

THE CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED

**AS AGENT FOR AND ON BEHALF OF
THE FOLLOWING DISTRIBUTION COMPANIES**

- 1. FAISALABAD ELECTRIC SUPPLY COMPANY LIMITED**
- 2. GUJRANWALA ELECTRIC POWER COMPANY LIMITED**
- 3. ISLAMABAD ELECTRIC SUPPLY COMPANY LIMITED**
- 4. LAHORE ELECTRIC SUPPLY COMPANY LIMITED**
- 5. MULTAN ELECTRIC POWER COMPANY LIMITED**
- 6. PESHAWAR ELECTRIC SUPPLY COMPANY LIMITED**
- 7. QUETTA ELECTRIC SUPPLY COMPANY LIMITED**
- 8. SUKKUR ELECTRIC POWER COMPANY LIMITED**
- 9. TRIBAL AREA ELECTRIC SUPPLY COMPANY LIMITED**

-- AND --

[●]

ENERGY PURCHASE AGREEMENT

RELATING TO -

A [●] MW (NET) HYDRO-ELECTRIC POWER GENERATION COMPLEX

AT

[•]

MADE AT
[•], PAKISTAN

As Of [•], 20[•]

COUNSEL FOR THE PURCHASER:

COUNSEL FOR THE SELLER:

Standard Energy Purchase Agreement – Small Hydro (Upfront-tariff)

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SCHEDULES¹

Schedule 1	Tariff, Indexation and Adjustment
Schedule 2	Description of the Complex
Schedule 3	Seller and Purchaser Interconnection Facilities; Interconnection Point
Schedule 4	Form of Construction Reports
Schedule 5	A. Technical Limits; B. Hydrological Conditions; and C. Correction Curves for Variations in Hydrology including in Schedule 5(B) average historical Site hydrological conditions (on a Monthly basis), and in Schedule 5(C) Manufacturers' specified relationship (curve) between water flow and electric power generation
Schedule 6	Metering, Flow Meters, Environmental Standards and Testing
Schedule 7	Commissioning Tests
Schedule 8	Insurance
Schedule 9	Form of Seller Letter of Credit
Schedule 10	NPMV Protocol

¹ To be updated once drafting/schedules numbering is finalized.

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

- (1) **THE CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED** (the “**Purchaser**”), a limited company incorporated under the Laws of Pakistan, with its principal office at 6th floor, Shaheed-e-Millat Secretariat, Blue Area, Islamabad Pakistan as agent of and for and on behalf of the Principal DISCOs (as hereinafter defined); and
- (2) [●], (the “**Seller**”), a [public/private] limited company incorporated under the Laws of Pakistan, with its principal office at [●], Pakistan.

Each of the Purchaser and the Seller is hereinafter referred to as a “**Party**” and collectively, as the “**Parties.**”

RECITALS

- A. **WHEREAS**, the Seller has proposed to the Purchaser that the Seller will design, engineer, finance, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [●] MW (net, at Reference Hydrological Conditions (as hereinafter defined)) hydro-electric power generation facility (the “**Complex**” (as hereinafter defined)) to be located at the Site (as hereinafter defined) at [●], [Azad Jammu & Kashmir] [Pakistan] on build, own, operate and transfer (BOOT) basis;
- B. **WHEREAS**, the Government of Pakistan (“**GOP**,” as hereinafter defined), through the Alternative Energy Development Board (as hereinafter defined), on [●] issued to the Seller a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, finance, Commissioning, operation and maintenance of the Complex and the transfer of the Complex at the end of the Term (as hereinafter defined) (collectively, the “**Project**,” as hereinafter defined);
- C. **WHEREAS**, the Principal DISCOs (as hereinafter defined) have appointed the Purchaser as their agent to purchase electricity on their behalf pursuant to [*name of instrument*] and have authorized the Purchaser to enter into and perform this Agreement;
- D. **WHEREAS**, the Seller wishes to sell and the Purchaser wishes to purchase all of the

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Net Delivered Energy (as hereinafter defined) generated by the Complex and delivered at the Interconnection Point (as hereinafter defined) on and pursuant to the terms and conditions contained herein;

- E. **WHEREAS**, on or about the date hereof, the Seller is entering into an Implementation Agreement with the GOP and is entering into or has entered into the [Site Lease]² (as hereinafter defined) with the [AEDB] [Provincial Government (as hereinafter defined)] [Azad Government of the State of Jammu & Kashmir]³;
- F. **WHEREAS**, on or about the date hereof, the Seller is entering into a Water Use Agreement with the [Provincial Government] [Azad Government of the State of Jammu & Kashmir (the “GOAJ&K” or the “GOAJK”)] for the construction of the Complex on [River] [Stream/Canal] [●] (the “**Water Resource**”) and the location of the Complex at the Site, and the use of water from the Water Resource in accordance with the terms and conditions of the Water Use Agreement; and
- G. **WHEREAS**, the Seller has been issued a Generation Licence (as hereinafter defined) by the [GOAJ&K under the Electricity Act, 1910] [National Electric Power Regulatory Authority (“NEPRA”, as hereinafter defined)].

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:

² Or Site Sub-Lease, depending on the project-specific situation. For projects using their own land, the references to Site Lease will be removed.

³ Grant of Site Lease protections is contingent on a Government-to-Government Coordination Agreement being made by AEDB acting for the Federal Government, as was done for upfront wind with the GOS and upfront solar with GOPunjab.

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ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.1. Definitions

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

“Abandonment” – The voluntary cessation of operation of the Complex, and the withdrawal of all, or substantially all, personnel by Seller from the Site for reasons other than (i) a breach or default by the Purchaser under this Agreement, or (ii) a breach or default by the GOP under the Implementation Agreement, (iii) a breach of default by the [Provincial Government] [GOAJ&K] under the Water Use Agreement or (iv) a Force Majeure Event.

“Affiliates” – Any Person 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, 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 each anniversary of the Commercial Operations Date and ending as of the end of the Day immediately 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 (other than a PPFME or a CLFME) within such Agreement Year for the number of days for which such Force Majeure Event subsisted, 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) (other than a PPFME or a CLFME) as provided above.

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“Ancillary Services” – Services to be provided hereunder by the Seller from the Complex other than the provision of Net Delivered Energy, such services being Reactive Power, black-start of the Complex, voltage control and frequency regulation.

“Annual Benchmark Energy” – The net annual energy (in GWh) being the aggregate of the Monthly Benchmark Energy for a year, as stated in Part I of Annex 2 of Schedule 1.

“Average Daily Energy” — For any Agreement Year in consideration, the quantity of electricity expressed in kWh per Day the Complex is assumed capable of generation and delivery at the Interconnection Point, calculated as follows:

$$\mathbf{ADE_Y} = \mathbf{ABE_Y / 365}$$

Where:

$\mathbf{ADE_Y}$ = the Average Daily Energy for the relevant Agreement Year,

$\mathbf{ABE_Y}$ = the Annual Benchmark Energy ;

provided, however, for any period prior to the Commercial Operations Date, the Average Daily Energy shall be calculated as follows:

$$\mathbf{ADE_Y} = \mathbf{ABE_Y * N / CC / 365}$$

Where:

\mathbf{N} = subject to the Seller Interconnection Facilities being installed and commissioned, the rated capacity in MW of the number of Units that are:

(i) installed and ready for Commissioning Tests (with reference to the Commissioning of the Complex) by the Scheduled Commercial Operations Date first notified by the Seller to the Purchaser under Section 8.1; or

(ii) already Commissioned, provided that, solely in relation to Section 15.6(a)(iii)⁴, “N” shall include the number of Units not yet installed or Commissioned for reasons of a PPFME or CLFME.

\mathbf{CC} = the Contract Capacity.

⁴ Restructure 15.6(a) according to Solar EPA.

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“Back-Up Metering System” – All meters and metering devices (including 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.

“Benchmark Energy Table” - The table (consisting of two parts) set out in Annex 2 to Schedule 1 that states the net values for the Power Curve Energy, the Monthly Benchmark Flow, and the Monthly Benchmark Energy for the Complex for all of the Months in a Year, as may be revised in accordance with the terms of this Agreement.

[“Bonus Energy” – For any Agreement Year, the quantity of the aggregate of the Net Delivered Energy and Non Project Missed Volume that exceeds the Annual Benchmark Energy, as determined in accordance with Section 9.1(a)(ii).]⁵

[“Bonus Energy Payment” - The consideration payable by the Purchaser to the Seller for Bonus Energy, determined in accordance with Section 9.1(a)(ii).]⁶

“Business Day” – Any Day other than the Day that banks in Islamabad, Pakistan are legally permitted to be closed for business.

“Capacity Test Certificate” – The certificate issued by the Engineer pursuant to Section 8.3(b).

“Carrying Costs” – The interest or mark-up equal to KIBOR for Rupee based loans and LIBOR for foreign currency based loans, as applicable, plus the spread as approved for debt financing in the Tariff Determination by NEPRA, payable in or converted into Rupees accruing on the then-outstanding principal amount of the debt under the Financing Documents related to the Complex; provided, that no interest charges or mark-up or other debt related costs or payments shall be included in any calculation or determination of the Tariff if and to the extent they are recovered under any of the provisions of this Agreement as Carrying Costs.

“Certificate of Readiness” – The certificate to be issued by the Engineer to the Seller and the Purchaser under Section 8.1 stating, in relation to the Complex, that the Complex is, in the professional opinion of the Engineer, ready for the Commissioning Tests to be carried out and that the Complex is in a condition that it will successfully complete the Commissioning Tests.

⁵ To be deleted if HR is with the Seller.

⁶ To be deleted if HR is with the Seller.

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“Certificate of Readiness for Synchronization” – The certificate to be issued by the Engineer to the Seller and the Purchaser under Section 8.2 stating, in relation to the Complex, that the Complex has, in the professional opinion of the Engineer, passed the necessary no load, full speed tests and that the Complex is in a condition that is ready for and capable of synchronization with the Grid System.

“Certificate of Readiness for Energization of the Seller Interconnection Facilities” - The certificate to be issued by the Engineer pursuant to Section 8.2(b).

“Change in Law” –

- (a) The adoption, promulgation, repeal, modification or reinterpretation 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); or
- (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 Consent after the date of this Agreement; or
- (c) the imposition by a Relevant Authority of any additional Consent,

that in the case of each of clause (a), (b), or (c) above establishes either a material increase in cost or decrease in revenue as a consequence of any requirement for the design, construction, operation or maintenance 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 Consent filed by the Seller on or before the Commercial Operations Date, and (iii) agreed to by the Seller in any agreement in the Project Agreements.

“Change in Tax” – The adoption, enactment, promulgation, coming into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification by any Public Sector Entity after the date hereof of any Law of Pakistan relating to any Tax or Taxes.

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“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” – 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 one hundred and twenty (120) Days prior to the Required Commercial Operations Date without the prior written approval of the Purchaser, which approval may be given or withheld in the sole discretion of the Purchaser.

“Commissioned” – The successful completion of Commissioning of the Complex for continuous operation and Despatch in accordance with Article VIII and Schedule 7 and the certification of such successful completion of Commissioning to the Purchaser and the Seller by the Engineer.

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

“Commissioning Tests” – The tests to be carried out pursuant to Section 8.3(a) and Schedule 7.

“Complex” – The hydro-electric power generation station located on the Site and the Seller Interconnection Facilities (but excluding the Purchaser Interconnection Facilities) having a capacity of [●] MW (net, at Reference Hydrological Conditions) to be designed, engineered, constructed, Commissioned, owned, operated and maintained 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, the Flow Meters, water storage, retention, diversion, tunnels, transportation structures and systems, all spare parts stored at the Site and all other equipment or facilities necessary for delivery of electricity to the Purchaser at the Interconnection Point, which Complex is described in Schedule 2.

“Complex Hill Chart” – The curves and the charts at Schedule 5 depicting the net electrical output the Complex is designed and constructed to produce at varying Hydrological Conditions.

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"Complex Yield Surplus" - The quantum of Regular Energy (if any) over and above the Power Curve Energy corresponding to the Monthly Mean Flow for a given Month, determined in the manner provided in Section 9.1(b).

"Consents" – The Seller Consents and the Purchaser Consents.

"Construction Report" – A report to be submitted by the Seller pursuant to Section 4.2(a), which report shall address the matters identified in, and shall be substantially in the form set out in, Schedule 4.

"Construction Start Date" - The date the 'notice to proceed' is issued by the Seller to the EPC Contractor and the release by the Seller to the EPC Contractor of funds equalling in aggregate not less than seven percent (7%) of the EPC Cost, as notified by the Seller to the Purchaser and AEDB no later than seven (7) Days after its occurrence.

"Construction Works" – The design, engineering, procurement, construction, installation, completion and the Commissioning of the Complex.

"Contract Capacity" – The rated capacity of the Complex in MW which the Seller commits to install and operate at the Site under this Agreement pursuant to Section 2.9(a), as may be revised pursuant to Section 2.9..

"Contractors" – The EPC 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 from time to time (but not more than one at any time) from which the Seller shall receive instructions to Despatch the Complex.

["Council" - means the Azad Jammu & Kashmir Council, constituted under the Azad Jammu and Kashmir Interim Constitution Act, 1974.]

"Cumulative Credit Energy" – The cumulative sum of Monthly Energy for all preceding Months since the immediately preceding calculation of the Lost Revenue Energy.

"Cure Period" – The meaning ascribed thereto in Section 16.3(b).

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

“Declared Available Capacity” – In respect of each hour of an Operating Day, the total generating capacity of the Complex expressed in MW at the Interconnection Point, the Seller has declared available (based on the forecasted Hydrological Conditions) to the Purchaser in accordance with Section 5.3.

“Delayed Payment Rate” – KIBOR, for payments due in Rupees, or LIBOR, for payments due in any foreign currency, as applicable, plus in either case, two (2%) per annum, compounded semi-annually, calculated for the actual number of Days for which the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) Day year.

“Despatch” –

- (i) The decrease, increase or cessation of the generation and delivery of Net Delivered Energy to the Interconnection Point, and
 - (ii) where applicable, the provision of Ancillary Services, as provided in Schedule 5,
- in each case, in accordance with the Technical Limits and the then prevailing Hydrological Conditions at the Site, in response to Despatch Instructions issued from the Control Centre, and “Despatched” shall be construed accordingly.

“Despatch Instructions” – The original, successive or revised instructions for Despatch by the Control Centre (including but not limited to revision 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 of a Party under any provision hereof.

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

“Due Date” – The meaning ascribed thereto in Section 9.8(a).

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

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“Emergency” – An event or circumstance affecting the Grid System which (i) materially and adversely affects (as determined solely by the System Operator) the availability of the Grid System, or the ability of the System Operator to maintain safe, adequate and continuous electrical service or (ii) presents a physical threat to persons or property or the security, integrity or reliability of the Grid System, or (iii) is described as an emergency and contingency event in the Grid Code, or (iv) which the System Operator reasonably expects to have the effects specified in clause (i), (ii) or clause (iii).

“Energy Payment” – [The consideration payable by the Purchaser to the Seller for Monthly Energy, determined in accordance with Section 9.1]⁷ // [Refers to, as applicable, the Regular Energy Payment, the Bonus Energy Payment and/or the Shortfall Energy Payment determined in accordance with Section 9.1].

“Energy Price” – The amount in Rupees per kWh identified as the Energy Price in Schedule 1, as adjusted from time to time in accordance with the provisions thereof.

“Engineer” – The firm of engineering consultants to be appointed and hired by the Seller with the approval of the Purchaser in accordance with Section 2.6 for the purpose of observing the construction of the Complex and the Commissioning Tests and certifying to the Purchaser and the Seller the results of the Commissioning Tests and the other matters specified herein.

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

“EPC” – Engineering, procurement and construction.

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

“EPC Contractor” – The Contractor or Contractors and any successor or successors thereto hired and appointed by the Seller pursuant to the EPC Contract, and not objected to by AEDB pursuant to Section 6.2 of the Implementation Agreement.

⁷ Where HR is with the Seller

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“EPC Cost” – The total cost which the Seller will incur under the EPC Contract in carrying out and completing the Construction Works and the Seller Interconnection Works in accordance with this Agreement.

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

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

“Extended Period” – The meaning ascribed thereto in Section 15.9(c).

“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 Tariff Components” – Fixed O&M Component (Foreign), Fixed O&M Component (Local), Insurance Component, Return on Equity Component, Principal Repayment Component and Interest Charges Component.

“Fixed O&M Component (Foreign)” – The meaning ascribed thereto in Schedule 1.

“Fixed O&M Component (Local)” – The meaning ascribed thereto in Schedule 1.

“Forced Outage or Partial Forced Outage” – From and after the Commercial Operations Date, a total or partial interruption of the Complex’s generating capability (excluding periods, if any, that the Complex is being operated by the Purchaser pursuant to Section 5.15) that is not the result of (i) a request by the Purchaser in accordance with this Agreement, (ii) a Scheduled Outage or a Maintenance Outage, or (iii) a Force Majeure Event.

“Force Majeure Event” – The meaning ascribed thereto in Section 15.1.

“Generation Licence” – The licence No. [●], dated [●] issued by the [GOAJ&K] [NEPRA] permitting the generation and supply of electricity by the Seller from the Complex as contemplated by this Agreement and in accordance with the terms and conditions of such license.

“GOP” – The Islamic Republic of Pakistan.

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“Grid Code” – The grid code prepared by NTDC and approved by NEPRA, as revised from time to time and, for the purposes of this Agreement, shall mean and include the distribution code of the distribution company in whose service area the Complex is located.

“Grid System” – (i) The transmission facilities owned by NTDC, and (ii) where the Interconnection Point is established with the distribution system of a distribution company operating at 132 kv or below, through which (a) the Net Delivered 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 Operator” – NTDC and its successors-in-interest.

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

“Hydrological Conditions” – The hydrological conditions existing at the Site and recorded by the Flow Meters which impact the operation and generation of the Complex in accordance with this Agreement, including the volumetric rate of water inflow at the Complex, gross head, upstream and downstream water levels or any other condition relevant to the operation of the Complex in accordance with this Agreement, as decided by the Operating Committee from time to time.

“Implementation Agreement” – The implementation agreement dated [●], by and between the GOP and the Seller in relation to the Project, as may be amended by the parties thereto from time to time.

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

“Insurance Component” – The meaning ascribed thereto in Schedule 1.

“Interconnection Point” – The physical point or points where the Complex and the Grid System are to be connected as specified in Schedule 3.

“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.

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“Interest Charges Component” – The meaning ascribed thereto in Schedule 1.

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

“Invoice Dispute Notice” – The meaning ascribed thereto in Section 9.9(a).

“KIBOR” – The average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits for a period equal to three (3) months which appears on the appropriate page of the Reuters service at or about 11:30 a.m. in Karachi on the last available Business Day, or in the event that the Reuter’s service, or any successor thereto, 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 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 or (b) (other than a Specified Consent mentioned in Part I of Schedule 1 of the Implementation Agreement) not being issued upon application having been properly and timely made and diligently pursued or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect a Party’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” manner (as explained in Section 1.2(j) of the Implementation Agreement).

“Laws of Pakistan” – The federal, provincial and local laws of Pakistan, and all orders, rules, regulations, executive orders, statutory regulatory 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.

“Lenders Cure Period” – The meaning ascribed thereto in Section 16.5.

“Lender Debt Certification” – The meaning ascribed thereto in Section 8.2(b).

“Letter of Support” – The [Tripartite] Letter of Support No. [●] dated [●] issued by [AEDB]

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[AEDB and the Provincial Government], as may be amended, extended or clarified prior to Financial Closing.

“LIBOR” – The ICE Benchmark Administration Interest Settlement Rate for Dollar deposits for a period equal to three (3) months which appears on the appropriate page of the Reuters service at or about 11:00 a.m. in London on the last available London Banking Day, or in the event that the Reuter’s service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the ICE Benchmark Administration Interest Settlement Rate for Dollar deposits in the London inter-bank market.

“Lien” – Any mortgage, pledge, lien, security interest, conditional and installment sale agreement, encumbrance, claim or charge of any kind.

“London Banking Day” – Any Day other than a Saturday or a Sunday or any other day on which banks are closed in London, England.

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

“Lost Revenue Energy” – For any Agreement Year, the shortfall, if any, in the electricity generated by the Complex and calculated as follows:

$$\mathbf{LRE}_Y = (\mathbf{ABE}_Y - \mathbf{AME}_Y) - \mathbf{CE}_Y$$

Where:

\mathbf{LRE}_Y = Lost Revenue Energy, not being a negative number, for the relevant Agreement Year,

\mathbf{ABE}_Y = the Annual Benchmark Energy for the relevant Agreement Year,

\mathbf{AME}_Y = the aggregate of Monthly Energy for all Months in the relevant Agreement Year,

\mathbf{CE}_Y = Cumulative Credit Energy, if any, standing to the credit of the Seller following the immediately preceding calculation of \mathbf{LRE}_Y .

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“Lost Revenue Energy Account” – The meaning ascribed thereto in Section 9.6(d).

“Maintenance Outage” – An interruption or reduction of the generating capability of the Complex that: (a) is not a Scheduled Outage; (b) has been scheduled in consultation with and allowed by the Purchaser in accordance with Section 5.5; and (c) is for the purpose of performing work on specific components, which, considering the Technical Limits and Prudent Utility Practices, should not, in the reasonable opinion of the Seller, be postponed until the next Scheduled Outage.

“Maintenance Period” – The period of [●] to [●] or any period or periods (provided that there shall be no more than two (2) such periods) aggregating ninety (90) Days in a Year, designated by the Purchaser (or the System Operator) in accordance with Section 5.12.

“Major Equipment Failure” – The failure of any major piece of equipment, systems or facilities forming part of the Complex that materially interrupts or materially and adversely affects the continued operation of the Complex.

“Major Overhaul” – A major overhaul of a Unit, the scope and frequency of which is set out in Schedule 5.

“Major Maintenance Expenses” – The meaning ascribed thereto in Section 9.11.

“Maximum Water Flow Period” – The period falling between [●] and [●] in each Year during which the flow of water at the Site, measured on a historical basis, is at a maximum.

“Metering System” – All meters and metering devices (including any remote terminal units and an electronic data recording system) to be procured by the Purchaser, 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 Net Delivered Energy from the Complex.

“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

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on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

"Monthly Mean Flow" – From and after the Commercial Operations Date, the mean of the actual water flow measurements at the Site recorded in a given Month by the Flow Meters at continuous ten (10) minutes intervals.

"Monthly Benchmark Energy" - Derived from the Power Curve Energy, the benchmarked net quantity of energy the Complex shall be designed and constructed to produce and deliver at the Interconnection Point at the Monthly Benchmark Flow for a given Month, as set forth in Part I of the Benchmark Energy Table.

"Monthly Benchmark Flow"⁸ - The projected mean water flow at the Site for a given Month determined on the basis of historical hydrological data for the Site for [●] years available with the relevant Public Sector Entity, as set forth in Part I of the Benchmark Energy Table.

"Monthly Energy" – For any Month, the sum of Net Delivered Energy and the Non Project Missed Volume.

"NEPRA" – The National Electric Power Regulatory Authority established by 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.

"Net Delivered Energy" – The net electrical energy expressed in kWh that is generated by the Complex and delivered to the Interconnection Point, as measured by the Metering System or the Back-Up Metering System (as the case may be).

"Non-Maintenance Period" – The period from [●] through [●] or any other periods (provided that there shall be no more than two (2) such periods) of not more than one hundred and fifty (150) Day in aggregate in a Year which are not included in the Maintenance Period, as designated by the Purchaser (or the System Operator) in accordance with Section 5.13.

⁸ Purchaser shall not take HR for those raw sites for which there is no recorded hydrological data with any Public Sector Entity; however, Seller may develop such sites by taking HR.

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"Non-Project Event" - Each of the following events or circumstances:

- (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) an Emergency, or
- (v) a Despatch Instruction,

in each case:

- (a) being the proximate and direct cause of cessation or reduction of the electricity generation from the Complex, and
- (b) not caused by:
 - (A) a Forced Outage or a Partial Forced Outage or the operating conditions at the Complex; or
 - (B) a fault or failure of any equipment or safety device comprised in the Complex.

"Non-Project Missed Volume" or "NPMV" - The volume of electric energy expressed in kWh, not delivered by the Complex solely due to a Non-Project Event, measured and recorded in the manner provided in Schedule 10, provided that, the generation and delivery of the electric energy shall be resumed as soon as technically possible as per Despatch Instructions upon cessation of the relevant Non-Project Event (except where prevented by another Non-Project Event);

"NPMV Protocol" – The protocol set out in Schedule 10.

“NTDC” – National Transmission and Despatch Company Limited, a public limited company incorporated under the Companies Ordinance, 1984 with its principal office at WAPDA House, Shahrah-e-Quaid-e-Azam, Lahore, Pakistan.

“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 due to a default of

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the other Party.

“O&M Agreement” – The agreement 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” – Any operation and maintenance Contractor(s), and any successor(s) thereto, appointed by the Seller and not objected to by AEDB pursuant to Section 6.2 of the Implementation Agreement.

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

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

“Ordinary Share Capital” – The meaning ascribed thereto in the Implementation Agreement.

“Pakistan Political 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” – Certain costs or charges identified as Pass-Through Items in Schedule 1.

“PE Compensation Period” – The meaning ascribed thereto in Section 15.6(a).

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

“Person” – Any person including, without limitation, 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.

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"Power Curve Energy" - The quantities of Net Delivered Energy the Complex is designed and constructed to deliver at the Interconnection Point at the various water flow levels at the Site for each Month, plotted graphically in the Complex Hill Chart at Schedule 5C and in a tabular form at Part I of the Benchmark Energy Table.

"PPFME" – The meaning ascribed thereto in Section 15.1(a).

"Prescribed Fee" – With respect to any Consent, the charge or fee, if any, prescribed by the Laws of Pakistan.

"Prescribed Form" – With respect to any Consent, the form, if any, (including all information and details) prescribed by the Laws of Pakistan for the application for, or renewal of, such Consent.

"Principal Repayment Component" – The meaning ascribed thereto in the Schedule 1.

"Principal DISCOs" – The following public limited companies incorporated under the Companies Ordinance, 1984 with their principal offices given herein:

- (a) Faisalabad Electric Supply Company Limited, West Canal Road, Abdullahpur, Faisalabad;
- (b) Gujranwala Electric Power Company Limited, 565-A Model Town, G. T. Road, Gujranwala;
- (c) Islamabad Electric Supply Company Limited, Street No. 40, Sector G-7/4, Islamabad;
- (d) Lahore Electric Supply Company Limited, 22-A Queens Road, Lahore;
- (e) Multan Electric Power Company Limited, MEPCO Complex, Khanewal Road, Multan;
- (f) Peshawar Electric Supply Company Limited, Shakhi Chashma, Shami Road, Peshawar;
- (g) Quetta Electric Supply Company Limited, QESCO Headquarters, Zarghoon Road, Quetta;
- (h) Sukkur Electric Power Company Limited, Thermal Power Station, Old Sukkur, Sukkur; and
- (i) Tribal Area Electric Supply Company Limited, 213-WAPDA House, Shami

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Road, Peshawar.

“Project” – Each of the following activities:

- (a) the ownership and possession of the Complex, and the location of the Project on the Site;
- (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), construction, procurement, permitting, testing and Commissioning of the Complex;
- (c) the procurement, importation, exportation (for 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 use of water at the Complex from the Water Resource for the generation and sale of Net Delivered 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 18.5(a)(i).

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

“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 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.

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“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 the same or similar circumstances and conditions 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 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.

“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, or (b) any department, authority, instrumentality, agency, or judicial body of the GOP, the Provincial Government or any such local governmental authority, (c) courts and tribunals in Pakistan, and (d) any commission or independent regulatory agency or body having jurisdiction over the Seller, the Project or any part thereof.

“Purchaser” – The Central Power Purchasing Agency (Guarantee) Limited (on behalf of the Principal DISCOs), a public limited company incorporated under the Companies Ordinance, 1984, with its principal office at 6th floor, Shaheed-e-Millat Secretariat, Blue Area, Islamabad Pakistan, and its successors and assigns.

“Purchaser Consents” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licences, 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 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 or caused to be designed, constructed or installed by the Purchaser on the Purchaser’s side of the Interconnection Point that are described in Schedule 3.

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“Purchaser Interconnection Works” – Those works and activities described in Schedule 3 to be undertaken by or caused 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.

“Reference Discharge” – The flow of [●] cumecs of water.

“Reference Gross Head” – The gross head of [●] meters.

“Reference Hydrological Conditions” – The Reference Discharge and the Reference Gross Head at the Site at which the Complex has been designed to generate and deliver the Power Curve Energy.

“Reactive Power” – The wattless component of the product of voltage and current, which the Complex shall provide to or absorb from the Grid System within the Technical Limits and which is measured in MVA_r.

“Reference Tariff Table” - The table at Annex 1 of Schedule [1](#) setting out elements of the tariff components, as per the Tariff Determination.

“Related Dispute” – Any dispute between a Party and its Contractor that is related to any Dispute between the Parties under this Agreement.

[“Regular Energy” - For any given Month following the Commercial Operations Date, the lower of the Monthly Energy and the Monthly Benchmark Energy for that Month.]⁹

[“Regular Energy Payment” - The consideration payable by the Purchaser to the Seller for Regular Energy, determined in accordance with Section 9.1(a)(i).]¹⁰

“Relevant Authority” – The department, authority, instrumentality, agency or other relevant entity from which a 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 and this Agreement, as the case may be.

“Reliability Test” – The test to be carried out pursuant to Section 8.3(b), as described in

⁹ To be deleted if HR is with the Seller.

¹⁰ To be deleted if HR is with the Seller.

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Schedule 7.

“Report” – The meaning attributable thereto in Section 15.7(a).

“Required Commercial Operations Date” – The date that is thirty six (36) months following the date on which Financial Closing occurs, as such date may be extended pursuant to Section 6.5 or Section 8.1(b) or by reason of a Force Majeure Event [or due to non-availability of water within Technical Limits]¹¹.

“Reserve Fund” – The meaning ascribed thereto in Section 9.11.

“Restoration” – The meaning ascribed thereto in Section 15.6.

“Restoration Period” – The period of restoration established in the Restoration Schedule and as defined in Section 15.6(a).

“Restoration Cost Estimate” – The meaning attributable thereto in Section 15.6(a).

“Restoration Schedule” – The meaning attributable thereto in Section 15.6(a).

“Return on Equity Component” – The meaning ascribed thereto in Schedule 1.

“Revised Dispatch Instruction” – The meaning ascribed thereto in Section 5.4(b).

“Rules” – The meaning ascribed thereto in Section 18.3(a).

“Rupee” or “Rs.” – The lawful currency 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” – [The Seller’s supervisory control and data acquisition system for the Complex and the Flow Meters]¹².

“Scheduled Commercial Operations Date” – The date reasonably advised to the Purchaser by

¹¹ Where HR is with Purchaser

¹² Generally, this term is used for the utilities’ SCADA. For the RE Projects, the term for the equipment required to be deployed by the Seller for real-time online collection of the energy resource data and the performance of the generation facility has been the “Complex Monitoring System” and “Met Station”. The technical experts may determine whether SCADA should continue or a different term should be employed.

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the Seller at Financial Closing and again at Construction Start Date, as such date may be revised from time to time based on the scheduled construction programme for the completion of the Complex.

“Scheduled Outage” – A planned interruption of the Complex’s generating capability or any material part thereof that (i) has been scheduled by the Seller and agreed to by the Purchaser in accordance with Section 5.5, and (ii) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Complex or any material part thereof.

“Seller” – [●], a limited company incorporated under the Laws of [Pakistan] [AJ&K], 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, licences (including the Generation Licence), permits, decisions or similar items which is or are issued by a Relevant Authority and which the Seller or any of its Contractors is required to obtain from any Relevant Authority (other than the Purchaser) and thereafter to maintain to fulfill its obligations under this Agreement, including the Specified Consents; 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 to be designed, constructed or installed by or on behalf of the Seller on the Seller’s side of the Interconnection Point that are described in Schedule 3, including any telemetering equipment, transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, telemetering and data interface for the SCADA System, protective devices and safety equipment.

“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.

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“Seller Letter of Credit” – An unconditional, irrevocable, divisible, and transferable on demand letter of credit in favour of the Purchaser in the form set out in Schedule 9, which is issued by a bank or other financial institution reasonably acceptable to the Purchaser, and which shall provide for draws by the Purchaser in immediately available funds on a Monthly basis upon presentation at a bank at Islamabad, Pakistan, and which, at the Effective Date, shall be delivered by the Seller to the Purchaser in the amount of thirty five (35) Dollars (\$35) per kW of the Contract Capacity.

[“Shortfall Energy” - The shortfall, if any, of the Monthly Energy in a given Month below the Monthly Benchmark Energy for that Month, where such shortfall is attributable to the Monthly Mean Flow being less than the Monthly Benchmark Flow, determined in accordance with Section 9.1(a)(iii).]¹³

[“Shortfall Energy Payment” - The payment for Shortfall Energy, determined subject to and in the manner provided in Section [9.1\(a\)\(iv\)](#).]¹⁴

“Site” – The land, roads, rights-of-way, and other interests in land and any rights, permits and licences acquired by the Seller for the purposes of the Complex on, through, above or below the ground 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, which Site is more particularly described in Schedule 2.

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

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

“Supplemental Tariff” – An amount payable by the Purchaser as provided in Section 9.5 and Schedule 1.

“System Operator” – The Control Centre, or any entity with the legal responsibility for despatch of the electric generation facilities delivering electric energy into the Grid System, and its successors and assigns.

“Tariff Determination” – The NEPRA’s Tariff Determination in Case No. [●] dated [●] issued

¹³ To be deleted if HR is with the Seller

¹⁴ To be deleted if HR is with the Seller

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by NEPRA for the Seller, as amended from time to time by NEPRA, including any clarification thereto issued from time to time by NEPRA, 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 and any tax, charge, cess, impost, tariff, duty, fee or payment, but excluding the Water Use Charge payable to the [Provincial Government] [GOAJ&K] for the use of water from the Water Resource in connection with the generation of Net Delivered Energy; provided, however, that 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 or reimbursable 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 or reimbursable by the Seller in relation to the Project as a result of a Change in Tax.

“Technical Limits” – The limits and constraints in Schedule 5 relating to the operation, maintenance and Despatch of the Complex.

“Technical Specifications” - The technical specifications for the construction, operation and maintenance of the Complex as set forth in Schedule 2.

“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).

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

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“Transfer of the Complex” – The meaning ascribed thereto in Section 19.9(e).

“Transferee” – The meaning ascribed thereto in Section 19.9(e).

“Unit” – A hydroelectric turbine along with its generator and associated equipment and auxiliaries.

“Unit Start-Up” – After the Commercial Operations Date, any start-up of a generating unit that is necessary for the Seller to comply with a Dispatch Instruction or a Revised Dispatch 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 Dispatch Instruction or Revised Dispatch Instruction.

“Variable O&M Component” – The meaning ascribed thereto in Schedule 1.

“Water Discharge Measurement Protocol” – The protocol developed by the Operating Committee to measure the flow of water at the Site for the purposes of this Agreement.

“Flow Meters” – The meters and other equipment specified in Schedule 2 procured, installed, owned, operated and maintained by the Seller at the Site at the location or locations agreed by the Operating Committee for the purpose of measuring, processing, communicating and archiving the Hydrological Conditions and Monthly Mean Flow in accordance with the requirements stated in Section 7.8 and Schedule 5, which equipment shall be subject to inspection by the Purchaser and testing at the request of the Purchaser upon reasonable advance notice.

“Water Resource” – The [River] [Canal] at [●] .

“Water Use Agreements” – The water use agreement entered into by the Seller with the [Provincial Government] [the GOAJ&K] for using the Water Resource for the purposes of the Project as such agreement may be amended or modified by the from time to time.

“Water Use Charge” – The amount in Rupees per kWh identified as the Water Use Charge in Schedule 1, as adjusted from time to time in accordance with the provisions thereof.

“Water Use Payment” – The amount in Rupees payable under Section 9.3 for Net Delivered Energy during a Month or part-Month, as determined in accordance with Schedule 1.

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

“Year” – Each twelve (12) Month period commencing at 12:00 midnight on the 31st of December and ending at 12:00 midnight on the following 31st of December.

Section 1.2. Rules of Interpretation

In this Agreement:

- 1.2.1 the headings are for convenience only 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;
- 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 provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.2.5 the words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- 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;
- 1.2.7 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.2.8 the Schedules (and if any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in Sections 1.1 and 1.3 of this Agreement, respectively;
- 1.2.9 except as otherwise indicated in this Agreement, references to time are references to time in Pakistan; and

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1.2.10 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.

Section 1.3. Abbreviations

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

°C	means degrees Celsius;
Cusec (Cumec)	means a volumetric unit for measuring the flow of water equal to one cubic foot (meter) per second;
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; and
MWh	means megaWatt hour or 1,000 kWh.

ARTICLE II

EFFECTIVE DATE AND TERM

Section 2.1. Conditions Precedent and Effective Date

- (a) On the date of execution of this Agreement by the Parties, only Article I (Definitions; Rules of Interpretation), this Section 2.1, Section 2.3, Article XIII

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(Representations and Warranties) and Article XIX (Miscellaneous Provisions) shall become effective.

- (b) In connection with the issuance of the Letter of Support, the Seller has delivered or has caused to be delivered the Performance Guarantee to the AEDB.
- (c) On the date on which notice from AEDB of the occurrence of the Financial Closing is received by the Purchaser, this Agreement shall become effective in its entirety (the “Effective Date”).
- (d) The Seller shall use its reasonable endeavors to cause the occurrence of Financial Closing by the date required in the Letter of Support. Before notice of the Financial Closing is received by the Purchaser from AEDB, the Seller shall deliver to the Purchaser the Seller Letter of Credit in a form which is reasonably acceptable to the Purchaser. The Purchaser shall notify AEDB confirming receipt and acceptance of the Seller Letter of Credit.
- (e) If the Seller Letter of Credit is not received by the Purchaser in the form required herein and issued by a bank reasonably acceptable to the Purchaser by the date required for the Financial Closing in the Letter of Support, as such date may be extended by AEDB in accordance with the Letter of Support, the Purchaser may deliver written notice to the Seller terminating this Agreement, which termination shall be effective immediately on 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 (such period, the “**Term**”), which 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 15.6(i), 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 extension period, the Seller shall be paid (i)

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the Fixed O&M Component and the Insurance Component; and (ii) in addition, if such period is longer than one hundred and eighty (180) Days, (ii) fifty percent (50%) of the Return on Equity Component for such period beyond the first one hundred and eighty (180) Days, plus (iii) the Energy Price for each kWh of Net Delivered Energy, in each case adjusted, *mutatis mutandis*, in accordance with the provisions of Schedule 1.

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, the Purchaser shall take such actions as are reasonable under the circumstances to assist the Seller in its efforts to procure or renew any Seller Consents that it has (or its Contractors have) not 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 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 a request;
 - (iii) at the same time as it submits its request, disclose to the Purchaser the full details of the 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, information and/or documents as the Purchaser may reasonably request in connection with

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the Seller's request; and

- (v) bear all reasonable out-of-pocket costs and expenses incurred by the Purchaser in relation to such request from the Seller.
- (c) To the extent material to the Seller's rights or obligations under this Agreement, the Purchaser shall, at its own cost and expense, procure, diligently pursue, and thereafter maintain all Purchaser Consents.

Section 2.4. Appointment of the Operating Committee

Not later than ten (10) months prior to the then-prevailing Scheduled Commercial Operations Date, the Parties shall establish the Operating Committee to perform the functions set out in Section 5.10.

- (a) Members of the Operating Committee shall have reasonable experience working on projects of a similar nature to undertake the scope of work of the Operating Committee.
- (b) 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 the holding of meetings, the keeping of minutes of meetings and the appointment and operation of sub-committees.
- (d) The 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 the unanimous approval of the members present at a meeting of the Operating Committee where a quorum of the Operating Committee members is present. A quorum of the members of the Operating Committee shall be deemed to be present where at least two (2) members representing the Purchaser and two (2) members representing the Seller are present at such meeting.

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Section 2.5. Operating Procedures

- (a) Within thirty (30) Days of the 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 interfaces between the Purchaser and the Seller. The Operating Procedures shall:
 - (i) take proper account of the design of the Complex, the Metering Systems, and the Grid System; and
 - (ii) 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 as follows:
 - (i) within forty-five (45) Days following the establishment of the Operating Committee, the Seller shall deliver to the Purchaser in writing proposed draft Operating Procedures;
 - (ii) the Purchaser shall provide comments in writing on the draft Operating Procedures within twenty-five (25) Days following the date the draft Operating Procedures are delivered by the Seller to the Purchaser, and each Party shall make a representative available to meet within ten (10) Days following the end of such twenty-five (25) Day period to review each Party's comments on the draft Operating Procedures and on the proposed changes and any objections to the proposed changes of a Party;
 - (iii) as soon as is 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

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Purchaser and, within five (5) Business Days after a request from the Seller, the Purchaser shall make its representatives available at Islamabad, Pakistan, to meet and review its comments and proposed changes with the Seller; and

- (v) the Seller shall revise the draft Operating Procedures to incorporate such additions or modifications required by the Purchaser and shall provide a 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 to the draft Operating Procedures. 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 the 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 discuss such proposed changes in good faith 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.
- (e) The Purchaser may delegate its functions and responsibilities under this Section 2.5 for developing and finalizing the Operating Procedures to the Grid System Operator.

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Section 2.6. Appointment of the Engineer

- (a) Not later than two hundred and seventy (270) Days prior to the then-prevailing Scheduled Commercial Operations Date, the Engineer shall have been appointed by the Seller, with the approval of the Purchaser, (and shall by such date be available to perform the duties of the Engineer provided herein and shall thereafter keep appointed and available for as long as may be necessary to discharge the duties of the Engineer under this Agreement) to carry out the duties of the Engineer specified in this Agreement in accordance with the highest professional standards and duty of care, both to the Seller and to the Purchaser. The Seller shall not replace any Person appointed as 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) The Seller shall deliver the Seller Letter of Credit as required in Section 2.1(d) to the Purchaser prior to the delivery of the notice of Financial Closing by the Agent to AEDB whereupon the Purchaser shall notify AEDB of its receipt of the Seller Letter of Credit. Upon Financial Closing being declared by AEDB, AEDB shall return the original Performance Guarantee to the Seller. The Seller shall maintain in full force and effect the Seller Letter of Credit in the then-required amount from the Effective Date 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;

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provided, that if the Seller is or is claimed to be liable to pay liquidated damages under Sections 2.9(b), 9.6 or 16.7(b) or on termination of this Agreement pursuant to Section 16.8, 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 interest / mark up 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) above. The Purchaser shall return the Seller Letter of Credit to the Seller within fifteen (15) Business Days following the end of the period referred to in Section 2.7(a). If the Seller provides a replacement or substitute Seller Letter of Credit acceptable to and with the consent of 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 shall be required to pay liquidated damages to the Purchaser, and the Seller fails to make any such payments of damages when due, then the Purchaser shall be entitled to draw or collect such amounts, less any amounts disputed in good faith and on reasonable grounds by the Seller, from the Seller Letter of Credit upon presentation of a certificate of an authorized officer of the Purchaser stating that (1) amounts shown in the invoice accompanying the certificate are due and payable by the Seller to the Purchaser under this Agreement and (2) an invoice for such amount has been delivered to the Seller at least thirty (30) Days prior to the presentation of the certificate and either (a) no amounts shown in such invoice have been disputed by the Seller or (b) 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 Invoice 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.

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- (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 to do so, 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 that the Seller is required to maintain the Seller Letter of Credit pursuant to Section 2.7(a), the Seller Letter of Credit will expire within ten (10) Days and the effective period of the Seller Letter of Credit has not been extended for a period of not less than ninety (90) Days or a replacement Seller Letter of Credit has not been 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 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, the Purchaser shall return to the Seller the amount received by the Purchaser in connection with the encashment of the Seller Letter of Credit less any amount properly retained pursuant to Section 2.7(d).

Section 2.8. Reaffirmation of Representations and Warranties

- (a) Together with the notice delivered by the Seller to the Purchaser giving notice of the Effective Date, the Seller shall deliver a certificate to the Purchaser confirming that the representations in Section 13.1 are true and accurate as at the Effective Date.
- (b) No later than five (5) Business Days after the date on which the Seller gives the Purchaser notice of the Effective Date, the Purchaser shall deliver a certificate to the Seller, confirming that the representations in Section 13.3 were true and

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accurate as at the Effective Date.

Section 2.9. Specification of Contract Capacity

- (a) The Parties agree that the Contract Capacity is [●] MW (net, at Reference Hydrological Conditions).
- (b) At any time (and from time to time) after the Effective Date but prior to the occurrence of the Commercial Operations Date, the Seller may elect by notice to the Purchaser to reduce the Contract Capacity by an amount not to exceed in aggregate ten percent (10%) of the Contract Capacity specified in Section 2.9(a). In each such case, the Contract Capacity shall be reduced as specified by the Seller upon the payment of liquidated damages specified below and the following provisions shall apply:
 - (i) the Seller shall pay to the Purchaser in immediately available funds within five (5) Business Days after the notice to reduce the Contract Capacity, as liquidated damages for such reduction and not as a penalty, an amount determined in accordance with the following schedule:
 - (A) if the reduction in the Contract Capacity requested by the Seller is greater than zero percent (0%) and less than or equal to two percent (2%) of the specified Contract Capacity, the amount payable shall be equal to four hundred thousand Dollars (\$400,000) multiplied by the number of MW (prorated for any fraction thereof) of the reduction in the Contract Capacity;
 - (B) if the reduction in the Contract Capacity requested by the Seller is greater than two percent (2%) and less than or equal to five percent (5%) of the specified Contract Capacity, the amount payable shall be equal to five hundred Dollars (\$500,000) multiplied by the number of MW (prorated for any fraction thereof) of the reduction in the Contract Capacity; and
 - (C) if the reduction in the Contract Capacity requested by the Seller is greater than five percent (5%) and less than or equal to ten percent (10%) of the specified Contract Capacity, the amount payable shall

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be equal to six hundred and twenty-five thousand Dollars (\$625,000) multiplied by the number of MW (prorated for any fraction thereof) of the reduction in the Contract Capacity;

- (ii) from the date of payment of the amount of liquidated damages determined pursuant to Section 2.9(b)(i), the Contract Capacity shall be reduced by the amount stated in such notice to the Purchaser;
 - (iii) the Seller may deliver additional notices of reduction of the Contract Capacity, provided that the aggregate reduction in Contract Capacity does not exceed ten percent (10%) of the Contract Capacity specified in Section 2.9(a) and provided that the amount of any liquidated damages payable pursuant to Section 2.9(b)(i) for such further reduction shall be without double-counting of, and shall exclude, any amounts already paid under Section 2.9(b)(i) for previous reductions of the Contract Capacity;
- (c) any liquidated damages payable under Section 2.9(b) shall be in addition to any other liquidated damages that have become or thereafter become payable under Section 9.6.
- (d) In the event the Contract Capacity is reduced under Section 2.9(b) above, the Benchmark Energy Table and the Complex Hill Chart at Schedule 5C shall be revised to account for the reduction in the Power Curve Energy, the Annual Benchmark Energy and the Monthly Benchmark Energy corresponding to the revised Contract Capacity. The provisions of Section 2.10 shall, mutatis mutandis, apply to the revision of the Benchmark Energy Table and the Complex Hill Chart at Schedule 5C and the revision shall be initiated by the Seller within fifteen (15) Days of the notification of the reduction in the Contract Capacity. The aforesaid revisions shall be submitted to NEPRA for its approval and shall, subject to NEPRA's approval, take effect when incorporated by an amendment in writing signed by the Parties to this Agreement.

Section 2.10 Benchmark Energy Table

The Benchmark Energy Table in Annex 2 to Schedule 1 shall be the final applicable Benchmark Energy Table in force during the Term. No change in the Benchmark Energy Table

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shall become effective unless approved by NEPRA.

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ARTICLE III SALE AND PURCHASE OF ENERGY

Section 3.1. Sale and Purchase of Net Delivered Energy

- (a) Subject to the terms of this Agreement, the Seller shall sell and deliver and the Purchaser shall purchase and accept all Net Delivered Energy generated by the Complex and delivered at the Interconnection Point for the consideration described in Article IX and determined in accordance with the provisions described in Schedule 1.
- (b) The Seller shall not, without the prior written consent of the Purchaser, sell or deliver the electrical output of the Complex to any Person other than the Purchaser.
- (c) ¹⁵Except as permitted expressly under this Agreement, the Seller shall take no action which would encumber, impair or diminish the Seller's ability to generate, sell and deliver the Net Delivered Energy in accordance with this Agreement.

Section 3.2 Carbon Credits

The Parties acknowledge that registration of the Project for Carbon Credits marketing and distribution of benefits of Carbon Credits generated by the Complex shall be in accordance with the Policy for Development of Renewable Energy for Power Generation 2006, as amended from time to time, that shall govern the matters afore-said. For the avoidance of doubt, the amounts realized from the sale of Carbon Credits shall not be set-off or netted against the Energy Payments.

Section 3.2. 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.

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ARTICLE IV

CONSTRUCTION OF THE COMPLEX

Section 4.1. Construction of the Complex

- (a) The Seller shall commence and proceed with the Construction Works 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 Specifications, the Laws of Pakistan (including the Seller Consents, the Tariff Determination, the Grid Code 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 by the Required Commercial Operations Date.
- (c) The Seller shall cause all equipment which is permanently installed by the EPC Contractor as part of the Complex to be new and unused at the time of such installation and to comply with the requirements of Schedule 2.

Section 4.2. Submission of Reports and Information

- (a) The Seller shall submit, or cause to be submitted, to the Purchaser the following documents on or before the specified dates:
 - (i) As soon as available, but no later than the Effective Date, a copy of the Implementation Agreement as executed, with any amendments thereto;
 - (ii) As soon as available, but no later than the Effective Date, a copy of the Water Use Agreement, as executed, with any amendments thereto;
 - (iii) Beginning within thirty (30) Days after the Effective Date and ending on the Commercial Operations Date, (A) reasonably detailed Construction Reports delivered to the Purchaser not later than the last Day of March, June, September and December, including any updates to the construction milestone schedule contained therein, (B) such other

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reports as are submitted to the Seller by the Engineer, and (C) 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;

- (iv) No later than ninety (90) Days after the Effective Date, (A) evidence demonstrating that the Seller (or its Contractors, 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 Net Delivered Energy from, the Complex, (B) a list identifying the Seller Consents not yet required to be obtained for the operation and maintenance of, and the supply and delivery of Net Delivered Energy from the Complex, and (C) 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;
- (v) At least sixty (60) Days prior to the scheduled commencement of testing and Commissioning of the Complex, a preliminary start-up and test schedule for the Complex;
- (vi) 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;
- (vii) On or as soon as practicable following the Construction Start Date but in any event within ten (10) Business Days thereafter, a copy of the certificate of insurance for the All Risk Insurance Policy and, as soon as available, a copy of such policy, and as soon as is available but in any event on or before the Commercial Operations Date and, as and when updated, copies of all insurance policies and certificates of insurance or

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other certificates of insurance for policies detailed in Schedule 8;

- (viii) 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 the Flow Meters, and a certificate from the Engineer confirming each successful Commissioning Test shall be provided to the Purchaser;
 - (ix) No later than thirty (30) Days following each successful Commissioning Test, for the major items of plant incorporated into the Complex, one copy, as received by the Seller pursuant to the EPC Contract, of all the manufacturers' specifications and manufacturers' operation manuals; and
 - (x) As soon as available, but no later than thirty (30) Days following the successful completion of the Commissioning Tests, two copies of the Commissioning Tests results performed on the Complex, and a certificate from the Engineer confirming the results of each such test.
- (b) The Seller shall notify the Purchaser promptly from time to time whenever it determines that the then expected date for the Commissioning of the Complex is unfeasible or inappropriate, and shall specify a revised expected date for the Commissioning of the Complex 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) The Purchaser shall provide or cause to be provided to the Seller within thirty (30) Days after receipt of a written request from the Seller, documents and information on the Grid System and such other documents and data in the Purchaser's or the Grid System Operator's possession and control as may be reasonably necessary for the Seller to undertake 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, the Grid System Operator and the System Operator, and any planned changes to the despatch and communication

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procedures then in effect. In connection with the provision of such documents and information, the Purchaser shall allow and enable the Seller during 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, the Grid System Operator's and the System Operator's relevant personnel engaged in the management, operation, maintenance and reinforcement of the Grid System. When such documents and information is no longer required for the purposes provided herein, such documents and information shall be returned to the Purchaser or 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 to the other Party pursuant to this Section 4.2.

Section 4.3. Delivery of Electrical Power

From and after the completion and commissioning of the Purchaser Interconnection Facilities, the Purchaser shall, to the extent necessary to carry out testing of the Complex including Commissioning Tests, transport to the Complex electrical energy for startups in accordance with the schedules provided to the Purchaser Pursuant to Section 4.2 and Section 8.1.

Section 4.4. Observation Visits

- (a) The Purchaser shall have the right, on a recurring basis and upon reasonable prior notice to the Seller to have the Purchaser's, the Grid System Operator's and the System Operator's officers, employees, and representatives 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, the Grid System Operator and the System Operator for, and assist in arranging, any such observation visits. The Purchaser's, the Grid System Operator's and the System Operator'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, the Grid System Operator and the System Operator shall comply with the Seller's and its Contractors' generally applicable safety regulations and procedures made available to such persons and shall comply with the reasonable instructions and directions of the Seller and its

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Contractors, and shall not unreasonably cause any interference with or disruption to the activities of the Seller or its Contractors on the Site.

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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 Laws of Pakistan, the Grid Code, and the Seller Consents, Prudent Utility Practices, and 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 appointment of the O&M Contractor by the Seller 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) The Complex will be operated within the range of voltage levels specified in Schedule 5. Subject to Technical Limits, the Seller shall operate and maintain the Complex in a manner that will not have an adverse effect on the Grid System's voltage level or voltage wave form.
- (c) The Seller shall be responsible for the availability of the Complex for generation and delivery of Net Delivered Energy and the provision, where applicable, of Ancillary Services throughout the Term in accordance with this Agreement. The Seller shall be responsible, at any time that the Hydrological Conditions enable the Complex to generate electricity, for the generation and delivery of Net Delivered Energy at the Interconnection Point, except when and to the extent that generation and delivery of Net Delivered Energy is prevented partially or completely during the continuance of or on account of a:
 - (i) Force Majeure Event,
 - (ii) Scheduled Outage,
 - (iii) Maintenance Outage,
 - (iv) Forced Outage,
 - (v) Partial Forced Outage, or
 - (vi) Non-Project Event.

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- (d) At any time that the Hydrological Conditions at Site enable generation and delivery of Net Delivered Energy (as determined on the basis of the Technical Specifications), which, however, the Complex is partially or wholly unable to generate and deliver for reasons attributable solely to the Seller (including non-availability of the Complex or any component thereof), such partial or complete non-availability of the Complex shall not constitute a Non-Project Event and the Net Delivered Energy not generated as a consequence shall be excluded in the computation of Non-Project Missed Volume.

Section 5.2. Estimated Energy Projection

- (a) Within thirty (30) Days following the Commercial Operations Date, the Seller shall notify the Purchaser of its projection in good faith based on forecasted Hydrological Conditions in accordance with the Operating Procedures for Net Delivered Energy on monthly basis (or any part Months as the case may be) for the remainder of the Year, or, if the Commercial Operations Date occurs within one hundred and eight (180) Days of the end of a year, for the remainder of that Year and the following year.
- (b) Not later than the 1st of September following the Commercial Operation Date and not later than the 1st of September of each year thereafter the Seller shall notify the Purchaser the projections in good faith based on forecasted Hydrological Conditions in accordance with the Operating Procedures for Net Delivered Energy on a daily basis for the following three (3) Months, or, if the Commercial Operations Date occurs within fourteen (14) Days of the end of a Month, its projections for the remainder of the Month and for the following three (3) Months, as the case may be.
- (c) On the Commercial Operations Date and not later than forty eight (48) hours prior to beginning of each Week thereafter, the Seller shall notify the Purchaser of its projections in good faith based on forecasted Hydrological Conditions in accordance with the Operating Procedures for Net Delivered Energy on a hourly basis for the following two (2) Weeks, or, if the Commercial Operations Date occurs within forty eight (48) hours of the end of a Week, its projections for the remainder of the Week and the following two (2) Weeks as the case may be.

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- (d) Any notice issued by the Seller under this Section 5.2 shall not be binding and no such notice shall subsequently prevent the Seller from altering its estimated energy projections from time to time; **provided** the Seller shall, as is practicable, after becoming aware of any material changes to the projections for Net Delivered Energy specified in any such notice, immediately notify the Purchaser of such change.

Section 5.3. Declared Available Capacity

- (a) Not later than 00:00 hours on the Commercial Operations Date, in the manner established in the Operating Procedures, the Seller shall notify the Purchaser of Declared Available Capacity for each following hour of the Commercial Operation Date.
- (b) Not later than sixteen (16) hour prior to the beginning of each Operating Day (the “**Declaration Deadline**”), in the manner established in the Operating Procedures, the Seller shall notify the Purchaser (or revise any such information previously given) of the Declared Available Capacity for each hour of such Operating Day. If, the Seller fails to give such notice up to the Declaration Deadline, the Declared Available Capacity for each hour of such Operating Day shall be deemed to be equal to the Declared Available Capacity for each hour declared by the Seller for the immediately previous Operating Day.
- (c) The Seller may revise downwards and continue to revise downwards the Declared Available Capacity for any hour up to and until the start of the applicable Operating Day by informing the Purchaser of such revision and revise upwards and continue to revise upwards the Declared available Capacity for any hour up to and until forty five (45) minutes prior to the start of the applicable hour (the “**Revised Declared Available Capacity**”).
- (d) When making notifications of Declared Available Capacity, subject to the Technical Limits and Prudent Utility Practices, the Seller shall not withhold available generating capacity. The notification by the Seller of Declared Available Capacity shall be made at the forecasted Hydrological Conditions for the applicable hour, as such forecast method is agreed by the Operating Committee. The Seller shall keep the Purchaser informed of the actual Hydrological

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Conditions and the forecasted Hydrological Conditions for purposes of administering this Agreement through a mechanism to be developed by the Operating Committee, which may involve real time transmittal of the relevant information. For the avoidance of doubt, all adjustments of Declared Available Capacity to Reference Hydrological Conditions under this Agreement shall be carried out using the Complex Hill Chart.

Section 5.4. Despatch Instructions and Delivery of Net Delivered Energy

- (a) The Seller shall comply with Despatch Instructions issued by the Control Centre for Net Delivered Energy and Ancillary Services, provided, that:
 - (i) such Despatch Instructions are consistent with the Technical Limits;
 - (ii) the Complex can be operated consistent with the Despatch Instructions in view of the then prevailing Ambient Site Conditions; and
 - (iii) the Seller shall only be required to comply to the extent there are no Scheduled Outages, Forced Outages or Partial Forced 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), and shall not be liable to pay liquidated damages under Section 9.6, if the Net Delivered Energy for that hour (adjusted to the Reference Hydrological Conditions) is less than the Net Delivered Energy (adjusted to the Reference Hydrological Conditions) stated in the prevailing Despatch Instruction and such shortfall is caused by a Non-Project Event, [non-availability of water]¹⁶ or a Force Majeure Event.
- (c) If the Seller fails to comply (except for the reasons or events described in Section 5.4(b)) with the prevailing Despatch Instruction for any hour, the Purchaser shall be entitled, without prejudice to its rights under Article XVI, to receive liquidated damages calculated in accordance with Section 9.6.
- (d) The rights of (and limitations on) the Purchaser under this Section 5.4 relating to the delivery of Despatch Instructions and Revised Despatch Instructions may be assigned by the Purchaser to the System Operator; provided, that such assignment

¹⁶ Only if the HR is with the Purchaser.

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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 payment for Tested Capacity and Net Delivered Energy as provided in Article III and Article IX.

Section 5.5. Scheduled Outage Periods

The Seller may undertake Scheduled Outages only according to a schedule which has been proposed by the Seller and accepted by the Purchaser according to the procedures in this Section 5.5.

- (a) The Seller’s proposals for Scheduled Outage periods shall be made as follows:
 - (i) as soon as practicable but in any event within forty-five (45) Days after the Commercial Operations Date, the Seller shall notify the Purchaser of its proposed schedule for Scheduled Outage periods for the remainder of the Year, or, if the Commercial Operations Date occurs within one hundred and twenty (120) Days of the end of the Year, for the remainder of that Year and the following Year and thereafter the Seller shall notify the Purchaser by not later than the 1st of September in each Year of its proposed schedule of Scheduled Outage periods for the following Year;
 - (ii) unless otherwise agreed, Scheduled Outage periods shall not be scheduled to exceed [four hundred and eighty (480) hours]¹⁷ in any Year (the “**Scheduled Outage Hours**”), except in any Year in which a Major Overhaul is required (not to exceed one (1) in any five (5) Year period), in which case the Seller shall be entitled up to an additional four hundred and eighty (480) hours of Scheduled Outage periods; and
 - (iii) subject to any requirements of the Technical Limits relating to equipment maintenance, the Seller may propose Scheduled Outage periods only during the Maintenance Period, and in no event shall the Seller propose or undertake any Scheduled Outage during the Non-Maintenance Period unless requested or approved in writing by the Purchaser.

¹⁷ May be reduced given the size of the Unit.

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- (b) The Purchaser shall respond to the Seller's proposals for Scheduled Outage periods as follows:
- (i) Within thirty (30) Days after receipt by the Purchaser from the Seller of its proposed Scheduled Outage periods pursuant to Section 5.5(a), the Purchaser shall notify the Seller whether or not it agrees to the proposed Scheduled Outage periods. If the Purchaser does not agree to any of the proposed Scheduled Outage periods, it shall notify the Seller of the periods during the Maintenance Period when the Seller may undertake those Scheduled Outages, such periods to be of the same duration as, and as close as reasonably practicable to the periods proposed by the Seller and to be consistent with the Technical Limits, and the Seller acting reasonably shall undertake Scheduled Outages in such periods as notified by the Purchaser.
 - (ii) If the Purchaser fails to notify the Seller in accordance with Section 5.5(b)(i), then the Seller may undertake Scheduled Outages in the periods proposed by the Seller.
 - (iii) Provided that the Purchaser shall not request that a Scheduled Outage period be rescheduled in a manner or at a time inconsistent with the Technical Limits, the Purchaser may upon thirty (30) Days' advance notice to the Seller request the Seller to reschedule a Scheduled Outage period previously scheduled under Section 5.5(a) and/or (b). The Seller shall use reasonable efforts to comply with such request and shall notify the Purchaser within fifteen (15) Days of receipt of the Purchaser's request whether the Seller is able to comply with such request.
 - (iv) If the Seller is unable to comply with such request, it shall give its reasons therefor and shall, where reasonably practicable, propose the period or periods, if any, to which the Scheduled Outage may be rescheduled, together with an estimate of the costs it expects it would reasonably incur as a result of such rescheduling. In such event, the Parties shall discuss in good faith an alternative period in which the Scheduled Outage may be undertaken. If the Parties have not reached agreement within ten (10)

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Business Days of the Seller's notice under Section 5.5(b)(iii), the Purchaser shall, no later than ten (10) Business Days thereafter, notify the Seller of the period or periods during which the Scheduled Outage shall occur, being either:

- (A) the period or periods originally scheduled under Section 5.5(a) and/or (b); or
- (B) such alternative period as may have been proposed by the Seller in its reply to the Purchaser's request for an alternative period.

Section 5.6. Maintenance Outages

- (a) The Seller shall advise the Purchaser of the need for any Maintenance Outages, together with the proposed commencement date and estimated duration of the work to be undertaken. The Purchaser shall advise the Seller of the periods during which such Maintenance Outage may be undertaken, such periods to be reasonable in light of the Purchaser's requirements for Net Delivered Energy and Ancillary Services and the necessity for the Maintenance Outage. The Seller shall, subject to the Technical Limits and Prudent Utility Practices, use reasonable endeavours to carry out the Maintenance Outage during the times provided by the Purchaser in accordance with this Section 5.6, provided that the hours or the part hour, as the case may be, of the Maintenance Outages shall be deducted from the Scheduled Outage Hours allowed to the Seller under Section 5.5(a)(ii).
- (b) Both Parties recognize that during low flow periods, there may not be enough water flow available for the simultaneous operation of all Units of the Complex. During such periods the Seller may carry out maintenance of the idle Units at its own risk, and such maintenance hours shall not count towards the Scheduled Outage hours or the Forced and Partial Forced outage hours.

Section 5.6(A) Forced and Partial Forced Outage

The Forced and Partial Forced Outage period during an Agreement Year shall not exceed one-half of the Schedule Outage Hours under Section 5.5(a)(ii). The Seller shall notify the Purchaser as soon as practicable after the occurrence of a Forced Outage or Partial Forced

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Outage, which notice shall set forth the likely cause thereof (if known at the time), together with an estimated time-frame within which such Forced Outage or Partial Forced Outage is likely to end, on the basis of information available to the Seller at that time. The Seller shall, periodically, update any notice provided under this Section 5.6(A) on the basis of further information that may, from time to time, become available to the Seller.

Section 5.7. Recording of Communications

- (a) Each Party hereby authorizes the other Party to record any communications relating to:
- (i) Declared Available Capacity,
 - (ii) any Despatch Instructions, and
 - (iii) any instructions issued by the Purchaser regarding the reduction or curtailment of Net Delivered Energy,

and agrees to supply, at the request of the other Party, a copy or transcript of any such recording.

- (b) The reference to the expression “Party” in Section 5.7(a) shall mean and include the System Operator, the Grid System Operator and the Control Centre, as the case may be, where such communication is or is to be carried out with the foregoing entities pursuant to the terms of this Agreement, the Grid Code or the Laws of Pakistan.

Section 5.8. Emergency Set-Up and Curtailment Plans

The Seller shall co-operate with the System Operator and/or the Control Centre in developing Emergency procedures for the Complex, including recovery from a local or widespread electrical blackout and voltage reduction to effect load curtailment, and shall, to the extent consistent with the Technical Limits and Prudent Utility Practices, comply with such Emergency procedures. To the extent not fully addressed in the Technical Specifications and Technical Limits, the Seller shall make technical references available to the Purchaser, the System Operator and/or the Control Centre concerning required times for Unit Start-Ups, black start capabilities, and minimum load carrying ability.

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Section 5.9. Supply of Power in Emergency

- (a) The Purchaser, the System Operator and/or the Control Centre may, on or after the occurrence of an Emergency, issue a notice to the Seller declaring the existence of an Emergency to the Seller.
- (b) The notice delivered pursuant to Section 5.4(a) shall:
 - (i) specify the nature of the Emergency; and
 - (ii) indicate the Purchaser's, the System Operator's and/or the Control Centre's best estimate of the duration of the Emergency and the steps it is taking to overcome the Emergency.
- (c) Following receipt of a notice of an Emergency and thereafter during the Emergency, the Purchaser, the System Operator and/or the Control Centre, and the Seller shall consult on the steps the Purchaser, the System Operator and/or the Control Centre requires the Seller to take, and, if the Purchaser, the System Operator and/or the Control Centre requests, the Seller shall use its reasonable endeavors to:
 - (i) revise and continue to revise its Declared Available Capacity so as to make additional generating capacity available to the Purchaser; and/or
 - (ii) reschedule any Scheduled Outage or Maintenance Outage not yet begun, or if the Scheduled Outage or the Maintenance Outage has already begun, expedite the completion of the relevant works and/or reschedule some or all of the remaining works so as to restore electric generating capacity as soon as possible.
- (d) The provisions of Article V and Article IX in relation to Declared Available Capacity and Despatch Instructions shall continue to apply during an Emergency; provided that the Seller shall not be liable to pay liquidated damages to the Purchaser pursuant to Section 9.6(b) or (c)¹⁸, for its inability to provide any increase in Declared Available Capacity made by the Seller at the Purchaser's, the System Operator's and/or the Control Centre's request under Section 5.9(c).

¹⁸ Check later again

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- (e) The Purchaser, the System Operator and/or the Control Centre shall notify the Seller at regular twenty-four (24) hour intervals of the status of the Emergency and notify the Seller as soon as the Emergency has ceased.
- (f) Nothing in this Section 5.9 shall require the Seller to operate the Complex in any manner which is inconsistent with the Technical Limits, Grid Code or the Prudent Utility Practice.

Section 5.10. Employment of Qualified Personnel

From and after the first date that any electric energy is delivered from the Complex to the Interconnection Point, the Seller shall ensure that its and/or its respective Contractors' personnel are on duty at the Complex at all times, and that such personnel are adequately qualified and trained, and who have experience as necessary and appropriate to undertake the duties for which they are engaged at the Complex.

Section 5.11. 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 and operation and maintenance of the Seller Interconnection Facilities, the Complex, the Purchaser Interconnection Facilities, and all related equipment;
 - (ii) the planning, directing, coordinating, reporting, forecasting, monitoring and evaluation of water resources and water flow, such that the operation of the Complex does not materially or adversely affect the hydrological conditions of a power generation facility located downstream from the Complex and to timely inform the Purchaser regarding the operational pattern of the Complex to enable the downstream generation facility to accurately forecast the hydrological conditions at the downstream facility for enabling declaration of its available capacity;

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- (iii) the steps to be taken on the occurrence of a Force Majeure Event affecting a Party, the Complex, or the Grid System, or a shutdown or reduction in capacity for any other reason affecting the Seller Interconnection Facilities, the Grid System, or the Complex, or any related equipment;
 - (iv) safety matters affecting the Complex, the Seller Interconnection Facilities, the Grid System, the Parties or their Contractors;
 - (v) clarification of emergency plans developed by the Purchaser for recovery from a local or widespread electrical blackout;
 - (vi) review and revision of protection schemes;
 - (vii) inspection, testing and calibration of the Flow Meters, the agreed accuracy limits therefor and adjustments to be made to water discharge data upon the Flow Meters being inaccurate in excess of the agreed limits since the last inspection; and
 - (viii) 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 5.12. 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. The Seller shall maintain an accurate and up-to-date operating log, in a format mutually agreed upon by the Parties, at the Site with records and data of:
- (i) Net Delivered Energy in respect of each hour;
 - (ii) Reactive Power in respect of each hour;
 - (iii) Grid System Frequency;
 - (iv) KV bus voltage [(132kV)] at all times;

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- (v) changes in operating status, Scheduled Outages and Maintenance Outages;
- (vi) Hydrological Conditions (together with cumulative volume of water flow through each Unit) in respect of each hour;
- (vii) Declared Available Capacity for each hour of each Operating Day;
- (viii) Despatch Instructions for each hour in each Operating Day;
- (ix) Flow Meters reading for each half-hourly intervals; and
- (x) other matters agreed upon by the Parties.

The aforesaid data recorded by the SCADA System and the Flow Meters shall be available for viewing and downloading by the Purchaser and the System Operator/Control Centre through real-time on-line redundancy-enabled V-SAT or other appropriate communication system (as specified in Schedules 2 and 6) provided therefor by the Seller at its own expense. The SCADA System shall be enabled to create and archive automated access logs with fields that include, at a minimum (i) the identity of the person accessing the SCADA System, (ii) the activity performed for the relevant access session, and (iii) time and date stamping.

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 to dispose of or destroy any 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 ten (10) Days.

- (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

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Section 5.12(a) at any time during normal office hours during the period such records and data are required hereunder to be maintained.

Section 5.13. Notification of Maintenance Period

The Purchaser shall give notice to the Seller by no later than 1st of September in each Year of the Maintenance Period and the Non-Maintenance Period applicable in the immediately following Year, provided, however, where the Purchaser does not designate the Maintenance Period and the Non-Maintenance Period, the then most recent designation shall remain in effect.

Section 5.14. Tampering with the Metering System or Flow Meters

The Seller shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper, with the Metering System and the Flow Meters. 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 reoccur, including the development or addition of security systems, and (b) compensate the Purchaser for two (2) times 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 Flow Meters (unless the Seller demonstrates to the reasonable satisfaction of the Purchaser, or the Expert determines, 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 liquidated damages to the Purchaser for any such breach and, subject to Section 16.2(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 claim that such compensation is void as a penalty.

Section 5.15. Cessation of Operation of the Complex

- (a) If, after the Commercial Operations Date, without the prior written consent of the Purchaser, the Seller shall have ceased to operate the Complex for a period of forty eight (48) consecutive hours other than because of (i) a Force Majeure Event, (ii) a Non-Project Event, (iii) any Forced Outage or Partial Forced Outage which the Purchaser does not dispute, (iv) Scheduled Outage, (v) Maintenance Outage,

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or (vi) any act or omission of the Purchaser and/or Grid System Operator that effectively prevents the Seller or its Contractors from operating the Complex, then the Purchaser shall, subject to the restrictions set forth in this Section 5.15, be entitled to (A) enter the Complex and operate it until the Seller demonstrates to the reasonable satisfaction of the Purchaser that the Seller can and will resume normal operation of the Complex or until the Lenders shall have exercised their rights to enter or procure a third party to enter the Complex and operate it by exercising their rights under the Financing Documents, and (B) as soon as is practicable, send written notice of such entry to the Agent (as defined in Section 16.5) in accordance with the procedure set forth in Section 16.5. During any period that the Purchaser shall operate the Complex pursuant to this Section, the Purchaser shall (i) operate the Complex within the Technical Limits, (ii) bear all costs of such operation, and (iii) continue to pay to the Seller the Principal Repayment Component and Interest Charges Component based on the Monthly Benchmark Energy (prorated as applicable).

- (b) Notwithstanding the foregoing and any other provision in this Agreement to the contrary, if any insurance coverage that was obtained by the Seller and is set forth in Part II of Schedule 8 is not available or in effect during any time that the Purchaser is entitled to operate the Complex pursuant to this Section 5.15 or does not cover such operation, then the Purchaser shall not enter or operate the Complex, and shall immediately cease operation and promptly quit possession of the Complex, as the case may be, unless and until such time that the Purchaser either:
- (i) obtains, and thereafter continuously maintains, and provides written evidence to the Seller and the Agent of the procurement of, the policies of insurance set forth in Part II of Schedule 8 (A) with terms and conditions which in all material respects (including deductibles, endorsements, terms for reinsurance and security in favor of the Lenders) conform to the terms and conditions of the policies of insurance of such type which had been most recently procured by the Seller, and (B) with an internationally reputable insurer(s) with a rating(s) of not less than the rating of the insurer providing the policies of insurance which had been most recently procured

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by the Seller; or

- (ii) agrees in writing to defend, indemnify and hold the Seller harmless from and against any loss or damage sustained as a result of an event that occurred during the period of the Purchaser's operation of the Complex to the extent that such loss or damage would have been covered by the insurance set forth in Schedule 8 that the Seller most recently had in effect prior to the Purchaser's operation of the Complex, including but not limited to loss or damage to the Complex and loss or damage resulting from third Party claims.
- (c) In the event that, at any time, the Purchaser obtains insurance pursuant to this Section 5.15, (i) the Seller and the Lenders (so long as they shall have an insurable interest in the Complex) shall be named as joint insured and the Lenders (so long as they shall have an insurable interest in the Complex) shall be named as the sole loss payee on any such insurance, and (ii) the Seller shall reimburse the Purchaser for the actual out of pocket costs of such insurance and all reasonable administrative costs incurred by the Purchaser in procuring such insurance.
- (d) Notwithstanding any other provision of this Agreement to the contrary, the Purchaser shall indemnify, defend and hold harmless the Seller from any loss or damage to the Complex incurred or sustained by the Seller by reason of the Purchaser's negligence or willful misconduct in the operation of the Complex during such period, but only to the extent that such loss or damage is not covered by the Seller's insurance.

Section 5.16. Non-Availability of Water¹⁹

[In the event the Seller is unable to Commission or operate the Complex as a result of the non-availability of sufficient water within Technical Limits, the Seller shall:

- (a) not be liable for any failure or delay in performing its obligations under or pursuant to this Agreement as a result thereof; and
- (b) be entitled to claim an extension to any performance deadline that the Seller is

¹⁹ To be deleted if the hydrology risk is with the Seller

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obligated to meet under or pursuant to this Agreement as a result thereof.]

Section 5.17. Free of Liens

The Seller shall at all times keep the Complex free and clear of all Liens other than those in favour of the Lenders as permitted under Section 19.9.

ARTICLE VI
INTERCONNECTION FACILITIES

Section 6.1. Construction of the Seller Interconnection Facilities

- (a) The Seller shall 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 Generation Licence, if applicable;
 - (iv) Prudent Utility Practices and Prudent Electrical Practices; and
 - (v) Schedule 3,
- so that the Seller Interconnection Facilities can reasonably be expected to provide a useful life of not less than the Term.
- (b) The design, scope and specification of the Seller Interconnection Works are set out in Schedule 3. The Seller shall give the Purchaser in the Construction Reports not less than thirty (30) Days' prior notice of the date from which it or its Contractor will commence the Seller Interconnection Works and shall complete the Seller Interconnection Works in accordance with the Interconnection Works Schedule. Subject to Section 2.3(b) and Section 5.1 of the Implementation Agreement, the Seller shall procure (or shall cause its Contractor in respect of the Seller Interconnection Works to procure) all Seller Consents necessary for carrying out the Seller Interconnection Works.

Section 6.2. Purchaser Interconnection Facilities

The Purchaser shall be responsible for the design, construction, financing, completion, and commissioning of the Purchaser Interconnection Facilities in accordance with Schedule 3. The Purchaser shall carry out, or cause to be carried out, the Purchaser Interconnection Facilities with all proper skill and care and in all material respects in accordance with:

- (i) this Agreement;

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- (ii) the Laws of Pakistan and the applicable Purchaser Consents; and
- (iii) Prudent Utility Practices and Prudent Electrical Practices,

so that the Purchaser Interconnection Facilities can be reasonably expected to provide a useful life of not less than the Term.

Section 6.3. Data Necessary for Construction of Purchaser Interconnection Facilities

Within three (3) Months after the execution of this Agreement and in any event not later than the date of the notice given by the Seller to the Purchaser pursuant to Section 6.5, the Seller shall provide to the Purchaser the information required in Schedule 3. Based upon this information, the Purchaser will design, construct and complete or cause to be designed, constructed and completed the Purchaser Interconnection Facilities within the time required by Section 6.5. Within ten (10) Days of a request by the Purchaser, the Seller shall provide all additional information reasonably requested by the Purchaser in connection with its completion of the Purchaser Interconnection Facilities. The Purchaser shall use such supplemented information in its final design of the Purchaser Interconnection Facilities. The timely provision by the Seller of such supplemental or additional information is a condition to 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, or to its nominee permanent easements and rights of way within the Site necessary to carry out and complete the Interconnection Works and to operate, maintain, replace and/or remove the Purchaser Interconnection Facilities. The easements shall grant to the Purchaser or to its nominee adequate and continuing rights for the purposes set forth in this Section 6.4 to enter the Site subject only to the Purchaser or to its nominee giving 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, as the Purchaser or its nominee may reasonably require to record 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. Insofar as it shall be consistent with the Laws of Pakistan, all easements, rights of way, licenses and other rights hereunder shall survive termination or expiration of this Agreement.

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Revocable licenses, if any, granted to the Purchaser or to its nominee pursuant to this Section 6.4 shall include such reasonable further term, not to exceed ninety (90) Days beyond the Term, to allow the Purchaser or its nominee to remove the Purchaser Interconnection Facilities. When on Site the Purchaser or its nominee shall comply with all reasonable instructions of the Seller and its Contractors relating to the carrying out of any work on the Site and, notwithstanding any other provision in this Agreement to the contrary, shall indemnify and hold the Seller and the Contractors harmless from any loss or damage sustained by virtue of the Purchaser's or its nominee'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 or its nominee shall be responsible for obtaining all rights-of-way, easements and other real or personal property interests necessary to construct, complete, operate and maintain the Purchaser Interconnection Facilities during the Term.

Section 6.5. Construction and Completion of Purchaser Interconnection Facilities

- (a) On or within ten (10) Days after the Effective Date, the Seller shall give to the Purchaser written notice of the Scheduled Commercial Operations Date then anticipated by the Seller. Following the receipt of such notice, the Purchaser shall commence or cause to be commenced the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall give or cause to be given the Seller reports on the progress of the Purchaser Interconnection Works as appropriate until the same are completed. The Purchaser shall complete or cause to be completed the Purchaser Interconnection Works and be able to absorb into the Grid System electrical power generated by the Complex as is necessary to enable the Seller to carry out the pre-commissioning of the Complex and the Commissioning Tests no later than one-hundred twenty (120) Days prior to the Scheduled Commercial Operations Date provided 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 because of the occurrence of any of the following:

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

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

- (b) If the Purchaser has not completed, commissioned and energized or caused to be completed, commissioned and energized the Purchaser Interconnection Works by the date required in this Section 6.5, as such date may be extended as provided in this Section 6.5, and such delay causes a delay in the 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 or caused to be completed the Purchaser Interconnection Works by the date which is fifteen (15) Days following the date by which the Purchaser Interconnection Works were required to be

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completed in accordance with Section 6.5(a), and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer under Section 8.3, then the Purchaser shall pay to the Seller Monthly, in arrears, (and prorated for any portion of a Month) an amount equal to (i) the Carrying Costs plus, fifty percent (50%) of the Insurance Component, and fifty percent (50%) of the Fixed O&M Component multiplied by the Average Daily Energy for each Day during the period of such delay. 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 the 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] and a simultaneous certification by the Engineer that the delay caused by the Purchaser has caused the then scheduled Commissioning Tests to be delayed. **In addition** to the payment of the aforesaid amounts, if the delay by the Purchaser in completing the Purchaser Interconnection Facilities continues beyond the ninetieth (90th) Day following the date of the issuance by the Engineer of the Certificate of Readiness for [Synchronization] and a simultaneous certification by the Engineer that the delay caused by the Purchaser would likely cause the then scheduled Commissioning Tests to be delayed, the Purchaser shall also be required to pay the principal debt payments when due under the Financing Documents pursuant to the repayment schedule agreed between the Seller and the Senior Lenders at Financial Closing (such repayment schedule to be consistent with Annex • of the Tariff Determination), with a copy of such repayment schedule being furnished to the Purchaser accompanied by the Lender Debt Certification. . Such principal debt payment shall be due from the Purchaser within thirty (30) Days following receipt of an invoice therefor (but in no event earlier than the ninetieth (90th) day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay), which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt aforesaid

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repayment schedule. 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). Any payments made by the Purchaser pursuant to this Section 6.5(b) on account of principal debt payments under the Financing Documents shall be recovered by the Purchaser, together with interest at KIBOR plus 3.5% per annum (on the monthly outstanding balance of such amounts), commencing on the Commercial Operations Date and ending on the date of complete repayment thereof by the Seller, through successive deductions of the Return on Equity Component from the Energy Payments until the aforesaid amounts have been completely recovered by the Purchaser.

- (c) The Purchaser shall have no obligation to make the 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 and Section 16.2, 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 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 prior consent of the Purchaser.
- (b) The Seller and the Purchaser shall verify the operation of the protection devices in accordance with the testing programme set out 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

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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. 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 approval.

Section 6.7. Testing

The Parties shall cooperate in testing the Purchaser Interconnection Facilities and the Seller Interconnection Facilities in accordance with the schedule developed by the Operating Committee (but in no event later than the time provided in Section 6.5 and at such other times thereafter as either Party may reasonably require).

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ARTICLE VII

METERING AND TELECOMMUNICATIONS

Section 7.1. Metering System

- (a) The Parties acknowledge that for the purposes of determining Net Delivered Energy of the Complex, the Metering Systems and Back-Up Metering Systems are required prior to the delivery of any Net Delivered Energy to the Interconnection Point for sale hereunder.
- (b) Not later than one hundred and eighty (180) 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. If the Purchaser has not provided the Metering System to the Seller by such date, the Seller may procure the Metering System (with specifications stated in Schedule 6) and invoice the Purchaser for the reasonable cost thereof as a Pass-Through Item. As a part of the Metering System, the Purchaser shall procure and the Seller shall install an electronic recorder or any other state-of-the-art recording equipment capable of making continuous recordings of the Net Delivered Energy of the Complex, which, after procurement and installation by the Seller shall constitute part of the Metering System. Such Net Delivered Energy shall be measured and recorded on appropriate magnetic media or equivalent, which recording shall be used to compute Energy Payments under Section 9.1 and Sections 9.6(b) and (c) respectively.

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) which are consistent with the requirements in Schedule 6 and shall:
 - (i) prior to the delivery of any Net Delivered 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

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System on the Site, at locations as close to the Interconnection Point as reasonably practicable and as agreed by the Parties;

- (ii) secure the Metering System and Back-Up Metering System in a locked and walled enclosure; and
 - (iii) ensure that 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 in Section 7.1(b), 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 avoidance of doubt, the Purchaser shall not read, test, adjust, repair or replace the Metering System without giving two (2) Days' notice to the Seller and without presence of the authorized representative of the Seller. The Purchaser shall be provided with no 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 the Site, and for ingress and egress thereto and therefrom.

Section 7.3. Testing of Metering System

- (a) The Seller shall test the accuracy of each of the Metering System and the Back-Up Metering System and, if necessary, calibrate or recalibrate them, in accordance with Schedule 6 not 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 Net Delivered 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 and the Back-Up Metering System at any time that the readings of Net Delivered Energy from the Metering

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System and the Back-Up Metering System differ by an amount greater than one-fifth of one percent (0.2%). In such eventuality, the Purchaser and the Seller together shall test the accuracy of the Metering System and recalibrate the Metering System, if necessary. The Purchaser shall provide 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 be deemed to have been waived with respect to such tests, 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), the Seller shall test the accuracy of the relevant Back-Up Metering System and recalibrate the relevant Back-Up Metering System if necessary. 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. 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 unless the test indicates that the Metering System is inaccurate by more than one-fifth of one percent (0.2%), 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

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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. 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 unless the test indicates that the Back-Up Metering System is inaccurate by more than one-fifth of one percent (0.2%), 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 and the Seller shall install electronic data recording system capable of recording the Net Delivered Energy measured by the Metering System on a continuous basis and capable of storing such recordings for a period of not less than ninety (90) Days and the Seller shall procure and install, at its own cost and expense, such system for the Back-Up Metering System as is capable of storing, on a continuous basis, such recordings for a period of not less than ninety (90) Days. 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 systems shall be used to determine the Net Delivered Energy of the Complex. The electronic data recording system related to the Metering System and the Back-Up Metering System shall constitute a part of the Metering System and the Back-Up Metering System, respectively, for all purposes under this Agreement, and the electronic data recording system related to the Metering System shall be conveyed to the Purchaser as a 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

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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 the Commercial Operations Date and thereafter Monthly on the last Business Day of each Month or such other Day as may be mutually agreed upon by the Parties;
 - (ii) the Seller shall take such reading during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) the Seller shall give the Purchaser not less than forty-eight (48) hours notice of the time the Seller intends to take such reading and the Purchaser shall have the right to be present at and to witness any such reading;
 - (iv) if a Purchaser's representative is present at such reading, then such reading shall be jointly taken and recorded;
 - (v) if a Purchaser's representative is not present at such reading, then the Seller's representative shall take and record such reading and make a photographic record thereof;
 - (vi) the Seller 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 Seller to the Purchaser within two (2) Business Days after the readings are taken.
- (c) The Metering System shall be used to measure the Net Delivered 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 Back-Up Metering System, shall be used to measure the Net Delivered 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-fifth of one percent (0.2%), or is otherwise unavailable or functioning improperly, then the correct amount of Net Delivered Energy delivered to the Purchaser for the actual period during which inaccurate

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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 Net Delivered 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-fifth of one percent (0.2%) or is otherwise functioning improperly;
- (ii) if the Back-Up Metering System is found to be inaccurate by more than one-fifth of one percent (0.2%) 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 and such guidelines as may have been agreed to between the Seller and the Purchaser;
- (iii) if the Purchaser and the Seller fail to agree upon an estimate for the correct reading, the Seller will estimate the reading and any Dispute shall be referred by either Party for resolution in accordance with Section 18.1 and Section 18.2; and
- (iv) the difference between the previous payments by the Purchaser for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Seller under this Agreement, as appropriate, plus 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 which is 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-fifth of one percent (0.2%) 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's personnel

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acting in accordance with the terms of this Agreement. The Purchaser shall give the Seller at least forty-eight (48) hours advance notice of the breaking of seals on any part of a Metering System. Such notice shall specify the time at which a meter seal shall be broken by the Purchaser's personnel, and the Seller shall be given the opportunity to be present when such seals are broken.

- (c) Seals on the Back-Up Metering System shall be broken only by Seller's personnel acting in accordance with the terms of this Agreement. The Seller shall give the Purchaser at least forty-eight (48) hours advance notice of the breaking of seals on any part of a Back-Up Metering System. Such notice shall specify the time at which a meter seal shall be broken by the Seller's personnel, and the Purchaser shall be given 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-fifth of one percent (0.2%) or is otherwise unavailable or functioning improperly, then the provisions of Section 7.4(d) shall apply to determine the correct amount of Net Delivered 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 as provided in this Agreement, 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 set out in this Agreement, 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 the 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 or the Back-Up

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Metering System shall be jointly sealed in accordance with Section 7.5.

Section 7.7. Protective Devices; Telecommunications Circuit

- (a) No later than one hundred and twenty (120) Days prior to the Commercial Operations Date and in any event before any Net Delivered Energy is delivered from the Complex to the Interconnection Point, the Seller shall at its own cost and expense procure and shall have installed and have operational the following equipment:
 - (i) Telecommunications and tele-protection equipment (power line carrier or, at the Seller's option, power line carrier and/or microwave system) reasonably acceptable to the Purchaser at the Complex and compatible with similar equipment at the Purchaser's grid station located at [●].
 - (ii) A communications unit in the control room of the Complex compatible with the Control Centre's PBX system to permit voice communications between the Complex and the Control Centre;
 - (iii) Equipment in the Complex to transmit and receive facsimiles; and
 - (iv) Tele-metering and data interface (or interface with the Purchaser's microwave system adjacent to the Complex) for the Purchaser's SCADA System satisfying the Purchaser's reasonable requirements, which tele-metering and data interface is described in Schedule 3.

- (b) The 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, which approval shall not be unreasonably withheld or delayed.

Section 7.8. Measurement of Water Flows and Net Head

- (a) The Seller shall procure (at its cost), install, calibrate, test, operate and maintain, during the Term, state of the art Flow Meters described in Schedule 6. The Purchaser shall have not less than forty-eight (48) hours' notice of the testing and calibration of the Flow Meters and shall have the opportunity to be present at such testing and calibration. The Flow Meters shall be retested and calibrated as required, and in any event not less than once in each Agreement Year. Following installation, testing and calibration of the Flow Meters, the Engineer shall certify to the Seller and the Purchaser that, in its professional opinion, the Flow Meters

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have been installed, tested and calibrated in accordance with, are of the make and model contemplated by, and are otherwise compliant with the relevant technical and functional specifications set out in Schedule 6. The Seller shall not be entitled to commence delivery and sale of Net Delivered Energy until the Engineer has issued such certificate.

- (b) The provisions of Schedule [10] shall govern in relation to the measurement of the water discharge for the purposes of this Agreement. Further, the recording, processing, analysis, reporting and archiving of the data relating to water discharge for all purposes shall be governed by the provisions of Section 5.12 and Schedule [10].
- (c) If at any time following the Commercial Operations Date, more accurate or more reliable Flow Meters become available, the Seller shall, at the request of the Purchaser, promptly procure such more accurate or more reliable Flow Meters and install or have installed such new Flow Meters at the Site at an appropriate location agreed by the Parties or, failing agreement, as determined by the technical Expert pursuant to Section 18.2. The cost to the Seller of procuring and installing more accurate or more reliable Flow Meters requested by the Purchaser shall be a Pass-Through Item.
- (d) The Seller shall at its expense provide online and real time access to the readings of the Flow Meters to the Purchaser and/or the System Operator and the Control Centre that includes such details as agreed by the Operating Committee which in any event shall include data of the volume of water flow, gross head and the net head available at the Complex to enable the Purchaser to monitor the accuracy of the Declared Available Capacity and performance of the Complex against the Dispatch Instructions and to measure and record such other metrics as required for the purposes of this Agreement.

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ARTICLE VIII

TESTING OF THE COMPLEX

Section 8.1. Testing of the Complex

- (a) The Seller shall provide the Purchaser on an on-going basis with relevant information regarding its programme for testing the Complex and the schedule therefor. No less than thirty (30) Days prior to the commencement of such test programme, the Seller will deliver to the Purchaser in writing the final programme for testing the Complex, including the expected duration of the Seller's start-up testing programme and a tentative schedule for conducting all tests required under Sections 8.2 and 8.3. The Seller shall advise the Purchaser in writing of any changes in its final schedule for the testing programme, no less than seven (7) Days prior to the commencement of the tests required under Section 8.2. 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 test required under Sections 8.2 or 8.3 is adjusted after the Seller has provided the Purchaser with the final testing programme schedule, then the Seller shall advise the Purchaser no less than forty-eight (48) hours prior to the commencement of any such test. 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 test will continue for more than one (1) Day). All testing of the Complex shall satisfy the Commissioning Test criteria provided in Schedule 7.
- (b) (i) If the Purchaser is unable (including by reason of its failure to complete the Purchaser Interconnection Facilities in accordance with Section 6.5) to accommodate the schedule for such test or tests as provided by the Seller in the final schedule for the programme of tests pursuant to Section 8.1(a), the Purchaser will give the Seller notice within forty eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex and the Parties will mutually agree on a date for any deferral test or programme of tests; provided, however, that should the Purchaser defer or delay any Commissioning Tests beyond fifteen (15) Days

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in aggregate from the date on which the tests were finally scheduled in accordance with Section 8.1 and such deferral causes the Scheduled Commercial Operations Date of the Complex, as certified by the Engineer under Section 8.3, to be delayed or deferred, [or

(ii) the Seller is unable to carry out the Commissioning test or tests due to non-availability of water in accordance with the Technical Limits and such non-availability of water causes the Scheduled Commercial Operations Date of the Complex, as certified by the Engineer under Section 8.3, to be delayed or deferred,]²⁰

then the Purchaser shall pay to the Seller Monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Costs plus fifty percent (50%) of the Insurance Component, fifty percent (50%) of the Fixed O&M Component (Foreign), and fifty percent (50%) of Fixed O&M Component (Local), multiplied by the Average Daily Energy for the number of Days of such delay.. 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 any Commissioning Test or Commissioning Tests and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not); provided, however, that the 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 and a simultaneous certificate that the delay or deferral caused by the Purchaser would likely cause the then scheduled Commissioning Tests to be delayed or deferred [or due to non-availability of water]²¹. The Purchaser shall notify the Seller at the end of any such delay or deferral.

(iii) In addition to the aforesaid payments, if the delay or deferral of the Commissioning Tests by the Purchaser continues beyond the ninetieth (90th) Day following the date of the issuance by the Engineer of the two (2) certificates mentioned in this Section, the Purchaser shall also be required to pay the principal

²⁰ Only if the HR is with the Purchaser.

²¹ Only if the HR is with the Purchaser.

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debt payments when due under the Financing Documents pursuant to the repayment schedule agreed between the Seller and the Senior Lenders at Financial Closing (such repayment schedule to be consistent with Annex • of the Tariff Determination), with a copy of such repayment schedule being furnished to the Purchaser attested by the Senior Lenders or their Agent as to its accuracy and incorporating any revision thereto on account of Interest Margin Savings resulting in reduction of the principal or interest payments thereunder (“**Lender Debt Certification**”). Such principal debt payment shall be due from the Purchaser on the later of thirty (30) Days following receipt of an invoice therefor (together with the Lender Debt Certification) or the due date for such payment under the repayment schedule, which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule. 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).

(iv) In addition, the Required Commercial Operations Date shall be extended on a Day-For-Day basis by the number of Days that any of the Commissioning Tests are delayed due to the Purchaser [or on account of non-availability of water]²², as certified by the Engineer in accordance with this Section.

(v) Any payments made by the Purchaser pursuant to this Section 8.1(b) on account of principal debt payments under the Financing Documents shall be recovered by the Purchaser, together with interest at KIBOR plus 3.5% per annum (on the monthly outstanding balance of such amounts), commencing on the Commercial Operations Date and ending on the date of complete repayment thereof by the Seller, through successive deductions of the Return on Equity Component from the Energy Payments until the aforesaid amounts have been completely recovered by the Purchaser.

(c) The Purchaser shall have no obligation to make the payments provided in this

²² Only if HR is with the Purchaser; and subsequent numbering will get corrected.

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Section 8.1 if and to the extent that 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 and Section 16.2, the Seller shall be entitled to no other compensation 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

- (a) Certificate of Readiness for Synchronization:
 - (i) Prior to synchronization of the Complex with the Grid System, the Engineer shall deliver to the Seller and the Purchaser the Certificate of Readiness for Synchronization. Prior to the delivery of the Certificate of Readiness for Synchronization and the first synchronization of the Complex, the Seller shall carry out, or shall cause the Contractors to carry out, in the presence of the Engineer, the following tests:
 - (A) automatic voltage regulator setting and adjusting in stand still condition and with the generator running at no load;
 - (B) turbine governor control checks;
 - (C) 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 are as agreed by the Operating Committee:
 - (1) stator earth fault;
 - (2) negative phase sequence;
 - (3) generator transformer over-current and earth fault; and

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- (4) 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 will be proved.
 - (ii) The Purchaser shall be given not less than ninety-six (96) hours notice of such tests (and any retests thereof) and shall have an opportunity to be present at and observe all such tests.
- (b) Certificate of Readiness for Energization of the Seller Interconnection Facilities
 - (i) Prior to establishing interconnection of the Seller Interconnection Facilities with the Purchaser Interconnection Facilities so as to enable the Seller Interconnection Facilities to be energized, the Seller shall carry out the tests listed in Schedule 7 in relation to the Seller Interconnection Facilities.
 - (ii) Upon successful completion of the tests set forth in Schedule 7 in relation to the Seller Interconnection Facilities, the Engineer shall issue the Certificate of Readiness for Energization of the Seller Interconnection Facilities. After receiving the Certificate of Readiness for Energization of the Seller Interconnection Facilities, the Purchaser shall energize the Purchaser Interconnection Facilities, whereafter the Seller shall energize the Seller Interconnection Facilities and perform the following additional tests:
 - (A) operation and interlocking checks; and
 - (B) MV panel tests.
 - (iii) Upon successful completion of the tests specified in Section 8.2(b), the Engineer will issue a certificate stating that the commissioning of the Seller Interconnection Facilities has been completed.

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

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Tests

- (a) After first synchronizing the Complex, initial operational testing of the Complex shall be conducted by the Seller or its Contractors. Once the Seller is satisfied that the Complex is capable of continued reliable operation, the Seller shall request the Engineer to issue the Certificate of Readiness. Upon issuance by the Engineer of the Certificate of Readiness, the Seller shall so notify the Purchaser and carry out or cause its Contractors to carry out the tests stated herein and in Schedule 7 (the “**Commissioning Tests**”) which, if the Complex satisfies the minimum performance criteria there for, will result in the Complex being Commissioned and in the establishment of the Commercial Operations Date in accordance with Section 8.3(c)(iii):
- (i) capacity test, together with test demonstrating Power Curve Energy;
 - (ii) reliability run test;
 - (iii) automatic voltage regulator droop;
 - (iv) turbine governor operation;
 - (v) reactive capability;
 - (vi) minimum load capability;
 - (vii) response of the Complex to step load changes; and
 - (viii) full load rejection.

Minimum performance criteria for the Commissioning Tests are included in Schedule 7.

(b) Reliability Run and Capacity

Upon completion of the reliability run test prerequisites as included in Schedule 7, the Seller shall declare to the Purchaser the commencement of the reliability run test including the test under Section 8.3(a)(i). During the one hundred and sixty-eight (168) hour period of the reliability run test, the capacity of the Complex will be demonstrated in the following manner:

- (i) The Complex shall be in operation at full output with normal auxiliaries and full colony load, if connected directly to the Complex, in service.
- (ii) The Seller will declare to the Purchaser the commencement of the test and will record the reading of the Metering System.

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- (iii) The test duration will be six (6) continuous hours and, at the end of this period, the Seller will record the new reading of the Metering System. The capacity of the Complex as determined by such test shall be the difference between the reading taken at the end of the six (6) hour period and the reading taken at the beginning of such period, divided by six (6) and such result adjusted to Reference Hydrological Conditions and thereupon, subject to Section 2.9(b), the Contract Capacity shall be that established in the aforesaid manner and which satisfies the minimum criteria for such test set forth in Schedule 7. At the completion of the Commissioning Tests, the Contract Capacity shall be certified by the Engineer (the “**Capacity Test Certificate**”).
 - (iv) Should the testing under Section 8.3(b)(i), (ii) and (iii) (as may be repeated under Section 8.3(c)) demonstrate the performance of the Complex (adjusted to Reference Hydrological Conditions) below the values of electrical output given in the Complex Hill Chart with the resultant forecasted net annual capacity factor for the Complex taking into account the Monthly Benchmark Flow for the next twelve (12) Months falling below [65% for low head projects/50% for high head projects], the Purchaser shall, subject to Section 8.8, be entitled to reject the Complex and terminate this Agreement and draw the Seller Letter of Credit. The forecasted net annual capacity factor for the Complex equal to or above [65% for low head projects/50% for high head projects] shall be certified by the Engineer to the Purchaser. Further, if the Tariff Determination was applied for by and awarded to the Seller without detailed engineering design, the Seller shall also deliver to the Purchaser a certified copy of the revised certificate from the panel of experts required to be delivered to NEPRA pursuant to paragraph 12(iv) of NEPRA’s decision in the matter of motion for leave for review regarding upfront tariff for small hydro power generation projects dated 14 October, 2015 (NEPRA/UTH-01/15031-15033) simultaneously with its delivery to NEPRA.
- (c) Additional Commissioning Tests
- (i) The Seller shall not be entitled to carry out more than ten (10)

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Commissioning Tests of the Complex to satisfy the minimum criteria set forth in Schedule 7 for achieving the Commercial Operations Date; provided, that no Commissioning Test undertaken by the Seller shall be counted against such ten (10) Commissioning Tests if the Seller is prevented from completing the test due to a reason attributable to the Purchaser, a Non-Project Event, a Force Majeure Event or non-availability of water within the Technical Limits. The Seller shall give the Purchaser not less than three (3) Days notice of each additional Commissioning Test it desires to attempt.

- (ii) When, subject to Section 2.9(b), the Complex has satisfied a Commissioning Test to establish the Commercial Operations Date, the Seller shall notify the Purchaser that the Seller has designated such test as the Commissioning Test and shall, subject to Section 2.9(b), set the Contract Capacity at the level certified in the Capacity Test Certificate; provided, however, such tested Capacity shall equal the Contract Capacity; provided further, that the duration of any additional Commissioning Test performed solely for the purpose of establishing the Contract Capacity need only be long enough to satisfy the requirements of Section 8.3(b)(i), (ii) and (iii) after running for at least seventy two (72) consecutive hours at maximum continuous rating.
- (iii) The Commercial Operations Date shall occur as of the first Day after the Day the Complex is Commissioned when declared by the Seller and certified in writing by the Engineer.

Section 8.4. Notice of and Compliance with Testing Procedures

The Seller shall carry out Commissioning of the Complex, testing the Contract Capacity of the Complex as a part thereof in accordance with Sections 8.2 and 8.3. The Purchaser shall use its reasonable efforts to comply promptly with all reasonable requests by the Seller for assistance in carrying out such testing and Commissioning. The Purchaser shall be given not less than forty-eight (48) hours prior written notice of any testing or Commissioning in accordance with Sections 8.2 and 8.3 and shall be entitled to be present and observe any such testing and Commissioning to verify that the testing or Commissioning is performed in accordance with the requirements of this Agreement and may Dispute the results of any tests or Commissioning

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not carried out in accordance with this Article VIII and Schedule 7.

Section 8.5. Payment for Net Delivered Energy during Testing

- (a) For any Net Delivered Energy delivered after synchronization of the Complex with the Grid System at any time prior to the Commercial Operations Date, the Purchaser shall pay the applicable Tariff to the Seller less the Principal Repayment Component and the Interest Charges Component in accordance with Section 9.8.
- (b) The Purchaser shall have no obligation to pay for any Net Delivered Energy delivered to the Interconnection Point during testing except as provided in Section 8.5(a).

Section 8.6. Copies of Test Results

The Seller shall provide the Purchaser with copies of the test results of all tests performed pursuant to this Article VIII and after every general overhaul of a Unit at the Complex. Except as required under the Laws of Pakistan or its licenced obligations, the Purchaser shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

Section 8.7. Scheduling and Accommodation of Additional Tests

If, during or following a Scheduled Outage, a Forced or Partial Forced Outage, a Maintenance Outage, or a Force Majeure Event, the Seller is required to undertake additional tests of a Unit or the Complex that are not required under this Article VIII and which require that electric energy is delivered to the Grid System, the Purchaser shall accommodate such tests as soon as reasonably practicable following a request therefor from the Seller.

Section 8.8. 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; provided that, in the case of a Dispute as to the successful completion of the Commissioning Tests, as certified by the Engineer, such Dispute shall, unless the Parties otherwise agree, 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

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Section 18.3. At the request of either Party, for purposes of resolving any Dispute related to the Commissioning Tests or the rights and liabilities of each Party under Section 6.5 or Section 8.1, the Expert may be appointed in accordance, mutatis mutandis, with the provisions of Section 18.2 forty-five (45) Days in advance of the scheduled date for synchronization of the Complex with the Grid System and shall be available thereafter to resolve any such Dispute. Unless the Parties otherwise agree, the Expert shall not attend the Commissioning Tests or be present on the Site prior to any Dispute being referred to the Expert by a Party. The fees and expenses of the Expert shall be shared equally by the Parties.

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ARTICLE IX COMPENSATION, PAYMENT AND BILLING

Section 9.1. Energy Payments²³

(a) [Subject to Section 9.8(c), and in accordance with the procedures specified in Section 9.7, from and after the Commercial Operations Date, the Purchaser shall pay to the Seller: (A) Monthly in arrears, the Energy Payment, for the Monthly Energy, consisting of the Regular Energy Payment and, if applicable, the Shortfall Energy Payment; and (B) yearly in arrears, if applicable, the Bonus Energy Payment, all determined as follows:

(i) Regular Energy Payment: The Regular Energy Payment for the Regular Energy shall be calculated as follows:

$$\mathbf{REP}_m = \mathbf{EP}_m * \mathbf{RE}_m$$

Where:

\mathbf{REP}_m = Regular Energy Payment for the relevant Month;

\mathbf{EP}_m = Energy Price for the relevant Month, calculated in accordance with Part II of Schedule 1;

\mathbf{RE}_m = Regular Energy for the relevant Month, determined as follows:

lesser of \mathbf{ME}_m and \mathbf{MBE}_m , if \mathbf{ME}_m equals \mathbf{MBE}_m , then \mathbf{RE}_m shall be taken as \mathbf{MBE}_m

Where:

\mathbf{ME}_m = Monthly Energy for the relevant Month, being $\mathbf{NDE}_m + \mathbf{NPMV}_m$

²³ Section 9.1 has two formulations, the first to be used where the HR is with the Purchaser and the second one is to be used where HR is with the Seller.

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NDE_m = Net Delivered Energy for the relevant Month;

$NPMV_m$ = Non-Project Missed Volume for the relevant Month;

MBE_m = Monthly Benchmark Energy for the relevant Month.

- (ii) Bonus Energy Payment: If Bonus Energy is established then the Bonus Energy Payment shall be calculated as follows:

$$\mathbf{BonEP_Y} = \mathbf{BonE_Y} \times \mathbf{EP_b} \times \mathbf{0.1}$$

Where:

$BonEP_Y$ = Bonus Energy Payment for the Bonus Energy for the preceding Agreement Year;

$BonE_Y$ = $(NDE_y + NPMV_y) - ABE$;

Where:

NDE_y = Net Delivered Energy for the preceding Agreement Year;

$NPMV_y$ = Non Project Missed Volume for the preceding Agreement Year;

ABE = The Annual Benchmark Energy for the preceding Agreement Year;

EP_b = The average of the Energy Prices for the four (4) Quarters determined for the Agreement Year in which the Bonus Energy is generated;

- (iii) Shortfall Energy: Shortfall Energy, if any, shall be calculated as follows:

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$$\mathbf{SFE_m} = \mathbf{MBE_m - PCE_{maf}}$$

Where

SFE_m = Shortfall Energy for the relevant Month;

MBE_m Monthly Benchmark Energy for the relevant Month;

PCE_{maf} = the Power Curve Energy corresponding to the Monthly Mean Flow for relevant Month.

(iv) Shortfall Energy Payment: Shortfall Energy Payment for Shortfall Energy in a given Month shall be calculated as follows:

(A) Provided the value of the Complex Yield Surplus, as determined under Section 9.1(b) below, is a positive number:

$$\mathbf{SFEPm} = \mathbf{(SFE_m - X) * FTCm}$$

Where:

$SFEPm$ = Shortfall Energy Payment for the relevant Month;

SFE_m = Shortfall Energy, computed in the manner provided in Section 9.1(a)(iii) above;

X = the Complex Yield Surplus;

$FTCm$ = Fixed Tariff Components for the relevant Month, calculated in accordance with Part II of Schedule 1.

(B) Provided the value of the Complex Yield Surplus, as determined under Section 9.1(b) below, is a negative number:

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$$\mathbf{SFEP_m} = \mathbf{SFE_m * (RE_m / PCE_{maf}) * FTC_m}$$

Where:

$SFEP_m$ = Shortfall Energy Payment for the relevant Month;

SFE_m = Shortfall Energy, computed in the manner provided in Section 9.1(a)(iii) above;

RE_m = Regular Energy for the relevant Month, determined under Section 9.1(a)(i);

FTC_m = Fixed Tariff Components for the relevant Month, calculated in accordance with Part II of Schedule 1;

PCE_{maf} = the Power Curve Energy corresponding to the Monthly Mean Flow for the relevant Month.

(C) Provided the value of the Complex Yield Surplus, as determined under Section 9.1(b) below, is equal to zero:

$$\mathbf{SFEP_m} = \mathbf{SFE_m * FTC_m}$$

Where:

$SFEP_m$ = Shortfall Energy Payment for the relevant Month;

SFE_m = Shortfall Energy, computed in the manner provided in Section 9.1(a)(iii) above;

FTC_m = Fixed Tariff Components for the relevant Month, calculated in accordance with Part II of Schedule 1.

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- (b) The value of the Complex Yield Surplus referred in Section 9.1 (a)(iv)(A), (B) and (C) shall be determined as follows:

$$\mathbf{X} = \mathbf{REm- PCEmaf}$$

Where:

X = the Complex Yield Surplus;

RE_m = Regular Energy for the relevant Month, determined under Section 9.1(a)(i); and

PCE_{maf} = the Power Curve Energy corresponding to the Monthly Mean Flow for the relevant Month.

- (c) The Seller shall cease invoicing for Shortfall Energy, and the Purchaser shall no longer have the obligation to pay therefor, where the sum total of the quantity of Monthly Energy and the Shortfall Energy during the Agreement Year equals the Annual Benchmark Energy for that Agreement Year.]

- [(a) Subject to Section 9.8(c), and in accordance with the procedures specified in Section 9.7, from and after the Commercial Operations Date, the Purchaser shall pay to the Seller, Monthly in arrears, the Energy Payment determined as follows:

$$\mathbf{EPaymentm} = \mathbf{EPricem * MEm}$$

Where:

EPayment_m = Energy Payment for the relevant Month;

EPrice_m = Energy Price for the relevant Month, calculated in accordance with Part II of Schedule 1;

ME_m = Monthly Energy for the relevant Month, being NDE_m + NPMV_m;

Where:

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NDE _m	=	Net Delivered Energy for the relevant Month;
NPMVm	=	Non-Project Missed Volume for the relevant Month.]

Section 9.2. Intentionally left blank

Section 9.3. Water Use Payments for Net Delivered Energy

From and after the Commercial Operations Date, the Purchaser shall, in accordance with the procedures specified in Section 9.7, pay to the Seller, as part of the Energy Payment each Month, the Water Use Payment for the Net Delivered Energy for the Month (or part Month). The amount of the Water Use Payment will be the product of the Water Use Charge and the Net Delivered Energy for the Month (or part Month) and shall be calculated in accordance with this Section 9.3 and the provisions of Schedule 1.

Section 9.4. Intentionally left blank

Section 9.5. Pass-Through Item(s); Supplemental Tariffs

- (a) Subject to Section 9.8(c), the Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.8, any amount for the Pass-Through Items evidenced in accordance with this Agreement and Schedule 1. Each invoice for the Pass-Through Items in accordance with Section 9.7 delivered to the Purchaser shall be accompanied by the original invoices or payment receipts for which the Seller seeks recovery from the Purchaser. 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 a Pass-Through Item 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 9.8(c), the Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.8, the Supplemental Tariffs calculated in accordance with Schedule 1. Supplemental Tariffs shall be determined as

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provided in Schedule 1, and invoiced in the same manner and on the same schedule as invoices for Energy Payments, as provided in Section 9.7(a)(i).

Section 9.6. Liquidated Damages

- (a) Without prejudice to the Purchaser's rights under Article XVI, the Parties agree that any liquidated damages payable under this Section 9.6 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 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 Contract Capacity per Month (prorated daily) until the Commercial Operations Date is achieved.
- (c) The Seller shall pay liquidated damages to the Purchaser where, except to the extent prevented due to a Non-Project Event, a Force Majeure Event, a Scheduled Outage, or a Maintenance Outage, the electricity generated by the Complex falls short of the Power Curve Energy at the Monthly Mean Flow, computed as follows:

$$\mathbf{LDm} = (\mathbf{PCEmaf} - \mathbf{SOHEm}) - (\mathbf{NDEm} + \mathbf{NPMVm}) * \mathbf{EPricem}$$

Where:

\mathbf{LDm} = liquidated damages (if any) for the relevant Month;

\mathbf{PCEmaf} = the aggregate quantity of energy in the relevant Month corresponding to the Monthly Mean Flow;

\mathbf{SOHEm} = the energy corresponding to the Scheduled Outage Hours for the relevant Month calculated as $\mathbf{SOH} * \mathbf{ADE}/24$;

Where:

\mathbf{SOH} = Scheduled Outage Hours for the relevant Month;

\mathbf{ADE} = Average Daily Energy;

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- NDEm = Net Delivered Energy for the relevant Month;
- NPMVm = Non-Project Missed Volume for the relevant Month; and
- EPricem = Energy Price for the relevant Month.

Provided always that, the electricity not generated by the Seller on account of any Despatch Instructions that require the Seller to generate electricity less than the Declared Availability Capacity shall be excluded from the calculation of the liquidated damages.

- (d) From and after the Commercial Operations Date:
- (i) the Seller shall submit to the Purchaser within thirty (30) Days after the expiry of each Agreement Year an account showing credit entries for Cumulative Credit Energy, if any, and debit entries for Lost Revenue Energy, if any, in such Agreement Year (“**Lost Revenue Energy Account**”). Such accounting shall continue for each successive Agreement Year taking the closing balances from the preceding Agreement Year as the opening balances for the succeeding Agreement Year;
 - (ii) the Purchaser may invoice the Seller for liquidated damages for any positive balance of the Lost Revenue Energy in the Lost Revenue Energy Account. The Seller shall pay such liquidated damages to the Purchaser calculated as the product of kilowatt hours representing the positive balance of the Lost Revenue Energy and the then-prevailing use of system charge per kWh allowed by NEPRA to the Purchaser for interconnection to and use of its Grid System; and
 - (iii) the Seller shall pay the liquidated damages afore-said to the Purchaser within thirty (30) Days of an invoice being raised by the Purchaser showing the calculations for the liquidated damages.
- (e) The Parties acknowledge and agree that it would be difficult or impossible at the date of this Agreement to determine with absolute 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

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provided under this Agreement, in particular, under this Section 9.6. The Parties agree that the amounts of liquidated damages provided under this Agreement, in particular, under this Section 9.6, 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 failure, and do not constitute a penalty.

Section 9.7. Billing

- (a) On or after the first (1st) Business Day of each Month following the Commercial Operations Date, the Seller shall submit an invoice to the Purchaser stated in Rupees for the following:
 - (i) the Energy Payment due in respect of the previous Month (or part-Month), and specifying for the relevant Month:
 - (A) the Energy Price,
 - (B) the Net Delivered Energy,
 - (C) the Non-Project Missed Volume, if any,
 - (D) [Regular Energy and, if applicable, the Shortfall Energy,]²⁴
 - (E) readings of Flow Meters for the Monthly Mean Flow (duly supported with relevant data and records, including data and records generated by the [SCADA System]), and
 - (F) such other information and calculations, in reasonable detail, so as to enable the Purchaser to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1;
 - (ii) any Pass-Through Item due in respect of the previous Month (or part-Month) in accordance with Schedule 1;
 - (iii) any interest payable hereunder on an amount not paid by the due date, showing the calculation of such claimed interest in reasonable detail,

²⁴ Where HR is with Purchaser

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- together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice;
- (iv) Sales Tax payable on the sale, exportation or delivery of electricity and on the generation of electricity by the Complex;
 - (v) any Supplemental Tariff due in the previous Month (or part Month) in accordance with Schedule 1; and
 - (vi) in respect of the first invoice for Energy Payment after the Commercial Operations Date, may include the Energy Payment, if any, for Net Delivered Energy prior to the Commercial Operations Date under Section 8.5.
- (b) [On or after the first (1st) Business Day following the end of each Agreement Year, the Seller shall submit an invoice to the Purchaser stated in Rupees for the Bonus Energy Payment due, if any, in respect of the previous Agreement Year, duly supported with such information and calculations, in reasonable detail, so as to enable the Purchaser to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1.]²⁵
- (c) At any time after the first (1st) Business Day of each Month:
- (i) the Purchaser shall submit an invoice to the Seller for 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); and
 - (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 9.6(b) for the previous Month (or part-Month),
 - (B) Rupees for the liquidated damages due to the Purchaser under Section 9.6(c) for the previous Month and Section 9.6(d), and
 - (C) Rupees for any interest payable hereunder on an amount not paid by the Due and Payable Date, showing the calculation of such

²⁵ Only where HR is with the Purchaser

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claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

- (d) The information in support of the invoices submitted by the Seller shall include, inter alia:
 - (i) the relevant Exchange Rate (as defined in Schedule 1) showing the applicable exchange values between the Rupee and the Dollar;
 - (ii) the relevant GOP Bureau of Statistics publication showing the relevant wholesale price index values;
 - (iii) the relevant United States Bureau of Labour Statistics publication showing the relevant United States Consumer Price index values, evidence of the relevant KIBOR and LIBOR values, as applicable; invoices or payment receipts for any amount claimed as Pass-Through Items; copies of meter readings showing the Net Delivered Energy; copies of readings of the Flow Meters and [the SCADA System];
 - (iv) 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; and
 - (v) original invoices or payment receipts for any amount claimed as Pass-Through Items claims.
- (e) Either Party may require clarification or substantiation of any amount included in an invoice or statement submitted under Section 9.7(a) through (e) 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 9.8. Payment

- (a) Subject to Section 9.9,
 - (i) the Purchaser shall pay the Seller the amount shown on an invoice delivered in accordance with Section 9.7(a) [and Section 9.7(b)], less

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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 9.7(c), 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. In case of an invoice delivered by the Purchaser under Section 9.7(c)(ii)(A) in Dollars, the Seller may elect to pay such invoice in Rupees, whereupon the amount of Rupees payable shall be calculated in accordance with the Exchange Rate (as defined in Schedule 1) prevailing 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.
- (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 payment obligation has been discharged under 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.

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- (g) The Purchaser shall have no obligation to pay the Supplemental Tariff, the Pass-Through Items or other payments required under Section 9.7, unless the supporting information and data stipulated in Section 9.5 are provided to it.

Section 9.9. Payment Disputes

- (a) At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an “**Invoice Dispute Notice**”) on the other Party that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, giving 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, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this Section 9.9(a). A Party submitting an Invoice Dispute Notice may require such Dispute to be immediately referred to the Expert for determination pursuant to Section 18.2.
- (b) Upon resolution of the Dispute under Section 18.1 or the determination of the Dispute by the Expert under Section 18.2 and without prejudice to the right of either Party to refer a Dispute to arbitration, 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, as the case may be, within seven (7) Business Days after such resolution or determination, 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 9.9(b).

Section 9.10. 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 and Energy Payments, 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

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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 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 generated, obtained or received by the Purchaser for payment by the Seller.
- (c) The Seller shall maintain accurate and complete records and data relating to:
 - (i) Non-Project Missed Volume, including
 - (A) communications by the Seller announcing and reasonably describing a Non-Project Event,
 - (B) verifications sought by the Purchaser and responses made by the Seller relating to a Non-Project Event,
 - (C) Despatch Instructions not complied with fully or partially due to a Non-Project Event,
 - (D) operating logs and records of the status of availability of the Complex,
 - (E) data on water discharge for the duration of the Non-Project Event recorded by the Flow Meters, and
 - (F) other relevant data and records; and
 - (ii) the Monthly Mean Flow,

as reasonably necessary to calculate or confirm the correctness of Non-Project Missed Volume, the Energy Price, the Energy Payments and any other claims for payment or recovery of costs or expenses made by the Seller under this

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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.

