be) or terminate this Agreement. The Company acknowledges that the GOB may delegate the review of a Report to BPDB or any Relevant Authority and agrees to cooperate with BPDB or any such Relevant Authority as if it were the GOB.
 - (i) In the case of a Political Event covered by Section 11B.1(a), the Company shall, unless this Agreement has been terminated by the GOB pursuant to Sections 11B.3(a) or 11B.4(b), be entitled to receive the payment pursuant to Section 16A.5(b) of the Power Purchase Agreement to recover the costs resulting from such Political Event including: (i) the costs (in excess of the materiality threshold in Section 11B.1(a)) incurred in effecting the Restoration, as provided in Section 11B.3(b); and (ii) the increase in the operating cost to the Company; resulting from operation of the Facility prior to completion of the Restoration.
 - (ii) In the case of a Change in Law covered by Section 11B.1(a), the Company shall, unless this Agreement has been terminated by the GOB pursuant to Sections 11B.3(a) or 11B.4(b), be entitled to an increase in the tariff of the Power Purchase Agreement to recover the costs of complying with such Change in Law, including: (i) the costs (in excess of the materiality threshold in Section 11B.1(a)) incurred in effecting the Restoration, as provided in Section 11B.3(b); and (ii) the increase in the operating cost of the Facility.
- (b) The costs to be recovered by the Company pursuant to Section 16A.5 and Section 16A.6 of the Power Purchase Agreement shall include: (i) the costs that are actually incurred by the Company to effect the Restoration (including Carrying Cost incurred during the Restoration Schedule period in connection therewith), to the extent those costs exceed any insurance proceeds and to the extent those costs exceed the materiality threshold in Section 11B.1(a); (ii) additional costs of operating the Facility; and (iii) financing costs and return on equity in relation thereto as provided for in Section 13.1 of the Power Purchase Agreement; provided,

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that in respect of costs incurred to effect a Restoration each such item of cost shall have been reasonable and appropriate for the Company to effect such Restoration consistent with the standards for the original construction and operation (or, if higher, such standards as are necessary in order to comply with the applicable Laws of Bangladesh or Standards) and they shall be deemed to be reasonable and appropriate costs if they have been incurred in accordance with Restoration Cost Estimate agreed or finally determined in accordance with Section 11B.3 and in respect of which the GOB has not exercised its right (if any) to terminate the Agreement pursuant to Section 11B.3(a). The Company shall deliver a schedule of such costs to the GOB, together with copies of the invoices, for review by the GOB. If the GOB contests any item of cost and the GOB and the Company cannot agree, the issue of whether such item of cost should be recovered under the Power Purchase Agreement shall be referred to the Expert pursuant to Section 11B.2(c).

- (c) If there is any Dispute as to whether any payment is due and payable to the Company pursuant to this Section 11B.3 or any Dispute as to the amount or timing of any such payment, then pending resolution of the Dispute, the GOB or BPDB, as the case may be, shall be obligated to pay to the Company the undisputed amount and, upon assurance from the Lenders reasonably acceptable to the GOB that any amounts paid in dispute and ultimately determined not to be chargeable to the GOB shall be promptly repaid to the GOB as provided below, pay any disputed amount into an Escrow Account that is a segregated separate subaccount established by the Company under its Escrow Agreement for that purpose and in accordance with the requirements of the Financing Documents. Amounts paid by the GOB or BPDB that are ultimately determined not to be chargeable to the GOB or BPDB, as the case may be, shall be re-paid by the Company to the GOB or BPDB with interest equal to the Bank Rate plus two percent (2%) from the date of payment to the date of repayment by the Company.

11B.4 Termination as a Result of a Political Event or Force Majeure Event or Change in Law

- (a) If this Agreement is terminated as a result of a Political Event or Force Majeure Event or Change in Law covered by Sections 11B.1(c) or 11B.1(e), then the provisions of Section 14.1(c) (for all termination resulting from Change in Law other than pursuant to Sections 11B.1(h)(iii) or 14.1(e) (in case of termination pursuant to Sections 11B.1(c) in respect of Political Event) or 14.1(f) (in the case of termination pursuant to Section 11B.1(d)) shall be applied to determine whether compensation is to be paid by the GOB to the Company. If this Agreement is terminated as a result of a Change in Law pursuant to Section 11B.1(h)(iii), the provisions of Section 14.1(e)(v) shall apply.
- (b) If the Company is required to proceed with a Restoration pursuant to Sections 11B.1(a), 11B.1(b), 11B.1(c) or 11B.1(d) and the Restoration has not been or will not be completed by the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or Political Event or Change in Law), or within the Restoration Cost Estimate, then the Company may, and if the Restoration Cost Estimate or Restoration Schedule is expected to be exceeded by fifteen percent (15%), the Company shall, develop a revised cost estimate and schedule as soon as possible and provide an explanation of the delay or revised cost or both to the GOB. If the GOB agrees that the delay and revised schedule, or revised cost estimate are reasonable and do not result from negligence, fault or unnecessary delay by the Company, (whether in the preparation of the Restoration Schedule and Restoration Cost Estimate in light of the information reasonably available at the time, and under the circumstances under which the Restoration Cost Estimate and Restoration Schedule were required to be prepared), or in effecting the Restoration, or otherwise, the GOB shall continue making the payments pursuant to Section 11B.1(a), including Principal Payments, if any (subject to repayment by the Company following the occurrence of the Commercial Operations Date pursuant to Section 11B.1(a)). If the GOB does not accept the explanation or the revised schedule or cost estimate, the matter shall be referred to an Expert selected pursuant to Section 11B.2 for resolution, and the GOB shall continue making the appropriate payments pending resolution of the Dispute by the Expert. The Expert shall make its determination with respect to the revised schedule or revised cost and the Company's liability therefore within thirty (30) Days of such referral. If the Expert determines that the delay was not reasonable and that it was due to the Company's negligence, fault, or unnecessary delay the Restoration Schedule shall not be revised. If the Expert concludes that the delay was

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reasonable under the circumstances and not due to the negligence, fault or unreasonable delay of the Company, the Expert shall fix the revised Restoration Schedule and Restoration Cost Estimate. If the revised Restoration Cost Estimate is more than one hundred fifteen percent (115%) of the Restoration Cost Estimate, or the revised Restoration Schedule is more than one hundred fifteen percent (115%) of the Restoration Schedule, the GOB may elect to terminate this Agreement, unless the Company elects to attempt to complete the Restoration during the Extended Period, as described below. Upon such termination, the provisions of Sections 14.1(c), 14.1(d) or 14.1(e)(vi), as applicable, will apply. If the revised Restoration Cost Estimate or Restoration Schedule do not exceed the one hundred fifteen percent (115%) threshold or if the GOB does not terminate this Agreement, the GOB shall continue to make payments pursuant to Section 11B.1(a) above, including Principal Payments, if any, (subject to repayment by the Company following the occurrence of the Commercial Operations Date pursuant to Section 11B.1(a)) to the Company during such revised schedule period. After the end of the Restoration Schedule, as it may have been revised, the GOB shall have no further obligation to make payments pursuant to Section 11B.1(a) above; and any additional costs incurred by the Company to expedite the completion of the Restoration shall not be included in the costs that form the basis of the tariff under Sections 16A.5 or 16A.6 of the Power Purchase Agreement. Notwithstanding the foregoing, if the Restoration has not been completed by the end of the Extended Period (as defined in the next sentence), then, unless the Company is diligently attempting to complete the Restoration, the GOB shall be entitled to terminate this Agreement upon thirty (30) Days notice, whereupon Sections 14.1(d) or 14.1(e)(iv), as the case may be, shall apply. The Extended Period shall commence on the first Day following the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or Political Event or Change in Law or revised in accordance with this Section 11B.4(b)) and will end on the last Day of a period equal to twenty-five (25) percent of the number of Days (recorded up to the next whole Day) in the Restoration Schedule (as it may have been revised); provided, however, that the Extended Period shall be extended for the full period of any intervening Force Majeure Event or Political Event or Change in Law plus the period of time necessary for the Company to overcome the effects of the intervening Force Majeure Event or Political Event or Change in Law.

SECTION 12: TAXATION; CUSTOMS DUTIES

12.1 Taxation of the Company

- (a) The Company shall maintain its existence as a company incorporated under the laws of Bangladesh operating exclusively as a power generation company, commencing on the Commercial Operations Date and continuing until the 20th (twentieth) anniversary of the Commercial Operations Date. The Company shall be exempted from taxation or withholding tax in Bangladesh (or withholding of tax by BPDB, or GOB) on its income from the sale of Net Energy Output under the Power Purchase Agreement (or on any payments received by the Company in lieu thereof) in accordance with the prevailing Statutory Regulatory Order (SRO) and any subsequent amendment thereof.
- (b) The Company, prior to the Commercial Operations Date, shall be allowed to import plant and equipment (other than office and household equipment) to be permanently incorporated into the Facility or required for the construction, Commissioning, testing, operation and maintenance of the Facility without payment of any Taxes, and the GOB shall grant the necessary exemptions to give effect to this Section 12.1(b) if and when necessary. The Company and the Contractors shall be exempt from the payment of any Taxes, including Custom Duties and VAT, on spare parts or repaired or refurbished parts imported during the period commencing on the date hereof and continuing until the twelfth (12th) anniversary of the Commercial Operations Date and incorporated from time to time into the Facility during the term of this Agreement; *provided*, that the imported spare parts or repaired or refurbished parts exempted from Taxes hereunder shall have a cost (which in the case of repaired or refurbished parts shall be expressly limited to the cost of material and parts used or added to the repaired or refurbished part or parts in connection with such repair or refurbishment) plus transportation cost, of not greater than 10% (ten percent) of the total equipment cost (cost plus transportation cost) for the construction of the Facility (*excluding* the cost plus transportation cost of spare parts). Any machinery and equipment imported for the construction, erection and testing of the Facility shall be exported within 6 (six) Months following the Commercial Operations Date or, absent such re-exportation, all applicable Customs Duties and VAT and other applicable Taxes, shall be paid by the Company.

In the event that there is a claim of Customs Duties and VAT due on plant or equipment imported for incorporation into, or use in the construction, operation, or maintenance of the Facility or on spare parts or on repaired or refurbished parts within the 10% (ten percent) exempted amount referred to in Section 12.1(b), and the Company chooses, notwithstanding the provisions of Section 12.1(b), to pay such duties under protest, upon notice to the GOB by the Company, the GOB shall ensure that the dispute is resolved consistent with the terms of this Agreement and the Laws of Bangladesh within 270 (two hundred and seventy) Days after the Company files its refund claim with the relevant Government Authority.

- (c) The Company shall be exempt from any stamp duty and fees on the registration of the Financing Documents.
- (d) Upon proper application in accordance, mutatis mutandis, with the provisions of Section 4.1(a):
- (i) Where the Company is a public limited company under the laws of Bangladesh, the Foreign Investors shall, so long as such Foreign Investors are also exempt from the payment of such capital gains taxes in the jurisdiction of their domicile, be exempt from the payment of capital gains tax in Bangladesh in accordance with the prevailing Statutory Regulatory Order (SRO) and any subsequent amendment thereof in respect of a transfer or disposal of Ordinary Share Capital in accordance with the terms of this Agreement;
- (ii) The expatriate employees of the Company shall be exempt from tax or withholding tax in Bangladesh on their income received from the Company in connection with work on the Project for a period of 3 (three) years commencing on the date of each such employee's first entry into Bangladesh as an employee of the Company in accordance with the prevailing Statutory Regulatory Order (SRO) and any subsequent amendment thereof;

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- (iii) Power generation has been declared by the GOB as an “industry” and, accordingly, the Company shall be eligible for all other concessions which were available to industrial projects in Bangladesh on [Bid Date] under and in accordance with the Laws of Bangladesh;
- (iv) Any direct foreign collaborators, companies and experts of the Company involved in the Project shall be exempt from tax and withholding tax on such of their income as is paid to it by the Company as “royalties” or as “technical knowhow fees” or as “technical assistance fees” in connection with the Project in accordance with the prevailing Statutory Regulatory Order (SRO) and any subsequent amendment thereof;
- (v) The GOB shall permit remittance of up to 50% (fifty percent) of the salary of the expatriate employees employed in Bangladesh by the Company or the Contractors, and the GOB shall provide all requisite facilities for repatriation of their savings and retirement benefits at the time of their departure from Bangladesh; and
- (vi) The Company, Lenders and the Contractors shall be governed by the applicable double taxation treaties or other bilateral arrangements between the GOB and their respective countries of domicile as at [Bid Date] and thereafter from time to time; *provided*, that such treaties and arrangements are no less favorable than those applicable and in existence on [Bid Date] if any.
- (vii) The Company shall be liable to deduct or collect tax from any payment to Contractor, Sub-Contractor, Suppliers, local employees in accordance with the provision of Income Tax Ordinance 1984.

12.2 Taxation of Lenders

The foreign Lenders shall not be subject to taxation or withholding tax in Bangladesh in accordance with the prevailing Statutory Regulatory Order (SRO) and any subsequent amendment thereof in respect of their income from interest and fees arising from loans extended to the Company under the Financing Documents during the term of the Power Purchase Agreement subject, however, to the fulfillment of all applicable conditions specified in the relevant bilateral tax treaty applicable to each Lender’s country in conjunction with the Income Tax Ordinance, 1984 (Ord. No. XXXVI of 1984), amended at the time the related Financing Documents become effective.

12.3 Foreign Investors

Foreign Investors will be governed by the bilateral tax treaties or other bilateral arrangements between the GOB and their respective countries of domicile as at [Bid Date] and thereafter from time to time; *provided*, that such treaties or arrangements are no less favourable than those applicable and in existence on [Bid Date] , if any. If there is no bilateral tax treaty between Bangladesh and any Foreign Investor’s country of residence, the Foreign Investor will be taxed in accordance with the Laws of Bangladesh.

12.4 Taxes on Electricity

The Company shall be exempted from any imposition of taxes on the sale of electricity to BPDB.

12.5 Tax Change Not a Breach

Notwithstanding anything to the contrary expressed or implied in this Section 12, no charge in the rate of an existing Tax or the assessment of a new or additional Tax on the Company, the Contractors or the Foreign Lenders in excess of the rate for such Tax expressly provided under this Section 12, if any, shall be a breach of this Agreement by the GOB; *provided*, that the charge in rate or assessment of a new Tax in excess of the rate provided hereunder is the basis for an adjustment in the compensation payable to the Company under the Power Purchase Agreement.

SECTION 13: TERMINATION

13.1 Company Events of Default --Termination by the GOB

The GOB may give a notice of default under this Agreement (a “**GOB Notice of Default**”) upon (or following) the occurrence of any of the following events (“**Company Event of Default**”); *provided*, that no such event shall be a Company Event of Default if it (i) results from a breach (a) by the GOB of this Agreement or the Guarantee, (b) BPDB of the Power Purchase Agreement, (ii) occurs as a result of a Force Majeure Event or Political Event or Change in Law for the period provided pursuant to Section 11.4 or 11A.4:

- (a) The failure of the Company to achieve the Financial Closing Date by the Required Financial Closing Date;
- (b) The failure of the Company to achieve the Construction Start Date within 90 (ninety) Days after the Financial Closing Date;
- (c) The failure of the Company to achieve the Commercial Operations Date by the Required Commercial Operations Date;
- (d) after the Construction Start Date but prior to the achievement of the Commercial Operation Date, the Abandonment of the Facility by the Company or the failure of the Company to prosecute the Facility in a diligent manner for a period of 30 (thirty) consecutive Days without the prior notice to, and the prior written consent of, the GOB (in either case, other than as a result of BPDB’s acts or omissions);
- (e) Except for the transfer of the Facility to the GOB pursuant to the terms of this Agreement and the assignment to and by the Lenders contemplated under Section 9.2 and Section 22.10 of the Power Purchase Agreement:
 - (i) The assignment or transfer of the Company’s rights or obligations in the Facility without obtaining the prior written consent of the GOB; or
 - (ii) The transfer, conveyance, loss, or relinquishment to any person or entity of the Company’s right to own and/or operate the Facility or any material part thereof or to occupy the Site without the prior written approval of the GOB;
- (f) except for the purpose of amalgamation or reconstruction (*provided*, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:
 - (i) The passing of a resolution by the shareholders of the Company for the winding up of the Company;
 - (ii) The voluntary filing by the Company of a petition of bankruptcy, moratorium, or other similar relief;
 - (iii) The appointment of a provisional liquidator in a proceeding for the winding up of the Company after notice to the Company and due hearing, which appointment has not been set aside or stayed within 90 (ninety) Days of such appointment; or
 - (iv) The making by a court with jurisdiction over the Company of an order winding up the Company that is not stayed or reversed by a court of competent authority within 90 (ninety) Days;
- (g) any statement, representation, or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation, or warranty having a material and adverse effect on the Company’s ability to perform its obligations under this Agreement;

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- (h) any material breach by the Company of this Agreement, that is not remedied within 30 (thirty) Days after notice from the GOB, stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;
- (i) the occurrence of a Company Event of Default under and as defined in the Power Purchase Agreement, or which has not been waived by the other party to the applicable agreement or remedied by the Company within the applicable cure period , if any, provided to the Company therein;
- (j) any default or defaults by the Company in the making of any undisputed payment or payments required to be made by it under this Agreement, the Power Purchase Agreement as the case may be, on the due date specified in such agreement that continues unpaid for a period of 30 (thirty) Days plus 5 (five) Business Days following the due date therefore;
- (k) The failure by the Company to provide and maintain the Performance Security Deposit as required by inform Force and effect.
- (l) The failure of the Company to submit the Operations Security Deposit within 30 (thirty) Days after the Commercial Operations Date or to maintain the Operations Security Deposit, in either case, in accordance with Section 8.2(b) of the Power Purchase Agreement.

