

Negotiated  
CONFIDENTIAL DRAFT  
KUprety  
April 13, 2004

CREDIT NUMBER \_\_\_\_BD  
GRANT NUMBER \_\_\_\_BD

Development Financing Agreement

((Power Sector Development Technical Assistance Project))

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated \_\_\_\_\_, 2004

CREDIT NUMBER \_\_\_\_\_NEP  
GRANT NUMBER \_\_\_\_\_NEP

## DEVELOPMENT FINANCING AGREEMENT

AGREEMENT, dated \_\_\_\_\_, 2004, between People's Republic of Bangladesh (the Borrower) and the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project; and

WHEREAS (B) the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit and the Grant to the Borrower upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I

### General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999), with the modifications set forth in Schedule 7 to this Agreement (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “BPDB” means the Bangladesh Power Development Board established under the Borrower's President's Order No. 59 of 1972;

(b) “DESA” means Dhaka Electric Supply Authority;

(c) “ERC” means the Energy Regulatory Commission, to be established by the Borrower, by June 2004;

(d) “ERC Subsidiary Grant Agreement” means the agreement to be entered into between the Borrower and ERC pursuant to Section 3.01 (a)(i) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the ERC Subsidiary Grant Agreement;

(e) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(f) "FY" or "Fiscal Year" means the fiscal year of the Borrower commencing on July 1 and ending on June 30 of the following year;

(g) "MPEMR" means the Borrower's Ministry of Power, Energy and Mineral Resources;

(h) "Petrobangla" means the Bangladesh Oil, Gas and Mineral Corporation established under the Bangladesh Oil, Gas and Mineral Corporation Ordinance, 1985 of the Borrower (Ordinance No. XXI of 1985) as amended in 1989;

(i) "Petrobangla Subsidiary Grant Agreement" means the agreement to be entered into between the Borrower and Petrobangla pursuant to Section 3.01 (a)(ii) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Petrobangla Subsidiary Grant Agreement;

(j) "Power Cell" means the unit under the Power Division of the MPEMR;

(k) "PGCB" means Power Grid Company of Bangladesh;

(l) "PSC" means the Project Steering Committee established pursuant to paragraph 1 of Schedule 4 to this Agreement;

(m) "Procurement Regulations" means the Borrower's Public Procurement Regulations 2003;

(n) "REB" means the Rural Electrification Board established by the Borrower's Rural Electrification Board Ordinance, 1977;

(o) "Special Account" means any of the Convertible Taka Special Accounts (CONTASA) referred to in Section 2.02(b) of this Agreement; and described in the Circular dated September 2, 1991, as revised on May 4, 1992 and December 24, 1992 of the Finance Division of the Borrower's Ministry of Finance entitled "Procedures for

Operation of Convertible Taka Special Account of IDA Aided Development Projects Under Government- Departments/Autonomous/Semi-Autonomous Bodies,” as such Circular may be amended from time to time in agreement with the Association; and

- (p) “Taka” means the currency of the Borrower.

## ARTICLE II

### The Financing

Section 2.01. The Association agrees to make available to the Borrower, on the terms and conditions set forth or referred to in this Agreement:

(a) an amount in various currencies equivalent to four million nine hundred thousand Special Drawing Rights (SDR 4,900,000) (the Credit); and

(b) an amount in various currencies equivalent to five million eight hundred thousand Special Drawing Rights (SDR 5,800,000) (the Grant).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account and the amount of the Grant may be withdrawn from the Grant Account, in each case, in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Financing.

(b) The Borrower shall open and maintain in Taka, three separate special deposit accounts, for Power Cell (Power Cell Special Account), for ERC (ERC Special Account), and for Petrobangla (Petrobangla Special Account), all in a commercial bank, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment. Deposits into, and payments out of, each Special

Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 2008 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association (i) a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum; and (ii) a commitment charge on the amount of the Grant not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, such rate not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or the Grant Account (as the case may be), or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency

or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ( $3/4$  of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on June 1 and December 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each June 1 and December 1, commencing December 1, 2014, and ending June 1, 2044. Each installment up to and including the installment payable on June 1, 2024 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita Gross National Product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:



(A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and

(B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### ARTICLE III

#### Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out Parts A1, B, C1, D1 and D2 of the Project through Power Cell, and without any limitation or restriction upon any of its obligations under this Agreement:

- (i) shall: (A) cause ERC to execute Parts A2, C2 and D3 of the Project, in accordance with the provisions of the ERC Subsidiary Grant Agreement; (B) take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable ERC to carry out Parts A2, C2 and D3 of the Project; (C) refrain from taking or permitting to be taken any action which would prevent or interfere with such performance by ERC; (D) for the purpose of carrying out Parts A2, C2 and D3 of the Project, enter into a subsidiary grant agreement with ERC (ERC Subsidiary Grant Agreement) on terms and conditions satisfactory to the Association and those specified to in paragraph 4 of Schedule 4 to this Agreement; and (E) exercise its rights under the ERC Subsidiary Grant Agreement in such manner as to cause ERC to execute Parts A2, C2 and D3 of the Project, to protect the interests of the Borrower

and the Association and to accomplish the purposes of the Financing;  
and

- (ii) (ii) shall: (A) cause Petrobangla to execute Parts A3, C3 and D4 of the Project, in accordance with the provisions of the Petrobangla Subsidiary Grant Agreement; (B) take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable Petrobangla to carry out Parts A3, C3 and D4 of the Project; (C) refrain from taking or permitting to be taken any action which would prevent or interfere with such performance by Petrobangla; (D) for the purpose of carrying out Parts A3, C3 and D4 of the Project, enter into a subsidiary grant agreement with Petrobangla (Petrobangla Subsidiary Grant Agreement) on terms and conditions satisfactory to the Association, and those specified to in paragraph 4 of Schedule 4 to this Agreement; and (E) exercise its rights under the Petrobangla Subsidiary Grant Agreement in such manner as to cause Petrobangla to execute Parts A3, C3 and D4 of the Project, to protect the interests of the Borrower and the Association and to accomplish the purposes of the Financing.

(b) The Borrower shall exercise its rights under the Petrobangla Subsidiary Grant Agreement and the ERC Subsidiary Grant Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Financing and, except as the Association shall otherwise agree, the Borrower shall not

assign, amend, abrogate or waive the Petrobangla Subsidiary Grant Agreement and the ERC Subsidiary Grant Agreement or any provision thereof.

(c) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.04. The Borrower shall provide to the Association a progress report every 6 months (beginning January 15, 2005), summarizing actions taken (since the previous report) to advance the Borrower's 3-Year Road Map for Power Sector Reforms (dated May 2003), as it is periodically updated, including key findings and

recommendations made by consultants engaged under the Project, decisions taken by the Borrower, and key actions to be taken over the following six months.

Section 3.05. The Borrower shall (a) convene a meeting of interested development partners at least once a year, the first meeting to be held by no later than March 31, 2005, to brief them on the progress with implementing power sector institutional and policy reforms, summarizing how sector operations have been aligned with the evolving sector structure and policies, and summarizing the flow of public funds to the sector; (b) maintain Power Cell and ERC adequately staffed and empowered to execute their functions in a competent manner.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall establish and maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial

statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Financing Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Financing Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) The Borrower shall cause Petrobangla and ERC, to establish and maintain financial management systems, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the relevant portion of the Project.

(b) The Borrower shall cause Petrobangla and ERC respectively to:



- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association) audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or such other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and

(iii) furnish to the Association such other information concerning such records, accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.03. (a) The Borrower shall prepare and furnish to the Association, a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Financing, and explains variances between the actual and planned uses of such funds;

- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Other Covenants

Section 5.01. The Borrower shall cause: (a) ERC (i) to take out and maintain with responsible insurers, or to make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice; and (ii) to carry on its operations and conduct its affairs in accordance with sound administrative, financial, and technical practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers; and (b) Petrobangla (i) to take out and maintain with responsible insurers, or to make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice; and (ii) to carry on its operations and conduct its affairs in accordance with sound administrative, financial, and technical practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

## ARTICLE VI

### Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

- (a) the Power Cell has contracted a qualified financial management officer to develop its in-house accounting system and be responsible for the financial management aspects of the Project and an accountant to be responsible for day-to-day accounting functions of the Project, including the operation of the Power Cell Special Account;
- (b) the Power Cell has appointed one procurement consultant (over a period of 3 years) to provide technical assistance on procurement matters for all activities for which it is responsible; and
- (c) the Power Cell has constituted a tender/proposal evaluation committee, in accordance with the Procurement Regulations, with at least five members, of whom two shall be from outside of Power Cell with procurement expertise.