Section 9.11. 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 9.11(c) (the “**Reserve Fund**”) with a depository institution and under depository agreements reasonably satisfactory to the Purchaser. On the 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 Energy Payment is made. On each date of payment of Energy Payments, one twenty fourth (1/24th) 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 investment 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 below) and (ii) only to the extent the Seller lacks other available funds therefor, for the purpose of paying maintenance and associated operating expenses with respect to the Complex or to pay for alterations, repairs, improvements, renewals and replacements with respect to the Complex which are necessary for the proper operation of the Complex. As used herein, “**Major Maintenance Expenses**” means expenses for an item of

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maintenance or repair of the Complex or Major Overhaul which will require a material expenditure and which is anticipated to be performed in accordance with 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) If after the withdrawal of any funds from the Reserve Fund for the payment of Major Maintenance Expenses as described in Section 9.11(c), the amount in the Reserve Fund is less than the amount required pursuant to Section 9.11(b), the Seller shall replenish the Reserve Fund by depositing funds therein in accordance with Section 9.11(b).
- (e) If, after the withdrawal of any funds from the Reserve Fund for the purpose described in Section 9.11(c) above, the amount remaining in the Reserve Fund is less than the amount required pursuant to Section 9.11(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 occurred, an amount sufficient to restore the amount required in Section 9.11(b). Such amount shall be paid out of fifty percent (50%) of each of the Fixed O & M Component (Local) and Fixed O & M Component (Foreign), Insurance Component and Return on Equity Component (each of the components as defined in Schedule 1) of the Monthly Energy Payment available during that 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).
- (f) The Seller shall keep accurate records with respect to 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.
- (g) 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 9.11 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 long term maintenance agreement that provides annual maintenance and major overhauls for agreed substantially equal Monthly installments, which agreement is

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reasonably acceptable to the Purchaser, such agreement shall satisfy the requirements for the maintenance of the Reserve Fund hereunder.

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ARTICLE X LIABILITY

Except as required by Section 11.1 and 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.

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ARTICLE XI INDEMNIFICATION

Section 11.1. Indemnification.

- (a) Purchaser's Indemnification. Except as 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 losses 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's Indemnification. Except as 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.
- (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.

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- (d) Survival. The provisions of this Section 11.1 shall survive for a period of five (5) years following termination or expiry 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 the 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 selection, to assume and control the defense of such claim, action, suit or proceeding at its expense, 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 selection, any claim, action, suit or proceeding by any

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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 hereunder.

- (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, 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. If clause (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such

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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 it 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.

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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 8 in the amounts set forth therein and during the periods mentioned therein, with financially sound insurer(s); provided, however, that such amounts may be changed by the Seller from time to time with the prior written consent of the Purchaser; provided, further, that the Seller shall not be in breach of its obligations hereunder if and to the extent that (i) 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 or (ii) the Seller is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.
- (b) Following a Pakistan Political Event to the extent that the insurance required by Section 12.1(a) above is not available to the Seller at commercially reasonable rates due to the occurrence of the Pakistan Political Event, upon notice to the Purchaser by the Seller, the additional cost of such insurance attributable to the occurrence of the Pakistan Political Event (that, in case of a dispute, may be determined by an Expert in conformity with the provisions of Section 18.2), shall be recoverable by the Seller from the Purchaser and treated as a Pass-Through Item. In such an event, in lieu of making such payment to the Seller, the Purchaser in its sole discretion may elect to procure the insurance required by Section 12.1(a) on behalf of the Seller with insurers of a rating not less than the Seller's existing insurers or the insurers with whom such insurance was procured by the Seller prior to the occurrence of the Pakistan Political Event and deduct the insurance cost component of the then prevailing Energy Price as full compensation therefor; provided, that the Purchaser shall, within fifteen (15) Business Days of procuring such insurance, provide to the Seller receipts for the payment of premia and copies of the certificates of insurance or policies, if

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available, of insurance obtained by the Purchaser. The Seller and the Lenders shall be named as an additional insured. The Seller shall be named as the loss payee (subject to any assignment of insurance proceeds to the Lenders) on any such insurance procured by the Purchaser pursuant to this Section 12.1(b). The additional compensation provided under this Section 12.1(b) and any such deduction shall cease as soon as the Seller's insurance rates are no longer affected by the Pakistan Political Event. From time to time, at the request of the Purchaser or the Seller, the Expert acting in conformity with the provisions of Article XVIII will determine the extent to which the Seller's insurance rates are then affected by the Pakistan Political Event.

Section 12.2. Maintenance of "Occurrence" Form Policies

The coverage requested in Section 12.1 hereabove and any "umbrella" or excess coverage shall be "occurrence" form policies. In the event the Seller has "claims made" form coverage, the Seller must obtain prior approval of all "claims-made" policies from the Purchaser.

Section 12.3. Policy Endorsements

The Seller shall cause the insurers to provide the following endorsement items in the commercial general liability and, if applicable, umbrella or excess liability policies relating to the ownership, construction, operation and maintenance of the Complex provided pursuant to Section 12.1:

- (a) The Purchaser, its directors, officers and employees shall be additional insureds under such policies with respect to claims arising out of or in connection with this Agreement;
- (b) The insurance shall be primary with respect to the interest of the Purchaser, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;
- (c) The following separation of interests clause shall be made a part of the policy:

"In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging

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to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance”;

- (d) The insurer shall waive all rights of subrogation against the Purchaser, its directors, officers and employees; and
- (e) Notwithstanding any provision of the policy, the policy may not be canceled, or not renewed, or materially changed by the insurer without giving thirty (30) Days prior written notice to the Purchaser, except in the case of non payment, in which case the prior written notice to the Purchaser shall be ten (10) Days. All other terms and conditions of the policy shall remain unchanged.

Section 12.4. Endorsements to Fire and Perils and Machinery Breakdown Policies

The Seller shall cause the insurers to provide the endorsements referred to in Section 12.3(a), (b), (d) and (e) hereabove, in the fire and perils and machinery breakdown policies covering the Complex as required by Section 12.1 hereabove.

Section 12.5. Certificates of Insurance

The Seller shall cause its insurers or agents to provide the Purchaser with certificates of insurance evidencing the policies and endorsements listed hereabove. Failure by the Seller to obtain the insurance coverage or certificates of insurance required under this Article XII, shall not in any way relieve the Seller of, or limit the Seller’s obligations and liabilities under, any provision of this Agreement. If the Seller shall fail to procure or maintain any insurance required pursuant to this Article XII, then the Purchaser shall have the right to procure such insurance in accordance with the requirements of Schedule 8 and shall be entitled to offset the premiums paid for such insurance against any amounts owed to the Seller pursuant to the terms of this Agreement. The Seller shall be named as the loss payee on any such insurance procured by the Purchaser pursuant to this Section 12.5.

Section 12.6. Insurance Reports

The Seller shall provide the Purchaser with copies of any underwriters’ reports or other reports received by the Seller from any insurer; provided, that the Purchaser shall not disclose such

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reports to any other person except as necessary in connection with administration and enforcement of this Agreement or as may be required by any Public Sector Entity having jurisdiction over the Purchaser, and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

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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] / [private] 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) general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for the Specified

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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 either its ability to perform its obligations hereunder or 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 the dissolution of the Seller, or (ii) against the Seller which, if adversely determined, would have a material adverse effect on either its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

Section 13.2. Certificates

The Seller shall, upon request by the Purchaser, deliver or cause to be delivered from time to time to the Purchaser 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 only be entitled to request each certificate from such accountants, engineers or agents once within any twelve (12) Month period.

Section 13.3. Representations and Warranties of 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

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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 law or 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) 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 either its ability to perform its obligations hereunder or 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 the dissolution of the Purchaser, or (ii) against the Purchaser which, if adversely determined, would have a material adverse effect on either its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

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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 from the Purchaser, certain Taxes paid by it as provided therein.

Section 14.2. Taxes Applicable to the 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 either the Purchaser or the Seller reasonably believes that a Change in Tax has occurred which
- (i) applies to the Complex or to the Purchaser's payments to the Seller, of amounts due and payable under this Agreement or the use of water from the Water Resource; and
 - (ii) causes the Seller to (A) incur any Tax Costs, (B) realize any Tax Savings, or (C) become subject to any variation in the rate of withholding Tax payable by the Seller, in each case in respect of the Project,
- then, either Party may provide the other Party written notice of such Change in Tax (a "**Change in Tax Notice**"), with reasonable details of the circumstances specified in clause (i) and clause (ii) hereinabove. 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 written calculation

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of the relevant Tax Costs or Tax Savings or effects of the withholding Taxes (other than withholding Taxes on dividends) resulting from the Change in Tax, 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 written calculation of any additional Tax Cost or Tax Saving in relation to the Project that has resulted, 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 Costs and/or Savings resulting from a Change in Tax

- (a) With effect from the date on which the Change in Tax occurs:
 - (i) The Purchaser shall reimburse the Seller for any Tax Costs or any increase in withholding Tax (other than withholding Taxes on dividends) incurred or suffered by the Seller, as Pass-Through Items, calculated in accordance with Section 9.2 and Schedule 1; and
 - (ii) The Seller shall reimburse the Purchaser for any Tax Savings or any decrease in withholding Tax (other than withholding Taxes on dividends) realized by the Seller, as calculated pursuant to the relevant Change in Tax Assessment, through an adjustment to the Energy Price or by set-off against the Energy Payment (at the option of the Purchaser) payable by the Purchaser, as calculated in accordance with Schedule 1.
- (b) Any Dispute as to the amount of the Tax Costs or Tax Savings resulting from a Change in Tax or the amount of the Pass-Through Items or the adjustment to the Energy Price or set-off against the Energy Payment shall be resolved in

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accordance with Article XVIII.

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, within forty-five (45) Days of the delivery of such notice, prepare and deliver to the other Party a written report in reasonable detail describing the Change in Tax, its likely effects on the Energy Price and the merits and probability of success in the proposed dispute. Within thirty (30) Days of receipt of such report, the Parties shall meet 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.

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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 the 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; or
 - (iv) [any change in the legal or constitutional status of AJ&K or the territories

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now forming AJ&K;]²⁶

- (b) Any Change in Law (and to the extent also a Force Majeure Event, “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, but only where such event is on a level that exceeds the design criteria of the Complex, except for the maximum credible seismic design event as specified in Schedule 2; 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) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Pakistan Political Event, in which case such event or circumstance shall constitute a Pakistan Political Event); or
 - (v) epidemic or plague;
- (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
 - (iii) normal wear and tear or random flaws in materials, machinery or

²⁶ In case of projects located in AJK.

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equipment;

provided, that each of the events described in clauses (d)(i) (ii) and (iii) above 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 any of its Contractors.

Section 15.2. Notification of Obligations

- (a) If by reason of a Force Majeure Event or Events 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, not 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 the 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, not later than seven (7) Days after the initial notice of the 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 to do so 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 it shall be unable to carry out any of its affected obligations due to the Force Majeure Event(s).

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- (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) along 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 forty-eight (48) hour period or six (6) 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 said notice is given within the forty-eight (48) hour period or six (6) hour period required by Section 15.2(a), hereabove, 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, the payment of reasonable sums of money by or on behalf of the affected Party (or such Contractors), which sums are reasonable in light of the likely efficacy of the mitigation measures.

Section 15.4. Delay Caused by Force Majeure

- (a) So long as the affected Party has, at all times since the occurrence of the Force Majeure Event, complied with the obligations of Section 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 payment) under or

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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 the 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, nevertheless, have 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 in effecting the Restoration are to be satisfied, as provided under this Agreement be extended beyond the end of the Restoration Period.

- (b) 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 During Force Majeure Event

Upon occurrence of any Force Majeure Event after the Commercial Operations Date, then during pendency of such Force Majeure Event, the Purchaser shall pay to the Seller Energy Payments for Monthly Energy that the Seller provides during the pendency of such Force Majeure Event.

Section 15.6. Restoration of the Complex; 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

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if the Pakistan Political Event has not ended by the time of such notice, in which case within thirty (30) Days of the notice stipulated in 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 15.6(b) shall herein be referred to as the “**Restoration Schedule**”, which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall herein be referred to as the “**Restoration Period**”).

If the damage to the Complex resulting from the PPFME is not material or the Seller’s compliance with a CLFME requires a modification or capital addition to the Complex that is not material (in each case, as defined below), the Seller shall promptly proceed with and complete the restoration of the Complex as soon as reasonably possible under the circumstances, keeping the Purchaser at all times informed about the progress of the restoration.

- (ii) 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, modifications or capital additions as are, or are reasonably expected to be, in excess of the equivalent of (i) the higher of the product of US\$ 5,000 and Contract Capacity or US\$ 100,000 in respect of any single event resulting in damage or requiring a modification or addition; or (ii) the higher of the product of US\$ 20,000 and Contract Capacity or US\$ 250,000 in the aggregate in any Year (in each case adjusted annually from the Commercial

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Operations Date for changes in the United States consumer price index from the value existing on the date hereof).

(iii) 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 Net Delivered Energy, the Purchaser shall within thirty (30) Days of the delivery by the Seller for an invoice therefor, pay to the Seller, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined below) an amount equal to:

(A) if the PPFME or the CLFME occurs prior to the Commercial Operations Date the Carrying Cost plus fifty percent (50 %) of the O&M Component, plus fifty percent (50%) of the Insurance Component multiplied by the Average Daily Energy for the number of Days of such delay. In addition, in the event that a PPFME or a CLFME continues beyond ninety (90) Days, then the Purchaser shall be required to pay the principal debt payments when due under the repayment schedule (as may be revised on account of Interest Margin Savings and certified by the Lenders or Agent together with Lender Debt Confirmation). Such principal debt payment shall be due from the Purchaser on the earlier of thirty (30) Days following receipt of an invoice therefor (accompanied by the Lender Debt Confirmation) or the due date for such payment under the repayment schedule (as certified to the Purchaser by the Lenders or Agent), which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule (as certified to the Purchaser by the Lenders or Agent); provided however, that any payment(s) that are made by the Purchaser pursuant to this Section on account of principal debt payments shall be recovered, together with interest at KIBOR plus 3.5% 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

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- (B) if the PPFME or the CLFME occurs after the Commercial Operations Date, the Energy Price multiplied by the Average Daily Energy for the number of Days of such delay (less the amount of Energy Payments paid to the Seller by the Purchaser pursuant to Section 15.5).

- (iv) The term “**PE Compensation Period**” shall mean the period beginning with the onset of PPFME or CLFME, as the case may be, (unless a 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:
 - (A) the date the Seller is able to resume performance of its obligations under this Agreement as specified in the notice given pursuant to Section 15.2(c);
 - (B) 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
 - (C) 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(b) 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:

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- (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 contemplated by Section 15.7(b)), the Parties shall either agree or disagree with respect to 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 a disagreement, after resolution by an Expert pursuant to Section 15.7(c) 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

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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 the commencement of that Other Force Majeure Event, then the Seller shall prepare and deliver a Report pursuant to Section 15.7(a).

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- (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 the 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 submit the matter to an Expert pursuant to Section 15.7(c) 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 ability of the Seller to operate the Complex and deliver Net Delivered 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 below), the Energy Price multiplied by the Average Daily Energy for the number of Days of such period less the amount any Energy Payments 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)(iv) 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, the EPC Cost multiplied by a percentage equal to twenty-five percent (25%) at any time prior to or on the Commercial Operations Date and

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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 following which the Complex does not operate 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 by Section 15.6(a), Section 15.6(c), Section 15.6(d), Section 15.6(f) or Section 15.7, the Seller shall commence the preparation of an appraisal report (the "**Report**") within fifteen (15) Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the Purchaser as soon as practicable, but in any event not 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

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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 the Complex, 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 to do so) 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 cashflow 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 the 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 provide promptly to the Purchaser such

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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) with respect to Disputes regarding any matter set forth in a Report, no later than twenty (20) Days after expiration of the period for review and consultation provided by Section 15.7(b);
 - (ii) with respect to Disputes pursuant to Section 15.6 within the applicable period provided for in Section 15.6; and
 - (iii) with respect to whether an item of cost incurred by the Seller should be recovered as provided in Section 15.8(e), within twenty (20) Days following the delivery of a written request to do so 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 ($2/3$) 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 asked to read all materials that are provided.
- (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.

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- (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 that is 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 the 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 decision is made by the Expert.
- (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 the 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),

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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 LIBOR plus [4.5%] 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 that are 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.

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- (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.
- (f) [If the Pakistan Political Force Majeure Event that results in damage to the Complex (i) is an event or circumstance set out in Section 15.1(a)(iii) above, (ii) is also a State Political Force Majeure Event under, and as defined in, the AJ&K Implementation Agreement and (iii) occurs inside AJ&K only, then the Seller shall seek appropriate compensation for the restoration costs from the GOAJK and the GOAJK shall be solely responsible to pay such compensation.]²⁷
- (g) [The Parties acknowledge that there exists a special legal and constitutional relationship between the GOP, the Council and the GOAJK. Variation or imposition of taxes, duties or levies on the income, profits or gains of the Seller, the Contractors, the Lenders or the Investors from the Project, by the GOAJK or the Council through adoption of any Laws of Pakistan enacted on or after the date of this Agreement shall be allowed to the Seller as a Pass Through Item under Part III of Schedule 1. Any material modification or capital addition to the Complex necessitated by application of any change in law of the GOAJK or the Council through adoption of any Laws of Pakistan enacted on or after the date of this Agreement shall be allowed to the Seller as a Change in Law and compensated by way of Supplemental Tariff.]²⁸
- (h) [If the variation or imposition of taxes, duties or levies on the income, profits or gains of the Seller, the Contractors, the Lenders or the Investors from the Project, by the GOAJK or the Council is not through adoption of any Laws of Pakistan enacted after the date of this Agreement, or (ii) causation of a Change in Law under, and as defined in, the AJ&K Implementation Agreement, is not through adoption of any Laws of Pakistan enacted on or after the date of this Agreement,

²⁷ For AJK's projects only.

²⁸ For AJK's projects only.

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then the Seller shall seek appropriate compensation from the GOAJK and the GOAJK shall be solely responsible to pay such compensation.]²⁹

Section 15.9. Revision of Restoration Cost Estimate or Restoration Period

- (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 therefore within thirty (30) Days of such referral. If the Expert determines that the delay was not reasonable and that it was due to the Seller's negligence, fault, or unnecessary delay the Restoration Period

²⁹ For AJK's projects only.

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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 the 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

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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 Termination as a Result of a Force Majeure Event; 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 (A) if it is caused in whole or material part by (i) a breach or default by the Purchaser of or under this Agreement (including any Purchaser Event of Default), (ii) a breach or default by the GOP of or under the Implementation Agreement (including any GOP Event of Default thereunder), [(iii) a breach or default by the GOAJK/Council of or under the AJK Implementation Agreement,]³⁰ (iv) a breach or default by the [Provincial Government]/[GOAJK]³¹ of or under the Water Use Agreement, (v) a breach of default by the [Provincial Government]/[AEDB]/[GOAJK] of or under the [Land Lease]/[Land Sub-lease]; or (B) if it is caused in whole or material part as a result of a Force Majeure Event (except in the case of Section 16.1(c); [or (C) if it results from non-availability of water within the Technical Limits]³²:

³⁰ For projects located in AJK and having AJK IA.

³¹ Only for AJK projects with WUA with GOAJK.

³² Where HR is with Purchaser.

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- (a) the failure of the Seller:
 - (i) to achieve the Construction Start Date within ninety (90) Days following Financial Closing;
 - (ii) to achieve the Commercial Operations Date not later than four hundred (400) Days after the Required Commercial Operations Date; or
 - (iii) after Construction Start Date but prior to the achievement of the Commercial Operations Date, the failure of the Seller to prosecute the Project in a diligent manner for a period of thirty (30) consecutive Days, without prior notice to and the prior written consent of AEDB;
- (b) following the Commercial Operations Date, an Abandonment by the Seller without the prior written consent of the Purchaser and which continues for a period of thirty (30) consecutive Days; provided however, that the Seller shall not be deemed to have Abandoned the Complex so long as it is using all reasonable efforts to regain control of the Complex or reinstate its commercial operations;
- (c) the Seller's failure:
 - (i) to pay any any undisputed (or following the resolution of such dispute in favour of the Purchaser) amount due from it under the provisions of [Section 9.4] of this Agreement by the Due and Payable 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 the Purchaser's notice 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, to 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 (Assignment);
- (e) Except for the purpose of amalgamation or reconstruction that does not affect the

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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) any proceeding being validly instituted under the Laws of Pakistan for the dissolution of the Seller 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 the payment of the claim subject to the said insolvency proceedings,then, in such case, 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 accurate;
 - (ii) the passing of a resolution for 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) 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 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,

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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 under or of this Agreement (other than any breach or default referred to in other sub-sections of this Section 16.1), including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after the Purchaser's notice to the Seller, stating that a material breach or default under or of this Agreement has occurred and is continuing, and in reasonable detail identifying such material breach or default;
- (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 Flow Meters, the Metering System or the Back-Up Metering System;
- (i) after the Commercial Operations Date, to deliver to the Interconnection Point during any consecutive six (6) Months Net Delivered Energy that is at least eighty-five percent (85%) of the aggregate quantity of the Power Curve Energy at the Monthly Mean Flows for the relevant Months, except to the extent (and only to the extent) prevented by a Non-Project Event or on account of non-availability of water within the Technical Limits;
- (j) (i) the exercise by the Lenders of their remedies under the Financing Documents with respect to either the assets comprising the Complex or any Ordinary Share Capital pledged to the Lenders under the Financing Documents such that the Seller or its management are removed by the Lenders from control of the Complex or of the Seller, and (ii) the failure by the Lenders or the Agent to deliver a Succession Notice pursuant to Section 19.9(c) or to transfer the Complex and the rights and obligations of the Seller under this Agreement and the Implementation Agreement to a Transferee within two hundred and forty (240) Days after the Seller or its management are removed by the Lenders from control of the Complex or of the Seller;
- (k) any material breach by the Seller of the Implementation Agreement that is not remedied within thirty (30) Days after notice from the Purchaser or the GOP to

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the Seller, which notice states that a material breach of such agreement has occurred and is continuing that could result in the termination of such agreement, and identifies the material breach in question in reasonable detail;

- (l) the irrevocable, unappealable and final order for termination of the Generation License (other than as a result of a Lapse of Consent); or
- (m) termination of the [Site Sub lease] [Site Lease] resulting from a material breach by the Seller that is not remedied in accordance with the [Site Sub-lease] [Site Lease];
- (n) the transfer, conveyance, loss, or relinquishment of the Seller’s right to own or operate the Complex or any material part thereof, to any Person (other than the Purchaser pursuant to the Energy Purchase Agreement or the Lenders exercising their rights under the Financing Documents), or failure to retain possession of the Site, without the prior written approval of the Purchaser; or
- (o) [the revocation or termination by (A) the GOAJK or the Council, following the exhaustion of any cure rights of the Seller (and the Lenders, if any) thereunder of the AJ&K Implementation Agreement due to a default or breach by the Seller thereunder, or (B) the GOAJK, following the exhaustion of any cure rights of the Seller (and the Lenders, if any) thereunder, of the Water Use Agreements due to a default or breach by the Seller thereunder.]³³

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 a breach of or a default by the Seller under this Agreement (including any Seller Event of Default), the GOP Implementation Agreement, [or AJ&K Implementation Agreement]³⁴ or Water Use Agreement, or if it occurs as a result of a Force Majeure Event (except in the case of Section16.2(b)):

- (a) as a result of the amalgamation, reorganization, reconstruction or privatization of the Purchaser pursuant to the Laws of Pakistan, the Purchaser’s obligations under

³³ For the AJK located Projects.

³⁴ For AJK Projects having AJK IA.

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this Agreement (or those of any successor to the Purchaser):

- (i) cease to be guaranteed under the Guarantee or cease to be guaranteed on terms and conditions which in the reasonable business judgment of the Seller (taking into account, *inter alia*, the creditworthiness of the guarantor) provide an acceptable alternative to the Guarantee; or
- (b) (ii) are assigned or transferred pursuant to the Laws of Pakistan or contractually assumed by an entity or entities (in whole or in part) which does not or do not have the legal capacity to perform such obligations or such entity's or entities' obligations are not guaranteed by the GOP pursuant to the Guarantee or cease to be guaranteed on terms and conditions which in the reasonable business judgment of the Seller (taking into account, *inter alia*, the creditworthiness of the guarantor) provide an acceptable alternative to the Guarantee; the Purchaser's failure to pay any undisputed amount due from it under the provisions of Section 9.8 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) any proceeding being validly instituted under the Laws of Pakistan for the dissolution of the Purchaser that is not stayed or suspended within ninety (90) Days; provided, that, if, within seven (7) days of the Purchaser becoming aware of such proceedings being filed, the Purchaser:
 - (A) confirms to the Seller that such proceedings relate to the recovery

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of a claim against the Purchaser that is disputed *bona fide* by the Purchaser as payable, and

(B) furnishes a certificate by its external auditors to the effect that the Purchaser is and will remain solvent despite the payment of the claim subject to the said insolvency proceedings,

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

- (ii) the passing of a resolution for dissolution or winding-up of the Purchaser;
 - (iii) the voluntary filing by the Purchaser of a winding-up petition;
 - (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 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 under this Agreement;
- (e) any material breach or material default by the Purchaser of 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 the material breach or default in question in reasonable detail;

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- (f) any material default by the GOP under the Implementation Agreement or the Guarantee, which default has not been remedied by the GOP within thirty (30) Days after delivery by the Seller 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 the breach or default in question in reasonable detail;
- (g) any Change in Law making, as a result of such change:
 - (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) 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 in the case of clause (i) or clause (ii) above, the effect continues for more than one hundred and eighty (80) Days; provided always that, a Purchaser Event of Default under sub-clause (i) or clause (ii) shall not be deemed to have occurred for as long as the Purchaser is making the payments to the Seller under [Section 15.6(a)(ii) or Section 15.8(c)], as the case may be;
- (h) the failure by the Purchaser to complete and commission the Purchaser Interconnection Facilities within one hundred and fifty-five (155) Days following the Required Commercial Operations Date;
- (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 Flow Meters, the Metering System or the Back-Up Metering System; or
- (j) the revocation or termination of [the AJ&K Implementation Agreement or]³⁵ the Water Use Agreements by the Seller due to a default or breach by the [GOAJK or

³⁵ For AJK Projects.

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the Council or] the Provincial Government (as applicable) thereunder, following the exhaustion of any cure rights of [the GOAJK or the Council or] the Provincial Government (as applicable) thereunder.

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 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 is deemed to have 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 the 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

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“**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 the 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 the 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

- (a) Anything in this Agreement notwithstanding, from and after the occurrence of Financial Closing, the Purchaser shall not seek to terminate this Agreement (other than pursuant to Sections 16.1(a)(i) or 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 period shall commence upon delivery of each such notice to the Lenders. If there is more than one (1) Lender, 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 within five (5) Business Days following Financial Closing (or such other address or to the Agent at such address as the Lenders may have

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specified by written notice delivered in accordance herewith). Any notice given by facsimile under this Section 16.5 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lenders or the Agent. 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 Sections 16.1(a)(i) or 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 Evaluation Period, 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 or procure, 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, the Purchaser shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that, upon the 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

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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) the delivery by the Agent to the Purchaser of notice that the Lenders have elected either directly or through a designee to procure the cure of such Seller Event of Default or otherwise pursue their remedies under the Financing Documents, assume the rights and obligations of the Seller as provided in Section 19.9 (an “**Election Notice**”) or (ii) forty-five (45) Days following the end of the Initial Cure Period. Upon the delivery of the Election Notice, the Lenders (or their designee) shall be granted an additional period of one hundred and eighty (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 the 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 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 by 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 the enforcement of their rights and remedies under the Financing Documents against the Seller. In the event the Agent fails to deliver an Election Notice or the Lenders (or their designee) fail to cure any such Seller Event of Default is not cured 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

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extended on a Day-for-Day basis for each Day in which 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 otherwise complied with the obligations applicable to them under Section 2.3 and such circumstance has not arisen due to (i) 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 (ii) 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 Section 5.15, 16.7, Article XI, and liquidated damages under Section 9.6, and/or (c) survive such termination pursuant to Section 17.1.

Section 16.7. Reimbursement

- (a) 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 (i) a Purchaser Event of Default; (ii) a GOP Event of Default under the Implementation Agreement; (iii) a PPFME, or (iv) a CLFME, 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) plus all reasonable costs (excluding overhead and general as well as

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administrative costs) incurred by the Purchaser on the construction of the Purchaser Interconnection Facilities, whether incurred by the Purchaser before or after the notice given by the Seller pursuant to the first sentence of Section 6.5(a). The amount of such construction costs shall be subject to independent audit, at the request and sole expense of the Seller. Upon a request by the Seller in writing, the Purchaser shall deliver to the Seller a good faith, non-binding estimate of any such costs and expenses which exceed the equivalent of five thousand Dollars (\$5,000), together with a description of the Purchaser Interconnection Facilities to be constructed.

- (b) In the event that this Agreement is terminated pursuant to Section 16.4 due to the 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.

Section 16.8. Other Remedies

- (a) The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law; provided, however, that no Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement. Subject to the provisions of Article X and except as may otherwise 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

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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)(v) 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 15.1(a) of the Implementation Agreement, the GOP elects to purchase the Complex and the Seller transfers the Complex to the GOP pursuant to Section 15.1(a) of the Implementation Agreement, then, upon such transfer, 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

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immediately terminate upon termination of the Implementation Agreement. Upon the transfer of the Complex to the GOP or its designee pursuant to Article XV 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's 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 16.2 and 16.3 to the GOP, such notices to be coupled with 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 set forth in this

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ARTICLE XVII

RIGHTS AND OBLIGATIONS OF PARTIES ON TERMINATION

Section 17.1. Survival of Rights and Obligations

- (a) On the expiry of this Agreement or the earlier termination of this Agreement 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 undischarged 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 9.10 (Supporting Data), this Article XVII (Rights and Obligations of Parties on Termination), Article I (Definitions; Rules of Interpretation); Article X (Liability), Article XI (Indemnification), Section 15.6 (Additional Compensation), Section 15.8 (Supplemental Tariffs), Section 15.9 (Termination as a result of Force Majeure Event), Section 16.7(c) (Reimbursement), Section 16.8 (Other Remedies), Article XVIII (Dispute Resolution) and Article XIX (Miscellaneous) 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 out in Section 16.8 and in Article XV of the Implementation Agreement.

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ARTICLE XVIII RESOLUTION OF DISPUTES

Section 18.1. Resolution by Parties

- (a) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party delivers written notice of the Dispute to the other Party.
- (b) The Party alleging the existence of a Dispute shall give to the other Party written notice setting out the material particulars of the Dispute in the written notice delivered pursuant to Section 18.1(a). 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 the date of 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 either Party, in accordance with this Section 18.2, may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a determination from the Expert 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 (a) above, 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 conflicts-of-interest in the matter, provided, that any current or former employees of either Party shall be deemed to have a

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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 discuss in good faith 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 such agreement by the Parties of the Expert, at the end of the meeting the President of the Pakistan Institute of Chartered Accountants (for financial and billing matters) or the Vice-Chancellor of the University of Engineering and Technology (UET), Lahore or the Vice-Chancellor of the Lahore University of Management Sciences (LUMS) or the Vice-Chancellor of the Ghulam Ishaq Khan Institute (GIK) (for technical matters) shall be requested to select the Expert in the sequence/order given above, and the selection of the 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) Consideration of the Dispute by an Expert shall be initiated by the Party who is 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

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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 a time and place for a 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 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 actions.
- (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 an arbitration and the laws relating to commercial arbitration shall not apply.

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- (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 determination 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 was 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) 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.
- (k) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for, and making presentations to, the Expert.
- (l) The failure of any Party to comply with the provisions and time periods set out 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.
- (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 determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the determination 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 that has not been resolved following the procedures set forth in

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Section 18.1 (*Resolution by Parties*) and Section 18.2 (*Determination by Expert*), 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 the rules of the London Court of International Arbitration as in effect on the date hereof (“Rules”). The arbitral tribunal shall comprise (one) 1 arbitrator; provided, that, (i) if the amount in Dispute is five million (5,000,000) Dollars or more, or (ii) if any arbitration under this Section 18.3 is consolidated with an arbitration under the Implementation Agreement, then, on request of either Party, the arbitral tribunal shall comprise three (3) arbitrators. The arbitration proceedings shall be conducted and the award shall be rendered in English. Except where all the Investors and Lenders are residents of, incorporated or established in Pakistan, or except where otherwise agreed by the Parties at the time of commencement of arbitration, the seat of arbitration shall be London, United Kingdom. The award of the arbitration tribunal duly constituted under this Section 18.3 shall be final and binding on the Parties, and any Party may apply to a court of competent jurisdiction for the enforcement of such award.

- (b) The arbitration shall be conducted at Islamabad, Pakistan, provided, however, that, if the amount in Dispute is greater than five million Dollars (\$5,000,000) or the amount of such Dispute together with the amount of all previous Disputes, if any, submitted for arbitration pursuant to this Section 18.3 (Arbitration) exceeds an aggregate of ten million Dollars (\$10,000,000) or the issue in Dispute is (i) the legality, validity or enforceability of this Agreement or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require arbitration to be conducted in London, United Kingdom. Except as otherwise determined in arbitration, and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with such arbitration.
- (c) Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in **London**, United Kingdom, and such Dispute is not of a type that could have been conducted in **London** in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in **London** shall pay all costs of arbitration as and when incurred by the other Party (including out-of-pocket costs but excluding any award made by the arbitral

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tribunal) in excess of the costs that would have been otherwise incurred by such other Party had the arbitration been conducted in Islamabad, Pakistan; provided, further, that the Party requiring that arbitration be conducted in **London** may seek a determination that the Dispute or the defence thereof is spurious and without any merit whatsoever, and upon such a final and binding determination, any amounts paid to the other Party to cover such excess costs shall be returned to the paying Party.

- (d) No arbitrator appointed pursuant to this Section 18.3 shall be a national of the jurisdiction of either Party 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.
- (e) 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. Related Disputes

If any Dispute has been referred to an Expert pursuant to Section 18.2 or to arbitration pursuant to Section 18.3 and such Dispute raises issues of fact or law that, in whole or in material part are, in the opinion of the arbitrators, substantially the same as issues of fact or law already pending in arbitration proceedings in connection with any Related Dispute, such issues shall, to the extent permitted under the Laws of Pakistan, be consolidated with such Related Dispute, unless such consolidation would, in the opinion of the arbitrators, produce manifest injustice, substantial hardship to the Purchaser or the Seller or cause significant delay in the determination of the Dispute between the Purchaser and the Seller or in the determination of any Related Dispute in which the Purchaser is involved.

Section 18.5. Sovereign Immunity; Jurisdiction

- (a) The Purchaser unconditionally and irrevocably:

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- (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 fulfilment by the Purchaser of its duties and responsibilities under the 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 in order 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) generally consents 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 such 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 pursuant to arbitration conducted in accordance with Section 18.3. The Seller waives any

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objection 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 commits itself 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 avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with the affirmations 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.

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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 a Party shall be in writing and either delivered personally or by courier or sent by facsimile to the address or number of the other Party specified below:

- (i) If to the Purchaser:

Central Power Purchasing Agency (Guarantee)
Limited, 6th floor, Shaheed-e-Millat Secretariat,
Blue Area, Islamabad , Pakistan.

Attention: Chief Executive Officer

Facsimile: [●]

With a copy to:

Attention: Chief Operating Officer

Address: WAPDA House, Lahore

Fascimile: [●]

with a copy to:

Alternative Energy Development Board
2nd Floor, OPF Building, F 5/2, Islamabad,
Pakistan.

Attention: Chief Executive Officer

Facsmile: [●]

- (ii) If to the Seller:

[●]

provided that, a Party may change the address to which notices are to be sent to it by giving not 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 unless and until received or

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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 Day after sending, if sent by courier;
 - (iii) five (5) Business Days after sending, if sent by registered post; or
 - (iii) upon sending if sent by facsimile, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is despatched not later than the following Business Day to the recipient by courier or personal delivery.
- (c) Despatch Instructions and communications between the Seller and Purchaser relating to Despatch of the Complex may be given by telephone 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 System Operator/Control Centre: [●]

With copy to the Purchaser at the address given in Section 19.1(a) above.

- (ii) If to the Seller: [●]

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

Section 19.2. Amendment

This Agreement can be amended only by agreement between the Parties in writing. No amendment, modification, supplement, extension or restatement of this Agreement will be effective without the prior written consent of the GOP if such amendment, modification, supplement, extension, restatement or replacement, increases or potentially increases materially the liability of the GOP under the Implementation Agreement or the Guarantee. No amendment, modification, supplement, extension, restatement or replacement, of [the AJ&K

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Implementation Agreement,]³⁶ the Water Use Agreement or the Implementation Agreement shall be effective without the prior written consent of the Purchaser if such amendment, modification, supplement, extension, restatement or replacement, increases or potentially increases the liability of the Purchaser under this Agreement.

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 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.

³⁶ For projects having AJK IA

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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 the 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, 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 the 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) Except as provided in this Section 19.9, no assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party.
- (b) Notwithstanding Section 19.9(a), 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 Seller's present and future movable, immovable and intellectual property; (vi) the Seller's present and future revenues or actionable claims, debts or any of the rights or assets of the Seller, including but not limited to all of the Seller's receivables and claims therefor under this Agreement; (vii) any other of the Seller's present and future rights, interest, property or assets of any kind and wherever situated; and (viii) the Site Lease, and any other lien or security interest permitted under Section 11.2 of the Implementation Agreement; provided that the requirements of such section are complied with in full.
- (c) The Lenders shall have the rights expressly granted in their favour in this

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Agreement and in any Direct Agreement 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 the 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

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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 the delivery to the Purchaser of a Succession Notice until the 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 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

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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 the 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 the 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 the 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 the performance or observance of any of the obligations or duties of the Seller under this Agreement, nor shall the 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 the delivery of a Succession Notice give the Purchaser notice terminating the Lenders' or their designee's obligations and rights under this Agreement (without affecting the continuation 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

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nominated date). Upon such nominated date, subject to the expiration of the applicable cure period provided in Section 16.5, the Purchaser may exercise without restriction all of its rights under this Agreement.

- (h) Without the requirement of obtaining any further consent from the Purchaser, upon the 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) so long as such Transferee shall assume in writing for the benefit of the Purchaser all of the obligations of the Seller under this Agreement, provided that the Transferee shall not be liable for any outstanding obligations under this Agreement which were not disclosed by the Purchaser to the Lenders or the Agent in accordance with Section 19.9(c) 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 out in Section 19.9(h) above, the Purchaser shall effect the transfer of the Seller's rights and obligations under this Agreement to a Transferee.
- (j) 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 have expressly 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

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national security of Pakistan and (v) is a corporate body established in Pakistan.

- (k) 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 unable to be transferred for any reason, 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.
- (l) 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

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with the Lenders in the exercise of such rights by the Lenders under this Agreement and the Financing Documents.

- (m) At the request of the Seller, delivered to the Purchaser no less than thirty (30) Days in advance, the Purchaser shall execute and deliver, effective at the 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.
- (n) 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 the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the 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.
- (o) If so requested by the Lenders, the Purchaser shall enter into a EPA Direct Agreement with the Lenders on terms acceptable to the Purchaser prior to the Financial Closing in connection with the debt financing of the 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 sub-Section (c) below) 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.

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- (c) Notwithstanding the provisions of sub-Section (a) above, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- (i) to directors and employees and Affiliates of such Party, provided that such Party shall use reasonable endeavours to ensure that such Affiliates 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 endeavours 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 of the whole or any part of the rights and interests of the disclosing Party under this Agreement; orbut (in either case) only to the extent required in connection with obtaining such finance 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;
 - (v) to any expert (including an 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

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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 it would otherwise 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, Relevant Authority 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,

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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 the 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, Relevant Authority 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 representatives and warranties made by it in Section 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 shall, 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 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.

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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 be affected by such determination in any way.

Section 19.16. 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 19.16 shall prevent the Purchaser and the GOP from separately initiating proceedings to terminate this Agreement and the Implementation Agreement, respectively, pursuant to Sections 16.2 and 16.4 of this Agreement and Sections 14.1 and 14.3 of the Implementation Agreement.

Section 19.17. 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 neither affect its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

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

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**THE CENTRAL POWER PURCHASING [●]
AGENCY (GUARANTEE) LIMITED**

By:

By:

Title:

Title:

WITNESS

Name: _____

Name: _____

CNIC #: _____

CNIC #: _____