

K-ELECTRIC LIMITED

– AND –

[COMPANY NAME]

ENERGY PURCHASE AGREEMENT

RELATING TO

SOLAR POWERED [120] MW_P (CONTRACT CAPACITY) POWER GENERATION COMPLEX

AT

MADE AT KARACHI

ISLAMIC REPUBLIC OF PAKISTAN

AS OF

COUNSEL FOR PURCHASER:

COUNSEL FOR SELLER:

Contents

1. DEFINITIONS; INTERPRETATION 7

1.1 DEFINITIONS7

1.2 RULES OF INTERPRETATION23

1.3 ABBREVIATIONS24

2. EFFECTIVE DATE; TERM AND AGREEMENTS OF THE PARTIES..... 25

2.1 CONDITIONS PRECEDENT AND EFFECTIVE DATE25

2.2 TERM.....25

2.3 SELLER CONSENTS26

2.4 APPOINTMENT OF THE OPERATING COMMITTEE.....27

2.5 OPERATING PROCEDURES27

2.6 APPOINTMENT OF THE ENGINEER28

2.7 SELLER LETTER OF CREDIT29

2.8 REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES30

2.9 SPECIFICATION OF CONTRACT CAPACITY30

3. SALE AND PURCHASE OF ENERGY..... 32

3.1 SALE AND PURCHASE OF NET DELIVERED ENERGY.....32

3.2 NOT USED32

3.3 CARBON CREDITS32

3.4 OBSERVANCE OF TECHNICAL LIMITS32

4. CONSTRUCTION OF THE COMPLEX 33

4.1 CONSTRUCTION OF THE COMPLEX33

4.2 SUBMISSION OF REPORTS AND INFORMATION.....33

4.3 DELIVERY OF ELECTRIC POWER TO THE COMPLEX.....35

4.4 PURCHASER OBSERVATION VISITS35

5. CONTROL AND OPERATION OF COMPLEX..... 36

5.1 OPERATION AND MAINTENANCE OF THE COMPLEX36

5.2 AVAILABILITY37

5.3 FORECASTING OF NET DELIVERED ENERGY37

5.4 DESPATCH INSTRUCTIONS39

5.5 SCHEDULED OUTAGES AND MAINTENANCE OUTAGES39

5.6 RECORDING OF COMMUNICATIONS40

5.7 EMERGENCY SET-UP AND CURTAILMENT PLANS.....40

5.8 EMPLOYMENT OF QUALIFIED PERSONNEL40

5.9 OPERATING COMMITTEE DUTIES.....40

5.10 MAINTENANCE OF OPERATING RECORDS41

5.11 TAMPERING WITH THE METERING SYSTEM AND THE COMPLEX MONITORING SYSTEM42

5.12 CESSATION OF OPERATION OF THE COMPLEX.....42

5.13	FREE OF LIENS	44
5.14	FORCED OUTAGES OR PARTIAL FORCED OUTAGES	44
6.	INTERCONNECTION FACILITIES	45
6.1	CONSTRUCTION OF THE SELLER INTERCONNECTION FACILITIES.....	45
6.2	PURCHASER INTERCONNECTION FACILITIES.....	46
6.3	DATA NECESSARY FOR CONSTRUCTION OF INTERCONNECTION FACILITIES	46
6.4	GRANTING OF EASEMENTS AND RIGHTS-OF-WAY	46
6.5	CONSTRUCTION AND COMPLETION OF PURCHASER INTERCONNECTION FACILITIES	46
6.6	PROTECTIVE DEVICES	48
6.7	TESTING	49
7.	METERING	50
7.1	METERING SYSTEM.....	50
7.2	INSTALLATION OF METERING SYSTEM.....	50
7.3	TESTING OF METERING SYSTEM	51
7.4	READING METERS	52
7.5	SEALING OF METERING SYSTEM	53
7.6	REPAIR, REPLACEMENT OR RECALIBRATION OF METERING SYSTEM	54
7.7	PROTECTIVE DEVICES AND TELECOMMUNICATIONS CIRCUIT	54
8.	TESTING OF THE COMPLEX	56
8.1	TESTING PROGRAMME	56
8.2	TESTING OF THE SELLER INTERCONNECTION FACILITIES	57
8.3	TESTING AND COMMISSIONING OF THE COMPLEX.....	58
8.4	COPIES OF TEST RESULTS AND CERTIFICATES.....	58
8.5	SCHEDULING AND ACCOMMODATION OF ADDITIONAL TESTS	58
8.6	TESTING DISPUTES	59
8.7	NET DELIVERED ENERGY PRIOR TO THE COMMERCIAL OPERATIONS DATE	59
8.8	AMBIENT SITE CONDITIONS.....	59
9.	COMPENSATION; PAYMENT AND BILLING	60
9.1	ENERGY PAYMENT.....	60
9.2	PASS-THROUGH ITEMS; SUPPLEMENTAL TARIFFS	60
9.3	LIQUIDATED DAMAGES.....	60
9.4	BILLING	61
9.5	PAYMENT	62
9.6	PAYMENT DISPUTES.....	63
9.7	SUPPORTING DATA.....	63
9.8	ESCROW ARRANGEMENT	64
10.	LIABILITY	66
11.	INDEMNIFICATION	67
11.1	INDEMNIFICATION	67

11.2	ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT	67
11.3	INDEMNIFICATION FOR FINES AND PENALTIES	67
11.4	DEFENCE OF CLAIMS	67
11.5	NOTICE OF CLAIMS	68
12.	INSURANCE	68
12.1	MAINTENANCE OF INSURANCE POLICIES	68
12.2	MAINTENANCE OF “OCCURRENCE” FORM POLICIES	69
12.3	POLICY ENDORSEMENTS	69
12.4	ENDORSEMENTS TO FIRE, PERILS AND MACHINERY BREAKDOWN POLICIES	70
12.5	CERTIFICATES OF INSURANCE	70
12.6	INSURANCE REPORTS	70
13.	REPRESENTATIONS, WARRANTIES AND COVENANTS	70
13.1	REPRESENTATIONS AND WARRANTIES OF THE SELLER	70
13.2	CERTIFICATES	72
13.3	REPRESENTATIONS AND WARRANTIES OF PURCHASER	72
14.	TAXES	74
14.1	TAXES APPLICABLE TO THE SELLER	74
14.2	TAXES APPLICABLE TO PURCHASER	74
14.3	NOTICE OF CHANGES IN TAX	74
14.4	CONSEQUENCES FOR TAX COSTS OR TAX SAVINGS	74
14.5	DISPUTED TAXES	75
15.	FORCE MAJEURE	76
15.1	DEFINITION OF FORCE MAJEURE	76
15.2	NOTIFICATION OBLIGATIONS	77
15.3	DUTY TO MITIGATE	77
15.4	DELAY CAUSED BY FORCE MAJEURE	78
15.5	PAYMENT DURING FORCE MAJEURE EVENT	78
15.6	COMPENSATION FOR PPFME OR CLFME	78
15.7	APPRAISAL REPORT AND USE OF EXPERT	83
15.8	SUPPLEMENTAL TARIFFS	85
15.9	TERMINATION AS A RESULT OF A FORCE MAJEURE EVENT	86
15.10	NOTICE OF TERMINATION	87
16.	TERMINATION	88
16.1	SELLER EVENTS OF DEFAULT	88
16.2	PURCHASER EVENTS OF DEFAULT	90
16.3	NOTICE TO CURE	91
16.4	TERMINATION NOTICE	94
16.5	NOTICE TO THE LENDERS OF THE SELLER’S DEFAULT	95
16.6	OBLIGATIONS UPON TERMINATION	96

16.7	REIMBURSEMENT	97
16.8	OTHER REMEDIES.....	97
16.9	RIGHT TO SELL ELECTRICAL ENERGY	97
17.	RIGHTS AND OBLIGATIONS OF PARTIES ON TERMINATION	98
17.1	SURVIVAL OF RIGHTS AND OBLIGATIONS	98
17.2	LIABILITY OF THE PARTIES ON TERMINATION	98
18.	RESOLUTION OF DISPUTES	99
18.1	RESOLUTION BY PARTIES.....	99
18.2	DETERMINATION BY EXPERT	99
18.3	ARBITRATION	ERROR! BOOKMARK NOT DEFINED.
18.4	IMMUNITY; JURISDICTION	101
19.	MISCELLANEOUS PROVISIONS.....	102
19.1	NOTICES.....	102
19.2	AMENDMENT	103
19.3	THIRD PARTIES	104
19.4	NO WAIVER	104
19.5	RELATIONSHIP OF THE PARTIES	104
19.6	LANGUAGE	104
19.7	GOVERNING LAW	104
19.8	ENTIRETY.....	104
19.9	ASSIGNMENT.....	104
19.10	CONFIDENTIALITY.....	107
19.11	SUCCESSORS AND ASSIGNS	108
19.12	NO LIABILITY FOR REVIEW	108
19.13	AFFIRMATION	108
19.14	COUNTERPARTS.....	109
19.15	SEVERABILITY	109
19.16	BUSINESS PRACTICES	109
19.17	CONSENTS AND APPROVALS	110
19.18	PARTIAL INVALIDITY.....	110

LIST OF SCHEDULES

SCHEDULE 1	TARIFF, INDEXATION AND ADJUSTMENT
SCHEDULE 2	DESCRIPTION OF THE COMPLEX; SPECIFICATIONS
SCHEDULE 3	SELLER AND PURCHASER INTERCONNECTION FACILITIES; INTERCONNECTION POINT
SCHEDULE 4	FORM OF CONSTRUCTION REPORTS, PROJECT PROGRESS REPORTING
SCHEDULE 5	TECHNICAL LIMITS AND MINIMUM FUNCTIONAL REQUIREMENTS
SCHEDULE 6	METERING; METEOROLOGICAL STATION; IRRADIATION MEASUREMENT PROTOCOL
SCHEDULE 7	COMMISSIONING AND RELIABILITY RUN TESTS; TESTS FOR THE SELLER INTERCONNECTION FACILITIES
SCHEDULE 8	INSURANCE
SCHEDULE 9	FORM OF SELLER LETTER OF CREDIT
SCHEDULE 10	NPMV MEASUREMENT PROTOCOL
SCHEDULE 11	NOT IN USE
SCHEDULE 12	FORM OF METER READING CERTIFICATE
SCHEDULE 13	HYBRID FORECAST MODEL TESTING PROTOCOL

THIS ENERGY PURCHASE AGREEMENT (this “Agreement”) is made at Karachi as of [●]by and between:

- (1) **K-ELECTRIC LIMITED**, a public limited company incorporated under the laws of Pakistan, with its registered office located at KE House, 39-B, Sunset Boulevard, Phase II, Karachi, Pakistan (hereinafter referred to as the “**Purchaser**” which expression shall mean and include its successors-in-interest and permitted assigns); and
- (2) [*Insert Seller’s Name*], a company incorporated under the laws of Pakistan, with its registered office located at [*Insert Address*], Pakistan (hereinafter referred to as the “**Seller**” which expression shall mean and include its successors-in-interest and permitted assigns).

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

RECITALS

- A. **WHEREAS**, the Seller has proposed to the Purchaser that the Seller will design, engineer, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [120] MW_P (Contract Capacity) solar powered electric generation facility (the “**Complex**”, as hereinafter defined) to be located at the Site (as hereinafter defined) at [●], Pakistan on build, own and operate basis;
- B. **WHEREAS**, the Seller wishes to sell and the Purchaser wishes to purchase all of the Net Delivered Energy (as hereinafter defined) generated by the Complex and delivered to the Interconnection Point (as hereinafter defined) on and pursuant to the terms and conditions contained herein;
- C. **WHEREAS**, the Seller has been issued a Generation License (as hereinafter defined) and has been awarded the tariff pursuant to the Tariff Determination (as hereinafter defined) by the National Electric Power Regulatory Authority (“**NEPRA**”, as hereinafter defined);
- D. **WHEREAS**, the Seller has acquired [freehold/leasehold] title to the Site (as hereinafter defined) pursuant to the Land Document (as hereinafter defined) and desires to locate the Complex on the Site.

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:

1. DEFINITIONS; INTERPRETATION

1.1 DEFINITIONS

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

“**Abandonment**” or “**Abandoned**” — The Seller’s voluntary cessation of operation of the Complex, and the withdrawal of all, or substantially all, personnel from the Site for reasons other than (i) a breach or default by the Purchaser under this Agreement; or (ii) a Force Majeure Event or (iii) an Emergency where the Purchaser requests or approves cessation of operation of the Complex or withdrawal of the Seller’s personnel from the Site in accordance with the Emergency procedures developed in accordance with Section 5.7.

“**Actual Annual Energy**” – The sum of Net Delivered Energy and Non-Project Missed Volume in a given Agreement Year.

“**Actual Principal Repayment**” – The actual loan repayment or principal repayment amount under the

Financing Documents for the relevant quarter or six-months period, as the case may be, in the relevant Agreement Year.

“Actual Interest Charges” – The actual interest charges for the current quarter or semi-annual period, as the case may be, that is payable on the outstanding principal amount under the Financing Documents for the relevant quarter or six-months period, as the case may be, in the relevant Agreement Year.

“Adjusted Forecast Energy” – The energy in KWh calculated on the basis of actual Ambient Site Conditions under the Hybrid Forecast Model for the available Arrays.

“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.

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

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

“Agreement Year” — A period of twelve (12) consecutive months commencing on the Commercial Operations Date and thereafter 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; provided, however, that each Agreement Year shall automatically be extended proportionately by the occurrence of (i) an Other Force Majeure Event declared by the Seller within such Agreement Year for the period for which it was unable to generate Net Delivered Energy due to such Other Force Majeure Event and during that period such Other Force Majeure Event subsisted; or (ii) FME Suspension Period in accordance with Section 15.6A; or (iii) Seller Suspension Period(s) and (iv) PPFME/CLFME Pendency Period, and 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 Other Force Majeure Event(s) declared by the Seller, the Seller Suspension Period, FME Suspension Period in accordance with Section 15.6A(e) and/or PPFME/CLFME Pendency Period.

“Allied Back-Up Metering Equipment” — The instrument transformers associated with the Back-Up Meter along with secondary circuit equipment.

“Allied Metering Equipment” — The instrument transformers associated with the Meters along with secondary circuit equipment.

“Ambient Site Conditions” — The climatic conditions at the Site for generation of Net Delivered Energy or which have an impact on the electrical output and efficiency of the Complex, including, without limitation, solar irradiation, temperature and rainfall, as measured by the Meteorological Station provided for the purposes of calculating Adjusted Forecast Energy, the Ambient Site Conditions may be measured by the Forecasting Consultant without necessarily relying on the Meteorological Station.

“Ambient Temperature” – The temperature recorded at the Site to be measured by the Meteorological Station as specified in and in accordance with Schedule 6.

“Ancillary Services” — Services provided by the Seller through the Complex, other than the delivery of Net Delivered Energy, as provided in Schedule 5, which services shall be provided within the Technical Limits and according to the provisions of the Grid Code.

“Annual Benchmark Energy” – For a given Agreement Year the net electrical output the Complex will be designed and constructed to deliver at the Interconnection Point, calculated as follows:

$$ABE = CF * CC * 8760 * 1000$$

Where:

ABE	=	Annual Benchmark Energy in kWh;
CF	=	the capacity utilization factor of [●];
CC	=	Contract Capacity in MWp.

“**Array**” — Each cluster of solar photo-voltaic panels constituting a part of the Complex and the inverter associated therewith.

“**Augmentation**” – A procedure for handshaking the SCADA / remote terminal unit signals with the Control Centre as specified in Schedule 3.

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

$$ADE_Y = ABE_Y * ((N/CC) / 365)$$

Where

ADE _Y	=	the Average Daily Energy for the relevant Agreement Year
ABE _Y	=	the Annual Benchmark Energy for the relevant Agreement Year
N	=	the aggregate rated capacity in MWp of the number of Arrays that are available to produce Net Delivered Energy.
CC	=	the Contract Capacity.

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

$$ADE_Y = ABE_Y / 365$$

Where

ABE _Y	=	Annual Benchmark Energy
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“**Back-Up Meter**” — The back-up equipment to measure the Net Delivered Energy along with the communication equipment installed at the Complex.

“**Back-Up Metering System**”— The system comprising of Back-Up Meter and Allied Back-up Metering Equipment, details ascribed to in Section 7.

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

“**Bid Submission Date**”: shall be [●]

“**Carbon Credits**” — Any tradable or sellable certificates or permits (and other environmental air quality credits and related emissions reduction credits or benefits (economic or otherwise)) that are derived by the producer of energy from generation sources that do not produce or emit carbon dioxide or other greenhouse gases.

“**Carrying Costs**” —Unless otherwise amended by NEPRA, the actual interest (or mark-up) applicable for the period on the Seller as agreed under the Financing Document, payable in or converted into Rupees accruing on the then-outstanding principal amount of the relevant portion of the debt under the Financing Documents related to the Complex but not exceeding KIBOR plus two and half percent (2.5%) for Rupee based financing and SOFR plus four and half percent (4.5%) for Foreign Currency based financing; provided that if the Seller secures full or portion of the debt under any concessionary financing scheme, including one introduced by the State Bank of Pakistan, the Carrying Costs for such portion of the debt

shall be calculated on the basis of the rate applicable to such concessionary financing availed by the Seller.

“Certificate of Commissioning of the Complex” — The certificate to be issued by the Engineer to the Seller and the Purchaser under Section 8.3(b) stating that, in the professional opinion of the Engineer, the Complex has been successfully Commissioned.

“Certificate of Readiness for Energization of the Seller Interconnection Facilities” — The certificate to be issued by the Engineer to the Seller and the Purchaser under Section 8.2(b) stating that, in the professional opinion of the Engineer, the Seller Interconnection Facilities are ready to be energized.

“Certificate of Readiness for Synchronization” — The certificate to be issued by the Engineer to the Seller and the Purchaser stating that the Complex is ready for and capable of synchronization with the Grid System.

“Change in Law” —

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

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

“Change in Tax” — After the Bid Submission Date, the adoption, enactment, promulgation, coming into effect, repeal, amendment, re-interpretation, change in application, change in interpretation or modification by any Public Sector Entity of any Law of Pakistan relating to any Tax or Taxes.

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

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

“CLFME” — A Change in Law if and to the extent that it is also a Force Majeure Event.

“Cloud Motion Data” — Cloud imagery techniques, using either satellite cloud images or images from terrestrial-based sky imaging devices, to predict the cloud motion and then applied to established algorithms to predict the plane of Array irradiance.

“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 fifteen (15) Days prior to the Required Commercial Operations Date without the prior written approval of the Purchaser.

“Commissioned” — The successful completion of Commissioning of the Complex for operation synchronous with the Grid System in accordance with Article VIII and Schedule 7, and the certification of such successful completion of Commissioning to the Purchaser and the Seller by the Engineer.

“Commissioning” — The event of undertaking of the Commissioning Tests on the Complex.

“Commissioning Tests” — The tests (including the Reliability Run Test) and successful completion criteria for such tests specified in Schedule 7, to be carried out pursuant to Sections 8.2, 8.3 and Schedule

7.

“Complex”— The electric power generation facility comprising of Arrays of solar photo-voltaic modules located at the Site and the Seller Interconnection Facilities (but excluding the Purchaser Interconnection Facilities), having a nominal rated capacity of approximately [120] MWp (Contract Capacity) to be designed, engineered, constructed, Commissioned, owned, operated, maintained and insured by the Seller during the Term, whether completed or at any stage in its construction, including without limitation or regard to level of development, engineering and design documents, all energy-producing equipment and auxiliary equipment, data-communication and recording equipment and systems, the Meteorological Station, the Complex Monitoring System, Hybrid Forecast Model, the inverter system, the step-up transformers and its associated switchgears & protection, all spare parts stored at Site and all other equipment or facilities necessary for delivery of electric power to the Purchaser at the Interconnection Point, which Complex is described in Schedule 2.

“Complex Monitoring System”- The system comprising the SCADA System, computer hardware, software and communication system to create, record, measure, process, gather, report, communicate and store the operating data for each Array in the Complex, with on-line access to the Purchaser to recordable data set out in Section 5.10(a), and which shall be installed and operated by the Seller in accordance with the minimum technical and functional specifications (including agreed parameters for the data) prescribed in Schedules 2 and 5, including the Augmentation of SCADA control in the existing network of the Purchaser installed at Control Center and/or other intermediary station at the sole cost of the Purchaser.

“Consents”— The Seller Consents and the Purchaser Consents.

“Construction Start Date” — The date the ‘notice to proceed’ is issued by the Seller to the EPC Contractor and the release of advance payments required under the EPC Contract by the Seller to the EPC Contractor, as notified by the Seller to the Purchaser no later than seven (7) Days after its occurrence.

“Construction Report”— The reports to be submitted by the Seller pursuant to Section 4.2(a), which shall address the matters identified in, and shall be substantially in the form set forth in Schedule 4.

“Construction Works” – The physical works and materials present on the Site after the Effective Date that are intended to form a permanent part of the Complex.

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

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

“Control Centre” — The Purchaser’s load despatch centre located in Karachi or such other control centre designated by the Purchaser and notified to the Seller in writing from time to time, but, in any event, not more than one at any time, from where the Despatch Instructions are issued for Despatch of the Complex.

“Custom Duties” All custom duty payable under the Customs Act, 1969 on or relating to the import into from Pakistan of plant, machinery and equipment.

“Cure Notice” — The meaning ascribed thereto in Section 16.3(a).

“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.

“Day Ahead Forecast” – A forecast of the net energy of the Complex in MWh which the Complex is likely to generate for each hour during the Day, provided by the Seller to the Purchaser.

“Delayed Payment Rate” — KIBOR plus two percent (2%) per annum, calculated for the actual number

of Days that the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) Day year.

“Despatch” – The exercise by the Purchaser (or subject to the Laws of Pakistan, its designee) of its right to:

- (a) the commencement, decrease, increase or cessation of the generation and delivery of Net Delivered Energy to the Interconnection Point, and
- (b) where applicable, the provision of Ancillary Services, as provided in Schedule 5,

in each case, in accordance with the Technical Limits and the then prevailing Ambient Site Conditions, in response to Despatch Instructions issued from the Control Centre, and “Despatched” shall be construed accordingly.

“Despatch Instructions” – The original, successive or revised instructions for Despatch (including but not limited to revision on the basis of information provided by the Seller).

“Determined Tariff” - The tariff approved by NEPRA for the Purchaser in relation to the sale of electrical energy including, monthly and quarterly tariff adjustments, as amended from time to time.

“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 provisions hereof, or the obligations or performance of a Party in accordance with any provision hereof.

“Distribution Licence” – The licence issued by NEPRA permitting the Purchaser to engage in distribution services in accordance with the terms and conditions stated therein, as such licence may be amended from time to time.

“Dollar” or **“\$”** or **“USD”**— The lawful currency of the United States of America.

“Due and Payable Date” — The meaning ascribed thereto in Section 9.5(a).

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

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

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

- (a) is described as an emergency and contingency event in the Grid Code; or
- (b) materially and adversely affects (as determined solely by the Purchaser) the availability of the Grid System, or the ability of the Purchaser to maintain safe, adequate and continuous electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers; or
- (c) presents a physical threat to persons or property or the security, integrity or reliability of the Grid System; or
- (d) which the Purchaser reasonably expects to have the effects specified in clauses (i), (ii) or (iii) hereinabove.

“Energy Payment” — The consideration payable by the Purchaser to the Seller for Monthly Energy, determined in accordance with Section 9.1.

“Energy Price” — The Reference Tariff, as adjusted from time to time in accordance with the indexations permitted by NEPRA under the Tariff Determination.

“Engineer” — The firm of engineering consultants to be appointed and hired by the Seller with the

approval of the Purchaser in accordance with Section 2.6 to monitor the construction of the Complex and Commissioning and to deliver the related certificates to the Seller and the Purchaser and to carry out all of the Engineer's responsibilities specified in this Agreement, including certifying to the Purchaser and the Seller the results of the Commissioning Tests as required herein.

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

“EPA Direct Agreement”— An agreement between the Lenders, the Seller and the Purchaser pertaining to rights and liabilities of the Lenders relating to this Agreement.

“EPC” — Engineering, procurement and construction.

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

“EPC Contractor” — The Contractor or Contractors and any successor or successors thereto hired and appointed pursuant to the EPC Contract by the Seller.

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

“EPC Works” — The design, engineering, procurement, construction, installation, completion and the Commissioning of the Complex.

“Escrow Account” – The meaning ascribed to such term in the Escrow Agreement.

“Escrow Agent” – The financial institution which enters into an Escrow Agreement with the Seller and the Purchaser.

“Escrow Agreement” – means either (i) the agreement executed or to be executed between the Purchaser, the Seller and the Escrow Agent; or (ii) an amendment to KE's existing escrow agreement(s) with its financiers such that the Seller becomes a beneficiary to the escrow arrangement thereunder; as each such agreement may be replaced with another escrow agreement or as may be amended from time to time in accordance with the terms of this Agreement.

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

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

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

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

“Financial Closing” —. (a) The execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, completion and Commissioning of the Complex, and evidence of commitments for such equity as is required by the Seller to satisfy the requirements of the Lenders and the satisfaction or waiver of all conditions precedent for the initial availability of funds under the Financing Documents (other than the effectiveness of this Agreement), and (b) the delivery of the Seller Letter of Credit in accordance with the terms of the Agreement.

“Financial Closing Date” – The date on which Financial Closing occurs as notified by the Agent, which shall be no later than [●] as provided in the Tariff Determination or such date as may be extended by NEPRA which extension shall also be agreed to by the Purchaser.

“Financing Documents” —Loan agreements, based on the term sheets related thereto, provided to the

Purchaser, and all related notes, indentures, security agreements, guarantees, documents under Islamic financing arrangements, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders) and other documents entered into by the Seller in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time".

"FME Suspension Period" – The meaning ascribed thereto in Section 15.6A (a).

"Forecasting Consultant" The specialist forecast provider appointed for the purpose of devising, operating and maintaining the Hybrid Forecast Model in accordance with Section 5.3 and Schedule 13, as may be replaced from time to time in accordance with this Agreement.

"Forecast Error" The meaning ascribed thereto in Schedule 13

"Force Majeure Event" — The meaning ascribed thereto in Section 15.1.

"Forced Outage or Partial Forced Outage" — From and after the Commercial Operations Date, a total or partial interruption of the Complex's generating capability that is not the result of:

- (a) a request by the Purchaser in accordance with this Agreement,
- (b) a Scheduled Outage or a Maintenance Outage,
- (c) a Force Majeure Event,
- (d) a Non-Project Event, or
- (e) a condition caused solely by the Purchaser or the Grid System.

"Foreign Currency" — Any legal currency other than Rupees.

"Generation Licence" — The license No. [●] dated [●], issued by NEPRA for generation and supply of electricity by the Seller from the Complex in accordance with the terms and conditions of such license as may be amended from time to time.

"Global Horizontal Irradiation Data" – The total amount of shortwave radiation received from above by a surface horizontal to the ground.

"GOP" — The Government of the Islamic Republic of Pakistan.

"Grid Code" – The grid code approved by NEPRA, establishing, *inter alia*, requirements for interconnection with the Grid System, as it may be revised from time to time with any necessary approval by NEPRA and notified to the Seller and as applicable to the Purchaser.

"Grid System" – The transmission facilities owned or maintained and operated by the Purchaser under and pursuant to its transmission licence, through which (a) the Net Delivered Energy will be received and distributed by the Purchaser to users of electricity and (b) electrical energy to be delivered to the Complex, as required.

