
SERVICE LEVEL AGREEMENT

BETWEEN

NETWORK CONTROL DEPARTMENT

–AND –

BIN QASIM POWER STATION II

RELATING TO

494.532 MW (NET) BIN QASIM POWER STATION II (BQPS-II)

AT

PORT QASIM, PROVINCE OF SINDH, KARACHI, PAKISTAN

MADE AT KARACHI, ISLAMIC REPUBLIC OF PAKISTAN

ON _____, 2025



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This **SERVICE LEVEL AGREEMENT** (“**Agreement**”) is made as of [•] day of [•] 2025 by and between the following departments of K-Electric Limited (“**Company**”):

- (1) **BIN QASIM POWER STATION-II** of the Company (“**Power Producer**”); and
- (2) **NETWORK CONTROL DEPARTMENT** (“**Offtaker**”) acting for and on behalf of the Supply Business Unit (as defined below) within distribution segment of the Company;

The Power Producer and the Offtaker shall hereinafter be referred to as a “**Party**” and collectively, as the “**Parties**”.

RECITALS

- A. **WHEREAS**, the tariff for the Company determined by National Electric Power Regulatory Authority (“**NEPRA**”) was expiring on 30 June 2023 and in this connection, the Company submitted its tariff petition to NEPRA for its power generation on 1 December 2022 (“**Tariff Petition**”) requesting it to determine plant wise tariff for the Company’s generation plants keeping in view the tariff structure of independent power producers prevalent in the power sector.
- B. **AND WHEREAS**, whilst awaiting for NEPRA’s decision, the Parties during the Interim Period (as hereinafter defined) made an arrangement whereby the Power Producer delivered electrical energy generated by it to the Offtaker on behalf of the Supply Business Unit within distribution segment of the Company based on the terms and conditions outlined in the Tariff Petition, subject to adjustment based on Tariff Determination (as defined below).
- C. **AND WHEREAS**, NEPRA vide its determination dated 22 October 2024 having reference no. NEPRA/R/ADG(Trf)/TRF-596/15878-82 determined the tariff for the Company’s generation plants including for the Power Producer.
- D. **AND WHEREAS**, in accordance with the Tariff Determination, the Parties shall reconcile and adjust all outstanding amounts due to the Power Producer during the Interim Period in accordance with the procedure provided in Article XIX of this Agreement.
- E. **AND WHEREAS**, in view of the above, the Power Producer wishes to sell, and the Offtaker wishes to offtake the Available Capacity (as defined below) up to the Contract Capacity (as defined below) and Despatched and Delivered Net Electrical Output (as defined below) in accordance with terms and conditions of this Agreement. For further clarity, the Offtaker will undertake these activities on behalf of the Supply Business Unit and that the actual buyer of electricity under this Agreement is the Supply Business Unit within distribution segment of the Company.
- F. **AND WHEREAS**, this Agreement is executed between different business units of the Company on the basis of the regulatory direction of NEPRA as set out

under the Tariff Determination and demonstrates the Company's diligent action to facilitate operational independence and governance frameworks of the Parties keeping in view separate tariffs issued or to be issued by NEPRA in respect of the Company's generation, transmission and distribution business operations.

NOW, THEREFORE, in view of the foregoing, the Parties hereby agree as follows:



ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.1 Definitions

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

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

“Agreement” – This service level agreement, together with all Schedules attached hereto, as may be amended by the Parties from time to time.

“Agreement Year” – Each period of twelve (12) consecutive months commencing on the Commencement Date and on each anniversary thereof and ending at the end of the Day immediately prior to each immediately following anniversary of the Commencement Date. Provided, however, that each Agreement Year shall automatically be extended by the occurrence of a Force Majeure Event declared by the Power Producer (other than a PPFME or a CLFME) within such Agreement Year for a period equal to the sum of the Days the Power Producer was unable to perform fully due to the Force Majeure Event multiplied by the difference between the applicable Average Available Capacity and the Available Capacity that the Power Producer was able to declare during the pendency of such Force Majeure Event and that difference divided by the applicable Average Available Capacity, provided, however, any income substitution insurance proceeds (minus the deductibles) received by the Power Producer shall be set off from the amounts amount payable by the Offtaker, provided, further, that in the event of such extension, the immediately succeeding Agreement Year shall commence on the Day following the last Day of such extension and end after a period of twelve (12) consecutive months, and each Agreement Year thereafter shall have a period of twelve (12) consecutive months, in each case subject to any extension for Force Majeure Event(s) declared by the Power Producer (other than a PPFME or a CLFME) as provided above.

“Ambient Site Condition” – Ambient temperature, ambient pressure, ambient humidity, sea water temperature as such condition exists from time to time at the Complex as measured and recorded by the Weather Station.

“Ancillary Services” – Services provided by the Power Producer from the Complex other than the provision of Net Electrical Output, within Technical Limit of the Complex, such services being Reactive Power, voltage control, Black Start and frequency regulation.

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

“Annual Delivery Plan” – has the meaning set out in the Gas Supply Agreement.

“Annual Production Plan” or **“APP”** – The Offtaker’s requirement of Net Electrical Output to be generated by the Complex for each Calendar Year to be agreed and finalized by the Offtaker and the Operating Committee in terms of Section 5.2 and 5.11.

“As-Available Revised Despatch Instruction” - Revisions to the APP which are made and have become binding on the Power Producer in accordance with Section 5.4(e).

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

“Average Available Capacity” – In relation to period commencing from the Commencement Date and ending on expiry of the Term, the average of the Available Capacities during the twelve (12) month period immediately prior to the occurrence of the Force Majeure Event, as applicable; provided that during the first twenty four (24) months, if there has not occurred a Scheduled Outage during the relevant twelve (12) months period, in determining the Average Available Capacity, the average of the Available Capacities during the twelve (12) months period, immediately prior to occurrence of the Force Majeure Event, as applicable, in each case shall be reduced by an amount equal to the then-prevailing Tested Capacity multiplied by 0.0603; provided further, if twelve months have not passed prior to occurrence of the Force Majeure Event, the Average Available Capacity will be the Contract Capacity.

“Back-Up Meter” – All meters which have been installed by the Power Producer and thereafter owned and maintained by the Power Producer as back-up.

“Banked Energy” – The meaning ascribed thereto in Section 9.2(c).

“Billing Cycle/Take-or-Pay Energy Shortfall” –the positive difference between (a) lower of (i) the APP or the As-Available Revised Despatch Instruction, if the same has become binding pursuant to Section 5.4(e), or (ii) the Declared Available Capacity or the Revised Declared Available Capacity, as applicable, and (b) the Despatched Net Electrical Output, each during the relevant billing cycle as described in the Gas Supply Agreement , if applicable; provided that the Offtaker shall make best efforts in diversion of such volume to other available plant(s) of the Company in case if the Complex is partially or fully not available due to outages.

“Billing Cycle/Take-or-Pay Energy Shortfall Payment” –the Offtaker shall confirm the Power Producer the Fuel Cost Component for the Billing Cycle/Take-or-Pay Energy Shortfall, as calculated pursuant to Schedule 1, provided that the Billing Cycle/Take-or-Pay Energy Shortfall has not arisen due to (i) a default of the Gas Supplier or the Power Producer (to the extent such default was not caused by a default of the Offtaker under this Agreement) under the Gas Supply Agreement or this Agreement, (ii) a Forced Outage or Partial Forced Outage or (iii) a force majeure event under the Gas Supply Agreement; provided that Offtaker shall make best efforts in diversion of such volume to other available plant(s) of the Company in case if the Complex is partially or fully not available due to outages.

“Black Start” – The capability to recover from a total or partial shutdown of the transmission system.

“BQ Complex” – means Complex, BQPS-III and BQPS-I.

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

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

“Capacity Invoice” – The amount invoiced by the Power Producer pursuant to Section 9.1 in respect of any Month or part-Month for Available Capacity.

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

“CEO” – The chief executive officer of the Company.

“Change in Law” – From and after the Commencement Date of this Agreement:

- (a) the adoption, promulgation, repeal, modification or reinterpretation by any Public Sector Entity of any Laws of Pakistan (including a final, binding and non-appealable decision of any Public Sector Entity); or
- (b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Consent; or
- (c) the imposition by a Relevant Authority of any additional Consent.

that in the case of each of clause (a), (b), or (c) above establishes either a material increase in cost or decrease in revenue as a consequence of any requirement for the design, construction, operation or maintenance of the Complex that is materially more restrictive than the most restrictive requirements (i) under the Laws of Pakistan, (ii) specified in any applications, or other documents filed in connection with such applications, for any Power Producer Consent filed by the Power Producer (iii) agreed to by the Power Producer in any Project Agreement.

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

“Commencement Date” – shall mean 1st July 2023.

“Commercial Operations Date” – The date on which commercial operations of the Complex commenced, i.e. May 2012.

“Company” - shall mean K-Electric Limited.

“Complex” – The Natural Gas/RLNG/HSD fired electric power generation station located on the Site and the Power Producer Interconnection Facilities (but excluding the Offtaker Interconnection Facilities) having a net capacity of approximately 494.532 MW (net, at the Reference Site Condition) each comprising of three Gas Turbine, one Steam Turbine operating in combined cycle arrangement which is designed, engineered, constructed, commissioned, owned, operated and maintained by the Power Producer during the Term, all energy producing equipment and its auxiliary equipment, heat recovery steam generator, steam turbine and associate equipment, fuel handling & storage facilities and equipment, water transportation and treatment systems, all spare parts stored at the Site, all Power Producer Interconnection Facilities and all other equipment or facilities necessary for delivery of electricity to the Offtaker at the Interconnection Point, which Complex is described in Schedule 2. For clarity, the Complex is planned to be commissioned on HSD fuel and request for approval of investment for the same has been submitted to NEPRA.

“Consents” – Shall include the Power Producer Consents and the Offtaker Consents.

“Contract Capacity” – The amount of generation capacity in MW (net at Reference Site Conditions) at the Interconnection Point which the Power Producer commits to provide to the Offtaker under this Agreement pursuant to Section 2.6.

“Contractors” – Any direct contractor or supplier engaged by a Party in connection with the performance of its obligations under this Agreement and any of their direct sub-contractors integrally involved in the Complex.

“Consumer End Tariff” – The tariff approved by NEPRA for the Company in relation to the sale of electrical energy to its consumers as may be revised from time to time and notified by NEPRA or the GOP, as the case may be.

“Contract Service Agreement (CSA)” – The agreement entered between the Power Producer and the CSA Contractor for the maintenance of the Gas Turbine, as may be amended from time to time.

“Control Centre” – The Offtaker’s load despatch centre located in Karachi, or such other control center designated by the Offtaker from time to time (but not more than one at any time) from which the Offtaker shall Despatch the Complex.

“CSA Contractor” – Any maintenance Contractor(s), and any successor(s) thereto, appointed by the Power Producer.

“Cure Period” - The meaning ascribed thereto in Section 16.3.

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

“Daily” shall be construed accordingly.

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

“Declared Available Capacity” – In respect of each hour of an Operating Day, the total generating capacity of the Complex expressed in MW (in accordance with applicable degradation and adjusted to forecasted Ambient Site Conditions) at the Interconnection Point, which, subject to Section 5.3 (d) and 5.3 (e), the Power Producer has declared available to the Offtaker in accordance with Section 5.3 (b) or (c).

“Demonstration Period” – Commencing with the Effective Date with respect to the Complex, a period of sixty (60) Days in each Year or any other suitable timeline as appropriate considering network dynamics, as agreed between the Offtaker and the Power Producer, during which the Power Producer shall carry out the Annual Capacity Test.

“Despatch” – The exercise by the Offtaker of its right to increase, decrease or cease the net electrical energy generated by the Complex by issuing Despatch Instructions in accordance with this Agreement, and **“Despatched”** shall be construed accordingly.

“Despatched and Delivered Net Electrical Output” – The Net Electrical Output during the relevant period in response to a Despatch Instruction or Revised Despatch Instruction, as the casemay be, including Net Electrical Output delivered during Start-Up and shut-down periods and ramp-up and ramp-down periods and during Annual Capacity Test or any other test under Article VIII, which shall not in any event exceed one hundred and one and one-half percent

101.5% of the Despatched Net Electrical Output for the relevant hour.

“Despatched Net Electrical Output” – The required net electrical energy to be generated by the Complex during the relevant period, as stated in a Despatch Instruction or Revised Despatch Instruction, as the case may be, during the relevant period in terms of Section 5.4, including Net Electrical Output delivered during Start-Up and shut-down periods and ramp-up and ramp-down periods and during Annual Capacity Test or any other test under Article VIII (if applicable).

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

“Dispute” – Any dispute between the Parties, arising under, out of, in connection with or relating to this Agreement, or any obligations or performance of a Party under any provision hereof.

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

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

“Effective Date” – The meaning ascribed in Section 2.1.

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

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

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

“Environmental Standards” - Collectively, the environmental guidelines and occupational health and safety standards established by the Pakistan Environmental Protection Agency and the relevant Provincial Environmental Protection Agency.

“EPC” – Engineering, procurement and construction.

“EPC Contract” – collectively, the construction contract and the supply contract each dated June 2008 executed between the Power Producer and the EPC Contractor(s) for the Complex and as amended from time to time.

“EPC Contractor” – The contractor(s) and any successor(s) thereto hired and appointed by the Power Producer pursuant to the EPC Contract.

“EPC Cost” - The total cost which the Power Producer has incurred under the EPC Contract in carrying out and completing the EPC works and the Power Producer Interconnection Works in accordance with this Agreement.

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

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

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

“Forced Outage or Partial Forced Outage” – a total or partial interruption of the Complex’s generating capability, including any total or partial interruption that is not the result of (a) a request by the Offtaker in accordance with this Agreement, (b) a Scheduled Outage or a Maintenance Outage or Non-Supply Event, (c) a Force Majeure Event, or (d) a condition caused solely by the Offtaker or solely by the Grid System.

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

“Fuel” – Natural gas as primary and HSD/RLNG as alternate/backup fuel.

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

“Fuel Supplier” – shall include all such companies supplying Fuel and shall include its successors and assigns.

“Fuel Supply Arrangement(s)” – The arrangement(s) made by the Power Producer (through the Company) for the supply of Fuel to be used by the Complex to generate electricity.

“Gas” – means natural gas / RLNG as supplied by the Gas Supplier.

“Gas Supplier” – Sui Southern Gas Company Limited (SSGC) & Pakistan LNG Limited (PLL) or any other supplier supplying Gas to the Complex, including its successors and permitted assigns. Such supplier shall be a company incorporated under the Laws of Pakistan.

“Gas Supply Agreement” – The agreement dated 10th August 2021, between the Gas Supplier (PLL) and the Company (on behalf of the Power Producer) for the supply of gas to be used at the BQ Complex to generate electricity, as may be amended and / or extended / or any agreement entered into, by the parties thereto from time to time with the consent of Offtaker.

“Gas Supply Arrangement” – The arrangements by the Power Producer (through the Company) with the Gas Supplier for the supply of Gas to be used by the Complex to generate electricity as may be changed from time to time with the mutual consent of Parties.

“Gas Turbine” – Gas / HSD fired turbine unit within the Complex including its auxiliaries and protective devices.

“Generation License” – The license No. GL/04/2002, dated November 18, 2002, including all subsequent modification approved by NEPRA from time to time, permitting the generation and supply of electricity by the Power Producer from the Complex as contemplated by this Agreement.

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

“Grid Code” – The grid code 2023 approved by NEPRA, as amended from time-to-time.

“Grid System” – The transmission facilities arranged and operated by the Offtaker, other than the Power Producer Interconnection Facilities, through which (a) the Net Electrical Output will

be received and distributed by the Offtaker to users of electricity and (b) electrical energy will be delivered to the Complex, as required.

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

“HSD Supply Agreement”- The agreement dated 27.09.2023, between the Fuel Supplier and the Company (on behalf of the Power Producer) for the supply of HSD (as back-up fuel) to be used at the BQ Complex to generate electricity, as may be amended and / or extended, by the parties thereto from time to time.

“Insurance Component” – means adjusted insurance component as ascribed thereto in Schedule 1.

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

“Interim Period” – The period commencing from the Commencement Date up to the Effective Date.

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

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

“KIBOR” – The average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits for a period equal to three (3) months which appears on the appropriate page of the Reuters service at or about 11:30 a.m. in Karachi on the last available Business Day, or in the event that the Reuter’s service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the average “ask side” Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi inter-bank market.

“Lapse of Consent” – Any Consent (a) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the applicable Laws of Pakistan or (b) (other than a specified Consent) not being issued upon application having been properly and timely made and diligently pursued or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect a Party’s ability to perform its obligations under any document included within the Project Agreements.

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

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

“Maintenance Cycle” – means each outage intervals as described in Schedule 5.

“Maintenance Months” – Any four Months in a Year for annual maintenance as mutually

agreed by the Parties every Year, designated by the Offtaker in accordance with Section 5.13.

“Maintenance Outage” – An interruption or reduction of the Complex’s and/or the Complex’s generating capability that: (a) is not a Scheduled Outage; (b) has been scheduled and allowed by the Offtaker in accordance with Section 5.6; and (c) is for the purpose of performing work on specific components, which, considering the Technical Limits and Prudent Utility Practices, should not, in the reasonable opinion of the Power Producer, be postponed until the next Scheduled Outage.

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

“Metering System” – All meters and metering devices other than back up meters (including any remote terminal units and an electronic data recording system), owned and maintained by the Offtaker and used to measure the Net Electrical Output from the Complex.

“Minimum Gas Order” – means for any Calendar Year, the minimum quantity of Gas as provided in the Gas Supply Agreement with respect to BQ Complex or as otherwise agreed, between the Power Producer and the Gas Supplier for the Calendar Year.

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

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

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

“Non-Maintenance Months” – Any four Month in a Year which are not Maintenance Months, as designated by the Offtaker in accordance with Section 5.13.

“Non-Supply Event” - Until the expiration of the Gas Supply Agreement, a total or partial failure of the Gas Supplier to deliver Gas as per the Gas Supply Agreement, such failure resulting in the Power Producer’s inability to generate and deliver the full Available Capacity under this Agreement; provided that, such non-supply of Gas has not arisen due to (a) a default of the BQ Complex under the Gas Supply Agreement or this Agreement, (b) a scheduled outage under the Gas Supply Agreement or this Agreement, (c) a force majeure event under the Gas Supply Agreement or (d) the Power Producer’s failure to comply with the requirements of Section 5.14 for use of HSD inventory at Site.

“Notice of Intent to Terminate” – A notice delivered by the Power Producer or the Offtaker, as the case may be, of its intent to terminate this Agreement pursuant to Section 16.3 due to a default of the other Party.

“Offtaker” – the Network Control Department of the Company.

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

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

“Offtaker Interconnection Facilities” – The facilities and equipment installed by or on behalf of Offtaker on the Offtaker’s side of the Interconnection Point that are described in Schedule 3.

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

“Operating Day” – Each period of 24 consecutive hours beginning at [00:00], the first such period commencing at [00:00].

“Operating Procedures” – The procedures for the operational interfaces between the Offtaker and the Power Producer to be agreed or finalized in accordance with Section 2.5.

“Overhaul” – An overhaul of the Complex, the scope and frequency of which is set out in Schedule 5.

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

“Party” – Each of the Offtaker and the Power Producer, 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)(ii).

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

“Person” – Any person, firm, company, corporation, society, government, state or agency of a state (including any Public Sector Entity), or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.

“Power Producer” – Bin Qasim Power Station-II (BQPS-II) of the Company.

“Power Producer Consents” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licences (including the Generation License), permits, decisions or similar items which is or are issued by a Relevant Authority and which the Power Producer or any of its Contractors is required to obtain from any Relevant Authority (other than the Offtaker) and thereafter to maintain to fulfill its obligations under this Agreement

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

“Power Producer Interconnection Facilities” – The facilities and equipment designed, constructed and installed by or on behalf of the Power Producer on the Power Producer’s side of the Interconnection Point that are described in Schedule 3, including any telemetering equipment, transmission lines and associated equipment, transformers and associated

equipment, relay and switching equipment, telecommunications devices, telemetering and data interface for the SCADA System, protective devices and safety equipment.

"Power Producer Interconnection Works" - Those works and activities described in Schedule 3 undertaken by or on behalf of the Power Producer for the design, engineering, construction, installation and commissioning of the Power Producer Interconnection Facilities in accordance with this Agreement.

"Preliminary Estimate" - The meaning ascribed thereto in Section 15.6(a)(i).

"Project Agreement" –

- (a) this Agreement;
- (b) any Contract Service Agreement;
- (c) EPC Contract;
- (d) HSD Supply Agreement; and
- (e) Gas Supply Agreement.

"Provincial Government" – means the government of 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 Power Producer's employees and agents at the Complex from malfunctions occurring on the Grid System. Prudent Electrical Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

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

"Public Sector Entity" – (a) The GOP, the Provincial Government, any subdivision of either, or any local governmental authority with jurisdiction over the Power Producer, the Complex, or any part thereof, or (b) any department, authority, instrumentality, agency, or judicial body of the GOP, the Provincial Government or any such local governmental authority, (c) courts and tribunals in Pakistan, and (d) any commission or independent regulatory agency or body having jurisdiction over the Power Producer, the Complex or any part thereof.



“Quarter” – Period of three months, each starting from 1st of January, 1st of April, 1st of July and 1st of September.

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

“Reference Site Condition” – The meaning ascribed thereto in Schedule 5.

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

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

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

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

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

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

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

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

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

“Rupee” or **“Rs.”** – The lawful currency of Pakistan.

“Saved Hours” – means, the aggregate number of hours that the Power Producer has not utilized from the Scheduled Outage or a Forced Outage or a Partial Forced Outage during any Agreement Year (or part thereof) in a Maintenance Cycle, for the purposes of utilizing the same for an Overhaul.

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

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

“Site” – The land, water-ways, roads, wells, rights-of-way, and other interests in land and any rights, permits and licences acquired by the Power Producer for the purposes of the Complex on, though, above or below the ground on which all or any part of the Complex has been built or pursuant to which access thereto is obtained or which is reasonably necessary or appropriate for the operation and maintenance of the Complex.

“Start-Up” – Any start-up of the Complex or part thereof necessary for the Power Producer to

comply with a Despatch Instruction or a Revised Despatch Instruction and that results in synchronization with the Grid System; provided, that the Offtaker has been notified that such Start-Up is necessary for the Power Producer to comply with a Despatch Instruction or a Revised Despatch Instruction, as the case may be.

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

“Steam Turbine” – A steam turbine and associated heat recovery steam generator within the Complex, including its auxiliaries and protective devices.

“Supplemental Tariff” – An amount payable by the Offtaker as provided in Section 9.3, Section 15.8 and Schedule 1 and as determined by NEPRA.

“Supply Business Unit” – The business unit of the distribution segment of the Company carrying out activities of supply of electricity to end consumers in line with the license awarded to the Company by NEPRA.

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

“Tariff Determination” – The complete tariff determination by NEPRA dated 22 October 2024 having reference no. NEPRA/R/ADG(Trf)/TRF-596/15878-82, as amended or supplemented by NEPRA from time to time.

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

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

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

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

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

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

“Tested Capacity” – The meaning ascribed thereto in Section 8.6.

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

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

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

“Year” – Each twelve (12) Month period commencing at 12:00 midnight on the 30th of June and ending at 12:00 midnight on the following 30th of June.

A handwritten signature in blue ink, consisting of several overlapping, slanted strokes.A handwritten signature in blue ink, featuring a large, stylized 'C' or 'G' shape followed by a few vertical strokes.A handwritten signature in blue ink, showing a series of vertical, slightly wavy strokes.

Section 1.2 Rules of Interpretation

In this Agreement:

- 1.2.1 the headings are for convenience only and shall be ignored in construing this Agreement;
- 1.2.2 other than where the context determines otherwise, the singular includes the plural and vice versa;
- 1.2.3 references to Sections, Articles, Recitals and Schedules are, unless otherwise specified, references to Sections and Articles of, and Schedules and Recitals to, this Agreement;
- 1.2.4 unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.2.5 the words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words;
- 1.2.6 references to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- 1.2.7 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.2.8 the Recitals and Schedules (and if any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in Sections 1.1 and 1.3 of this Agreement, respectively;
- 1.2.9 except as otherwise indicated in this Agreement, references to time are references to time in Pakistan;
- 1.2.10 notwithstanding anything contained herein otherwise the Parties acknowledge that any and all usage of words “liquidated damages” in this Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damage and/or loss for the particular event or occurrence;
- 1.2.11 except as other indicated in this Agreement, references to any Project Agreement, shall include references to such Project Agreement, as amended from time to time; and
- 1.2.12 the Sections and Articles that are not relevant due to the Parties being under the same Company or relating to the construction of the Complex or before the Commercial Operations Date have not been used in the Agreement and/or are termed as “Not Used” in this Agreement.



Section 1.3 Abbreviations

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

°C	means degrees Celsius;
GIS	means Gas Insulated Switchgear
kV	means kilovolt or 1,000 Volts; kW means kilowatt or 1,000 Watts;
kWh	means kilowatt hour;
MW	means megawatt or 1,000,000 Watts;
MVAR	means megavar or 1,000,000 vars; and
MWh	means megawatt hour or 1,000.
HSD	means High Speed Diesel
NEPRA	means National Electrical Power Regulatory Authority
RLNG	means Regasified Liquified Natural Gas
IPPs	means Independent Power Producers



ARTICLE II
PURPOSE, TERM AND EFFECTIVE DATE

Section 2.1 Effective Date

This Agreement shall come into effect upon the date of its signing by the Parties.

Section 2.2 Term

- (a) Unless terminated earlier in accordance with its terms, this Agreement shall remain in full force and effect until the end of the Day immediately preceding the thirtieth (30th) anniversary of the Commercial Operations Date of Complex or the expiry of the Generation License for the Complex, whichever is later (the "Term"), as may be extended pursuant to section 2.2 (c).
- (b) The Term of this Agreement may be extended in writing, on mutually acceptable terms and conditions for such further period as may be agreed between the Parties in writing.
- (c) If there occurs a PPFME or a CLFME that, in either case requires the Offtaker to make any claims from the Power Producer pursuant to Section 15.6(a)(i), Section 15.6(a)(ii) or 15.6(i), then the Term shall be extended for a period equal to the number of Days each PPFME or CLFME, as the case may be, was in effect multiplied by the difference between the Average Available Capacity and the Available Capacity that the Power Producer was able to declare during the pendency of such PPFME or CLFME, as the case may be, and that difference divided by the Average Available Capacity. During such extension period, the Power Producer shall invoice the Fixed O&M Component, Component and the Insurance Component; in addition to the above the Power Producer shall also be entitled to the Return on Equity Component for such period that extends beyond the first one hundred and eighty (180) Days, of the Capacity Price for Available Capacity, the Billing Cycle/Take-or-Pay Energy Shortfall Payment (subject to Section 15.5(a)) and the Energy Price for Net Electrical Output, in each case adjusted, mutatis mutandis, in accordance with the provisions of Schedule 1.
- (d) Notwithstanding the aforesaid but subject to Section 15.6(a), if NEPRA does not permit the Offtaker to pass through payments pursuant to Section 15.6(a)(i), Section 15.6 (a)(ii) or 15.6(i), for the PE Compensation Period (or for any part thereof), under the Consumer End 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 Offtaker under the Consumer End Tariff. Any payments during such extended period shall be in accordance with the applicable reference tariff set out under the Tariff Determination prevailing at the date of such extension together with any applicable indexation.

Section 2.3 Consents

Each Party 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 Consents required to be obtained by such Party for the performance of its obligations under this Agreement.

Section 2.4 Appointment of the Operating Committee

- (a) The Parties acknowledge that they have established the Operating Committee to perform the functions set out in Section 5.11. The Operating Committee consists of six (6) members, three (03) duly representing the Power Producer and three (03) duly representing the Offtaker.
- (b) The Operating Committee have developed procedures for the holding of meetings, keeping of minutes of meetings and the appointment and operation of sub- committees.
- (c) The chairmanship of the Operating Committee shall rotate each six (6) months between the Parties, and the Parties have mutually agreed to the first chairman being nominated by the Offtaker. The Chairman shall not have a casting vote.
- (d) Decisions of the Operating Committee shall require the unanimous approval of the members present at a meeting where a quorum of the Operating Committee members is present. A quorum of the members of the Operating Committee shall be deemed to be present where at least two (2) members representing the Offtaker and two (2) members representing the Power Producer are present at such meeting.

Section 2.5 Operating Procedures

- (a) After the Effective Date, the Parties shall:
 - (i) update and finalize the Operating Procedures addressing all operational interfaces between the Offtaker and the Power Producer;
 - (ii) take proper account of the design of the Complex, the Metering Systems, and the Grid System;
 - (iii) be consistent with Prudent Electrical Practices, Prudent Utility Practices, and the Technical Limits; and
 - (iv) develop an inter-tripping schedule. Such inter-tripping schedule shall be based on a proposed schedule submitted to the Power Producer by the Offtaker.
- (b) Following the update and finalization of the Operating Procedures, pursuant to Section 2.5 (a), 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 18.1 or 18.2.

Section 2.6 Specification of Contract Capacity

The Parties agree that the Contract Capacity is 494.532 MW (net, at Reference Site Conditions as per Tariff Determination), with two (02) compressors.



ARTICLE III

ACQUISITION OF ENERGY AND CAPACITY


Section 3.1 Acquisition of Energy and Capacity

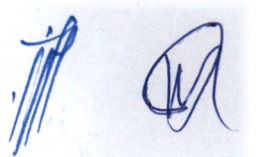
- (a) Subject to the terms of this Agreement (including the Technical Limits), the Power Producer shall:
 - (i) make available to the Offtaker the Declared Available Capacity at the Contract Capacity (adjusted to then-prevailing Ambient Site Conditions including degradation impact);
 - (ii) deliver and sell to the Offtaker at the Interconnection Point the Despatched Net Electrical Output; and
 - (iii) provide to the Offtaker the Ancillary Services.
- (b) Subject to and in accordance with the terms of this Agreement (including the Technical Limits), the Offtaker shall:
 - (i) acknowledge the invoices for the Declared Available Capacity and its consideration described in Article IX and determined in accordance with the provisions described in Schedule 1 and attribute the corresponding amounts set out in such invoices appropriately in the records of the Company;
 - (ii) take delivery of (A) the Despatched and Delivered Net Electrical Output of the Complex (or part thereof), and (B) the Billing Cycle/Take-or-Pay Energy Shortfall, and acknowledge the respective invoices and their consideration described in Article IX and determined in accordance with the provisions described in Schedule 1 (Tariff, Indexation and Adjustment) and attribute the corresponding amounts set out in such invoices appropriately in the records of the Company; and
 - (iii) take delivery of the Net Electrical Output generated during the Annual Capacity Tests or any additional tests (if applicable), carried out under Article VIII, acknowledge the invoice for the consideration described in Article VIII and determined in accordance with the provisions of Schedule 1 and attribute the corresponding amounts set out in such invoices appropriately in the records of the Company.

Section 3.2 Offtaker's Exclusive Right to Energy and Capacity

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



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



ARTICLE IV
NOT USED



ARTICLE V
CONTROL AND OPERATION OF COMPLEX

Section 5.1 Operation and Maintenance of the Complex

- (a) The Power Producer shall operate and maintain the Complex in accordance with the terms of this Agreement, the Operating Procedures developed in accordance with Section 2.5 (Operating Procedures) of this Agreement, the Grid Code, the Power Producer Consents, Prudent Utility Practices, Prudent Electrical Practices, and applicable Laws of Pakistan.
- (b) The Complex will be operated within the range of voltage levels specified in Schedule 5. Subject to Technical Limits, the Power Producer shall operate and maintain the Complex in a manner that will not have an adverse effect on the Offtaker's voltage level or voltage wave form.

Section 5.2 Estimated Energy Requirements

- (a) The Offtaker along with the Operating Committee, shall to the extent of scheduling and compliance with Technical Limits and Scheduled Outages, agree and finalise (i) the first APP for the remaining period of the relevant Calendar Year on the Effective Date; and (ii) all subsequent APPs one thirty days (130) before each Calendar Year which shall not exceed 100% of the prevailing Contract Capacity.

For abundant clarity, all APPs shall be prepared in a manner which ensures compliance of Minimum Gas Order under the Gas Supply Agreement for BQ Complex and any other obligation under the Gas Supply Arrangement. Subject to this Section, in all subsequent APPs, the maximum amount of APP (within the range of Minimum Gas Order under the Gas Supply Agreement for BQ Complex / any other obligation under the Gas Supply Arrangement to 100% of the prevailing Contract Capacity) shall be at the discretion of the Offtaker.

Provided that the Power Producer shall provide necessary details of Scheduled Outages for the period being covered by an APP. The APP shall be binding on the Offtaker and Power Producer for the Calendar Year.

- (b) The APP will be broken down into monthly and ten days (10) billing cycle, based on the Offtaker demand and shall also account for shipments of Gas being imported on a per cargo basis and shall reflect the Power Producer's obligation to the Gas Supplier to order the Minimum Gas Order (under the Gas Supply Agreement) or any other obligation under the Gas Supply Arrangement in each relevant Calendar Year.
- (c) Not later than the month of June of each Year the Offtaker shall notify the Power



Producer of its requirements, estimated in good faith, for Net Electrical Output on a monthly basis for the following Year.

- (d) Not later than the ten (10) Days prior to the beginning of each Month, the Offtaker shall notify the Power Producer of its requirements for Net Electrical Output on a hourly basis for the following Month.
- (e) Not later than twenty four (24) hours prior to the beginning of each day, the Offtaker shall notify the Power Producer of its requirements for Net Electrical Output for the hourly basis for the following day.
- (f) Any notice issued by the Offtaker under this Section 5.2 (d),(e) and (f) shall not be binding and no such notice shall subsequently prevent the Offtaker from altering its requirements for Net Electrical Output from time to time; provided that the Offtaker shall, as soon as is practicable after becoming aware of any material changes to its requirements for Net Electrical Output specified in any such notice, notify the Power Producer of such change.

Section 5.3 Declared Available Capacity

- (a) Not Used.
- (b) Not later than fourteen (14) hours prior to the beginning of each Operating Day following the Effective Date, the Power Producer shall notify the Offtaker (or revise any such information previously given) of the Declared Available Capacity for each hour of such Operating Day. If the Power Producer fails to give such notice on or before twelve (12) hours prior to the beginning of each Operating Day (“**Declaration Deadline**”), the Declared Available Capacity for each hour of such Operating Day shall be deemed to be equal to the Declared Available Capacity for each hour declared by the Power Producer for the immediately previous Operating Day.
- (c) The Power Producer may:
 - (i) subject to the payment of liquidated damages pursuant to Section 9.4 and Schedule 1, except as provided in Section 5.3(e), revise downwards and continue to revise downwards the Declared Available Capacity for any hour up to and until the start of the applicable Operating Day by informing the Offtaker of such revision;
 - (ii) revise upwards and continue to revise upwards the Declared Available Capacity for any hour up to and until four (4) hours prior to the start of the applicable hour by informing the Offtaker of such revision; and
 - (iii) revise upwards or downwards and continue to revise upwards or downwards the Declared Available Capacity for any hour or part thereof at any time if the same is due to any change in net capacity of the Complex as a result of fuel changeover or due to change in fuel mix by informing

the Offtaker of such revision.

- (iv) revise upwards and continue to revise upwards Declared Available Capacity for any hour or part thereof at any time if the same is on request of Offtaker within the next four (4) hours.

(Such revised Declared Available Capacity described in paragraphs (i), (ii), (iii) & (iv) is referred to in this Agreement as “**Revised Declared Available Capacity**”). For the avoidance of doubt, the Power Producer shall be entitled to and the Offtaker shall acknowledge to the Power Producer the Capacity Price based on the Revised Declared Available Capacity, if any.

- (d) When making notifications of Declared Available Capacity or Revised Declared Available Capacity, subject to the Technical Limits, Prudent Electricity Practices and Prudent Utility Practices, the Power Producer shall not withhold available generating capacity and shall be entitled to notify the Declared Available Capacity or Revised Declared Available Capacity regardless of unavailability of (i) Gas in excess of requirement under APP and (ii) HSD, subject to compliance with Section 5.14.
- (e) The notification by the Power Producer of Declared Available Capacity or any Revised Declared Available Capacity shall be made at the forecasted Ambient Site Condition for the applicable hour, as such forecast method is agreed by the Operating Committee, and such Declared Available Capacity or any Revised Declared Available Capacity may be adjusted by the Power Producer at any time prior to forty five (45) minutes of the relevant hour, without penalty, for changes in the forecasted Ambient Site Condition from the earlier forecasted Ambient Site Condition for each hour of the relevant Operating Day (the “**Adjusted Declared Available Capacity**”). The Declared Available Capacity, any Revised Declared Available Capacity or any Adjusted Declared Available Capacity, in each case at the forecasted prevailing Ambient Site Condition, shall not exceed at any time the lesser of (i) the prevailing Tested Capacity (adjusted to the same forecasted Ambient Site Condition) and (ii) the prevailing Contract Capacity (adjusted to the same forecasted Ambient Site Condition), in each case in effect at the relevant time. The Power Producer shall keep the Offtaker informed of the Ambient Site Condition as appropriate for purposes of administering this Agreement. For the avoidance of doubt, all adjustments of prevailing Contract Capacity or prevailing Tested Capacity, as the case may be, to Ambient Site Conditions under this Agreement shall be carried out using manufacturers’ correction curves and/or tables attached hereto as Schedule 10.

Section 5.4 Despatch Instructions and Delivery of Net Electrical Output

- (a) Not later than seven (7) hours prior to the beginning of each Operating Day, subject to Section 5.4(b) and Section 5.4(d), the Offtaker shall notify the Power Producer of its requirements for Net Electrical Output and Reactive Power on an

hourly basis for such Operating Day (“**Despatch Instruction**”).

- (b) The Offtaker may notify the Power Producer of any upward revision to any Despatch Instruction subject to Section 5.4 (d) or downward revision to any Despatch Instruction (“**Revised Despatch Instruction**”) at any times, keeping in view of the available technicalities of fuel arrangement made by the Power Producer, and the Power Producer shall comply with such Revised Despatch Instruction not later than fifteen (15) minutes before the beginning of any hour to which such revision relates (or such later time following the Revised Despatch Instruction as may be demonstrated to be required by the Technical Limits). If, due to the Technical Limits, (i) the Power Producer is required to meet the Revised Despatch Instruction within the first thirty (30) minutes of the relevant hour and the Power Producer fails to meet such Revised Despatch Instruction before the end of the first thirty (30) minutes of the relevant hour, liquidated damages under Section 9.4 (*Liquidated Damages*) shall be assessed for the full hour, and (ii) the Power Producer is required to meet the Revised Despatch Instruction within the last thirty (30) minutes of the relevant hour and the Power Producer fails to meet such Revised Despatch Instruction before the end of the relevant hour, liquidated damages under Section 9.4 shall be assessed from the beginning of the following hour if and to the extent that such failure is continuing.
- (c) The Power Producer shall comply with Despatch Instructions and Revised Despatch Instructions prevailing at the start of the relevant hour; provided, that such Despatch Instructions and Revised Despatch Instructions:
 - (i) have been issued in accordance with sub-sections (a) and (b) above;
 - (ii) are consistent with the Technical Limits; and
 - (iii) do not require the Power Producer to operate the Complex at a level exceeding the Declared Available Capacity, the Adjusted Declared Available Capacity, or the Revised Declared Available Capacity, as applicable, (in each case adjusted to the forecasted prevailing Ambient Site Condition) prevailing for that hour.
- (d) The Power Producer shall, subject to Sections 5.3(e), be Despatched during the relevant period, in accordance with, the lower of: (i) the APP or the As-Available Revised Despatch Instructions, if the same has become binding pursuant to Section 5.4 (e), as the case may be, and; (ii) the Declared Available Capacity or Revised Declared Available Capacity or any Adjusted Declared Available Capacity, as applicable.
- (e) Any downward or upward deviations from the APP by the Offtaker (the “**As-Available Revised Despatch Instruction**”), that impacts the Net Electrical Output requirement on a given Day (or Days) shall only be permitted where:
 - (i) In case of any downward revision of APP where such deviation has been



notified by the Offtaker at least one hundred thirty (130) Days in advance, at any time during the Calendar Year, allowing necessary time to the Power Producer to reschedule orders under the Gas Supply Agreement or Gas Supply Arrangement provided that such revision request shall be in compliance with the terms of this Agreement and the Gas Supply Agreement or Gas Supply Arrangement, and the Power Producer has consented thereto including conditions of Minimum Gas Order or any other conditions under the Gas Supply Agreement and any obligation under the Gas Supply Arrangement. The Power Producer shall provide its response providing consent mentioned above, or otherwise, to such revision of the APP to the Offtaker (subject to the approval of the Gas Supplier), not later than the thirty (30) Days from the receipt of such request from the Offtaker.

- (ii) The Offtaker may also request an upward revision of the APP at any time from the Power Producer, however such request shall not be binding on the Power Producer unless the Gas Supplier has agreed to the supply of additional Gas quantity under the Gas Supply Agreement or Gas Supply Arrangement and the Power Producer has provided its consent on the Offtaker's request.
- (f) The Power Producer shall not be in breach of its obligation to deliver Net Electrical Output in accordance with the APP, and the As-Available Revised Despatch Instruction, if the same has become binding pursuant to Section 5.4 (e), and shall not be liable to pay liquidated damages under Section 9.4 , if the Offtaker is in breach of any of its obligations under this Agreement or the Net Electrical Output is less than the required net electrical energy stated in the APP, and the As-Available Revised Despatch Instruction, if the same has become binding pursuant to Section 5.4 (e), provided that such shortfall is caused by conditions mentioned in Section 5.4 (g).
- (g) The Power Producer shall not be in breach of Section 5.4(c) and shall not be liable to pay liquidated damages under Section 9.4, if the Net Electrical Output for that hour is less than the required net electrical energy stated in the prevailing Despatch Instruction or Revised Despatch Instruction, as applicable, and such shortfall is caused by:
 - (i) constraints on the Grid System;
 - (ii) variations in Grid System Frequency outside the Technical Limits;
 - (iii) Grid System voltage outside the Technical Limits; or
 - (iv) A Force Majeure Event.
- (h) If the Power Producer fails to comply (except for the reasons or events described in Section 5.4(g)) with the prevailing Despatch Instruction or Revised Despatch Instruction (as the case may be) for any hour, the Offtaker shall be entitled,

without prejudice to its rights under Article XVI, to receive liquidated damages calculated in accordance with Section 9.4.

Section 5.5 Scheduled Outage Periods

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

- (a) The Power Producer's proposals for Scheduled Outage periods shall be made as follows:
 - (i) the Power Producer shall notify the Offtaker of its proposed schedule for Scheduled Outage periods for the subsequent Agreement Year, by not later than the April of each Year of its proposed schedule of Scheduled Outage periods for the following Year;
 - (ii) unless otherwise agreed, combined Scheduled Outage periods shall not be scheduled to exceed twenty two (22) Days of each Agreement Year of Complex, except in any Agreement Year in which an Overhaul is required. The Power Producer shall be entitled to utilize additionally available Saved Hours for Overhaul during a Maintenance Cycle, if any; and
 - (iii) subject to any requirements of the Technical Limits relating to equipment maintenance, the Power Producer may propose Scheduled Outage periods only during the Maintenance Months, or as per mutual agreement with the Offtaker.
- (b) The Offtaker shall respond to the Power Producer's proposals for the Scheduled Outage periods as follows:
 - (i) Within thirty (30) Days after receipt by the Offtaker from the Power Producer of its proposed Scheduled Outage periods pursuant to Section 5.5(a), the Offtaker shall notify the Power Producer whether or not it agrees to the proposed Scheduled Outage periods. If the Offtaker does not agree to any of the proposed Scheduled Outage periods, it shall notify the Power Producer of the periods during Maintenance Months when the Power Producer may undertake those Scheduled Outages, such periods to be of the same duration as, and as close as reasonably practicable to the periods proposed by the Power Producer and to be consistent with the Technical Limits, and the Power Producer acting reasonably shall undertake Scheduled Outages in such periods as notified by the Offtaker;
 - (ii) If the Offtaker fails to notify the Power Producer in accordance with Section 5.5(b)(i), then the Power Producer may undertake Scheduled Outages in the periods proposed by the Power Producer;
 - (iii) Provided that the Offtaker shall not request that a Scheduled Outage

period be rescheduled in a manner or at a time inconsistent with the Technical Limits, the Offtaker may upon thirty (30) Days' advance notice to the Power Producer request the Power Producer to reschedule a Scheduled Outage period previously scheduled under Section 5.5(a) and/or (b). The Power Producer shall use reasonable efforts to comply with such request and shall notify the Offtaker within fifteen (15) Days of receipt of the Offtaker's request whether the Power Producer is able to comply with such request; and

- (iv) If the Power Producer is unable to comply with such request, the Power Producer shall give its reasons therefor and shall, where reasonably practicable, propose the period or periods, if any, to which the Scheduled Outage may be rescheduled, together with an estimate of the costs it expects it would reasonably incur as a result of such rescheduling. In such event, the Parties shall discuss in good faith an alternative period in which the Scheduled Outage may be rescheduled together with an estimate of the cost the Parties expect would reasonably be incurred as a result of such rescheduling. If the Parties have not reached an agreement within five (5) Days of the Power Producer's notice under Section 5.5(b)(iii), the Offtaker shall not later than ten (10) Days thereafter notify the Power Producer of the period or periods during which the Scheduled Outage shall occur, being either:
 - (A) the period or periods originally scheduled under Section 5.5(a) and/or (b); or
 - (B) such alternative period as may have been proposed by the Power Producer including the associated cost in accordance with Section 5.5(b)(iv) above in its reply to the Offtaker's request for an alternative period.

Section 5.6 Maintenance Outages

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

Section 5.7 Recording of Communications

Each Party hereby authorises the other Party to record any communications relating to:

- (a) Declared Available Capacity, Revised Declared Available Capacity and Adjusted

- Declared Available Capacity (if any); and
- (b) any Despatch Instructions and any Revised Despatch Instructions.

Section 5.8 Emergency Set-Up and Curtailment Plans

The Power Producer shall co-operate with the Offtaker in developing Emergency procedures for the Complex, including recovery from a local or widespread electrical blackout and voltage reduction to effect load curtailment, and shall, to the extent consistent with the Technical Limits, comply with such Emergency procedures. To the extent not fully addressed in the Technical Specifications and Technical Limits, the Power Producer shall make technical references available to the Offtaker concerning required times for Start-Ups, Black Start capabilities, and minimum load carrying ability and any other technical information in respect of the Complex reasonably requested by the Offtaker.

Section 5.9 Supply of Power in Emergency

- (a) The Offtaker may, on or after the occurrence of an Emergency, issue a notice to the Power Producer declaring the existence of an Emergency to the Power Producer.
- (b) The notice delivered pursuant to Section 5.9(a) shall:
- (i) specify the nature of the Emergency; and
 - (ii) indicate the Offtaker's best estimate of the duration of the Emergency and the steps it is taking to overcome the Emergency.
- (c) Following receipt of a notice of an Emergency and thereafter during the Emergency, the Offtaker and the Power Producer shall consult on the steps the Offtaker requires the Power Producer to take, and, if the Offtaker requests, the Power Producer shall use its reasonable endeavors to:
- (i) revise and continue to revise its Declared Available Capacity or Revised Declared Available Capacity, so as to make additional generating capacity available to the Offtaker; and/or
 - (ii) reschedule any Scheduled Outage or Maintenance Outage not yet begun, or if the Scheduled Outage or the Maintenance Outage has already begun, expedite the completion of the relevant works and/or reschedule some or all of the remaining works so as to restore electric generating capacity as soon as possible.
 - (iii) The provisions of Article V and Article IX in relation to Declared Available Capacity, Revised Declared Available Capacity, Despatch Instructions and Revised Despatch Instructions and invoice in respect of the Billing Cycle/Take-or-Pay Energy Shortfall shall continue to apply during an Emergency; provided that the Power Producer shall not be liable



to pay liquidated damages to the Offtaker pursuant to Section 9.4(b), for its inability to provide any increase in Declared Available Capacity made in a Revised Declared Available Capacity made by the Power Producer at the Offtaker's request under Section 5.9(c).

- (d) The Offtaker shall notify the Power Producer at regular twenty-four (24) hour intervals of the status of the Emergency and notify the Power Producer as soon as the Emergency has ceased.
- (e) Nothing in this Section 5.9 shall require the Power Producer to operate the Complex in any manner which is inconsistent with the Technical Limits, Grid Code, Prudent Electrical Practices or Prudent Utility Practices.

Section 5.10 Employment of Qualified Personnel

The Power Producer and the Offtaker shall ensure that their personnel are on duty at the Complex and the Control Centre, respectively, at all times, and that such personnel are adequately qualified and trained, and who have experience as necessary and appropriate to undertake the duties for which they are engaged at the Complex.

Section 5.11 Operating Committee Duties

- (a) The Operating Committee shall be responsible for assisting the Parties in finalizing the Operating Procedures in accordance with Section 2.5 and Schedule 5 (Technical Limits) and for advising the Parties in relation to the following matters relating to the interaction of the Power Producer and Offtaker with respect to the Complex and the Grid System:
 - (i) the co-ordination of the respective programmes and procedures of the Parties for the operation and maintenance of the Power Producer Interconnection Facilities, the Complex, the Offtaker Interconnection Facilities, and all related equipment;
 - (ii) the steps to be taken on the occurrence of a Force Majeure Event affecting a Party, the Complex or the Grid System, or a shutdown or reduction in capacity for any other reason affecting the Power Producer Interconnection Facilities, the Grid System, or the Complex, or any related equipment;
 - (iii) safety matters affecting the Complex, the Power Producer Interconnection Facilities, the Grid System, the Parties or their Contractors;
 - (iv) clarification of emergency plans developed by the Offtaker for recovery from a local or widespread electrical blackout;
 - (v) review and revision of protection schemes;
 - (vi) agree and finalise the APP along with the Offtaker. The APP shall be used by the Power Producer to determine the Firm Gas Allocation (as defined in the Gas Supply Agreement) and finalize the Annual Delivery Plan

pursuant to which the Power Producer will place annual orders for Gas, on the firm basis, under the Gas Supply Agreement or Gas Supply Arrangement; and

- (vii) any other matter agreed upon by the Parties.
- (b) The Operating Committee shall have no power or authority to amend or modify the provisions of this Agreement or to determine the rights or obligations of the Parties under this Agreement.

Section 5.12 Maintenance of Operating Records

- (a) Each Party shall keep complete and accurate records and all other data reasonably required for the proper administration of this Agreement. The Power Producer shall maintain an accurate and up-to-date operating log, in a format mutually agreed upon by the Parties, at the Site with records and data of:
 - (i) Net Electrical Output and Fuel consumed in respect of each hour;
 - (ii) Reactive Power in respect of each hour;
 - (iii) Grid System Frequency;
 - (iv) kV bus voltage (132kV, 220kV or as otherwise applicable) at all times;
 - (v) changes in operating status, Scheduled Outages, Maintenance Outages and Start-Ups;
 - (vi) Ambient Site Conditions;
 - (vii) Declared Available Capacity, Adjusted Declared Available Capacity and Revised Declared Available Capacity for each Operating Day;
 - (viii) Despatch Instructions and Revised Despatch Instructions for each Operating Day; and
 - (ix) other matters agreed upon by the Parties.

All such records and data shall be maintained for a sufficient period required as mutually agreed between the Parties in accordance with Operating Procedures.

Section 5.13 Notification of Maintenance Months and Period Weighting Factors

The Offtaker shall give notice to the Power Producer by no later than March in each Year of the Maintenance Months, the Non-Maintenance Months, and the Period Weighting Factors applicable in the immediately following Year, provided, however, where the Offtaker does not designate the Maintenance Months, the Non-Maintenance Months, or the Period Weighting Factors, as the case may be, the then most recent designation shall remain in effect; provided, further, that the weighted average of the Period Weighting Factors shall always be equal to one (1).

Section 5.14 Adequate Gas Supply and Fuel Inventory; Fuel Supply Arrangement

The Power Producer shall make necessary Fuel Supply Arrangement and shall provide reasonable evidence to the Offtaker that the Power Producer has the required supply of Fuel and the capacity to process, transport, store (applicable for HSD) and handle such fuel for use as fuel at the Complex in such quantities to allow the Power Producer to generate (in case of HSD), for a consecutive four (4) Day period, Net Electrical Output at full load of the Complex, as contemplated in this Agreement.

The Power Producer shall maintain on the Site an inventory of back-up fuel of HSD at four (4) Days at full load, however, the Power Producer shall within three (3) Days from the start of the HSD operations, progressively arrange replenishment, to its maximum unloading capacity of HSD based on daily consumption of HSD keeping in view the Offtaker's requirement. For clarity the HSD inventory being maintained is common for the BQ Complex.

The Complex is planned to be commissioned on HSD Fuel and request for approval of investment for the same has been submitted to NEPRA, and accordingly the clauses related to HSD shall be applicable once Complex is commissioned on HSD along with relevant amendments in Schedules to this Agreement.

After the Effective Date, any amendment in the Gas Supply Agreement or the HSD Supply Agreement(s) or any new agreement being entered into, including minimum take or pay obligations, shall be subject to the approval of the Offtaker.

Section 5.15 Tampering with the Metering System

The Power Producer shall not tamper, and shall ensure that its employees, Contractors or subcontractors of any tier do not tamper, with the Metering System. Should the Power Producer breach the foregoing covenant, the Power Producer shall (a) take all remediable action reasonably acceptable to the Offtaker to ensure that such tampering does not reoccur, including the development or addition of security systems, and (b) compensate the Offtaker for two (2) times the amount or reasonably estimated amount of any overpayment by the Offtaker resulting from such tampering, which for purposes of such determination shall be assumed to have occurred immediately after the last known accurate test of the Metering System (unless the Power Producer demonstrates to the reasonable satisfaction of the Offtaker, or the Expert determines, that the tampering did not occur until a later date, in which case such later date shall be used as the reference date for determination of such amount). The Parties have agreed that the amount of such compensation constitutes liquidated damages to the Offtaker for any such breach and, subject to Sections 16.1(b), shall be the sole remedy of the Offtaker thereof. The Power Producer waives, to the fullest extent permitted by law, any claim that such compensation is void as a penalty.

Section 5.16 Not Used.

Section 5.17 Not Used.

Section 5.18 Degradation and part load

For avoidance of doubt, calculation for Capacity Invoice and Energy Invoice (including Billing Cycle/Take-or-Pay Energy Shortfall Payments) pursuant to Article IX (*Compensation and Billing*) shall take account of the degradation of Complex (or part thereof) and part load, in terms of the Tariff Determination calculated as per mechanism set forth in Schedule I (*Tariff, Indexation and Adjustment*).



ARTICLE VI
INTERCONNECTION FACILITIES

Section 6.1 Power Producer Interconnection Facilities

- (a) The Power Producer represents and warrants that the Power Producer Interconnection Works have been constructed with all proper skill and care and in all material respects to ensure that the Power Producer Interconnection Facilities can be reasonably expected to provide a useful life of not less than the Term and is in accordance with:
- (i) this Agreement;
 - (ii) the Laws of Pakistan and the applicable Power Producer Consents;
 - (iii) the Company's Generation License;
 - (iv) Prudent Utility Practices and Prudent Electrical Practices; and
 - (v) Schedule 3 hereto.

Section 6.2 Offtaker Interconnection Facilities

The Offtaker shall be responsible to operate and maintain the Offtaker Interconnection Facilities in accordance with Schedule 3 of this Agreement. The Offtaker shall carry out, or cause to be carried out, the Offtaker Interconnection Facilities with all proper skill and care and in all material respects in accordance with:

- (a) this Agreement;
- (b) the Laws of Pakistan and the applicable Offtaker Consents;
- (c) Company's Transmission License;
- (d) Prudent Utility Practices and Prudent Electrical Practices; and
- (e) Schedule 3 hereto.

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

Section 6.3 Data Necessary for Offtaker Interconnection Facilities

The Power Producer shall provide all additional information reasonably requested by the Offtaker in connection with its Offtaker Interconnection Facilities. The Offtaker shall use such supplemented information in its system studies, or any other purpose.

Section 6.4 Granting of Easements and Rights-of-Way

- (a) If required, the Power Producer shall grant to the Offtaker permanent easements and rights of way across the Site necessary to operate, maintain, replace and/or



remove the Offtaker Interconnection Facilities. The easements shall grant to the Offtaker adequate and continuing rights for the purposes set forth in this Section 6.4 to enter the Site subject only to the Offtaker giving prior notice to the Power Producer. Upon request by the Offtaker, the Power Producer shall execute such easements, rights of way, licenses and other documents, each in recordable form, as the Offtaker may reasonably require to record any and all of the above rights. Consideration for such rights shall be the execution of this Agreement and no other consideration shall be required. Insofar as it shall be consistent with the Laws of Pakistan, all easements, rights of way, licenses and other rights here under shall survive termination or expiration of this Agreement.

- (b) Except as provided in Section 6.4(a), the Offtaker shall be responsible for obtaining all rights-of-way, easements and other real or personal property interests necessary to construct, operate and maintain the Offtaker Interconnection Facilities during the Term.

Section 6.5 Not Used.

Section 6.6 Protective Devices

- (a) The Power Producer shall maintain the settings of all relays in the Complex at the levels agreed by the Power Producer and the Offtaker, and the Power Producer shall not change such settings without the prior consent of the Offtaker.
- (b) The Power Producer and the Offtaker shall verify the operation of the protection devices in accordance with the testing programme set out in Schedule 3.
- (c) Subject to giving the Power Producer reasonable notice, the Offtaker may require the Power Producer to modify or expand the requirements for protective devices. Following approval by the Offtaker of the costs of such modification or expansion, the Power Producer shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. The Offtaker 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 Power Producer shall provide the Offtaker with an invoice for the reasonable and necessary costs therefor, together with supporting documentation with respect thereto. The Offtaker shall acknowledge the required amount invoiced by the Power Producer.
- (e) Each Party shall notify the other Party in advance of any changes to either the Complex or the Grid System that may affect the proper co-ordination of protective devices between the two systems, and neither Party shall make any such changes to either the Complex or the Grid System, as the case may be, without the other Party's approval.

Section 6.7 Testing

The Parties shall cooperate in testing the Offtaker Interconnection Facilities and the Power Producer Interconnection Facilities at any time as reasonably required by the either party and as decided by the Operating Committee.



ARTICLE VII
METERING AND TELECOMMUNICATIONS

Section 7.1 Metering System

The Parties acknowledge that for the purposes, *inter alia*, determining Net Electrical Output of the Complex, the Metering Systems and Back-Up Meters of an accuracy class of 0.2s are required for the delivery of any Net Electrical Output to the Interconnection Point for sale hereunder along with an electronic recorder or any other state-of-the-art recording equipment capable of making continuous recording of the Net Electrical Output of the Complex.

Section 7.2 Testing and Maintenance

The Power Producer shall maintain and test the accuracy / calibrate or recalibrate, if necessary, the Back-Up Meters in accordance with Schedule 6.

Section 7.3 Testing of Metering System and Back Up Meter

- (a) The Offtaker shall test the accuracy of each of the Metering System at any time that the readings of electrical energy from the Metering System and the Back Up Meter differ by an amount greater than one-fifth of one percent (0.2%). In such an event, the Offtaker shall test the accuracy of the Metering System and recalibrate the Metering System, if necessary. The Offtaker shall give the Power Producer not less than forty-eight (48) hours' notice of such tests and the Power Producer shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided that if the Power Producer's representative fails to attend such tests, inspection or adjustment, such right shall have been waived with respect to such test, inspection and/or adjustment.
- (b) Following testing and any recalibration, if necessary, and return to service of the Metering System pursuant to Section 7.3(a), above, the Power Producer shall if necessary, test the accuracy of the relevant Back-Up Meter and recalibrate the relevant Back-Up Meters. The Power Producer shall give the Offtaker no less than forty-eight (48) hours' notice of such tests and the Offtaker shall have the right to witness such tests, as well as any inspection of the Back-Up Meter or adjustment thereof; provided that if the Offtaker fails to attend such tests, inspection or adjustment such right shall have been waived with respect to such test, inspection and/or adjustment.
- (c) In addition to the tests to be carried out pursuant to Section 7.3(a), if the Power Producer believes that the Metering System is inaccurate it shall inform the Offtaker, requesting that the Metering System's accuracy be tested, and the Offtaker shall test the Metering System within a reasonable time. If the Offtaker believes that the Metering System is inaccurate it shall inform the Power Producer, and the Offtaker shall test the Metering System within a reasonable



time. The Offtaker shall give the Power Producer no less than forty eight (48) hours' notice of such tests and the Power Producer shall have the right to witness such tests, as well as any inspection of the Metering System or adjustment thereof; provided that if the Power Producer fails to attend such tests, inspection or adjustment such right shall have been waived with respect to such test, inspection and/or adjustment. The Power Producer shall bear the cost of such additional test requested by it unless the test indicates that the Metering System is inaccurate by more than one-fifth of one percent (0.2%), in which case the Offtaker shall bear the cost of the additional test.

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

Section 7.4 Reading Meters

- (a) The Power Producer has, at its own cost and expense, procured and installed electronic data recording systems capable of recording the Net Electrical Output measured by the Metering System and Back-Up Meter on a continuous basis and capable of storing such recordings for not less than ninety (90) Days. Subject to the provisions of Section 7.4(d) and verification of the data recording system pursuant to Section 7.4(b), the Parties agree that the information contained in or obtained from such electronic data recording systems shall be used to determine the Net Electrical Output of the Complex. The electronic data recording system related to the Metering System and the Back-Up Meter shall constitute a part of the Metering System and the Back-Up Meter, respectively, for all purposes under this Agreement, and the electronic data recording system related to the Metering System shall be conveyed to the Offtaker as a part of the Metering System in accordance with the provisions of this Article VII.
- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized

readings for the Metering System (or, if applicable, the Back-Up Meter) over the same period (determined by subtracting the local totaled reading at the beginning of the period from the local totaled 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 Meter shall be read monthly on the last Business Day of each Month or such other Day as may be mutually agreed upon by the Parties;
 - (ii) the Power Producer shall take such reading during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) the Power Producer shall give the Offtaker at least forty-eight (48) hours notice of the time the Power Producer intends to take such reading and the Offtaker shall have the right to witness any such reading;
 - (iv) if a Offtaker representative is present at such reading, then such reading shall be jointly taken and recorded;
 - (v) if a Offtaker representative is not present at such reading, then the Power Producer representative shall take and record such reading and make a photographic record thereof; and
 - (vi) the Power Producer shall maintain a log of all such meter readings.
- (c) The Metering System shall be used to measure the Net Electrical Output, provided, that during any period when the Metering System is out of service as a result of maintenance, repairs or testing, then the best available information, which may include the Back-Up Meter or any other mutually agreed reconciliation through other meters, shall be used to measure the Net Electrical Output and the provisions of Section 7.4(a) and Section 7.4(b) shall apply to the reading of the Back-Up Meters.
- (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 Electrical Output delivered to the Offtaker for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
- (i) the readings of the Back-Up Meter shall be used to calculate the correct amount of Net Electrical Output, unless a test of such Back-Up Meter, as required by either Party, reveals that the Back-Up Meters are inaccurate by more than one- fifth of one percent (0.2%) or is otherwise functioning improperly;
 - (ii) if the Back-Up Meter is found to be inaccurate by more than one-fifth of one percent (0.2%) or is otherwise unavailable or functioning improperly, then the Power Producer and Offtaker shall jointly prepare an estimate of

the correct reading on the basis of all available information and such guidelines as may have been agreed to between the Power Producer and the Offtaker;

- (iii) if the Offtaker and the Power Producer fail to agree upon an estimate for the correct reading, the Power Producer will estimate the reading and any Dispute shall be referred by either Party for resolution in accordance with Section 18.1 and Section 18.2; and
- (iv) the difference between the previous amounts by the Offtaker for the period of inaccuracy and the recalculated amount shall be offset against or added to the next claim to the Power Producer under this Agreement, as appropriate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date which is midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus one-fifth of one percent (0.2%) and not otherwise functioning improperly.

Section 7.5 Sealing of Metering Systems

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

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

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

Section 7.7 Protective Devices; Telecommunications Circuit

- (a) the Power Producer at its own cost and expense have made operational the following equipment:
 - (i) Telecommunications and tele-protection equipment (power line carrier or, at the Power Producer's option, power line carrier and/or microwave system) reasonably acceptable to the Offtaker at the Complex and compatible with similar equipment at the Offtaker's grid station located at 220kV KCR Grid and BQPS-III Complex GIS ;
 - (ii) A communications unit in the control room of the Complex compatible with the Control Centre's PBX system to permit voice communications between the Complex and the Control Centre;
 - (iii) Equipment in the Complex to transmit and receive e-mails; and
 - (iv) Tele- metering and data interface (or interface with the Offtaker's microwave system adjacent to the Complex) for the Offtaker's SCADA satisfying the Offtaker's reasonable requirements, which tele-metering and data interface is described in Schedule 3.
- (b) The items to be provided by the Power Producer in accordance with this Section 7.7 shall be subject to the prior written approval of the Offtaker.



ARTICLE VIII
TESTING AND CAPACITY RATINGS

Section 8.1 Not Used.

Section 8.2 Not Used.

Section 8.3 Not Used.

Section 8.4 Testing of Tested Capacity After Effective Date.

- (a) During each Demonstration Period a test (the “**Annual Capacity Test**”) shall be conducted to determine the Tested Capacity of the Complex. The Power Producer may at any time after running for at least seventy two (72) consecutive hours at maximum continuous rating during a Demonstration Period declare the immediate six (6) hour period thereafter to be the Annual Capacity Test period; provided, that the Offtaker has scheduled in excess of ninety- five percent (95%) of the Tested Capacity of the Complex for that seventy two (72) hour period or more in its notification of requirements to be given to the Power Producer pursuant to Section 5.2. Upon the Power Producer declaring an Annual Capacity Test period the Despatch level for the Annual Capacity Test period shall be deemed to be the maximum capability of the Complex. In the case the Offtaker is not able to despatch the Complex for continuous seventy-two (72) hours due to economic merit order, the Demonstration Period-may be reduced based on the mutual agreement and technical considerations. The Annual Capacity Test shall be conducted by a reputable independent engineer to be appointed by the Offtaker, which shall provide a report for the same.
- (b) The Annual Capacity Test period shall be for six (6) continuous hours. The test shall be run using the Metering System and plant instrumentation for measurements, unless otherwise decided by the Operating Committee. The Tested Capacity shall be the Net Electrical Output during those six (6) hours divided by six (6), adjusted to Reference Site Conditions and applying any necessary corrections for over- loading of the Complex and auxiliaries load correction, if any, but shall not exceed the Contract Capacity. The compressors shall be in operation during the Annual Capacity Test, or adjustment shall be made for the same in case one or two compressors not required for operations due to high pressure Gas, for consistency with the initial Contract Capacity. For purposes of determining Capacity Invoices pursuant to Section 9.1 the Tested Capacity so established as above shall be effective from the Day after such testing is complete.
- (c) In the event that the Power Producer has not declared an Annual Capacity Test period within forty-two (42) Days of the start of a Demonstration Period, then if:



- (i) The Offtaker has not scheduled the required level and duration of generation pursuant to Section 8.4(a) during the forty-two (42) Day period, such that the Power Producer was able to declare an Annual Capacity Test period, then the Power Producer may request an Annual Capacity Test; or
 - (ii) The Offtaker did schedule the required level and duration of generation pursuant to Section 8.4(a) during the forty-two (42) Day period, such that the Power Producer was able to declare an Annual Capacity Test but then elected not to declare an Annual Capacity Test, then the Offtaker may request an Annual Capacity Test.
- (d) If either Party requests a test pursuant to Section 8.4(c), then such test shall be performed in accordance with the provisions of Section 8.4(b) within seven (7) Days following such request, provided that such request is made at least fourteen (14) Days prior to the end of the Demonstration Period. The Power Producer shall give the Offtaker not less than forty-eight (48) hours notice of its intention to perform the test.
- (e) Either Party may, within twenty- four (24) hours of completion of any test, reject the test and may conduct a retest, provided, however, the test disputing Party cannot conduct more than two retests. The Power Producer shall give the Offtaker at least twenty-four (24) hours notice of the retest and the retest shall be conducted within six (6) Days of the completion of the rejected test.
- (f) Either Party shall be entitled to request one test of Tested Capacity of the Complex between any two consecutive Demonstration Periods. Either Party shall be entitled to one retest of any such test provided that it rejects the test within twelve (12) hours of completing the test. The test and, as appropriate, the retest shall be conducted in accordance with Section 8.4(b), within six (6) Days of its request or, as the case may be, the rejection and the Power Producer shall give the Offtaker not less than forty-eight (48) hours notice of its intention to perform the test.

Section 8.5 Notice of and Compliance with Testing Procedures

The Offtaker shall use its reasonable efforts to comply promptly with all reasonable requests by the Power Producer for assistance in carrying out such testing under Article VIII. The Offtaker shall be given not less than twenty- four (24) hours prior written notice of any testing in accordance with Section 8.4 and shall be entitled to be present and observe any such testing to verify that the testing is performed in accordance with the requirements of this Agreement and may Dispute the results of any such tests not carried out in accordance with this Article VIII.

Section 8.6 Tested Capacity

- (a) The “**Tested Capacity**” shall be the net generation capacity demonstrated by the Power Producer for Complex and shall be applicable from the Day following

the date of the Annual Capacity Test (or any retest thereof) pursuant to Section 8.4. However, the Tested Capacity of the Complex shall be the Contract Capacity (after applying degradation factor provided in Schedule 10) from the Commencement Date till the first Annual Capacity Tests are conducted after the Effective Date. For avoidance of doubt, since the Annual Capacity Test will be on Gas, after commissioning of the Complex on HSD, the Tested Capacity on HSD shall be as Determined by NEPRA along with applicable degradation, unless test required by Offtaker.

- (b) On completion of such Annual Capacity Test under Section 8.4 the Offtaker shall be, certifying the Tested Capacity, which shall be applicable from the Day following the date of completion of the Annual Capacity Tests, unless revised pursuant to Section 8.4.

Section 8.6A Invoice for Net Electrical Output during Testing

- (a) Not Used.
- (b) For Net Electrical Output delivered during Annual Capacity Tests (including any retest thereof) carried out pursuant to Section 8.4, the Offtaker shall acknowledge the invoice to the Power Producer regarding the Energy Price, Start-Up Charges or any other charges in accordance with Section 9.6.

Section 8.7 Copies of Test Results.

The Power Producer shall provide the Offtaker with copies of the test results of all tests performed pursuant to Section 8.4 or after Overhaul at the Complex. The Offtaker shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

Section 8.8 Scheduling and Accommodation of Additional Tests

If, during or following a Scheduled Outage, a Forced Outage or Partial Forced Outage, a Maintenance Outage, or a Force Majeure Event, the Power Producer is required to undertake additional tests at the Complex that are not required under this Article VIII and which require that electric energy is delivered to the Grid System, the Offtaker shall accommodate such tests as soon as reasonably practicable following a request therefore from the Power Producer; provided that the Offtaker shall, except in the case of an Emergency, accommodate such test and allow the Power Producer to deliver electric energy into the Grid System (without any additional cost to the Offtaker) not later than the end of the twenty four (24) hour period of such request from the Power Producer.

Section 8.9 Testing Disputes

Any Dispute between the Power Producer and the Offtaker arising under this Article VIII shall be resolved in accordance with the provisions of Article XVIII; provided that, in the case of a Dispute as to the successful completion of the tests, such Dispute shall, unless the Parties

otherwise agree, be referred to the Expert, and the determination of the Expert under Section 18.2 shall be implemented and followed by the Parties prior to and pending any further dispute resolution proceedings pursued by a Party under Section 18.2(i).

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ARTICLE IX
COMPENSATION AND BILLING

Section 9.1 Capacity Invoice

- (a) Subject to Section 2.2(c) and Section 9.6(d), from and after the Effective Date, the Offtaker shall acknowledge the Capacity Invoice, in accordance with the procedures specified in Section 9.6, for the Available Capacity for each Month (or part-Month), such Capacity Invoice being calculated in accordance with this Section 9.1 and the provisions of Schedule 1 and shall attribute the corresponding amounts set out in such invoices appropriately in the records of the Company.
- (b) For the purposes of calculating Capacity Invoice as stated above in Section 9.1(a) and Schedule 1 hereto, the “Available Capacity” shall in any hour be the Declared Available Capacity, unless:
- (i) the Power Producer has informed the Offtaker of a Revised Declared Available Capacity in accordance with Section 5.3(c) that is less than the Declared Available Capacity of the Power Producer prevailing at the Declaration Deadline, in which case the Available Capacity for that hour shall be the Revised Declared Available Capacity (at the forecasted Ambient Site Condition).
 - (ii) the Power Producer has informed the Offtaker of an Adjusted Declared Available Capacity in accordance with Section 5.3(e) that is greater than or less than the Declared Available Capacity or the Revised Declared Available Capacity, as applicable, in which case the Available Capacity for that hour shall be the Adjusted Declared Available Capacity (at the forecasted Ambient Site Condition).
 - (iii) the Power Producer has informed the Offtaker of a Revised Declared Available Capacity
 - in accordance with Section 5.3 (c) (ii) that is greater than the Declared Available Capacity prevailing at the Declaration Deadline, in which case the Available Capacity for that hour shall be the Revised Declared Available Capacity (at the forecasted Ambient Site Condition) notified at least four (4) hours prior to the start of the relevant hour as per Section 5.3 (c) (ii) unless adjusted on account of Section 5.3 (e) in such case the Adjusted Declared Available Capacity, as notified up to forty five (45) minutes prior to the start of such hour, shall be applicable.
 - in accordance with Section 5.3 (c) (iii) and (iv) that is greater than the Declared Available Capacity prevailing at the Declaration Deadline, in which case the Available Capacity for that hour shall be the Revised Declared Available Capacity (at the forecasted Ambient

Site Condition).

- (iv) the Despatched and Delivered Net Electrical Output is less than the Despatched Net Electrical Output due to reasons other than those described in Section 5.4(g), in which case the Available Capacity for the applicable hour shall be the capacity, in MW, as determined by the Net Electrical Output for such hour. For avoidance of doubt, this provision would equally apply if the Complex is Despatched in accordance with Section 5.4(d).
 - (v) the Complex has Despatched at one hundred (100%) of the Declared Available Capacity, Adjusted Declared Available Capacity or the Revised Declared Available Capacity and the Net Electrical Output is more than the Despatched Net Electrical Output for that hour, then in that case the Available Capacity for that hour shall be the capacity in MW as determined by the Net Electrical Output for such hour; subject to maximum upper limit of 101.5% of the Despatched Net Electrical Output for such hour.
- (c) In addition to the acknowledgement by the Offtaker of Capacity Invoices for the Available Capacity pursuant to Section 9.1(a), from and after the Effective Date, the Offtaker shall confirm to the Power Producer the Capacity Price for each kW of the then prevailing Tested Capacity, then unavailable during any period during which the Complex is undergoing any of the following outages:
- (i) Subject to Section 9.1.(c)(iii), Scheduled Outage scheduled by the Power Producer in accordance with Section 5.5; provided that the total outages confirmed under this Section 9.1(c)(i) in any Agreement Year shall not exceed the product of the then-prevailing Tested Capacity and the number of hours permitted for Scheduled Outages under Section 5.5 in the relevant Agreement Year.
 - (ii) Subject to Section 9.1.(c)(iii), a Forced Outage or Partial Forced Outage notified by the Power Producer not later than one (1) hour (except in the case of an emergency shutdown) prior to the relevant hour or a Maintenance Outage notified by the Power Producer in accordance with Section 5.3(b) and Section 5.6; provided, that the total outages for which acknowledgment will be made by the Offtaker under this Section 9.1(c)(ii) in any Agreement Year shall not exceed the product of (i) the then-prevailing Tested Capacity of Complex and (ii) three hundred and forty-eight (348) hours for which Power Producer has not received acknowledgment under Section 9.1 (c) (i) in the relevant Agreement Year.
 - (iii) For avoidance of doubt the Power Producer may utilize Scheduled Outage hours for Forced Outage or Partial Forced Outage or vice versa and amounts under Section 9.1 (c) (i) and (ii) shall be made accordingly, provided, that the total hours for which acknowledgment will be made by the Offtaker under Section 9.1(c) (i) and (ii) in any Agreement Year shall not exceed the product of (i) then-

prevailing Tested Capacity of the Complex and (ii) aggregate of eight hundred and seventy-six (876) hours (i.e. 10% of the total Hours in an Agreement Year) and the available balance in Saved Hours at the start of that Agreement Year subject to Section 9.1 (d).

- (d) The Power Producer may utilize the Saved Hours to undertake the Overhaul, provided further that the utilization of such allowance shall be supported by notice of the Power Producer to the Offtaker. For avoidance of doubt, any outages exceeding the outage allowance pursuant to Section 9.1(c) during any Agreement Year, may be carried forward for an adjustment in the subsequent Agreement Years during the prevailing Maintenance Cycle. Further considering the Complex is already operating and it is in between the Maintenance Cycle at Commencement Date, any outages exceeding the outage allowances in the first Maintenance Cycle shall be allowed to be carried forward for an adjustment in the subsequent Maintenance Cycle. Notwithstanding the foregoing, the failure or inability of the Power Producer to serve such one (1) hour notice in respect of Forced Outage or Partial Forced Outage, to be ascertained in light of provisions of Section 9.4(c):
- (i) Shall not disentitle the Power Producer to receive full Capacity price of such hour; and
 - (ii) Shall not entitle the Offtaker to impose liquidated damages for the Power Producer failures to comply with the Despatch Instructions or the Revised Despatch Instructions on account of such Forced Outage or Partial Forced Outage.

Section 9.2 Energy Invoices

- (a) Subject to Section 9.6(d), from and after the Effective Date, the Offtaker shall confirm to the Power Producer the Energy Invoices in accordance with the procedures specified in Section 9.6 for Despatched and Delivered Net Electrical Output for the relevant Month (or part-Month), such payments being calculated in accordance with the provisions of Schedule 1 and attribute the corresponding amounts set out in such invoices appropriately in the records of the Company.
- (b) With respect to the Billing Cycle/Take-or-Pay Energy Shortfall where the Power Producer has made payments to the Gas Supplier under the Gas Supply Agreement, the Power Producer shall receive acknowledgement from the Offtaker in accordance with Section 9.6 and shall attribute the corresponding amounts set out in such invoices appropriately in the records of the Company in respect of the Billing Cycle/Take-or-Pay Energy Shortfall Payments.
- (c) With respect to the Billing Cycle/Take-or-Pay Energy Shortfall Payment, the Offtaker shall be entitled to Despatch and take delivery of an amount of Net Electrical Output equal to the then undelivered aggregate Billing Cycle/Take-or-Pay Energy Shortfall ("**Banked Energy**"), subject to the availability of such supply from Gas Supplier under the Gas Supply Agreement, provided that the Offtaker shall have first

Despatched as per the prevailing APP, and provided, further, that in no event shall the Offtaker have a right to take Despatch and take delivery of Net Electrical Output (including Banked Energy) during any hour in excess of the Declared Available Capacity for such hour. The Despatch and delivery of the then undelivered Banked Energy shall be on a "first in, first out" basis.

- (d) The Energy Invoice under Section 9.2 shall include the payment for Banked Energy, however the Energy Invoice shall be reduced by the applicable Fuel Cost Component paid earlier for the relevant Billing Cycle/Take-or-Pay Energy Purchase Shortfall. In the event the Banked Energy has not been Despatched due to Technical Limit of network or any other constraints and it is no longer available for Despatch under the Gas Supply Agreement then the adjustment of Billing Cycle/Take-or-Pay Energy Shortfall paid earlier shall be allowed to the Offtaker in accordance with Gas Supply Agreement. The mechanism for any invoices under this Section 9.2(d) shall be as per Schedule 1.

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

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

Section 9.4 Liquidated Damages

- (a) Without prejudice to the Offtaker's rights under Article XVI, the Parties agree that any liquidated damages payable under this Section 9.4 shall be the Offtaker's sole and exclusive remedy against the Power Producer in respect of the matters to which such

liquidated damages relate.

- (b) The following liquidated damages shall apply to Revised Declared Available Capacity as per Section 5.3 (c) (i) and (ii) (provided that these liquidated damages shall apply and be payable by the Power Producer only after the number of hours available to the Power Producer under Section 9.1 (c) and (d) have first been utilized):
- (i) In respect of any Revised Declared Available Capacity made between twelve (12) hours and four (4) hours prior to the beginning of an Operating Day, the Power Producer shall acknowledge the Offtaker as liquidated damages an amount equal to ten percent (10%) of the difference between the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing twelve (12) hours before the start of the Operating Day and the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing four (4) hours before the start of the Operating Day multiplied by the applicable Capacity Price for the relevant hour of that Operating Day, adjusted in accordance with Schedule 1. No adjustment shall be made to the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) to the actual Ambient Site Conditions.
 - (ii) In respect of any Revised Declared Available Capacity made less than four (4) hours prior to the beginning of an Operating Day, the Power Producer shall acknowledge to the Offtaker, as liquidated damages, an amount equal to twenty percent (20%) of the difference between the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing four (4) hours before the start of the Operating Day and the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing at the start of the Operating Day multiplied by the applicable Capacity Price for the relevant hour of that Operating Day, adjusted in accordance with Schedule 1. No adjustment shall be made to the Declared Available Capacity or Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) to the actual Ambient Site Conditions.
 - (iii) In respect of any upward revisions to the Declared Available Capacity for any hour, with a notice at least four (4) hour prior to the start of relevant hour to the Offtaker, no liquidated damages shall be payable. Such notice shall take effect from the start of next operating hour in which such notice is delivered to the Offtaker. If the Power Producer is Despatched subject to Section 5.4 (d) according to the Revised Declared Available Capacity and the Power Producer is unable to comply with such Despatch Instruction (or any Adjusted Declared Available Capacity related thereto), as applicable, liquidated damages shall be payable at two hundred percent 200% of those payable under Section 9.4 (b)(iv).

- (iv) If the Power Producer fails to comply with a Despatch Instruction or a Revised Despatch Instruction for any hour (or any Adjusted Declared Available Capacity related thereto), except to the extent such failure is as a result of a Force Majeure Event or any of the events set out in Section 5.4(g) and subject to Section 9.1(c), the Power Producer shall acknowledge to the Offtaker as liquidated damages an amount equal to one hundred percent (100%) of the difference between (i) the Declared Available Capacity or the Revised Declared Available Capacity (or any Adjusted Declared Available Capacity related thereto) prevailing at the start of the hour and (ii) the Available Capacity (as determined pursuant to Section 9.1(b)) for that hour multiplied by the applicable Capacity Price for such hour, adjusted in accordance with Schedule 1. The liquidated damages payable under this Section 9.4(b)(iv) shall be in addition to any liquidated damages payable under Section 9.4(b)(i) and (ii) for the same hour, to the extent liquidated damages are payable under both sections.
- (c) The Parties agree that the amounts of liquidated damages provided under this Section 9.4 are in lieu of actual damages and are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

Section 9.5 Billing

- (a) At any time on or after first (1st) Business Day of each Month, the Power Producer may submit an invoice to the Offtaker stated in Rupees for the following:
 - (i) The Capacity Invoice due in respect of the Available Capacity during the previous Month (or part-Month). Such invoice shall include for each hour of the relevant Month (or part-Month), the Capacity Price, the Available Capacity and the then prevailing Tested Capacity;
 - (ii) the Energy Invoice due in respect of the previous Month (or part-Month), and any Billing Cycle/Take-or-Pay Energy Shortfall Payment due in respect of the previous Month (or part-Month). Such invoice shall include for each hour of the relevant Month, the Energy Price, as determined in accordance with Schedule 1, and such other information and calculations, in reasonable detail, so as to permit the Offtaker to confirm that the calculation of the amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1.
- (b) the Energy Invoice for all Net Electrical Output produced during an Annual Capacity Test or any additional tests carried out pursuant to Article VIII and due in respect of the previous Month (or part Month). Such invoice shall include the Energy Price, as determined in accordance with Article VIII and Schedule 1, the Net Electrical Output delivered during the relevant tests, and such other information and calculations, in reasonable detail, so as to permit the Offtaker to confirm that the calculation of the



amounts shown in the invoice comply with the provisions of this Agreement and Schedule 1;

- (c) any Pass-Through Item due in respect of the previous Month (or part- Month) in accordance with Schedule 1 along with Supplemental Tariff;
- (d) any Start-Up Charges, Black Start or Black Start testing as part of Ancillary Services due in respect of the previous Month (or part-Month) as determined in Schedule 1;
- (e) At any time after the first (1st) Business Day of each Month, the Offtaker may submit an invoice to the Power Producer stated in Rupees for the amount of liquidated damages due to the Offtaker under this Agreement or for delivery of energy by the Offtaker at the Interconnection Point for the previous Month (or part-Month) at the applicable tariff rates, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice;
- (f) Either Party may require clarification or substantiation of any amount included in an invoice or statement submitted under Section 9.5 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; and
- (g) 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.

Section 9.6 Acknowledgment

- (a) Subject to Section 9.7, the Offtaker shall provide its acknowledgement by issuance of a confirmatory note to the Power Producer and shall attribute the corresponding amounts appropriately in the records of the Company as shown on an invoice delivered in accordance with Section 9.5, less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the invoice is received by the Offtaker (“**Due Date**”).
- (b) Subject to Section 9.7, the Power Producer shall provide its acknowledgement by issuance of a confirmatory note to the Offtaker and attribute the corresponding amounts appropriately in the records of the Company as shown on an invoice delivered in accordance with Section 9.5(e), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Power Producer.
- (c) In case, where a confirmatory note has not been issued by Offtaker or Power Producer (as applicable) by the Due Date, the same shall be deemed to be issued for the invoice amount less deduction of any Disputed amount.
- (d) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only

to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable as per Article XVIII.

- (e) Not Used.
- (f) Not Used.
- (g) Notwithstanding anything to the contrary in the Agreement, any references to the obligations for payments under this Agreement by the Offtaker or the Power Producer will be understood as acknowledgment of invoice under Section 9.6.

Section 9.7 Payment Disputes

- (a) At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an “**Invoice Dispute Notice**”) on the other Party that the amount of such invoice (or part thereof) is in Dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in Dispute, giving reasons as complete and as detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to Dispute resolution in accordance with Article XVIII, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this Section 9.7(a). A Party submitting an Invoice Dispute Notice may require such Dispute to be immediately referred to the Expert for determination pursuant to Section 18.2.
- (b) Upon resolution of Dispute under Section 18.1 or determination of the dispute by the Expert under Section 18.2, any amounts disputed and not paid but determined to be owed by a Party or any amounts acknowledged and determined not to be owed shall be acknowledged to the other Party, as the case may be, within seven (7) Business Days after such resolution or determination.
- (c) Not Used.

Section 9.8 Supporting Data

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

such data and information was relevant for claims by the Offtaker for payment by the Power Producer.



ARTICLE X

LIABILITY

Section 10 Limitation of Liability

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. 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 right of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.



ARTICLE XI
NOT USED

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ARTICLE XII

INSURANCE

Section 12.1 Maintenance of Insurance Policies

- (a) Subject to the provisions of this Article XII, the Power Producer, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term the policies of insurance set forth on Schedule 8 in the amounts set forth therein and during the periods mentioned therein, with financially sound insurer(s); provided, however, that such amounts may be changed from time to time with the prior written consent of the Offtaker; provided, further, that the Power Producer 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 Power Producer or (ii) the Power Producer is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.
- (b) Following a Pakistan Political Event to the extent that the insurance required by Section 12.1(a) above is not available to the Power Producer at commercially reasonable rates due to the occurrence of the Pakistan Political Event, upon notice to the Offtaker by the Power Producer, the additional cost of such insurance attributable to the occurrence of the Pakistan Political Event as determined by an Expert in conformity with the provisions of Section 18.2, shall be recoverable by the Power Producer from the Offtaker and treated as a Pass-Through Item. The additional compensation provided under this Section 12.1(b) and any such deduction shall cease as soon as the Power Producer's insurance rates are no longer affected by the Pakistan Political Force Majeure Event (or the other event described above). From time to time, at the request of the Offtaker or the Power Producer, the Expert acting in conformity with the provision of Article XVIII will determine the extent to which the Power Producer's insurance rates are then affected by the Pakistan Political Event.

Section 12.2 Maintenance of "Occurrence" Form Policies

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

Section 12.3 Policy Endorsements

The Power Producer shall cause the insurers to provide the following endorsement items in the comprehensive or commercial general liability and, if applicable, umbrella / excess liability

policies relating to the ownership, operation and maintenance of the Complex provided pursuant to Section 12.1:

- (a) The Offtaker, being part of the Company, shall be an insured under such policies with respect to claims arising out of or in connection with this Agreement;
- (b) Not Used;
- (c) Not Used;
- (d) The insurer shall waive all rights of subrogation against the Offtaker; and
- (e) Notwithstanding any provision of the policy, the policy may not be canceled or not renewed or materially changed by the insurer without prior notice from the Power Producer to the Offtaker.

Section 12.4 Endorsements to All Risks and Machinery Breakdown Policies

The Power Producer shall cause the insurers to provide the endorsements referred to in Section 12.3(a), (d) and (e) in the all risks and machinery breakdown policies covering the Complex as required by Section 12.1.

Section 12.5 Certificates of Insurance

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

Section 12.6 Insurance Reports

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



ARTICLE XIII
REPRESENTATIONS AND WARRANTIES

Section 13.1 Representations and Warranties

Each Party hereby warrants and represents that it is duly authorized by the Company to enter into this Agreement and has obtained the necessary approvals, authorisations and Consents to execute, conduct, deliver and perform its obligations under this Agreement.



ARTICLE XIV

TAXES

Section 14.1 Applicable Taxes

All present and future federal, provincial, municipal or other lawful Taxes applicable to either Party arising from or in connection with its rights and obligations under this Agreement shall be paid by the either Party as and when required under the Laws of Pakistan. Nothing herein shall limit or restrict the provisions of Schedule 1 (*Tariff, Indexation and Adjustment*), which allow the Power Producer to claim certain Taxes paid from the Offtaker as provided therein and in accordance with the Tariff Determination.



ARTICLE XV
FORCE MAJEURE

Section 15.1 Definition of Force Majeure

A “*Force Majeure Event*” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Effective Date, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party’s ability to deliver or receive energy from the Complex); provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event; that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. “**Force Majeure Events**” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirements, provided that such requirements shall not apply to Section 15.1 (a)(v), (a)(vi) and (b) (but only to the extent of a Change in law force majeure event under the Gas Supply Agreement) below:

- (a) The following political events that occur inside or directly involve Pakistan (each a “**Pakistan Political Event**”, and to the extent also a Force Majeure Event, a “**PPFME**”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days or more; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide; or
 - (iv) Not Used; or
 - (v) any force majeure event (other than CLFME) under the Gas Supply Agreement; or
 - (vi) any Non-Supply Event.
- (b) (i) any Change in Law (and to the extent also a Force Majeure Event) or
(ii) Change in Law Force Majeure Event under the Gas Supply Agreement, (in each case, a “**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) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Pakistan Political Event, in which case such event or circumstance shall constitute a Pakistan Political Event); or
 - (v) epidemic or pandemic or plague; or
 - (vi) non-availability of HSD due to a force majeure event under the relevant HSD Supply Agreement.
- (d) Force Majeure Events shall expressly not include the following conditions:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (excluding fuel); or
 - (ii) a delay in the performance of any Contractor; or
 - (iii) breakdown in machinery or equipment; or
 - (iv) normal wear and tear or random flaws in materials, machinery or equipment.

Provided, that each of the events described in clauses (d)(i), (ii) or (iii) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event of circumstance that is itself a Force Majeure Event, whether experienced by either Parties or the Company (as the case may be) or by one of its or Company's Contractors (as the case may be).

Section 15.2 Notification of Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
- (i) give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than the later of forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event(s) or twenty four (24) hours after the resumption of any means of providing notice between the Power Producer and the Offtaker, and
 - (ii) further give the other Party a second notice, describing the Force Majeure



Event(s) in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party pursuant to Section 15.2 (a) (i). When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event(s).

- (b) The affected Party shall provide notice to the other Party:
 - (i) with respect to an ongoing Force Majeure Event, of the cessation of the Force Majeure Event, and
 - (ii) of its ability to recommence performance of its obligations under this Agreement as soon as possible and in any event not later than seven (7) Days after the occurrence of events described in this Section 15.2 (b).
- (c) Failure by the affected Party to have given written notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or twenty- four (24) hour period required by Section 15.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Section 15.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If said notice is given within the forty-eight (48) hour period or twenty- four (24) hour period required by Section 15.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 15.4 from the date of commencement of the relevant Force Majeure Event.

Section 15.3 Duty to Mitigate

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event (or shall ensure that its Contractors use all reasonable efforts), including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures. Notwithstanding the foregoing, in case of a Force Majeure Event affecting the supply of Gas, the Power Producer shall be required to mitigate the effects of the same by using HSD fuel to the extent contemplated in Section 5.14.



Section 15.4 Delay Caused by Force Majeure

So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 15.3 and continues to so comply then (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make an acknowledgment) under or pursuant to this Agreement during the existence of a Force Majeure Event and (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended;

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

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

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

Section 15.5 Payment During Force Majeure Event

- (a) Upon the occurrence of any Force Majeure Event, then during the pendency of a Force Majeure Event, the Power Producer shall claim from the Offtaker Energy Invoices, for Net Electrical Output delivered during the pendency of such Force Majeure Event, the Billing Cycle/Take-or-Pay Energy Shortfall Payment and the Capacity Invoices for the Available Capacity that the Power Producer is able to provide during the pendency of the Force Majeure Event. The Billing Cycle/Take-or-Pay Energy Shortfall Payment in respect of a Force Majeure Event pursuant to Sections 15.1 (a)(v), (a)(vi) and (b)(ii) shall exclude the Fuel Cost Component.
- (b) Upon the occurrence of and at any time during the pendency of a Force Majeure Event, either Party may request that a test be performed to determine the then-available Tested Capacity in accordance with the provisions of Section 8.4 (Testing of Tested Capacity after Effective Date); provided, however, that no more than two (2) tests may be requested by a Party within any thirty (30) Day period during the pendency of the Force Majeure Event, provided further, no tests shall be requested if the Force Majeure Event relates to a Non-Supply Event or a Force Majeure Event under Sections 15.1(a)(v), 15.1(a)(vi) and 15.1(b)(ii). Except as provided in this Section 15.5 and in Section 15.6 (*Restoration of the Complex; Additional Compensation*), the Power Producer shall not be entitled to claim any amount from the Offtaker during any Force Majeure Event.

Section 15.6 Restoration of the Complex; Additional Compensation

- (a) (i) In the event that a PPFME results in material damage to the Complex or that compliance by the Power Producer with a Change in Law requires a material modification or a material capital addition to the Complex (each such event a **"Restoration"**), the Power Producer shall, within thirty (30) Days after the date by which it was first required to provide notice to the Offtaker under Section 15.2(a), except if the Pakistan Political Event has not ended by the time of such notice, in which case within thirty (30) Days of the notice required by Section 15.2(b), develop and deliver to the Offtaker a preliminary written estimate (the **"Preliminary Estimate"**) of : (A) the range of cost to effect the Restoration, less any insurance proceeds available or likely to become available to the Power Producer (the **"Restoration Cost Estimate"**) and the Threshold Amount (as defined in Section 15.6(j); and (B) a preliminary schedule for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Threshold Amount (as defined in Section 15.6(j)), a reasonable period to arrange the financing, (such schedule and each such schedule contained in the Report to be delivered pursuant to Section 15.7(a) shall be referred to herein as the **"Restoration Schedule,"** which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the **"Restoration Period"**). The Power Producer shall make the Preliminary Estimate as comprehensive and as complete as possible under the circumstances. The Offtaker and the Power Producer shall meet within fifteen (15) Days of the delivery of the Preliminary Estimate to discuss the conclusions set forth therein. As used in this Section 15.6, a material modification or material capital addition to the Complex shall mean out-of-pocket expenditures on such modification or modifications or capital addition or additions which are or are expected to be in excess of the equivalent of six hundred thousand dollars (\$600,000) (adjusted annually from the Commercial Operation Date for changes in the United States consumer price index from the value existing on the date hereof) in the aggregate in any Year.
- (ii) If there occurs such a PPFME or a CLFME that prevents or reduces the Power Producer's ability to declare Available Capacity, the Offtaker shall within thirty (30) Days of the delivery by the Power Producer for an invoice therefor, acknowledge the payment liability to the Power Producer, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined below) an amount equal to the full Capacity Invoice (calculated on the basis that the Declared Available Capacity is equal to the Average Available Capacity) and the Billing Cycle/ Take-or-Pay Energy Shortfall Payment (calculated on the basis that the Declared Available Capacity is equal to the Average Available Capacity) in case of Capacity Invoices, only to the extent that the Capacity Invoices is not acknowledged to the Power Producer by the Offtaker pursuant to Section 15.5. The Billing Cycle/Take-or-Pay Energy Shortfall Payment, as applicable, in

respect of a Force Majeure Event pursuant to Sections 15.1 (a)(v), (a)(vi) and (b)(ii) shall exclude the Fuel Cost Component. The term "**PE Compensation Period**" shall mean the period beginning with the onset of PPFME or the CLFME, as the case may be, (unless a timely notice was not given under Section 15.2(a)(i) in which case from the time such notice was given) and ending on either, as appropriate, (A) the earlier of the date the Power Producer is able to resume performance of its obligations under this Agreement, as specified in the notice given pursuant to Section 15.2(b); or (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 (*Termination as a Result of a Force Majeure Event*)) or (C) the Day of termination of this Agreement under Section 15.9 (*Termination as a Result of a Force Majeure Event*) or Article XVI (*Termination*).

Notwithstanding anything to the contrary in this Agreement, if any amount in any invoice issued by the Power Producer has been duly acknowledged under this Section 15.6(a), is subsequently disallowed by NEPRA under the Consumer End Tariff, the Offtaker shall have the right to recover the same from the Power Producer by way of set off or otherwise.

- (b) If the Power Producer concludes that the Restoration Cost Estimate shall be less than the Threshold Amount (as defined in Section 15.6 (j) and the Offtaker, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Power Producer shall, subject to Section 15.6(d), proceed with the Restoration in accordance with the Restoration Schedule.
- (c) If (i) the Power Producer concludes that the Restoration Cost Estimate shall be less than the Threshold Amount and the Offtaker, within fifteen (15) Days of its receipt of the Preliminary Estimate, notifies the Power Producer that the Offtaker disagrees with the Power Producer's conclusion and/or that it disagrees with the Restoration Schedule or (ii) the Power Producer concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount and the Offtaker, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with such conclusion, then the Power Producer shall proceed with the preparation of a Report and the provisions of Section 15.6 (e) shall apply.
- (d) If the Power Producer concludes that the Restoration Cost Estimate shall be greater than the Threshold Amount and the Offtaker, 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 Offtaker delivers notice to the Power Producer that the Offtaker 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 Power Producer shall proceed with the preparation of a Report and the provisions of Section 15.6(e) shall apply.

- (e) If a Report is required to be prepared, then at the conclusion of the meetings of the Parties (as contemplated by Section 15.7(b)) to discuss the Report, the Parties shall either agree or disagree with respect to the matters addressed therein. If the Parties reach agreement on such matters, or, in the case of a disagreement, after resolution by an expert pursuant to Section 15.7(c), the Offtaker shall, within fifteen (15) Days of such agreement or resolution, provide the Power Producer with a written notice of its election to either (i) terminate this Agreement or (ii) authorise the Power Producer to proceed with Restoration, in which case the following provisions shall apply:
 - (i) the Power Producer shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Offtaker. If the Power Producer is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of the Offtaker's notice authorizing the Power Producer to proceed with Restoration, then unless the Offtaker commits to provide financing for the Restoration within the next sixty (60) Days and provides such funds to the Power Producer within one hundred and twenty (120) Days thereafter, the failure to secure financing shall be treated as an election by the Offtaker to terminate the Agreement;
 - (ii) if financing for the Restoration has been secured, then the Power Producer shall proceed with the Restoration in accordance with the Restoration Schedule and, upon completion of the Restoration, the Power Producer shall be entitled to special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be; and
 - (iii) the Power Producer shall provide the Offtaker 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 Power Producer fails to restore the operation of the Complex within thirty (30) Days following the commencement of that Other Force Majeure Event, then the Power Producer shall prepare and deliver a Report pursuant to Section 15.7(a).
- (g) If the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Power Producer can continue to meet its obligations under this Agreement, the Power Producer shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report.



- (h) If the Parties conclude (or the Expert concludes) that the Complex can be restored such that the Power Producer can continue to meet its obligations under this Agreement, but the Offtaker does not agree with the Restoration Schedule contained in the Report, then the Offtaker shall notify the Power Producer within fifteen (15) Days of the receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The Power Producer and the Offtaker 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 Power Producer shall, subject to satisfying any of the conditions or requirements of the entity providing financing for the Restoration (including any insurance firm paying a claim to the Power Producer), have the option to proceed with the Restoration while the issue of the Restoration Schedule is being resolved.
- (i) If there occurs a PPFME or CLFME that reduces the Power Producer's ability to declare Available Capacity and does not require the Power Producer to undertake a Restoration, then the Offtaker shall acknowledge the payment liability to the Power Producer for each Month (or portion thereof) of the PE Compensation Period (as defined below), the Billing Cycle/Take-or-Pay Energy Shortfall Payment and the full applicable Capacity Invoice (assuming an Available Capacity equal to the Average Available Capacity immediately prior to the occurrence of the PPFME or CLFME), each such claim shall be made only to the extent that such Capacity Invoice and the Billing Cycle/Take-or-Pay Energy Shortfall Payment, as applicable, are not confirmed to the Power Producer by the Offtaker pursuant to Section 9.1, Section 9.2 and Section 15.5. The Billing Cycle/Take-or-Pay Energy Shortfall Payment in respect of a Force Majeure Event pursuant to Sections 15.1 (a)(v), a(vi) and (b)(ii) shall exclude the Fuel Cost Component. The term "PE Compensation Period", for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(ii), except for the reference to the Restoration Schedule. Notwithstanding anything to the contrary in this Agreement, if any amount in any invoice issued by the Power Producer has been duly acknowledged under this Section 15.6(i), is subsequently disallowed by NEPRA under the Consumer End Tariff, the Offtaker shall have the right to recover the same from the Power Producer by way of set off or otherwise.
- (j) For the purposes of this Article XV, the term "Threshold Amount" shall mean, for any event, the EPC Cost multiplied by a percentage equal to twenty-five percent (25%) and such percentage decreasing as a straight-line basis to five percent (5%) at one (1) year prior to the end of the Term, and remaining at five percent (5%) thereafter until the end of the Term.
- (k) Notwithstanding anything herein to the contrary, in the event of (i) the

occurrence of a PPFME that has a material adverse effect on the Power Producer's ability to operate the Complex and such PPFME continues for a period exceeding one hundred eighty (180) Days (including the effects thereof), (ii) a series of such related PPFMEs that continue in the aggregate for a period that exceeds one hundred and eighty (180) Days (including the effects thereof) during any Year, or (iii) a CLFME following which (x) the Parties agree or the expert determines that a Restoration is not feasible or the Offtaker decides that the cost of Restoration is not acceptable and (y) the Complex does not operate for one hundred eighty (180) Days following such determination or decision, and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration, the Offtaker or the Power Producer shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party.

Section 15.7 Appraisal Report and Use of Expert

- (a) When required pursuant to Section 15.6 and Section 15.7(b), the Power Producer 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 Offtaker as soon as practicable, but in any event not later than sixty (60) Days thereafter. The Report shall address, in such detail as is practicable under the circumstances and accompanied by reasonable supporting data, the following matters (to the extent applicable):
- (i) in the case of a Force Majeure Event covered by Section 15.6(a), Section 15.6 (c) or Section 15.6 (f), (A) describe the Force Majeure Event and the damage to the Complex, and/or the other effects or impacts on, the Complex (B) 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 (C) 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 Power Producer's good faith estimate of:
- (A) 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;
- (B) a revised cash flow forecast for the Complex;
- (C) 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;
- (D) in the case of a PPFME or a CLFME covered by Section 15.6(a), describe the plan to fund the costs of the Restoration;
 - (E) 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 provide special compensation under Section 15.8 (Supplemental Tariff); and
 - (F) in the case of a Force Majeure Event covered by Section 15.6(a), Section 15.6(c) and Section 15.6(f) provide certificates and reports of the Power Producer's financial and technical advisers, as appropriate or as reasonably requested by the Offtaker, 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 a 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 Offtaker of a Report prepared by the Power Producer, the Power Producer shall provide promptly to the Offtaker such additional financial and related information pertaining to the Report and the matters described therein as the Offtaker may reasonably request.
 - (c) The following Disputes between the Offtaker and the Power Producer shall be submitted to the Expert for resolution within the time period specified: (i) with respect to Disputes regarding any matter set forth in a Report, no later than twenty (20) Days after expiration of the period for review and consultation provided by Section 15.7(b); (ii) with respect to Disputes pursuant to Section 15.6 within the applicable period provided for in Section 15.6; and (iii) with respect to whether an item of cost incurred by the Power Producer should be recovered as provided in Section 15.8(d), within twenty (20) Days following the delivery of a written request to do so by either Party.
 - (d) In addition to the requirements under Section 18.2, the Expert shall be an engineer with extensive experience in the construction and operation of electric power plants similar to the Complex.
 - (e) If the Power Producer or the Offtaker 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 Expert 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.

Section 15.8 Supplemental Tariffs

- (a) In the case of a Force Majeure Event that is covered by Section 15.6(a)(ii), the Offtaker shall determine whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Section 15.8(b) or Section 15.8(c), as the case may be, or terminate this Agreement. The Power Producer acknowledges that the Offtaker may delegate the review of a Report to any Relevant Authority and agrees to cooperate with such Relevant Authority as if it were the Offtaker. The determination required to be made by the Offtaker under this Section 15.8(a) shall be made no later than fifteen (15) Business Days after the receipt of the Report by the Offtaker; 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 Offtaker 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 Power Producer shall unless this Agreement has been terminated by the Offtaker pursuant to Section 15.9, be entitled to receive Supplemental Tariffs in accordance with the procedures set forth in Schedule 1 to recover over the remainder of the Term (unless a shorter period for recovery of such costs is agreed by the Parties) the costs incurred in effecting the Restoration as provided in Section 15.8(e).
- (c) In the case of a CLFME covered by Section 15.6(a) the Power Producer shall, unless this Agreement has been terminated by the Offtaker pursuant to Section 15.9, 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 Power Producer to come into compliance with the Change in Law and are approved in accordance with Section 15.8(e) of this Agreement and (ii) the cost of additional quantities



or higher quality of consumables that can be directly attributed to compliance by the Power Producer with the Change in Law. Any reduction in cost due to a decrease in the use of quantity of consumables by the Complex shall be adjusted to the Offtaker as provided in Section 15.8(d).

- (d) The Power Producer shall, unless this Agreement has been terminated by the Offtaker pursuant to the previous sentence, be entitled to receive a Supplemental Tariff such that it will recover from the Offtaker, assuming Available Capacity is delivered at the Contract Capacity for ninety percent (90%) of the hours in a Year, over the remainder of the Term the costs incurred in effecting the Restoration, including, without limitation, weighted average cost of capital equal to 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 Power Producer. The costs to be recovered by the Power Producer pursuant to this Section 15.8 and Section 15.9 shall be the costs that are actually incurred by the Power Producer 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 Power Producer to effect such Restoration consistent with the standards for the original construction, consistent with the requirements of the applicable Laws of Pakistan and Prudent Utility Practices. The Power Producer shall deliver a schedule of such costs to the Offtaker, together with copies of the invoices, for review by the Offtaker. If the Offtaker contests any item of cost on the basis of the foregoing standards and the Offtaker and the Power Producer 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 Power Producer 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 Offtaker shall be obligated to pay to the Power Producer the undisputed amount. Amounts determined through the Dispute resolution procedure to be payable by the Offtaker shall be made to the Power Producer.

Section 15.9 Termination as a Result of a Force Majeure Event

- (a) Not Used.
- (b) If the Power Producer is required to proceed with a Restoration pursuant to Section 15.6(a)(i), Section 15.6(a)(ii), Section 15.6 (b) Section 15.6(c), or Section 15.6(d) and the Restoration has not been or shall not be completed by the end of the Restoration Period (as such Restoration Period may have been extended due to an intervening Force Majeure Event), or within the Restoration Cost Estimate, then the Power Producer may, and if the Restoration Cost

Estimate or Restoration Period is expected to be exceeded by fifteen percent (15%), the Power Producer 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 Offtaker. If the Offtaker 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 Power Producer, (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 Offtaker shall continue to acknowledge Capacity Invoices (calculated on the basis of Average Available Capacity) or Billing Cycle/Take-or-Pay Energy Shortfall Payment, as applicable. The Billing Cycle/Take-or-Pay Energy Shortfall Payment, as applicable, in respect of a Force Majeure Event pursuant to Sections 15.1 (a)(v), (a)(vi) and (b)(ii) shall exclude the Fuel Cost Component. If the Offtaker 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 Offtaker shall continue to make the appropriate payments pending resolution of the Dispute by the expert.

- (c) The Expert shall make its determination with respect to the revised schedule or revised cost and the Power Producer's liability thereof within thirty (30) Days of such referral. If the Expert determines that the delay was not reasonable and that it was due to the Power Producer's negligence, fault, or unnecessary delay the Restoration Period shall not be revised. If the Expert concludes that the delay was reasonable under the circumstances and not due to the negligence, fault or unreasonable delay of the Power Producer, the Expert shall fix the revised Restoration Period (the "**Extended Period**") and Restoration Cost Estimate. If the revised Restoration Cost Estimate is more than one hundred and fifteen percent (115%) of the Restoration Cost Estimate, or the revised Restoration Period is more than one hundred and fifteen percent (115%) of the Restoration Period, the Offtaker may elect to terminate this Agreement, unless the Power Producer elects to attempt to complete the Restoration during the Extended Period, as described below. If the revised Restoration Cost Estimate or Restoration Period do not exceed the one hundred and fifteen percent (115%) threshold, or the Offtaker does not terminate this Agreement, the Offtaker shall continue to acknowledge Capacity Invoices to the Power Producer (calculated on the basis of Average Available Capacity) and the Billing Cycle/ Take-or-Pay Energy Shortfall Payment, as applicable, to the Power Producer during such revised schedule period. After the end of the Restoration Period, as it may have been revised, the Offtaker shall have no further obligation to acknowledge Capacity Invoices and any additional costs incurred by the Power Producer to expedite the completion of the Restoration shall not be included in the costs that



form the basis of the Tariff under Section 15.8 of this Agreement. The Billing Cycle/Take-or-Pay Energy Shortfall Payment, in respect of a Force Majeure Event pursuant to Sections 15.1 (a)(v), (a)(vi) and (b)(ii) shall exclude the Fuel Cost Component.

- (d) Notwithstanding the provisions of Section 15.9(c), if the Restoration has not been completed by the end of the Extended Period (as defined in the next sentence), then, unless the Power Producer is diligently attempting to complete the Restoration, the Offtaker shall be entitled to terminate this Agreement upon thirty (30) Days' notice. 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 Power Producer to overcome the effects of the intervening Force Majeure Event.

Section 15.10 Notice of Termination

A Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Party in accordance with Section 20.1. Such notice shall identify the PPFME or CLFME or Other Force Majeure Event (as applicable) in reasonable detail and the basis for termination and the applicable provisions of this Agreement giving rise to the right to terminate. Termination of this Agreement shall be effective at 1700 hours on the thirtieth (30th) Day following the date of delivery of such notice.

ARTICLE XVI
TERMINATION

Section 16.1 Power Producer's Event of Default

The following events shall be events of default by the Power Producer (each Power Producer Event of Default), provided, however, that no such event shall be Power Producer Event of Default if it is caused in whole or material part by a breach by the Offtaker of, or a default by the Offtaker under, this Agreement (including any Offtaker Event of Default), or if it occurs as a result of a Force Majeure Event:

- (a) any material breach or material default by the Power Producer of this Agreement including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after notice from the Offtaker, stating that a material breach or default under of this Agreement has occurred and is continuing and identifying the material breach or default in question in reasonable detail;
- (b) tampering on three (3) or more separate occasions by the Power Producer or its Contractors or their departmental employees acting in the course of their employment with the Metering System or the Back-Up Meter;
- (c) revocation of Power Producer's licenses by NEPRA and/or any other Consents; and
- (d) The Power Producer's failure to maintain an average Available Capacity (excluding, for the purpose of calculating such average, any periods of Scheduled Outage) of seventy-five percent (75%) or higher of the Contract Capacity over any period of eighteen (18) consecutive Months, unless that failure is due to a Major Equipment Failure, in which case the eighteen (18) consecutive Months period referred to above shall be thirty (30) consecutive Months; provided the Power Producer has commenced and is diligently continuing to remedy such Major Equipment Failure during that period.

Section 16.2 Offtaker's Event of Default

The following events shall be events of default by the Offtaker (each an Offtaker Event of Default), provided, however, that no such event shall be Offtaker Event of Default if it is caused in whole or material part by a breach by the Power Producer of, or a default by the Power Producer under, this Agreement (including any Power Producer Event of Default), or if it occurs as a result of a Force Majeure Event:

- (a) any material breach or material default by the Offtaker of this Agreement including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after notice from the Party, stating that a material breach or default under of this Agreement has occurred and is continuing and identifying

- the material breach or default in question in reasonable detail;
- (b) tampering on three (3) or more separate occasions by the Party or its Contractors or their departmental employees acting in the course of their employment with the Metering System or the Back-Up Meter; and
 - (c) revocation of Offtaker's licenses by NEPRA and/or any other Consents.

Section 16.3 Notice of Intent to Terminate

If any Power Producer Event of Default or Offtaker Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may opt to deliver a notice ("**Notice of Intent to Terminate**") to the defaulting Party which notice shall specify in reasonable detail (i) the Power Producer Event of Default or the Offtaker Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate, including, as applicable, whether such event of default does not affect the Complex in any material respect and, (ii) the applicable "**Cure Period**" which in any event shall not be less than forty five (45) Days from the date of Notice of Intent to Terminate.

Section 16.4 Termination Notice

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

Section 16.5 Mutual Termination for Convenience

Subject only to written approval of the CEO, the Power Producer and the Offtaker may mutually agree in writing to terminate this Agreement for convenience with immediate effect.

Section 16.6 Obligations upon Termination

Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that arose prior to such termination or which expressly survive termination under this Agreement.

Section 16.7 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 (*Liability*) 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.



ARTICLE XVII

RIGHTS AND OBLIGATIONS OF PARTIES ON TERMINATION

Section 17.1 Survival of Rights and Obligations

- (a) On the expiry of this Agreement or the earlier termination of this Agreement pursuant to Section 16.4(a) or Article XV, all covenants, obligations, representations and warranties contained in this Agreement shall terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under this Agreement, except for those obligations and liabilities which arose prior to and remain undischarged at the date of expiry or termination.
- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Section 5.12 (Maintenance of Operating Records), Section 9.8 (Supporting Data), shall expressly survive any termination or expiry of this Agreement for a period of thirty six (36) Months from the date of such expiry or termination.

Section 17.2 Liability of the Parties on Termination

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



ARTICLE XVIII

RESOLUTION OF DISPUTES

Section 18.1 Resolution by Parties

- (a) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party delivers written notice of the Dispute to the other Party. 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 this Section 18.1(a). Representatives from each of the Parties shall meet to attempt in good faith to resolve the Dispute.
- (b) In the event of failure of mutual discussion between respective representative, the Parties may submit the Dispute before the Operating Committee. The Chairman of Operating Committee will endeavor to resolve the issue through round of mutual discussion between the Offtaker and the Power Producer within a period of fifteen (15) Days.
- (c) In the event that the Operating Committee is unable to resolve a Dispute, respective leads of the Power Producer and the Offtaker will endeavor to resolve the issue through mutual discussion within a period of fifteen (15) Days.

Section 18.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 18.1 within the time periods set forth therein, then either Party, in accordance with this Section 18.2, may refer the Dispute to an independent expert (the “**Expert**”) in the relevant field for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution thereof. 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. 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 CEO shall be requested to select the Expert and such selection by the CEO shall be binding on the Parties.

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

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

- (d) 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.
- (e) Each Party shall designate one (1) Person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such Person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 18.2(b)(ii) or 18.2(c)(ii), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (f) The Expert shall provide a recommendation within fifteen (15) Days after the ten (10) day response period provided in Section 18.2(c) has run, or within such further time as is agreed in writing by the Parties. If the Expert's recommendation is given within such fifteen (15) Days period, as may be extended by the Parties, the Parties may review and discuss the recommendation with each other in good faith for a period often (10) Days following delivery of the recommendation before proceeding with any other actions.
- (g) 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.



- (h) 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.
- (i) If either Party is dissatisfied with the Expert decision, it may serve a written notice on the other Party within thirty (30) Days of the Expert's decision having been notified to it, stating its intention to refer the matter in dispute to the CEO for final resolution. Any decision by the CEO shall be issued within thirty (30) Days of the referral of the matter by either Party in accordance with this Section and shall be binding on the Parties.



ARTICLE XIX

ACKNOWLEDGEMENT OF PAYMENT DURING INTERIM PERIOD¹

Section 19.1 Settlement for Interim Period

- (a) No later than 30 Business Days from the Effective Date, the Power Producer shall issue an invoice, unless the Power Producer has already issued such invoices prior to the Effective Date, for the Interim Period in respect of the matters covered in Section 19.1(b) to (h) in accordance with the Tariff Determination and the Offtaker shall acknowledge the invoice(s) and shall, unless such invoice(s) are disputed, attribute the corresponding amounts set out in such invoices appropriately in the records of the Company.
- (b) Capacity payments during the Interim Period shall be equal to product of the Capacity Price and the available capacity of the Complex during such Interim Period and shall also include amounts calculated by multiplying the Capacity Price for each kW of the then prevailing Tested Capacity then unavailable during (i) any period during which the Complex has undergone any Scheduled Outage, Maintenance Outage and Forced Outage or Partial Forced Outage provided that the aggregate of total outage hours shall not exceed the total of 10% of outages within the relevant Agreement Year and Saved Hours, if available.
- (c) Energy payments for net electrical energy as measured by the Metering System or the Back-Up Meter, as the case may be, during the Interim Period shall be calculated by multiplying the Energy Price with net electrical energy which shall not in any event exceed one hundred and one and one-half percent (101.5%) of the net electrical energy as stated in the Despatch Instruction or the Revised Despatch Instruction, as the case may be, during such Interim Period.
- (d) Pass-Through Items during the Interim Period shall be:
 - (i) Any unrecovered cost of outgoing multi-year tariff (2017 - 2023) which may be allowed under pending end of term adjustment of the multi-year tariff (2017 - 2023).
 - (ii) Gas Infrastructure Development Cess (GIDC) required to be paid by the Power Producer pertaining to prior periods based on a court verdict, if any.
 - (iii) In the case of any unbundling of the Company in future, one-time adjustment for additional costs pursuant to unbundling.
 - (iv) Any tax that becomes applicable to the Power Producer, including but not limited to the corporate tax.
 - (v) WWF/WPPF being separately levied on the Power Producer.



- (e) All Start-Up Charges, Black Start, Black Start testing charges during the Interim Period.
- (f) Billing Cycle/Take-or-Pay Energy Shortfall Payment during the Interim Period provided the Power Producer has made payment to the Gas Supplier under the Gas Supply Agreement.
- (g) Energy Invoice for Banked Energy despatched, if any, during the Interim Period provided that the Energy Invoice shall be reduced by the applicable Fuel Cost Component previously paid for the relevant Billing Cycle/Take-or-Pay Energy Shortfall.
- (h) In the event the Banked Energy has not been Despatched due to technical limit of the network or any other constraints and it is no more available for Despatch under the Gas Supply Agreement, then the adjustment of the Billing Cycle/Take-or-Pay Energy Shortfall Payment paid earlier shall be allowed to the Offtaker in accordance with the Gas Supply Agreement.
- (i) In case of failure of Power Producer to comply with a Despatch Instruction or a Revised Despatch Instruction for any hour during the Interim Period except where such failure is a result of any of the events relating to grid variation and network constraint (provided that the liquidated damages shall only be applicable upon the Power Producer only after the number of outages hours available to the Power Producer during the Interim Period as set out in Section 19.1(b) have first been utilized), liquidated damages shall be applicable at an amount equal to one hundred percent (100%) of the difference between (i) net electrical energy as measured by the Metering System or the Back-Up Meter, as the case may be and (ii) the available capacity (as determined by the Offtaker) for that hour multiplied by the applicable Capacity Price for such hour



ARTICLE XX

MISCELLANEOUS PROVISIONS

Section 20.1 Notices

Except for any notice given under Section 5.3 (*Declared Available Capacity*) or Section 5.4 (*Despatch Instructions and Delivery of Net Electrical Output*), all notices and other communications required or permitted to be given by a Party shall be in writing.

Any notice required or permitted to be given under Section 5.3 (*Declared Available Capacity*) or Section 5.4 (*Despatch Instructions and Delivery of Net Electrical Output*) may be given by telephone communication or any other form of communication that the Parties agree to use.

Section 20.2 Amendment

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

Section 20.3 Company Restructuring

In the event either Party notifies the other of any unbundling, demerger, amalgamation, reorganization, restructuring or reconstruction of the Company that may directly or indirectly affect the operations of any Party in any respect whether performance of any obligation under this Agreement or otherwise, the Parties shall engage in good faith negotiations to address any issues arising from such change within five (5) Business Days of the notification including but not limited to any assignment, assumption, or transfer of rights, obligations, or liabilities arising under this Agreement. Any amendments or modifications to this Agreement shall be made in a manner consistent with the updated structure of the Parties.

Section 20.4 Third Parties

This Agreement is intended solely for the benefit of the Parties and the Company 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 hereto.

Section 20.5 No Waiver

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

Section 20.6 Language

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

Section 20.7 Governing Law

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

Section 20.8 Entirety

This Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein.

Section 20.9 Good Faith

The Parties shall at all times during the continuance of this Agreement act towards each other in dutifully and perform their obligations hereunder in good faith.

Section 20.10 Confidentiality

This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.

Section 20.11 Effective Date between an Agreement Year and a Calendar Year

In case the Effective Date falls between an Agreement Year and a Calendar Year, respective clauses applicable for the Agreement Year and the Calendar Year shall be applied proportionately for the remaining period of such prevailing Agreement Year and the Calendar Year, as the case may be and the Operating Committee shall agree the modalities in respect thereto.



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

THE POWER PRODUCER through its authorized representative:

By:

Name:

Title:

THE OFFTAKER through its authorized representative:

By:

Name:

Title:

Acknowledgement by the KE Supply Business Unit through its authorized representative:

By:

Name:

Title:

Witness:

Name:
Designation:

Witness:

Name:
Designation:

