

POWER PURCHASE AGREEMENT

BY AND BETWEEN

**CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED FOR AND ON
BEHALF OF EX-WAPDA DISTRIBUTION COMPANIES**

– AND –

NATIONAL TRANSMISSION AND DESPATCH COMPANY LIMITED

– AND –

[NAME OF POWER PRODUCER]

POWER PURCHASE AGREEMENT

RELATING TO

A [.] MW [.] FIRED

POWER GENERATION COMPLEX

AT

[.]

MADE AT

[.], PAKISTAN

ON [.]

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THIS POWER PURCHASE AGREEMENT (this “**Agreement**”) is made as of the [.] day of [.] by and between:

- (1) **CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED**, acting for and on behalf of the Ex-WAPDA Distribution Companies, a guarantee limited company incorporated under the laws of Pakistan, with its principal office at the Sixth Floor, Shaheed-e-Millat, Secretariat, Blue Area, Islamabad, Pakistan (the “**Power Purchaser**”); and
- (2) **NATIONAL TRANSMISSION & DESPATCH COMPANY LIMITED**, a public limited company incorporated under the laws of Pakistan, with its principal office at WAPDA House, Shahrah-e-Quaid-e-Azam, Lahore, Pakistan (the “**NTDC**”); and
- (3) [.] (the “**Company**”), a [public/private] limited company incorporated under the laws of Pakistan, with its principal office at [.]

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

RECITALS

- A. **WHEREAS**, the Company has proposed to the Power Purchaser that the Company will design, engineer, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [.] MW (gross ISO) [.]-fired electric power generation facility (the “**Complex**” (as hereinafter defined)) to be located on the Site (as hereinafter defined) at [.] and with a Contract Capacity (as hereinafter defined) of [.] MW (net, at Reference Conditions (as hereinafter defined));
- B. **WHEREAS**, the Government of the Islamic Republic of Pakistan (“**GOP**” (as hereinafter defined)), through the Private Power & Infrastructure Board (“**PPIB**”, as hereinafter defined), on [.] issued to the Company a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, commissioning, operation and maintenance of the Complex (the “**Project**”, as hereinafter defined);
- C. **WHEREAS**, the Company wishes to sell and the Power Purchaser wishes to purchase the Available Capacity (as hereinafter defined) up to the Contract Capacity and all of the Dispatched and Delivered Net Electrical Output (as hereinafter defined) at the Connection Point, on and pursuant to the terms and conditions contained herein;
- D. **WHEREAS**, NTDC is licensed by National Electric Power Regulatory Authority (“**NEPRA**”, as hereinafter defined) to, *inter alia*, engage in the transmission business in terms of its license dated 31st December 2002 no. TL/01/2002, as modified from time to time. Furthermore, in terms of the Market Rules and the Commercial Code (as hereinafter defined), Power Purchaser is to carry out the functions allocated to it in this Agreement;
- E. **WHEREAS**, on the date hereof, the Company has entered into an Implementation

Agreement dated [.] with the GOP and shall enter into the Fuel Supply Agreement (as hereinafter defined) with the Fuel Supplier (as hereinafter defined); and

- F. **WHEREAS**, the Company has been issued a Generation Licence (as hereinafter defined) by NERPA (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:

**ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION**

Section 1.1 Definitions

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

“Abandonment” or “Abandoned” – The voluntary cessation of operation of the Complex, and the withdrawal of all, or substantially all, personnel by the Company from the Site for reasons other than (i) a breach or default by the Power Purchaser or NTDC under this Agreement, or (ii) a breach or default by the GOP under the Implementation Agreement, or (iii) a Force Majeure Event.

“Adjusted Declared Available Capacity” – The meaning ascribed thereto in Section 5.3(e).

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

“AGC” – Automatic generation control equipment.

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

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

“Agreement Year” – A period of twelve (12) consecutive months commencing on each consecutive anniversary of the Commercial Operations Date and ending as of the end of the Day preceding the next anniversary of the Commercial Operations Date, except for the first Agreement Year which shall start on the Commercial Operations Date; provided, however, that each Agreement Year shall automatically be extended,

- (a) by the occurrence of a Force Majeure Event declared by the Company (other than a Pakistan Political Force Majeure Event or a Change in Law) within such Agreement Year for a period equal to the sum of the Days the Company was unable to perform fully due to the Force Majeure Event multiplied by the difference between the applicable Average Available Capacity and the Available Capacity that the Company was able to declare during the pendency of such Force Majeure Event, and the difference divided by the Average Available Capacity, provided, however, any insurance proceeds (minus the deductibles) received by the Company shall be set off from the amounts amount payable by the Power Purchaser; and / or
- (b) by the Recovery Period under Section 9.10(d),

provided further, that in the event of such extension, the immediately succeeding Agreement Year shall commence on the Day following the last Day of such extension and end after a period of twelve (12) consecutive months, and each Agreement Year thereafter shall have a period of twelve (12) consecutive months, in each case subject to any extension for Force Majeure Event(s) declared by the Company (other than a Pakistan Political Force Majeure Event or a Change in Law) as provided above.

“Ambient Site Conditions” – Ambient temperature, as such conditions exist from time to time at the Complex as measured and recorded by the Weather Station.

“Ancillary Services” – Services provided by the Company from the Complex other than the provision of Net Electrical Output, such services being Reactive Power, black-start of the Complex, voltage control and frequency regulation.

“Annual Capacity Test” – The meaning ascribed thereto in Section 8.4(a).

“Available Capacity” – The meaning ascribed thereto in Section 9.1(b).

“Average Available Capacity” – The average of the Available Capacities during the twelve (12)-month period immediately prior to the occurrence of the PPFME or CLFME, as applicable; provided, that during the first twenty-four (24)-month period following the Commercial Operations Date, if there has not occurred a Scheduled Outage during the relevant twelve (12)-month period, in determining the Average Available Capacity, the average of the Available Capacities during the twelve (12)-month period immediately prior to the occurrence of the PPFME or CLFME, as applicable, shall be reduced by an amount equal to the then-prevailing Tested Capacity multiplied by 0.0603.

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

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

“Capacity Payment” – The amount payable pursuant to Section 9.1 in respect of any Month or part-Month for Available Capacity.

“Capacity Price” – The amount denominated in Rupees per kilowatt per hour of Available Capacity, as provided in Schedule 1.

“Capacity Test” – The tests to determine Tested Capacity to be carried out pursuant to Sections 8.3 and 8.4, as more particularly described in Schedule 7.

“Capacity Test Certificate” – The certificate to be issued by the Engineer under Section 8.3(b)(iii) containing the information specified in Schedule 7.

“Carrying Costs” – The interest or mark-up limited to KIBOR for Rupee based loans and LIBOR

for foreign currency based loans, as applicable, plus [*insert margin as per tariff*] percent [____] only, 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 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 Company, NTDC and the Power Purchaser under Section 8.3(a) 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.

“Certificate of Readiness for Synchronization” – The certificate to be issued by the Engineer to the Company, NTDC and the Power 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.

“Change in Law” –

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

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 Consent filed by the Company on or before the Commercial Operations Date, and (iii) agreed to by the Company 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 Laws of Pakistan relating to any Tax or Taxes.

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

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

“CLFME” – The meaning ascribed thereto in Section 15.1(b).

“Commercial Code” – The commercial code prepared by the Power Purchaser and approved by NEPRA, as revised from time to time.

“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 ninety (90) Days prior to the Required Commercial Operations Date without the prior written approval of NTDC, which approval may be given or withheld in the sole discretion of NTDC.

“Commissioned” – The successful completion of Commissioning of the Complex for continuous operation and Despatch in combined-cycle mode in accordance with Article VIII and Schedule 7 and the certification of such successful completion of Commissioning to the Power Purchaser, NTDC and the Company 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 and Schedule 7.

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

“Company Consents” – All approvals, consents, authorisations, 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 Company or any of its Contractors is required to obtain from any Relevant Authority (other than the Power Purchaser), and thereafter to maintain, to fulfill its obligations under this Agreement, including the Specified Consents; provided, however, that in no event shall the Company Consents include any concessions or exemptions from the Laws of Pakistan unless they are expressly granted pursuant to the terms of the Implementation Agreement.

“Company Event of Default” – The meaning ascribed thereto in Section 16.1.

“Company Interconnection Facilities” – The facilities and equipment to be designed, constructed or installed by or on behalf of the Company on the Company’s side of the Connection 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.

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

“Company Letter of Credit” – An unconditional, irrevocable, divisible, revolving and transferable on demand letter of credit in favour of the Power Purchaser in the form set out in

Schedule 9, which is issued by a bank or other financial institution reasonably acceptable to the Power Purchaser, and which shall provide for draws by the Power Purchaser in immediately available funds on a monthly basis upon presentation at a scheduled bank in [.], Pakistan, and which, at the Effective Date, shall be delivered by the Company to the Power Purchaser in the amount of [.] per kW of the Contract Capacity.

“Company Notice of Intent to Terminate” - The meaning ascribed thereto in Section 16.3(a)(ii).

“Company Termination Notice” - The meaning ascribed thereto in Section 16.4(a)(ii).

“Complex” – The [.]-fired electric power generation station located at the Site and the Company Interconnection Facilities (but excluding the NTDC Interconnection Facilities) having a design capacity of approximately [.] MW (net at the Reference Conditions) to be designed, engineered, constructed, Commissioned, owned, operated and maintained by the Company during the Term, whether completed or at any stage in its construction, including without limitation or regard to the level of development, engineering and design documents, all energy producing equipment and its auxiliary equipment, heat recovery steam generators and associated equipment, fuel handling and storage facilities and equipment, water transportation and treatment systems, all spare parts stored at the Site, all Company Interconnection Facilities and all other equipment or facilities necessary for delivery of electricity to the Power Purchaser at the Connection Point, which Complex is more particularly described in Schedule 2.

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

“Consents” – The Company Consents, NTDC Consents and the Power Purchaser Consents.

“Construction Report” – A report to be submitted by the Company 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 on which the Company issues the “notice to proceed” authorizing the EPC Contractors to commence the EPC Works in accordance with the EPC Contract and incurs or has incurred an unconditional obligation to pay not less than seven percent (7%) of the EPC Cost to the EPC Contractors under the EPC Contract.

“Contract Capacity” – An amount of generation capacity in MW (net at Reference Conditions) which the Company commits to provide to the Power Purchaser under this Agreement pursuant to Section 2.9(a), as such amount of generation capacity may be revised pursuant to Section 2.9(b).

“Contractors” – The EPC Contractor, the O&M Contractor and the Fuel Supplier, and any other direct contractor of the Company 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 Power Purchaser from time to time (but not more than one at any time) from which NTDC shall Despatch the Complex.

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

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

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

“Declaration Deadline” – The meaning ascribed thereto in Section 5.3(b).

“Declared Available Capacity” – In respect of each hour of an Operating Day, the total generating capacity of the Complex expressed in MW (adjusted to forecasted Ambient Site Condition) at the Connection Point, which, subject to Section 5.3 (e), the Company has declared available to NTDC in accordance with Section 5.3 (a), (b) or(c).

“Delayed Payment Rate” – KIBOR plus two percent (2%) per annum, calculated for the actual number of Days which the relevant amount remains unpaid on the basis of a three hundred and sixty five (365) Day a year.

“Demonstration Period” – Commencing with the first anniversary of the Commercial Operations Date with respect to the Complex, a period of sixty (60) Days following the last Day of the last Month in the Maintenance Months in each Year, or such other sixty (60)-Day period as may be agreed between the Power Purchaser and the Company, during which the Company shall carry out the Annual Capacity Test.

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

“Despatched and Delivered Net Electrical Output” – The Net Electrical Output generated by the Complex during the relevant period and delivered at the Connection Point in response to a Despatch Instruction or Revised Despatch Instruction, as the case may be, including Net Electrical Output delivered at the Connection Point during start-up and shut-down periods and ramp-up and ramp-down periods, which shall not in any event exceed one hundred and one and one-half percent (101.5%) of the Despatched Net Electrical Output for the relevant hour.

“Despatched Net Electrical Output” – The required net electrical energy to be generated by the Complex during the relevant period, as stated in a Despatch Instruction or Revised Despatch Instruction, as the case may be, including Net Electrical Output delivered during start-up and shut-down periods and ramp-up and ramp-down periods.

“Despatch Instruction” – The meaning ascribed thereto in Section 5.4(a).

“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.

“Distribution Company” – A distribution company licensed by NEPRA to engage in the distribution of electric power.

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

“Due and Payable Date” – The meaning ascribed thereto in Section 9.6(a); provided that, if the Due Date is not a Business Day, then the Due and Payable Date shall be the next following Business Day.

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

“Emergency” – An event or circumstance affecting the Grid System (i) which materially and adversely affects the ability of NTDC to maintain safe, adequate and continuous electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers, and/or (ii) which presents a physical threat to persons or property or the security, integrity or reliability of the Grid System, or which NTDC reasonably expects to have the effects specified in clause (i) or clause (ii).

“Energy Payment” – The amounts payable under Section 9.2 for Despatched and Delivered Net Electrical Output delivered by the Company during the Month or part Month, as determined in accordance with Schedule 1.

“Energy Price” – The amount 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 Company with the approval of the Power Purchaser and NTDC in accordance with Section 2.6 for the purpose of observing the construction of the Complex and the Commissioning Tests and certifying to the Power Purchaser, NTDC and the Company 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 Pakistan Environmental Protection Agency and the relevant Provincial Environmental Protection Agency.

“EPC” – Engineering, procurement and construction.

“EPC Contract” – The agreement or agreements entered or to be entered into between the Company and the EPC Contractor for, *inter alia*, the design, engineering, procurement, construction, completion, start-up, testing and Commissioning of the Complex, as such agreement or agreements 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 Company, and not objected to by the GOP pursuant to Section 6.2 of the Implementation Agreement, for undertaking the whole or part of the EPC Works.

“EPC Cost” – The total cost which the Company will incur under the EPC Contract in carrying out and completing the EPC Works and the Company Interconnection Works in accordance with

this Agreement.

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

“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 O&M Component” – 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 Power Purchaser or its nominee pursuant to Section 5.16), including any total or partial interruption that is not the result of (a) a request by NTDC or the Power Purchaser in accordance with this Agreement, (b) a Scheduled Outage or a Maintenance Outage, (c) a Force Majeure Event, (d) a condition caused solely by the Power Purchaser or NTDC or solely by the Grid System, or (e) a condition that is caused solely by the GOP.

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

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

“Fuel” – [.]

“Fuel Supplier” – _____, and its successors and assigns.

“Fuel Supply Agreement” – The agreement dated before or after the date hereof, between the Fuel Supplier and the Company for the supply of [.] to be used by the Complex to generate electricity, as may be amended, modified or supplemented by the parties thereto from time to time.

“Generation Licence” – The licence No. [.] , dated [.] issued by NEPRA permitting the generation and supply of electricity by the Company from the Complex as contemplated by this Agreement.

“Genset¹” – A diesel cycle residual fuel oil-fired engine, driving an electric generator, within the Complex, including its auxiliaries and protective devices.

“GOP” – The Islamic Republic of Pakistan.

¹ This definition will require modification keeping in view of type of Power Plant.

“Grid Code” – The grid code prepared by NTDC and approved by NEPRA, as revised from time to time.

“Grid System” – The transmission facilities owned by NTDC, other than the Company Interconnection Facilities, through which (a) the Net Electrical Output will be received and transmitted to users of electricity and (b) electrical energy to be delivered to the Complex will be transported, as required.

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

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

“Guaranteed NIF Date” – The meaning ascribed thereto in Section 6.5(a).

“Implementation Agreement” – The Implementation Agreement, dated [.] , entered into by and between the GOP and the Company 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 Works Schedule” – The schedule for carrying out the Company Interconnection Works and the NTDC Interconnection Works as described in Schedule 3 and as may be adjusted in accordance with Article VI.

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

“Invoice Dispute Notice” – The meaning ascribed thereto in Section 9.7(a).

“ISO” – The standards existing on the date hereof of the International Standards Organization, a non-governmental international network of national standards institutes with its secretariat in Geneva, Switzerland.

“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 interbank 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) 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" (as explained in Section 12.4 of the Implementation Agreement) manner.

"Laws of Pakistan" – The federal, provincial and local laws of Pakistan, and all orders, rules, regulations, 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(b).

"Letter of Support" – The meaning ascribed thereto in the Implementation Agreement.

"LIBOR" – The British Bankers Association Interest Settlement Rate for Dollar deposits for a period equal to six (6) 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 British Bankers Association Interest Settlement Rate for Dollar deposits in the London interbank 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 day on which banks in London, England, are legally permitted to be open for business.

"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).

"Maintenance Months" – The Months of February, March, and the fifteenth (15th) of October through the fourteenth (14th) of December or any four (4) Months (none of which shall be required to commence on the first (1st) Day of such Month) in a Year, at least two (2) of them consecutive Months, designated by NTDC in accordance with Section 5.13.

"Maintenance Outage" – An interruption or reduction of the Complex's and/or the Complex's generating capability that: (a) is not a Scheduled Outage; (b) has been scheduled and allowed by NTDC in accordance with Section 5.6; 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 Company, be postponed until the next Scheduled Outage.

"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 Genset or a Steam Unit, the scope and frequency of

which is set out in Schedule 5.²

“Major Maintenance Expenses” – The meaning ascribed thereto in Section 9.9(c).

“Metering Committee” – The committee established by NTDC pursuant to Section 2.5A.

“Metering System” – All meters and metering devices (including any remote terminal units and an electronic data recording system) to be procured by NTDC, and thereafter installed and tested by the Company and transferred to NTDC, and thereafter owned and maintained by NTDC and used to measure the Net Electrical Output 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 on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

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

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

“NTDC Event of Default” – The meaning ascribed thereto in Section 16.2B.

“NTDC Interconnection Facilities” – The facilities and equipment (excluding the Metering System) to be designed, constructed or installed by or on behalf of NTDC on NTDC's side of the Connection Point that are described in Schedule 3.

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

“Net Electrical Output” – The net electrical energy expressed in kWh that is generated by the Complex and delivered to the Connection Point, as measured by the Metering System or the Back-Up Metering System, as the case may be.

“Non-Maintenance Months” – The Months of January, April, May and June or any four (4) Months in a Year which are not Maintenance Months as designated by NTDC in accordance with Section 5.13. “Notice of Intent to Terminate” – A notice delivered by the Company or the

² This would also require modification keeping in view type of Power Plant.

Power Purchaser, as the case may be, of its intent to terminate this Agreement pursuant to Section 16.3 due to a default of the other Party.

“Notice of Intent to Terminate” – The Power Purchaser Notice of Intent to Terminate or Company Notice of Intent to Terminate.

“O&M Agreement” – The agreement to be entered into between the Company and the O&M Contractor for the operation and maintenance of the Complex, as such agreement may be amended from time to time.

“O&M Contractor” – Any operation and maintenance contractor(s), and any successor(s) thereto, appointed by the Company and not objected to by the GOP pursuant to Section 6.2(c) of the Implementation Agreement.

“Off-Peak Period” – The meaning ascribed thereto in Annex 2 to Schedule 1.

“Operating Committee” – The committee established by the Parties pursuant to Section 2.4 for the purposes described in Section 2.5 and Section 5.11.

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

“Operating Procedures” – The procedures for the operational interfaces between the Complex and the Grid System to be agreed or finalised 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 Power Purchaser, NTDC and the Company, and the “Parties” means all of them.

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

“Peak Period” – The meaning ascribed thereto in Annex 2 to Schedule 1.

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

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

“Period Weighing Factors” – The meaning ascribed thereto in Annex 2 to Schedule 1.

“Person” – Any person, 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.

“Power Purchaser” – Central Power Purchasing Agency (Guarantee) Limited, acting for and on behalf of the Distribution Companies, a guarantee limited company incorporated under the laws of Pakistan, with its principal office at Sixth Floor, Shaheed-e-Millat, Secretariat, Blue Area,

Islamabad, Pakistan and its successors and permitted assigns.

“Power Purchaser Consents” – All approvals, consents, authorisations, notifications, concessions, acknowledgements, licences, permits, decisions or similar items which is or are issued by a Relevant Authority and which the Power 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.

“Power Purchaser Event of Default” – The meaning ascribed thereto in Section 16.2A.

“Power Purchaser Notice of Intent to Terminate” - The meaning ascribed thereto in Section 16.3(a)(i).

“Power Purchaser Termination Notice” - The meaning ascribed thereto in Section 16.4(a)(i).

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

“PPIB” – Private Power & Infrastructure Board (Ministry of Water & Power), Government of Pakistan, and any successor or substitute board or agency that assumes the responsibilities of the Private Power & Infrastructure Board.

“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.

“Project” – Each of the following activities:

- (a) the ownership and possession of the Complex;
- (b) the design, engineering, financing, refinancing (provided that the benefits of such refinancing are shared by the Parties in accordance with the requirements of the Implementation Agreement), 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 and the Company Interconnection Facilities;
- (d) the insuring, operation, maintenance and repair of the Complex, including any Restoration;
- (e) the use of [identify fuel] at the Complex, the sale of Available Capacity and the generation and sale of Net Electrical Output from the Complex under this Agreement; 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 Company’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.

“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 Company, 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 Company, the Project or any part thereof.

“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 MVAR.

“Reference Conditions” – The meaning ascribed thereto in Schedule 2.

“Reference Debt Service Component” – The meaning ascribed thereto in Schedule 1.

“Reference Non-Debt Service Component” – The meaning ascribed thereto in Schedule 1.

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

“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, any of the Parties 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 Schedule 7.

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

“Required Commercial Operations Date” – The [.] , as such date may be extended pursuant to Section 6.5 or Section 8.1(b) or by reason of a Force Majeure Event.

“Reserve Fund” – The meaning ascribed thereto in Section 9.9(a).

“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 ascribed thereto in Section 15.6(a).

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

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

“Revised Declared Available Capacity” – The meaning ascribed thereto in Section 5.3(c).

“Revised Despatch 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.

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

“SCADA System” – A supervisory control and data acquisition system.

“Scheduled Commercial Operations Date” – The date reasonably estimated by the Company as the Commercial Operations Date based on the then-existing construction schedule, as notified to the Power Purchaser and NTDC, as such date may be modified by the Company from time to time in the Construction Reports or in other written notices from the Company to the Power Purchaser and NTDC.

“Scheduled Outage” – A planned interruption of the Complex’s generating capability or any material part thereof that (i) has been scheduled by the Company and agreed to by NTDC 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.

“Site” – The land, water-ways, roads, wells, rights-of-way, and other interests in land and any rights, permits and licences acquired by the Company 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.

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

“Steam Unit” – A steam turbine driving an electric generator and associated heat recovery steam generators within the Complex, including its auxiliaries and protective devices.

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

“Supplemental Tariff” – An amount payable by the Power Purchaser as provided in Section 9.3 and Schedule 1.

“Tariff” – The meaning ascribed thereto in Schedule 1.