Section 6.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Secretary, the Additional Secretary, Joint Secretary, Deputy Secretary, Senior Assistant Secretary or Assistant Secretary of the Economic Relations Division of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Economic Relations Division  
Ministry of Finance  
Government of the People's Republic  
of Bangladesh  
Sher-e-Bangla Nagar  
Dhaka, Bangladesh

|                |                |             |
|----------------|----------------|-------------|
| Cable address: | Telex:         | Facsimile:  |
| BAHIRSAMPAD    | 642226 SETU BJ | 88028113088 |

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

|                             |                                |                |
|-----------------------------|--------------------------------|----------------|
| Cable address:              | Telex:                         | Facsimile:     |
| INDEVAS<br>Washington, D.C. | 248423 (MCI) or<br>64145 (MCI) | (202) 477-6391 |

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Dhaka, People's Republic of Bangladesh, as of the day and year first above written.

PEOPLE'S REPUBLIC OF BANGLADESH

By

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Financing

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Financing, the allocation of the amounts of the Credit and the allocation of the amounts of the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

| <u>Category</u>   | <u>Amount of the<br/>Credit Allocated<br/>(Expressed in<br/>SDR Equivalent)</u> | <u>Amount of the<br/>Grant Allocated<br/>(Expressed in<br/>SDR Equivalent)</u> | <u>% of<br/>Expenditures<br/>to be Financed</u>  |
|-------------------|---|--|--|
| (1) Goods         |   |  | 100% of foreign expenditures, 100% of local expenditures(ex-factory cost) and 70% of local expenditures for other items procured locally |
| (a) Under Part D1 | ----  | 500,000  |  |
| (b) Under Part D2 | 1,950,000   | ---  |  |
| (c) Under Part D3 | ----  | 50,000   |  |
| (d) Under Part D4 | ----  | 150,000  |  |

|     |   |                  |                  |
|-----|---|------------------|------------------|
| (2) | Consultants' services                         |                  | 80%              |
|     | (a) Under Part A1                             | -----            | 2,200,000        |
|     | (b) Under Part A2                             | -----            | 300,000          |
|     | (c) Under Part A3                             | -----            | 950,000          |
|     | (d) Under Part B                              | 2,450,000        | ----             |
| (3) | Training, including Workshops and Study Tours |                  | 100%             |
|     | (a) Under Part C1                             | -----            | 500,000          |
|     | (b) Under Part C2                             | -----            | 150,000          |
|     | (c) Under Part C3                             | -----            | 150,000          |
| (4) | Incremental Operating Costs                   |                  | 100%             |
|     | (a) For Power Cell                            | -----            | 150,000          |
|     | (b) For ERC                                   | -----            | 150,000          |
| (5) | Unallocated                                   | 500,000          | 550,000          |
|     |   | <u>4,900,000</u> | <u>5,800,000</u> |
|     | TOTAL   | =====            | =====            |

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;



(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term “Incremental Operating Costs” means the costs for salaries of key Power Cell and ERC operational staff that are not funded by the Borrower, and costs incurred by the Power Cell and ERC on account of office supplies, consumables, organization of consultations and workshops, and costs incurred in the maintenance and rental of vehicles and equipment.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 270,000, may be made in respect of Categories 1(a), 2(a), 2(c), 3(a) and 4(a) on account of payments made for expenditures before that date but after January 1, 2004;