"Grid System Frequency" — The frequency of the Grid System measured in hertz.

"Hourly Availability Notice" - A forecast provided by the Seller to the Purchaser of the net energy of the Complex in MWh which the Complex is likely to generate for each hour of the relevant Day as may be revised pursuant to section 5.3(b)(iv).

"Hybrid Forecast Model" – The state of the art predictive tools or software prepared and operated by the Forecasting Consultant to generate energy forecast for the Complex in accordance with Section 5.3(a).

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

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

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

“International Electrotechnical Commission” or “IEC” — The International Electrotechnical Commission (*Commission Électrotechnique Internationale*), a non-profit, non-governmental international standards organization with its headquarters in Geneva, that prepares and publishes international standards for all electrical, electronic and related technologies, collectively known as "electrotechnology".

“Investor” — The holder, from time to time of Ordinary Share Capital, as well as the holder of any securities convertible at the option of the holder into Ordinary Share Capital.

“Invoice Dispute Notice” — The meaning ascribed thereto in Section 9.6(a).

“KIBOR” — The average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits for a period equal to three (3) months, which appears on the appropriate page of the State Bank of Pakistan (SBP) , or in the event that SBP, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi inter-bank market.

“Land Documents” – The title documents of the land where the Complex is situated.

“Lapse of Consent” — Any Seller Consent (a) ceasing to remain in full force and effect and not being renewed or replaced within the time-period prescribed by the applicable Laws of Pakistan for renewal or replacement of such Seller Consent or, where a time-period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of such Seller Consent ceasing to be in full force and effect; or (b) not being issued upon application having been properly and timely made and diligently pursued within the time-period prescribed by the applicable Laws of Pakistan or, where a time-period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of proper application being made for such Seller Consent; or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Seller’s or a Contractor’s ability to perform its obligations under any document included within the Project Agreements in each of the above instances, despite such party’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” manner.

“Laws of Pakistan” — Federal, provincial and local laws of Pakistan, and all applicable orders, rules, regulations, statutory regulatory orders, decrees, judicial decisions, notifications, executive orders, or other similar directives pursuant thereto issued by any Public Sector Entity that in each case have the effect of law and are enforceable under law, including the Environmental Standards, as any of them may be amended, re-promulgated, substituted or replaced from time to time.

“Lenders” —The financial institutions listed in the EPA Direct Agreement, or subsequent financial institutions that become parties to the Financing Documents, together with their respective successors and assigns.

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

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

“Maintenance Months” – Any three (3) Months in a Year mutually agreed between the Parties.

“Maintenance Outage” — An interruption or reduction of the generation capability of the Complex scheduled by the Seller in consultation with the Purchaser in accordance with Section 5.5(b) for the purpose

of performing work on specific components, which, considering the Technical Limits and Prudent Utility Practices, should not, in the reasonable opinion of the Seller, be postponed until the next Scheduled Outage.

“Meteorological Station” – One or more stations on the Site that will monitor and measure the Ambient Site Conditions, the design, components, installation, performance capabilities, and testing of which shall be in accordance with the requirements of Schedule 6 and 7 and International Standard IEC 60904 with certification of the foregoing requirements to be delivered to the Purchaser by the Engineer together with the certification of the results of the Commissioning Tests, with the Purchaser being provided advance notice of, and being allowed to be present at, the installation and testing of the Meteorological Station and all of the components thereof. The parameters of Hybrid Forecast Model relating to weather would also be available at the Control Center for direct information of the Purchaser.

“Meter” — The equipment to measure the Net Delivered Energy along with the communication equipment installed at the Complex.

“Metering System” — The system comprising of Meter and Allied Metering Equipment, details ascribed to in Section 7.

“Minimum Indemnification Amount” — The amount, equal to the Rupee equivalent of the lower of (i) one hundred thousand Dollars (\$100,000) and (ii) the product of two thousand Dollars (\$2,000) and the Contract Capacity in MW but in any event not less than ten thousand Dollars (\$10,000), that a Party's claims for indemnification pursuant to Article XI must exceed in the aggregate before that Party will be entitled to indemnification.

“Month” — A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

“Monthly Energy” — For any Month, the sum of Net Delivered Energy and the Non-Project Missed Volume.

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

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

“Non-Project Event” — Each of the following events or circumstances:

- (a) constraints on or the unavailability of the Grid System,
- (b) variations in Grid System Frequency outside the Technical Limits,
- (c) Grid System voltage outside the Technical Limits,
- (d) an Emergency, or
- (e) subject to section 5.4, a Despatch Instruction,

in each case:

- (i) being the proximate and direct cause of cessation or reduction of the generation of Net Delivered Energy, and
- (ii) not caused by:
 - (A) a Forced Outage or Partial Forced Outage, a Scheduled Outage, a Maintenance Outage or the operating conditions (including the Ambient Site Conditions) at the Complex or a Force Majeure Event; or

(B) a fault or failure of any equipment or safety device comprised in the Complex.

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

“NPMV Protocol” – The protocol set out in Schedule 10.

“Numerical Weather Predictive Data Analysis” – The collection of physical data consisting of, *inter alia*, Global Horizontal Irradiation Data, Ambient Temperature, sky images, statistical irradiation patterns and Cloud Motion Data evaluated through a standard formula for predicting the pattern of irradiance or accumulated energy pattern in an Array or wide piece of land.

“O&M” — means operations and maintenance.

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

“O&M Contractor” — Any operation and maintenance contractor, and any successor thereto, appointed by the Seller.

“Operating Committee” — The committee established by the Parties pursuant to Section 2.4 for the purposes described in Section 2.5 and Section 5.9.

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

“Ordinary Share Capital” — Any shares of the Seller or Purchaser with voting or other rights of management and control, and any securities of the Seller or Purchaser that are convertible into such shares at the option of the holder.

“Other Force Majeure Event” or **“OFME”** — Any Force Majeure Event, as defined in Section 15.1, that is not a PPFME or a CLFME.

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

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

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

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

“Payment Security” – The meaning ascribed thereto in Section 9.8.

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

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

“PPFME/CLFME Pendency Period” – The meaning ascribed thereto in Section 2.2(e).

“Pre-Commissioning Tests” - The meaning ascribed thereto in Schedule 7

“Preliminary Estimate” – The meaning ascribed thereto in Section 15.6(a)(i).

“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 Tariff Determination), construction, procurement, permitting, testing and Commissioning of the Complex;
- (c) the procurement, importation, exportation (for remedying defects, repair, maintenance or refurbishing) and contracting for goods, equipment and services for the Complex;
- (d) the insuring, operation, maintenance and repair of the Complex, including any Restoration;
- (e) the generation and sale of Net Delivered Energy;
- (f) the recruitment, employment and training of staff for the Complex;
- (g) dealing with Carbon Credits in accordance with this Agreement and the applicable government policy relating thereto, as amended from time to time; and
- (h) all other activities reasonably incidental or related to any of the above.

“Project Agreements” –

- (a) this Agreement;
- (b) O&M Agreement, if any;
- (c) EPC Contract;
- (d) Land Documents;
- (e) Financing Documents;
- (f) Insurance policies required to be procured and maintained by the Seller under this Agreement and/or the Financing Documents; and
- (g) Carbon Credit Agreement, if any.
- (h) Escrow Agreement

“Protected Assets” — The meaning ascribed thereto in Section 18.4(a)(i).

“Provincial Government” — The Government of the Province of Sindh.

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

“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, where not expressly catered for in the Grid Code, are a spectrum of possible practices, methods and acts which could have been expected

to accomplish the desired result at reasonable cost consistent with reliability and safety applicable with reference to solar-powered projects.

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

“Purchaser” – As defined at the beginning of this Agreement.

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

“Purchaser Event of Default” — The meaning ascribed thereto in Section 16.2.

“Purchaser Interconnection Facilities” — The facilities and equipment to be designed, constructed or installed by or on behalf of the Purchaser on the Purchaser’s side of the Interconnection Point, as described in Schedule 3.

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

“Purchaser Major Default” – The meaning ascribed to that term in Section 16.3B(a) of this Agreement.

“Purchaser Major Default Notice” – The meaning ascribed to that term in Section 16.3B(a) of this Agreement.

“Purchaser Major Default Period” – The meaning ascribed to that term in Section 16.3B(a) of this Agreement.

“PV Panels”—The solar photo-voltaic panel constituting a part of the Arrays.

“Reactive Power” — The wattless component of the product of voltage and current measured in Mvar, which the Complex may provide to or absorb from the Grid System within the Technical Limits and in accordance with Grid Code.

“Reference Tariff” – The reference per kWh rate for Net Delivered Energy expressed in Rupees pursuant to the Tariff Determination.

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

“Reliability Run Test” — The part of the Commissioning Tests carried out on the Complex in accordance with Section 8.3 and Schedule 7 that demonstrates the reliable operation of the Complex, which shall be the continuous operation of the entire Complex from sun-up to sun-down on consecutive Days (subject to there being minimally acceptable Ambient Site Conditions for testing purposes as forecasted by Hybrid Forecast Model) for an aggregate period of forty-eight (48) hours during which period the Complex shall deliver to the Interconnection Point Net Delivered Energy.

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

“Required Commercial Operations Date” or “RCOD” — The date that is ten (10) Months following the date on which Financial Closing occurs, as such date may be extended pursuant to Section 6.5, Section 6.6(c), Section 8.1(b), Section 8.8, or by reason of a Force Majeure Event, any breach or default by the

Purchaser of or under this Agreement or any Non-Project Event.

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

“Restoration Cost Estimate” — The meaning ascribed thereto in Section 15.6(a)(i)(A).

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

“Restoration Schedule” — The meaning ascribed thereto in Section 15.6(a)(i)(B).

“Root Mean Square Error Correction” — The square root of the sum of the squares of the difference between hourly forecasted irradiance and hourly measured irradiance over such period(s), as agreed by the Operating Committee, measured either in watts per square meter or presented in relative percentage terms.

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

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

“Sales Tax” — Sales tax levied on and payable by the Seller under the Sales Tax Act 1990 as amended or superseded from time to time, and under the Provincial Government’s or any other provincial government’s relevant sales tax laws, if any.

“SBP” means the State Bank of Pakistan.

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

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

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

“Seller” — As defined at the beginning of this Agreement.

“Seller Consents” — All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses (including the Generation License), permits, decisions or similar items issued by a Relevant Authority or a Public Sector Entity and which the Seller or its Contractors are required to obtain from any Relevant Authority or Public Sector Entity and, thereafter, to maintain for fulfilling its obligations under this Agreement;

“Seller Event of Default” — The meaning ascribed thereto in Section 16.1.

“Seller Interconnection Facilities” — The facilities and equipment designed or to be designed, constructed and installed by or on behalf of the Seller on the Seller’s side of the Interconnection Point, as described in Schedule 3, including any telemetering equipment, transmission lines, and associated equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, data interface for the SCADA System and the Complex Monitoring System, protective devices and safety equipment.

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

“Seller Letter of Credit” — An unconditional, irrevocable, direct-pay, divisible, and transferable on demand standby letter of credit in favour of the Purchaser in the form set out in Schedule 9, issued or to be

issued by a bank or other financial institution reasonably acceptable to the Purchaser, which provides for draws by the Purchaser in immediately available funds on a Monthly basis upon presentation at a bank in Karachi, Pakistan, which shall be delivered by the Seller to the Purchaser in the amount USD equivalent of Dollars thirty five (\$35.00) per kW of the Contract Capacity.

“Seller Other Default” – The meaning ascribed thereto in Section 16.3A(a).

“Seller Other Suspension Notice” – The meaning ascribed thereto in Section 16.3B(c).

“Seller Suspension Period” – The meaning ascribed thereto in Section 16.3B(d).

“Seller Total Suspension Period” – The meaning ascribed thereto in Section 16.3B(d).

“Site” — The parcel of land described in the Land Documents on which the Complex is to be built by the Seller.

“SOFR” – The secured overnight financing rate administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate)."

“Specifications” — The technical and functional specifications of the PV modules, inverters, protection devices and balance of system comprising the Complex, as set forth in Schedule 2 and in the respective manufacturers’ product data sheets that are attachments to Schedule 2.

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

“Supplemental Tariff” — The additional compensation as determined by NEPRA and payable by the Purchaser to the Seller, as provided in Section 9.2, Section 15.8 and Schedule 1.

“Tariff Determination” — The tariff approval for grid-connected solar PV power generation projects issued by NEPRA in Case No. [●] dated [●], as may further be amended or clarified from time to time by NEPRA and in each case as notified in the official Gazette.

“Tax” or **“Taxes”** — Any tax, charge, cess, impost, tariff, duty, 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 Custom Duty, withholding tax, excise tax, tax on Foreign Currency or foreign exchange transactions or property tax. The term “Tax” shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity.

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

“Tax Savings” — An amount equal to the amount of any decrease or reduction in or elimination of a Tax, other than withholding Tax on dividends, payable by the Seller in relation to the Project as a result of a Change in Tax.

“Technical Limits” — The limits and constraints in Schedule 5 (including the manufacturer’s product data sheets annexed to Schedule 5) relating to the operation and Despatch of the Complex.

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

“Termination Period” — The meaning ascribed thereto in Section 16.4(c).

“Termination Notice to the Seller” — The meaning ascribed thereto in Section 16.4(a).

“Termination Notice to the Purchaser” — The meaning ascribed thereto in Section 16.4(b).

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

“Total FME Suspension Period” – The meaning ascribed thereto in Section 15.6A(a).

“Total Major Default Period” – The meaning ascribed thereto in Section 16.3B(a).

“Transferee” — The meaning ascribed thereto in Section 19.9(j).

“Undisputed Payment Obligation” – The meaning ascribed thereto in Section 16.3B(a)

“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 on 12:00 midnight on the 31st of December and ending on 12:00 midnight the following 31st of December during the Term.

“Year Ahead Notification” – The meaning ascribed thereto in Section 5.3(b)(i).

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 other than where the context determines otherwise, the singular includes the plural and vice versa;
- 1.2.3 references to Sections, Articles, Recitals and Schedules are, unless otherwise specified, references to Sections and Articles of, and Schedules and Recitals to, this Agreement;
- 1.2.4 unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised on reasonable grounds. Whenever under this Agreement a Party is required to exercise discretion by: (a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party, the Party exercising such discretion shall exercise such discretion fairly and reasonably;
- 1.2.5 the words “include”, “including, and “in particular” shall not be construed as, nor shall they have the effect of limiting the generality of the preceding words to which they are related;
- 1.2.6 references to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- 1.2.7 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith. Notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damages and/or losses for that particular event or occurrence;
- 1.2.8 reference to any Laws of Pakistan shall include reference to such Laws of Pakistan, as amended, re-promulgated, substituted or replaced from time to time;
- 1.2.9 the Schedules (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;
- 1.2.10 except as otherwise indicated in this Agreement, references to time are references to time and dates are, and shall be construed to be, references to Pakistan standard time; and
- 1.2.11 except as otherwise indicated in this Agreement, references to “MW” or “kW” in the context of power generation capacity are references to the aggregate nameplate capacity of the Arrays installed or to be installed at the Complex.

1.3 ABBREVIATIONS

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

AC	means alternating current of electrical energy;
AM	means ante meridiem;
°C	means degrees Celsius;
DPLC	means digital power line circuit;
GWh	means gigawatt hour or 1,000,000 kWh;
kV	means kilovolt or 1,000 Volts;
kVARh	means kilovolt ampere reactive;
kW _{AC}	means kilowatt or 1,000 Watts (alternating current);
kW _P	means kilowatt or 1,000 Watts (photovoltaic);
kWh	means kilowatt hour (alternating current);
MW	means megawatt or 1,000,000 Watts (alternating current);
MW _P	means megawatt or 1,000,000 Watts (photovoltaic);
Mvar	means megavar or 1,000,000 vars;
MWh	means megawatt hour or 1,000 kWh;
OPGW	means optical ground wire;
PABX	means private automatic branch exchange;
SDH	means synchronous digital hierarchy; and
PV	means photo-voltaic production of electrical energy through light.

2. EFFECTIVE DATE; TERM AND AGREEMENTS OF THE PARTIES

2.1 CONDITIONS PRECEDENT AND EFFECTIVE DATE

- (a) No provision of this Agreement shall become effective prior to the approval of this Agreement by NEPRA, a copy of which approval shall be provided by the Purchaser to the Seller. Subject to and in accordance with the terms of NEPRA's approval only the following Articles and Sections shall become effective:
 - (i) Article I (Definitions; Interpretation),
 - (ii) this Section 2.1,
 - (iii) Section 2.3,
 - (iv) Article XIII (Representations and Warranties) and
 - (v) Article XIX (Miscellaneous Provisions).
- (b) The Seller shall use its reasonable endeavours to cause the occurrence of Financial Closing by the [●], or such extended date as may be approved by NEPRA, which extension shall also be agreed to by the Purchaser.
- (c) The Seller shall deliver to the Purchaser, the Seller Letter of Credit in a form which is reasonably acceptable to the Purchaser on or before the Financial Closing Date.
- (d) The date on which notice from the Agent of the occurrence of Financial Closing is received by the Purchaser, this Agreement shall become effective in its entirety (the “**Effective Date**”).
- (e) If the Effective Date does not occur by [●], as such date may be extended in accordance with this Agreement, then the Purchaser may deliver written notice to the Seller terminating this Agreement, which termination shall be effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.

2.2 TERM

- (a) Unless terminated earlier or extended in accordance with its terms, this Agreement shall be effective from the Effective Date and continue in full force and effect for twenty-five (25) Agreement Years (“**Term**”). Not later than twenty-four (24) Months before the expiry of the Term, the Parties shall enter into negotiations for sale and purchase of the electrical output of the Complex following expiry of the Term on terms mutually acceptable to the Parties and subject to the fulfilment of the then-prevailing regulations and, necessary Seller Consents and Purchaser Consents. In the event the Parties are unable to agree by no later than eighteen (18) Months before expiry of the Term on the terms for the sale and purchase of the electrical output of the Complex after expiry of the Term, the Seller may, thereafter, subject to the mandatory right of first refusal of the Purchaser, as set forth in this Section 2.2(a), be entitled to sell the electrical output of the Complex after the expiry of the Term to any prospective purchaser in accordance with the Laws of Pakistan. If the Seller agrees to sell the electrical output of the Complex to such prospective purchaser after expiry of the Term, the Seller shall, twelve (12) Months prior to making any commitment to such purchaser, provide the Purchaser with a term-sheet setting forth, in adequate detail, the terms and conditions on which such prospective purchaser has offered to purchase the electrical output of the Complex from the Seller after the expiry of the Term, together with evidence that such term-sheet has been provisionally agreed to by such prospective purchaser. The Purchaser shall have the option (to be exercised within a period of sixty (60) Days from the date of the Purchaser's receipt of the said term sheet) to enter into an

agreement with the Seller based on the said agreed term-sheet for the sale of electrical output of the Complex after the expiry of the Term. If the Parties are unable to enter into the agreement within thirty (30) Days of the Purchaser exercising the option as contemplated in the immediately preceding sentence, the Seller shall have the right to enter into an agreement, based on terms no less favourable to the Seller than the aforesaid agreed term-sheet, with any other prospective purchaser in accordance with the Laws of Pakistan.

- (b) If there occurs a PPFME or a CLFME that, in either case, requires the Purchaser to make payments to the Seller pursuant to Section 15.6(a)(iii)(B) and 15.6(i), then, unless Section 2.2(e) applies, the Term at the end of the Agreement shall be extended for a period equal to the number of Days such PPFME or CLFME, as the case may be, was in effect. During such extended period, the Seller shall be paid: (i) twenty five percent (25%) of the Energy Price; and (ii) the actual O&M and insurance costs, not exceeding twelve percent (12%) of the Energy Price, prevailing at the end of 25th Agreement Year, in respect of such period provided reasonable and verifiable documentary evidence is submitted to the Purchaser in respect of actual O&M and insurance costs.
- (c) The Term of the Agreement, if applicable, shall also be extended on account of Purchaser Major Default Period (s) as provided Section 16.3(B)(b).
- (d) Any payments following a resumption of the supply of Net Delivered Energy after any FME Suspension Period, the Seller Suspension Period and PPFME/CLFME Pendency Period set out in Sections 15.6(A)(a), 16.3(B)(d) and 2.2(e) respectively under this Agreement, shall be in accordance with the applicable Reference Tariff prevailing at the date of such suspension together with any applicable indexation.
- (e) Notwithstanding the aforesaid but subject to Section 15.6(k), if NEPRA does not permit the Purchaser to pass through any payments pursuant to Section 15.6(a)(iii) and/or 15.6(i) for the PE Compensation Period (or for any part thereof), under its Determined Tariff, then the Agreement Year shall be extended for such duration of the PE Compensation Period during which payments were disallowed as pass through payments to the Purchaser under its Determined Tariff (“**PPFME/CLFME Pendency Period**”).

2.3 SELLER CONSENTS

- (a) From the date of execution of this Agreement, the Seller shall, at its own cost and expense, apply for, procure, diligently pursue and, following receipt, maintain (and, where applicable, cause its Contractors to procure and maintain) all Seller Consents.
- (b) Upon receiving a written request from the Seller so to do, the Purchaser shall, upon its own discretion, take such actions as are reasonable and appropriate under the circumstances to assist the Seller, in its efforts to procure or renew any Seller Consent that it has (or its Contractors have) not received despite proper application therefor, provided, however, that, where the Seller makes any such request to the Purchaser, the Seller shall:
 - (i) prior to the date upon which its request to the Purchaser is submitted, have done all such things as it is reasonable for the Seller to have done and as are necessary to procure or renew any Seller Consent which is the subject of such request;
 - (ii) notwithstanding the making of any such request, continue diligently to pursue the grant or renewal of any Seller Consent which is the subject of such request;
 - (iii) at the same time as it submits its request, disclose to the Purchaser the full details of actions which the Seller has, prior to the date of the request, taken to procure or renew the Seller Consent and of the actions it is continuing to take with respect to the procurement or renewal of any such Seller Consent;

- (iv) provide the Purchaser with such assistance and information as the Purchaser may reasonably request in connection with the Seller's request; and
- (v) bear, and remain, responsible for all reasonable out-of-pocket costs and expenses reasonably incurred by the Purchaser in relation to such request from the Seller.
- (c) To the extent material to the Seller's rights or obligation under this Agreement, the Purchaser shall, in a timely fashion, at its own cost and expense, procure, diligently pursue, and thereafter maintain all Purchaser Consents expect for the consent mentioned in Section 2.3 (b).

2.4 APPOINTMENT OF THE OPERATING COMMITTEE

- (a) No later than thirty (30) Days following the occurrence of Financial Closing, the Parties shall establish the Operating Committee to perform the functions set forth in Section 5.9.
- (b) Members of the Operating Committee shall have reasonable experience of working on projects of a similar nature for undertaking the Operating Committee's scope of work. The Operating Committee shall be comprised of six (6) members. Each Party shall designate three (3) members to represent it on the Operating Committee, and either Party may remove or replace any of its Operating Committee members at any time upon notice to the other Party.
- (c) The Operating Committee shall develop procedures for holding of meetings, keeping of minutes thereof, and the appointment and operation of sub-committees.
- (d) Chairmanship of the Operating Committee shall rotate each six (6) months between the Parties, and the Parties agree that the first chairman shall be nominated by the Purchaser. The chairman shall not have a casting vote.
- (e) Decisions of the Operating Committee shall require 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 present where at least two (2) members representing the Purchaser and two (2) members representing the Seller attend such meeting.

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 Purchaser and the Seller. The Operating Procedures shall:
 - (i) take proper account of the design of the Complex, the Metering Systems, the Meteorological Station, the Complex Monitoring System and the Grid System;
 - (ii) refer to the operational practices and procedures stipulated in the Grid Code consistent with the operation, scheduling and Despatch of the Complex; and
 - (iii) be consistent with Prudent Electrical Practices, Prudent Utility Practices, and the Technical Limits.
 - (iv) manage the procedures for the implementation of the Hybrid Forecast Model for energy forecasting.
- (b) The procedure for developing and finalising the Operating Procedures shall be as follows:

- (i) within thirty (30) Days following the establishment of the Operating Committee, the Seller shall deliver to the Purchaser in writing proposed draft Operating Procedures;
 - (ii) the Purchaser shall provide comments and advise the Seller of all matters and information the Purchaser believes are required to be included in the Operating Procedures in writing on the draft Operating Procedures within thirty (30) Days following the date the draft Operating Procedures are delivered by the Seller to the Purchaser, and each Party shall make a representative available to meet within ten (10) Days following the end of such thirty (30) Day period to review each Party's comments on the draft Operating Procedures and on the proposed changes and any objections to the proposed changes of a Party;
 - (iii) as soon as is practicable after the meeting referred to in Section 2.5(b)(ii), but in any event within thirty (30) Days following the end of such meeting, the Seller shall provide the Purchaser with proposed final draft Operating Procedures incorporating to the extent agreed each of the Parties' proposed changes;
 - (iv) the Purchaser shall provide final comments on the final draft Operating Procedures within fifteen (15) Business Days after its receipt by the Purchaser and, within five (5) Business Days after a request from the Seller, the Purchaser shall make its representatives available in Karachi, Pakistan, to meet and review its comments and proposed changes with the Seller;
 - (v) the Seller shall revise the draft Operating Procedures (as revised under sub-clause (iv) hereinabove) to incorporate such additions or modifications required by the Purchaser and shall provide final drafts to the Purchaser as soon as practicable, and in any event within ten (10) Days following receipt of the Purchaser's comments and proposed changes to the draft Operating Procedures (as revised under sub-clause (iv) hereinabove). Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Operating Procedures shall be determined in accordance with Section 18.2. The determination of the Expert shall be final and binding with respect to the resolution of such Dispute.
- (c) Following the finalisation of the Operating Procedures pursuant to Section 2.5(b), either Party may propose changes to the Operating Procedures from time to time as changes in events and circumstances may require. The Parties shall meet and discuss such proposed changes in good faith and incorporate such changes as are agreed by the Parties. Any Dispute between the Parties as to whether any matter should be included in or removed from or modified in the way it is then treated in the Operating Procedures shall be determined in accordance with Section 18.2. The determination of the Expert shall be final and binding with respect to the resolution of such Dispute.
- (d) The Seller and the Purchaser shall mutually develop an inter-tripping schedule no later than sixty (60) Days prior to the required implementation of such schedule. Such inter-tripping schedule shall be based on a proposed schedule submitted to the Seller by the Purchaser at least one hundred and twenty (120) Days prior to the date implementation of such schedule is required.

2.6 APPOINTMENT OF THE ENGINEER

- (a) No later than one hundred and twenty (120) Days prior to the Scheduled Commercial Operations Date, the Seller shall appoint the Engineer with the approval of the Purchaser, who shall select the Engineer from a panel of up to three (3) engineers to be proposed by the Seller (and shall by such date be available to perform the duties of the Engineer provided herein and shall thereafter keep appointed and available for as long as may be necessary to discharge the duties of the Engineer under this Agreement) to carry out the duties of the Engineer specified

in this Agreement in accordance with the highest professional standards and duty of care, both to the Seller and to the Purchaser. The Seller shall not replace any Person appointed as the Engineer without the prior written consent of the Purchaser and such consent shall not to be unreasonably withheld.