13.2 GOB Events of Default -- Termination by the Company

The Company may give a notice of default under this Agreement (a “**Company Notice of Default**”) upon (or following) the occurrence of any of the following events (a “**GOB Event of Default**” with respect to each of the following events; *provided* that no such event shall be a GOB Event of Default if it (i) results from a breach by the Company of the Power Purchase Agreement or (ii) occurs as a result of a Force Majeure Event for the period provided pursuant to Section 11.4:

- (a) The expropriation, compulsory acquisition, or nationalization by the GOB or any Government Authority of:
 - (i) Any Ordinary Share Capital; or
 - (ii) Any material asset or right of the Company (except as contemplated by the Security Package);
- (b) Any procurement by the GOB or any Government Authority or any combination thereof of:
 - (i) Any Ordinary Share Capital if the result would be for the GOB or one or more Government Authority(ies) or both to acquire control of the Company or its management; or
 - (ii) Any material asset or right of the Company (except as contemplated by the Security Package);
- (c) The dissolution, pursuant to law, of BPDB, except for:
 - (i) The privatization of BPDB; or
 - (ii) An amalgamation, reorganization, reconstruction, corporatization or further privatization of BPDB,
 - (iii) In each case where:
 - (A) the GOB without interruption, guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee; or such other commercial security is provided for the obligation of the succeeding

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entity or entities that in the reasonable business judgment of the Company provides an adequate alternative to the Guarantee;

- (B) and all of BPDB's obligations under the Power Purchase Agreement have been assigned pursuant to law or contractually assumed, through a notation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations;
- (d) any default or defaults by the GOB in the making of any payment or payments required to be made by it under the Guarantee referred to in Section 16 on the due date for payment specified in the Guarantee that continues unpaid for 5 (five) Business Days;
- (e) any material breach by the GOB of this Agreement that is not remedied within 30 (thirty) Days after notice from the Company to the GOB stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail, and demanding remedy thereof;
- (f) The occurrence of BPDB Event of Default under (and as defined in) the Power Purchase Agreement which has not been waived by the Company or remedied within the applicable cure period provided therein (if any);
- (g) any change in any Laws of Bangladesh making:
 - (i) unenforceable, invalid, or void any material undertaking of the GOB, BPDB and PGCB under this Agreement, the Guarantee, the Power Purchase Agreement; or
 - (ii) it unlawful for the Company, its Lenders or the investors to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement or any other document in the Security Package; or
 - (iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right unenforceable, invalid or void as a result of any such change in law; or
- (h) any change in any of the Laws of Bangladesh from those in existence on the date hereof placing any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of the execution of this Agreement) on the ability of the Company to exchange for Dollars, or for Foreign Investors to repatriate, any capital, dividends distributions or other proceeds from the Company (provided, that such distributions do not arise in connection with a breach by the Company of this Agreement), which restrictions or limitations remain in place for more than ninety (90) Days without an arrangement being provided to exempt the Company or its Foreign Investors from all such restrictions and limitations.

13.3 Rights and Remedies Upon an Event of Default

- (a) Notice of Intent to terminate
 - (i) Upon (or following) the occurrence of a GOB Event of Default or a Company Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting party may, at its option, initiate termination of this Agreement by delivering a notice (a "**Notice of Intent to Terminate**") of its intent to terminate this Agreement to the defaulting Party copied to the other Parties.
 - (ii) The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default, the GOB Event of Default, as the case may be, giving rise to such Notice of Intent to Terminate.

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- (b) Consultation
 - (i) Following the delivery of a Notice of Intent to Terminate (other than for a Company Event of Default under Section 13.1(b)), the Parties shall consult for a period of:
 - (A) Forty five (45) Days in case of a failure by any Party to make payments when due; and
 - (B) Ninety (90) Days with respect to any other Event of Default (or such longer period as the Parties may mutually agree),

As to what steps shall be taken with a view to resolving or mitigating the consequences of the relevant Event of Default.

- (ii) Notwithstanding any such consultations, during the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 13.3(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- (c) Termination Notice

Subject to the provisions of Sections 13.4 or 13.5, as the case may be, upon expiration of the consultation period described in Section 13.3(b), and unless the Parties shall have otherwise agreed or unless the GOB Event of Default or Company Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Parties, whereupon this Agreement shall immediately terminate immediately upon delivery of such notice to such Parties and Section 14 shall apply.

13.4 Notice to the GOB of BPDB's Default

- (a) No Termination without Notice to the GOB

Notwithstanding anything in this Agreement, the Company shall not seek to terminate this Agreement, the Power Purchase Agreement due to any default by BPDB without first giving a copy of any notices given to BPDB, as the case may be, under Sections 13.1 or Sections 4.3 and 4.4 of the Power Purchase Agreement 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, as the case may be, under the Power Purchase Agreement such cure period to commence upon delivery of each such notice to the GOB.

- (b) Notification Procedure
 - (i) Each such notice shall be deemed to have been delivered:
 - (A) When presented personally to the GOB;
 - (B) When transmitted by facsimile; or
 - (C) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the GOB, at the address indicated in Section 17 (or such other address as the GOB may have specified by written notice delivered in accordance herewith).

Any notice given by facsimile under this Section 13.4 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 GOB.

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- (c) Termination Not Valid Without Notice to the GOB
 - (i) No rescission or termination of this Agreement, the Power Purchase Agreement, by the Company shall be effective 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 is required under the Guarantee) or to perform any act required under this Agreement, BPDB under the Power Purchase Agreement with the same effect as if the payment or act had been made or performed by BPDB, as the case may be.

- (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, as the case may be, under this Agreement, the Power Purchase Agreement, the Company shall have all of its rights and remedies with respect to such default as set forth in this Agreement, the Power Purchase Agreement, *provided*, that if the GOB is diligently attempting to cure any default other than a payment default of BPDB, as the case may be, and demonstrable progress toward affecting such cure is being made, the GOB shall be granted an additional period not exceeding 90 (ninety) Days to effect such cure before the Company may exercise its rights and remedies with respect to such default set forth in this Agreement and the Power Purchase Agreement.

13.5 Notice to the Lenders of Company Event of Default

- (a) No Termination without Notice to the Lenders

Notwithstanding anything in this Agreement, from and after the occurrence of the Financial Closing Date, the GOB shall not seek to terminate this Agreement without first giving to the Lenders a copy of any notices given to the Company under Sections 13.2 and 13.3, such notice to be coupled with a request to the Lenders to cure any such default within the cure period specified in Section 13.3(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 the GOB 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 the GOB and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below; or
 - (C) 5 (five) 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 or Agent 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 13.5 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lenders or the Agent.

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(iii) Notwithstanding the foregoing, if the address of the Lenders or Agent is outside Bangladesh, any notice delivered to the Lenders or Agent pursuant to this Section 13.5 shall be:

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

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

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

(iv) The address and facsimile number for the Lenders or Agent shall be provided to the GOB by the Company at Financial Closing and thereafter may be changed by the Lenders or the Agent by subsequent delivery of a notice to the GOB at the address or facsimile number for the GOB provided in Section 17.1 (or at such other address or facsimile number subsequently delivered to the Lenders or the Agent in accordance with this Section 13.5) and otherwise in accordance with the requirements of Section 17.1.

(c) Termination Not Valid Without Notice to Lenders

(i) From and after Financial Closing no rescission or termination of this Agreement by the GOB (other than termination resulting from a Company Event of Default under Section 13.1(b)) shall be valid or binding upon the Lenders without such notice and the expiration of:

(A) The Initial Cure Period;

(B) The Evaluation Period provided in this Section 13.5; and

(C) If applicable, the Lenders Cure Period, provided in this Section 13.5, as such Lenders Cure Period may be extended.

(ii) The Lenders may make, but shall be under no obligation to make, any payment or perform or procure the performance of any act required to be made or performed by the Company, with the same effect as if made or performed by the Company.

(d) Failure of Lenders to Cure Default

If the Lenders fail to cure or are unable or unwilling to cure any Company Event of Default that is required to be cured prior to the expiration of the periods referred to above in this Section 13.5, the GOB shall have all the rights and remedies with respect to such default as set forth in this Agreement; *provided*, that:

(i) upon the expiration of the Initial Cure Period, the Lenders shall have a further period (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 earlier of:

(A) the delivery by the Lenders to the GOB 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, the GOB’s rights and remedies with respect to a Company Event of Default shall be suspended.

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- (e) Delivery of Election Notice
 - (i) Upon the delivery of the Election Notice, the Lenders shall be permitted an additional period of 180 (one hundred and eighty) Days to cure any Company Event of Default (the “**Lenders Cure Period**”).
 - (ii) During the Lenders Cure Period, the GOB’s right to terminate this Agreement shall be suspended so long as the Lenders are diligently:
 - (A) attempting to procure (other than by the Company unless the Company is acting at the direction of the Lenders) the cure of such default; or
 - (B) pursuing the enforcement of their rights and remedies under the Financing Documents against the Company.
- (f) Expiry of Cure Period

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

13.6 Other Remedies

- (a) Except where expressly provided otherwise in this Agreement: (i) the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law, and (b) remedies are cumulative, and the exercise of, or the failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party.
- (b) Notwithstanding the provisions of Section 13.6(a), the Parties agree that the GOB will be damaged in amounts that may be difficult or impossible to determine in the event that (i) Financial Closing is not achieved as required by Section 13.1(a) or (ii) this Agreement is terminated due to a Company Event of Default prior to the occurrence of Financial Closing and, in the event of any such breach by the Company, the sole right and remedy of the GOB for any such default shall be the right (but not the obligation) to terminate this Agreement pursuant to Section 13.3, and upon such termination to encash the Performance Security Deposit in full.
- (c) Notwithstanding the provisions of Section 13.6(a), the Parties agree that the Company will be damaged in amounts that may be difficult or impossible to determine in the event that this Agreement is terminated due to a GOB Event of Default. Therefore, the Parties agree that the compensation amounts provided in Section 14.1(b) and the transfer of the Facility to the GOB in exchange therefore is reasonable and constitutes liquidated damages to the Company for any default by the GOB under Section 13.2 and it is further understood and agreed that the payment by the GOB of the compensation amount provided in Section 14.1(b) and transfer of the Facility to the GOB and the termination of this Agreement pursuant to Section 13.3 is the sole remedy of the Company for such event.

13.7 Proposal Security/ Bid Security

- (a) The Bid Security has been delivered to BPDB and is required to be maintained in effect until submission of Performance Security Deposit (PSD). If at any time prior to the submission of PSD, the Bid Security will expire within thirty (30) Days and the Company does not extend the period of effectiveness of the Bid Security for a period of not less than 4 (four) Months, BPDB shall be entitled immediately to encash the Bid Security in full.

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13.8 Performance Security Deposit (PSD)

- (a) The PSD has been delivered to BPDB and is required to be maintained in effect until the Commercial Operation Date (COD). If at any time prior to COD the PSD will expire within 30 (thirty) Days and the Company does not extend the period of effectiveness of the PSD for a period of not less than 3 (three) Months, BPDB shall be entitled immediately to encash the PSD in full.

- (b) The PSD, among other things secures the Company's obligation to achieve Financial Closing in accordance with the terms of this Agreement.

SECTION 14: RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

14.1 Compensation Upon Termination

(a) Company Event of Default

(i) In the event that the GOB terminates this Agreement pursuant to Section 13.1(a) as a result of a Company Event of Default for failure to timely achieve Financial Closing or for any other Company Event of Default occurring before the occurrence of Financial Closing, its rights and remedies shall be those set out in Section 13.6(b).

(ii) In the event that, following the occurrence of Financial Closing, the GOB terminates this Agreement pursuant to Section 13.1(b) through (k) as a result of any other Company Event of Default, the GOB or its designee shall have the right, but shall not be required, to acquire all of the Company's rights, title and interests in and to the Facility; *provided*, that the GOB or its designee, upon such acquisition, pays the Company the compensation amount set forth in Row I of the Compensation Table in Schedule 2. If the GOB does not elect to purchase the Facility upon the effective date of the termination, the GOB shall have no further obligations to the Company hereunder.

(b) GOB Event of Default.

In the event the Company terminates this Agreement pursuant to Section 13.2(a) through (h) as a result of a GOB Event of Default, the Company may elect to transfer the Facility to the GOB or its designee and, upon such transfer, the GOB or its designee shall pay the Company the compensation amount set forth in Row II of Schedule 2.

(c) Termination Following Change in Law

In the event of a termination of this Agreement following a Change in Law (other than pursuant to Section 11B.1(h)(iii)), the GOB shall pay the Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.

(d) Termination for Failure of the Company to Achieve Restoration Schedule Following Force Majeure Event

If following a Force Majeure Event, the GOB terminates this Agreement in accordance with Section 11B.4(b), as a result of the Company's failure to timely complete the Restoration as required in Section 11B.4(b), the GOB or its designee shall have the right, but shall not be required, to acquire all of the Company's rights, title, and interests in and to the Facility; provided, that the GOB or its designee, upon such acquisition, pays the Company the compensation amount set forth in Row IV of the Compensation Table in Schedule 2. If the GOB does not elect to purchase the Facility upon the effective date of the termination, the GOB shall have no further obligations to the Company hereunder.

(e) Termination Following Political Event:

(i) If following a Political Event, the GOB and the Company agree or an Expert determines that Restoration is feasible, but the GOB elects to terminate this Agreement, the GOB shall pay the Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.

(ii) If following a Political Event, the GOB and the Company agree or an Expert determines that Restoration is not feasible, the GOB shall pay the Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.

(iii) If following a Political Event, the GOB and the Company or an Expert determines that Restoration is feasible, but the Company is unable to obtain financing for the Restoration, the GOB shall pay the Company the compensation amount set forth in

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Row VI of the Compensation Table in Schedule 2. Upon the payment of such compensation amount, the Company shall transfer the Facility to the GOB.

- (iv) If following a Political Event, the GOB terminates this Agreement in accordance with Section 11B.4(b) as a result of a failure to timely complete a Restoration, the GOB shall, so long as the Company has made a demonstrable good faith effort to effect the Restoration, pay the Company the compensation amount set forth in Row IV of the Compensation Table in Schedule 2. If the Company has not made a demonstrable good faith effort to effect the Restoration, the GOB shall pay the Company the compensation amount set forth in Row V of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.
 - (v) If a Political Event has continued uninterrupted for more than ninety (90) Days, intermittent Political Event have taken place ninety (90) Days in any Year, or, following a Change in Law, an Expert has determined that Restoration or modification of the Facility is not technically feasible or the GOB has determined that the costs of Restoration or modification are unacceptable and the Change in Law has not been modified or rescinded to make such Restoration or modification technically or financially acceptable to the GOB and the Facility has not been operated for ninety (90) Days, and either the Company or the GOB terminates this Agreement in accordance with Section 11B.1(h) the GOB shall pay the Company the compensation amount set forth in Row II (for a GOB termination) or Row III (for a Company termination) of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.
 - (vi) If following a revision of the Restoration Cost Estimate or the Restoration Schedule of a Restoration resulting from Political Event or Change in Law, the GOB elects to terminate this Agreement pursuant to Section 11B.4, the GOB shall pay the Company the compensation amount set forth in Row VI of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.
- (f) Termination Following Force Majeure Event or Political Event or Change in Law under this Agreement or the Power Purchase Agreement
- (i) If following a Force Majeure Event or Political Event or Change in Law affecting BPDB, either the Company or the GOB pursuant to Section 11B.1(e)(i) elects to terminate this Agreement, the GOB shall pay the Company the compensation amount set forth in Row II (for a GOB termination) or Row III (for a Company termination) of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.
 - (ii) If following a Force Majeure Event affecting the Facility, the GOB pursuant to Section 11B.1(e)(ii) elects to terminate this Agreement, the GOB shall pay the Company the compensation amount set forth in Row VI of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to the GOB.
- (g) Termination Following Company's Inability to Obtain Permits
- If this Agreement is terminated pursuant to Section 11B.1(f) as a result of the Company's inability to obtain a necessary Government Authorisation, the GOB shall pay the Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Company shall transfer the Facility to GOB.
- (h) Use of Certain Insurance Proceeds

Whenever this Agreement is terminated pursuant to Section 11B following a Force Majeure Event or Political Event or Change in Law, and the GOB is obligated to pay compensation to the Company pursuant to Section 14.1 and insurance proceeds are available in connection with the Force Majeure Event or Political Event or Change in Law, the total amount of the net

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proceeds made available under the insurance policies to which the Company is entitled with respect to the Facility shall, if not used to effect a Restoration or make repairs to the Facility, be used to pay the following items in the following order of priority:

- (i) to the payment of all indebtedness secured by the Facility;
 - (ii) then to the other compensation, if any, payable by the GOB to the Company as set forth in Schedule 2; and
 - (iii) then to the Company.
- (i) Not used
 - (j) Return of Bid Security

Upon submission of the Performance Security Deposit the GOB shall, promptly, upon such submission, procure the return of the Bid Security by BPDB (without any drawings thereon) to the Company.

- (k) Return of Performance Security Deposit

In the event of a termination of this Agreement prior to the occurrence of Financial Closing due to a GOB Event of Default or BPDB Event of Default, as the case may be, the GOB shall, promptly, upon such termination, procure the return of the Performance Security Deposit by BPDB (without any drawings thereon) to the Company.

14.2 Obligations upon Termination

Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Agreement; *provided*, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Section 8 (Bank Accounts; Foreign Exchange), Section 12 (Taxation; Customs Duties), and Section 15 (Resolution of Disputes) shall survive any termination or expiration of this Agreement until all provisions are fulfilled and all funds payable hereunder by the GOB are received by the Company or the Lenders upon the sale or other disposal of the assets related to the Project, including, without limitation, proceeds from the enforcement by the Lenders of the security created by the Company under or pursuant to the Security Package have been repatriated.

14.3 Facility to be Free and Clear

Any transfer of the Facility by the Company to the GOB (or its designee) in accordance with the provisions of this Section 14 shall be made free and clear of all Environmental Liabilities and all Liens and encumbrances other than Permitted Liens; *provided*, that the GOB has paid to the Company all compensation amounts that are payable in accordance with this Section 14.

SECTION 15: CHOICE OF LAW AND RESOLUTION OF DISPUTES

15.1 Governing Law

This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of Bangladesh.

15.2 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 Parties 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 the Parties have determined that further discussion is not likely to resolve the Dispute to its satisfaction, such Party may immediately refer the matter to the Expert for consideration pursuant to Section 15.3.

(b) Referral to Chief Executive Officer

- (i) In the event that the Dispute is not resolved in accordance with Section 15.2(a), any 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 the GOB) 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 a Party may refer the matter to an Expert in accordance with Section 15.3 or, if the Dispute is not of a type required to be referred to an Expert under Section 15.3, commence arbitration of the Dispute in accordance with Section 15.4.

15.3 Mediation by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 15.2, then any Party, in accordance with this Section 15.3, 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 Parties 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 Parties shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable. If the Parties receiving such notice fail 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 any Party.

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- (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 Parties 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 15.3(c), the other Parties may submit to the Expert:
 - (i) a description of the Dispute;
 - (ii) a statement of such Party's position; and
 - (iii) copies of any records supporting such Party's position.
- (e) The Expert shall consider any such information submitted by the responding Parties within the period provided in Section 15.3(d) and, in the Expert's discretion, may consider any additional information submitted by any 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 Parties' relevant records and to receive copies of the records submitted by the other Parties.
- (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 15.3(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 all 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 15.3(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 no 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 or where the Parties agree in writing at the time that the Expert is selected that the Expert's determination shall be final and binding (in which case the determination of the Expert shall be binding), such determination shall not be final and binding and a Party, it may initiate arbitration proceeding in accordance with Section 15.4; 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

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the Expert has not submitted its recommendation within the time period provided in Section 15.3(i), a Party may initiate arbitration proceedings in accordance with Section 15.4, 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 Parties). Notwithstanding the foregoing provisions of this Section 15.3(j), the Party 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 15.3(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.

15.4 Arbitration

- (a) The arbitration shall be conducted in accordance with the Arbitration Act, 2001 (Act No. 1 of 2001) of Bangladesh as at present in force. The place of arbitration shall be in Dhaka, Bangladesh. 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 15.4) 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 of 2001 [Act No. I of 2001].
- (b) Any arbitral proceeding under this Article 15.4 shall be carried out at Dhaka, Bangladesh in accordance with the Laws of Bangladesh.
- (c) No arbitrator appointed pursuant to this Article 15.4 shall be any shareholder or group of shareholders owning directly or indirectly 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.
- (d) Each Party hereby irrevocably undertakes (i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Article 15.4 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.
- (e) Until such time as any arbitral proceedings begun in pursuant of Article 15.4(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 15.4, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance

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of Article 15.4(a)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Article 15.4(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 15.4(a).

- (f) The language of the arbitration shall be in English.

15.5 Separability and Related Disputes

- (a) The arbitration agreement set forth in Sections 15.4 and 15.5 shall be (i) governed by and construed in accordance with the laws of Bangladesh and (ii) treated as an agreement independent of and separable from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted in pursuance of Sections 15.4(a) or (b) that this Agreement or any provision hereof (other than Section 15.4) is invalid, illegal or unenforceable, shall not invalidate the arbitration agreement set forth in Sections 15.4 and 15.5.
- (b) If the Dispute raises issues which are substantially the same or connected with issues raised in a related dispute between the Company and the GOB under this Agreement and the Company and BPDB, pursuant to the Power Purchase Agreement and if the related dispute has already been referred for determination to arbitration and if referral of the related Dispute hereunder would not impair or adversely affect the rights or interests of the Parties, each of the Company, the GOB hereby agree that the Dispute shall be referred to the same arbitral tribunal constituted to determine the related dispute.

15.6 Commercial Acts; Sovereign Immunity; Jurisdiction

- (a) GOB unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts. In furtherance of the foregoing, GOB hereby irrevocably and unconditionally agrees that:
- (i) should any proceedings be brought against it or its assets in Bangladesh, other than its military aircraft, naval vessels, other defence properties, accounts of the Bangladesh Bank held outside of Bangladesh (collectively, “**Protected Assets**”) where such assets or property of the GOB are located to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings will be claimed by or on behalf of the GOB on behalf of itself or any of its assets (other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
- (ii) 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 Agreement in accordance with the Bangladesh Energy Regulatory Commission Dispute Settlement Regulation, 2014 to resolve any Dispute between the Parties (including without limitation, the making, enforcement or execution against or in respect

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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. GOB 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.

15.7 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) in accordance with the Arbitration Act, 2001 (Act No. 1 of 2001) of Bangladesh as at present in force or Expert who were duly appointed under this Agreement to resolve any Dispute between the Parties. The Company waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 19.6 and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Company irrevocably waives any and all rights it may have to enforce any judgement or claim against the Protected Assets in the courts of 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 15.6 or this Section 15.7 or both shall be referred for determination under Section 15.3 and Section 15.4 and shall fall within the definition of Dispute.

SECTION 16: GUARANTEE

The GOB shall, at Financial Closing, execute and deliver to the Company the Guarantee.

SECTION 17: NOTICES

17.1 Address for Notices

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

For the GOB:

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

With a copy to: [_____]

For the Company:

Attention: Managing Director/Chairman
Address: [Company Name],
[Address] ,
Facsimile:
Telephone No:
E-mail:

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 such receiving Party's facsimile number specified above and, if received on a Day that is not Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to such receiving Party's facsimile number specified above;
 - (iii) 1 (one) Business Day after being delivered to a courier for overnight delivery, addressed to a receiving Party, at the address indicated above (or such other address as such Party may have specified by notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith); or
 - (iv) 5 (five) 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 a receiving Party, at the address indicated above (or such other address as such receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith).
- (b) Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.
 - (c) Any Party may by not less than 10 (ten) days' prior written notice change the addressees and/or addresses to which such notices and communications to it are to be delivered or mailed.

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SECTION 18: MISCELLANEOUS PROVISIONS

18.1 Amendment

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

18.2 Third Parties

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

18.3 No Waiver

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

18.4 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Parties. The Company shall be solely responsible for the payment of salaries, wages and mandatory and fringe benefits of its employees, which will not have any relationship of any kind with the GOB.

18.5 Accounts and Reports

- (a) The Company shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment as auditors of a firm of independent chartered accountants reasonably acceptable to the GOB.
- (b) The Company shall permit representatives of the GOB, on reasonable notice, to enter upon and inspect the Facility and the design, construction, operation, and maintenance thereof. The Company shall maintain complete and accurate records accounting for all transactions relating to any Restoration of the Facility, which records shall be subject to inspection and audit by the GOB.
- (c) (i) The Company shall, as soon as available but in any event within 60 (sixty) Days of filing or of the date that would be required for filing by a private limited company, furnish to the GOB 2 (two) copies of all documents filed or that would be required to be filed in compliance with the requirements applicable to private limited companies of the Companies Act of 1994, as amended or as may be superseded from time to time.

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- (ii) The Company shall, as soon as available furnish to the GOB (A) a report on any factors materially and adversely affecting or that might materially and adversely affect the Project or the Company's business and operations, and (B) copies of the Monthly progress reports and any other construction-related reports given to BPDB.
- (d) The Company shall, at least 14 (fourteen) Days prior to its becoming effective, report any contemplated: (i) material change in its Memorandum and Articles of Association; (ii) change in its fiscal year; (iii) change in the constitution of its Board of Directors; (iv) change in its Chief Executive Officer, and (v) without prejudice to Section 10.3, registration of a transfer of Ordinary Share Capital to any person.
- (e) Together with the periodic report required by Section 18.5(c)(i), the Company shall provide to the GOB a list of each of its Lenders and creditors to which the Company owes a sum equivalent to at least US\$1,000,000 (one million Dollars) including the amount due under each loan to each of them. The list shall also indicate any changes, as compared to the list submitted the previous year, that might have occurred.
- (f)
 - (i) The Company shall, within 7 (seven) Days of receipt thereof, provide a copy of any notice that the Company may be served under Chapter V (as such Chapter may be amended, modified or relocated) of the Companies Act of 1994 by any of the Lenders or the Company's creditors.
 - (ii) The Company shall provide to the GOB all information in respect of any further actions taken by the Lenders or its creditors following any notice under Chapter V (as such Chapter may be amended, modified or relocated) of the Companies Act of 1994.

