

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(REGISTRAR OFFICE)

No: NEPRA/R/RFP-100/120 MW/ 2150

April 20, 2023

ION

Subject: **REQUEST FOR PROPOSAL (RFP) DOCUMENT FOR THE DEVELOPMENT OF 120 MW (PV) SOLAR POWER PLANT AT DISTRICT WEST KARACHI (KARACHI SITE 01)**

Please find enclosed herewith copy of RFP submitted by K-Electric vide its letter No. BD/MZ/NEPRA-0114/2023-0411 dated 18.04.2021 (received on 19.04.2021) for the development of 120 MW Solar Power Project at District West Karachi (Karachi SITE 01) for approval of the Authority under NEPRA (Electric Power Procurement) Regulations, 2022. The documents submitted by K-Electric alongwith RFP are available on ECM Portal.

2. It may be noted that earlier RFP for the subject project was submitted by Government of Sindh. The same was considered by the Authority vide ARM 23-133 and decided as under:

- i. *To return the Request for Proposal (RFP) documents for the development of 120 MW Solar Power Plant at District West Karachi filed by Energy Department, Govt. of Sindh (ED.GoS) being non-maintainable.*
- ii. *The said RFP may be filed by KE after fulfillment of requirements as envisaged in NEPRA (Electric Power Procurement) Regulations, 2022 including but not limited to the following: a) Submission of Power Acquisition Program (PAP) with these projects included. b) Pre-qualification for said project. c) Feasibility study of the said project.*
- iii. *The letter to be written to ED-GoS shall be copied to KE."*

3. The above direction of the Authority was conveyed to Government of Sindh and K-Electric vide NEPRA's letter dated 06.04.2023. Now, in response to above letter, K-Electric has submitted the subject RFP.

4. DG (M&E), DG (Lic), DG (Tariff), Director (Technical), Consultant (CTBCM) and Legal Advisor (KIP) are requested to go through the enclosed RFP and offer their comments that whether this RFP merits for admission or otherwise.

5. The requested comments may kindly be provided by 28.04.2023 for submission of case for Authority's consideration, please.

Encl: As Above

(Iftikhar Ali Khan)
ADG (R.O)

Tariff Division Record

By No. 2578
Dated 26-4-23

1. DG (M&E)
2. DG (Licensing)
3. DG (Tariff)
4. Director (Technical)
5. Consultant (CTBCM)
6. Legal Advisor (KIP)

CC:

1. Registrar
2. Master File

(OFFICE OF REGISTRAR)

RECEIVED
DATE
BY
SIGNATURE
DESIGNATION
DATE



Reference no. BD/MZ/NEPRA- 0114/2023-0411
April 18, 2023

Registrar,
National Electric Power Regulatory Authority ("NEPRA")
NEPRA Tower
Attaturk Avenue (East)
G-5/1
Islamabad

Subject: KE Submission of the Request for Proposal (RFP) Document for the Development of two Solar Projects

- (i) 120 MW (PV) Solar Power Plant at Deh Halkani & Deh Bund Murad District West Karachi (Karachi Site 01) and
- (ii) 150 MW (PV) Solar Power Plant at District Malir Karachi (Karachi Site 02)

("Projects") under NEPRA (Electric Power Procurement) Regulations, 2022 (NEPPR)

Dear Sir,

In continuation to our previous letter having Ref No: BD/MZ/NEPRA- 0113/2023-0411 dated April 13th, 2023, we are pleased to submit two (2) RFPs of the aforementioned "Projects" under NEPRA (Electric Power Procurement) Regulations, 2022 (NEPPR).

The cheques for RFP submission fee amounting to PKR 572,650 each (net of withholding tax) for Karachi Site 01 and Karachi Site 02 are also enclosed.

Moreover, as mentioned in our previous letter, the pre-qualification process for these Projects is currently ongoing, and the final list of the pre-qualified applicants would be shared with the Authority immediately upon completion of the evaluation process. Accordingly, we would humbly request the Authority to admit the RFPs for initiation of its processing, while the list of prequalified applicants will be submitted by KE in parallel.

We look forward to the Authority's support during this process and remain available for any clarification required.

Sincerely,


Mudassar Zuberi
Head of Business Development



| Forwarded please: | |
|--|--|
| <input checked="" type="checkbox"/> For nec action | <input type="checkbox"/> for information |
| 1. DG (Lic.) | 2. DG (Admn./HR) |
| 3. DG (M&E) | 4. DG (CAD) |
| 5. DG (Trf.) | 6. Dir. (Fin.) |
| 7. Dir. (Tech.) | 8. Consultant |
| 9. LA | 10. Addl. Dir. (IT) |

For kind information please
1. Chairman
2. M (Lic.)
3. M (Law)
4. M (Tech.)
5. M (Fin.)

Copy to: Mr. Mehfooz Ahmed Qazi, Project Director, Sindh Solar Energy Project (SSEP)

Encl:

- 1. RFP for Karachi Site 01 and Karachi Site 02
- 2. Cheque No: 07745984 and 07745985 as submission fees of the two RFPs

REGISTRAR
Date: 19-4-23

HABIB BANK
HABIB BANK PLAZA,
I.I. Chundrigar Road, Karachi. (0786)

Not Negotiable



Date

14.04.2023

Pay **NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (NEPRA)**
or bearer

Rupees **FIVE HUNDRED SEVENTY TWO THOUSAND SIX HUNDRED FIFTY**

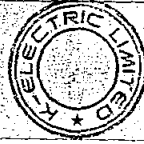
PKR **572,650.30**

AND THIRTY PAISAS ONLY

IBAN NO: PK86 HABB 0007867000959117

K-ELECTRIC
Energy That Moves Life

Please do not write below this line.



Signature 1

Signature 2

⑈07745985⑈0540786⑈0007867000959117⑈000⑈

HBL **HABIB BANK**
Habib Bank Limited, Pakistan
HBL Plaza Branch, Habib Bank Plaza,
I.I. Chundrigar Road, Karachi. (0786)

Payee's A/c Only
Not Negotiable



Cheque No

07745984

Date

14.04.2023

Pay **NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (NEPRA)**
or bearer

Rupees **FIVE HUNDRED SEVENTY TWO THOUSAND SIX HUNDRED FIFTY**

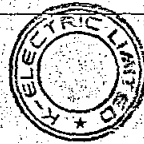
PKR **572,650.30**

AND THIRTY PAISAS ONLY

IBAN NO: PK86 HABB 0007867000959117

K-ELECTRIC
Energy That Moves Life

PL do not write below this line.



Signature 1

Signature 2

⑈07745984⑈0540786⑈0007867000959117⑈000⑈



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| 5. Dir. (Tech.) | 6. Dir. (Fin.) | 7. Addl. Dir. (IT) | 8. Addl. Dir. (IT) |
| 9. LA | 10. Addl. Dir. (IT) | 11. Addl. Dir. (IT) | 12. Addl. Dir. (IT) |
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| 97. Addl. Dir. (IT) | 98. Addl. Dir. (IT) | 99. Addl. Dir. (IT) | 100. Addl. Dir. (IT) |

Reference no. BD/MZ/NEPRA- 0113/2023-0411
April 14, 2023

Registrar,
National Electric Power Regulatory Authority ("NEPRA")
NEPRA Tower
Attaturk Avenue (East)
G-5/1
Islamabad

Subject: Submission of the Request for Proposal (RFP) Document for the Development of two Solar Projects

- (i) 120 MW (PV) Solar Power Plant at Deh Halkani & Deh Bund Murad District West Karachi (Karachi Site 01) and
- (ii) 150 MW (PV) Solar Power Plant at District Malir Karachi (Karachi Site 02)

(the "Projects") under NEPRA (Electric Power Procurement) Regulations, 2022 (NEPPR)

Dear Sir,

We write with reference to your letter no. NEPRA/R/RFP-100/GoS-120MW/8579-80 and letter no.

NEPRA/R/RFP-100/GoS-150MW/8582-83 dated 6th April 2023, wherein the Authority has directed K-Electric Limited (KE) to submit the RFP for the Projects in accordance with the NEPPR after fulfilling the following requirements:

a) Submission of Power Acquisition Program (PAP) of KE with the subject project included

In this regard, we would like to inform the Authority that the Projects, with expected commissioning in FY-25, are included in the PAP submitted for approval of the Authority by KE vide its letter no. BD/MZ/NEPRA-0979/2023-2003 dated 20 March 2023.

b) Prequalification for subject project

As the Authority may be aware, these Projects are being undertaken by Sind Solar Energy Project (SSEP) under Component -1 (Utility Scale Solar) of their framework, with an aim to increase solar power generation and access to electricity in the Province of Sindh and a financing agreement and a project agreement were executed by the Islamic Republic of Pakistan and the Province of Sindh, respectively, with the World Bank (WB) on January 9, 2019 where the WB agreed to facilitate the development of renewable energy resources in Sindh through the SSEP. Subsequently, a Memorandum of Understanding for development the Projects was signed between the WB, Sindh Energy Department (SED), and KE on Dec 10th, 2021, wherein SED agreed to undertake the bidding process through the SSEP and KE agreed to be their power purchaser.

While the Project was initially conceived under the NEPRA Competitive Bidding Tariff (Approval procedure) Regulations, subsequent to the enactment of NEPPR in Dec 2022, the bidding process was initiated by SSEP considering section 35 of the NEPPR. The advertisement for prequalification of prospective bidders was published by the SSEP on January 26th, 2023 and in response to the advertisement, SED has received 20 applications for pre-qualification (list of applicants is attached as List of companies).

The pre-qualification process is currently under active processing, and the final list of the pre-qualified applicants would be shared with the Authority immediately upon completion of the evaluation process.

K-Electric Limited

39-B KE House Sunset Boulevard, DHA- Phase 2, Karachi, Pakistan

REGISTRAR OFFICE
Dated: 19-4-23
Page No: 506




Having now received the Authority's directives regarding submission of RFP, the evaluation for pre-qualification applicants will be done by Auction and Evaluation Committee (AEC) comprising of KE, SSEP and independent consultants. Accordingly, subsequent to Authority's approval of the RFP, the RFP will be issued to the bidders pre-qualified under the ongoing pre-qualification process. It is also pertinent to mention that the Request for Pre-Qualification (RFQ) document was finalized by SSEP team with the involvement and consent of KE.

In view of the above, KE humbly requests the Authority to allow admission of the RFP for the Projects upon submission, while the pre-qualification process is being conducted in parallel and the list of pre-qualified applicants will be submitted to the Authority immediately upon completion.

c) Feasibility study of the subject project

The feasibility studies for the Projects will be submitted with the RFP.

We look forward to the Authority's support during this process and remain available for any clarification required.

Sincerely,


Mudassir Zuberi
Head of Business Development

Copy to: Mr. Mehfooz Ahmed Qazi, Project Director, Sindh Solar Energy Project (SSEP)

List of Companies

| S. No | Name | BOX | Date & Time |
|-------|-------------------------------------|---------|-----------------------------|
| 1 | Atlas Power | 1 Box | 24 th Feb 2023 |
| 2 | Artistic Milliners | 1 File | 27 th Feb 2023 |
| 3 | Adeel Ahmed (IBVOGI) GMBH | 1 Box | 27 th Feb 2023 |
| 4 | Sapphire Textile | 8 Box | 28 th Feb 2023 |
| 5 | Liberty Mills Limited | 6 Files | 3 rd March 2023 |
| 6 | Hecate Energy | 4 Files | 6 th March 2023 |
| 7 | Lucky Electric Power Co. | 6 Files | 7 th March 2023 |
| 8 | Total Network Solutions | 1 File | 10 th March 2023 |
| 9 | Novatex Limited | 1 File | 17 th March 2023 |
| 10 | Engro Energy Pvt. Ltd. | 3 Files | 20 th March 2023 |
| 11 | Orient Power (Pvt.) Ltd. | 1 Box | 20 th March 2023 |
| 12 | Trans Tech Pakistan | 1 File | 20 th March 2023 |
| 13 | Sapphire Electric & Sapphire Fibers | 1 Box | 20 th March 2023 |
| 14 | Hub Power Holding Ltd. | 1 Box | 20 th March 2023 |
| 15 | REON Energy | 1 Box | 20 th March 2023 |
| 16 | SMADB – XCEL – RP | 2 Box | 20 th March 2023 |
| 17 | Gul Ahmed Energy Ltd. | 1 Box | 20 th March 2023 |
| 18 | Metro Energy Group | 1 Box | 20 th March 2023 |
| 19 | JCM Power Corporation | 3 Box | 20 th March 2023 |
| 20 | Kalyon – ZKB (JV) | 1 Box | 20 th March 2023 |

K-ELECTRIC LIMITED

REQUEST FOR PROPOSAL (RFP)

**FOR SELECTION OF BIDDERS/ DEVELOPERS FOR
DEVELOPMENT OF UTILITY SCALE SOLAR POWER PLANT**

**AT KARACHI SITE 01 - DISTRICT WEST, KARACHI, SINDH,
PAKISTAN** *(APPROX. 120 MW SOLAR PV POTENTIAL - ON SINGLE AXIS TECHNOLOGY), SINDH, PAKISTAN*

UNDER NEPRA (ELECTRIC POWER PROCUREMENT) REGULATIONS, 2022

DATE: 18 APRIL 2023

Note to Bidders: Bidders are requested to note that the information set out herein is subject to confidentiality restrictions set out in this RFP. By participating and receiving a copy of this RFP, a Bidder undertakes to keep confidential all information that it receives from K-Electric Limited and all information it provides to K-Electric Limited or will be provided in this process.

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**KE Request for Proposal (RFP) – approx. 120 MW solar power project at District West, Karachi, Sindh, Pakistan
'Karachi Site 01'**

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1 Invitation to Bid

- (a) K-Electric Limited (**KE**) hereby invites, the prequalified applicants, through this Request for Proposal (**RFP**) to submit Bids to develop, design, finance, insure, construct, complete, commission, own, operate and maintain a site-specific solar PV power project having the capacity of approximately 120 MW, to be located at Karachi Site 01, Sindh, Pakistan on Build, Own, Operate and Transfer (**BOOT**) basis, and undertake all activities incidental or ancillary thereto (the **Project**). For avoidance of doubt, the Project will be transferred to the Government of Sindh (**GOS**) after the expiry of the Term.
- (b) The Project is part of Component I (Utility scale solar) of the Sindh Solar Energy Project (**SSEP**) assignment of the Sindh Energy Department (**SED**) which has received support from the World Bank (**WB**) for overall development of utility scale solar parks in Sindh through competitive auctions. This RFP has been prepared in line with the NEPRA (Electric Power Procurement) Regulations, 2022 (**NEPP**). This RFP sets out, inter alia, the process for the selection of the Successful Bidder that will develop the Project on BOOT basis and will be responsible for all activities incidental or ancillary to the Project.
- (c) KE is conducting the competitive auction for the Project in accordance with NEPP as the Supplier of Last Resort (**SOLR**) within its service territory. The Project is conceived under a joint collaboration between the SED, WB and KE. In order for a Bid to be evaluated, the Bidders must meet all of the eligibility requirements stated herein. For avoidance of doubt, KE shall perform all the obligations as required in the process for competitive auction which includes submission of an Auction Evaluation Report to the Authority and selection of Successful Bidder. The Successful Bidder will form the Special Purpose Vehicle (**SPV**) that will enter into an Energy Purchase Agreement (**EPA**) with KE. For purposes of this Project, KE will be the Purchaser.
- (d) Approximately 612 acres of land shall be provided by the GOS for the construction of the Complex at the Site and the Successful Bidder/SPV shall pay the Solar Park Fee to the GOS (or the nominee of the same) in accordance with the applicable laws. The feasibility study has already been carried out for the Project in accordance with internationally acceptable standards. The Complex shall be connected with the KE grid system at 220 kV voltage level and shall be capable of operating within the range specified in the Grid Code on the 220 kV high voltage system which range shall not be exceeded.
- (e) The Successful Bidder will be issued a Letter of Intent (**LOI**) by KE (being the Purchaser) in the form as appended in Exhibit 14, for formation of the SPV subject to submission of Performance Guarantee. Subsequent to the formation of SPV, the SPV will be required to (i) obtain Generation License and Tariff Approval from NEPRA (ii) enter into EPC contract for the design, construction and commissioning of the Complex (iii) enter into EPA with KE, and other necessary Project agreements (iv) arrange the necessary financing for the Project and achieve financial close (v) construct and implement the Project to achieve Commercial Operation Date (**COD**) within the time period allowed by NEPRA in the Tariff Approval, and (vi) upon Commissioning, operate the Complex for the Term so as to provide electricity to the Purchaser as per the terms and conditions of the EPA and at the Tariff approved by the Authority arrived through Competitive Auction in accordance with the NEPP Regulations.
- (f) The Successful Bidder will implement the Project awarded to them consistent with the LOI, and the EPA, and shall undertake all activities incidental or ancillary to implementation of the awarded Project in accordance with the said documents within the timelines stated in the Project Development Schedule in section 7.
- (g) KE at its sole discretion may participate as a minority shareholder with up to 49% equity

**KE Request for Proposal (RFP) – approx. 120 MW solar power project at District West, Karachi, Sindh, Pakistan
'Karachi Site 01'**

shareholding in the SPV either through its affiliate or its subsidiary.

- (h) This RFP is structured on a single stage, two-envelope bidding process. The contents required for each envelope and the basis for evaluation of the Bids are detailed in the ensuing Sections of this RFP. Bidders are required to meet the Minimum Technical Requirements (**MTR**) as provided in section 17.2, following which the selection of the Successful Bidder will be based on the financial evaluation criteria defined under Section 14 and technical evaluation criteria as provided in Exhibit 16. All bids equal to or higher than the **Benchmark Tariff** will be rejected.
- (i) Each Bid must comply with the RFP requirements. The Bids (along with the Bid Bond and the Bid Processing Fee) must be delivered no later than the Deadline specified in Section 13.6 at the address specified in Section 13.7.
- (j) Capitalized expressions used but not defined herein shall bear the meaning ascribed thereto in Section 3.2.
- (k) Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Glossary of this RFP.
- (l) This invitation and the RFP are subject to the Disclaimer attached herewith.

All Bids must be submitted, as per the instructions provided in this RFP, to:

Attention : Mr. Qasim Mehmud
Strategic Sourcing Lead – Project Procurement
K-Electric Limited
Address : 1st Floor, Block J Procurement Division, Elander Road Complex, Karachi,
Pakistan
Telephone : +92 21 387 09132 (Ext: 9424)
Email : qasim.mehmud@ke.com.pk
Website : www.ke.com.pk

We would like to thank the Bidders for their interest in this Project.

2 Disclaimer

- a) This RFP cannot be considered to be a recommendation or encouragement to a Bidder to submit a Bid but is intended to enable the Bidder to submit a Bid. This RFP is not an agreement or offer by KE to the prospective bidders or any other party. The information contained in this RFP has been prepared to assist each Bidder in making its own evaluation of the Project and does not purport to contain all of the information that such Bidder may desire with respect to the Project.
- b) The documentation provided in this RFP is made available to Bidders who: (i) are expected to have the necessary skills and experience to be able to assess the risks inherent in the award procedure and to understand and evaluate the data provided in this RFP; and (ii) are expected to seek the assistance of advisors and consultants to make an analysis of the procedure and the documentation. In all cases, the Bidder is required to conduct its own due diligence, investigation and analysis including but not limited to Site assessment, interconnection assessment, energy yield etc.
- c) KE shall under no circumstances be responsible or liable to reimburse the cost associated with the preparation and submission of the bids regardless of the outcome of the bidding process. KE rejects all liability, of whatever nature, for any damage or loss that a Bidder may suffer as a consequence of the: (i) use of this document, changes to it, or information incorporated into it; (ii) the fact that the Bidder relied on this information; or (iii) the lack of, the irrelevance of, or the interpretation of certain information in this document.
- d) None of KE or its directors, officers, employees or advisors makes any representation or warranty, express or implied, as to the accuracy or completeness of this RFP or the information contained herein and none of KE or its directors, officers, employees or advisors shall not be liable for any of the information contained herein, or omitted from this RFP, nor for any of the written, oral, electronic or other communications transmitted to the Bidder in the course of Bidder's investigation and evaluation of the Project and submission of its Bid pursuant to this RFP. Only those representations and warranties that are made in a definitive written agreement, when and if executed, and subject to any limitations and restrictions as may be specified in such definitive written agreement, shall have any legal effect. Each Bidder shall be responsible for its own independent evaluation and assessment of the Project and should consult its own professional advisors and consultants accordingly.
- e) The Bidder must take this risk into account in its Bid. By submitting a Bid the Bidder accepts this liability disclaimer. The Bidder who, on the basis of the information incorporated into this document or provided up until the submission date, decides not to submit a Bid also accepts this liability disclaimer.

KE Request for Proposal (RFP) – approx. 120 MW solar power project at District West, Karachi, Sindh, Pakistan
‘Karachi Site 01’

3 Interpretation

3.1 Abbreviations

| | |
|-----------|---|
| AC | Alternate Current |
| ARE | Alternative and Renewable Energy |
| BOOT | Build, Own, Operate and Transfer |
| CCTV | Closed Circuit Television |
| COD | Commercial Operations Date |
| DC | Direct Current |
| DISCOs | Distribution Companies |
| EPA | Energy Purchase Agreement |
| ESIA | Environment and Social Impact Assessment |
| Grid Code | NTDC's grid code 2023 or as amended from time to time |
| GOP | Government of Pakistan or Federal Government |
| GOS | Government of Sindh or Provincial Government |
| HV | High Voltage |
| IEC | International Electro-technical Commission |
| IP | Ingress Protection |
| IPP(s) | Independent Power Producer(s) |
| KE | K-Electric Limited or Purchaser |
| kW | Kilowatt |
| kWh | Kilowatt hour |
| LOI | Letter of Intent |
| MV | Medium Voltage |
| MW | Megawatt |
| MWp | Megawatt peak |
| NEPP | NEPRA (Electric Power Procurement) Regulations, 2022 |
| NEPRA | National Electric Power Regulatory Authority |
| NOC | No Objection Certificate |
| NTDC | National Transmission and Despatch Company Limited |
| O&M | Operation and Maintenance |
| Pakistan | The Islamic Republic of Pakistan |
| PKR or Rs | Pakistani Rupees |

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| | |
|-------------|--|
| PKT | Pakistan Standard Time |
| PV | Photovoltaic |
| RFP | Request for Proposal |
| SED | Energy Department, Government of Sindh |
| SCADA | Supervisory Control and Data Acquisition |
| SPV | Special Purpose Vehicle |
| STC | Standard testing Conditions |
| TSF | Temporary Site Facility |
| USD or US\$ | United States Dollar |
| VPN | Virtual Proxy Network |
| VT | Voltage Transformer |

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3.2 Definitions

| | |
|---|---|
| Authority | National Electric Power Regulatory Authority (NEPRA) has been appointed as the sole regulator in the power sector by the GoP and is tasked to ensure a transparent, competitive and commercially-oriented power market in Pakistan. |
| Auction and Evaluation Committee | The committee formulated in accordance with NEPP. |
| Auction and Evaluation Report | The report prepared by the Auction and Evaluation Committee and submitted to the Authority after completion of a competitive auction under the bidding documents in accordance with the NEPP. |
| Backup Metering System | The meaning ascribed thereto in the EPA. |
| Benchmark Tariff | The benchmark tariff for competitive bidding for this Project determined by NEPRA vide decision no. [•] dated [•] being US Cents [•]/kWh |
| Bid | A bid in response to this RFP to implement the Project in accordance with this RFP which shall comprise of all documents including the Technical Proposal and Tariff Proposal. |
| Bidder(s) | A company incorporated under the Laws of Pakistan or a foreign company registered according to the laws of country of incorporation, a person or a consortium, that is prequalified through the prequalification process for the Project dated [•] and meets the eligibility criteria stated in this RFP. |
| Bid Bond | An unconditional, irrevocable, on demand bank guarantee issued to KE in an amount equal to USD 1,000/MW by at least an “AA” rated scheduled bank operating in Pakistan, or a corresponding bank in Pakistan (in case of a foreign Bidder), which is acceptable to KE, valid for a period of at least twelve (12) months from the Deadline after the Bid Validity Period (as may be extended pursuant to section 12(d), in the format and language as provided in Exhibit 9, or equivalent in PKR at the T.T/OD PKR/USD sell side rate published by National Bank of Pakistan on the last working day which is five (05) days before the Deadline. |
| Bid Processing Fee | A non-refundable processing fee of PKR 1,500,000/- |
| Bid Letter | The cover letter for Bid in the format as provided in Exhibit 2. |
| Bid Tariff | The bid tariff provided by the Bidder in the format as set out in Exhibit 11. |
| Bid Validity Period | The meaning ascribed thereto in Section 13.7. |
| Capacity | The nominal rated capacity of the Complex of 120 MWp. |

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| | |
|---|---|
| Commercial Operations Date (COD) | The meaning ascribed thereto in the Energy Purchase Agreement (EPA). |
| Commissioning | The meaning ascribed thereto in the Energy Purchase Agreement (EPA). |
| Complex | The meaning ascribed thereto in the Energy Purchase Agreement (EPA). |
| Consumer End Tariff | The meaning ascribed thereto in EPA. |
| Deadline | The meaning ascribed thereto in Section 13.6. |
| Energy Purchase Agreement (EPA) | The Energy Purchase Agreement in the form provided in Exhibit 15 to be entered into by and between the Purchaser and the Seller for the purchase and sale of electricity generated by the Complex, which shall be valid for the Term of the Project. |
| Feasibility Study Report (FSR) | The feasibility study conducted through a reputable consultant for the Complex by the Bidder which shall include but not limited to Geotechnical study, topographic survey, flood risk assessment, meteorological and climate data impact assessment, yield assessment etc. |
| Financial Close | The meaning ascribed thereto in the EPA. |
| Generation License | The license to be issued by NEPRA permitting the generation and supply of electricity by the Seller from the Complex in accordance with the terms and conditions of such license. |
| Grid Code | The Grid code approved by NEPRA, establishing inter alia, requirements for interconnections with the grid system, as it may be revised from time to time with any necessary approval by NEPRA and notified to the Bidder and as applicable, to KE |
| Grid Interconnection Study | The study conducted by a third-party consultant for the evaluation of load flow, short circuit, transient stability, reactive power requirement etc. |
| Independent Engineer | The firm of engineering consultants to be appointed and hired by the Successful Bidder with the approval of KE, for monitoring the construction and commissioning of the Complex and to deliver related certificates to the Successful Bidder and KE and to carry out all the engineer’s responsibilities to be specified in the EPA. |
| Interconnection Point | The meaning ascribed thereto in the Energy Purchase Agreement. |
| K-Electric Limited or KE | An integrated power utility company operating in Karachi and adjoining areas in Sindh and Baluchistan provinces, duly incorporated as a public limited company and existing under the Company Act 2017, having SECP registration number 0000002, |

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| | |
|-------------------------------------|---|
| | with its principal office at KE House, 39-B, Sunset Boulevard, Phase-II, D.H.A, Karachi, Pakistan. |
| Karachi Site 01 | The Site in District West Karachi admeasuring 600 acres for purposes of construction and operations of the Project Complex. |
| Letter of Intent | The Letter of Intent to be issued by K-Electric Limited to the Successful Bidder in the form provided at Exhibit 14. |
| Metering System | The meaning ascribed thereto in EPA. |
| NEPP | National Electric Power Regulatory Authority (Electric Power Procurement) Regulations, 2022, as amended or superseded by subsequent regulations from time to time. |
| Performance Guarantee or PG | The bank guarantee in the form provided at Exhibit 13 to be submitted by a Successful Bidder to KE from an "AA" rated scheduled Bank operating in Pakistan which is acceptable to K-Electric, with a validity of 13 months in the sum equivalent to USD 5,000/- per MW, as a condition for the issuance of the LOI payable in equivalent Pakistan Rupees calculated at the average of the National Bank of Pakistan TT & OD selling rate for United States Dollar prevalent on the business day preceding the date of which payment is made under the PG. |
| Project | The development, design, financing, insurance, construction, completion, Commissioning, ownership, operation and maintenance of the Complex on BOOT basis and all activities incidental or ancillary thereto at the Site. |
| Provincial Government or GOS | The Government of Sindh. |
| Purchaser | K-Electric Limited or KE. |
| Tariff Table | The tariff table submitted by a Bidder in the form attached as Exhibit 11. |
| RFP | This document and any appendices, attachments to schedules to this document/RFP. |
| Site | The parcel of land for the Project identified in this RFP at Karachi Site 01, Sindh, Pakistan and allocated by Land Utilization Department (LUD), GOS for development and construction of the Complex. |
| Solar Park Fees | Subject to execution of land lease agreement, the Successful Bidder (until such time till the SPV is formed) and following the incorporation of the SPV, the SPV shall make an annual payment |

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| | |
|---|---|
| | amounting to PKR 30,000/acre/year to SSEP which will be inclusive of annual land lease and ancillary charges incurred by the SSEP in respect of the Project. |
| Special Purpose Vehicle (SPV) | A company to be formed by the Successful Bidder for specific purpose of undertaking the Project. |
| Successful Bidder | The meaning ascribed thereto in Section 14. |
| Tariff | <p>a) Before the Tariff Approval, means the tariff bid by the Bidder in its Bid; and</p> <p>b) after the Tariff Approval, means the tariff approved in the Tariff Approval.</p> |
| Tariff Approval | NEPRA’s approval of the Tariff of a Successful Bidder. |
| Tariff Proposal | The proposal submitted by the Bidder in accordance with the requirements outlined in Section 13.5.2 of this RFP and corresponding Exhibits. |
| Technical Proposal | The proposal submitted by the Bidder in accordance with the requirements outlined in Section 13.5.1 of this RFP and corresponding Exhibits. |
| Technically Non-Qualified Bidder | The meaning ascribed thereto in Section 12.1. |
| Technically Qualified Bidder | The meaning ascribed thereto in Section 12.1. |
| Technically Qualified Bid | The meaning ascribed thereto in Section 12.1. |
| Technically Non- Qualified Bid | The meaning ascribed thereto in Section 12.1. |
| Term | The term is twenty-five (25) years from Commercial Operation Date (COD) of the Project as approved by NEPRA and as provided in the EPA. |

3.3 Rules of Interpretation

In this RFP:

- (i) headings are only for convenience, and shall be ignored in construing this RFP;
- (ii) the singular includes the plural and vice versa;
- (iii) capitalized terms used herein and not defined in this RFP bear the meanings as ascribed to them in the EPA, provided, terms defined in this RFP and also defined in the EPA shall, for the purposes of this RFP, bear the meaning given in this RFP;
- (iv) unless the context requires otherwise, references to times and dates are, and shall be construed to

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be, references to Pakistan Standard Time;

- (v) references to clauses, Sections, Proformas and Exhibits are, unless the context otherwise requires, references to clauses, Sections, Proformas and Exhibits to this RFP;
- (vi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision; and
- (vii) the terms “interest” or “markup” is used interchangeably and shall wherever they are used describe or denote the return paid to lenders on debt or profit on debt.

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4 K-Electric Limited

K-Electric Limited ("KE") is a publicly listed utility company and the only vertically integrated power utility, engaged in the Generation, Transmission, and Distribution of electricity in Pakistan.

KE not only produces electricity from its own generation units but has arrangements with external power producers as well. KE's licensed installed capacity including 900 MW of BQPS III is 2,817 MW. Further, KE has arrangements with external power producers for over 1,600 MW which includes supply from various IPPs covering gas, coal and solar technologies, and the National Grid without the backing of a sovereign guarantee or government's implementation agreement. Besides this, KE's transmission system comprises of 1,354 km of transmission lines, 71 grid stations and 179 power transformers. KE operates under the regulatory regime of NEPRA.

For purposes of this Project, KE will be the Purchaser. The Successful Bidder will form an SPV that will enter into an Energy Purchase Agreement (EPA) with KE. By participating in the bidding process, the Bidders are deemed to have signified their acceptance to the terms of the LOI and the EPA, drafts whereof are annexed to this RFP. Except for Project-specific additions or modifications required to be made to the EPA, the EPA will be executed by the Successful Bidder and the Purchaser in the form of the drafts appended as Exhibit 15.

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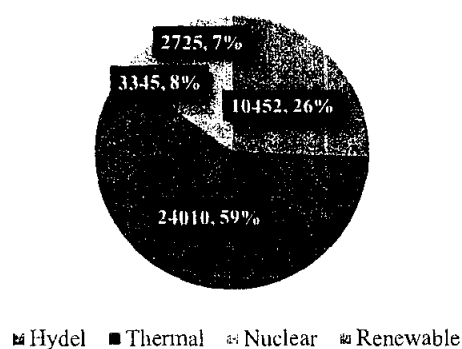
5 The Power Sector in Pakistan

As this competitive auction is being held among the Bidders who have been part of the prequalification process, they are deemed to be familiar with the power sector in Pakistan. Further information about the power sector in Pakistan can be gathered by visiting the websites of NEPRA, K-Electric Limited, NTDC and Ministry of Energy. The Bidders however are required to carry out their own independent due diligence and no representation, warranty or assurance as to the accuracy and sufficiency of such information is made or deemed to be made for the purposes of this RFP.

Pakistan currently has around 43,775 (State of Industry Report 2022) GW of installed capacity for electricity generation. Conventional thermal plants (oil, natural gas, coal) account for 60.95% of Pakistan's capacity, with hydroelectricity making up 24.29%, nuclear 8.27% and renewable (other than small hydro) 6.48%. The total dependable generation capacity of the country, including CPPA-G (national grid system) and KE Systems as on 30-06-2022 was 40,532 MW comprising of 37,858 MW capacity in CPPA-G System and 2,674 MW in KE system. Overall installed capacity of renewable projects as of June 30, 2022 comprises 630 MW solar, 1,838 MW wind and 369 MW Baggage.

Pakistan's reliance on fossil fuels for energy is jeopardising its economic progress and social development. The major reasons for the energy crises are high costs of electricity, unutilized "Take Or Pay" power generation capacity, weak transmission and distribution system, lack of investment in power sector in the past, non-development of renewable energy sector i.e. small hydel, wind and solar etc. and the depleting of oil and gas reserves. It is imperative for Pakistan to look for indigenous /cheap energy resources for sustainable growth through self-reliance.

Dependable Capacity (MW) 2022



6 Solar Power

Solar energy has been highlighted as one of the most feasible alternative energy technologies in Pakistan. Solar energy is widely available in Pakistan, as per the meso scale Solar PV map of the Pakistan, the available Solar PV potential ranges between 1200-2020 KWh/KWhp/yr. Till June 2022, a total of seven utility scale solar PV projects of 530 MW capacity were connected to the national grid and 100 MW utility scale capacity of solar is connected to the KE system. In addition to some more utility scale projects being developed in the pipeline.

In order to facilitate development of solar PV power generation, NEPRA in the past has determined a series of cost plus and upfront tariffs for generation of electricity from solar PV power. Considering that the solar PV industry has seen immense growth in the last years, NEPRA is of the view that it is an opportune time to transition from cost plus and upfront tariffs to a competitive bidding model, in line with the Government of Pakistan's overall aims to promote competition within the power sector for the benefit of consumers.

6.1 Project Background - The Sindh Solar Energy Project (SSEP)

The Sindh Solar Energy Project (SSEP) falls under the overall ambit of development of Renewable Energy projects in the Province of Sindh. The Energy Department, Government of Sindh (SED) received funding from the World Bank in the form of a loan to finance the studies related development to increase solar power generation and access to electricity in the province of Sindh. For the development of solar power in the province of Sindh, SSEP has the following four components and results targets under the current project design:

1. **Component 1:** 400 MW of Utility-Scale Solar to be developed by the private sector under a competitive bidding model;
2. **Component 2:** 20 MW of Distributed Solar on and around public buildings;
3. **Component 3:** Provision of Solar Home Systems to 200,000 households with low access to electricity; and
4. **Component 4:** Capacity Building and Technical Assistance

With regards to (1) above, SSEP will carry out Component 1 by facilitating the construction of 400 MW of utility-scale solar power capacity by private sector developers across multiple sites. The first site under SSEP has been identified in Manjhand District, Jamshoro, Sindh, Pakistan for development of a 50 MW solar PV plant for power offtake by CPPA. The second site under Component 1 - 'Karachi Site 01' has been earmarked in Karachi (District West), Sindh, Pakistan and the third site under Component 1 - 'Karachi Site 02' has been identified in Karachi (District Malir), Sindh, Pakistan for power offtake by KE. This RFP pertains to Karachi Site 01 which has a solar PV potential of approx. 120 MW.

6.2 Salient features of the Project Site

The Project is to be located at latitude of 25.029533°, and longitude of 66.993153° in District West, Karachi, Sindh, Pakistan. The Project site is located at Northern side of the Karachi city in District West near Hazratnabad on Northern Bypass road which is approximately 74.9 km from Port Qasim, Karachi; Pakistan's commercial hub and main port city. The Project site spans across 612 acres of land. The access to the site from Port Qasim will be through the National and Super highway link road then Karachi-Hyderabad M-9 Motorway to Karachi Northern Bypass M10 towards Project site. The major section of the track from Karachi to the site is a multi-lane, relatively flat road.

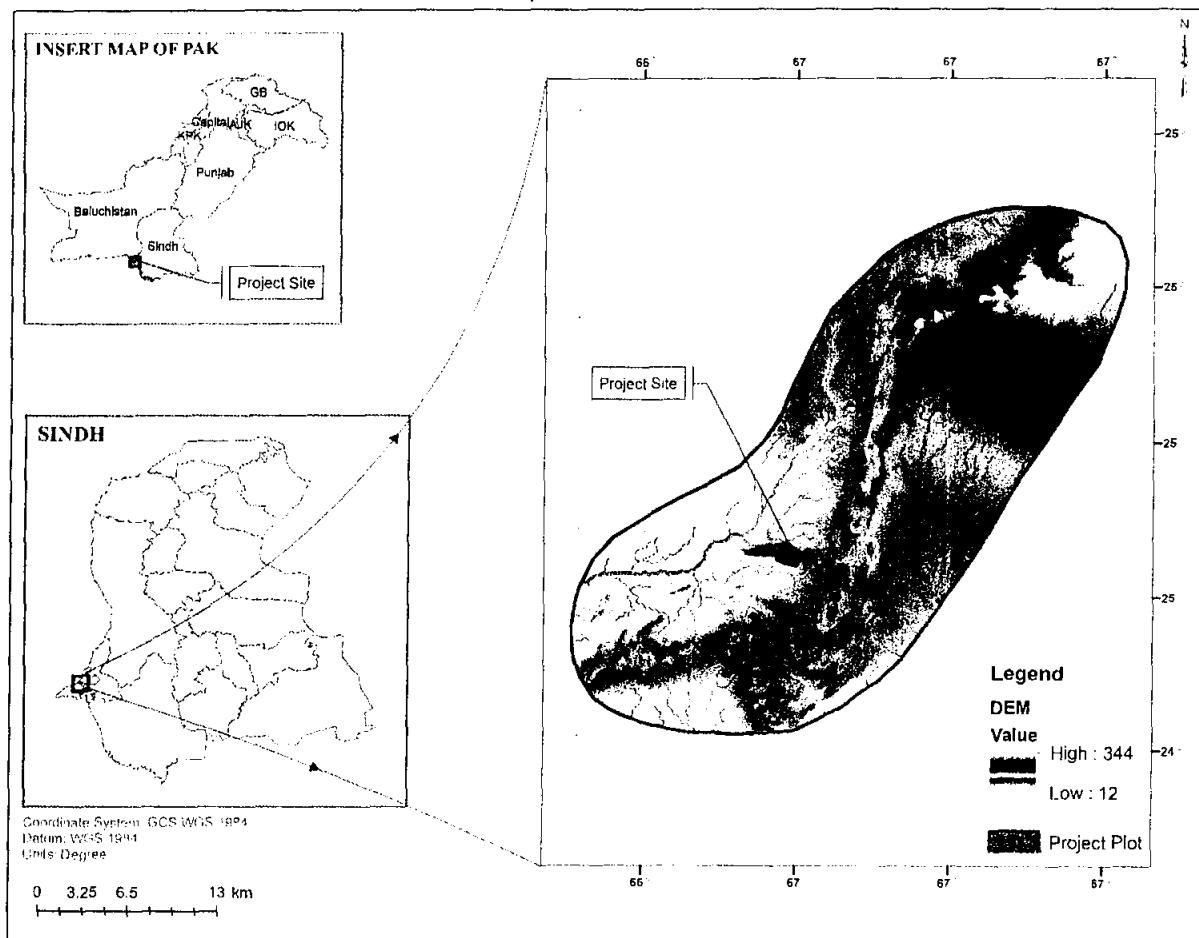
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The Project site surrounded by the small graveyards, chicken cheds, residential area, connecting road, agricultural land, small goths and hills which is covered in the technical study in details and the outcome of the report shall be considered in the construction phase for safety of the installed Structures and performance of the plant. Situated near the coastal line of the Arabian Sea at an altitude of approx. 50m the Site enjoys high levels of irradiation. Point coordinates of the project are given in below table:

| Boundary | Latitude/Longitude | Boundary | Latitude/Longitude | Boundary | Latitude/Longitude |
|-----------|--------------------|-----------|--------------------|-----------|--------------------|
| 1 | 25° 2'5.52"N | 12 | 25° 1'26.83"N | 23 | 25° 1'15.10"N |
| | 66°59'40.34"E | | 67° 0'17.70"E | | 66°59'46.28"E |
| 2 | 25° 1'41.85"N | 13 | 25° 1'18.75"N | 24 | 25° 1'13.21"N |
| | 66°59'23.00"E | | 67° 0'35.75"E | | 67° 0'0.70"E |
| 3 | 25° 1'32.20"N | 14 | 25° 1'25.19"N | 25 | 25° 1'24.17"N |
| | 66°59'57.54"E | | 67° 0'39.43"E | | 67° 0'8.37"E |
| 4 | 25° 1'26.07"N | 15 | 25° 1'59.16"N | 26 | 25° 1'43.64"N |
| | 67° 0'1.12"E | | 66°59'49.57"E | | 66°59'18.65"E |
| 5 | 25° 1'25.51"N | 16 | 25° 1'58.64"N | 27 | 25° 2'6.83"N |
| | 67° 0'8.67"E | | 66°59'49.17"E | | 66°59'36.35"E |
| 6 | 25° 1'32.12"N | 17 | 25° 1'59.39"N | 28 | 25° 1'52.56"N |
| | 67° 0'3.27"E | | 66°59'48.06"E | | 66°58'12.05"E |
| 7 | 25° 1'39.39"N | 18 | 25° 1'59.95"N | 29 | 25° 1'51.54"N |
| | 66°59'50.31"E | | 66°59'48.42"E | | 66°58'12.10"E |
| 8 | 25° 1'44.50"N | 19 | 25° 1'35.66"N | 30 | 25° 1'45.09"N |
| | 66°59'45.92"E | | 66°59'18.32"E | | 66°57'59.74"E |
| 9 | 25° 1'46.51"N | 20 | 25° 1'27.04"N | 31 | 25° 1'41.69"N |
| | 66°59'48.33"E | | 66°59'11.97"E | | 66°57'59.71"E |
| 10 | 25° 1'43.71"N | 21 | 25° 1'17.82"N | 32 | 25° 1'35.14"N |
| | 66°59'57.43"E | | 66°59'32.56"E | | 66°59'12.26"E |
| 11 | 25° 1'30.46"N | 22 | 25° 1'17.29"N | 33 | 25° 1'37.49"N |
| | 67° 0'14.77"E | | 66°59'40.74"E | | 66°59'13.80"E |

Whereas the ground distance between the Site and Port Qasim, Karachi is about 74.9 km. A brief overview of location of site and topography is shown in below image.

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The Project covers an area of 612 acres which is equivalent to 2.47 Square kilometers. The latitudes and longitudes are provided in a table above. The average altitude is 51m above sea level. The satellite map of site is shown above in picture.

6.3 Site Images

The Site is mostly arid with scant vegetation under dry climatic conditions, with savanna being the major vegetation, while the terrain is largely flat with small undulations on the Surface. Many small seasonal streams were observed in the proposed land area which can be redirected in the construction phase for safety of the installed Structures in the area. The overall topography and overview of site can be observed in below graphics.

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Further details of the Site including ambient conditions can be accessed in the Project's Feasibility Study Report.

7 Bidding and Project Development Schedule

| Activity | Calendar Days from Day zero (DO)¹ |
|---|---|
| NEPRA approval of the RFP | DO |
| Issuance of RFP to eligible Bidders (last date for issuance of RFP) | 7 |
| Deadline for emailing questions and seeking RFP clarifications | 30 |
| Pre-Bid meeting(s) | 35 |
| Issuance of clarifications on RFP | 40 |
| Deadline for submission of Bids ² | 70 |
| Opening of Envelope I (Technical) | 71 |
| Evaluation of technical Bids | 100 |
| Announcement of Technically Qualified Bidders | 105 |
| Opening of Envelope II (Financial) of Technically Qualified Bidders and commencement of evaluation of Envelope II (Financial) | 105 |
| Evaluation of Envelope II (Financial) and submission of Auction Evaluation Report to NEPRA pursuant to the NEPP. | 115 |
| Submission of Performance Guarantee by Successful Bidder (post NEPRA's approval of Auction Evaluation Report) | 150 |
| Issuance of LOI by KE to Successful Bidder post submission of Performance Guarantee | 160 |
| Post LOI Activities | Days from LOI Issuance |
| Application to NEPRA by the Successful Bidder for Generation License and Tariff Approval | 07 |
| Approval of Tariff by NEPRA and intimation to GOP for notification. ³ | 68 |
| Execution of other Project Agreements including land lease instrument (from date of LOI) | 180 |
| Financial Close | 180 |
| Commercial Operation Date (from Financial Close) | 300 |

By submitting a Bid, the Bidder is deemed to covenant to adhere to the above bidding and project development schedule (as may be extended by KE pursuant to clause 12(d)).

¹ Where any day on which an activity is to be performed is not a working day, the activity shall be performed on the next working day and the timeframes shall stand modified accordingly.

² In case of any clarifications or corrigenda to the RFP if the need arises, the time taken by NEPRA for approval to be excluded from the stated timeframes. If the corrigenda or clarification is material, KE may announce an extension to the Deadline and the timeframes will stand modified accordingly.

³ Should NEPRA decide to hold a public hearing pursuant to regulation 12(7) of NEPP, the time taken in the hearing and the determination thereon shall stand excluded.

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8 Comments on RFP and Communications

Comments and clarifications on the RFP should be communicated via email before the deadline as stipulated in clause 1 (above) “Deadline for emailing questions and seeking clarifications” in writing electronically.

Contact details are as follows:

Attention : Mr. Qasim Mehmud
Strategic Sourcing Lead – Project Procurement
K-Electric Limited
Address : 1st Floor, Block J Procurement Division, Elander Road Complex, Karachi
Telephone : +92 21 387 09132 (Ext: 9424)
Email : qasim.mehmud@ke.com.pk

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9 Benchmark Tariff on BOOT Basis

NEPRA has determined a Benchmark Tariff of Rs. [●]/kWh for the Project.

9.1 Reverse Auction

The Benchmark Tariff issued by NEPRA for the control period of twenty five (25) years sets the ceiling for the Tariff permitted to be offered by the Bidders. Any Bidder offering a BidTariff equal to or above the Benchmark Tariff will be deemed as financially non-responsive and will be disqualified.

10 Equity Shareholding in the Project

- a) Upon issuance of the LOI the Successful Bidder shall form the SPV.
- b) KE at its sole discretion will participate as a shareholder in the SPV either through its affiliate or its subsidiary, that shall hold up to 49% shareholding in the SPV.
- c) The Successful Bidder shall have management control in the SPV.
- d) The terms and conditions of equity injection will be part of the Shareholders’ Agreement which will be negotiated with the Successful Bidder after completion of the Bidding Process.

11 The Bidding Process

11.1 Who Can Bid

- (a) Any Bidder who (i) meets the eligibility criteria set out in section 11.2, and (ii) pays the prescribed fees, can submit a Bid under this RFP.
- (b) Each Bid must correspond to the installed capacity stipulated in the RFP.

11.2 Eligibility Requirement

- (a) The Bidders must meet the prequalification criteria and fulfill the following eligibility requirements, to the satisfaction of the Auction and Evaluation Committee, in order to be eligible to submit a Bid:
 - (i) The Bidder must not be subject to any insolvency or analogous proceedings nor shall any of its shareholders be subject to any insolvency or analogous proceedings in Pakistan or in any other jurisdiction;
 - (ii) Neither any shareholders of the Bidder nor its contractors or suppliers of equipment shall have the nationality, country of incorporation or domicile from amongst the countries proscribed by Pakistan;
 - (iii) The shareholders of the Bidder must be the same as those stated in its application at the prequalification stage. Should there be any change of shareholders since the submission of prequalification documents and up to the date of submission of the Bid, a valid permission from KE must be provided. Once the Bid is submitted, the initial shareholders and the main sponsors shall not be changed prior to the COD and in accordance with the terms of the EPA, thereafter; and
 - (iv) Any pending litigation by the Bidder or its sponsors/shareholders/directors/consortium members against KE, SSEP, or the GOS must be withdrawn before submission of the Bid.
 - (v) Any Bidder found to be in breach of the foregoing eligibility requirements shall stand disqualified. Should such ineligibility surface at any later stage including after the execution of the EPA, the Project award shall stand cancelled.

12 Bidding Approach

- (a) A single-stage, two-envelope bidding approach will be adopted.
- (b) Bidders are required to meet the Minimum Technical Requirements as provided in the RFP, particularly in clause 17.2 of the RFP.
- (c) KE may declare a bid nonresponsive and reject the same, for reasons to be recorded in writing, if the bid is in material deviation from the Bidding Documents, or the quoted bid price(s) is higher than the Benchmark Tariff, or if the bid does not provide all the necessary information or meet the tariff structure provided in the bidding documents, or does not meet the Knock-off Criteria. Where all the bids have been rejected KE may call for rebidding and prior to doing so, it shall assess the reasons for rejection and may revise the specifications, evaluation criteria and any other conditions for bidders as deemed necessary, subject to approval of NEPRA.
- (d) Notwithstanding any other section of this RFP or any practice or custom of the trade or industry, KE, in its discretion, reserves the complete right to, at any time and from time to time, amend,

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modify, supplement or withdraw, cancel this RFP at any time and to reject any or all of the Bids and/or make no award received without any liability, cost and/or obligation on the part of KE or being under any obligation to inform the affected Bidders of the grounds of rejection/justification for KE's action. At any time KE can reject all proposals and make no award under this RFP. KE is not obliged to proceed to award any contract. KE shall notify the Bidder of the amendment, modification or supplement to the RFP in writing as soon as practicably possible. Any such amendment, modification or supplement to the RFP shall be taken into account by the Bidder. In order to take into account such amendment, modification or supplement in the preparation of the Bids by the Bidders, KE may extend the schedule at its discretion.

- (e) The Bidder shall have the sole responsibility to determine and to satisfy itself by such means as it considers necessary or desirable as to all the matters pertaining to the execution of Project, including the precise location of Project, the weather conditions, the terrain and geological conditions at the Site, availability of resources to be used in Project and all other factors that may affect the cost, duration and execution of Project.
- (f) KE shall assume no responsibility regarding any interpretation made by the Bidder from the information furnished by SSEP including any studies / reports carried out by its consultants.
- (g) No verbal agreement or conversation with any director, officer, employee, representative or agent of KE shall affect or modify any of the terms or obligations of KE and the Bidder contained in this RFP.

12.1 Envelope I – Technical

- (a) In Envelope-I technical information will be submitted along with the Bid Bond and Bid Processing Fee.
- (b) Contents of Envelope-I will be evaluated for the Bid Evaluation Criteria stipulated under Exhibit 16. A Bid satisfying the Bid Evaluation Criteria and not otherwise found to be non-compliant with the other terms of this RFP shall be declared a qualified Bid (Technically Qualified Bid), and the Bidder submitting the Technically Qualified Bid shall be considered a technically qualified bidder (Technically Qualified Bidder). A Bid not satisfying the Bid Evaluation Criteria or otherwise found to be non-compliant with the other terms of this RFP shall be declared a non-qualified bid (Technically Non-Qualified Bid), and the Bidder submitting the Technically Non-Qualified Bid shall be considered a technically non-qualified bidder (Technically Non-Qualified Bidder).
- (c) A Bidder noted as Technically Non-Qualified Bidder and informed accordingly by KE may make a representation before the Auction and Evaluation Committee challenging its technical non-qualification within fifteen (15) days of its declaration as a Technically Non-Qualified Bidder.

12.2 Envelope II – Financial

- (a) Envelope-II of only Technically Qualified Bidders will be opened. The Envelopes-II and Bid Bonds of Technically Non- Qualified Bidders will be returned un-opened.
- (b) Envelope-II shall contain the Tariff bid by the Bidder along with all required information stated in this RFP. Information given in Envelope-II of Technically Qualified Bidders will be evaluated.
- (c) The contents of Envelope-II and the Tariff shall be consistent with the Benchmark Tariff structure.

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The Bidders are required to carefully review the Benchmark Tariff structure and comply therewith, which is a material condition for the validity of the Bids - any Bid which is inconsistent with the tariff structure stated in this RFP shall be deemed non-responsive and shall be rejected.

12.3 Auction and Evaluation Committee

The Auction and Evaluation Committee comprises of the following members:

- (i) two representatives from SSEP consultants (having technical and financial expertise)
- (ii) two representatives from the SSEP team;
- (iii) three representatives of the Purchaser; and
- (iv) two independent representatives, each having relevant technical or financial expertise and meeting the criteria specified under NEPP), where such a person is not an officer of the SED, SSEP, KE or any of its affiliates and does not have a direct or indirect interest, financial or otherwise with the SED, SSEP, KE or any of the qualified bidders in the last three years prior to execution of this RFP.

13 Guidelines for Bid Submission

13.1 Responsibility of the Bidders

- a) The Bidders are advised to carefully note and comply with the requirements of this RFP.
- b) The Bidders are responsible to carry out the necessary due diligence and conduct their own investigations to obtain pertinent information and related data, entirely at Bidders' own risk, costs and consequences. KE, SSEP or GOS does not assume any responsibility for any information provided to the Bidder in connection with this Bid or the Project.
- c) The Bidders shall bear all costs associated with the preparation and submission of their Bids. The KE, SSEP or GOS shall under no circumstance be responsible or liable to reimburse such costs, regardless of the outcome of the bidding or the evaluation process.

13.2 Bid Requirements

- a) The Bid shall be prepared strictly in accordance with this RFP in its entirety. Any conditional Bid will be deemed unresponsive and shall be rejected.
- b) A Bidder may submit only one Bid.
- c) All information pertaining to the Bid must be typed and filled in English language.
- d) Each page of the Bid Letter and its Exhibits as well as each page of the contents of both the envelopes must be numbered, signed and stamped by the Bidder.

13.3 Clarifications on RFP

- a) The Bidder may request clarifications on the RFP by completing the Form of Clarifications to RFP (Exhibit 17).
- b) The Bidder shall make any clarifications requests in writing to the provided email. KE will

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respond in writing to any clarification of this RFP provided that such request is received by KE in writing no later than the timeline for clarifications mentioned in (Section 7 Bidding and Project Development Schedule) above.

- c) KE is, under no obligation to respond to any clarifications received after the clarification deadline mentioned above. KE may also conduct a clarification pre-bid meeting with the Bidders and shall notify each Bidder of the date, time and location for the meetings. The clarification meetings, if required, shall be held in Karachi, Pakistan or online. Bidders shall be responsible for obtaining all visas and necessary travel documents. Any other mode of informal communication will not be permitted during the RFP process and such communication shall be considered invalid.
- d) All clarifications issued by KE will be notified to all the Bidders. Where a clarification request necessitates a material modification to the requirements of this RFP, KE may extend the Deadline for Bid submission subject to NEPRA's approval.

13.4 Pre-Bid Meeting

A pre-Bid meeting will be held to answer the questions of the Bidders as per the tentative schedule provided in Section 7. KE will notify the Bidders of the date, time and location of the pre-Bid meeting.

13.5 Submission of Bid

The Bid consisting of the Technical Proposal and Tariff Proposal shall consist of five hard copies (1 original plus 4 copies) and password protected electronic copies in USB and google drive/one drive, clearly marking the hard copy as "Original".

The paper copy shall be an exact color photocopy of the original and well organized in a bound book or ring binder with separators between each section. The PDF copies shall be exact scans of the paper original. Each PDF copy should be provided on a separate USB drive protectively included in the package, with each folder and file clearly and sequentially numbered and identified to allow for easy navigation. Documents that require signatures shall be hand signed by the authorized representative before conversion to PDF format. The authorized representative of the Bidder who signs the Bid must also initial all pages to avoid any discrepancy.

In the event there is any discrepancy between the original hard copies and electronic copies, the hard copy shall govern. It is the Bidder's responsibility to ensure that the electronic copy aligns with the original hard copy. Any prequalified applicant who submits or participates in more than one Bid will be disqualified.

13.5.1 Technical Proposal

In its Technical Proposal, the Bidder must respond to the requirements stated in the Volume-II of the document.

Technical Proposal should comprise of the following documents:

- a) Bid Letter
- b) Bid Processing Fee

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- c) Confidentiality Agreement
- d) Covenant of Integrity
- e) Affidavit
- f) Power of Attorney
- g) Letter of Acceptance by the Bidder
- h) Bid Bond
- i) Technical Information

The Technical Proposal comprising one paper original, two paper copies, and password protected electronic copies shall be in one sealed envelope labelled "TECHNICAL PROPOSAL", with the Bidder's name clearly displayed.

13.5.2 Tariff Proposal

In its Tariff Proposal the Bidder must respond to the requirements stated in Volume-III of the RFP. Tariff Proposal shall remain sealed until the assessment of the Technical Proposal has been completed.

Tariff Proposal should comprise of the following documents.

- a) Covering Letter
- b) Letter of equity commitment
- c) Tariff Proposal duly signed and sealed.
- d) Financial Exhibits as covered in Section 14.1.

The Tariff Proposal shall be submitted as one paper original, two paper copies and password protected electronic copies in one sealed envelope labelled "TARIFF PROPOSAL", with the Bidder's name clearly displayed.

13.5.3 Proposal Package

The Technical Proposal and Tariff Proposal shall be sealed in separate envelopes. The sealed envelope labelled "TECHNICAL PROPOSAL" and "TARIFF PROPOSAL" shall be placed inside one package. This enclosing package shall be clearly labelled in large, bold lettering as follows:

K-ELECTRIC REQUEST FOR PROPOSAL

120 MW Solar Power Project at Karachi Site 01

[Bidder's Name]

CONFIDENTIAL

**DO NOT OPEN EXCEPT IN PRESENCE OF THE AUCTION AND EVALUATION
COMMITTEE**

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Note: KE does not bear any responsibility for the premature opening or mishandling of the Bid that are not submitted in accordance with the procedure set out in this RFP.

13.6 Deadline for Receipt of Bids

Bid must be delivered as stipulated above on or before [•] hours PKT on [•] (the Deadline). Any Bid received after the Deadline shall not be entertained, (even if dispatched before the Deadline).

13.7 Submission and Validity of Bid

The Bid shall remain valid, and open for acceptance by KE for a period of not less than one hundred and eighty (180) days from the Deadline for receipt of Bids (as may be extended pursuant to the terms of this RFP). Any Bid stated to be valid for a shorter period than the Bid Validity Period will be deemed non-responsive and shall be rejected by KE.

The proposal should be submitted by courier or hand delivery to the following KE representative:

Mr. Qasim Mehmud
Strategic Sourcing Lead – Project Procurement
K-Electric Limited
1st Floor, Block J Procurement Division, Elander Road Complex,
Karachi, Pakistan
+ 92 21 387 09132 (Ext: 9424)

13.8 Basis for disqualification

The pre-qualified Bidders are eligible to participate in this process, however a Bid may be disqualified by the Auction and Evaluation Committee subject to following:

- a) after the submission of the Application by the Applicant, if queries are raised by the KE via email and the Applicant is non-responsive for 5 business days.
- b) if the Bidder is currently in willful default of its obligations to any bank or financial institution.
- c) failure of the Bidder to disclose and/or provide any additional information as may be required during the bid evaluation process.
- d) failure to report promptly to KE any material change; in the circumstances of the Bidder affecting its eligibility to submit the Bid or to implement the Project following submission of the Bid;
- e) failure to report to KE any information that at the relevant time or with the passage of time results in or is likely to result in any information provided in the Bid or any documents submitted therewith ceasing to remain accurate or becoming misleading; or
- f) failure to comply with the requirements of this RFP including, without limitation, failure to submit documents and information consistent and compliant with the requirements of this RFP or failure to commit to the required bidding and project development schedule provided in this RFP.
- g) The information submitted materially deviates from the requirements and criteria defined in the RFP or is false, misleading, or materially inaccurate. In this case the Applicant maybe blacklisted for future work with KE without any notice and liabilities on part of KE.

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- h) Notwithstanding anything in this section, K-Electric reserves the right to disqualify any Bidder if K-Electric determines, in its sole judgement, that the Bidder is technically and/or financially or otherwise incapable of executing the Project(s) and/or the Tariff Proposal does not meet or reflect the requirements of the RFP. However, such decision shall be made in compliance of the applicable clauses (if any) under the NEPP.

14 Selection of Successful Bidder for the Project

Once the Bids are technically evaluated, the Tariff Proposal of only the technically qualified Bidders will be opened. The Tariff Proposal and its evaluation will be done considering following points;

- a) While bidding for the Project, the Bidder shall be submitting the Bid tariff of each year for the whole tariff control period (i.e., 25 years) along with the levelized tariff — calculated at the NEPRA provided discount rate and exchange rate in the RFP approval
- b) For the purpose of financial evaluation, the bidder offering the lowest levelized tariff will be selected as the Successful Bidder.
- c) It must be noted that Bidders are allowed to structure the tariff in a way that they can service the debt during the period which is lesser than the tariff control period and can accordingly front-load the debt servicing component in the Bid Tariff.
- d) Further, subject to approval of NEPRA, the Bid Tariff submitted by the selected Bidder shall be allowed adjustment with respect to change in exchange rates during the construction period at the time of the COD of the Project.
- e) The Auction and Evaluation Committee will conduct the Bid Evaluation and prepare the Auction Evaluation Report which will be submitted by KE to NEPRA for its approval. Upon NEPRA's approval, KE will request the Successful Bidder to submit the Performance Guarantees and will issue the Letter of Intent (LOI) to the Successful Bidder in the form set out at Exhibit 14 after submission of Performance Guarantees. KE shall simultaneously publish the notification of the Successful Bidder on its website.
- f) In the event that any of the Successful Bidder defaults in fulfilling its obligations under this RFP, the NEPRA's regulatory framework or LOI, or withdraws its Bid pursuant to clause 4.4(i) of this Section, KE may replace such Bidder with the next lowest Bidder, whose financial Bid (Envelope II) was compliant with this RFP and was duly evaluated by KE.
- g) The Successful Bidder will be issued the LOI for the Project against the Performance Guarantee and its Bid Bond shall be released. The validity of the LOI will be one (1) year from its issuance. The terms of the LOI shall govern the processing of the Project and the obligations of the Successful Bidder until Financial Closing.
- h) The Successful Bidder will be required to file an application for approval of their respective Tariffs to NEPRA within the timeframe specified in project development schedule in Section 7.
- i) The Successful Bidder must follow NEPRA's regulatory framework and pay all fees stipulated therein for award of the Generation License and their respective tariffs.
- j) No Bidder may withdraw or revoke its Bid during the Bid Validity Period. In case a Bidder defaults at any stage or does not comply with the requirements of this RFP within the respective timeframes, KE shall encash the Bid Bond of such Bidder.
- k) The Bid Bonds of unsuccessful Bidders will be returned upon the issuance of LOI by KE to the Successful Bidder.

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- l) The Successful Bidder will be required to obtain the approval of the IEE/EIA from the relevant Environmental Protection Agency.

14.1 Basis for Rejection of Bids

- (a) Without prejudice to the other provisions of this RFP, the following may be the basis for rejection of a Bid by KE in its sole discretion at any stage of the bidding process:
 - (i) any Bid which is higher than Benchmark Tariff provided by NEPRA for this Project;
 - (ii) any Bid which is conditional or which contains or necessitates material deviation from the requirements of this RFP or the drafts of the LOI and the EPA appended with this RFP;
 - (iii) collusion, failure to disclose conflict of interest, fraud, misrepresentation, withholding or concealment of information in the Bid;
 - (iv) failure of the Bidder to disclose or provide any additional information as may be required by KE during the evaluation process;
 - (v) if the Bidder is currently in willful default of its obligations to any bank or financial institution;
 - (vi) if, subject to NEPP, KE determines in its discretion that the Bidder is prohibited from doing business with the GOP, GOS, SSEP or KE on grounds which may include but are not limited to public policy or national interest;
 - (vii) failure to report promptly to KE any material changes in the circumstances of the Bidder affecting its eligibility to submit the Bid or to perform the Bid and implement the Project following submission of the Bid;
 - (viii) failure to report to KE any information that at the relevant time or with the passage of time results in or is likely to result in any information provided in the Bid or any documents submitted therewith ceasing to remain accurate or becoming misleading;
 - (ix) failure to comply with the requirements of this RFP including, without limitation, failure to submit documents and information consistent and compliant with the requirements of this RFP or failure to commit to the required bidding and project development schedule provided in Section 7; or
 - (x) any discrepancy between the Bid Tariff and Exhibit 11 provided or delivered by the Bidder along with the financial Bid.

15 Applicable Law and Dispute Procedure

- a) The bidding procedure, the RFP and all related documentation are exclusively governed by the laws of Pakistan.
- b) Any complaints regarding compliance with RFP or NEPP shall be referred to NEPRA for decision.
- c) Any dispute between the parties involved with the RFP and the bidding procedure shall be submitted exclusively to the courts of Karachi, Pakistan

16 Confidentiality

- a) All information supplied to the Bidder by KE and all information which the Bidder provides to KE or will provide as part of the award procedure shall be kept confidential and the Bidder shall not communicate this information to any third parties. The Bidder shall not publish or allow third parties to be informed about the terms and conditions of this RFP, any Bid and/or any information related thereto.
- b) The Bidder shall not make or release any announcements or issue or release any publications, notifications, or correspondence (whether to the media, public or otherwise) regarding its participation in the Project, the award procedure, or this RFP, unless a Bidder has obtained the prior written consent of KE (at KE's absolute discretion).
- c) Bidders may communicate the aforementioned information to their employees and advisors and consultants on a need-to-know basis if their involvement in the award procedure is required, provided that the Bidder procures that such third parties are subject to an equally onerous obligation of confidentiality as set out in this RFP.
- d) This obligation of confidentiality is not applicable if the information is already available to the general public. This obligation of confidentiality is not applicable when expressly permitted by the RFP or when expressly allowed by RFP. If the Bidder is required by applicable laws, or a court or tribunal of competent jurisdiction, or by applicable regulatory requirements, to disclose the information to third parties, for example, on the basis of a legal obligation or within the framework of legal proceedings, the Bidder must (1) notify KE, and (2) limit the information that is provided to third parties as much as possible.

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Volume-II: Project Technical Requirements

17 Technical Bid (Envelope I)

17.1 Technical Information Pack and Minimum Technical Requirements

- a) Prior to submission of the Bid, the Bidders are expected to have thoroughly reviewed the Feasibility Study Report along with its Annexures, which have been appended to this RFP document in the Technical Information Pack (TIP). However, KE, SSEP or GOS bears no responsibility for the accuracy or completeness of information in the TIP and it is the Bidders responsibility to verify facts and numbers contained therein and conduct their own independent analysis as necessary for arriving at the Bid Tariff.

| Sr. No | Annexures to FSR | Annexure |
|---------------|--|-----------------|
| 1. | Transportation and Access Study | I |
| 2. | Topographic Survey Map | II |
| 3. | Solar Resource and Energy Yield Assessment | III |
| 4. | Geotechnical investigation and earth resistivity study | IV |
| 5. | Flood risk assessment report | V |
| 6. | Initial Environment Examination | VI |
| 7. | Equipment Datasheets | VII |

- b) The offered plant and equipment should be compatible with the Purchaser's system and the Grid Code. Minimum Technical requirements as provided in 17.2 of the RFP in addition to the following, must be complied with:
- (i) Compatibility of the Complex and equipment with technical standards of Grid Code (Power factor, voltage variation, operating frequency range etc.), Distribution Code and other applicable documents etc., at the interconnection point
 - (ii) Energy yield to be greater than 21.5%
 - (iii) The performance parameters of the Complex, including the operating frequency range, shall be in conformity with the Grid Code.
 - (iv) The solar PV panels and inverters shall be designed, manufactured and tested in accordance with the latest International Electrotechnical Commission (IEC) standards. The specific model of solar PV panels and invertors shall be "Type Certified" issued for a design life of [25 years] on latest IEC standards by an international certification body duly accredited by the International Laboratory Accreditation Corporation. If the type certification is in process by the Deadline, then a written commitment from the original equipment manufacturer shall be provided confirming that the Type Certificate shall be available before the Financial Closing at the sole risk of the Bidder. By delivering the aforesaid written commitment, the Bidder is deemed to have undertaken that its Bid or the Project awarded to it will stand disqualified if the requisite Type Certificate is not available prior to Financial Closing.
 - (v) If Type Certificates are not issued for a design life beyond twenty five (25) years, the Bidders will provide certificates from (1) the original equipment manufacturer of the

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solar PV panels and inverters, (2) the EPC contractor⁴, and (3) itself, certifying that the plant as a whole will have a design life of twenty five (25) years from the Commercial Operations Date.

- (vi) The Complex shall be connected with the grid system at 220 kV voltage level and shall be capable of operating within the range specified in the Grid Code on the 220 kV high voltage system which range shall not be exceeded.
- (b) The Bids should clearly indicate the details including the type of units, make and model of the solar PV panels, inverters and other major items of plant and equipment to be installed in the Complex.
- (c) The verification of the new equipment and overall compliance with RFP requirements will be done by the independent engineer at the time of the commissioning of the Complex.
- (d) The Project should achieve Commercial Operations Date within 300 days after Financial Closing.

17.2 Minimum Technical Requirements

(Capitalized terms used but not defined in this Section shall bear the meaning defined in the drafts or Energy Purchase Agreement provided at Exhibit 15 of the RFP)

17.2.1 Design and Construction Prerequisites

17.2.1.1 Site Conditions

The Bidder shall accept the risk of encountering adverse ground conditions or environmental conditions at the Site and shall be responsible for commissioning and undertaking any further investigations and analysis of the area as he considers may be necessary for the execution of the design and construction work. The design shall be suitable for the ground conditions at the Site and the design life of the solar farm, and the environmental conditions at the Site which may be encountered over the design life of the solar farm. The initial information relating to the Site is provided in feasibility documents such as topographic survey, geotechnical investigations and environmental studies. Bidders are required to make themselves fully aware of the local conditions and laws applicable in those areas.

17.2.1.2 Engineering Studies, Surveys and Investigations

As part of Bidder's package, several engineering studies are provided to Bidders. This package includes topographic study, geotechnical study, Grid Interconnection Study, solar resource assessment, and flood risk assessment. The output of these studies shall be considered as requirement for the Project. The transportation is possible by National Highway N-55 and M-9 Motorway from Karachi to the Site. The nearest port for receiving the shipments and machinery related to project construction and execution is Port Bin Qasim in Karachi.

17.2.1.3 Preparatory Site Activities

The levelling of Site shall be performed, if required. The Bidder will be responsible to provide lay-down areas for the purposes of executing the works. This includes the upgrading of the road to the Site from the public highway to a suitable standard for the purpose of executing the works. The TSF and temporary offices may be constructed depending on the requirement of bidders.

17.2.1.4 Facility Performance

⁴ Bidders may undertake the Project development under self-EPC mode which will be evaluated as per the criteria provided in the RFP.

| |
|--|
| Technical Lifetime |
| <p>The works within the solar farm shall be designed for a minimum operating life of 25 years and shall be suitable for outdoor operation in an exposed area. When designing for the required life, the Bidder shall take account of the site environmental conditions and the need for a high standard of durability and serviceability with the requirements for minimum maintenance. In all cases equipment shall be selected upon the basis of proven designs.</p> |
| Operations & Maintenance (O&M) |
| <p>The Bidder will be responsible for the O&M of the entire Complex, scope of which includes:</p> <ul style="list-style-type: none"> (i) Module cleaning, module connection integrity, junction boxes/combiners inspection, thermographic detection of faults, inverter servicing, mechanical integrity of mounting structure, vegetation control, routine balance of plant servicing/inspection, cable connection tightening/replacement of blown fuses, lightening damage repair, mounting structure/tracking system fault repair, optimized loss due to soiling, additional points for automated cleaning mechanism provision, rectifying SCADA faults. (ii) The Bidder will be responsible to claim any warranties or replacements that will arise during the life of the plant. (iii) The Bidder will have to ensure operations to maintain the proposed availability and capacity factor. (iv) Array inspection and cleaning to maintain the required performance target, inspection of the inverter and rectification of faults to ensure plant availability. (v) Plant availability and performance criteria of O&M operator must be competitive according to the current project scenarios in the premises and approved by the governing bodies. |
| Telecommunication and SCADA |
| <ul style="list-style-type: none"> (vi) SCADA, telecommunication and tele-protection equipment of the Complex side are mandatory and will be covered in the Project cost. Non-compliance to such provision would lead to disqualification. (vii) Specifications of the equipment will be finalized with the consent of KE. Two channels shall be established till load dispatch center for data transfer to SCADA system. All telecom links shall be capable of transmitting speech, telephone signaling, data and tele-protection signals. (viii) Each transmission line will have dedicated protection relays. Bus-bar protection and step-up transformer protection will be as per Complex design. (ix) Telco/Tele protection and SCADA system for visibility of the plant in K-Electric's LDC Control room as per the specs/details provided by K-Electric. |

Health, Safety and Social/Environment

The Bidder shall comply with Environment and Social Management Plan (ESMP) and World Bank EHS requirements necessary for implementation of renewable energy projects. The purpose of the ESMP is to consider and develop adequate measures and controls to minimize and mitigate the potential environmental and social risks and impacts identified during the project implementation. EHS guidelines and practices will take precedence in all the decisions and activities performed during construction and operation of plant. The Bidder shall make sure:

- (x) To minimize health and safety hazards to our stakeholders and all others influenced by our activities.
- (xi) To propose an environmental and social monitoring plan to ensure that mitigation measures are implemented during the sub-project execution and timely corrective actions are taken where required.
- (xii) To ensure compliance with all applicable occupational health safety and environment regulations and other requirements.
- (xiii) To integrate health, safety and environment procedures and best practices into every operational activity.
- (xiv) To encourage employees in maintaining a safe and healthy work place through periodic reviews of operational procedures and safe method of work.
- (xv) To carry out periodic social and environmental monitoring and ensure compliances and reporting non-compliances in accordance with this ESMP.
- (xvi) To develop a safety culture through active leadership.
- (xvii) The availability of resources to fully implement health and safety policy of the company.

The relevant laws and standards from Provincial and Federal authorities are listed below:

- (xviii) Environment, Health, and Safety (EHS) Guidelines prepared by International Finance Corporation and World Bank in 2007.
- (xix) Pakistan Environmental Protection Act 1997 (PEPA 1997).
- (xx) Sindh Environmental Protection Agency Act (SEPA 2014).
- (xxi) Environmental & Social Management Plant (ESMP) for 50 MW SSP in Manjhand (as provided in this concession package).
- (xxii) NOC dated 1st April 2019 provided by Sindh Environmental Protection Agency, Government of Sindh for the Project (as provided in this concession package)
- (xxiii) The environmental factors including water consumption, waste water treatment, waste disposal, noise emissions, chemical handling etc. shall be as per the above-mentioned laws and standards.
- (xxiv) The Bidder shall demonstrate a corporate commitment to safety, proven solutions, safe working practices and culture, training and supervision.

- | | |
|--------|---|
| (xxv) | Solar PV power plants represent a large financial investment. The PV modules are not only valuable, but also portable. There have been many instances of module theft and also theft of copper cabling. Security solutions are required to reduce the risk of theft and tampering. These security systems will need to satisfy the insurance provider requirements. |
| (xxvi) | Bidders must ensure adequate fencing and surveillance to ensure security of the Complex as per the Site condition/requirement. Security systems installation, lighting, security cameras, microwave sensors for security purpose shall also be preferred. |

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|---------------------------------------|
| Factory Acceptance Tests (FAT) |
|---------------------------------------|

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| The objective of FAT shall be solely to witness and verify that the manufactured equipment is according to the design duly approved by the Purchaser. |
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17.2.1.5 General

The Bidder shall be handed over the required land and the Bidder shall deliver up and running plant, including but not limited to, all equipment for generation, measuring, delivery to customer, protection schemes, weather monitoring and forecasting equipment, local on-site and remote control systems for substation(s), raw and potable water, appropriate sewerage arrangements, water for panel washing, plant buildings including store building, workshop building, admin building, offices with requisite furniture/fixtures, appropriate residential buildings for operating and maintenance team, master control room equipped with a monitoring host with tables and chairs, plant boundary walls, security check posts, watch towers, street lights, CCTV systems, plant roads etc.

It is added for the avoidance of doubt if anything is missing in the above scope of work which is necessary for plant operations it shall be provided by the Bidder as part of scope of work based on designing.

17.2.1.6 Services

- (a) The Complex shall be capable of operating in accordance with the guidelines of this RFP as well as subsequent contractual documents entered into between the Bidder and the Purchaser.
- (b) The Bidder shall design and construct the Complex in accordance with the contractual documents and this scope of work and specifications.
- (c) The Complex shall include, but not be limited to perimeter fences, PV modules, structural support systems, module string DC wiring harnesses, DC combiner boxes, inverters, inverter step-up transformers, SCADA system, and ancillary hardware required to connect and operate listed equipment.
- (d) The Bidder shall prepare and submit to the Purchaser Complex design engineering and drawing packages for construction permitting, installation and "as-built" documentation.
- (e) The Bidder shall ensure Complex construction including all site/civil work, structural, electrical, mechanical and monitoring/control systems.
- (f) The Bidder shall ensure Complex and construction management, including quality assurance/quality control, Site safety, site material control and management of all subcontractors.

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- (g) The Bidder shall ensure Complex commissioning and testing in accordance with the agreement.
- (h) The Bidder shall ensure the training and Complex sequence of operations; installation and maintenance documentation.
- (i) The Bidder shall be responsible for obtaining and providing, all permits necessary to support construction and Complex installation.
- (j) The Bidder shall be responsible for connection of the Complex to electrical interface provided by the Purchaser.
- (k) If necessary, the Bidder shall be responsible for establishing and maintaining all restroom, lunchroom and other office and meeting areas for the duration of the construction and commissioning portion of the Complex.
- (l) The Bidder shall provide temporary sanitary facilities with location. Bidder shall be responsible for decommissioning these temporary sanitary facilities at the termination of construction.
- (m) The Bidder shall maintain on-site dumpsters and personnel to maintain a clean and rubbish free work site.
- (n) The Bidder shall be responsible for permitting, installation and removal of all equipment necessary to satisfy water requirements for dust control purposes. Temporary water storage facilities, if used, shall be removed and the area returned to existing grades and surfacing.
- (o) The Bidder shall be responsible for Site security throughout construction duration.
- (p) The Bidder shall provide traffic management as necessary to ensure the safe entry to and exit from public roads for all vehicles and equipment.

17.2.1.7 Preliminary Studies

a) Solar Resource

Energy yield assessment has already been conducted for the Site and is part of the FSR. Bidder to conduct their own energy yield assessment and shall submit the same along with their Bid.

b) Geo Technical Investigations

The geo-technical investigations have already been conducted for the Site and is part of the feasibility study. Bidder may rely on it as first information or may conduct its own investigations if deemed necessary at its own expense.

c) Flood Risk Assessment

The flood risk investigations are already conducted for the Site and is a part of Bidder's package. Bidder may rely on it as first information or may conduct its own investigation if deemed necessary at its own expense.

d) Grid Connection

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The Grid Interconnection Study will be part of Bidder's package.

e) Accessibility

Transportation and accessibility are part of feasibility package. Bidder may rely on it as first information or may conduct its own investigation if deemed necessary at its own expense.

f) Consents

The Bidder shall obtain and maintain in effect all Consents pertaining to the performance of its obligations hereunder, including, but not limited to:

- (i) all licenses/registrations to permit the Contractor to do business in Pakistan (where the Works are to be performed).
- (ii) all permits to export any item required in connection with the Works to or from any country and including any permit required for the exchange or international movement of currency or funds in any other form, except for payment(s) under the Contract.
- (iii) any permits required by any building regulations.
- (iv) any permits required by any fire regulations.
- (v) any permits required in connection with disposal and/or transportation of any waste materials or products.
- (vi) any permits required in connection with transportation of unusual or abnormal loads.
- (vii) all other consents required by a relevant authority outside of Pakistan (as applicable).

The lists of applicable consents are given below. They shall be required from time to time depending on the need from relevant authority:

- Engineering permit;
- Generation License;
- Security patrolling around Site;
- Arms license;
- Transportation of heavy equipment;
- Explosive materials;
- Electrical connection application;
- Interconnection and synchronization with National Grid;
- Import/ re-export of equipment;
- Import of equipment;
- Work visa;
- Environment permits;
- Wireless license;
- Consents under Electricity Act 1910;

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- License pursuant to Petroleum Rules 1937 to store petroleum products;
- Waste disposal; and
- Stability certificate under Factories Act 1935.

g) Standard Unit of Measurement

Metric units of measurement (SI) shall be used with the only exception being pressures, which may be expressed in Pascal or bar/millibar as appropriate.

h) Standard on Documentation

- (i) All drawings and documents must be in English and prepared in accordance with the IEC/ISO standards.
- (ii) All layout, detail, general arrangement, sketches, schematics, process drawings, documentation and manuals shall be available.
- (iii) A General arrangement drawing is normally a one-page high level drawing showing the layout of major components which makeup the main subject of the drawing. It may also highlight the main design feature, component numbers, names and main dimensions.
- (iv) A detailed arrangement drawing would show the layout of all components spanning over more than one drawing. A detailed arrangement drawing may contain main dimensions of each component and an exploded view of assembled parts.
- (v) The Bidder is required to implement and update a program of the works, and to regularly report on the actual progress.
- (vi) The requirements for certification to evidence the successful completion of the testing required during the completion of the works.
- (vii) The Bidder shall ensure availability of Project construction program, monthly progress reports, method statements, Quality Inspection Plan (QIP), quality audit reports, testing and commissioning program, all relevant performance and availability tests and others as deemed necessary. All commissioning & testing schedules / programs / method statements shall be submitted to the Purchaser minimum 6 weeks before start of the respective activity.
- (viii) The Bidder shall ensure implementation and documentation of health and safety plan which shall include method statements, risk assessments, drawings, plans, manuals in the scope of Works in accordance with regulations.
- (ix) The Bidder shall ensure availability of O&M manuals, preventive maintenance schedules, and spare parts list necessary for operation of plant.

17.2.1.8 Construction

a) Site Preparation

Bidder shall be responsible for all site preparation including any demolition, soil stabilization, grading, drainage, flood management, roadways and temporary parking areas.

b) Civil

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The scope shall include but not be limited to the following:

- (i) Design and prepare the construction plans, final design reports and Project specifications for the civil site work, including the storm water drainage, grading, roads, temporary construction facilities, etc.
- (ii) Obtain all necessary permitting associated with civil site work construction such as grading permits, haul permits, dust permits, storm water pollution prevention plans, etc., in compliance with local jurisdictional requirements and other jurisdictional government agencies as may pertain.
- (iii) Construction of all civil site work (if determined required), including the storm water drainage infrastructure, earth grading, roads, security fencing, etc., unless otherwise noted.
- (iv) Construction of any temporary civil site work such as temporary security fencing, temporary construction roads, etc.
- (v) If necessary, perform the geotechnical evaluations for the civil site work.
- (vi) Perform all construction surveys.
- (vii) Prepare as-built record drawings.

c) Erection and Installation

The Bidder shall ensure safe and acceptable installation of mounting structures, PV modules, junction boxes and other electrical equipment including transformers, sub-station equipment, gantries as per the relevant standards.

d) Commissioning

The commissioning process provides a quality-oriented methodology for verifying and documenting the design, construction, functionality and performance of the Project. The commissioning process shall ensure that all system components perform interactively to meet the defined systems' objective and criteria of and requirements of Purchaser.

e) Performance Tests

The performance tests shall be conducted at each equipment level as well as at Complex level. These tests shall meet the criteria listed in Energy Purchase Agreement. Additional tests may be conducted to verify the performance of equipment individually.

17.2.1.9 Equipment

The equipment/ plant will generally include the following:

- a) PV modules with a capacity of 120MWp, with agreed loss ratio, or higher if loss ratio is higher;
- b) Inverters (string or central type);
- c) All structures/nuts/bolts/clips etc. to install panels;
- d) Cables/wires/joints of various sizes;
- e) Junction boxes/combiner boxes;
- f) AC circuit breakers/DC circuit breakers;

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- g) LV/MV transformers according to EPC contractor's approved design;
- h) MV/220kV main transformers according to EPC contractor's approved design;
- i) 220kV substation including connection to the grid;
- j) Energy metering systems;
- k) Online monitoring devices / data loggers for remote sensing and monitoring (hybrid forecasting model);
- l) Reactive power compensation;
- m) Miscellaneous structures and buildings;
- n) Boundary wall;
- o) Meteorological station;
- p) Security cameras;
- q) Internet access devices;
- r) Cable trenches;
- s) Access road and internal roads in the plant area and residential area;
- t) Spare parts;
- u) As-built drawings and operating manuals; and
- v) Training.

17.2.1.10 Design Requirements

a) Civil Design Criteria

(i) Standards and Codes

The design of the civil infrastructure works shall comply with all current Pakistani/international regulations, and international/Pakistani design codes and standards. The Contractor shall be responsible for compliance with the provisions of any order or regulation that may apply to the temporary and permanent buildings erected on the Site.

(ii) Main Design Criteria

All buildings and module mounting structures installed at project shall have a design life of 25 years. International standards shall be adopted while designing the equipment, plant, and civil structures of Complex. The appearance of the substation building, and the type and color of materials used to build the substation shall comply with the requirements of the appropriate authority before construction commences. The layout of the building shall be reviewed and approved prior to construction.

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The architectural layout of substation shall be according to the requirements of the Purchaser and the provisions of the EPA. The substation shall consist of:

- a) High and medium voltage switchgear room(s);
- b) Low voltage switchgear room;
- c) SCADA room or control room. Panels for HV control protection. Substation remote control panels and CCTV and Human Machine Interface shall be housed in the control room. The control room shall be in accordance with the requirements of the Purchaser and the provisions of the EPA and shall not be less than 150 m²;
- d) Telecommunication room;
- e) Battery room;
- f) Metering room;
- g) Three offices;
- h) Meeting room;
- i) LV/DC panel room;
- j) Kitchenette;
- k) Toilets and washroom facilities sufficient for the proposed operational personnel;
- l) Storage area of a minimum of 100m² for the storage of spare parts, this shall contain:
 - o Racking for the storage of small parts;
 - o Bunded area for the storage of oils and chemicals;
 - o Climate controlled area for parts that require specialized storage conditions;
- m) Rooms shall be fitted with the following as appropriate:
 - o Power and lighting (including a minimum of two 240V and two 110V standard power sockets above that specified for other equipment within this document);
 - o Suspended ceiling (for control room only);
 - o Emergency lighting;
 - o Fire detection and alarm system in accordance with BS 5839 (or equivalent international European or Pakistan Standard) for displaying in control room;
 - o Space cooling systems for living spaces and equipment rooms, as necessary for environmental conditions and consistent with good local practice for occasional day accommodation and electrical equipment rooms;
 - o Ventilation designed to avoid rainwater or sand ingress;
 - o Durable floor covering;
 - o Phone sockets as required (control room, and office space);
 - o Network sockets as required (control room and office space); and

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- Two externals portable 110V power adaptors.

The Complex shall have buildings for accommodation, offices, control room, workshop, warehouse, auxiliary building and any other requirement for smooth operation of the plant. Civil design of plant must have provision for flood water outlet. All civil works associated with the provision of temporary and permanent access roads on the site with suitable drainage arrangements. Feasibility Study Report will provide further detailed analysis of flooding at Site.

Bidder shall provide all civil works associated with watch towers. Bidder shall also consider the topography while designing to cater the shading impact.

b) Electrical Design

(i) PV Module

Panels considered for the Project shall be produced by Tier 1 manufacturer as determined by BNEF, which shall be certified and listed with third party insurance company providing worldwide coverage such as SolarIF, PowerGuard etc. or equivalent. The module manufacturer shall have fully automated production cycle, and reduced sources of variation in production. Manufacturer shall have their own in-house solar cell and solar panel manufacturer facility. However, the solar panel shall meet the requirement set in IEC 61215:2016, IEC 61730-1:2004 or latest and IEC 61730-2:2004 or latest, IEC 61701(latest), / international standards. The additional specifications for the PV module are also given below.

- a) The PV modules must be PID compliant, salt, mist and ammonia resistant and shall withstand weather conditions for the project life cycle.
- b) The PV modules must qualify (enclose test reports/certificates from IEC/NABL accredited laboratory) as per relevant IEC standard. The performance of PV modules at STC conditions must be tested and approved by one of the IEC/NABL accredited testing laboratories.
- c) PV modules shall be poly/mono crystalline high efficiency (minimum 20%) with 3% or more positive power tolerance.
- d) PV modules used in solar power plant/ systems must be warranted for 10 years for their material, manufacturing defects, workmanship. The output peak watt capacity which shall not be less than 90% at the end of 10 years and 80% at the end of 25 years.
- e) Flash test reports from manufacturer for each panel given for sample.
- f) The modules must be framed in such a way as to allow secure connection to the module mounting structure.
- g) The PV system shall be grounded against atmospheric discharges, static and lightning etc.
- h) The PV module have an ability to work well with high-voltage input Inverters/ charge controllers.
- i) The terminal box on the module shall have a provision for opening for replacing the cable, if required and it shall be waterproof.
- j) Each PV module used in any solar power project must have a durable permanent identification tag, which must contain market standard information for PV modules.

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All information regarding solar panel with above mentioned featured data shall be accessible and verifiable online on manufacturer website or verifiable in writing from manufacturer through fast-track courier.

The PV modules shall have a product warranty of minimum 25 years counting from the Commercial Operation Date.

(ii) Power Inverters

Bidders are allowed to use string inverters or central inverters based on their own Complex design to achieve low LCOE within the boundaries mentioned in the technical specifications. The DC power produced is fed to inverter for conversion into AC. In a grid interactive system AC power shall be fed to the grid at three phase AC bus. Inverter shall supervise the grid condition continuously and in the event of grid failure (or) under voltage (or) over voltage. Other important features/protections required in the inverter are:

- a) Grid voltage shall also be continuously monitored and in the event of voltage going below a pre-set value and above a pre-set value, the solar system shall be disconnected from the grid within the set time. Both over voltage and under voltage relays shall have adjustable voltage (50% to 130%) and time settings (0 to 5 seconds).
- b) The inverter control unit shall be so designed so as to operate the PV system near its maximum Power Point (MPP), the operating point where the combined values of the current and voltage of the solar modules result in a maximum power output.
- c) The inverter shall be a true sine wave for a grid interactive PV system.
- d) The degree of protection of the outdoor inverter panel shall be at least IP-65.
- e) Inverters are procured from companies in the manufacturing business for at least 10 years which are used in Commercial/Utility scale projects (5MW and above) and operational.
- f) Provision of product warranty covering defects in materials and workmanship of at least ten (10) years counting from the Commercial Operation Date, and option with extendable warranty from supplier.
- g) Typical technical features of the suggested inverters must mention as per following sequence:
 - o Nominal AC output voltage and frequency.
 - o Continuous output power rating (1.1 times for 60 seconds).
 - o Accuracy of AC voltage control $\pm 1\%$.
 - o Accuracy of frequency control $\pm 0.5\%$.
 - o Grid frequency control range ± 3 Hz.
 - o Maximum input DC voltage range.
 - o Maximum Power Point Tracker (MPPT) range DC.
 - o THD 2.5% or lesser.
 - o Ambient temperature -10 deg. C to 55 deg. C.

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- Humidity 95 % non-condensing.
- Protection of enclosure IP-65 (minimum).
- Grid Voltage tolerance -20% and + 15%.
- Power factor control 0.95 inductive to 0.95 capacitive.
- No-load losses < 1% of rated power.
- Inverter efficiency (minimum) plus 98%.
- h) Following shall also be displayed like protective function limits, over voltage, AC under voltage, over frequency, under frequency, ground fault, PV starting voltage, PV stopping voltage, over voltage delay, under voltage delay over frequency, ground fault delay, PV starting delay, PV stopping delay.
- i) Nuts and bolts and the inverter enclosure shall be adequately protected taking into consideration the atmosphere and weather prevailing in the area.
- j) Dimension and weight of the inverter shall be indicated by the bidder in the offer.
- k) All doors, covers, panels and cable exits shall be gasketed or otherwise designed to limit the entry of dust and moisture.
- l) Operation Mode:
 - **Night or sleep mode:** where the inverter is almost completely turned off, with just the timer and control system still in operation. losses shall be less than 2W per 5kW.
 - **Standby mode:** where the control system continuously monitors the output of the solar generator until pre-set value is exceeded (typically 10W).
 - **Operational of MPP tracking mode:** the control system continuously adjusts the voltage of the generator to optimize the power available. The power conditioner shall automatically re-enter standby mode input power reduce below the standby mode threshold. Front panel should provide display of status of the inverter.
 - **Junction Box / Combiner Box**

SMART Junction boxes with the multi-function of string monitor to detect each string's voltage, current, and power, plus fault detection and surge protection function. The array junction box has been suitably designed to be integrated into the Complex. The junction boxes shall have suitable arrangement for the following:

- a) Provide arrangement for disconnection for each of the groups.
- b) Provide a test point for each sub-group for quick fault location.
- c) To provide group array isolation.
- d) The current carrying ratings of the junction boxes shall be suitable with adequate safety factor to interconnect the solar PV array.
- e) To include data collector for monitoring system. A DC string meter is integrated into a DC box to provide the capability of collecting the required data/information of string level.

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(iii) Terminal points

- a) The Project is expected to be connected to the 220kV grid station of KE network which is located near the project Site. A detailed Grid Interconnection Study is also conducted for the project which provides further details about inter-connection.
- b) The interconnection point will be droppers from the terminal tower connected to the gantry of 220kV transmission lines. The interconnection point shall be the HV line bushings installed at the gantry of the Complex. The interconnection point shall represent the boundary of responsibility between the project facility and system operator.
- c) The interconnection between the Complex and the Grid System shall be through 220kV double circuit transmission lines for looping in-out arrangement of the existing 220kV network.
- d) Power evacuation and interconnection scheme shall be as per performed Grid integration study and guidelines and policies applicable by the Purchaser. The same study and its NOC are shared along with this RFP.

(iv) SCADA, Tele-Communication and Protection Schemes

- a) The Complex is remotely monitored and controlled (at Site) through a SCADA system, which will be used for online operation, monitoring, processing of user-defined reports and statistics as well as remote monitoring of entire Complex for operation and maintenance purpose.
- b) 24h/10m Log: The data available in the 24h/10m log are a group of analogue data stored as average values of 10 minutes over the latest 24 hours. In the menu of the controller, it can be configured and is available for presentation.
- c) Production Overview Log: The production overview log provides information on energy produced by PV arrays during certain period.
- d) Availability Log: The availability log allows information on amount of time PV array has been available for production during a certain period. It is measured in percentage and is calculated through the ratio between the amount of time a PV array produced energy and the total amount of time in the given period where the irradiation is above or equal to a defined value.
- e) Plant Overview: An overview screen gives a current data list view over all PV arrays in the Complex.
- f) Weather Station Data: The weather station panel shows weather conditions at the Complex site.
- g) The bidder shall be responsible to arrange all the equipment and material brand new from internationally reputable manufacturers in compliance with the relevant international standards.
- h) The Bidder will transmit the data as required by the System Operator for the monitoring of the Complex parameters at their end and would establish a robust communication system for the purpose. the key features of the communication solutions will be as under:
 - o A V-SAT link or cable net shall be installed as the primary link.

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- Internet connectivity via V-SAT/ cable net will be established for Remote Monitoring of Plant through Plant SCADA system.
- The Bidder will install firewall devices and configure VPN (virtual private network) infrastructure for secure remote access.
- Remote users will be able to access the system web portal only by signing into their respective VPN accounts.
- Voice communication system at plant and System Operator's.
- i) The protection schemes by the Bidder for the Complex and interconnection facilities shall be in accordance with System Operator's technical specifications. Interconnection facilities shall include back-up metering system along with set of dedicated cores of CTs and VTs with accuracy class of 0.2S, protection relay and switching equipment, protective devices and safety equipment and tele-protection system up to the interconnection point.

(v) 220kV Substation

- a) The entire Complex and grid connection works shall be able to operate in accordance with the relevant local grid code and distribution code and local technical and operational standards and requirements concerning embedded generation of this type and capacity. The Bidder shall be responsible for meeting these requirements and those of regulator and transmission system operator.
- b) The HV side of the sub-station works shall confirm to the relevant requirements of the Grid Code and Purchaser requirements.
- c) 220kV grid connection cable/conductor (whichever is applicable) emanating from the solar farm substation and interfacing with system operator grid connection interface point.
- d) Communication lines as required by the system operator for network control and protection.
- e) Provision of all necessary primary and secondary equipment required at solar farm substation or grid connection interface including but not limited to switchgear, cables, termination, protection, CT's, VT's earthing, surge arrestors, lightning protection and metering to terminate the 220kV overhead line, to allow export of power to the national/regional grid.
- f) HV switchgear shall comply with the latest editions of IEC 60298, ISO 60694, IEC 62271-100, IEC 62271-102 and IEC 62271-203, IEC 60265 - 1 standards for equipment of this type or the relevant Pakistan standards.
- g) The Bidder shall confirm with system operator, the scope of works for the 220kV protection systems and the technical requirements for the protection equipment and equipment design fault level.
- h) The following electrical design limits must be adhered to with regards to the Complex:
 - The Complex shall be designed to operate within a power factor range as per Grid Code.
 - The Complex shall operate within the range as per Grid Code.

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- The Complex shall be able to operate within the frequency range as per Grid Code.
 - The Complex shall operate within the harmonics range as per Grid Code.
 - i) The HV switchgears shall be type approved by the System Operator to which they will be connected and to ensure connection to the local 220kV system, shall be of the metal type switchgear and vacuum/SF6 circuit breaker.
 - j) All MV and LV switchgear shall comply with the relevant National standard or the latest edition of the relevant part of the IEC 60947 standards for this type of device.
 - k) Switchboards/panels (as applicable) installed within the solar farm substation shall have a method of preventing condensation, an internal light and a standard 10A power socket outlet to National standards or IEC 60309-2 equivalent.
 - l) 220kV Switchyard of the Complex can be Gas or Air Insulated Switchgear based on the choice of the bidder and available spacing at the project Site.
 - m) The Switchyard will be double bus-bar single breaker scheme comprising two transmission line bays so as to provide 220kV double circuit in-out arrangement and remaining bays will be as per plant design.
 - n) The GIS switchgear shall have a product warranty covering defects in materials and workmanship of at least five (5) years counting from the Commercial Operation Date.
- (vi) Power Transformer and Switchyard Equipment**
- a) The Complex design will include the step-up transformer considering (N-1) contingency. Step-up Transformer shall comprise of adequate electrical and mechanical protections to ensure safety and reliability. The step-up transformer shall be oil immersed, ONAN, dual-low-voltage and core type. Transformer is Insulation Class A. Transformer routine tests are carried out as per IEC standard or equivalent. The type test reports shall be provided. Over and under voltage limits shall be controlled by ON load tap changer at each tap position shall be governed by relevant IEC standard applicable to oil filled transformers.
 - b) The following accessories are provided with the transformer for protection against internal faults:
 - Oil temperature indicator.
 - Pressure relief device.
 - Oil level gauge.
 - Buchholz relay.

All outdoor equipment i.e. Surge arrestors, line traps, coupling capacitors, capacitive voltage transformers, line coupling device equipment and etc. shall be provided having adequate rating and as per given IEC standards later in coming section.

The Transformers shall have a product warranty covering defects in materials and workmanship of at least 2 years counting from the Commercial Operation Date.

(vii) Metering System

- a) For export and import metering, the Complex shall be provided at the Complex' interconnection point with the Metering System on the HV side of the switch gear at the sub-station. The metering system shall provide record of kWh (import / export) and kVArh (import / export) exchange between the Complex and the system operator at HV side. The Bidder shall provide independent current transformers (switchyard) of accuracy class 0.2S and voltage transformers (switchyard) of accuracy class 0.2S at the substation for input to the Energy Meters. The Metering System's overall measuring error shall be within 0.2%. A separate walled room in the Sub-station of the Complex shall be provided for metering system. All cabling between the meters and associated current transformers and voltage transformers shall be laid in rigid conduits as per the design standards.
- b) Back-up metering system installation is mandatory and must be as per EPA.

(viii) Earthing

- a) The Complex shall have a dedicated earthing system. The earthing for array and LT power shall earthing be designed and installed as per the provisions of applicable international standards.
- b) System shall connect all non –current carrying metal receptacles, electrical boxes, appliance frames, chassis and PV module mounting structures in one long run. The earth strips shall not be bolted. Earthing GI strips shall be interconnected by proper welding.
- c) The earthing conductor shall be rated for 1.56 times the maximum short circuit current of the PV array. The factor 1.56 considers 25 percent as a safety factor and 25 percent as albedo factor to protect from any unaccounted external reflection onto the PV modules increasing its current.
- d) Earth resistance shall not be more than 5 ohms.
- e) The equipment grounding wire shall be connected to earth strip by proper fixing arrangement.
- f) Each strip shall be continued up to at least 500mm from the equipment.

(ix) Lightning Protection

- a) The Complex shall be provided with lightning and over voltage protection. The source of over voltage can be lightning or other atmospheric disturbance. The lightning conductors shall be made as per applicable international standards in order to protect the entire array yard from lightning stroke.
- b) Lightning Protection System shall comprise of air terminations, down conductors, test links, earth electrode etc. as per approved drawings from the Purchaser and standards.
- c) The protection against induced high voltages shall be provided by the use of surge protection devices (SPDs) and the earthing terminal of the SPD shall be connected to the earth through the earthing system.

(x) Balance of System

- a) The Bidder shall design, construct and commission an MV substation [indoor], which shall

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mainly comprise the following:

- MV switchgear including control and protection relays.
- Auxiliary transformer.
- Fire detection and alarm system.
- Emergency lighting shall be provided in the MV switchgear room. This shall be automatically activated on the failure of the AC supply.
- b) MV Switchgears of metal-enclosed indoor type with SF6 Circuit Breakers. The SF6 circuit breaker is maintenance-free. The position of the power and grounding contacts are clearly visible on the front of the switchboard.
- c) MV (11/22/33 KV) Switchgear supplier is accredited to ISO 9001 and MV (11/22/33 KV) Transformer supplier is accredited to ISO 9001 and IEC 60085 certified. IEC 60214 certified transformers for tap changers and transformer warranty period of minimum 2 years. Efficiency of Transformer at least 96%.
- d) Medium Voltage Cables will be Cross Linked Polyethylene (XLPE) insulated with Copper Conductors suitable for laying in ground for interconnection between PV array and MV switchgear room at the Sub-station.
- e) The sizing of MV cabling accommodates 0.9 to 1.1p.u. voltages and 0.85 leading and 0.95 lagging power factor at the substation bus and Site-specific thermal resistivity. All the cables are laid as per prudent engineering practices and also based on relevant IEC standards.
- f) AC cables IEC-60502 certified (1 to 36KV) or IEC-60840 certified (30 to 150KV). Reputable AC cable supplier accredited to ISO 9001. Minimum 2-year warranty period of AC cables. AC cables are UV radiation and weather resistant.
- g) The Bidder ensures that all cables, materials, design, manufacture and test procedures are in accordance with the applicable IEC Standards and equivalent. DC Cables shall be used before the inverter in the topology and AC cables shall be used after the inverter. Communication between PV area and inverter station shall be done through copper cables and communication from inverter to main control room through fiber optic cables.
- h) The extent of works shall comprise proper cable sizing, cable routing from the Combiner Box of the PV arrays to the MV Substation, laying and termination of underground fiber optic and communication cables including related civil works.
- i) Well-defined row spacing to reduce inter-row shading and associated shading losses, layout to minimize cable runs and associated electrical losses, sufficient distance between rows to allow access for maintenance purposes etc. shall be evaluated under design criteria.
- j) The power from each inverter station shall be transformed to the MV via the transformer. From the transformer the same shall be interconnected with one another by underground power cables and fed into MV substation at the site.
- k) Diesel engine and UPS shall be provided in all Control room to provide minimum of 12 hours of back up for the SCADA system. In the inverter rooms, the inverter could work by the auxiliary transformer of 33KV step-up substation.
- l) One 33kV/400V Auxiliary Power Transformer of rating up to 400 kVA with manual

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change-over arrangement shall be provided. The Auxiliary transformer shall be connected to the main 33kV bus bar via breaker and supply the Main Distribution Board at 400V with circuit breakers. The transformers will be three phase, delta star connected with impedance value of 5%.

- m) AC Distribution Board (ACDB) shall control the AC power from inverter and shall have necessary surge arrestors.
- n) An ACDB panel shall be provided in between PCU and utility grid. It shall have MCB/MCCB/ACB or circuit breaker of suitable rating for connection and disconnection of PCU from grid.
- o) The connection between ACDB and Utility grid shall be of standard cable/conductor with suitable termination. It shall have provision to measure grid voltage, current and power.
- p) The incomer shall be selected at required rating. The ACDB enclosure shall be of good protection and suitable for mounting on the trenches / on wall.
- q) All the 415 V AC or 230 V AC devices/equipment like bus support insulators, circuit breakers, SFU isolators (if applicable), SPD, etc. mounted inside the switch gear shall be suitable for continuous operation.
- r) Switches/ circuit breakers/ connectors meeting general requirements and safety measurements as per IEC 60947 part I, II and III.
- s) Junction boxes, enclosures, panels for inverters/ Controllers shall meet IP 54 (for outdoor)/ IP 65 (for indoor) as per IEC 529.
- t) The earth system for the 220kV Substation is designed in accordance with applicable IEC Standards and shall ensure safe step and touch potentials in the event of a fault or lightning strike. All grounding works in substation area shall be of copper.
- u) The PV panels / system's grounding system is an interconnected network of flat strips made of galvanized iron. The system is provided to protect plant personnel and equipment from the hazards, which can occur during power system faults and lightning strikes. In the substation, "danger mark" will be installed to remind staff.
- v) Use of fuses when arrays formed of four or more strings for over-current protection.
- w) Double-pole DC switches usage to block both positive and negative PV array cables. DC switches used rated for system voltage and maximum current expected and DC switches equipped with safety signs.
- x) Module cables have a temperature range -55 to 125°C. Single core double insulated DC cables used with mechanical resistance (animal proof/compression/tension/bending etc.).
- y) Relevant fire safety protection guidelines must be adopted.
- z) Lighting shall be provided at regular intervals to ensure required visibility at night.
- aa) The MV switchgears shall have a product warranty covering defects in materials and workmanship of at least 2 years counting from the Commercial Operation Date.
- bb) The solar cables shall have a product warranty covering defects in materials and workmanship of at least 2 years counting from the Commercial Operation Date.

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(xi) Security and Surveillance System

- a) A galvanized steel wire mesh fence with anti-climb protection shall be provided.
- b) Watch towers shall be provided to meet the security requirements all over the project boundary.
- c) Street lights shall be provided in accommodation area and inside the sub-station and around watch towers to ensure security personnel can see outside and inside of the boundary.
- d) Bidder shall provide at least day/night cameras for security and surveillance purposes. Cameras shall ideally have strong zooming capabilities and shall be easy to manipulate remotely (e.g., with the help of pan-tilt-zoom support) for external users to be able to identify sources of intrusion with more ease. Day/night cameras typically have ranges of 50m to 100m and are coupled with infrared illuminators.

17.2.1.11 Standards Compliance

Note: Equivalent standards can be considered based on International and local practices.

a) PV Modules

| Standard | Description |
|--------------------|--|
| IEC 61215 | Crystalline silicon (c-Si) terrestrial PV modules – Design qualification and type approval |
| IEC 61646 | Thin-film terrestrial PV modules - Design qualification and type approval |
| IEC 60364-4-41 | Protection against electric shock |
| IEC 61701 | Resistance to salt mist and corrosion |
| IEC 62804 | System voltage durability test for c-Si modules |
| UL 1703 | Comply with the National Electric Code, Occupational Safety and Health Administration and the National Fire Prevention Association. The modules perform to at least 90% of the manufacturer's nominal power. |
| IEC 62738 | Plant Design |
| EN-50380 | Datasheet and Nameplate information of PV modules as per standard |
| IEC 61724-1-2-3 | Performance monitoring-Capacity Evaluation-Energy Evaluation |
| IEC 63049 | PV System Installation |
| IEC 62446-2 | System Maintenance |
| IEC 62446-1 | Documentation, Test and Inspection |
| <u>IEC 60904-1</u> | Measurements of PV current-voltage characteristics |
| <u>IEC 60904-5</u> | Determination of the equivalent cell temperature (ECT) of photovoltaic (PV) devices by the open-circuit voltage method |
| <u>IEC 60904-7</u> | Computation of the spectral mismatch correction for measurements of photovoltaic devices |

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| | |
|--------------------|---|
| <u>IEC 61345</u> | UV test for photovoltaic (PV) modules |
| <u>IEC 61730-1</u> | Scope of the work in progress includes PV module safety qualification requirements for construction |
| <u>IEC 61730-2</u> | Photovoltaic (PV) module safety qualification |
| <u>IEC 61829</u> | Scope of the work in progress includes on-site measurement of I-V characteristics for crystalline silicon PV array |
| <u>IEC 61853-1</u> | Scope of the work in progress includes irradiance and temperature performance measurements and power rating for PV module performance testing and energy rating |
| <u>IEC 61853-2</u> | Scope of work in progress includes spectral response, incidence angle and module operating temperature measurements for PV module performance testing and energy rating |
| <u>IEC 62716</u> | Ammonia corrosion testing of photovoltaic (PV) modules |
| <u>IEC 62446</u> | Grid connected photovoltaic systems – Minimum requirements for system documentation, commissioning tests and inspection |
| 82/618/NP | Specification for solar trackers used for photovoltaic systems. |
| ISO9001 | Type tested and comply to ISO9001 |
| NFPA Article 690 | Solar Electric Systems |
| NFPA Article 705 | Interconnected Electrical Power Production sources |

b) Inverters

| Standard | Description |
|--------------------|---|
| IEC 61683 | Photovoltaic systems—Power conditioners—Procedure for measuring efficiency |
| IEC 61721 | Characteristics of the utility interface |
| IEC 62116 | Islanding prevention measures for utility-interconnected photovoltaic inverters |
| IEC 62109-1 and 2 | Safety of power converters for use in photovoltaic power systems |
| EN 61000-6-2 and 4 | Electromagnetic Compatibility (EMC) |
| EN 50178 | Electronic equipment for use in power installations |
| EN 50524 | Datasheet and Nameplate for Inverters |
| EN 55022 | Information technology equipment. Radio disturbance characteristics. Limits and methods of measurement. |
| EN 61000 | Electromagnetic compatibility (EMC). Immunity for residential, commercial and light-industrial environments |
| IEC 62548 | Installation and Safety Requirements for wiring |
| IEC 61683 | PV systems – Power conditioners – Procedure for measuring efficiency |

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| | |
|---------------|--|
| IEC 62093 | Balance-of-system components for photovoltaic systems – Design qualification natural environments. |
| IEEE 519 1992 | Compliance to Total Harmonic Distortion levels |
| UL 2703 | Rack Mounting Systems and Clamping Devices for Flat-Plate Photovoltaic Modules and Panels |
| UL 3703 | Trackers |

c) Switchyard Equipment

| Standards | Description |
|----------------------|---|
| IEC 60076/60354 | Power transformer selection as per IEC-60076 and IEC 60354 certified for type of installation |
| ISO9001 | Transformer supplier is accredited to ISO 9001 |
| IEC 60085 | Certified transformers for electrical insulation |
| IEC 62271-203 | Gas insulated metal enclosed switchgear for rated voltages above 52kV |
| IEC 62271-100 | High voltage alternating current circuit breakers |
| IEC 62271-102 | Alternating current disconnectors and earthing switch |
| IEC 60296 | Certified for Oil specification |
| IEC 60137 | Certified for Primary and Secondary Bushings |
| IEC 60214/ IEC 60542 | Certified transformers for tap changers |
| IEC 61869-1 | Instrument transformers - Part 1: General requirements |
| IEC 61869-5 | Instrument transformers - Part 5: Additional requirements for capacitor voltage transformers |
| IEC 61869-3 | Instrument transformers - Part 3: Additional requirements for inductive voltage transformers |
| IEC 60099-4 | Surge arresters - Part 4: Metal-oxide surge arresters without gaps for A.C. |
| IEC 60353 | Line traps for A.C. power systems |
| IEC 60358-1 | Coupling capacitors and capacitor dividers - Part 1: General rules |
| IEC 66044-1 & 2 | Current transformers and voltage transformers |
| IEC 60694 | Common clauses for high voltage switchgear and control gear standards |

17.2.1.12 Mounting Structure

Photovoltaic arrays must be mounted on a stable, durable structure that can support the array and withstand wind, rain, and other adverse conditions. The module mounting structures shall have adequate strength and appropriate design suitable to the locations, which can withstand the load and high wind velocities. Stationary structures shall support PV modules at a given orientation, absorb and transfer the mechanical loads to the surface properly. Mounting System shall be ICC ES AC428 and UL 2703 certified.

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The Complex shall only be designed with single-axis trackers. Other tracker designs or fixed mounting structure design will not be accepted.

Mounting Systems having tracking system provision shall have warranty of 10 years or above for both movable and non-movable parts.

17.2.1.13 Single Axis Tracking

The trackers shall fulfil following requirements:

- a) The tracker system shall be of proven design and shall be based on trackers systems that have been deployed in the field in at least three (3) PV power plants with a minimum of two (2) years of successful operation each and with a respective capacity of at least 20 MW.
- b) The structure and the materials selected by the Contractor shall have a product warranty of at least 10 years for mounting structure performance including mechanical stability and 10 years for corrosion warranty from the manufacturer. The warranty conditions must cover any damage (deformation, cracking, corrosion, etc.) caused by conventional use or during extreme environmental conditions as specified in the design data (wind force, etc.).
- c) The tracker system shall be electrically driven and shall meet all the seismic and wind loading requirements of the applicable local codes and local wind conditions.
- d) Mounting structure and tracker structure shall be made of Aluminum or Hot Dip Galvanized Steel, able to withstand at least 25 years of outdoor exposure without special signs of corrosion or fatigue at site conditions.
- e) The minimum thickness of galvanization for hot dip galvanized mild steel shall be at least 80 microns.
- f) Mounting structure shall be supported by foundations which shall be designed according to recommendations of dedicated geotechnical soil test report (e.g. driven piles, earth-screws, helical piles, casted foundations).
- g) Dynamic wind analysis shall be performed considering torsional galloping and aeroelastic instability. Wind tunnel test report shall be submitted by the Contractor for approval.
- h) Once fully constructed, the trackers shall be able to support the weight of PV modules, equipment such as weather monitoring station, cables as well as the weight of the operations and maintenance personnel (O&M) if any and associated machines/tools.
- i) The design of the tracker shall enable the assembly/disassembly and replacement of any unit.
- j) Each tracker must be specially constructed to prevent the accumulation of water or moisture on or in the structure and allow the adequate flow of water to the outside of the structure.
- k) Bonding jumper cables shall be installed between trackers for proper grounding.
- l) Ground strap shall be installed between the torque tube and the motor support for proper grounding.
- m) Tracking range shall be at least of 120° [-60°; +60°].
- n) The trackers shall be self-powered.
- o) The time to stow at 0° from full tilt shall be inferior to 5 minutes.
- p) The communications shall be wireless.

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- q) Equipped with GPS to ensure the accuracy of time.
- r) The tracker shall present a minimum steep-slope tolerance to 15% grade on NS axis.
- s) Tracker stowing system shall be provided which shall be capable of reliable operation independent of the AC grid supply.
- t) Automatic tracking without manual debugging.
- u) Remote communication, group control for multi-equipment.
- v) The mounting structure must be engineered for wind resistance of minimum 130km/h.
- w) The structure shall be designed to withstand operating environmental conditions for a period of minimum 25 years and shall be free from corrosion while installation.
- x) Modules shall be fixed with the frame through pure SS Rawal bolts. The bolts shall be tightened at the required angle.
- y) The nuts, bolts and washers/spring washers for modules & mounting structures must be stainless steel material with appropriate gauge (14 or plus).
- z) Screw fasteners shall use existing mounting holes provided by module manufacturer. No additional holes shall be drilled on module frames.
- aa) Minimum distance between the lower level of PV module and the ground shall be 0.6m from the ground level.
- bb) The PV panel area shall be accessible for cleaning and for any repair work.
- cc) Trackers shall be reprocessed and recyclable at the end of their technical life.

17.2.1.14 Testing & Commissioning

Bidder shall successfully complete the Commissioning testing in accordance with the Commissioning Test and Reliability Run Test requirements as per EPA.

17.2.1.15 Test Duration

Purchaser shall approve the Commissioning Test and Reliability Run Test procedures prior to execution of the testing.

17.2.1.16 Performance Verification

All commissioning activities shall be executed under a phased approach. Activities of each phase shall be documented and submitted to Purchaser for review, acceptance, and documentation under the requirements of Energy Purchase Agreement.

- a) Physical inspections.
- b) O&M manual review.
- c) Warranty review.
- d) Commissioning manual.

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- e) Performance verification.
- f) Reliability run test.

17.2.1.17 Back-up Metering System

Back-up metering system installation is mandatory, non-compliance of which would result in disqualification.

Back-up metering shall include ISKRA MT860 AMR meters of 0.2 accuracy class, dedicated CTs of 0.2 accuracy class, dedicated VTs and dedicated metering panels. All cabling between the meters and associated current transformers and voltage transformers shall be laid in rigid conduits as per the design standards.

17.2.1.18 Weather Station

Meteorological Stations shall be setup at the Complex capable of monitoring ambient temperature, wind speed, wind direction, irradiation, rainfall and any other relevant component as necessities by the requirement of HFM. Moreover, through the equipped data acquisition system and communication port, the relevant parameters can be uploaded to Complex SCADA system which shall also be accessible to System Operator.

Provision of Hybrid forecast model (HFM) where Hybrid Forecast Model means predictive tool/software prepared and operated by the forecasting consultant to generate energy forecast for the Complex is required for the Project. HFM uses physical data which at least includes:

- a) Global horizontal irradiance.
- b) Ambient temperature.
- c) Cloud motion data.
- d) Numerical weather predictive model.
- e) Wind speed.
- f) Past statistical data to extrapolate and model the future prediction of MW output of the plant. The prediction error (MAE).
- g) Mean bias error (MBE).
- h) Model output statistics (MOS),

curve then is corrected through various error removing techniques which at least include:

- i) Root mean square error (RMSE).
- j) Mean absolute.

17.2.1.19 Irradiance measurement protocol

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Irradiation and temperature measurements are to be recorded at intervals of ten minutes or less. Particular care must be taken, that the measuring equipment conforms to environmental conditions of the Complex location. The equipment shall have the capability of recording and storing data for 24 hours.

The irradiation measurement equipment shall be calibrated by an independent certified third party every two years. The calibration shall be compliant with international standards. Two pyranometers shall be placed for each system: one for measuring the horizontal plane irradiation and the other for the in-plane irradiation. The pyranometers shall conform to the standards of ISO (International Organization for Standardization) 9060 (SR5: secondary standard) or the WMO classification, and IEC 60904. Thermopile sensors are preferable to silicon photodiodes. A sensor calibration tolerance of $\pm 2\%$ is expected.

(Optional): The ground-based sensor data is to be supplemented with bankable satellite data to quantify longer-term variations (e.g. Solar GIS or any other company).

Ambient air and the module temperature shall be measured in conformity with IEC 60751 AA. Particular care shall be taken about the method of attaching the temperature sensor on the back of the module. The dependence of the system's sub-system performance on temperature variations shall be characterized by SCADA.

A weather-monitoring station shall be provided with redundant humidity sensors, a rain gauge, and a wind profiling unit/anemometer (speed and direction), preferably capable of data telemetry or other electronic connectivity to the SCADA server. The environmental analysis is important to understand any unexpected degradation effects in the modules or other system components.

The use of consolidated measuring equipment; supported by an integrated UPS, with the above-mentioned functionality and modeling software capable of predictive functions is required.

17.2.1.20 Spare Parts and Special Tools

The bidder shall list and provide the spare parts required for the commissioning of the works. A full inventory of these spare parts shall be ready for use and store either on site or locally.

One set of special tools (especially for electrical equipment) necessary for proper installation, operation, maintenance and monitoring of the plant shall be provided by the bidder. In addition, the bidder shall provide required sets of electrician's tools, each including a high-quality multimeter (e.g. FLUKE) and housed in a suitable tool chest or cabinet inside the substation store/ workshop room.

17.2.1.21 Operation & Maintenance (O&M)

During the Operation and Maintenance period of the project, O&M operator must fulfill the below requirements:

- a) Comply with the Dispatch Instructions under the EPA.
- b) Maximize the power generation and plant availability.
- c) Maximize the useful life of the Complex as per the term of the EPA.
- d) Minimize Complex down time and disruptions.
- e) Minimize operation and maintenance costs consistent with Prudent Electrical Practices and Prudent Utility Practices.

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- f) Minimize Complex and capacity degradation.
- g) Minimize the possibility of default under the EPA.
- h) Minimize the incident, severity and duration of Forced or Partial Forced Outages, Maintenance Outages and Scheduled Outages; and maximize availability and reliability of the Complex.
- i) Run the Plant as per EPA, Prudent Utility Practices and according to the terms and conditions of the Agreement.
- j) Provide operational services including such number of personnel as specified in the Agreement in accordance with the Plant design and engineer's recommendations, the equipment manufacturer's recommendations and the Company's recommendations.
- k) Perform and record periodic operational checks and tests of equipment in accordance with original equipment manufacturers' recommendations, applicable law, Energy Purchase Agreement and the Company's recommendations.
- l) Maintain and provide to the Purchaser, upon request, operating logs, records and reports for operation of the plant in English language.
- m) Undertake Schedule Outages, Maintenance Outages, routine maintenance services and provide technical supervision of any maintenance activity carried out by original equipment manufacturer.
- n) Coordinate with the Purchaser/company to arrange times for maintenance as required.
- o) Keep the Plant in proper state and shall maintain in good condition all furniture, goods and other items provided, including all electrical equipment, tools, and communication systems etc.
- p) Be responsible to maintain liaison with the Purchaser and provide all information as per the agreed EPA.
- q) Operator will deploy sufficient staff required for necessary and smooth operation of the plant.

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Volume-III: Tariff Proposal Requirements

18 Quoted Tariff and Commercial Requirements

The Bidders may bid the Bid Tariff for the Project, rounded off to four decimal places for the Term. The Tariff Proposal shall be consistent with the tariff structure given below. Any Bid which is inconsistent with the tariff structure shall be rejected.

18.1 Bid Tariff

Bidders are required to submit a Bid Tariff for each year of the Project term calculated at the NEPRA provided reference exchange rate for the Project.

In addition, Bidders shall also submit a levelized tariff calculated based on the Bid Tariff discounted using the NEPRA provided referenced discount rate which should be below the Benchmark Tariff as approved by NEPRA in the RFP Approval.

It must be noted that Bidders are allowed to structure the tariff in a way that they can service the debt during the period which is lesser than the tariff control period and can accordingly front-load the debt servicing component in the Bid Tariff.

Further, the Bid Tariff by the selected Bidder shall be allowed adjustment with respect to change in exchange rates during the construction period at the time of the respective COD of the projects.

18.2 Bid Tariff Assumptions

- a) All invoicing and payment terms are assumed to be in accordance with the standard EPA, to be issued to the Bidder.
- b) No adjustment for certified emission reductions should be accounted for in the Bid Tariff.

18.3 Pass-through Items

Subject to the approval of NEPRA in Consumer End Tariff, following items shall be considered pass-through:

- a) If the Successful Bidder is obligated to pay any tax on its income from electricity generated from the Project, or any duties or taxes not being of refundable nature are imposed on the Successful Bidder, the exact amount paid by the Successful Bidder on these accounts will be reimbursed by KE and on production of original filing documents.

In case of the above scenario, the Successful Bidder shall also submit to KE the details of any tax savings and KE shall deduct the amount of these savings from its payment to the Successful Bidder on accounts of taxation. The adjustment for duties and taxes will be restricted only to the extent of duties and taxes directly imposed on the Successful Bidder. No adjustment for duties and taxes imposed on third parties such as contractors, suppliers, consultants, etc., will be allowed.

- b) In case any Bidder proposes to import any plant, machinery or equipment that is also manufactured locally in accordance with the Customs General Order of the FBR, the Bid should account for the additional duties so that the Bid Tariff by the Bidder is inclusive of customs duty; pass-through of such duty subsequent to the bidding is not allowed. However, in such cases where the local procurement is not viable for the Project due to genuine technical constraints, import duties on such items shall also be considered as pass-through subject to fulfillment of conditions given in ARE Policy, 2019, for which relevant certification shall be obtained by the Bidder from AEDB.

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The Bidder is expected to have knowledge of applicable laws and regulations and shall not in any case hold KE accountable for information not provided under this document.

- c) Payment into Worker's Profit Participation Fund and Worker's Welfare Fund.
- d) Withholding tax on dividend will not be a pass-through item.
- e) The solar resource risk will not be borne by the Purchaser.
- f) Tariff indexation: [Tariff awarded through successful bid shall be subject to indexation mechanism to be prescribed / approved by NEPRA. KE, in consultation with the SED's financial consultant, will submit a proposal for indexation mechanism for Authority's consideration.]

18.4 All Inclusive Tariff

- (a) Except for the items specifically excluded in section 18. (pass-through items), the Tariff shall be all-inclusive for all actual or contingent, foreseen or unforeseen costs or expenditures, capital and operating costs and returns of the Bidder, including, without limitation:
 - (i) EPC Cost
 - (ii) Non-EPC Cost
 - (iii) Project Development Costs
 - (iv) Insurance During Construction
 - (v) Interest During Construction\
 - (vi) Commitment fees, management fees, draw down fees and all other financial charge related to debt & equity raising
 - (vii) LC Charges
 - (viii) Mobilization Charges
 - (ix) Working capital
 - (x) Degradation of solar panels
- (b) Except as expressly stated in this RFP, in NEPRA's approval on the RFP or in the Tariff Approval, no additional items of cost or return under any head whatsoever will be admissible to the Bidder.

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Exhibits

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Exhibit 1 – Form of Acknowledgement

1.1. Instructions

If Bidder wishes / does not wish to participate in the bidding process for this Project, then the Bidder must submit the form of acknowledgement letter prior to bid submission (within 03 days from the date of receipt of RFP Package) via email at following email addresses:

Qasim.mehmud@ke.com.pk

The Bidder to submit the hard copy of this form of acknowledgement letter to K-Electric along with the Bid.

1.2. Template

[On Bidder's corporate letterhead]

[Date]

Director, Procurement

K - Electric Limited

1st Floor Procurement Division

Building J

Elander Road (Power House) Complex, Karachi, Pakistan

Subject: **K-Electric, Request for Proposal for Development of 120 MW Solar Project –
Acknowledgement Letter**

Dear Mr./Ms. _____,

In response to the Request for Proposal dated [xxx], we hereby duly acknowledge receipt of the Instructions to Bidders, Attachments and Exhibits that constitute the complete Request for Proposal. We would like to confirm:

☐ That we intend to participate in the Request for Proposal process and will submit our proposal as per your schedule.

or

☐ That we do not intend to participate in the Request for Proposal process.

For and on behalf of

Bidder company name: _____

Name of Bidder's authorized person: _____

Title: _____

Date: _____

Signature: _____

Exhibit 2: Bid Letter

Date: [•]

[•]

[K-Electric Limited)]

[Insert address]

Subject: Bid of [•] for [•] MW Solar IPP at [•]

I [Title/Position, Company], acting as the duly authorized representative for and on behalf of [name of the Bidder] ("Bidder") confirm the Bidder's interest in developing, financing, insuring, installing, testing, commissioning, owning, operating and maintaining a [•] MW solar power project ("the Project") at [Site 02] in furtherance whereof I on behalf of the Bidder hereby certify, represent, warrant and agree that:

- (a) This Bid Letter, along with all its annexes, and contents of Envelopes I and II, forms our Bid and is submitted pursuant to the Request of Proposal (RFP) dated [•] issued by the K-Electric ("KE").
- (b) Having examined and being fully familiar with all the provisions of the RFP (including its proformas and exhibits), receipt of which is hereby duly acknowledged, and having evaluated, following our own studies undertaken under our responsibility, the nature and scope of the contractual obligations to be executed, the financing structure, the Purchaser profile, the EPA, and the applicable legal framework, the Bidder hereby offers to undertake the development of its [•] MW Project:
 - (i) on BOOT basis in compliance with all requirements of the RFP,
 - (ii) on Tariff as offered in Envelope II of our Bid, subject to NEPRA's approval.
- (c) We hereby agree that our Bid constitutes our unconditional, firm, irrevocable offer that is binding upon us and will remain valid for the Bid Validity Period.
- (d) We have provided and attached hereto a Bid Bond dated [•] issued by [name of issuing bank] in the amount of [PKR/USD state amount in words] (PKR/USD [show amount in figure]) in accordance with Exhibit 9 of the RFP.
- (e) We certify that (i) the information submitted as part of our Bid is complete and accurate, (ii) the Bidder will be bound to this Bid and to the development of the Project, and (iii) we accept the documents, terms and conditions of the RFP.
- (f) We understand the evaluation criteria and the process for selection of Successful Bidder and acknowledge that Auction and Evaluation Committee is not obligated to accept our Bid and may at any time reject our Bid at its sole discretion.

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- (g) We commit ourselves, if required, to extend the validity of our Bid and the Bid Bond until the issuance of the LOI to the Successful Bidder, pursuant to section 12(d) of the RFP.
- (h) We confirm our commitment to the bidding and project development schedule stated at Section 7 of the RFP. We further commit ourselves, if advised by KE to do so, to furnish the Performance Guarantee, the EPA and any other agreement ancillary to it consistent with the aforesaid bidding and project development schedule.
- (i) We commit to hold at least fifty-one percent (51%) of the total issued and paid-up share capital of the SPV and maintain such shareholding for the till the sixth anniversary of the Commercial Operations Date,
- (j) We further commit ourselves to provide any additional information, clarification and data in respect of the Bid, if required by KE and to pay all fees and charges in terms of the RFP.

Capitalized terms used and not defined herein carry the meanings assigned thereto in the RFP.

In *[location]*, on this *[date]*.

The undersigned is duly authorized to execute the Bid for and on behalf of the Bidder.

[Signature and Seal]

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Annexure 1: List of Annexes to Bid Letter

Envelope I

| Exhibit | Description of Items | Completed and submitted |
|----------------|--|--------------------------------|
| 2 | Bid Letter with Annexure | |
| 3 | Bid Processing Fee | |
| 4 | Confidentiality Agreement | |
| 5 | Covenant of Integrity | |
| 6 | Affidavit | |
| 7 | Power of Attorney | |
| 8 | Letter of acceptance by the Bidder | |
| 9 | Bid Bond (in the form of bank guarantee) | |
| 10 | Technical Information with Annexures | |

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Envelope II

| Exhibit | Description of Items | Completed and submitted |
|----------------|---|--------------------------------|
| 11 | Reference Tariff Table with Reference Levelized Tariff with Annexures | |
| Annexure-I | Bidder’s confirmation on tariff requirements | |
| Annexure-II | Project cost summary | |
| Annexure-III | Financing Plan | |
| Annexure-IV | Debt Repayment Schedule | |
| 12 | Equity commitment from sponsors | |

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Exhibit 3: Bid Processing Fee

[Original Pay Order]

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Exhibit 4: Confidentiality Agreement

CONFIDENTIALITY AGREEMENT (on stamp paper)

This Confidentiality Agreement ("**Agreement**") is made at Karachi on this ____ day of _____, 2022
("**Effective Date**").

By and between

K-Electric LIMITED, a public limited company duly incorporated and existing under the laws of Pakistan and having its registered office at KE House, 39B, Sunset Boulevard, Phase-II, DHA, Karachi, Pakistan, (hereafter referred to as "**KE or Disclosing Party**").

And

[-----], [registered address] (hereinafter "**Company of Receiving Party**")

(**KE and Company** are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**").)

WHEREAS:

1. KE is in process of obtaining bids for the Development of approx. 120 MW solar power project at Deh Halkani, District West, Karachi, Pakistan
2. As part of these discussions, the Parties (either directly or through a representative) have and may in the future exchange Confidential Information pertaining to the Project.
3. COMPANY and KE wish to enter into this Agreement to safeguard the confidentiality of such Confidential Information.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the Parties agree as follows:

1. In this Agreement, unless the context requires otherwise, the following terms shall have the meaning given below:

"**Affiliate(s)**" means in relation to a Party, any, corporation, partnership or other legal entity: (i) that is, directly or indirectly, controlled by such Party; or (ii) that directly or indirectly controls such Party; or (c) that is, directly or indirectly, controlled by a Party that also, directly or indirectly, controls such a Party. For the purpose of this definition, a Party is directly controlled by another Party which owns or controls shares or other interests carrying in the aggregate at least fifty percent (50%) of the voting rights exercisable at a general or shareholders meeting of the first-mentioned Party or the right to appoint or dismiss a majority of the directors thereof.

"**Confidential Information**" means all information (in whatever form, including, but not limited to, oral, visual, written or electronic, or in any medium or by any method) relating to the Project, including but not limited to, all manuals, specifications, drawings, letters, telexes and any other material containing Confidential Information disclosed to the COMPANY by or on behalf of the KE in writing, in drawing or in any other form or acquired by the COMPANY from the KE regardless of whether such information was obtained prior to or after the Effective Date. Confidential Information shall also include all memoranda, reports, valuations, analyses and

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summaries of Confidential Information that the Receiving Party or any of its Affiliates derives from Confidential Information disclosed by the Disclosing Party.

2. Each Party agrees that the Confidential Information received by it shall be kept strictly confidential, shall only be used in relation to the Project and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy or reproduction, or electronic transmission, without the prior written consent of the Disclosing Party.
3. Receiving Party further agrees that, unless otherwise expressly permitted in this Agreement, it shall not disclose, and shall cause its representatives not to disclose (i) the existence or terms and conditions contained in this Agreement, (ii) the fact that Confidential Information has been made available to the Receiving Party or its representatives; (iii) the fact that discussions or negotiations are or were taking place concerning the Project, and (iv) the terms, conditions or other facts with respect to any such Project, if any, including the status thereof, to any third parties (other than such third parties who are permitted to receive Confidential Information hereunder) without the prior written consent of Disclosing Party.

3.1 The Receiving Party may disclose Confidential Information without the Disclosing Party's prior written consent only to the extent such information:

- (i) is required to be disclosed under applicable laws, rules or regulations, including a governmental order or decree, a ruling or judgment of a court of competent jurisdiction, arbitrator or the rules of any recognized stock exchange ("Applicable Laws") (provided that the Receiving Party shall promptly give a written notice to the Disclosing Party prior to such disclosure, limit the disclosure to the extent legally allowable and seek to protect such information from further disclosure;
- (ii) is disclosed to the employees, officers or directors of Receiving Party and to their employees, officers or directors on a 'need to know' basis; or
- (iii) is disclosed to any professional consultant, legal counsel or agent retained by the Receiving Party where bona fide necessary for the proper performance of their duties in relation to the Project.

3.2 The following shall not constitute Confidential Information:

- (i) was in the lawful possession of the Receiving Party at the time of its receipt and can be proven by the Receiving Party that it did not have an obligation to keep it confidential;
- (ii) was in the public domain at the time of receipt or disclosure or subsequently becomes so through no fault of the Receiving Party or any person to whom Receiving Party disclosed Confidential Information;
- (iii) is developed by or for the Receiving Party at any time independently of the Confidential Information disclosed to it, as evidenced by its written records; or

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- (iv) has been or hereafter is rightfully acquired from third parties who rightfully have possession of such information without an obligation to keep it confidential.

3.3 The Receiving Party shall not be liable for such inadvertent or unauthorized disclosure if it has used the same degree of care in safeguarding such Confidential Information as it uses for its own Confidential Information of like importance.

4. The Receiving Party shall be responsible to Disclosing Party for the compliance of the persons listed in paragraph 3.1(i) and (iii) to whom the Receiving Party has disclosed Confidential Information as though such persons and entities were Receiving Party. Prior to any disclosure to persons listed in paragraph 3.1(iii) Receiving Party shall obtain a written undertaking of confidentiality from such persons in the same form as this Agreement. The Receiving Party shall not make any statements and/or issue any press releases concerning the Project without the prior written consent of the Disclosing Party.
5. Any Confidential Information disclosed by or on behalf of the Disclosing Party shall remain the property of the Disclosing Party, and the Disclosing Party may demand the return thereof at any time upon giving written notice to the Receiving Party. The Receiving Party shall not acquire any right, title, interest or license in Confidential Information it receives pursuant to this Agreement and no actions pursuant to this Agreement shall be construed as conferring on the Receiving Party any license under any patent, copyright or future patent owned by the Disclosing Party, its Affiliates or any of their shareholders or any other intellectual property right. Within thirty (30) days of receipt of a request to return Confidential Information, a Receiving Party shall return all original Confidential Information it has received and destroy, or procure the destruction of, all other Confidential Information, including any information retained on computer backup system, copies and reproductions (both written and electronic), in its, its Affiliates and any persons' to whom it was disclosed.
6. This Agreement shall terminate on the earlier of the third (3rd) anniversary of the Effective Date or receipt of written notice of termination. In addition to the obligation to return and/or destroy set forth in paragraph 5, following termination, the obligations of confidentiality set forth herein shall continue until the third (3rd) anniversary of the termination date. The provisions of this Agreement

shall however apply retrospectively to any Confidential Information which may have been disclosed in connection with discussions and negotiations regarding the Project prior to the Effective Date. Notwithstanding anything else contained herein either Party has the right to terminate this Agreement at any time by furnishing the other Party with a one (01) month prior written notice without giving any reason for termination.

7. The Disclosing Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party. The Disclosing Party, by providing such Confidential Information or otherwise, neither makes nor gives any representation, warranty or undertaking, express or implied, concerning the quality, reliability, accuracy, completeness or reasonableness of the Confidential Information. The Receiving Party shall use any Confidential Information at its own risk and the Disclosing Party shall have no liability to the Receiving Party resulting from the Receiving Party's use

of such Confidential Information. Nothing contained herein shall be construed as requiring the Disclosing Party to enter into any business dealings, to negotiate in good faith, or to hold or to continue discussions concerning the Project with the Receiving Party. Neither this Agreement nor any actions of the Parties shall constitute or be construed to constitute a partnership, joint venture or any other cooperative relationship between the Parties. The obligations and liabilities of the Parties to this Agreement are several, not joint, or joint and several.

8. The liability of the Parties to each other for breach of this Agreement shall be limited to actual direct and foreseeable damages. In no event shall the Parties be liable to each other for any other damages, including loss of profits or business interruptions, or indirect, incidental, consequential, special, exemplary or punitive damages, decline in market capitalization, however caused, regardless of negligence or fault. Receiving Party acknowledges and agrees that Disclosing Party may be irreparably harmed by the breach of this Agreement and damages may not be an adequate remedy. Disclosing Party shall be entitled to seek an injunction or specific performance for any threatened or actual breach of this Agreement by Receiving Party or any other person receiving Confidential Information pursuant to this Agreement. In addition to the above, the Disclosing Party may in its sole discretion pursue any and all other remedies available to it for such violation, breach or threatened breach including recovery of compensatory damages.
9. This Agreement shall be governed by and construed in accordance with the laws of Islamic republic of Pakistan. All claims, demands, causes of action, disputes, controversies and other matters in question ("Dispute") arising out of, relating to, or in connection with this Agreement, including any question regarding its existence, breach, validity, or termination, which cannot be amicably resolved by the Parties, shall be settled before a two (02) arbitrators appointed mutually by both the Parties and one (01) umpire appointed mutually by the two (02) arbitrators. For purposes of clarity, the arbitrators and the umpire shall be retired confirmed judges of the High Court of Sindh at Karachi. Such arbitration shall be held in accordance with the provisions of the Arbitration Act, 1940. The venue of such arbitration shall be Karachi, Pakistan and the language of arbitration proceedings shall be English in effect as of the Effective Date. Judgment upon such award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Receiving Party acknowledges that remedies at law may be inadequate to protect against breach of this Agreement; accordingly, the arbitrator may award both monetary and equitable relief, including injunctive relief and specific performance. The Disclosing Party may apply to any competent judicial authority for interim or conservatory relief; an application for such measures or an application for the enforcement of such measures ordered by the arbitrator shall not be deemed an infringement or waiver of the agreement to arbitrate and shall not affect the powers of the arbitrator.
10. This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and neither Party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other Party except as set forth herein. This Agreement may not be modified or amended except in writing and signed by a duly authorized representative of each of the Parties. No failure or delay in exercising or any single or partial exercise, of any right, power or privilege under this Agreement shall operate as a waiver or preclude any further exercise of any right, power or privilege under this Agreement or otherwise. If any provision of this Agreement (or part thereof) is or becomes unlawful, invalid or void, the legality, validity, and enforceability of any other part of that

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provision or any other provision of this Agreement shall not be affected but shall continue in full force and effect. The unlawful, invalid or void provision shall be deleted from this Agreement but only to the extent of the invalidity so as to preserve this Agreement to the maximum extent possible.

11. All notices and other communications given under this Agreement shall be in writing in the English language and shall be deemed to have been properly given or made if: (a) personally handed to an authorized representative of the Party for which intended; (b) sent by postage prepaid, registered (return receipt requested) mail (airmail if international); (c) transmitted by facsimile with confirmation of receipt; or (d) transmitted by email (such notice by email shall be contained in an attachment and not in the body of the email); in each case at or to the address of the Party for which intended, as indicated below, or other address as may be designated by notice given in accordance with this paragraph:

| | |
|-----------------------|--|
| To XYZ: | To: K-Electric Limited |
| Attention: [name] | Attention: Qasim Mehmud |
| Telephone: [number] | Facsimile: 1st Floor, Block J, Procurement Division, Elander Road Complex, Karachi, Pakistan |
| Facsimile: [number] | Postal Code: 74200, Karachi, Pakistan |
| Email: [name@XYZ.com] | Email: Qasim.mehmud@ke.com.pk |

Notices and other communications given in accordance with this paragraph 11 shall be effective (a) on receipt by the addressee if personally delivered or transmitted by mail, and (b) on transmission to the addressee if transmitted by facsimile (with the correct recipient confirmation) or by email during normal business hours at the place of the addressee or, if so transmitted outside such hours, at the opening of business on the next business day at such place.

12. This Agreement may be executed in two (02) counterparts and each of which shall be deemed an original, with the same effect as if the signatures on the counterparts were upon a single engrossment of this Agreement provided that this Agreement shall not be effective until all the counterparts have been executed.

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IN WITNESS THEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

Bidder Company

K-Electric Limited

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signed in the presence of the following witnesses:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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Exhibit 5: Covenant of Integrity

5.1 Instructions

The Bidder must promptly execute the Covenant of Integrity on its corporate letterhead. The executed Covenant of Integrity must be submitted to K-Electric.

5.2 Template

[On Bidder letterhead]

[Date]

Attention:

Strategic Sourcing Lead – Project Procurement

K-Electric Limited

1st Floor Procurement Division

Building J, Elandar Road Complex,

Karachi - 74200,

Pakistan

www.ke.com.pk

Subject: Covenant of Integrity

Dear Recipient,

The Bidder hereby undertakes that the bid was not concluded under the influence of an agreement, decision or conduct which influences an open and fair competition negatively. In addition, the Bidder hereby warrants and covenants that neither it, nor its affiliates or representatives has made, offered, promised, requested, solicited or accepted or authorised regarding the bid, nor will make, offer, promise, request, solicit or accept or authorise regarding the matters that are the subject of the bid, any payment or any transfer of anything of value, including without limitation any gift, service or entertainment, or other advantage, or a so-called facilitation payment, whether directly or indirectly, to or for the use or benefit of:

- (i) any public official including without limitation any person holding a legislative, administrative, or judicial office, including any person employed by or acting for a public agency, or public international organization or providing a public service;
- (ii) any director, officer or employee of a government owned or controlled company or any company or enterprise in which government owns an interest;
- (iii) any political party or political party official or candidate for office;
- (iv) any director, officer or employee of any other party or any of their respective affiliates;
- (v) any close family member of any of the foregoing;
- (vi) any other third party; or

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- (vii) any agent or intermediary for the purposes of subsequent transfer (in whole or in part) to one or more of the foregoing, in each case where the payment, gift, service, entertainment, or advantage:
- (A) would violate the laws of any jurisdiction applicable to the subject matter of, and its performance of its obligations under, the bid;
 - (B) would violate the laws of the country of formation of it or its ultimate parent company, the country where it or its ultimate parent company's shares are listed, or the countries where it or its ultimate parent company carry on business; or
 - (C) is for the purpose of:
 - (1) influencing the individual receiving such payment, gift, service, entertainment or advantage to act or refrain from acting in the exercise of his or her official duties;
 - (2) seeking with a view to obtaining from such individual any undue advantage; or
 - (3) inducing such individual to act or refrain from acting in the exercise of his or her official duties in order to obtain or retain business or other undue advantage in relation to the bid.

in each case, in violation of the principles set forth in articles 15, 16, 18 and 21 of the "United Nations Convention Against Corruption" signed by the Islamic Republic of Pakistan on 9 December 2003 and ratified by the Islamic Republic of Pakistan on 31 August 2007, and to the extent otherwise not in conflict with (A) or (B).

In the case of breach of any of the above warranties and/or covenants, without prejudice to any other right and remedy provided by law, equity or by contract, the Bidder shall indemnify and hold K-Electric harmless from and against all claims, damages, losses, expenses, fines or any third-party liability claims (excluding any consequential losses) arising out of or in connection with such breach.

For and on behalf of

Bidder company name:

Name of Bidder's authorized person:

Title:

Date:

Signature:

Exhibit 6: Affidavit

(The Bidder must execute the Affidavit on stamp paper and submit to K-Electric along with complete Bid)

AFFIDAVIT

I, _____ S/o _____, permanent Resident of _____ holding CNIC/Passport No. _____ being a duly authorized representative of the _____ (“Applicant”)

_____ (designation) , do hereby declare as under:-

1. That I am the deponent of this affidavit and fully conversant with the facts stated herein and nothing has been concealed or mis-declared.
2. That the Bidder has applied to bid for the Project of K-Electric Limited.
3. That the country of origin of Bidder is not any country upon which the government of Pakistan has imposed any trade embargo and/or sanctions, including but not limited to Israel and India.
4. That the Bidder and its members, representatives, personnel's etc. do not have any restrictions with respect to travel in Pakistan.
5. That the Bidder does not have a conflict of interest with any of the parties involved in the bidding process of KE and further the Applicant hereby agrees that if the Applicant is found to be in conflict of interest with one or more parties involved in the bidding process, at any time, KE, shall have the right to disqualify the Bidder.
6. The Bidder is considered to be in a conflict of interest with KE, if the Bidder and the other parties in the bidding process including but not limited to have:
 - a) controlling shareholders in common or
 - b) a relationship with each other, directly or through common third parties, that puts the Bidder in a position to have access to material information about or improperly influence the proposal of any other Bidder involved in the bidding process or influence the decisions of KE regarding the bidding process
7. That the information and the assumptions provided by the Bidder are correct and complete and no material information is concealed by the Bidder in its Bid including any supporting documents;
8. The Bidder, if declared the Successful Bidder, will execute the project unconditionally;
9. That the Bidder and its members (in case of the Bidder being a consortium/joint venture) have not defaulted in their payment obligations and/or performance of major contracts over the past five years.
10. The Bidder or any officer, director or owner thereof, has not been in substantial noncompliance of the terms and conditions of prior project contracts.
11. That the Bidder and its members (if any) are solvent and have no liquidation application pending against them in any court of law.
12. That the information provided by the Bidder, on any litigation or arbitration resulting from contracts completed or under execution over the last five years is accurate and will not adversely affect KE in

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any way whatsoever. That the Bidder understands that a consistent history of award against the Bidder may result in rejection of the Bid of the Bidder by KE.

13. That the Bidder and its members (in case of the Bidder being a consortium/joint venture) have been compliant of the prevailing regulations over the past five years. The composition or the constitution of the consortium shall not be altered without the prior consent of the KE.
14. That all members shall be severally liable and the Main Sponsor shall, in addition to the members' several liability, be jointly and overall liable for all obligations and responsibilities of the members under the consortium agreement, the bidding proposal and all ancillary documents, to the KE till the lock-in period of the Project(s).
15. The Bidder, its owners, directors, and key employees, have not been prosecuted, blacklisted or barred during the past five years by KE or any federal or provincial agency or any international DFI and are not subject to any international sanctions;
16. The Bidder should affirm that it has not been the cause of any serious health, safety, or environment hazard in any of its projects in Pakistan or any other place in the world over the past five years.
17. That the Bidder shall submit his statement on separate affidavit, in case the Bidder is claiming no litigation.
18. The Bidder hereby agrees if any provision of this RFP document is, against the law of Pakistan the remaining provisions of this RFP document shall remain in full force and effect.
19. The Bidder shall confirm that there has been no material change in records provided at the time of prequalification. In case of any material change, the Bidder shall submit a separate statement of changes.

Whatever stated above is true and correct to the best of my knowledge and belief.

DEPONENT

Signature: _____

Name: _____

Dated: _____

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Exhibit 7: Power of Attorney

(The Bidder must execute the Power of Attorney on stamp paper and submit to K-Electric along with the Bid)

POWER OF ATTORNEY

TO ALL WHOM PRESENT, these presents shall come. _____, having its registered office at _____ (hereinafter called the "Company") send greetings.

WHEREAS the Company was incorporated under the _____ as a _____.

WHEREAS, by virtue of the powers conferred upon them by Article ____ of the Company's Articles of Association, the Board of Directors of the Company have passed the resolution dated _____ and entrusted to and conferred upon _____, the _____ of the Company. The following powers which shall be exercisable by him from the date that a power of Attorney enumerating the same is executed in his favor by _____.

NOW THESE PRESENTS WITNESS THAT, _____ s/o _____ holder of CNIC/Passport No. _____ is holding the position of _____ in the Company, is hereby appointed Attorney of the Company to act in the name and on behalf of the Company to do and perform the following act and things only:

1. To sign the application and its ancillary documents on behalf of the Company with respect to the bidding process for the Project(s) as specified in the Request for Proposal.
2. The Company hereby agrees to ratify and confirm all and whatever the said Attorney shall lawfully do or cause to be done by virtue of this Power of Attorney.
3. This Power of Attorney, unless earlier revoked, shall be valid until the completion of execution of bidding process and shall stand immediately revoked upon the execution of the same.

IN WITNESS WHEREOF the Common Seal of the Company has been affixed hereto at _____ on this _____ by the undersigned _____ of the Company pursuant to the resolution dated _____ passed by the Board of Directors of the Company.

Signature of Attorney

THE COMMON SEAL of the Company
is hereunto affixed in the presence of

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Director

Director

WITNESSES:

1. _____

2. _____

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Exhibit 8: Letter of Acceptance by the Bidder

(to be submitted on stamp paper)

The Bidder is obliged to accept the following in order to proceed with bid evaluation:

1. It is necessary that the Bidder accepts all **‘terms and conditions’** specified in the RFP.
2. Bidder has accepted the **‘Energy Purchase Agreement’** shared by KE with RFP.
3. It is required from Bidder to accept the **‘Equity Structure’** specified in Section 10 of RFP.
4. The Bidder must conform the timelines stipulated in Section 7 of the RFP document. Any change to the project timeline will be communicated by KE to the Successful Bidder at the time of LOI issuance.

Exhibit 9: Bid Bond (in the Form of a Bank Guarantee)

FORM OF BID BOND

(Bank Guarantee)

Guarantee No. _____

Executed on _____

Expiry date _____

Strategic Sourcing Lead – Project Procurement

K-Electric Ltd.,

1st Floor, Block J Procurement Division

Elander Road Complex

Karachi, Pakistan

Name of Guarantor (Bank) with address: _____

Name of Principal (Bidder) with address: _____

Penal Sum of Security (express in words and figures): _____

Bid Reference No. and Date: _____

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bid and at the request of the said Principal, we the Guarantor above-named are held and firmly bound unto the K-Electric Limited (hereinafter called The “Company”) in the sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid numbered dated as above for [the Development of the Project].

WHEREAS, the Company has required as a condition for considering said Bid that the Principal furnish a Bid Bond in the above said sum to the Company, conditioned as under:

- (1) That the Bid Bond shall remain valid for a period of nine (09) months from the bid submission deadline.
- (2) That in the event of:
 - a) The Principal withdraws his Bid during the period of validity of Bid, or
 - b) Failure of the Successful Bidder to:

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furnish the required Performance Guarantee, in accordance with Request for Proposal, Then the entire sum be paid immediately to the said Company as liquidated damages and not as penalty for the successful Bidder's failure to perform.

NOW THEREFORE, if the Successful Bidder shall, within the period specified therefore, on the prescribed form presented to him for signature enter into a Letter of Intent with the said Company in accordance with his Bid as accepted and furnish within thirty (30) days of his being requested to do so, a Performance Guarantee with good and sufficient surety, as may be required, upon the form prescribed by the said Company for the faithful performance and proper fulfilment of the said Letter of Intent or in the event of withdrawal of the said Bid within the time specified then this obligation shall be void and of no effect, but otherwise to remain in full force and effect.

PROVIDED THAT the Guarantor shall forthwith pay to the Company the said sum stated above upon first written demand of the Company without cavil or argument and without requiring the Company to prove or to show grounds or reasons for such demand, notice of which shall be sent by the Company to the Guarantor at its address given above.

PROVIDED ALSO THAT the Company shall be the sole and final judge for deciding whether the Principal has duly performed his obligations to sign the Letter of Award and to furnish the requisite Performance Guarantee within the time stated above or has defaulted in fulfilling said requirements and the Guarantor shall pay without objection the sum stated above upon first written demand from the Company forthwith and without any reference to the Principal or any other person.

IN WITNESS WHEREOF, the above bounden Guarantor has executed the instrument under its seal on the date indicated above, the name and seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

Guarantor (Bank)

Signature: _____

Witness:

1. _____

Name: _____

Title: _____

Corporate Secretary (Seal)

Corporate Guarantor (Seal)

1. _____

Name, Title & Address (Seal)

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'Karachi Site 01'**

Exhibit 10: Technical Information

Annexure 1: Technical Data

Solar Plant:

Name of Manufacturer

Capacity of Complex (MW)

Design Life, years

Generator and Accessories (per unit):

Manufacturer

Type/model/ year of manufacture

Rated voltage at generator terminal, kV

Rated output (MW)

Annual Plant Capacity Factor

Frequency range (Hz)

Power factor: (lagging and leading)

Transformers

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Annexure 2: Energy Yield Report

(To be inserted by the bidder)

[Note: The yield assessment is to be given as net generation delivered at the Interconnection Point, being gross generation less all auxiliary losses. All panel degradation losses are to be factored in the yield assessment for the Term of the EPA.]

This report must include the annual energy yield numbers at different probability levels after incorporation of all the applicable losses.

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Annexure 3: Brochures and Technical Details for Power Plant

Instructions for Bidder:

Bidders are required to submit the following documents pertaining to an approximately 120 MW solar PV power project Complex at Karachi Site 01 Pakistan:

- (a) Information Brochure.
- (b) Technical details / manuals for the solar plant and main equipment.

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Annexure 4: Type Certificate and Letter from the Manufacturer

Type Certificate and letter from the manufacturer confirming design life of 25 years and Bidder confirming operability of plant for 25 years

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Exhibit 11: Tariff Table

Bidders are required to submit Tariff Table for the project in the format given below.

| Year | Total Tariff (Rs./kWh) |
|-----------------------------|-----------------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| Levelized Bid Tariff | |

**The Bidder shall provide the levelized tariff over the project term using discount factor approved by NEPRA.*

KE Request for Proposal (RFP) – approx. 120 MW solar power project at District West, Karachi, Sindh, Pakistan
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Exhibit 12: Equity Commitment from Sponsors

Bidders shall provide the evidence of available funding mechanism including signed equity commitment from sponsors.

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Exhibit 13: Performance Guarantee

PERFORMANCE GUARANTEE

Guarantee No: _____

Executed on: _____

Amount: _____

Expiry Date: _____

Strategic Sourcing Lead – Project Procurement

K-Electric Ltd.,

1st Floor, Block J Procurement Division

Elander Road Complex

Karachi, Pakistan

Name of Guarantor (Bank) with address: _____

Name of Contractor with address: _____

Amount of Guarantee: _____

(Express in words & figures)

RFP Date: _____

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the RFP (hereinafter called the Documents) and at the request of the said Bidder being our Client, we, the Guarantor above named hereby irrevocably and unconditionally bind ourselves to K Electric (hereinafter called the Company) in the sum of [●] for the payment of which sum well and truly to be made to the said Company to pay the Company on its first demand in writing without raising any cavil or objection whatsoever.

We understand that the Bidder has been notified dated _____ by the Company as the Successful Bidder for the development of the Project.

WHEREAS:

- A. The Bidder has been declared as the Successful by the Company to set up the solar power plant at [location] in accordance with the terms of the Request for Proposal.

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- B. As required by the Beneficiary prior to the issuance of the Letter of Intent (the "LOI") to the Successful Bidder, and in consideration thereof, the Guarantor, at the request and on behalf of the Successful Bidder, hereby furnishes this irrevocable, unconditional, without recourse, on demand bank guarantee (hereinafter referred to as the "Performance Guarantee") in favor of the Beneficiary in order to secure the performance of the Successful Bidder's obligations under the LOI.

We, the Guarantor, under the contract do hereby irrevocably and unconditionally guarantee to pay to the Company immediately without any delay upon the Company's first written demand without cavil or arguments and without requiring the Company to prove or to show grounds or reasons for such demands any sum or sums up to the amount stated above without reference to the Contractor or any other third party. Any demand by the Company shall be final and conclusive for all the purposes whatsoever. For the avoidance of doubt, time shall be of the essence of this Guarantee and the liability of the Guarantor shall be valid until expiry date continuing and co-extensive with that of the Contractor and shall be valid up to (Date) and shall not be diminished by any partial claim or demand made on the Guarantor under this Guarantee by the Company.

This Guarantee shall be solely governed and construed by the substantive and procedural laws of the Islamic Republic of Pakistan.

This guarantee shall come into force at once and be valid for a continuous period of [●] months ending on [expiry date]. Any demand by the Company should reach the Guarantor before (time and date)

IN WITNESS WHEREOF, the above-bounden Guarantor has executed this instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Notwithstanding anything herein above this guarantee is [●] (in words) valid until [●] after which date the guarantee will become null and void irrespective of whether or not the original guarantee is returned to the bank for cancellation. Any claim made under this guarantee must be in writing and delivered to the bank's office at [●] on or before (time and date) after which we will no longer be liable to make payment to you.

Guarantor (Bank)

Signature: _____

Witness:

1. _____

Corporate Secretary (Seal)

Name: _____
Title: _____

Corporate Guarantor (Seal)

1. _____
Name, Title & Address (Seal)

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Exhibit 14: Letter of Intent

LETTER OF INTENT

[Insert Name]

[Date]

[Designation]

[Address]

Subject: Letter of Intent ("LoI") to Successful Bidder for Development of one Utility Scale Solar Power Plant on a Build Own Operate Transfer (BOOT) Basis at District West Karachi, Sindh, Pakistan of 120 MW – (Karachi Site 01) Project"

Dear [],

This LOI is executed in Karachi on _____ ("Effective Date") by and between:

- 1 **K-Electric Limited**, a public limited company duly incorporated and existing under the laws of Pakistan and having its registered office at KE House, 39-B, Sunset Boulevard, Phase-II, DHA, Karachi, Pakistan (hereinafter referred to as "**KE**"), which expression shall include wherever the context permits its successors-in-interest and assigns, and
- 2 **(SUCCESSFUL BIDDER), (COMPANY DETAILS)** which expression shall include wherever the context permits its successors-in-interest and permitted assigns;

KE and **Successful Bidder** may hereinafter be individually referred to as a "Party" and collectively as "Parties".

WHEREAS:

- A. This LOI is being awarded to the Special Purpose Vehicle created by the Successful Bidder.
- B. The SPV will be responsible to develop, construct, own and operate the [] MW Independent Power Plant ("**IPP**") based on solar photovoltaic modules and technical requirements as mentioned in RFP, to be located in [], in accordance with the milestones specified by the Successful Bidder in response to RFP of the Project.
- C. Subsequent to the formation of SPV, the SPV will be required to (i) obtain Generation License and Tariff Approval from NEPRA (ii) enter into EPC contract for the design, construction and commissioning of the Complex (ii) enter into **Energy Purchase Agreement ("EPA")** with KE, in accordance with the Exhibit [5] of RFP, and other necessary Project agreements (iii) arrange the necessary financing for the Project(s) and achieve financial close (iv) construct and implement the Project within the time period allowed by NEPRA in the Tariff Approval, and (v) upon commissioning, operate and maintain the Complex for the Term to provide the generated electricity to KE.

**KE Request for Proposal (RFP) – approx. 120 MW solar power project at District West, Karachi, Sindh, Pakistan
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- D. SPV shall be duly licensed by National Electric Power Regulatory Authority ("NEPRA") under the Regulation of Generation, Transmission and Distribution Act, 1997 ("**NEPRA Act**") as amended by NEPRA Act 2018 and the Securities and Exchange Commission of Pakistan ("**SECP**") to undertake this Project.
- E. SPV shall develop the Project under BOOT basis for a period of twenty-five (25) years post Commercial Operations Date ("**CoD**"); and transfer the Project to the [Government of Sindh/Sindh Solar Energy Project] after the end of the said term.

Now, therefore, in consideration of the mutual promises and covenants of the Parties set forth in this LoI, the Parties agree to the following:

1. Term and Termination

- 1.1 The Parties agree that this LoI shall be remain effective from the Effective Date and shall remain valid for a period of one (1) year ("**Term**").
- 1.2 The Parties agree to complete the Milestones during the term of this LoI. In the event that the LoI is terminated under Clause 1.3 (a), KE shall have the right to encash the Performance Guarantee as per the terms of this LoI.
- 1.3 This LoI shall become effective from the Effective Date and shall remain in force and valid until the occurrence of the following, whichever comes first:
 - (a) Expiry of the term of this LoI, without renewal in writing between Parties; or
 - (b) Achievement of Financial Close by SPV as stated in the Milestones; or
 - (c) Expiry of the Performance Guarantee

2. The Project

- 2.1 For the purposes of this LOI, Main Sponsor shall be the same person as submitted by Successful Bidder in their RFQ. For the purposes of this LOI irrespective of any other Sponsor being added to the Project in the future, SPV or its designated affiliate shall remain as the developer for the Project for all intents and purposes and in its dealings with KE. The equity shareholding of the Successful Bidder shall not be less than 51% of the SPV's equity during the Lock-In Period whereas in cases where the Successful Bidder is a consortium, the Main Sponsor is required to hold at least 51% of Consortium's total equity in the SPV during the Lock-in period. Any change in the shareholding during the Lock-in period will require prior approval of KE which shall not be unreasonably withheld.
- 2.2 SPV shall be responsible for raising financing of the Project and to successfully achieve all the Project Milestones as following:

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| S. No. | Milestone | Days of LOI Issuance |
|---------------|--|-----------------------------|
| 1. | Filing of Tariff and GL Application to NEPRA | 07 |
| 2. | GL and Tariff Approval by NEPRA | 68 |
| 3. | Finalization of Project Agreements including land lease instrument | 180 |
| 4. | Financial Close | 180 |

Table – 1 Project Development Activities

- 2.3 KE shall ensure that the Project is connected to its grid network. The cost and arrangement of interconnection up to the interconnection point to be situated at the Project site would be borne by KE.
- 2.4 [Main Sponsor] of the SPV shall take all the risks and liabilities of development of the Project and shall contribute the finances, expertise and overall business development in respect of the Project.
- 2.5 SPV shall comply with all the regulations, which include warranties related to the performance of such plants in line with requirements mentioned in the Request For Proposal (“RFP”) and in the EPA and/or the applicable laws and regulations of the Islamic Republic of Pakistan. In addition, SPV shall be responsible for obtaining license/authorization from NEPRA under the NEPRA Act as well as ensuring that all relevant performance standards of NEPRA for the grant of any generation license in favor of SPV are duly complied with.
- 2.6 The Parties agree that SPV shall file tariff application with NEPRA and tariff approval shall be used for the purposes of the EPA.
- 2.7 The Successful Bidder has submitted a Performance Guarantee in the form acceptable to KE prior to execution of this LoI.
- 2.8 Notwithstanding anything in this LoI, KE shall have the right to encash the Performance Guarantee to its full outstanding value in case of any breach of the terms and conditions hereof.
- 2.9 SPV shall regularly update KE on the progress of the Project at monthly intervals. The scope of the progress report shall include both technical and commercial areas which shall be presented by SPV to KE’s designated team. Without prejudice to the foregoing, KE shall be entitled to demand and receive from time-to-time specific information/reports/data on the progress of the Project and/or achievement of milestones.
- 2.10 The Parties agree that upon end of the Term, the Project will be transferred to [Sindh Solar Energy Project (SSEP)/Government of Sindh].

3. Confidential Information

- 3.1 For the purposes of this LOI, "Confidential Information" shall mean any information, knowledge or data relating to the subject matter of this LOI which is not in the public domain and is disclosed by the disclosing party to the receiving party and is other than intellectual property of the disclosing party. All Confidential Information shared by the disclosing party to the receiving party shall remain the exclusive property of the disclosing party and the receiving party shall not disclose the same to any other person or entity not being a signatory to this LOI unless:-
- (a) the said information/data is already in the public domain;
 - (b) such disclosure is required by the order of the competent authority or judicial forum subject to prior intimation to the disclosing party.
- 3.2 No Party shall issue or make any public announcement or disclose any information regarding this LoI and its objects unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of the other Party to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable laws or regulations including but not limited to the listing regulations of the Pakistan Stock Exchange.
- 3.3 This clause 3 of the LoI shall survive termination or expiry of this LoI and continue for a period of [ten (10)] years thereafter.

4. Miscellaneous

- 4.1 Neither Party may assign, novate, substitute, sub-delegate, sub-contract or otherwise transfer any or all of its rights and obligations under this LoI, whether in whole or in part, without prior specific written consent of the other Party.
- 4.2 This LoI may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by duly authorized representatives of both the Parties to this LoI.
- 4.3 The validity, construction and implementation of this LoI shall be solely governed by the substantive and procedural laws of the Islamic Republic of Pakistan. Any disputes or claims arising under or in connection with this LoI shall be subject to the exclusive civil jurisdiction of the High Court of Sindh at Karachi to which the Parties to this LoI hereby irrevocably submit.
- 4.4 Neither of the Parties shall be liable to the other Party in contract, tort, negligence, breach of statutory duty, trust or otherwise for any indirect, direct and/or consequential losses or damages of whatsoever nature for any breach of the provisions of this LOI whether intentional or otherwise. In no way shall either Party be liable to the other for any loss of profits or loss of business opportunities for any delay or non-achievement of the milestones set out in this LOI whether under the provisions of the law of contract, tort, trust or any other theory of law.

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- 4.5 Each Party warrants to the other that the person(s) signing below have all necessary capacity and authority, corporate or otherwise, to enter into, execute and implement this LOI in good faith on behalf of the Parties to this LOI.
- 4.6 All notices and other communications required under this LOI shall be given in writing, through personal delivery, courier mail or by facsimile transmission and shall be addressed to the following:

KE:

Attention: [●]

Designation: [●]

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

Facsimile: 021 99205192

SPV:

Attention: [Name]

Designation:

Address:

- 4.7 Any notices sent under this LoI above shall be deemed to be duly received where sent during normal business hours by personal delivery or facsimile transmission on the same business day as it was sent, and where sent by courier within three (3) business days of dispatch.
- 4.8 The provisions of this LoI are severable in nature and in the event that any one or more of its provisions are incapable of being implemented for any reason, this shall not affect the validity of the remaining provisions of this LOI and the Parties shall in good faith enter into negotiations to come up with an alternative provision which best reflects the understanding and mutual intention of the Parties at the time of entering into this LoI.
- 4.9 Notwithstanding anything to the contrary contained herein, this LoI shall be legally binding on the Parties.
- 4.10 Neither of the Parties shall be liable to the other Party in contract, tort, negligence, breach of statutory duty, trust or otherwise for any indirect, direct and/or consequential losses or damages of whatsoever nature for any breach of the provisions of this LoI whether intentional or otherwise.
- 4.11 In no way shall either Party be liable to the other for any loss of profits or loss of business opportunities for any delay or non-achievement of the milestones set out in this LOI whether under the provisions of the law of contract, tort, trust or any other theory of law.

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- 4.12 The SPV shall comply with all the applicable laws/regulations/standards in line with good industry practices and lender's requirements.
- 4.13 Nothing in this LOI shall be deemed to constitute a partnership or the formation of a joint venture between the Parties.
- 4.14 Neither Party makes any representations or warranties to the other Party under this LoI and each Party shall be responsible for conducting its own due diligence with regard to the subject matter of this LoI. Accordingly, each Party shall be strictly responsible for its own costs.
- 4.15 For the avoidance of doubt, time shall be of the essence of this LoI for Parties.
- 4.16 This LOI is personal in nature and does not create any third-party rights or interests in favor of any person or entity who is not a signatory to this LoI.
- 4.17 The terms defined in this LoI shall have the meaning set out herein and for all the Capitalized terms undefined in this LoI shall have the same meaning as set out in the RFP.

In witness thereof, the Parties hereby put their respective signatures on the date and year first above written.

For and on behalf of KE:

Name

[Designation]

***Acknowledged by and on behalf of
Successful Bidder:***

Name

[Designation]

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Exhibit 15: Energy Purchase Agreement

Exhibit 16: Bid Evaluation Criteria

15.1 Knock-Off Criteria

1. Compatibility of the Complex and equipment with technical standards of Grid Code (Power factor, voltage variation, operating frequency range etc.), Distribution Code and Other applicable documents etc.
2. Yield – Greater than 21.5%

15.2 Technical Evaluation

Detailed Technical Scorecard is given below according to which, minimum criteria for qualification of Bidder is **75** out of **100** marks after passing the Knock-off criteria provided above. Applicants failing the Knock-off Criteria will be rejected and will not be technically evaluated.

| Sr. No | Technical Evaluation Criteria | Overall Score | Score |
|---------------|--|----------------------|--------------|
| 1 | Components/equipment and technical solution | 90 | |
| 1.1 | Solar Panels | | 10 |
| | Efficiency | | |
| | Annual degradation / guarantee | | |
| | Lifetime | | |
| | Compliance with RFP | | |
| | Track record | | |
| 1.2 | Power Inverters | | 10 |
| | Efficiency | | |
| | Track record | | |
| | After sales service | | |
| | Compliance with RFP | | |
| 1.3 | Mounting Structures | | 03 |
| | Trackers – single axis tracking system | | |
| | Track record | | |
| | Material of structure | | |
| | Protection coating | | |
| | Compliance with RFP | | |
| 1.4 | Balance of Plant | | 10 |

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| Sr. No | Technical Evaluation Criteria | Overall Score | Score |
|---------------|---|----------------------|--------------|
| | Track record of key equipment | | |
| | Cable selection and sizing | | |
| | Auxiliary facilities and back up | | |
| | Security, surveillance and fire fighting | | |
| | Earthing, grounding, lightning protection | | |
| | Overall layout of plant | | |
| | Compliance with RFP | | |
| 1.5 | SCADA and Telecommunication system | | 04 |
| | Manufacturer track record | | |
| | Monitoring parameters and integration | | |
| | Data backup and storage | | |
| | Compliance with RFP | | |
| 1.6 | O&M Methodology | | 08 |
| | Key staff (organization; qualification/experience and facilities) | | |
| | Emergency spares, list and necessary stock | | |
| 1.7 | 220kV Switchgear | | 10 |
| | Compliance with RFP, grid code and applicable policies by Power Purchaser | | |
| | Track record & quality of main equipment | | |
| | Historical performance in local environment | | |
| 1.8 | Civil Works and Infrastructures | | 03 |
| | Buildings and ancillary facilities | | |
| | Flood mitigation measures | | |
| | Plant accessibility - internal & external roads; fencing | | |
| 1.9 | HSE | | 02 |
| | Compliance with RFP and all necessary regulatory standards | | |
| 1.10 | Plant performance; guarantee values | | 15 |

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| Sr. No | Technical Evaluation Criteria | Overall Score | Score |
|---------------|--|----------------------|--------------|
| | Performance Ratio | | |
| 1.11 | Warranty | | 15 |
| | PV Modules | | |
| | Inverters | | |
| | Mounting structures (single axis) | | |
| | Switchgears | | |
| | Transformers | | |
| | Cables | | |
| | Terms of warranty and warranty period | | |
| | Extended warranty option | | |
| | Compliance with RFP | | |
| 2 | Execution & timeline | 05 | |
| | Detailed, structured and logic time schedule | | 2.5 |
| | Suitability and feasibility of proposed tasks | | 2.5 |
| 3 | Ability to contribute to local economic development | 05 | 05 |
| | TOTAL | 100 | 100 |

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Exhibit 17: Form of Clarification to RFP Documents

| S. No. | Clause Reference No. and title of RFP Doc | Original wording or issue for which clarification is sought | Bidder's Clarification Request | K-Electric's response to Bidder's Clarification Request |
|---------------|--|--|---------------------------------------|--|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
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| 17 | | | | |
| 18 | | | | |

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| | | | | |
|----|--|--|--|--|
| 19 | | | | |
| 29 | | | | |
| 30 | | | | |

For an on behalf of

Bidder Company Name:

Name of Bidder’s authorized person:

Title:

E-mail:

Date:

Signature:

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Exhibit 18 – Hazard Substance Management Procedure

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Exhibit 19 – Waste Management Procedure

K-ELECTRIC LIMITED

— AND —

[COMPANY NAME]

ENERGY PURCHASE AGREEMENT

RELATING TO

SOLAR POWERED [●]MW_r (CONTRACT CAPACITY) POWER GENERATION COMPLEX

AT

MADE AT KARACHI

ISLAMIC REPUBLIC OF PAKISTAN

AS OF

COUNSEL FOR PURCHASER:

COUNSEL FOR SELLER:

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THIS ENERGY PURCHASE AGREEMENT (this "Agreement") is made at Karachi as of the [●] 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 private limited 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 [●] 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, 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 Component” – The rate expressed in Rs./kWh calculated by dividing 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 with the Average Quarterly Energy or Average Semi-Annual Energy, as the case may be.

“Actual Interest Charges Component” – The rate expressed in Rs./kWh calculated by dividing 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, the Average Quarterly Energy or Average Semi-Annual Energy, as the case may be.

“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) 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(e); 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.

“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 of 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

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

$$AQE_Y = ABE_Y * ((N/CC) / 4)$$

Where

AQE_Y = the Average Quarterly 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.

“Average Semi-Annual Energy” — For any Agreement Year in consideration, the quantity of electricity expressed in kWh for the six-month period which the Complex is assumed capable of generation and delivery at the Interconnection Point, calculated as follows:

$$ASE_Y = ABE_Y * ((N/CC)/2)$$

Where

ASE_Y = the Average Semi-Annual 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.

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

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

“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 interest (or mark-up) limited to KIBOR plus [●%] for Rupee based financing and SOFR/LIBOR plus [●%] for Foreign Currency based financing, as applicable, as agreed under the Financing Documents, 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; 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 date of this Agreement by any Public Sector Entity of any Law of Pakistan (including a final, binding and non-appealable decision of any Public Sector Entity);
- (b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Seller Consent after the date of this Agreement; or

(c) the imposition by a Relevant Authority of any additional Seller Consent,

that in the case of each of clause (a), (b), or (c) hereinabove establishes either a material 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 date hereof, the adoption, enactment, promulgation, coming into effect, repeal, amendment, re-interpretation, change in application, change in interpretation or modification by any Public Sector Entity of any Law of Pakistan relating to any Tax or Taxes.

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

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

"CLFME" — 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 [●]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 (a), (b) or (c) 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.

"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".

"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 will be transported, 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 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.

"LIBOR" — The London interbank offered rate, being the screen rate administered by the Intercontinental Exchange (ICE) Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for a period equal to three (3) months that appears on the LIBOR01 or LIBOR02 page of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters at or about 11:00 a.m. in London on the last available London Banking Day or, in the event that Thomson Reuters, or any successor thereto, no longer provides such information, the rate determined by such other means as agreed to by the Parties that provides the interbank rate for Dollars for the relevant tenor in the London inter-bank market, and if, in either case, that rate is less than zero, then LIBOR shall be deemed to be zero.

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

"London Banking Day" — Any Day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom.

"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.

"Metering System" — All meters and metering devices (including, if applicable, any remote terminal units

and electronic data-recording and telemetry system) to be procured by the Seller on behalf of the Purchaser or directly by the Purchaser (subject to Section 7.1(b)), and thereafter installed and tested by the Seller and transferred to the Purchaser, and thereafter owned and maintained by the Purchaser and used to measure the Net Delivered Energy.

"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).

"Numerical Weather Prediction 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

"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(c).

"Pre-COD Energy Payment" – The meaning ascribed thereto in Section 8.7.

"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 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.

"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 LC Amount" – means the aggregate amount of two (2) months of the Energy Payment calculated on the basis of the Annual Benchmark Energy determined in accordance with Schedule 1 of this Agreement at the time of issuance of the Purchaser Letter of Credit and adjusted from time to time.

"Purchaser Letter of Credit" – The unconditional and irrevocable stand-by letter of credit issued by a scheduled Pakistani bank reasonably acceptable to the Seller, substantially in the form set out in Schedule 11 to this Agreement, which shall provide for draws by the Seller for the purposes of Section 9.8 in immediately available funds and which shall be in an amount equal to the Purchaser LC Amount.

"Purchaser Transferee" – The meaning ascribed to that term in Section 19.10 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 eleven (11) 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.

"Service Territory" - The service and concession territory identified by NEPRA in the Distribution Licence issued to the Purchaser, which may be amended from time to time.

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

"SOFR" — [to be added]

"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 determination 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 Customs Duty, withholding tax, excise tax, tax on Foreign Currency or foreign exchange transactions or property tax. The term "Tax" shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity.

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

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

"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,
 - (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 [●]¹, 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. 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) and 15.6(i), then, unless Section 2.2(c) 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

¹ We should mention FC date in the LOI.

such extended period, the Seller shall be paid twelve percent (12%) of the Energy Price on account of O&M and insurance costs in respect of such period.

- (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 and the Seller Suspension Period set out in Section 15.6(A)(a) and 16.3(B)(d) 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 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.

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;
- (iii) (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 authorized 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 [●]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 strictly in accordance with the Tariff Determination 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; CARBON CREDITS

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 in accordance with the Alternate Renewable Energy Policy 2019, as amended or replaced from time to time by the GOP, that shall govern the matters aforesaid.

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 twenty-four (24) hours 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 four (4) hours before the start of each hour, a forecast of 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 three (3) 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 Force Majeure Event.

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.

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) Months 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 Component and the Actual Interest Charges Component multiplied by the Average Daily Energy 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 and Metering System 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
 - (v) Procurement and installation of the Metering System, if required by the Purchaser.
- (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;
- (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 thirty (30) 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 six percent (6%) of the Energy Price on account of partial O&M and insurance costs multiplied by the Average Daily Energy for each Day during the period of such delay.

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

- (i) the end of a period equal to the period of delay in completing the Purchaser Interconnection Facilities, 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 and fiftieth (150th) 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 ninetieth (90th) day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay which invoice shall be signed by the Lenders or the Agent, certifying the amount shown therein to be correct and stating the due date for such payment of principal debt 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 [3%] (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 (20%) twenty percent 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 Purchaser shall, at its expense, have procured and shall provide the Metering System to the Seller unless the Purchaser requires the Seller to provide such Metering System in accordance with Section 6.1(e). The Purchaser shall ensure that such 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, 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 install the Metering System and procure and install the Back-Up Metering System in accordance 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 (or, if the Seller has procured the Metering System, subject to reimbursement therefor as provided herein, ownership) of such Metering System to the Purchaser, and the Purchaser shall thereafter be responsible for the ownership and maintenance of the Metering System. For avoidance of doubt, the Purchaser shall not read, test, adjust, repair or replace the Metering System without providing not less than forty-eight (48) hours prior written notice to the Seller and without the presence of the Seller. The Purchaser shall be provided with no less than forty-eight (48) hours' notice of, and shall have the right to be present at and to observe, the installation and all testing of the Metering System. The Seller shall grant to the Purchaser all necessary easements and rights-of-way for the location of the Metering System on Site and for ingress and egress thereto and therefrom.

7.3 TESTING OF METERING SYSTEM

- (a) The Purchaser shall test the accuracy of each of the Metering System and the Back-Up Metering System, in the presence of the Seller, 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 shall be borne by the Purchaser and the cost of testing 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 Metering System and the Back-Up Metering System carried out by the Purchaser and shall have the right to witness such tests, as well as any inspection of the Metering System and the Back-Up Metering System or adjustments thereof; provided that if 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. 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 Back-Up Metering System and recalibrate the relevant Back-Up Metering System. 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 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 Purchaser 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 totaled 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 Seller's personnel acting in accordance with the terms of this Agreement. The Seller shall provide the Purchaser at least forty-eight (48) hours advance 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 Seller's personnel, and the Purchaser shall be provided the opportunity to be present when such seals are broken.
- (d) If any seal securing the Metering System or the Back-Up Metering System is found to be broken, or if the Metering System or the Back-Up Metering System has been found to have been tampered with, and, in either case, the Metering System is found to be inaccurate by more than one-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 any component of the Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Purchaser shall forthwith repair, recalibrate or replace such component of the Metering System at its own cost and expense.
- (b) If any component of the Back-Up Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Seller shall forthwith repair, recalibrate or replace such component of the Back-Up Metering System at its own cost and expense.
- (c) Upon completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Back-Up Metering System, as the case may be, such Metering System and Back-Up Metering System shall be jointly sealed in accordance with Section 7.5.

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. 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 six percent (6%) of the Energy Price on account of partial O&M and insurance costs multiplied by the Average Daily Energy for the number of Days of such delay. Such payments shall commence on the Scheduled Commercial Operations Date prevailing immediately prior to such delay 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 ninetieth (90th) Day 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 three percent (3%) (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 20% twenty percent 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

- (c) 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 ("**Pre-COD Energy Payment**") 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:

$$EPmt_m = EPr_m * ME_m$$

Where:

$$EPmt_m = \text{Energy Payment for the relevant Month}$$

| | | |
|-------------|---|---|
| E_{Prc_m} | = | Energy Price for the relevant Month |
| ME_m | = | Monthly Energy for the relevant Month, consisting of NDE_m ² |
| NDE_m | = | Net Delivered Energy 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

² NPMV will be considered as per NEPRA's approval.

(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 Energy³,
- (C) 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;

The first invoice for Energy Payment after the Commercial Operations Date may include the invoice for the Pre-COD Energy Payment under Section 8.7; and

(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.

³ NPMV will be considered as per NEPRA's approval

- (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) 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.
- (f) 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 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)(ii)(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.

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 PURCHASER LETTER OF CREDIT

- (a) No later than [seven (7)] Business Days prior to the Scheduled Commercial Operations Date, the Purchaser undertakes to provide to the Seller, the Purchaser Letter of Credit.

which shall have an initial term of twelve (12) Months from the date of issuance. The Purchaser shall maintain in full force and effect the Purchaser Letter of Credit in an amount equal to the Purchaser LC Amount, from the date of its issuance until the expiry of the Term.

- (b) No later than ten (10) Days prior to the expiry of the Purchaser Letter of Credit and until the expiry of the Term, the Purchaser shall extend the validity of the Purchaser Letter of Credit for an additional period of twelve (12) Months or provide a replacement or substitute Purchaser Letter of Credit. If the Purchaser provides a replacement or substitute Purchaser Letter of Credit, the Seller shall return the original Purchaser Letter of Credit immediately after receipt by the Seller of such replacement.
- (c) The Seller shall only be entitled to encash the Purchaser Letter of Credit after providing notice to the Purchaser of its unpaid invoices at least fifteen (15) Days prior to encashment.
- (d) The Purchaser Letter of Credit shall provide for draws by the Seller for the purposes of Section 9.8 in immediately available funds for any amounts due to the Seller under this Agreement, less any amounts disputed by the Purchaser, upon presentation of a certificate of an authorized officer of the Seller stating that: (1) amounts shown in the invoice accompanying the certificate are due and payable by Purchaser to the Seller under this Agreement; (2) a notice has been served by the Seller to the Purchaser at least fifteen (15) Days prior to the presentation of the certificate in respect of the outstanding invoice(s) and the outstanding amount that remains due and payable and (3) an invoice for such amount has been delivered to the Purchaser at least forty five (45) Days prior to the presentation of the certificate in respect of the outstanding invoice(s) relating to the Energy Payment, the Sales Tax and the Pass Through Items and either (i) no amount shown in such invoice(s) have been disputed by the Purchaser or (ii) a portion of the amount shown in the invoice(s) has been disputed by the Purchaser, identifying such disputed amount. The certificate shall be accompanied by the relevant invoice delivered to the Purchaser and any Invoice Dispute Notice delivered to the Seller by the Purchaser. The Seller shall not be entitled to draw any amounts shown in the invoice or demand to the Purchaser that has been disputed by the Purchaser until such amount is determined to be due and payable to the Seller in accordance with the dispute resolution procedures set forth in this Agreement.
- (e) In the case where the Seller has encashed the Purchaser Letter of Credit in accordance with this Section 9.8, the Purchaser shall be required to replenish or replace the Purchaser Letter of Credit to the Purchaser LC Amount within thirty (30) Days of such encashment.
- (f) In the event that the Seller draws against any Purchaser Letter of Credit and it is subsequently determined that the Seller was not entitled to do so, then the Seller shall repay such amount to the Purchaser, together with interest thereon from the date of the draw through the date of repayment at the Delayed Payment Rate, and shall be computed for the actual number of Days on the basis of a three and sixty-five (365) Day year.

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(a), (b), (d) and (e) 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.

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:
 - (iii)(i) defences of set-off and counter-claim;
 - (iv)(ii) the time barring of claims due to expiry of any period of limitation under applicable laws;
 - (v)(iii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and

(vi) (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 strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide.
- (b) A Change in Law (and to the extent also a Force Majeure Event, a "**Change in Law Force Majeure Event**" or "**CLFME**"); or
- (c) Other events beyond the reasonable control of the affected Party (each an "**Other Force Majeure Event**"), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
 - (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (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 random 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 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 (20%) of the Energy Price for the energy not delivered under Section 15.5;

further such payments shall be pass-through item in Determined Tariff by NEPRA.

(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(c)(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(c) 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(c) 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 percent (20%) 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; provided however any such payment hereunder shall be pass-through item under the Determined Tariff by NEPRA.
- (j) 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.

- (k) 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.
- (l) 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, following the expiry of the Total FME Suspension Period, either Party shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party.
- (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 Seller shall be entitled to withdraw the FME Suspension Notice earlier than the period set out in the FME Suspension Notice provided the Seller gives a written notice to the Purchaser 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).
- (g)

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(c), 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 three percent (3%) 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 [●] days for 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) Not used
- (c) Except for the purpose of amalgamation or restructuring that does not affect the ability of the amalgamated or restructured entity, as the case may be, to perform its obligations under this Agreement, 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 provide the Purchaser Letter of Credit in accordance with Section 9.8 within ninety (90) Days of the expiry of the period provided in Section 9.8;

(g) The Purchaser fails to replenish the Purchaser Letter of Credit in accordance with Section 9.8.

(h) The failure by the Purchaser to complete and commission the Purchaser Interconnection Facilities within one hundred and eighty (180) 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 OF DEFAULT

CONSEQUENCES OF SELLER EVENT

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(c) 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(c) 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 Purchaser Letter of Credit and the Seller's obligation to supply and deliver energy and its entitlement to encash the Purchaser Letter of Credit 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 percent (20%) 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 EVENT OF DEFAULT

CONSEQUENCES OF PURCHASER

Notwithstanding anything contrary contained in this Agreement:

- (a) If there is a Purchaser Event of Default as set out in Section 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 twelve percent (12%) of the Energy Price on account of O&M and insurance costs, in accordance with the provisions of Schedule 1, for the Net Delivered Energy delivered by the Seller to the Purchaser. For avoidance of doubt, no additional payment shall be due and payable by the Purchaser for such Net Delivered Energy 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 and Purchaser Event of Default set out in Section 16.2(c) (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.
- (h) If there is a Purchaser Event of Default as set out in Section 16.2(c) and the same is not cured within the Cure Period provided in Section 16.3, then the Seller shall be entitled to terminate in accordance with Section 16.4.

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

- (a) 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.

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 17.3, 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.

17.3 RIGHT TO SELL NET DELIVERED ENERGY FOLLOWING TERMINATION

If this Agreement is terminated during the Term, the Seller may sell the Net Delivered Energy to any prospective purchaser in accordance with the Laws of Pakistan.

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 [Arbitration Act of 1940/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 [Karachi, Pakistan/London, United Kingdom]. Except as otherwise determined in arbitration, and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with such arbitration.
- (c) Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in London, United Kingdom, and such Dispute is not of a type that could have been conducted in London in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London shall pay all costs of arbitration as and when incurred by the other Party (including out-of-pocket costs but excluding any award made by the arbitral 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:

(ii) K-Electric Limited

Attention: Chief Executive Officer

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

Facsimile: +92-21-99205192

With a copy to:

Attention: Chief Operating Officer

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

Facsimile: +92-21-99205192

(iii) 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(c), 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 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:

