

NATIONAL TRANSMISSION & DESPATCH COMPANY LIMITED
(THROUGH ITS CENTRAL PURCHASING AGENCY)
ON
BEHALF OF EX-WAPDA DISTRIBUTION COMPANIES

– AND –

[●]

ENERGY PURCHASE AGREEMENT

RELATING TO

A [●] MW ([AT REFERENCE CONDITIONS AT GENERATOR TERMINALS]) POWER GENERATION
COMPLEX

AT

[●], PROVINCE OF [PUNJAB], PAKISTAN

MADE AT [LAHORE],

ISLAMIC REPUBLIC OF PAKISTAN

ON _____, _____

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THIS ENERGY PURCHASE AGREEMENT(this “**Agreement**”) is made as of the ____ day of _____ 201_ by and between:

- (1) **NATIONAL TRANSMISSION AND DESPATCH COMPANY LIMITED** (through its Central Power Purchasing Agency) on behalf of ex-WAPDA Distribution Companies (the “**Purchaser**”), a public limited company incorporated under the laws of Pakistan, with its principal office at WAPDA House, Shahrah-e-Quaid-e-Azam, Lahore, Pakistan; and
- (2) [●],(the “**Seller**”),a public limited company incorporated under the laws of Pakistan, with its registered office at [●].

(The Purchaser and the Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

- A. **WHEREAS**, the Seller has proposed to the Purchaser that the Seller will design, engineer, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [●] MW (at reference conditions at generator terminals) bagasse/biomass power generation facility (the “**Complex**”, as hereinafter defined) to be located at the Site (as hereinafter defined) at[●], Province of[Punjab], Pakistan on build, own and operate basis;
- B. **WHEREAS**, the Government of Pakistan (“**GOP**”, as hereinafter defined), through the Alternative Energy Development Board (as hereinafter defined), has issued to the Seller a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, commissioning, operation and maintenance of the Complex (the “**Project**”, as hereinafter defined);
- C. **WHEREAS**, the Seller wishes to sell and the Purchaser wishes to purchase the net electrical energy produced by and at the Complex, on and pursuant to the terms and conditions contained herein;
- D. **WHEREAS**,on the date hereof, the Seller is entering into or has entered into an Implementation Agreement with the GOP; and
- E. **WHEREAS**, the Seller has applied for (and shall be issued) a Generation License (as hereinafter defined) by the National Electric Power Regulatory Authority (“**NEPRA**”, as hereinafter defined); a copy of which the Seller shall provide to the Purchaser.

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS: RULES OF INTERPRETATION

Section 1.1 Definitions

Whenever the following capitalized terms appear in this Agreement or in the Schedules, they shall have the meanings stated herein below:

“AEDB” – Alternative Energy Development Board, a statutory body corporate formed under the Alternative Energy Development Board Act 2010.

“Affiliate(s)” – Any Person or Persons that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with another Person.

“Agent” – The meaning ascribed thereto in Section 16.5(a).

“Agreement” – This Energy Purchase Agreement, together with all Schedules hereof, dated as of the date first written above, between the Purchaser and the Seller, as may be amended by the Parties from time to time.

“Agreement Year” – A period of twelve (12) consecutive months commencing on the Commercial Operations Date and ending as of the end of the Day preceding the next anniversary of the Commercial Operations Date, except for the first Agreement Year which shall start on the Commercial Operations Date; provided, however, that each Agreement Year shall automatically be extended by the occurrence of a Force Majeure Event declared by the Seller (other than a PPFME or a CLFME) within such Agreement Year for the Days the Complex was prevented by such Force Majeure Event from generating electrical energy; provided, further, that in the event of such extension, the immediately succeeding Agreement Year shall commence on the Day following the last Day of such extension and end after a period of twelve (12) consecutive months, and each Agreement Year thereafter shall have a period of twelve (12) consecutive months, in each case subject to any extension for Force Majeure Event(s) declared by the Seller (other than a PPFME or a CLFME) as provided above.

“Average Daily Energy” – The quantity of net electrical energy the Project is capable of generation and delivery at the Interconnection Point expressed in kWh per Day.

“Back-Up Metering System” – All meters and metering devices (including (if applicable) any remote terminal units and an electronic data recording system) installed by the Seller and thereafter owned and maintained by the Seller as back-up to the Metering System.

“Business Day” – Any Day on which banks are legally permitted to be open in Lahore, Pakistan for business.

“Capacity Test Certificate” – The certificate issued by the Engineer in accordance with Section 8.3.

“Carbon Credits” – The amount of carbon dioxide (CO₂) and other greenhouse gases not

produced as a result of generation of energy by the Complex, and other environmental air quality credits and related emissions reduction credits or benefits (economic or otherwise) related to the generation of energy by the Complex, which are available or can be obtained in relation to the Complex after the Commercial Operations Date.

“Carrying Costs” – The interest (or markup) limited to KIBORplus three percent (3.0%) only, payable in or converted into Rupees accruing on the then-outstanding principal amount of the debt as per the Tariff Determination; provided, that, no interest charges (or markup) or other debt-related costs or payments shall be included in the Reference Tariff if, and to the extent, they are recovered under any of the provisions of this Agreement as Carrying Costs.

“Certificate of Commissioning of the Complex” – The Engineer’s certificate to the Seller and the Purchaser, to be issued under Section 8.3, stating that, in the professional opinion of the Engineer, the Complex has been successfully Commissioned, and setting out the Tested Capacity.

“Certificate of Readiness for Commissioning Tests” – The Engineer’s certificate to the Seller and the Purchaser, to be issued under Section 8.3, stating that, in the professional opinion of the Engineer, the Complex is ready for the Commissioning Tests including the Reliability Run Test.

“Certificate of Readiness for Synchronization” – The Engineer’s certificate to the Seller and the Purchaser, to be issued under Section 8.2, stating that, in the professional opinion of the Engineer, the Complex is ready for and capable of synchronization with the Grid System.

“Change in Law” –

- (a) The adoption, promulgation, repeal, modification or re-interpretation after the date of this Agreement, by any Public Sector Entity of any Law of Pakistan (including a final, binding and non-appealable decision of any Public Sector Entity);
- (b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Seller Consent after the date of this Agreement; or
- (c) the imposition by a Relevant Authority of any additional Seller Consent –

that in the case of each of clause (a), (b), or (c) hereinabove establishes either a material increase in cost or decrease in revenue as a consequence of any requirement for the design, construction, operation, maintenance or financing of the Complex, that is materially more restrictive than the most restrictive requirements (i) in effect as of the date of this Agreement, (ii) specified in any applications, or other documents filed in connection with such applications, for any Seller Consents filed by the Seller on or before the Commercial Operations Date, and (iii) agreed to by the Seller in any of the Project Agreements.

“Change in Tax” – After the date hereof, the adoption, enactment, promulgation, coming into effect, repeal, amendment, re-interpretation, change in application, change in interpretation or

modification by any Public Sector Entity, of any Law of Pakistan relating to any Tax or Taxes.

“Change in Tax Assessment” – The meaning ascribed thereto in Section [14.3\(b\)](#).

“Change in Tax Notice” – The meaning ascribed thereto in Section [14.3\(a\)](#).

“CLFME” or “Change in Law Force Majeure Event” – The meaning ascribed thereto in Section [15.1\(b\)](#).

“Commercial Operations Date” – The Day immediately following the date on which the Complex is Commissioned;provided, that in no event shall the Commercial Operations Date occur earlier than [●] Days prior to the Required Commercial Operations Date without the prior written approval of the Purchaser.

“Commissioned” –The successful completion of Commissioning of the Complex for continuous operation and Despatch in accordance with [Article VIII](#) and issuance of the Engineer’s Certificate of Commissioning of the Complex.

“Commissioning” – The undertaking of the Commissioning Tests on the Complex.

“Commissioning Tests” – The tests to be carried out pursuant to [Article VIII](#).

“Complex” – The bagasse/biomass-fired electric power generation facility located on the Site and the Seller Interconnection Facilities (but excluding the Purchaser Interconnection Facilities), having a nominal rated capacity of approximately [●]MW to be designed, engineered, constructed, Commissioned, owned, operated, maintained and insured by the Seller during the Term, whether completed or at any stage in its construction, including without limitation or regard to level of development, engineering and design documents, all energy-producing equipment and its auxiliary equipment, data-communication and recording equipment and systems, all spare parts stored at Site and all other equipment or facilities necessary for delivery of electrical energy to the Purchaser at the Interconnection Point, which Complex is fully identified in Schedule [2](#).

“Complex Monitoring System” – The system comprising the SCADA System or Distributed Control System, computer hardware, software and communication system to create, record, process, gather, report, communicate and archive the operating data measured and recorded at the Complex, as set forth in Section 5.11(a) –which shall be installed and operated by the Seller in accordance with the technical specifications and functional requirements in accordance with this Agreement.

“Construction Contract” – The agreement(s) entered or to be entered into between the Seller and the Construction Contractor for, *inter alia*, the design, engineering, procurement, supply, construction, completion, testing of the Complex and/or the Commissioning of the Complex, as such agreement(s) may be amended by the parties thereto from time to time.

“Construction Contractor” – The Contractor or Contractors and any successor or successors

thereto hired and appointed by the Seller pursuant to the Construction Contract.

“Construction Works” – The design, engineering, procurement, construction, installation, completion of the Complex, and the start-up, testing and Commissioning of the Complex.

“Contract Capacity” – has the meaning ascribed thereto under Section 2.9; as such Contract Capacity is fully and finally determined pursuant to the Commissioning Tests.

“Commissioning Tests” – The tests to be carried out pursuant to Section 8.1.

“Contractors” – The Construction Contractor and the O&M Contractor, and any other direct contractors and any of their direct sub-contractors integrally involved in the Project.

“Control Centre” – The National Power Control Centre located in Islamabad, or such other control centre designated by the Purchaser and notified in writing to the Seller, from time to time, but not more than one at any time, from where the Complex shall be Despatched.

“Cure Period” – The meaning ascribed thereto in Section [16.3\(b\)](#).

“Customs Duties” – All Taxes (other than Sales Tax, but including Federal Excise Duty levied under the Federal Excise Act 2005)) levied by any Federal Entity, on or relating to the import into or export from Pakistan, of plant, machinery and equipment.

“Day” – A period of twenty-four (24) hours, commencing at 12:00 midnight of each day, and “Daily” shall be construed accordingly.

“DCS” – The distributed digital control system.

“Declared Available Energy” – In respect of each hour of an Operating Day, the total generating capacity of the Complex expressed in kWh at the Interconnection Point, which, the Seller has declared available to the Purchaser in accordance with Section 5.2(a) or (b).

“Delayed Payment Rate” – KIBOR plus four and one-half percent (4.5%) per annum calculated for the actual number of Days that the relevant amount remains unpaid, on the basis of a three hundred and sixty-five (365) Day year.

“Delivered Net Energy” – The net electric energy expressed in kWh that is generated by the Complex and delivered at the Interconnection Point, as measured by the Metering System or the Back-Up Metering System, as the case may be.

“Despatch” – The exercise by the Purchaser (or subject to the Laws of Pakistan, its designee) of its right to commence, increase, decrease or cease the net electrical energy generated by the Complex by issuing Despatch Instructions in accordance with this Agreement, and “Despatched” shall be construed accordingly.

“Despatched and Delivered Net Energy” – The Delivered Net Energy during the relevant

period in response to a Despatch Instruction.

“Despatch Instruction” – The instructions for Despatch, which include successive or revised Despatch Instructions and Despatch Instructions revised on the basis of information provided by the Seller.

“Dispute” – Any dispute or disagreement or difference arising under, out of, in connection with, or relating to, this Agreement, including any dispute or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof, or the obligations or performance by a Party under any provision hereof.

“Dollar” or “US\$” – The lawful currency of the United States of America.

“Due Date” – The meaning ascribed thereto in Section 9.5(a); provided that, if the Due Date is not a Business Day, then the Due Date shall be the next following Business Day.

“Effective Date” – The meaning ascribed thereto in Section 2.1(c).

“Election Notice” – The meaning ascribed thereto in Section 16.5(b).

“Emergency” – An event or circumstance affecting the Grid System which:

- (i) materially and adversely affects (as determined solely by the Purchaser) the availability of the Grid System, or the ability of the Purchaser to maintain safe, adequate and continuous electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers, or
- (ii) presents a physical threat to persons or property or the security, integrity or reliability of the Grid System, or
- (iii) which the Purchaser reasonably expects to have the effects specified in clause (i) or (ii) hereof.

“Energy Payment” – The amount payable under Section 9.1 by the Purchaser to the Seller for Monthly Energy during the Month or part Month.

“Energy Price” – means the Reference Tariff as adjusted by NEPRA for the relevant period.

“Engineer” – The engineering consultant(s) that are appointed and/or hired by the Seller in accordance with Section 2.6, for the purpose of Engineer’s responsibilities stipulated in this Agreement.

“Environmental Standards” – Collectively, the environmental guidelines and occupational health and safety standards established by the relevant Public Sector Entity.

“EPA Direct Agreement” – The tripartite agreement (if any) between the Lenders, the Seller and the Purchaser, pertaining to rights and liabilities of the Lenders relating to this Agreement.

“Evaluation Period” - The meaning ascribed thereto in Section 16.5(b).

“Expert” – The meaning ascribed thereto in Section 18.2.

“Extended Period” – The meaning ascribed thereto in Section [15.9\(d\)](#).

“Extended Cure Period” – The meaning ascribed thereto in Section 16.5(b), as maybe extended in terms thereof.

“Federal Entity” – The meaning ascribed thereto in the Implementation Agreement.

“Financial Closing” – The meaning ascribed thereto in the Implementation Agreement.

“Financing Documents” – The meaning ascribed thereto in the Implementation Agreement.

“Fixed O&M Local Component” – The amount referred to in the fixed O&M local column of Annex 1 of the Tariff Determination.

“Fixed Energy Purchase Price” or “FEPP”- means the amount expressed in Rs per kWh, comprising of Fixed O&M Local Component, Insurance Component, Working Capital Cost Component, Return on Equity Component, Return on Equity During Construction Component, Loan Repayment Component, Interest Charges Component.

“Force Majeure Event” – The meaning ascribed thereto in Section [15.1](#).

“Foreign Currency” – Any legal currency other than Rupees.

“Fuel” – Bagasse, cane trash, rice husk, cotton stalks and any other biomass/organic waste.

“Fuel Cost Component” – The amount referred to in the fuel cost component column of Annex 1 of the Tariff Determination.

“Generation Licence” – The licence, issued by NEPRA, permitting generation and supply of electrical energy by the Seller from the Complex in accordance with the terms and conditions of such license.

“GOP” – The Government of the Islamic Republic of Pakistan.

“GOP Event of Default” – The meaning ascribed thereto in the Implementation Agreement.

“Grid Code” – The latest grid code duly approved by NEPRA, as revised from time to time by NEPRA.

“Grid System” – The transmission facilities owned and operated by the System Operator, other than the Seller Interconnection Facilities, through which – (a) the Delivered Net Energy will be received and distributed by the Purchaser to users of electricity; and (b) electrical energy will be delivered to the Complex, as required.

“Grid System Frequency” – The frequency of the Grid System measured in hertz.

“Grid System Voltage” the voltage of the Grid System measured in Volts.

“Guarantee” – The GOP’s guarantee of the Purchaser’s payment obligations under this Agreement, in the form set out in Schedule 3 to the Implementation Agreement.

“Implementation Agreement” – The Implementation Agreement, by and between the GOP and the Seller, entered or to be entered into, in relation to the Project – as it may be amended from time to time by the parties thereto.

“Initial Cure Period” – The meaning ascribed thereto in Section 16.5(a).

“Insurance Component” – The amount referred to in the insurance column of Annex 1 of the Tariff Determination.

“Interconnection Point” – The physical point or points where the Complex and the Grid System are to be connected as specified in Schedule 3, at which point the Purchaser shall receive the Delivered Net Energy.

“Interconnection Works Schedule” – The schedule for carrying out the Seller Interconnection Works and the Purchaser Interconnection Works, as described in Schedule 3, and as may be adjusted in accordance with Article VI.

“Interest Charges Component” – The amount referred to in the interest charges column of Annex 1 of the Tariff Determination.

“Investor” – The holder, from time to time of Ordinary Share Capital, as well as the holder of any securities convertible at the option of the holder into Ordinary Share Capital in a manner not inconsistent with the terms of the Implementation Agreement.

“KIBOR” – The average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits for a period equal to three (3) months (except for the purpose of calculating the Delayed Payment Rate, where deposits for a period of three (3) months shall be used), announced or issued by the State Bank of Pakistan on the last available Business Day, or in the event that the State Bank no longer provides such information, such other service as agreed to by the Parties that provides the average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi inter-bank market.

“Lapse of Consent” – Any Seller Consent – (a) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the applicable Laws of Pakistan for the renewal or replacement of such Seller Consent or, where a time period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of such Seller Consent ceasing to be in full force and effect; or (b) (other than a Specified Consent set forth in Part I of Schedule 1 of the Implementation Agreement) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the applicable Laws of Pakistan or, where a time period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of proper application being made for such Seller Consent; or (c) being made subject, upon renewal, or otherwise, to any terms or conditions

that materially and adversely affect the Seller's or a Contractor's ability to perform its obligations under any document included within the Project Agreements, in each of the above instances despite such party's compliance with the applicable procedural and substantive requirements as applied in a "non-discriminatory" (as explained in Section 12.4 of the Implementation Agreement) manner.

"Laws of Pakistan" – The federal, provincial and local laws of Pakistan, and all orders, rules, regulations, statutory regulatory orders, executive orders, decrees, judicial decisions, notifications, or other similar directives issued by any Public Sector Entity pursuant thereto, including the Environmental Standards, as any of them may be amended from time to time.

"Lenders" – The meaning ascribed thereto in the Implementation Agreement.

"Letter of Support" – The Letter of Support dated [●], issued by AEDB in relation to the Project, as may be amended, extended or clarified.

"LIBOR" - The British Bankers Association Interest Settlement Rate for Dollar deposits for a period equal to six (6) months, announced or issued by the State Bank of Pakistan on the last available Business Day, or in the event that the State Bank of Pakistan no longer provides such information, such other service as agreed to by the Parties that provides the British Bankers Association Interest Settlement Rate for Dollar deposits in the London inter-bank market.

"Lien" – Any mortgages, pledges, liens, security interests, conditional and installment sales agreements, encumbrances, claims or charges of any kind.

"Loan Repayment Component" – The amount referred in the loan repayment column of Annex 1 of the Tariff Determination.

"Loss" – Any loss, damage, cost, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including, without limitation, reasonable legal fees).

"Major Maintenance Expenses" – The meaning ascribed thereto in Section 9.8(c).

"Metering System" – All meters and metering devices (including, if applicable, any remote terminal units and an electronic data recording and telemetry system) to be procured by the Purchaser (subject to Section 7.1(b)), and thereafter installed and tested by the Seller and transferred to the Purchaser, and thereafter owned and maintained by the Purchaser and used to measure the Delivered Net Energy.

"Minimum Indemnification Amount" – The amount, equal to the Rupee equivalent of one hundred thousand Dollars (\$100,000), that a Party's claims for indemnification pursuant to Article XI must exceed in the aggregate before that Party will be entitled to indemnification.

"Month" – A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month, and ending at 12:00 midnight on the last

Day of that month.

“Monthly Energy” – means with respect to any Month, the aggregate Despatched and Delivered Net Energy and/or aggregate Declared Available Energy (as the case may be).

“Monthly Fixed Energy Payment” or “MFEP” – means with respect to any Month the amount payable by the Purchaser to the Seller in accordance with Section 9.1.

“Monthly Variable Energy Payment” or “MVEP” – means with respect to any Month the amount payable by the Purchaser to the Seller in accordance with Section 9.1.

“NEPRA” – The National Electric Power Regulatory Authority established under the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (XL of 1997), and any successor or substitute regulatory agency with authority and jurisdiction over the electricity sector in Pakistan.

“Non-Restoration Event” — The meaning ascribed thereto in Section 15.5(i).

“Notice of Intent to Terminate” – A notice delivered by the Seller or the Purchaser, as the case may be, of its intent to terminate this Agreement pursuant to Section 16.3.

“Off-Season” – Such days during an Agreement Year which are not part of (or do not fall within) the Season.

“O&M Agreement” – The agreement(s) (if required) to be entered into between the Seller and the O&M Contractor for the operation and maintenance of the Complex, as may be amended from time to time.

“O&M Contractor” – Operation and maintenance contractor(s), and any successor(s) thereto, (if any) appointed by the Seller.

“Operating Committee” – The committee established by the Parties pursuant to Section 2.4 for the purposes described in Section 2.5 and Section 5.10.

“Operating Procedures” – The procedures for the operational interface between the Complex and the Grid System, to be determined by the Operating Committee in accordance with Section 2.5.

“Operating Day” – Each period of 24 consecutive hours beginning at 00:00, the first such period commencing at 00:00 on the Commercial Operations Date.

“Ordinary Share Capital” – Any shares of the Seller with voting or other rights of management and control, and any securities of the Seller that are convertible into such shares at the option of the holder, in accordance with terms of the Implementation Agreement.

“OFME” or “Other Force Majeure Event” – The meaning ascribed thereto in Section 15.1(c).

“Outage” – From and after the Commercial Operations Date, a total or partial interruption of the Complex’s generating capability that is not the result of: (a) a Force Majeure Event; and/or (b) a condition caused by the Grid System.

“Pakistan Political Event” – The meaning ascribed thereto in Section [15.1\(a\)](#).

“PPFME” or “Pakistan Political Force Majeure Event” – The meaning ascribed thereto in Section [15.1\(a\)](#).

“Party” – Each of the Purchaser and the Seller, and the “Parties” means both of them.

“Pass-Through Items” – Those costs and/or charges that are identified as Pass-Through Items in Schedule [1](#).

“PE Compensation Period” — The meaning ascribed thereto in Section [15.6\(a\)\(ii\)](#).

“Performance Guarantee” – The meaning ascribed thereto in the Implementation Agreement.

“Person” – Any person, including without limitation any firm, company, corporation, society, government, state or agency of a state (including any Public Sector Entity), or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.

“PPFME” or “Pakistan Political Force Majeure Event” – The meaning ascribed thereto in Section [15.1\(a\)](#).

“Pre-COD Energy Price” – means the Reference Tariff, excluding the Loan Repayment Component and Interest Charges Component.

“Preliminary Estimate” — The meaning ascribed thereto in Section [15.6\(a\)](#).

“Project” – Each of the following activities:

- (a) the ownership and possession of the Complex;
- (b) the design, engineering, financing, refinancing (provided that the benefits of such refinancing are shared by the Parties in accordance with the requirements of the Implementation Agreement or the Tariff Determination), construction, procurement, permitting, testing and Commissioning of the Complex;
- (c) the procurement, importation, exportation (for remedying defects, repair, maintenance or refurbishing) and contracting for goods, equipment and services for the Complex;
- (d) the insuring, operation, maintenance and repair of the Complex, including any Restoration;
- (e) the generation and sale of Delivered Net Energy; and
- (f) the recruitment, employment and training of staff for the Complex.

“Project Agreements” – The meaning ascribed thereto in the Implementation Agreement.

“Protected Assets” – The meaning ascribed thereto in Section [18.4\(a\)\(i\)](#).

“Provincial Government” – The Government of the Province of [Punjab].

“Prudent Electrical Practices” – The use of equipment, practices or methods, as required to comply with applicable industry codes, standards, and regulations in Pakistan – (i) to protect the Grid System, employees, agents, and customers from malfunctions occurring at the Complex; and (ii) to protect the Complex and the Seller’s employees and agents at the Complex from malfunctions occurring on the Grid System. Prudent Electrical Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather, where not expressly catered for in the Grid Code, are a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Prudent Utility Practices” – Those practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under circumstances and conditions the same or similar to those pertaining in Pakistan and satisfying the health, safety and environmental standards of reputable international electric generation companies. Prudent Utility Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather, where not expressly catered for in the Grid Code, are a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety applicable.

“Public Sector Entity” – (a) The GOP, the Provincial Government, any subdivision of either, or any local governmental authority with jurisdiction over the Seller, the Project, or any part thereof;(b) any department, authority, instrumentality, agency, or quasi-judicial body of the GOP, the Provincial Government or any local governmental authority;(c) any and all courts and tribunals in Pakistan; or (d) any commission or independent regulatory agency or body having jurisdiction over the Seller, the Project or any part thereof.

“Purchaser” – The National Transmission and Despatch Company Limited (through its Central Power Purchasing Agency) on behalf of ex-WAPDA Distribution Companies, a public limited company incorporated under the laws of Pakistan, with its principal office at WAPDA House Shahrah-e-Quaid-e-Azam, Lahore, Pakistan, and its successors and permitted assigns.

“Purchaser Consents” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions or similar items which is or are issued by a Relevant Authority and which the Purchaser or any of its contractors is required to obtain from any Relevant Authority and, thereafter, to maintain in order to fulfill its obligations under this Agreement.

“Purchaser Event of Default” – The meaning ascribed thereto in Section [16.2](#).

“Purchaser Interconnection Facilities” – The facilities and equipment (excluding the Metering

System) to be designed, constructed or installed by or on behalf of the Purchaser on the Purchaser's side of the Interconnection Point, as are described in Schedule [3](#).

“Purchaser Interconnection Works” – Those works and activities described in Schedule 3 to be undertaken by or on behalf of the Purchaser for the design, engineering, construction, installation and commissioning of the Purchaser Interconnection Facilities in accordance with this Agreement.

“Reactive Power” – The wattless component of the product of voltage and current measured in Mvar, which the Complex may provide to or absorb from the Grid System as per the Technical Limit specified in generator capability curve provided by OEM.

“Reference Tariff” – The per kWh rate expressed in Pakistan Rupees, as set out in Annex 1 of the Tariff Determination, comprising offuel cost component, variable O&M local, variable O&M foreign, fixed O&M local, insurance, working capital cost, return on equity, ROE during construction, loan repayment, interest charges.

“Relevant Authority” – The department, authority, instrumentality, agency or other relevant entity from which a Seller Consent is to be obtained, and any authority, body or other Person having jurisdiction under the Laws of Pakistan with respect to the Project, the Purchaser, the Implementation Agreement and this Agreement, as the case may be.

“Reliability Run Test” – The Commissioning Test to be carried out on the Complex in accordance with Section 8.3.

“Required Commercial Operations Date” – The date that is [●] months following the Effective Date, as such date may be extended pursuant to Section 6.5, Section 8.1(b), Section 6.6, or by reason of a Force Majeure Event, any breach or default by the GOP of the Implementation Agreement.

“Reserve Fund” – The meaning ascribed thereto in Section [9.8\(a\)](#).

“Restoration” – The meaning ascribed thereto in Section [15.6\(a\)\(i\)](#).

“Restoration Cost Estimate” – The meaning ascribed thereto in Section [15.6\(a\)\(i\)\(A\)](#).

“Restoration Period” – The period of restoration established in the Restoration Schedule and as defined in Section [15.6\(a\)\(i\)\(B\)](#).

“Restoration Schedule” – The meaning ascribed thereto in Section [15.6\(a\)\(i\)\(B\)](#).

“Return on Equity Component” – The amount referred to in the return on equity column of Annex 1 of the Tariff Determination.

“Return on Equity During Construction Component” – The amount referred to in the ROE during construction column of Annex 1 of the Tariff Determination.

“Rupee” or “Rs.” – The lawful currency of the Islamic Republic of Pakistan.

“Sales Tax” – Sales tax levied under the Sales Tax Act 1990, as may be amended or superseded from time to time.

“SCADA System” – A supervisory control and data acquisition system which shall be installed by the Seller (and which is being made applicable to this Agreement) provided that the Purchaser has also installed and notified such supervisory control and data acquisition system.

“Scheduled Commercial Operations Date” – The date reasonably estimated by the Seller as the Commercial Operations Date based on the then-existing construction schedule, as notified to the Purchaser, as such date may be modified by the Seller from time to time in written notices from the Seller to the Purchaser.

“Season” - The period during an Agreement Year during which the Sugar Mills are operational, as per notices provided by Seller to the Purchaser notifying the beginning and the end of a Season.

“Seller” – [], a [] limited company incorporated under the laws of Pakistan, with its principal office at [], Pakistan, and its permitted successors and permitted assigns and any permitted Transferee.

“Seller Consents” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses (including the Generation License), permits, decisions or similar items which are issued by a Relevant Authority or a Public Sector Entity and which the Seller or its Contractors are required to obtain from any Relevant Authority or Public Sector Entity and, thereafter, to fulfill and/or to maintain its obligations under this Agreement and the Implementation Agreement, including the Specified Consents as listed in Schedule 1 to the Implementation Agreement; provided, however, that in no event shall the Seller Consents include any concessions or exemptions from the Laws of Pakistan, unless they are expressly granted pursuant to the terms of the Implementation Agreement.

“Seller Event of Default” – The meaning ascribed thereto in Section [16.1](#).

“Seller Interconnection Facilities” – The facilities and equipment designed or to be designed, constructed and installed by or on behalf of the Seller on the Seller’s side of the Interconnection Point, as described in Schedule [3](#), including transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment, protective devices, safety equipment, telecommunications devices and any telemetering equipment/data interface for the SCADA System/DCS (if applicable and notified).

“Seller Interconnection Works” – Those works and activities described in Schedule 3 to be undertaken by or on behalf of the Seller for the design, engineering, construction, installation and commissioning of the Seller Interconnection Facilities in accordance with this Agreement.

“Seller Letter of Credit” – An unconditional, irrevocable, direct-pay, divisible, and transferable-on-demand standby letter of credit in favour of the Purchaser, in the form set out in Schedule 4, and issued or to be issued by a bank or other financial institution reasonably

acceptable to the Purchaser – which provides for draws by the Purchaser in immediately available funds on a Monthly basis upon presentation at a bank in Lahore, Pakistan, and which shall be delivered by the Seller to the Purchaser in the amount of \$35 (Dollars thirty five) per kW of the Contract Capacity.

“Site” – All that piece and parcel of land, measuring [] acres of land situated in [], Province of [], Pakistan, including the water-ways, roads, wells, rights-of-way, and other interests in land and any rights, easements, permits and licences acquired or leased by the Seller for the purposes of the Complex on, through, above or below the land on which all or any part of the Complex is to be built, or pursuant to which access thereto is obtained, or which is reasonably necessary or appropriate for the operation and maintenance of the Complex.

“Specified Consents” – The Seller Consents identified in Schedule 1 of the Implementation Agreement.

“Start-Up” – After the Commercial Operation Date, any start-up of the Complex requested by the Purchaser, that is necessary for the Seller to comply with a Despatch Instruction and that results in synchronization with the Grid system; provided that the Purchaser has been notified that such Start-Up is necessary for the Seller to comply with a Despatch Instruction.

“Start-Up Charges” – The meaning ascribed thereto in Schedule 1.

“Sugar Mills” – the sugar production mills owned and operated by the Seller located at [·].

“Succession Notice” – The meaning ascribed thereto in Section [19.9\(c\)](#).

“Supplemental Tariff” – Additional compensation payable by the Purchaser to the Seller as provided in Section [9.2](#), Section 15.8 and Schedule [1](#).

“System Operator” – Any entity with legal competence to assume the Purchaser’s responsibilities with respect to the issuance of Despatch Instructions hereunder, and which entity assumes generally the responsibility for Despatch of the electric generation facilities delivering electric energy into the Grid System, and its successors and assigns.

“Tariff Determination” – NEPRA’s upfront tariff approval []201_ issued to the Seller, as such determination is amended, adjusted and/or indexed by NEPRA from time to time, including any clarification thereof issued by NEPRA from time to time, and notified in the official Gazette.

“Tax” or “Taxes” – Any tax, charge, cess, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession or allowance imposed by or payable to a Public Sector Entity, including any value added tax, Sales Tax, water or environmental or energy tax, import or Customs Duty, withholding tax, excise tax, tax on Foreign Currency or foreign exchange transactions or property tax. The term “Tax” shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity.

“Tax Costs” – An amount equal to the amount of any new or additional Tax or an increase in an existing Tax payable by the Seller in relation to the Project, as a result of a Change in Tax.

“Tax Savings” – An amount equal to the amount of any decrease or reduction in or elimination of a Tax payable by the Seller in relation to the Project, as a result of a Change in Tax.

“Technical Limits” – Allowable tolerance limits for (i) variations in Grid System Frequency which shall be $\pm 3\%$; (ii) variations in Grid System Voltage which shall be $\pm 10\%$ at 132 kV; and (iii) the Seller to deliver the requisite electrical energy in accordance with the Despatch Instruction which shall be $\pm 5\%$.

“Term” – The meaning ascribed thereto in Section 2.2.

“Termination Date” – The meaning ascribed thereto in Section [16.4\(a\)](#).

“Termination Notice” – The meaning ascribed thereto in Section [16.4\(a\)](#).

“Tested Capacity” – The net generation capacity demonstrated by the Commissioning Tests for the Complex as certified by the Engineer in the Certificate of Commissioning of the Complex and shall be applicable at and from the Day following the date of completion of Commissioning.

“Threshold Amount” – The meaning ascribed thereto in Section [15.6\(j\)](#).

“Transferee” - The meaning ascribed thereto in Section [19.9\(j\)](#).

“Variable O&M Component” – The sum of the Variable O&M Foreign Component and Variable O&M Local Component.

“Variable O&M Foreign Component” – The amount referred to in the variable O&M foreign column of Annex 1 of the Tariff Determination.

“Variable O&M Local Component” – The amount referred to in the variable O&M local column of Annex 1 of the Tariff Determination.

“Variable Energy Purchase Price” or “VEPP” - means the amount expressed in Rs per kWh, comprising of Fuel Cost Component, Variable O&M Local, and Variable O&M Foreign.

“Week” – Each period of seven (7) consecutive Days beginning at 12:00 midnight falling between a Saturday and a Sunday.

“Working Capital Costs Component” – The amount referred to in the working capital cost column of Annex 1 of the Tariff Determination.

Section 1.2 Rules of Interpretation

In this Agreement:-

- 1.2.1 The headings are only for convenience, and shall be ignored in construing this Agreement.
- 1.2.2 Other than where the context determines otherwise – the singular includes the plural and *vice versa*, and the masculine gender includes the feminine and *vice versa*.
- 1.2.3 References to Sections, Articles, Recitals and Schedules are, unless otherwise specified, references to Sections and Articles of, and Schedules and Recitals to, this Agreement.
- 1.2.4 Unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised only on reasonable grounds. Whenever, under this Agreement, a Party is required to exercise discretion by–(a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party–the Party exercising such discretion, shall exercise such discretion fairly and reasonably.
- 1.2.5 The words “include”, “including, and “in particular”, shall not be construed as, nor shall they have the effect of, limiting the generality of the preceding words to which they are related.
- 1.2.6 References to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement, and its successors in title.
- 1.2.7 In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith. Notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Agreement shall be construed as representing the Parties’ good faith reasonable estimate of the actual damages and/or losses for that particular event or occurrence.
- 1.2.8 Reference to any Laws of Pakistan shall include reference to such Laws of Pakistan, as amended, re-promulgated, substituted or replaced from time to time.
- 1.2.9 The Schedules (including schedules and tables thereof, if any) to this Agreement, form part of this Agreement; and capitalized terms and abbreviations used in such Schedules but not defined therein, shall have the meanings ascribed thereto in Sections 1.1 and 1.3of this Agreement.
- 1.2.10 Except as otherwise specified in this Agreement, all references to time and date are, and shall be construed as, references to Pakistan standard time and date.

Section 1.3 Abbreviations

1.3.1 In this Agreement, the following abbreviations shall have the following meanings:

°C means degrees Celsius;

kV means kilovolt or 1,000 Volts;

kW means kilowatt or 1,000 Watts;

kWh means kilowatt-hour;

MW means megawatt or 1,000,000 Watts;

Mvar means megavar or 1,000,000 vars;

MWh means megawatt-hour or 1,000 kWh; and

GWh means gigawatt-hour or 1,000,000 kWh.

ARTICLE III EFFECTIVE DATE AND TERM

Section 2.1 Conditions Precedent and Effective Date

- (a) This Agreement shall become effective on the later of:
 - (i) the date of execution; and
 - (ii) the Financial Closing, as the case may be (“**Effective Date**”).
- (b) Against AEDB’s issuance of the Letter of Support, the Seller has delivered or has caused to be delivered the Performance Guarantee to AEDB.
- (c) Not Used.
- (d) The Seller shall use its reasonable endeavours to cause the occurrence of Financial Closing (if applicable) by the date required in the Letter of Support. Before notice of Financial Closing (if applicable) is received by the Purchaser from AEDB (acting on behalf of the GOP), the Seller shall deliver the Seller Letter of Credit to the Purchaser.
- (e) If the Seller Letter of Credit is not received by the Purchaser in a form reasonably acceptable to the Purchaser by the date required for Financial Closing in the Letter of Support, as such date may be extended by AEDB in accordance with the Letter of Support (if applicable), the Purchaser may deliver written notice to the Seller terminating this Agreement, which termination shall be effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.

Section 2.2 Term

- (a) Unless terminated earlier in accordance with its terms, this Agreement shall continue in full force and effect for [thirty] ([30]) Agreement Years (the “**Term**”), as such period may be extended pursuant to Section 2.2(b).
- (b) Following the Commercial Operations Date, if there occurs a PPFME or a CLFME that, in either case requires the Purchaser to make payments to the Seller pursuant to Section 15.6(a)(ii) or Section 15.8, then the Term shall be extended for a period equal to the number of Days each PPFME or CLFME, as the case may be, was in effect. During such extended period, the Seller shall only be paid the Fixed O&M Local Component, the Insurance Component, the Variable O&M Component and Fuel Cost Component of the applicable Energy Price for the Monthly Energy. Additionally, for such period that extends beyond one hundred and eighty (180) Days, the Seller shall also be

entitled to the Return on Equity Component, as adjusted by NEPRA in accordance with the Tariff Determination.

Section 2.3 Seller Consents

- (a) From the date of execution of this Agreement, the Seller shall, at its own cost and expense, apply for, procure, diligently pursue and, following receipt, maintain (and, where applicable, cause its Contractors to procure and maintain) all Seller Consents.
- (b) Upon receiving a written request from the Seller so to do, the Purchaser shall take such actions as are reasonable under the circumstances to assist the Seller or its Contractors, if applicable, in their efforts to procure or renew any Seller Consents that have not been received after proper application therefor; provided, however, that where the Seller makes any such request to the Purchaser, the Seller shall:
 - (i) prior to the date upon which its request to the Purchaser is submitted, have done all such things as it is reasonable for the Seller to have done and as are necessary to procure or renew any Seller Consent which is the subject of such request;
 - (ii) notwithstanding the making of any such request, continue diligently to pursue the grant or renewal of any Seller Consent which is the subject of such request;
 - (iii) at the same time as it submits its request, disclose to the Purchaser the full details of actions which the Seller has, prior to the date of the request, taken to procure or renew the Seller Consent and of the actions it is continuing to take with respect to the procurement or renewal of any such Seller Consent;
 - (iv) provide the Purchaser with such assistance and information as the Purchaser may reasonably request in connection with the Seller's request; and
 - (v) be, and remain, responsible for all reasonable out-of-pocket costs and expenses reasonably incurred by the Purchaser in relation to such request from the Seller.
- (c) The Purchaser shall, in timely manner and at its own cost and expense, procure, diligently pursue, and thereafter maintain all Purchaser Consents.

Section 2.4 Appointment of the Operating Committee

- (a) The Parties shall establish the Operating Committee in such manner and at such time mutually agreed between the Parties to perform the functions set out in Section [5.10](#).

- (b) Members of the Operating Committee shall have reasonable experience of working on projects of a similar nature for undertaking the Operating Committee's scope of work. The Operating Committee shall be comprised of six (6) members. Each Party shall designate three (3) members to represent it on the Operating Committee, and either Party may remove or replace any of its Operating Committee members at any time upon notice to the other Party.
- (c) The Operating Committee shall develop procedures for holding its meetings, keeping minutes thereof, and the appointment and operation of sub-committees.
- (d) Chairmanship of the Operating Committee shall rotate each six (6) months between the Parties, and the Parties agree that the first chairman shall be nominated by the Purchaser. The chairman shall not have a casting vote.
- (e) Decisions of the Operating Committee shall require unanimity among the members present at the Operating Committee's meeting, in addition to fulfillment of its quorum. A quorum of the members of the Operating Committee shall be fulfilled when there are present at the Meeting at least two (2) members representing each Party.

Section 2.5 Operating Procedures

- (a) Within thirty (30) Days of establishment of the Operating Committee, the Parties shall cause the Operating Committee to meet and cause their respective designated members to work towards finalizing the Operating Procedures addressing all operational interface between the Purchaser and the Seller. The Operating Procedures shall:
 - (i) take proper account of the design of the Complex, the Metering Systems, the Complex Monitoring System and the Grid System;
 - (ii) refer to the operational practices and procedures stipulated in the Grid Code which are not inconsistent with the operation, scheduling and Despatch of the Complex; and
 - (iii) be consistent with Prudent Electrical Practices, Prudent Utility Practices, and the Technical Limits.
- (b) The procedure for developing and finalizing the Operating Procedures shall be the following:-
 - (i) Within thirty (30) Days following the establishment of the Operating Committee, the Seller shall deliver the proposed draft Operating Procedures in writing to the Purchaser.
 - (ii) Within thirty (30) Days following the date the draft Operating

Procedures are delivered by the Seller to the Purchaser, the Purchaser shall, in writing, provide comments and advise the Seller of all matters and information the Purchaser believes are required to be included in the Operating Procedures; and, within ten (10) Days following the end of such thirty (30) Day period, each Party shall make a representative available to meet, so as to review each Party's comments on the draft Operating Procedures and on the proposed changes, and on any objections to any of the proposed changes of a Party.

- (iii) As soon as practicable after the meeting referred to in Section 2.5(b)(ii), but in any event within thirty (30) Days following the end of such meeting, the Seller shall provide the Purchaser with proposed final draft Operating Procedures incorporating, to the extent agreed, each of the Parties' proposed changes.
 - (iv) The Purchaser shall provide final comments on the final draft Operating Procedures within fifteen (15) Business Days after its receipt by the Purchaser and, within five (5) Business Days after a request from the Seller, the Purchaser shall make its representatives available in Lahore, Pakistan, to meet with the Seller and review its comments and proposed changes.
 - (v) The Seller shall revise the draft Operating Procedures in accordance with sub-clause (iv) hereinabove, so as to incorporate such additions or modifications required by the Purchaser, and shall provide the final draft to the Purchaser as soon as practicable, and in any event within ten (10) Days following receipt of the Purchaser's comments and proposed changes. Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Operating Procedures shall be determined in accordance with Section 18.2. The determination of the Expert shall be final and binding with respect to the resolution of such Dispute.
- (c) Following finalization of the Operating Procedures pursuant to Section 2.5(b), either Party may propose changes to the Operating Procedures from time to time as changes in events and circumstances may require. The Parties shall meet and, in good faith, discuss such proposed changes and incorporate such changes as are agreed by the Parties. Any Dispute between the Parties as to whether any matter should be included in or removed from or modified in the way it is then treated in the Operating Procedures, shall be determined in accordance with Section 18.2. The determination of the Expert shall be final and binding with respect to the resolution of such Dispute.
- (d) The Seller and the Purchaser shall mutually develop an inter-tripping schedule no later than sixty (60) Days prior to the required implementation of such schedule. Such inter-tripping schedule shall be based on a proposed schedule

submitted to the Seller by the Purchaser, at least one hundred and twenty (120) Days prior to the date implementation of such schedule is required.

Section 2.6 Appointment of the Engineer

- (a) Within thirty (30) Days from the date of execution of this Agreement, the Seller shall notify in writing to the Purchaser of the person proposed to be appointed as the Engineer for approval of the Purchaser. If the Purchaser: (a) does not respond within fourteen (14) days thereof, the Purchaser's approval shall be deemed to have been granted and the Seller shall appoint the proposed person as the Engineer; or (b) objects to the proposed person (provided that such objection is conveyed to the Seller in writing within fourteen (14) days of the Seller's notice) then the Seller shall give a second notice to the Purchaser specifying the names of two additional persons for appointment of one of them as the Engineer. The Purchaser shall not have the right to object to the names proposed in the second notice, provided that if the Purchaser does not respond within fourteen (14) days from the date of the second notice then the Purchaser's approval shall be deemed to have been given and the Seller shall appoint either one of the two proposed persons as the Engineer. The Engineer shall be available to perform the duties of the Engineer in accordance with this Agreement and in accordance with the highest professional standards and duty of care, both to the Seller and to the Purchaser. The Seller shall keep the Engineer engaged and available so long as may be necessary, and shall not replace the Engineer without the prior written consent of the Purchaser.
- (b) The terms and conditions of appointment of the Engineer shall oblige the Engineer to act independently and impartially, on the basis of his expertise, experience and knowledge in relation to all matters referred to him pursuant to this Agreement, and in carrying out his other duties ascribed to him under this Agreement. The costs and remuneration, to which the Engineer is entitled under his terms and conditions of appointment, shall be borne by the Seller.

Section 2.7 Seller Letter of Credit

- (a) Upon AEDB's receipt of (a) the Agent's notice of the occurrence of Financial Closing or (b) the Effective Date, whichever is relevant (other than delivery of the Seller Letter of Credit, and issuance of the Guarantee), the Seller shall immediately deliver the Seller Letter of Credit to the Purchaser. The Seller shall maintain in full force and effect the Seller Letter of Credit in the then-required amount, from the date of issuance of the Seller Letter of Credit until the date that is fifteen (15) Business Days following whichever shall first occur of:
 - (i) the Commercial Operations Date; or
 - (ii) if this Agreement is terminated before the Commercial Operations

Date has occurred, the date which is thirty (30) Days following the date on which the termination of this Agreement is effective;

Provided that if the Seller is or is claimed to be liable to pay liquidated damages under Section 9.3, or under Section 16.7(b), the Seller shall maintain the Seller Letter of Credit in an amount not less than the amount in dispute plus the Purchaser's reasonable estimate of the Delayed Payment Rate that will be payable thereon until any dispute in relation thereto has been finally resolved in accordance with this Agreement and all liabilities in relation thereto have been discharged in full.

- (b) The Seller Letter of Credit shall be expressed to continue until the end of the period referred to in Section 2.7 (a). The Purchaser shall return the Seller Letter of Credit to the Seller within fifteen (15) Business Days following the end of the period stipulated in Section 2.7(a). If the Seller provides a replacement or substitute Seller Letter of Credit satisfactory to the Purchaser, the Purchaser shall return the original Seller Letter of Credit within five (5) Business Days after receipt by the Purchaser of such replacement.
- (c) In the event that the Seller be required to pay liquidated damages to the Purchaser pursuant to Section 9.3(b) and/or pursuant to Section 16.7(b), and the Seller fails to make any such payment of damages when due, then the Purchaser shall be entitled to draw or collect such amounts, less any amounts disputed by the Seller, from the Seller Letter of Credit upon presentation of a certificate of an authorized officer of the Purchaser stating that— (A) amounts shown in the invoice accompanying the certificate are due and payable by the Seller to the Purchaser under this Agreement, and that (B) an invoice for such amount has been delivered to the Seller at least thirty (30) Days prior to presentation of the certificate and, either (i) no amounts shown in such invoice have been disputed by the Seller, or (ii) a portion of the amount shown in the invoice has been disputed by the Seller, identifying such disputed amount. The certificate shall be accompanied by the relevant invoice delivered to the Seller and any dispute notice delivered to the Purchaser by the Seller. The Purchaser shall not be entitled to draw from the Seller Letter of Credit any amounts shown in an invoice or demand delivered to the Seller that have been disputed by the Seller until such disputes are resolved in accordance with Article [XVIII](#).
- (d) In the event that the Purchaser draws against any Seller Letter of Credit and it is subsequently determined that the Purchaser was not entitled so to do, then the Purchaser shall repay such amount to the Seller, together with all costs and expenses incurred by the Seller in connection with such drawing (including reasonable attorneys' fees), plus interest thereon from the date of the draw through the date of repayment at the Delayed Payment Rate, compounded semi-annually, and shall be computed for the actual number of Days on the basis of a three hundred and sixty-five (365) Day year.

- (e) Provided that the Seller Letter of Credit is delivered to the Purchaser within five (5) Business Days of its issuance, the Seller Letter of Credit shall have a term of not less than twelve (12) Months from the date of its issuance. If at any time while the Seller is required to maintain the Seller Letter of Credit pursuant to Section 2.7(a) and the Seller Letter of Credit would be due to expire within ten (10) Days without the effective period of the Seller Letter of Credit being extended for a period of not less than ninety (90) Days or a replacement Seller Letter of Credit on the same terms being delivered to the Purchaser with an effective period of not less than ninety (90) Days following the date of expiration of the existing Seller Letter of Credit the Purchaser shall be entitled to immediately encash in full the Seller Letter of Credit; provided that the Purchaser shall return to the Seller the amount encashed (less any amount properly retained pursuant to Section 2.7(c)) upon delivery of a valid amendment extending the term of the Seller Letter of Credit or a replacement for the expired Seller Letter of Credit on the same terms.

Section 2.8 Reaffirmation of Representations and Warranties

- (a) Together with the Seller's notice delivered by the to the Purchaser providing notice of the Effective Date, the Seller shall also deliver to the Purchaser a certificate confirming that the representations in Section [13.1\(a\)](#), Section 13.1(e) and Section 13.1(f) are true and accurate as at the Effective Date.
- (b) No later than five(5) Business Days after the date on which the Seller delivers to the Purchaser notice of the Effective Date, the Purchaser shall deliver to the Seller a certificate confirming that the representations in Section [13.3\(a\)](#), Section 13.3(e) and Section 13.3(f) were true and accurate as at the Effective Date.

Section 2.9 Specification of Contract Capacity

- (a) The Seller declares that the estimated contract capacity is approximately [JMW ("**Contract Capacity**")]. Notwithstanding the aforementioned, the Seller shall be entitled to deliver part of the Contract Capacity to the Sugar Mills in view of its requirements.
- (b) Not Used.
- (c) Not Used.
- (d) Not Used.
- (e) Not Used.
- (f) Not Used.

ARTICLE III
SALE AND PURCHASE OF ENERGY; CARBON CREDITS

Section 3.1 Sale and Purchase of Energy

- (a) Subject to the terms of this Agreement (including the Technical Limits), from and after the Commercial Operations Date, the Seller shall:
 - (i) make available to the Purchaser the Declared Available Energy; and
 - (ii) deliver and sell to the Purchaser at the Interconnection Point the Despatched and Delivered Net Energy.
 - (iii) Not Used.
- (b) Subject to and in accordance with the terms of this Agreement (including the Technical Limits), the Purchaser shall:
 - (i) from and after the Commercial Operations Date, pay to the Seller for the Declared Available Energy, the consideration described in Article IX and determined in accordance with the provisions thereof;
 - (ii) from and after the Commercial Operations Date take delivery of and pay to the Seller for the Despatched and Delivered Net Energy, the consideration described in Article IX and determined in accordance with the provisions thereof;
 - (iii) prior to the Commercial Operations Date take delivery of and pay to the Seller for the Delivered Net Energy generated by the Complex, following synchronization of the Complex with the Grid System, the consideration described in Section 8.8 and determined in accordance with the provisions described in Schedule 1.
- (c) Not Used.
- (b) Not Used.

Section 3.2 Carbon Credits

The Parties acknowledge that (if applicable to the Project) any Carbon Credits realized by the Complex shall be distributed between the Parties in accordance with Policy for Development of Renewable Energy for Power Generation 2006. For the avoidance of doubt, the amounts realized from the sale of Carbon Credits shall not be set-off or netted against the Energy Payment(s).

Section 3.3 Observance of Technical Limits

Nothing contained in this Agreement shall be construed to require the Seller to operate the Complex, at any time, including during an Emergency, in any manner inconsistent with the Technical Limits or the Laws of Pakistan.

ARTICLE IV
CONSTRUCTION OF THE COMPLEX

Section 4.1 Construction of the Complex

- (a) The Seller shall commence and/or proceed with the construction works of the Complex as soon as reasonably practicable following the Effective Date. The Seller shall procure that the design of the construction works shall be carried out with all proper skill and care and in all material respects in accordance with this Agreement, including the Technical Limits, the Laws of Pakistan (including the Seller Consents and the Generation Licence), Prudent Utility Practices and Prudent Electrical Practices, so that the Complex is reasonably expected to provide a useful life of not less than the Term.
- (b) The Seller shall carry out and complete the construction works such that the Seller is able to achieve the Commercial Operations Date in any case no later than the Required Commercial Operations Date.
- (c) The Seller shall cause all equipment permanently installed by the Construction Contractor as part of the Complex to be new and unused at the time of such installation.

Section 4.2 Submission of Reports and Information

- (a) The Seller shall submit, or cause to be submitted, to the Purchaser the following documents as soon as available:-
 - (i) a copy of the Implementation Agreement as executed, with any amendments thereto;
 - (ii) reports, when and as the Seller becomes aware of any condition or event and/or any change in such condition or event that will have a material and adverse effect on the timely completion of the construction of the Complex.
 - (iii) evidence demonstrating that the Seller (or its Contractor, if applicable) has obtained all Seller Consents then required to be obtained for the lease/ownership, construction, operation and maintenance of, and the supply and delivery of Delivered Net Energy from, the Complex;
 - (iv) a list identifying the Seller Consents not yet required to be obtained for the operation and maintenance of, and the supply and delivery of Delivered Net Energy from the Complex; and
 - (v) a list identifying the Seller Consents applied for by the Seller or its Contractors but not yet issued or received, together with a plan reasonably acceptable to the Purchaser for obtaining such Seller

Consents and an estimate of the time within which such Seller Consents will be obtained.

- (vi) At least forty five (45) Days prior to the scheduled commencement of testing and Commissioning of Complex, a preliminary test schedule respectively for the Complex.
- (v) On or before the Commercial Operations Date, a certificate from the Engineer addressed to the Seller and the Purchaser to the effect that, based upon its monitoring and review of construction, the construction of the Complex has been carried out in all material respects in compliance with the terms of this Agreement.
- (vi) Not Used.
- (vii) As soon as available, but no later than thirty (30) Days following Commissioning Tests, two copies of all results of the Commissioning Tests, including tests of major equipment included in the Complex, tests of related electricity metering equipment and a certificate from the Engineer confirming each successful Commissioning Test— shall be provided to the Purchaser.
- (viii) Not Used. (b) The Seller shall notify the Purchaser promptly from time to time whenever it determines that the then expected date for Commissioning of the Complex is unfeasible or inappropriate, and shall specify a revised expected date for Commissioning which shall not, in any event, be earlier than ten (10) Business Days following the date of delivery of such notice to the Purchaser.
- (c) Within fifteen (15) Business Days after receipt of a written request from the Seller, the Purchaser shall provide to the Seller documents and information which shall include documents and information on the Purchaser Interconnection Facilities, transmission facilities, Metering System, the Grid System, and such other documents, technical details and any other data in the Purchaser's possession and control as may reasonably be necessary for the Seller to undertake its obligations under this Agreement, the Seller Interconnection Works and the construction works, including details of all existing and planned facilities necessary to connect the Complex with the Grid System, Despatch and communications procedures currently in use by the Purchaser and any planned changes to the Despatch and communication procedures then in effect. In connection with the provision of such documents and information, the Purchaser shall allow the Seller during the Purchaser's regular business hours to make copies of such documents and information, at the Seller's sole cost and expense, and to have reasonable access to and to consult with the Purchaser's (or, as the case may be, the Grid System Operator's) relevant personnel engaged in the management, operation,

maintenance and reinforcement of the Grid System. When such documents and information are no longer required for the purposes provided herein, such documents and information shall be returned to the Purchaser or, at the Purchaser's option, destroyed by the Seller.

- (d) Each Party shall notify the other Party in a timely manner upon becoming aware of any changes to the information provided pursuant to this Section 4.2 to the other Party.

Section 4.3 Delivery of Electrical Power to the Complex

From and after completion and commissioning of the Purchaser Interconnection Facilities, the Purchaser shall, transport electrical energy to the Complex for Commissioning Tests, emergencies, black starts and any Start-Up, in accordance with the schedules provided to the Purchaser pursuant to Section 4.2 and Section 8.1. From and after Commissioning of the Seller Interconnection Facilities, the Purchaser shall (to the extent reasonably possible) transport to the Interconnection Point sufficient electrical power to operate the Complex during any period that the Complex is unable to generate sufficient electrical power for such purpose. For the avoidance of doubt, the Seller shall pay for such electrical power in accordance with Section 9.4(b)(i).

Section 4.4 Purchaser Observation Visits

The Purchaser shall have the right, on a recurring basis and upon reasonable prior notice to the Seller, to have the Purchaser's officers, employees, and representatives at its sole cost and expense, observe the progress of the Construction Works and the Seller Interconnection Works and the operation of the Complex. The Seller shall comply with all reasonable requests of the Purchaser for, and assist in arranging, any such observation visits. The Purchaser's visits shall be reasonable both in terms of the frequency of such visits and the number of persons. All persons visiting the Complex, or the Site on behalf of the Purchaser shall comply with the Seller's and its Contractors' generally applicable safety regulations and procedures made available to such persons, and shall comply with all reasonable instructions and directions of the Seller and its Contractors, and shall not unreasonably cause any interference with or disruption to the activities of the Seller or its Contractors on the Site.

ARTICLE V
CONTROL AND OPERATION OF COMPLEX

Section 5.1 Operation and Maintenance of the Complex

- (a) The Seller shall operate and maintain the Complex in accordance with the terms of this Agreement, the Operating Procedures developed in accordance with Section 2.5, the Technical Limits, Laws of Pakistan, the Grid Code, the Seller Consents, Prudent Utility Practices and the Prudent Electrical Practices; provided, however, that the Seller may contract with the O&M Contractor to operate and maintain the Complex; provided, further, that the Seller's appointment of the O&M Contractor shall not relieve the Seller of any of its obligations or potential liability regarding the insuring, operation or maintenance of the Complex or any liability whatsoever resulting from a breach of any term or condition of this Agreement.
- (b) Subject to the Technical Limits, the Seller shall operate and maintain the Complex in a manner that will not have an adverse effect on the Purchaser's voltage level or voltage waveform.

Section 5.2 Declared Available Energy

- (a) Not later than 00:00 hours on the Commercial Operations Date, the Seller shall notify the Purchaser of the Declared Available Energy for each following hour of the Commercial Operations Date.
- (b) Twelve (12) hours prior to the beginning of each Operating Day following the Commercial Operations Date, the Seller shall notify the Purchaser of the Declared Available Energy for each hour of such Operating Day. The Seller may revise the Declared Available Energy for any hour by issuing a notice to the Purchaser (i) two (2) hour prior to the relevant hour in case of downward revision of the Declared Available Energy; and (ii) one (1) hour prior to the relevant hour in case of upward revision of the Declared Available Energy. If no such revisions are notified by the Seller then the Declared Available Energy for each hour of such Operating Day shall be deemed to be equal to the Declared Available Energy for each hour declared by the Seller under the immediately previous Operating Day.
- (c) Following receipt by the Purchaser of the Declared Available Energy for the relevant hour the Purchaser shall issue Despatch Instructions to the Seller. For the avoidance of doubt, it shall be mandatory for the Purchaser to accept all the Declared Available Energy made available by the Seller pursuant to Section 5.2. Subject to Section 5.2(f) the Seller shall be entitled to payment and the Purchaser shall pay to the Seller the Energy Payment in accordance with Section 9.1 based on the Despatched and Delivered Net Energy.
- (d) (i) If the Seller has issued the Declared Available Energy and if either: (i) the Purchaser fails to accept (or give Despatch Instructions); or (ii) Despatch Instructions relate to an amount less than the Declared Available Energy, then the Purchaser shall pay to the Seller the Energy Payment based on the

Declared Available Energy in accordance with Section 9.1 during Season.

(ii) If the Seller has issued the Declared Available Energy and if either: (i) the Purchaser fails to accept (or give Despatch Instructions); or (ii) Despatch Instructions relate to an amount less than the Declared Available Energy, then the Purchaser shall pay to the Seller the Fixed Energy Purchase Price based on the Declared Available Energy in accordance with Section 9.1 during Off-Season.

For avoidance of doubt with reference to Section 5.2(d)(i) above, the Parties acknowledge that since the Project is based on cogeneration, the Complex shall still be operational and will be consuming Fuel during Season even if the Purchaser fails to accept the Declared Available Energy or gives Despatch Instructions for an amount less than the Declared Available Energy.

- (e) The Seller shall not be in breach of Section 5.2 and shall be entitled for Energy Payment by the Purchaser, if the Seller is unable to deliver the Declared Available Energy because of:
- (i) constraints on the Grid System;
 - (ii) variations in Grid System Frequency outside the Technical Limits;
 - (iii) Grid System Voltage outside the Technical Limits.
- (f) Following the issuance by the Seller of the Declared Available Energy and the Purchaser of the Despatch Instruction; if the Seller is subsequently unable to deliver the Net Energy as per the Despatch Instruction other than due to (i) constraints on the Grid System; (ii) variations in Grid System Frequency outside the Technical Limits; (iii) Grid System Voltage outside the Technical Limits; (iv) Force Majeure Event; and (v) Outage, then the difference between the Despatch Instructions and the actual Delivered Net Energy shall be adjusted against the Despatched and Delivered Net Energy of the relevant Month.

Section 5.3 Forecasting of Estimated Net Energy

- (a) If, required or deemed necessary, the Seller shall use its reasonable efforts to predict the availability of Fuel at the Site, and on that basis:
- (i) no later than one (1) Week before the beginning of each Month, the Seller shall notify the Purchaser (or revise any such information previously given) of the Month ahead forecast of the estimated net energy of the Complex in kWh which the Complex is likely to generate for each Week of such Month; and
 - (ii) no later than thirty (30) Days before the beginning of each Agreement Year, the Seller shall notify the Purchaser (or revise any such information previously given) of the year ahead forecast of the

estimated net energy of the Complex in kWh which the Complex is likely to generate for each Month of such Agreement Year.

- (b) The forecasts of estimated net energy provided by the Seller to the Purchaser under Section 5.3(a) shall not:
 - (i) be binding on the Seller or the Purchaser;
 - (ii) result in the Seller incurring or accruing any liability of any nature towards the Purchaser in relation to any discrepancy or deviation between the non-binding estimates and the actual Declared Available Energy or Despatched and Delivered Net Energy (as the case may be); or
 - (iii) prejudice the rights and obligations of the Parties under Section 3.1(a).

Section 5.4 Despatch Instructions

- (a) The Purchaser shall accept all Delivered Net Energy generated by the Complex and delivered at the Interconnection Point. Subject to Section 5.4(b), the Seller shall comply with Despatch Instructions issued by the System Operator, provided that:
 - (i) such Despatch Instructions are consistent with the Technical Limits;
 - (ii) the Complex can be operated consistent with the Despatch Instructions and
 - (iii) the Seller shall be required to comply only to the extent there are no Outages, in effect or scheduled to occur and which would prevent compliance with such Despatch Instructions.
- (b) The Seller shall not be in breach of Section 5.4(a) for failure to execute a Despatch Instruction due to a Force Majeure Event.
- (c) The rights of (and limitations on) the Purchaser relating to the delivery of Despatch Instructions may be assigned by the Purchaser to the System Operator; provided that such assignment shall not relieve the Purchaser from or affect in any way any of its obligations and liabilities under this Agreement, including the obligation to make Energy Payment(s) in accordance with Article IX.

Section 5.5 Scheduled Outage

Not Used.

Section 5.6 Outages

The Seller may undertake Outages during any Agreement Year in accordance with its requirements. For the avoidance of any doubt the Purchaser shall not be liable to make any payment during an Outage period (other than such payments that are already owed by the Purchaser to the Seller in accordance with this Agreement).

Section 5.6 Maintenance Outages

Not Used.

Section 5.7 Recording of Communications

All communications between the Seller and the System Operator relating to Despatch Instructions, including communications by the Seller declaring partial or complete inability of the Complex to comply with the Despatch Instructions (together with the reasons therefor), shall be recorded by the Seller and a copy or transcript of such recording shall be provided to the Purchaser at its request.

Section 5.8 Emergency Set-Up and Curtailment Plans

- (a) Subject to Clause 5.8(b), the Seller shall co-operate with the Purchaser in developing Emergency procedures for the Complex (to the extent required), including voltage reduction to effect load curtailment, and shall, to the extent consistent with the Technical Limits, comply with such Emergency procedures.
- (b) The Emergency procedures(to the extent required) shall provide that, in case of an Emergency and upon request of the Purchaser, the Seller shall use reasonable endeavors to reschedule any Outage not yet begun, or if the Outage has already begun, expedite completion of the relevant works and/or reschedule some or all of the remaining works so as to restore electric generation as soon as possible.

Section 5.9 Employment of Qualified Personnel

From and after the first date that Delivered Net Energy is delivered from the Complex to the Interconnection Point, the Seller and the Purchaser shall ensure that their and/or their respective contractors' personnel are on duty at the Complex and with the Control Centre, respectively, at all times, and that such personnel are adequately qualified and trained, and have experience as necessary and appropriate to undertake the duties for which they are engaged at the Complex and with the Control Centre, respectively.

Section 5.10 Operating Committee Duties

- (a) The Operating Committee shall be responsible for assisting the Parties in finalizing the Operating Procedures in accordance with Section [2.5](#), and for advising the Parties in relation to the following matters relating to the interaction of the Complex and the Grid System:
 - (i) the co-ordination of the respective programmes and procedures of the Parties for the construction, operation and maintenance of the Seller Interconnection Facilities, the Complex, the Purchaser Interconnection Facilities, and all related equipment — for the avoidance of doubt, the Operating Committee shall not establish programmes and procedures for the construction of the Complex;
 - (ii) the steps to be taken on the occurrence of a Force Majeure Event affecting a Party, the Complex, the Grid System, or a shutdown or reduction in capacity for any other reason, affecting the Purchaser Interconnection Facilities, the Grid System, the Complex, or any related equipment;
 - (iii) safety matters affecting the Complex, the Purchaser Interconnection Facilities, the Grid System, the Parties or their Contractors;
 - (iv) review and revision of protection schemes;
 - (v) develop testing procedures for the Purchaser Interconnection Facilities and the Seller Interconnection Facilities; and
 - (vii) any other matter agreed upon by the Parties.
- (b) The Operating Committee shall have no power or authority to amend or modify the provisions of this Agreement, or to determine the rights or obligations of the Parties under this Agreement.

Section 5.11 Maintenance of Operating Records

- (a) Each Party shall keep complete and accurate records and all other data reasonably required for the proper administration of this Agreement. Without prejudice to the generality of the foregoing, the Seller shall maintain at the Site, an accurate and up-to-date operating log, in a format mutually agreed upon by the Parties, setting forth the record and data of the:
 - (i) Delivered Net Energy for each hour;
 - (ii) Reactive Power in respect of each hour;
 - (iii) Grid System Frequency;

- (iv) Grid System Voltage;
- (v) changes in operating status, and Outages;
- (vi) Not Used;
- (vii) Declared Available Energy for each Operating Day;
- (viii) Despatch Instructions for each Operating Day; and
- (ix) other matters agreed upon by the Parties.

The data required by NTDC as per agreed list of signals shall be transmitted to National Power Control Centre (NPCC) via V-sat link. The SCADA (if applicable and notified)/DCS at the Complex shall have the capability to resend the data to NPCC in case of any communication interruption. The Purchaser shall be responsible for configuring the system at NPCC, to receive and data and store the data so received and sent.

All such records and data shall be maintained for a minimum of sixty (60) Months after the creation of such record or data and for any additional length of time required by any Public Sector Entity with jurisdiction over either Party; and neither Party shall dispose of or destroy any such records or data after such sixty (60) Month period unless the Party desiring disposal or destruction of such records or data has first given thirty (30) Days prior written notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice has not objected thereto in writing within such thirty (30) Days period.

- (b) Either Party shall have the right, upon ten (10) Days prior written notice to the other Party, to examine the records and data kept by the other Party pursuant to Section 5.11(a) at any time during normal office hours during the period such records and data are required hereunder to be maintained. For avoidance of doubt, it is agreed that references to records and data in this Section 5.11 includes, but is not limited to, records and data created, recorded, maintained and retrieved in electronic form.

Section 5.12 Tampering with the Metering System and the Complex Monitoring System

The Seller shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper, with the Metering System or the Complex Monitoring System. Should the Seller breach the foregoing covenant, the Seller shall:-

- (a) Take all remediable action reasonably acceptable to the Purchaser to ensure that such tampering does not recur, including the development or addition of security systems.

- (b) Compensate the Purchaser by double the amount or reasonably estimated amount of any overpayment by the Purchaser resulting from such tampering, which, for purposes of such determination, shall be assumed to have occurred immediately after the last known accurate test of the Metering System or the Complex Monitoring System (unless the Seller demonstrates to the reasonable satisfaction of the Purchaser, or it is resolved under Article XVIII, that the tampering did not occur until a later date, in which case such later date shall be used as the reference date for determination of such amount). The Parties have agreed that the amount of such compensation constitutes not a penalty but liquidated damages to the Purchaser for any such breach and, subject to Sections [16.1\(h\)](#) and Section [16.4](#), shall be the sole remedy of the Purchaser therefor. The Seller waives, to the fullest extent permitted by law, any and all defense(s) to its liability to make such payment(s).

Section 5.13 Cessation of Operation of the Complex

Not Used.

Section 5.14 Free of Liens

Not Used

Section 5.15 Forced Outages or Partial Forced Outages

Not Used.

ARTICLE VI
INTERCONNECTION FACILITIES

Section 6.1 **Construction of the Seller Interconnection Facilities**

- (a) To the extent not provided for in Schedule 3, the construction and completion of the Seller Interconnection Facilities shall be governed by this section 6.1. In case of any conflict or inconsistency between the provisions of this Article 6 and Schedule 3, the provisions of Schedule 3 shall prevail. The Seller shall, at its cost, carry out or cause to be carried out the Seller Interconnection Works with all proper skill and care and in all material respects in accordance with —
- (i) this Agreement,
 - (ii) the Laws of Pakistan and the applicable Seller Consents,
 - (iii) the Grid Code,
 - (iv) the Generation Licence,
 - (v) Prudent Utility Practices and Prudent Electrical Practices, and
 - (vi) Schedule [3](#) —
- so that the Seller Interconnection Facilities can be reasonably expected to provide a useful life of not less than the Term.
- (b) The design, scope, specification and schedule of the Seller Interconnection Works are set forth in Schedule 3. The Seller shall procure (or cause its Contractors to procure) all Seller Consents necessary for carrying out the Seller Interconnection Works.

Section 6.2 **Purchaser Interconnection Facilities**

The Purchaser shall design, construct, finance, complete (excluding installation of the Metering System, as provided in Section 7.2) and commission the Purchaser Interconnection Facilities in accordance with Schedule 3 of this Agreement, Prudent Utility Practices and Prudent Electrical Practices — such that the Purchaser Interconnection Facilities can be expected to have a useful life of not less than the Term.

Section 6.3 **Data Necessary for Construction of Interconnection Facilities**

The Seller and the Purchaser shall exchange all information within the time period provided therefor in the Interconnection Works Schedule. Within ten (10) Days of a request by either Party, the requested Party shall provide all additional information reasonably requested by the requesting Party in connection with the execution of its Interconnection Works. Timely provision

by the Seller of such supplemental or additional information shall not modify the obligation of the Purchaser to complete the Purchaser Interconnection Works as required herein.

Section 6.4 Granting of Easements and Rights-of-Way

- (a) If required, the Seller shall grant to the Purchaser easements and rights of way across the Site necessary to carry out and complete the Purchaser Interconnection Works and to operate, maintain, replace and/or remove the Purchaser Interconnection Facilities during the term of this Agreement. The easements and rights of way shall grant to the Purchaser adequate and continuing rights for the purposes set forth in this Section 6.4 to enter the Site subject only to the Purchaser giving reasonable prior notice to the Seller. Upon request by the Purchaser, the Seller shall execute such easements, rights of way, licenses and other documents, each in recordable form, such as the Purchaser may reasonably require for recording any and all of the above rights. Consideration for such rights shall be the execution of this Agreement, and no other consideration shall be required. To the extent allowed by the Laws of Pakistan and only for the purpose of removal of the Purchaser Interconnection Facilities (if required), all easements, rights of way, licenses and other rights hereunder shall survive termination or expiration of this Agreement. Revocable licenses, if any, granted to the Purchaser pursuant to this Section 6.4 shall include such reasonable further period, not to exceed ninety (90) Days beyond the Term, to allow the Purchaser to remove the Purchaser Interconnection Facilities. When on Site, the Purchaser shall comply with all reasonable instructions of the Seller and its Contractors relating to the carrying out of any work on Site and, notwithstanding any other provision to the contrary in this Agreement, shall indemnify and hold the Seller and the Contractors harmless from any loss or damage sustained by virtue of the Purchaser's negligence or willful misconduct in the exercise of rights pursuant to this Section 6.4 — but only to the extent that such loss or damage is not covered by insurance.
- (b) Except as provided in Section 6.4(a), the Purchaser shall be responsible for obtaining all rights-of-way, easements and other real or personal property interests necessary to construct, operate and maintain the Purchaser Interconnection Facilities during the Term.

Section 6.5 Construction and Completion of Purchaser Interconnection Facilities

- (a) To the extent not provided for in Schedule 3, the construction and completion of the Purchaser Interconnection Facilities shall be governed by this section 6.5. In case of any conflict or inconsistency between the provisions of this Article 6 and Schedule 3, the provisions of Schedule 3 shall prevail. On or after the Effective Date, the Seller shall give to the Purchaser not less than [●] prior written notice of the Scheduled Commercial Operations Date then

anticipated by the Seller. Following receipt of such notice, the Purchaser shall commence the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall provide to the Seller monthly progress reports on the Purchaser Interconnection Works until their completion. The Purchaser shall complete the Purchaser Interconnection Works so as to be able to accept Delivered Net Energy at the Interconnection Point, to carry out the Commissioning Tests no later than [●] days prior to the Scheduled Commercial Operations Date notified to the Purchaser pursuant to the first sentence of this Section 6.5(a); provided, however, that such completion date shall be extended on a Day-for-Day basis for any changes in the Scheduled Commercial Operations Date, and to the extent necessary, caused by occurrence of any of the following:

- (i) the Seller's failure to execute, in sufficient time for the Purchaser to complete the Purchaser Interconnection Facilities, such easements, rights-of-way, licenses and other documents, each in recordable form, as the Purchaser may reasonably require to record the deeds, easements, rights-of-way and licenses granted pursuant to Section 6.4;
- (ii) the Seller's failure to provide the Purchaser, on a timely basis, with any technical data not included in Schedule 3 but available to the Seller and requested by the Purchaser relating to the Complex, reasonably necessary for the Purchaser to undertake the design, construction, installation, commissioning, maintenance and operation of the Purchaser Interconnection Facilities;
- (iii) a Force Majeure Event that materially and adversely affects the Purchaser's ability to perform its obligations in accordance with this Article VI;
- (iv) any other failure by the Seller to perform in accordance with this Agreement, which materially and adversely affects the Purchaser's ability to perform its obligations in accordance with this Article VI;

provided, however, that no extension shall be granted to the Purchaser to the extent that such failure or delay would, nevertheless, have been experienced by the Purchaser.

- (b) If the Purchaser has not completed, commissioned and energized the Purchaser Interconnection Facilities by the date required in Section 6.5(a), as such date may be extended in accordance with this Section 6.5(a)(i), (ii), (iii) or (iv), and such delay causes a delay in Commissioning of the Complex, the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the Purchaser Interconnection Works are completed. In addition, if the Purchaser has not completed the Purchaser Interconnection Works within fifteen (15) Days following the date by which the

Purchaser Interconnection Facilities were required to be completed in accordance with Section 6.5(a), and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer, then the Purchaser shall pay to the Seller Monthly, in arrears, an amount equal to the Carrying Costs, plus fifty percent (50%) of the Insurance Component, plus fifty percent (50%) of the Fixed O&M Local Component of the Energy Price, multiplied by the Average Daily Energy.

Such payments shall commence on the Scheduled Commercial Operations Date prevailing immediately prior to such delay, and shall continue until the earlier of:

- (i) the end of a period equal to the period of delay in completing the Purchaser Interconnection Facilities; and
- (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not);

provided, however, that payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of the Certificate of Readiness for Synchronization of the Seller Interconnection Facilities, and a simultaneous certificate that the delay caused by the Purchaser has caused the then scheduled Commissioning Tests to be delayed. In addition to payment of the Carrying Costs, plus fifty percent (50%) of the Insurance Component, plus fifty percent (50%) of the Fixed O&M Local Component of the Energy Price, multiplied by the Average Daily Energy — if the delay by the Purchaser in completing the Purchaser Interconnection Facilities continues beyond one hundred fifty (150) Days following the date stipulated in Section 6.5(a), and the Engineer has certified that the delay caused by the Purchaser would likely cause the then scheduled Commissioning Tests to be delayed as confirmed by Engineer pursuant to the two certificates mentioned in this Section, then the Purchaser shall also be required to pay the principal debt payments (Loan Repayment Component) in accordance with the Tariff Determination; provided however, that such principal debt payments (Loan Repayment Component) made by the Purchaser under this Section 6.5(b) shall be recovered, together with interest at KIBOR plus 3% per annum (on the monthly outstanding balance of such amounts, commencing on the date of such payments by the Purchaser and ending on the date of complete repayment thereof by the Seller), through successive deductions of the Return on Equity Component from the Monthly Energy Payments until the aforesaid amounts have been completely recovered. Such principal debt payment (Loan Repayment Component) by the Purchaser shall commence on the later of thirty (30) Days following receipt of an invoice therefor or the due date for such payment under the Financing Documents (but in no event earlier than the sixtieth (60th) Day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay).

Such payments shall continue until the earlier of:

- (i) end of the period equal to the period of delay or deferral of any Commissioning Test; and
 - (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not).
- (c) The Purchaser shall have no obligation to make payments provided in this Section 6.5 if and to the extent that the delay in the Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests. If payments by the Purchaser under this Section 6.5 shall have commenced or the obligation for such payments shall have accrued, the Complex shall be tested at the first available opportunity thereafter. Except as provided in this Section 6.5, Section 8.1, Section 15.6 and Section 16.2(h), the Seller shall be entitled to no other compensation or claim for damages under this Agreement as a result of delay in the completion of the Purchaser Interconnection Facilities or deferral of the Commissioning Tests by the Purchaser.

Section 6.6 Protective Devices

- (a) As part of the Seller Interconnection Works, the Seller shall install protective relays in accordance with approved single line diagram and Schedule 3. The Seller shall maintain the settings of all relays in the Complex at the levels agreed by the Seller and the Purchaser, and the Seller shall not change such settings without the Purchaser's prior written consent.
- (b) The Seller and the Purchaser shall verify the operation of the protection devices in accordance with the testing programme set forth in Schedule 3.
- (c) Subject to giving the Seller reasonable notice, the Purchaser may require the Seller to modify or expand the requirements for protective devices. Following approval by the Purchaser of the costs of such modification or expansion, the Seller shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. To the extent that any modification or expansion of the requirements for protective devices causes the Seller a delay in Commissioning the Complex, as certified by the Engineer, the Required Commercial Operations Date shall be extended Day-for-Day to account for such delay. The Purchaser shall be notified in advance of, and shall have the right to observe, all work on the protective devices.
- (d) Following completion of such modification or expansion work, the Seller shall provide the Purchaser with an invoice for the reasonable and necessary costs therefor, together with supporting documentation with respect thereto. The Purchaser shall pay the Seller the required amount within thirty (30) Days after delivery of the invoice by the Seller.

- (e) Each Party shall notify the other Party in advance of any changes to either the Complex or the Grid System that may affect the proper co-ordination of protective devices between the two systems, and neither Party shall make any such changes to either the Complex or the Grid System, as the case may be, without the other Party's prior written approval.

Section 6.7 Testing

The Parties shall cooperate in testing the Purchaser Interconnection Facilities and the Seller Interconnection Facilities — but in no event later than the time provided in Section 6.5(a) — and at such other times thereafter as either Party may reasonably require.

ARTICLE VII
METERING AND METEOROLOGY

Section 7.1 Metering Systems

- (a) The Parties acknowledge that for purposes of determining Delivered Net Energy, the Metering System and Back-Up Metering System are required prior to the delivery of any Delivered Net Energy to the Interconnection Point for sale hereunder.
- (b) No later than [●] Days prior to the then Scheduled Commercial Operations Date, the Purchaser shall have procured at its expense, and shall provide to the Seller, the Metering System. The Purchaser shall ensure that such Metering System shall be in good working order in accordance with the approved Purchaser specifications. If the Purchaser fails to provide the Metering System to the Seller by such date, the Seller may procure the Metering System (subject to the specifications set forth in Schedule 3) and invoice the Purchaser for reimbursement of the reasonable costs thereof as a Pass-Through Item. The Seller shall procure and install an electronic recorder or any other state-of-the-art recording equipment, approved by the Purchaser, capable of making continuous recordings of the Delivered Net Energy, which, after procurement and installation by the Seller, shall constitute a part of the Metering System. Such Delivered Net Energy shall be measured and recorded on appropriate magnetic media or equivalent, which recording shall be used to compute Energy Payment(s).

Section 7.2 Installation of Metering Systems

- (a) The Seller shall at its expense install the Metering System, and shall procure and install the Back-Up Metering System (in accordance with Schedule 3) — both in accordance with the requirements of Schedule 3, and shall:
 - (i) prior to delivery of any Delivered Net Energy from the Complex to the Interconnection Point for which payment is required to be made by the Purchaser hereunder, install, test and commission, and calibrate or recalibrate as necessary, the Metering System and the Back-Up Metering System at the higher voltage side of, and as close as possible to, the Interconnection Point;
 - (ii) secure the Metering System and Back-Up Metering System in a locked and walled enclosure; and
 - (iii) ensure that it or its Contractors, employees, agents and invitees (other than the Purchaser), and others for whom the Seller is responsible, shall not tamper with the Metering System or the Back-Up Metering System.

- (b) When the Metering System has been shown by testing in accordance with Section 7.3(a) to satisfy the required level of accuracy of measurement, the Seller shall transfer possession (or if the Seller has procured the Metering System, subject to payment therefor as provided herein, ownership) of such Metering System to the Purchaser, and the Purchaser shall thereafter be responsible for the ownership and maintenance of the Metering System. For the avoidance of doubt, the Purchaser shall not read, test, adjust, repair or replace the Metering System without giving two (2) Days prior notice to the Seller and without the presence of the Seller. The Purchaser shall be provided with not less than forty-eight (48) hours' notice of, and shall have the right to be present at, and to observe the installation and all testing of, the Metering System. The Seller shall grant to the Purchaser all necessary easements and rights-of-way for the location of the Metering System on Site and for ingress and egress thereto and therefrom.

Section 7.3 Testing of Metering System

- (a) The Seller shall test the accuracy and calibrate or recalibrate, if necessary, each of the Metering System and the Back-Up Metering System in accordance with Schedule 3, no later than the earlier of — (i) thirty (30) Days after the relevant Metering System or Back-Up Metering System is installed by the Seller, or (ii) the Day before the date of first delivery to the Interconnection Point of any Delivered Net Energy from the Complex — as the case may be, that is to be paid for by the Purchaser pursuant to this Agreement. Thereafter, the Purchaser and the Seller shall test the accuracy of each of the Metering System at any time that the readings of Delivered Net Energy from the Metering System and the Back-Up Metering System differ by an amount greater than one-half of one percent (0.5%). In such eventuality, the Purchaser and the Seller together shall test the accuracy of the Metering System and, if necessary, shall recalibrate the Metering System. The Purchaser shall give the Seller no less than forty-eight (48) hours' notice of such tests and the Seller shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided that if the Seller's representative fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment.
- (b) Following testing and any recalibration, if necessary, and return to service of the Metering System pursuant to Section 7.3(a), above, the Seller shall, if necessary, test the accuracy of the relevant Back-Up Metering System and recalibrate the relevant Back-Up Metering System. The Seller shall give the Purchaser no less than forty-eight (48) hours' notice of such tests, and the Purchaser shall have the right to witness such tests as well as any inspection of the Back-Up Metering System or adjustment thereof; provided that if the Purchaser fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment.

- (c) In addition to the tests to be carried out pursuant to Section 7.3(a), if the Seller believes that the Metering System is inaccurate it shall inform the Purchaser, requesting that the Metering System's accuracy be tested, and the Purchaser and the Seller shall test the Metering System within a reasonable time. If the Purchaser believes that the Metering System is inaccurate it shall inform the Seller, and the Purchaser and the Seller shall test the Metering System within a reasonable time. The Purchaser shall give the Seller no less than forty-eight (48) hours' notice of such tests and the Seller shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided that if the Seller fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment. The Seller shall bear the cost of such additional test requested by it, unless the test indicates that the Metering System is inaccurate by more than one-half of one percent (0.5%), in which case the Purchaser shall bear the cost of the additional test.
- (d) In addition to the tests to be carried out pursuant to Section 7.3(b), if the Purchaser believes that the Back-Up Metering System is inaccurate it shall inform the Seller, requesting that the Back-Up Metering System's accuracy be tested, and the Seller shall test the Back-Up Metering System within a reasonable time. If the Seller believes that the Back-Up Metering System is inaccurate it shall inform the Purchaser, and the Seller shall test the Back-Up Metering System within a reasonable time. The Seller shall give the Purchaser no less than forty-eight (48) hours' notice of such tests and the Purchaser shall have the right to witness such tests, as well as any inspection of the Back-Up Metering System or adjustment thereof; provided that if the Purchaser fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment. The Purchaser shall bear the cost of such additional test requested by it, unless the test indicates that the Back-Up Metering System is inaccurate by more than one-half of one percent (0.5%), in which case the Seller shall bear the cost of the additional test.

Section 7.4 Reading Meters

- (a) The Purchaser shall, at its own cost and expense, procure telemetry and electronic data recording systems capable of recording the Delivered Net Energy measured by the Metering System, which the Seller shall install; and the Seller shall procure and install corresponding systems for the Back-Up Metering System, which the Seller shall maintain on a continuing basis with the capacity of storing such recordings for not less than ninety (90) Days. Where compatible telemetry system is installed by the Seller (if required) all metering data recorded by the Metering System and the Back-up Metering System shall also be telemetered at the System Operator's Control Centre . Subject to the provisions of Section 7.4(d) and verification of the data

recording system pursuant to Section 7.4(b), the Parties agree that the information contained in or obtained from such electronic data recording and telemetry systems shall be used to determine the Delivered Net Energy. The electronic data recording system and the telemetry system related to the Metering System and the Back-Up Metering System shall constitute part of the Metering System and the Back-Up Metering System, respectively, for all purposes under this Agreement; and the electronic data recording system and telemetry system related to the Metering System shall be conveyed to the Purchaser as part of the Metering System, in accordance with the provisions of this Article VII.

- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized readings for the Metering System (or, if applicable, the Back-Up Metering System) over the same period (determined by subtracting the local totalized reading at the beginning of the period from the local totalized reading at the end of the period). In order to verify the information contained in the electronic data recording system, the following procedure shall apply:
- (i) the local totalized readings of the Metering System and the Back-Up Metering System shall be read on issuance of the Certificate of Readiness for Synchronization of the Seller Interconnection Facilities and, thereafter, Monthly on the last Business Day of each Month or such other Day as may mutually be agreed upon by the Parties;
 - (ii) the Purchaser shall take such readings during normal business hours, unless otherwise mutually agreed by the Parties;
 - (iii) the Purchaser shall give the Seller at least forty-eight (48) hours notice of the time the Purchaser intends to take such reading, and the Seller shall have the right to witness any such reading;
 - (iv) if a Seller representative is present at such reading, then such reading shall be jointly taken and recorded;
 - (v) if a Seller representative is not present at such reading, then the Purchaser representative shall take and record such reading and make a photographic record thereof;
 - (vi) the Purchaser shall maintain a log of all such meter readings; and
 - (vii) the recorded measurements for each hour during the relevant period and the local totalized recorded measurements, shall be delivered by the Purchaser to the Seller within two (2) Business Days after the readings are taken.

- (c) The Metering System shall be used to measure the Delivered Net Energy, provided that during any period when the Metering System is out of service as a result of maintenance, repairs or testing, then the best available information, which may include the metering data recorded through the telemetry system or the data recorded at the electronic data recording system of the Back-Up Metering System, shall be used to measure the Delivered Net Energy and the provisions of Section 7.4(a) and Section 7.4(b) shall apply to the reading of the Back-Up Metering System.
- (d) If, in any test carried out pursuant to Section 7.3(a), the Metering System is found to be inaccurate by more than [one-half of one percent (0.5%), or is otherwise unavailable or functioning improperly, then the correct amount of Delivered Net Energy delivered to the Purchaser for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
 - (i) the readings of the Back-Up Metering System shall be used to calculate the correct amount of Delivered Net Energy, unless a test of such Back-Up Metering System, as required by either Party, reveals that the Back-Up Metering System is inaccurate by more than one-half of one percent (0.5%) or is otherwise functioning improperly;
 - (ii) if the Back-Up Metering System is found to be inaccurate by more than one-half of one percent (0.5%) or is otherwise unavailable or functioning improperly, then the Seller and Purchaser shall jointly prepare an estimate of the correct reading on the basis of all available information, including the telemetered data, and such guidelines as may have been agreed upon between the Seller and the Purchaser as part of the Operating Procedures;
 - (iii) if the Purchaser and the Seller fail to agree upon an estimate for the correct reading, the Seller will estimate the reading, and either Party may refer such Dispute for resolution in accordance with Article XVIII; and
 - (iv) the difference between the previous payments by the Purchaser for the period of inaccuracy, if any, and the re-calculated amount shall, as appropriate, be offset against or added to the payment due to the Seller, with interest at the Delayed Payment Rate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus one-half of one percent (0.5%) and not otherwise functioning improperly.

Section 7.5 Sealing of Metering Systems

- (a) The Metering System and the Back-Up Metering System shall be jointly sealed by the Parties.
- (b) Seals on the Metering System shall be broken only by the Purchaser acting in accordance with the terms of this Agreement. The Purchaser shall provide the Seller at least forty-eight (48) hours advance notice of the breaking of seals on any part of the Metering System. Such notice shall specify the time at which a meter seal shall be broken by Purchaser's personnel, and the Seller shall be provided the opportunity to be present when such seals are broken.
- (c) Seals on the Back-Up Metering System shall be broken only by the Seller's personnel acting in accordance with the terms of this Agreement. The Seller shall provide the Purchaser at least forty-eight (48) hours advance notice of the breaking of seals on any part of the Back-Up Metering System. Such notice shall specify the time at which a meter seal shall be broken by the Seller personnel, and the Purchaser shall be provided the opportunity to be present when such seals are broken.
- (d) If any seal securing the Metering System or the Back-Up Metering System is found to be broken, or if the Metering System or the Back-Up Metering System has been found to have been tampered with, and, in either case, the Metering System is found to be inaccurate by more than one-half of one percent (0.5%) or is otherwise unavailable or functioning improperly, then the provisions of Section 7.4(d) shall apply to determine the correct amount of Delivered Net Energy.

Section 7.6 Repair, Replacement or Recalibration of Metering System and Back-Up Metering System

- (a) If any component of the Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Purchaser shall forthwith repair, recalibrate or replace such component of the Metering System at its own cost and expense.
- (b) If any component of the Back-Up Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Seller shall forthwith repair, recalibrate or replace such component of the Back-Up Metering System at its own cost and expense.
- (c) Upon completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Back-Up Metering System, as the case may be, such Metering System and Back-Up Metering System shall be jointly sealed in accordance with Section 7.5.

Section 7.7 Protective Devices

- (a) No later than [·] prior to the Commercial Operations Date, and in any event before any Delivered Net Energy is delivered from the Complex to the Interconnection Point, the Seller shall, at its own cost and expense, procure, install, and maintain as operational the following equipment:
 - (i) A communications unit in the control room of the Complex compatible with the Control Centre's PBX system, so as to permit voice communications between the Complex and the Control Centre; and
 - (ii) Equipment in the Complex to transmit and receive facsimiles.
- (b) Selection and installation of items to be provided by the Seller in accordance with this Section 7.7, shall be subject to the prior written approval of the Purchaser.

ARTICLE VIII
TESTING OF THE COMPLEX

Section 8.1 Testing Programme

- (a) The Seller shall provide to the Purchaser, on an on-going basis, all relevant information regarding its programme for testing the Complex and the schedule therefor. Not less than [●] Days prior to the commencement of such test programme, the Seller shall deliver to the Purchaser in writing the final testing programme for the Complex, including a tentative schedule for conducting all tests required under this Article VIII. The Seller shall advise the Purchaser in writing of any changes in its final schedule for the testing programme not less than [●] Days prior to commencement of the tests. Such final schedule shall not materially increase or advance the timing of the Purchaser's obligations under this Agreement, without the prior written consent of the Purchaser. If the schedule for any tests is adjusted after the Seller has provided the Purchaser with the final testing programme schedule, then the Seller shall advise the Purchaser not less than [●] hours prior to the commencement of any such test(s). On each Day beginning with the Day on which testing commences, the Seller shall provide the Purchaser with a schedule of the tests to be conducted on the following Day or Days (if such tests will continue for more than one (1) Day). All testing of the Complex shall satisfy the Commissioning and test criteria provided in this Article VIII.
- (b) If the Purchaser is unable to accommodate the schedule for the Commissioning Tests as provided by the Seller, the Seller may perform the Commissioning Tests in the presence of the Engineer; provided, however, that should the Purchaser defer or delay any Commissioning Tests beyond fifteen (15) Days from the date on which the tests were finally scheduled and such deferral or delay causes the Scheduled Commercial Operations Date of the Complex to be delayed or deferred, as certified by the Engineer, then, for the entire duration of such delay, from the Scheduled Commercial Operations Date prevailing prior to such delay or deferral, the Purchaser shall pay to the Seller Monthly, in arrears, an amount equal to the Carrying Costs, plus fifty percent (50%) of the Insurance Component, plus fifty percent (50%) of the Fixed O&M Local Component of the Energy Price multiplied by the Average Daily Energy.

For each Commissioning test or Commissioning Test delayed or deferred by the Purchaser, such payments shall commence on the Scheduled Commercial Operations Date prevailing immediately prior to such delay or deferral and shall continue until the earlier of — (i) the end of a period equal to the period of delay or deferral of such Commissioning test or Commissioning Tests; and (ii) the completion of the first attempt of such Commissioning Test (whether successfully completed or not); provided, however, that payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of the Certificate

of Readiness for Commissioning Tests and a certificate stating that the delay or deferral caused by the Purchaser would be likely to cause the then scheduled relevant Commissioning Tests to be delayed or deferred. In addition to the payment of the Carrying Costs, plus fifty percent (50%) of the Insurance Component, plus fifty percent (50%) of the Fixed O&M Local Component of the Energy Price multiplied by the Average Daily Energy, if the delay or deferral of such Commissioning Tests by the Purchaser continues beyond one hundred fifty (150) Days following the date of issuance by the Engineer of the two (2) certificates referred to in this Section, then the Purchaser shall also be required to pay the principal debt payments (Loan Repayment Component) in accordance with the Tariff Determination; provided however, that such principal debt payments (Loan Repayment Component) made by the Purchaser under this Section 8.1(b); shall be recovered, together with interest at KIBOR plus 3% per annum (on the monthly outstanding balance of such amounts, commencing on the date of such payments by the Purchaser and ending on the date of complete repayment thereof by the Seller), through successive deductions of the Return on Equity Component from the Monthly Energy Payments until the aforesaid amounts have been completely recovered. Such principal debt payment (Loan Repayment Component) shall be due from the Purchaser on the later of thirty (30) Days following receipt of an invoice therefor the due date for such payment under the Financing Documents. Such payments shall continue until the earlier of — (i) the end of a period equal to the period of delay or deferral of any Commissioning test or Commissioning Tests; and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not). In addition, the Required Commercial Operations Date shall be extended on a Day-For-Day basis by the number of Days any of the Commissioning Tests are delayed due to the Purchaser, as certified by the Engineer in accordance with this Section.

The Purchaser shall have no obligation to make the payments provided for in this Section 8.1 if and to the extent the delay in the programme of Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests. If payments by the Purchaser under this Section 8.1 shall have commenced or the obligation for such payments shall have accrued, the Complex shall be tested at the first available opportunity thereafter. Except as provided in Section 6.5, this Section 8.1, Section 15.6 and Section 16.2(h), the Seller shall be entitled to no other penalty or claim for damages under this Agreement as a result of delay or deferral of the Commissioning Tests by the Purchaser.

Section 8.2 Tests Prior to Synchronization of the Complex

Prior to synchronization of the Complex with the Grid System, the Seller shall, in the presence of the Engineer (other than for tests relating to (a), (b) and (c) below), carry out or cause the Contractors to carry out the following tests and/or shall produce "factory acceptance test" (FAT) reports and/or "site

test results” (as the case may be) as mentioned in this Section 8.2:

- (a) FAT reports in relation to automatic voltage regulator setting and adjusting in stand-still condition. Site test results with the generator running at no load;
- (b) Site test results in relation to turbine governor-control checks, including turbine over-speed test;
- (c) FAT report in relation to open and short circuit tests on each generator;
- (d) functional testing and timing of high-voltage switchgear in the switchyard of the Complex;
- (e) the Seller and the Purchaser shall verify that the protection level settings for the following through site simulation tests:;
 - (i) stator earth fault;
 - (ii) negative phase sequence;
 - (iii) generator transformer over-current and earth fault; and
 - (iv) high voltage bus-bar protection;
- (f) voltage phasing checks will be carried out between the sub-station of the Complex and the Grid System; and
- (g) all inter-tripping circuits between the Complex and the Purchaser’s equipment installed will be proved.

The Engineer shall be given not less than twenty-four (24) hours notice of such tests (and any re-tests thereof) and shall have an opportunity to be present at and observe all such tests.

Upon carrying out of the tests set forth in this Section 8.2 to the Engineer’s satisfaction, the Engineer shall deliver to the Seller and the Purchaser the Certificate of Readiness for Synchronization.

Section 8.3 Tests Upon and After Synchronization of the Complex and Commissioning Tests

After first synchronizing the Complex, initial operational testing of the Complex shall be conducted by the Seller or its Contractors. On being satisfied that the Complex is capable of continued reliable operation, the Seller shall request the Engineer to issue the Certificate of Readiness of Commissioning Tests. Upon issuance of the Certificate of Readiness of Commissioning Tests, the Seller shall so notify the Purchaser and carry out or cause its Contractors to carry out, the following tests (the “**Commissioning Tests**”) and/or shall produce “factory acceptance test” (FAT) reports and/or “site test results” (as relevant) as mentioned in this Section 8.3, which, if the Complex satisfies the minimum performance criteria therefor, will result in the

Complex being Commissioned and in the establishment of the Commercial Operations Date in accordance with Section 8.4:

- (i) Reliability Run Test: A test for a period of twenty four (24) hours, which shall include three (3) continuous hours at maximum continuous rating however any interruption caused due to Grid (in)stability or failure shall not be considered as interruption to this test (“**Reliability Run Test**”);

The Seller shall give the Purchaser no less than twenty four (24) hours prior written notice of the first Reliability Run Test. The Purchaser may observe the Reliability Run Test. The Seller shall be entitled to carry out as many Reliability Run Tests as are required to satisfy the relevant criteria.

- (ii) Contract Capacity Test: A test (“**Contract Capacity Test**”) in accordance with the following criteria:

- (A) The Contract Capacity shall be determined/finalised by measuring the electrical energy at the delivery point recorded by the Metering System while all generating units are operating at 100% base load.

- (B) The test shall be conducted for three (3) continuous hours based on the relevant ASME, ISO and IEC standards for the plant using plant instrumentation and the Metering System in the presence of the Engineer. For the avoidance of doubt: (i) the Seller can request for up to three (3) attempts to carry out the aforementioned testing; (ii) the Seller may at its sole discretion interrupt any such test (during the three (3) hour testing period) and thereafter request for repetition of such test after a minimum of forty-eight (48) hours; (iii) the Purchaser shall ensure the availability of the necessary Grid System Frequency and Grid System Voltage – and any interruption caused by the non-availability of (or faults in) the Grid System shall not affect the overall testing time of three (3) hours; (iv) during such testing, normal auxiliaries shall remain in operation; and (v) colony/residential load shall be accounted for while calculating the net electrical load (in case the colony/residential lodge is attached to the plant load).

- (C) At the end of the testing period, the Seller shall record the new reading of the Metering System; and the Contract Capacity (as determined by such test) shall be the difference between the reading taken at the end of the abovementioned three (3) hour period and the reading taken at the beginning of such period, divided by three (3). Upon completion of the Contract Capacity test the Engineer shall issue a certificate (the “Capacity Test

Certificate”) which shall finally determine the Contract Capacity.

- (iii) FAT in relation to automatic voltage regulator droop;
- (iv) FAT in relation to turbine governor operation; such FAT shall be based on mechanical run test of turbine at manufacturer’s facility. In addition, over speed trip (mechanical and electronic) shall be performed on Site and the site test results shall be provided;
- (v) OEM Generator capability curve shall be provided in relation to reactive capability;
- (vi) Not Used;
- (vii) Not Used;
- (viii) Not Used

After successful completion of the Commissioning Tests)and the issuance of the Capacity Test Certificate, the Engineer shall issue a Certificate of Commissioning of the Complex to the Purchaser and the Seller.

Section 8.4 Commercial Operation Date

The Commercial Operations Date shall occur as of the first Day after the Day the Capacity Test Certificate and theCertificate of Commissioning of the Complex is issued by the Engineer pursuant to Section 8.3.

Section 8.5 Copies of Test Results and Certificates

The Seller shall provide the Purchaser with copies of the test results of all tests performed pursuant to Sections 8.2 and 8.3,and after every general overhaul of the steam turbine generator. The Engineer shall provide the Purchaser and the Seller with copies of all certificates issued by the Engineer pursuant to Sections 8.2 and 8.3. The Purchaser shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

Section 8.6 Scheduling and Accommodation of Additional Tests

Not Used.

Section 8.7 Testing Disputes

Any Dispute between the Seller and the Purchaser arising under this Article VIII shall be resolved in accordance with the provisions of Article [XVIII](#); providedthat, in the case of a Dispute as to the successful completion of the Commissioning Tests, as certified by the Engineer, such Dispute shall be referred to the Expert, and the determination of the Expert under Section 18.2 shall be implemented and followed by the Parties prior to

and pending any further dispute resolution proceedings pursued by a Party under Section 18.3.

Section 8.8 Payment for Delivered Net Energy prior to Commercial Operations Date and during Testing

- (a) For any Delivered Net Energy delivered after synchronization of the Complex to the Grid System and prior to the Commercial Operations Date, the Purchaser shall pay the Seller the Pre-COD Energy Price in accordance with Section 9.4 and 9.5.
- (b) The Purchaser shall have no obligation to pay for any Delivered Net Energy delivered to the Interconnection Point during testing except as provided in Section 8.8(a).

ARTICLE IX
COMPENSATION, PAYMENT AND BILLING

Section 9.1 Payments for the Monthly Energy

Pursuant to Section 3.1 (b) & Section 5.2 and subject to Section 9.5 (c), from and after the Commercial Operations Date, the Purchaser shall pay to the Seller (Monthly in arrears) the Energy Payment (comprising of the Monthly Variable Energy Payment and the Monthly Fixed Energy Payment) for the Monthly Energy of the relevant Month (or part-Month), (the “**Monthly Energy Payment**”) in accordance with the procedures specified in Section 9.4, such payments being calculated in accordance with the provisions of Part II of Schedule 1.

Section 9.2 Pass-Through Item(s); Supplemental Tariffs

- (a) Subject to Section 9.5(c), the Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.4 any amount for the Pass-Through Item(s) evidenced in accordance with the provisions of this Agreement and Schedule 1. Each invoice for the Pass-Through Item(s) delivered to the Purchaser in accordance with Section 9.4 shall be accompanied by the original invoice(s) or payment receipts to the Seller for which recovery from the Purchaser is being sought. In addition to the other Pass-Through Items specified in this Agreement, if and to the extent required to be paid by the Seller under the Laws of Pakistan, the Seller shall be entitled to recover as Pass-Through Items, any payments made by the Seller into the Workers’ Welfare Fund and the Workers’ Profit Participation Fund for its employees in accordance with the Laws of Pakistan.
- (b) Subject to Section 9.5(c), the Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.4, the Supplemental Tariffs, calculated in accordance with Schedule 1, and shall be invoiced in the same manner and on the same schedule as invoices for the Energy Payment.

Section 9.3 Liquidated Damages

- (a) Without prejudice to the Purchaser’s rights under Article [XVI](#), the Parties agree that any liquidated damages payable under this Section 9.3 shall be the Purchaser’s sole and exclusive remedy against the Seller in respect of the matters to which such liquidated damages relate.
- (b) If the Seller is in breach of its obligation under Section [4.1](#)(b) to achieve the Commercial Operations Date (unless such breach is attributable to breach or default by the Purchaser of its obligations hereunder or by the GOP of its obligations under the Implementation Agreement or a Force Majeure Event) by the Required Commercial Operations Date, then for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved,

the Seller shall pay the Purchaser as liquidated damages an amount equal to two and one-half Dollars (\$ 2.50) per kW of the Contract Capacity, per Month (prorated Daily) until the Commercial Operations Date is achieved. The Parties acknowledge and agree that it would be difficult, if not impossible, at the date of this Agreement to determine with precision the amount of damages that would or might be incurred by the Purchaser as a result of the Seller's failure to perform those matters for which liquidated damages are provided under this Section 9.3.

- (c) Not used
- (d) The Parties agree that the amounts of liquidated damages provided under this Section 9.3 are in lieu of actual damages, and are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

Section 9.4 Billing

- (a) On or after the first (1st) Business Day of each Month following the Commercial Operations Date, the Seller shall submit an invoice complete in all respects stated in Rupees to the Purchaser, for the following:-
 - (i) the Energy Payment, comprising of the Monthly Variable Energy Payment and the Monthly Fixed Energy Payment, due in respect of the previous Month (or part-Month) calculated in accordance with the provision of Part II of Schedule 1 along with such other information and calculation, in reasonable detail, so as to enable the Purchaser to confirm that the calculation of the amount shown in the invoice comply with the provision of this Agreement and Schedule 1;
 - (ii) Pre-COD Energy Price for all Delivered Net Energy after synchronization of the Complex to the Grid System and prior to the Commercial Operations Date and due in respect of the relevant Month (or part-Month), determined in accordance with Section 8.8. Such invoice shall set forth the Pre-COD Energy Price, as determined in accordance with Section 8.8, the Delivered Net Energy delivered during such period, and such other information and calculations, in reasonable detail, so as to enable the Purchaser to confirm that the calculations of the amount(s) shown in the invoice comply with the provisions of this Agreement.
 - (iii) any Pass-Through Item due in respect of the previous Month (or part-Month), in accordance with Schedule 1;
 - (iv) any Start-Up Charges due in respect of the previous Month (or part-Month) as determined in Schedule 1;

- (v) any interest payable hereunder on amount(s) not paid by the Due Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amount(s) claimed in the invoice; and
- (vi) any Supplemental Tariff due in respect of the previous Month (or part Month) in accordance with Schedule 1.
- (vii) Sales Tax payable on the sale, exportation, generation or delivery of electricity by the Complex.

The invoice must be accompanied by such supporting information, including the applicable determination of NEPRA for the adjustment/ indexation as notified in the Official Gazette, as may reasonably be necessary to substantiate the amounts and reference quantities utilized as claimed in the invoice. Such supporting information shall include, *inter alia* the relevant Foreign Exchange Bulletins showing the applicable exchange values between the Rupee and the Dollar; the relevant GOP Bureau of Statistics publication showing the relevant wholesale price index values; evidence of the relevant US Treasury Rates, KIBOR and LIBOR values, as applicable; original invoices or payment receipts for any Pass-Through Items claims; and paper and electronic copies of meter readings showing the Delivered Net Energy delivered during testing.

- (b) At any time after the first (1st) Business Day of each Month:-
 - (i) The Purchaser shall submit an invoice to the Seller for the delivery of energy by the Purchaser at the Interconnection Point to the Complex in the preceding Month, at the then prevailing rate under the relevant distribution company's bulk supply tariff category C-3 (or any substitute tariff category, as approved by NEPRA from time to time);
 - (ii) The Purchaser may submit an invoice to the Seller stated in:
 - (A) Dollars for the amount of liquidated damages due to the Purchaser under Section 9.3(b) of this Agreement, for the previous Month (or part-Month); and
 - (B) Rupees for any interest payable hereunder on such amount not paid by the Due Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.
- (c) Either Party may require clarification or substantiation of any amount included in an invoice or statement submitted under Section 9.4(a) or (b) by delivering notice of such requirement to the other Party. The Party receiving such request shall provide the requested clarification and substantiation of such invoice or statement within five (5) Business Days of its receipt of such request.

Section 9.5 Payment

- (a) Subject to Section 9.6,

- (i) the Purchaser shall pay the Seller the amount shown on an invoice delivered in accordance with Section 9.4(a), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Purchaser; and
- (ii) the Seller shall pay the Purchaser the amount shown on an invoice delivered in accordance with Section 9.4(b), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth(30th) Day following the Day the invoice is received by the Seller,

(in each case, the “**Due Date**”); provided that, if such date is not a Business Day, the Due Date shall be the next following Business Day.

- (b) Any invoice delivered pursuant to this Article IX shall be paid in Rupees, except any invoice delivered under Section 9.3(b), which shall be paid in Dollars or Rupee equivalent (at the prevailing exchange rate on the date of payment).
- (c) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party, and are undisputed or have been determined to be payable by the Expert or through arbitration under Article 18.
- (d) Late payments by either Party, of amounts due and payable under this Agreement, shall bear interest at a rate per annum equal to the Delayed Payment Rate, prorated Daily.
- (e) The Purchaser’s obligation to pay any amount under this Agreement shall remain in full force and effect, and shall not be affected by the provisions of the Guarantee, except to the extent that the Purchaser’s obligation to the Seller has been discharged in accordance with the Guarantee.
- (f) Payments received by either Party shall be applied against outstanding invoices on the ‘first in, first out’ principle, so that the invoices that have been outstanding the longest (in whole or in part) shall be paid first.
- (g) Reference Tariff, Indexations and adjustment factors shall be determined by NEPRA in accordance with the Tariff Determination.
- (h) The Purchaser shall have no obligation to make any payment for the Supplemental Tariff including, Pass-Through Items or other payments required under Section 9.2, unless the supporting information and data required under Section 9.2 with respect thereto are provided to it.

Section 9.6 Payment Disputes

- (a) At any time within three hundred and sixty (360) Days after receipt of an

invoice, a Party may serve notice on the other Party that the amount of such invoice (or part thereof) is in dispute. Such notice shall specify the invoice concerned and the amount in dispute, providing reasons as complete and as detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice, to dispute resolution in accordance with Article XVIII.

- (b) Upon resolution of the Dispute under Article XVIII, any amounts disputed and not paid but determined to be owed by a Party, or any amounts paid and determined not to be owed, shall be paid or repaid to the other Party (or offset as provided in Section 9.5 (c)), as the case may be, within seven (7) Business Days after such resolution, together with interest thereon from, but excluding, the date initially owed or paid until, and including, the date paid or repaid, as the case may be, at the Delayed Payment Rate.
- (c) Following such resolution or determination by an Expert, neither Party may refer a Dispute regarding such matter to arbitration under Section 18.3, unless and until it has paid all amounts resolved or determined to be payable in accordance with Section 9.6(b).

Section 9.7 Supporting Data

- (a) The Seller shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the Energy Price, Energy Payment(s), any Pass-Through Items, any Supplemental Tariffs, and any other claims for payment or recovery of costs or expenses made by the Seller under this Agreement. All such records and data shall be maintained for a period of not less than thirty-six (36) Months following the last date on which such data and information was generated, obtained or received by the Seller for payment by the Purchaser.
- (b) The Purchaser shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the invoices for liquidated damages and any other claims for payment or recovery of costs or expenses made by the Purchaser under this Agreement. All such records and data shall be maintained for a period of not less than thirty-six (36) months following the last date on which such data and information was relevant for claims by the Purchaser for payment by the Seller.

Section 9.8 Reserve Fund

- (a) On or before the Commercial Operations Date, the Seller shall establish and maintain, for the remaining Term, a separate reserve fund for the payment of expenses described in Section 9.8(c) (the “**Reserve Fund**”) with a depository institution and under depository agreements reasonably satisfactory to the Purchaser and not inconsistent with this Agreement. On termination of this Agreement, all amounts in the Reserve Fund shall be payable to the Seller.

- (b) The Reserve Fund shall be funded by the Seller out of retained earnings, commencing on the date that the first Monthly Fixed Energy Payment and Monthly Variable Energy Payment is made. On each date of payment of the Energy Payment(s), one thirty-six (1/36th) of the annual operating and maintenance budget for the Complex will be deposited into the Reserve Fund until a reserve equal to nine (9) such deposits has been established. After the second Agreement Year, and at any time thereafter, the Reserve Fund may be re-established at such other level that the Parties agree is appropriate for a facility of this size and type, considering Prudent Utility Practices, the design, technology and operating history of the Complex, and other pertinent information. Any investment income resulting from the depository arrangements of the Reserve Fund shall remain in the Reserve Fund; provided, however, that so long as no Seller Event of Default exists, any monies in excess of the minimum deposit required above may be paid to the Seller upon its request.
- (c) Monies in the Reserve Fund may be drawn on and used by the Seller: (i) to pay Major Maintenance Expenses (as defined herein below), and (ii) only to the extent the Seller lacks other available funds therefor, for the purpose of paying maintenance and associated operating expenses in respect of the Complex, or to pay for alterations, repairs, improvements, renewals and replacements in respect of the Complex, as may be necessary for the proper operation of the Complex.

As used herein, “**Major Maintenance Expenses**” means expenses for an item of maintenance or repair of the Complex which requires material expenditure, and which is anticipated to be performed in accordance with the manufacturers’ recommendations, sound engineering practices or Prudent Utility Practices, but which is not expected to be performed on an annual or more frequent basis.

- (d) (i) If, after withdrawal of any funds from the Reserve Fund for payment of Major Maintenance Expenses, as described in Section 9.8(c)(i), the amount in the Reserve Fund is less than the amount required pursuant to Section 9.8(b), the Seller shall replenish the Reserve Fund by depositing funds therein in accordance with Section 9.8(b).
- (ii) If, after the withdrawal of any funds from the Reserve Fund for the purpose described in Section 9.8(c)(ii) hereinabove, the amount remaining in the Reserve Fund is less than the amount required pursuant to Section 9.8(b) above, the Seller shall replenish the Reserve Fund by depositing therein, within one (1) Month after the end of such Month in which such withdrawal occurs, an amount sufficient to restore the amount required in Section 9.8(b). Such amount shall be paid out of fifty percent (50%) of each of the Fixed O & M Component (Local), Insurance Component and Return on Equity Component of the Monthly Fixed Energy Payment available during the Month; provided, however, that if the Seller’s net cash flow is insufficient to fund the Reserve Fund at the required level, any shortfall shall be carried over

and shall be due the following Month(s).

- (e) The Seller shall keep accurate records in respect of the Reserve Fund and all disbursements therefrom and shall, upon the Purchaser's reasonable request, supply a complete accounting or independent audit thereof to the Purchaser.
- (f) Separate accounts established at the request of the Lenders, pursuant to the Financing Documents, for the purpose of paying maintenance and associated operating expenses that in all material respects satisfy the provisions of this Section 9.8, shall satisfy the Seller's obligation to maintain a Reserve Fund hereunder. In addition, if and so long as the Seller has in effect a maintenance agreement that provides annual maintenance and necessary overhauls, such agreement shall satisfy the requirements for the maintenance of the Reserve Fund hereunder.

ARTICLE X
LIABILITY

Except as required by Section 11.1 and Section 19.13(c), neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. The Parties agree that any liquidated damages expressly required to be payable by either Party under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other under the Laws of Pakistan with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

ARTICLE XI
INDEMNIFICATION

Section 11.1 Indemnification

- (a) The Purchaser. Except if specifically provided elsewhere in this Agreement, the Purchaser shall indemnify and defend the Seller, for itself and as trustee for its officers, directors and employees against, and hold the Seller, its officers, directors and employees harmless from, at all times after the date hereof, any and all Loss incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Seller, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Purchaser in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 11.1(a) shall apply to any Loss in respect of and to the extent which the Seller receives proceeds from insurance policies or indemnification from another party.
- (b) The Seller. Except if specifically provided elsewhere in this Agreement, the Seller shall indemnify and defend the Purchaser, for itself and as trustee for its officers, directors and employees against, and hold the Purchaser, its officers, directors and employees harmless from, at all times after the date hereof, any and all Loss, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Purchaser, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Seller in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 11.1(b) shall apply to any Loss in respect of and to the extent to which the Purchaser receives proceeds from insurance policies or indemnification from another party.
- (c) Joint Negligence. In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.
- (d) Survival. The provisions of this Section 11.1 shall survive for a period of five (5) years following termination of this Agreement.

Section 11.2 Assertion of Claims to Exceed Minimum Indemnification Amount

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Agreement Year, exceed

the Minimum Indemnification Amount. For purposes of this Section 11.2, a Loss (or claim for indemnification) shall be deemed to arise in the Agreement Year in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Agreement Year, in the Agreement Year such event ends.

Section 11.3 Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party for non-compliance with the applicable Laws of Pakistan, unless they result directly from an act or omission of the other Party (in which case, they shall be reimbursed by the other Party), shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

Section 11.4 Defense of Claims

- (a) The indemnifying Party shall be entitled, at its option and expense and with counsel of its choice, to assume and control the defense of such indemnified claim, action, suit or proceeding, subject to the prior approval of the indemnified Party; provided, however, it gives prompt notice of its intention to do so to the indemnified Party, and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defense.
- (b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 11.4(a), the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own choice, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party.
- (c) Upon assumption by the indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defense of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defense.
- (d) Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party; provided, however, that after agreeing in writing to indemnify the indemnified Party as per Section 11.4(a) and Section 11.4(b), the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party.

- (e) Following acknowledgment of the indemnification and assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless — (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party; (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action; (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party, to assume the defense of such action, and shall have been so notified by the indemnified Party; or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party, either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying Party, or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. In the event that Clauses (ii), (iii) or (iv) of the preceding sentence are applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder and be paid by the indemnifying Party.

Section 11.5 Notice of Claims

Each Party shall promptly notify the other Party of any Loss, claim, proceeding or other matter in respect of which it is or may be entitled to indemnification under this Article XI. Such notice shall be given as soon as is reasonably practicable after the relevant Party becomes aware of such Loss, claim, proceeding or other matter.

ARTICLE XII
INSURANCE

Section 12.1 Maintenance of Insurance Policies

- (a) Subject to the provisions of this Article XII, the Seller, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term, the policies of insurance set forth in Schedule 5 with a financially sound insurer or insurers; provided, however, that such amounts may be altered by the Seller from time to time, with notice to the Purchaser; provided, further, that the Seller shall not be in breach of its obligations hereunder if and to the extent that any particular insurance is not available to it under commercially reasonable terms and for commercially reasonable rates for reasons other than any negligence or default by, or condition (financial or otherwise) of, the Seller;

- (b) The Seller shall provide to the Purchaser copies of all insurance policies that may have been acquired by the Seller pursuant to this Article XII.

Section 12.2 Maintenance of “Occurrence” Form Policies

Not Used.

Section 12.3 Policy Endorsements

Not Used

Section 12.4 Endorsements to Fire and Perils and Machinery Breakdown Policies

Not Used

Section 12.5 Certificates of Insurance

Not Used

Section 12.6 Insurance Reports

Not Used.

ARTICLE XIII
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 13.1 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Purchaser that:-

- (a) The Seller is a public limited company, duly organized, validly existing and in good standing under the Laws of Pakistan, and has, so far as it is material to the Purchaser, complied fully with all requirements of the Companies Ordinance (XLVII) of 1984 and all other applicable Laws of Pakistan.
- (b) The Seller has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Seller:
 - (i) has been duly authorized by all requisite corporate action on the part of the Seller, and no other proceedings on the part of the Seller or any other Person are necessary for such authorization; and
 - (ii) will not:
 - (A) violate:
 - (1) the Laws of Pakistan or any applicable order of any Public Sector Entity; and
 - (2) any provision of the Memorandum and Articles of Association of the Seller; or
 - (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Seller is a Party or by which the Seller or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Seller or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Purchaser, this Agreement constitutes a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to:
 - (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and

- (ii) to general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for the Seller Consents, no filing or registration with, no notice to and no permit, authorization, Consent or approval of, any Person is required for the execution, delivery or performance of this Agreement by the Seller.
- (e) The Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding or investigation pending or, to the Seller's knowledge, threatened, (i) for dissolution of the Seller, or (ii) against the Seller which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.

Section 13.2 Certificates

Upon request by the Purchaser, the Seller shall deliver or cause to be delivered to the Purchaser, from time to time, certifications of its officers, accountants, engineers, or agents as to the performance of its obligations under this Agreement, including a certificate by the Engineer regarding compliance of the Complex with the provisions of this Agreement and the Environmental Standards, and as to such other matters as the Purchaser may reasonably request; provided, however, that the Purchaser shall be entitled to request each certificate from such accountants, engineers or agents only once within any twelve (12) Month period.

Section 13.3 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants that:-

- (a) It is duly incorporated under the Laws of Pakistan, and has, so far as it is material to the Seller, complied fully with all applicable Laws of Pakistan.
- (b) The Purchaser has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Purchaser:
 - (i) has been duly authorized by all requisite corporate action on the part of the Purchaser, and no other proceedings on the part of the Purchaser or any other Person are necessary for such authorization; and
 - (ii) will not:

- (A) violate:
 - (1) the Laws of Pakistan or any applicable order of any Public Sector Entity; or
 - (2) any provision of any incorporating document; or
- (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Purchaser is a Party or by which the Purchaser or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Purchaser or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Seller, this Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, subject to:
 - (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - (ii) to general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for approvals already given or obtained, no filing or registration with, no notice to and no permit, authorization, Consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Purchaser.
- (e) The Purchaser is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding or investigation pending or, to the Purchaser's knowledge, threatened, (i) for dissolution of the Purchaser, or (ii) against the Purchaser which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or on the validity or enforceability of this Agreement.

ARTICLE XIV
TAXES

Section 14.1 Taxes Applicable to the Seller

Subject to Section 14.3 and Section 14.4, all present and future federal, provincial, municipal or other lawful Taxes applicable to the Seller, the Complex, the Project and the Seller's other assets, shall be paid by the Seller, as and when required under the Laws of Pakistan. Nothing herein shall limit or restrict the provisions of Section 14.4 or Schedule 1, which allow the Seller to recover certain Taxes paid by it from the Purchaser as provided therein.

Section 14.2 Taxes Applicable to Purchaser

All present and future federal, provincial, municipal or other lawful Taxes applicable to the Purchaser, arising from or in connection with its rights and obligations under this Agreement, shall be paid by the Purchaser, as and when required under the Laws of Pakistan.

Section 14.3 Notice of Changes in Tax

- (a) If a Change in Tax occurs, or if the Purchaser or the Seller reasonably believes that a Change in Tax has occurred, which:
- (i) applies to the Complex/Project or to payments by the Purchaser to the Seller of amounts due and payable under this Agreement; or
 - (ii) causes the Seller to (A) incur any Tax Costs,(B) realize any Tax Savings, or (C) become subject to any variation in the withholding Tax payable by the Seller in respect to the Project,

then either Party may give the other Party notice of such Change in Tax (a "**Change in Tax Notice**") with reasonable details of any of the circumstances specified in clause (i) or clause (ii), hereinabove, or both. The Seller or the Purchaser shall give the other Party notice within thirty (30) Days of becoming aware of a Change in Tax resulting in a Tax Saving or a Tax Cost.

- (b) No later than forty-five (45) Days from the date of delivery of a Change in Tax Notice, the Seller shall provide the Purchaser with a detailed calculation of the relevant Tax Costs or Tax Savings or effects of the withholding Taxes resulting from the Change in Tax, in writing, accompanied by a statement from an international accounting firm or other reputable and qualified professional consultant certifying that the Seller will incur, realize or become subject to such additional Tax Costs or Tax Savings or variation in withholding Tax in relation to the Project (a "**Change in Tax Assessment**").
- (c) Either Party may, from time to time, deliver to the other Party further Change in Tax Notices and, within forty-five (45) Days of delivery of a Change in Tax

Notice, the Seller shall provide the Purchaser with a detailed calculation of any additional Tax Cost or Tax Saving in relation to the Project that has or can reasonably be expected to result from any such Change in Tax.

- (d) Neither Party may request reimbursement for any Tax Cost or Tax Saving that arises due to a Change in Tax unless it delivers a Change in Tax Notice on or before the fifth (5th) anniversary of the Day on which the Change in Tax occurs.

Section 14.4 Consequence for Tax Costs and/or Tax Savings resulting from a Change in Tax

With effect from the date on which the Change in Tax occurs:

- (a) The Purchaser shall reimburse the Seller for any Tax Costs or any increase in withholding Tax incurred or suffered by the Seller, as a Pass Through Item, calculated in accordance with Section 9.2 and Schedule 1; and/or
- (b) The Seller shall reimburse the Purchaser for any Tax Savings or any decrease in withholding Tax realized by the Seller, as calculated pursuant to the relevant Change in Tax Assessment, through an adjustment to the actual ReferenceTariff or by set-off against the Energy Payment payable by the Purchaser, as calculated in accordance with section 9.1 and Schedule 1.
- (c) Any Dispute as to the amount of the Tax Costs or Tax Savings resulting from a Change in Tax, or the amount of the Supplemental Tariffs, or the adjustment to the actual ReferenceTariff, or set-off against the Energy Payment, shall be resolved in accordance with Article XVIII.
- (d) Notwithstanding anything to the contrary contained in this Agreement, in case any Tax incentives available to the Project (or the Seller) as per the Renewable Energy Policy 2006 and the Framework for Power Cogeneration 2013 (Bagasse/Biomass) have not been notified or adopted under relevant laws accordingly by the Effective Date, then any subsequent notification or adoption of such Tax incentives shall not be construed as a Change in Tax or Tax Savings nor shall it result in a Change in Tax Notice or reimbursement by the Seller of any amounts to the Purchaser under this Agreement and the provisions relating thereto shall not apply.

Section 14.5 Disputed Taxes

In the event that the Seller or the Purchaser intends to dispute any Change in Tax, it shall provide to the other Party notice of its intention to pursue such dispute. Following delivery of such notice of intention to dispute a Change in Tax, the Party raising the dispute shall prepare and deliver to the other Party within forty-five (45) Days of the delivery of such notice, a written report in reasonable detail describing the Change in Tax, its likely effects on the Reference Tariff and the merits and probable success of the proposed dispute.

The Parties shall meet within thirty (30) Days of receipt of such report and determine whether the dispute of the relevant Change in Tax should be pursued by the Party raising the dispute. If so agreed, the Party raising the dispute shall diligently prosecute such dispute. Any costs and expenses reasonably incurred by the Seller in disputing any Change in Tax that the Parties have agreed to dispute in accordance with this Section 14.5 shall be reimbursed by the Purchaser as a Pass-Through Item in accordance with Schedule 1. Nothing in this Section 14.5 shall preclude the Seller from disputing at its sole cost and expense any Tax or Change in Tax applicable to it or from delivering a Change in Tax Notice to the Purchaser.

ARTICLE XV
FORCE MAJEURE

Section 15.1 Definition of Force Majeure

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that, on or after the Effective Date, materially and adversely affects performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party’s ability to deliver or receive energy from the Complex); provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event, that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. “**Force Majeure Events**” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirements:

- (a) The following political events that occur inside or directly involve Pakistan (each a “**Pakistan Political Event**”, and to the extent also a Force Majeure Event, a “**Pakistan Political Force Majeure Event**” or “**PPFME**”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days or more; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide.
- (b) A Change in Law (and to the extent also a Force Majeure Event, a “**Change in Law Force Majeure Event**” or “**CLFME**”); or
- (c) Other events beyond the reasonable control of the affected Party (each an “**Other Force Majeure Event**”), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
 - (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days; or

- (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
- (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation; or
- (v) epidemic or plague —.

except to the extent that in cases where any of the foregoing event(s) or circumstance(s) result directly from a Pakistan Political Event, such event(s) or circumstance(s) shall constitute a Pakistan Political Event.

- (d) Force Majeure Events shall not include the following events or circumstances:
 - (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor;
 - (iii) [breakdown in machinery or equipment; or]
 - (iv) normal wear and tear or random flaws in materials, machinery or equipment —

Provided that each of the events described in clauses (d)(i),(d)(ii), (d)(iii) and (d)(iv) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is itself a Force Majeure Event, whether experienced directly by the Seller or by one of its Contractors.

Section 15.2 Notification of Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
 - (i) give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, no later than the later of forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event(s), or six (6) hours after resumption of any means of providing notice between the Seller and the Purchaser; and
 - (ii) give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters, as soon as practicable but, in any event, no later than seven (7) Days after the

initial notice of occurrence of the Force Majeure Event(s) is given by the affected Party pursuant to Section 15.2.(a)(i).

When appropriate or when reasonably requested so to do by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects to be unable to carry out any of its affected obligations due to the Force Majeure Event(s).

- (b) The affected Party shall provide notice to the other Party of: (i) the cessation of the Force Majeure Event notified under Section 15.2(a) together with an estimate of the date it would be able to recommence performance of its obligations under this Agreement; and (ii) the date it was able to recommence performance of its obligations under this Agreement, as soon as possible and in any event no later than seven (7) Days after the occurrence of each of the events mentioned in clauses (i) and (ii) hereabove.
- (c) Failure by the affected Party to have given written notice of a Force Majeure Event to the other Party within the six (6) hour period or forty-eight (48) hour period required by Section 15.2(a), shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Section 15.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If the aforesaid notice is given within the forty-eight (48) hour period or six (6) hour period required by Section 15.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 15.4, from the date of commencement of the relevant Force Majeure Event.

Section 15.3 Duty to Mitigate

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

Section 15.4 Delay Caused by Force Majeure

So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 15.3, and continues so to comply, then:

- (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a

payment) under or pursuant to this Agreement, during the existence of a Force Majeure event; and

- (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended;

provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 15.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred;

provided, further, that, in the case of a Force Majeure Event which damages the Complex, in no event shall the date by which performance obligations of the affected Party are to be satisfied in effecting the Restoration, as provided under this Agreement, be extended beyond the end of the Restoration Period.

Other than for breaches of this Agreement by the other Party, and without prejudice to the affected Party's rights to indemnification pursuant to Article XI or for payment pursuant to Article IX, Section 15.5, Section 15.6, Section 15.8, and Section 15.9, the other Party shall not bear any liability for any Loss suffered by the affected Party as a result of a Force Majeure Event.

Section 15.5 Payment For Delivered Net Energy During Force Majeure Event

Upon the occurrence of any Force Majeure Event after the Commercial Operations Date, the Purchaser shall pay, during pendency of such Force Majeure Event, to the Seller, Energy Payment(s) for Delivered Net Energy that the Seller is able to provide during the pendency of such Force Majeure Event.

Section 15.6 Additional Compensation

- (a) (i) In the event that a PPFME results in material damage to the Complex, or that the Seller's compliance with a CLFME requires material modification or material capital addition to the Complex (each such event referred to herein as a "**Restoration**"), the Seller shall, within thirty (30) Days after the date by which it was first required to provide notice to the Purchaser under Section 15.2(a), except if the Pakistan Political Event has not ended by the time of such notice, in which case within thirty (30) Days of the notice required by Section 15.2(b), develop and deliver to the Purchaser a preliminary written estimate (the "**Preliminary Estimate**") of:

- (A) the projected range of cost to effect the Restoration, less any insurance proceeds available or likely to become available to the Seller (the "**Restoration Cost Estimate**") and the Threshold Amount; and

- (B) a preliminary schedule for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Threshold Amount, a reasonable period to arrange the financing (such schedule, and each such schedule contained in the Report to be delivered pursuant to Section 15.7(b), shall be referred to herein as the “**Restoration Schedule**,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “**Restoration Period**”).

The Seller shall make the Preliminary Estimate as comprehensive and as complete as reasonably possible. The Parties shall meet within fifteen (15) Days of the delivery of the Preliminary Estimate, to discuss the conclusions set forth therein. As used in this Section 15.6, “**material damage**” or a “**material modification**” or “**material capital addition**” to the Complex shall mean out-of-pocket expenditures on such damage, modification or modifications or capital addition or additions, such as are or are reasonably expected to be in excess of the equivalent of: (i) US\$[] in respect of any single event resulting in damage or requiring a modification or addition; or (ii) US\$[] in the aggregate in any Year — in each case adjusted annually from the Commercial Operations Date, for changes in the United States consumer price index from the value existing on the date hereof.

- (ii) If there occurs a PPFME or a CLFME that prevents or delays the construction of the Complex or the ability of the Seller to operate the Complex or deliver Delivered Net Energy the Purchaser shall within thirty (30) Days of delivery by the Seller of an invoice therefor, pay to the Seller, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined hereinbelow) an amount equal to:

- (A) Carrying Costs, plus fifty percent (50%) of the Insurance Component, plus fifty percent (50%) of the Fixed O&M Local Component of the Energy Price multiplied by the Average Daily Energy, prorated Daily; and the principal debt payments (Loan Repayment Component), if such payment has become due under the Financing Documents, in accordance with the Tariff Determination (provided however, that such principal debt payments (Loan Repayment Component) made by the Purchaser under this Section 15.6(b)(ii)(A) shall be recovered, together with interest at KIBOR plus 3% per annum (on the monthly outstanding balance of such amounts, commencing on the date of such payments by the Purchaser and ending on the date of complete repayment thereof by the Seller), through

successive deductions of the Return on Equity Component from the Monthly Energy Payments until the aforesaid amounts have been completely recovered, or

- (B) the Fixed O&M Local Component, Insurance Component, Return on Equity Component, Interest Charge Component, Loan Repayment Component, Working Capital Costs Component and Return on Equity During Construction Component of the Energy Price multiplied by the Average Daily Energy if the PPFME or the CLFME occurs after the Commercial Operations Date (less the amount of Energy Payment(s) paid to the Seller by the Purchaser pursuant to Section 15.5).

The term “**PE Compensation Period**” shall mean the period beginning with the onset of PPFME or CLFME, as the case may be, (unless timely notice was not given under Section 15.2(a)(i) — in which case, from the time such notice was given) and ending on either, as appropriate:

- (I) the date the Seller is able to resume performance of its obligations under this Agreement, as specified in the notice pursuant to Section 15.2(b);
 - (II) the last Day of the Restoration Period (as such Restoration Period may have been extended due to an intervening Force Majeure Event, or pursuant to Section 15.9); or
 - (III) if this Agreement is terminated pursuant to Section 15.9, the Day that all compensation payable by the GOP in connection with such termination under Article XV of the Implementation Agreement is paid, notwithstanding any contrary provision of this Agreement, if this Agreement is terminated pursuant to Section 15.9, all amounts payable under Section 15.6(a)(ii) are to be paid to the Seller no later than the Day the compensation amount determined in accordance with Section 15.9 and Article XV of the Implementation Agreement is paid.
- (b) If the Seller concludes that the Restoration Cost Estimate shall be less than the Threshold Amount, and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Seller shall, subject to Section 15.6(d), proceed with the Restoration in accordance with the Restoration Schedule.
 - (c) If —
 - (i) the Seller concludes that the Restoration Cost Estimate shall be less

than the Threshold Amount, and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, notifies the Seller that the Purchaser disagrees with the Seller's conclusion and/or that it disagrees with the Restoration Schedule; or

- (ii) the Seller concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount, and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with such conclusion —

then the Seller shall proceed with the preparation of a Report and the provisions of Section 15.6(e) and Section 15.7 shall apply.

- (d) If the Seller concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount, and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, disagrees with the Preliminary Estimate, such matter (and any disagreement regarding the Restoration Schedule) shall be referred to an Expert for resolution pursuant to Section 15.7(c) within twenty (20) Days of the date the Purchaser delivers notice to the Seller that the Purchaser disagrees with the Restoration Cost Estimate. If the Expert concludes that the Restoration Cost Estimate is less than the Threshold Amount, the provisions of Section 15.6(b) shall apply. If the Expert concludes that the Restoration Cost Estimate is greater than the Threshold Amount, then the Seller shall proceed with the preparation of a Report and the provisions of Sections 15.6(e) and 15.7 shall apply.
- (e) If a Report is required to be prepared, then at the conclusion of the meetings of the Parties to discuss the Report (as provided in Section 15.7(b)), the Parties shall either agree or disagree in respect of the matters addressed therein and whether the Restoration is feasible or not.

If the Parties reach agreement on such matters, or, in the case of disagreement, after resolution pursuant to Section 15.7(c) by an Expert, the Purchaser shall, within fifteen (15) Days of such agreement or resolution, provide the Seller with a written notice of its election to either:

- (i) terminate this Agreement with the approval of the GOP and the GOP pay the applicable compensation pursuant to, as applicable, Section 15.1(c) or Section 15.1(e) of the Implementation Agreement; or
- (ii) proceed with Restoration in which case the following provisions shall apply:
 - (A) the Seller shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Purchaser. If the Seller is unable to obtain binding commitments for such financing within three hundred (300)

Days of receipt of the Purchaser's notice authorizing the Seller to proceed with Restoration, then, unless the Purchaser commits to provide financing for the Restoration within the next sixty (60) Days and provides such funds to the Seller within one hundred and twenty (120) Days thereafter, the failure to secure financing shall be treated as an election by the Purchaser to terminate this Agreement pursuant to Section 15.6(e) and Section 15.8(a), in which case the GOP shall be required to pay the applicable compensation pursuant to, as applicable, Section 15.1(c) or Section 15.1(e) of the Implementation Agreement;

- (B) if financing for the Restoration has been secured, then the Seller shall proceed with the Restoration in accordance with the Restoration Schedule set out in the Report, as amended by agreement of the Parties or resolution of the Expert, as applicable, and, upon completion of the Restoration, the Seller shall be entitled to special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be; and
 - (C) the Seller shall provide the Purchaser with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work.
- (f) If the Complex or any part thereof is damaged as a result of an Other Force Majeure Event and the Seller fails to restore the operation of the Complex within thirty (30) Days following commencement of that Other Force Majeure Event, then the Seller shall prepare and deliver a Report pursuant to Section 15.7(a).
 - (g) If, pursuant to Section 15.6(f), the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Seller can continue to meet its obligations under this Agreement, the Seller shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report.
 - (h) If pursuant to Section 15.6(f) the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Seller can continue to meet its obligations under this Agreement but the Purchaser does not agree with the Restoration Schedule contained in the Report, then the Purchaser shall notify the Seller within fifteen (15) Days of receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The Parties shall try, in good faith, to agree upon a revised Restoration Schedule. If the Parties cannot agree upon a revised Restoration Schedule within the fifteen (15) Day period following the notice, then either Party may, pursuant to Section 15.7(c), submit the matter to an Expert, to determine the proper Restoration Schedule. Notwithstanding the foregoing, the Seller shall, subject to satisfying any of the

conditions or requirements of the entity providing financing for the Restoration (including any insurance company paying a claim to the Seller), have the option to proceed with the Restoration while the issue of the Restoration Schedule is being resolved.

- (i) If, following the Commercial Operations Date, there occurs a PPFME or a CLFME that, in either case, does not require the Seller to undertake a Restoration but nonetheless has a material adverse effect on the Seller's ability to operate the Complex or to deliver Delivered Net Energy (a "**Non-Restoration Event**"), then the Purchaser shall pay to the Seller for each Month (or portion thereof) of the PE Compensation Period (as defined hereinbelow), the Energy Price multiplied by the Average Daily Energy less the amount any Energy Payment(s) paid to the Seller by the Purchaser pursuant to Sections 9.1 and 15.5. The term "PE Compensation Period" for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(ii) except for the reference to the Restoration Period.
- (j) For the purposes of this Article XV, the term "**Threshold Amount**" shall mean, for any event, an amount equal to [●] at any time prior to or on the Commercial Operations Date and such percentage decreasing annually as a straight-line basis to five percent (5%) at one year prior to the end of the Term, and remaining at five percent (5%) thereafter until the end of the Term.
- (k) Notwithstanding anything herein to the contrary, in the event of —
 - (i) the occurrence of a PPFME that has a material adverse effect on the Seller's ability to construct, commission or operate the Complex and such PPFME continues for a period exceeding one hundred eighty (180) Days, or
 - (ii) a series of such related PPFMEs that continue in the aggregate for a period that exceeds one hundred eighty (180) Days (not including the effects thereof) during any year, or
 - (iii) a PPFME or a CLFME following which the Parties agree or the Expert determines that a Restoration is not feasible, or the Purchaser decides that the cost of Restoration is not acceptable, or
 - (iv) a CLFME that effects the Seller's ability to construct, commission or operate the Complex for one hundred eighty (180) Days, and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration or allow the Complex to operate as before —

the Purchaser (with the approval of the GOP) or the Seller shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party, and, following such termination, the

GOP shall be required to pay to the Seller the compensation provided in Section 15.1 of the Implementation Agreement.

Section 15.7 Appraisal Report and Use of Expert

- (a) When required under Section 15.6(a), Section 15.6(c), Section 15.6(d), Section 15.6(f) or Section 15.7, the Seller shall commence preparation of an appraisal report (the “**Report**”) within fifteen (15) Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the Purchaser as soon as practicable, but in any event no later than sixty (60) Days thereafter. The Report shall address, in such detail as is practicable under the circumstances and accompanied by reasonable supporting data, the following matters (to the extent applicable):
- (i) in the case of a Force Majeure Event covered by Section 15.6(a) or Section 15.6(c), describe the Force Majeure Event and the damage to, and/or the other effects or impacts on, the Complex;
 - (ii) estimate in good faith the time it shall take to restore the Complex (as much as it may be possible so to do) to its condition immediately prior to the Force Majeure Event, or to bring the Complex into compliance with the Change in Law;
 - (iii) propose a Restoration Schedule; or in the case of a Force Majeure Event covered by Section 15.6(a), provide a statement and explanation in good faith regarding whether restoration or modification of the Complex or necessary capital additions are technically feasible, including the Seller’s good faith estimate of the cost to restore the Complex to its condition immediately prior to the Force Majeure Event and the associated delay costs or the costs to come into compliance with the Change in Law;
 - (iv) a revised cash flow forecast for the Complex;
 - (v) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied;
 - (vi) in the case of PPFME or a CLFME covered by Section 15.6(a), describe the plan to fund the costs of the Restoration;
 - (vii) in the case of a PPFME or a CLFME covered by Section 15.6(a), the projected Supplemental Tariff payable under this Agreement that would be required to pay special compensation under Section 15.8; and
 - (viii) in the case of a Force Majeure Event covered by Sections 15.6(a) or

15.6(c), certificates and reports of the Seller's financial and technical advisers, as appropriate or as reasonably requested by the Purchaser, in support of the applicable matters referred to in this Section 15.7(a).

- (b) Within fifteen (15) Days of delivery of a Report to a Party or such further time as the Parties may agree, the Parties shall meet to discuss the Report and any action(s) to be taken. In connection with the review by the Purchaser of a Report prepared by the Seller, the Seller shall promptly provide to the Purchaser such additional financial and related information pertaining to the Report and the matters described therein as the Purchaser may reasonably request.
- (c) The following Disputes between the Purchaser and the Seller shall be submitted to the Expert for resolution within the time period specified:
 - (i) in respect of Disputes regarding any matter set forth in a Report, no later than twenty (20) Days after expiration of the period for review and consultation provided in Section 15.7(b);
 - (ii) in respect of Disputes pursuant to Section 15.6, within the applicable period provided for in Section 15.6; and
 - (iii) in respect of whether an item of cost incurred by the Seller should be recovered as provided in Section 15.8(e), within twenty (20) Days following delivery of a written request so to do by either Party.
- (d) In addition to the requirements under Section 18.2, the Expert shall be an engineer with extensive experience in the construction and operation of electric power plants similar to the Complex selected for technical matters in accordance with Section 18.2.
- (e) If the Seller or the Purchaser reasonably believes that the cost of a Restoration is likely to exceed two-thirds ($2/3^{\text{rd}}$) of the Threshold Amount, then the Parties shall cooperate in good faith to select an Expert each time that a Preliminary Estimate is to be prepared pursuant to Section 15.6, and engage such Expert to be available in case a Dispute shall need to be resolved. The Expert shall be provided with a copy of the Preliminary Estimate and any other written materials prepared by either Party, and shall prepare himself for the eventuality of a Dispute.
- (f) Once a Dispute is referred to the Expert, each Party shall provide all materials in support of its position to the Expert and to the other Party in accordance with Section 18.2. Each Party shall use its best efforts to provide the Expert with any additional information the Expert requests. The Expert shall be charged with the responsibility of using his best efforts to render his decision regarding any referred matter within thirty (30) Days of the date of the referral. Each Party shall be responsible for paying fifty percent (50%) of the

costs of the Expert and shall pay for its own costs.

- (g) Notwithstanding any other provision in this Agreement to the contrary regarding the role of Experts in resolving Disputes, unless the Parties agree to the contrary in writing signed by both Parties at the time the Expert is selected, the decision of the Expert as to any matter referred under Section 15.6 shall be final and binding on both Parties and shall not be subject to appeal. The Parties expressly waive, to the fullest extent permitted by law, any and all rights that they may now have or may have in the future to contest the decision of the Expert before any arbitral tribunal or any court or other adjudicatory or administrative body.

Section 15.8 Supplemental Tariffs

- (a) In the case of a Force Majeure Event covered by Section 15.6(a), the Purchaser shall determine under Section 15.6(e) whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be), or terminate this Agreement. The Seller acknowledges that the Purchaser may delegate the review of a Report to any Relevant Authority, and agrees to cooperate with such Relevant Authority as if it were the Purchaser. In the case of a Force Majeure Event covered by Sections 15.6(a) or 15.6(e), the determination required to be made by the Purchaser under this Section 15.8(a) shall be made no later than fifteen (15) Days after receipt of the Report by the Purchaser; provided, however, that if any matter is submitted to an Expert for resolution pursuant to Section 15.7(c), such determination shall be made by the Purchaser no later than ten (10) Days after the Expert's decision.
- (b) In the case of a PPFME covered by Section 15.6(a), the Seller (unless this Agreement has been terminated by the Purchaser pursuant to Section 15.6(e), Section 15.8(a) or Section 15.9(b) or by either Party pursuant to Section 15.6(k)), shall be entitled to receive Supplemental Tariffs in accordance with the procedures set forth in Schedule 1 to recover, over the remainder of the Term (unless a shorter period for recovery of such costs is agreed by the Parties), the costs incurred in effecting Restoration as provided in Section 15.6(e).
- (c) In the case of a CLFME covered by Section 15.6(a), the Seller shall (unless this Agreement has been terminated by the Purchaser pursuant to Sections 15.6(e), 15.8(a) or 15.9 or by either Party pursuant to Section 15.6(k)), be entitled to receive Supplemental Tariffs in accordance with the procedures set forth in Schedule 1, to recover the costs of complying with the Change in Law, including:
 - (i) the cost of any material modifications or material capital additions to the Complex, that are necessary for the Seller to come into compliance

with the Change in Law and are approved in accordance with Section 15.8(d); and

- (ii) the cost of additional quantities or higher quality of consumables that can be directly attributed to compliance by the Seller with the Change in Law. Any reduction in cost due to a decrease in the use of quality of consumables by the Complex shall be credited to the Purchaser as provided in Section 15.8(d).

- (d) The Seller shall (unless this Agreement has been terminated by the Purchaser pursuant to Sections 15.6(e), 15.8(a) or 15.9), be entitled to receive a Supplemental Tariff such that it will recover from the Purchaser the costs actually incurred in effecting the Restoration, including, without limitation, weighted average cost of capital equal to KIBOR plus [●]determined at the time the Complex returns to operation or, if the Complex did not cease operation, at the time the Restoration is completed by the Seller. The costs to be recovered by the Seller pursuant to this Section 15.8 and Section 15.9 shall be the costs actually incurred by the Seller to effect the Restoration, to the extent those costs exceed any insurance proceeds; provided, however, that each such item of cost shall have been reasonable and appropriate for the Seller to effect such Restoration consistent with the standards for the original construction and the applicable Laws of Pakistan and Prudent Utility Practices. The Seller shall deliver a schedule of such costs to the Purchaser, together with copies of the invoices, for review by the Purchaser. If the Purchaser contests any item of cost on the basis of the foregoing standards and the Purchaser and the Seller cannot agree, the issue of whether such item of cost should be recovered under this Agreement shall be referred to an Expert pursuant to Section 15.7(c), to render a decision based on the foregoing standards.

- (e) If there is any Dispute as to whether any payment is due and payable to the Seller pursuant to this Section 15.8 or any Dispute as to the amount or timing of any such payment, then pending resolution of the Dispute, the Purchaser shall be obligated to pay to the Seller the undisputed amount. Amounts determined through the Dispute resolution procedure to be payable by the Purchaser shall be paid to the Seller with interest equal to the Delayed Payment Rate from the date payment was due to the date of payment by the Purchaser.

Section 15.9 Termination as a Result of a Force Majeure Event

- (a) If this Agreement is terminated as a result of a Force Majeure Event, then the provisions of Section 15.1 of the Implementation Agreement shall be applied to determine whether compensation is to be paid by the GOP to the Seller and the amount of such compensation.

- (b) If the Seller is required to proceed with a Restoration pursuant to Section 15.6 and the Restoration has not been or shall not be completed by the end of the Restoration Period (as such Restoration Period may have been extended due to an intervening Force Majeure Event), or within the Restoration Cost Estimate, then the Seller may, and if the Restoration Cost Estimate or Restoration Period is expected to be exceeded by fifteen percent (15%), the Seller shall, develop a revised cost estimate and schedule as soon as possible, and provide an explanation of the delay or revised cost or both to the Purchaser. If the Purchaser agrees that the delay and revised schedule, or revised cost estimate are reasonable and do not result from negligence, fault or unnecessary delay by the Seller (whether in the preparation of the Restoration Period and Restoration Cost Estimate in light of the information reasonably available at the time and under the circumstances under which the Restoration Cost Estimate and Restoration Period were required to be prepared, or in effecting the restoration, or otherwise), the Purchaser shall continue to make the payments required under this Article XV. If the Purchaser does not accept the explanation or the revised schedule or cost estimate, the matter shall be referred to an Expert selected pursuant to Section 15.7(c) for resolution, and the Purchaser shall continue to make the appropriate payments pending resolution of the dispute by the Expert.
- (c) The Expert shall make its determination with respect to the revised schedule or revised cost and the Seller's liability therefor within thirty (30) Days of such referral. If the Expert determines that the delay was not reasonable and that it was due to the Seller's negligence, fault or unnecessary delay, the Restoration Period shall not be revised and the provisions of Section 15.9(d) shall apply. If the Expert concludes that the delay was reasonable under the circumstances and not due to the negligence, fault or unreasonable delay of the Seller, the Expert shall fix the revised Restoration Period and Restoration Cost Estimate. If the revised Restoration Cost Estimate is more than one hundred and fifteen percent (115%) of the Restoration Cost Estimate, or the revised Restoration Period is more than one hundred and fifteen percent (115%) of the Restoration Period, the Purchaser with the approval of the GOP may elect to terminate this Agreement, unless the Seller elects to attempt to complete the Restoration during the Extended Period. Upon such termination, the provisions of Section 15.10 of this Agreement, and as applicable, Section 15.1(c) or Section 15.1(e) of the Implementation Agreement shall apply. If the revised Restoration Cost Estimate or Restoration Period do not exceed the one hundred and fifteen percent (115%) threshold, or the Purchaser does not terminate this Agreement, the Purchaser shall continue to make payments to the Seller in accordance with Section 15.6(a)(ii) during such revised schedule period. After the end of the Restoration Period, as it may have been revised, the Purchaser shall have no further obligation to make such payments, and any additional costs incurred by the Seller to expedite completion of the Restoration shall not be included in the costs that form the basis of the tariff under Section 15.8.

- (d) Notwithstanding the provisions of Section 15.9(c), if the Restoration has not been completed by the end of the Extended Period or the end of the Restoration Period, as applicable, then, unless the Seller is diligently attempting to complete the Restoration, the Purchaser, with the written approval of the GOP, shall be entitled to terminate this Agreement upon thirty (30) Days' notice, whereupon Section 15.10 of this Agreement and, and as applicable, Section 15.1(c) or Section 15.1(e) of the Implementation Agreement shall apply. The "**Extended Period**" shall commence on the first Day following the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or revised in accordance with Section 15.9(c)), and shall end on the last Day of a period equal to twenty-five (25%) percent of the number of Days in the Restoration Schedule (as it may have been revised); provided, however, that the Extended Period shall be extended for the full period of any intervening Force Majeure Event plus the period of time necessary for the Seller to overcome the effects of the intervening Force Majeure Event.

Section 15.10 Notice of Termination

A Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Party in accordance with Section 19.1. Any such notice from the Purchaser shall be executed by a duly authorized representative of the Purchaser. A copy of any notice from the Seller shall be delivered to the GOP at the same time the notice is delivered to the Purchaser, in accordance with the provisions of Section 18.1 of the Implementation Agreement. Such notice shall identify, if applicable, the PPFME or CLFME in reasonable detail, and the basis for termination. Termination of this Agreement shall be effective at 17:00 hours on the thirtieth (30th) Day following the date of delivery of such notice.

ARTICLE XVI
TERMINATION

Section 16.1 Seller Events of Default

The following events shall be events of default by the Seller (each a “**Seller Event of Default**”) — provided, however, that no such event shall be a Seller Event of Default if it is caused in whole or material part by: (i) the Purchaser’s breach or default under, this Agreement (including any Purchaser Event of Default), (ii) the GOP’s breach or default under, the Implementation Agreement (including any GOP Event of Default thereunder), or (iii) if it occurs as a result of a Force Majeure Event (except in the case of Section 16.1(c)) —

- (a) the Seller’s failure:
 - (i) to achieve the Financial Closing within ninety (90) Days following Effective Date; or
 - (ii) to achieve the Commercial Operations Date no later than four hundred (400) Days after the Required Commercial Operations Date;
 - (iii) after the Financial Closing, but prior to the achievement of the Commercial Operations Date, to prosecute the Project in a diligent manner for a period of thirty (30) consecutive Days without prior notice to and prior written consent of AEDB (acting on behalf of the GOP); or
- (b) Not Used;
- (c) the Seller’s failure:
 - (i) to pay any amount due from it under the provisions of Section 9.4 of this Agreement by the Due Date for the relevant invoice or to make any other payment when required to be made, in each case, that is not remedied within thirty-five (35) Days following notice from the Purchaser to the Seller stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail; or
 - (ii) to post and, thereafter, maintain security in the amount required under Section 2.7 as required to be maintained by the Seller under this Agreement;
- (d) any breach by the Seller of its obligations under Section 19.9;
- (e) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to

perform its obligations under this Agreement, the occurrence of any of the following events:

- (i) for the Seller's dissolution under the Laws of Pakistan, any proceeding being validly instituted that is not stayed or suspended in ninety (90) Days, provided that, if within seven (7) days of the Seller becoming aware of such proceedings being filed, the Seller:
 - (a) confirms to the Purchaser that such proceedings relate to the recovery of a claim against the Seller that is disputed *bona fide* by the Seller as payable, and
 - (b) furnishes a certificate by its external auditors to the effect that the Seller is and will remain solvent despite payment of the claim in the said insolvency proceedings —

then, in such circumstance, the Purchaser shall not exercise its right of termination until such time that the said certificate by the auditors is revoked or otherwise ceases to remain effective and accurate;

- (ii) the Seller's resolution for the dissolution or winding up of the Seller;
 - (iii) the voluntary filing by the Seller of a winding up petition, or a request for a moratorium on debt payments or other similar relief;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Seller after notice to the Seller and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
 - (v) the making by a court with jurisdiction over the Seller, of an order for dissolution or winding up of the Seller, which order is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days;
- (f) any statement, representation or warranty by the Seller in this Agreement (or in a certificate delivered pursuant to Section 2.8) proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation or warranty having a material adverse effect on the Seller's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Purchaser under this Agreement;
- (g) the Seller's material breach or material default of or under this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.1), including any material breach or default in performance of its obligation to act in accordance with Prudent Utility Practices, which breach or default is not remedied within thirty (30) Days after notice from the Purchaser,

stating that a material breach or default under this Agreement has occurred and is continuing and identifying such material breach or default in reasonable detail;

- (h) tampering on three (3) or more separate occasions by the Seller or its Contractors or their employees acting in the course of their employment, with the Metering System or the Back-Up Metering System;
- (i) any irrevocable, unappealable and final order for termination of the Generation License (other than as a result of a Lapse of Consent);
- (j) Not Used;
- (k) the Seller's material breach of the Implementation Agreement, which results in the GOP serving a Termination Notice under Section 14.2(c) of the Implementation Agreement.

Section 16.2 Purchaser Events of Default

The following events shall be events of default by the Purchaser (each a "**Purchaser Event of Default**"); provided, however, that no such event shall be a Purchaser Event of Default if it is caused in whole or material part by the Seller's breach or default under, this Agreement (including any Seller Event of Default), or if it occurs as a result of a Force Majeure Event (except in the case of Section 16.2(b)):

- (a) (i) the Purchaser's obligations under this Agreement ceasing to be guaranteed under the Guarantee or ceasing to be guaranteed on terms and conditions which in the Seller's reasonable business judgment (taking into account, *inter alia*, the credit worthiness of the guarantor) provide an acceptable alternative to the Guarantee; or
- (ii) upon assignment by Purchaser under Section 19.9(n) —
 - (A) the obligations of the successor entity ceasing to be guaranteed under the Guarantee; or
 - (B) where a substitute guarantee is offered for performance of the successor entity's obligations, such guarantee being issued by an entity with credit rating inferior to the then prevailing credit rating of the GOP or being on terms and conditions materially inferior to the terms and conditions of the Guarantee; or
 - (C) where the successor entity does not promptly enter into a novation of the EPA Direct Agreement with the Lenders;
- (b) the Purchaser's failure to pay any undisputed amount due from it under the

provisions of Section 9.4 of this Agreement by the Due Date for the relevant invoice or to make any other payment when required to be made, in each case, that is not remedied within thirty-five (35) Days following notice from the Seller to the Purchaser stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail;

- (c) except for the purpose of amalgamation or restructuring that does not affect the ability of the amalgamated or restructured entity, as the case may be, to perform its obligations under this Agreement and provided the obligations of the amalgamated or restructured entity, as the case may be, continue to be guaranteed under the Guarantee, or continue to be guaranteed on terms and conditions which in the Seller's reasonable business judgment (taking into account, *inter alia*, the creditworthiness of the guarantor) provide an acceptable alternative to the Guarantee, the occurrence of any of the following events:
 - (i) for the Purchaser's dissolution under the Laws of Pakistan, any proceeding being validly instituted that is not stayed or suspended within ninety (90) Days;
 - (ii) the Purchaser's resolution for the dissolution or winding up of the Purchaser;
 - (iii) the voluntary filing by the Purchaser of a winding up petition, or a request for a moratorium on debt payments or other similar relief;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Purchaser after notice to the Purchaser and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
 - (v) the making by a court with jurisdiction over the Purchaser, of an order winding up of the Purchaser, that is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days;
- (d) any statement, representation or warranty made by the Purchaser in this Agreement proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation or warranty having a material adverse effect on the Purchaser's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Seller hereunder;
- (e) the Purchaser's material breach or material default of or under this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.2) which is not remedied within thirty (30) Days after notice from the Seller to the Purchaser, stating that a material breach or default has occurred under this Agreement and is continuing, and identifying such

material breach or default in reasonable detail;

- (f) the GOP's material default under the Implementation Agreement or the Guarantee, which default has not been remedied by the GOP within thirty (30) Days after the Seller's delivery to the Purchaser of a copy of the notice sent by the Seller to the GOP, which notice shall state that a material default has occurred under the Implementation Agreement or Guarantee, as the case may be, and is continuing, and identify such breach or default in reasonable detail;
- (g) any Change in Law rendering —
 - (i) any material undertaking or obligation of
 - (A) the Purchaser under this Agreement; or
 - (B) the GOP under the Implementation Agreement or the Guarantee,unenforceable, invalid, or void; or
 - (ii) it unlawful for the Seller to make or receive any payment, to perform any obligation or to enjoy or to enforce any material right or material benefit under this Agreement —

where the effect of the above continues for more than ninety (90) Days, provided always that a Purchaser Event of Default under sub-clause (i) hereinabove shall not be deemed to have occurred so as long as the Purchaser is making payments to the Seller under Section 15.6(a)(ii) or Section 15.8(c), as the case may be;

- (h) the Purchaser's failure to complete and commission the Purchaser Interconnection Facilities within one hundred and fifty-five (155) Days following the Required Commercial Operations Date; or
- (i) tampering on three (3) or more separate occasions by the Purchaser or its Contractors or their employees acting in the course of their employment with the Metering System, the Back-Up Metering System, or the Complex Monitoring System.

Section 16.3 Notice of Intent to Terminate

- (a) If any Seller Event of Default or Purchaser Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may deliver a notice ("**Notice of Intent to Terminate**") to the defaulting Party, which notice shall specify in reasonable detail the Seller Event of Default or the Purchaser Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate, including, as applicable, whether such event of default does or does not affect

the Complex in any material respect.

- (b) The following cure periods (each a “**Cure Period**”) shall apply:
- (i) In the case of a Seller Event of Default arising under Section 16.1(c)(i) or a Purchaser Event of Default arising under Section 16.2(b), the Cure Period shall be forty-five (45) Days;
 - (ii) In the case of a Seller Event of Default arising under Section 16.1(c)(ii), the Cure Period shall be five (5) Business Days; and
 - (iii) In the case of any other Purchaser Event of Default or any other Seller Event of Default, as the case may be, the Cure Period shall be ninety (90) Days —

in each case from the date the relevant Notice of Intent to Terminate has been delivered.

Section 16.4 Termination Notice

- (a) In the event that a defaulting Party has not, following its receipt of a Notice of Intent to Terminate, remedied the Seller Event of Default or Purchaser Event of Default, as the case may be, described therein before expiry of the relevant Cure Period, the non-defaulting Party may terminate this Agreement by delivering a notice of termination (the “**Termination Notice**”) to the defaulting Party. This Agreement shall terminate on the date specified in the Termination Notice (the “**Termination Date**”), which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery. Upon any termination of this Agreement pursuant to this Section 16.4(a) the provisions of Article XVII shall apply.
- (b) The Parties shall continue to perform their respective obligations under this Agreement pending final resolution of any Dispute raised by the receiving Party of a Notice of Intent to Terminate or a Termination Notice; provided that the notice of Dispute has been delivered to the Party claiming occurrence of the Purchaser Event of Default or the Seller Event of Default, as the case may be, before the end of the relevant Cure Period.

Section 16.5 Notice to the Lenders of the Seller’s Default

For the avoidance of any doubt, the provisions of section 16.5(a)-(b) shall only apply if relevant to the Project and/or where the Purchaser is required to enter in to an EPA Direct Agreement with the Lender(s).

- (a) From and after the occurrence of Financial Closing, the Purchaser shall not

seek to terminate this Agreement (other than pursuant to Section 16.1(j)) as the result of any default of the Seller without first giving a copy of any notices required to be given to the Seller under Sections 16.3 and 16.4 to the Lenders. The Lenders shall be entitled to cure, subject to Section 16.5 (b), any such default within the relevant cure period specified in Section 16.3(b) (the “**Initial Cure Period**”), which cure period shall commence upon delivery of each such notice to the Lenders. If there is more than one (1) Lender, the Lenders will designate in writing to the Purchaser an agent (the “**Agent**”) and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders. Each such notice shall be in writing and shall be deemed to have been delivered — (i) when presented personally to the Lenders or the Agent, (ii) when transmitted by the Purchaser and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below, or (iii) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the Lenders at the address notified to the Purchaser (or such other address or to the Agent at such address as the Lenders may have specified by written notice delivered in accordance herewith), within five (5) Business Days following Financial Closing. Any notice given by facsimile under this Section 16.5 shall be confirmed in writing delivered personally or sent by prepaid post, but failure so to confirm shall not void or invalidate the original notice if it is in fact received by the Lenders or the Agent. Notwithstanding the foregoing, if the address of the Lenders or Agent is outside Pakistan, any notice delivered to the Lenders or the Agent pursuant to this Section 16.5 shall be presented personally or sent by international courier or facsimile, and if sent by facsimile, confirmed by international courier. The address and facsimile number for the Agent shall be provided to the Purchaser by the Seller within five (5) Business Days following Financial Closing and, thereafter, may be changed by the Lenders or the Agent by subsequent delivery of a notice to the Purchaser at the address or facsimile number for the Purchaser provided in Section 19.1 (or at such other address or facsimile number subsequently delivered to the Lenders or the Agent in accordance with this Section 16.5) and otherwise in accordance with the requirements of Section 19.1.

- (b) Except for notices of termination pursuant to Section 16.1(j), no rescission or termination of this Agreement by the Purchaser (whether pursuant to its rights or remedies under this Agreement or at law) shall be valid or binding upon the Lenders without such notice, and the expiration of the Initial Cure Period, the expiration of the Evaluation Period (as defined hereinbelow) and the expiration of the Extended Cure Period as provided in this Section 16.5(b). The Lenders (or their designee) may make or procure, but shall be under no obligation to make, any payment or perform or procure the performance of any act required to be made or performed by the Seller, with the same effect as

if made or performed by the Seller. If the Lenders (or their designee) fail to cure or procure the cure of, or are unable or unwilling to cure or procure the cure of, any Seller Event of Default or (in the case of any Seller Event of Default which is not reasonably susceptible to cure within the Initial Cure Period) mitigate such Seller Event of Default within the Initial Cure Period, then the Purchaser shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that, upon expiration of the Initial Cure Period, the Lenders (or their designee) may have a further period (an “**Evaluation Period**”) during which the Lenders (or their designee) may evaluate such Seller Event of Default, the condition of the Complex and other matters relevant to the actions to be taken by the Lenders (or their designee) concerning such Seller Event of Default. The Evaluation Period shall end on the earlier to occur of — (i) delivery by the Agent to the Purchaser of notice that the Lenders have elected either directly or through a designee to pursue their remedies under the Financing Documents and assume the rights and obligations of the Seller as provided under Section 19.9 (an “**Election Notice**”); and (ii) forty-five (45) Days following the end of the Initial Cure Period. Upon delivery of the Election Notice, the Lender’s (or their designee) shall be granted an additional period of one hundred and eighty days (180) Days (the “**Extended Cure Period**”) within which to cure or procure the cure of any such Seller Event of Default. If the Purchaser has assumed operation of the Complex pursuant to Section 5.13 and the Complex is being operated by the Purchaser, the Purchaser shall extend the Initial Cure Period, Evaluation Period and/or Extended Cure Period for an additional period of six (6) Months (and, for the avoidance of doubt, the Lenders shall have the benefit of the indemnity provided by Section 5.13(d) during any period in which the Complex is operated by the Purchaser). During the Initial Cure Period, the Evaluation Period and the Extended Cure Period and any extensions thereof, the Purchaser’s right to terminate this Agreement in respect of any such Seller Event of Default shall be suspended so long as the Lenders (or their designee, other than the Seller, unless the Seller is acting at the direction of the Lenders) are diligently attempting to cure or mitigate or procure the cure or mitigation of such Seller Event of Default or are pursuing against the Seller enforcement of their rights and remedies under the Financing Documents. In the event that the Agent fails to deliver an Election Notice or the Lenders (or their designee) fail to cure any such Seller Event of Default on or before the expiration of the Extended Cure Period, as it may have been extended, the Purchaser may immediately terminate this Agreement effective upon delivery to the Lenders or the Agent of notice of such termination. During such Extended Cure Period, the Agent shall keep the Purchaser apprised of the Lenders’ or their designee’s efforts to cure such Seller Event of Default. Notwithstanding any provisions of this Section 16.5 to the contrary, the Initial Cure Period, the Evaluation Period and the Extended Cure Period, as the case may be, shall be extended on a Day-for-Day basis for each Day during any such period the breaches, conditions or events set forth in

sub-clauses (i), (ii), (iii) or (iv) of the preamble of Section 16.1 are in existence or in effect or subsist or a Seller Consent has not been transferred to or issued in favour of the Lenders, their designee or any Transferee, or is not in full force or effect on or after the one hundred and eightieth (180th) Day of such period and within thirty (30) Days after the Lenders, the Agent, the Lenders' designee or the Transferee have made due application therefor and have otherwise complied with the obligations applicable to them under Section 2.3, and such circumstance has not arisen due to — (A) a failure by the Lenders, the Agent, the Lenders' designee or the Transferee, to comply with the obligations applicable to them under Section 2.3; or (B) the Purchaser or any Relevant Authority exercising any power in accordance with Section 12.1 of the Implementation Agreement in relation to any such Seller Consents, following the issuance thereof in favour of the Lenders, the Agent, the Lenders' designee or the Transferee.

Section 16.6 Obligations upon Termination

Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that:

- (a) arose prior to such termination,
- (b) expressly survive such termination, including without limitation, the obligation to pay amounts due under Sections 5.12, 16.7, Article XI, and liquidated damages under Section 9.3, and/or
- (c) survive such termination pursuant to Section 17.1.

Section 16.7 Reimbursement

- (a) In the event of termination of this Agreement after the Effective Date and prior to the Commercial Operations Date, for a Seller Event of Default, the Seller shall reimburse the Purchaser for all costs and expenses (including reasonable attorneys' fees) relating to the Project incurred by the Purchaser prior to such termination, which amount in any event shall not exceed the Rupee equivalent of [one hundred and fifty thousand Dollars (\$150,000)].
- (b) In the event that this Agreement is terminated pursuant to Section 16.4 due to a Seller Event of Default set forth in Section 16.1(a), then the Purchaser shall be immediately entitled to encash the Seller Letter of Credit (or any remaining portion thereof) in full. The Parties agree that any such encashment constitutes liquidated damages for such Seller Event of Default and shall be the exclusive remedy available to the Purchaser therefor, and the Seller shall not have any obligation to compensate the Purchaser for any amount pursuant to Section 16.7(a). The Seller hereby waives to the fullest extent permitted by law, any claim that the encashment of the Seller Letter of Credit in such amount is void

as a penalty.

- (c) In the event of a termination of this Agreement after the Effective Date and prior to the Commercial Operations Date for any reason other than a Seller Event of Default, the Purchaser shall reimburse the Seller for all costs and expense (including reasonable attorneys' fees) relating to the Project incurred by the Seller prior to such termination, which amount in any event shall not exceed the Rupee equivalent of [one hundred and fifty thousand Dollars (\$150,000)].

Section 16.8 Other Remedies

- (a) A Party's exercise of its right to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies provided herein or available at law; provided, however, that no Party shall have a right to terminate this Agreement, or treat it as repudiated, except in accordance with the provisions of this Agreement. Subject to the provisions of Article X and except as otherwise may be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.
- (b) Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the Parties agree that the Purchaser may be damaged in amounts that may be difficult or impossible to determine in the event the Seller Event of Default described in Section 16.1(a) occurs. Therefore, the Parties have agreed that, in such event, the amounts set forth in Section 16.7 are reasonable and constitute liquidated damages to the Purchaser, and it is further understood and agreed that the payment of such amounts under Section 16.7, and any encashment of the Seller Letter of Credit pursuant to its terms, shall be in lieu of actual damages for such occurrence, and the collection of such sums and the termination of this Agreement pursuant to Section 16.1(a) is the sole remedy of the Purchaser for such event.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event the Seller terminates this Agreement and the Implementation Agreement as a result of a Purchaser Event of Default under this Agreement pursuant to Section 14.1(b)(vi) of the Implementation Agreement, and the Seller receives from the GOP compensation for such default and termination pursuant to Section 15.1(b) of the Implementation Agreement, then, upon receipt of such payment and termination of this Agreement, any claims by the Seller against or liability of the Purchaser under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Seller shall have no further claim or recourse against the Purchaser under this Agreement.

- (d) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that the GOP terminates the Implementation Agreement as a result of a Seller Event of Default under this Agreement pursuant to Section 14.1(a)(ix) of the Implementation Agreement, any claims by the Purchaser against or liability of the Seller under this Agreement (except as provided in Section 16.7, which shall constitute independent and separate rights of the Purchaser) shall be fully extinguished and the Purchaser shall have no further claim or recourse against the Seller under this Agreement.
- (e) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that either the GOP or the Seller terminates the Implementation Agreement pursuant to Section 14 thereof, this Agreement shall immediately terminate upon termination of the Implementation Agreement. Upon termination of the Implementation Agreement, any claims against or liability of either Party under this Agreement as a consequence of such termination shall be fully extinguished and the Purchaser and the Seller shall have no further claim or recourse against the Seller or the Purchaser, as the case may be, under this Agreement, except for claims existing or having accrued prior to the date of such termination.

Section 16.9 Notice to the GOP of a Purchaser Event of Default

Anything in this Agreement notwithstanding, the Seller shall not seek to terminate this Agreement as a result of any default of the Purchaser without first giving a copy of any notices required to be given to the Purchaser under Sections 16.3 and 16.4 to the GOP, such notices to be accompanied by a statement of the period available to cure any such default within the same cure period as provided to the Purchaser hereunder and such cure period to commence upon delivery of each such notice to the GOP. Each such notice shall be deemed to have been delivered — (a) when presented personally to the GOP; (b) when transmitted by facsimile; or (c) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the GOP, at the address indicated in Section 18.1 of the Implementation Agreement (or such other address as the GOP may have specified by written notice delivered in accordance therewith). No rescission or termination of this Agreement by the Seller shall be of any effect without such notice and expiration of such Cure Period. Except as provided by the terms of the Guarantee, the GOP may, but shall be under no obligation to, make any payment or to perform any act required of the Purchaser hereunder with the same effect as if the payment or act had been made or performed by the Purchaser. If the GOP fails to cure or is unable or unwilling to cure a default of the Purchaser within the cure periods provided to the Purchaser under this Agreement, the Seller shall have all of its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that

with respect to any default of the Purchaser other than a payment default, if the GOP is diligently attempting to cure such default of the Purchaser and demonstrable progress toward affecting such cure is being made, the GOP shall be granted an additional period not exceeding ninety (90) Days to effect such cure before the Seller may exercise its rights and remedies with respect to such default as set forth in this Agreement.

ARTICLE XVII
RIGHTS AND OBLIGATIONS OF PARTIES ON TERMINATION

Section 17.1 Survival of Rights and Obligations

- (a) On expiry of this Agreement, or its earlier termination pursuant to Section 16.4(a) or Article XV, all covenants, obligations, representations and warranties contained in this Agreement shall terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under this Agreement, except for those obligations and liabilities which arose prior to and remain un-discharged at the date of expiry or termination, and those obligations and liabilities which expressly survive such expiry or termination pursuant to Section 17.1(b) of this Agreement.

- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Section 5.11 (Maintenance of Operating Records), Section 9.7 (Supporting Data), this Article XVII, Article I; Article X, Article XI, Section 15.6, Section 15.8, Section 15.9, Section 16.6, Section 16.7(c), Section 16.8, Article XVIII and Article XIX shall expressly survive any termination or expiry of this Agreement.

Section 17.2 Liability of the Parties on Termination

Subject to Section 17.1, the Parties shall have no right to receive, nor liability to pay, damages or other compensation on or as a result of termination of this Agreement under Article XV, or Article XVI, except for amounts payable by, and liabilities of, a Party arising prior to such termination, and except for those rights and liabilities expressly set forth in Section 16.8, and in Article XV of the Implementation Agreement.

ARTICLE XVIII
RESOLUTION OF DISPUTES

Section 18.1 Resolution by Parties

- (a) In the event that a Dispute arises, the Parties shall in good faith attempt to settle such Dispute by mutual discussions, within thirty (30) Days after the date that the disputing Party delivers written notice of the Dispute to the other Party.
- (b) Pursuant to Section 18.1(a), the Party alleging existence of a Dispute shall give to the other Party written notice setting out the material particulars of the Dispute. Representatives from each of the Purchaser and the Seller shall meet in Lahore to attempt in good faith to resolve the Dispute.
- (c) If the Dispute is not resolved within thirty (30) Days after receipt of notice described in Section 18.1(a) by the relevant Party (or within such longer period of time as the Parties may agree), then the provisions of Section 18.2 and Section 18.3 shall apply, as appropriate.

Section 18.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 18.1 within the time periods set forth therein, then, in accordance with this Section 18.2, either Party may refer the Dispute to an expert (the “**Expert**”), for consideration of the Dispute and to obtain from the Expert a determination as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 18.3 without first referring it to an Expert.
- (b) Subject to Section 18.2(a) hereinabove, the Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The Expert may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in the field of expertise relevant to the Dispute, which is the subject matter of the determination. The Party shall nominate an Expert who does not have any conflict-of-interest in the matter, provided that any current or former employee of either Party shall be deemed to have a conflict-of-interest. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such person is acceptable and, if such nominated Expert is not acceptable to the responding Party, the responding Party shall propose a person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable or nominates an Expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and in good faith discuss for a period of five (5)

Days to agree upon a person to be the Expert. Failing nomination by the responding Party of an Expert within the period provided or failing consensus of the Parties on the choice of Expert, at the end of the meeting the President of the Pakistan Institute of Chartered Accountants (for financial and billing matters) or, (for technical matters) the Vice-Chancellor of the University of Engineering and Technology (UET), Lahore, failing which the Vice-Chancellor of the Ghulam Ishaq Khan Institute of Engineering, Science and Technology (GIKIEST), failing which the Vice-Chancellor of the Lahore University of Management Sciences (LUMS) shall be requested to select the Expert; and such selection of Expert by the relevant selecting entity shall be binding on the Parties; provided, however, that unless the selecting entity be informed by consent of the Parties that the Expert may be a Pakistan national, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any Investor or group of Investors holding directly or beneficially more than five percent (5%) of the Ordinary Share Capital, nor (as noted above) shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.

- (c) The Expert's consideration of the Dispute shall be initiated by the Party seeking consideration of the Dispute, by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (i) a description of the Dispute;
 - (ii) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (iii) copies of records supporting the initiating Party's position.

- (d) Within ten (10) Days of the date that a Party has submitted the materials described in Section 18.2(c), the other Party may submit to the Expert, with copies to the other Party:
 - (i) a description of the Dispute;
 - (ii) a statement of such Party's position and, if not already requested, whether a hearing is requested by such Party; and
 - (iii) copies of any records supporting the Party's position.

The Expert shall consider any such information submitted by the responding Party and may consider any additional information submitted by either Party at a later date but, in such event, the other Party shall be concurrently provided with such information and shall be allowed reasonable opportunity to respond thereto.

- (e) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (f) Each Party shall designate one person knowledgeable about the issues in Dispute, who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 18.2(c)(ii) or (d)(ii), the Expert shall nominate the time and place for hearing of the Parties on the Dispute.
- (g) The Expert shall provide a determination within fifteen (15) Days after the ten (10) Day response period provided in Section 18.2(d) has expired, or within such further time as is consensually agreed in writing by the Parties. If the Expert's determination is given within such fifteen (15) day period, as may be extended by the Parties, the Parties may review and discuss the determination with each other in good faith for a period of ten (10) Days following delivery of the determination before proceeding with any other action(s).
- (h) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as arbitration, and the laws relating to commercial arbitration shall not apply.
- (i) Unless the Parties agree in writing at the time the Dispute is referred to the Expert stating that the decision of the Expert shall be binding, the recommendation of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 18.3 have not been commenced within seventy-five (75) Days from the date the Expert's determination is received by the Parties in accordance with Section 18.2(g), the Expert's determination shall be final and binding on the Parties, and any right of such Parties to resort to arbitral, judicial or other proceedings in relation to the subject matter of the determination shall stand waived to the fullest extent permitted by law.
- (j) The costs of engaging an Expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.
- (k) Failure of any Party to comply with the provisions and time periods set forth in this Section 18.2 shall not prevent: (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated, and the matter referred immediately to arbitration in accordance with Section 18.3.
- (l) Subject to Section 18.2(i), if a Party does not accept the determination of the

Expert with respect to the Dispute, or if the Expert has not provided a determination within the time period specified in Section 18.2(g), either Party may initiate arbitration proceedings in accordance with Section 18.3.

- (m) Subject to Section 18.2(i), either Party may serve a written notice on the other Party within thirty (30) Days of the Expert's recommendation having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the recommendation of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty-five (45) Day period after serving such notice. Notwithstanding anything to the contrary expressed in this Article XVIII, either Party may require arbitration of a Dispute pursuant to Section 18.3 without reference to an Expert under this Section 18.2.

Section 18.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Section 18.1 and Section 18.2, or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with Pakistan's law of arbitration and the seat of arbitration shall be Lahore, Pakistan. The arbitration proceedings shall be conducted, and the award shall be rendered in the English language.
- (b) No arbitrator appointed pursuant to this Section 18.3 shall be a national of the jurisdiction of either Party unless the Parties belong to the same jurisdiction, or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Purchaser, the Seller, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.
- (c) In relation to the Parties, or any parties claiming through the Parties, the provisions of Sections 18.3(a) and 18.3(b) hereinabove shall override and have effect, notwithstanding any arbitration clause or provision to the contrary or otherwise in any Bilateral Investment Treaty to which Pakistan is or may become a party.

Section 18.4 Sovereign Immunity; Jurisdiction

- (a) The Purchaser unconditionally and irrevocably:
 - (i) agrees that should any proceedings be brought against it or its assets, other than the Grid System, electric generation assets and equipment, electric distribution assets or other assets necessary for the fulfillment by the Purchaser of its duties and responsibilities under Regulation,

Transmission, and Distribution of Electric Power Act 1997 (XL of 1997) (or the law creating any successor, assignee or permitted transferee of the Purchaser), and the transmission licence issued to it by NEPRA (collectively, “**Protected Assets**”) in any jurisdiction where such assets or property of the Purchaser are located to enforce any award or decision of any arbitrator duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings shall be made by or on behalf of the Purchaser on behalf of itself or any of its assets (other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;

- (ii) waives any right of immunity that it or any of its assets (other than Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) consents generally to the jurisdiction of any court of competent jurisdiction for any action filed by the Seller to enforce any award or decision of any arbitrator duly appointed under this Agreement to resolve any Dispute between the Parties (including the making, enforcement or execution, against or in respect of any of its assets whatsoever (other than the Protected Assets), regardless of its use or intended use), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Purchaser agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.
- (b) The Seller hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may hereafter acquire, of any court of competent jurisdiction for any action filed by the Purchaser to enforce any arbitral award or decision made pursuant to arbitration conducted in accordance with Section 18.3. The Seller waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 18.4(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum, and agrees not to plead or claim the same. The Seller agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Seller irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.
- (c) For the avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in this Section

18.4 shall be referred to for determination under Section 18.3 and shall fall within the definition of Dispute.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

Section 19.1 Notices

(a) Except for any Despatch Instructions and communications between the Seller and Purchaser relating to Despatch of the Complex, all notices and other communications required or permitted to be given by one Party to the other shall be in writing and delivered either personally or by courier, or sent by facsimile to the address or number of the other Party specified hereinbelow:

(i) IF TO THE PURCHASER:

Attention: Chief Executive Officer, (NTDC)
WAPDA House, Lahore

Facsimile: +9242 99202053

WITH A COPY TO:

Attention: Chief Operating Officer, (CPPA)
WAPDA House, Lahore

Facsimile: +9242 99202578

WITH A COPY TO:

Attention: Chief Executive Officer, (AEDB)

Facsimile: +92519262977

(ii) IF TO THE SELLER:

Attention: []
[]
[]
[]

Facsimile No: [];

Provided that a Party may change the address to which notices are to be sent to it, by giving no less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 19.1(a).

- (b) No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party —
 - (i) when delivered, if personally delivered;
 - (ii) two (2) Business Days after sending, if sent by courier;
 - (iii) five (5) Business Days after sending, if sent by registered post; or
 - (iv) upon sending, if sent by facsimile, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is dispatched to the recipient by courier or personal delivery no later than the following Business Day.

- (c) Despatch Instructions and communications between the Seller and Purchaser relating to Despatch of the Complex may be given by telephonic communication or any other form of communication that the Parties agree to use. All such telephonic notices shall be made to the following telephone numbers:
 - (i) If to the Purchaser: []
 - (ii) If to the Seller: [];

Provided that a Party may change the telephone number or any other details necessary for such communication, by giving to the other Party no less than thirty (30) Days' prior written notice in accordance with Section 19.1(a).

Section 19.2 Amendment

Amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties.

Section 19.3 Third Parties

Except for the rights expressly granted to the Lenders herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

Section 19.4 No Waiver

No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. No waiver by either Party of any default by the other in the performance of or compliance with any of the

provisions of this Agreement shall operate or be construed as a waiver of any other or further default or breach, whether of a like or different character.

Section 19.5 Relationship of the Parties

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.
- (b) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third-party as having such right, power, or authority.

Section 19.6 Language

This Agreement has been drafted in English and the English version shall prevail over any translations. All notices, certificates and other documents and communications (including copies) given or made under or in connection with this Agreement shall be in English.

Section 19.7 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of Pakistan.

Section 19.8 Entirety

Upon occurrence of the Effective Date, this Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. Except for the Letter of Support, which, until Financial Closing will govern the Project and supersede all documents and agreements between the Parties in relation to the Project (save to the extent, if any, provided otherwise in the Letter of Support), all written or oral representations, understandings, offers or other communications of every kind between the Parties in relation to the Project prior to this Agreement are hereby abrogated and withdrawn. Until occurrence of the Effective Date, to the extent of any inconsistency between the provisions of the Letter of Support and the provisions of this Agreement which are then effective, the Letter of Support shall be controlling as to the rights and obligations of the Parties in relation to the Project.

Section 19.9 Assignment

- (a) No assignment or transfer of this Agreement or a Party's rights or obligations hereunder, shall be effective without the prior written consent of the other Party, except by the Seller as provided in Section 19.9(b).

- (b) Notwithstanding the provisions of Section 19.9(a), if required for the purpose of financing the Project, the Seller may, pursuant to the Financing Documents, assign to, or create a security interest in favour of the Lenders in the Seller's rights and interests under or pursuant to: (i) this Agreement, (ii) any agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the present and future movable, immovable and intellectual property of the Seller, (vi) the present and future revenues or actionable claims of the Seller, and (vii) any other present and future rights, interest, property or assets of any kind and wherever situated of the Seller.
- (c) The Lenders shall have the rights expressly granted in their favour in this Agreement, the EPA Direct Agreement and the IA Direct Agreement (if required), concerning the Project between the Purchaser and the Lenders or the Agent. Except in respect of such rights, the Lenders shall not exercise any of the rights of the Seller hereunder assigned to them under the Financing Documents, unless and until such time as the Agent elects that the Lenders or their designee shall succeed to the Seller's interest under this Agreement, whether by exercise of the rights or remedies of the Lenders under the Financing Documents or otherwise, in which case the Agent shall give notice to the Purchaser of the occurrence and continuance of an event of default under the Financing Documents and of such succession by the Lenders or their designee, as the case may be (the "**Succession Notice**"). As soon as practicable prior to delivery of any such Succession Notice, the Agent shall notify the Purchaser of the preliminary intent of the Lenders or their designee to succeed to such interest, which notice shall not be binding upon the Lenders or their designee and shall not constitute a Succession Notice. Within twenty five (25) Days after delivery of such preliminary notice, the Purchaser shall notify the Agent of all Seller Events of Default (or events that, with delivery of notice and the passage of time, would become Seller Events of Default) which are, or after delivery of a Succession Notice would be, required to be cured by the Lenders or their designee in accordance with this Section 19.9(c). Such notice by the Purchaser to the Agent shall state: (A) all amounts due to the Purchaser under this Agreement, as at the date of such notice; (B) all amounts which may become due to the Purchaser under this Agreement, as at the date of such notice and the events which have occurred under this Agreement and giving rise to such amounts; (C) all amounts claimed by the Purchaser under this Agreement, as at the date of such notice which are then in dispute with the Seller; and (D) any additional amounts (contingent or otherwise) accruing as at the date of such notice under this Agreement until paid to the Purchaser, and the events which have occurred under this Agreement giving rise to such amounts, together with formulae for determining such amounts. Such notice by the Purchaser to the Agent may be updated by the Purchaser to re-quantify such amounts and/or identify any additional events and the amounts related thereto, by written notice to the Agent at any time prior to succession by the Lenders or their designee to the

Seller's interest under this Agreement.

- (d) Subject to Section 19.9(c) and (e), upon delivery of notice by the Agent to the Purchaser, of the occurrence and continuance of an event of default under the Financing Documents, the Lenders or their designee shall have the right, among others, to: (A) take possession of the Complex and, prior to the Commercial Operations Date, complete construction of the Complex and, after the Commercial Operations Date, operate and maintain the same; and (B) cure any continuing Seller Event of Default, as provided under Section 16.5 of this Agreement. Subject to this Section 19.9(d) and Section 19.9(e), with effect from delivery to the Purchaser of a Succession Notice until delivery of a notice terminating the Lenders' (or their designee's) obligations pursuant to Section 19.9(g), the Lenders (or their designee, as the case may be) shall assume and enjoy the rights, powers and privileges of, and subject to Section 19.9(h), shall become jointly and severally liable with, the Seller to perform and discharge the obligations, liabilities and duties of the Seller under this Agreement, and the Purchaser shall perform and discharge the obligations, liabilities and duties of the Purchaser under this Agreement as if the Lenders (or their designee) were an original party to this Agreement on a joint and several basis with the Seller from the date of execution thereof; provided that during any such period, all notices, demands and other communications delivered to or made on the Purchaser in exercising the Seller's rights under this Agreement, shall only be delivered or made by the designee (as identified by the Agent in the Succession Notice) or the Agent (if a designee has not been so identified). Notwithstanding the foregoing, the Lenders (or their designee) shall have no obligation to cure any Seller Event of Default that is not capable of being cured, including, but not limited to, a default under Sections 16.1(d), Section 16.1(e) or Section 16.1(f), and no right will exist for the Purchaser to terminate this Agreement based upon such Seller Events of Default occurring prior to the Succession Notice.
- (e) Upon succession by the Lenders or their designee to the Seller's interest under this Agreement in accordance with Section 19.9(c), the Lenders or such designee, as applicable, shall settle all amounts due and payable by the Seller (if any), and shall cure all defaults by the Seller under this Agreement within the Extended Cure Period (other than those that are not required to be cured pursuant to Section 19.9(d) and other than damages, liabilities and penalties incurred by the Seller under Article XI, except for damages, liabilities or penalties arising while the Lenders or such designee, pursuant to the rights and remedies of the Lenders under the Financing Documents, have assumed control of the Complex, and then only to the extent that the general liability insurance naming the Purchaser as an additional insured is not in effect) arising during the period prior to the Lenders' or their designee's succession to the Seller's interest under this Agreement and that were notified by the Purchaser to the Agent in writing on or before delivery of such Succession

Notice in accordance with Section 19.9(c); provided, however, that the aggregate liability of the Lenders or their designee, as the case may be, shall strictly be limited to the Lenders' or their designee's interest in the Complex, and; provided, further, that the Lenders or their designee, as the case may be, shall have no liability for breaches of the Seller arising prior to delivery of a Succession Notice other than to cure the breaches notified by the Purchaser pursuant to Section 19.9(c), and the liability of the Lenders or their designee to the Purchaser in respect of all liabilities of the Seller under or relating to this Agreement prior to delivery of a Succession Notice shall not exceed the total amount specified by the Purchaser in the latest notice delivered by it in accordance with Section 19.9(c), as such amount may be adjusted in accordance with the formulae specified in such notice.

- (f) Except as otherwise set forth in this Section 19.9, neither the Lenders, the Agent nor the Lenders' designee shall be liable for performance or observance of any of the obligations or duties of the Seller under this Agreement, nor shall assignment by the Seller of this Agreement to the Lenders pursuant to Section 19.9 give rise to any duties or obligations whatsoever on the part of any of the Lenders or their designee owing to the Purchaser.
- (g) The Lenders or their designee may, at any time following delivery of a Succession Notice, give the Purchaser notice terminating the Lenders' or their designee's obligations and rights under this Agreement (without affecting continuance of the Seller's obligations towards the Purchaser thereunder). Such notice shall designate a date on which such obligations and rights will terminate and, on and after such nominated date, the Lenders or their designee shall be released from all obligations and liabilities under this Agreement (other than those obligations and liabilities which have arisen under this Agreement prior to such nominated date). Upon such nominated date, subject to expiration of the applicable cure period provided in Section 16.5, the Purchaser may, without restriction, exercise all its rights under this Agreement.
- (h) Without requirement of obtaining any further consent from the Purchaser, upon exercise by the Lenders or their designee of any of the remedies set forth in the Financing Documents, the Lenders may assign or transfer by novation their rights and interests and the rights of the Seller under this Agreement to any Transferee (hereinafter defined),providedthat such Transferee shall assume in writing, for the benefit of the Purchaser, all the obligations of the Seller under this Agreement; andprovidedfurther that the Transferee shall not be liable for any outstanding obligations under this Agreement which were not disclosed in accordance with Section 19.9(c), by the Purchaser to the Lenders or the Agent, nor have any obligation to cure any Seller Event of Default that is not capable of being cured. Upon such assignment and assumption, the Lenders and their designee shall be relieved of all obligations under this

Agreement arising after such assignment and assumption.

- (i) Upon notice to the Purchaser from the Agent of the Lenders' assignment or transfer by novation to a Transferee, as set forth in Section 19.9(h) hereinabove, the Purchaser shall effect the transfer of the Seller's rights and obligations under this Agreement to a Transferee.
- (g) As used herein, a "**Transferee**" shall be a person who: (i) either is an experienced power plant operator or shall have agreed to engage the services of a person who is an experienced power plant operator; (ii) shall have paid all amounts, if any, then due and payable to the Purchaser under this Agreement; (iii) shall expressly have assumed in writing for the benefit of the Purchaser, the obligations of the Seller under this Agreement including (but not limited to) the obligation of the Seller to maintain and operate the Complex in accordance with the requirements of this Agreement; (iv) has not been objected to by the GOP (in a written notice delivered by the GOP to the Lenders not later than ten (10) Days after the Lenders have delivered notice identifying the Transferee to the GOP) on the basis that a majority of the capital of the Transferee is held or controlled by persons of a nationality that the GOP reasonably considers to be prejudicial to the national security of Pakistan; and (v) is a corporate body established in Pakistan.
- (h) With respect to all Seller Consents issued by the Purchaser or any Relevant Authority to the Seller, the Purchaser shall not, and the Purchaser shall ensure that no Relevant Authority shall, exercise any power under Section 5.2 of the Implementation Agreement unless the Lenders shall have first been given written notice of such failure (which notice shall specify, in reasonable detail, the nature of such failure), and the Lenders or their designee are given the opportunity and fail within a reasonable period of time after receipt of such notice to so rectify, remedy or cure such failure, which period shall not in any event exceed the cure period provided to the Seller or to the Contractors, as the case may be, under Section 5.2 of the Implementation Agreement. The Purchaser shall ensure that, in connection with any transfer or sale of the Complex or the shares of the Seller to the Lenders or their designee, as applicable, to any Transferee, each Seller Consent issued by the Purchaser or any Relevant Authority shall be transferred or, if for any reason unable to be transferred, shall be re-issued in the same form to the Lenders or their designee or the Transferee, as applicable. The Purchaser shall ensure that such transfer or re-issuance is made within the period of time, if any, prescribed by applicable Laws of Pakistan as applied in a non-discriminatory manner pursuant to Section 12.1 of the Implementation Agreement and, in any event, within one hundred and eighty (180) Days after the date of proper and complete application therefor. Provided that the Seller shall have requested in writing from a Relevant Authority its consent to any security interest in any Seller Consent granted or to be granted by such Relevant Authority to the

Lenders or the Agent and shall have diligently pursued obtaining the consent of such Relevant Authority to such security interest, the Purchaser hereby covenants and shall procure, or cause to be procured, that such Relevant Authority consents to the grant, by the Seller to the Lenders or the Agent, of a security interest in any such Seller Consent to the extent that such Consent is assignable to the Lenders or the Agent by way of security, and such security interest is available, under the Laws of Pakistan.

- (i) Upon notice to the Purchaser of a default under the Financing Documents, the Purchaser shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders in the exercise of such rights by the Lenders under this Agreement and the Financing Documents.
- (j) At the Seller's request delivered to the Purchaser no less than thirty (30) Days in advance, the Purchaser shall execute and deliver, effective at Financial Closing, acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Section 19.9 and the rights of such parties in and to this Agreement, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature.
- (k) Notwithstanding the above, the Purchaser shall have the right to assign all or any part of this Agreement to any entity or entities assuming all or part of the Purchaser's rights and obligations under this Agreement; provided, however, that the GOP without interruption guarantees performance of the succeeding entity or entities on the same terms and conditions as the Guarantee, or such other commercial security is provided for the obligations of the succeeding entity or entities that in the reasonable business judgment of the Seller provides an adequate alternative to the Guarantee and all or any part of the Purchaser's rights and obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation, by such entities, each of which has the appropriate legal capacity to carry out and perform such rights and obligations assigned to or assumed by it.
- (l) The Purchaser shall (if required) enter into an EPA Direct Agreement with the Lenders, prior to the Financial Closing in connection with the debt financing of the Project.
- (m) For the avoidance of doubt, the provisions of this section 19.9 pertaining to the Lenders and the rights granted to them shall only apply to the extent the same are applicable(if at all)to this Project.

Section 19.10 Confidentiality

- (a) This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and (except as provided in Section 19.10(c) hereinbelow) such information shall not be disclosed in

whole or in part by either Party without the prior consent of the other Party.

- (b) This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Agreement or has been, or could have been, lawfully acquired by the Party.
- (c) Notwithstanding the provisions of Section 19.10(a) hereinabove, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of the following information:
 - (i) to directors and employees and Affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such Persons keep the disclosed information confidential on the same terms as are provided in this Section 19.10;
 - (ii) to Persons professionally engaged by or on behalf of such Party; provided that such Persons shall be required by such Party to undertake to keep such information confidential, and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
 - (iii) to any government department or any governmental or regulatory agency having jurisdiction over such Party, but only to the extent that such Party is required by law to make such disclosure;
 - (iv) to:
 - (A) any lending or other financial institution, in connection with the financing of such Party's operations; or
 - (B) any *bona fide* intended assignee or transferee approved by the other Party, of the whole or any part of the rights and interests of the disclosing Party under this Agreement;but (in either case) only to the extent required in connection with obtaining such financing or in respect of such proposed assignment, and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 19.10; or
 - (v) to any expert (including any Expert) or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) This Section 19.10 shall survive termination or expiry of this Agreement for a period of thirty six (36) months from the date of such termination or expiry.

Section 19.11 Successors and Assigns

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

Section 19.12 No Liability for Review

No review and approval by the Purchaser of any agreement, document, instrument, drawing, specifications, or design proposed by the Seller, nor any inspection of the Construction Works or the Seller Interconnection Works carried out by the Purchaser pursuant to this Agreement, shall relieve the Seller from any liability that otherwise it would have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification, or design or the carrying out of such works or failure to comply with the applicable Laws of Pakistan with respect thereto, or to satisfy the Seller's obligations under this Agreement, nor shall the Purchaser be liable to the Seller or any other Person by reason of its review or approval of an agreement, document, instrument, drawing, specification or design or such inspection.

Section 19.13 Affirmation

- (a) The Seller hereby declares that it has not obtained or induced the procurement of this Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the Purchaser or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Seller represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Seller for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project, and has not given or agreed to give and shall not give, or agree to give, to any Person within or outside Pakistan, either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing procurement of this Agreement or any contract, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the Purchaser or any Public Sector Entity, except that which has been expressly declared pursuant hereto.
- (c) The Seller accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any

action likely to defeat the purpose of the representations and warranties contained herein in this Section 19.13 and the declarations required hereby. It agrees that in the event that any of the representations and warranties made by it in Sections 19.13 (a) and (b) are proved to be materially incorrect, any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid, without prejudice to any other right and remedies available to the Purchaser, shall be voidable and without legal effect at the option of the Purchaser.

- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the Purchaser in this regard, the Seller agrees to indemnify the Purchaser for any loss or damage incurred by it on account of its corrupt business practices and, further, pay compensation to the Purchaser in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by the Seller (either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors)), as aforesaid for the purpose of obtaining or inducing procurement of this Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the Purchaser or any Public Sector Entity.

Section 19.14 Counterparts

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

Section 19.15 Severability

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable or against public policy, the remaining provisions of this Agreement shall remain in full force and effect, and will not in any way be affected by such determination.

Section 19.16 Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement, in whole or in part, under the law of any jurisdiction, shall affect neither its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

Section 19.17 Double Jeopardy

A final non-appealable order issued in a proceeding initiated by the GOP and based upon a claim of breach of the Implementation Agreement, shall preclude any proceedings against the Seller based upon the same claim that the Purchaser could otherwise bring for breach by the Seller of its obligations under this Agreement. Nothing in this Section shall prevent the Purchaser and the GOP from separately initiating proceedings to terminate this Agreement and the Implementation Agreement, respectively, pursuant to Sections 16.3 and 16.4 of this Agreement and Sections 14.1 and 14.3 of the Implementation Agreement.

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

**NATIONAL TRANSMISSION AND DESPATCH
COMPANY LIMITED (THROUGH CENTRAL
POWER PURCHASING AGENCY) ON BEHALF
OF EX WAPDA DISTRIBUTION COMPANIES**

THE SELLER

By: _____

By: _____

Designation: _____

Designation: _____

WITNESSES:

Witness:

Witness:

.....

Name:

Name:.....