18.6 Survival

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

18.7 Language

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

18.8 Entirety

Except for the provisions of the Letter of Intent (LOI) dated [Bid Date] distributed by BPDB in relation to the Project, which shall govern the Parties rights and obligations in relation to the Bid Security, this Agreement, together with the Power Purchase Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter hereof. Except for the provisions of the Letter of Intent (LOI) dated [Bid Date] distributed by BPDB in relation to the Project, which shall continue to govern the Parties rights and obligations in relation to the Bid Security, all prior written or oral understandings, offers or other communications of every kind are hereby abrogated and withdrawn.

18.9 Successors and Assigns

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

18.10 Confidentiality

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

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professional advisers, to publish, disclose or use the same for its own purposes other than as may be required to perform its obligations under this Agreement.

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

- (b) The provisions of paragraph 18.10 (a) shall not apply to:
- (i) Any information in the public domain otherwise than by breach of this Agreement;
 - (ii) Information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; and
 - (iii) Information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality.

18.11 Double Jeopardy

A final, non-appealable order issued in a proceeding initiated by (i) BPDB and based on a claim of breach of the Power Purchase Agreement shall be with prejudice to any proceedings against the Company that the GOB could otherwise bring for breach by the Company of substantially the same obligations under this Agreement. Nothing in this Section 18.11 shall prevent the GOB from separately initiating proceedings to terminate this Agreement pursuant to Section 13.3.

18.12 Counterparts

This Agreement is executed in counterparts and all such executed counterparts shall constitute an original of this Agreement, binding on the Parties.

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

[COMPANY NAME]

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

By: _____
Name:
Title:

By: _____
Name:
Title:

Witness

Witness

Seal

Seal

**THE POWER GRID COMPANY OF
BANGLADESH**

By: _____
Name:
Title:

Seal

Witness

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SCHEDULE 1: GOVERNMENT AUTHORIZATIONS*

[SUBJECT TO REVIEW]

<u>Sl. No.</u>	<u>Government Authorization</u>	<u>Relevant Authority</u>
PART 1 :		
PART A : CRITICAL GOVERNMENT AUTHORIZATIONS		
1.	No objection certificates for the Project and consents for Site clearance and Environmental Clearance Certificate. In particular:	
(a)	As per the Local Government (Union Parishads) Act, 2009(Act No. 61 of 2009)	UP
(b)	As per Local Government Upazila Parishad Act, 2009.	Upazila
(c)	Government Authorization granting permission to commence civil works on the basis of the “ Initial Environmental Examination Report ”.	DOE
(d)	Government Authorization approving the Project for environmental and social impact (“ EIA Approval ”) on the basis of the “Environmental Impact Assessment Report”.	DOE
2.	Government Authorization for the execution of the Financing Documents, including approval of the term sheets for the Company’s Foreign Currency loans.	MOF (ERD)/BIDA
3.	Registration of the executed Financing Documents	BIDA
4.	Licence for the term of the Power Purchase Agreement permitting the Company to generate and supply electricity under the Power Purchase Agreement.	MOPEMR/OEACEI/BE RC
PART B : OTHER GOVERNMENT AUTHORIZATIONS		
1.	Registration of the Company and the O&M Contractor to operate and maintain infrastructure facilities for private power generation projects.	BIDA
2.	Government Authorization for the installation, construction and operation of a deep tube well at the Site.	DPHE
3.	Work permits for Project personnel including the Company’s and Contractors’ employees and residence visas.	BIDA/MOHA
4.	National security clearance for expatriate employees of Company and the Construction and O&M Contractor.	MOHA
5.	Government Authorization for remittance of up to fifty percent (50%) of salaries and savings by expatriate employees of the Company without restriction.	BB

- To the extent of any inconsistencies between the terms and provisions of the Implementation Agreement and this Schedule 1, the terms and provisions of the Implementation Agreement shall be in all respects controlling. Capitalized terms used and not defined herein are as defined in the Implementation Agreement (of which this Schedule 1 constitutes a part).

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<i>Sl. No.</i>	<i>Government Authorization</i>	<i>Relevant Authority</i>
6.	Registration of the Company as a private limited company.	Registrar of Joint Stock Companies and Firms MOC/CCIE
7.(a)	All import permits, certificates, licenses and other required consents allowing the Company and the Contractors to import into Bangladesh all plant, machinery, equipment, spare parts, materials and supplies required for the Project, as expressly provided in Section 7.1 of the Implementation Agreement.	MOC/CCIE
7.(b)	Exempting the Company and the Contractors from payment of fees on import into Bangladesh all plant, machinery, equipment, spare parts, materials and supplies required for the Project, as expressly provided in Section 7.1 of the Implementation Agreement.	BB
7.(c)	No objection certificate to obtain export permit to export the imported equipment not forming the permanent part of the Facility as expressly provided in Section 7 of the Implementation Agreement.	NBR
8.	Statutory notifications granting exemption from Customs Duties and VAT on the importation of plant and equipment (including spare parts) for incorporation into the Facility and the temporary importation of erection materials, machinery and equipment (subject to re-export), as expressly provided in Section 12.1(b) of the Implementation Agreement.	NBR
9.	Statutory notification granting the Company exemption from taxation on its income including all withholding taxes related directly to the Project, as expressly provided in Section 12.1(a) of the Implementation Agreement.	NBR
10.	Statutory notification granting foreign collaborators, companies and experts exemption from tax or withholding tax on such of their income as is paid as “royalties”, “technical assistance fees” and “technical know-how fees” by the Company in connection with the Project, as expressly provided in Section 12.1(d) of the Implementation Agreement.	NBR
11.	Statutory notification granting the Foreign Investors of the Company (if a public limited company) exemption from capital gain tax in respect of any transfer or disposal of shares in the Company, as expressly provided in Section 12.1(d) of the Implementation Agreement.	NBR
12.	Statutory notification granting the Company an exemption from any duty on the sale of electricity to BPDB, as expressly provided in Section 12.4 of the Implementation Agreement.	MOPEMR/OEACEI
13.	Statutory notification granting foreign employees of the Company exemptions from taxation on their personal income in Bangladesh, as expressly provided in Section 12.1(d) of the Implementation Agreement.	NBR
14.	Statutory notification that the Lenders will be exempted from taxation on their income in Bangladesh, as expressly provided in Section 12.2 of the Implementation Agreement.	NBR

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<u>Sl. No.</u>	<u>Government Authorization</u>	<u>Relevant Authority</u>
15(a).	Statutory notification granting exemption from stamp duties in respect of the registration of all deeds, documents and instruments contained in the Financing Documents as expressly provided in Section 12.1(c) of the Implementation Agreement.	MOF(IRD)/MOL
15(b)	Statutory notification granting exemption from registration fees in respect of the registration of all deeds, documents and instruments contained in the Financing Documents, as expressly provided in Section 12.1(c) of the Implementation Agreement.	MOF(IRD)/MOL
16(a)	Easement or lease agreement and approval for construction of shoreline work, jetty, intake and outfall structures of once through cooling system, use of river water and dredging of river.	IWTA
16(b)	Approval for construction of shoreline work, jetty, intake and outfall structures of once through cooling system, use of river water and dredging of river.	BWDB
16(c)	Approval for shoreline work such as sheet piling at Site along the canal.	Upazila /UP
17.	Government Authorization for payment by the Company to persons outside Bangladesh under Section 5 of the Foreign Exchange Regulations Act, 1947 (Act VII of 1947) (“ FERA ”) in respect of all transactions of the Company necessary to implement the Project, as expressly provided in Section 8.3 of the Implementation Agreement.	BB
18.	Government Authorization for the issuance, export and transfer of securities in Bangladesh or outside Bangladesh under Section 13 of FERA, purchased in Taka or in Foreign Currency.	BB
19.	Government Authorization to lend money to the Company	BB
20.	Government Authorization for opening and operating on-shore Dollar and off-shore Foreign Currency bank accounts, as expressly provided in Section 8.2 of the Implementation Agreement.	BB
21.	Government Authorization for the purchase of Dollars for Taka through normal commercial banking channels in Bangladesh for the purposes specified in Section 8.3 of the Implementation Agreement, and for the transfer of such Dollars from bank accounts inside Bangladesh into bank accounts outside Bangladesh, as is expressly provided in Sections 8.2 and 8.3 of the Implementation Agreement.	BB
22.	Government Authorization for creation of security interests in favor of the Lenders in the Company’s bank accounts.	BB
23.	Government Authorization to make or remit payments in Dollars from bank accounts in Bangladesh or outside Bangladesh, as expressly provided in Section 8.3 of the Implementation Agreement.	BB
24.	Certificate from IDRA for Obtaining insurance for the Project from Companies outside Bangladesh, in case of risk cannot be covered by Sadharan Bima Corporation, As per Insurance Act 2010.	IDRA/MOF

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<i>Sl. No.</i>	<i>Government Authorization</i>	<i>Relevant Authority</i>
25.	Special Order for the term of the Power Purchase Agreement exempting the Company from the application of Section 30 of the Electricity Act, 1910 (Act IX of 1910), so as to permit the Company to use electricity within the Facility for auxiliaries (other than supply of electricity to the residential area of Facility).	MOPEMR/OEACIE/BE RC
26.	Special sanction for the term of the Power Purchase Agreement under Section 34 of the Electricity Act, 1910 (Act IX of 1910) permitting the connection of the Facility to the earth by the Company.	MOPEMR/OEACEI/BE RC
PART 2 : GOVERNMENT AUTHORIZATIONS REQUIRED AFTER FINANCIAL CLOSING		
4.	License for the Company to obtain and have arms for the purposes of the security of the Facility.	MOHA
6.	Government Authorization to commission, startup and operate the Facility based on the implementation of measures identified in the EIA (“ Environmental Clearance Certificate ”).	DOE

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<u>Abbreviations:</u>	BB	–	Bangladesh Bank
	BERC	–	Bangladesh Energy Regulatory Commission
	BIDA	–	Bangladesh Investment Development Authority
	BPDB	–	Bangladesh Power Development Board
	BWDB	–	Bangladesh Water Development Board
	CAAB	–	Civil Aviation Authority of Bangladesh
	CCIE	–	Chief Controller of Import and Export
	CI	–	Controller of Insurance
	CIFE	–	Chief Inspector of Factories and Establishment
	DFSCD	–	Department of Fire Service & Civil Defence
	DOE	–	Department of Environment
	DOEXP	–	Department of Explosives
	DPHE	–	Department of Public Health Engineering
	FERA	–	Foreign Exchange Regulation Act 1947
	IWTA	–	Inland Water Transport Authority
	MOC	–	Ministry of Commerce
	MOPEMR	–	Ministry of Power, Energy and Mineral Resources
	MOF (ERD)	–	Ministry of Finance (Economic Relations Division)
	MOF (IRD)	–	Ministry of Finance (Internal Resources Division)
	MOHA	–	Ministry of Home Affairs
	MOL	–	Ministry of Law
	NBR	–	National Board of Revenue
	Upazila	–	Upazila Authority
	UP	–	Local Unon Parishad
	OEACEI	–	Office of the Electrical Adviser and Chief Electric Inspector

SCHEDULE 2: COMPENSATION AMOUNTS

This Schedule 2 consists of two parts. Part 1 is a Compensation Table showing in a tabular format the amounts payable in accordance with Section 11 and Section 14.1. The table refers to various compensation elements, labeled as a, b, c, d, and e, which are set forth in Part 2.

The calculations with respect to each such compensation element shall be verified by an international accounting firm acceptable to the Parties and the Lenders.

PART 1 OF SCHEDULE 2 - COMPENSATION TABLE **TERMINATION COMPENSATION PAYABLE BY GOB**

I. a

(Section 14.1(a))

II. a + b + c + d

(Section 14.1(b); Section 14.1(c); Section 14.1(e)(i); Section 14.1(e)(ii); Section 14.1(e)(v) (GOB termination); Section 14.1(f)(i) (GOB termination)); 14.1(g)

III. a + b + c/2 + d;

provided, that if the Political Event or Change in Law occurs prior to the Commercial Operations Date, “c” shall be multiplied by a fraction, the numerator of which is the equity invested by the Company at the time of termination and the denominator of which is the planned equity investment by the Commercial Operations Date.

Section 14.1(e)(v)(Company termination); Section 14.1(f)(i)(Company termination))

IV. a + e

Section 14.1(d); Section 14.1(e)(iv))

V. a + (e/1.25)

Section 14.1(e)(iv)

VI. a + b + d

Section 14.1(e)(iii); Section 14.1(e)(vi); Section 14.1(f)(ii))

PART 2 OF SCHEDULE 2 - COMPENSATION ELEMENTS

In this Schedule 2, the letters a, b, c, d, and e are used to signify different elements of compensation to be paid upon the occurrence of the events described in Section 14 and this Schedule 2. The letters shall represent the following amounts:

a = the sum of (i) the total amount of principal outstanding to the Lenders under the Financing Documents incurred by the Company in compliance with Section 9.3 of the Implementation Agreement and interest (including (but only as provided below) default interest) thereon plus (ii) the total amount outstanding under any loan agreements for capital improvements to the Facility

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that are required under this Agreement, as approved by the GOB, taking into account all Payments made pursuant to Section 16A.5 (b) & (c) of the Power Purchase Agreement through such dates plus (iii) the total amount of any other outstanding debt incurred by the Company that was approved by the GOB, less any insurance proceeds received by the Company following a Force Majeure Event or Political Event or Change in Law and not spent for Restoration plus (iv) any winding-up costs, prepayment charges, or similar charges or costs passed through by the Lenders to the Company in accordance with the Financing Documents as shown in the schedule provided to the GOB under Section 9.3. For the purpose of Clauses (i) and (iv) of this item a, the total amount outstanding to Lenders under the Financing Documents shall be an amount equal to all unpaid principal, accrued interest (including default interest), prepayment penalties, fees, commissions, costs, and expenses owing to the Lenders as of the date of payment by the GOB which shall be determined and certified by the Lenders to the GOB. Notwithstanding the foregoing, in no event shall the principal amount exceed the amount shown to be outstanding in the amortization schedule provided to the GOB pursuant to Section 9.3 unless directly attributable to a GOB Event of Default and no accrued interest shall be paid by the GOB for any interest that accrued under the Financing Documents or other loan agreements from and after a default by the Company there under, unless such default results from a default by the GOB, BPDB or the Power Purchase Agreement respectively. The sum of all amounts owing to the Lenders under clauses (i) and (iv) above, shall within thirty (30) Days of a request of the GOB, prior to termination by the GOB, be specified by the Lenders as to such amounts owing on a date not less than sixty (60) Days following the request and specified in the request by the GOB.

- b = as of the date of transfer of the Facility to GOB, the equity investment by the shareholders of the Company, expressed in Dollars, reduced on a straight line basis from the Commercial Operations Date through the term of this Agreement to five percent (5%) of the initial value of such equity; which amount shall be further reduced by the estimated cost of maintenance to be performed during the then-Scheduled Outage or Scheduled Outages and the estimated cost of the maintenance to be performed during the next major maintenance overhaul, in each case pro rated by the ratio of (i) the number of Days in the period from the last such maintenance until the date of termination to (ii) the number of Days in the period between the last such maintenance and the scheduled date for the next such maintenance.
- c = for a period equal to the lesser of (i) five (5) years and (ii) the remainder of the term of the Power Purchase Agreement but in no event less than two (2) years, an amount equal to the "Net Cash Flow," expressed in Dollars, for such period (or if such period extends beyond the base case for the last year of the base case), discounted to its present value by applying a discount rate equal to twelve percent (12%) to the base case pro forma presented to the Lenders at Financial Closing. The term "Net Cash Flow" shall mean the net cash profits of the Company with respect to the Facility less all principal repayment amounts and without regard to depreciation, all as projected in such base case pro forma.
- d = the summation of (i) any additional equity amounts that are contributed by the shareholders, expressed in Dollars, of the Company for any of the events that are described under Section 11B.1 plus any such other equity contributions, expressed in Dollars, approved by the GOB, in each case reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution.
- e = The summation of (i) any additional equity amounts, expressed in Dollars, that are contributed by the shareholders of the Company for any of the events that are described under Section 11.B1 prior to the Political Event or Change in Law or Force Majeure Events giving rise to the Restoration which led to the termination by the GOB pursuant to Section 11B.4(b), reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution plus (ii) original equity contributions, expressed in Dollars, adjusted in the manner described in (b) above plus other equity contributions, expressed in Dollars, prior to such Political Event or Change in Law and approved by the GOB, reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution.

SCHEDULE 3: FORM OF GUARANTEE

THIS GUARANTEE (this “**Guarantee**”) is entered into as of this ___ day of _____, 20__¹, in Dhaka, Bangladesh,

BY AND BETWEEN:

- (1) THE PEOPLE’S REPUBLIC OF BANGLADESH represented by POWER DIVISION, THE MINISTRY OF ENERGY AND MINERAL RESOURCES (the “**Guarantor**”); and
- (2) [Company Name]., a company incorporated under the Companies Act, 1994 (Act XVIII of 1994), whose registered office is located in [Address] the “**Company**”).

WHEREAS:

- (A) The Guarantor and the Company have entered into an Implementation Agreement (the “**Implementation Agreement**”).
- (B) The Bangladesh Power Development Board (“**BPDB**”) has entered or will enter into or a Power Purchase Agreement with the Company (the “**Power Purchase Agreement**”).
- (C) In accordance with Section 16 of the Implementation Agreement, the Guarantor has agreed to enter into this Guarantee of the payment obligations of BPDB under the Power Purchase Agreement

NOW THEREFORE, IT IS HEREBY AGREED as follows:

1. GUARANTEE

1.1 Guarantee

In consideration of the Company entering into the Implementation Agreement with the Guarantor, the Power Purchase Agreement with BPDB, the Guarantor hereby irrevocably and unconditionally guarantees and promises to pay the Company any and every sum of money BPDB, is obligated to pay to the Company under or pursuant to the Power Purchase Agreement or the Share Purchase Agreement that BPDB has failed to pay when due in accordance with the terms of the relevant agreement or agreements, which obligation of the GOB shall include monetary damages arising out of any failure by BPDB to perform its obligations under the Power Purchase Agreement, respectively, to the extent that any failure to perform such obligations gives rise to monetary damages.

1.2 Waiver of Defenses

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

1.2.1 The extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of BPDB, set forth in the Power Purchase Agreement.

1.2.2 Amendments to the Power Purchase Agreement.

¹ Insert date of Financial Closing.



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- 1.2.3 The failure, omission, or delay by the Company to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Power Purchase Agreement;
- 1.2.4 The bankruptcy, insolvency, or other failure or financial disability of BPDB or the Company;
- 1.2.5 The addition, or partial or entire release of any guarantor, maker or other party (including BPDB) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Power Purchase Agreement or by any extension, waiver, amendment, or thing or circumstance whatsoever in law or in equity that may release or create a defense or discharge for a guarantor (other than complete performance in accordance with the terms of the Power Purchase Agreement);
- 1.2.6 Any failure of BPDB to comply with the requirements of any law, regulation or order;
- 1.2.7 The dissolution, privatization, reorganization or any other legal alteration of the legal structure of BPDB; and
- 1.2.8 Any assignment pursuant to Section 9.2(a) of the Implementation Agreement by the Company of the Implementation Agreement, the Power Purchase Agreement;
- 1.2.9 Any invalidity, illegality, or unenforceability of the Implementation Agreement, the Power Purchase Agreement, or any of their respective provisions, terms or conditions; and
- 1.2.10 Any other act (other than payment of amounts due), event or omission which, but for this Section 1.2, might operate to discharge, impair, or otherwise affect any of the obligations of the Guarantor under this Guarantee.

1.3 Continuing Guarantee

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

1.4 Additional Security

- 1.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Company may at any time hold in respect of the obligations of BPDB under the Power Purchase Agreement.
- 1.4.2 The Company may enforce this Guarantee notwithstanding that it may hold any other guaranty, lien, or security of or for the obligations of BPDB under the Power Purchase Agreement or have available to it any other remedy at law or equity.

1.5 Preliminary Demand

- 1.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from the Guarantor, the Company agrees to make demand in writing for payment from BPDB, with a copy of such demand delivered by the Company to the Guarantor. After thirty (30) Days from the date payment was due, the Company may notify the Guarantor in writing that payment from BPDB, is past due and make a demand for payment from the Guarantor under this Guarantee, and the Guarantor shall make payment within thirty (30) Days thereafter. Late payments hereunder shall bear interest at an annual

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rate equal to that established for late payment in the applicable agreement (the Power Purchase Agreement).

- 1.5.2 Except as provided in Section 1.5.1, the Company shall not be obliged before taking steps to enforce this Guarantee to exercise any other remedies that may be available to it under or in respect of the Power Purchase Agreement, or to initiate any proceedings or obtain judgment against BPDB thereon.

1.6 Certification

Any demand for payment made pursuant to this Guarantee shall be made in person by a duly authorized officer of the Company at the Guarantor's offices provided in Section 5.1.1 of this Guarantee and shall be accompanied by a certificate signed by a duly authorized officer of the Company stating that:

"We hereby certify that (A) (1) [Company Name]. (the "Company") is making this demand on the GOB of the People's Republic of Bangladesh (the "Guarantor") in the amount of USD [INSERT AMOUNT] in accordance with the Guarantee dated [____ 201_], between the Guarantor and the Company; (2) the amount specified above is now due and payable by [the Bangladesh Power Development Board ("BPDB")] [the Bangladesh Power Development Board] under the [Power Purchase Agreement between the Company and BPDB] (3) demand in writing for payment from BPDB was made on the date payment was due and not less than 30 Days from the date hereof and (4) such amount, on the date hereof, remains unpaid by [BPDB]."

1.7 Subordination

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

1.8 No Set-off

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

1.9 Arbitration; Jurisdiction

1.9.1 Arbitration. The Parties irrevocably agree that any dispute or difference arising under, out of, in connection with or relating to, this Guarantee, including, without limitation, any dispute or difference concerning the existence, validity or enforceability of this Guarantee or any provision hereof (including the existence, validity or enforceability of the agreements contained in this Section 1.9.1) or as to whether this Guarantee or any provisions hereof (including agreements contained in this Section 1.9.1) are invalid, illegal or unenforceable (each a "**Dispute**") shall be resolved in accordance with the provisions of Section 15.4 of the Implementation Agreement, which provisions are, *mutatis mutandis*, incorporated herein by reference. Each Party hereby consents to the jurisdiction of any courts of competent jurisdiction for any action filed by the other Party under this Guarantee to enforce any award or decision of any arbitrator who was duly appointed under this Guarantee to resolve any Dispute hereunder between the Parties.

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

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1.9.3 Sovereign Immunity; Jurisdiction.

- (a) The Guarantor unconditionally and irrevocably:
- (i) should any proceedings be brought against it or its assets in Bangladesh, other than its military aircraft, naval vessels, other defence properties, accounts of the Bangladesh Bank held outside of Bangladesh (collectively, “**Protected Assets**”) where such assets or property of the Guarantor are located to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings will be claimed by or on behalf of the Guarantor on behalf of itself or any of its assets (other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
 - (ii) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in Bangladesh in connection with any such proceedings; and
 - (iii) 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 Agreement in accordance with Bangladesh Arbitration Act of 2001 [Act No. I of 2001] 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. The Guarantor 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.
- (b) 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 any jurisdiction.

2. TAXATION

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

3. UNDERTAKING

3.1 Duration

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

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4. NO WAIVER; REMEDIES CUMULATIVE

4.1 No Waiver

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

4.2 Remedies Cumulative

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

5. NOTICES

5.1 Address for Notices

All notices or other communications (together, the “**Notices**”) to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by registered or certified mail or facsimile or courier. All Notices shall be deemed delivered (a) when presented personally, (b) if received on a Business Day of the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number specified above and, if received on a Day that is not a Business Day of the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number specified above, (c) one (1) Business Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by notice delivered to the delivering Party at its address or facsimile number specified above) or (d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Bangladesh, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written Notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The address for service of each Party and its respective facsimile number shall be:

5.1.1 For the Guarantor:

Attention: Joint Secretary
Address: Ministry of Power, Energy and Mineral Resources
Government of the People’s Republic of Bangladesh
Bangladesh Secretariat
Abdul Gani Road,
Dhaka-1000, Bangladesh.
Facsimile: 880-2-865097

5.1.2 For the Company:

Attention: Managing Director/Chairman
Address: [Company Name]
[Address]
Facsimile:
Telephone No:
E-mail:

or such other addresses or facsimile numbers as either Party may have notified to the other Party in accordance with this Section 5.1.

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Notwithstanding the foregoing, if the address of the Lender or Agent is outside Bangladesh, any notice delivered to the Lender or Agent pursuant to this Section 5.1 shall be sent by international courier or facsimile, and if sent by facsimile confirmed by international courier.

6. ASSIGNMENT

6.1 Assignment by the Guarantor

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

6.2 Assignment by the Company

The Company may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor. Notwithstanding the provision of the immediately preceding sentence, for the purpose of construction or permanent financing of the Facility, the Company may assign or create a security interest over its rights and interests in and to this Guarantee in favour of the Lenders.

6.3 Successors

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

7. GOVERNING LAW

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

8. MISCELLANEOUS

8.1 Severability

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

8.2 Representations and Warranties

The Guarantor represents and warrants that:

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

8.3 Definitions

The capitalized terms used but not defined in this Guarantee shall have the meanings given to them in the Implementation Agreement.



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

[COMPANY NAME]

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

By: _____
Name:
Title:

By: _____
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Witness

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