- (b) The terms and conditions of appointment of the Engineer shall oblige the Engineer to act independently and impartially on the basis of his expertise, experience and knowledge in relation to all matters referred to him pursuant to this Agreement, and in carrying out his other duties ascribed to him under this Agreement. The costs and remuneration to which the Engineer is entitled under his terms and conditions of appointment shall be borne by the Seller.

2.7 SELLER LETTER OF CREDIT

- (a) The Seller shall deliver the Seller Letter of Credit to the Purchaser at or prior to Financial Closing. The Seller Letter of Credit shall have a term of twelve (12) Months from the date of issuance and shall be substantially in the form set forth in Schedule 9. The Seller shall maintain in full force and effect the Seller Letter of Credit in the then-required amount, from the date of issuance of the Seller Letter of Credit until the date that is thirty (30) 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;

(the “**LC Expiry Date**”)

provided that if the Seller is or is claimed to be liable to pay liquidated damages under Sections 2.9(b), Section 9.3(b) or under Section 16.7(b), the Seller shall maintain the Seller Letter of Credit in an amount not less than the amount in dispute plus the Purchaser’s reasonable estimate of the Delayed Payment Rate that will be payable thereon until any dispute in relation thereto has been finally resolved in accordance with this Agreement and all liabilities in relation thereto have been discharged in full.

- (b) The Seller Letter of Credit shall be expressed to continue until the end of the period referred to in Section 2.7(a). The Purchaser shall return the Seller Letter of Credit to the Seller within fifteen (15) Business Days following the end of the period stipulated in Section 2.7(a). If the Seller provides a replacement or substitute Seller Letter of Credit satisfactory to the Purchaser, the Purchaser shall return the original Seller Letter of Credit within five (5) Business Days after receipt by the Purchaser of such replacement.
- (c) In the event the Seller fails to achieve Commercial Operations Date fifteen (15) Business Days prior to the expiration of the Seller Letter of Credit (including any extension or replacement thereof), the Seller shall extend the Seller Letter of Credit up to the then scheduled LC Expiry Date or provide a replacement Seller Letter of Credit, which shall have a term of not less than the then scheduled LC Expiry Date.
- (d) In the event that the Seller is required to pay liquidated damages to the Purchaser pursuant to Sections 2.9(b), Section 9.3(b) and/or pursuant to Section 16.7(b) and the Seller fails to make any such payment of liquidated damages, then the Purchaser shall be entitled to draw or collect such amounts, less any amounts disputed by the Seller, from the Seller Letter of Credit upon presentation of a certificate of an authorized officer of the Purchaser stating that (A) amounts shown in the invoice accompanying the certificate are due and payable by the Seller to the Purchaser under this Agreement; and that (B) an invoice for such amount has been delivered to the Seller at least thirty (30) Days prior to presentation of the certificate and, either (i) no amounts shown in such invoice have been disputed by the Seller, or (ii) a portion of the amount shown in the invoice has been disputed by the Seller,

identifying such disputed amount. The certificate shall be accompanied by the relevant invoice delivered to the Seller and any dispute notice delivered to the Purchaser by the Seller. The Purchaser shall not be entitled to draw from the Seller Letter of Credit any amounts shown in an invoice or demand delivered to the Seller that have been disputed by the Seller until such disputes are resolved in accordance with Article XVIII. The Purchaser shall also have the right to draw or collect the full available amount of a Seller Letter of Credit issued pursuant to Sections 2.7(a) if it is not replaced as required pursuant to this Section 2.7 upon presentation of a certificate of an authorised officer of the Purchaser stating that the term of such Seller Letter of Credit will expire within ten (10) Business Days of the date of the certificate, the Seller has failed to deliver a replacement Seller Letter of Credit in accordance with this Section 2.7 and such Seller Letter of Credit is still required under the terms of this Section 2.7; provided, that the Purchaser shall return to the Seller the amount encashed (less any amount properly retained pursuant to Section 2.7) upon delivery of a valid amendment extending the term of the Seller Letter of Credit or a replacement for the expired Seller Letter of Credit.

- (e) In the event that the Purchaser draws against any Seller Letter of Credit and it is subsequently determined that the Purchaser was not entitled so to do, then the Purchaser shall repay such amount to the Seller, together with all costs and expenses incurred by the Seller in connection with such drawing, plus interest thereon from the date of the draw through the date of repayment at the Delayed Payment Rate, compounded semi-annually, and shall be computed for the actual number of Days on the basis of a three hundred and sixty-five (365) Day year.

2.8 REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

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

2.9 SPECIFICATION OF CONTRACT CAPACITY

- (a) The Parties agree that the Contract Capacity is [120] MW_p, being the nameplate capacity of the PV modules installed at the Site at Commercial Operations Date. In the event that PV Panels are added after Commercial Operations Date, at the Seller's cost, to address effect of yearly degradations, the same would not be added to calculate the Contract Capacity.
- (b) The Seller may vary the installed capacity in MW_p before the Commercial Operations Date for which the necessary consents needs to be obtained, provided that the maximum power to be evacuated in MW_{ac} shall remain consistent with the grid study approved by the Purchaser; and provided further that, if the reduction in the Contract Capacity requested by the Seller is less than or equal to five percent (5%) of the specified Contract Capacity, the Seller shall pay to the Purchaser in immediately available funds within five (5) Business Days after the notice to reduce the Contract Capacity, as liquidated damages for such reduction and not as a penalty, an amount equal to four hundred thousand Dollars (\$400,000) multiplied by the number of MW (prorated for any fraction thereof) of the reduction in the Contract Capacity.
 - (i) from the date of payment of the amount of liquidated damages determined pursuant to Section 2.9(b), the Contract Capacity shall be reduced by the amount stated in such notice to the Purchaser;

- (ii) the Seller may deliver additional notices of reduction of the Contract Capacity, provided that the aggregate reduction in Contract Capacity does not exceed five percent (5%) of the initial Contract Capacity specified in Section 2.9(a), and provided, further, that the amount of any liquidated damages payable pursuant to Section 2.9(b) for such further reduction shall be without double-counting of, and shall exclude, any amounts already paid under Section 2.9(b) for previous reductions of the Contract Capacity.
- (c) Any liquidated damages payable under Section 2.9 shall be in addition to any other liquidated damages that have become or thereafter become payable under Section 9.3(b).

3. SALE AND PURCHASE OF ENERGY

3.1 SALE AND PURCHASE OF NET DELIVERED ENERGY

- (a) Subject to the terms of this Agreement, the Seller shall sell and deliver and the Purchaser shall purchase and accept all Net Delivered Energy generated by the Complex and delivered at the Interconnection Point for the consideration described in Article IX and determined in accordance with the provisions described in Schedule 1.
- (b) Except as permitted expressly under this Agreement, the Seller shall take no action which would encumber, impair or diminish the Seller's ability to generate, sell and deliver the Net Delivered Energy in accordance with this Agreement.

3.2 NOT USED

3.3 CARBON CREDITS

The Parties acknowledge that registration of the Project for Carbon Credits marketing and distribution of benefits of Carbon Credits generated by the Complex shall be shared equally between the Company and Purchaser.

3.4 OBSERVANCE OF TECHNICAL LIMITS

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

4. CONSTRUCTION OF THE COMPLEX

4.1 CONSTRUCTION OF THE COMPLEX

- (a) The Seller shall commence and proceed with the EPC Works as soon as reasonably practicable following the Effective Date. The Seller shall ensure that the design of the EPC Works shall be carried out with all proper skill, diligence and care and in all material respects in accordance with this Agreement, including the Specifications, the Laws of Pakistan (including the Seller Consents and the Generation Licence), Prudent Utility Practices and Prudent Electrical Practices, so that the Complex is reasonably expected to provide a useful life of not less than the Term.
- (b) The Seller shall carry out and complete the Construction Works such that the Seller is able to achieve the Commercial Operations Date in any case no later than the Required Commercial Operations Date.
- (c) The Seller shall ensure and shall procure that the Engineer certifies to the Purchaser before the Commissioning Tests that all equipment permanently installed as part of the Complex is new, contemporary and unused at the time of such installation, and complies with the requirements of Schedule 2 and Schedule 5.
- (d) The Complex and the components thereof including PV modules and the installation thereof must comply with all applicable quality standards, including the standards of the International Electrotechnical Commission set forth in Schedule 2 and Schedule 5, and, prior to the occurrence of the Commercial Operations Date, the Seller shall provide certificates of the EPC Contractor and the Engineer confirming that the quality, design, installation and construction of the Complex and the components thereof are in compliance with and satisfy the quality, design and safety standards of the IEC Standards stated in Schedule 2 and Schedule 5.
- (e) The Seller shall ensure that the Complex has adequate security and surveillance equipment and facilities, including a satisfactory security fence around the Complex, so as to minimize the risk of vandalism and theft on the Site, with adequate, trained and experienced personnel available to operate such equipment and to take reasonable action to protect the Complex in the event of any breach or attempted breach of such security equipment and facilities and unauthorized trespass onto the Site.

4.2 SUBMISSION OF REPORTS AND INFORMATION

- (a) The Seller shall submit, or cause to be submitted, to the Purchaser the following documents on or before the specified dates:
 - (i) Beginning within thirty (30) Days after the Effective Date and ending on the Commercial Operations Date:
 - (A) reasonably detailed Construction Reports delivered to the Purchaser no later than the last Day of each Month, including any updates to the construction milestone schedule contained therein;
 - (B) such other reports as are submitted to the Seller by the Engineer within five (5) Days of such reports being provided to the Seller by the Engineer; and
 - (C) reports, when the Seller becomes aware of any condition or event and/or any change in such condition or event that will have a material and adverse effect on timely completion of the construction of the Complex;

- (ii) At least sixty (60) Days prior to the scheduled commencement of testing and Commissioning of the Complex, a serially prioritized preliminary test schedule for the Complex;
 - (iii) On or before the Commercial Operations Date, a certificate from the Engineer addressed to the Seller and the Purchaser to the effect that, based upon its monitoring and review of procurement and construction activities, the construction of the Complex has been carried out in all material respects in compliance with the terms of this Agreement and is of acceptable standards;
 - (iv) On, or as soon as practicable following, the Construction Start Date but in any event, within ten (10) Business Days thereafter, a copy of the certificate of insurance for the EPC Contactor's all risk insurance policy and, as soon as available, a copy of such policy; and, as soon as 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 the policies detailed in Schedule 8;
 - (v) As soon as available, but no later than thirty (30) Days following the Commissioning Tests, two copies of all results of the Commissioning Tests, including tests of major equipment included in the Complex, tests of related electricity metering equipment and a certificate from the Engineer confirming each successful Commissioning Test shall be provided to the Purchaser;
 - (vi) No later than thirty (30) Days following each successful Commissioning Test for the major items of plant incorporated into the Complex, one copy, as received by the Seller pursuant to the EPC Contract, of all the manufacturers' specifications and manufacturers' operation manuals;
 - (vii) As soon as available, but no later than thirty (30) Days following 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; and
 - (viii) No later than sixty (60) Days after the Effective Date, (A) evidence demonstrating that the Seller has obtained all Seller Consents then required to be obtained for the lease/ownership, construction, operation and maintenance of, and the supply and delivery of the Net Delivered Energy from, the Complex, (B) a list identifying the Seller Consents not yet required to be obtained for the operation and maintenance of, and the supply and delivery of the Net Delivered Energy from the Complex, and (C) a list identifying the Seller Consents applied for by the Seller or its Contractors but not yet issued or received, together with a plan reasonably acceptable to the Purchaser for obtaining such Seller Consents and an estimate of the time within which such Seller Consents will be obtained.
- (b) The Seller shall notify the Purchaser promptly from time to time whenever it determines that the then-expected date for Commissioning of the Complex is unfeasible or inappropriate, and shall specify a revised expected date for Commissioning which shall not, in any event, be earlier than seven (7) Business Days following the date of delivery of such notice to the Purchaser.
 - (c) Within fifteen (15) Business Days after receipt of a written request from the Seller or as soon as reasonably practicable, the Purchaser shall provide to the Seller documents and information which shall include documents and information on the Purchaser Interconnection Facilities, transmission facilities, Metering System the Grid System and such other documents, technical details and any other data in the Purchaser's possession and control as may reasonably be necessary for the Seller to undertake its obligations under this Agreement, the Seller Interconnection Works and the construction works, including

details of all existing and planned facilities necessary to connect the Complex with the Grid System, Despatch and communications procedures currently in use by the Purchaser and any planned changes to the Despatch and communication procedures then in effect. In connection with the provision of such documents and information, the Purchaser shall allow the Seller during the Purchaser's regular business hours to make copies of such documents and information, at the Seller's sole cost and expense, and to have reasonable access to and to consult with the Purchaser's relevant personnel engaged in the management, operation, maintenance and reinforcement of the Grid System. When such documents and information is no longer required for the purposes provided herein, such documents and information shall be returned to the Purchaser or destroyed by the Seller.

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

4.3 DELIVERY OF ELECTRIC POWER TO THE COMPLEX

From and after completion and commissioning of the Purchaser Interconnection Facilities, the Purchaser shall, to the extent necessary to carry out any testing of the Complex, including Commissioning Tests, transport electrical energy in accordance with the schedules provided to the Purchaser pursuant to Section 4.2 and Section 8.1. From and after the Commissioning of the Seller Interconnection Facilities, the Purchaser shall (to the extent reasonably possible, and if required) transport to the Interconnection Point sufficient electrical power to operate the Complex during any period that the Complex is unable to generate sufficient electrical power for such purpose. For the avoidance of doubt, the Seller shall pay for such electrical power received under this Section 4.3 at the prevailing tariff then applicable to the Seller and charged by the Purchaser.

4.4 PURCHASER OBSERVATION VISITS

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

5. CONTROL AND OPERATION OF COMPLEX

5.1 OPERATION AND MAINTENANCE OF THE COMPLEX

- (a) The Seller shall operate and maintain the Complex in accordance with this Agreement, the Operating Procedures developed in accordance with Section 2.5, the Technical Limits, Laws of Pakistan, the Grid Code, the Seller Consents, Prudent Utility Practices and the Prudent Electrical Practices; provided however, that the Seller may contract with the O&M Contractor to operate and maintain the Complex; provided, further, that the appointment of the O&M Contractor by the Seller shall not relieve the Seller of any of its obligations or potential liability regarding the insuring, operation or maintenance of the Complex or any liability whatsoever resulting from a breach of any term or condition of this Agreement.

The Seller shall use its reasonable efforts to maintain and repair the Complex and the components thereof and equipment therein so that the capability of the Complex to generate Net Delivered Energy during the Term does not fall below the Annual Benchmark Energy.

- (b) The Complex will be operated within the range of voltage levels specified in the Grid Code. Subject to the Technical Limits, the Seller shall operate and maintain the Complex in a manner that will not have an adverse effect on the Purchaser's voltage level or voltage waveform.
- (c) The Seller shall ensure that the Hybrid Forecast Model is: (i) procured from a reputable local or international company with demonstrated expertise in forecasting generation of solar power plants; and (ii) calibrated as required from time to time to maintain forecasts within the tolerance limits for accuracy provided in Section 5.3(c) and Schedule 13.
- (d) Not later than sixty (60) Days following the end of the Agreement Year commencing on the second anniversary of the Commercial Operations Date and not later than sixty (60) Days following the end of each alternate Agreement Year thereafter, the Seller shall provide to the Purchaser a certificate stating that the Complex is being maintained in accordance with Prudent Utility Practices and in all material respects in accordance with the terms and requirements of this Agreement and the manufacturer's recommendations (including by timely and proper replacements of any material equipment or component of the Complex). If the Actual Annual Energy in an Agreement Year falls below eighty-five percent (85%) of the Annual Benchmark Energy for such Agreement Year, then the Purchaser shall be entitled to nominate and appoint at the Seller's cost an engineering consulting firm of repute in solar PV operations and maintenance from amongst a panel of three (3) such firms agreed by the Seller and the Purchaser ("**Inspection Engineer**") (and in case of disagreement, by the Expert). The Inspection Engineer shall examine the Complex and certify to the Purchaser regarding the Seller's compliance with its obligations under this Agreement for maintenance of the Complex. Should the Inspection Engineer find Seller's non-compliance with its maintenance obligations, the Inspection Engineer shall certify to the Purchaser (with copy to Seller) stating with reasonable specificity and detail the actions and corrective measures that must be taken at or to the Complex or any material parts thereof so that certification of compliance can be given, and a reasonable estimate of the time required to implement and complete such actions and corrective measures identified in the certificate of non-compliance. The Seller shall at its cost undertake and complete the actions and corrective measures identified by the Inspection Engineer (or by the Expert, as provided in the immediately following sentence) within the time period provided in the certificate (or in the Expert's determination), such period of time to commence on the date that such certificate (or the Expert's determination) is delivered to the Purchaser. If the Seller disagrees with the actions and corrective measures identified by the Inspection Engineer in its certificate or the time required to undertake and complete such actions and corrective measures, the Seller and the Purchaser and the Inspection Engineer shall meet and attempt in good faith to agree on the corrective or remedial actions to be taken and the time period in which they should be completed by the

Seller. If the Seller and the Purchaser cannot agree on such matters within thirty (30) Days following the date that the certificate was issued to the Purchaser, such matters shall be referred to the Expert for resolution pursuant to Section 18.2, and the determination of the Expert shall be final and binding on the Parties in respect to the corrective or remedial actions to be taken and the time period in which they should be completed by the Seller.

5.2 AVAILABILITY

- (a) The Seller shall be responsible for the availability of the Complex for generation and delivery of Net Delivered Energy and the provision, where applicable, of Ancillary Services throughout the Term in accordance with this Agreement. The Seller shall be responsible, at all times that the Ambient Site Conditions enable the generation and delivery of Net Delivered Energy, to generate and deliver the Net Delivered Energy at the Interconnection Point consistent with the Specifications, except when and to the extent that generation and delivery of Net Delivered Energy is prevented partially or completely during the continuance of or on account of a:
 - (i) Force Majeure Event,
 - (ii) Scheduled Outage,
 - (iii) Maintenance Outage,
 - (iv) Forced Outage,
 - (v) Partial Forced Outage, or
 - (vi) Non-Project Event.
- (b) At any time that the Ambient Site Conditions determined pursuant to the Hybrid Forecast Model enable generation and delivery of Net Delivered Energy (as determined on the basis of the Specifications), which, however, the Complex is partially or wholly unable to generate and deliver for reasons attributable solely to the Seller (including non-availability of the Complex or any component thereof), such partial or complete non-availability of the Complex shall not constitute a Non-Project Event and the Net Delivered Energy not generated as a consequence shall be excluded in the computation of Non-Project Missed Volume.

5.3 FORECASTING OF NET DELIVERED ENERGY

- (a) No later than one hundred and fifty (150) Days prior to the Scheduled Commercial Operations Date the Seller shall appoint, at its own cost, the Forecasting Consultant, with the consent of the Purchaser pursuant to Schedule 13, to establish, the Hybrid Forecast Model. The Forecasting Consultant (i) shall be an expert in forecasting solar power generation with at least ten (10) current facilities in its forecasting portfolio with aggregate generation capacity of one thousand (1,000) MW or more, as demonstrated to the Purchaser, and (ii) shall use sophisticated and reliable forecasting tools and software. The Hybrid Forecast Model shall forecast the Net Delivered Energy for the available Arrays pursuant to Sections 5.3(b)(iii) and 5.3(b)(iv) below based on the minimum following criteria:
 - (i) Global Horizontal Irradiation Data;
 - (ii) Ambient Temperature;
 - (iii) Cloud Motion Data;
 - (iv) Numerical Weather Predictive Data Analysis;

- (v) Root Mean Square Error Correction.
- (b) Subject to Section 5.3(a) above and following the Commercial Operations Date, the Seller shall:
 - (i) no later than thirty (30) Days before the beginning of each Agreement Year, notify the Purchaser (or revise any such information previously given) of the year ahead forecast of estimated net energy of the Complex in MWh which the Complex is likely to generate for each Month of such Agreement Year (the “**Year Ahead Notification**”);
 - (ii) No later than seven (7) days prior to the beginning of each Month, notify the Purchaser (or revise any such information previously given) of the month ahead forecast of estimated net energy of the Complex in MWh which the Complex is likely to generate for each Day of the Month;
 - (iii) No later than sixteen (16) hours prior to the beginning of each Day, notify the Purchaser of the Day Ahead Forecast for each hour of the relevant Day;
 - (iv) Not later than six (6) hours before the start of each hour, a forecast of the Net Delivered Energy for the said hour, provided, the Seller may revise once, and only once, the forecast for the said hour no later than four (4) hours prior to the commencement of the hour for which the forecast is revised; and
- (c) No later than five (5) Days after the end of each Month, the Seller shall notify the Purchaser of the Forecast Error based on Adjusted Forecast Energy in accordance with Schedule 13
- (d) The forecasts of Net Delivered Energy provided by the Seller to the Purchaser under Section 5.3(b) shall not:
 - (i) be binding on the Seller or the Purchaser; provided however the Purchaser shall rely on the Hourly Availability Notice to prepare and send its Despatch Instructions;
 - (ii) result in the Seller incurring or accruing any liability of any nature towards the Purchaser in relation to any discrepancy or deviation between the non-binding estimates and the actual Net Delivered Energy; or
 - (iii) prejudice the rights and obligations of the Parties under Section 3.1(a).
- (e) No later than thirty (30) Days prior to the Scheduled Commercial Operations Date the Seller shall be obligated, at its own cost, to procure, install and operate the relevant devices, systems and other ancillary equipment, including data recorder, required to implement the Hybrid Forecast Model. The data recorded by such systems and devices implementing the Hybrid Forecast Model shall only be used to determine (i) estimated net energy of the Complex in accordance with Section 5.3(b) above and (ii) subject to section 5.4(c) the Adjusted Forecast Energy shall be used for the verification/calculation of the Non-Project Missed Volume, if any.
- (f) The Seller shall:
 - (i) prior to the delivery of any Net Delivered Energy from the Complex to the Interconnection Point for which payment is required to be made hereunder by the Purchaser, install, test and commission, and calibrate or recalibrate as necessary, any devices acquired by the Seller to implement the Hybrid Forecast Model; and
 - (ii) ensure that it or its Contractors, employees, agents and invitees (other than the Purchaser), and others for whom the Seller is responsible, shall not tamper with the devices acquired by the Seller to implement the Hybrid Forecast Model.

- (g) The Seller grants to the Purchaser all necessary easements on, rights-of-way and access to the Site and for ingress and egress thereto and therefrom for the purposes of witnessing the installation, testing, commissioning or operation of the relevant devices and systems acquired by the Seller to implement the Hybrid Forecast Model.
- (h) The Seller shall provide the Purchaser no less than forty-eight (48) hours' notice of any installation, testing or commissioning of the relevant devices and systems acquired by the Seller to implement the Hybrid Forecast Model and the Purchaser shall have the right to witness such installation, testing or commissioning; provided that if the Purchaser's representative fails to attend such installation, testing or commissioning, such right shall be deemed to have been waived with respect to such installation, testing or commissioning.

5.4 DESPATCH INSTRUCTIONS

- (a) The Purchaser shall accept all Net Delivered Energy generated by the Complex and delivered at the Interconnection Point. Subject to Section 5.4 (b), the Seller shall comply with Despatch Instructions issued by the Purchaser, provided, that:
 - (i) such Despatch Instructions are consistent with the Technical Limits;
 - (ii) the Complex can be operated consistent with the Despatch Instructions in view of the then prevailing Ambient Site Conditions; and
 - (iii) Seller shall only be required to comply to the extent there are no Scheduled Maintenance Outages, Forced Outages or Partial Forced Outages in effect or scheduled to occur and which would prevent compliance with such Despatch Instructions.
- (b) The Seller shall not be in breach of Section 5.4(a) for failure to execute a Despatch Instruction due to a Non-Project Event or a Force Majeure Event.
- (c) Notwithstanding Section 5.4(a) above, where the Net Delivered Energy delivered by the Seller is in excess of the forecasted energy as notified under the Hourly Availability Notice on account of change in availability of the Arrays, then the Purchaser shall be entitled to accept such excess Net Delivered Energy, at its sole discretion. If the Purchaser decides not to accept such excess Net Delivered Energy it shall not be required to or obligated to make Energy Payment in respect thereto. In the event the Net Delivered Energy delivered by the Seller is in excess of the forecasted energy notified under the Hourly Availability Notice for reasons other than the change in availability of the Arrays, then the Purchaser shall be required to accept such excess Net Delivered Energy or make payment as NPMV for the excess Net Delivered Energy not accepted by the Purchaser in accordance with Section 9 of this Agreement read with Schedule 1.

5.5 SCHEDULED OUTAGES AND MAINTENANCE OUTAGES

- (a) Any elective maintenance of the entire Complex shall be taken by the Seller only in the three Months designated by the Purchaser as Maintenance Months in its Year Ahead Notification. The Seller shall consult the Purchaser before developing the Scheduled Outage programme and shall carry out Scheduled Outages in accordance with the Scheduled Outage programme approved by the Purchaser. To the extent possible, the Scheduled Outages of individual Arrays shall be phased for minimizing the reduction in the total available generation capacity of the Complex
- (b) The Seller shall advise the Purchaser of the need for any Maintenance Outages, together with the proposed commencement date and estimated duration of the work to be undertaken. The Purchaser shall advise the Seller of the periods during which such

Maintenance Outage may be undertaken, such periods to be reasonable in light of the Purchaser's requirements for Net Delivered Energy and the necessity for the Maintenance Outage. The Seller shall, subject to the Technical Limits, Prudent Utility Practices and Prudent Electrical Practices, use reasonable endeavours to carry out the Maintenance Outage during the times provided by the Purchaser in accordance with this Section 5.5.

5.6 RECORDING OF COMMUNICATIONS

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

5.7 EMERGENCY SET-UP AND CURTAILMENT PLANS

- (a) Subject to Section 5.7(b), the Seller shall co-operate with the Purchaser in developing Emergency procedures for the Complex, including voltage reduction to effect load curtailment, and shall, to the extent consistent with the Technical Limits, comply with such Emergency procedures.
- (b) The Emergency procedures shall provide that, in case of an Emergency and upon request of the Purchaser, the Seller shall use reasonable endeavours to reschedule any Scheduled Outage or Maintenance Outage not yet begun, or if the Scheduled Outage or 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 generation as soon as possible.

5.8 EMPLOYMENT OF QUALIFIED PERSONNEL

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

5.9 OPERATING COMMITTEE DUTIES

- (a) The Operating Committee shall be responsible for assisting the Parties in finalizing the Operating Procedures in accordance with Section 2.5 and for advising the Parties on interaction of the Complex and the Grid System, including:
 - (i) co-ordination of the respective programmes and procedures of the Parties for the construction, operation and maintenance of the Seller Interconnection Facilities, the Complex, the Purchaser Interconnection Facilities, and all related equipment, provided, the Operating Committee shall not establish programmes and procedures for the construction of the Complex;
 - (ii) steps to be taken on the occurrence of a Force Majeure Event affecting a Party, the Complex, the Grid System, or a shutdown or reduction in capacity for any other reason affecting the Purchaser Interconnection Facilities, the Seller Interconnection Facilities, the Grid System, or the Complex, or any related equipment;
 - (iii) safety matters affecting the Complex, the Purchaser Interconnection Facilities, the Seller Interconnection Facilities, the Grid System, the Parties or their Contractors;
 - (iv) review and revision of protection schemes;

- (v) developing testing procedures for the Purchaser Interconnection Facilities and the Seller Interconnection Facilities
 - (vi) review and improve, if required, the methods for evaluating the NPMV in accordance with Schedule 10 and Schedule 13;
 - (vii) clarification of emergency plans developed by the Purchaser for recovery from a local or widespread electrical blackout; and
 - (viii) any other matter agreed upon by the Parties;
- (b) The Operating Committee shall have no power or authority to amend or modify the provisions of this Agreement, or to determine the rights and obligations of the Parties under this Agreement.

5.10 MAINTENANCE OF OPERATING RECORDS

- (a) Each Party shall maintain complete and accurate records and all other data reasonably required for the proper administration of this Agreement. Without prejudice to the generality of the foregoing, the Seller shall maintain (where applicable, through automated data generation, processing and archiving capabilities of the Complex Monitoring System and the Meteorological Station) at Site, an accurate and up-to-date operating log in a format mutually agreed upon by the Parties, with records and data of:
- (i) gross DC electricity generation for each hour;
 - (ii) Net Delivered Energy in AC for each hour;
 - (iii) Array availability data for each hour;
 - (iv) Actual output per Array measured in MWp for each hour;
 - (v) Reactive Power in respect of each hour;
 - (vi) Grid System Frequency;
 - (vii) 132 kV bus voltage at all times;
 - (viii) changes in operating status, Scheduled Outages, Maintenance Outages and Forced and Partial Forced Outages;
 - (ix) Ambient Site Conditions for each fifteen (15) minute period;
 - (x) Despatch Instructions;
 - (xi) the cause and duration of each Non-Project Event; and
 - (xii) other matters agreed upon by the Parties.

The aforesaid data recorded by the Complex Monitoring System, the Meteorological Station or through any other mode shall be available for viewing and downloading by the Purchaser through real-time communication system (as specified in Schedule 2 and Schedule 6) provided therefor by the Seller at its own expense. The Complex Monitoring System shall be enabled to create and archive automated access logs with fields that include, at a minimum (i) the identity of the person accessing the Complex Monitoring System, (ii) the activity performed for the relevant access session, and (iii) time and date stamping.

All such records and data shall be maintained for a minimum of one hundred twenty (120) 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 one hundred twenty (120) Month period unless the Party desiring disposal or destruction of such records or data has first given thirty (30) Days prior written notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice has not objected thereto in writing within such ten (10) Days of receiving such notice.

- (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 5.10(a) at normal office hours during the period such records and data are hereunder required to be maintained. For avoidance of doubt, it is agreed that references to records and data in this Section 5.10 includes records and data created, recorded, maintained and retrieved in electronic form.

5.11 TAMPERING WITH THE METERING SYSTEM AND THE COMPLEX MONITORING SYSTEM

- (a) The Seller shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper with the Metering System, the Back-Up Metering System, the Complex Monitoring System and the Meteorological Station. Should the Seller breach the foregoing covenant, the Seller shall:
 - (i) take all remediable action reasonably acceptable to the Purchaser to ensure that such tampering does not reoccur, including the development or addition of security systems, and
 - (ii) compensate the Purchaser for two (2) times the amount or reasonably estimated amount of any overpayment by the Purchaser resulting from such tampering, which for purposes of such determination shall be assumed to have occurred immediately after the last known accurate test of the Metering System, the Complex Monitoring System and the Meteorological Station (unless the Seller demonstrates to the reasonable satisfaction of the Purchaser, or it is resolved under Article XVIII, that the tampering did not occur until a later date, in which case such later date shall be used as the reference date for determination of such amount). The Parties have agreed that the amount of such compensation constitutes liquidated damages to the Purchaser for any such breach and, subject to Sections 16.1(h) and Section 16.4, shall be the sole remedy of the Purchaser therefor. The Seller waives, to the fullest extent permitted by law, any and all defenses to its liability to make such payments.

5.12 CESSATION OF OPERATION OF THE COMPLEX

- (a) If, after the Commercial Operations Date, without the prior written consent of the Purchaser, the Seller shall have ceased to operate the Complex for a period of seven (7) consecutive Days other than because of:
 - (i) a Force Majeure Event;
 - (ii) a Scheduled Outage or a Maintenance Outage;
 - (iii) a Forced Outage or a Partial Forced Outage;
 - (iv) a Non-Project Event; or
 - (v) any act or omission of the Purchaser that effectively prevents the Seller or its Contractors from operating the Complex,

then the Purchaser shall be entitled to (A) enter the Complex and operate it until the Seller demonstrates, to the reasonable satisfaction of the Purchaser, that the Seller can and will resume normal operation of the Complex or until the Lenders shall have exercised their

rights in accordance with the Financing Documents, including the EPA Direct Agreement, to enter the Complex and operate it, and (B) as soon as is reasonably practicable, send written notice of such entry to the Lender or the Agent (as defined in Section 16.5) in accordance with the procedure set forth in Section 16.5 and the EPA Direct Agreement.

During any period that the Purchaser operates the Complex pursuant to this Section 5.12, the Purchaser shall (i) operate the Complex within the Technical Limits and in accordance with Laws of Pakistan, Prudent Utility Practices and Prudent Electrical Practices, (ii) bear all costs of such operation, and (iii) pay to the Seller the aggregate of the Actual Principal Repayment and the Actual Interest Charges during such period (to the extent Ambient Site Conditions enabled such generation under the Hybrid Forecast Model); provided, however, that the Seller shall not be entitled to any payment during such period to which it would not be entitled if the Complex had been operated by the Seller during such period.

- (b) Notwithstanding the foregoing and any other provision in this Agreement to the contrary, if any insurance coverage that was obtained by the Seller and is set forth in Schedule 8 is not available or in effect during any time that the Purchaser is entitled to operate the Complex pursuant to this Section 5.12 or does not cover such operation, then the Purchaser shall not enter or operate the Complex, and shall immediately cease operation and promptly quit possession of the Complex, as the case may be, unless and until such time that the Purchaser either:
 - (i) obtains, and thereafter continuously maintains, and provides written evidence to the Seller and the Lender or 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 Seller, and
 - (B) with an internationally reputable insurer(s) with a rating(s) of not less than the rating of the insurer that provided policies of insurance which had been most recently procured by the Seller; or
 - (ii) agrees in writing to defend, indemnify and hold the Seller harmless from and against any loss or damage sustained as a result of an event that occurred during the period of the Purchaser's operation of the Complex to the extent that such loss or damage would have been covered by the insurance set forth in Schedule 8 that the Seller most recently had in effect prior to the Purchaser's operation of the Complex, including but not limited to loss or damage to the Complex and loss or damage resulting from third Party claims.
- (c) In the event that, at any time, the Purchaser obtains insurance pursuant to this Section 5.12,
 - (i) the Seller 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 Seller shall reimburse the Purchaser for the actual out-of-pocket costs of such insurance and all reasonable administrative costs incurred by the Purchaser in procuring such insurance.
- (d) Notwithstanding any other provision of this Agreement to the contrary, the Purchaser shall indemnify, defend and hold harmless the Seller from any loss or damage to the Complex incurred or sustained by the Seller by reason of the Purchaser's negligence or willful

misconduct in the operation of the Complex during such period, but only to the extent that such loss or damage is not covered by the Seller's insurance.

5.13 FREE OF LIENS

The Seller shall at all times keep the Complex free and clear of all Liens other than those in favour of the Lenders as permitted under Section 19.9 or those not affecting the Seller to perform its obligations under this Agreement.

5.14 FORCED OUTAGES OR PARTIAL FORCED OUTAGES

The Seller shall notify the Purchaser as soon as practicable after the occurrence of a Forced Outage or Partial Forced Outage, which notice shall set forth the likely cause thereof (if known at the time), together with an estimated time-frame within which such Forced Outage or Partial Forced Outage is likely to end, on the basis of information available to the Seller at that time. The Seller shall, periodically, update any notice provided under this Section 5.14 on the basis of further information that may, from time to time, become available to the Seller.

6. INTERCONNECTION FACILITIES

6.1 CONSTRUCTION OF THE SELLER INTERCONNECTION FACILITIES

- (a) The Seller, at its cost, shall carry out or cause to be carried out the Seller Interconnection Works with all proper skill, diligence and care, and in all material respects in accordance with:
 - (i) this Agreement;
 - (ii) the Laws of Pakistan and the applicable Seller Consents;
 - (iii) the Grid Code;
 - (iv) the Generation Licence;
 - (v) Prudent Utility Practices and Prudent Electrical Practices; and
 - (vi) Schedule 3,so that the Seller Interconnection Facilities can reasonably be expected to provide a useful life of not less than the Term.
- (b) The design, scope and Specification of the Seller Interconnection Works are set out in Schedule 3. The Seller shall give the Purchaser in the Construction Reports not less than thirty (30) Days' prior notice of the date from which it or its Contractor will commence the Seller Interconnection Works and shall complete the Seller Interconnection Works in accordance with the Interconnection Works Schedule. The Seller shall ensure that the Construction Reports provided to the Purchaser in accordance with this Agreement also contains a progress report in respect of the completion of the Seller Interconnection Works Schedule. The Seller shall procure (or shall cause the EPC Contractor to procure) all Seller Consents necessary for carrying out the Seller Interconnection Works.
- (c) Not applicable.
- (d) The Seller shall undertake the following works on behalf of the Purchaser, if required by the Purchaser, at the Purchaser's Interconnection Facilities at the Purchaser's cost and time:
 - (i) Replacement and/or upgradation of power line carrier, SCADA, remote terminal unit interface;
 - (ii) Signal parameterization from the Complex to the Grid System and the main Control Centre;
 - (iii) Procurement and installation of relevant SCADA and/or remote terminal unit hardware at Purchaser's Grid system(s) and Control Centre;
 - (iv) Augmentation of SCADA / remote terminal unit communication at Control Centre; and
- (e) Any costs incurred by the Seller on behalf of the Purchaser in respect of works set out in Section 6.1(d) above shall be reimbursed by the first invoice raised by the Seller following the Commercial Operations Date, provided the amount of such invoice is less than USD 100,000. For any works required to be undertaken by the Seller on behalf of the Purchaser, for which the estimated cost exceeds USD 100,000, the Purchaser may elect to undertake the work itself upon submission of the supporting documents by the Seller evidencing such estimate, or if the Purchaser requires the Seller to undertake the same, the Purchaser shall reimburse the Seller within the thirty (30) Days of the invoice being received by the Purchaser; provided such cost does not exceed USD 500,000 and has been incurred and

paid by the Seller. For any work exceeding USD 500,000 the Seller shall not be obligated to undertake the same.

6.2 PURCHASER INTERCONNECTION FACILITIES

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

6.3 DATA NECESSARY FOR CONSTRUCTION OF INTERCONNECTION FACILITIES

The Seller and the Purchaser shall exchange all information within the time period provided therefor in the Interconnection Works Schedule. Within ten (10) Days of a request by either Party, the requested Party shall provide all additional information reasonably requested by the requesting Party in connection with the execution of its Interconnection Works. Timely provision by the Seller of such supplemental or additional information shall not modify the obligation of the Purchaser to complete the Purchaser Interconnection Works as required herein.

6.4 GRANTING OF EASEMENTS AND RIGHTS-OF-WAY

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

6.5 CONSTRUCTION AND COMPLETION OF PURCHASER INTERCONNECTION FACILITIES

- (a) Within seven (7) Days of the Effective Date, the Seller shall give to the Purchaser written notice of the Scheduled Commercial Operations Date then anticipated by the Seller (which date shall not in any event be earlier than the earliest date on which the Commercial Operations Date may occur hereunder). Following receipt of such notice, the Purchaser shall commence the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall provide to the Seller reports on the progress of the Purchaser Interconnection Works until their completion. The Purchaser shall complete the Purchaser Interconnection Works so as to be able to accept Net Delivered Energy at the

Interconnection Point to carry out the Commissioning Tests no later than [fifteen (15)] Days prior to the Scheduled Commercial Operations Date notified by the Seller to the Purchaser pursuant to this Section 6.5(a); provided, however, that such completion date shall be extended on a Day-for-Day basis for any changes in the Scheduled Commercial Operations Date, and to the extent necessary because of the occurrence of any of the following:

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

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

If the Purchaser has not completed, commissioned and energized the Purchaser Interconnection Facilities, by the date required in Section 6.5(a), and such delay causes a delay in the Commissioning of the Complex, the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the Purchaser Interconnection Works are completed, provided however, the Required Commercial Operations Date shall not be extended on account of any extension of the completion date of the Purchaser Interconnection Works under Section 6.5(a)(i), (ii) and (iv).

- (b) In addition, if the Purchaser has not completed the Purchaser Interconnection Works by the date which is ninety (90) Days following the date by which the Purchaser Interconnection Facilities were required to be completed in accordance with Section 6.5(a) as such date may be extended pursuant to Section 6.5(a)(i), (ii), (iii) and (iv), and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer, then the Purchaser shall pay to the Seller monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus fifty (50%) of actual O&M and insurance costs for the period but not exceeding six percent (6%) of the Energy Price multiplied by the Average Daily Energy for each Day during the period of such delay provided reasonable and verifiable documentary evidence is submitted by the Seller to the Purchaser in respect of Carrying Cost, actual O&M and insurance costs.

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

- (i) the end of a period equal to the period of delay in completing the Purchaser Interconnection Facilities, or
- (ii) completion of the first attempted Commissioning Tests (whether such tests be successful or not);

Provided, however, that the payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of (A) the Certificate of Readiness for Synchronization and (B) a simultaneous certification by the Engineer that the delay caused by the Purchaser would likely cause the then scheduled Commissioning Tests to be delayed.

- (c) In addition to payment set out in Section 6.5(b) above for the period of such delay, if the delay by the Purchaser in completing the Purchaser Interconnection Facilities continues beyond the one hundred eighty(180) Day following the date of the issuance by the Engineer of the Certificate of Readiness for Synchronization and a simultaneous certificate by the Engineer that the delay caused by the Purchaser would likely cause the then-scheduled Commissioning Tests to be delayed, the Purchaser shall also be required to pay the principal sum of the debt when due pursuant to the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lender or Agent). Such payment of the principal sum of the debt by the Purchaser shall be made within thirty (30) Days following receipt of an invoice therefor, but in no event earlier than the two hundred ten (210) Days 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 repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lenders or Agent). Such payments shall continue until the earlier of (A) the end of the period equal to the period of delay or deferral of any Commissioning Test, or (B) completion of the first attempted Commissioning Tests (whether successfully completed or not), provided, that any payments made by the Purchaser pursuant to Section 6.5(c) on account of payments of principal sum of the debt shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered, together with interest at KIBOR plus a spread of two and half percent (2.5%) (on the monthly outstanding balance of such amounts) commencing on the date of such payments by the Purchaser and ending on the date of complete repayment thereof by the Seller, through successive deductions of twenty five percent (25%) of the Energy Price from the monthly Energy Payments until such amounts have been completely recovered. The Purchaser shall have no obligation to make the payments provided in this Section 6.5 if, and to the extent that, the delay in the Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests. If payments by the Purchaser under this Section 6.5 shall have commenced, or the obligation for such payments shall have accrued, the Complex shall be tested at the first available opportunity thereafter. Except as provided in this Section 6.5, Section 8.1, Section 15.6 and Section 16.2(h), the Seller shall be entitled to no other compensation or claim for damages under this Agreement as a result of delay in completion of the Purchaser Interconnection Facilities or deferral of the Commissioning Tests by the Purchaser, as the case may be.

6.6 PROTECTIVE DEVICES

- (a) As part of the Seller Interconnection Works, the Seller shall install protective relays in accordance with Schedule 3. The Seller shall maintain the settings of all relays in the Complex at the levels agreed by the Seller and the Purchaser, and the Seller shall not change such settings without the Purchaser's prior written consent.

- (b) The Seller and the Purchaser shall verify the operation of the protection devices in accordance with the testing programme set forth in Schedule 3.
- (c) Subject to providing the Seller reasonable notice, the Purchaser may require the Seller to modify or expand the requirements for protective devices. Following the Purchaser's approval of the costs of such modification or expansion, the Seller shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. If such request for a modification or expansion is sent by the Purchaser on or after the Construction Start Date and such request causes a delay in Commissioning the Complex, as certified by the Engineer, the Required Commercial Operations Date shall be extended Day-for-Day to account for such delay provided the Seller has submitted its final metering, control and protection single line diagram to the Purchaser no later than fifteen (15) Days after the Construction Start Date. The Purchaser shall be notified in advance of, and shall have the right to observe, all work on the protective devices.
- (d) Following completion of such modification or expansion work, the Seller shall provide the Purchaser with an invoice for the reasonable and necessary costs therefor, together with supporting documentation with respect thereto. The Purchaser shall pay the Seller the required costs within thirty (30) Days after delivery of the invoice by the Seller.
- (e) Each Party shall notify the other Party in advance of any changes to either the Complex or the Grid System that may affect the proper co-ordination of protective devices between the two systems, and neither Party shall make any such changes to either the Complex or the Grid System, as the case may be, without the other Party's approval.

6.7 TESTING

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

7. METERING

7.1 METERING SYSTEM

- (a) The Parties acknowledge that, for purposes of determining Net Delivered Energy, the Metering System and Back-Up Metering System are required prior to delivery of any Net Delivered Energy to the Interconnection Point for sale hereunder.
- (b) Not later than forty-five days (45) Days prior to the then Scheduled Commercial Operations Date, the Seller shall, at its expense, have procured and shall install the Metering System and the Back-Up Metering System. The Seller shall ensure that such Metering System and Back-Up Metering System shall be new and in good working order, in accordance with the approved Purchaser specifications. The Seller shall procure and install an electronic recorder or any other state-of-the-art recording equipment (if required), approved by the Purchaser, capable of continuous recordings of the Net Delivered Energy, which, after procurement and installation by the Seller shall constitute a part of the Metering System. The Net Delivered Energy shall be measured and recorded on appropriate magnetic media or equivalent, which recording shall be used to compute Energy Payments.
- (c) The Metering System and the Back-Up Metering System shall be (i) fully compatible with the characteristics of automatic meter reading (AMR) system; and (ii) compliant with the latest Purchaser standards (which shall be provided by the Purchaser to the Seller immediately upon request therefor).

7.2 INSTALLATION OF METERING SYSTEM

- (a) The Seller, at its expense, shall procure and install Metering System and the Back-Up Metering System in accordance with the Grid Code along with Schedule 3 and consistent with the requirements set forth in Schedule 6 and shall:
 - (i) prior to the delivery of any Net Delivered Energy from the Complex to the Interconnection Point for which payment is required to be made hereunder by the Purchaser, install, test and commission, and calibrate or recalibrate as necessary, the Metering System and the Back-Up Metering System at the higher voltage side of and as close as possible to the Interconnection Point;
 - (ii) secure the Metering System and Back-Up Metering System in a locked and bricked walled enclosure; and
 - (iii) ensure that it or its Contractors, employees, agents and invitees (other than the Purchaser), and others for whom the Seller is responsible, shall not tamper with the Metering System or the Back-Up Metering System.
- (b) When, by testing in accordance with Section 7.3(a), the Metering System has been demonstrated to satisfy the required level of accuracy of measurement, the Seller shall transfer possession of such Meter and Back-Up Meter to the Purchaser, and the Purchaser shall thereafter be responsible for the ownership and maintenance of the Meter and the Back-Up Meter provided that the Seller shall thereafter be responsible for the ownership and maintenance of the Allied Metering Equipment and the Allied Back-Up Metering Equipment. For avoidance of doubt, the Purchaser shall not read, test, adjust, repair or replace the Meter and the Back-Up Meter without providing not less than forty-eight (48) hours prior written notice to the Seller and without the presence of the Seller. For avoidance of doubt, the Seller shall not test, adjust, repair or replace the Allied Metering Equipment and the Allied Back-Up Metering Equipment without providing not less than forty-eight (48) hours prior written notice to the Purchaser and without the presence of the Purchaser. The Purchaser shall be provided with no less than forty-eight (48) hours' notice of, and shall have the right to be present at and to observe, the installation and all testing of the Metering System and the Back-Up Metering System. The Seller shall be responsible for

arrangement of space and all necessary easements for installation of the Metering System and the Back-Up Metering System on Site and for ingress and egress thereto and therefrom.

7.3 TESTING OF METERING SYSTEM

- (a) The Seller shall test the accuracy of each of the Metering System and the Back-Up Metering System, in the presence of the Purchaser, and, if necessary, calibrate or recalibrate them, in accordance with Schedule 6 not later than the earlier of (i) thirty (30) Days after the relevant Metering System or Back-Up Metering System is installed by the Seller or (ii) the Day before the date of first delivery to the Interconnection Point of any Net Delivered Energy from the Complex, as the case may be. The cost of testing the Metering System and the Back-Up Metering System shall be borne by the Seller. The Seller shall be given not less than forty-eight (48) hours' notice of all tests of the Meter and the Back-Up Meter carried out by the Purchaser and shall have the right to witness such tests, as well as any inspection of the Meter and the Back-Up Meter or adjustments thereof; provided that if the Seller representative fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment. The Purchaser shall be given not less than forty-eight (48) hours' notice of all tests of the Allied Metering Equipment and the Allied Back-Up Metering Equipment carried out by the Seller and shall have the right to witness such tests, as well as any inspection of the Allied Metering Equipment and the Allied Back-Up Metering Equipment or adjustments thereof. Thereafter, the Purchaser and the Seller shall test the accuracy of each of the Metering System and the Back-Up Metering System at any time that the readings of Net Delivered Energy from the Metering System and the Back-Up Metering System differ by an amount greater than one-fifth of one percent (0.2%). In such eventuality, the Purchaser and the Seller together shall test the accuracy of the Metering System and recalibrate the Metering System, if necessary. The Purchaser shall provide the Seller no less than forty-eight (48) hours' notice of such tests, and the Seller shall have the right to witness such tests as well as any inspection of the Metering System or adjustment thereof; provided that if the Seller's representative fails to attend such tests, inspection or adjustment, such right shall be deemed to have been waived with respect to such tests, inspection and/or adjustment.
- (b) Following testing and any recalibration, if necessary, and return to service of the Metering System pursuant to Section 7.3(a), the Seller shall if necessary test the accuracy of the relevant Allied Metering Equipment and Allied Back-Up Metering Equipment and recalibrate the relevant Allied Metering Equipment and Allied Back-Up Metering Equipment. The Seller shall provide the Purchaser no less than forty-eight (48) hours' notice of such tests, and the Purchaser shall have the right to witness such tests as well as any inspection of the Allied Metering Equipment and Allied Back-Up Metering Equipment or adjustment thereof. Following testing and any recalibration, if necessary, and return to service of the Metering System pursuant to Section 7.3(a), the Purchaser shall if necessary, test the accuracy of the relevant Meter and Back-Up Meter and recalibrate the relevant Meter and Back-Up Meter. The Purchaser shall provide the Seller no less than forty-eight (48) hours' notice of such tests, and the Seller shall have the right to witness such tests as well as any inspection of the Meter and Back-Up Meter or adjustment thereof; provided that, if the Seller fails to attend such tests, inspection or adjustment, such right shall be deemed to have been waived with respect to such tests, inspection and/or adjustment.
- (c) In addition to the tests to be carried out pursuant to Section 7.3(a), if the Seller believes that the Metering System is inaccurate it shall inform the Purchaser, requesting that the Metering System's accuracy be tested, and the Purchaser and the Seller shall test the Metering System within reasonable time. If the Purchaser believes that the Metering System is inaccurate it shall inform the Seller, and the Purchaser and the Seller shall test the Metering System within reasonable time. The Purchaser shall provide the Seller no less than forty-eight (48) hours' notice of such tests, and the Seller shall have the right to witness such tests as well as any inspection of the Metering System or adjustment thereof; provided that if the Seller fails to attend such tests, inspection or adjustment, such right

shall be deemed to have been waived with respect to such tests, inspection and/or adjustment. The Seller shall bear the cost of such additional tests requested by it, unless the test indicates that the Metering System is inaccurate by more than one-fifth of one percent (0.2%) in which case, the Seller shall bear the cost of the additional tests.

- (d) In addition to the tests to be carried out pursuant to Section 7.3(b), if the Purchaser believes that the Back-Up Metering System is inaccurate it shall inform the Seller, requesting that the Back-Up Metering System's accuracy be tested, and the Seller shall test the Back-Up Metering System within reasonable time. If the Seller believes that the Back-Up Metering System is inaccurate it shall inform the Purchaser, and the Seller shall test the Back-Up Metering System within reasonable time. The Seller shall provide the Purchaser no less than forty-eight (48) hours' notice of such tests, and the Purchaser shall have the right to witness such tests as well as any inspection of the Back-Up Metering System or adjustment thereof; provided that if the Purchaser fails to attend such tests, inspection or adjustment such right shall have been waived with respect to such tests, inspection and/or adjustment. The Purchaser shall bear the cost of such additional tests requested by it, unless the test indicates that the Back-Up Metering System is inaccurate by more than one-fifth of one percent (0.2%) in which case the Seller shall bear the cost of the additional tests.

7.4 READING METERS

- (a) The Seller, at its own cost and expense, shall procure and install telemetry and electronic data recording systems capable of recording the Net Delivered Energy measured by the Metering System, and shall procure and install such systems for the Back-Up Metering System on a continuous basis with the capacity of storing such recordings for not less than ninety (90) Days. All metering data recorded by the Metering System and the Back-up Metering System shall also be telemetered at the Control Centre through telemetry facilities provisioned by the Seller at its expense. Subject to the provisions of Section 7.4(d) and verification of the data recording system pursuant to Section 7.4(b), the Parties agree that the information contained in or obtained from such electronic data recording and telemetry systems shall be used to determine the Net Delivered Energy. The electronic data recording system and the telemetry 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 and the telemetry system related to the Metering System shall be conveyed to the Purchaser as part of the Metering System, in accordance with the provisions of this Article VII.
- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized readings for the Metering System (or, if applicable, the Back-Up Metering System) over the same period (determined by subtracting the local totalized reading at the beginning of the period from the local totalized reading at the end of the period). In order to verify the information contained in the electronic data recording system, the following procedure shall apply:
 - (i) the local totalized readings of the Metering System and the Back-Up Metering System shall be read on issuance of the Certificate of Readiness for Energization of the Seller Interconnection Facilities and, thereafter, Monthly on the last Business Day of each Month or such other Day as may mutually be agreed upon by the Parties;
 - (ii) the Seller shall take such readings during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) the Seller shall provide the Purchaser at least forty-eight (48) hours' notice of the time the Seller intends to take such readings, and the Purchaser shall have the right to witness any such readings;

- (iv) if the Purchaser's representative is present at such readings, then such readings shall be jointly taken and recorded;
 - (v) if the Purchaser's representative is not present at such readings, then the Seller representative shall take and record such readings) and make a photographic record thereof;
 - (vi) the Seller shall maintain a log of all such meter readings; and
 - (vii) the recorded measurements for each hour during the relevant period and the local totaled recorded measurements shall be printed and delivered by the Seller to the Purchaser immediately after the readings are taken, which shall be jointly signed by both Parties.
- (c) The Metering System shall be used to measure the Net Delivered Energy, provided that during any period when the Metering System is out of service as a result of maintenance, repairs or testing, then the best available information, which may include the metering data recorded through the telemetry system or the data recorded at the electronic data recording system of the Back-Up Metering System, shall be used to measure the Net Delivered Energy, and the provisions of Section 7.4(a) and Section 7.4(b) shall apply to the reading of the Back-Up Metering System.
- (d) If, in any test carried out pursuant to Section 7.3(a), the Metering System is found to be inaccurate by more than one-fifth of one percent (0.2%), or is otherwise unavailable or functioning improperly, then the correct amount of Net Delivered Energy delivered to the Purchaser for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
- (i) the readings of the Back-Up Metering System shall be used to calculate the correct amount of Net Delivered Energy, unless a test of such Back-Up Metering System, as required by either Party, reveals that the Back-Up Metering System is inaccurate by more than one-fifth of one percent (0.2%) or is otherwise functioning improperly;
 - (ii) if the Back-Up Metering System is found to be inaccurate by more than one-fifth of one percent (0.2%) or is otherwise unavailable or functioning improperly, then the Seller and Purchaser shall jointly prepare an estimate of the correct reading on the basis of all available information, including the tele-metered data, and such guidelines as may have been agreed upon between the Seller and the Purchaser as part of the Operating Procedures;
 - (iii) if the Purchaser and the Seller fail to agree upon an estimate for the correct reading, the Seller will estimate the reading, and either Party may refer such Dispute for resolution in accordance with Article XVIII; and
 - (iv) the difference between the previous payments by the Purchaser for the period of inaccuracy, if any, and the recalculated amount shall, as appropriate, be offset against or added to the payment due to the Seller, with interest at the Delayed Payment Rate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus one-fifth of one percent (0.2%) and not otherwise functioning improperly.