(b) payments made for expenditures under Categories 1(c), 2(b), 3(b) and 4(b) unless: (i) ERC has been established and adequately staffed and the ERC Subsidiary Grant Agreement, satisfactory to the Association, has been entered into, has been duly authorized or ratified by the parties and is legally binding upon the Borrower and ERC; (ii) ERC has secured adequate financial management expertise to develop its in-house accounting system and be responsible for the financial management aspects of the Project, including operation of the ERC Special Account; (iii) ERC has secured the services of a qualified procurement specialist on terms and conditions agreed with the Association; (iv) ERC has designated a person to deal with Project procurement matters; (v) ERC has prepared a procurement plan covering at least the next 18 months of Project-

related activities; and (vi) ERC has constituted a tender/proposal evaluation committee, in accordance with the Procurement Regulations, with at least five members, of whom two shall be from outside of ERC with procurement expertise; and

(c) payments made for expenditures under Categories 1(d), 2(c) and 3(c), unless (i) the Petrobangla Subsidiary Grant Agreement, satisfactory to the Association, has been entered into, has been duly authorized or ratified by the parties and is legally binding upon the Borrower and Petrobangla; (ii) Petrobangla has constituted a tender/proposal evaluation committee, in accordance with the Procurement Regulations, with at least five members, of whom two shall be from outside of Petrobangla with procurement expertise.

4. Notwithstanding the provisions of paragraph 3 above, training under Category 3 shall not be eligible for financing, unless each such training is consistent with training plans prepared by Power Division/Power Cell, ERC and EMR Division/Petrobangla respectively, and which shall have been approved by the Association.

5. The Association may require withdrawals from the Financing Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$300,000 equivalent per contract; (b) for services of individual consultants costing less than \$50,000 equivalent per contract; (c) for services of consulting firms under contracts costing less than \$100,000 equivalent per contract; and (d) Incremental Operating Costs and Training; all under such terms and conditions as the Association shall specify by notice to the Borrower.

## SCHEDULE 2

### Description of the Project

The objectives of the Project are to (a) create effective capacity within MPEMR to put in place sector policies and industry structures needed for the balanced development of its power sector; (b) create regulatory capacity within ERC to regulate the sector effectively; and (c) prepare, and secure financing for, at least two well-structured power sector investment projects that are then efficiently implemented.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

#### Part A: Technical Assistance

##### 1. Power Sector Policy Making and Enterprise Restructuring

(a) Detailed Design of the Power Sector Reform Plan focusing on: (i) Financial restructuring and recovery plan to restore creditworthiness while building the sector to meet the goals of universal coverage and high quality service in an efficient and sustainable manner; (ii) corporatization models, single buyer structure and initial market interface arrangements for generation and distribution entities, (iii) an electricity/energy demand assessment of main consumer groups and update of the country's Power System Master Plan (PSMP); (iv) update of the financing and implementation strategies for the PSMP; (v) design of demand side management and energy efficiency programs; (vi) preparation of a sector wide social safeguard

framework, including a subsidy strategy to facilitate access by low income and vulnerable people in urban and rural areas (drawing on the demand assessment); and (vii) other policy/program design, including preparation of training and capacity building programs, and design of the communication and consultations strategy.

(b) Corporatization of Chittagong and Sylhet area electricity distribution companies to improve enterprise performance, drawing on recommendations of the corporatization model developed under the detailed design work.

(c) Preparation of investment program for Chittagong and Sylhet area distribution entities to improve distribution system reliability, reduce system losses, improve accountability and system management, and improve customer satisfaction.

(d) Preparation of corporate restructuring and investment plans for other entities for the 2004-09 period, drawing upon the corporatization models and the PSMP:

(e) Project management, monitoring and evaluation to assist with preparing consultant terms of reference, assisting with consultant contracting, ensuring quality of consultant work, evaluating consultant recommendations, and synthesizing reports as necessary.

(f) Any other eligible tasks based on demand.

## 2. Energy Regulatory Commission

Provision of technical advisory services to strengthen ERC by complementing and supplementing activities being funded by the Borrower and other development partners.

### 3. Gas Sector Support

Provision of technical advisory services to assist Petrobangla and the Energy and Mineral Resources Division (EMR) of MPEMR to (i) strengthen planning, capacity building and management of Petrobangla/EMR Division; (ii) prepare and update the Gas Sector Master Plan (GSMP) and Strategy; and (iii) prepare an implementation and financing plan, which ensures reliable and adequate gas supply to power, industry and other sectors.

#### Part B: Management Strengthening

1. Management support from qualified operators to help turn around the technical, financial and customer service performance of the Chittagong and Sylhet electricity distribution areas and to develop the human resources deployed in these areas.

2. Management support to improve the technical, commercial and human resource management of 1-2 power generation companies.

3. Management support to improve the technical, commercial and human resource management of other power companies, based on emerging demand.

#### Part C: Training and Other Capacity Building Measures

1. Strengthening the capacity of the Power Division of MPEMR and the Power Cell and power sector enterprises in planning, policy making, management, operations, and customer and regulatory relations.

2. Strengthening of the capacity of ERC to shape and conduct economic regulation.
3. Strengthening the capacity of the EMR Division in MPEMR in gas sector policy making and sector reform, and the capacity of Petrobangla in gas sector planning and management.

Part D. Goods and Equipment

1. Provision of office, logistical and management support equipment for the Power Division in MPEMR, Power Cell and the Project working groups.
2. Provision of priority interface and system metering for the power supply system.
3. Provision of office, logistical and management support equipment for ERC.
4. Provision of office, logistical and management support equipment for Petrobangla and EMR Division of MPEMR.

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The Project is expected to be completed by June 30, 2008.

SCHEDULE 3

Procurement

Section I. Procurement of Good and Works

Part A: General

Except as the Association shall otherwise agree, procurement of the goods and works to be financed out of the proceeds of this Credit shall be governed by the provisions of this Section I.

Part B: International Competitive Bidding

1. All goods estimated to cost the equivalent of \$300,000 or more per contract shall be procured under contracts awarded in accordance with the provisions of Section II of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines), and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Preference for Domestically Manufactured Goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

(b) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. National Competitive Bidding:

All goods estimated to cost less than \$300,000 equivalent per contract, may be procured under National Competitive Bidding method in accordance with the Borrower's Procurement Regulations.

2. National Shopping

All goods estimated to cost less than \$20,000 equivalent per contract, may be procured under National Shopping method in accordance with the Borrower's Procurement Regulations.

3. Direct Contracting

All goods estimated to cost less than \$2,000 equivalent per contract, may be procured under Direct Contracting method in accordance with the Borrower's Procurement Regulations.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, a procurement plan for goods, which shall include contract cost estimates, contract packaging, and applicable procurement procedures, shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Such plan shall be updated at least every 12 months during the execution of the Project always covering the next 18 months, and each such updating shall be furnished to the Association for its review and approval. Procurement of all goods shall



be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for goods estimated to cost the equivalent of \$300,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) Notwithstanding the provision of paragraph (a) above, the Association may, at its own discretion, carry out post review of any contract awarded in accordance with this Section.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the Association may, at its own discretion, carry out post review/ procurement audit of any contract awarded in accordance with this Section. The Borrower shall carry out procurement review of such contracts by independent consultant in accordance with the provision of the Borrower's Procurement Regulations.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.
2. The following provision shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph: the short list of consultants for services estimated to cost less than \$200,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 and footnote 8 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Quality- and Cost- Based Selection (QCBS)/Fixed Budget Selection (FBS):  
Services through firms estimated to cost less than \$200,000 per contract may be procured following quality- and cost-based selection or selection under a fixed budget method, in accordance with the Borrower's Procurement Regulations. All contracts costing \$200,000 or more, but less than \$300,000 shall follow the QCBS or FBS method in accordance with the Consultant Guidelines.
2. Consultants' Qualification (CQ): Services through firms estimated to cost less than \$100,000 per contract may be procured following CQ method, in accordance with the Borrower's Procurement Regulations.
3. Single-Source Selection (SSS): Specific consultants' services through firms, estimated to cost less than \$50,000 per contract, may, with the Association's prior

agreement, be procured following SSS method in accordance with the Borrower's Procurement Regulations.

4. Individual Consultants: Services of individual consultants for tasks, estimated to cost \$50,000 and more, that meet the requirements set forth in paragraph 5.1 of the Consultant Guidelines shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.4 of the Consultant Guidelines. All other individual consultants may be selected following Borrower's Procurement Regulations.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance of consultants of any requests for proposals, the proposed plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection procedures, shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Such plan shall be updated at least every 12 months during the execution of the Project always covering the next 18 months period, and each such updating shall be furnished to the Association for its review and approval. Selection of all consultants' services shall be undertaken in accordance with such selection plan (as updated from time to time) as shall have been approved by the Association.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the report on the comparison of the qualifications and experience of candidates, the qualifications, experience terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the Association may, at its own discretion, carry out post review/ procurement audit of any contract awarded in accordance with this Section. The Borrower shall carry out procurement review of such contracts by independent consultant in accordance with the provision of the Borrower's Procurement Regulations.

## SCHEDULE 4

### Implementation Program

1. The Borrower shall establish and maintain a Project Steering Committee (PSC) to be chaired by the Principal Secretary of the Prime Minister's Office. The PSC shall comprise, inter alia, the Secretaries of the Power Division and the EMR, the Economic Relations Division, the Implementation Monitoring and Evaluation Division (IMED), the Finance Division, and the Ministry of Establishment, and the Member in the Planning Commission, responsible for Power and Industry, and shall be responsible for reviewing overall policy recommendations, and providing overall guidance during the implementation and monitoring of the Project.

2. The Borrower shall establish and maintain a Task Force for the Project to be headed by the Secretary, Power Division (MPEMR) and including the Chairpersons of BPDB, DESA and REB, the Managing Director of PGCB, the Division Chief (Power and Industry) of the Planning Commission, the Director General (Industry and Energy) in IMED, the concerned Additional/Joint Secretary of ERD, the Joint Secretaries of Finance Division and Power Division. The Director General of the Power Cell shall act as the member-secretary. The Task Force shall be responsible for reviewing and monitoring the progress of implementation of the reform program, guiding the work of Power Cell and approving the work plan, reform proposals and performance evaluation of Power Cell.

3. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 6 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about February 28, 2006, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) above, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by March 31, 2006, or such later date as the Association shall request, the report referred to in paragraph (b) above, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

4. The Petrobangla Subsidiary Grant Agreement and the ERC Subsidiary Grant Agreement shall, inter alia, include the obligation of Petrobangla and ERC respectively regarding the following:

(a) the obligation to (i) take all measures necessary to ensure that the Project is carried out with due diligence and efficiency and in accordance with appropriate administrative, technical and financial practices, (ii) comply with the record keeping,

auditing and reporting requirements set forth in Article 4.02 of the Development Financing Agreement, and (iii) employ an independent auditor under terms of reference acceptable to the Association.

(b) the obligation to promptly inform the Borrower and the Association of any condition which interferes, or threatens to interfere, with (i) the progress of the Project, (ii) the accomplishment of the purposes of the Credit and Grant, and (iii) the performance of their obligations under the Petrobangla Subsidiary Grant Agreement and the ERC Subsidiary Grant Agreement;

(c) the obligation to provide to the Association and the Borrower, not later than two, months after the Closing Date, a report complying with the requirements of the completion report required under Section 9.06 (c) of the General Conditions.

(d) the obligation to refund to the Borrower any proceeds from the Financing not used for purposes of carrying out the Project, unless the Borrower and the Association shall otherwise agree.

## SCHEDULE 5

### Special Accounts

1. For the purposes of this Schedule:

(a) the term “eligible Categories” means Categories 1(a),1(b) 2(a), 2(d), 3(a) and 4(a) set forth in the table in paragraph 1 of Schedule 1 to this Agreement in respect of Power Cell Special Account; Categories 1(c), 2(b), 3(b) and 4(b) set forth in said table in respect of ERC Special Account; and Categories 1(d), 2(c) and 3(c) set forth in said table in respect of Petrobangla Special Account,;

(b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Financing allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term “Authorized Allocation” means an amount equivalent to 50,000,000.00 Tk in respect of the Power Cell Special Account, an amount equivalent to 8,200,000.00 Tk in respect of Petrobangla Special Account, and an amount equivalent to 4,000,000.00 Tk in respect of the ERC Special Account, to be withdrawn from the Credit Account and deposited into the Special Accounts pursuant to paragraph 3(a) of this Schedule.

2. Payments out of the respective Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.



3. After the Association has received evidence satisfactory to it that the respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Financing Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Financing Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been

paid out of the respective Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Financing Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Financing Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Accounts;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Financing Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Financing allocated to the eligible Categories for the respective Special Account, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Financing Account of the remaining unwithdrawn amount of the Financing allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in any Special Account will not be required to cover further payments for

eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Financing Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

SCHEDULE VI  
Performance Indicators

1. Power sector policies adopted (particularly for underpinning financial recovery, faster access for all, and private participation), which are based on robust analysis and are consistent with principles of commercial viability with safeguards for social & environmental protection.
2. Regulatory processes in place, particularly for power tariff-setting and quality-of-service monitoring, which are effective in ensuring that customers receive acceptable levels of service at the least-cost (based on a broadly accepted investment, operational & financing plan).
3. Improving public perception of power sector's performance and customer satisfaction (measured through periodic surveys).
4. Corporate governance structures and policies put in place for at least two power enterprises which would facilitate transparent and efficient decision-making, efficient and accountable management, and credible and timely monitoring of performance (including accounting and audit arrangements consistent with international practices).
5. Gas Sector Master Plan and Strategy updated ensuring it includes the strategy for meeting gas demand for power, industry and other sectors.
6. Management and operations of at least two power enterprises improved through the participation of qualified global expertise.

7. Monitoring, reporting and Invoicing of power flows between “unbundled” power enterprises based on accurate system metering.

## SCHEDULE 7

### Modifications to the General Conditions

For the purpose of this Agreement, the provisions of the General Conditions are modified as follows:

1. Section 1.01 is amended to read:

“These General Conditions set forth certain terms and conditions generally applicable to development financing granted by the Association as a development credit and development grant to its members. They apply to any development financing agreement providing for any such development finance to the extent and subject to any modifications set forth in such agreement.”

2. Paragraph 8 of Section 2.01 is amended to read as follows:

“8. “Development Financing Agreement” means the particular Development Financing Agreement to which these General Conditions apply, as such agreement may be amended from time to time. Development Financing Agreement includes these General Conditions as applied thereto, and all schedules and agreements supplemental to the Development Financing Agreement.”

3. The following new paragraphs are added to Section 2.01:

“15. “Grant” means the development grant provided for in the Development Financing Agreement.”;

16. “Grant Account” means the account opened by the Association on its books in the name of the Borrower to which the amount of the Grant is credited.”;

17. “Financing” means, collectively, the Credit and the Grant.

18. “Financing Accounts” means, collectively, the Credit Account and the Grant Account (or, where the context so requires, either of the Credit Account or the Grant Account).”

4. The term “Credit”, wherever used in the following Articles and Sections of the General Conditions, is amended to read “Financing”: Sections 2.01(3), 2.01(12), 4.01, Article V, Article VI (excluding Section 6.05), Section 7.01(d), Article VIII, and Article IX.

5. The term “Credit Account”, wherever used in the following Articles and Sections of the General Conditions, is amended to read “Financing Accounts”: Section 2.01(6), 4.01, Article V, Article VI, and Section 12.03.

6. The term “Development Credit Agreement”, wherever used in the General Conditions, is amended to read the Development Financing Agreement.

7. Section 3.01 is modified to read as follows:

“Section 3.01. Financing Accounts. The amount of the Credit shall be credited to the Credit Account and may be withdrawn from the Credit Account by the Borrower as provided in the Development Financing Agreement and in these General Conditions. The amount of the Grant shall be credited to the Grant Account and may be withdrawn from the Grant Account by the Borrower as



provided in the Development Financing Agreement and in these General Conditions.”

8. The phrase “(including any development financing agreement or development grant agreement)” is added to Section 6.02(a)(ii) after the words “any development credit agreement” and before the words “between the Borrower and the Association”, to Section 6.02(c)(i) after the words “any development credit agreement” and before the words “with the Association”, and to Section 7.01(b)(i) after the words “any other development credit agreement” and before the words “between the Borrower and the Association”:
9. Section 6.05 is amended to read as follows:

“Except as the Borrower and the Association shall otherwise agree, any cancellation of any amount of the Credit shall be applied pro rata to the several installments of the principal amount of the Credit maturing after the date of such cancellation.”

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