“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 duty or tax, tax on foreign currency or foreign exchange transactions or property tax. The term “Tax” shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity.

“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 Power Purchaser Termination Notice or the Company Termination Notice.

“Tested Capacity” – Initially the net generation capacity demonstrated by the Commissioning Tests for the Complex (adjusted to Reference Conditions), as certified by the Engineer in the Capacity Test Certificate and shall be applicable at and from the Day following the date of completion of Commissioning until revised by the Annual Capacity Test (or any retest thereof) pursuant to Section 8.4(b), and thereafter, the net generation capacity demonstrated by such Annual Capacity Test (or any retest thereof) (adjusted to Reference Conditions).

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

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

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

“Transmission Charges” – The component of the use of system charge of the transfer price that relates to the transmission charge of NTDC (as determined from time to time by NEPRA) paid by the Distribution Companies and collected by the Power Purchaser, in accordance with the Commercial Code.

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

“Unit Start-Up” – After the Commercial Operations Date, any start-up of a generating unit that is necessary for the Company to comply with a Despatch Instruction or a Revised Despatch Instruction and that results in synchronisation with the Grid System; provided that the Power Purchaser and NTDC has been notified that such Start-Up is necessary for the Company to comply with a Despatch Instruction or Revised Despatch Instruction.

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

“WAPDA” – The Pakistan Water and Power Development Authority, a statutory corporation established pursuant to the Pakistan Water and Power Development Authority Act of 1958, with its principal office located at Lahore, Pakistan and its successors and permitted assigns.

“Weather Station” – The equipment specified in Schedule 2 purchased, installed, owned and maintained by the Company on the Site for the purpose of measuring the Ambient Site Condition, which equipment shall be subject to inspection by NTDC and testing at the request of NTDC upon reasonable advance notice.

“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 thirty-first (31st) of December and ending at 12:00 midnight on the following thirty-first (31st) of December.

Section 1.2 Rules of Interpretation

In this Agreement:

- 1.2.1 headings are for convenience only and shall be ignored in construing this Agreement;
- 1.2.2 except where the context determines otherwise, the singular includes the plural and vice versa and the masculine gender includes all genders;
- 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” being by way of illustration only shall not be construed as, nor shall have the effect of limiting the generality of the 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 and its successors in title;
- 1.2.7 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 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
- 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;
- kV means kilovolt or 1,000 Volts;
- kW means kilowatt or 1,000 Watts;
- kWh means kilowatt hour;
- MW means megawatt or 1,000,000 Watts;
- MVAR means megavar or 1,000,000 Vars;
- MWh means megawatt hour or 1,000 kWh;
- O&M means operation and maintenance of the Complex; and

RFO means residual fuel oil.

**ARTICLE II
EFFECTIVE DATE AND TERM**

Section 2.1 Condition 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 (Representations and Warranties) and Article XIX (Miscellaneous Provisions) shall become effective.
- (b) In connection with the issuance of the Letter of Support by the PPIB, the Company has delivered or has caused to be delivered to the PPIB the Performance Guarantee.
- (c) On the date on which PPIB issues notice to the Power Purchaser and NTDC with a copy to the Company of the occurrence of Financial Closing, this Agreement shall become effective in its entirety (the “Effective Date”).
- (d) The Company shall use its reasonable endeavors to cause the achievement of Financial Closing by the date required in the Letter of Support. Before issuance of the notice by PPIB of Financial Closing referred to in (c) above, the Company shall deliver the Company Letter of Credit to the Power Purchaser.
- (e) If the Company Letter of Credit is not received by the Power Purchaser in a form which is reasonably acceptable to the Power Purchaser by the date required for Financial Closing in the Letter of Support, as may have been extended by the GOP in accordance with the Letter of Support, then the Power Purchaser may deliver written notice to the Company terminating this Agreement, which termination shall be binding and effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.

Section 2.2 Term

- (a) Unless terminated earlier in accordance with its terms, this Agreement shall continue in full force and effect for [.] ([.]) 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 Power Purchaser to make payments to the Company 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, multiplied by the difference between the Average Available Capacity and the average Available Capacity that the Company was able to declare during the pendency of such PPFME or CLFME, as

the case may be, and that difference divided by the Average Available Capacity. During such extended period, the Company shall be paid the “Fixed O&M Component” and the “Insurance Component”; in addition, the Company shall also be entitled to the Return on Equity Component for such period that extends beyond one hundred and eighty (180) Days, of the Capacity Price for Available Capacity and the Energy Price for Net Electrical Output, in each case adjusted, *mutatis mutandis*, in accordance with the provisions of Schedule 1.

Section 2.3 Company Consents

- (a) From the date of execution of this Agreement, the Company 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 Company Consents.
- (b) Upon receiving a written request from the Company to do so, the Power Purchaser shall take such actions as are reasonable under the circumstances to assist the Company in its efforts to procure or renew any Company Consents that it has (or its Contractors have) not received after proper application therefor, provided, however, that, where the Company makes any such request of the Power Purchaser, the Company shall:
 - (i) prior to the date upon which its request to the Power Purchaser is submitted, have done all such things as it is reasonable for the Company to have done and as are necessary to procure or renew any Company 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 Company Consent which is the subject of such a request;
 - (iii) at the same time as it submits its request, disclose to the Power Purchaser the full details of the actions which the Company has, prior to the date of the request, taken to procure or renew the Company Consent and of the actions it is continuing to take with respect to the procurement or renewal of any such Company Consent;
 - (iv) provide the Power Purchaser with such assistance, information and/or documents as the Power Purchaser may reasonably request in connection with the Company’s request; and
 - (v) bear all reasonable out-of-pocket costs and expenses incurred (and duly supported by relevant documents, if any) by the Power Purchaser in relation to such request from the Company.
- (c) To the extent material to the Company’s rights or obligations under this Agreement, the Power Purchaser and the NTDC shall, as applicable, at their own

cost and expense, procure, diligently pursue, and thereafter maintain all Power Purchaser Consents and NTDC 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 5.11.

- (a) The Operating Committee shall be comprised of six (6) members. The Power Purchaser shall designate two (2) member, the NTDC shall designate two (2) members and the Company shall designate two (2) members to represent it on the Operating Committee, and each Party may remove or replace any of its Operating Committee members at any time upon notice to the other Parties.
- (b) 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.
- (c) The chairmanship of the Operating Committee shall rotate every four (4) months between the Parties, and the Parties agree that the first chairman shall be nominated by the Power Purchaser. The chairman shall not have a casting vote.
- (d) 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 one (1) member representing each Party is present at such meeting.

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 finalize the Operating Procedures addressing all operational interfaces between the Power Purchaser, NTDC and the Company, other than those matters to be addressed by the Metering Committee. 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 finalising the Operating Procedures shall be as follows:
 - (i) within forty-five (45) Days following the establishment of the Operating Committee, the Company shall propose and deliver to the Power

- Purchaser and NTDC in writing, draft Operating Procedures;
- (ii) the Power Purchaser and NTDC shall provide their respective comments in writing on the draft Operating Procedures within twenty-five (25) Days following the date the draft Operating Procedures are delivered by the Company to the Power Purchaser and NTDC, 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 changes proposed by 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 Company shall provide the Power Purchaser and NTDC with proposed final draft Operating Procedures, incorporating to the extent agreed by the Parties, each of the Parties' proposed changes, if any;
 - (iv) the Power Purchaser and NTDC shall provide final comments on the final draft Operating Procedures within fifteen (15) Business Days after its receipt by the Power Purchaser and NTDC, and within five (5) Business Days after a request from the Company, the Power Purchaser and NTDC shall make its representatives available in [.] Pakistan, to meet and review their respective comments and proposed changes, with the Company; and
 - (v) the Company shall revise the draft Operating Procedures to incorporate such additions or modifications required by the Power Purchaser and NTDC, and shall provide a final draft to the Power Purchaser and NTDC as soon as practicable, and in any event within ten (10) Days following receipt of the Power Purchaser's and / or NTDC'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 on all the Parties with respect to the resolution of such Dispute.
- (c) Following the finalisation of the Operating Procedures pursuant to Section 2.5(b), any 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 on all the Parties with respect to the resolution of such Dispute.
 - (d) The Company, the Power Purchaser and NTDC 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 Company by NTDC at least one hundred and twenty (120) Days prior to the date implementation of such schedule is required.

- (e) Copies of the inter-tripping schedule to be developed in terms of Section 2.5(d) and the Operating Procedures shall be sent to the Power Purchaser for information.

Section 2.5A Appointment of the Metering Committee

Not later than ten (10) months prior to the Required Commercial Operations Date, NTDC shall establish the Metering Committee, which shall include an authorized representative of NTDC, the Company and the Power Purchaser, who shall perform the functions relating to meter reading and meter sealing set out in Commercial Code and this Agreement.

Section 2.5B Authorization

NTDC hereby irrevocably and unconditionally authorizes the Power Purchaser to discharge all of NTDC's payment obligations in favour of the Company under or arising out of this Agreement. Accordingly, for the purposes of this Agreement and the Guarantee, the payment obligations of NTDC under or arising out of this Agreement shall be considered as the payment obligations of the Power Purchaser.

Section 2.6 Appointment of the Engineer

- (a) Not later than one hundred and eighty (180) Days prior to the then-prevailing Scheduled Commercial Operations Date, the Engineer shall have been appointed by the Company, after securing approval from the Power Purchaser and NTDC, (and shall by such date the Engineer shall be available to perform the duties of the Engineer provided herein and shall thereafter remain appointed and available for as long as may be necessary to discharge the duties of the Engineer under this Agreement). The Engineer shall carry out the duties of the Engineer specified in this Agreement in accordance with the highest professional standards and duty of care, to the Company, the Power Purchaser and NTDC. The Company shall not replace any Person appointed as the Engineer without the prior written consent of NTDC and the Power 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 Company.

Section 2.7 Company Letter of Credit

- (a) On the Effective Date, the Company shall have delivered to the Power Purchaser the Company Letter of Credit as required in Section 2.1(d) and the Power Purchaser shall notify the PPIB of its receipt of the Company Letter of Credit. The Company shall maintain in full force and effect the Company 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;

provided, that if the Company is held or is alleged to be liable to pay liquidated damages under Section 9.4, or upon termination of this Agreement pursuant to Section 16.8, the Company shall maintain the Company Letter of Credit in an amount not less than the amount in dispute plus the Power Purchaser's reasonable estimate of interest or 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 Company Letter of Credit shall be expressed to continue until the end of the period referred to in Section 2.7(a) above. The Power Purchaser shall return the Company Letter of Credit to the Company within fifteen (15) Business Days following the end of the period referred to in Section 2.7(a). If the Company provides a replacement or substitute Company Letter of Credit, the Power Purchaser shall return the original Company Letter of Credit within five (5) Business Days after receipt by the Power Purchaser of such replacement.
- (c) In the event that the Company fails to pay liquidated damages to the Power Purchaser under this Agreement, then the Power Purchaser shall be entitled to draw or collect such amounts, less any amounts disputed by the Company, from the Company Letter of Credit upon presentation of a certificate of an authorized officer of the Power Purchaser stating that (1) amounts shown in the invoice accompanying the certificate are due and payable by the Company to the Power Purchaser under this Agreement and (2) an invoice for such amount has been delivered to the Company 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 Company or (b) a portion of the amount shown in the invoice has been disputed by the Company, identifying such disputed amount. The certificate shall be accompanied by the relevant invoice delivered to the Company and any Invoice Dispute Notice delivered to the Power Purchaser by the Company. The Power Purchaser shall not be entitled to draw from the Company Letter of Credit any amounts shown in an invoice or demand delivered to the Company that have been disputed by the Company until such amounts are determined by the Expert

or an arbitrator to be payable to the Power Purchaser in accordance with the disputes resolution procedures set forth in Article XVIII.

- (d) In the event that the Power Purchaser draws against any Company Letter of Credit and it is subsequently determined that the Power Purchaser was not entitled to do so, then the Power Purchaser shall repay such amount to the Company, together with all costs and expenses incurred by the Company in connection with such drawing (including reasonable attorneys' fees), plus interest thereon from the date of the draw till 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 Company Letter of Credit is delivered to the Power Purchaser within five (5) Business Days of its issuance, the Company 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 Company is required to maintain the Company Letter of Credit pursuant to Section 2.7(a), the Company Letter of Credit will expire within ten (10) Days and the effective period of the Company Letter of Credit has not been extended for a period of not less than ninety (90) Days or a replacement Company Letter of Credit has not been delivered to the Power Purchaser with an effective period of not less than ninety (90) Days following the date of expiration of the existing Company Letter of Credit, the Power Purchaser shall be entitled to immediately encash in full the Company Letter of Credit; provided that upon delivery of a valid amendment extending the term of the Company Letter of Credit or a replacement for the expired Company Letter of Credit, the Power Purchaser shall return to the Company the amount encashed less any amount properly retained pursuant to Section 2.7(c).
- (f) In the event that the Company Letter of Credit is encashed by the Power Purchaser in terms of this Agreement, the Parties agree that any such encashment shall be the exclusive remedy available to the Power Purchaser and NTDC therefor, which compensation shall be shared between the Power Purchaser and NTDC in the ratio of [.%]:[.%], respectively, and the Company shall not have any obligation to additionally compensate the Power Purchaser or NTDC for any such event leading to encashment of the Company Letter of Credit. The Company hereby waives to the fullest extent permitted by law any claim that the encashment of the Company Letter of Credit in such amount is void as a penalty.

Section 2.8 Reaffirmation of Representations and Warranties

- (a) Together with the notice delivered by the Company to the Power Purchaser and NTDC intimating the Effective Date, the Company shall deliver a certificate to the Power Purchaser and NTDC confirming that the representations in Section 13.1(a), Section 13.1(e) and Section 13.1(f) are true and accurate as on the Effective Date.
- (b) No later than five (5) Business Days after the date on which the Company gives

the Power Purchaser notice of the Effective Date, each of the Power Purchaser and NTDC shall deliver a certificate to the Company, confirming that the representations in Section 13.3(a), Section 13.3(e) and Section 13.3(f) were true and accurate as at the Effective Date.

Section 2.9 Specification of Contract Capacity

- (a) The Parties agree that the Contract Capacity is [.] ([.]) MW (net at Reference Conditions), and that such Contract Capacity may be revised upward to the initial Tested Capacity as established pursuant to Section 8.3 (b).
- (b) At any time (and from time to time) after the Effective Date but prior to the occurrence of the Commercial Operations Date, the Company may elect by notice to the Power Purchaser (which notice shall be binding on NTDC) 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 Company upon the payment of liquidated damages specified below and the following provisions shall apply:
 - (i) the Company shall pay to the Power 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 Company 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 one hundred and seventeen thousand Dollars (\$117,000) 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 Company 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 two hundred and thirty-four thousand Dollars (\$234,000) 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 Company is greater than five percent (5%) and less than or equal to ten percent (10%) of the specified Contract Capacity, the amount payable shall be equal to three hundred and fifty thousand Dollars (\$350,000) 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 Power Purchaser;

- (iii) if the Company has demonstrated a Tested Capacity through Commissioning Tests equal to or greater than the Contract Capacity, as it may have been subsequently reduced pursuant to this Section 2.9(b), upon the payment of the required amount of liquidated damages and the reduction of the Contract Capacity, the Company shall be entitled to declare the Commercial Operations Date, subject to the delivery of the Engineer's Capacity Test Certificate, and the Commercial Operations Date shall occur on the Day following the later of the date of such declaration by the Company or the date of delivery of the Capacity Test Certificate by the Engineer; and
 - (iv) the Company may deliver additional notices of reduction of the Contract Capacity (which shall also be binding on NTDC and the Power Purchaser), provided that the aggregate reduction in Contract Capacity does not exceed ten percent (10%) of the Contract Capacity specified in Section 2.9(a).
- (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 this Agreement.

**ARTICLE III
SALE AND PURCHASE OF ENERGY AND CAPACITY**

Section 3.1 Sale and Purchase of Energy and Capacity

- (a) Subject to the terms of this Agreement (including the Technical Limits), from and after the Commercial Operations Date, the Company shall:
 - (i) make available to the Power Purchaser the Declared Available Capacity at the Contract Capacity (adjusted to then-prevailing Ambient Site Condition);
 - (ii) deliver and sell to the Power Purchaser at the Connection Point the Despatched Net Electrical Output; and
 - (iii) provide to NTDC the Ancillary Services.

- (b) Subject to and in accordance with the terms of this Agreement (including the Technical Limits), the Power Purchaser shall:
 - (i) from and after the Commercial Operations Date, pay to the Company for the Declared Available Capacity, the consideration described in Article IX and determined in accordance with the provisions described in Schedule 1;
 - (ii) from and after the Commercial Operations Date take delivery of and pay to the Company for the Despatched and Delivered Net Electrical Output, the consideration described in Article IX and determined in accordance with the provisions described in Schedule 1;
 - (iii) prior to the Commercial Operations Date take delivery of and pay to the Company for the Net Electrical Output generated by the Complex following synchronization of the Complex with the Grid System, the consideration described in Section 8.7 and determined in accordance with the provisions described in Schedule 1; and
 - (iv) from and after the Commercial Operations Date take delivery of and pay for the Net Electrical Output generated during Capacity Tests carried out under Section 8.3 and Section 8.4, the consideration described in Section 8.7 and determined in accordance with the provisions of Schedule 1.

- (c) For the avoidance of doubt, in no event shall the Power Purchaser have any obligation to pay for any electric energy produced by the Complex prior to the synchronization of the Complex with the Grid System or during any testing of the Complex not provided for in Article VIII after the Commercial Operations Date.

Section 3.2 Power Purchaser's Exclusive Right to Energy and Capacity

Except to the extent that electric energy is required for the operation of any part of the Complex, the Company shall not, without the prior written approval of the Power Purchaser:

- (a) sell or deliver electric energy produced at the Complex to any Person other than the Power Purchaser; or
- (b) confer upon any Person other than the Power Purchaser any right in or to the Available Capacity.

**ARTICLE IV
CONSTRUCTION OF THE COMPLEX**

Section 4.1 Construction of the Complex

- (a) The Company shall commence and proceed with the EPC Works as soon as reasonably practicable following the Effective Date. The Company shall ensure that the design of the EPC Works are 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 Company Consents and the Generation Licence), Prudent Utility Practices and Prudent Electrical Practices, so that the Complex is reasonably expected to provide a useful life of not less than the Term.
- (b) The Company shall carry out and complete the EPC Works such that the Company is able to achieve the Commercial Operations Date by the Required Commercial Operations Date.
- (c) The Company 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 otherwise comply with the requirements of Schedule 2.

Section 4.2 Submission of Reports and Information

- (a) The Company shall submit, or cause to be submitted, to the Power 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) Beginning within thirty (30) Days after the Effective Date and ending on the Commercial Operations Date, (A) reasonably detailed Construction Reports delivered to the Power 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 reports as are submitted to the Company by the Engineer, and (C) reports, when and as the Company 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, all of which shall simultaneously also be submitted to NTDC.
 - (iii) No later than ninety (90) Days after the Effective Date, (A) evidence demonstrating that the Company has obtained all Company Consents then required to be obtained for the lease/ownership, construction, operation and maintenance of, and the supply and delivery of Net Electrical Output from, the Complex, (B) a list identifying the Company Consents not yet required to be obtained for the operation and maintenance of, and the

supply and delivery of Net Electrical Output from the Complex, and (C) a list identifying the Company Consents applied for by the Company or its Contractors but not yet issued or received, together with a plan for obtaining such Company Consents and an estimate of the time within which such Company Consents will be obtained;

- (iv) As and when available, drafts of the Fuel Supply Agreement, and copies of the Fuel Supply Agreement and any amendments thereto within ten (10) Business Days of the date such agreement and any such amendments thereto are executed;
- (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, which shall simultaneously also be submitted to NTDC;
- (vi) On or before the Commercial Operations Date, a certificate from the Engineer addressed to the Company, NTDC and the Power 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, which shall simultaneously be submitted to NTDC;
- (vii) On or as soon as practicable following the Construction Start Date but in any event no later than ten (10) Business Days thereafter, a copy of the certificate of insurance for the EPC Contractor's 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 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 electricity metering equipment, and a certificate from the Engineer confirming each successful Commissioning Test, which shall simultaneously also be submitted to NTDC;
- (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 Company pursuant to the EPC Contract, of all the manufacturers' specifications and manufacturers' operation manuals, which shall simultaneously also be submitted to NTDC; 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, which shall simultaneously also be submitted to NTDC.

- (b) The Company shall notify the Power Purchaser and NTDC promptly from time to time whenever it determines, on the basis of reasonable evidence, that the then expected date for Commissioning of the Complex is unfeasible or impracticable, 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 Power Purchaser and NTDC.
- (c) NTDC shall provide to the Company within fifteen (15) Business Days after receipt of a written request from the Company, documents and information on the Grid System and such other documents and data in the NTDC's possession and control as may be reasonably necessary for the Company to undertake the Company Interconnection Works and the EPC 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 NTDC, and any planned changes to the Despatch and communication procedures then in effect. In connection with the provision of such documents and information, NTDC shall allow the Company during NTDC's regular business hours to make copies of such documents and information, at the Company's sole cost and expense, and to have reasonable access to and to consult with NTDC'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 NTDC or destroyed by the Company.
- (d) Each Party shall notify the other Parties in a timely manner upon becoming aware of any changes in 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 NTDC Interconnection Facilities, NTDC shall, to the extent necessary to carry out any testing of the Complex, including Commissioning Tests, transport to the Complex electrical energy for start-ups in accordance with the schedules provided to the Power Purchaser and NTDC pursuant to Section 4.2 and Section 8.1 or (if available), while the Complex is shutdown, transport to the Complex electrical energy, at the sole cost and expense of the Company and at the then applicable relevant tariff category of the distribution company where the Complex is located to be payable to the Power Purchaser.

Section 4.4 Power Purchaser Observation Visits

The Power Purchaser and NTDC shall have the right, on a recurring basis and upon reasonable prior notice to the Company to have the Power Purchaser's and/or NTDC's officers, employees, and duly authorized representatives observe the progress of the EPC Works and the Company

Interconnection Works and the operation of the Complex. The Company shall comply with all reasonable requests of the Power Purchaser and/or NTDC for, and assist in arranging, any such observation visits. The Power Purchaser's and/or NTDC'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 Power Purchaser and/or NTDC shall comply with the Company'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 Company and its Contractors, and shall not unreasonably cause any interference with or disruption to the activities of the Company or its Contractors on the Site.

**ARTICLE V
CONTROL AND OPERATION OF COMPLEX**

Section 5.1 Operation and Maintenance of the Complex

- (a) The Company 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 Company Consents, Prudent Utility Practices, and Prudent Electrical Practices; provided, however, that the Company 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 Company shall not relieve the Company 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 Company shall operate and maintain the Complex in a manner that will not have an adverse effect on NTDC's voltage level or voltage wave form.

Section 5.2 Estimated Energy Requirements

- (a) Within thirty (30) Days following the Commercial Operations Date, NTDC in consultation with the Power Purchaser, shall notify the Company of the requirements, estimated in good faith, for Net Electrical Output on a 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 eighty (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 November following the Commercial Operations Date and not later than the 1st of November of each Year thereafter, NTDC in consultation with the Power Purchaser shall notify the Company of the requirements, estimated in good faith, for Net Electrical Output on a Monthly basis for the following Year. On the Commercial Operations Date and not later than fourteen (14) Days prior to the beginning of each Month thereafter, NTDC in consultation with the Power Purchaser shall further notify the Company of the requirements, estimated in good faith, for Net Electrical Output 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, the requirements 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 the beginning of each Week thereafter, NTDC in consultation with the Power Purchaser shall notify the Company of the requirements, estimated in good faith, for Net Electrical Output on an 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, the requirements for the remainder of the Week and the following two (2) Weeks, as the case may be.

- (d) Any notice issued by NTDC under this Section 5.2 shall not be binding on the Power Purchaser or NTDC, and no such notice shall subsequently prevent NTDC from altering the requirements for Net Electrical Output from time to time; provided that NTDC shall, as soon as is practicable after becoming aware of any material changes to its requirements for Net Electrical Output specified in any such notice, notify the Company of such change.

Section 5.3 Declared Available Capacity

- (a) Not later than 00:00 hours on the Commercial Operations Date, the Company shall notify NTDC and the Power Purchaser of the Declared Available Capacity for each following hour of the Commercial Operations Date.
- (b) Not later than sixteen (16) hours prior to the beginning of each Operating Day following the Commercial Operations Date, the Company shall notify NTDC and the Power Purchaser (or revise any such information previously given) of the Declared Available Capacity for each hour of such Operating Day. If the Company fails to give such notice on or before twelve (12) hours prior to the beginning of each Operating Day (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 Company for the immediately previous Operating Day.
- (c) The Company may:
 - (i) subject to the payment of liquidated damages pursuant to Section 9.4 and Schedule 1, except as provided in Section 5.3(e), 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 NTDC and the Power Purchaser of such revision; and
 - (ii) revise upwards and continue to revise upwards the Declared Available Capacity for any hour up to and until four (4) hours prior to the start of the applicable hour by informing NTDC and the Power Purchaser of such revision,

(such revised Declared Available Capacity described in paragraphs (i) and (ii) is referred to in this Agreement as “Revised Declared Available Capacity”). For the avoidance of doubt, the Company shall be entitled to and the Power Purchaser shall pay to the Company the Capacity Price based on the Revised Declared Available Capacity.

- (d) When making notifications of Declared Available Capacity or Revised Declared Available Capacity, subject to the Technical Limits and Prudent Utility Practices,

the Company shall not withhold available generating capacity.

- (e) The notification by the Company of Declared Available Capacity or any Revised Declared Available Capacity shall be made at the forecasted Ambient Site Condition for the applicable hour, as such forecast method is agreed by the Operating Committee, and such Declared Available Capacity or any Revised Declared Available Capacity may be adjusted by the Company at any time prior to forty-five (45) minutes prior to the relevant hour, without penalty or damages, for changes in the forecasted Ambient Site Condition from the earlier forecasted Ambient Site Condition for each hour of the relevant Operating Day (“Adjusted Declared Available Capacity”). The Declared Available Capacity, any Revised Declared Available Capacity or any Adjusted Declared Available Capacity, in each case at the forecasted prevailing Ambient Site Condition, shall not exceed at any time the lesser of (i) the Tested Capacity (adjusted to the same forecasted Ambient Site Condition) and (ii) the Contract Capacity (adjusted to the same forecasted Ambient Site Condition), in each case in effect at the relevant time. The Company shall keep NTDC informed of the Ambient Site Condition as appropriate for purposes of administering this Agreement. For the avoidance of doubt, all adjustments of Contract Capacity or Tested Capacity, as the case may be, to Ambient Site Condition under this Agreement shall be carried out using manufacturers’ correction curves and/or tables for temperature attached hereto as Schedule 10.

Section 5.4 Despatch Instructions and Delivery of Net Electrical Output

- (a) Not later than seven (7) hours prior to the beginning of each Operating Day, subject to Section 5.4(b), NTDC shall notify the Company of the requirements for Net Electrical Output and Reactive Power on an hourly basis for such Operating Day (a “Despatch Instruction”).
- (b) NTDC may notify the Company of any upward or downward revision to any Despatch Instruction (a “Revised Despatch Instruction”) at any time, and the Company shall comply with such Revised Despatch Instruction not later than five (5) minutes before the beginning of any hour to which such revision relates (or such later time following the Revised Despatch Instruction as may be demonstrated to be required by the Technical Limits). If, due to the Technical Limits, (i) the Company is required to meet the Revised Despatch Instruction within the first thirty (30) minutes of the relevant hour and the Company fails to meet such Revised Despatch Instruction before the end of the first thirty (30) minutes of the relevant hour, liquidated damages under Section 9.4 shall be assessed for the full hour, and (ii) the Company is required to meet the Revised Despatch Instruction within the last thirty (30) minutes of the relevant hour and the Company fails to meet such Revised Despatch Instruction before the end of the relevant hour, liquidated damages under Section 9.4 shall be assessed from the beginning of the following hour if and to the extent that such failure is continuing.
- (c) Subject to Section 5.4(d), the Company shall comply with Despatch Instructions

and Revised Dispatch Instructions prevailing at the start of the relevant hour; provided, that such Dispatch Instructions and Revised Dispatch Instructions:

- (i) have been issued in accordance with sub-sections (a) and (b) above;
 - (ii) are consistent with the Technical Limits; and
 - (iii) do not require the Company to operate the Complex at a level exceeding the Declared Available Capacity, the Adjusted Declared Available Capacity, or the Revised Declared Available Capacity, as applicable, (in each case adjusted to the final forecasted Ambient Site Condition) prevailing for that hour.
- (d) The Company shall not be in breach of Section 5.4(c) and shall not be liable to pay liquidated damages under Section 9.4, if the Net Electrical Output for that hour is less than the required net electrical energy stated in the prevailing Dispatch Instruction or Revised Dispatch Instruction, as applicable, and such shortfall is caused by:
- (i) constraints on the Grid System;
 - (ii) variations in Grid System Frequency outside the Technical Limits;
 - (iii) Grid System voltage outside the Technical Limits; or
 - (iv) a Force Majeure Event.
- (e) If the Company fails to comply (except for the reasons or events described in Section 5.4(d)) with the prevailing Dispatch Instruction or Revised Dispatch Instruction (as the case may be) for any hour, the Power Purchaser shall be entitled, without prejudice to its rights under Article XVI, to receive liquidated damages calculated in accordance with Section 9.4.

Section 5.5 Scheduled Outage Periods

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

- (a) The Company'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 Company shall notify NTDC 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 Company shall notify NTDC by not later than the 1st of October 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 [.] Days per unit in any Year; and
 - (iii) [the Company will propose staggered Scheduled Outage periods during the Maintenance Months, however, the Company may propose or undertake any Scheduled Outage during other Months of a Year subject to any requirement of Technical Limits.]
- (b) NTDC shall respond to the Company's proposals for Scheduled Outage periods as follows:
- (i) Within thirty (30) Days after receipt by NTDC from the Company of its proposed Scheduled Outage periods pursuant to Section 5.5(a), NTDC shall notify the Company whether or not it agrees to the proposed Scheduled Outage periods. If NTDC does not agree to any of the proposed Scheduled Outage periods, it shall notify the Company of the periods during Maintenance Months when the Company 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 Company and to be consistent with the Technical Limits, and the Company acting reasonably shall undertake Scheduled Outages in such periods as notified by NTDC.
 - (ii) If NTDC fails to notify the Company in accordance with Section 5.5(b)(i), then the Company may undertake Scheduled Outages in the periods proposed by the Company.
 - (iii) Provided that NTDC shall not request that a Scheduled Outage period be rescheduled in a manner or at a time inconsistent with the Technical Limits, NTDC may upon thirty (30) Days' advance notice to the Company request the Company to reschedule a Scheduled Outage period previously scheduled under Section 5.5(a) and/or (b). The Company shall use reasonable efforts to comply with such request and shall notify NTDC within fifteen (15) Days of receipt of the NTDC's request whether the Company is able to comply with such request.
 - (iv) If the Company 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) Business Days of the Company's notice under Section 5.5(b)(iii), NTDC shall not later than ten (10) Business Days thereafter notify the Company 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 Company in its reply to NTDC's request for an alternative period.

Section 5.6 Maintenance Outages

The Company shall advise NTDC of the need for any Maintenance Outages, together with the proposed commencement date and estimated duration of the work to be undertaken. NTDC shall advise the Company of the periods during which such Maintenance Outage may be undertaken, such periods to be reasonable in light of the requirements for Net Electrical Output and Ancillary Services and the necessity for the Maintenance Outage. The Company shall, subject to the Technical Limits and Prudent Utility Practices, use reasonable endeavours to carry out the Maintenance Outage during the times provided by NTDC in accordance with this Section 5.6.

Section 5.7 Recording of Communications

NTDC and the Company hereby authorise each other to record any communications relating to:

- (a) Declared Available Capacity, Revised Declared Available Capacity and Adjusted Declared Available Capacity; and
- (b) any Despatch Instructions and any Revised Despatch Instructions,

and agrees to supply, at the request of the other Party, a copy or transcript of any such recording. NTDC shall provide copy or transcript of aforesaid record to the Power Purchaser on Weekly basis.

Section 5.8 Emergency Set-Up and Curtailment Plans

The Company shall co-operate with NTDC 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 Company shall make technical references available to NTDC concerning required times for Unit Start-Ups, black start capabilities, and minimum load carrying ability and any other technical information in respect of the Complex reasonably requested by NTDC.

Section 5.9 Supply of Power in Emergency

- (a) On or after the occurrence of an Emergency, NTDC may issue a notice to the Company declaring the existence of an Emergency to the Company. The Company shall also communicate the notice to the Power Purchaser.
- (b) The notice delivered pursuant to Section 5.9(a) shall:
 - (i) specify the nature of the Emergency; and
 - (ii) indicate the NTDC'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, NTDC and the Company shall consult on the steps NTDC requires the Company to take, and, if NTDC requests, the Company shall use its reasonable endeavors to:
 - (i) revise and continue to revise its Declared Available Capacity or Revised Declared Available Capacity, so as to make additional generating capacity available to NTDC; 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, Revised Declared Available Capacity, Dispatch Instructions and Revised Dispatch Instructions shall continue to apply during an Emergency; provided that the Company shall not be liable to pay liquidated damages to the Power Purchaser pursuant to Section 9.4(b) or (c), for its inability to provide any increase in Declared Available Capacity made in a Revised Declared Available Capacity made by the Company at NTDC's request under Section 5.9(c).
- (e) NTDC shall notify the Company at regular twenty-four (24) hour intervals of the status of the Emergency and notify the Company as soon as the Emergency has ceased.
- (f) Nothing in this Section 5.9 shall require the Company to operate the Complex in any manner, which is inconsistent with the Technical Limits or 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

Connection Point, the Company and NTDC shall ensure that their and/or their respective Contractors' personnel are on duty at the Complex and the Control Centre, respectively, 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 finalising 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 Company Interconnection Facilities, the Complex, the NTDC Interconnection Facilities, and all related equipment;
 - (ii) 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 Company Interconnection Facilities, the Grid System, or the Complex, or any related equipment;
 - (iii) safety matters affecting the Complex, the Company Interconnection Facilities, the Grid System, the Parties or their contractors;
 - (iv) clarification of emergency plans developed by NTDC for recovery from a local or widespread electrical blackout;
 - (v) review and revision of protection schemes; and
 - (vi) 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) All Parties shall keep complete and accurate records and all other data reasonably required for the proper administration of this Agreement. The Company shall maintain at the Site an accurate and up-to-date operating log, in a format mutually agreed upon by the Parties, together with records and data of:
 - (i) Net Electrical Output and fuel consumed in respect of each hour;
 - (ii) Reactive Power in respect of each hour;

- (iii) Grid System Frequency;
- (iv) bus voltage at all times;
- (v) changes in operating status, Scheduled Outages, Maintenance Outages and Unit Start-Ups;
- (vi) Ambient Site Condition;
- (vii) Declared Available Capacity and Revised Declared Available Capacity for each Operating Day;
- (viii) Despatch Instructions and Revised Despatch Instructions for each Operating Day; and
- (ix) other matters agreed upon by the Parties.

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 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 Months and Period Weighing Factors

NTDC shall give notice to the Company by not later than 1st of September in each Year of the Maintenance Months, the Non-Maintenance Months, and the Period Weighing Factors applicable in the immediately following Year, provided, however, where NTDC does not designate the Maintenance Months, the Non-Maintenance Months, or the Period Weighing Factors, as the case may be, then the most recent designation shall remain in effect; provided, further, that the weighted average of the Period Weighing Factors shall always equal one (1) over a Year, no Period Weighing Factor for any hour shall exceed two and one-half (2.5), and there shall be no more than three (3) periods in any Day and no more than five (5) periods in any two (2) consecutive Days provided however that during the loan repayment period the Period Weighing Factor shall continuously remain one (1) and the Power Purchaser shall not change the Period Weighing Factor without the GOP's written approval.

Section 5.14 Adequate Fuel Supply and Inventory; Fuel Supply Agreement

- (a) On or before the Effective Date, the Company shall provide reasonable evidence to the Power Purchaser that the Company has, or has procured from a reliable supplier and transporter through one or more commercially reasonable fuel supply agreements, supplies of fuel and the capacity to process, transport, store, and handle such fuel for use as fuel at the Complex in such quantities and at such rates to allow the Company to generate Net Electrical Output at the Contract Capacity during the Term as is contemplated in this Agreement. The pricing terms for fuel, including price adjustment or indexation, minimum take obligations, if any, and measurement of fuel units for sale under the Fuel Supply Agreement shall be subject to the approval of the Power Purchaser (such approval not to be unreasonably withheld or delayed). After such approval, no such terms in the Fuel Supply Agreement shall be changed, amended or modified without the prior written approval of the Power Purchaser (such approval not to be unreasonably withheld or delayed).
- (b) The Company shall maintain on the Site, an inventory of the Fuel for [.] ([.]) Days at full load, provided that for the purposes of this Section 5.14(b), all firm orders placed with the Fuel Supplier against advance payment shall be deemed to be included in the inventory of the Fuel on the Site.

Section 5.15 Tampering with the Metering System

The Company shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper, with the Metering System. Should the Company breach the foregoing covenant, the Company shall (a) take all remediable action reasonably acceptable to the Power Purchaser and NTDC to ensure that such tampering does not reoccur, including the development or addition of security systems, and (b) compensate the Power Purchaser for two (2) times the amount or reasonably estimated amount of any overpayment by the Power 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 (unless the Company demonstrates to the reasonable satisfaction of the Power Purchaser and NTDC, 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 Power Purchaser for any such breach and, subject to Sections 16.1(h) and Section 16.4, shall be the sole remedy of the Power Purchaser therefor. The Company waives, to the fullest extent permitted by law, any claim that such compensation is void as a penalty.

Section 5.16 Cessation of Operation of the Complex

- (a) If, after the Commercial Operations Date, without the prior written consent of the Power Purchaser, the Company shall have ceased to declare Available Capacity substantially equal to the then-prevailing Tested Capacity or to comply with the Despatch Instructions for a period of forty-eight (48) consecutive hours other than

because of any of the events described in Section 5.4(d), any Forced Outage or Partial Forced Outage which NTDC does not dispute, Scheduled Outage, Maintenance Outage, or any act of the Power Purchaser that effectively constitutes ejection of the Company or its Contractors from the Complex, then NTDC shall notify the Power Purchaser of any such event within [.] hours and the Power Purchaser or its nominee shall, subject to the restrictions set forth in this Section 5.16, be entitled to enter the Complex and operate it until the Company demonstrates to the reasonable satisfaction of the Power Purchaser that the Company 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, and 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 Power Purchaser or its nominee shall operate the Complex pursuant to this Section, the Power Purchaser shall (i) operate directly or through its nominee the Complex within the Technical Limits, (ii) bear all costs of such operation (including, without limitation, fixed and variable costs), and (iii) continue to pay to the Company the Debt Servicing Component of the Capacity Payments as the Company would otherwise be entitled to during such period.

- (b) Notwithstanding the foregoing and any other provision in this Agreement to the contrary, if any insurance cover obtained by the Company and is set forth in Schedule 8 is not available or in effect during any time that the Power Purchaser directly or through its nominee is entitled to operate the Complex pursuant to this Section 5.16 or does not cover such operation, then the Power 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 Power Purchaser either:
- (i) obtains, and thereafter continuously maintains, and provides written evidence to the Company and the Agent of the procurement of, the policies of insurance set forth in 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 Company, and (B) with an internationally reputable insurer(s) with a rating(s) of not less than the rating of the insurer that provided the policies of insurance which had been most recently procured by the Company; or
 - (ii) agrees in writing to defend, indemnify and hold the Company harmless from and against any loss or damage sustained as a result of an event that occurred during the period of the Power Purchaser's or its nominee'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 Company most recently had in effect prior to the Power Purchaser's or its nominee'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 Power Purchaser obtains insurance pursuant to this Section 5.16, (i) the Company and the Lenders (so long as they shall have an insurable interest in the Complex) shall be named as joint insureds 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 Company shall reimburse the Power Purchaser for the actual out of pocket costs of such insurance and all reasonable administrative costs incurred by the Power Purchaser in procuring such insurance.
- (d) Notwithstanding any other provision of this Agreement to the contrary, the Power Purchaser shall indemnify, defend and hold harmless the Company from any loss or damage to the Complex incurred or sustained by the Company by reason of the Power Purchaser's or its nominee'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 Company's insurance.

Section 5.17 Free of Liens

The Company 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 Company Interconnection Facilities

- (a) The Company shall carry out or cause to be carried out the Company 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 Company Consents;
 - (iii) the Generation Licence, if applicable;
 - (iv) Prudent Utility Practices and Prudent Electrical Practices;
 - (v) Schedule 3; and
 - (vi) the design specifications of NTDC applicable at the relevant time (a copy of which shall be provided to the Company by the NTDC in a reasonably timely manner),

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

- (b) The design, scope and specification of the Company Interconnection Works are set out in Schedule 3. The Company shall give the Power Purchaser and NTDC in the Construction Reports not less than thirty (30) Days' prior notice of the date from which it or its Contractor will commence the Company Interconnection Works and shall complete the Company Interconnection Works in accordance with the Interconnection Works Schedule. Subject to Section 4.3 and Section 5.1 of the Implementation Agreement, the Company shall procure (or shall cause its Contractor in respect of the Company Interconnection Works to procure) all Company Consents necessary for carrying out the Company Interconnection Works.

Section 6.2 NTDC Interconnection Facilities

NTDC shall be responsible for the design, construction, financing, completion and commissioning of the NTDC Interconnection Facilities in accordance with Schedule 3. NTDC shall carry out, or cause to be carried out, the NTDC Interconnection Facilities 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 NTDC Consents;

(iii) Prudent Utility Practices and Prudent Electrical Practices,

so that the NTDC 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 NTDC Interconnection Facilities

Within three (03) Months after the execution of this Agreement, the Company shall provide to NTDC the information required in Schedule 3. Based upon this information, NTDC will design, construct and complete the NTDC Interconnection Facilities within the time required by Section 6.5. Within ten (10) Days of a request by NTDC, the Company shall provide all additional information reasonably requested by NTDC in connection with its completion of the NTDC Interconnection Facilities. NTDC shall use such supplemented information in its final design of the NTDC Interconnection Facilities. The timely provision by the Company of such supplemental or additional information shall not modify the obligation of the NTDC to complete the NTDC Interconnection Works as required herein.

Section 6.4 Granting of Easements and Right-of-Way

- (a) If required, the Company shall grant to NTDC for the duration of the Term easements and rights of way across the Site reasonably necessary to carry out and complete the NTDC Interconnection Works and to operate, maintain, replace and/or remove the NTDC Interconnection Facilities. The easements shall grant to NTDC continuing rights adequate for the purposes set forth in this Section 6.4 to enter the Site subject only to NTDC giving prior notice to the Company. Upon request by NTDC, the Company shall execute such easements, right of way, licenses and other documents, each in recordable form, as NTDC 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. Revocable licenses and easements, if any, granted to NTDC pursuant to this Section 6.4 shall include such reasonable further term, not to exceed one hundred and twenty (120) Days beyond the Term, to allow NTDC to remove the NTDC Interconnection Facilities. When on Site, NTDC shall comply with all reasonable instructions of the Company 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, NTDC shall indemnify and hold the Company and the Contractors harmless from any loss or damage sustained on account of the NTDC'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), NTDC shall be responsible for obtaining all right-of-way, easements and other real or personal property interests necessary to construct, complete, operate and maintain the NTDC Interconnection Facilities during the Term.

Section 6.5 Construction and Completion of NTDC Interconnection Facilities

- (a) On or after the date of execution of this Agreement, the Company shall give to the Power Purchaser and NTDC not less than [thirty (30) months] prior written notice of the Scheduled Commercial Operations Date then anticipated by the Company. Following the receipt of such notice, NTDC shall commence the final design of the NTDC Interconnection Facilities. Thereafter, NTDC shall give the Company and the Power Purchaser reports on the progress of the NTDC Interconnection Works as appropriate until the same are completed. NTDC shall complete the NTDC Interconnection Works and be able to absorb into the Grid System electrical power generated by the Complex as is necessary to enable the Company to carry out the pre-commissioning of the Complex and the Commissioning Tests no later than sixty (60) Days prior to the Synchronization Date of the first Unit which is anticipated to be [.] (“**Scheduled Synchronization Date of first Unit**”); provided, however, that such completion date shall be extended on a Day-for-Day basis for any changes in the Scheduled Synchronization Date of first Unit and to the extent necessary because of the occurrence of any of the following:
- (i) the failure by the Company to execute, in sufficient time for NTDC to complete the NTDC Interconnection Facilities, such easements, rights-of-way, licences and other documents, each in recordable form, as NTDC may reasonably require to record the deeds, easements, rights-of-way and licences granted pursuant to Section 6.4;
 - (ii) the failure by the Company to provide NTDC, on a timely basis, with any technical data not included in Schedule 3 available to the Company and requested by NTDC relating to the Complex reasonably necessary for NTDC to undertake the design, construction, installation, commissioning, maintenance and operation of the NTDC Interconnection Facilities;
 - (iii) a Force Majeure Event (excluding PPFME and CLFME) that materially and adversely affects the NTDC’s ability to perform its obligations in accordance with this Article VI;
 - (iv) any other failure by the Company to perform in accordance with this Agreement that materially and adversely affects NTDC’s ability to perform its obligations in accordance with this Article VI;

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

- (b) If NTDC has not completed, Commissioned and energized the NTDC Interconnection Works by the date required in this Section 6.5, as such date may be extended pursuant to 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 NTDC Interconnection Works are completed. In addition, if NTDC has not completed the NTDC Interconnection Works by the date which is fifteen (15) Days following such date, and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer under Section 8.3, then NTDC shall pay to the Company, Monthly in arrears, (and prorated for any portion of a Month) an amount equal to the sum of (i) Carrying Costs, (ii) fifty percent (50%) of the “Insurance Component, (iii) fifty percent (50%) of the Fixed O&M (Foreign) Component, (iv) fifty percent (50%) of the Fixed O&M (Local) Component; and (v) subject to clarification by NEPRA (if required), the Return on Equity Component, of the Capacity Price as specified in the Tariff. For the purposes of calculating (ii), (iii), (iv), and (v), the Contract Capacity shall be deemed to be the Available Capacity.

The Return on Equity during the extended construction period on account of such delay shall be accrued and payable through the updating of Reference Tariff Table 1 in Schedule 1 at the time of the Commercial Operations Date.

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 NTDC Interconnection Works and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not); provided, however, that the payment of such amounts by NTDC and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of the Certificate of Readiness for Synchronization for the first Unit and a certification by the Engineer that the delay caused by NTDC has caused the then scheduled Commissioning Tests to be delayed. NTDC shall notify the Company and the Power Purchaser at the end of any such delay. In addition to the payments set out in this Section above, if the delay by NTDC in completing the NTDC Interconnection Facilities continues beyond the sixtieth (60th) Day following the date of the issuance by the Engineer of the Certificate of Readiness for Synchronization for the first Unit and a simultaneous certification by the Engineer that the delay caused by NTDC would likely cause the then scheduled Commissioning Tests to be delayed, NTDC shall also be required to pay the principal debt payments when due under the Financing Documents; provided, that such principal debt paid by NTDC under this Section 6.5 shall be excluded in any determination or calculation of the Tariff at the Commercial Operation Date to be

paid by the Power Purchaser hereunder. Such principal debt payment shall be due from NTDC on the later of thirty (30) Days following receipt of an invoice therefor or the due date for such payment under the Financing Documents (but in no event earlier than the sixtieth (60th) day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay), 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 Financing Documents. Such payments shall continue until the earlier of (i) the end of a period equal to the period of delay in completing the NTDC Interconnection Works and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not).

- (c) NTDC 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 NTDC's delay or deferral of such tests. If payments by NTDC 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 Company shall be entitled to no other compensation or claim for damages under this Agreement as a result of delay in the completion of the NTDC Interconnection Facilities or deferral of the Commissioning Tests by NTDC.

Section 6.6 Protective Devices

- (a) As part of the Company Interconnection Works, the Company shall install protective relays in accordance with Schedule 3. The Company shall maintain the settings of all relays in the Complex at the levels agreed by the Company and NTDC, and the Company shall not change such settings without the prior consent of NTDC.
- (b) The Company and NTDC shall verify the operation of the protection devices in accordance with the testing programme set out in Schedule 3.
- (c) Subject to giving the Company reasonable notice, NTDC may require the Company to modify or expand the requirements for protective devices. Following approval by NTDC of the costs of such modification or expansion, the Company shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. NTDC 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 Company shall provide NTDC with an invoice for the reasonable and necessary costs therefor, together with supporting documentation with respect thereto. NTDC shall pay the Company the required amount within thirty (30) Days after delivery of the invoice by the Company.

- (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 Company and NTDC shall cooperate in testing the NTDC Interconnection Facilities and the Company 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.

**ARTICLE VII
METERING AND TELECOMMUNICATIONS**

Section 7.1 Metering Systems

- (a) The Parties acknowledge that for the purposes of determining Net Electrical Output of the Complex, the Metering Systems and Back-Up Metering Systems are required prior to the delivery of any Net Electrical Output to the Connection Point for sale hereunder.
- (b) Not later than one hundred and eighty (180) Days prior to the then Scheduled Commercial Operations Date, NTDC shall have procured, at its expense, and shall provide to the Company, the Metering System. If NTDC has not provided the Metering System to the Company by such date, the Company may procure the Metering System and invoice NTDC for the reasonable cost thereof. As a part of the Metering System, NTDC shall procure and the Company shall install an electronic recorder or any other state-of-the-art recording equipment capable of making continuous recordings of the Net Electrical Output of the Complex, which, after procurement and installation by the Company shall constitute part of the Metering System. Such Net Electrical Output shall be recorded on appropriate magnetic media or equivalent, which recording shall be used to compute Energy Payments and liquidated damages under Section 9.2 and Sections 9.4(b) and (c) respectively.

Section 7.2 Installation of Metering Systems

- (a) The Company shall at its expense install the Metering System and shall procure and install the Back-Up Metering System (in accordance with Schedule 3 as per the design specifications of NTDC applicable at the relevant time (a copy of which shall be provided to the Company by the Power Purchaser in a reasonably timely manner)) which are consistent with the requirements in Schedule 6 and shall:
 - (i) provide exclusive dedicated sets of current and voltage transformers of accuracy class of 0.2s and 0.2 to measure current and voltage feeding the Metering System and Backup Metering System;
 - (ii) prior to the delivery of any Net Electrical Output from the Complex to the Connection Point for which payment is required to be made by the Power Purchaser hereunder, install, test and commission, and calibrate or recalibrate as necessary, the Metering System and the Back-Up Metering System on the Site, at locations as close to the Connection Point as reasonably practicable and as agreed by the Parties;
 - (iii) secure the Metering System and Back-Up Metering System in a locked and walled enclosure;

- (iv) Company shall be provided with a read-only facility displayed in the power plant control room for the purposes of determining the Net Electrical Output, if technically possible; and
 - (v) ensure that its Contractors, employees, agents and invitees (other than the Power Purchaser), and others for whom the Company 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 Company shall transfer possession (or if the Company has procured the Metering System, subject to payment therefor as provided in Section 7.1(b), ownership) of such Metering System to NTDC and NTDC shall thereafter be responsible for the ownership and maintenance of the Metering System. NTDC and Power Purchaser shall be provided with not less than forty-eight (48) hours' notice of and have the right to be present at and to observe the installation and all testing of the Metering System. The Company shall grant to NTDC and the Power 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) NTDC and Power Purchaser shall be given not less than forty-eight (48) hours notice of all tests of the Metering System and the Back-Up Metering System carried out by the Company pursuant to Section 7.2(a) and shall have the right to witness such tests, as well as any inspection of the Metering System and the Back-Up Metering System or adjustments thereof; provided that if NTDC representative fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment. After the Metering System has been conveyed to NTDC pursuant to Section 7.2(b), NTDC shall test the accuracy of the Metering System at any time that the readings of electrical energy from the Metering System and the Back-Up Metering System differ by an amount greater than one-half of one percent (0.5%). In such an event, NTDC shall test the accuracy of the Metering System and recalibrate the Metering System, if necessary. NTDC shall give the Company not less than forty-eight (48) hours' notice of such tests and the Company shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided, that if the Company representative fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment.
- (b) Following testing and any recalibration, if necessary, and return to service of the Metering System pursuant to Section 7.3(a), above, the Company shall test the accuracy of the relevant Back-Up Metering System and recalibrate the relevant Back-Up Metering System, if necessary. The Company shall give NTDC no less than forty-eight (48) hours notice of such tests and NTDC 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 NTDC 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 Company believes that the Metering System is inaccurate it shall inform NTDC, requesting that the Metering System's accuracy be tested, and NTDC shall test the Metering System within a reasonable time. If NTDC believes that the Metering System is inaccurate it shall inform the Company, and NTDC shall test the Metering System within a reasonable time. NTDC shall give the Company no less than forty eight (48) hours notice of such tests and the Company shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided that if the Company fails to attend such tests, inspection or adjustment such right shall have been waived with respect to such test, inspection and/or adjustment. The Company shall bear the cost of such additional test unless the test indicates that the Metering System, is inaccurate by more than one-half of one percent (0.5%), in which case NTDC 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 NTDC believes that the Back-Up Metering System is inaccurate it shall inform the Company, requesting that the Back-Up Metering System's accuracy be tested, and the Company shall test the Back-Up Metering System within a reasonable time. If the Company believes that the Back-Up Metering System is inaccurate it shall inform NTDC, and the Company shall test the Back-Up Metering System within a reasonable time. The Company shall give NTDC no less than forty eight (48) hours notice of such tests and NTDC 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 NTDC fails to attend such tests, inspection or adjustment such right shall have been waived with respect to such test, inspection and/or adjustment. NTDC shall bear the cost of such additional test unless the test indicates that the Back-Up Metering System is inaccurate by more than one-half of one percent (0.5%), in which case the Company shall bear the cost of the additional test.

Section 7.4 Reading Meters

- (a) NTDC shall, at its own cost and expense, procure and the Company shall install electronic data recording system capable of recording the Net Electrical Output measured by the Metering System on a continuous basis and capable of storing such recordings for not less than ninety (90) Days and the Company 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 no 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 Electrical Output 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 NTDC 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 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 by the Metering Committee 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 Company shall take such reading during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) the Company shall give NTDC at least forty-eight (48) hours notice of the time the Company intends to take such reading and NTDC shall have the right to witness any such reading;
 - (iv) if a NTDC representative is present at such reading, then such reading shall be jointly taken and recorded;
 - (v) if a NTDC representative is not present at such reading, then the Company representative shall take and record such reading and make a photographic record thereof;
 - (vi) the Company 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 Company to NTDC and the Power Purchaser within two (2) Business Days after the readings are taken.
- (c) The Metering System shall be used to measure the Net Electrical Output, 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 Electrical Output and the provisions of Section 7.4(a) and Section 7.4(b) shall

apply to the reading of the Back-Up Metering System.

- (d) If, in any test carried out pursuant to Section 7.3(a), the Metering System is found to be inaccurate by more than one-half of one percent (0.5%), or is otherwise unavailable or functioning improperly, then the correct amount of Net Electrical Output delivered at the Connection Point for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
- (i) the readings of the Back-Up Metering System shall be used to calculate the correct amount of Net Electrical Output, unless a test of such Back-Up Metering System, as required by either Party, reveals that the Back-Up Metering System is inaccurate by more than one-half of one percent (0.5%) or is otherwise functioning improperly;
 - (ii) if the Back-Up Metering System is found to be inaccurate by more than one-half of one percent (0.5%) or is otherwise unavailable or functioning improperly, then the Company and NTDC 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 Company and NTDC;
 - (iii) if NTDC and the Company fail to agree upon an estimate for the correct reading, the Company 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 Power Purchaser for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Company 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-half of one percent (0.5%) and not otherwise functioning improperly.

Section 7.5 Sealing of Metering Systems

- (a) The Metering System and the Back-Up Metering System shall be sealed by the Metering Committee.
- (b) Seals on the Metering System shall be broken only by the NTDC's personnel acting in accordance with the terms of this Agreement. NTDC shall give the Company 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 NTDC's personnel, and the Company 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 Company personnel acting in accordance with the terms of this Agreement. The Company shall give NTDC 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 Company personnel, and NTDC 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-half of one percent (0.5%) or is otherwise unavailable or functioning improperly, then the provisions of Section 7.4(d) shall apply to determine the correct amount of Net Electrical Output.

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 set out in this Agreement, or otherwise not functioning properly, NTDC 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 Company 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 shall be jointly sealed in accordance with Section 7.5.

Section 7.7 Protective Devices; Telecommunications Circuit

- (a) Not later than one hundred and twenty (120) Days prior to the Commercial Operations Date and in any event before any Net Electrical Output is delivered from the Complex to the Connection Point, the Company shall at its own cost and expense procure and shall have installed and have operational the following equipment:
 - (i) Telecommunications and tele-protection equipment (optical phiber ground wire ("OPGW")) along with a backup arrangement via digital power line carrier)

reasonably acceptable to NTDC and the Power Purchaser at the Complex and compatible with similar equipment at the Power Purchaser's [] kV grid.

- (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 for the Power Purchaser's SCADA System at the Control Centre satisfying NTDC's reasonable requirements, which tele-metering and data system interface is described in Schedule 3.
- (b) The selection and installation of items to be provided by the Company in accordance with this Section 7.7 shall be subject to the prior written approval of NTDC.
- (c) The Company shall procure identical telecom equipment at the request of and on behalf of NTDC for NTDC Interconnection Facilities according to the equipment list specified by NTDC. The Company shall provide details of the proposed order (including description of equipment, quantities and price) and NTDC shall approve the same within Thirty (30) Days from submission to it. The costs of such equipment shall be reimbursed by NTDC within sixty (60) days of submission of the invoice by the Company.

**ARTICLE VIII
TESTING AND CAPACITY RATINGS**

Section 8.1 Testing of the Complex Prior to Commercial Operations Date

- (a) The Company shall provide the Power Purchaser and NTDC on an on-going basis with relevant information regarding its programme for testing the Complex and the Schedule therefor. Not less than thirty (30) Days prior to the commencement of such test programme, the Company will deliver to the Power Purchaser and NTDC in writing the final programme for testing the Complex, including the expected duration of the Company's start-up testing programme and a tentative schedule for conducting all tests required under Sections 8.2 and 8.3. The Company shall advise the Power Purchaser and NTDC in writing of any changes in its final schedule for the testing programme not 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 Power Purchaser's and NTDC's obligations under this Agreement without the prior written consent of the Power Purchaser and NTDC. If the schedule for any test required under Section 8.2 or 8.3 is adjusted after the Company has provided the Power Purchaser and NTDC with the final testing programme schedule, then the Company shall advise the Power Purchaser and NTDC not 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 Company shall provide the Power Purchaser and NTDC 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 and test criteria provided in Schedule 7.
- (b) If NTDC is unable to accommodate the schedule for such test or tests as provided by the Company in the final schedule for the programme of tests pursuant to Section 8.1(a), NTDC will give the Company 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 Company and NTDC will mutually agree on a date for any deferral test or programme of tests; provided, however, that should NTDC defer or delay any Commissioning Tests beyond fifteen (15) Days 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, then NTDC shall be liable to the Company 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" and fifty percent (50%) of the "Fixed O&M Component" of the Capacity Price assuming the Contract Capacity as Available Capacity. The Return on Equity during the extended construction period on account of such delay shall be accrued and payable through the updating of Reference Tariff Table 1 in Schedule 1 at the time of the Commercial Operations Date. 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 NTDC 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 NTDC would likely cause the then scheduled Commissioning Tests to be delayed or deferred. NTDC shall notify the Company and the Power Purchaser at the end of any such delay or deferral. In addition to the payment of the Carrying Costs plus fifty percent (50%) of the “Insurance Component” and fifty percent (50%) of the “Fixed O&M Component” of the Capacity Price assuming the Contract Capacity as Available Capacity, if the delay or deferral of the Commissioning Tests by NTDC continues beyond the sixtieth (60th) Day following the date of the issuance by the Engineer of the two (2) certificates mentioned in this Section 8.1, NTDC shall also be liable for the principal debt payments when due under the Financing Documents; provided that no principal debt paid under this Section 8.1(b) shall be included in any determination or calculation of the Tariff at the Commercial Operations Date to be paid by the Power Purchaser hereunder. Such principal debt payment due from NTDC on the later of thirty (30) Days following receipt of an invoice therefor or the due date for such payment under the Financing Documents, which invoice shall be signed by the Lender or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the Financing Documents. Such debt payments shall continue until the earlier of (i) the end of a period equal to the period of delay or deferral of any Commissioning Test or Commissioning Tests and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not).

In addition, the Required Commercial Operations Date shall be extended on a Day-For Day basis by the number of Days the Commissioning Tests are delayed due to NTDC, as certified by the Engineer in accordance with this Section.

- (c) NTDC shall have no obligation or liability to make the payments provided in this Section 8.1 if and to the extent that the delay in the programme of Commissioning Tests would nevertheless have occurred regardless of NTDC’s delay or deferral of such tests. If payments by NTDC 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 Company 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 NTDC.

Section 8.2 Tests Prior to Synchronization of the Complex

Prior to synchronization of the Complex with the Grid System, the Engineer shall deliver to the Company and the Power Purchaser and NTDC 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 Company 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/engine governor control checks, including a steam governor over speed test;
- (c) open and short circuit tests on each generator; and
- (d) functional testing and timing of high voltage switchgear in the switchyard of the Complex.
- (e) The Company and NTDC shall verify that the protection level settings for the following are as agreed by the Operating Committee:
 - (i) stator earth fault;
 - (ii) negative phase sequence;
 - (iii) generator transformer over-current and earth fault; and
 - (iv) high voltage bus-bar protection.
- (f) Voltage phasing checks will be carried out between the sub-station of the Complex and the Grid System.
- (g) All inter-tripping circuits between the Complex and the NTDC's equipment will be proved.

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

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

- (a) After first synchronizing the Complex, initial operational testing of the Complex shall be conducted by the Company or its Contractors. Once the Company is satisfied that the Complex is capable of continued reliable operation, the Company shall request the Engineer to issue the Certificate of Readiness. Upon the issuance by the Engineer of the Certificate of Readiness, the Company shall so notify the Power Purchaser and NTDC and carry out or cause its Contractors to carry out, the following tests (the "Commissioning Tests"), which if the Complex satisfies the minimum performance criteria therefor, will result in the Complex being Commissioned and in the establishment of the Commercial Operations Date in accordance with Section 8.3(c)(iii):

- (i) initial Tested Capacity test;
- (ii) reliability run test;
- (iii) automatic voltage regulator operation test;
- (iv) engine/turbine governor operation (droop) test;
- (v) reactive capability;
- (vi) minimum load capability;
- (vii) response of 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 Initial Tested Capacity.

Upon completion of the reliability run test prerequisites as included in Schedule 7, the Company shall declare to the Power Purchaser and NTDC 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 initial Tested Capacity of the Complex will be determined 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 Company will declare to the Power Purchaser and NTDC the commencement of the test and will record the reading of the Metering System.
- (iii) The test duration will be six (6) continuous hours and, at the end of this period, the Company will record the new reading of the Metering System. The initial Tested Capacity 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 Conditions; provided, that, subject to Section 2.9(b), the initial Tested Capacity shall not be considered to have been established unless the result of such determination is equal to or greater than the Contract Capacity and satisfies the minimum criteria for such test set forth in Schedule 7. At the completion of the Commissioning Tests, the initial Tested Capacity (adjusted to Reference Conditions) shall be certified by the Engineer (the "Capacity Test Certificate").

- (c) Additional Commissioning Tests.
- (i) The Company shall not be entitled to carry out more than ten (10) 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 Company shall be counted against such ten (10) Commissioning Tests if the Company is prevented from completing the test due to a reason attributable to any event or circumstance described in Section 5.4(d). The Company shall give the Power Purchaser and NTDC 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 Company shall notify the Power Purchaser and NTDC that the Company has designated such test as the Commissioning Test and shall set the initial Tested Capacity at the level certified in the Capacity Test Certificate; provided, however, that 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 initial Tested Capacity need only be long enough to satisfy the requirements of Sections 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 and Capacity Payments shall commence as of the first Day after the Day the Complex is Commissioned when declared by the Company and subsequently certified in writing by the Engineer.

Section 8.4 Testing of Tested Capacity After Commercial Operations Date

- (a) During each Demonstration Period a test (the “Annual Capacity Test”) shall be conducted to determine the Tested Capacity of the Complex. At any time during a Demonstration Period, the Company may, after running for at least seventy-two (72) consecutive hours during which the Net Electrical Output shall be at least ninety-five percent (95%) of the Despatch Instruction or Revised Despatch Instruction, declare the immediate six (6) hour period thereafter to be the Annual Capacity Test period; provided, that the Power Purchaser and NTDC have jointly scheduled in excess of ninety-five percent (95%) of the Tested Capacity of the Complex for that seventy-two (72) hour period or more in its notification of requirements to be given to the Company pursuant to Section 5.2(b). Upon the Company declaring an Annual Capacity Test period the Despatch level for the Annual Capacity Test period shall be deemed to be the maximum capability of the Complex, and the Complex shall not be controlled by AGC.
- (b) The Annual Capacity Test period shall be for six (6) continuous hours. The test shall be run using the Metering System and plant instrumentation for measurements, unless otherwise decided by the Operating Committee. The Tested

Capacity shall be the Net Electrical Output during those six (6) hours divided by six (6), adjusted to Reference Conditions and applying any necessary corrections for over-loading of the Complex and auxiliaries load correction, if any, but shall not exceed the Contract Capacity. For purposes of determining Capacity Payments payable pursuant to Section 9.1 the Tested Capacity so established as above, shall be effective from the Day after such testing is complete.

- (c) In the event that the Company has not declared an Annual Capacity Test period within thirty-five (35) Days of the start of a Demonstration Period, then if:
 - (i) The Power Purchaser and NTDC have not jointly scheduled the required level and duration of generation pursuant to Section 8.4(a) during the thirty-five (35) Day period, such that the Company was able to declare an Annual Capacity Test period, then the Company may request an Annual Capacity Test; or
 - (ii) The Power Purchaser and NTDC did jointly schedule the required level and duration of generation pursuant to Section 8.4(a) during the thirty-five (35) Day period, such that the Company was able to declare an Annual Capacity Test but elected not to declare an Annual Capacity Test, then the Power Purchaser and NTDC may jointly request an Annual Capacity Test.
- (d) If either Party requests a test pursuant to Section 8.4(c), then such test shall be performed in accordance with the provisions of Section 8.4(b) within seven (7) Days following such request, provided that such request is made at least fourteen (14) Days prior to the end of the Demonstration Period. The Company shall give the Power Purchaser and NTDC not less than forty-eight (48) hours' notice of its intention to perform the test.
- (e) Either Party may, within twenty-four (24) hours of completion of any test, reject the test and may conduct a retest, provided, however, the test disputing Party cannot conduct more than two retests. The Company shall give the Power Purchaser and NTDC at least twenty-four (24) hours notice of the retest and the retest shall be conducted within six (6) Days of the completion of the rejected test.
- (f) Either Party shall be entitled to request one test of Tested Capacity of the Complex between any two consecutive Demonstration Periods. Either Party shall be entitled to one retest of any such test provided that it rejects the test within twelve (12) hours of completing the test. The test and, as appropriate, the retest shall be conducted in accordance with Section 8.4(b), within six (6) Days of its request or, as the case may be, the rejection and the Company shall give the Power Purchaser and NTDC not less than forty-eight (48) hours notice of its intention to perform the test.

Section 8.5 Notice of and Compliance with Testing Procedures

The Company shall carry out Commissioning of the Complex, testing the Tested Capacity of the

Complex as a part thereof and test the Tested Capacity of the Complex thereafter in accordance with Sections 8.2 through 8.4. The Power Purchaser and NTDC shall use their reasonable efforts to comply promptly with all reasonable requests by the Company for assistance in carrying out such testing and Commissioning. The Power Purchaser and NTDC shall be given not less than twenty-four (24) hours prior written notice of any testing or Commissioning in accordance with Sections 8.2 through 8.4 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 not carried out in accordance with this Article VIII and Schedule 7.

Section 8.6 Tested Capacity

- (a) The “Tested Capacity” shall initially be the generation capacity demonstrated by the Commissioning Tests for the Complex, as certified by the Engineer in the Capacity Test Certificate and shall be applicable at and from the Day following the date of completion of Commissioning until revised by the Annual Capacity Test pursuant to Section 8.4.
- (b) On completion of such initial Capacity Test (or additional test carried out pursuant to Section 8.3(c)), the Engineer shall deliver to the Power Purchaser, NTDC and the Company the Capacity Test Certificate, certifying the Tested Capacity, which shall be applicable from the Day following the date of completion of the Commissioning Tests, unless and until revised pursuant to Section 8.4.

Section 8.7 Payment for Net Electrical Output during Testing

- (a) For any Net Electrical Output delivered after synchronization of the Complex with the Grid System at any time prior to the Commercial Operations Date, the Power Purchaser shall pay the Company only the Fuel Cost Component of the Energy Price for Net Electrical Output in accordance with Section 9.6.
- (b) For Net Electrical Output delivered during any Capacity Tests (including any retest thereof) after the Commercial Operations Date carried out pursuant to Section 8.4, the Power Purchaser shall pay the Company the Energy Price in accordance with Section 9.6.
- (c) The Power Purchaser shall have no obligation to pay for any Net Electrical Output delivered to the Connection Point during testing except as provided in Section 8.7(a) and Section 8.7(b).

Section 8.8 Copies of Test Results

The Company shall provide the Power Purchaser and NTDC with copies of the test results of all tests performed pursuant to Sections 8.2 through 8.4 above and after every general overhaul of a Genset or a Steam Unit at the Complex. The Power Purchaser and NTDC shall not use or

disclose such results other than in connection with the administration and enforcement of this Agreement.

Section 8.9 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 Company is required to undertake additional tests of a Genset or a Steam Unit³ or the Complex that are not required under this Article VIII and which require that electric energy is delivered to the Grid System, NTDC shall accommodate such tests as soon as reasonably practicable following a request therefor from the Company; provided that NTDC shall, except in the case of an Emergency, accommodate such test and allow the Company to deliver electric energy into the Grid System (without cost to the Power Purchaser) not later than the end of the immediately following Off-Peak Period following the receipt of such request from the Company and in any event within twenty-four (24) hours following such request.

Section 8.10 Testing Disputes

Any Dispute between the Parties 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 Section 18.3. At the request of any 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 to the dispute.

³ This will also require modification keeping in view type of Power Plant.

**ARTICLE IX
COMPENSATION, PAYMENT AND BILLING**

Section 9.1 Capacity Payments

- (a) Subject to Section 2.2(b) and Section 9.6(c), from and after the Commercial Operations Date, the Power Purchaser shall pay the Company the Capacity Payments, in accordance with the procedures specified in Section 9.6, for the Available Capacity for each Month (or part-Month), such payments being calculated in accordance with this Section 9.1 and the provisions of Schedule 1.
- (b) For the purposes of calculating Capacity Payments in Section 9.1(a) and Schedule 1, the “Available Capacity” shall in any hour be the Declared Available Capacity as communicated to the Power Purchaser and the Company by NTDC, unless:
 - (i) the Company has informed NTDC of a Revised Declared Available Capacity in accordance with Section 5.3(c) that is less than the Declared Available Capacity of the Company prevailing at the Declaration Deadline, in which case the Available Capacity for that hour shall be the Revised Declared Available Capacity (at the forecasted Ambient Site Condition prevailing at the time of the declaration),
 - (ii) the Company has informed NTDC of an Adjusted Declared Available Capacity in accordance with Section 5.3(e) that is greater than or less than the Declared Available Capacity of the Company prevailing at the Declaration Deadline, as applicable, in which case the Available Capacity for that hour shall be the Adjusted Declared Available Capacity (at the forecasted Ambient Site Condition prevailing at the time of the declaration),
 - (iii) the Company has informed NTDC of a Revised Declared Available Capacity in accordance with Section 5.3(c)(ii) that is greater than the Declared Available Capacity of the Company prevailing at the Declaration Deadline, in which case the Available Capacity for that hour shall be the Revised Declared Available Capacity (at the forecasted Ambient Site Condition prevailing at the time of such declaration) notified at least four (4) hours prior to the start of the relevant hour as per Section 5.3(c)(ii) unless adjusted on account of Section 5.3(e) in such case the Adjusted Declared Available Capacity, as notified up to forty five (45) minutes prior to the start of such hour), shall be applicable, or
 - (iv) the Net Electrical Output is less than the Despatched Net Electrical Output due to reasons other than those described in section 5.4(d), in which case the Available Capacity for the applicable hour shall be the capacity, in MW, as determined by the Net Electrical Output for such hour.

- (v) Notwithstanding anything to the contrary contained in this Agreement, should the Complex be Despatched up to the Declared Available Capacity or the Revised Declared Available Capacity or the Adjusted Declared Available Capacity and the Net Electrical Output is more than the Despatched Net Electrical Output for that hour then in that case the Available Capacity for that hour shall be the capacity, in MW, as determined by the Net Electrical Output for such hour subject to a maximum upper limit of one hundred and one and one fifth percent (101.2%) of the Despatched Net Electrical Output.
- (c) In addition to the payment by the Power Purchaser of Capacity Payments for the Available Capacity pursuant to Section 9.1(a), from and after the Commercial Operations Date, the Power Purchaser shall pay to the Company the Capacity Price for each kW of the then prevailing Tested Capacity then unavailable during any period during which the Complex is undergoing a Scheduled Outage scheduled by the Company in accordance with Section 5.5; provided that the total outages for which payment will be made by the Power Purchaser under this Section 9.1(c) in any Agreement Year shall not exceed the product of the then-prevailing Tested Capacity and the number of hours permitted for Scheduled Outages under Section 5.5 in the relevant Agreement Year.
- (d) In addition to the payment by the Power Purchaser of Capacity Payments for the Available Capacity pursuant to Section 9.1(a) and for payments during Scheduled Outages pursuant to Section 9.1(c), from and after the Commercial Operations Date, the Power Purchaser shall pay to the Company the Capacity Price for each kW of the then prevailing Tested Capacity then unavailable during any period during which the Complex is undergoing a Forced or Partial Forced Outage notified by the Company not later than one (1) hour (except in the case of an emergency shutdown) prior to the relevant hour or a Maintenance Outage notified by the Company in accordance with Section 5.3(b) and Section 5.6; provided, that the total outages for which payment will be made by the Power Purchaser under this Section 9.1(d) in any Agreement Year shall not exceed the product of (i) the then prevailing Tested Capacity and (ii) [.] ([.]) hours plus the number of hours, not to exceed [.] ([.]) hours (measured on a total Complex basis), for which the Company has not received payment under Section 9.1(c) in the relevant Agreement Year as a result of completing the Scheduled Outage in less time than is allowed therefor.
- (e) If, during the Term, the Tested Capacity of the Complex as determined by two (2) consecutive Annual Capacity Tests is reduced by an amount that exceeds six percent (6%) of the Contract Capacity and if there are any further reductions in Tested Capacity in excess of two percent (2%) of the Contract Capacity thereafter, then in each case the “Reference Non-Debt Service Component” of the Capacity Price for the present Agreement Year and each subsequent Agreement Year shall be adjusted so that, after such adjustment, the Capacity Price for the average Available Capacity provided for the Term, assuming average Available Capacity in each prior Agreement Year equal to the applicable Tested Capacity in

each such prior Agreement Year and average Available Capacity equal to the then prevailing Tested Capacity for the present Agreement Year and all subsequent Agreement Years for the remainder of the Term, shall equal the levelized Capacity Price shown in Annex 1 to Schedule 1. If the Company and the Power Purchaser cannot agree on the appropriate adjustment to the Capacity Price to be made in connection with the reduction in Tested Capacity, the matter shall be referred to an Expert for determination in accordance with Section 18.2. If, following any downward adjustment in the Capacity Price pursuant to this Section 9.1(f), the Tested Capacity is increased by one percent (1%) or more of the Contract Capacity, the “Reference Non-Debt Service Component”⁴ of the Capacity Price shall be adjusted upward in the like manner used for the downward adjustment.

Section 9.2 Energy Payments

Subject to Section 9.6(c), from and after the Commercial Operations Date, the Power Purchaser shall pay to the Company the Energy Payments in accordance with the procedures specified in Section 9.6 for Despatched and Delivered Net Electrical Output for the relevant Month (or part-Month), such payments being calculated in accordance with the provisions of Schedule 1.

Section 9.3 Pass-Through Item(s); Supplemental Tariffs

- (a) Subject to Section 9.6(c), the Power Purchaser shall pay the Company, in accordance with the procedures specified in Section 9.6, any amount for the Pass-Through Item(s) evidenced in accordance with this Agreement and Schedule 1. Each invoice for the Pass-Through Item(s) delivered to the Power Purchaser in accordance with Section 9.5 shall be accompanied by the invoice(s) or payment receipts to the Company for which recovery from the Power Purchaser is being sought. In addition to the other Pass-Through Items specified in this Agreement, if and to the extent required to be paid by the Company under the Laws of Pakistan, the Company shall be entitled to recover as a Pass-Through Item payments by the Company into the Workers’ Welfare Fund and the Workers’ Profit Participation Fund for its employees paid in accordance with the Laws of Pakistan.
- (b) Subject to Section 9.6(c), the Power Purchaser shall pay the Company, in accordance with the procedures specified in Section 9.6, the Supplemental Tariffs calculated by the Company in accordance with Schedule 1. Supplemental Tariffs shall be determined as provided in Schedule 1, and invoiced (i) in the same manner and on the same schedule as invoices for Capacity Payments as provided in Section 9.5(b)(i) (to the extent that the basis for such payments does not vary with the amount of Despatched and Delivered Net Electrical Output generated) and (ii) in the same manner and on the same schedule as invoices for Energy Payments, as provided in Section 9.5(b)(ii) (to the extent that the basis for such payments varies with the amount of Despatched and Delivered Net Electrical

⁴ This would require modification keeping in view current practice.

Output); provided, that if and to the extent that the Company has made the required notifications under Section 9.1(d), the Company shall not be liable to pay liquidated damages under this Section 9.3 in relation to the allowances provided in Section 9.1(d) for any delay or failure in notifying the Revised Declared Available Capacity as provided in this Section 9.3.

Section 9.4 Liquidated Damages

- (a) Without prejudice to the Power Purchaser's rights under Article XVI, the Parties agree that any liquidated damages payable under this Section 9.4 shall be the Power Purchaser's sole and exclusive remedy against the Company in respect of the matters to which such liquidated damages relate.
- (b) The following liquidated damages shall apply to Revised Declared Available Capacity provided that these liquidated damages shall apply and be payable by the Company only after the number of hours available to the Company under Section 9.1(d) have first been utilized:
 - (i) In respect of any Revised Declared Available Capacity intimated between twelve (12) hours and four (4) hours prior to the beginning of an Operating Day, the Company shall pay the Power Purchaser as liquidated damages an amount equal to ten percent (10%) of the difference between the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing twelve (12) hours before the start of the Operating Day and the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing four (4) hours before the start of the Operating Day multiplied by the applicable Capacity Price for the relevant hour of that Operating Day, adjusted in accordance with Schedule 1. No adjustment shall be made to the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) to the actual Ambient Site Condition.
 - (ii) In respect of any Revised Declared Available Capacity intimated less than four (4) hours prior to the beginning of an Operating Day, the Company shall pay the Power Purchaser, as liquidated damages, an amount equal to twenty percent (20%) of the difference between the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing four (4) hours before the start of the Operating Day and the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing at the start of the Operating Day multiplied by the applicable Capacity Price for the relevant hour of that Operating Day, adjusted in accordance with Schedule 1. No adjustment shall be made to the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) to the actual Ambient Site Condition.

- (iii) In respect of any upward revision to the Declared Available Capacity for any hour, with a notice at least four (4) hours prior to the start of the relevant hour to the Power Purchaser, no liquidated damages shall be payable. Such notice shall take effect from the start of the next operating hour in which such notice is delivered to the Power Purchaser. If the Company is Despatched according to the Revised Declared Available Capacity and the Company is unable to comply with such Despatch Instruction or Revised Despatch Instruction (or any Adjusted Declared Available Capacity related thereto), as applicable, liquidated damages shall be payable at twice the rate *i.e.* two hundred percent (200%) of those payable under Section 9.4(c).
- (c) If the Company fails to comply with a Despatch Instruction or a Revised Despatch Instruction (or any Adjusted Declared Available Capacity related thereto), for any hour, except to the extent such failure is as a result of any of the events set out in Section 5.4(d) and subject to Section 9.1(d), the Company shall pay to the Power Purchaser as liquidated damages an amount equal to one hundred percent (100%) of the difference between (i) the Declared Available Capacity or the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing at the start of the hour and (ii) the Available Capacity (as determined pursuant to Section 9.1(b)) for that hour multiplied by the applicable Capacity Price for such hour, adjusted in accordance with Schedule 1. The liquidated damages payable under this Section 9.4(c) shall be in addition to any liquidated damages payable under Section 9.4(b) for the same hour, to the extent liquidated damages are payable under both sections.
- (d) If the Company 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 Company shall pay the Power 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. 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 Power Purchaser as a result of the Company's failure to perform those matters for which liquidated damages are provided under this Section 9.4.
- (e) The Parties agree that the amounts of liquidated damages provided under this Section 9.4 are the Parties' reasonable and genuine estimates for the actual damages and/or losses that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

Section 9.5 Billing

- (a) At any time following the Commercial Operations Date, the Company may submit an invoice to the Power Purchaser for seventy percent (70%) of the

estimated Available Capacity (at the Reference Conditions) during that Month (or part-Month). Such invoice shall set forth for each hour of the relevant Month (or part-Month), the Capacity Price and the then-prevailing estimated Available Capacity (at the Reference Conditions), based on the then-prevailing Tested Capacity, adjusted for expected hours of unavailability not excused under Section 9.1(c) or 9.1(d).

- (b) At any time on or after first (1st) Business Day of each Month, the Company may submit an invoice to the Power Purchaser stated in Rupees for the following:
- (i) (A) the Capacity Payment (net of the amount shown in the invoice delivered pursuant to Section 9.5(a)) due in respect of the Available Capacity during the previous Month (or part-Month) and (B) seventy percent (70%) of the estimated Available Capacity during that Month. Such invoice shall set forth for each hour of the relevant Month (or part-Month) the Capacity Price, the Available Capacity and the then-prevailing Tested Capacity;
 - (ii) any Energy Payment due in respect of the previous Month (or part-Month); such invoice shall set forth for each hour of the relevant Month, the Energy Price as determined in accordance with Schedule 1, the Despatched and Delivered Net Electrical Output, the Fuel Cost Component, and such other information and calculations, in reasonable detail, so as to permit the Power Purchaser to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1;
 - (iii) (A) the Fuel Cost Component for all Net Electrical Output produced after synchronization of the Complex to the Grid System and prior to the Commercial Operations Date and due in respect of the previous Month (or part-Month), determined in accordance with Section 8.7 and Schedule 1, and (B) the Energy Price for all Net Electrical Output produced during an Annual Capacity Test or any additional Capacity Tests carried out pursuant to Article VIII, following the Commercial Operations Date and due in respect of the previous Month (or part Month); such invoice shall set forth the Energy Price or the Fuel Cost Component, as applicable, as determined in accordance with Section 8.7 and Schedule 1, the Net Electrical Output delivered during the relevant tests, and such other information and calculations, in reasonable detail, so as to permit the Power Purchaser to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1;
 - (iv) any Pass-Through Item due in respect of the previous Month (or part-Month) in accordance with Schedule 1;
 - (v) any Unit Start-Up Charges due in respect of the previous Month (or part-Month) as determined in Schedule 1;

- (vi) any interest payable hereunder on an amount not paid by the Due Date, showing the calculation of such claimed interest in reasonable detail; and
- (vii) any Supplemental Tariff due in respect of the previous Month (or part Month) in accordance with Schedule 1,

together with such supporting information as may reasonably be necessary to substantiate the amounts and quantities utilized as claimed in the invoice. Such supporting information shall include, *inter alia*, the relevant invoice from the relevant Fuel Supplier under the relevant Fuel Supply Agreement, the relevant Foreign Exchange Bulletins showing the applicable exchange values between the Rupee and the Dollar, the relevant US Bureau of Labour Statistics publication showing the relevant US consumer price index (All Urban Consumers) values, the relevant GOP Bureau of Statistics publication showing the relevant wholesale price index values, evidence of the relevant KIBOR and LIBOR values, as applicable, invoices or payment receipts for any amounts claimed as Pass-Through Items, and paper and electronic copies of meter readings showing the Despatched and Delivered Net Electrical Output and Net Electrical Output delivered during testing.

- (c) At any time after the first (1st) Business Day of each Month, the Power Purchaser may submit an invoice to the Company stated in Rupees, except for an invoice issued under Section 9.4(d), which shall be stated in Dollars, for (i) the amount of liquidated damages due to the Power Purchaser under this Agreement for the previous Month (or part-Month), and (ii) any interest payable hereunder on amount not paid by the Due Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice. Such supporting information shall include, *inter alia*, the relevant Foreign Exchange Bulletins showing the applicable exchange rate values between the Rupee and the Dollar; evidence of the relevant KIBOR and LIBOR values, as applicable; and copies of Declared Available Capacity, Revised Declared Available Capacity, or Adjusted Declared Available Capacity, as the case may be, together with the record of failure to despatch according to Despatch Instructions, used to calculate such liquidated damages.
- (d) The Power Purchaser or the Company may require clarification or substantiation of any amount included in an invoice or statement submitted under Section 9.5(a), (b), or (c) 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.
- (e) Both the Power Purchaser and the Company shall be entitled to submit a revised invoice if an error is discovered in the calculation of an invoice at any time up to [ninety (90) Days] after the date that the original invoice was submitted.

Section 9.6 Payment

- (a) Subject to Section 9.7,
 - (i) the Power Purchaser shall pay the Company the amount shown on an invoice delivered in accordance with Section 9.5(a) or Section 9.5(b), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Power Purchaser; and
 - (ii) the Company shall pay the Power Purchaser the amount shown on an invoice delivered in accordance with Section 9.5(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 Company,

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

- (b) Any invoice delivered pursuant to this Article IX shall be paid in Rupees, except any invoice delivered under Section 9.4(d), which shall be paid in Dollars or Rupee equivalent (at the prevailing exchange rate on the payment day).
- (c) Each of the Power Purchaser and the Company (as the case may be) 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 the Power Purchaser and the Company (as the case may be) 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.
- (e) The Power 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 Power Purchaser’s obligation to the Company has been discharged in accordance with the Guarantee.
- (f) Payments received by either Party shall be applied against outstanding invoices on the ‘first in, first out’ principle, so that the invoices that have been outstanding the longest (in whole or in part) shall be paid first.
- (g) The Power Purchaser shall have no obligation to make any payment for Supplemental Charges, including Pass-Through Items or other payments required under Section 9.3, unless the supporting information and data required under Section 9.3 with respect thereto are provided to it.

Section 9.7 Payment Disputes

- (a) At any time within three hundred and sixty (360) Days after receipt of an invoice, the Power Purchaser or the Company (as the case may be) may serve notice (an “Invoice Dispute Notice”) on the other Party issuing the invoice 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. The Power Purchaser or the Company (as the case may be) 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 9.7(a). The Power Purchaser or the Company (as the case may be) 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 such 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, the relevant Party may refer a Dispute regarding such matter to arbitration under Section 18.3, provided it has paid all amounts resolved or determined to be payable in accordance with Section 9.7(b).

Section 9.8 Supporting Data

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

information was relevant for claims by the Power Purchaser for payment by the Company.

- (c) NTDC shall maintain accurate and complete records, supporting documents and data, as reasonably necessary to calculate or confirm the correctness of the Capacity Price, the Energy Price, any Pass-Through Items, any Supplemental Tariffs, any Unit Start-Up Charges and any other claims for payment or recovery of costs or expenses made by the Company under this Agreement. All such records and data shall be maintained for a period of not less than thirty-six (36) months following the last date on which such data and information was relevant for claims by the Company for payment by the Power Purchaser.

Section 9.9 Reserve Fund

- (a) On or before the Commercial Operations Date, the Company shall establish and maintain, for the remaining Term, a separate reserve fund for the payment of expenses described in Section 9.9(c) (the “**Reserve Fund**”) with a depository institution and under depository agreements reasonably satisfactory to the Power Purchaser. On the termination of this Agreement, all amounts in the Reserve Fund shall be payable to the Company.
- (b) The Reserve Fund shall be funded by the Company commencing on the date that the first Capacity Payment is made. On each Capacity Payment date, one twenty fourth (1/24) of the annual operating and maintenance cost for the Complex, less fuel expenses, 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 Company Event of Default exists, any monies in excess of the minimum investment required above may be paid to the Company upon its request.
- (c) Monies in the Reserve Fund may be drawn on and used by the Company, (i) to pay Major Maintenance Expenses (as defined below) and (ii) only to the extent the Company 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 maintenance or repair of the Complex 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) (i) If, after the withdrawal of any funds from the Reserve Fund for the payment of Major Maintenance Expenses as described in Section 9.9(c)(i) hereinabove, the amount in the Reserve Fund is less than the amount required pursuant to Section 9.9(b), the Company shall replenish the Reserve Fund by depositing funds therein in accordance with Section 9.9(b).
- (ii) If, after the withdrawal of any funds from the Reserve Fund for the purpose described in Section 9.9(c)(ii) hereinabove, the amount remaining in the Reserve Fund is less than the amount required pursuant to Section 9.9(b) hereinabove, the Company 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 9.9(b) hereinabove. Such amount shall be paid out of fifty percent (50%) of the "Reference Non-Debt Service Component" of the Capacity Payment available during the Month; provided, however, that if the Company's net cash flow is insufficient to fund the Reserve Fund at the required level, any shortfall shall be carried over and shall be due the following Month(s).
- (e) The Company shall keep accurate records with respect to the Reserve Fund and all disbursements therefrom and shall, upon the Power Purchaser's reasonable request, supply a complete accounting or independent audit thereof to the Power Purchaser.
- (f) Separate accounts established at the request of the Lenders pursuant to the Financing Documents for the purpose of paying maintenance and associated operating expenses that in all material respects satisfy the provisions of this Section 9.9 shall satisfy the Company's obligation to maintain a Reserve Fund hereunder. In addition, if and so long as the Company has in effect a long term maintenance agreement that provides annual maintenance and major overhauls for agreed substantially equal Monthly installments, which agreement is reasonably acceptable to the Power Purchaser, such agreement shall satisfy the requirements for the maintenance of the Reserve Fund hereunder.

Section 9.10 Suspension⁵

Notwithstanding the payment of mark-up on delayed payments at the Delayed Payment Rate as provided in Section 9.6(d) or any other provision of this Agreement:

- (a) if at any time after the COD, the aggregate Outstanding Amounts under one or more Overdue Invoices of the Company is equal to or exceeds the Maximum Amount (excluding delayed payment interest at Delayed Payment Rate), the Company's obligations to make available the Declared Available Capacity and the Power Purchaser's right to Despatch the Complex may, at the Company's option be suspended with immediate effect by a notice in writing by the Company to the Power Purchaser and NTDC (with a copy to GOP and Lenders) ("**Suspension Notice**"), and such suspension shall take effect from the date of the Suspension Notice ("**Suspension Start Date**") and end on the Suspension End Date (as defined in Section 9.10(b) below) (the "**Suspension Period**");
- (b) the aforementioned suspension shall, unless ended earlier at the Company's sole option, continue till such date that falls up to a maximum of thirty (30) consecutive Days (subject to Force Majeure) (the "**Suspension End Date**") after the date on which the aggregate Outstanding Amounts under one or more Overdue Invoices of the Company are reduced, through payment(s) made by or on behalf of the Power Purchaser and received by the Company, to the Minimum Amount ("**Minimum Amount Payment Date**");
- (c) during the period from the Suspension Start Date till the Minimum Amount Payment Date;
 - i. the Company's obligations to make available the Declared Available Capacity shall remain suspended;
 - ii. the Power Purchaser's right to Despatch the Complex, shall also remain suspended;
 - iii. the Company shall continue to notify the Declared Available Capacity under this Agreement, which shall be at the Contract Capacity or the then prevailing Tested Capacity, whichever is lower, and shall be paid the Capacity Payments calculated on the basis of the Declared Available Capacity at Contract Capacity or the then prevailing Tested Capacity as applicable albeit with the Return on Equity Component reduced by twenty percent (20%);
 - iv. no liquidated damages under Section 9.4 shall be assessed against the Company due to non-deliveries of Net Electrical Output.
- (d) During the period starting from the Minimum Amount Payment Date and ending on

⁵ This clause is only applicable to thermal power plant. Further the time period would also be modified based on type of fuel.

Suspension End Date (“**Recovery Period**”):

- i. the provisions of Section 9.10(c)(i), (ii) and (iv) will apply *mutatis mutandis*; and
 - ii. subject to Section 9.10(d)(i) above, the Power Purchaser shall not be responsible to make and the Company shall not be entitled to receive Capacity Payments pertaining to the Recovery Period.
- (e) During the Suspension Period the Company shall not seek to terminate this Agreement on account of payment default of the Power Purchaser; provided that if the Minimum Amount Payment Date has not occurred sixty (60) consecutive Days after the Suspension Start Date, the Company shall have the right to serve a notice to the Power Purchaser and the Power Purchaser shall cure its default by paying at least the Maximum Amount, within 35 Days of the receipt of such notice. If Power Purchaser fails to make the payment within the said 35 Days, then the Company shall have the right to serve a notice of intent to terminate to the Power Purchaser and if the Power Purchaser still fails to make the payment of at least the Maximum Amount within 45 days of such notice of intent to terminate, the Company shall have the right to terminate this Agreement by following Section 16.4(a). In addition, and without prejudice to any other consequences of such termination as envisaged in this Agreement, the Company shall be entitled to full recovery of all and any outstanding amounts payable to the Company under this Agreement.
- (f) For avoidance of doubts, it is clarified that (i) Section 9.6(d) shall apply *mutatis mutandis* to all payments envisaged under this Section 9.10; (ii) declaration of Available Capacity by the Company during the period from the Suspension Start Date till the Minimum Amount Payment Date shall be deemed to comply with the Guaranteed Availability requirements of this Agreement.
- (g) As used in this Section 9.10,
- “**Maximum Amount**” shall mean estimated aggregate amount of invoices for Capacity Payments and Energy Payments (excluding delayed payment interest at Delayed Payment Rate) for five (5) Months on the basis of one hundred percent (100%) plant load factor based on the then-prevailing relevant Tariff components allowed by NEPRA, and will be subject to adjustment at COD and annually thereafter;
- “**Minimum Amount**” shall mean estimated aggregate amount of invoices for Capacity Payments and Energy Payments (excluding delayed payment interest at Delayed Payment Rate) for two (2) Months on the basis of one hundred percent (100%) plant load factor based on the then-prevailing relevant Tariff components allowed by NEPRA, and will be subject to adjustment at COD and annually thereafter;
- “**Outstanding Amounts**” shall mean amounts due under the Overdue Invoices, other than any amount in Dispute for which payment may be withheld pursuant to Section 9.6

above.

"Overdue Invoices" shall mean invoices of the Company that have remained unpaid beyond the respective Due and Payable Date therefore as specified in Section 9.6, other than invoices for the delayed payment interest.

**ARTICLE X
LIABILITY**

Except as required by Section 11.1, no Party shall be liable to the other Parties in contract, tort, warranty, strict liability or any other legal theory, for any indirect, consequential, incidental, punitive or exemplary damages. No Party shall have any liability to the other Parties 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 others with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

**ARTICLE XI
INDEMNIFICATION**

Section 11.1 Indemnification

- (a) NTDC's Indemnification to Company. Except as specifically provided elsewhere in this Agreement, NTDC shall indemnify and defend the Company, for itself and as trustee for its officers, directors and employees against, and hold the Company, 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 Company, 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 NTDC 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 Company receives proceeds from insurance policies or indemnification from another party.

- (b) Power Purchaser's Indemnification to Company. Except as specifically provided elsewhere in this Agreement, the Power Purchaser shall indemnify and defend the Company, for itself and as trustee for its officers, directors and employees against, and hold the Company, 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 Company, 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 Power Purchaser 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 that the Company receives proceeds from insurance policies or indemnification from another party.

- (c) The Company's Indemnification to the Power Purchaser and NTDC. Except as specifically provided elsewhere in this Agreement, the Company shall indemnify and defend the Power Purchaser and NTDC, for itself and as trustee for its/their directors, officers, and employees against, and hold the Power Purchaser and NTDC, its/their directors, officers, 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 Power Purchaser and/or NTDC, its/their directors, officers, 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 Company in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 11.1(c) shall apply to any Loss in respect of and to the extent to which the Power Purchaser or NTDC (as the case may be) receives proceeds from insurance policies.

- (d) 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.
- (e) NTDC's Indemnification to the Power Purchaser. Except as specifically provided elsewhere in this Agreement, NTDC shall indemnify and defend the Power Purchaser, for itself and as trustee for its officers, directors and employees against, and hold the Power Purchaser, 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 Power Purchaser, its officers, directors and employees, by the Company, for failure to comply with obligations under this Agreement by NTDC, including but not limited to on account of any payment required to be made by the Power Purchaser pursuant to Section 2.5B of this Agreement or on account of any negligent or intentional act or omission by the NTDC in connection with this Agreement.
- (f) Set-Off. The Power Purchaser shall have the right to set off any amounts due and payable by it to NTDC for Transmission Charges against any and all amounts then due and payable to it by NTDC under this Agreement, particularly on account of Section 11.1(e) and arising pursuant to Section 2.5B.
- (g) Survival. The provisions of this Section 11.1 shall survive for a period of five (5) years following termination of this Agreement (or such later date as the Company actually vacates the Site where the Complex has been or is to be transferred to the GOP or its designee following termination of the Implementation Agreement).

Section 11.2 Assertion of Claims to Exceed Minimum Indemnification Amount

The Company, the Power Purchaser or NTDC 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 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 Year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Year, in the 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/(ies) (in which case, they shall be reimbursed by the other Party/(ies)), shall not be reimbursed by the other Party/(ies) 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, subject to the prior approval of the indemnified Party; provided, however, it gives prompt notice of such intention 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 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 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.

Section 11.5 Notice of Claims

The indemnified Party shall promptly notify the indemnifying 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.

**ARTICLE XII
INSURANCE**Section 12.1 Maintenance of Insurance Policies

- (a) Subject to the provisions of this Article XII, the Company, with the approval of Power Purchaser and NTDC, such approval shall not be withheld unreasonably, 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 on Schedule 8 in the amounts set forth therein and for the durations specified therein, with financially sound insurer(s); provided, however, that such amounts may be changed from time to time with the prior written consent of the Power Purchaser and NTDC; provided, further, that the Company 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 Company or (ii) the Company 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) is not available to the Company at commercially reasonable rates due to the occurrence of the Pakistan Political Event, upon notice to the Power Purchaser by the Company, the additional cost of such insurance attributable to the occurrence of the Pakistan Political Event as determined by an Expert in conformity with the provisions of Article XVIII, shall be recoverable by the Company from the Power Purchaser and treated as a Pass-Through Item. In such an event, in lieu of making such payment to the Company, the Power Purchaser in its sole discretion may elect to procure the insurance required by Section 12.1(a) on behalf of the Company with insurers of a rating not less than the Company's existing insurers or the insurers with whom such insurance was procured by the Company prior to the occurrence of the Pakistan Political Event and deduct the insurance cost component of the then prevailing Capacity Payments as full compensation therefor; provided, that the Power Purchaser shall, within fifteen (15) Business Days of procuring such insurance, provide to the Company receipts for the payment of premia and copies of the certificates of insurance or policies, if available, of insurance obtained by the Power Purchaser. The Company and NTDC shall be named as an additional insured. The Company and NTDC shall also be named as the loss payee (subject to any assignment of insurance proceeds to the Lenders) on any such insurance procured by the Power 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 Company's insurance rates are no longer affected by the Pakistan Political Force Majeure Event (or the other event described above). From time to time, at the request of the Power Purchaser or the Company, the Expert acting in conformity with the provisions of Article XVIII will determine the extent to which the Company'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 and any “umbrella” or excess coverage shall be “occurrence” form policies. In the event the Company has “claims made” form coverage, the Company must obtain prior approval of all “claims-made” policies from the Power Purchaser and NTDC.

Section 12.3 Policy Endorsements

The Company shall cause the insurers to provide the following endorsement items in the comprehensive or 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 Power Purchaser and NTDC, its/their 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 Power Purchaser and NTDC, its/their directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;
- (c) The following cross liability 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 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 Power Purchaser and NTDC, its/their 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 Power Purchaser and NTDC, except in the case of non payment, in which case the prior written notice to the Power 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 Company shall cause the insurers to provide the endorsements referred to in Section 12.3(a),

(b), (d) and(e) in the fire and perils and machinery breakdown policies covering the Complex as required by Section 12.1.

Section 12.5 Certificates of Insurance

The Company shall cause its insurers or agents to provide the Power Purchaser and NTDC with certificates of insurance evidencing the policies and endorsements listed above. Failure by the Company to obtain the insurance coverage or certificates of insurance required under this Article XII shall not in any way relieve the Company of, or limit the Company's obligations and liabilities under, any provision of this Agreement. If the Company shall fail to procure or maintain any insurance required pursuant to this Article XII, then the Power 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 Company pursuant to the terms of this Agreement. The Company and NTDC shall be named as the loss payee on any such insurance procured by the Power Purchaser pursuant to this Section 12.5.

Section 12.6 Insurance Reports

The Company shall provide the Power Purchaser and NTDC with copies of any underwriters' reports or other reports received by the Company from any insurer; provided, that the Power Purchaser and NTDC shall not disclose such 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 Power Purchaser and/or NTDC, and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

**ARTICLE XIII
REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 13.1 Representations and Warranties of the Company

The Company hereby represents and warrants to the Power Purchaser and NTDC that:

- (a) The Company is a public limited company, duly organized, validly existing and in good standing under the laws of Pakistan, and has, so far as it is material to the Power Purchaser and NTDC, complied fully with all requirements of the Companies Ordinance (XLVII) of 1984 and all other applicable Laws of Pakistan.
- (b) The Company 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 Company, (i) has been duly authorized by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company 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 Company, 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 Company is a Party or by which the Company 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 Company or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Power Purchaser and NTDC, this Agreement constitutes a legal, valid and binding obligation of the Company, 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 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 Company.
- (e) The Company 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 Company's

knowledge, threatened, (i) for the dissolution of the Company, or (ii) against the Company 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 Company shall, upon request by the Power Purchaser or NTDC, deliver or cause to be delivered from time to time to the Power Purchaser or NTDC, as the case may be, 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 Power Purchaser or NTDC may reasonably request; provided, however, that the Power Purchaser or NTDC 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 Power Purchaser

The Power 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 Company, complied fully with all applicable Laws of Pakistan.
- (b) The Power 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 Power Purchaser, (i) has been duly authorized by all requisite corporate action on the part of the Power Purchaser, and no other proceedings on the part of the Power 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 Power Purchaser is a Party or by which the Power 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 Power Purchaser or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Company, this Agreement constitutes a legal, valid and binding obligation of the Power 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 Power Purchaser.

- (e) The Power 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 Power Purchaser's knowledge, threatened, (i) for the dissolution of the Power Purchaser, or (ii) against the Power 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.

Section 13.4 Representations and Warranties of NTDC

NTDC 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 Company, complied fully with all applicable Laws of Pakistan.
- (b) NTDC 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 NTDC, (i) has been duly authorized by all requisite corporate action on the part of NTDC, and no other proceedings on the part of NTDC 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 NTDC is a Party or by which NTDC 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 NTDC or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Company, this Agreement constitutes a legal, valid and binding obligation of NTDC, 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 NTDC.

- (e) NTDC 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 NTDC's knowledge, threatened, (i) for the dissolution of NTDC, or (ii) against NTDC 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.

**ARTICLE XIV
TAXES****Section 14.1 Taxes Applicable to the Company**

Subject to Section 14.3 and Section 14.4, all present and future federal, provincial, municipal or other lawful Taxes applicable to the Company, the Complex, the Project and the Company's other assets shall be paid by the Company 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 Company to recover certain Taxes paid by it from the Power Purchaser as provided therein.

Section 14.2 Taxes Applicable to Power Purchaser and NTDC

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

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

Section 14.3 Notice of Changes in Tax

- (a) If a Change in Tax occurs or if the Power Purchaser or the Company reasonably believes that a Change in Tax has occurred which:
- (i) applies to the Complex or the sales of Available Capacity or Net Electrical Output hereunder; and
 - (ii) causes the Company to (A) incur any Costs, (B) realise any Savings, or (C) become subject to any variation in the withholding Tax payable by the Company in respect of the Project,

then either the Power Purchaser or the Company (as the case may be) may give the other Party notice of such Change in Tax (a "Change in Tax Notice") with reasonable details of any of the circumstances specified in clause (i) or clause (ii), above, or both. The Company shall give the Power Purchaser notice within thirty (30) Days of becoming aware of a Change in Tax resulting in a Savings.

- (b) No later than forty-five (45) Days from the date of delivery of a Change in Tax Notice, the Company shall provide the Power Purchaser with a detailed calculation in writing of the relevant Costs, Savings or effects of the withholding Taxes 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 Company will incur, realise or become subject to

such additional Costs, 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 Company shall provide the Power Purchaser with a detailed calculation of any additional Cost or Saving in relation to the Project that has or can reasonably be expected to result from any such Change in Tax.
- (d) Neither Party may request reimbursement for any Cost or 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

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

- (a) The Power Purchaser shall reimburse the Company for any Costs or any increase in withholding Tax incurred or suffered by the Company as Pass Through Item, calculated in accordance with Section 9.5(b)(iv) and Schedule 1; and/or
- (b) The Company shall reimburse the Power Purchaser for any Savings or any decrease in withholding Tax realised by the Company, as calculated pursuant the relevant Change in Tax Assessment, through an adjustment to the actual Tariff payable by the Power Purchaser as calculated in accordance with Schedule 1.

Any Dispute as to the amount of the Costs or Savings resulting from a Change in Tax or the amount of the Supplemental Tariffs or the adjustment to the actual Tariff related thereto shall be resolved in accordance with Article XVIII.

Section 14.5 Disputed Taxes

In the event that the Company desires to dispute any Change in Tax, it shall provide notice of its desire to pursue such dispute to the Power Purchaser. Following the delivery or receipt, as the case may be, of such notice of a desire to dispute a Change in Tax, the Company shall prepare and deliver to the Power Purchaser within forty-five (45) Days of the delivery or receipt, as the case may be, of such notice, a written report in reasonable detail describing the Change in Tax, its likely effects on the Tariff and the merits and probable success of the proposed dispute. The Parties shall meet within thirty (30) Days of the Power Purchaser’s receipt of such report and determine whether the dispute of the relevant Change in Tax should be pursued by the Company. If so agreed, the Company shall diligently prosecute such dispute. Any costs and expenses reasonably incurred by the Company 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 Power Purchaser as a Pass-Through Item in accordance with Schedule 1. Nothing in this Section 14.5 shall preclude the Company 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 Power Purchaser.

ARTICLE XV
FORCE MAJEURE

Section 15.1 Definition of Force Majeure

A “Force Majeure Event” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Effective Date, materially and adversely affects 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 “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) a nationwide shortage of fuel that prevents the Fuel Supplier from providing adequate deliveries of fuel to the Complex for more than twenty-one (21) Days as determined by the Director-General Oil, Ministry of Petroleum and Natural Resources;
- (b) any Change in Law (and to the extent also a Force Majeure Event, each a “CLFME”);
- (c) Other events beyond the reasonable control of the affected Party (each an “Other Force Majeure Event”), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or

- (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
 - (iv) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation (except where resulting directly from a Pakistan Political Event); or
 - (v) epidemic or plague;
- (d) Force Majeure Events shall expressly not include the following events or circumstances except and to the extent that such events or circumstances occur directly as a consequence of a Force Majeure Event:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (including fuel);
 - (ii) a delay in the performance of any Contractor;
 - (iii) breakdown in machinery or equipment; or
 - (iv) normal wear and tear or random flaws in materials, machinery or equipment;

provided, that each of the events described in clauses (d)(i), (ii) or (iii) shall constitute 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 Company 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 Parties 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 twenty-four (24) hours after the resumption of any means of providing notice between the Parties, and
 - (ii) give the other Parties 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 pursuant to Section 15.2(a)(i). When appropriate or when reasonably requested to do so by the other Parties, the affected Party shall provide further notices to the other Parties 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).

- (b) The affected Party shall provide notice to the other Parties:
 - (i) with respect to an ongoing Force Majeure Event, of the cessation of the Force Majeure Event, and
 - (ii) of its ability (or its inability, together with an estimate of the date it will be able) to recommence performance of its obligations under this Agreement as soon as possible and in any event not later than seven (7) Days after the occurrence of the events described in each of clause (i) and (ii) above.
- (c) Failure by the affected Party to have given written notice of a Force Majeure Event to the other Parties within the forty-eight (48) hour period or twenty-four (24) 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 twenty-four (24) hour period required by Section 15.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 15.4 from the date of commencement of the relevant Force Majeure Event.

Section 15.3 Duty to Mitigate

The affected Party shall use all reasonable efforts (or shall ensure that its Contractors use all reasonable efforts) to mitigate the effects of a Force Majeure Event, including, but not limited to, 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

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 to so comply, then: (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement during the existence of a Force Majeure event and (ii) any performance deadline that the affected Party is obligated to

meet under this Agreement shall be extended; provided, 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 have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred; provided, further, that, in the case of a Force Majeure Event which damages the Complex, in no event shall the obligations of the affected Party under this Agreement to meet performance deadlines be extended beyond the end of the Restoration Period. Other than for breaches of this Agreement by the other Parties, and without prejudice to the affected Party's rights to indemnification pursuant to Article XI or for payment pursuant to Article IX, Section 15.6, Section 15.8 and Section 15.9, the other Parties 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

- (a) Upon the occurrence of any Force Majeure Event after the Commercial Operations Date, then during the pendency of a Force Majeure Event, the Power Purchaser shall pay to the Company Energy Payments for Net Electrical Output delivered during the pendency of such Force Majeure Event plus Capacity Payments for the Available Capacity that the Company is able to provide during the pendency of the Force Majeure Event.
- (b) Upon the occurrence of and at any time during the pendency of a Force Majeure Event, any Party may request that a test be performed to determine the then-available Tested Capacity in accordance with the provisions of Section 8.4; provided, however, that no more than two (2) tests may be requested by a Party within any thirty (30) Day period during the pendency of the Force Majeure Event. Except as provided in this Section 15.5 and in Section 15.6, the Company shall not be entitled to any payments from the Power Purchaser during any 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 compliance by the Company with a CLFME requires a material modification or a material capital addition to the Complex (each such event referred to herein as a "Restoration"), the Company shall, within thirty (30) Days after the date by which it was first required to provide notice to the Power Purchaser and NTDC under Section 15.2(a), except if the Pakistan Political Event has not ended by the time of such notice, in which case within thirty (30) Days of the notice required by Section 15.2(b), develop and deliver to the Power 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 Company (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 (as defined in Section 15.6(j)), 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 be referred to herein as the “Restoration Schedule,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “Restoration Period”). The Company shall make the Preliminary Estimate as comprehensive and as complete as reasonably possible under the circumstances. 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, a “material” modification or “material” capital addition to the Complex shall mean out-of-pocket expenditures on such modification or modifications or capital addition or additions are or are reasonably expected to be in excess of the equivalent of six hundred thousand Dollars (\$600,000) (adjusted annually from the Commercial Operations Date for changes in the United States consumer price index from the value existing on the date hereof) in the aggregate in any Year.

- (ii) If there occurs such a PPFME or a CLFME that prevents or delays the construction of the Complex or reduces the Company’s ability to declare Available Capacity, the Power Purchaser shall within thirty (30) Days of the delivery by the Company for an invoice therefor, pay to the Company, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined below) an amount equal to (A) the Carrying Cost if the PPFME or the CLFME occurs after the first unit constituting a part of the Complex has left its port of origin for transport into Pakistan but prior to the Commercial Operations Date, or (B) the full Capacity Payment if the PPFME or the CLFME occurs after the Commercial Operations Date (but only to the extent that the Capacity Payment is not paid to the Company by the Power Purchaser pursuant to Section 15.5). The term “PE Compensation Period” shall mean the period beginning with the onset of PPFME or the 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 earlier of the date the Company is able to resume performance of its obligations under this Agreement, as specified in the notice given pursuant to Section 15.2(b); (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) the Day of termination of this Agreement under Section 15.9 or Article XVI. Notwithstanding any contrary provision of this Agreement, if this Agreement is terminated pursuant to Section 15.9, all amounts payable under this paragraph are to be paid to the Company 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 Company concludes that the Restoration Cost Estimate shall be less than the Threshold Amount and the Power 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 Company shall, subject to Section 15.6(d), proceed with the Restoration in accordance with the Restoration Schedule.
- (c) If (i) the Company concludes that the Restoration Cost Estimate shall be less than the Threshold Amount and the Power Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, notifies the Company that the Power Purchaser disagrees with the Company's conclusion and/or that it disagrees with the Restoration Schedule or (ii) the Company concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount and the Power Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with such conclusion, then the Company shall proceed with the preparation of a Report and the provisions of Section 15.6(b) shall apply.
- (d) If the Company concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount and the Power 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 Power Purchaser delivers notice to the Company that the Power 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 Company shall proceed with the preparation of a Report and the provisions of Section 15.6(e) 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. 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 Power Purchaser shall, within fifteen (15) Days of such agreement or resolution, provide the Company with a written notice of its election to either (i) terminate this Agreement pursuant to Section 15.9(a) with the approval of the GOP and the GOP pay the applicable compensation pursuant to Section 15.1(e) of the Implementation Agreement or (ii) authorize the Company to proceed with Restoration, in which case the following provisions shall apply:
 - (i) the Company shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Power Purchaser. If the Company is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of the Power Purchaser's notice authorizing the Company to proceed with Restoration, then unless

- the Power Purchaser commits to provide financing for the Restoration within the next sixty (60) Days and provides such funds to the Company within one hundred and twenty (120) Days thereafter, the failure to secure financing shall be treated as an election by the Power Purchaser to terminate the Agreement pursuant to Section 15.9(a), in which case the GOP shall be required to pay the applicable compensation pursuant to Section 15.1(a)(i) of the Implementation Agreement;
- (ii) if financing for the Restoration has been secured, then the Company shall proceed with the Restoration in accordance with the Restoration Schedule and, upon completion of the Restoration, the Company shall be entitled to special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be; and
 - (iii) the Company shall provide the Power 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 Company fails to restore the operation of the Complex within thirty (30) Days following the commencement of that Other Force Majeure Event, then the Company shall prepare and deliver a Report pursuant to Section 15.7(a).
 - (g) If the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Company can continue to meet its obligations under this Agreement, the Company shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report.
 - (h) If the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Company can continue to meet its obligations under this Agreement but the Power Purchaser does not agree with the Restoration Schedule contained in the Report, then the Power Purchaser shall notify the Company within fifteen (15) Days of the receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The 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 Company 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 Company), 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 Company to undertake a Restoration but nonetheless results in a decrease of the Capacity Payment, then

the Power Purchaser shall pay to the Company for each Month (or portion thereof) of the PE Compensation Period (as defined below) the full Capacity Payment (assuming an Available Capacity equal to the Average Available Capacity immediately prior to the occurrence of the PPFME or CLFME), but only to the extent that such Capacity Payment is not paid to the Company by the Power Purchaser pursuant to Section 9.1 and Section 15.5. The term “PE Compensation Period”, for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(ii), except for the reference to the Restoration Schedule.

- (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 such percentage decreasing as a straight-line basis to five percent (5%) at the beginning of the last Agreement 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 Company’s ability to operate the Complex and such PPFME continues for a period exceeding one hundred and eighty (180) Days (not including the effects thereof), (ii) a series of such related PPFMEs that continue in the aggregate for a period that exceeds one hundred and eighty (180) Days (not including the effects thereof) during any Year, or (iii) a CLFME following which (x) the Parties agree or the Expert determines that a Restoration is not feasible or the Power Purchaser decides that the cost of Restoration is not acceptable and (y) the Complex does not operate for one hundred and eighty (180) Days following such determination or decision, and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration, the Company or the Power Purchaser with the approval of the GOP 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 Company the compensation provided in Section 15.1(e)(v) of the Implementation Agreement.

Section 15.7 Appraisal Report and Use of Expert

- (a) When required by Section 15.6(a)(ii), Section 15.6(c), or Section 15.6(d), the Company shall commence the preparation of an appraisal report (the “Report”) within fifteen (15) Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the Power Purchaser and NTDC 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 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 and (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 Company's good faith estimate of:

- (ii) 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;
 - (iii) a revised cash flow forecast for the Complex; and
 - (iv) 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;
 - (v) in the case of a PPFME or a CLFME covered by Section 15.6(a), describe the plan to fund the costs of the Restoration;
 - (vi) in the case of a PPFME or a CLFME covered by Section 15.6(a) or a Remediation of the Site covered by Section 15.7(c), the projected Supplemental Tariff payable under this Agreement that would be required to pay special compensation under Section 15.8; and
 - (vii) in the case of a Force Majeure Event covered by Section 15.6(a) or Section 15.6(c), provide certificates and reports of the Company's financial and technical advisers, as appropriate or as reasonably requested by the Power 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 Power Purchaser and NTDC of a Report prepared by the Company, the Company shall provide promptly to the Power Purchaser and NTDC such additional financial and related information pertaining to the Report and the matters described therein as the Power Purchaser and/or NTDC may reasonably request.
- (c) The following Disputes between the Power Purchaser and/or NTDC (as the case may be) and the Company 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 Company should be recovered as provided in Section 15.8(d), 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.
- (e) If the Company or the Power Purchaser and NTDC 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 Parties in accordance with Section 18.2. Each Party shall use its best efforts to provide the Expert with any additional information the Expert requests. The Expert shall be charged with the responsibility of using his best efforts to render his decision regarding any referred matter within thirty (30) Days of the date of the referral. Each Party shall be responsible for paying fifty percent (50%) of the costs of the Expert and shall pay for its own costs.
- (g) Notwithstanding any other provision in this Agreement to the contrary regarding the role of Experts in resolving Disputes, unless the Parties agree to the contrary in writing signed by both Parties at the time the Expert is selected, the decision of the Expert as to any matter referred under Section 15.6 shall be final and binding on both Parties and shall not be subject to appeal. The Parties expressly waive, to the fullest extent permitted by law, any and all rights that they may now have or may have in the future to contest the decision of the Expert before any arbitral tribunal or any court or other adjudicatory or administrative body.

Section 15.8 Supplemental Tariffs

- (a) In the case of a Force Majeure Event that is covered by Section 15.6(a)(ii) or Section 15.6(b), the Power Purchaser shall determine whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Section 15.9(b) or Section 15.9(c), as the case may be), or terminate this Agreement. The Company acknowledges that the Power 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 Power Purchaser. In the case of a Force Majeure Event covered by Section 15.6(a)(ii) or Section 15.6(c), the determination required to be made by the Power Purchaser under this Section

15.8(a) shall be made no later than fifteen (15) Business Days after the receipt of the Report by the Power 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 Power 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 Company shall unless this Agreement has been terminated by the Power Purchaser pursuant to Section 15.8(a) or Section 15.9(b), 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 15.8(e).
- (c) In the case of a CLFME covered by Section 15.6(a) the Company shall, unless this Agreement has been terminated by the Power Purchaser pursuant to Section 15.9(a) or Section 15.9(b), 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 Company to come into compliance with the Change in Law and are approved in accordance with Section 15.8(e) of this Agreement and (ii) the cost of additional quantities or higher quality of consumables that can be directly attributed to compliance by the Company 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 Power Purchaser as provided in Section 15.8(d).
- (d) The Company shall, unless this Agreement has been terminated by the Power Purchaser pursuant to the previous sentence, be entitled to receive a Supplemental Tariff such that it will recover from the Power Purchaser, assuming Available Capacity is delivered at the Contract Capacity for eighty-eight percent (88%) of the hours in a Year, over the remainder of the Term the costs incurred in effecting the Remediation, including, without limitation, weighted average cost of capital equal to LIBOR plus six and one-half percent (6.5%), determined at the time the Complex returns to operation or, if the Complex did not cease operation, at the time the Restoration or Remediation is completed by the Company. The costs to be recovered by the Company pursuant to this Section 15.8 and Section 15.9 shall be the costs that are actually incurred by the Company to effect the Restoration or Remediation, as the case may be, 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 Company to effect such Restoration consistent with the standards for the original construction or the Remediation, consistent with the requirements of the applicable Laws of Pakistan, Prudent Utility Practices and the use of efficient and, to the extent consistent with Prudent Utility Practices, low cost Remediation methods, as the case may be. The Company shall deliver a schedule of such costs to the Power Purchaser, together with copies of the invoices, for review by the Power Purchaser. If the Power Purchaser contests

any item of cost on the basis of the foregoing standards and the Power Purchaser and the Company cannot agree, the issue of whether such item of cost should be recovered under this Agreement shall be referred to an Expert pursuant to Section 15.7(c) to render a decision based on the foregoing standards.

- (e) If there is any Dispute as to whether any payment is due and payable to the Company 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 Power Purchaser shall be obligated to pay to the Company the undisputed amount. Amounts determined through the Dispute resolution procedure to be payable by the Power Purchaser shall be paid to the Company with interest equal to the Delayed Payment Rate from the date payment was due to the date of payment by the Power Purchaser.

Section 15.9 Termination as a Result of a Force Majeure Event

- (a) If this Agreement is terminated as a result of a Force Majeure Event covered by Section 15.6(a)(ii), Section 15.6(b), Section 15.6(c) or Section 15.6(d), or a Remediation pursuant to Section 15.7(a)(vii), then the provisions of Section 15.6 and the provisions of Section 15.1(c), (d) or (e) of the Implementation Agreement shall be applied to determine whether compensation is to be paid by the GOP to the Company and the amount of such compensation.
- (b) If the Company is required to proceed with a Restoration pursuant to Section 15.6(a), Section 15.6(a)(ii), Section 15.6(c), or Section 15.6(d) 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 Company may, and if the Restoration Cost Estimate or Restoration Period is expected to be exceeded by fifteen percent (15%), the Company shall, develop a revised cost estimate and schedule as soon as possible and provide an explanation of the delay or revised cost or both to the Power Purchaser. If the Power 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 Company, (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 Power Purchaser shall continue to make Capacity Payments. If the Power 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 15.6(g) for resolution, and the Power 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 Company's liability therefore within thirty (30) Days of such referral. If the Expert determines that the delay was not reasonable and that it was due to the Company's negligence, fault, or unnecessary delay the Restoration

Period shall not be revised. If the Expert concludes that the delay was reasonable under the circumstances and not due to the negligence, fault or unreasonable delay of the Company, the Expert shall fix the revised Restoration Period (the "Extended 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 Power Purchaser with the approval of the GOP may elect to terminate this Agreement, unless the Company elects to attempt to complete the Restoration during the Extended Period, as described below. Upon such termination, the provisions of 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 Power Purchaser does not terminate this Agreement, the Power Purchaser shall continue to make Capacity Payments to the Company during such revised schedule period. After the end of the Restoration Period, as it may have been revised, the Power Purchaser shall have no further obligation to make Capacity Payments and any additional costs incurred by the Company to expedite the completion of the Restoration shall not be included in the costs that form the basis of the Tariff under Section 15.8 of this Agreement.

- (d) Notwithstanding the provisions of Section 15.9(c), if the Restoration has not been completed by the end of the Extended Period (as defined in the next sentence), then, unless the Company is diligently attempting to complete the Restoration, the Power Purchaser, with the written approval of the GOP, shall be entitled to terminate this Agreement upon thirty (30) Days notice, whereupon Section 15.10 and Section 15.1(e) of the Implementation Agreement shall apply. The Extended Period shall commence on the first (1st) 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 this Section 15.9(b) and shall end on the last Day of a period equal to twenty-five percent (25%) of the number of Days in the Restoration Schedule (as it may have been revised); provided, however, that the Extended Period shall be extended for the full period of any intervening Force Majeure Event plus the period of time necessary for the Company to overcome the effects of the intervening Force Majeure Event.

Section 15.10 Notice of Termination

A Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Parties in accordance with Section 19.1. Any such notice from the Power Purchaser shall be executed by a duly authorized representative of the Power Purchaser. A copy of any notice from the Company shall be delivered to the GOP at the same time the notice is delivered to the Power Purchaser and NTDC in accordance with the provisions of Section 18.1 of the Implementation Agreement. Such notice shall identify the PPFME or CLFME in reasonable detail and the basis for termination. Termination of this Agreement shall

be effective at 1700 hours on the thirtieth (30th) Day following the date of delivery of such notice.

**ARTICLE XVI
TERMINATION****Section 16.1 Company Events of Default**

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

- (a) the failure of the Company:
 - (i) to achieve the Construction Start Date within ninety (90) Days following Financial Closing; or
 - (ii) to achieve the Commercial Operations Date not later than four hundred (400) Days after the Required Commercial Operations Date;
- (b) after the Construction Start Date but prior to the achievement of the Commercial Operations Date, the failure of the Company to prosecute the Project in a diligent manner or, following the Commercial Operations Date, an Abandonment by the Company, in each case, without the prior written consent of the Power Purchaser and which in each case continues for a period of thirty (30) consecutive Days;
- (c) the Company’s failure (i) to pay any undisputed amount due from it under the provisions of Section 9.6 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 Power Purchaser to the Company stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail or (ii) to post and thereafter maintain security in the amount required under Section 2.7 as required to be maintained by the Company under this Agreement;
- (d) any breach by the Company of its obligations under Section 19.9 (Assignment);
- (e) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the laws of Pakistan for the dissolution of the Company that is not stayed or suspended in ninety (90) Days;

- (ii) the passing of a resolution for the dissolution or winding up of the Company;
 - (iii) the voluntary filing by the Company of a winding up petition, or a request for a moratorium on debt payments or other similar relief;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Company after notice to the Company 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 Company of an order winding up the Company 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 Company in this Agreement (or in a certificate delivered pursuant to Section 2.8) proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Company's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Power Purchaser or NTDC under this Agreement;
- (g) any material breach or material default by the Company of this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.1), including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after notice to the Company from the Power Purchaser or NTDC, stating that a material breach or default under this Agreement has occurred and is continuing, and identifying the material breach or default in question in reasonable detail;
- (h) tampering on three (3) or more separate occasions by the Company or its Contractors or their employees acting in the course of their employment with the Metering System or the Back-Up Metering System;
- (i) after the Commercial Operations Date, the Company's failure to maintain an average Available Capacity (excluding, for the purpose of calculating such average, any periods of Scheduled Outage) of seventy-five percent (75%) or higher of the Contract Capacity over any period of eighteen (18) consecutive months, unless that failure is due to a Major Equipment Failure, in which case the eighteen (18) consecutive month period referred to above shall be thirty (30) consecutive months; provided the Company has commenced and is diligently continuing to remedy such Major Equipment Failure during that period;
- (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

Company or its management are removed by the Lenders from control of the Complex or of the Company, 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 Company under this Agreement and the Implementation Agreement to a Transferee within two hundred and forty (240) Days after the Company or its management are removed by the Lenders from control of the Complex or of the Company; and

- (k) any material breach by the Company of the Implementation Agreement that is not remedied within thirty (30) Days after delivery of notice from the Power Purchaser or the GOP to the Company, 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.

Section 16.2 A Power Purchaser Events of Default

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

- (a) as a result of the amalgamation, reorganisation, reconstruction or privatisation of the Power Purchaser pursuant to the laws of Pakistan, the Power Purchaser’s obligations under this Agreement (or those of any successor to the Power 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 Company (taking into account, *inter alia*, the creditworthiness of the guarantor) provide an acceptable alternative to the Guarantee; or
 - (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 Company (taking into account, *inter alia*, the creditworthiness of the guarantor) provide an acceptable alternative to the Guarantee;
- (b) the Power Purchaser’s failure to pay any amount due from it under the provisions of Section 9.6 of this Agreement by the Due Date for the relevant invoice or to make any other payment when required to be made, including under Section 2.5B, in each case, that remains unpaid for thirty-five (35) Days following notice from the Company to the Power 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 reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and provided the obligations of the amalgamated or reconstructed 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 reasonable business judgment of the Company (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 Power Purchaser that is not stayed or suspended within ninety (90) Days;
 - (ii) the passing of a resolution for the dissolution or winding up of the Power Purchaser;
 - (iii) the voluntary filing by the Power Purchaser of a winding up petition;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Power Purchaser after notice to the Power 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 Power Purchaser of an order winding up the Power 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 Power 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 Power Purchaser's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Company under this Agreement;
- (e) any material breach or material default by the Power 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 Company to the Power 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;
- (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 Company to the Power Purchaser of a copy of the notice sent by the Company 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 Power Purchaser under this Agreement; or
 - (B) the GOP under the Implementation Agreement or the Guarantee, unenforceable, invalid, or void; or
 - (ii) unlawful for the Company 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 ninety (90) Days; or
- h) tampering on three (3) or more separate occasions by the Power Purchaser or their Contractors or their employees acting in the course of their employment with the Metering System or the Back-Up Metering System.

Section 16.2B NTDC Events of Default

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

- (a) as a result of the amalgamation, reorganisation, reconstruction or privatisation of NTDC pursuant to the laws of Pakistan, the NTDC's obligations under this Agreement (or those of any successor to NTDC) 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 considered by the Power Purchaser pursuant to Section 2.5B as the payment obligations of the Power Purchaser;
- (b) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the laws of Pakistan for the

dissolution of NTDC that is not stayed or suspended within ninety (90) Days;

- (ii) the passing of a resolution for the dissolution or winding up of NTDC;
 - (iii) the voluntary filing by NTDC of a winding up petition;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of NTDC after notice to NTDC 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 NTDC of an order winding up NTDC that is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days;
- (d) any statement, representation or warranty made by NTDC 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 NTDC's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Company under this Agreement;
- (e) any material breach or material default by NTDC 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 Company to NTDC, 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;
- (f) any Change in Law making, as a result of such change:
- (i) any material undertaking or obligation of NTDC under this Agreement unenforceable, invalid, or void; or
 - (ii) unlawful for the Company 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 ninety (90) Days;
- (g) the failure by NTDC to complete and commission the NTDC Interconnection Facilities within one hundred and fifty-five (155) Days following the Required Commercial Operations Date; or

- (h) tampering on three (3) or more separate occasions by NTDC or their Contractors or their employees acting in the course of their employment with the Metering System or the Back-Up Metering System.

Section 16.3 Notice of Intent to Terminate

- (a)(i) If any Company Event of Default occurs and is continuing, then the Power Purchaser shall be entitled to deliver a notice to the Company, itself or on behalf of NTDC (“Power Purchaser Notice of Intent to Terminate”), which notice shall specify in reasonable detail the Company Event of Default, giving rise to the Power Purchaser Notice of Intent to Terminate, including, as applicable, whether such event of default does not affect the Complex in any material respect. For avoidance of doubt it is clarified NTDC hereby confers authority on the Power Purchaser to issue the Power Purchaser Notice of Intent to Terminate and shall not directly issue any such notice.
- (a)(ii) If any Power Purchaser Event of Default or NTDC Event of Default occurs and is continuing, then the Company shall be entitled to deliver a notice to the Power Purchaser and NTDC (“Company Notice of Intent to Terminate”), which notice shall specify in reasonable detail the Power Purchaser Event of Default and/or NTDC Event of Default, giving rise to the Company 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 Company Event of Default arising under Section 16.1(c)(i) or a Power Purchaser Event of Default or NTDC Event of Default arising under Section 16.2A(b) or 16.2B(b), the Cure Period shall be forty-five (45) Days;
 - (ii) In the case of a Company 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 Power Purchaser Event of Default or NTDC Event of Default or any other Company 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)(i) In the event that the Company has not, following its receipt of a Power Purchaser Notice of Intent to Terminate, remedied the Company Event of Default, described therein before the expiry of the relevant Cure Period, the Power Purchaser may terminate this Agreement by delivering a notice of termination (the “Power

Purchaser Termination Notice”) to the Company.

- (a)(ii) In the event that the Power Purchaser and/or NTDC has not, following its receipt of a Company Notice of Intent to Terminate, remedied the Power Purchaser Event of Default and/or NTDC Event of Default, described therein before the expiry of the relevant Cure Period, the Company may terminate this Agreement by delivering a notice of termination (the “Company Termination Notice”) to the Power Purchaser.
- (a)(iii) This Agreement shall terminate on the date specified in the Power Purchaser Termination Notice or the Company Termination Notice (as the case may be) (the “Termination Date”), which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Power Purchaser Termination Notice or the Company Termination Notice (as the case may be) is delivered 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)(i) or Section 16.4(a)(ii) 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 issuing the Termination Notice, before the end of the relevant Cure Period.

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

- (a) Anything in this Agreement notwithstanding, from and after the occurrence of Financial Closing, the Power 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 Company without first giving a copy of any notices required to be given to the Company under Sections 16.1 and 16.3 to the Lenders, such notice to specify to the Lenders the period for curing or for procuring the cure of such default specified in Section 16.3(b) (the “Initial Cure Period”), which period shall commence upon delivery of each such notice to the Lenders. The Lenders will designate in writing to the Power 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 Power 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 Power 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 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. 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, and the Initial Cure Period shall commence upon receipt by the Lenders or the Agent of the notice referenced above. The address and facsimile number for the Agent shall be provided to the Power Purchaser by the Company 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 Power Purchaser at the address or facsimile number for the Power 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 Power Purchaser shall be valid or binding upon the Lenders without such notice, and the expiration of the Initial Cure Period, the Evaluation Period provided in this Section 16.5(b) and, if applicable, the Lender Cure Period provided in this Section 16.5(b), as such Lender Cure Period may be extended. The Lenders 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 Company, with the same effect as if made or performed by the Company. If the Lenders fail to cure or procure the cure of, or are unable or unwilling to cure or procure the cure of, any Company Event of Default pursuant to Section 19.9(d) prior to the expiration of the periods referred to above in this Section 16.5(b), then the Power 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 shall have a further period (an "Evaluation Period") during which the Lenders may evaluate such Company Event of Default, the condition of the Complex and other matters relevant to the actions to be taken by the Lenders concerning such Company Event of Default. The Evaluation Period shall end on the earlier to occur of (i) the delivery by the Lenders to the Power Purchaser of notice that the Lenders have elected to attempt to cure or procure the cure of such Company Event of Default or otherwise pursue the Lenders' right or remedies under the Financing Documents, and (ii) forty-five (45) Days following the end of the Initial Cure Period. During the Evaluation Period the Power Purchaser's right to terminate this Agreement in respect of such Company Event of Default shall be suspended. Upon delivery of the notice described in clause (i) of this Section 16.5(b), the Lenders shall be granted an additional period of sixty (60) Days (the "Lender Cure Period") within which to cure or procure the cure of any such Company Event of Default. During the Lender Cure Period, the Power Purchaser's right to terminate this Agreement in respect of any such Company Event of Default shall be suspended so long as the Lenders are diligently attempting to cure or procure (other than by the Company,

unless the Company is acting at the direction of the Lenders) the cure of such Company Event of Default or are pursuing the enforcement of their rights and remedies under the Financing Documents against the Company. In the event that any such Company Event of Default is not cured on or before the expiration of the Lender Cure Period the Power Purchaser may immediately terminate this Agreement effective upon delivery to the Lenders or the Agent of notice of such termination.

Section 16.6 Obligations upon Termination

Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (a) arose prior to such termination, (b) expressly survive such termination, including without limitation, the obligation to pay amounts due under Sections 5.15, 16.7, Article XI, and liquidated damages under Section 9.4, 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 Power Purchaser Event of Default or NTDC Event of Default; (ii) a GOP Event of Default under the Implementation Agreement; (iii) a PPFME, or (iv) a CLFME, the Company shall reimburse the Power Purchaser for all costs and expenses (including reasonable attorneys' fees) relating to the Project incurred by the Power Purchaser and/or NTDC 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 and administrative costs) incurred by the NTDC on the construction of the NTDC Interconnection Facilities, whether incurred by the Power Purchaser or NTDC before or after the notice given by the Company 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 Company. Upon a request by the Company in writing, the Power Purchaser and NTDC shall deliver to the Company 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 NTDC Interconnection Facilities to be constructed.
- (b) In the event that this Agreement is terminated pursuant to Section 16.4 due to the Company Event of Default set forth in Section 16.1(a), then the Power Purchaser shall be immediately entitled to encash the Company Letter of Credit (or any remaining portion thereof) in full. The Parties agree that any such encashment constitutes liquidated damages for such Company Event of Default and shall be the exclusive remedy available to the Power Purchaser and NTDC therefor, and the Company shall not have any obligation to compensate the Power Purchaser or NTDC for any amount pursuant to Section 16.7(a). The Company hereby waives to the fullest extent permitted by law any claim that the encashment of the

Company Letter of Credit in such amount is void as a penalty.

Section 16.8 Other Remedies

- (a) The exercise of the right by the Power Purchase or the Company 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 this Agreement 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 Power Purchaser or NTDC may be damaged in amounts that may be difficult or impossible to determine in the event the Company 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 genuine estimates for the actual damages and/or losses to the Power Purchaser or NTDC and it is further understood and agreed that the payment of such amounts under Section 16.7 and any encashment of the Company Letter of Credit pursuant to its terms and the termination of this Agreement pursuant to Section 16.1(a) is the sole remedy of the Power Purchaser and/or NTDC for such event.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event the Company terminates this Agreement and the Implementation Agreement as a result of a Power Purchaser Event of Default or NTDC Event of Default under this Agreement pursuant to Section 14.1(b)(v) of the Implementation Agreement and the Company 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 Company against or liability of the Power Purchaser or NTDC under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Company shall have no further claim or recourse against the Power Purchaser or NTDC 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 Company Event of Default under this Agreement pursuant to Section 14.1(a)(ix) of the Implementation Agreement, the GOP elects to purchase the Complex and the Company transfers the Complex to the GOP pursuant to Section 15.1(a) of the Implementation Agreement, then, upon such transfer, any claims by the Power Purchaser or NTDC against or liability of the Company under this Agreement (except as provided in Section 16.7, which shall constitute independent and separate rights of the Power Purchaser or NTDC) shall

be fully extinguished and the Power Purchaser or NTDC shall have no further claim or recourse against the Company under this Agreement. Upon the transfer of the Complex to the GOP, if not terminated earlier pursuant to the terms hereof, this Agreement shall immediately terminate.

Section 16.9 Notice to the GOP of a Power Purchaser's or NTDC's Default

Anything in this Agreement notwithstanding, the Company shall not seek to terminate this Agreement as a result of any default of the Power Purchaser or NTDC without first giving a copy of any notices required to be given to the Power Purchaser or NTDC 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 Power Purchaser or NTDC 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 Company 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 Power Purchaser or NTDC hereunder with the same effect as if the payment or act had been made or performed by the Power Purchaser or NTDC. If the GOP fails to cure or is unable or unwilling to cure a default of the Power Purchaser or NTDC within the cure periods provided to the Power Purchaser under this Agreement, the Company 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 Power Purchaser or NTDC other than a payment default, if the GOP is diligently attempting to cure such default of the Power Purchaser or NTDC 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 Company may exercise its rights and remedies with respect to such default set forth in this Agreement.

**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 5.12 (Maintenance of Operating Records), Section 9.8 (Supporting Data), this Article XVII (Rights and Obligations of Parties on Termination), Article I (Definitions; Rules of Interpretation); Article X (Liability), Article XVIII (Dispute Resolution) and Article XIX (Miscellaneous) shall expressly survive any termination or expiry of this Agreement for a period of thirty six (36) months from the date of such expiry or termination.

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.

**ARTICLE XVIII
RESOLUTION OF DISPUTES**

Section 18.1 Resolution by Parties

- (a) In the event of any Dispute (other than a Dispute between NTDC and the Power Purchaser, which does not involve or otherwise impact the rights or obligations of the Company under this Agreement), all 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 Parties.
- (b) The Party alleging the existence of a Dispute shall give to the other Parties written notice setting out the material particulars of the Dispute, pursuant to Section 18.1(a). Representatives from each of the Power Purchaser, NTDC and the Company shall meet in Islamabad 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 Parties (or within such longer period of time as the Parties may agree), then the provisions of Section 18.2 shall apply.

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, then any of the Parties may refer the Dispute to an expert (the “Expert”), in accordance with this Section 18.2, for consideration and a determination as to the resolution thereof.
- (b) The Party initiating submission of the Dispute to the Expert, whether jointly with another Party or otherwise (the “Initiating Party”), shall serve all other Parties (the “Recipient Parties”) with a notice intimating the material particulars of the Dispute and its intention to submit the same for Expert Determination under this Section 18.2, and nominating a person to be the Expert therefor. Within fifteen (15) Days of receiving such notice, the Recipient Parties shall notify the Initiating Party of their respective acceptance of the Initiating Party’s nomination. If however, any of the Recipient Parties do not accept the Initiating Party’s nomination for the Expert, the said Party or Parties, shall propose an alternative person for appointment as an Expert, within fifteen (15) Days from the date the Initiating Party’s notice is received by the Recipient Parties. The Initiating Party may accept or reject the Recipient Parties nomination for appointment as Expert, within fifteen (15) Days from the date the Recipient Parties’ proposal is received. If the Recipient Parties do not respond to the Initiating Party’s notice within the prescribed time or fail to communicate their rejection of the Initiating Party’s nomination without proposing an alternative, or the Initiating Party fails to accept the Recipient Parties nomination within the prescribed time period, the Parties shall meet within five (5) Business Days and to discuss and agree in good faith,

for a period not exceeding five (5) Days, upon a person to be the Expert. Where, after exhausting the procedure prescribed this Section, the Parties are unable to agree on a person to be appointed as the Expert, 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) (only for technical matters) shall be requested to select the Expert, which selection shall be binding on the Parties; provided, however, unless the Parties otherwise agree 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 Company nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.

- (c) The Dispute shall only be considered by an Expert, after Initiating Party has concurrently submitted to both the Expert and the Recipient Parties, all written materials setting forth:
 - (i) a description of the Dispute identifying the defaulting Party/(ies);
 - (ii) a statement of the Initiating Party's position detailing the claim against the defaulting Party/(ies) and whether a hearing is requested by the same; and
 - (iii) copies of records supporting the Initiating Party's position.
- (d) Within ten (10) Business Days after the Initiating Party's submission of written materials as prescribed in Section 18.2(c), the Recipient Parties may submit to the Expert, with copies to the Initiating Party:
 - (i) their respective descriptions of the Dispute;
 - (ii) their respective statements of positions and, if not already requested by the Initiating Party, a request for a hearing; and
 - (iii) copies of any records supporting their respective positions.

The Expert shall consider any such information submitted by the Parties and may consider any additional information submitted by any Party at a later date. In such event, such additional information shall only be considered by the Expert if the Party submitting the same concurrently furnishes a copy thereof to the remaining Parties, who shall be allowed reasonable opportunity to submit their response thereto.

- (e) Each Party shall have access to the other Party/(ies)'s relevant records and be entitled to receive copies of the records submitted by the other Party/(ies).
- (f) Each Party shall designate one (1) 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 for assistance thereof. If a hearing is requested by any Party in accordance with the applicable provisions, the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.

- (g) The Expert shall provide to all the Parties a written determination regarding the Dispute identifying therein his/her findings with respect to matters specified in 18.2(c) and (d) above, within fifteen (15) Days of being selected as an Expert, or within such further time as is agreed in writing by the Parties. Upon furnishing of the Expert's determination, the Parties may review and discuss the same 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 Expert proceedings shall be without prejudice to rights and obligations of any Party, and any evidence given or statements made in the course of this process may not be used against any Party in any other proceedings before any forum. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- (i) Unless the Parties agree in writing at the time the Expert is selected, stating that the decision of the Expert shall be binding, and except for the matters referred to in Section 18.2(m), the determination of the Expert shall not be binding; provided, however, that if the arbitration proceedings have not commenced in accordance with Section 18.3, within seventy-five (75) Days from the date the Expert's determination is received by the Parties in accordance with Section 18.2(g) the Expert's determination shall be final and binding on the Parties, and any right of any Parties to resort to arbitral, judicial or other proceedings in relation to the subject matter Dispute determined by the Expert shall stand waived to the fullest extent permitted by law.
- (j) Subject to Section 18.2(i), only if a Party does not accept the determination of the Expert issued in context of the Dispute referred or if the Expert has not provided a determination within the time period specified in Section 18.2(g), any Party may initiate arbitration proceedings in accordance with Section 18.3.
- (k) The costs of engaging an Expert shall be borne equally by all the Parties and each Party shall bear its respective costs in preparing materials for, and making presentations to the Expert.
- (l) The failure of any Party to comply with the time periods set out in this Section 18.2 shall not prevent the Expert from proceeding with the reference, or the failure of a Party or the Expert to comply with the time periods set out in this Section 18.2 shall not prevent the Recipient Parties (or in the case of delay by the Expert, any Party) from terminating the Expert proceedings and referring the matter immediately to arbitration in accordance with Section 18.3.

- (m) Except in the case of manifest error or fraud, the Expert's determination rendered in accordance with this Section 18.2 resolving an issue or matter under Section 2.5(b)(v), or any issue or matter relating to a Restoration under Section 15.6, shall be final and binding on the Parties and shall not be referable to arbitration or otherwise subject to appeal.
- (n) In respect to all matters other than those described in Section 18.2 (m), any Party may serve a written notice on the other Party/(ies) within thirty (30) Days of the Expert's decision having been notified to it, stating its intention to refer the matter in 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.

Section 18.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Section 18.1 and Section 18.2(n) and is not the kind of Dispute identified in Section 18.2(m), shall be settled by arbitration in accordance with the rules of the London Court of International Arbitration, as in effect on the date of this Agreement (the "Rules"), by one (1) arbitrator appointed in accordance with the Rules. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language. Provided however, a reference to Arbitration under Section 18.3 shall only be valid if the condition precedents of Sections 18.1 and 18.2 have been satisfied and all Parties are provided an opportunity to participate in the arbitration proceedings.
- (b) If under the Laws of Pakistan the use of the Rules in the arbitration conducted for the resolution of a Dispute would result in an award that is not enforceable, then such Dispute shall be finally settled by arbitration under the Rules of Arbitration of the United Nations Commission and International Trade Law ("UNCITRAL Rules") as in effect on the date of this Agreement by one (1) arbitrator appointed in accordance with the UNCITRAL Rules.
- (c) The arbitration shall be conducted in Lahore, Pakistan; provided, however, that if the amount in Dispute is greater than four million Dollars (\$4,000,000/-) or the amount of such Dispute together with the amount of all previous Disputes submitted for arbitration pursuant to this Section 18.3 exceeds six million Dollars (\$6,000,000/-) or an issue in Dispute is (i) the legality, validity or enforceability of this Agreement or any material provision hereof, or (ii) the termination of this Agreement, then any Party may, unless otherwise agreed by the Parties, require that the arbitration be conducted in London, in which case the arbitration shall be conducted in London. Except as awarded by the arbitrator and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder. Notwithstanding the foregoing, any Party may require that arbitration of any Dispute be conducted in London (or such other location outside Pakistan as agreed to by the Parties), in which case the arbitration shall be conducted in London (or such other location outside Pakistan

as agreed to by the Parties); provided, however, that if the Dispute is not of a type that could have been conducted in London (or such other location outside Pakistan agreed by the Parties) in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London (or such other location outside Pakistan as agreed by the Parties) shall pay all costs of the arbitration as and when incurred by the other Parties (including out of pocket costs but excluding any award made by the arbitrator) in excess of the costs that would have been otherwise incurred by such other Parties had the arbitration been conducted in Lahore, Pakistan; provided, further, that the Party requiring that arbitration be conducted in London (or such other location outside Pakistan as agreed by the Parties) 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 Parties 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 any Party or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital (as defined in this Agreement), nor shall any such arbitrator be an employee or agent or former employee or agent of the Power Purchaser, the NTDC, the Company, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital (as defined in this Agreement).
- (e) In relation to the Parties, or any parties claiming through the Parties, the provisions of Sections 18.3(a) and 18.3(b) above 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 arbitrator, 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 Power Purchaser, the NTDC or the Company or cause significant delay in the determination of the Dispute between the Power Purchaser and the Company, or the NTDC and the Company, or in the determination of any Related Dispute in which the Power Purchaser or the NTDC is involved.

Section 18.5 Sovereign Immunity; Jurisdiction

- (a) The Power Purchaser and NTDC unconditionally and irrevocably:
 - (i) agrees that should any proceedings be brought against them or their assets,

other than the Grid System, electric generation assets and equipment, electric distribution assets or other assets necessary for the fulfillment by them of their 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 Power Purchaser or NTDC), and the authorization issued to the Power Purchaser to act as Market Operator by NEPRA or the distribution licence issued to NTDC by NEPRA (collectively, "Protected Assets") in any jurisdiction where such assets or property of the Power Purchaser or NTDC are located to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings shall be made by or on behalf of the Power Purchaser or NTDC on behalf of themselves or any of their assets (other than Protected Assets) that they now have or may in the future have in any such jurisdiction in connection with any such proceedings;

- (ii) waive any right of immunity that they or any of their assets (other than Protected Assets) now have or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) consent generally to the jurisdiction of any court of competent jurisdiction for any action filed by the Company to enforce any award or decision of any arbitrator who was 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 their assets whatsoever (other than the Protected Assets) regardless of their use or intended use) and specifically waive any objection that any such action or proceeding has been brought in an inconvenient forum and agree not to plead or claim the same. The Power Purchaser and NTDC agree that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.
- (b) The Company 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 Power Purchaser or NTDC to enforce any arbitral award or decision made pursuant to arbitration conducted in accordance with Section 18.3. The Company waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 18.5(b) and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Company irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.

- (c) For the avoidance of doubt, any dispute or difference between the Parties as to whether any Party has complied with the affirmation set out in this Section 18.5 shall be referred for determination under Section 18.3 and shall fall within the definition of Dispute.

Section 18.6 Implementation of Expert Determination or Arbitral Award

- (a) Any liability of any Party, as determined in a final and binding Expert Determination or Arbitral award, shall be implemented in accordance with applicable laws of Pakistan, as modified from time to time.
- (b) Any and all liability of NTDC in favour of the Company, as determined in a final and binding Expert Determination or Arbitral award shall be discharged and borne by the Power Purchaser, for and on behalf of NTDC.

Section 18.7 Dispute between Power Purchaser and NTDC

- (a) In the event of any Dispute between NTDC and the Power Purchaser, which does not involve or otherwise impact the rights or obligations of the Company under this Agreement, both 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) If any Dispute falling within the scope of this Section 18.7(a) is not resolved within thirty (30) Days after the date of receipt of notice described in Section 18.7(a) (or within such longer period of time as the Parties may agree), then the same shall be referred to NEPRA by either Party.

**ARTICLE XIX
MISCELLANEOUS PROVISIONS**

Section 19.1 Notices

(a) Except for any notice given under Section 5.3 or Section 5.4, 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 Power Purchaser:

Attention:

Facsimile:

with a copy to:

Attention:

Facsimile:

(ii) If to the Company:

Attention: Chief Executive Officer

Facsimile:

(iii) If to NTDC:

Attn:

Facsimile:

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 Parties in accordance with this Section 19.1(a).

(b) No notice or other communication shall be effective unless and until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:

(i) when delivered if personally delivered;

(ii) one (1) Business Day after sending, if sent by courier; 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) Any notice required or permitted to be given under Section 5.3 or Section 5.4 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 Power Purchaser: 0-----
 - (ii) If to the Company: 0-----
 - (iii) If to NTDC: [.]

provided, that a Party may change the telephone number, or any other details necessary for such communication, by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with Section 19.1(a).

- (d) A copy of any material notice sent hereunder by the Power Purchaser to the Company shall concurrently be sent to the Lenders. Material notices shall be a notice of a Force Majeure Event experienced by the Power Purchaser, Notice of Intent to Terminate and a Termination Notice. Each material notice shall be delivered in accordance with the procedures set forth in Section 15.2 and Section 16.5, addressed to the Agent at the address indicated at Financial Closing (or such other address as the Lenders or the Agent may have specified by written notice delivered in accordance herewith; provided, however, that the Power Purchaser shall have no liability to the Lenders in respect of any damages, losses, costs or expenses whatsoever suffered by them as a result of any delay in delivery or non-delivery of any such notice under this Section 19.1(d), nor shall such delay in delivery or non-delivery constitute a breach or default under this Agreement or any direct agreement between the Lenders and the Power Purchaser.

Section 19.2 Amendment

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

Section 19.3 Third Parties

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

Section 19.4 No Waiver

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

Party. No waiver by either Party of any default by the other in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

Section 19.5 Relationship of the Parties

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

Section 19.6 Language

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

Section 19.7 Governing Law

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

Section 19.8 Entirety

Upon the occurrence of Financial Closing and the full effectiveness of this Agreement, 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 Financial Closing, to the extent of any inconsistency between the provisions of the Letter of Support and the provisions of this Agreement which are then effective, the Letter of Support shall be controlling as to the rights and obligations of the Parties in relation to the Project.

Section 19.9 Assignment

- (a) No assignment or transfer 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, except by the Company as provided in Section 19.9(b).
- (b) Notwithstanding the provisions of Section 19.9(a), for the purpose of financing the Project, in connection with the Financial Closing, the Company may,

pursuant to the Financing Documents, assign to, or create a security interest in favour of, the Lenders in the Company's rights and interests under or pursuant to (i) this Agreement, (ii) any agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the present and future movable, immovable, and intellectual property of the Company, (vi) the present and future revenues or actionable claims of the Company, and (vii) any other present or future right, interest, property or asset of the Company of any kind and wherever situated.

- (c) The Lenders shall have no rights (except as expressly provided herein) or obligations to the GOP under this Agreement until such time as the Lenders or their designees succeed to the Company's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give notice of such succession ("the Succession Notice") to the GOP and shall assume liability for all of the Company's obligations under this Agreement, including payment of any amounts due and owing to the GOP for breaches or defaults by the Company and other liabilities arising under this Agreement prior to the Lenders' or such designees' succession to the Company's interest in and under this Agreement; provided, however, that any liability of the Lenders or their designees shall be strictly limited to the interest of the Lenders in the Complex.
- (d) Upon notification by the Lenders or the Agent to the GOP, of the occurrence and continuance of an event of default under the Financing Documents, the Lenders shall have the right, *inter alia*, to (i) take possession of the Complex and prior to the Commercial Operations Date, complete construction of the Complex and operate and maintain the same and, after the Commercial Operations Date, operate and maintain the same, and (ii) cure any continuing Company Event of Default as provided under Section 16.5 of this Agreement.
- (e) In the event the Lenders desire to sell, transfer or assign the Complex as a going concern with all assets (present and future) together with possession thereof (hereinafter the "Transfer of the Complex") for the purposes of enforcing their rights under or pursuant to the Financing Documents, the following conditions shall apply:
 - (i) Lenders shall obtain the consent of the Power Purchaser for the purposes of the Transfer of the Complex, which consent shall not be unreasonably withheld or delayed;
 - (ii) The Transfer of the Complex shall only be in favour of a transferee (the "Transferee") who shall have been approved by the GOP; and
 - (iii) The Power Purchaser may impose such conditions (which will not be unreasonable) for granting its consent and approval as stated in sub-clause (i) and (ii) above, including the curing by the Transferee of any existing Company Event of Default within the period remaining for such cure by

the Company and the Lenders and the payment of any amounts due and owing to the Power Purchaser or NTDC by the Company hereunder on or before the date of Transfer of the Complex.

Provided that the Lenders and the Transferee have complied with the requirements of this Section 19.9(e), the GOP agrees to execute such agreements and documents necessary or reasonably expedient to ensure that the Transferee has the benefit of all right, title and interest of the Company under this Agreement and assumes in writing for the benefit of the GOP the obligations and liabilities of the Company hereunder in place of the Company.

- (f) Upon notice to the GOP of a default under the Financing Documents, the GOP shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders in the exercise of such rights by the Lenders under this Agreement and the Financing Documents.
- (g) At the request of the Company, delivered to the GOP no less than thirty (30) Days in advance, the GOP 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 Article XI 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.
- (h) Notwithstanding the above, the Power 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 Power 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 as is provided for the obligations of the succeeding entity or entities that in the reasonable business judgment of the Company provides an adequate alternative to the Guarantee and all or any part of the Power Purchaser's rights and obligations under this Agreement are assigned pursuant to law to or contractually assumed, through a novation, by one or more entities, each of which has the appropriate legal capacity to carry out and perform such rights and obligations assigned to or assumed by it.

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.

- (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 or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) This Section 19.10 shall survive termination or expiry of this Agreement for a period of thirty six (36) months from the date of such termination or expiry.

Section 19.11 Successors and Assigns

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

Section 19.12 No Liability for Review

No review and approval by the Power Purchaser of any agreement, document, instrument,

drawing, specifications, or design proposed by the Company nor any inspection of the EPC Works or the Company Interconnection Works carried out by the Power Purchaser or NTDC pursuant to this Agreement shall relieve the Company 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 Company's obligations under this Agreement nor shall the Power Purchaser or NTDC be liable to the Company 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 Company 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 Power Purchaser, NTDC, any Relevant Authority or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Company 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 Company for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing 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 Power Purchaser, NTDC, any Relevant Authority or any Public Sector Entity, except that which has been expressly declared pursuant hereto.
- (c) The Company 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 and the declarations required hereby. It agrees that 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 Power Purchaser or NTDC, be voidable and without legal effect at the option of the Power Purchaser or NTDC.
- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the Power Purchaser or NTDC in this regard, the Company agrees to indemnify the Power Purchaser or NTDC for any loss or damage incurred by it on

account of its corrupt business practices and further pay compensation to the Power 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 Company (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 the Power Purchase Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the Power Purchaser, NTDC, any Relevant Authority or any Public Sector Entity.

Section 19.14 Counterparts

This Agreement may be executed in three (3) 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 be with prejudice to any proceedings against the Company based upon the same claim that the Power Purchaser could otherwise bring for breach by the Company of its obligations under this Agreement. Nothing in this Section shall prevent the Power Purchaser and the GOP from separately initiating proceedings to terminate this Agreement and the Implementation Agreement, respectively, pursuant to Sections 16.1 and 16.4 of this Agreement and Sections 14.1 and 14.2 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.

**CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED
FOR AND ON BEHALF OF EX-WAPDA DISTRIBUTION COMPANIES**

By:

Title:

Witness: _____

Witness: _____

Name: _____

Name: _____

**NATIONAL TRANSMISSION &
DESPATCH COMPANY LIMITED**

[.] LIMITED

By:

By:

Title:

Title: Chief Executive

Witness: _____

Witness: _____

Name: _____

Name: _____