7.5 SEALING OF METERING SYSTEM

- (a) The Metering System and the Back-Up Metering System shall be jointly sealed by the Parties.
- (b) Seals on the Metering System shall be broken only by the Purchaser acting in accordance with the terms of this Agreement. The Purchaser shall provide the Seller at least forty-eight (48) hours advance written notice of the breaking of seals on any part of the Metering System. Such notice shall specify the time at which a meter seal shall be broken by the Purchaser's personnel, and the Seller shall be provided the opportunity of being present when such seals are broken.
- (c) Seals on the Back-Up Metering System shall be broken only by the Purchaser acting in accordance with the terms of this Agreement. The Purchaser shall provide the Seller at least forty-eight (48) hours advance written notice of the breaking of seals on any part of the Back-Up Metering System. Such notice shall specify the time at which a meter seal shall be broken by the Purchaser's personnel, and the Seller shall be provided the opportunity to be present when such seals are broken.
- (d) If any seal securing the Metering System or the Back-Up Metering System is found to be broken, or if the Metering System or the Back-Up Metering System has been found to have been tampered with, and, in either case, the Metering System is found to be inaccurate by more than one-fifth of one percent (0.2%) or otherwise unavailable or functioning improperly, then the provisions of Section 7.4(d) shall apply to determine the correct amount of Net Delivered Energy.

7.6 REPAIR, REPLACEMENT OR RECALIBRATION OF METERING SYSTEM

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

7.7 PROTECTIVE DEVICES AND TELECOMMUNICATIONS CIRCUIT

- (a) Subject to the Purchaser completing its Purchaser Interconnection Facilities in accordance with Section 6.5, no later than thirty (30) Days prior to the Scheduled Commercial Operations Date and, in any event, before any Net Delivered Energy is delivered from the Complex to the Interconnection Point, the Seller shall at its own cost and expense procure, and shall install and have operational the following equipment at the Complex:
 - (i) Telecommunication and tele-protection equipment (power line carrier equipment) reasonably acceptable to the Purchaser and compatible with the Grid System.
 - (ii) The DPLC or fiber optic system including SDH or OPGW equipment installed at Complex.
 - (iii) If and to the extent required, an identical DPLC or fiber optic system including SDH or OPGW unit, together with out-door coupling equipment including PABX, shall be procured and installed by the Seller.

The actual cost of any DPLC or fiber optic system including SDH or OPGW unit, together with all of the related in-door and out-door equipment and works at the Purchaser's end beyond the Interconnection Point, procured and if installed by the Seller, shall be reimbursed by the Purchaser to the Seller in PKR through the first (1st) invoice raised by the Seller after the Commercial Operations Date.

- (b) The ownership, operation and maintenance of all the DPLC or fiber optic system, including SDH or OPGW equipment, installed at the Purchaser's end beyond the Interconnection Point by the Seller, shall be the Purchaser's responsibility.
- (c) The DPLC or fiber optic system including SDH or OPGW equipment installed by the Seller shall be used for:
 - (i) Voice communication;
 - (ii) Data communication;
 - (iii) Implementation of inter-tripping of 132 KV transmission line between the Complex and relevant grid station of the Grid System;
 - (iv) The voice/data communication beyond the Interconnection Point located at the Complex shall be the responsibility of the Purchaser; and
 - (v) Equipment in the Complex for transmission and receipt of facsimiles.
- (d) The SCADA signals (as agreed between the Parties) shall be transmitted to Purchaser's load despatch center ("LDC"), in real time, through DPLC or fiber optic link to be provided by Seller at the Complex, which shall be interfaced at the main server of the LDC SCADA system by the Seller on behalf of the Purchaser, details of the signals should be as per KE SCADA adaptation policy in accordance with Schedule 3. The selection and installation of items to be provided by the Seller in accordance with this Section 7.7 shall be subject to the prior written approval of the Purchaser that shall not be unreasonably held and, in any event, shall be granted within thirty (30) Days of the request by the Seller.

8. TESTING OF THE COMPLEX

8.1 TESTING PROGRAMME

- (a) The Seller shall provide to the Purchaser, on an on-going basis, all relevant information regarding its programme for testing the Complex and the schedule thereof. Not less than thirty (30) Days prior to the commencement of such test programme, the Seller shall deliver to the Purchaser in writing the final testing programme for the Complex, including a tentative schedule for conducting all tests required under and in relation to this Article VIII. The Seller shall advise the Purchaser in writing of any changes in its final schedule for the testing programme not less than seven (7) Days prior to the commencement of such tests. Such final schedule shall not materially increase or advance the timing of the Purchaser's obligations under this Agreement, without the prior written consent of the Purchaser. If the schedule for any tests required by Section 8.2 or 8.3 is adjusted after the Seller has provided the Purchaser with the final testing programme schedule, then the Seller shall advise the Purchaser not less than forty-eight (48) hours prior to the commencement of any such tests. On each Day beginning with the Day on which testing commences, the Seller shall provide the Purchaser with a schedule of the tests to be conducted on the following Day or Days (if such tests will continue for more than one (1) Day). All testing of the Complex shall satisfy the Commissioning Tests and Reliability Run Test provided in this Article VIII and Schedule 7. The Purchaser and its representatives shall have the right to be present at and observe the Commissioning Tests (including the Reliability Run Test) and any retests thereof.
- (b) (1) If the Purchaser is unable to accommodate the schedule for any of the Commissioning Tests as provided by the Seller, the Purchaser will give the Seller notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex and the Parties will mutually agree on a date for any deferral test or programme of tests; provided, subject to the requirements for notification to the Purchaser hereunder, in no event shall the Purchaser be permitted to delay or defer the Commissioning Tests beyond thirty (30) Days from the date on which the tests were finally scheduled, except for reasons of a Force Majeure Event experienced by the Purchaser. Notwithstanding the foregoing, the Purchaser shall have no liability to the Seller under this Section 8.1 and no claim of breach or default hereunder shall arise if, and to the extent that, any delay in or deferral of the programme of Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests.
- (2) Should the Purchaser defer or delay any Commissioning Tests beyond thirty (30) Days from the date on which the tests were finally scheduled and such deferral or delay causes the Scheduled Commercial Operations Date of the Complex to be delayed or deferred, as certified by the Engineer, then from the Scheduled Commercial Operations Date prevailing immediately prior to such delay or deferral, the Purchaser shall pay to the Seller Monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus fifty (50%) of actual O&M and insurance costs for the period but not exceeding six (6%) of the Energy Price multiplied by the Average Daily Energy for the number of Days of such delay provided reasonable and verifiable documentary evidence is submitted by the Seller to the Purchaser in respect of the Carrying Cost, actual O&M and insurance costs. Such payments shall commence on the Scheduled Commercial Operations Date prevailing immediately prior to such delay and shall continue until the completion of the first attempted Commissioning Tests (whether successfully completed or not); provided, however, that the payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of Certificate of Readiness for Synchronization and a simultaneous certificate that the delay caused by the Purchaser has caused the then scheduled Commissioning Tests to be delayed.

(3) In addition to the payment set out in Section 8.1(b)(2) above, if the delay or deferral of the Commissioning Tests by the Purchaser continues beyond the [one hundred and eighty (**180**)] Days following the date of issuance by the Engineer of the two (2) certificates referred to in this Section, then the Purchaser shall also be required to pay the principal debt payments when due under the Financing Documents pursuant to the repayment schedule agreed between the Seller and the Lenders at Financial Closing, with a copy of such repayment schedule being furnished to the Purchaser attested by the Lenders or their Agent as to its accuracy (“**Lender Debt Confirmation**”). Such principal debt payment shall be due from the Purchaser no later than thirty (30) Days following receipt of an invoice therefor (together with the Lender Debt Confirmation) which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule. Such payments shall continue until the earlier of (i) the end of a period equal to the period of delay or deferral of any Commissioning test or Commissioning Tests; and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not).

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

(5) Any payments made by the Purchaser pursuant to this Section 8.1(b) on account of principal debt payments under the Financing Documents shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered by the Purchaser, together with interest at KIBOR plus a spread of two and half percent (2.5%) (on the monthly outstanding balance of such amounts), commencing on the Commercial Operations Date and ending on the date of complete repayment thereof by the Seller, through successive deductions of twenty five percent (25%) of the Energy Price from the monthly Energy Payments until the aforesaid amounts have been completely recovered.

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

(c) The Complex tests shall be performed in the following sequence:

- (i) Testing of the Seller Interconnection Facilities; and
- (ii) Commissioning Tests.

8.2 TESTING OF THE SELLER INTERCONNECTION FACILITIES

- (a) Prior to establishing interconnection of the Seller Interconnection Facilities with the Purchaser Interconnection Facilities so as to enable the Seller Interconnection Facilities to be energized, the Seller shall carry out the tests listed in Schedule 7 in relation to the Seller Interconnection Facilities in accordance with applicable IEC standards.
- (b) Upon successful completion of the tests set forth in Schedule 7 in relation to the Seller Interconnection Facilities, the Engineer shall issue the Certificate of Readiness for Energization of the Seller Interconnection Facilities. After receiving the Certificate of Readiness for Energization of the Seller Interconnection Facilities, the Purchaser shall

energize the Purchaser Interconnection Facilities, whereafter the Seller shall energize the Seller Interconnection Facilities and perform the following additional tests:

- (i) Operation and interlocking checks;
 - (ii) MV panel tests; and
 - (iii) Hybrid Forecast Model operational test;
- (c) Upon successful completion of the tests specified in Section 8.2(b), the Engineer will issue a certificate stating that the commissioning of the Seller Interconnection Facilities has been completed.

8.3 TESTING AND COMMISSIONING OF THE COMPLEX

- (a) Upon successful completion of Pre-Commissioning Tests, the Seller shall certify to the Engineer (with copy to the Purchaser) that:
- (i) such Pre-Commissioning Tests, have been successfully completed;
 - (ii) the results of such tests are adequate to demonstrate that the design, installation and performance (including energy production and the reliability thereof) of the Complex, and all of the components thereof, meet or exceed the requirements of Schedule 7, the manufactures' requirements for construction and installation of all equipment and facilities, the Specifications, and the requirement and determinations of the IEC; and
 - (iii) the design, construction and installation of the Complex and components thereof do not restrict, adversely affect or void any manufacturers' warranties or any material part thereof.
- (b) Following the Seller's certification specified in Section 8.3(a), the Seller shall carry out the Reliability Run Test of the entire Complex as indicated in Schedule 7. The Purchaser shall be given not less than seventy-two (72) hours prior notice by the Seller of the Reliability Run Test and any retest of any part thereof. The Purchaser and its representatives shall be allowed to be present at and observe all such tests. After the successful completion of the Reliability Run Test for the entire Complex, the Engineer shall issue the Certificate of Commissioning of the Complex to the Purchaser and the Seller.
- (c) The Commercial Operations Date shall occur as of the first Day after the Day the Certificate of Commissioning of the Complex is issued by the Engineer pursuant to Section 8.3(b).

8.4 COPIES OF TEST RESULTS AND CERTIFICATES

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

8.5 SCHEDULING AND ACCOMMODATION OF ADDITIONAL TESTS

- (a) The Seller may repeat the Commissioning Tests as many times as required by the Seller to meet the test criteria set forth in this Article VIII and Schedule 7.
- (b) If, during or following a Scheduled Outage, a Maintenance Outage, a Forced Outage, a Partial Forced Outage or a Force Majeure Event, the Seller is required to undertake additional tests of the Complex (or any significant component thereof) that are not required under this Article VIII and which require that electric energy is delivered to the Grid

System, the Purchaser shall accommodate such tests as soon as reasonably practicable following a request therefor from the Seller.

8.5A RECALIBRATION OF THE HYBRID FORECAST MODEL

The Seller shall procure and maintain at its own cost at least two (2) load banks of capacity corresponding to the Arrays. Should the Forecast Error (as defined in Schedule 13) of the Hybrid Forecast Model exceed the Forecast Error Limit (as defined in Schedule 13), the Purchaser may require the Seller to undertake dump load tests at the Complex to demonstrate that the variation in the Forecast Error beyond the Forecast Error Limit is not attributable to the Forecasting Consultant or the Hybrid Forecast Model. In the event the same is attributable to the Forecasting Consultant or the Hybrid Forecast Model, then the procedure laid out in Schedule 13 shall be followed by the Parties.

8.6 TESTING DISPUTES

Any Dispute between the Seller and the Purchaser arising under this Article VIII shall be resolved in accordance with the provisions of Article XVIII; provided that, in the case of a Dispute as to successful completion of the Commissioning Tests, as certified by the Engineer, such Dispute shall be referred to the Expert, and the determination of the Expert under Section 18.2 shall be implemented and followed by the Parties prior to and pending any further dispute resolution proceedings pursued by a Party under Section 18.3.

8.7 NET DELIVERED ENERGY PRIOR TO THE COMMERCIAL OPERATIONS DATE

Net Delivered Energy prior to the Commercial Operations Date shall be delivered to Purchaser free of cost at the Interconnection Point.

8.8 AMBIENT SITE CONDITIONS

Notwithstanding anything to the contrary contained in this Agreement, the Seller shall not be liable for any delay in conducting or continuing all or any part of the Commissioning Tests, to the extent that the Engineer certifies, based on the calculation under the Hybrid Forecast Model, that such delay has been caused by (and only by) the non-availability of the minimum necessary quantity of solar irradiation, as set out pursuant to Schedule 6, required to conduct and continue the Commissioning Tests and, in such event, the Required Commercial Operation Date shall be extended on a Day-to-Day basis so as to fully reflect the delay caused by the non-availability of the minimum necessary quantity of irradiation.

9. COMPENSATION; PAYMENT AND BILLING

9.1 ENERGY PAYMENT

Subject to Section 9.5(c) and the other terms of this Agreement, and in accordance with the procedures specified in Section 9.4, from and after the Commercial Operations Date the Seller shall sell and deliver and the Purchaser shall accept all of the Net Delivered Energy generated by the Complex and delivered to the Purchaser at the Interconnection Point, and the Purchaser shall pay, Monthly in arrears, the Energy Payment for all Net Delivered Energy generated by the Complex and delivered at the Interconnection Point and for Non-Project Missed Volume, determined as follows:

EPmt_m = **EPrc_m * ME_m**

Where:

- EPmt_m = Energy Payment for the relevant Month
- EPrc_m = Energy Price for the relevant Month
- ME_m = Monthly Energy for the relevant Month, consisting of NDE_m + NPMV_m
- NDE_m = Net Delivered Energy for the relevant Month
- NPMV_m = Non-Project Missed Volume for the relevant Month

9.2 PASS-THROUGH ITEMS; SUPPLEMENTAL TARIFFS

- (a) Subject to Section 9.4 of this Agreement, any payment by the Purchaser to the Seller on account of Pass-Through Items shall be subject to and in accordance with Schedule 1. The Purchaser may, in making any payments on account of Pass-Through Items pursuant to Schedule 1, exercise the right of set off as provided in Section 9.5(c). Each invoice for the Pass-Through Items in accordance with Section 9.4 delivered to the Purchaser shall be accompanied by the original invoices or payment receipts for which the Seller seeks recovery from the Purchaser.
- (b) Subject to Section 9.5(c), the Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.4, the Supplemental Tariffs calculated in accordance with Schedule 1. Supplemental Tariffs shall be determined as provided in Schedule 1 and invoiced in the same manner and on the same schedule as invoices for Energy Payments as provided in Section 9.4 (a)(i).

9.3 LIQUIDATED DAMAGES

- (a) Without prejudice to the Purchaser’s rights under Article XVI, the Parties agree that any liquidated damages payable under this Section 9.3 shall be the Purchaser’s sole and exclusive remedy against the Seller in respect of the matters to which such liquidated damages relate.
- (b) If the Seller is in breach of its obligation under Section 4.1(b) to achieve the Commercial Operations Date by the Required Commercial Operations Date (unless such breach is attributable to breach or default by the Purchaser of its obligations hereunder, the non-availability of Ambient Site Conditions in accordance with Section 8.8, or a Force Majeure Event) then for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved, the Seller shall pay the Purchaser as liquidated damages an amount equal to four Dollars (\$4.00) per kW of the Contract Capacity for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually 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 Purchaser as a result of the Seller's failure to perform those matters for which liquidated damages are provided under this Section 9.3.

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

9.4 BILLING

- (a) On or after the first (1st) Business Day of each Month following the Commercial Operations Date, the Seller shall submit to the Purchaser an invoice, complete in all respects, stated in Rupees, for the following:
 - (i) The Energy Payments due in respect of the previous Month (or part-Month) and specifying for the relevant Month:
 - (A) the Energy Price,
 - (B) the Net Delivered Energy,
 - (C) the Non-Project Missed Volume, if any (duly supported with relevant data and records, including data and records generated by the Complex Monitoring System, the Meteorological Station and the Hybrid Forecast Model), and
 - (D) such other information and calculations, in reasonable detail, so as to enable the Purchaser to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1;
 - (ii) any Pass-Through Item due in respect of the previous Month (or part-Month) provided the treatment of any amount as Pass-Through Item and subsequent payment of the same by the Purchaser shall be subject to and in accordance with Schedule 1 and Section 9.2(a); and
 - (iii) any interest payable hereunder on an amount not paid by the Due and Payable 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; and
 - (iv) Sales Tax payable on the sale, export, generation or delivery of electricity by the Complex; and
 - (v) any Supplemental Tariff due in the previous Month (or part Month) in accordance with Schedule 1.
- (b) At any time after the first (1st) Business Day of each Month:
 - (i) the Purchaser may submit an invoice to the Seller stated in:
 - (A) Dollars for the amount of liquidated damages due to the Purchaser under Section 9.3 (b) for the previous Month (or part-Month),
 - (B) Rupees for any other liquidated damages due to the Purchaser under this Agreement; and
 - (C) Rupees for any interest payable hereunder on an amount not paid by the

Due and Payable Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

- (c) A Seller's invoice under Section 9.4(a) must be accompanied by supporting information, including:
 - (i) the applicable Tariff Determination, as may reasonably be necessary to substantiate the amounts and reference quantities utilized as claimed in the invoice;
 - (ii) original invoices or payment receipts for any amount claimed as Pass-Through Items claims; and
 - (iii) paper and electronic copies of meter readings showing the Net Delivered Energy during testing.
- (d) Either Party may require clarification or substantiation of any amount included in an invoice or statement submitted under Section 9.4(a) through (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. Provided that if the requisite information (which is reasonably required) is furnished after five (5) Business Days of receipt of such request, the Due and Payable Date of such invoice shall be extended proportionately. Provided further that if such information is not furnished within one (1) Month of such requisition, the invoice may be returned for resubmission along with the requisite information and the Due and Payable Date for any invoice so resubmitted shall be determined based on the date such invoice is resubmitted along with the requisite information.
- (e) Not Used
- (f) Each Party 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.
- (g) Notwithstanding anything to the contrary in this Agreement, if any amount paid by the Purchaser to the Seller under this Agreement, is subsequently disallowed by NEPRA under the Determined Tariff, the Purchaser shall have the right to recover the same from the Seller by way of set off or otherwise.

9.5 PAYMENT

- (a) Subject to Section 9.6:
 - (i) the Purchaser shall pay the Seller the amount in accordance with Section 9.8 shown on an invoice delivered in accordance with Section 9.4(a) and Section 9.4(c), less deductions for any Disputed amounts on or before the thirtieth (30th) Day following the Day the invoice is received by the Purchaser; and
 - (ii) the Seller shall pay the Purchaser the amount shown on an invoice delivered in accordance with Section 9.4(b), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Seller

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

- (b) Any invoice delivered pursuant to this Article IX shall be paid in Rupees. In the case of an invoice delivered by the Purchaser under Section 9.4(b)(i)(A), it shall be paid in equivalent Rupees at the Exchange Rate (as defined in Schedule 1) prevailing on the date of payment.
- (c) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to undisputed amounts that are then due and payable to and by a Party, or amounts determined by the Expert or through arbitration under Article XVIII to be payable.
- (d) Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate, prorated Daily.
- (e) Payments received by either Party shall be applied against undisputed outstanding invoices on the 'first in, first out' principle, so that the undisputed invoices outstanding the longest (in whole or in part) shall be paid first.

9.6 PAYMENT DISPUTES

- (a) At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an '**Invoice Dispute Notice**') on the other Party that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, providing reasons as complete and detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to dispute resolution in accordance with Article XVIII, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with Section 9.6(a).
- (b) Upon resolution of the Dispute under Section 18.1 or subject to Section 9.6(c), the determination of the Dispute by the Expert under Section 18.2 and without prejudice to the right of either Party to refer the 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 (or offset as provided in Section 9.5 (c)), 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) Notwithstanding the determination of the Dispute by the Expert under Section 18.2, each Party shall be entitled to refer the Dispute to arbitration without being obligated to pay, repay or offset, as the case may be, prior to the Dispute being settled through arbitration if such Party has elected to refer the Dispute to arbitration.
- (d) Not Used

9.7 SUPPORTING DATA

- (a) The Seller shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the Energy Price, Energy Payments, any Pass-Through Items, any Supplemental Tariff, and any other claims for payment or recovery of costs or expenses paid by the Seller under this Agreement. All such records and data shall be maintained for a period of not less than ten (10) Years following the last date on which such data and information was generated, obtained or received by the Seller for payment by the Purchaser.
- (b) The Purchaser shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the invoices for liquidated damages and any other claims for payment or recovery under this Agreement, of costs or expenses paid by the Purchaser under this Agreement. All such records and data shall be maintained for a period of not less than ten (10) Years following the last date on which such data and

information was generated, obtained or received by the Purchaser for payment by the Seller.

- (c) The Seller shall maintain accurate and complete records and data relating to Non-Project Missed Volume on a daily basis during the Term, including:
- (i) communications by the Seller announcing a Non-Project Event,
 - (ii) verifications sought by the Purchaser and responses made by the Seller relating to a Non-Project Event,
 - (iii) Despatch Instructions resulting in a Non-Project Event,
 - (iv) operating logs and records of the Complex Monitoring System recording the status of the availability of the Complex,
 - (v) data on Ambient Site Conditions recorded by the Meteorological Station for each hour, and
 - (vi) other relevant data and records,

as reasonably necessary to calculate or confirm the correctness of Non-Project Missed Volume, the Energy Price, the Energy Payments, the Non-Project Missed Volume Payments, and any other claims for payment or recovery of costs or expenses under this Agreement paid by the Seller. All such records and data shall be maintained for a period of not less than ten (10) Years following the last date on which such data and information was generated, obtained or received by the Seller for payment by the Purchaser.

- (d) The Seller shall also provide a report to the Purchaser before 1600 hours on a daily basis during the Term, for the previous Day, of the following:
- (i) A detailed account of the Non-Project Event stating, *inter alia*, reasons why the Non-Project Event occurred and the steps, if any, taken by the Seller to avoid the Non-Project Event;
 - (ii) Hourly changes of the actual ambient condition prevalent at the Site as recorded by the Seller pursuant to Section 5.3(a);
 - (iii) Despatch Instruction received by the Seller from the Purchaser,
 - (iv) Actual Net Delivered Energy as recorded by the Metering System or Back-Up Metering System as the case may be;
 - (v) Hourly Adjusted Forecast Energy calculated on the basis of actual Ambient Site Conditions through Hybrid Forecast Model prevailing on the previous Day and any Non-Project Missed Volume calculated in accordance with Schedule 13; and
 - (vi) Hourly availability of the Complex and any outages taken on account of Scheduled Outage, Maintenance Outage, Forced Outage or Partial Forced Outage.

9.8 ESCROW ARRANGEMENT

- a) Prior to Financial Closing, the Purchaser undertakes to execute an Escrow Agreement which shall, subject to Section 9.8(b), become effective within thirty (30) Days after Commercial Operations Date. The Purchaser shall for the purposes of effecting payments under the Agreement, designate a collection account maintained with the Escrow Agent in accordance with the Escrow Agreement. The Escrow Agent shall transfer, in accordance with the Escrow Agreement, the payments due in accordance with Section 9.5, to the Seller that have fallen due and which have not been disputed by the Purchaser.

- b) In the event that the Purchaser has not completed the Purchaser Interconnection Facilities within ninety (90) Days following the date by which the Purchaser Interconnection Facilities were required to be completed in accordance with Section 6.5(a) as such date may be extended pursuant to Section 6.5(a)(i), (ii), (iii), (iv) and after issuance of Certificate of Readiness for Synchronization by the Engineer under Section 6.5(b), then the Escrow Agreement shall become effective within fifteen (15) Business Days of receipt of a written notice from the Seller by the Escrow Agent requiring that the Escrow Agreement should become effective immediately.
- c) The Escrow Account will remain in place until all payment obligations of the Purchaser to the Seller in relation to payments due in accordance with Section 9.5, to the extent of any undisputed amounts, are paid or discharged in full, provided that;
 - (i) All Consents under this Agreement are timely obtained as per the terms of this Agreement;
 - (ii) The Agreement is not terminated due to a Force Majeure Event pursuant to Section 15;
 - (iii) The Agreement is not terminated pursuant to Section 16; or
- d) In the event that the Seller fails to pay any undisputed invoice issued by the Purchaser in accordance with this Agreement (the “**Purchaser Invoice**”), the Purchaser shall have the right to set-off such undisputed amounts due and payable to it under the Purchaser Invoice against any amount due and payable by the Purchaser under this Agreement.
- e) Notwithstanding the aforesaid, in the event the Purchaser is notified by the Escrow Agent that the Escrow Agreement may terminate prior to the termination of this Agreement, the Purchaser shall, prior to such termination of the Escrow Agreement, provide the Seller with an alternate escrow arrangement, on substantially similar terms to the Escrow Agreement.

10. LIABILITY

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

11. INDEMNIFICATION

11.1 INDEMNIFICATION

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

11.2 ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Agreement Year, exceed the Minimum Indemnification Amount. For purposes of this Section 11.2, a Loss (or claim for indemnification) shall be deemed to arise in the Agreement Year in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Agreement Year, in the Agreement Year such event ends.

11.3 INDEMNIFICATION FOR FINES AND PENALTIES

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

11.4 DEFENCE OF CLAIMS

- (a) The indemnifying Party, at its option and expense and with counsel of its selection, shall be entitled to assume and control the defence of any claim, action, suit or proceeding at its expense, within the ambit of Section 11.1, subject to the indemnified Party's prior written approval; provided, however, it gives prompt notice to the indemnified Party of its intention

so, to do, and reimburses the indemnified Party for reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defence.

