

CONFORMED COPY

NUMBER B-002-0 BD

Guarantee Agreement

between

INTERNATIONAL DEVELOPMENT ASSOCIATION  
as Guarantor

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
acting through its London Branch  
as IDA Facility Agent

Dated April 4, 2001

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THIS GUARANTEE AGREEMENT is dated April 4, 2001 between:

INTERNATIONAL DEVELOPMENT ASSOCIATION (the "Guarantor" or "IDA") of 1818 H Street, N.W., Washington, D.C. 20433; and AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED acting through its London branch of Minerva House, P.O. Box 7, Montague Close, London SE1 9DH, as IDA Facility Agent (the "Agent") under the IDA Guaranteed Facility Agreement (in such capacity, including its successors and permissible assigns in such capacity), on its own behalf and as agent and trustee for the IDA Facility Lenders.

IT IS AGREED as follows:

1. GUARANTEE

1.1 Guarantee

On and subject to the terms and conditions of this Guarantee Agreement, the Guarantor guarantees and undertakes that if the Government of Bangladesh (the "State") fails to pay any amount (other than an Excluded Obligation) due and payable by the State in accordance with the Implementation Agreement or the GoB Guarantee on or by the date provided for pursuant thereto and as a result of such failure by the State

(a) the Company fails to pay when due and payable any Unpaid Guaranteed Liability; or

(b) the IDA Facility Lenders are unable to recover (by reason of an act or omission of a Public Sector Entity) any Unpaid Guaranteed Liability

the Guarantor will, subject to receipt of a Demand Notice (and the documentation required by Clause 6.3) from the Agent, pay to the Agent that amount which is equal to the aggregate amount of Scheduled Payments the IDA Facility Lenders would have received pursuant to the IDA Guaranteed Facility Agreement on the Repayment Date immediately preceding the Demand Notice in respect of amounts due and payable by the State to the Company or to any representative, agent or trustee for the IDA Facility Lenders during the Interest Period ending on such Repayment Date, in accordance with the Implementation Agreement or the GoB Guarantee but which have not been so paid, provided always that if any such amount falls due and payable to the Company by the State in the next Interest Period (on account of grace periods for payment under the Implementation Agreement or the GoB Guarantee) following the Interest Period in which the non-payment by BPDB or the Gas Supplier occurred, this shall not prevent the Agent submitting a Demand Notice in respect of such amount.

1.2 In each case, the amount for which the Guarantor is liable pursuant to this Guarantee Agreement shall be reduced by an amount equal to any amount that the IDA Facility Lenders are (without the consent of any other party) entitled at such time to instruct (and no action or omission by a Public Sector Entity exists preventing such instructions being executed by) a Security Trustee to withdraw (including any amounts received by the Company from the State, BPDB or the Gas Supplier in partial settlement of the relevant obligations under Clause 1.1(a) above and which are then available for repayment of the IDA Guaranteed Facility pursuant to the Accounts Agreement) for application to repayment of the IDA Guaranteed Facility by operation of the provisions of the Accounts Agreement (using sums in the offshore IDA Guaranteed Facility Debt Service Payment Account, the offshore IDA Guaranteed Facility Debt Service Reserve Account and any letters of credit provided by the Company in relation thereto), in respect of the Scheduled Payments referred to in Clause 1.1 above calculated on the basis specified in Clause 6 of such Demand Notice, PROVIDED that the Guarantor shall never be obliged to pay more than the amount of the Unpaid Guaranteed Liability.

1.3 Interpretation of Clause 1.1

Without prejudice to Clause 13.2 below, for the purposes of calculating the

amount the IDA Facility Lenders would have received pursuant to the IDA Guaranteed Facility Agreement with respect to the State's payment obligations under the Implementation Agreement and the GoB Guarantee, no account shall be taken of any change in the Applicable Laws of Bangladesh occurring after the date of this Guarantee Agreement (i) making the State's obligations under the Implementation Agreement or the GoB Guarantee illegal, invalid, unenforceable, voidable or void in whole or in part or (ii) materially affecting the performance of the State's obligations under the Implementation Agreement or the GoB Guarantee so as to restrict or prevent any payment to the Company or to the IDA Facility Lenders.

#### 1.4 Maximum Liability

The maximum aggregate amount of the Guarantor's liability under this Guarantee Agreement is the Maximum Guaranteed Amount (as defined in Clause 2 below) and in no event shall the Guarantor be liable or obliged by this Guarantee Agreement (or otherwise), to make any payments under this Guarantee Agreement in an aggregate amount in excess of the Maximum Guaranteed Amount.

#### 2. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

In this Guarantee Agreement headings are for convenience only and do not affect the interpretation of this Guarantee Agreement and words importing the singular include the plural and vice versa.

##### "Accounts Agreement"

means the agreement dated April 4, 2001 entered into among the IDA Facility Agent (as Intercreditor Agent), the Company, certain commercial banks as contemplated under the Intercreditor and Common Terms Agreement and others.

##### "Amendment Agreements"

means those certain agreements dated January 21, 2001 entered into among the State, BPDB, the Gas Supplier and the Company which amend the IA, the PPA, the GSA and the LLA respectively, each singly referred to herein as the IA Amendment Agreement, the PPA Amendment Agreement, the GSA Amendment Agreement and the LLA Amendment Agreement.

##### "Advance"

means any monies disbursed for eligible expenditure pursuant to the IDA Guaranteed Facility Agreement and in accordance with the disbursement schedule stipulated in Schedule 4 hereto.

##### "Applicable Laws of Bangladesh"

means, in relation to this Guarantee Agreement, all laws in force in Bangladesh, and includes all rules, regulations, orders, directives, notifications made or issued by any competent authority pursuant to or under any such law and any decree or judicial decision (not in suspense as a result of an appeal) given by or pronounced by any court of competent jurisdiction.

##### "Arbitral Award"

means an award issued in accordance with the relevant dispute resolution provisions and procedures of any Principal Project Agreement which is stated to be final in accordance with ICSID or ICC rules as applicable.

##### "Availability Period"

has the meaning given in the IDA Guaranteed Facility Agreement.

##### "Best Endeavors"

shall mean the taking by the Company and the IDA Facility Lenders (or any agent, representative or trustee on their behalf) of all lawful and reasonable measures (including but not limited to undertakings on damages or costs) within their power which a prudent, determined and well advised person would take to challenge and remove by substantive hearing, appeal, judicial review or other recognised means any order, judgement or other decision (whether temporary or permanent) of a court of law restricting or preventing (i) the submission to

arbitration in accordance with Article 15.2 of the Implementation Agreement or Section 1.9 of the GoB Guarantee (or the relevant provisions of the GSA or the PPA) of any dispute between the Company and/or the IDA Facility Lenders on the one side and the State, BPDB or the Gas Supplier on the other side; or (ii) the due completion of any such arbitration proceedings commenced in accordance with the rules of arbitration applicable pursuant to Article 15.2 of the Implementation Agreement or Section 1.9 of the GoB Guarantee (or the relevant provisions of the GSA or the PPA).

"Business Day"

means: (a) a day (other than a Saturday or Sunday) when banks are generally open for business in the city specified in the relevant clause of this Guarantee Agreement; or (b) when such term is used with respect to the delivery of a communication to IDA, a day on which IDA is open for business in Washington, D.C.

"Commercial Operations Date"

shall have the meaning set out in the PPA.

"Intercreditor and Common Terms Agreement"

means the agreement dated April 4, 2001 entered into among the Agent, the Security Trustees, the Company, the IDA Facility Lenders and AES Oasis Finco, Ltd. setting out the composition, structure and the terms and conditions of the financing for the Project.

"Company Event of Default"

means the events of default set out in Article 13.1(a) of the Implementation Agreement.

"Demand Notice"

means a notice from the Agent to the Guarantor (completed as appropriate) substantially in the form of Schedule 1 (Form of Demand Notice) to this Guarantee Agreement making a Demand for payment in accordance with Clause 6.3 hereof or a Demand for Provisional Payment.

"Demand for Provisional Payment"

shall mean a demand made in accordance with Clause 6.5 of this Guarantee Agreement.

"Direct Agreements"

means those certain Acknowledgement and Consent Instruments dated April 4, 2001 entered into among the State, BPDB, the Gas Supplier, the Security Trustees and the Company regarding the IA, PPA, GSA and LLA, each singly referred to herein as the IA Direct Agreement, the PPA Direct Agreement, the GSA Direct Agreement and the LLA Direct Agreement.

"Effective Date"

means the date of the notice provided by IDA to the Agent pursuant to Clause 4 below.

"Event of Default"

means any event of default as defined under the Transaction Documents.

"Excluded Obligation"

means any obligation of the State with respect to any compensation or amount payable in accordance with or by reason of:

- (a) any actions, claims, disputes or demands arising from legal proceedings (and any indemnity given in relation thereto) identified in the Schedule III to the Land Lease Agreement;
- (b) (i) the Direct Agreements (or any amendments thereto) regarding

the Implementation Agreement, the Land Lease Agreement, the Power Purchase Agreement and the Gas Supply Agreement with the exception of:

- aa. Clauses 3.13, 6.1 (but not including subclause (i)(A) thereof) and any amendment to these subclauses to which IDA has consented and 6.2 of the IA Direct Agreement;
- bb. Clauses 3.10, 6.1 (but not including subclause (ii)(A) thereof) and any amendment to these subclauses to which IDA has consented and 6.2 of the PPA Direct Agreement;
- cc. Clauses 3.9, 6.1 (but not including subclause (ii)(A) thereof) and any amendment to these subclauses to which IDA has consented and 6.2 of the GSA Direct Agreement; and
- dd. Clause 6.1 (but not including subclause (i)(A) thereof) and any amendment to this subclause to which IDA has consented and Clause 6.2 (but not including consent to joinder or consolidation based on common issue of law) of the LLA Direct Agreement respectively;

other than any obligation of the State in connection with any compensation or amount payable by reason of the provisions of the Direct Agreements in the exceptions above which would otherwise be an Excluded Obligation under any other clause in this definition;

(ii) the following provisions of the Amendment Agreements to the IA, GSA, PPA and LLA:

IA Amendment Agreement

Clause 2.8(f) to the extent that such obligation of the State arises after the expiry of 18 (eighteen) months (unless the Guarantor agrees to an extension) from the end of the initial period of 270 (two hundred seventy) days of the Lenders' Cure Period (as defined therein);

Clause 2.12(f) to the extent that any assignment of the GoB Guarantee for purposes of refinancing of the IDA Guaranteed Facility does not have the prior approval of the Guarantor;

Clause 3 to the extent of any obligation of the State arising from or in connection with the letter from the Company to the State dated November 1, 1999; and Clause 4.

GSA Amendment Agreement

Clause 2.9(b) to the extent that such obligation of the State arises after the expiry of 18 (eighteen) months (unless the Guarantor agrees to an extension) from the end of the initial period of 270 (two hundred seventy) days of the Lenders' Cure Period (as defined therein);

Clause 3 save to the extent it operates as the State's consent pursuant to Section 18.1(b) of the IA; and Clause 4.