- (b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence 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 defence of a claim, suit, action or proceeding in accordance with this Section 11.4(a), the indemnifying Party shall reimburse the indemnified Party for reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defence.
- (d) Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the other Party's prior written consent; provided, however, that after agreeing in writing to indemnify the indemnified Party as per Section 11.4(a) and Section 11.4(b), the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party.
- (e) Following acknowledgment of the indemnification and assumption of defence 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 defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence 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 defences available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. In the event that clauses (ii), (iii) or (iv) of the preceding sentence are applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees of and disbursements to such counsel shall constitute legal or other expenses hereunder chargeable to and payable by the indemnifying Party.

11.5 NOTICE OF CLAIMS

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

12. **INSURANCE**

12.1 MAINTENANCE OF INSURANCE POLICIES

- (a) Subject to the provisions of this Article XII, the Seller, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term the policies of insurance set forth in Schedule 8 in amounts not less than the amounts set forth therein and during the periods mentioned therein, with a financially sound insurer or insurers; provided, however, that the amounts of such insurance may be less than amounts specified in Schedule 8 from time to time with the prior written consent of the Purchaser; provided, further, that the Seller shall not be in breach of its obligations hereunder if and to the extent that:
 - (i) any particular insurance is not available to it under commercially reasonable terms and for commercially reasonable rates for reasons other than any negligence or default by, or condition (financial or otherwise) of, the Seller. For avoidance of doubt, to ascertain commercial reasonableness of the insurance rates, the same may be compared to the insurance allowed in the Tariff Determination; or
 - (ii) the Seller is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.
- (b) Following a PPFME to the extent that the insurance required by Section 12.1(a) is not available to the Seller at commercially reasonable rates due to the occurrence of a PPFME, upon notice to the Purchaser by the Seller, the additional cost of such insurance attributable to the occurrence of the PPFME (that, in case of a Dispute, may be determined by an Expert in accordance with Section 18.2) shall be dealt with in accordance with Schedule 1. In such an event, in lieu of making any payments pursuant to Schedule 1, the Purchaser, at its sole discretion, may elect to procure the insurance required by Section 12.1(a) on behalf of the Seller, with insurers of rating no less than the Seller's existing insurers or the insurers with whom such insurance was procured by the Seller prior to the occurrence of the PPFME, and deduct the insurance cost for such insurance from the then-prevailing Energy Price as full compensation therefor; provided, that the Purchaser shall, within fifteen (15) Business Days of procuring such insurance, provide to the Seller receipts for the payment of premiums and copies of the certificates of insurance or policies of insurance obtained by the Purchaser. The Seller shall be named as an additional insured and shall be named as the loss payee (subject to any assignment of insurance proceeds to the Lenders) on any such insurance procured by the Purchaser pursuant to this Section 12.1(b). The additional compensation provided under this Section 12.1(b), and any such deduction, shall cease as soon as the Seller's insurance rates are no longer affected by the PPFME. From time to time, at the request of the Purchaser or the Seller, an Expert will determine, in accordance with Section 18.2, the extent to which the Seller's insurance rates are then affected by the PPFME.

12.2 MAINTENANCE OF "OCCURRENCE" FORM POLICIES

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

12.3 POLICY ENDORSEMENTS

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

- (i) The Purchaser, its directors, officers and employees shall be additional insureds under such policies with respect to claims arising out of or in connection with this Agreement;

- (ii) The insurance shall be primary with respect to the interest of the Purchaser, its directors, officers and employees, and any other insurance maintained by them is excess and not contributory with such policies;
- (iii) The following separation of interests clause shall be made an integral clause 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.”;
- (iv) The insurer shall waive all rights of subrogation against the Purchaser, its officers, directors and employees; and
- (v) Notwithstanding any provision of the policy, the policy may not be cancelled or allowed to lapse without the insurer endeavouring to give thirty (30) Days prior written notice to the Purchaser except in the case of non-payment, in which case the prior written notice to the Purchaser shall be ten (10) Days. All other terms and conditions of the policy shall remain unchanged.

12.4 ENDORSEMENTS TO FIRE, PERILS AND MACHINERY BREAKDOWN POLICIES

The Seller shall cause the insurers to provide the endorsements referred to in Section 12.3(i), (ii), (iv) and (v) in the fire and perils and machinery breakdown policies covering the Complex as required by Section 12.1.

12.5 CERTIFICATES OF INSURANCE

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

12.6 INSURANCE REPORTS

The Seller shall provide the Purchaser with copies of any underwriters' reports or other reports received by the Seller from any insurer; provided that the Purchaser shall not disclose such reports to any other person except as necessary in implementation of this Agreement, or as may be required by any Public Sector Entity having jurisdiction over the Purchaser and shall use and internally distribute such reports only as necessary in implementation of this Agreement.

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Purchaser that:

- (a) The Seller is a [private/public] limited company, duly organized, validly existing and in good standing under the Laws of Pakistan, and has, so far as it is material to the Purchaser,

complied fully with all requirements of the Companies Act (XIX) of 2017 and all other applicable Laws of Pakistan.

- (b) The Seller has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Seller:
 - (i) has been duly authorized by all requisite corporate action on the part of the Seller, and no other proceedings on the part of the Seller or any other Person are necessary for such authorization; and
 - (ii) will not:
 - (A) violate either the Laws of Pakistan or any applicable order of any Public Sector Entity; or any provision of the Memorandum and Articles of Association of the Seller; or
 - (B) violate, be in conflict with, result in a breach of, or constitute a default under, any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Seller is a Party or by which the Seller or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Seller or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Purchaser, this Agreement constitutes a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to:
 - (i) defences of set-off and counter-claim;
 - (ii) the time barring of claims due to expiry of any period of limitation under applicable laws;
 - (iii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and
 - (iv) to general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for the Seller Consents, no filing or registration with, no notice to and no permit, authorization, Consent or approval of, any Person is required for the execution, delivery or performance of this Agreement by the Seller.
- (e) The Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding or investigation pending or, to the Seller's knowledge, threatened (i) for dissolution of the Seller; or (ii) against the Seller, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (g) This Agreement has been duly authorized by the Seller' board of directors, executed and delivered by the Seller and constitutes the legal, valid and binding obligation of the Seller;
- (h) The Seller will act in a reasonable and prudent manner in relation to its obligations under this Agreement;

- (i) The Seller shall render reasonable assistance to the Purchaser at Purchaser's request to enable the Buyer to obtain and maintain all approvals, consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgements, agreements, rights-of way, permits, decisions and similar items that are required by the Buyer to perform its obligations under this Agreement;
- (j) The Seller shall at all times maintain its corporate existence in compliance with the Laws of Pakistan, (B) at all times, so far as it is material to the Buyer hereunder, comply with all Laws of Pakistan applicable to the Seller, and (C) procure and maintain in full force and effect as and when necessary all approvals, consents, authorizations, grants or certificates of registration, notifications, licenses, concessions, acknowledgements, agreements, permits, decisions and similar items required for its performance under this Agreement; and
- (k) The Seller shall not enter into any amendments to this Agreement or any other which adversely affects the Purchaser's interest, without the prior consent of the Purchaser;

13.2 CERTIFICATES

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

13.3 REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants that:

- (a) It is duly incorporated under the Laws of Pakistan, and has, so far as it is material to the Seller, complied fully with all applicable Laws of Pakistan.
- (b) The Purchaser has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Purchaser:
 - (i) has been duly authorized by all requisite corporate action on the part of the Purchaser, and no other proceedings on the part of the Purchaser or any other Person are necessary for such authorization, and
 - (ii) will not:
 - (A) violate either the Laws of Pakistan or any applicable order of any Public Sector Entity or any provision of its incorporating documents, or
 - (B) violate, be in conflict with, result in a breach of, or constitute a default under, any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Purchaser is a Party or by which the Purchaser or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Purchaser or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the Seller, this Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, subject to:

- (i) defences of set-off and counter-claim;
 - (ii) the time barring of claims due to expiry of any period of limitation under applicable laws;
 - (iii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - (iv) to general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for approvals already obtained, no filing or registration with, no notice to and no permit, authorization, Consent or approval of, any Person is required for the execution, delivery or performance of this Agreement by the Purchaser.
- (e) The Purchaser is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding or investigation pending or, to the Purchaser's knowledge, threatened (i) for dissolution of the Purchaser; or (ii) against the Purchaser, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.

14. TAXES

14.1 TAXES APPLICABLE TO THE SELLER

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

14.2 TAXES APPLICABLE TO PURCHASER

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

14.3 NOTICE OF CHANGES IN TAX

- (a) If a Change in Tax occurs or if the Purchaser or the Seller reasonably believes that a Change in Tax has occurred which
 - (i) applies to the Complex or to the Purchaser's payments to the Seller, of amounts due and payable under this Agreement; and/or
 - (ii) causes the Seller to (A) incur any Tax Costs (other than such Tax which is recoverable/adjustable and withholding taxes on dividends), (B) realize any Tax Savings payable by the Seller, in each case in respect of the Project,then, either Party may provide the other Party written notice of such Change in Tax (a "**Change in Tax Notice**"), with reasonable details of the circumstances specified in clause (i) and clause (ii) hereinabove. The Seller or the Purchaser shall give the other Party notice within thirty (30) Days of becoming aware of a Change in Tax resulting in a Tax Saving or a Tax Cost.
- (b) No later than forty-five (45) Days from the date of delivery of a Change in Tax Notice, the Seller shall provide the Purchaser with a detailed written calculation of the relevant Tax Costs or Tax Savings or effects of the withholding Taxes (other than such withholding tax which is recoverable/adjustable and withholding Taxes on dividends) resulting from the Change in Tax, accompanied by a statement from an international accounting firm (or their local affiliates) or other reputable and qualified professional consultant certifying that the Seller will incur, realize or become subject to such additional Tax Costs (other than such Tax which is recoverable/adjustable and withholding taxes on dividends) or Tax Savings in relation to the Project (a "**Change in Tax Assessment**").
- (c) Either Party may from time to time deliver to the other Party further Change in Tax Notices, and within forty-five (45) Days of delivery of a Change in Tax Notice, the Seller shall provide the Purchaser with a detailed written calculation of any additional Tax Cost or Tax Saving in relation to the Project that has resulted, or can reasonably be expected to result, from any such Change in Tax.
- (d) Neither Party may request reimbursement for any Tax Cost or Tax Saving that arises due to a Change in Tax unless it delivers a Change in Tax Notice on or before the fifth (5th) anniversary of the Day on which the Change in Tax occurs.

14.4 CONSEQUENCES FOR TAX COSTS OR TAX SAVINGS

- (a) With effect from the date on which the Change in Tax occurs:

- (i) Any Tax Costs or any increase in withholding Tax (other than such Tax which is recoverable/adjustable and withholding taxes on dividends) incurred or suffered by the Seller, shall be dealt with in accordance with Section 9.2 provided such payments are permitted by NEPRA to be pass-through to the Purchaser; or
 - (ii) The Seller shall reimburse the Purchaser for any Tax Savings or any decrease in withholding Tax (other than such Tax which is recoverable/adjustable and withholding taxes on dividends) realized by the Seller, as calculated pursuant to the relevant Change in Tax Assessment, through an adjustment to the Energy Price or by set-off against the Energy Payment (at the option of the Purchaser) payable by the Purchaser, as calculated in accordance with Schedule 1.
- (b) Any Dispute as to the amount of the Tax Costs or Tax Savings resulting from a Change in Tax or the amount of the Pass-Through Items or the adjustment to the Energy Price or set-off against the Energy Payment shall be resolved in accordance with Article XVIII.

14.5 DISPUTED TAXES

In the event that the Seller or the Purchaser intends to dispute any Change in Tax, it shall provide to the other Party notice of its intention to pursue such dispute. Following delivery of such notice of intention to dispute a Change in Tax, the Party raising the dispute shall, within forty-five (45) Days of the delivery of such notice, prepare and deliver to the other Party a written report in reasonable detail describing the Change in Tax, its likely effects on the Energy Price and the merits and probability of success in the proposed dispute. Within thirty (30) Days of receipt of such report, the Parties shall meet and determine whether the dispute of the relevant Change in Tax should be pursued by the Party raising the dispute. If so agreed, the Party raising the dispute shall diligently prosecute such dispute. Any costs and expenses reasonably incurred by the Seller in disputing any Change in Tax that the Parties have agreed to dispute in accordance with this Section 14.5, shall be dealt with in accordance with Schedule 1. Nothing in this Section 14.5 shall preclude the Seller from disputing, at its sole cost and expense, any Tax or Change in Tax applicable to it or from delivering a Change in Tax Notice to the Purchaser.

15. FORCE MAJEURE

15.1 DEFINITION OF FORCE MAJEURE

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

- (a) The following political events that occur inside or directly involve Pakistan (each a “**Pakistan Political Event**”, and to the extent also a Force Majeure Event, a “**Pakistan Political Force Majeure Event**” or “**PPFME**”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days or more; or
 - (iii) any major strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide.
- (b) A Change in Law (and to the extent also a Force Majeure Event, a “**Change in Law Force Majeure Event**” or “**CLFME**”); or
- (c) Other events beyond the reasonable control of the affected Party (each an “**Other Force Majeure Event**”), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
 - (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any major strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Pakistan Political Event, in which case such event or circumstance shall constitute a Pakistan Political Event); or
 - (v) epidemic or plague.
- (d) Force Majeure Events shall not include the following events or circumstances:
 - (i) late delivery or interruption in the delivery of machinery, PV Panels or Arrays, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor;

- (iii) breakdown in machinery or equipment or PV Panels or Arrays;
- (iv) reduction or cessation of the production of Net Delivered Energy as a result of the change in the Ambient Site Conditions, including lower solar irradiation; or
- (v) normal wear and tear or flaws in materials, machinery or equipment;

provided, that each of the events described in Section 15.1(d)(i), (ii) and (iii) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is itself a Force Majeure Event, whether experienced directly by the Seller or by one of its Contractors.

15.2 NOTIFICATION OBLIGATIONS

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to perform its obligations under this Agreement, the affected Party shall:
 - (i) provide the other Party notice of the Force Majeure Event as soon as practicable but, in any event, no later than the later of, forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Seller and the Purchaser, and
 - (ii) provide the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable but, in any event, no later than seven (7) Days after initial notice of the occurrence of the Force Majeure Event is given by the affected Party pursuant to Section 15.2.(a)(i).
- (b) When appropriate, or when reasonably requested by the other Party so to do, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event and its cause and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effects thereof, as well as estimates, to the extent practicable, of the time that the affected Party reasonably expects to be unable to perform any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notices to the other Party of (i) the cessation of the Force Majeure Event notified under Section 15.2(a) together with an estimate of the date on which it will be able to recommence performance of its obligations under this Agreement; and (ii) the date it recommenced or will recommence performance of its obligations under this Agreement, including, following the occurrence of the Commercial Operations Date, the date on which the delivery of Net Delivered Energy will resume (if such delivery had been curtailed) as soon as possible and, in any event, no later than forty-eight (48) hours after the occurrence of each of the events mentioned in clause (i) and clause (ii) above.
- (d) Failure by the affected Party to have provided written notice of a Force Majeure Event to the other Party within the six (6) hour period or forty eight (48) hour period stipulated in Section 15.2(a), shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 15.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If the aforesaid notice is provided within the forty-eight (48) hour period or six (6) hour period stipulated in 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.

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 Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures.

15.4 DELAY CAUSED BY FORCE MAJEURE

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

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

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

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

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

15.5 PAYMENT DURING FORCE MAJEURE EVENT

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

15.6 COMPENSATION FOR PPFME OR CLFME

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

- (A) the projected range of cost to affect the Restoration, less any insurance proceeds available or likely to become available to the Seller (the "**Restoration Cost Estimate**") and the Threshold Amount; and
- (B) a preliminary schedule for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Threshold Amount, a reasonable period to arrange the financing (such schedule and each such schedule contained in the Report to be delivered pursuant to Section 15.6(b) shall herein be referred to as the "**Restoration Schedule**",

which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall herein be referred to as the “**Restoration Period**”).

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

- (ii) The Seller shall make the Preliminary Estimate as comprehensive and as complete as reasonably possible. The Parties shall meet within fifteen (15) Days of the delivery of the Preliminary Estimate to discuss the conclusions set forth therein. As used in this Section 15.6, “**material damage**” or a “**material modification**” or “**material capital addition**” to the Complex shall mean out-of-pocket expenditures on such damage, modifications or capital additions as are, or are reasonably expected to be, in excess of the equivalent of [seven hundred and fifty thousand Dollars [(\$750,000)]] in the aggregate in any Year (in each case adjusted annually from the Commercial Operations Date for changes in the United States consumer price index from the value existing on the date hereof).
- (iii) If there occurs a PPFME or a CLFME that prevents or delays the construction of the Complex or the ability of the Seller to operate the Complex or deliver Net Delivered Energy, the Purchaser shall within thirty (30) Days of the delivery by the Seller for an invoice therefor, pay to the Seller, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined below) an amount equal to:
 - (A) if the PPFME or the CLFME occurs prior to the Commercial Operations Date, the Carrying Cost plus fifty percent (50%) of the O&M and insurance costs but not exceeding six percent (6%) of the Energy Price, provided reasonable and verifiable documentary evidence is submitted to the Purchaser in respect of the Carrying Costs actual O&M and insurance costs; or
 - (B) if the PPFME or the CLFME occurs after the Commercial Operations Date, the Energy Price multiplied by the Average Daily Energy for the number of Days the Seller was unable to operate the Complex or deliver the Net Delivered Energy less (i) the amount of Energy Payments paid to the Seller by the Purchaser pursuant to Section 15.5 and (ii) twenty five percent (25%) of the Energy Price for the energy not delivered under Section 15.5;

Notwithstanding anything to the contrary in this Agreement, if any amount paid by the Purchaser to the Seller under this Section 15.6(a)(iii), is subsequently disallowed by NEPRA under the Determined Tariff, the Purchaser shall have the right to recover the same from the Seller by way of set off or otherwise.

- (iv) The term “**PE Compensation Period**” shall mean the period beginning with the onset of PPFME or CLFME, as the case may be, (unless a timely notice was not given under Section 15.2(a)(i) in which case from the time such notice was given) and ending on either, as appropriate:
 - (A) the date the Seller is able to resume performance of its obligations under this Agreement as specified in the notice given pursuant to Section 15.2(c);
 - (B) the last Day of the Restoration Period (as such Restoration Period may

have been extended due to an intervening Force Majeure Event or pursuant to Section 15.9); or

(C) the Day of termination of this Agreement under Section 15.9 or Article XVI.

(b) If the Seller concludes that the Restoration Cost Estimate shall be less than the Threshold Amount and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Seller shall subject to Section 15.6(e)(ii), proceed with the Restoration in accordance with the Restoration Schedule

(c) If:

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

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

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

(d) If the Seller concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount and the Purchaser, within fifteen (15) Days of its receipt of the Preliminary Estimate, disagrees with the Preliminary Estimate, such matter (and any disagreement regarding the Restoration Schedule) shall be referred to an Expert for resolution pursuant to Section 15.7(c) within twenty (20) Days of the date the Purchaser delivers notice to the Seller that the Purchaser disagrees with the Restoration Cost Estimate. If the Expert concludes that the Restoration Cost Estimate is less than the Threshold Amount, the provisions of Section 15.6(b) shall apply. If the Expert concludes that the Restoration Cost Estimate is greater than the Threshold Amount, then the Seller shall proceed with the preparation of a Report and the provisions of Sections 15.6(e) and 15.7 shall apply.

(e) If a Report is required to be prepared, then at the conclusion of the meetings of the Parties to discuss the Report (as contemplated by Section 15.7(b)), the Parties shall either agree or disagree with respect to the matters addressed therein and whether the Restoration is feasible or not.

Subject to Section 15.6(k)(iii) read with Section 15.6A, if the Parties reach agreement on such matters, or, in the case of a disagreement, after resolution by an Expert pursuant to Section 15.7(c) the Purchaser shall, within fifteen (15) Days of such agreement or resolution, provide the Seller with a written notice of its election to either:

(i) terminate this Agreement unless the Parties have reached an agreement for Restoration; or

(ii) if it has been agreed or determined that the Restoration of the Complex is feasible under the circumstances proceed with Restoration in which case the following provisions shall apply:

(x) the Seller shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Purchaser. If the Seller is unable to obtain binding commitments for such financing within one hundred and

eighty (180) Days of receipt of the Purchaser's notice authorizing the Seller to proceed with Restoration, then unless the Purchaser commits to provide financing for the Restoration within the next fifteen (15) Days and provides such funds to the Seller within one hundred and twenty (120) Days thereafter, the failure to secure financing shall be treated as an election by the Purchaser to terminate this Agreement pursuant to Section 15.6(e) and Section 15.8(a);

- (y) if financing for the Restoration has been secured, then the Seller shall proceed with the Restoration in accordance with the Restoration Schedule set out in the Report, as amended by agreement of the Parties or resolution of the Expert, as applicable, and, upon completion of the Restoration, the Seller shall be entitled to special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be; and
 - (z) the Seller shall provide the Purchaser with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work.
- (f) If the Complex or any part thereof is damaged as a result of an Other Force Majeure Event and the Seller fails to restore the operation of the Complex within thirty (30) Days following the commencement of that Other Force Majeure Event, then the Seller shall prepare and deliver a Report pursuant to Section 15.7(a).
- (g) If pursuant to Section 15.6(f) the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Seller can continue to meet its obligations under this Agreement, the Seller shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report.
- (h) If pursuant to Section 15.6(f) the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Seller can continue to meet its obligations under this Agreement but the Purchaser does not agree with the Restoration Schedule contained in the Report, then the Purchaser shall notify the Seller within fifteen (15) Days of the receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The Parties shall try, in good faith, to agree upon a revised Restoration Schedule. If the Parties cannot agree upon a revised Restoration Schedule within the fifteen (15) Day period following the notice, then either Party may submit the matter to an Expert pursuant to Section 15.7(c) to determine the proper Restoration Schedule. Notwithstanding the foregoing, the Seller shall, subject to satisfying any of the conditions or requirements of the entity providing financing for the Restoration (including any insurance company paying a claim to the Seller), have the option to proceed with the Restoration while the issue of the Restoration Schedule is being resolved.
- (i) If, following the Commercial Operations Date, there occurs a PPFME or a CLFME that, in either case, does not require the Seller to undertake a Restoration but nonetheless disables the Seller from operating the Complex and delivering Net Delivered Energy (a “**Non-Restoration Event**”), then the Purchaser shall pay to the Seller for each Month (or portion thereof) of the PE Compensation Period (as defined below), the Energy Price multiplied by the Average Daily Energy for the number of Days during such period less (i) payment on account of twenty five percent (25%) of the prevailing Energy Price for the energy not delivered under Section 15.5 and (ii) the amount of any Energy Payments paid to the Seller by the Purchaser pursuant to Sections 9.1 and 15.5. Notwithstanding anything to the contrary in this Agreement, if any amount paid by the Purchaser to the Seller under this Section 15.6(i), is subsequently disallowed by NEPRA under the Determined Tariff, the Purchaser shall have the right to recover the same from the Seller by way of set off or otherwise.

The term “PE Compensation Period” for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(iv) except for the reference to the Restoration Period.

- (j) For the purposes of this Article XV, the term "**Threshold Amount**" shall mean, for any event, the EPC Cost multiplied by a percentage equal to twenty-five percent (25%) at any time prior to or on the Commercial Operations Date and such percentage decreasing annually as a straight-line basis to five percent (5%) at one year prior to the end of the Term, and remaining at five percent (5%) thereafter until the end of the Term.
- (k) Notwithstanding anything herein to the contrary, in the event of:
 - (i) the occurrence of a PPFME and/or CLFME that has a material adverse effect on the Seller’s ability to construct, commission or operate the Complex and such PPFME and/or CLFME continues for a period exceeding one hundred eighty (180) Days, or
 - (ii) a series of such related PPFMEs and/or CLFME that continue in the aggregate for a period that exceeds one hundred eighty (180) Days during any year, or
 - (iii) a PPFME or a CLFME following which (A) the Parties agree or the Expert determines that a Restoration is not feasible or the Purchaser decides that the cost of Restoration is not acceptable or (B) the Parties agree that a Restoration is feasible and the Seller fails to secure financing for the Restoration or (C) the Parties disagree on the Report, or
 - (iv) a CLFME following which the Complex does not operate for one hundred eighty (180) Days and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration or allow the Complex to operate as before,

either Party may elect to suspend the operation of this Agreement pursuant to Section 15.6A no later than three (3) Days: (i) prior to the expiry of one hundred and eighty (180) day period provided in Section 15.6(k)(i), (ii) and (iv) hereinabove; or (ii) following the fulfilment of the condition(s) provided in Section 15.6(k)(iii) hereinabove by delivering a written notice to the other Party (the “**FME Suspension Notice**”). If both the Parties fail to deliver the FME Suspension Notice within the period set out herein, then either Party shall have the option to terminate this Agreement immediately by delivering a written notice of such termination to the other Party. Notwithstanding the Parties’ right to suspend or terminate this Agreement pursuant to this Article 15, no payments shall be due from the Purchaser to the Seller following the expiry of the one hundred and eighty (180) Days as provided in this Section 15.6(k) on account of a PPFME/CLFME.

15.6A FME SUSPENSION PERIOD

- (a) If either Party elects to suspend the operation of this Agreement by issuance of the FME Suspension Notice pursuant to section 15.6(k), such suspension shall take effect from the date of the FME Suspension Notice and continue until the earlier to occur of the following: (i) expiry of the period, as set out in the FME Suspension Notice; or (ii) the earlier withdrawal by either Party of the FME Suspension Notice in accordance with Section 15.6A(c) below; or (iii) the earlier cessation of the PPFME or CLFME, as the case may be (the “**FME Suspension Period**”). The Parties agree that the aggregate of the FME Suspension Period shall not exceed five (5) years during the Term (the “**Total FME Suspension Period**”) and either Party may issue as many FME Suspension Notice(s) as it deems appropriate during the Term. For avoidance of doubt, either Party shall only have the option to terminate this Agreement upon the expiry of the Total FME Suspension Period and not upon the expiry of any part thereof. Such termination may be effected by delivering written notice of such termination to the other Party unless the Agreement is terminated earlier with the mutual agreement of the Parties.

- (b) During the FME Suspension Period, all obligations under the Agreement for both the Parties, including, *inter alia*, the Seller to supply energy and Purchaser's obligation to make any payments during the pendency of PPFME or CLFME shall be suspended with immediate effect and shall remain suspended until the Seller withdraws the FME Suspension Notice.
- (c) The Party issuing the FME Suspension Notice shall be entitled to withdraw such FME Suspension Notice earlier than the period set out therein provided it gives a written notice to the other Party at least fourteen (14) Days prior to such expected withdrawal.
- (d) During the FME Suspension Period, the Purchaser shall not be entitled to terminate this Agreement on account of the PPFME or CLFME; provided however in the event the PPFME or CLFME continues beyond the Total FME Suspension Period, either Party may terminate the Agreement pursuant to Section 15.1
- (e) Following the cessation of the PPFME or CLFME, the Agreement Year shall be extended for a period equal to but not to exceed the FME Suspension Period. During the extension on account of the FME Suspension Period, the Seller shall make the Complex available for generation and delivery of Net Delivered Energy including provision of any Ancillary Services and the Purchaser shall make payments in accordance with the Agreement.
- (f) For avoidance of doubt payments to be made by the Purchaser during the extension of the Agreement Year on account of the FME Suspension Period shall be in accordance with Section 2.2(d).

15.7 APPRAISAL REPORT AND USE OF EXPERT

- (a) When required by Section 15.6(a), Section 15.6(c), Section 15.6(d), Section 15.6(f) or Section 15.7, the Seller shall commence the preparation of an appraisal report (the "**Report**") within fifteen (15) Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the Purchaser as soon as practicable, but in any event not later than thirty (30) 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 the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be expected to be received, and the particular purposes for which such proceeds are required to be applied; and, in addition;
 - (iii) propose a Restoration Schedule; or in the case of a Force Majeure Event covered by Section 15.6(a), provide a statement and explanation in good faith regarding whether restoration or modification of the Complex or necessary capital additions are technically feasible, including the Seller's good faith estimate of the cost to restore the Complex to its condition immediately prior to the Force Majeure Event and the associated delay costs or the costs to come into compliance with the Change in Law;
 - (iv) a revised cashflow forecast for the Complex;

- (v) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied;
 - (vi) in the case of PPFME or a CLFME covered by Section 15.6(a), describe the plan to fund the costs of the Restoration;
 - (vii) in the case of a PPFME or a CLFME covered by Section 15.6(a) the projected Supplemental Tariff payable under this Agreement that would be required to pay special compensation under Section 15.8; and
 - (viii) in the case of a Force Majeure Event covered by Sections 15.6(a) or 15.6(c) certificates and reports of the Seller's financial and technical advisers, as appropriate or as reasonably requested by the Purchaser, in support of the applicable matters referred to in this Section 15.7(a).
- (b) Within fifteen (15) Days of the delivery of a Report to a Party or such further time as the Parties may agree, the Parties shall meet to discuss the Report and any action(s) to be taken. In connection with the review by the Purchaser of a Report prepared by the Seller, the Seller shall provide promptly to the Purchaser such additional financial and related information pertaining to the Report and the matters described therein as the Purchaser may reasonably request.
- (c) The following Disputes between the Purchaser and the Seller shall be submitted to the Expert for resolution within the time period specified:
- (i) with respect to Disputes regarding any matter set forth in a Report, no later than seven (7) Days after expiration of the period for review and consultation provided by Section 15.7(b);
 - (ii) with respect to Disputes pursuant to Section 15.6 within the applicable period provided for in Section 15.6; and
 - (iii) with respect to whether an item of cost incurred by the Seller should be recovered as provided in Section 15.8(e), within twenty (20) Days following the delivery of a written request to do so by either Party.
- (d) In addition to the requirements under Section 18.2, the Expert shall be an engineer with extensive experience in the construction and operation of electric power plants similar to the Complex selected for technical matters in accordance with Section 18.2.
- (e) If the Seller or the Purchaser reasonably believes that the cost of a Restoration is likely to exceed two-thirds (2/3) of the Threshold Amount, then the Parties shall cooperate in good faith to select an Expert each time that a Preliminary Estimate is to be prepared pursuant to Section 15.6 and engage such Expert to be available in case a Dispute shall need to be resolved. The Expert shall be provided with a copy of the Preliminary Estimate and any other written materials prepared by either Party and asked to read all materials that are provided.
- (f) Once a Dispute is referred to the Expert, each Party shall provide all materials in support of its position to the Expert and to the other Party in accordance with Section 18.2. Each Party shall use its best efforts to provide the Expert with any additional information the Expert requests. The Expert shall be charged with the responsibility of using his best efforts to render his decision regarding any referred matter within thirty (30) Days of the date of the referral. Each Party shall be responsible for paying fifty percent (50%) of the costs of the Expert and shall pay for its own costs.
- (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.

15.8 SUPPLEMENTAL TARIFFS

- (a) In the case of a Force Majeure Event that is covered by Section 15.6(a), the Purchaser shall determine under Section 15.6(e) whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Section 15.8(b) or Section 15.8(c), or terminate this Agreement. The Seller acknowledges that the Purchaser may delegate the review of a Report to any Relevant Authority and agrees to cooperate with such Relevant Authority as if it were the Purchaser. In the case of a Force Majeure Event covered by Sections 15.6(a) or 15.6(e), the determination required to be made by the Purchaser under this Section 15.8(a) shall be made no later than fifteen (15) Days after the receipt of the Report by the Purchaser; provided, however, that if any matter is submitted to an Expert for resolution pursuant to Section 15.7(c), such determination shall be made by the Purchaser no later than ten (10) Days after the decision is made by the Expert.
- (b) In the case of a PPFME covered by Section 15.6(a), the Seller (unless this Agreement has been terminated by the Purchaser pursuant to Section 15.6(e), Section 15.8(a) or Section 15.9(b) or by either Party pursuant to Section 15.6(k)), shall be entitled to receive Supplemental Tariffs in accordance with the procedures set forth in Schedule 1 to recover over the remainder of the Term (unless a shorter period for recovery of such costs is agreed by the Parties) the costs incurred in effecting the Restoration as provided in Section 15.6(e).
- (c) In the case of a CLFME covered by Section 15.6(a), the Seller shall (unless this Agreement has been terminated by the Purchaser pursuant to Sections 15.6(e), 15.8(a) or 15.9 or by either Party pursuant to Section 15.6(k)), be entitled to receive Supplemental Tariffs in accordance with the procedures set forth in Schedule 1 to recover the costs of complying with the Change in Law, including:
 - (i) the cost of any material modifications or material capital additions to the Complex that are necessary for the Seller to come into compliance with the Change in Law and are approved in accordance with Section 15.8(d); and
 - (ii) the cost of additional quantities or higher quality of consumables that can be directly attributed to compliance by the Seller with the Change in Law. Any reduction in cost due to a decrease in the use of quality of consumables by the Complex shall be credited to the Purchaser as provided in Section 15.8(d),
- (d) The Seller shall (unless this Agreement has been terminated by the Purchaser pursuant to Sections 15.6(e), 15.8(a) or 15.9), be entitled to receive a Supplemental Tariff such that it will recover from the Purchaser, the costs actually incurred in effecting the Restoration, including, without limitation, weighted average cost of capital not exceeding KIBOR plus two and half percent (2.5%) determined at the time the Complex returns to operation or, if the Complex did not cease operation, at the time the Restoration is completed by the Seller but subject in all respect to the terms and conditions of NEPRA's approval under the Supplemental Tariff. The costs to be recovered by the Seller pursuant to this Section 15.8 and Section 15.9 shall be the costs that are actually incurred by the Seller to effect the Restoration to the extent those costs exceed any insurance proceeds; provided, however, that each such item of cost shall have been reasonable and appropriate for the Seller to effect such Restoration consistent with the standards for the original construction and the applicable Laws of Pakistan Prudent Utility Practices and low cost Restoration methods, as the case may be. The Seller shall deliver a schedule of such costs to the Purchaser, together with copies of the invoices, for review by the Purchaser. If the Purchaser contests

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

- (e) If there is any Dispute as to whether any payment is due and payable to the Seller pursuant to this Section 15.8 or any Dispute as to the amount or timing of any such payment, then pending resolution of the Dispute, the Purchaser shall be obligated to pay to the Seller the undisputed amount. Amounts determined through the Dispute resolution procedure to be payable by the Purchaser shall be paid to the Seller with interest equal to the Delayed Payment Rate from the date payment was due to the date of payment by the Purchaser.
- (f) Notwithstanding anything contained in this Section, the Purchaser and the Seller agree that any payment under Section 15.8 shall be made by the Purchaser pursuant to the Supplemental Tariff issued by NEPRA. The Parties further agree that an application shall be made to NEPRA to approve the Supplemental Tariff as per the rules applicable thereto.

15.9 TERMINATION AS A RESULT OF A FORCE MAJEURE EVENT

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

additional costs incurred by the Seller to expedite the completion of the Restoration shall not be included in the costs that form the basis of the tariff under Section 15.8.

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

15.10 NOTICE OF TERMINATION

Subject to the Parties entitlement to issue a FME Suspension Notice pursuant to Section 15.6(k), a Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Party in accordance with Section 19.1. Any such notice from the Purchaser shall be executed by a duly authorized representative of the Purchaser. Such notice shall identify, if applicable, the PPFME or CLFME (as applicable) in reasonable detail and the basis for termination. Termination of this Agreement shall be effective at 17:00 hours on the thirtieth (30th) Day following the date of delivery of such notice.

16. TERMINATION

16.1 SELLER EVENTS OF DEFAULT

The following events shall be events of default by the Seller (each a “**Seller Event of Default**”); provided, however, that no such event shall be a Seller Event of Default if it is caused in whole or material part by (i) a breach of or default under this Agreement by the Purchaser or (ii) a Force Majeure Event (except in the case of Section 16.1(c)):

- (a) The Seller’s failure:
 - (i) to achieve the Construction Start Date within sixty (60) Days following Financial Closing;
 - (ii) to achieve the Commercial Operations Date not earlier than one hundred eighty (180) Days after the Required Commercial Operations Date;
 - (iii) after Construction Start Date but prior to the achievement of the Commercial Operations Date to execute the Project in a diligent manner for a period of thirty (30) consecutive Days without prior notice to and prior written consent of the Purchaser; or
 - (iv) following the Commercial Operations Date, to deliver to the Interconnection Point during any consecutive twelve (12) months period on a rolling average basis Net Delivered Energy from the Complex in an amount less than fifty (50%) percent of the Annual Benchmark Energy for the relevant Agreement Year, except to the extent (and only to the extent) prevented by a Non-Project Event or on account of factors not attributable to the Seller.
- (b) Following the Commercial Operations Date, without the Purchaser’s prior written consent, the Seller’s Abandonment which continues for a period of thirty (30) consecutive Days; provided however, the Seller shall not be deemed to have Abandoned its Complex so long as it is using all reasonable efforts to regain control of the Complex or reinstate its commercial operations.
- (c) The Seller’s failure:
 - (i) to pay any undisputed (or following the resolution of such dispute in favour of the Purchaser) amount due from it under the provisions of Section 9.4 of this Agreement by the Due and Payable Date for the relevant invoice, or to make any other payment when required to be made, in each case, that is not remedied within forty-five (45) Days following the Purchaser’s notice to the Seller, stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail; or
 - (ii) to post and, thereafter, to maintain security in the amount required under Section 2.7 as required to be maintained by the Seller under this Agreement.
- (d) A breach by the Seller of its obligations under Section 19.9.
- (e) Except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the Laws of Pakistan for the dissolution of the Seller that is not stayed or suspended in ninety (90) Days, provided, that, if, within seven (7) days of the Seller becoming aware of such proceedings being filed, the Seller:

(A) confirms to the Purchaser that such proceedings relate to the recovery of a claim against the Seller that is disputed *bona fide* by the Seller as payable, and

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

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

- (ii) the passing of a resolution for dissolution or winding-up of the Seller;
- (iii) the voluntary filing by the Seller of a winding-up petition, or a request for a moratorium on debt payments, or other similar relief;
- (iv) appointment of a provisional liquidator in a proceeding for the winding-up of the Seller after notice to the Seller and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
- (v) the making, by a court with jurisdiction over the Seller, of an order for dissolution or winding-up the Seller, which order is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days.

- (f) Any statement, representation or warranty made by the Seller in this Agreement (or in a certificate delivered pursuant to Section 2.8) proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation or warranty having a material adverse effect on the Seller's ability to perform its obligations under this Agreement or having a material adverse effect on the Purchaser's rights or obligations under this Agreement.
- (g) The Seller's material breach or material default under or of this Agreement (other than any breach or default referred to in other sub-sections of this Section 16.1), including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after the Purchaser's notice to the Seller, stating that a material breach or default under or of this Agreement has occurred and is continuing, and in reasonable detail identifying such material breach or default.
- (h) On three (3) or more separate occasions, tampering by the Seller or its Contractors or their employees acting in the course of their employment, with the Metering System, the Back-Up Metering System, the Meteorological Station or the Complex Monitoring System (unless any alterations are required for rectifying any errors in the Complex Monitoring System), which tampering, in case of a dispute, is verified by an independent third-party expert.
- (i) The irrevocable, un-appealable and final order for revocation or termination of the Generation License (other than as a result of a Lapse of Consent).
- (j) The exercise by the Lenders of their remedies under the Financing Documents with respect to either the Complex assets or the pledged Ordinary Share Capital such that either the Seller or its management are removed by the Lenders from control of the Complex and the failure by the Lenders or the Agent to deliver a Succession Notice (as defined in Section 19.9(c)) or to transfer the Complex and the rights and obligations of the Seller under the Agreement to a Transferee within two hundred and forty (240) Days after the Seller or its management are removed by the Lenders from control of the Complex.

- (k) Except as provided under this Agreement, the transfer or creation of any right, title or interest under the Land Documents from the Seller to a third party without the prior consent of the Purchaser after the Commercial Operations Date.
- (l) The transfer, conveyance, loss, or relinquishment of the Seller's right to own or operate (by the Seller or through its O&M Contractor) the Complex or any material part thereof, to any Person (other than the Purchaser pursuant to the Energy Purchase Agreement or the Lenders exercising their rights under the Financing Documents), or failure to retain possession of the Site, without the prior written approval of the Purchaser.
- (m) Reduction of the Contract Capacity on the Commercial Operations Date by an amount which exceeds in aggregate five percent (5%) of the Contract Capacity specified in Section 2.9(a).

16.2 PURCHASER EVENTS OF DEFAULT

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

- (a) Upon transfer by Purchaser under Section 19.9(m) where the successor entity does not simultaneously enter into a novation of: (i) the EPA Direct Agreement with the Lenders; and (ii) this Agreement with the Seller.
- (b) The Purchaser's failure to pay any undisputed (or following the resolution of such dispute in favour of the Seller) amount due from it under the provisions of Section 9.4 of this Agreement by the Due and Payable Date for the relevant invoice or to make any other payment when required to be made under the Agreement, that, in each case, is not remedied within sixty (60) Days following the Seller's notice to the Purchaser stating that a payment default has occurred and is continuing, and describing such payment default in reasonable detail.
- (c) Except for the purpose of amalgamation, restructuring or the unbundling of the Purchaser that does not affect the ability of the amalgamated, restructured or unbundled 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 Purchaser that is not stayed or suspended within ninety (90) Days; provided, that, if, within seven (7) days of the Purchaser becoming aware of such proceedings being filed, the Purchaser:
 - (A) confirms to the Seller that such proceedings relate to the recovery of a claim against the Purchaser that is disputed *bona fide* by the Purchaser as payable, and
 - (B) furnishes a certificate by its external auditors to the effect that the Purchaser is and will remain solvent despite the payment of the claim subject to the said insolvency proceedings,

then, in such case, the Seller shall not exercise its right of termination until such time that the said certificate by the auditors is revoked or otherwise ceases to remain accurate;
 - (ii) the passing of a resolution for dissolution or winding-up of the Purchaser;
 - (iii) the voluntary filing by the Purchaser of a winding-up petition;

- (iv) the appointment of a provisional liquidator in a proceeding for the winding-up of the Purchaser after notice to the Purchaser and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or
 - (v) the making by a court with jurisdiction over the Purchaser of an order winding-up the Purchaser that is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days.
- (d) Any material statement, representation or warranty made by the Purchaser in this Agreement proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation or warranty having a material adverse effect on the Purchaser's ability to perform its obligations under this Agreement or having a material adverse effect on the Seller's rights or obligations hereunder.
 - (e) Any material breach or material default by the Purchaser of this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.2) which is not remedied within thirty (30) Days after notice from the Seller to the Purchaser, stating that a material breach or default has occurred under this Agreement and is continuing, and identifying the material breach or default in question in reasonable detail.
 - (f) The Purchaser fails to enter into the Escrow Agreement in accordance with Section 9.8(a); or the Escrow Agreement is terminated prior to the expiry or termination of this Agreement, and the Purchaser fails to provide an alternate arrangement in accordance with Section 9.8 within ninety(90) Days of such termination or expiry or termination of the Escrow agreement,
 - (g) Breach of any material term of the Escrow agreement which is attributable to the Purchaser and such breach continues for a period of one hundred eighty days(180) consecutive Days.
 - (h) The failure by the Purchaser to complete and commission the Purchaser Interconnection Facilities within three hundred sixty five (365) Days following the Required Commercial Operations Date, provided any extension of RCOD shall only be pursuant to a Force Majeure Event and/or Section 6.5.
 - (i) On three (3) or more separate occasions, tampering by the Purchaser or its contractors or their employees acting in the course of their employment with the Metering System, the Back-Up Metering System, the Meteorological Station or the Complex Monitoring System, which tampering, in case of a dispute, is verified by an independent third-party expert.

16.3 NOTICE TO CURE

- (a) If any Seller Event of Default or Purchaser Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may deliver a notice ("**Cure Notice**") to the defaulting Party which notice shall specify in reasonable detail the Seller Event of Default or the Purchaser Event of Default, as the case may be, including, as applicable, whether such event of default does or does not affect the Complex in any material respect.
- (b) The following cure periods (each a "**Cure Period**") shall apply:
 - (i) In the case of a Seller Event of Default arising under Section 16.1(c)(i) or a Purchaser Event of Default arising under Section 16.2(b) and (g), the Cure Period shall be sixty (60) Days;
 - (ii) In the case of a Seller Event of Default arising under Section 16.1(c)(ii) and Section 16.1(i) and in the case of Purchaser Event of Default arising under Section 16.2(f) the Cure Period shall be five (5) Business Days;

- (iii) In the case of a Seller Event of Default arising under Section 16.1(d) or (f) or a Purchaser Event of Default arising under Section 16.2(d), the Cure Period shall be three hundred and sixty-five (365) Days; and
- (iv) In the case of any other Purchaser Event of Default or any other Seller Event of Default, as the case may be, the Cure Period shall be ninety (90) Days;

in each case from the date the relevant Cure Notice is deemed to have been received.

Notwithstanding anything contained herein, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of the Cure Period.

16.3A CONSEQUENCES OF SELLER EVENT OF DEFAULT

Notwithstanding anything contrary contained in this Agreement:

- (a) If there is any Seller Event of Default, other than a Seller Event of Default set out in Section 16.1(a)(iv), Section 16.1(e) or Section 16.1(i) (the “**Seller Other Defaults**”), and the same is not cured within the time period provided in Section 16.3 the Purchaser shall not terminate this Agreement and shall continue to pay the Seller for all Net Delivered Energy in accordance with this Agreement provided if the Seller Other Default(s) are not cured within three hundred and sixty five (365) consecutive Days, the Purchaser may elect to suspend the operation of this Agreement in accordance with Section 16.3A(b).
- (b) If there is a Seller Event of Default as set out in Section 16.1(a)(iv), Section 16.1(e) or Section 16.1(i), which is not cured within the time period provided in Section 16.3 or there is a Seller Other Default which is not cured within the period provided in Section 16.3A(a), the Purchaser may elect to suspend the operation of this Agreement by delivering a written notice to the Seller (the “**Purchaser Suspension Notice**”) but shall not be entitled to terminate this Agreement. If the Purchaser elects to suspend the operation of this Agreement by issuance of the Purchaser Suspension Notice, such suspension shall take effect from the date of the Purchaser Suspension Notice and continue until the earlier to occur of the following: (i) fourteen (14) Days of the notice from the Seller to the Purchaser that it has cured such default; or (ii) withdrawal by the Purchaser of the Purchaser Suspension Notice (the “**Purchaser Suspension Period**”). The Parties agree that the aggregate of the Purchaser Suspension Period shall not exceed five (5) years during the Term (the “**Purchaser Total Suspension Period**”) and the Purchaser may issue as many Purchaser Suspension Notice(s) as the circumstances permit during the Term.
- (c) During any Purchaser Suspension Period, all obligations under the Agreement for both the Parties, including, *inter alia*, the Purchaser’s obligation to make any payments or provide the Escrow account and the Seller’s obligation to supply and deliver energy and its entitlement to receive any payments or Escrow Agreement shall be suspended with immediate effect and shall remain suspended until the end of the Purchaser Suspension Period.
- (d) During any Purchaser Suspension Period, the Purchaser shall not be entitled to terminate this Agreement on account of the aforesaid Seller Events of Default; provided however in the event the Seller Event of Default continues beyond the Purchaser Total Suspension Period, either Party may terminate this Agreement pursuant to Section 16.4 (a). The Parties agree that the term of this Agreement shall not be extended for the period this Agreement remains suspended due to the issuance of the Purchaser Suspension Notice(s) in accordance with this Agreement and once the Purchaser Suspension Period comes to an end, the Seller shall supply and deliver energy and Purchaser shall continue to pay the Seller as per the Reference Tariff in effect from the date such Reference Tariff was suspended due to the Purchaser Suspension Notice, with applicable indexations.
- (e) If the Purchaser elects not to suspend this Agreement pursuant to Section 16.3A(b), the

Purchaser shall be required to pay only for the Net Delivered Energy supplied by the Seller in accordance with this Agreement provided that twenty five percent (25%) of the prevailing Energy Price shall not be payable until such time that the Seller Event of Default is cured.

- (f) The Parties acknowledge and agree that whenever suspension takes place under this section, all obligations of the Parties prior to such suspension shall remain valid and the performance thereto shall not be affected by such suspension.

16.3B CONSEQUENCES OF PURCHASER EVENT OF DEFAULT

Notwithstanding anything contrary contained in this Agreement:

- (a) If there is a Purchaser Event of Default as set out in Section 16.2(b), 16.2(c), 16.2(f) and 16.2(h) (the “**Purchaser Major Default**”) and the same is not cured within the time period provided in Section 16.3, the Seller may cease the supply and delivery of the Net Delivered Energy by delivering a written notice to the Purchaser (the “**Purchaser Major Default Notice**”), but the Purchaser shall continue to be liable to pay and the Seller shall continue to be entitled to receive hundred percent (100%) of the Energy Payment multiplied by the Average Daily Energy for each Day during the period of such suspension (the “**Undisputed Payment Obligation**”). If the Seller elects to stop the supply and delivery of the Net Delivered Energy from the date of the Purchaser Major Default Notice, the same shall continue until the earlier to occur of the following: (i) the date the Purchaser pays all due payments to the Seller under this Agreement; or (ii) the earlier withdrawal by the Seller of the Purchaser Major Default Notice (the “**Purchaser Major Default Period**”). The Parties agree that the aggregate of the Purchaser Major Default Period shall not exceed three (3) years during the Term (“**Total Major Default Period**”) and the Seller may issue as many Purchaser Major Default Notice(s) as the circumstances permit during the Term. Provided however in the event the Purchaser Major Default Period continues beyond the Total Major Default Period, either Party may terminate this Agreement pursuant to Section 16.4. The Agreement may only be terminated during the Purchaser Major Default Period by mutual consent by both the Parties.
- (b) If the Purchaser has paid the Undisputed Payment Obligation, then the Term shall be extended for a period equal to the Purchaser Major Default Period and the Purchaser shall be entitled to receive an equivalent number of kWh, during such extended period, provided the Purchaser pays to the Seller the actual O&M and insurance costs for the period but not exceeding twelve (12%) of the Energy Price, in accordance with the provisions of Schedule 1, for the Net Delivered Energy delivered by the Seller to the Purchaser provided reasonable and verifiable documentary evidence is submitted to the Purchaser in respect of actual O&M and insurance costs. For avoidance of doubt, no additional payment shall be due and payable by the Purchaser for such Net Delivered Energy during such extended period other than as provided in this Section 16.3B(b).
- (c) If there is a Purchaser Event of Default other than the Purchaser Major Default (the “**Purchaser Other Default**”) and the same is not cured within the time period provided under this Agreement, the Seller shall deliver a written notice to the Purchaser within seven (7) Days of the expiry of the cure period as provided in Section 16.3, to cure such Purchaser Other Default by providing to the Purchaser a further period(s) not exceeding three hundred and sixty five (365) Days to cure the Purchaser Other Default (“**Additional Cure Period**”). Following the expiry of the Additional Cure Period the Seller may elect to suspend the operation of this Agreement (“**Seller Other Suspension Notice**”).
- (d) If the Seller elects to suspend the operation of this Agreement by issuance of the Seller Other Suspension Notice, such suspension shall take effect from the date of the Seller Other Suspension Notice and continue until the earlier to occur of the following: (i) the date the notice from the Purchaser to the Seller is issued that it has cured such default; or (ii) withdrawal by the Seller of the Seller Other Suspension Notice (the “**Seller Suspension**”).

Period”). The Parties agree that the aggregate of the Seller Suspension Period shall not exceed three (3) years during the Term (“**Seller Total Suspension Period**”) and the Seller may issue as many Seller Suspension Notice(s) as the circumstances permit during the Term.

- (e) During any Seller Suspension Period, all obligations under the Agreement for both the Parties, including, inter alia, the Purchaser’s obligation to make any payments and the Seller’s obligation to supply and deliver energy shall be suspended with immediate effect.
- (f) During any Seller Suspension Period, the Seller shall not be entitled to terminate this Agreement on account of the Purchaser Other Default; provided however in the event the Purchaser Other Default continues beyond the Seller Total Suspension Period, either Party may terminate this Agreement pursuant to Sections 16.4.
- (g) The Parties acknowledge and agree that whenever suspension takes place under this section, all obligations of the Parties prior to such suspension shall remain valid and the performance thereto shall not be affected by such suspension.

16.4 TERMINATION NOTICE

- (a) Subject to Section 16.3A, in the event that the Seller has not, following its receipt of a Cure Notice from the Purchaser, remedied the Seller Event of Default described therein before the expiry of the relevant Cure Period, the Purchaser may terminate this Agreement by delivering a notice of termination (the “**Termination Notice to the Seller**”).
- (b) Subject to Section 16.3B, in the event that the Purchaser has not, following its receipt of a Cure Notice from the Seller, remedied the Purchaser Event of Default described therein before the expiry of the relevant Cure Period, the Seller may terminate this Agreement by delivering a notice of termination (the “**Termination Notice to the Purchaser**”).
- (c) Subject to Section 16.4(d), following the issuance of Termination Notice to the Seller or Termination Notice to the Purchaser, this Agreement shall terminate on the date specified in the Termination Notice to the Seller or in the Termination Notice to the Purchaser, which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice to the Seller or the Termination Notice to the Purchaser is delivered or later than thirty (30) Days following the date of such delivery (the “**Termination Period**”). Upon any termination of this Agreement pursuant to this Section 16.4(a) the provisions of Article XVII shall apply.
- (d) Following the issuance of Termination Notice to the Seller, if the Seller cures all Sellers Events of Default to the satisfaction of the Purchaser, the Purchaser shall withdraw the Termination Notice to the Seller. In the event, after the withdrawal by the Purchaser of the Termination Notice to the Seller, there occurs a Seller Event of Default, the Purchaser may follow the procedure provided in Section 16.3 and Section 16.4 of this Agreement. Similarly, following the issuance of Termination Notice to the Purchaser, if the Purchaser cures all Purchaser Events of Default to the satisfaction of the Seller, the Seller shall withdraw the Termination Notice to the Purchaser. In the event, after the withdrawal by the Seller of the Termination Notice to the Purchaser, there occurs a Purchaser Event of Default, the Seller may follow the procedure provided in Section 16.3 and Section 16.4 of this Agreement.
- (e) During the Termination Period, the Purchaser shall be liable to pay each Month on accrual basis, the Energy Payments calculated on the basis of the Reference Tariff provided, however, the Seller shall only be entitled to receive the foregoing each Month on accrual basis in the event the Seller makes the Complex available to despatch and deliver the Net Delivered Energy in accordance with this Agreement. The Purchaser shall continue to be liable to pay for all undisputed amounts which have accrued under this sub-section (e).