PPA Amendment Agreement

Clause 2.10(b) to the extent such obligation of the State arises after the expiry of 18 (eighteen) months (unless the Guarantor agrees to an extension) from the end of the initial period of 270 (two hundred seventy) days of the Lenders' Cure Period (as defined therein);

Clause 3 save to the extent it operates as the State's consent pursuant to Section 18.1(b) of the IA; and Clause 4.

LLA Amendment Agreement

Clause 2.3(c) to the extent such obligation of the State or reason arises after the expiry of 18 (eighteen) months from

the end of the initial period of 270 (two hundred seventy) days of the Lenders' Cure Period as defined therein);

Clause 3; and Clause 4.

- (c) termination of the Implementation Agreement by reason of any Other Force Majeure Event (as defined therein) and:
  - (i) Section 11.5(c)(iii) thereof;
  - (ii) Section 11.5(d)(i) or (ii) thereof save, in both cases, to the extent that the prevention of operation or commissioning of the Complex (as defined in the IA) is a result of an Other Force Majeure Event as defined under Section 11.1(c)(i)(A) to (E) thereof affecting the ability of BPDB or the Gas Supplier to (i) construct or complete the Interconnection and Transmission Facilities or the Transportation Facilities (as such terms are defined in the PPA and GSA) in accordance with the Power Purchase Agreement or the Gas Supply Agreement; or (ii) receive or deliver power or gas from or to the Complex;
  - (iii) Section 11.5(e) thereof in the event that the inability of the Company to obtain any consent is the result of an Other Force Majeure Event as defined under Section 11.1(c)(ii) thereof;
  - (iv) Section 11.8(b) thereof to the extent this provision is being applied by virtue of Section 11.5(c) of the Implementation Agreement;
- (d) Section 6.4(b)(ii) and 6.5(a) of the Power Purchase Agreement due to the occurrence of an Other Force Majeure Event as defined under Section 14.1(c)(ii) thereof;
- (e) delay to the completion of the Transportation Facilities due to the occurrence of an Other Force Majeure Event as defined under Section 13.1(c)(ii) of the Gas Supply Agreement;
- (f) Section 9.10(a)(i), (ii) and (iii) of the Gas Supply Agreement if such obligation arises as a result of the occurrence of an Other Force Majeure Event as defined under Section 13.1(c)(ii) of the Gas Supply Agreement;
- (g) the failure or inability of the Gas Supplier (i) (by reason of an Other Force Majeure Event as defined under Section 13.1(c)(ii) of the Gas Supply Agreement) to supply the quantity of gas warranted pursuant to Section 5.1 of the Gas Supply Agreement; or (ii) at any time during the Term (as defined in the GSA) to economically recover gas from available gas fields in Bangladesh unless such failure or inability arises from the export of gas from Bangladesh;
- (h) any Company Event of Default;
- (i) the amendment to the Implementation Agreement made by letter from the Company to the State dated November 1, 1999;
- (j) the amendment of the GoB Guarantee pursuant to the IA Amendment Agreement Clause 2.12(e) regarding an indemnity to the Company in respect of the obligations of BPDB, the Gas Supplier or the Lessor under the PPA, GSA or Land Lease Agreement being void, avoidable, illegal, invalid, unenforceable or ineffective (the "Invalidity") for any reason whatsoever in any case where the reason for the Invalidity was either known to the Company or the IDA Facility Lenders prior to the date hereof or was discoverable by the IDA Facility Lenders through the exercise of reasonable due diligence prior to the date hereof; and
- (k) the Simple Cycle Supplemental and Amendment Agreement dated on or about April 4, 2001 entered into among the Company, the State, BPDB and the Gas Supplier.

"Final Demand Date"

means 90 (ninety) days after the final Repayment Date under and as defined in the IDA Guaranteed Facility Agreement, as such date may be extended under the IDA Guaranteed Facility Agreement with the prior written consent of the Guarantor.

"Finance Documents"

shall have the meaning given in Clause 1.1 (Definitions) of the Intercreditor and Common Terms Agreement.

"GoB Event of Default"

means the events of default set out in Article 13.1(b) of the Implementation Agreement.

"GoB Guarantee"

means the guarantee agreement dated April 4, 2001 entered into between the State and the Company as at the date of its signature (as amended in writing pursuant to Clause 2.12 of the IA Amendment Agreement) and forming Schedule 3 (Form of the GoB Guarantee) to the IA.

"Gas Supply Agreement" or "GSA"

means the gas supply agreement dated September 17, 1998 entered into between the Gas Supplier and the Company as at the date of its signature, and, (subject to Clause 2.2 (Excluded Obligations) at (b)(ii) hereof) the written amendments thereto made by the GSA Amendment Agreement.

"Guaranteed Liability"

means any obligation of the Company under, and in accordance with, the IDA Guaranteed Facility Agreement for:

- (a) the repayment of any principal amount due and payable pursuant to the IDA Guaranteed Facility on a scheduled Repayment Date as set forth on the Repayment Schedule in Schedule 5 to this Guarantee Agreement; and
- (b) the payment of Interest on a scheduled Interest Payment Date at the rate applicable thereto pursuant to Section 5.1 of the IDA Guaranteed Facility Agreement namely, two percent per annum (2% p.a.) plus LIBOR.

For the avoidance of doubt, no other obligations of the Company arising under or in connection with the IDA Guaranteed Facility Agreement are Guaranteed Liabilities.

"IBRD"

means the International Bank for Reconstruction and Development.

"IDA Guaranteed Facility"

means the facility provided for under the IDA Guaranteed Facility Agreement.

"IDA Guaranteed Facility Agreement"

means the loan agreement dated April 4, 2001 entered into among the Agent, the IDA Facility Lenders and the Company as it may be amended in accordance with the terms of this Guarantee Agreement.

"IDA Guaranteed Loan"

means all amounts of principal and Interest due and payable under the IDA Guaranteed Facility.

"IDA Project Agreement"

means the agreement entered into between the Guarantor and the Company dated

April 4, 2001.

"IDA Facility Lenders"

means the financial institutions party to the IDA Guaranteed Facility Agreement named in Schedule 1 thereto and their permitted successors and assigns.

"IDA Guaranteed Facility Debt Service Payment Account" and "IDA Guaranteed Facility Debt Service Reserve Account"

shall have the respective meanings set out in the Accounts Agreement.

"Implementation Agreement" or "IA"

means the agreement dated September 17, 1998 entered into between the State and the Company as at the date of its signature and, (subject to Clause 2.2 (Excluded Obligations) at (b)(ii) hereof) the written amendments thereto made by the IA Amendment Agreement.

"Indemnity Agreement"

means the indemnity agreement entered into between the Guarantor and the State dated April 4, 2001.

"Ineligible Costs"

shall have the meaning set out at Clause 1.1 (Definitions) of the IDA Guaranteed Facility Agreement.

"Interest"

means scheduled interest calculated at the rate set out in Clause 5.1 of the IDA Guaranteed Facility Agreement.

"Interest Payment Date"

shall mean any date on which Interest is due pursuant to Clauses 4 and 5 of the IDA Guaranteed Facility Agreement.

"Interest Period"

shall have the meaning set out in the IDA Guaranteed Facility Agreement.

"Land Lease Agreement" or "LLA"

means the agreement dated September 17, 1998, re-executed on July 12, 2000, entered into between the State and the Company as at the date of its original signature in 1998, (subject to Clause 2.2 (Excluded Obligations) at (b)(ii) hereof) the written amendments thereto made by the LLA Amendment Agreement and the rectification of the description of the site at Schedule 1 therein pursuant to a rectification agreement executed by the Company and the State dated on or about March 28, 2001.

"LIBOR"

means the London Interbank Offered Rate as defined in the IDA Guaranteed Facility Agreement.

"Maximum Guaranteed Amount"

means, subject to Clause 3 (Limitation of Guarantor's Liability), an amount equal to the aggregate of the Maximum Guaranteed Principal and the Maximum Guaranteed Interest (as defined in I and II respectively below):

I - Maximum Guaranteed Principal

A - B

Where:

A. is the aggregate principal amount committed and disbursed under



the IDA Guaranteed Loan (not to exceed United States Dollars sixty million nine hundred thousand (US\$60,900,000));

- B. is an amount equal to the aggregate of those amounts of principal (if any) in respect of which the Agent may not, as a result of Clause 6.2 (No Demand Notices after due date) of this Guarantee Agreement, serve a Demand Notice.

## II - Maximum Guaranteed Interest

means Interest due and payable on any Advances made pursuant to the IDA Guaranteed Facility Agreement of an aggregate principal amount not exceeding the Maximum Guaranteed Principal.

"Power Purchase Agreement" or "PPA"

means the power purchase agreement dated September 17, 1998 entered into between BPDB and the Company as at the date of its signature and (subject to Clause 2.2 (Excluded Obligations) at (b)(ii) hereof) the written amendments thereto made by the PPA Amendment Agreement.

"Principal Project Agreements"

means the IA, the PPA, the GSA, the LLA and the Amendment Agreements.

"Project"

means the development, financing, construction, ownership, insuring, commissioning, operating and maintaining by the Company of the 360MW gas fired Haripur Power Station complex and the generation and sale of electrical power pursuant to the IA and PPA.

"Provisional Payment Escrow Account"

shall mean the interest bearing account established in the name of the Guarantor at a bank acceptable to the Guarantor and operated by the Agent under the instructions and for the account of the Guarantor for the purpose of receiving, holding and distributing any funds paid by the Guarantor pursuant to a Demand for Provisional Payment or refunded by an IDA Facility Lender pursuant to Clause 6.5(b)(A).

"Project Documents"

shall have the meaning set out in Clause 1.1 of the Intercreditor and Common Terms Agreement.

"Provisional Payment Security"

shall mean an irrevocable stand-by letter of credit for the relevant Provisional Payment amount (together with interest calculated on such amount each six months at prevailing LIBOR), substantially in the form of Schedule 6 hereto issued by a financial institution (which may be an IDA Facility Lender entitled to a share of the relevant provisional payment (and providing such letter of credit)) rated by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. ("Standard & Poor's") as 'A' or above or Moody's Investors Services Limited ("Moody's") as 'A2' or above, required to be provided by any IDA Facility Lender to the Guarantor pursuant to Clause 6.5. Such letter of credit will be increased semi-annually to reflect accrued interest.

"Public Sector Entity"

means

- (i) the State or any entity subject to the overall control or direction as to matters of policy of the State or which is otherwise under and controlled by the State, including without limitation, but only for so long as they are under the control of the State, BPDB, the Gas Supplier, and Bangladesh Bank;
- (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 IDA Facility 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.

"Repayment Date"

means any date set out in Schedule 5 hereto, as such may be revised in accordance with the IDA Guaranteed Facility Agreement with the consent of the Guarantor.

"Scheduled Payment(s)"

means the payment of Interest or repayment of principal pursuant to the IDA Guaranteed Facility Agreement on the Repayment Dates in the amounts set forth in Schedule 5 hereto.

"Security Documents"

shall have the meaning set out at Clause 1.1 (Definitions) of the Intercreditor and Common Terms Agreement.

"Security Trustees"

shall have the meaning set out at Clause 1.1 (Definitions) of the Intercreditor and Common Terms Agreement.

"Senior Sponsor Facility"

means the loan made available by AES Oasis Finco, Ltd. to the Company for the purposes of funding Project construction costs pursuant to the facility agreement dated March 31, 2001 entered into between the Company and AES Oasis Finco, Ltd.

"Share Retention and Project Funds Agreement"

means the share retention and project funds agreement dated April 4, 2001 among (inter alia) the Company, The AES Corporation and the Agent as Intercreditor Agent.

"Technical Advisor"

means Sargent & Lundy LLC or its permitted successor.

"Transaction Documents"

shall have the meaning set out in Clause 1.1 of the Intercreditor and Common Terms Agreement.

"Unpaid Guaranteed Liability"

means any Guaranteed Liability (or, as the context may require, the amount thereof) which, at the time in question, is due as a Scheduled Payment but has not been received by the IDA Facility Lenders.

### 3. LIMITATION OF GUARANTOR'S LIABILITY

#### 3.1 Guarantor's notice of no further coverage

Where, prior to the end of the Availability Period under the IDA Guaranteed Facility Agreement, either:

- (a) any GoB Event of Default, Company Event of Default or Event of Default pursuant to any Transaction Document has occurred and is continuing; or
- (b) the Company has breached any of its obligations to the Guarantor under the IDA Project Agreement between the Company and the Guarantor and, in the opinion of the Guarantor, such breach is continuing after the expiry of the relevant cure period (if any) specified under the IDA Project

Agreement; or

- (c) the State has failed to pay to the Guarantor or IBRD an amount due and payable under any credit, borrowing, guarantee or indemnity agreement between the State and the Guarantor or between the State and IBRD when due and as a result the Guarantor or IBRD has suspended disbursements on credits or loans to or guaranteed by the State, and the Guarantor has delivered to the Agent a certificate to such effect; or
- (d) the State has been suspended from membership of, or has ceased to be a member of, the Guarantor, IBRD or the International Monetary Fund and the Guarantor has delivered to the Agent a certificate to such effect,

the Guarantor may, by written notice to the Agent (Limitation Notice), inform the Agent that, until the Guarantor issues a Revocation Notice, as defined in Clause 3.2 (Revocation), no further disbursements pursuant to the IDA Guaranteed Facility Agreement made after the date of notification of such Limitation Notice pursuant to Clause 15 (Notices) hereof will be covered by this Guarantee Agreement.

### 3.2 Revocation

The Guarantor will, if the event giving rise to such Limitation Notice under Clause 3.1 has been remedied (in the reasonable opinion of the Guarantor) or waived, immediately and may, at any other time, revoke any Limitation Notice by written notice to the Agent stating which disbursements (or parts thereof) under the IDA Guaranteed Facility Agreement made after the date of the Limitation Notice are reinstated for coverage under this Guarantee Agreement.

### 3.3 Guarantor's Liability

- (a) If a Limitation Notice is served under Clause 3.1 (Guarantor's Notice of no further coverage), unless and until such Limitation Notice has been revoked in accordance with Clause 3.2 the Maximum Guaranteed Amount under this Guarantee Agreement shall be the Advances (together with Interest accrued thereon to the date of such Limitation Notice and accruing on such Advances thereafter) outstanding at the date of the said Limitation Notice.
- (b) If the Guarantor determines that an Advance has been used by the Company for an Ineligible Cost (as defined pursuant to the IDA Guaranteed Facility Agreement) at any time within 45 (forty five) days after receipt by the Guarantor from the Agent of a report on final Project costs as certified by the Technical Advisor, the Guarantor may issue a notice to the Agent stating the amount disqualified for coverage under this Guarantee Agreement until such time as the Company has reimbursed such amount to the Agent and requested an equivalent disbursement (to the extent permissible) for use on Project costs which are not Ineligible Costs.

## 4. CONDITIONS PRECEDENT

The Guarantor's obligations under this Guarantee Agreement are subject to satisfaction of the condition precedent that the Guarantor has notified the Agent in writing that the Guarantor has received (or waived receipt of) (a) payment by the Company of the first instalment of the Guarantee Fees payable on the date and in the manner specified under Clause 5 (Guarantee Fees) below and Schedule 6 (Payment of IDA Guarantee Fees) to the IDA Guaranteed Facility Agreement; (b) payment by the Company of the initiation fee and processing fee to the Guarantor; (c) confirmation of payment of the guarantee fee payable by the Company to the State as set out in Section 1.5 of the IDA Project Agreement; and (d) all of the documents and other items set out in Schedule 2 (Conditions Precedent) hereto and each is, in form and substance, satisfactory to the Guarantor.

## 5. GUARANTEE FEES

- 5.1 The Guarantor's obligations under this Guarantee Agreement are subject to the receipt by the Guarantor of a Guarantee Fee payable by the Company, the first instalment of which shall be due on the sixtieth (60th) day from signature hereof or on the date of effectiveness of this Guarantee Agreement, whichever occurs earlier. Payment and calculation shall be made as follows:

- (a) Prior to and including Commercial Operations Date, the Guarantee Fee shall be due and payable in advance on each Interest Payment Date for the following Interest Period in an amount equal to 0.75 percent per annum (75 basis points) of the principal amount of the IDA Guaranteed Facility, being US\$60,900,000 (US Dollars sixty million nine hundred thousand);
- (b) After Commercial Operations Date, the Guarantee Fee shall be due and payable semi-annually in advance on each Repayment Date (save for the Interest Period immediately succeeding Commercial Operations Date which shall be eight (not six) months and in respect of which the Guarantee Fee shall be due and payable on Commercial Operations Date for such eight month Interest Period on the same basis) and shall be in an amount equal to 0.75 percent per annum (75 basis points) of the aggregate principal amount of the IDA Guaranteed Facility from time to time outstanding during the Interest Period immediately following such Repayment Date (or Commercial Operations Date) (before taking account of any principal repayment made on such date and as such principal amount shall be determined in accordance with Clause 5.2 below), which portion of the Guarantee Fee shall accrue up to and excluding the final Repayment Date.

5.2 Commencing on the first Repayment Date, the aggregate outstanding principal amount under the IDA Guaranteed Facility shall be determined as the maximum aggregate outstanding principal amount from time to time during the relevant semi-annual period, as set forth in Schedule 5 hereto, as such schedule may be revised with the written consent of the Guarantor at the termination of the Availability Period.

5.3 The Guarantee Fee shall be calculated on the basis of the actual number of days in the relevant period divided by 360. The Guarantor acknowledges that the Agent or any IDA Facility Lender shall be entitled (but in no event required) to make payment to the Guarantor of such Guarantee Fee on behalf of the Company, promptly notifying IDA of such payment.

## 6. DEMANDS

6.1 Demand Notices after Final Demand Date are void

Subject to Clause 6.2 below, any Demand Notice received by the Guarantor after 5:00 p.m. (Washington D.C. time) on the Final Demand Date shall be void and of no effect and, save for accrued obligations, the Guarantor's obligations under this Guarantee Agreement shall automatically terminate at such time on the Final Demand Date (unless such date is not a day on which IDA is open for business in Washington (an "IDA Business Day"), in which case a Demand Notice may be delivered on or prior to 5:00 p.m. (Washington D.C. time) on the immediately following IDA Business Day).

6.2 No Demand Notices after due date

A Demand Notice in respect of the Company's failure to pay any Unpaid Guaranteed Liability must be received by the Guarantor no less than 30 (thirty) nor more than 90 (ninety) days after the due date for Scheduled Payment of such Unpaid Guaranteed Liability; provided, however, that (i) if the Agent or the IDA Facility Lenders are precluded by the terms of the Finance Documents from delivering a Demand Notice or otherwise taking any action necessary to initiate or vest their claim against the Guarantor, or the State and/or the Company are pursuing dispute resolution under Article 15 of the Implementation Agreement or under Section 1.9 of the GoB Guarantee (or the Company and BPDB or the Gas Supplier is pursuing dispute resolution pursuant to the respective relevant provisions of the PPA or the GSA), which has not been concluded by an Arbitral Award (or expert determination in the case of PPA Section 11.7 or GSA Section 9.6), such 90 (ninety) day period shall be calculated by reference to the end of the period of such preclusion or the date of issue of the Arbitral Award in such dispute resolution proceedings, as the case may be; and (ii) in the event that Clause 6.5 below applies, the 90 (ninety) day period shall be calculated from the day following the last Business Day of the six months stipulated under Clause 6.5(b).

6.3 Demand for Payment

Each Demand Notice shall be substantially in the form of Schedule 1 (Form of

Demand Notice), hereto and shall be:

- (a) signed by or on behalf of the Agent;
- (b) accompanied by copies of the Agent's demands made on the Company with respect to the relevant amounts demanded;
- (c) accompanied by copies of the Company's demands made on the State, the Gas Supplier and BPDB, as the case may be;
- (d) without prejudice to Clauses 6.4 and 6.5, in the event that the State has disputed payment of the relevant amounts in accordance with Article 15.2 of the Implementation Agreement (or the Gas Supplier or BPDB has disputed the same in accordance with Section 18.2 of the GSA or Section 15.2 of the PPA respectively), accompanied by a certification by the Agent that the relevant amount that the State has failed to pay (i) was determined to be due and payable by the State pursuant to an Arbitral Award in accordance with the dispute resolution provisions and procedures of the Implementation Agreement or of the GoB Guarantee or by the Gas Supplier or BPDB either pursuant to an Arbitral Award in accordance with the dispute resolution provisions and procedures of the GSA or PPA or pursuant to an expert determination in accordance with Section 9.6 of the GSA or Section 11.7 of the PPA (as the case may be), with documentary evidence to that effect attached in the form of a certified copy of the Arbitral Award or expert's determination; or (ii) was agreed to be due and payable with a copy of the binding settlement agreement executed by the State (or BPDB or the Gas Supplier, as the case may be), and the Company. For the avoidance of doubt, the Guarantor will require any settlement agreement reached after commencement of arbitration proceedings to be endorsed by the arbitral tribunal;
- (e) accompanied by evidence reasonably satisfactory to the Guarantor of the authority of the signatory to sign such Demand Notice on behalf of the Agent (a copy of the Agent's most recent official signature book which shows the authority of the signatory or an official incumbency certificate signed or sealed by an officer of the Agent showing the authority of the signatory shall, for these purposes, be such reasonable evidence);
- (f) effective only (and the Guarantor shall only be liable to make a payment on the due date pursuant to Clause 8.1 (Payments by the Guarantor) under this Guarantee Agreement in respect of such Demand Notice) when the Demand Notice is actually received by the Guarantor at its address provided for in Clause 15 (Notices); and
- (g) in the absence of manifest error, conclusive and binding on all parties to this Guarantee Agreement in respect of all information set out in such Demand Notice.

The Guarantor may reasonably request other additional information or documentation concerning the circumstances of the Demand within 30 (thirty) days of receipt of the Demand Notice.

#### 6.4 Demand Notice at date of default

The Agent shall be entitled pursuant to this provision to serve (i) a Demand Notice at a time when dispute resolution proceedings pursuant to Article 15.2 of the Implementation Agreement or Section 1.9 of the GoB Guarantee (or the relevant provisions of the PPA or GSA) or settlement discussions between the Company and the State are ongoing but no Arbitral Award or binding settlement agreement has been issued for compliance with Clause 6.3(d) above; or (ii) a Demand for Provisional Payment prior to the expiry of the 6 (six) month period in Clause 6.5(b) below.

The Guarantor shall have no payment obligation in respect of (i) such Demand Notice until such time as Clause 6.3 (d) above is complied with; or (ii) in the case of a Demand Notice regarding Provisional Payment, until the requirements of Clause 6.5(b)(A) are satisfied.

#### 6.5 Demand for Provisional Payment

In the event that:

- (a) the State disputes its liability to pay the Company either under a demand for payment made pursuant to Section 1.5 of the GoB Guarantee or in relation to an obligation pursuant to the Implementation Agreement (in each case, the "Company Claim") and, notwithstanding its undertaking in Section 15.2(h) of the Implementation Agreement, the State elects to pursue dispute of the Claim through a procedure not agreed to by the Company and different to the dispute resolution procedure provided for pursuant to Article 15 of the Implementation Agreement (or Section 1.9 of the GoB Guarantee) and thereafter the State commences proceedings in the Bangladesh courts (or courts elsewhere) and obtains a court decision, judgment or order (whether temporary or permanent) ("Restraining Order") which prevents or interrupts (whether directly or indirectly) the submission or pursuit of the Claim by the Company and/or the IDA Facility Lenders to arbitration in accordance with the applicable provisions of the Implementation Agreement or the GoB Guarantee; or
- (b) the commencement or pursuit of dispute resolution in accordance with Article 15 of the Implementation Agreement or Section 1.9 of the GoB Guarantee (or other process agreed between the State and the Company) is prevented or interrupted (whether directly or indirectly) by a Bangladesh court decision, judgment or order (whether temporary or permanent) ("Bangladesh Restraining Order") emanating from third party legal action commenced in the Bangladesh courts,

then, subject to Clause 1 (Guarantee) hereof and to the conditions set out in A and B below, if the cumulative effect of any Restraining Order(s) and/or Bangladesh Restraining Order(s) is to prevent or interrupt (whether directly or indirectly) the submission of the Company Claim to or its pursuit through dispute resolution in accordance with Article 15 of the Implementation Agreement or Section 1.9 of the GoB Guarantee (or other process agreed between the State and the Company) for a period, in aggregate, of 6 (six) months despite the Best Endeavors of the Company and the IDA Facility Lenders to remove such Restraining Order(s) and/or Bangladesh Restraining Order(s) (or their effect) and the Company has failed to pay any Unpaid Guaranteed Liability, the Guarantor will make a provisional payment ("Provisional Payment") in the amount of such Unpaid Guaranteed Liability:

- A. under the Guarantee Agreement pursuant to a Demand for Provisional Payment from the Agent (complying with Clause 6.3(a), (b), (c) and (e)). In each such case such provisional payment by the Guarantor (subject to B(i) and (ii) below) shall be made to the Provisional Payment Escrow Account. Each of the IDA Facility Lenders which has provided Provisional Payment Security proportional to its share of such provisional payment, as calculated by the Agent shall be entitled to receive such share through disbursement from the Provisional Payment Escrow Account. The Agent shall provide IDA with quarterly reports on the Standard & Poor's and/or Moody's credit ratings of all IDA Facility Lenders to the extent these are available. In the event that the credit rating of any issuer of Provisional Payment Security is downgraded at any time below such applicable credit rating specified in Clause 2.2 (Provisional Payment Escrow Account), the Agent promptly upon being advised of such downgrade shall notify the Guarantor immediately and the Guarantor shall be entitled to call for the issue of replacement Provisional Payment Security by notifying the Agent in writing. If within 30 (thirty) days of receipt by the Agent of such notification from the Guarantor, a replacement Provisional Payment Security has not been provided, the relevant IDA Facility Lender shall immediately refund the full amount of its share of the relevant Provisional Payment (in respect of which no acceptable Provisional Payment Security has been provided to the Guarantor) to the Provisional Payment Escrow Account, for retention pending provision of acceptable replacement Provisional Payment Security.

In the event that either replacement Provisional Payment Security is not provided or no refund of the Provisional Payment is made by the relevant IDA Facility Lender, notwithstanding anything in this Guarantee Agreement to the contrary, the Guarantor shall be under no obligation to make any further payment to such IDA Facility Lender pursuant to this Guarantee Agreement unless and until the refund has been effected in full and acceptable replacement Provisional Payment

Security has been provided and such IDA Facility Lender shall account to the Guarantor in respect of interest accruing (calculated by reference to LIBOR prevailing on the second Business Day prior to the end of the relevant period) on its share of the provisional payment from the latest date replacement Provisional Payment Security should have been provided until the earlier of the date replacement Provisional Payment Security is provided and the expiry of the 3 (three) year period specified in subclause B below.

In the event that the 3 (three) year period specified pursuant to subclause C below expires prior to the provision of replacement Provisional Payment Security, any refunded share of the Provisional Payment will be released from the Provisional Payment Escrow Account to the relevant IDA Facility Lender but any interest earned thereon since the date of refund by the IDA Facility Lender will be paid out to the Guarantor.

- B. Provisional Payment from the Guarantor shall be subject to the provision (i) of an opinion from counsel acceptable to the Guarantor as to those legal measures consistent with the exercise of Best Endeavors which could have been taken within the 6 (six) month period to remove each Restraining Order or each Bangladesh Restraining Order; (ii) in lieu of compliance with Clause 6.3(d) above by the Agent, of copies of any request to arbitrate (made by the Company or the State), and of the Restraining Order or Bangladesh Restraining Order, together with a statement from the General Counsel (or such other legal officer acceptable to the Guarantor) of the Agent describing measures taken by the Company and/or by the IDA Facility Lenders consistent with Best Endeavors; and (iii) of a certificate from the Agent that the Company and/or the IDA Facility Lenders have been unable to remove the Restraining Order(s) or Bangladesh Restraining Order(s), the cumulative effect of which has lasted for six months provided that:
- C. if an Arbitral Award rendered pursuant to Article 15 of the Implementation Agreement or pursuant to Section 1.9 of the GoB Guarantee (or other dispute resolution process agreed between the Company and the State) or a binding settlement agreement between the Company and the State subsequently determines the liability of the State in respect of the Claim and such liability is less than the full amount of the Company Claim, the Guarantor will be entitled to immediate reimbursement with respect to the relevant Provisional Payment(s) (together with interest thereon from the date of such Provisional Payment(s) to the date of reimbursement at a rate calculated by reference to LIBOR prevailing on the second Business Day before the date of reimbursement) through the exercise of its right to call upon and enforce the Provisional Payment Security provided pursuant to A above. The amount of reimbursement shall be equal to the aggregate amount of provisional payments received by the IDA Facility Lenders from the Guarantor less the amount of the State's liability as determined by the Arbitral Award or the binding settlement agreement. The Guarantor's right to enforce the Provisional Payment Security will be unconditional, exercisable immediately on the date of the issue of the Arbitral Award or date of the binding settlement agreement and will expire three years from the date of the relevant Provisional Payment by the Guarantor, provided that the expiry of the 3 (three) year period shall not preclude the exercise by the Guarantor of such right to reimbursement within 60 (sixty) days after such expiry where at any time prior to the end of the three year period (a) the Guarantor has given the Agent written notice that an Arbitral Award or binding settlement agreement is imminent and (b) there is conclusion of the relevant arbitration proceedings or binding settlement agreement but the issue of the Arbitral Award or formal execution of the binding settlement agreement occurs after the end of the 3 (three) year period. In such case, the Agent agrees to arrange for the extension of the validity of the Provisional Payment Security as provided in Schedule 6 hereto.
- (c) the Company fails to pay when due and payable further Unpaid Guaranteed Liabilities as a result of or during the continuance of either a Restraining Order or a Bangladesh Restraining Order, then, subject to Demands in compliance with Clauses 6.3 and 6.5(b) above, the Guarantor will make further Provisional Payments in respect of such further Unpaid

Guaranteed Liabilities.

6.6 Election for Court Proceedings

Notwithstanding Clause 13.2 (Waiver of Defenses) below, in the event that following a Restraining Order or a Bangladesh Restraining Order, the Company and, as the case may be, the IDA Facility Lenders submit or transfer the Company Claim (or any part thereof) to the jurisdiction of the courts and pursue the Company Claim (or the relevant part thereof) through such court proceedings, no Demand for Provisional Payment may be made on the Guarantor in respect of the Company Claim or the relevant part thereof.

7. GUARANTOR NOT LIABLE

7.1 Nonpayment of Guarantee Fees

The Guarantor's obligations under this Guarantee Agreement shall terminate automatically (except in respect of Demand Notices already received by the Guarantor) if any Guarantee Fee referred to in Clause 5 (Guarantee Fees) is not paid on or before the tenth (10th) day following the relevant Guarantee Fee Payment Date.

7.2 Breach of obligations

The Guarantor's obligations under this Guarantee Agreement shall terminate and any Demand Notice which has been issued but in respect of which the due date for payment by the Guarantor has not occurred shall be void and of no effect if the IDA Facility Lenders or Agent breach any of their obligations in Clause 10.2 (Waivers, amendments) and, where such breach, if capable of remedy, is not remedied in the reasonable opinion of the Guarantor by the date falling ninety (90) days after notice from the Guarantor to the Agent of such breach and requiring such breach to be remedied.

8. PAYMENTS

8.1 Payments by the Guarantor not accelerable

Subject to Clause 1.4 (Maximum Liability) and this Clause 8:

- (a) with respect to any Unpaid Guaranteed Liability, the Guarantor shall be liable to make payment in respect of Scheduled Payments only on their respective due dates pursuant to Schedule 5 hereof (as it may be revised with IDA's consent). An acceleration of repayment by the IDA Facility Lenders in accordance with the IDA Guaranteed Facility Agreement shall not give rise to any corresponding acceleration of the Guarantor's liabilities hereunder. The Guarantor shall have the option, in its sole discretion and at any time, to pay the IDA Facility Lenders all or any part of the Unpaid Guaranteed Liability not to exceed the outstanding Maximum Guaranteed Amount through the date of such prepayment by the Guarantor; and
- (b) subject to Clauses 6.3 and 6.5 above, the Guarantor shall pay to the Agent the amounts demanded in any Demand Notice on or before the sixtieth (60th) day following the Guarantor's receipt of the Demand Notice or Demand for Provisional Payment concerned (the Guarantee Payment Date) or, if such sixtieth (60th) day is not a day when banks are open for business in London, the immediately following Business Day.

8.2 Repayment by the Company prior to payment by the Guarantor

If, after the Agent has served a Demand Notice on the Guarantor pursuant to this Guarantee Agreement but before the Guarantor has paid the amount demanded by such Demand Notice:

- (a) the Company pays to the Agent or the IDA Facility Lenders recover otherwise than from the Guarantor the whole or any part of any Unpaid Guaranteed Liability referred to in the Demand Notice:
  - (i) the Agent shall promptly notify the Guarantor of such fact; and
  - (ii) the Guarantor's liability under this Guarantee Agreement in respect of such Demand Notice shall be reduced by an amount equal



to the amount so paid by the Company or recovered by the Agent or the IDA Facility Lenders, as certified by the Agent; or

- (b) the Gas Supplier, BPDB or the State pays to the Company in accordance with the terms of the Gas Supply Agreement, the Power Purchase Agreement, the Implementation Agreement, the GoB Guarantee or otherwise the whole or any part of the amount due and payable (but unpaid) by it to which the Demand Notice relates, the Guarantor's liability hereunder in respect of such Demand Notice shall be reduced by an amount equal to the IDA Facility Lenders' share, which they are then entitled to apply (and no act or omission of any Public Sector Entity exists preventing such application) in discharge of Unpaid Guaranteed Liability in accordance with the IDA Guaranteed Facility Agreement, the Intercreditor and Common Terms Agreement and the Accounts Agreement, of the amount so paid by the Company to the IDA Facility Lenders, as a result of such payment by the Gas Supplier, BPDB or the State.

### 8.3 Payments to the Agent

- (a) Payments to the Agent by the Guarantor of amounts demanded by the Agent pursuant to any Demand Notice shall discharge the Guarantor fully from its obligations to the Agent and the IDA Facility Lenders to the extent of the amounts so paid; and
- (b) the Guarantor shall not be obliged to make any payment under this Guarantee Agreement directly to any IDA Facility Lender but only to the Agent and the Guarantor shall have no obligation or liability whatsoever (i) to the IDA Facility Lenders or any other party in respect of the Agent's distribution of any such payments received by the Agent; or (ii) to inquire as to the Agent's distribution thereof.

### 8.4 Account and Funds

All payments to be made by the Guarantor to the Agent under this Guarantee Agreement shall be made in immediately available funds in United States Dollars before 11:00 a.m. New York time on the due date therefor to the account of the Agent specified in the Demand Notice.

### 8.5 Set-off

All payments to be made by the Guarantor under this Guarantee Agreement shall be made without deduction for or on account of set-off, counter-claim, or any other reduction except that the Guarantor may make deductions from payments to the Agent under this Guarantee Agreement on account of any monies owing to the Guarantor by the Agent or any of the IDA Facility Lenders pursuant to this Guarantee Agreement.

### 8.6 Payment of Guarantee Fees

All Guarantee Fees referred to in Clause 5 (Guarantee Fees) shall be paid to the Guarantor in immediately available funds in United States Dollars before 11:00 a.m. (New York time) on the Guarantee Fee Payment Date at:

HSBC Bank USA  
140 Broadway  
New York, NY 10005

Account: IDA 000125202

Swift Code: MRMDUS33  
Ref: Attn.: LOALA (Payment of Haripur Partial Risk Guarantee Fees)

with written notice of the amount and value date to:

World Bank Treasury Operations  
Tel: (202) 458-1877  
Fax: (202) 522-1564

with copies of each notice to:

Loan Accounting and Borrowers' Services  
World Bank

Tel.: (202) 458-0665  
Fax: (202) 522-3428

Director, Project Finance and Guarantees Department, Private Sector and  
Infrastructure Vice Presidency  
World Bank  
Tel.: (202) 473-7878  
Fax: (202) 477-0218

9. GUARANTOR'S RIGHT OF SUBROGATION

9.1 Subrogation

Subject to Clause 9.1(a) below, if and to the extent that the Guarantor makes any payment under this Guarantee Agreement pursuant to a Demand Notice, and the State for any reason fails to discharge its obligation under the Indemnity Agreement to reimburse the Guarantor for such payment in full within sixty (60) days after written notice from the Guarantor, the Guarantor, subject to Clause 9.2 (Loan fully paid out), shall be subrogated immediately to the extent of such payment to the rights, claims and security held, recovered or receivable by each IDA Facility Lender receiving any part of such payment from the Guarantor under the IDA Guaranteed Facility Agreement and the Finance Documents (regardless of whether such IDA Facility Lender has been fully repaid all amounts owed to it by the Company under the IDA Guaranteed Facility Agreement) provided that:

- (a) the Guarantor shall not be subrogated to any voting rights held by such IDA Facility Lender pursuant to the IDA Guaranteed Facility Agreement (or be entitled to direct such IDA Facility Lender as to the exercise of its voting rights) or to any rights to seek enforcement of any of such IDA Facility Lender's security unless and until either (i) the Guarantor has paid to the Agent the Maximum Guaranteed Amount; or (ii) in the case where the IDA Facility Lenders have exercised their right to accelerate the IDA Guaranteed Facility pursuant to Clause 16 thereof (an "Acceleration"), the Guarantor has agreed that it is obliged to make payments to the Agent in the amounts and on the dates stipulated under Schedule 5 hereto;
- (b) upon the occurrence of either 9.1(a)(i) or (ii) above, the Guarantor shall be subrogated to the voting rights of the IDA Facility Lenders and their rights to seek enforcement of any of the IDA Facility Lenders' security to the extent of such payment (or agreement to pay) and the IDA Facility Lenders will thereafter, but subject to Clause 9.2 (Loan fully paid out), exercise such rights as directed by the Guarantor provided that the IDA Facility Lenders shall retain voting rights and enforcement rights proportionate to any outstanding amount which is not an Unpaid Guaranteed Liability and, upon notice to the Guarantor and pursuant to the Intercreditor and Common Terms Agreement, may vote and proceed to enforce security to recover such outstanding amount unless the Guarantor shall vote against enforcement within 60 (sixty) days of such notice giving reasonable grounds for so voting; and
- (c) if IDA has received reimbursement from the IDA Facility Lenders by operation of Clause 6.5(b)(C) above, any such rights, claims and security held by the Guarantor in respect of the amount reimbursed shall revert to the IDA Facility Lenders forthwith but only to the extent of such reimbursement.

9.2 Loan fully paid out

If, at the time the Guarantor (A) pays to the Agent the Maximum Guaranteed Amount or (B) agrees to make payment on Repayment Dates under the IDA Guaranteed Facility Agreement in accordance with Clause 9.1(a)(ii) above and the Guarantor notifies the Agent in writing that the Guarantor:

- (a) waives its rights of subrogation, then the provisions of Clause 9.1 shall not apply thereafter in respect of amounts paid by the Guarantor under this Guarantee Agreement; or
- (b) does not waive its rights of subrogation,

then the provisions of Clause 9.1 shall continue to apply, the Agent and the IDA Facility Lenders, to the fullest extent permitted by law and so

long as such actions do not expose the IDA Facility Lenders or the Agent to any risk of liability for which the IDA Facility Lenders have not received satisfactory indemnification from the Guarantor, shall exercise their rights under the Finance Documents as directed by the Guarantor, to the extent of the payment received or agreed to be made, to enforce the security constituted by the Security Documents as the Agent and the IDA Facility Lenders are entitled to require enforcement for the benefit of the Guarantor, and the Guarantor shall pay, forthwith on demand, to the Agent (by way of reimbursement), all those costs and expenses incurred by the Agent and any of the IDA Facility Lenders under or in connection with the Finance Documents (including but not limited to costs and expenses incurred in connection with the preservation or enforcement of such rights) after such date.

### 9.3 Notice by Guarantor

If the Guarantor fails to give a notice pursuant to Clause 9.2, the Guarantor shall be deemed to have given a notice pursuant to Clause 9.2(a).

## 10. COVENANTS BY IDA FACILITY LENDERS

### 10.1 Information

- (a) As soon as practical after receipt of the same, the Agent will provide to the Guarantor a copy of the following received by it:
- (i) any documents, reports, reviews, financial information, project information or notifications furnished pursuant to Schedule 4 of the Intercreditor and Common Terms Agreement, including but not limited to the report on final Project costs required to be delivered by the Company to the Agent after Project Completion (pursuant to the Intercreditor and Common Terms Agreement) and any notifications given pursuant thereto;
  - (ii) any notice or report issued in connection with the Company's compliance with Clauses 11.1.23 (Insurance), 11.1.25 (Improper Payments), 10.1.5 (No Default), 10.1.6 (Consents), 10.1.14 (Proceedings), 10.1.15 (Information), 10.1.16 (Project Documents), 10.1.19 (Insurances), 10.1.21 (No Force Majeure), 10.1.23 (Budgets), 10.1.25 (Environmental Matters) and 10.1.26 (Improper Payments) of the Intercreditor and Common Terms Agreement;
  - (iii) the Project Budget and Forecasts (as defined in the Intercreditor and Common Terms Agreement) and each revision thereof produced and furnished pursuant to Clauses 11.2.3 (Project Budget) and 11.3 (Forecasts) of the Intercreditor and Common Terms Agreement and any submission to an expert in relation thereto;
  - (iv) the legal opinions produced or delivered pursuant to paragraph 17 of Part I of Schedule 3 (Conditions Precedent) of the Intercreditor and Common Terms Agreement;
  - (v) any information furnished pursuant to Clause 12.20 (Project Events) of the Intercreditor and Common Terms Agreement;
  - (vi) reports on testing of Debt Service Cover Ratio and Loan Life Cover Ratio pursuant to Clause 11.4 (Calculation of Ratios) of the Intercreditor and Common Terms Agreement; and
  - (vii) any other reports provided to the IDA Facility Lenders pursuant to the Intercreditor and Common Terms Agreement or the Transaction Documents.
- (b) As soon as practical after receipt or issue of notice relating to the same or actual knowledge thereof, the Agent will keep the Guarantor promptly (or with such other regularity as the Guarantor and the Agent may otherwise agree in writing) informed of:
- (i) Commercial Operations Date and the first Repayment Date together with any revision to Schedule 5 hereto, the date and amount of each Disbursement (as defined in the IDA Guaranteed Facility Agreement) under the IDA Guaranteed Facility Agreement (which

shall be effected by the delivery of each Disbursement Request under Clause 3 (Availability of the Facility) of the IDA Guaranteed Facility Agreement and each notice of satisfaction of conditions precedent to disbursement pursuant to Clause 9 (Conditions Precedent) of the Intercreditor and Common Terms Agreement);

- (ii) any cancellation pursuant to Clause 8.5 (Cancellation) of the IDA Guaranteed Facility Agreement and Clause 4.10 (Cancellation) of the Intercreditor and Common Terms Agreement;
  - (iii) its receipt of each payment of interest and payment of principal (whether a Scheduled Payment, voluntary or mandatory prepayment) pursuant to Clause 8 of the IDA Guaranteed Facility Agreement and Clause 4 (Payment Terms) of the Intercreditor and Common Terms Agreement;
  - (iv) any Company Event of Default or GoB Event of Default, any Force Majeure Event as defined under Article 11 of the Implementation Agreement, any Changes in Law as defined under Article 11 of the Implementation Agreement; any Notice of Default by the Company or the Gas Supplier or BPDB pursuant to Article 17 and Article 13 of the GSA and PPA respectively; any Notice of Termination under any of the Principal Project Agreements of which it receives notice in writing from any party thereto;
  - (v) any notice issued in connection with the contribution of equity support pursuant to the Share Retention and Project Funds Agreement;
  - (vi) any notice or actual knowledge of any Event of Default under Clause 15 of the IDA Guaranteed Facility Agreement, any notice of any Event of Default under Section I of the Intercreditor and Common Terms Agreement and exercise of remedies pursuant thereto;
  - (vii) any notice of assignments or transfers of participations under Clause 25 of the IDA Guaranteed Facility Agreement; and
  - (viii) any action contemplated or taken and any notices given or received pursuant to the Intercreditor and Common Terms Agreement.
- (c) Without prejudice to the provisions of Clause 6 (Demand Notices) or Clause 13.5 (Certificates and determinations of the Agent), as soon as practical after receipt of a written request from the Guarantor, the Agent shall provide such information as the Guarantor may reasonably request relating to any claim made under this Guarantee Agreement (including, without limitation, the circumstances of such claim and the calculation of the amount claimed) as is in the possession of the Agent or, if not in the possession of the Agent at such time, the Agent shall request such information from the Company in accordance with the IDA Guaranteed Facility Agreement.

## 10.2 Waivers, amendments

Nothing in this Guarantee Agreement shall restrict or prevent the Agent or the IDA Facility Lenders (or any of them) from:

- (a) cancelling, suspending or terminating any Transaction Document or consenting to or accepting any cancellation, suspension or termination thereof;
- (b) amending, varying, modifying, novating, restating, supplementing or replacing or agreeing to or acquiescing in any amendment, variation, modification, novation, restatement, supplement or replacement of any Transaction Document; or
- (c) giving any consent or waiver pursuant to, or in connection with, any Transaction Document,

except that neither the Agent nor any of the IDA Facility Lenders shall make or, in the case of provisions not in the IDA Guaranteed Facility Agreement, exercise

their voting rights to vote in favor of (but, if the Guarantor so requests the Agent in reasonable time (and in any event not later than 2 (two) New York Business Days prior to the relevant vote) for the IDA Facility Lenders to do so and the Guarantor has not given its consent thereto, the IDA Facility Lenders shall exercise their voting rights to vote against) any cancellation, suspension, termination, amendment, variation, modification, novation, restatement, supplement or replacement of (or give a consent or waiver under) any of the provisions set out in Schedule 3 (Restricted Provisions) hereto without the prior written consent of the Guarantor, which consent shall not be unreasonably withheld or delayed (and shall be deemed to have been given if the Guarantor has not delivered a response by the close of business on the thirtieth (30th) Business Day following receipt by the Guarantor of any request therefor).

### 10.3 Confidentiality

To the extent the same are not subject to any obligation of confidentiality pursuant to or in connection with any Transaction Document, the Agent and the IDA Facility Lenders waive any rights they may have to prevent or restrict the Guarantor disclosing (and confirm that, as between the Agent and the IDA Facility Lenders and the Guarantor, the Guarantor may disclose) to any other person this Guarantee Agreement, the subject matter of this Guarantee Agreement, the IDA Project Agreement and the other Transaction Documents or any other agreement related hereto and thereto and the transactions contemplated hereby and thereby.

### 10.4 No Set-off

Neither the Agent nor any IDA Facility Lender may exercise (and the Agent and, by execution and delivery of the IDA Guaranteed Facility Agreement, the IDA Facility Lenders each irrevocably waives) any right of set-off or counter-claim it may have in respect of any obligation owed by the Guarantor under this Guarantee Agreement against any obligation (whether or not matured) owed by the Agent or the relevant IDA Facility Lender to the Guarantor regardless of the place of payment, booking branch or currency of such obligation owed to the Guarantor except in respect of obligations owed by the Agent or IDA Facility Lender concerned under this Guarantee Agreement.

## 11. ASSIGNMENTS

### 11.1 The Guarantor

The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee Agreement without the prior written consent of the Agent.

### 11.2 Assignment and transfer under IDA Guaranteed Facility

Neither the Agent nor any IDA Facility Lender may assign or transfer any of its rights or obligations under any Finance Document except in accordance with Clause 24.14 (Successor IDA Facility Agent) of the IDA Guaranteed Facility Agreement, in the case of the Agent, or Clause 25 (Assignments and Transfers) of the IDA Guaranteed Facility Agreement, in the case of the IDA Facility Lenders.

## 12. GUARANTOR AND THE AGENT

### 12.1 Warranty of Authority

The Agent represents and warrants to the Guarantor that it is duly authorized by the IDA Facility Lenders to enter into this Guarantee Agreement as Agent on their behalf.

### 12.2 Guarantor to deal with the Agent

As between (1) the Guarantor and (2) the IDA Facility Lenders, the IDA Facility Lenders have authorized and instructed the Guarantor pursuant to Clause 24 of the IDA Guaranteed Facility Agreement:

- (a) to deal only with the Agent on behalf of the IDA Facility Lenders and to rely upon all statements, consents, waivers or actions of the Agent for itself and on behalf of the IDA Facility Lenders as being binding on the IDA Facility Lenders; and

(b) not to inquire whether or not (but, in the absence of receipt of written notice to the contrary or actual knowledge to the contrary by one of its officers with functional responsibility for this Guarantee Agreement, the Guarantor is to assume that) the Agent has the actual authority of the IDA Facility Lenders in respect of any particular dealing under this Guarantee Agreement where the Agent purports to act for the IDA Facility Lenders.

### 13. PROTECTION OF IDA FACILITY LENDERS

#### 13.1 Waivers, Remedies Cumulative

The rights and remedies of the Agent and the IDA Facility Lenders under this Guarantee Agreement:

- (a) are cumulative and in addition to and not exclusive of their respective rights under general law; and
- (b) may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any such right or remedy is not a waiver of that right or remedy.

#### 13.2 Waiver of defenses

Subject to Clause 3 (Limitation of Guarantor's Liability), Clause 7 (Guarantor not liable) and Clause 6.5(b)(A), the Guarantor's obligations under this Guarantee Agreement are irrevocable, unconditional and absolute regardless of the unenforceability, invalidity, illegality or voidability of any Transaction Document and neither the rights, powers or remedies conferred on the Agent or any of the IDA Facility Lenders by this Guarantee Agreement or by law nor the liability of the Guarantor under this Guarantee Agreement shall be discharged, impaired or otherwise affected by any act, omission, circumstance, matter or thing which, but for this provision, might operate to release or prejudice any of the Guarantor's obligations under this Guarantee Agreement or discharge, impair or diminish or otherwise affect such rights, remedies or obligations in whole or in part, or any other circumstances which might constitute a legal or equitable discharge or a defense of a surety or guarantor including without limitation and whether or not known to any party to this Guarantee Agreement:

- (a) any time or waiver granted to or composition with the Company, the State or any other person;
- (b) the taking, variation, compromise, exchange, renewal or release of any rights against, or security over assets of, the Company, the State or any other person; or
- (c) any rights which the IDA Facility Lenders or the Agent (or any authorized representative or trustee acting on its or their behalf) may have against the Company or any other person or pursuant to any Transaction Document.

PROVIDED that nothing in this Clause 13.2 shall in any way increase, expand, or create any obligations of the Guarantor under this Guarantee Agreement that would not otherwise have existed under Clause 1 (Guarantee).

#### 13.3 Additional security

Subject to Clause 1.4 (Maximum Liability), the Guarantor's obligations under this Guarantee Agreement shall be in addition to, and shall not in any way be prejudiced by, any other security or guarantee now or hereafter held by, or for the benefit of, the Agent or the IDA Facility Lenders for the obligations of the Company or any other person.

#### 13.4 Immediate recourse

Subject to Clause 1 (Guarantee) and Clause 6 (Demands), the Guarantor waives any right it may have of first requiring the Agent or any of the IDA Facility Lenders to proceed against or to enforce (or seek to enforce) any other rights against:

- (a) the Company under the Transaction Documents; or

- (b) the State in respect of its obligations under the Implementation Agreement and the GoB Guarantee or, in relation to its obligations thereunder, under any other Principal Project Agreement or (for the purposes of this Clause only) the Direct Agreements; or
- (c) any other person in respect of or in relation to the Company's obligations under the Transaction Documents, the State's obligations under any Project Document or the obligations of any other person under any Transaction Document,

before claiming from the Guarantor hereunder, PROVIDED that prior to serving any Demand Notice (i) the Agent shall have first made a demand in writing for the amount set out in paragraph 4 of the Demand Notice against the Company; (ii) the Company shall have made a demand in writing (unless prevented from doing so by a GoB Event of Default pursuant to Article 13.1(b)(i) of the IA) for the amount set out in paragraph 6(b) of the Demand Notice against the State, in accordance with the relevant Principal Project Agreement, which demands shall not have been satisfied by the date upon which the Agent is entitled to issue a Demand Notice pursuant to Clause 6.3 above; and (iii) in relation to provisional payment, the Agent shall have satisfied the requirements of Clause 6.5 applicable at the time of issue of such notice.

#### 13.5 Certificates and determinations of the Agent

Where this Guarantee Agreement refers to, or requires, any determination or certification of any amount or fact to be made by the Agent, the Agent's certificates or determinations (but not any statement provided pursuant to Clause 6.5) shall, in the absence of manifest error, be conclusive and binding for all purposes of this Guarantee Agreement.

#### 13.6 Severability of Provisions

If any provision of this Guarantee Agreement is or becomes prohibited, illegal, invalid or unenforceable in any jurisdiction, such prohibition, illegality, invalidity or unenforceability shall not affect or impair the legality, validity or enforceability of the remaining provisions of this Guarantee Agreement nor the legality, validity or enforceability of such provision in any other jurisdiction.

#### 14. GUARANTOR: CAPACITY AND NO IMPLIED OBLIGATIONS

##### 14.1 Capacity

The Guarantor is acting under this Guarantee Agreement solely in the capacity of guarantor and in no other capacity. This Guarantee Agreement establishes a guarantee of payment only and not a guarantee of collection or performance.

##### 14.2 No obligations of Members

The obligations of the Guarantor under this Guarantee Agreement are not the obligations of any government or member of the Guarantor.

##### 14.3 Express obligations only

The Guarantor shall have no liability, duties or obligations under this Guarantee Agreement or any of the other Transaction Documents except to the extent expressly stated in this Guarantee Agreement.

##### 14.4 Guarantor's rights

Nothing in this Guarantee Agreement shall:

- (a) prejudice the rights of the Guarantor as between the Guarantor and the State or any other Public Sector Entity pursuant to the Indemnity Agreement or any other agreement between the Guarantor and the State or any other Public Sector Entity (whether in relation to the Project specifically or more generally); or
- (b) give the IDA Facility Lenders any rights (by way of subrogation, operation of the Contracts (Rights of Third Parties) Act 1999 or otherwise) in respect of the Guarantor's rights (or the way in which the

Guarantor exercises or does not exercise its rights) under the Indemnity Agreement or any other agreements between the Guarantor and the State or any other Public Sector Entity; and

the Guarantor shall be entitled to exercise such rights (set forth in subclause (a) and (b) above) as it may have against the State or any other Public Sector Entity as and when and in the manner it sees fit and without any obligation to account to the IDA Facility Lenders for any monies, security interests or other proceeds so realized.

#### 14.5 No Third Party Rights

A person who is not party to this Guarantee Agreement shall not have any right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of this Guarantee Agreement.

#### 15. NOTICES

- (a) Each communication to be made under this Guarantee Agreement shall be made in writing but may be transmitted by telex, facsimile or letter.
- (b) Any communication or document to be made or delivered by one person to another pursuant to this Guarantee Agreement shall (unless that other person has, by 15 (fifteen) days' written notice to the other party, specified another address) be made or delivered to that other person at the address identified in paragraph (c) and shall be effective only when received by the addressee and then only if the same is expressly marked for the attention of the department or officer identified in paragraph (c) (or, in any case, such other department or officer as the Agent or the Guarantor shall from time to time specify for this purpose by 15 (fifteen) days' written notice to the other).

- (c) (i) The Guarantor's notice details are:

Address: 1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Telex: 248423 (MCI)  
64145 (MCI)

Attention: Vice President  
South Asia Region

Facsimile: (202) 522-3707

with a copy to: Director, Project Finance and Guarantees, Private  
Sector and Infrastructure Vice Presidency

Facsimile: (202) 477-0218

- (ii) The Agent's notice details are:

Address: Minerva House, PO Box 7, Montague Close,  
London SE1 9DH, England

Telephone: (020) 7378 2495

Facsimile: (020) 7378 2158

Attention: Ms. Lindsey Clark

- (d) Each communication and document made or delivered by one party to another party pursuant to this Guarantee Agreement shall be in the English language.

#### 16. LAW AND JURISDICTION

##### 16.1 Governing law



This Guarantee Agreement shall be governed by and construed in accordance with the laws of England.

#### 16.2 Submission to Jurisdiction

Each of the parties to this Guarantee Agreement irrevocably:

- (a) submits to the non-exclusive jurisdiction of the High Court of Justice in England, for the purposes of any suit, action or proceeding arising out of or relating to this Guarantee Agreement; and
- (b) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the commencement of any such action or proceeding in such court, and any claim that any such proceeding brought in any such court has been brought in an inconvenient forum; and
- (c) agrees not to claim that any such court is not a convenient or appropriate forum whether on the grounds of venue or forum non conveniens or any similar ground or otherwise.

#### 16.3 Service of process

The Agent irrevocably agrees that the process by which any suit, action or proceeding is begun in England may be served on the Agent by being delivered to Minerva House, PO Box 7, Montague Close, London SE1 9DH England. The Guarantor irrevocably agrees that the process by which any suit, action or proceeding is begun in England may be served on the Guarantor by being delivered, to its offices at New Zealand House, 15th Floor, Haymarket, London SW14 4TE England.

#### 16.4 Non-exclusivity

The submission by each of the parties to this Guarantee Agreement to the jurisdiction of the court referred to in Clause 16.2(a) shall not (and shall not be construed so as to) limit the right of either party to take proceedings against the other party with respect to the Guarantee Agreement in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, if and to the extent permitted by applicable law; provided, however, nothing in this Guarantee Agreement shall operate as or be construed to constitute a waiver, renunciation or any other modification of any privilege or immunity of the Guarantor under Article VIII of its Articles of Agreement or under any applicable law (including 22 United States Code § 286(g)). In particular, the Agent acknowledges that in accordance with the Guarantor's Articles of Agreement, actions may be brought against the Guarantor only in a court of competent jurisdiction in the territories of a member in which the Guarantor has an office, has appointed an agent for accepting service or notice of process, or has issued or guaranteed securities. The Agent further acknowledges that:

- (a) no actions shall be brought by members of the Guarantor or persons acting for or deriving claims from such members;
- (b) the property and assets of the Guarantor, wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Guarantor;
- (c) the archives of the Guarantor shall be inviolable.

IN WITNESS whereof the parties have caused this Guarantee Agreement to be duly entered into on the date first above written.

#### SCHEDULE 1

##### Form of Demand Notice/Demand for Provisional Payment

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

Attention: Vice President



to the IDA Facility Lenders on [insert relevant due date] and, which amount was due to be paid on that date in respect of a Scheduled Payment under Schedule 5 of the Guarantee Agreement;

- (b) such failure resulted from the failure of the State to pay [insert amount] due from the State in accordance with Article [insert relevant subsection] of the Implementation Agreement or in accordance with Section [insert relevant subsection] of the GoB Guarantee, of which the IDA Facility Lenders' share is [insert amount] in accordance with Section [insert relevant provision] of the IDA Guaranteed Facility Agreement/ N.B. following alternative wordings in the case of a Demand for Provisional Payment: the State has taken legal action and obtained a Restraining Order in breach of its undertaking pursuant to Article 15.2(h) of the Implementation Agreement or legal action by a third party in the courts of Bangladesh has resulted in a Bangladesh Restraining Order;
- (c) no part of the amount specified above remains subject to a dispute between the Company, the State, BPDB or the Gas Supplier (save in the case of a dispute which has been the subject of expert determination pursuant to Section 11.7 of the PPA or Section 9.6 of the GSA, or the amount specified above is subject to a dispute between the State, BPDB or the Gas Supplier and the Company) and this Demand Notice is made pursuant to Clause 6.4/N.B. this section not relevant in case of Demand for Provisional Payment;
- (d) a valid demand in writing by the Company for payment from the State under the Implementation Agreement or the GoB Guarantee has been made and such amount, on the date hereof, remains unpaid;
- (e) a valid demand in writing for the payment from the Company has been made pursuant to the IDA Guaranteed Facility Agreement and such amount, on the date hereof, remains unpaid; and
- (f) we are entitled to issue this Demand Notice and have taken account of amounts we are entitled (without any other lender) to instruct the Security Trustee to withdraw pursuant to the Account Agreement and apply (in accordance with Clause 1.2 of the Guarantee Agreement) when calculating the sum claimed under this Demand Notice/Demand for Provisional Payment.

7. Accompanying Documents

We enclose:

- (a) certified copies of our demand on the Company;
- (b) certified copies of the demands by the Company on the State, the Gas Supplier and BPDB as the case may be; and
- (c) the documents, certificates and opinions required by Section 6.3(d) and (e)/N.B. in case of Demand for Provisional Payment required by Section 6.5(b)(B) of the Guarantee Agreement in lieu of 6.3(d).

8. Law

This Demand Notice shall be governed by and construed in accordance with the laws of England.

Dated [insert date]

For and on behalf of  
Australia and New Zealand Banking Group Limited, acting through its London  
branch, as IDA Facility Agent

Conditions precedent to the issuing and effectiveness of the Guarantee Agreement

1. Duly executed originals of each of the following documents:
  - (a) the Indemnity Agreement; and
  - (b) the IDA Project Agreement.
2. Copies certified by an authorized officer of the Company of the Transaction Documents and all documents referred to under Clause 9.1 (Conditions Precedent to Initial Drawdown) and Part 1 of Schedule 2 (Conditions Precedent) of the Intercreditor and Common Terms Agreement duly executed by all parties.
3. Opinions of counsel addressed to the Guarantor referred to in paragraph 17 of Part 1 of Schedule 2 (Conditions Precedent) of the Intercreditor and Common Terms Agreement:
  - (a) An opinion of English counsel to the Company;
  - (b) An opinion of Bangladeshi counsel to the Company;
  - (c) An opinion of the Bangladeshi Attorney General/Minister of Justice/Chief Justice with respect to the Principal Project Agreements, the Amendment Agreements and provisions of the Direct Agreements mentioned in Excluded Obligation (b)(i);
  - (d) An opinion of special Bangladesh counsel for the IDA Facility Lenders;
  - (e) An opinion of English counsel to the IDA Facility Lenders;
  - (f) Any other opinion of counsel received by the IDA Facility Agent in connection with the initial Disbursement;
  - (g) other legal opinions as may be required pursuant to the Intercreditor and Common Terms Agreement or by the Finance Parties.
4. A copy of the Disbursement Request (and accompanying certification) under Section 3.1 of the IDA Guaranteed Facility Agreement and any Notice or other document issued under Clause 9 (Conditions Precedent) of the Intercreditor and Common Terms Agreement with respect to the initial Disbursement under the IDA Guaranteed Facility Agreement.
5. Payment in full by the Company and receipt by IDA of the initiation fee and processing fee.
6. Payment in full by the Company of the first instalment of the GoB project support fee.
7. Payment by the Company of the first instalment of the IDA Guarantee Fee, or, if the Guarantor so determines, this condition may be satisfied by evidence that the initial IDA Guarantee Fee will be included in the first Disbursement Notice under the IDA Guaranteed Facility Agreement and will be paid directly to the Guarantor as provided pursuant to Clause 5 of this Guarantee Agreement.
8. An original legal opinion addressed to the Guarantor from the Bangladesh First Secretary/Attorney General/Chief Justice/Minister of Justice relating to the Indemnity Agreement, satisfactory to IDA and substantially in the form agreed prior to signature of this Guarantee Agreement.
9. Documentary evidence satisfactory to IDA of the authority of each person who:
  - (a) has signed the Indemnity Agreement; and
  - (b) will sign the statements, reports, certificates and other documents required by the Indemnity Agreement,

on behalf of the State and will otherwise act as a representative of or on behalf of the State in relation to the implementation and administration of the Indemnity Agreement (such documentary evidence to include certified copies of all governmental actions and consents taken or obtained in order to authorize the execution, delivery and performance by the State of the Indemnity Agreement

and the transactions contemplated by the Indemnity Agreement and the authenticated specimen signatures of and certificate of incumbency in respect of each person described in subclauses (a) and (b) above);

- (c) has signed the IDA Project Agreement;
  - (d) has signed the IDA Guarantee Agreement;
  - (e) has signed the Implementation Agreement;
  - (f) has signed the GoB Guarantee;
  - (h) has signed the IDA Guaranteed Facility Agreement, the Direct Agreements and the Amendment Agreements.
10. Other matters arising from legal, technical and commercial due diligence and on which IDA requires appropriate assurance including, without limitation, IDA's satisfaction with the executed versions of the Transaction Documents (in particular conformity with final drafts received by IDA prior to signature of this Guarantee Agreement), the content and coverage of all legal opinions and the due execution of the Rectification Agreement in relation to the Land Lease Agreement rectifying the description of the site therein.

### SCHEDULE 3

#### RESTRICTED PROVISIONS

No cancellations, suspensions, terminations, amendments, variations, modifications, novations, restatements, supplements or replacements (consents or waivers) without the Guarantor's prior written consent, such consent not to be unreasonably withheld or delayed:

- A. The following provisions of the Intercreditor and Common Terms Agreement:
- (1) Clause 1 (Definitions);
  - (2) Clause 2 (Facilities and Financial Plan);
  - (3) Clause 9 (Conditions Precedent) to the extent the Guarantor's consent is required with respect to the satisfaction or waiver of any conditions precedent and paragraph 6 of Part I of Schedule 3 (Conditions Precedent) and the definition of "Base Equity Commitment" in Clause 1.1 of the Intercreditor and Common Terms Agreement so as to change the amount of equity to be paid into the Company;
  - (4) Clauses 11.1.1 (Provision of Information) and 11.1.2 (Access);
  - (5) Clause 11.1.23 (Insurance): to the extent that this Section requires the Company to maintain construction all risk, third party or public liability insurance cover, including endorsement of the Guarantor as a named insured and deals with the application of proceeds from such insurance; (i) any change to the scope or amount of construction all risk, third party or public liability insurance; (ii) any change to the endorsements naming the Guarantor as an additional named insured; or (iii) any amendment materially affecting the Guarantor;
  - (6) Clauses 4.5 (Voluntary Prepayment) and 4.6 (Mandatory Prepayment): so as to change the order of priority for application of project revenues or the terms of payment, prepayment or cancellation of the IDA Guaranteed Facility;
  - (7) Clauses 5 (Increased Costs), 6 (Tax Gross Up and Indemnities), 7 (Other Indemnities), 8 (Mitigation by the Lenders) and 4.1 (Illegality) with respect to the Guarantor's rights with regard to the costs and expenses incurred by the Guarantor in relation to the investigation of or the preparation for the actual enforcement or protection or attempted enforcement or protection of its rights under any Transaction Document or related agreement;
  - (8) Clause 12.27 (Remedies upon an Event of Default);

- (9) Clause 13 (Sharing among Lenders) regarding the exclusion therefrom of any payment made by the Guarantor pursuant to this Guarantee Agreement to the IDA Facility Lenders or by the IDA Facility Lenders or the State to the Guarantor;
- (10) Clause 17.2 (Duties of the Intercreditor Agent) with respect to information given to Guarantor;
- (11) Schedule 8 (Eligible Costs) and Schedule 16 (Project Budget).

B. The following provisions of the IDA Guaranteed Facility Agreement:

- (1) Clause 2.2 (Purpose and Application): regarding use of the proceeds exclusively for the Project (other than Ineligible Costs) and for purposes permitted thereunder, the definition of "Ineligible Costs", Schedule 3 (Drawdown Request) and Schedule 4 (Costs certificate) and the Technical Adviser's confirmation relating thereto;
- (2) Clause 2.3 (Conditions Precedent): to the extent that the Guarantor's consent is required with respect to the satisfaction or waiver of any Conditions Precedent;
- (3) Clause 3.4 (Reimbursement of Ineligible Costs) regarding repayment of funds;
- (4) Schedule 6 (IDA Guarantee Fee), Schedule 8 (IDA Guaranteed Facility Indicative Repayment Schedule) and Schedule 9 (Project Costs);
- (5) Clause 8 (Repayment, Prepayment and Cancellation), Clause 5 (Payment and Calculation of Interest) and Clause 6.3 (Alternative Rate): so as to change any Interest Payment or Repayment Date, the rate of interest or its method of calculation or change the amount of any Scheduled Payment to be paid on any Repayment Date;
- (6) Clause 14 (Covenants);
- (7) Clause 15 (Events of Default);
- (8) Clause 24.1 regarding IDA's right to deal only with the IDA Facility Agent and Clause 24.1.3 regarding the Provisional Payment Escrow Account and Provisional Payment Security;
- (9) Clause 24.10 (Exclusion of Liabilities) regarding the proviso and Clause 24.14 (Successor IDA Facility Agents): to the extent the Guarantor's consent is required regarding the appointment of successor;
- (10) Clause 24.18 (Subrogation Payments) authorising Agent to pay subrogation payments to the Guarantor;
- (11) Clause 24.19 regarding a vote of IDA Facility Lenders in the manner requested by IDA pursuant to Clause 9 hereof;
- (12) Clause 25.3.6 and Schedule 2 (Assignment and Transfers) regarding IDA's consent to assignment and assignments to commercial banks or other private financial institutions, irrespective of any government ownership thereof (and not to any export credit agency, multilateral financial institution or state entity, except state-owned commercial banks or financial institutions) or to the extent that advance notice to the Guarantor is required and Clause 25.2 (No assignments and transfers by the Company) regarding the consent of the IDA Facility Agent;
- (13) Clause 28.6 (Information required by IDA) regarding Company's acknowledgement and waiver;
- (14) Clause 30 (Amendments): to the extent that the Guarantor's consent to any action is required;
- (15) Clause 31 (Governing Law) and Clause 32 (Jurisdiction);

C. The following provisions of the Accounts Agreement and the Share Retention and Project Funds Agreement.

Accounts Agreement

- (1) Article 2 (The Projects Accounts)
- (2) Article 3 (Application of Specific Proceeds)
- (3) Article 4 (Offshore Proceeds Accounts)
- (4) Clause 6.1.1 (Transfers to Operating Accounts)
- (5) Article 7 (IDA Guaranteed Facility Debt Service Account)
- (6) Article 8 (IDA Guaranteed Facility DSRA)
- (7) Article 14 (Offshore Compensation Sub-Accounts)
- (8) Article 15 (IDA Provisional Payment Escrow Account)
- (9) Definitions: "Demand for Provisional Payment"

Share Retention and Project Funding Agreement

- (10) Clause 3.1 (Base Equity, SC Loans and Contingent Equity)
- (11) Clause 4 (Subordination)
- (12) Clause 5 (Parent Support)
- (13) Clause 7 (Covenants)
- (14) Definitions: "Subordinated Liabilities"

SCHEDULE 4

INDICATIVE DRAWDOWN SCHEDULE  
(US\$)

Date	Proposed Drawings under the IDA Guaranteed Facility Agreement
30-Apr-01	47,440,037.7
31-May-01	1,519,358.0
30-Jun-01	1,317,346.0
31-Jul-01	-
31-Aug-01	-
30-Sep-01	-
31-Oct-01	10,623,258.3
TOTAL	60,900,000.0

SCHEDULE 5

INDICATIVE REPAYMENT SCHEDULE  
(US\$)

Repayment Date*	Indicative Interest Payment	Principal Repayment	Outstanding Amount
30-Jun-02	3,248,000	2,342,308	58,557,692
31-Dec-02	2,342,308	2,342,308	56,215,385
30-Jun-03	2,248,615	2,342,308	53,873,077
31-Dec-03	2,154,923	2,342,308	51,530,769
30-Jun-04	2,061,231	2,342,308	49,188,462
31-Dec-04	1,967,538	2,342,308	46,846,154
30-Jun-05	1,873,846	2,342,308	44,503,846
31-Dec-05	1,780,154	2,342,308	42,161,538
30-Jun-06	1,686,462	2,342,308	39,819,231
31-Dec-06	1,592,769	2,342,308	37,476,923
30-Jun-07	1,499,077	2,342,308	35,134,615
31-Dec-07	1,405,385	2,342,308	32,792,308
30-Jun-08	1,311,692	2,342,308	30,450,000
31-Dec-08	1,218,000	2,342,308	28,107,692
30-Jun-09	1,124,308	2,342,308	25,765,385
31-Dec-09	1,030,615	2,342,308	23,423,077
30-Jun-10	936,923	2,342,308	21,080,769
31-Dec-10	843,231	2,342,308	18,738,462
30-Jun-11	749,538	2,342,308	16,396,154
31-Dec-11	655,846	2,342,308	14,053,846
30-Jun-12	562,154	2,342,308	11,711,538
31-Dec-12	468,462	2,342,308	9,369,231
30-Jun-13	374,769	2,342,308	7,026,923
31-Dec-13	281,077	2,342,308	4,684,615
30-Jun-14	187,385	2,342,308	2,342,308
31-Dec-14	93,692	2,342,308	(0)

\* See over for notes.

NOTES

(i) The above repayment schedule is indicative at this stage and not binding on the parties hereto only to the extent of changes required as a consequence of (a) and (b) below. A revision to reflect actual Commercial Operations Date will be made with the approval of IDA as Repayments under the IDA Guaranteed Facility will commence from the earlier of (a) 8 months after Commercial Operations Date or (b) 12 months after Financial Close. For the purpose of the above schedule, Commercial Operations Date and first Repayment Date have been assumed at October 30, 2001 and June 30, 2002 respectively.

(ii) In the event that, immediately following the end of the IDA Guaranteed Facility Availability Period, the aggregate principal amount outstanding under the IDA Guaranteed Facility differs from the aggregate principal amount to be repaid as indicated above, the principal amount to be repaid on each of the Repayment Dates will be adjusted proportionately.

(iii) The amount of interest due and payable on each of the Repayment Dates shown above has been calculated assuming a LIBOR rate of 6 percent (6%) per annum plus a margin of 2 percent (2%) per annum. As a result of variations in LIBOR, the actual amount of interest due and payable under the IDA Guaranteed Facility Agreement may vary from time to time.

SCHEDULE 6

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

[Letterhead of Issuing Bank--The l/c may be issued by any commercial bank with a Standard & Poors credit rating of 'A'. If the rating is downgraded, the Agent will



arrange a replacement security from an institution with acceptable rating.]

Issue Date: \_\_\_\_\_, 20[ ]

L.C. Reference No.: [ ]

**BENEFICIARY**

International Development Association ("IDA") Amount: US\$ [amount of  
provisional payment]  
1818 H Street, N.W. Expiry Date: [day/month], 20[ ]  
Washington, D.C. 20433  
USA

Haripur Power Project

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [IDA Facility Lender], in your favor our Irrevocable Standby Letter of Credit in the amount of US\$[amount of provisional payment] (the "Stated Amount").

We hereby irrevocably authorize you to draw on us at [office, address] ("Office") an aggregate amount not to exceed the Stated Amount, to be available against your draft at sight, accompanied only by

1. A written statement from IDA executed by your Vice President, South Asia Region (or his named designate), that IDA is entitled to reimbursement of a stipulated US dollar amount pursuant to Clause 6.5(b)(C) of the Guarantee Agreement dated [ ], 2001 entered into between IDA and Australia and New Zealand Banking Group Limited as IDA Facility Agent.

2. The original of this letter of credit, in case of a partial drawing, will be endorsed with the amount and date drawn and returned to you without delay.

Any draft so drawn by you must show on its face that it is "Drawn under Irrevocable Standby Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, 20[ ]." Partial drawings (not to exceed in aggregate the Stated Amount) are permissible by you at any time prior to the Expiry Date.

The Stated Amount shall be subject to revision on your request at semi-annual intervals, such revision to reflect an increment representing 6 (six) monthly interest accruing at prevailing LIBOR, such calculation to be certified by the IDA Facility Agent.

We hereby engage with you that any draft drawn under and in compliance with the terms of this letter of credit shall be duly honored in full by us within 7 (seven) banking days upon presentation and delivery of documents as specified above if presented at our Office on or before 5:00 p.m. New York time on the [date] (the day which is exactly 3 (three) years from the Issue Date of this Irrevocable Standby Letter of Credit) or the next business day thereafter if that day is a date on which our Office is not open for normal banking hours.

The Expiry Date stated above shall be extended automatically by 60 (sixty) days upon your written notice to our Office (attention: [ ] fax no.: [ ]) (fax transmission is acceptable), to be received no later than 5:00 p.m. New York time on the Expiry Date, stating that events entitling you to present a draft may occur and that such presentation will be made by you within such 60 (sixty) day extension.

Except as otherwise expressly stated, this letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits" (1993 Revision), International Chamber of Commerce Publication No. 5000 and is a contract subject to the jurisdiction of the Courts of England subject to review.

Yours faithfully,

By /s/ [name]  
authorized signatory

Title: [Vice President,]  
for and on behalf of [issuing bank]

cc: IDA Facility Agent, relevant IDA Facility Lender

EXECUTION PAGE OF GUARANTEE AGREEMENT

THE GUARANTOR

By /s/ Frederick Thomas Temple  
Country Director, Bangladesh  
For and on behalf of  
INTERNATIONAL DEVELOPMENT ASSOCIATION

THE AGENT

By /s/ Paul Sempere  
For and on behalf of  
Australia and New Zealand Banking Group Limited, acting through its London branch  
for itself and as Agent for  
each of the IDA Facility Lenders