- (f) For the avoidance of doubt, during the Termination Period the Seller shall not be entitled to any payments by the Purchaser except as provided in Section 16.4(e) above and any due undisputed payments. Further, Section 16.4(e) shall not apply and no amounts shall be accrued beyond the Termination Period.
- (g) 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 Cure Notice or a Termination Notice; provided that the notice of Dispute has been delivered to the Party claiming the occurrence of the Purchaser Event of Default or the Seller Event of Default, as the case may be, before the end of the relevant Cure Period.

16.5 NOTICE TO THE LENDERS OF THE SELLER'S DEFAULT

- (a) Anything in this Agreement notwithstanding, from and after the occurrence of Financial Closing the Purchaser shall not seek to terminate this Agreement (other than pursuant to Section 16.1(j)) as the result of any default of the Seller without first giving a copy of any notices required to be given to the Seller under Sections 16.3, 16.3A and 16.4 to the Lenders. The Lenders shall be entitled to cure, subject to Section 16.5 (b), any such default within the relevant cure period specified in Section 16.3(b) and further cure period specified in Section 16.3A (the “**Initial Cure Period**”), such cure period to commence upon delivery of each such notice to the Lenders. If there is more than one (1) Lender, the Lenders will designate in writing to the Purchaser an agent (the “**Agent**”) and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders. Each such notice shall be in writing and shall be deemed to have been delivered (i) when presented personally to the Lenders or the Agent, (ii) when transmitted by the Purchaser and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below, or (iii) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the Lenders at the address notified to the Purchaser 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. Notwithstanding the foregoing if the address of the Lenders or Agent is outside Pakistan, any notice delivered to the Lenders or the Agent pursuant to this Section 16.5 shall be presented personally or sent by international courier or facsimile, and if sent by facsimile, confirmed by international courier. The address and facsimile number for the Agent shall be provided to the Purchaser by the Seller within five (5) Business Days following Financial Closing and thereafter may be changed by the Lenders or the Agent by subsequent delivery of a notice to the Purchaser at the address or facsimile number for the Purchaser provided in Section 19.1 (or at such other address or facsimile number subsequently delivered to the Lenders or the Agent in accordance with this Section 16.5) and otherwise in accordance with the requirements of Section 19.1.
- (b) Except for notices of termination pursuant to Section 16.1(j), no rescission or termination of this Agreement by the Purchaser (whether pursuant to its rights or remedies under this Agreement or at law) shall be valid or binding upon the Lenders without such notice, and the expiration of the Initial Cure Period, the expiration of the Evaluation Period (as defined below) and the expiration of the Extended Cure Period as provided in this Section 16.5(b). The Lenders (or their designee) may make or procure but shall be under no obligation to make any payment or perform or procure the performance of any act required to be made or performed by the Seller with the same effect as if made or performed by the Seller. If the Lenders (or their designee) fail to cure or procure the cure of, or are unable or unwilling to cure or procure the cure of, any Seller Event of Default or (in the case of any Seller Event of Default which is not reasonably susceptible to cure within the Initial Cure Period)

mitigate such Seller Event of Default within the Initial Cure Period, the Purchaser shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that, upon the expiration of the Initial Cure Period, the Lenders (or their designee) may have a further period (an “**Evaluation Period**”) during which the Lenders (or their designee) may evaluate such Seller Event of Default, the condition of the Complex and other matters relevant to the actions to be taken by the Lenders(or their designee) concerning such Seller Event of Default. The Evaluation Period shall end on the earlier to occur of (i) the delivery by the Agent to the Purchaser of notice that the Lenders have elected either directly or through a designee to pursue their remedies under the Financing Documents, and assume the rights and obligations of the Seller as provided under Section 19.9 (an “**Election Notice**”) and (ii) forty-five (45) Days following the end of the Initial Cure Period. Upon the delivery of the Election Notice, the Lender’s (or their designee) shall be granted an additional period of one hundred and eighty (180) Days (the “**Extended Cure Period**”) within which to cure or procure the cure of any such Seller Event of Default. If the Purchaser has assumed the operation of the Complex pursuant to Section 5.12 and the Complex is being operated by the Purchaser, the Purchaser shall extend the Initial Cure Period, Evaluation Period and/or Extended Cure Period for an additional period of three (3) Months (and, for the avoidance of doubt, the Lenders shall have the benefit of the indemnity provided by Section 5.12(d) during any period in which the Complex is operated by the Purchaser). During the Initial Cure Period, the Evaluation Period and the Extended Cure Period and any extensions thereof, the Purchaser’s right to terminate this Agreement in respect of any such Seller Event of Default shall be suspended so long as the Lenders (or their designee) (other than by the Seller, unless the Seller is acting at the direction of the Lenders) are diligently attempting to cure or mitigate or procure the cure or mitigation of such Seller Event of Default or are pursuing the enforcement of their rights and remedies under the Financing Documents against the Seller. In the event that the Agent fails to deliver an Election Notice or the Lenders (or their designee) fail to cure any such Seller Event of Default on or before the expiration of the Extended Cure Period, as it may have been extended, the Purchaser may immediately terminate this Agreement effective upon delivery to the Lenders or the Agent of notice of such termination. During such Extended Cure Period, the Agent shall keep the Purchaser apprised of the Lenders' or their designee's efforts to cure such Seller Event of Default. Notwithstanding any provisions of this Section 16.5 to the contrary, the Initial Cure Period, the Evaluation Period and the Extended Cure Period, as the case may be, shall be extended on a Day-for-Day basis for each Day in which during any such period the breaches, conditions or events set forth in sub-clauses (i), (ii), (iii) or (iv) of the preamble of Section 16.1 are in existence or in effect or subsist or a Seller Consent has not been transferred to or issued in favour of the Lenders, their designee or any Transferee, or is not in full force or effect on or after the one hundred and eightieth (180th) Day of such period and within thirty (30) Days after the Lenders, the Agent, the Lenders' designee or the Transferee have made due application therefor and otherwise complied with the obligations applicable to them under Section 2.3 and such circumstance has not arisen due to (i) a failure by the Lenders, the Agent, the Lenders' designee or the Transferee to comply with the obligations applicable to them under Section 2.3

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:

- (i) arose prior to such termination,
- (ii) expressly survive such termination, including without limitation, the obligation to pay amounts due under Sections 5.11, 16.7, Article XI, and liquidated damages under Section 9.3, and/or
- (iii) survive such termination pursuant to Section 17.1.

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 a Seller Event of Default (other than a Seller Event of Default under Section 16.1(a)), the Seller shall reimburse the Purchaser for all costs and expenses (including reasonable attorneys' fees) relating to the Project incurred by the Purchaser prior to such termination, which amount in any event shall not exceed the Rupee equivalent of one hundred thousand Dollars (\$100,000), whether incurred by the Purchaser before or after the notice given by the Seller pursuant to the first sentence of Section 6.5(a). The amount of such construction costs shall be subject to independent audit, at the request and sole expense of the Seller. Upon a request by the Seller in writing, the Purchaser shall deliver to the Seller a good faith, non-binding estimate of any such costs and expenses which exceed the equivalent of five thousand Dollars (\$5,000), together with a description of the Purchaser Interconnection Facilities to be constructed.
- (b) In the event that this Agreement is terminated pursuant to Section 16.4 due to the Seller Event of Default set forth in Section 16.1(a), then the Purchaser shall be immediately entitled to encash the Seller Letter of Credit (or any remaining portion thereof) in full. The Parties agree that any such encashment constitutes liquidated damages for such Seller Event of Default and shall be the exclusive remedy available to the Purchaser therefor, and the Seller shall not have any obligation to compensate the Purchaser for any amount pursuant to Section 16.7(a). The Seller hereby waives to the fullest extent permitted by law any claim that the encashment of the Seller Letter of Credit in such amount is void as a penalty.

16.8 OTHER REMEDIES

- (a) The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law; provided, however, that no Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement. Subject to the provisions of Article X and except as may otherwise be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.
- (b) Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the Parties agree that the Purchaser may be damaged in amounts that may be difficult or impossible to determine in the event the Seller Event of Default described in Section 16.1(a) occurs. Therefore, the Parties have agreed that, in such event, the amounts set forth in Section 16.7 are reasonable and constitute liquidated damages to the Purchaser and it is further understood and agreed that the payment of such amounts under Section 16.7, and any encashment of the Seller Letter of Credit pursuant to its terms, shall be in lieu of actual damages for such occurrence and the collection of such sums and the termination of this Agreement pursuant to Section 16.4(a) is the sole remedy of the Purchaser for such event.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event the Seller terminates this Agreement as a result of a Purchaser Event of Default under this Agreement, then upon termination of this Agreement, any claims by the Seller against or liability of the Purchaser under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Seller shall have no further claim or recourse against the Purchaser under this Agreement.

16.9 RIGHT TO SELL ELECTRICAL ENERGY

Upon termination of this Agreement, the Seller shall be entitled to sell electrical energy under the competitive supply market in accordance with the applicable laws.

17. RIGHTS AND OBLIGATIONS OF PARTIES ON TERMINATION

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 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 2.2(a), Section 5.10 (Maintenance of Operating Records), Section 9.7, this Article XVII, Article I; Article X, Article XI, Section 15.6, Section 15.8, Section 15.9, Section 16.6, Section 16.7(c), Section 16.8, Section 16.9, Article XVIII and Article XIX shall expressly survive any termination or expiry of this Agreement.

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.

18. RESOLUTION OF DISPUTES

18.1 RESOLUTION BY PARTIES

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

18.2 DETERMINATION BY EXPERT

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 18.1 within the time periods set forth therein, then either Party, in accordance with this Section 18.2, may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a determination from the Expert as to the resolution thereof. Notwithstanding anything contrary contained herein, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 18.3 without first referring it to an Expert.
- (b) Subject to (a) above, the Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The Expert may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in the field of expertise relevant to the Dispute, which is the subject matter of the determination. The Party shall nominate an Expert who does not have any conflicts-of-interest in the matter, provided, that any current or former employees of either Party shall be deemed to have a conflict-of-interest. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such person is acceptable, and if such nominated Expert is not acceptable to the responding Party, the responding Party shall propose a person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable or nominates an Expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of five (5) Days to agree upon a person to be the Expert. Failing nomination by the responding Party of an Expert within the period provided or failing such agreement by the Parties of the Expert, at the end of the meeting the President of the Pakistan Institute of Chartered Accountants (for financial and billing matters) or the Vice-Chancellor of the Nadirshaw Eduljee Dinshaw (NED) University (for technical matters) shall be requested to select the Expert in the sequence/order given above, and the selection of the Expert by the relevant selecting entity shall be binding on the Parties; provided, however, that unless the selecting entity be informed by consent of the Parties that the Expert may be a Pakistan national, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any Investor or group of Investors holding directly or beneficially more than five percent (5%) of the Ordinary Share Capital, nor (as noted above) shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.
- (c) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:

- (i) a description of the Dispute;
 - (ii) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (iii) copies of records supporting the initiating Party's position.
- (d) Within ten (10) Days of the date that a Party has submitted the materials described in Section 18.2(c), the other Party may submit to the Expert, with copies to the other Party:
 - (i) a description of the Dispute;
 - (ii) a statement of such Party's position and, if not already requested, whether a hearing is requested by such Party; and
 - (iii) copies of any records supporting the Party's position.
- (e) The Expert shall consider any such information submitted by the responding Party and may consider any additional information submitted by either Party at a later date but, in such event, the other Party shall be concurrently provided with such information and shall be allowed reasonable opportunity to respond thereto.
- (f) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (g) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 18.2(c)(ii) or (d)(ii), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (h) The Expert shall provide a determination within fifteen (15) Days after the ten (10) Day response period provided in Section 18.2(d) has expired, or within such further time as is agreed in writing by the Parties. If the Expert's determination is given within such fifteen (15) day period, as may be extended by the Parties, the Parties may review and discuss the determination with each other in good faith for a period of ten (10) Days following delivery of the determination before proceeding with any other actions.
- (i) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply,
- (j) Unless the Parties agree in writing at the time the Dispute is referred to the Expert stating that the decision of the Expert shall be binding, the determination of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 18.3 have not been commenced within one hundred and twenty (120) Days from the date the Expert's determination was received by the Parties in accordance with Section 18.2(g) the Expert's determination shall be final and binding on the Parties, and any right of such Parties to resort to arbitral, judicial or other proceedings in relation to the subject matter of the determination shall stand waived to the fullest extent permitted by law.
- (k) Subject to Section 18.2(i), if a Party does not accept the determination of the Expert with respect to the Dispute or if the Expert has not provided a determination within the time period specified in Section 18.2(g), either Party may initiate arbitration proceedings in accordance with Section 18.3.

- (l) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for, and making presentations to, the Expert.
- (m) The failure of any Party to comply with the provisions and time periods set out in this Section 18.2 shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Section 18.3.
- (n) Except in the case of manifest error or fraud, unless resolved by the Parties in accordance with Section 18.1, the Expert's determination rendered in accordance with this Section 18.2 that is related to an issue or matter to be resolved under Section 2.5(b)(v) or any matter to be resolved by an Expert 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.
- (o) Subject to Section 18.2(i) either Party may serve a written notice on the other Party within thirty (30) Days of the Expert's determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration.

18.3 ARBITRATION

- (a) Any Dispute that has not been resolved following the procedures set forth in Section 18.1 (*Resolution by Parties*) and Section 18.2 (*Determination by Expert*), or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with the rules of arbitration of the London Court of International Arbitration ("**LCIA**") as may be amended from time to time (the "**Rules**"). The arbitral tribunal shall comprise of one (1) arbitrator.
- (b) The venue of the arbitration shall be Karachi, Pakistan, provided, however, that, if the amount in Dispute is greater than five million Dollars (\$5,000,000) or the amount of such Dispute together with the amount of all previous Disputes, if any, submitted for arbitration pursuant to this Section 18.3 exceeds an aggregate of ten million Dollars (\$10,000,000) or the issue in Dispute is (i) the legality, validity or enforceability of this Agreement, or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require the seat and venue of the arbitration to be London, United Kingdom. Except as otherwise determined in arbitration, and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with such arbitration.
- (c) Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in London, United Kingdom, and such Dispute is not of the said amount that could have been conducted in London in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London shall pay all costs of arbitration as and when incurred by the other Party (including out-of-pocket costs but excluding any award made by the arbitral tribunal) in excess of the costs that would have been otherwise incurred by such other Party had the arbitration been conducted in Karachi, Pakistan; provided, further, that the Party requiring that arbitration be conducted in London may seek a determination that the Dispute or the defence thereof is spurious and without any merit whatsoever, and upon such a final and binding determination, any amounts paid to the other Party to cover such excess costs shall be returned to the paying Party.
- (d) No arbitrator appointed pursuant to this Section 18.3 shall be a national of the jurisdiction of either Party or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Purchaser, the Seller, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.

18.4 IMMUNITY; JURISDICTION

- (a) The Purchaser unconditionally and irrevocably:
 - (i) agrees that should any proceedings be brought against it or its assets, other than the Grid System, electric generation assets and equipment, electric distribution assets or other assets necessary for the fulfilment by the Purchaser of its duties and responsibilities under the Regulation, Transmission, and Distribution of Electric Power Act 1997 (XL) of 1997 (or the law creating any successor, assignee or permitted transferee of the Purchaser), and the transmission licence issued to it by NEPRA (collectively, “**Protected Assets**”), in any jurisdiction where such assets or property of the Purchaser are located in order to enforce any award or decision of any arbitrator duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings shall be made by or on behalf of the Purchaser (on behalf of itself or any of its assets, other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
 - (ii) waives any right of immunity that it or any of its assets (other than Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) generally consents to the jurisdiction of any court of competent jurisdiction for any action filed by the Seller to enforce any award or decision of any arbitrator duly appointed under this Agreement to resolve any Dispute between the Parties, including the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets regardless of its use or intended use)), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum, and agrees not to plead or claim the same. The Purchaser agrees that service of process in any such action or proceeding may be affected in any manner permitted by the law applicable to such court.
- (b) The Seller hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may hereafter acquire, of any court of competent jurisdiction for any action filed by the Purchaser to enforce any arbitral award or decision pursuant to arbitration conducted in accordance with Section 18.3. The Seller waives any objection 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 commits itself not to plead or claim the same. The Seller agrees that service of process in any such action or proceeding may be affected in any manner permitted by the law applicable to the aforementioned court. The Seller irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.
- (c) For avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with the affirmations set out in this Section 18.5 shall be referred to for determination under Section 18.3 and shall fall within the definition of Dispute.

19. MISCELLANEOUS PROVISIONS

19.1 NOTICES

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

(i) If to the Purchaser:

K-Electric Limited

Attention: [●]

Address: KE House, 39B, Sunset Boulevard, Phase –II, Karachi

Facsimile: +92-21-99205192

With a copy to:

Attention: [●]

Address: KE House, 39B, Sunset Boulevard, Phase –II, Karachi

Facsimile: +92-21-99205192

(ii) If to the Seller:

Attention: Chief Executive Officer

Address: .

Facsimile No:

provided, that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 19.1(a).

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

(i) when delivered, if personally delivered;

(ii) two (2) Business Days after sending, if sent by courier;

(iii) five (5) Business Days after sending, if sent by registered post; or

(iv) upon sending if sent by facsimile, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is despatched not later than the following Business Day to the recipient by courier or personal delivery.

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

(i) If to the Purchaser: +92-21-111537211

(ii) If to the Seller:

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).

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.

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.

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.

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.

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.

19.7 GOVERNING LAW

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

19.8 ENTIRETY

Upon the occurrence of the Effective Date, this Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein.

19.9 ASSIGNMENT

- (a) Except as provided in this Section 19.9, no assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party.
- (b) Notwithstanding Section 19.9(a), for the purpose of financing the Project, the Seller may, pursuant to the Financing Documents, assign to or create a security interest in favour of the Lenders in the Seller's rights and interests under or pursuant to (i) this Agreement; (ii) any agreement or document included within or contemplated by the Project Agreements; (iii) the Complex; (iv) the Site; (v) the Seller's present and future movable, immovable and intellectual property; (vi) the Seller's present and future revenues or actionable claims, debts or any of the rights or assets of the Seller, including but not limited to all of the Seller's receivables and claims therefor under this Agreement; (vii) any other of the Seller's present and future rights, interest, property or assets of any kind and wherever situated; and (viii) the Land Documents.
- (c) The Lenders shall have the rights expressly granted in their favour in this Agreement and in any Direct Agreement concerning the Project between the Purchaser and the Lenders or

the Agent. Except in respect of such rights, the Lenders shall not exercise any of the rights of the Seller hereunder assigned to them under the Financing Documents unless and until such time as the Agent elects that the Lenders or their designee shall succeed to the Seller's interest under this Agreement, whether by exercise of the rights or remedies of the Lenders under the Financing Documents or otherwise, in which case the Agent shall give notice to the Purchaser of the occurrence and continuance of an event of default under the Financing Documents and of such succession by the Lenders or their designee, as the case may be (the "**Succession Notice**"). As soon as practicable prior to the delivery of any such Succession Notice, the Agent shall notify the Purchaser of the preliminary intent of the Lenders or their designee to succeed to such interest, which notice shall not be binding upon the Lenders or their designee and shall not constitute a Succession Notice. Within twenty five (25) Days after delivery of such preliminary notice, the Purchaser shall notify the Agent of all Seller Events of Default (or events that with delivery of notice and the passage of time would become Seller Events of Default) which are, or after delivery of a Succession Notice would be, required to be cured by the Lenders or their designee in accordance with this Section 19.9(c). Such notice by the Purchaser to the Agent shall state (A) all amounts due to the Purchaser under this Agreement as at the date of such notice, (B) all amounts which may become due to the Purchaser under this Agreement as at the date of such notice and the events which have occurred under this Agreement and giving rise to such amounts, (C) all amounts claimed by the Purchaser under this Agreement as at the date of such notice which are then in dispute with the Seller, and (D) any additional amounts (contingent or otherwise) accruing as at the date of such notice under this Agreement until paid to the Purchaser and the events which have occurred under this Agreement giving rise to such amounts, together with formulae for determining such amounts. Such notice by the Purchaser to the Agent may be updated by the Purchaser to re-quantify such amounts and/or identify any additional events and the amounts related thereto by written notice to the Agent at any time prior to succession by the Lenders or their designee to the Seller's interest under this Agreement.

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

the Seller under this Agreement within the Extended Cure Period (other than those that are not required to be cured pursuant to Section 19.9(d) and other than damages, liabilities and penalties incurred by the Seller under Article XI, except for damages, liabilities or penalties arising while the Lenders or such designee, pursuant to the rights and remedies of the Lenders under the Financing Documents, have assumed control of the Complex, and then only to the extent that the general liability insurance naming the Purchaser as an additional insured is not in effect) arising during the period prior to the Lenders' or their designee's succession to the Seller's interest under this Agreement and that were notified by the Purchaser to the Agent in writing on or before the delivery of such Succession Notice in accordance with Section 19.9(c); provided, however, that the aggregate liability of the Lenders or their designee, as the case may be, shall strictly be limited to the Lenders' or their designee's interest in the Complex, and; provided, further, that the Lenders or their designee, as the case may be, shall have no liability for breaches of the Seller arising prior to the delivery of a Succession Notice other than to cure the breaches notified by the Purchaser pursuant to Section 19.9(c), and the liability of the Lenders or their designee to the Purchaser in respect of all liabilities of the Seller under or relating to this Agreement prior to the delivery of a Succession Notice shall not exceed the total amount specified by the Purchaser in the latest notice delivered by it in accordance with Section 19.9(c), as such amount may be adjusted in accordance with the formulae specified in such notice.

- (f) Except as otherwise set forth in this Section 19.9, neither the Lenders, the Agent nor the Lenders' designee shall be liable for the performance or observance of any of the obligations or duties of the Seller under this Agreement, nor shall the assignment by the Seller of this Agreement to the Lenders pursuant to Section 19.9 give rise to any duties or obligations whatsoever on the part of any of the Lenders or their designee owing to the Purchaser.
- (g) The Lenders or their designee may at any time following the delivery of a Succession Notice give the Purchaser notice terminating the Lenders' or their designee's obligations and rights under this Agreement (without affecting the continuation of the Seller's obligations towards the Purchaser thereunder). Such notice shall designate a date on which such obligations and rights will terminate and on and after such nominated date the Lenders or their designee shall be released from all obligations and liabilities under this Agreement (other than those obligations and liabilities which have arisen under this Agreement prior to such nominated date). Upon such nominated date, subject to the expiration of the applicable cure period provided in Section 16.5, the Purchaser may exercise without restriction all of its rights under this Agreement.
- (h) Without the requirement of obtaining any further consent from the Purchaser, upon the exercise by the Lenders or their designee of any of the remedies set forth in the Financing Documents, the Lenders may assign or transfer by novation their rights and interests and the rights of the Seller under this Agreement to any Transferee (hereinafter defined) so long as such Transferee shall assume in writing for the benefit of the Purchaser all of the obligations of the Seller under this Agreement, provided that the Transferee shall not be liable for any outstanding obligations under this Agreement which were not disclosed by the Purchaser to the Lenders or the Agent in accordance with Section 19.9(c) nor have any obligation to cure any Seller Event of Default that is not capable of being cured. Upon such assignment and assumption, the Lenders and their designee shall be relieved of all obligations under this Agreement arising after such assignment and assumption.
- (i) Upon notice to the Purchaser from the Agent of the Lenders' assignment or transfer by novation to a Transferee, as set out in Section 19.9(h) above, the Purchaser shall affect the transfer of the Seller's rights and obligations under this Agreement to a Transferee.
- (j) As used herein, a "**Transferee**" shall be a person who (i) either is an experienced power plant operator or shall have agreed to engage the services of a person who is an experienced power plant operator, (ii) shall have paid all amounts, if any, then due and payable to the

Purchaser under this Agreement, (iii) shall have expressly assumed in writing for the benefit of the Purchaser the obligations of the Seller under this Agreement including (but not limited to) the obligation of the Seller to maintain and operate the Complex in accordance with the requirements of this Agreement and (iv) is a corporate body established in Pakistan.

- (k) Upon notice to the Purchaser of a default under the Financing Documents, the Purchaser shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders in the exercise of such rights by the Lenders under this Agreement and the Financing Documents.
- (l) At the request of the Seller, delivered to the Purchaser no less than thirty (30) Days in advance, the Purchaser shall execute and deliver, effective at the Financial Closing, acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Section 19.9 and the rights of such parties in and to this Agreement, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature.
- (m) Notwithstanding the above, the Purchaser shall have the right to assign any rights under this Agreement or transfer by novation all or any part of this Agreement to any entity or entities assuming all or part of the Purchaser's rights and obligations under this Agreement to the party having reasonable financial, commercial and technical standing, having no winding up proceedings or a resolution for dissolution against it, subject to the following conditions:
 - (i) novation agreement to be entered into between the Purchaser, the Seller and the transferee prior to the effectiveness of any such transfer, if applicable;
 - (ii) the assignment or transfer must comply with all regulatory approvals prior to the effectiveness of any such transfer; and
 - (iii) if applicable, the Purchaser and the transferee shall enter into, as a condition precedent to the transfer, a novation agreement with the Lenders in respect of the EPA Direct Agreement.
- (n) If so requested by the Lenders, the Purchaser shall enter into an EPA Direct Agreement with the Lenders prior to the Financial Closing in connection with the debt financing of the Project.

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, but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 19.10;
 - (v) to any expert (including 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.

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.

19.12 NO LIABILITY FOR REVIEW

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

19.13 AFFIRMATION

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

or benefit related to this Agreement or the Project, from the Purchaser or any Public Sector Entity, except that which has been expressly declared pursuant hereto.

- (c) The Seller accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein in this Section 19.13 and the declarations required hereby. It agrees that in the event that any of the representations and warranties made by it in Sections 19.13 (a) and (b) are proved to be materially incorrect, any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Purchaser, shall be voidable and without legal effect at the option of the Purchaser.
- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the Purchaser in this regard, the Seller agrees to indemnify the Purchaser for any loss or damage incurred by it on account of its corrupt business practices, and further pay compensation to the Purchaser in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by the Seller (either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors)), as aforesaid for the purpose of obtaining or inducing the procurement of this Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the Purchaser or any Public Sector Entity.

19.14 COUNTERPARTS

This Agreement may be executed in two (2) 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.

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.

19.16 BUSINESS PRACTICES

The Parties hereby declare that they have 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 through any corrupt or illegal business practice.

Without limiting the generality of the foregoing, the Parties represent and warrant that they have fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Parties for services provided) paid or payable to any person within or outside Pakistan in relation to this Agreement and have 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, except that which has been expressly declared pursuant hereto.

19.17 CONSENTS AND APPROVALS

Any consent or approval of the Seller or Buyer referred to in this Agreement shall be deemed duly given if signed by the authorized official(s) for the relevant consent or approval; provided, however, that the Seller or Buyer may, by notice given in accordance with this Agreement, designate a different official or department for the purposes of giving any consent or approval referred to in this Agreement and not yet given

19.18 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 Karachi, Pakistan as of the date first above written.

K-Electric Limited

By: _____

Name:

Title:

By: _____

Name:

Title:

By: _____

Name:

Title: Chief Executive Officer

Witness: _____

Name:

Witness: _____

Name: