

**ENGINEERING PROCUREMENT AND CONSTRUCTION CONTRACT**

**BETWEEN**

**CAVALIER ENERGY CORPORATION**

**and**

**GLOBAL EDISON CORPORATION**

**In Consortium with**

**CHINA NATIONAL CHEMICAL ENGINEERING CORPORATION**

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**FOR THE CONSTRUCTION OF A  
LIQUIFIED NATURAL GAS (LNG) FIRED  
COMBINED CYCLE POWER PLANT  
AT PORT QASIM**

**IN**

**PROVINCE OF SINDH, PAKISTAN**

**JULY 2009**

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**THIS CONTRACT** (the “**Contract**”) is made on the 11th day of November 2008 at Dallas, Texas United States of America.

**BETWEEN:**

- (1) **CAVALIER ENERGY CORPORATION**, a private limited company incorporated and existing under the laws of the United States of America, with its principal office located at Plot 101-103, Industrial Estate, Sihala Road, Islamabad, Pakistan (the “**Employer**”); and
- (2) **GLOBAL EDISON CORPORATION**, a corporation incorporated and existing under the laws of the United States of America, with its principal office located at 415 East Airport Freeway, Irving, Texas 75062, USA (the “**Contractor**”).

**WHEREAS:**

- (A) The Employer desires that the Works (as defined below) known as the [**Cavalier Power Complex**] should be executed by the Contractor.
- (B) The Employer shall operate or procure the operation of the Complex (as defined below).
- (C) The Employer has entered into the Power Purchase Agreement (as defined below) and the other Project Documents (as defined below) and shall enter into other project documents including the Financing Documents (as defined below) to facilitate the Project (as defined below).
- (D) The Contractor has familiarized itself with conditions prevailing at the Site (as defined below), the Project Requirements (as defined below), the requirements of the Project Documents, and desires to design, engineer, procure relevant materials for, construct, fit for the purpose, and test the Complex for the Employer, as more fully described in this Contract.
- (E) This Contract sets out the detailed terms and conditions on which the Contractor is appointed to design, engineer, procure relevant materials for, construct (fit for purpose) and test the Complex.

**NOW, THEREFORE**, in considerations of the mutual covenants hereinafter set forth, the Parties agree as under:

**1 GENERAL PROVISIONS**

**1.1 Definitions**

In this Contract, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

“**Advance Payment**” means the payment to be made by the Employer pursuant to Clause 14.2.

“**Advance Payment Guarantee**” means a guarantee in an amount equal to the Advance Payment, adjusted to include amounts of any interim payment for Plant and Materials intended for the Works, issued by an entity and from within a country (or other jurisdiction) approved by the Employer and shall be in the form set out in Annex J (*Advance Payment Guarantee*).

“**Back-Up Metering System**” means any meters and metering devices installed for backup purposes.

“**Basic Design**” has the meanings set out in Annex K (*Project Requirements*).

“**Change in Law**” means (a) the adoption, bringing into effect, promulgation, modification, repeal or reinterpretation after the date of this Contract by any Public Sector Entity of any Laws of Pakistan (including a final and binding decision of a Public Sector Entity after the date of this Contract), which amends such laws established or in effect as of the date of this Contract, or (b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Consent after the date of this Contract, that in either case establishes requirements for the Project or the Works that are materially more restrictive or more onerous than the most restrictive or most onerous requirements: (i) in effect as of the date of this Contract, or (ii) to the extent more restrictive or more onerous than the requirements in (i) above, specified in any applications or other documents filed in connection with such applications for any Consent filed by the Contractor on or before the date of the Taking-Over Certificate for the Works, so long as such requirements are consistent with the Laws of Pakistan in effect as of the date of this Contract and to the extent not inconsistent with such laws, and (c) which is recognized as a "Change in Law" as defined in the Power Purchase Agreement.

“**Commencement Date**” means the date notified under Clause 8.1 (*Commencement of Works*).

“**Commercial Operations Date**” means the day following the date on which the Complex is "Commissioned" as defined in, and in accordance with Article VIII and Schedule 7 of the Power Purchase Agreement.

“**Commissioning Tests**” has the meaning given to it under the PPA.

“**Complex**” means the approximately 800 MW installed capacity, dual fuel (Liquefied Petroleum Gas and Natural Gas) fired combined cycle electricity power generation station, at Port Qasim, Province of Sindh, Pakistan, which is the subject of this Contract, including the Employer Interconnection Facilities, land, engineering and design documents, all energy producing equipment and its auxiliary equipment, fuel handling facilities, heat recovery steam generator and associated equipment, water transportation and treatment systems, and all other equipment or facilities necessary for the delivery of electricity to the Power Purchaser at the Interconnection Point.

“**Consents**” means all such approvals, consents, authorisations, notifications, grants or certificate of registration, concessions, acknowledgements, licenses, permits, summaries, decisions or similar items required to be obtained from any Relevant Authority by the Employer and/or the Contractor for the Project and the Works.

“**Contract**” means this Contract and all Annexes hereto.

“**Contract Price**” means the amount payable to the Contractor for the design, engineering, procurement, supply, execution, start up, testing, commissioning, and completion of the Works and the remedying of any defects, in the sum of (US\$ [320,000,000 (three hundred and twenty million US Dollars)] and PKR [4,522,000,000,000 (four billion, five hundred and twenty-two million Pakistan Rupees)]) as adjusted pursuant to the terms of this Contract.

“**Contractor's Documents**” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor under the Contract; as described in Clause 5.2 (*Contractor's Documents*).

“**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Plant, Materials and any other things intended to form or forming part of the Permanent Works.

“**Contractor’s Personnel**” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor, Contractor’s home office management and administration staff, Contractor’s design consultants, and any other personnel, other than personnel of the Employer, assisting the Contractor in the execution of the Works.

“**Contractor’s Representative**” means the person specified in Clause 4.5 (*Contractor’s Representative*) or such other person appointed from time to time by the Contractor thereunder with the prior approval of the Employer, who is authorised to act on behalf of the Contractor.

“**Cost**” means all expenditure reasonably incurred (or to be incurred) by the Contractor on a best effort basis to keep such expenditure to the minimum, whether on or off the Site, including overhead and similar charges, but does not include profit.

“**Country**” means the Islamic Republic of Pakistan.

“**day**” means a calendar day beginning and ending at 12.00 midnight Pakistan Standard Time and “**year**” means a year in the Gregorian calendar.

“**Defects Notification Period**” means the twenty-four (24) month period for notifying defects in the Works under Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*), (with any extension under Clause 11.3 (*Extension of Defects Notification Period*)), calculated from the date on which the Works have reached the Commercial Operations Date.

“**Demonstrated Complex Energy**” means the net electrical output as established in accordance with the Annex K (*Project Requirements*) of the Complex during the twenty-four (24) hour test period selected by the Employer during Tests on Completion or as provided in Clause 12.5 (*Demonstrated Complex Energy Test*).

“**Direct Agreement**” means the direct agreement to be entered into between the Contractor, the Employer and the Lenders that incorporates the matters referred to in Annex G (*Form of Lenders Direct Agreement*).

“**Dispute**” means any dispute or disagreement of any kind whatsoever between the Contractor and the Employer in connection with or arising out of this Contract.

“**Effective Date**” means the date this Contract comes into full force and effect pursuant to Clause 1.5 (*Effective Date*).

“**Employer Interconnection Facilities**” means the facilities and equipment to be designed, constructed or installed by the Contractor on the Employer’s side of the Interconnection Point, including any telemetering equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, telemetering and data interface for the SCADA System, protective devices and safety equipment.

“**Employer’s Personnel**” means the Employer’s Representative, the assistants referred to in

Clause 3.2 (*Other Employer's Personnel*) and all other staff, labour and other employees of the Employer and of the Employer's Representative; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.

**"Employer's Representative"** means the person specified in Clause 3.1 (*The Employer's Representative*) or such other person appointed from time to time by the Employer thereunder, to act on behalf of the Employer as the Employer's Representative under this Contract.

**"Engineer"** is as defined under the Power Purchase Agreement.

**"Environmental Law"** means any Laws concerning:

- (i) health and safety;
- (ii) human health or safety or social issues, including minimum labour standards and laws prohibiting forced labour or harmful child labour;
- (iii) the environment;
- (iv) any emission or substance which is capable of causing harm to any living organism or the environment; or
- (v) Hazardous Materials.

**"Environmental Liabilities"** means all Losses (including the reasonable costs of investigation, testing, containment, removal, cleanup, abatement, waste disposal, mitigation or remediation and reasonable attorneys' fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials or disturbances to the environment or local community attributable to the Works from and after the earlier of the Effective Date to the date of issue of the Taking-Over Certificate for the Works, or the violation by the Contractor, its agents or employees of any Environmental Requirements under the applicable Laws.

**"Environmental Requirements"** means:

- (i) all Environmental Laws;
- (ii) all Environmental Standards (as defined in the PPA); and
- (iii) [all applicable IFC, DEG and FMO policies and guidelines – these will be provided to the Contractor in due course after receiving input from the Lenders].

**"Expert"** means an expert person appointed in accordance with Clause 20.2.

**"Final Statement"** means the statement defined in Clause 14.12 (*Application for Final Payment*).

**"Financial Closing"** is as defined under the Implementation Agreement.

**"Financing Documents"** is as defined in the Implementation Agreement.

**"Force Majeure Event"** is defined in Clause 19 (*Force Majeure*).

**"Fuel Supplier"** means one or more suppliers of Liquefied Natural Gas (LNG), and their

successors and permitted assigns.

**“Fuel Supply Agreement”** means the agreement between the Fuel Supplier and the Company for the supply of high speed diesel to be used by the Complex to generate electricity, as may be amended by the parties thereto from time to time.

**“Gas Supplier”** means Sui Northern Gas Pipelines Limited, a company organized and existing under the laws of Pakistan, and its successors and permitted assigns.

**“Gas Supply Agreement”** means the agreement between the Gas Supplier and the Company for the supply of gas to be used by the Complex to generate electricity, as may be amended by the parties thereto from time to time.

**“Goods”** means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

**“GOP”** means the Islamic Republic of Pakistan.

**“Implementation Agreement”** means the implementation between the GOP and the Employer, as may be amended by the parties thereto from time to time.

**“Grid Code”** means the code issued pursuant to Section 35 of the NEPRA Act and Article 16 of the NTDC licence that regulates electrical network supply and delivery systems, dated June 2005.

**“Grid System”** means the transmission facilities through which the net electrical output of the Complex will be received and distributed by the Power Purchaser to distribution companies and electrical energy will be delivered by the Power Purchaser to the Complex at the Interconnection Point.

**“Hazardous Material”** means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance, materials or waste, any flammable, explosive or radioactive materials defined, listed, classified or regulated as such in or under, or subject to, any applicable Laws and Environmental Requirements including:

- (i) any petroleum or petroleum products (including gasoline or crude oil or any fraction of them, but excluding small quantities of lubricating greases), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyl;
- (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Requirements; and
- (iii) any other chemical, material or substance, exposure to or release of which is prohibited, limited or regulated by any Relevant Authority.

**“Interconnection Point”** shall bear the meaning ascribed under the Power Purchase Agreement.

**“Latent Defect”** means any defect which did not or could not have become apparent upon a

reasonable examination by the Employer prior to the expiry of the Defects Notification Period.

**“Latent Defects Notification Period”** means the period commencing on the date of expiry of the Defects Notification Period and continuing until the date which is sixty (60) months after the issue of the Taking-Over Certificate pursuant to Clause 10 (*Employer’s Taking Over*), as may be extended under Clause 11.12 (*Latent Defects*).

**“Laws”** means all national (provincial or local) legislation, statutes, ordinances and other laws, and all regulations, by-laws, rules, orders, decrees, judicial decisions, delegated legislation, directives, guidelines (to the extent mandatory) policies or code of any legally constituted Relevant Authority, as amended from time to time.

**“Lenders”** means any person providing any form of finance or refinance or credit support to the Employer for the purposes of the Project whether such finance or credit support relates to such Project solely or to the Project and other activities of the Employer. **“Lenders”** includes any agent, trustee or technical adviser of the foregoing as well as financial institutions party to the Financing Documents, or subsequent financial institutions that become parties to the Financing Documents together with their respective successors and assigns.

**“Loss”** means any loss, claim, damage, liability, judgment, payment or obligation [(excluding any indirect or consequential loss, damage, liability, payment or obligation)], and all costs and expenses (including reasonable attorneys’ fees) related thereto and amounts in settlement in lieu thereof.

**“Materials”** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

**“Metering System”** means all meters and metering devices (including remote terminal units) specified or provided by the Power Purchaser and owned by the Power Purchaser and used to measure the delivery and receipt of net electrical output of the Complex.

**“Milestone”** means the completion of a specified activity or the occurrence of an event identified as such in the Schedule of Milestones, which shall not be achieved unless and until the Employer and the Engineer agree that it has been achieved pursuant to Clause 14.4 (*Schedule of Milestones*).

**“Milestone Certificate”** means the certificate to be issued by the Employer in the form attached as Annex O (*Milestone Certificate*) upon the approval of the Employer and the Engineer in relation to the achievement of a Milestone pursuant to Clause 14.4 (*Schedule of Milestones*).

**“Milestone Date”** means the date by which the Contractor guarantees a Milestone shall be achieved, as set out in the Schedule of Milestones as the same may be revised in accordance with this Contract.

**“Minimum Functional Specifications”** means the minimum functional specifications for the construction of the Works as set forth in Annex E (*Minimum Functional Specifications and Performance Guarantees*).

**“Net Electrical Output”** - means net electrical energy expressed in kWh delivered during testing and Commissioning of the Complex and, following the Commercial Operations Date, when despatched by the Power Purchaser.

**“Notice to Proceed”** - means the notice to commence the Works to be issued by the Employer to

the Contractor within 10 (ten) days from the date of Financial Closing.

“**O&M Contract**” means the agreement between the O & M Contractor and the Company for operation and maintenance of the Complex, as may be amended by the parties thereto from time to time.

“**O&M Contractor**” means [a company to be contracted by the Employer], a company organized and existing under the laws of Pakistan, and its successors and permitted assigns.

“**Operating Committee**” has the meaning given to it in the Power Purchase Agreement.

“**Pakistan Rupees**” or “**PKR**” or “**Rs.**” means the lawful currency of Pakistan.

“**Parent Company Guarantee**” – [not applicable]

“**Party**” means the Employer or the Contractor, as the context requires, and “**Parties**” means the Employer and the Contractor.

“**Performance Certificate**” means the certificate issued under Clause 11.9 (*Performance Certificate*).

“**Performance Guarantees**” mean the performance guarantees relating to output, and efficiency as set out in Annex E (*Minimum Functional Specifications and Performance Guarantees*) and described in Clause 9.5(b) (*Guaranteed Performance*) and which the Contractor guarantees to achieve under the terms of the Contract.

“**Performance Security**” means the security (or securities, if any) under Clause 4.3 (*Performance Security*).

“**Permanent Works**” means the permanent works to be designed, tested, commissioned, completed and executed fit for purpose by the Contractor under the Contract, including all engineering, procurement and construction works relating to the construction of the Complex.

“**Plant**” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works item.

“**Power Purchase Agreement**” or the “**PPA**” means the power purchase agreement entered into by and between the Power Purchaser and the Employer, for the sale and purchase of the electric generation capacity of and electric power generated by, the Complex, as may be amended by the parties thereto from time to time<sup>1</sup>.

“**Power Purchaser**” or “**NEPRA**” means the National Electrical Power Regulatory Authority, together with its successors and permitted assigns.

“**Power Purchaser Interconnection Facilities**” means the facilities and equipment, including any tele-metering equipment, relay and switching equipment; protective devices and safety equipment (but not including the Metering System or the Back-Up Metering System) beyond the Interconnection Point between the Complex and the Grid System whereby the Employer is able to

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<sup>1</sup> Note: The Employer intends to negotiate and finalize the PPA simultaneously with the finalization of the EPCC. There being no final PPA at present, any key provisions in the final PPA not reflected herein will be required to be incorporated in the EPCC to avoid any mismatches.



receive from and deliver to the Power Purchaser and the Power Purchaser is able to receive net electric output generated by the Complex.

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

“**Project**” means the execution of the Works and the development and/or operation of the Complex.

“**Project Documents**” means the Implementation Agreement, the Power Purchase Agreement, the LNG Supply Agreement, the Fuel Supply Agreement and the O&M Contract.

“**Project Requirements**” means the document entitled Project Requirements set out in Annex K (*Project Requirements*), which specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.

“**Provincial Government**” – The government of the Province of Sindh.

“**Prudent Practices**” means that degree of skill and judgment and the use of equipment, practices, techniques, standards and methods that are generally expected of skilled and experienced engineering and construction firms in the international independent power industry employing the highest standards in respect of the design, engineering, construction, commissioning and testing of work similar in nature and extent to the Works including as required to comply with applicable industry codes, standards, and regulations in Pakistan (i) to protect the Power Purchaser’s, Employer’s and Contractor’s system, employees, agents, and customers from malfunctions occurring at the Works and (ii) to protect the Works and the Employer’s and Contractor’s employees and agents at the Works, from malfunctions occurring on the Grid System.

“**Prudent Utility Practices**” means the prudent utility practices followed from time to time by the electric utility industry in Pakistan (including practices generally followed by independent power producers in Pakistan), having regard to engineering and operational considerations, including manufacturer’s recommendations and the Grid Code. 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 results at reasonable cost consistent with reliability and safety.

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

“**Relevant Authority**” – The department, authority, agency or other relevant entity from which a Consent is to be obtained and any authority, body or other Person having jurisdiction under the Laws of Pakistan with respect to the Project.

“**Retention Bond**” means the retention bond which the Contractor is required to issue to the Employer pursuant to Section 14.9 below.

“**Required Commercial Operations Date**” means the date by which the Complex is to have achieved the Commercial Operations Date under the Power Purchase Agreement, as such date may be extended thereunder.

“**Schedule of Milestones**” means the schedule set out in Annex D (*Schedule of Milestones*) stipulating the Milestone Dates (as may be revised in accordance with this Contract) to be used, inter alia, for the calculation of interim payments.

“**Scheduled Outage**” is as defined under the Power Purchase Agreement.

“**Site**” means the place or places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

“**Statement**” means a statement submitted by the Contractor as part of an application for payment under Clause 14 (*Contract Price and Payment*).

“**Subcontractor**” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

“**Taking-Over Certificate**” means a certificate issued under Clause 10 (*Employer’s Taking Over*).

“**Technical Limits**” means the limits and constraints described in Annex F (*Technical Limits*) relating to the planned operation, maintenance and despatch of the Complex following completion of the Works.

“**Temporary Works**” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

“**Tests after Completion**” means the tests (if any) which are specified in the Contract and which are carried out under Clause 12 (*Tests after Completion*) after the Works are taken over by the Employer.

“**Tests on Completion**” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 (*Tests on Completion*) before the Works are taken over by the Employer.

“**Time for Completion**” means the time for completing the Works under Clause 8.2 (*Time for Completion*).

“**US Dollar**” or “**US\$**” means the lawful currency of the United States of America.

“**Variation**” means any change to the Project Requirements or the Works, which is instructed or approved as a variation under Clause 13 (*Variations and Adjustments*).

“**Works**” mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender shall include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) the words “include”, “including” and “in particular” shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (f) references to Clauses and Annexes are, unless the context otherwise requires, references to clauses of, and annexes to, this Contract;
- (g) a reference to any legislation or legislative provision includes any statutory modification, amendment, or re-enactment of or legislative provisions substituted for, and any subordinate legislation/rules/regulations under that legislation or legislative provision;
- (h) 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;
- (i) in carrying out its obligations and duties under this Contract, each Party shall have an implied obligation of good faith;
- (j) except as provided in Clause 1.8 ( *Confidentiality*), nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Employer, the Lenders or the Power Purchaser to claim any benefit provided under applicable Laws (whether in effect now or in the future);
- (k) headings shall not be taken into consideration in the interpretation of this Contract; and
- (l) unless otherwise specifically provided in the Contract, a reference to an agreement shall be a reference to that agreement as amended, re-stated, supplemented, modified or novated from time to time; and
- (m) references to "this Contract" shall include a reference to the Annexes hereto.

### 1.3 **Communications**

- (a) Except as expressly provided otherwise in this Contract, every certificate, notice, instruction, direction, order, consent or decision to be given under this Contract shall be given in writing to the respective addressee at the corresponding address specified below (or such other address and/or addressee as the Contractor may notify to the Employer or the Employer may notify to the Contractor (as the case may be) in writing upon seven (7) days advance notice and shall be effective when received) and shall be deemed effective as follows:

- (i) if delivered personally, upon delivery;
  - (ii) if sent by post, upon certified receipt;
  - (iii) if sent by a courier service, upon receipt;
  - (iv) if sent by facsimile transfer, when despatched but only if sender's transmission report shows the entire facsimile to have been received by the recipient; or
  - (v) if sent by e-mail, upon a returned receipt.
- (b) If to the Contractor:

Global Edison Corporation  
415 East Airport Freeway  
Fourth Floor  
Irving, Texas 75062

Fax: +1 (972) 261-1111  
Attention: Mr. Rod A. Johnson, President

- (c) If to the Employer:

Cavalier Energy Corporation  
Plot 101-103, Industrial Estate  
Sihala Road  
Islamabad, Pakistan

Fax: 00 92 51 449-0873  
Attention: Mr. Waseem Pasha Tajammal, Managing Director Pakistan

- (d) Any notice required to be delivered to the Lenders hereunder shall be delivered in accordance with the notice provisions set out in the Direct Agreement.

#### 1.4 **Law and Language**

- (a) The Contract shall be governed by and construed in accordance with the laws of Pakistan.
- (b) If there are versions of any part of the Contract which are written in more than one language, the English language version shall prevail.
- (c) The language for communications/notices shall be English.

#### 1.5 **Effective Date**

The Contract shall come into full force and effect when the following conditions are satisfied:

- (a) The Contract has been executed by each Party;
- (b) All Consents required by the Contractor for the Works that are required to have been obtained at that time have been obtained;

- (c) All Consents required by the Employer for the Works that are required to have been obtained at that time have been obtained;
- (d) Delivery to the Employer of the duly executed Performance Security.

The Employer shall promptly confirm to the Contractor the date on which all these conditions have been satisfied. The Employer may waive any of the above conditions precedent on written notice to the Contractor.

#### 1.6 **Assignment**

- (a) The Contractor shall be entitled to subcontract or assign either in whole or in part any of its rights and obligations under the Contract to any party without the prior written consent of the Employer.
- (b) Except as provided below, the Employer shall not be entitled to assign either in whole or in part any of its rights and obligations under the Contract to any party without the prior written consent thereto of the Contractor.
- (c) The Employer shall be entitled to assign either in whole or in part any of its rights and obligations under the Contract to the Lenders or anyone nominated by the Lenders without the prior written consent of the Contractor.

#### 1.7 **Care and Supply of Documents**

- (a) Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer six (6) copies of each of the Contractor's Documents.
- (b) The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Project Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
- (c) If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

#### 1.8 **Confidentiality**

- (a) The Contractor shall and shall procure that the Contractor's Personnel, Subcontractors, consultants and agents shall hold in confidence all documents and other information whether technical or commercial supplied to it by or on behalf of the Employer relating to the design, construction, insurance, operation, maintenance, management or financing of the Complex and all information and documents obtained by it in the course of any inspection performed in accordance with the terms of this Contract, and shall not, save as required by Law publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Contract.
- (b) The provisions set out in the paragraph above shall not apply to:

- (i) any information in the public domain otherwise than by breach of this Contract;
- (ii) information in the possession of the Contractor before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; and
- (iii) information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality.

#### 1.9 **Employer's Use of Contractor's Documents**

- (a) As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.
- (b) The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:
  - (i) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
  - (ii) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works,
  - (iii) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor, and
  - (iv) be capable of being sub-licensed or assigned by the Employer to any Lender (or designee or transferee of any Lender) on the same terms as set out in this Clause.
- (c) The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Clause.

#### 1.10 **Contractor's Use of Employer's Documents**

- (a) As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Project Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of the Contract.
- (b) Such documents shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

#### 1.11 **Contractor Information**

The Contractor shall disclose any information which the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

#### 1.12 **Compliance with Laws**

The Contractor shall, in performing the Contract comply with, and procure that any subcontractor complies with, all applicable Laws, Consents, Environmental Standards and Prudent Practices. Unless otherwise stated in the Project Requirements:

- (a) The Contractor shall give all notices and pay all taxes, duties and fees as required by all Laws, in relation to the design, execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.
- (b) The Contractor acknowledges the provisions set out in the Project Documents relating to the Consents (as defined therein), and in particular the provisions relating to applications for Consents and the provision of status reports relating thereto. The Contractor shall obtain and maintain all Consents that are required by the Laws and the Project Documents in relation to the design, execution and completion of the Works, including those Consents specified in Annex M (*Consents*) as having been (or being) obtained by the Contractor and shall comply with all the provisions relating thereto in the Project Documents in a timely manner and in order to fulfil the Employer's obligations thereunder; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.
- (c) Any fines or other penalties incurred by the Contractor for non-compliance with the applicable Laws or other government actions taken pursuant thereto or the Consents shall not be reimbursed by the Employer, but shall be the sole responsibility of the Contractor.

#### 1.13 **No Liability for Review**

Notwithstanding anything contained otherwise in this Contract, no review, no non-objection, or approval by the Employer of any agreement, document, instrument, drawing, specification or design proposed by the Contractor shall relieve the Contractor from any liability that it would otherwise have had for its negligence or default in the preparation of such agreement, document, instrument, drawing, specification or design or failure to comply with applicable Laws or to satisfy the Contractor's obligations under this Contract, nor shall the Employer be liable to the Contractor or any other person by reason of its review, non-objection, or approval of any agreement, document, instrument, drawing, specification, or design.

#### 1.14 **No Waiver**

- (a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Contract:
  - (i) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
  - (ii) shall be effective unless in writing duly executed by a duly authorised representative of such Party.

- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Contract nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

#### 1.15 **Relationship of the Parties**

This Contract shall not be interpreted or construed to create an association, joint venture, agency or partnership between the Parties or to impose any partnership or agency obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### 1.16 **Survival**

Cancellation, expiration or earlier termination of this Contract shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

#### 1.17 **Affirmation**

The Contractor declares and affirms that it has not paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick-backs or unlawful commission and that it has not in any other way or manner paid any sums, whether in Pakistani Rupee or foreign currency and whether in the Country or abroad, or in any other manner given or offered to give any monetary or non-monetary promises, favours, gifts and/or presents in the Country or abroad to any person, company, organisation, authority or government to procure this Contract, and the Contractor undertakes not to engage in any of the said or similar acts during the term of and relative to this Contract or the Project.

#### 1.18 **Entirety**

This Contract and the Annexes hereto are intended by the Parties as the final expression of their agreement on the matters contained herein and are intended also as a complete and exclusive statement of the terms of their agreement with respect to the Works. All prior written or oral representations, understandings, offers or other communications of every kind pertaining to the Works hereunder as between the Employer and the Contractor are hereby superseded.

#### 1.19 **Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) [Clauses 1 (*General Provisions*) to 21 (*Lenders*) (inclusive)];
- (b) Annex A (*Not used*) to J (*Advance Payment Guarantee*) (inclusive) and Annex L (*Not used*) to Annex O (*Milestone Certificate*) excluding Annex K (*Project Requirements*).
- (c) Annex K (*Project Requirements*).



## **2 THE EMPLOYER**

### **2.1 Right of Access to the Site**

- (a) The Employer shall give to/procure for the Contractor right of access to, and possession of, all parts of the Site for the purposes of performing the Works with effect from the Effective Date. The right of access to, and possession of the Site shall not be exclusive to the Contractor. However, the Employer may withhold any such right or possession until the Performance Security has been received.

### **2.2 Consents**

Each Party shall (where it is in a position to do so) provide reasonable assistance to the responsible Party at their request with applications for any Consents required by the Laws of the Country or the Project Documents.

### **2.3 Employer's Personnel**

Without prejudice to the obligations of the Contractor in relation to the matters referred to in paragraphs (a) and (b) below, the Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Clause 4.8 (*Co-operation*), and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Clause 4.10 (*Safety Procedures*) and under Clause 4.19 (*Environmental Matters*).

### **2.4 Employer's Claims**

- (a) If the Employer considers itself to be entitled to any payment under this Contract, and/or to any extension of the Defects Notification Period and/or an extension to any performance deadline as a result of a Force Majeure Event, the Employer shall give notice and particulars to the Contractor. However, notice is not required for payments due for services requested by the Contractor.
- (b) The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.
- (c) The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers itself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Clause 11.3 (*Extension of Defects Notification Period*) and/or the extension (if any) of the relevant performance deadline in accordance with Clause 19.4 (*Consequences of Force Majeure Event*).
- (d) The Employer may set off or deduct this amount from any moneys due, or to become due, to the Contractor. The Employer shall only be entitled to set off against or make any

deduction from an amount due to the Contractor, or to otherwise claim against the Contractor, in accordance with this Clause or with sub-paragraph (a)(i) and/or (a)(ii) of Clause 14.6 (*Interim Payments*).

### **3 THE EMPLOYER'S ADMINISTRATION**

#### **3.1 The Employer's Representative**

- (a) The Employer shall designate an individual as Employer's Representative to act on its behalf under the Contract. The duties and authority of the Employer's Representative are to administer the Contract, to monitor progress by the Contractor in completion of the Works, to audit the Contractor's quality assurance and quality control programs, to review Contractor's Documents, to monitor the Contractor's performance with respect to environmental obligations, to witness tests carried out by the Contractor, to verify payment applications submitted by the Contractor, and other such duties as may be required to confirm the Contractor's fulfilment of the Contract and to exercise the duties and rights of the Employer under the Contract.
- (b) The Employer's Representative shall carry out the duties assigned to it, and shall exercise the authority delegated to it, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract, except in respect of Clause 15 (*Termination by Employer*).
- (c) If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than fourteen (14) days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

#### **3.2 Other Employer's Personnel**

- (a) The Employer or the Employer's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor.
- (b) Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Clause 1.4 (*Law and Language*).

#### **3.3 Delegated Persons**

Any person, including the Employer's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer. However:

- (a) the Contractor shall satisfy itself in respect of delegated persons authority;

- (b) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility it has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- (c) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials; and
- (d) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Employer, who shall promptly confirm, reverse or vary the determination or instruction.

### **3.4 Instructions**

- (a) The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform its obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 (*Variations and Adjustments*) shall apply.
- (b) The Contractor shall take instructions from the Employer, or from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause.

### **3.5 Determinations**

- (a) Whenever this Contract provides that the Employer shall proceed in accordance with this Clause 3.5 (*Determinations*) to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- (b) The Employer or the Employer's Representative shall give notice to the Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Contractor gives notice, to the Employer, of its dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the dispute to the Expert in accordance with Clause 20.3 (*Obtaining the Expert's Decision*).

## **4 THE CONTRACTOR**

### **4.1 Contractor's General Obligations**

- (a) In consideration of the payments of the Contract Price to be made by the Employer to the Contractor under this Contract, the Contractor hereby covenants with the Employer to design, engineer, execute, test, commission and complete the Works and remedy any defects therein in accordance with this Contract and the Project Documents, with the care and diligence appropriate to a company of international standing and reputation. When the Works are completed, the Works shall be suitable and fit for the purposes for which the Works are intended as set out in the Contract and the Project Documents.

- (b) The Contractor shall provide the Plant and Materials and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, engineering, execution, testing, commissioning and completion and remedying of defects relating to the Contract, the Works and the Project Documents.
- (c) The Works shall include any work which is necessary to satisfy the Project Requirements, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.
- (d) The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.
- (e) The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without such alteration having previously been notified to the Employer.

#### **4.2 Project Documents**

- (a) The Contractor confirms that it has received a copy of the Project Documents, that it has reviewed the terms thereof thoroughly and is familiar with their terms. The Contractor confirms that the terms of this Contract are consistent with the terms of the Project Documents.
- (b) The Contractor covenants that it shall:
  - (i) observe, perform and comply with all requirements of the Project Documents so far as they relate or apply to the Works (or any part thereof);
  - (ii) ensure that no act or omission by the Contractor, the Contractor's Personnel, Subcontractors or subcontractors of any tier shall cause or contribute to any breach by the Employer of any of the Employer's obligations under or pursuant to any of the Project Documents;
  - (iii) without restricting the right of the Employer to claim damages or any other relief on any basis available to it, indemnify, defend and hold harmless the Employer from and against all Losses suffered or incurred by or brought against the Employer arising out of any breach of this Clause.
- (c) Without prejudice to the generality of this Clause 4.2, in any case where under the Contract or Project Documents, any drawings, programmes, notices or other documents are required to be submitted to the Power Purchaser, GOP or any other person in connection with the Works, the Contractor shall, unless otherwise provided in the Contract or otherwise instructed in writing by the Employer, submit the same in the manner and within sufficient time to allow the Employer to submit the same in the manner and within the time (if any) prescribed therefor in the Project Documents and so as not to cause or contribute to any breach by the Employer of any of the Employer's obligations under the Project Documents or to prejudice any right or entitlement which the Employer may have under the Project Documents. For the avoidance of doubt, the Contractor shall endeavour to submit all drawings, programmes, notices, or other documents at the earliest possible time to preclude

or mitigate any possible delay arising from the review of documents by the Employer, the Power Purchaser or the GOP.

- (d) To the extent that the same is required in connection with the Contractor's obligations under the Contract, the Employer shall promptly pass to the Contractor all information, documents and communications which it shall receive from time to time from the Power Purchaser or the GOP relating to the Works.

#### 4.3 Performance Security

- (a) The Contractor shall obtain (at its cost) a Performance Security for proper performance by the Contractor of its obligations, in the amount of [five per cent (5%)] of the Contract Price, which shall be expressed in US Dollars. Upon the Commercial Operations Date for the completed Project, the Performance Security shall be reduced to the amount of [two per cent (2%)] of the Contract Price. The value of the Performance Security shall be increased or decreased in accordance with changes in the Contract Price each time any single or aggregate increases in the Contract Price equal ten percent (10%) of the Contract Price upon which value the Performance Security value was previously based prior to any such increases or decreases, so that it equals [five per cent (5%)] prior to the Commercial Operations Date or, following the Commercial Operations Date, [two per cent (2%)], of the adjusted Contract Price.
- (b) The Contractor shall deliver the Performance Security to the Employer as a condition to the effectiveness of this Contract, as set out in Clause 1.5 (*Effective Date*). The Performance Security shall be in the form annexed at Annex B (*Form of Performance Security*) and shall be in the form of an unconditional bank guarantee issued by a first class Pakistan scheduled bank acceptable to the Employer or first class foreign bank acceptable to the Employer.
- (c) The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works (including all Works under Clause 11 (*Defects Liability*) or Clause 12 (*Tests After Completion*)), remedied any defects and the Defects Notification Period has expired. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.
- (d) The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:
  - (i) failure by the Contractor to extend the validity of the Performance Security as described in paragraph (c) above, in which event the Employer may claim the full amount of the Performance Security;
  - (ii) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Clause 2.4 (*Employer's Claims*) or Clause 20 (*Claims, Disputes and Arbitration*), within twenty-eight (28) days after this agreement or determination;
  - (iii) failure by the Contractor to remedy a default within twenty-eight (28) days after receiving the Employer's notice requiring the default to be remedied;

- (iv) failure by Contractor to execute work under Clause 11 (*Defects Liability*) or Clause 12 (*Tests After Completion*);
  - (v) circumstances which entitle the Employer to terminate this Contract under Clause 15.2 (*Termination by Employer*), irrespective of whether notice of termination has been given; or
  - (vi) any other breach of this Contract by the Contractor.
- (e) The Employer shall return the Performance Security to the Contractor within twenty-one (21) days after the Contractor has become entitled to receive the Performance Certificate.

#### **4.4 Fitness for Purpose**

- (a) Without prejudice to the provisions of Clause 4.1 above, the Contractor confirms that the Complex shall be designed, engineered and constructed so as to ensure that:
- (i) the Complex is constructed in accordance with the Project Requirements and is able to operate within the operational parameters (including but not limited to the Technical Limits) stated under this Contract while using both the gas inputs to be supplied to the Complex in accordance with the LNG Supply Agreement and the LNG inputs to be supplied to the Complex in accordance with the Fuel Supply Agreement; and
  - (ii) the Complex is able to operate within/in accordance with, the parameters/requirements set forth under the Power Purchase Agreement and the Project Requirements.

#### **4.5 Contractor's Representative**

- (a) The Contractor shall appoint the individual listed in Annex K (*Project Requirements*) as its Contractor's Representative. The Contractor gives the Contractor's Representative all authority necessary to act on the Contractor's behalf under the Contract.
- (b) The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement.
- (c) The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Clause 3.4 (*Instructions*).
- (d) The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- (e) The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Clause 1.4 (*Law and Language*).

#### **4.6 Subcontractor**

- (a) The Contractor shall not subcontract the whole of the Works.
- (b) Subject to Clause 4.6(f) and (h), the Employer acknowledges that the Contractor may subcontract with any subcontractor(s) as a Subcontractor for that part of the Works listed in Annex C (*Subcontracted Works*), provided, however, that any such subcontracting shall be in accordance with the terms of this Contract and provided further that such acknowledgement or subcontracting shall not relieve the Contractor of any of its obligations or potential liability regarding the design, insuring, construction or completion of the Works or any liability whatsoever resulting from a breach of any term or condition of this Contract.
- (c) The Contractor shall be responsible for the acts or defaults of any Subcontractor, its agents or employees, as if they were the acts or defaults of the Contractor. In relation to the subcontracting of any element of the Works listed at Annex C (*Subcontracted Works*), the Contractor shall give the Employer not less than forty (40) days' notice of:
  - (i) the intended appointment of the Subcontractor, with detailed particulars which shall include its relevant experience;
  - (ii) the Subcontractor's representative who has all authority to act on the Subcontractor's behalf under the Subcontract;
  - (iii) the intended commencement of the Subcontractor's work; and
  - (iv) the intended commencement of the Subcontractor's work on the Site.
- (d) Subject to 4.6(f) and (h), the Contractor may not subcontract any element of the Works listed in Annex C (*Subcontracted Works*) unless the contract with such Subcontractor (a "**Subcontract**"):
  - (i) is in all material respects consistent with the terms and conditions of the Contract;
  - (ii) provides that the Contractor's rights under the Subcontract are capable of being freely assigned and novated in full without consent or limitation to the Employer or any person nominated by the Employer, including the Lenders, in the event that this Contract is terminated; and
  - (iii) provides that the benefit of any warranties and/or guarantees provided by the Subcontractor are capable of being freely assigned in full without consent or limitation to the Employer or any person nominated by the Employer, including the Lenders, in the event that this Contract is terminated.
- (e) The Contractor shall assign: (a) its rights and the benefit of any such warranties and/or guarantees, to the Employer or its nominee in the event this Contract is terminated; and (b) all such rights and benefits that extend beyond the Defects Notification Period, to the Employer with effect from the end of the Defects Notification Period.
- (f) Notwithstanding that the Contractor may contract with any persons as Subcontractors, not later than forty (40) days prior to the execution of any proposed subcontract the Contractor shall deliver to the Employer a certificate of a duly authorized officer of the Contractor setting out the name and nationality of the proposed Subcontractor and each and every subcontractor thereto supplying a major piece of Plant or Materials and the nation of origin

of such Plant or Materials.

- (g) The Contractor shall provide the Employer with a certificate of a duly authorized officer of the Contractor setting out any proposed amendment (a “Proposed Material Amendment”) to any subcontract that would result in (i) a change in the Subcontractor, or (ii) a change in a major piece of Plant or Material as to either its company or country of manufacture, not later than twenty-eight ( 28) days prior to the execution thereof setting forth the proposed changes.
- (h) The Employer shall then have the right, but not the obligation, to review the certificate, and may not object to the Contractor prior to the proposed execution date that it objects to the subcontract or Proposed Material Amendment because in the Employer’s (or GOP’s) sole reasonable discretion the proposed Subcontractor or the company or country of manufacture of a major piece of Plant or Equipment is adverse to the national security interests of Pakistan; provided, however, that by not objecting to the subcontract or the Proposed Material Amendment the Employer shall not be construed as having approved of the subcontract or the Proposed Material Amendment nor in any way having relieved the Contractor of its obligations under this Contract.
- (i) Within twenty ( 20) days after execution of any subcontract and any Proposed Material Amendment, the Contractor shall deliver to the Employer a complete copy of the subcontract and each such Proposed Material Amendment with information that is confidential or proprietary deleted therefrom and acknowledges that the Employer may make available to the GOP a copy of all subcontracts and all Proposed Material Amendments.
- (j) The Contractor shall ensure that each subcontract entered into by the Contractor shall contain:
  - (i) representations and undertakings of any Subcontractor party thereto in the same form, mutatis mutandis, as those given by the parties under Clause 1.17 (Affirmation); and
  - (ii) obligations of the relevant Subcontractor to comply with all Applicable Law, Environmental Requirements, Prudent Practices and all Consents in carrying out all works so sub-contracted to the relevant Subcontractor.

#### **4.7 Co-operation**

- (a) The Contractor shall, as specified in the Contract or as instructed by the Employer, allow appropriate opportunities for carrying out work to:
  - (i) the Employer’s Personnel,
  - (ii) any other contractors employed by the Employer, and
  - (iii) the personnel of any legally constituted public authorities, who may be employed in the execution on or near the Site of any work not included in the Contract.
- (b) The Contractor shall be responsible for its construction activities on the Site, and shall co-ordinate its own activities with those of other contractors to the extent (if any) specified in the Project Requirements and, in respect of the Employer Interconnection Facilities, the



Power Purchaser.

- (c) If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer in the time and manner stated in the Project Requirements.

#### **4.8 Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

#### **4.9 Safety Procedures**

The Contractor shall:

- (a) comply with all applicable safety regulations under Applicable Law,
- (b) take due care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 (*Employer's Taking Over*), and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

#### **4.10 Quality Assurance**

- (a) The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract and shall conform to the requirements of the relevant standards published by the International Standards Organization (ISO). The Employer shall be entitled to audit any aspect of the system.
- (b) Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor itself shall be apparent on the document itself.
- (c) Compliance with the quality assurance system shall not relieve the Contractor of any of its duties, obligations or responsibilities under the Contract.

#### **4.11 Site Data**

The Contractor is familiar with the Site conditions in general and, in particular, for the purposes of the design and construction of a dual fuel (liquefied petroleum gas and natural gas) powered combined cycle











#### 4.25 Fossils

- (a) All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- (b) The Contractor shall, upon discovery of any such finding, promptly give notice to the Employer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Employer and shall be entitled subject to Clause 20.1 (*Contractor's Claims*) to:
  - (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*); and
  - (ii) payment of any such Cost, which shall be added to the Contract Price;
- (c) After receiving this further notice, the Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.

#### 4.26 Submittal of Data

- (a) The Contractor shall submit to the Employer the following documents on or before the specified dates:
  - (i) Beginning on the Effective Date and ending on the date of the Taking-Over Certificate, (A) reports as are submitted to the Contractor by the Engineer and (B) reports, when and as the Contractor becomes aware, of any new condition or event which will have, or may have, a material and adverse effect on the Works or the timely execution and completion of the Works;
  - (ii) At least ninety (90) days prior to the scheduled date for commencement of Tests on Completion, a preliminary start-up and test schedule for the Works. The Contractor shall notify the Employer of any changes to such schedule in a timely manner;
  - (iii) Before carrying out the Tests on Completion, for the major items of Plant incorporated into the Works, copies of all Manufacturers' specifications, manufacturers' operation manuals, and a certificate of the Engineer attesting to the fact that all equipment is new and unused;
- (iv) After carrying out the Tests on Completion and before the Contractor applies to the Employer for a Taking-Over Certificate, a certificate from the Contractor addressed to the Employer and the Engineer to the effect that the Works have been executed and completed in all material respects in compliance with the terms of this Contract, such that the Employer will be able to operate the Complex or cause it to be operated in accordance with Prudent Utility Practices; the Project Documents and the Project Requirements;
- (v) As soon as available, but not later than the date the Contractor applies to the Employer for a Taking-Over Certificate, copies of all preliminary results of tests

performed on the Works, including tests of major equipment included in the Works, in accordance with this Contract, and as soon as available but not later than fifteen (15) days after the date of a Taking-Over Certificate, copies of all final results of such tests;

- (vi) At the date of signing of this Contract the necessary technical documents and data required by Annex F (*Technical Limits*) and Annex K (*Project Requirements*); and
  - (vii) [Within sixty (60) days after the Commercial Operations Date] six (6) copies of a completion report in form and substance satisfactory to the Employer, such report to include all matters set out in Section A-5 of the Project Requirements.
- (b) The receipt of the above schedules, data, certificates and reports by the Employer shall not be construed as an endorsement by the Employer of the design thereof, does not constitute a warranty by the Employer of the safety, durability or reliability of the Works, nor otherwise relieve the Contractor of its obligations or potential liability under this Contract.

#### **4.27 Failure to Submit Reports**

Any failure by the Contractor to timely submit any reports, information or certifications required by this Contract, including the items required by Clause 4.28 (*Submittal of Data*), shall, in addition to any rights and remedies available to the Employer under law or under this Contract, give the Employer the right to delay reciprocal action for which such information is provided, or the date or event in connection with which the information is provided, for a period equal to any such delay by the Contractor. Any such delay by the Employer shall not affect or delay the scheduled Time for Completion nor the imposition of any delay damages.

#### **4.28 Certificates**

The Contractor will, upon request of the Employer, deliver or cause to be delivered from time to time to the Employer certifications of Contractor's Personnel as to the performance of its obligations under this Contract, and as to such other matters as the Employer may reasonably request.

#### **4.29 Financial Records**

Not used.

#### **4.30 Right to Import, Export and Re-import**

- (a) The Contractor is encouraged to incorporate locally produced material, equipment, and supplies available in the Country for the construction of the Works. The Contractor agrees to comply with any restrictions imposed by the "Negative List" of the Import Policy Order 2005 (SRO 734(I)/2005, dated 21 July 2005) as modified, amended, updated and published in the Gazette of Pakistan, from time to time and any other import restriction imposed by Applicable Law.
- (b) The Contractor shall obtain all necessary Consents for the import, export and re-import of any Plant, Materials and Goods for the Permanent Works or use in the Works and shall pay any applicable customs duties and other levies and charges on such items, if any, in a timely manner. The Contractor shall notify the Employer in writing of any delay in the



release by Customs of such items. The Employer shall provide reasonable assistance to the Contractor as reasonably required to expedite clearance of Plant, Materials and Goods for the Permanent Works or use in the Works for entry into the Country; provided, however, that by agreeing to provide assistance to the Contractor, the Employer does not relieve the Contractor of any of its obligations or potential liability under the Contract and the Contractor shall not be entitled to claim any Cost or any extension of the Time for Completion for any delay resulting from any delay in obtaining such Consent or obtaining such release.

- (c) Any Materials or Plant not manufactured in the Country and required to be imported, shall be imported in the name of the Employer. The customs duties and import charges on such Materials or Plant shall be paid by the Contractor on behalf of the Employer after approval of the Employer, and reimbursed by the Employer. The Contractor shall be responsible for and pay all port and quay charges and/or demurrage, wharfage and penalties imposed relating to the import of such Materials and Plant due to non-compliance with applicable Laws, incorrect/incomplete documents, delay in submission of documents and/or clearance and non-compliance of the Contractor with the provisions of the Project Documents relating to the import of Materials and Plant.
- (d) The Contractor may import Contractor's Equipment as required for the Temporary Works, upon payment of concessionary customs duties and import charges as provided under the applicable Laws and the Contractor shall assume exclusive responsibility to import, clear and pay all the applicable customs duties, import, port and transportation charges in relation to such Contractor's Equipment, provided, however, that such Contractor's Equipment is either: (i) re-exported after completion of the Contract, or (ii) if retained in the Country, the Contractor pays all the applicable customs duties/import duties.
- (e) The Contractor shall indemnify the Employer against and from all Losses in respect of any breach by the Contractor of its obligations under this Clause 4.31 or any Loss arising in connection with the importation of Materials or Plant.

#### **4.31 Contractor Representations**

The Contractor represents and warrants to the Employer that:

- (a) the Contractor is duly incorporated, existing and in good standing under the laws of the United States of America and has all requisite power and authority to conduct its business and to execute, to deliver and to perform its obligations under this Contract;
- (b) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Contractor or that could materially adversely affect the performance by the Contractor of its obligations under this Contract;
- (c) this Contract has been duly authorised, executed and delivered by it and constitutes the legal, valid and binding obligation of it;
- (d) to the best of its knowledge, the execution and delivery of, and performance of its obligations under this Contract by the Contractor, subject to the granting and maintenance of the requisite Consents, does not and, subject to the granting and maintenance of the relevant additional Consents in the future, will not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, governmental authority or

arbitrator of competent jurisdiction applicable or relating to it, its assets or its businesses;  
and

- (e) it has adequate expertise and personnel to comply with its obligations under this Contract.

#### **4.32 Emergency Set-Up and Curtailment Plans**

- (a) The Contractor shall cooperate with the Employer and the Power Purchaser in developing emergency procedures for the Works, including recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment, and shall, within the Technical Limits, comply with such emergency procedures. The Contractor shall make technical references available to the Employer concerning minimum load-carrying ability as and when requested by the Employer.
- (b) Prior to the Commercial Operations Date, the Contractor shall if so requested by the Employer, supply to the Power Purchaser such power as the Works are able to generate within the Technical Limits, provided, however, that prior to the Commercial Operations Date, the Contractor shall not be obligated to supply such power if doing so would delay the completion of construction, testing, or commissioning of the Works.

### **5 DESIGN**

#### **5.1 General Design Obligations**

- (a) The Contractor shall be responsible for design of the Works, which shall be performed according to Prudent Practices so that the completed Complex is fit for its purpose as agreed to in this Contract, the Project Documents and the Grid Code and can be operated according to Prudent Utility Practices.
- (b) The Contractor shall be deemed to have participated in the preparation of and scrutinised, prior to the Effective Date, requirements in the Annexes to this Contract, the Project Requirements, requirements of the Power Purchaser and the Project Documents (including design criteria). The Contractor shall be responsible for the accuracy of the Project Requirements except as stated below.
- (c) Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from its responsibility for the design and execution of the Works.
- (d) The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Project Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from its responsibility for the design and execution of the Works.
- (e) Any mistake, inaccuracy, discrepancy or divergence in information provided by the Employer or set out in the Project Requirements shall be notified to the Employer and, if the Employer so instructs, corrected by the Contractor, provided that no adjustment to the Contract Price shall be made in respect of such correction and the Contractor shall not make any claim for an extension of the Time for Completion in respect of such correction.
- (f) The Contractor shall design and complete the Works in such a manner that the Scheduled

Outages shall not exceed [five hundred and twenty eight (528) hours] in each year.

## 5.2 Contractor's Documents

- (a) [The Contractor's Documents shall comprise the technical documents specified in the Project Requirements, documents required to satisfy all regulatory approvals, and the documents described in Clause 5.6 (*As-Built Documents*) and Clause 5.7 (*Operation and Maintenance Manuals*). The Contractor's Documents shall be written in English.
- (b) The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel.
- (c) If the Project Requirements describe the Contractor's Documents which are to be submitted to the Employer for review, they shall be submitted accordingly, [Note: Annex K to be reviewed to confirm that all time periods for submitting all such information is included therein.] together with a notice as described below. In the following provisions of this Clause, (i) "review period" means the period required by the Employer for review, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review.
- (d) Unless otherwise stated in this Contract or the Project Requirements, each review period shall not exceed twenty-one (21) days, calculated from the date on which the Employer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review in accordance with this Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.
- (e) Notwithstanding Clause 5.2(d), following submission of the Contractor's Document control schedules, as described in Annex K, (*Project Requirements*), the Employer will identify Contractor's Documents that must be submitted by the Employer for review by the Power Purchaser. The review period, including the Employer's review period, for any Contractor's Document listed for review by the Power Purchaser shall, except as stated otherwise in this Contract, not exceed fifty (50) days. The Contractor shall adjust the integrated project schedule as required to accommodate such review periods required by the Power Purchaser.
- (f) The Employer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Clause, at the Contractor's cost.
- (g) For each part of the Works, and except to the extent that the Parties otherwise agree:
  - (i) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
  - (ii) execution of such part of the Works shall be in accordance with these Contractor's Documents, as submitted for review; and
  - (iii) if the Contractor wishes to modify any design or document which has previously

been submitted for review, the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the above procedure.

- (h) Any such agreement (under paragraph (g) above) or any review (under this Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.
- (i) The Contractor acknowledges that, in addition to the review process set out above and before commencement of civil works and procurement of equipment for the Works, the Contractor shall ensure that the specifications, design and details comprising the Basic Design are approved by the Employer, which shall in turn require approval from the relevant departments of the Power Purchaser in accordance with the procedure set out in the Power Purchase Agreement. Provided, however, that such approval by the Employer shall not be construed as an endorsement by the Employer of its contents, does not constitute a warranty by the Employer of the safety, durability or reliability of the Works, nor otherwise relieve the Contractor of its obligations or potential liability under this Contract.

### **5.3 Contractor's Undertaking**

- (a) The Contractor undertakes that the design, the Contractor's Documents, the engineering, the construction, the execution and the completed Works will be in accordance with:
  - (i) the Laws in the Country, the Consents, the Grid Code, and the Minimum Functional Specifications set forth in Annex E;
  - (ii) the documents forming the Contract, as altered or modified by Variations;
  - (iii) the Project Documents;
  - (iv) the plans and specifications and accompanying data submitted to the Employer pursuant to this Contract and/or enclosed in Annex K (*Project Requirements*);
  - (v) sound engineering and construction practices and Prudent Utility Practices and Prudent Practices;
  - (vi) the Environmental Requirements; and
  - (vii) such requirements as the Employer may reasonably deem necessary in order for the Interconnection Facilities to be designed and constructed in accordance with sound engineering practices, Prudent Practices and the Project Documents.
- (b) Within 3 months of signing this Contract, the Contractor shall notify the Employer of all information relating to the Grid System that is reasonably necessary for the Contractor to design and construct the Works in accordance with the Contract.
- (c) The Contractor covenants that the Works (i) will be designed, constructed and completed in a good and workmanlike manner, only with materials and equipment that are brand new and unused (to the extent of the Permanent Works), and suitable for their intended use, (ii) shall be, in accordance in all material respects with sound engineering practices and Prudent Practices and (iii) that the completed Works shall be capable of meeting the

operational standards of the Power Purchaser and those set out in the Project Documents and requirements of this Contract.

- (d) The Contractor shall ensure that the Works shall be executed and completed in such a manner to enable the Employer to operate and maintain the completed Works [without adverse effect on the Power Purchaser's voltage level or voltage waveform] and otherwise in accordance with the Technical Limits. Furthermore, the Works shall be executed and completed in such a manner to ensure the completed Works may be operated at the voltage levels determined pursuant to Annex F (*Technical Limits*).

#### **5.4 Technical Standards and Regulations**

- (a) The design, the Contractor's Documents, the engineering, the construction, the execution and the completed Works shall comply and be in accordance with the Country's technical standards, international standards, building, construction and Environmental Requirements, Laws applicable to the product being produced from the Works, the Consents, and other standards specified in the Project Requirements, applicable to the Works, or as otherwise required by the applicable Laws.
- (b) All these Laws and requirements shall be those prevailing when the Works are taken over by the Employer under Clause 10 (*Employer's Taking Over*). References in the Contract to published standards shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise.
- (c) If changed or new technical standards come into force in the Country after the Effective Date, the Contractor shall give notice to the Employer and (if appropriate) submit proposals for compliance. In the event that:
  - (i) the Employer determines that compliance is required, and
  - (ii) such changed or new technical standards constitute a "Change in Law" according to Clause 19 (*Force Majeure*),

then the provisions of Clause 19 (*Force Majeure*) will apply.

#### **5.5 Training**

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in Annex K (*Project Requirements*). If the Contract specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Clause 10.1 (*Taking Over of the Works*) until this training has been completed.

#### **5.6 As-Built Documents**

- (a) The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Clause. These records shall be available to the Employer and the Employer's Representative. Two copies shall be supplied to the Employer prior to the commencement of the Tests on Completion.

- (b) In addition, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed and including the civil and architectural works, and submit them to the Employer for review under Clause 5.2 (*Contractor's Documents*). The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.
- (c) Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings, signed and sealed and in accordance with the Project Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Clause 10.1 (*Taking Over of the Works*) until the Employer has received these documents.
- (d) The Employer shall be entitled to provide copies of any manuals or other information provided to it under this Clause 5.7 to any of its personnel and to the O&M Contractor.

### **5.7 Operation and Maintenance Manuals**

- (a) Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Complex.
- (b) The Works shall not be considered to be completed for the purposes of taking-over under Clause 10.1 (*Taking Over of the Works*) until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Project Requirements for these purposes.

### **5.8 Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval given by the Employer or the Employer's Representative under this Contract.

### **5.9 Operating Procedures**

- (a) The Contractor shall develop, with the input and comments of the Employer and Power Purchaser, written operating procedures for the Works that are acceptable to the Employer and Power Purchaser no later than forty (40) days prior to the Time for Completion of the Works. The operating procedures shall be based on the designs of the Works, the Metering System, the Employer Interconnection Facilities and the Grid System and shall be consistent with the Technical Limits and Prudent Utility Practices. The operating procedures shall deal with all operational interfaces between the Employer and the Power Purchaser, including, but not limited to, the method of day-to-day communication, identification and contact of key personnel, clearances and switching practices, outage scheduling, capacity and energy reporting, operations logs and reactive power support. The operating procedures shall be developed in accordance with the following process:
  - (i) The Employer shall advise the Contractor of all matters and information the Employer believes are to be included in the operating procedures at least [forty

(40) weeks] prior to the then existing Time for Completion for the Works and within twenty-one (21) days of a request from the Contractor, shall make its representatives, and use its reasonable endeavours to procure that the Power Purchaser's representative is, available to review such matters and information with the Contractor procedures;

- (ii) The Contractor shall provide the Employer with draft written operating procedures not later than thirty-six (36) weeks prior to the then existing Time for Completion for the Works;
  - (iii) The Employer shall provide definitive comments on the draft operating procedures to the Contractor and, within fourteen (14) days of a request from the Contractor, shall make its representatives and use its reasonable endeavours to procure that the Power Purchaser's representative is, available to review its comments with the Contractor; and
  - (iv) The Contractor shall revise the draft operating procedures to incorporate the comments of the Employer and provide them to the Employer not later than [seven (7) months] before the then existing Time for Completion for the Works. Any remaining disagreements concerning the operating procedures shall be resolved by the Employer. Upon the resolution thereof, the operating procedures for the Complex shall be modified accordingly.
- (b) As and when requested by the Employer, the Contractor shall assist the Employer in a timely manner in respect of: (i) finalising the operating procedures to be developed by the Contractor and Employer pursuant to Clause 5.9 (*Operating Procedures*); (ii) approving procedures for the testing and commissioning of the Works pursuant to Annex K (*Project Requirements*) (iii) establishing other procedures relating to the interaction of the Works, the Metering System, the Interconnection Facilities and the Grid System; and (iv) where appropriate, proposing solutions to other issues, including the coordination of the respective programmes and procedures of the Parties for the construction and commissioning of the Interconnection Facilities, the Metering System and the Works, and agreement where necessary upon the respective commissioning procedures.
- (c) The Contractor and the Employer shall mutually develop an inter-tripping schedule no later than seventy-five (75) days prior to the required implementation of such schedule. Such inter-tripping schedule shall be based on a proposed schedule submitted to the Contractor by the Employer at least ninety (90) days prior to the date implementation of such schedule is required.

#### **5.10 Power Purchaser Interconnection Facilities**

Not used.

#### **5.11 Protective Devices**

- (a) Subject to giving the Contractor reasonable notice, the Employer may require the Contractor to modify or expand the requirements for protective devices after the initial review, approval and execution of the Contractor's design. Following approval by the Employer of the costs of such modification or expansion, the Contractor shall perform such modification or expansion.

- (b) The Contractor shall notify the Employer in advance of any changes to the Works or the Grid System that may affect the proper coordination of protective devices. Such changes shall not be made without the Employer's approval.

## 5.12 Metering and Telecommunications

- (a) The Contractor shall:
  - (i) Procure and install the Back-Up Metering System,
  - (ii) Install the Metering System, and
  - (iii) Procure and install a sequential event recorder or other equivalent software system as approved, by the Employer.
- (b) The Contractor shall install the Metering Systems and Back-Up Metering Systems on the Site at a location to be agreed upon by the Parties. Prior to the installation by the Contractor of such equipment, the Contractor will deliver to the Employer the protection scheme and the metering plan for the Works for the Employer's approval. The Employer will provide written comments to the protection scheme and the metering plan within forty (40) days of receipt. The Contractor will incorporate the Employer's comments into the protection scheme and the metering plan and deliver final copies to the Employer as soon as reasonably practicable. The Employer will approve the final scheme and plan within eighteen (18) days or notify the Contractor that it does not approve the scheme and plan, giving its reasons therefore. If the Employer does not give reasons for not approving the scheme and plan within such eighteen (18) day period, the Employer shall be deemed to have approved such scheme and plan. Upon approval by the Employer, the Contractor will complete the design and commence construction of the Metering System and Back-Up Metering System. Such installation shall be completed not later than eighteen (18) days prior to the scheduled date to begin initial testing of the Works. The Contractor shall provide the Employer with sixty-five (65) days advance notice of, and the Employer, the Power Purchaser, and the Lenders shall have the right to observe and inspect, the installation of the Metering System and Back-Up Metering System.
- (c) If so requested by the Employer, the Contractor shall acquire the Metering System on behalf of the Employer and the Employer shall reimburse the Contractor for all reasonable expenses incurred by the Contractor for the acquisition of the Metering System. Together with an invoice for reimbursement, the Contractor shall provide reasonable documentation of the expenses incurred for the purchase of the Metering System.
- (d) The Employer and/or Power Purchaser shall have the right to initially test the Metering System and Back-Up Metering System for accuracy in accordance with Annex K (*Project Requirements*) by the later of eighteen (18) days after it is installed by the Contractor or the date scheduled for initial testing of the Works to begin. The Contractor may have a representative present during any such testing, as well as during any inspection of the Metering System and Back-Up Metering System or adjustment thereof.
- (e) When on the Site to perform testing of the Metering System and the Back-Up Metering System, the Employer shall comply with all reasonable instructions of the Contractor.
- (f) The Metering System and the Back-Up Metering System shall comply with the



specifications set out in Annex K (*Project Requirements*) and shall be jointly sealed. Such seals shall be broken only by the Employer and/or the Power Purchaser's personnel. The Contractor shall be given at least twenty (20) hours advance notice of the breaking of seals on the Metering System, or the Back-Up Metering System; provided, however, that no such notice will be necessary when the breaking of a seal is necessitated by the occurrence of an emergency (as determined by the Power Purchaser). Such notice will specify the time at which a meter seal will be broken by the Employer and/or the Power Purchaser's personnel, and the Contractor will be given the opportunity to be present when such seals are broken.

- (g) If at any time any component of the Back-Up Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Contractor shall forthwith repair, recalibrate or replace such component of the Back-Up Metering System at its expense. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Back-Up Metering System, the metering system shall be jointly sealed.

### **5.13 Telecommunication Circuit**

The Contractor shall provide, install and commission the system in accordance with the general and technical requirements provided in Annex K of the Project Requirements. The Contractor shall be responsible for obtaining Consents for the telecommunications circuit and ordering of lines to the Works.

## **6 STAFF AND LABOUR**

### **6.1 Engagement of Staff and Labour**

- (a) Except as otherwise stated in the Project Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

### **6.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out or as prescribed under the Laws of the Country. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

### **6.3 Persons in the Service of Others**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

### **6.4 Labour Laws**

- (a) The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

- (b) The Contractor shall require its employees to obey all applicable Laws, including those concerning safety at work.

## **6.5 Working Hours**

No work shall be carried out on the Site on locally recognised days of rest, or outside normal working hours, unless:

- (a) otherwise stated in the Contract,
- (b) the Employer gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer.

## **6.6 Facilities for Staff and Labour**

- (a) Except as otherwise stated in the Project Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Project Requirements.
- (b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

## **6.7 Health and Safety**

- (a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's Personnel and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (b) The Contractor shall appoint a health and safety officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- (c) The Contractor shall send, to the Employer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.

## **6.8 Contractor's Superintendence**

- (a) Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary

superintendence to plan, arrange, direct, manage, inspect and test the work.

- (b) A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the English language, or the Contractor shall have a sufficient number of competent interpreters available on Site during all working hours. Superintendence shall be given by a sufficient number of persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.
- (c) The Contractor shall comply with the following additional requirements:

- (i) **Foreign Staff and Labour**

The Contractor may import any personnel who are necessary for the execution of the Works. However, the Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place from where such personnel were recruited or to their respective domiciles. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial, as appropriate.

- (ii) **Alcoholic Liquor or Drugs**

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow any such importation, sale, gift, barter or disposal by Contractor's Personnel.

- (iii) **Arms and Ammunition**

The Contractor shall not give, barter or otherwise dispose of to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

- (iv) **Festivals and Religious Customs**

The Contractor shall respect the Country's recognised festivals, days of rest and religious or other customs in the Country.

## **6.9 Contractor's Personnel**

- (a) The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:
  - (i) persists in any misconduct or lack of care,
  - (ii) carries out duties incompetently or negligently,

- (iii) fails to conform with any provisions of the Contract, or
  - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
- (b) If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

**6.10 Records of Contractor’s Personnel and Equipment**

The Contractor shall submit, to the Employer, details showing the number of each class of Contractor’s Personnel and of each type of Contractor’s Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work which is known to be outstanding at the completion dates stated in the Taking-Over Certificate.

**6.11 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor’s Personnel, and to preserve peace and protection of persons and property on and near the Site.

**6.12 Key Persons**

- (a) The Contractor shall nominate members of the Contractor’s Personnel in the following key roles in relation to the Works:

**Position**

- Project Manager
- Site Manager
- Civil Works Manager
- Electrical and Mechanical Erection Works Manager
- Control Systems Erection Works Manager
- Testing and Commissioning Manager
- Design Consultant
- Quality Control Manager
- Project Planning and Control Manager

(together known as the “**Key Persons**”).

- (b) The Employer shall have the right to approve the appointment of Key Persons based on their qualifications and experience for the position assigned. Approval by the Employer shall not be unreasonably withheld.
- (c) The Key Persons shall be available for as long as necessary to ensure the proper carrying out of the Works.
- (d) The Contractor shall not replace the Key Persons without the prior approval of the Employer and shall only replace the Key Persons with persons approved by the Employer.

**7 PLANT, MATERIALS AND WORKMANSHIP**

## 7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with sound engineering and construction practices and Prudent Practices,
- (c) with properly equipped facilities and non-Hazardous Materials, except as otherwise specified in the Contract, and
- (d) consistent with the Project Documents.

## 7.2 Samples

The Contractor shall submit samples of the Plant and Materials to the Employer, for review and/or Power Purchaser's approval (as applicable) in accordance with the procedures for Contractor's Documents described in Clause 5.2 (*Contractor's Documents*), as specified in the Contract or the Project Documents and at the Contractor's cost. Each sample shall be labelled as to origin and intended use in the Works.

## 7.3 Inspection

- (a) The Employer's Personnel shall at all reasonable times:
  - (i) have full access to all parts of the Site and to all places from which Materials are being obtained, and
  - (ii) during production, manufacture and construction (at the Site and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (b) The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.
- (c) In respect of the work which Employer's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the Employer whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer does not require to do so. If the Contractor fails to give the notice, it shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

## 7.4 Testing

- (a) This Clause shall apply to all tests specified in the Contract, other than the Tests after











Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Clause 2.4 (*Employer's Claims*) pay these costs to the Employer, in addition to delay damages (if any) under Clause 8.6 (*Delay Damages*) below.

## **8.6 Delay Damages**

- (a) If the Contractor fails to comply with Clause 8.2 (*Time for Completion*), the Contractor shall subject to Clause 2.4 (*Employer's Claims*) pay delay damages in the amounts set out in Clause 8.6(b) to the Employer for this default, such delay damages to be paid for every day or part thereof which shall elapse between the relevant Time for Completion and the date stated in the associated Taking-Over Certificate.
- (b) If the Contractor fails to complete the Works within the Time for Completion, the Contractor shall pay to the Employer as delay damages in arrears the sum of forty thousand dollars (US\$40,000) for each day of delay.
- (c) The total amount due under Clause 8.6 shall not exceed [twenty per cent (20%)] of the Contract Price.
- (d) The amounts specified in sub-paragraphs (b) above of this Clause have been calculated by the Parties as representing the likely daily loss to the Employer as a result of any delay in achieving the Times for Completion, and are reasonable and constitute liquidated damages and are not a penalty. It is further understood and agreed that the payment of such amounts, and any encashment of the Performance Security pursuant to its terms, shall be in partial satisfaction of actual damages for such occurrence.
- (e) These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Clause 9.4 (*Failure to Pass Tests on Completion*), Clause 11.4 (*Failure to Remedy Defects*) and Clause 15.2 (*Termination by Employer*) prior to completion of the Works. These damages shall not relieve the Contractor from its obligation to complete the Works, or from any other duties, obligations or responsibilities which it may have under the Contract.
- (f) At any time following the end of each month, the Employer shall compute and advise the Contractor in an invoice of the amount of delay damages due to the Employer pursuant to this Contract for any of the preceding month. Such amounts shall be payable by the Contractor within twenty (20) days of the date of the delivery of such invoice to the Contractor.

## **8.7 Suspension of Work**

- (a) The Employer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.
- (b) The Employer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility and/or at the risk of the Contractor, the following Clauses 8.8 (*Consequences of Suspension*), and 8.10 (*Resumption of Work*) shall not apply.

## **8.8 Consequences of Suspension**

- (a) If the Contractor suffers delay from complying with the Employer's instructions under Clause 8.7 (*Suspension of Work*) and/or from resuming the work, the Contractor shall give notice to the Employer and shall be entitled subject to Clause 8.7(b) (*Suspension of Work*), Clause 8.8(b) and Clause 20.1 (*Contractor's Claims*) to an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*) and payment of any such Cost, which shall be added to the Contract Price.
- (b) After receiving this notice, the Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.
- (c) The Contractor shall not be entitled to an extension of time for, or to payment of any Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Clause 8.7 (*Suspension of Work*).

### **8.10 Resumption of Work**

After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

## **9 TESTS ON COMPLETION**

Unless defined in this Contract, capitalized terms used but not defined in this Article 9 shall bear the meanings ascribed to them in the PPA.

### **9.1 Testing of the Complex Prior to Commercial Operations Date**

- (a) The Contractor shall provide the Employer on an on-going basis with relevant information regarding its programme for testing the Complex and the schedule therefor. Not less than forty-five (45) days prior to the commencement of such test programme, the Contractor will deliver to the Employer in writing the final programme for testing the Complex, including the expected duration of the Contractor's start-up testing programme and a tentative schedule for conducting all tests required by Sections 9.2 and 9.3. The Contractor shall advise the Employer in writing of any changes in its final schedule for the testing programme not less than ten (10) days prior to the commencement of the tests required by Section 9.2. Such final schedule shall not materially increase or advance the timing of the Power Purchaser's obligations under the PPA without the prior written consent of the Employer. If the schedule for any test required by Section 9.2 or 9.3 is adjusted after the Contractor has provided the Employer with the final testing programme schedule, then the Contractor shall advise the Employer not less than seventy-two (72) hours prior to the commencement of any such test. On each day beginning with the day on which testing commences, the Contractor shall provide the Employer with a schedule of the tests to be conducted on the following day or days (if such test will continue for more than one (1) day). All testing of the Complex shall satisfy the commissioning and test criteria provided in The Commissioning and Testing Schedule.
- (b) If the Employer is unable to accommodate the schedule for such test or tests as provided by the Contractor in the final schedule for the programme of tests pursuant to Section 9.1(a), the Employer will give the Contractor notice within seventy-two (72) hours of its receipt of

the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex and the Parties will mutually agree on a date for any deferral test or programme of tests; provided, however, that should the Employer defer or delay any Commissioning Tests beyond fifteen (15) days from the date on which the tests were finally scheduled in accordance with Section 9.1 and such deferral causes the Scheduled Commercial Operations Date of the Complex, as certified by the Engineer under Section 9.3, to be delayed or deferred, then the Contractor may be entitled to day-for-day extension to the Time for Completion under this Agreement; provided, however, that the extension to the Time for Completion shall be subject to issuance by the Engineer of the Certificate of Readiness and a simultaneous certificate that the delay or deferral caused by the Employer will cause the then scheduled Commissioning Tests to be delayed or deferred. The Employer shall notify the Contractor at the end of any such delay or deferral.

- (c) The Contractor shall not be entitled to an extension of time under this Section 9.1 if and to the extent that the delay in the programme of Commissioning Tests would nevertheless have occurred regardless of the Employer's delay or deferral of such tests. The Complex shall be tested at the first available opportunity after such delay or deferral.

## **9.2 Tests Prior to Synchronization of the Complex**

Prior to synchronization of the Complex with the Grid System, the Engineer shall deliver to the Contractor and the Employer the Certificate of Readiness for Synchronization. Prior to the delivery of the Certificate of Readiness for Synchronization and the first synchronization of the Complex, the Contractor shall carry out in the presence of the Engineer, the following tests:

- (a) automatic voltage regulator setting and adjusting in stand still condition and with the generator running at no load;
- (b) turbine/ governor control checks
- (c) open and short circuit tests on each generator; and
- (d) functional testing and timing of high voltage switchgear in the switchyard of the Complex.

The Contractor and the Employer shall verify that the protection level settings for the following are as agreed by the Operating Committee:

- (i) stator earth fault;
- (ii) Negative phase sequence;
- (iii) generator transformer over-current and earth fault; and
- (iv) high voltage bus-bar protection.

Voltage phasing checks will be carried out by the Contractor between the sub-station of the Complex and the Grid System. All inter-tripping circuits between the Complex and the Power Purchaser's equipment will be proved by the Contractor. The Employer shall be given not less than forty-eight (48) hours notice of such tests (and any retests thereof) and, together with the Power Purchaser and the Lenders, shall have an opportunity to be present at and observe all such tests.

### 9.3 Tests Upon and After Synchronization of the Complex and Commissioning Tests

(a) After first synchronizing the Complex, initial operational testing of the Complex shall be conducted by the Contractor. Once the Contractor is satisfied that the Complex is capable of continued reliable operation, the Contractor shall request the Engineer to issue the Certificate of Readiness. Upon the issuance by the Engineer of the Certificate of Readiness, the Contractor shall so notify the Employer and carry out the following tests (the "Commissioning Tests"), which if the Complex satisfies the minimum performance criteria therefor, will result in the Complex being Commissioned and in the establishment of the Commercial Operations Date in accordance with Section 9.3(c)(iii):

- (i) initial Tested Capacity test;
- (ii) reliability run test;
- (iii) automatic voltage regulator droop;
- (iv) turbine governor operation, including a steam governor over speed test;
- (v) reactive capability;
- (vi) minimum load capability;
- (vii) response of Complex to step load changes; and
- (viii) full load rejection

Minimum performance criteria for the Commissioning Tests are included in The Commissioning and Testing Schedule.

(b) Reliability Run and initial Tested Capacity.

Upon completion of the reliability run test prerequisites as included in Schedule [●], the Contractor shall declare to the Employer the commencement of the reliability run test (including the test under Section 9.3(a)(i)). During the 30 (thirty) day period of the reliability run test, the initial Tested Capacity of the Complex will be determined in the following manner:

- (i) The Complex shall be in operation at full output with normal auxiliaries and full colony load, if connected directly to the Complex, in service.
- (ii) The Contractor will declare to the Employer the commencement of the test and will record the reading of the Metering System.
- (iii) The test duration will be six (6) continuous hours and at the end of this period the Contractor will record the new reading of the Metering System. The initial Tested Capacity as determined by such test shall be the difference between the reading taken at the end of the six (6) hour period and the reading taken at the beginning of such period, divided by six (6) and such result adjusted to Reference Condition; provided, that, subject to Section [●], the initial Tested Capacity shall not be considered to have been established unless the result of such determination is

equal to or greater than the Contract Capacity and satisfies the minimum criteria for such test set forth in Schedule [●]. At the completion of the Commissioning Tests, the initial Tested Capacity (adjusted to Reference Condition) shall be certified by the Engineer (the “Capacity Test Certificate”).

(c) Additional Commissioning Tests.

- (i) The Contractor shall not be entitled to carry out more than ten (10) reliability run tests of the Complex to satisfy the criteria set forth in The Commissioning and Testing Schedule for achieving the Commercial Operations Date. The Contractor shall give the Employer not less than four (4) days notice of each additional Commissioning Test it desires to attempt.
- (ii) When, subject to The Commissioning and Testing Schedule the Complex has satisfied a Commissioning Test to establish the Commercial Operations Date, the Contractor shall notify the Employer that the Contractor has designated such test as the Commissioning Test and shall set the initial Tested Capacity at the level certified in the Capacity Test Certificate; provided, however, such Tested Capacity shall equal the Contract Capacity; provided further, that the duration of any additional Commissioning Test performed solely for the purpose of establishing the initial Tested Capacity need only be long enough to satisfy the requirements of Sections 9.3 (b)(i), (ii) and (iii) after running for at least seventy two (72) consecutive hours at maximum continuous rating.
- (iii) The Commercial Operations Date shall occur as of the first day after the day the Complex is Commissioned when declared by the Contractor and subsequently certified in writing by the Engineer.

**9.4 Not used.**

**9.5 Notice of and Compliance with Testing Procedures**

The Contractor shall carry out Commissioning of the Complex, testing the Tested Capacity of the Complex at the Commercial Operations Date in accordance with Sections 9.2 and 9.3. The Employer shall use its reasonable efforts to comply promptly with all reasonable requests by the Contractor for assistance in carrying out such testing and Commissioning. The Employer shall be given not less than forty-eight (48) hours prior written notice of any testing or Commissioning in accordance with Sections 9.2 and 9.3 and, along with the Power Purchaser and the Lenders, shall be entitled to be present and observe any such testing and Commissioning to verify that the testing or Commissioning is performed in accordance with the requirements of this Agreement and may Dispute the results of any tests or Commissioning not carried out in accordance with this Article 9 and The Commissioning and Testing Schedule.

**9.6 Tested Capacity**

- (a) The “ Tested Capacity” shall be the generation capacity demonstrated by the Commissioning Tests for the Complex, as certified by the Engineer in the Capacity Test Certificate and shall be applicable at and from the day following the date of completion of Commissioning.

- (b) On completion of such initial Capacity Test (or additional test carried out pursuant to Section 9.3(c)), the Engineer shall deliver to the Employer and the Contractor the Capacity Test Certificate, certifying the Tested Capacity.

### **9.7 Fuel during Testing**

The Contractor shall be responsible for all the cost of fuel (liquefied petroleum gas) that may be used during testing. After Synchronization with grid, the cost of fuel for testing shall be reimbursed by the Employer to the Contractor to the extent that the Employer is reimbursed by the Power Purchaser for such power fed into the grid

### **9.8 Copies of Test Results.**

The Contractor shall provide the Employer with copies of the test results of all tests performed pursuant to Sections 9.2 and 9.3 above.

### **9.9 Delayed Tests**

- (a) If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Tests on Completion within seven (7) days after receiving the notice. The Contractor shall carry out the Tests on Completion on such day or days within that period as the Contractor may fix and of which it shall give notice to the Employer.
- (b) If the Contractor fails to carry out the Tests on Completion within the period of seven (7) days, the Employer's Personnel may proceed with the Tests on Completion at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests on Completion shall be accepted as accurate.

### **9.10 Retesting**

If the Works fail to pass the Tests on Completion, Clause 7.5 (*Rejection*) shall apply, and the Employer or the Contractor may require the failed Tests on Completion, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### **9.11 Failure to Pass Tests on Completion**

- (a) If the Works fail to pass the Tests on Completion repeated under Clause 9.3 (*Retesting*), the Employer shall at its sole discretion be entitled:
  - (i) to order further repetition of Commissioning Tests under Clause 9.3 (*Retesting*);
  - (ii) if the failure deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, or the Works or any part thereof do not meet the Minimum Functional Specifications or the minimum performance criteria for satisfying the Complex Commercial Operations Test to reject the Works in which event the Employer shall have the same remedies as are provided in sub-paragraph (b)(iii) of Clause 11.4 (*Failure to Remedy Defects*); or

- (iii) issue a Taking-Over Certificate.
- (b) In the event of sub-paragraph (a)(iii) above, the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contractor will pay the amounts set out in Clause 9.12 (*Guaranteed Performance*).

## 9.12 Guaranteed Performance

- (a) The Contractor guarantees that the completed Works shall conform, and be in accordance with, the Performance Guarantees set out in Annex E (the “**Performance Guarantees**”).
- (b) In the event the completed Works fail to achieve the Performance Guarantees, the Contractor shall subject to Clause 2.4 (*Employer’s Claims*) pay to the Employer the following liquidated damages:
  - (i) If the output measured by the Metering Station or the Back-up Metering System, as the case may be, adjusted to the Reference Condition, is less than eight hundred megawatts (800MW) the sum of US\$ 800,000 for each MW that exceeds the actual output, provided, however that such sums shall be adjusted proportionally for the exact difference between eight hundred megawatts (800MW) and the actual output. The total amount due under this clause shall not exceed [Twenty per cent (20%)] of the Contract Price.
  - (ii) If the net efficiency of the Complex is less than the guaranteed net efficiency, the sum of US\$ [•] for each 0.1% that the guaranteed net efficiency exceeds the tested net efficiency of the Complex. The total amount due under this Clause shall not exceed [Twenty per cent (20%)] of the Contract Price for up-to five per cent net efficiency shortfall. For the net efficiency shortfall in excess of five per cent (Special Liquidated damages), the total amount due under this Clause shall not exceed [Twenty five per cent (25%)] of the Contract Price.
- (c) The amounts specified in sub-paragraphs (b)(i) and (ii) of Clause 9.12(b) have been calculated by the Parties as representing the likely loss to the Employer as a result of any failure of the completed Works to achieve the Performance Guarantees, and are reasonable and constitute liquidated damages and not a penalty.
- (d) The total amount due under Clause 9.12 shall not exceed [Sixty per cent (60%)] of the Contract Price.
- (e) These liquidated damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Clause [•] (*Failure to Pass Tests on Completion*), Clause 11.4 (*Failure to Remedy Defects*) and Clause 15.2 (*Termination by Employer*). These damages shall not relieve the Contractor from its obligation to complete the Works suitable and fit for the purposes for which the Works are intended, or from any other duties, obligations or responsibilities which it may have under the Contract.
- (f) The liquidated damages under each of (i) and (ii) in Clause 9.12(b) are cumulative and if there are claims in respect of more than one such provision, the liquidated damages payable shall be the sum of the applicable amounts.
- (g) At any time following the Tests on Completion, the Employer shall compute and advise the



Contractor in an invoice of the amount of liquidated damages due to the Employer pursuant to this Clause 9.5. Such amounts shall be payable by the Contractor within twenty (20) days of the date of the delivery of such invoice to the Contractor.

## **10 EMPLOYER'S TAKING OVER**

### **10.1 Taking Over of the Works**

- (a) Except as stated in Clause 9.4 (*Failure to Pass Tests on Completion*), the Works shall be taken over by the Employer when: (i) the Works have been completed in accordance with the Contract, including the matters described in Clause 8.2 (*Time for Completion*) and except as allowed in sub-paragraph (c)(i) below, and (ii) a Taking-Over Certificate has been issued.

The Contractor may apply by notice to the Employer for a Taking-Over Certificate not earlier than fourteen (14) days before the Works will, in the Contractor's opinion, be complete and ready for taking over..

- (b) Subject to Clause 10.1 (d), the Employer shall, within twenty-eight (28) days after receiving the Contractor's application:
- (i) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
  - (ii) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Clause.
- (c) It shall be a condition precedent to the Employer's obligation to issue the Taking-Over Certificate that a certificate has been issued by the Engineer certifying that (i) the Works have been executed and completed in all material respects in compliance with the terms of the Contract such that the Employer will be able to operate the Complex or cause it to be operated in accordance with Prudent Utility Practices and the requirements of the Project Documents; (ii) the Works have been commissioned in accordance with the Power Purchase Agreement and (iii) the Works have successfully passed all Tests on Completion.

### **10.2 Taking Over of Parts of the Works**

Parts of the Works shall not be taken over or used by the Employer, except as may be stated in the Contract or as may be agreed by both Parties.

### **10.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall carry out the Tests on Completion as soon as practicable.

## **11 DEFECTS LIABILITY**

### **11.1 Completion of Outstanding Work and Remedying Defects**

- (a) In order that the Works, and Contractor's Documents, and the Complex shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the Defects Notification Period or as soon as practicable thereafter, the Contractor shall:
  - (i) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Employer, and
  - (ii) execute all work required to remedy defects or damage, including work required to remedy defects or damage in other parts of the Works consequential upon the original defect, as may be notified by the Employer on or before the expiry date of the Defects Notification Period for the Works.
- (b) If a defect appears or damage occurs, the Employer shall notify the Contractor accordingly.

### **11.2 Cost of Remedying Defects**

- (a) All work referred to in sub-paragraph (a)(ii) of Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*) and Clause 11.12 (*Latent Defects*) shall be executed at the risk and cost of the Contractor, which shall include the cost of any liquidated damages payable by the Employer to the Power Purchaser during the execution of the repair and or replacement activities, if and to the extent that the work is attributable to:
  - (i) the design of the Works,
  - (ii) Plant, Materials or workmanship not being in accordance with the Contract,
  - (iii) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Clauses 5.5 (*Training*) to 5.7 (*Operation and Maintenance Manuals*) or otherwise), or (d) failure by the Contractor to comply with any other obligation under the Contract, or
  - (iv) failure by the Contractor to comply with any other obligation.
- (b) If and to the extent that such work is attributable to any other cause, the Employer shall give notice to the Contractor accordingly, and Clause 13.3 (*Variation Procedure*) shall apply.

### **11.3 Extension of Defects Notification Period**

- (a) The Employer shall be entitled subject to Clause 2.4 (*Employer's Claims*) to an extension of the Defects Notification Period for the Works, or any item of Plant (as the case may be, after taking over) if and to the extent that such Works, or any item of Plant (as the case may be, after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage, and such extension shall be for the period during which the Works, or any item of Plant (as the case may be) could not be used for the purposes for which they are intended provided that such extension period shall not exceed twenty-four (24) months from the end of the original Defects Notification Period.

(b) The Defects Notification Period in respect of any part of the Works, or item of Plant (as the case may be) that is repaired or replaced under Clause 11.1 shall be twenty-four (24) months from the date of repair or replacement of such part of the Works, or item of Plant (as the case may be).

#### **11.4 Failure to Remedy Defects**

- (a) If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- (b) If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Clause 11.2 (*Cost of Remedying Defects*), the Employer may (at its option):
- (i) carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Clause 2.4 (*Employer's Claims*) pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
  - (ii) agree or determine a reasonable reduction in the Contract Price in accordance with Clause 3.5 (*Determinations*); or
  - (iii) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, or the Works or any part thereof do not meet the Minimum Functional Specifications or the minimum criteria for satisfying the Complex Commercial Operations Test, terminate the Contract as a whole, or in respect of such part. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be) plus financing costs, all associated costs of the Employer, and the cost of dismantling the same, clearing the Site, and returning Plant and Materials to the Contractor.
- (c) At any time following the end of each month, the Employer shall compute and advise the Contractor in an invoice of the amount(s) due to the Employer pursuant to this Clause 11.4. Such amounts shall be payable by the Contractor within twenty (20) days of the date of the delivery of such invoice to the Contractor.

#### **11.5 Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

#### **11.6 Further Tests**

- (a) If the work of remedying of any defect or damage may affect the performance of the Complex, the Employer may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. The requirement

shall be made by notice within twenty-eight (28) days after the defect or damage is remedied.

- (b) These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Clause 11.2 (*Cost of Remedying Defects*), for the cost of the remedial work.

#### **11.7 Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

#### **11.8 Contractor to Search**

The Contractor shall, if required by the Employer, search for the cause of any defect, under the direction of the Employer. Unless the defect is to be remedied at the cost of the Contractor under Clause 11.2 (*Cost of Remedying Defects*), the Cost of the search shall be agreed or determined in accordance with Clause 3.5 (*Determinations*) and shall be added to the Contract Price.

#### **11.9 Performance Certificate**

- (a) Performance of the Contractor's obligations shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed its obligations under the Contract.
- (b) The Employer shall issue the Performance Certificate within twenty-eight (28) days after the expiry date of the Defects Notification Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. If the Employer fails to issue the Performance Certificate accordingly:
  - (i) the Performance Certificate shall be deemed to have been issued on the date twenty-eight (28) days after the date on which it should have been issued, as required by this Clause, and
  - (ii) Clause 11.11 (*Clearance of Site*) and sub-paragraph (a)(i) of Clause 14.1.5 (*Cessation of Employer's Liability*) shall be inapplicable.
- (c) Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

#### **11.10 Unfulfilled Obligations**

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time and of any obligation under Clause 11.12 (*Latent Defects*). For the purposes of determining the nature and extent of unperformed obligations and of meeting any obligation under Clause 11.12 (*Latent Defects*), the Contract shall be deemed to remain in force.

#### **11.11 Clearance of Site**

- (a) Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- (b) If all these items have not been removed within twenty-eight (28) days after the Employer issues the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- (c) Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

#### **11.12 Latent Defects**

- (a) Notwithstanding the issue of a Performance Certificate, if before the expiry of the Latent Defects Notification Period, a Latent Defect is found in the Works, the Employer may elect to either (i) carry out the remedial work itself or by others and the Contractor shall pay or allow the Employer's proper costs determined in accordance with Clause 3.5 (*Determinations*) or (ii) notify the Contractor who shall promptly and at its own cost, repair, replace or otherwise make good such Latent Defect and any damage caused to the Works by such Latent Defect.
- (b) The Contractor shall submit to the Employer for its approval details of the remedial work which it proposes to make pursuant to this Clause 11.12, the estimated duration of such remedial work, details of such Plant as it may be necessary to shut down and the proposed dates for the remedial Work. The Employer shall afford the Contractor such access to the Complex as may be reasonable in all the circumstances for such purposes. If the remedial work can be carried out without shutting down the Complex, the Contractor shall carry out such remedial work as soon as reasonably practicable. If the remedial work necessitates the shutting down of the Complex, the remedial work shall be carried out at a time and for periods agreed with the Employer, (taking into account its obligations under the Project Documents), or failing agreement at such times which minimize disruption to the operation of the Complex as far as practicable having regard to the nature of defect.
- (c) The Contractor shall, in undertaking any remedial work under Clause 11.12 which could affect the safe and efficient use or the operation of the Complex, observe all reasonable requirements of the Employer with regard to safe and efficient use or operation thereof and shall in any event comply with site security safety and operational requirements. The Employer may request that the Tests on Completion be repeated to the extent necessary. The request shall be made by notice within twenty eight (28) days after the completion of the remedial work. Such repetition of the Tests on Completion shall be carried out in accordance with Clause 9 (*Test on Completion*) at the Contractor's expense.
- (d) The Owner shall be entitled to an extension of the Latent Defects Notification Period for the Works if and to the extent that the Works or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage.
- (e) Subject always to Clause 11.12 (f) below, if the Contractor repairs, replaces or renews any part of the Works pursuant to this Clause 11.12 then the Latent Defects Notification Period

for such Works or any part thereof shall be extended for a period of 24 months from the date of completion of such repair, replacement or renewal.

- (f) The Latent Defects Notification Period in respect of such whole or part of the Works referred to in Clause 11.12(e) shall not be extended by more than 60 months from the date of issue of the Performance Certificate for the Works.

## **12 TESTS AFTER COMPLETION**

### **12.1 Procedure for Tests after Completion**

- (a) If Tests after Completion are specified in the Project Requirements, this Clause shall apply. Unless otherwise stated in the Project Requirements:
  - (i) the Employer shall provide all electricity, fuel and materials, and make the Employer's Personnel and Plant available;
  - (ii) the Contractor shall provide any other plant, equipment and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently; and
  - (iii) the Contractor shall carry out the Tests after Completion in the presence of such Employer's and/or Contractor's Personnel as either Party may reasonably request and in presence of representatives of the Power Purchaser and the Lenders.
- (b) The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works have been taken over by the Employer. The Employer shall give to the Contractor twenty-one (21) days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests after Completion shall be carried out on the day or days determined by the Employer.
- (c) The results of the Tests after Completion shall be compiled and evaluated by the Contractor, who shall prepare a detailed report.

### **12.2 Delayed Tests**

Not used.

### **12.3 Retesting**

- (a) If the Works fail to pass the Tests after Completion:
  - (i) sub-paragraph (a)(ii) of Clause 11.1 (*Completion of Outstanding Work and Remedying of Defects*) shall apply, and
  - (ii) either Party may then require the failed Tests after Completion, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.
- (b) If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a)(i) to (a)(iv) of Clause 11.2 (*Cost of Remedying Defects*) and cause the Employer to incur additional costs, the Contractor shall subject to Clause 2.4 (*Employer's*

*Claims*) pay these costs to the Employer.

#### **12.4 Failure to Pass Tests after Completion**

- (a) If the following conditions apply, namely:
  - (i) the Works fail to pass any or all of the Tests after Completion, and
  - (ii) the Contractor pays the amounts set out in Clause 9.12 (*Guaranteed Performance*), Clause 11.4(c) (*Failure to Remedy Defects*) and any other amounts specified in the Contract to the Employer during the Defects Notification Period for this failure to pass such Tests after Completion,

then the Works shall be deemed to have passed these Tests after Completion.

- (b) If the Works fail to pass a Test after Completion and the Contractor proposes to make adjustments or modifications to the Works, the Contractor may be instructed by (or on behalf of) the Employer that right of access to the Works cannot be given until a time that is convenient to the Employer. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test after Completion, within a reasonable period of receiving notice by (or on behalf of) the Employer of the time that is convenient to the Employer. However, if the Contractor does not receive this notice during the Defects Notification Period, the Contractor shall be relieved of this obligation and the Works shall be deemed to have passed this Test after Completion.

### **13 VARIATIONS AND ADJUSTMENTS**

#### **13.1 Right to Vary**

- (a) Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.
- (b) The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Employer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, the Employer shall cancel, confirm or vary the instruction.

#### **13.2 Value Engineering**

- (a) The Contractor may, at any time, submit to the Employer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer. The Contractor shall not make any alteration and/or modification of the Works unless and until the Employer's Representative instructs or approves a Variation.
- (b) The proposal shall be prepared at the cost of the Contractor and shall include the items

listed in Clause 13.3 (*Variation Procedure*).

- (c) In the event of any Variation or request by the Employer's Representative for a proposal for a Variation, the Contractor shall provide such information as the Employer's representative may reasonably request, including but not limited to, identifications of the country of origin of equipment to be incorporated into the Works.

### **13.3 Variation Procedure**

- (a) If the Employer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why it cannot comply (if this is the case) or by submitting:
  - (i) a description of the proposed design and/or work to be performed and a programme for its execution,
  - (ii) the Contractor's proposal for any necessary modifications to the programme according to Clause 8.3 (*Programme*) and to the Time for Completion, and
  - (iii) the Contractor's proposal for adjustment to the Contract Price.
- (b) The Employer shall, as soon as practicable after receiving such proposal (under Clause 13.2 (*Value Engineering*) or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.
- (c) Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Employer to the Contractor, who shall acknowledge receipt.
- (d) Upon instructing or approving a Variation, the Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Clause 13.2 (*Value Engineering*) if applicable.
- (e) For the avoidance of doubt the Employer may in its sole discretion reject a Variation relating to the company or country of manufacture of a major piece of Plant or Materials or a Subcontractor on the basis that it is adverse to the national security interests of Pakistan.

### **13.4 Payment in Applicable Currencies**

Whenever an adjustment is agreed, approved or determined as stated above, the amount payable in US Dollars and Pakistan Rupees shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the value of the varied work, and to the proportions of such currencies specified for payment of the Contract Price.

**13.5** Not used.

**13.6** Not used.

### **13.7 Adjustments for Change in Law**

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting



from a Change in Law made after the Effective Date, which exceeds (i) the equivalent of five hundred thousand US Dollars (US\$ 500,000) in respect of any single Change in Law, or (ii) the equivalent of two million US Dollars (US\$ 2,000,000) in the aggregate for all Changes in Law in any year.

### **13.8 Adjustments for Changes in Costs**

The Contract Price shall not be adjusted for inflation or for any changes in, or rises or falls in, the cost of labour, including standard regulatory notifications of minimum wage requirements for labour, goods or other inputs to the Works unless an adjustment is required according to the provisions of Clause 19 (*Force Majeure*).

## **14 CONTRACT PRICE AND PAYMENT**

### **14.1 The Contract Price**

- (a) Payment for the Works shall be made on the basis of the lump sum Contract Price, subject only to adjustments in accordance with the Contract.
- (b) Unless expressly stated otherwise, the Contractor shall pay all taxes, duties, levies, fees and other impositions applicable to the Contractor and the Works in a timely fashion, and the Contract Price shall not be adjusted for any of these costs. [For the avoidance of doubt, the Contract Price shall exclude customs tax and duties on any Materials or Plant not manufactured in Pakistan.]

### **14.2 Advance Payment**

- (a) The Employer shall make the Advance Payment, as an interest-free loan for mobilisation and design, when the Contractor submits a guarantee in accordance with this Clause including the details stated in this Contract.
- (b) The amount of the Advance Payment shall be twenty per cent (20%) of the Contract Price and shall be amortised proportionately against amounts recovered through interim applications for payment throughout the progress of the Works, starting with the first interim payment after the Commencement Date. The currency shall be the same as the Contract Price.
- (c) The Employer shall pay the Advance Payment after receiving (i) the Performance Security in accordance with Clause 4.3 (Performance Security), and (ii) the Advance Payment Guarantee at least [twenty-one (21)] days prior to the expected date of the Notice to Proceed. Unless and until the Employer receives the Advance Payment Guarantee, this Clause shall not apply.
- (d) The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the Advance Payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor and by the interim payment amounts paid for Plant and Materials in accordance with Clause 14.5, when such Plant and Materials are properly stored on Site and protected against loss, damage or deterioration. If the terms of the Advance Payment Guarantee specify its expiry date, and the Advance Payment has not been repaid by the date twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Advance Payment Guarantee until the Advance Payment has

been repaid. [If the Contractor fails to do so, the Employer shall be entitled to draw the full amount available under the Advance Payment Guarantee.]

- (e) The Advance Payments shall be repaid through proportional deductions from interim payments. Deductions shall be made at the amortisation rate stated above, which shall be applied to the amount otherwise due (excluding the Advance Payment and deductions and repayments of retention), until such time as the Advance Payment has been repaid.
- (f) If the Advance Payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 (*Termination by Employer*), Clause 16 (*Suspension and Termination by Contractor*) or Clause 19 (*Force Majeure*) (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

### **14.3 Application for Interim Payments**

- (a) Subject to Clause 14.4 (*Schedule of Milestones*) the Contractor shall submit a Statement in six copies to the Employer after the end of each month, in a form approved by the Employer and including any additional requirements specified by the Employer (as required by the Lenders), showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Clause 4.23 (*Progress Reports*).
- (b) The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:
  - (i) the applicable Contract Price for the Milestones executed for which Milestone Certificates have been issued up to the end of the month (including Variations but excluding items described in sub-paragraphs (ii) to (iv) below);
  - (ii) any amounts to be added and deducted for the Advance Payment and repayments in accordance with Clause 14.2 (*Advance Payment*);
  - (iii) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 (*Claims, Disputes and Litigation*); and
  - (iv) the deduction of amounts included in previous Statements.
- (c) For the avoidance of doubt, it shall be a condition precedent to consideration by the Employer of any Statement (under this Clause 14.3, Clause 14.11 (*Statements at Completion*) and Clause 14.12 (*Application for Final Payment*)) that the Statement includes the Milestone Certificates to which the application relates.

### **14.4 Schedule of Milestones**

- (a) When the Contractor considers that it has achieved a Milestone, it shall give written notice to that effect to the Employer. The Employer shall within seven (7) days in case of Clause 14.4(a)(ii) below, or twenty-one (21) days in case of Clause 14.4(a)(i) or (iii) below, of

receipt of such notice inspect the Works and notify the Contractor in writing either:

- (i) that the Milestone has been achieved in which case the Employer shall, upon the approval of the Engineer, issue a Milestone Certificate to the Contractor; or
  - (ii) that the Milestone has not been achieved in which case the Employer shall give particulars of the work which remains outstanding for the Milestone to be achieved; or
  - (iii) that the Engineer has determined that the Milestone has not been achieved pursuant to the submission referred to in Clause 14.4 (a) (i) in which case the Employer shall give the particulars of the work which remains outstanding for the Milestone to be achieved.
- (b) The issue of a Milestone Certificate shall not be deemed to be evidence that any other certificate has been or should be issued nor that the relevant Works have been completed in accordance with the terms of the Contract.
- (c) The instalments set out in the Schedule of Milestones set out the amount of the Contract Price applicable in relation to each Milestone for the purpose of sub-paragraph (b)(i) of Clause 14.3 (*Application for Interim Payments*). The Contract Price shall be payable at the end of each month commencing on the Commencement Date in accordance with the Schedule of Milestones set out in Annex D (*Schedule of Milestones*).

Each interim payment shall include the Contract Price payable in respect of each Milestone completed during the period of payment.

#### **14.5 Plant and Materials intended for the Works**

If the Contractor is entitled, under the Contract, to an interim payment for Plant and Materials which are not yet on the Site, the Contractor shall nevertheless not be entitled to such payment unless:

- (a) the relevant Plant and Materials are in the Country and have been marked as the Employer's property in accordance with the Employer's instructions; or
- (b) the Contractor has delivered, to the Employer, evidence of insurance and the amounts remaining in the Advance Payment Guarantee are sufficient to secure both the un-amortized portion of the Advance Payment and the interim payment amounts for Plant and Materials which are not yet on the Site. For the avoidance of doubt, the amount of the Advance Payment Guarantee shall be increased as needed to secure both the unamortized portion of the Advance Payment and the interim payment amounts for Plant and Materials which are not yet at the Site but for which the Contractor has applied for an interim payment.

#### **14.6 Interim Payments**

- (a) No amount will be paid until the Employer has received and approved the Performance Security. Thereafter, the Employer shall within fourteen (14) days after receiving a Statement and supporting documents, give to the Contractor notice of any items in the Statement with which the Employer disagrees, with supporting particulars. Payments due

under Clause 14.3 shall not be withheld, except that:

- (i) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
  - (ii) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- (b) The Employer may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.

#### **14.7 Timing of Payments**

- (a) Except as otherwise stated in Clause 2.4 (*Employer's Claims*), the Employer shall pay to the Contractor:
- (i) subject to the provisions of Clause 14.2, the Advance Payment at the time of issue of the Notice to Proceed or within twenty-one (21) days after the Employer receives the documents in accordance with Clause 4.3 (*Performance Security*) and Clause 14.2 (*Advance Payment*), whichever is later;
  - (ii) the amount which is due in respect of each Statement under Clause 14.3, other than the Final Statement, within thirty (30) days after receiving the Statement and supporting documents; and
  - (iii) the final amount due, within forty-two (42) days after receiving the Final Statement and written discharge in accordance with Clause 14.12 (*Application for Final Payment*) and Clause 14.13 (*Discharge*).
- (b) Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in this Contract.

#### **14.8 Early Completion**

[Not used.]

#### **14.9 Delayed Payment**

- (a) If the Contractor or the Employer (as the case may be) does not receive payment in accordance with Clause 8.6 (*Delay Damages*), Clause 9.4 (*Failure to Pass Tests on Completion*), Clause 11.4 (*Failure to Remedy Defects*) or Clause 14.7 (*Timing of Payments*), the Contractor or the Employer (as the case may be) shall be entitled to receive financing charges compounded semi-annually on the amount unpaid during the period of delay, such charges to be computed for the actual number of days on the basis of a three-hundred-sixty-five (365) day year.
- (b) The financing charges shall be calculated at two per cent (2%) above LIBOR (London

Interbank Offered Rate) per annum.

- (c) The Contractor and/or the Employer (as the case may be) shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

#### **14.10 Retention Bond**

- (a) The Contractor shall, at the time when it submits its first invoice for payment, obtain (at its cost) and provide to the Employer a Retention Bond, which shall be in the form of Annex-H and shall be in the form of an unconditional bank guarantee issued by a first class Pakistan scheduled bank acceptable to the Employer or first class foreign bank acceptable to the Employer. The Retention Bond amount shall be the sum equal to ten percent (10%) of the gross value of the Contractor's first invoice as certified and approved by the Employer, and shall increase progressively to ten percent (10%) of the cumulative gross value of every subsequent invoice as certified and approved by the Employer.
- (b) Following the receipt by the Contractor of an authenticated copy of the Taking-Over Certificate for the whole of the Works under Clause 10 of the Contract, the Retention Bond amount shall be reduced to five percent (5%) of the cumulative gross value of invoices certified and approved by the Employer.
- (c) The Contractor shall ensure that the Retention Bond is valid and enforceable until the Contractor has executed and completed the Works (including all Works under Clause 11 (Defects Liability) or Clause 12 (Tests After Completion)), remedied any defects and the Defects Notification Period has expired. If the terms of the Retention Bond specify its expiry date, and the Contractor has not been entitled to receive the Performance Certificate by the date twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Retention Bond until the Works as aforesaid have been completed and any defects have been remedied.
- (d) The Employer shall not make a claim under the Retention Bond, except for amounts to which the Employer is entitled under the Contract in the event of:
  - (i) failure by the Contractor to extend the validity of the Retention Bond as described in paragraph (c) above by the date twenty-eight (28) days prior to the expiry date, in which event the Employer may claim the full amount of the Retention Bond;
  - (ii) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Clause 2.4 (Employer's Claims) or Clause 20 (Claims, Disputes and Arbitration), within twenty-eight (28) days after his agreement or determination;
  - (iii) failure by the Contractor to remedy a default within twenty-eight (28) days after receiving the Employer's notice requiring the default to be remedied;
  - (iv) failure by Contractor to execute work under Clause 11 ( Defects Liability) or Clause 12 (Tests After Completion);
  - (v) Circumstances which entitle the Employer to termination under Clause 15.2 (Termination by Employer), irrespective of whether notice of termination has been given; or

- (vi) any other breach of this Contract by the Contractor.
- (e) The Employer shall return the Retention Bond to the Contractor within twenty-one (21) days after the Contractor has become entitled to receive the Performance Certificate.

#### **14.11 Statement at Completion**

- (a) Within eighty-four (84) days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Employer six copies of a Statement at completion with supporting documents (including all relevant Milestone Certificates), in accordance with Clause 14.3 (*Application for Interim Payments*), showing:
  - (i) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
  - (ii) any further sums which the Contractor considers to be due, and
  - (iii) an estimate of any other amounts which the Contractor considers will become due to it under the Contract. Estimated amounts shall be shown separately in this Statement at completion.
- (b) The Employer shall then give notice to the Contractor in accordance with Clause 14.6 (*Interim Payments*) and make payment in accordance with Clause 14.7 (*Timing of Payments*).

#### **14.12 Application for Final Payment**

- (a) Within fifty-six (56) days after receiving the Performance Certificate, the Contractor shall submit, to the Employer, six copies of a draft final statement with supporting documents including all relevant Milestone Certificates showing in detail in a form approved by the Employer:
  - (i) the value of all work done in accordance with the Contract, and
  - (ii) any further sums which the Contractor considers to be due to it under the Contract or otherwise.
- (b) If the Employer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer the final statement as agreed. This agreed statement is referred to in this Contract as the “Final Statement”.
- (c) However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Employer shall pay the agreed parts of the draft final statement in accordance with Clause 14.6 (*Interim Payments*) and Clause 14.7 (*Timing of Payments*). Thereafter, if the dispute is finally resolved under Clause 20.3 (*Obtaining the Expert’s Decision*) or Clause 20.5 (*Amicable Settlement*), the Contractor shall then prepare and submit to the Employer a Final Statement.

### **14.13 Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the out-standing balance of this total, in which event the discharge shall be effective on such date.

### **14.14 Final Payment**

In accordance with sub-paragraph (c) of Clause 14.7 (*Timing of Payments*), the Employer shall pay to the Contractor the amount which is finally due, less all amounts previously paid by the Employer and any deductions in accordance with Clause 2.4 (*Employer's Claims*).

### **14.15 Cessation of Employer's Liability**

- (a) The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
  - (i) in the Final Statement and also
  - (ii) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Clause 14.11 (*Statement at Completion*).
- (b) However, this Clause shall not limit the Employer's liability under its indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

### **14.16 Currencies of Payment**

The currency of payments for each Milestone shall be as indicated in Annex D (*Schedule of Milestones*), and shall comprise United States Dollar and Pakistan Rupee.

### **14.17 Withholding Tax**

The Employer shall deduct withholding tax of six per cent (6%) from the gross amount payable by the Employer to the Contractor and the Contractor shall deduct withholding tax of six per cent (6%) from payments made by the Contractor to its Subcontractors.

## **15 TERMINATION BY EMPLOYER**

### **15.1 Notice to Correct**

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

### **15.2 Termination by Employer**

- (a) The Employer shall be entitled to terminate the Contract if:

- (i) the Contractor fails to comply with Clause 4.3 (*Performance Security*) or with a notice under Clause 15.1 (*Notice to Correct*),
- (ii) the Contractor without reasonable excuse fails to proceed with the Works in accordance with Clause 8 (*Commencement, Delays and Suspension*),
- (iii) the Contractor subcontracts the whole of the Works or assigns the Contract without approval of the Employer,
- (iv) the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (v) the Contractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - (A) for doing or forbearing to do any action in relation to the Contract, or
  - (B) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (a)(v). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination,
- (vi) the Contractor fails to start design and execution of the Works within fourteen (14) days after the Commencement Date,
- (vii) the Contractor fails to pass the Tests on Completion and is not issued with the Taking-Over Certificate for the Works within six (6) months after the Time for Completion,
- (viii) after the Effective Date, but prior to the date of the Taking-Over Certificate for the Works, the Contractor abandons the Works or fails to prosecute the Works in a diligent manner for a period of twenty-five (25) consecutive days or otherwise demonstrates the intention not to continue performance of its obligations under the Contract without prior written notice to, and prior written consent of, the Employer,
- (ix) any statement, representation or warranty by the Contractor in this Contract or in any certificate or other instrument provided by the Contractor in connection herewith proves to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation or warranty is likely to have a material and adverse effect on the rights or obligations of the Employer hereunder or on the Contractor's ability to perform its obligations under this Contract,



- (x) the Contractor commits any material breach of this Contract that is not remedied within twenty-five (25) days after notice from the Employer stating that a material breach of the Contract has occurred and is continuing that could result in the termination of the Contract, identifying the material breach in question in reasonable detail, and demanding remedy thereof,
  - (xi) any of the Contractor, the Contractor's Personnel, Subcontractors or subcontractors of any tier tampers with the Power Purchaser Interconnection Facilities or the Metering System,
  - (xii) the Contractor does anything or omits to do anything that causes or contributes to a "Company Event of Default" as defined in the Project Documents that is not remedied within twenty-five (25) days after notice from the Employer,
  - (xiii) the Contractor has paid or is liable to pay delay damages to the Employer for a period of 400 days or has otherwise paid the maximum amount of delay damages pursuant to Clause 8.6 (*Delay Damages*),
  - (xiv) the circumstances in Clause 9.4(a)(ii) (*Failure to Pass Tests on Completion*) or Clause 11.4(b)(iii) (*Failure to Remedy Defects*) apply, or
  - (xv) the Contractor breaches any of the Environmental Requirements.
- (b) In any of these events or circumstances, the Employer may, upon giving fourteen (14) days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraphs (a)(iv) to (a)(xiv) above, the Employer may by notice terminate the Contract immediately.
  - (c) The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.
  - (d) The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for it, to the Employer. However, the Contractor shall use its best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.
  - (e) After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.
  - (f) The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **15.3 Valuation at Date of Termination**

[As soon as practicable after a notice of termination under Clause 15.2 (*Termination by Employer*)

has taken effect, the Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.]

#### **15.4 Payment after Termination**

- (a) After a notice of termination under Clause 15.2 (*Termination by Employer*) has taken effect, the Employer may:
- (i) proceed in accordance with Clause 2.4 (*Employer's Claims*),
  - (ii) with-hold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion and other liquidated damages (if any), and all other costs incurred by the Employer, have been established,
  - (iii) recover from the Contractor any Losses incurred by the Employer and any extra costs of completing the Works (including any extra costs for accelerating completion of the Works, additional financing costs and any liquidated damages payable by the Employer to third parties for delay in completing the Works), after allowing for any sum due to the Contractor under Clause 15.3 (*Valuation at Date of Termination*), provided that the Contractor's obligations to pay for such Losses and extra costs shall not exceed the Contract Price.
  - (iv) in the event of the termination by the Employer of this Contract that causes or contributes to the termination of the Power Purchase Agreement or any other Project Document, recover from the Contractor the Losses incurred by the Employer including but not be limited to, all amounts due to the Lenders under the Financing Documents at the date of termination (including the total amount of debt outstanding to the Lenders, accrued interest, winding-up costs, swap breakage costs, prepayment charges or similar charges or costs passed through by the Lenders), lost return on Employer's equity, and any costs and expenses or damages the Employer is required to reimburse to the Power Purchaser or GOP under the Project Documents, in aggregate less any amounts received from the GOP or Power Purchaser as compensation in respect of such termination; provided that the Contractor's obligations to pay for such Losses shall not exceed the Contract Price except as provided for in Clause 17.5 (*Limitation of Liability*).
- (b) After recovering any losses, damages and extra costs referred to in sub-paragraph (a)(iii) and/or (a)(iv) above, the Employer shall pay any balance due to the Contractor under Clause 15.3 (*Valuation at Date of Termination*).

## **15.5 Employer's Entitlement to Termination**

- (a) The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect seven (7) days after the date on which the Contractor receives this notice or the Employer forthwith returns the Performance Security. The Employer shall not terminate the Contract under this Clause in order to execute the Works itself or to arrange for the Works to be executed by another Contractor.
- (b) After this termination, the Contractor shall proceed in accordance with Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*) and shall be paid in accordance with Clause 19.6 (*Optional Termination, Payment and Release*).

## **15.6 Obligations Upon Termination**

Upon expiration or termination of the Contract, the Parties shall have no further obligations hereunder except for obligations that arose prior to such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Contract.

## **16 SUSPENSION AND TERMINATION BY CONTRACTOR**

### **16.1 Contractor's Entitlement to Suspend Work**

- (a) If the Employer fails to comply with Clause 14.7 (*Timing of Payments*), the Contractor may, after giving not less than thirty (30) days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the payment, as described in the notice.
- (b) The Contractor's actions shall not prejudice its entitlement to financing charges under Clause 14.8 (*Delayed Payment*) and to termination under Clause 16.2 (*Termination by Contractor*).
- (c) If the Contractor subsequently receives such payment (as described in the relevant Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.
- (d) If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Clause, the Contractor shall give notice to the Employer and shall be entitled subject to Clause 20.1 (*Contractor's Claims*) to:
  - (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*), and
  - (ii) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.
- (e) After receiving this notice, the Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.

## 16.2 Termination by Contractor

- (a) The Contractor shall be entitled to terminate the Contract if:
- (i) the Contractor does not receive the amount due within [sixty (60)] days after the expiry of the time stated in Clause 14.7 (*Timing of Payments*) within which payment is to be made (except for deductions in accordance with Clause 2.4 (*Employer's Claims*)),
  - (ii) the Employer commits a repudiatory breach of its material obligations under the Contract and such breach is not rectified by the Employer within seven (7) days of the Employer receiving a notice from the Contractor requiring such rectification,
  - (iii) the Employer fails to comply with Clause 1.6 (*Assignment*), or
  - (iv) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- (b) On the occurrence of any of these events or circumstances the Contractor shall serve a notice on the Employer informing the Employer of the circumstances or events entitling the Contractor to terminate the Contract and informing the Employer of the Contractor's intention to terminate the Contract. If the events or circumstances specified in such notice continue for a period of fourteen (14) days from the giving of such notice, the Contractor may, upon giving a further written notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (a)(iv) above, the Contractor may by notice terminate the Contract immediately.
- (c) The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.
- (d) Anything in this Contract notwithstanding, the Contractor shall not seek to terminate this Contract except in accordance with the Direct Agreement.

## 16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Clause 15.5 (*Employer's Entitlement to Termination*), Clause 16.2 (*Termination by Contractor*) or Clause 19.6 (*Termination, Payment and Release*) has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

## 16.4 Payment on Termination

After a notice of termination under Clause 16.2 (*Termination by Contractor*) has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor, and
- (b) pay the Contractor in accordance with Clause 19.6 (*Optional Termination, Payment and Release*).

## 17 RISK AND RESPONSIBILITY

### 17.1 Indemnities

- (a) The Contractor shall indemnify, hold harmless and defend the Employer, the Employer's Personnel, and their respective agents, against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon any such persons in respect of:
  - (i) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless directly attributable to any negligence, intentional act or omission of the Contract by the Employer, the Employer's Personnel, or any of their respective agents,
  - (ii) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
    - (A) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects or Latent Defects, and
    - (B) is not directly attributable to any negligence, intentional act or omission of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them, and
  - (iii) any compensation paid by the Employer to the Power Purchaser as a result of the termination of the Power Purchase Agreement by the Power Purchaser to the extent that such compensation arises out of or by reason of the tampering by the Contractor, the Contractor's Personnel, the Subcontractors or subcontractors of any tier with the Power Purchaser Interconnection Facilities or the Metering System.
- (b) The Employer shall indemnify, hold harmless and defend the Contractor, the Contractor's Personnel, and their respective agents, against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon any such persons in respect of bodily injury, sickness, disease or death, which is attributable directly to any negligence, intentional act or omission of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.
- (c) In the event injury or damage results from the joint or concurrent negligent or intentional acts

or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

- (d) The provisions of this Clause 17.1 shall survive for a period of five (5) years following the earlier of termination of this Contract or expiry of the Defects Notification Period.
- (e) Any fines or other penalties incurred by a Party for non-compliance with applicable Laws shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

## **17.2 Defence of Claims**

- (a) The indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior approval of the indemnified Party; provided, however, it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defence.
- (b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with this Clause, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- (c) Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgement of the indemnification and assumption of the defence.
- (d) Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party.
- (e) Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it which are different from or

additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Contract. If (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **17.3 Contractor's Care of the Works**

- (a) The Contractor shall take full responsibility for the care of the Works and Goods from the Effective Date until the Taking-Over Certificate is issued (or is deemed to be issued under Clause 10.1 (*Taking Over of the Works*)) for the Works, when responsibility for the care of the Works shall pass to the Employer.
- (b) After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.
- (c) If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform to the requirements under this Contract.
- (d) The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **17.4 Intellectual and Industrial Property Rights**

- (a) In this Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.
- (b) Whenever a Party does not give notice to the other Party of any claim within twenty-eight (28) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Clause.
- (c) The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:
  - (i) a result of any Works being used by the Employer:
    - (A) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
    - (B) in conjunction with any thing related to the Works which was not supplied by the Contractor under this Contract, unless such use was disclosed to the Contractor prior to the Effective Date or is stated in the Contract.

- (d) The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.
- (e) If a Party is entitled to be indemnified under this Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation upon being requested to do so by such other Party.

## 17.5 Limitation of Liability

- (a) 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, except to the extent that the damages or losses in question are:
  - (i) liquidated damages for delay pursuant to Clause 8.6 (*Delay Damages*);
  - (ii) liquidated damages for performance pursuant to Clause 9.5 (*Guaranteed Performance*);
  - (iii) provided for under Clause 15.4(a)(iii), Clause 15.4(a)(iv) (*Payment after Termination*) and Clause 17.1 (*Indemnities*).
- (b) Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Contract;] provided, however, that this provision is not intended to constitute a waiver of any rights of one party against the other with regard to matters unrelated to this Contract or any activity not contemplated by the Contract.
- (c) The total liability of the Contractor to the Employer, under or in connection with the Contract other than liabilities and costs under Clauses 11.4(b)(iii) (*Failure to Remedy Defects*), 12.3 (*Retesting*), 1.12 (*Compliance with Laws*), 4.2 (*Project Documents*), 4.4 (*Fitness for Purpose*), 4.16 (*Avoidance of Interference*), 4.17 (*Access Route*), 4.18 (*Transport of Goods*), 4.19 (*Environmental Matters*), 4.32 (*Right to Import, Export and Re-Import*), 14.1 (*The Contract Price*), 17.1 (*Indemnities*) and 17.4 (*Intellectual and Industrial Property Rights*), shall not exceed the Contract Price.
- (d) Notwithstanding the limitations of liability in Clauses 17.5 (a) through (d), this Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## 18 INSURANCE

### 18.1 General Requirements for Insurances

- (i) [In this Clause, the “**insuring Party**” shall be the Party responsible under Annex I (*Insurance*) for effecting and maintaining the insurance thereunder.



- (ii) Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage except where the Financing Documents with the Lenders state otherwise.
- (iii) The relevant insuring Party shall (calculated from the Effective Date), submit to the other Party as and when reasonably requested:
  - (i) evidence that the insurances described in this Clause have been effected;
  - (ii) copies of the policies for the insurances described in Clause 18.2 (*Employer Insurances*); and
  - (iii) The respective periods for submission of evidence of insurance and relevant policies for (i) and (ii) above shall be seven (7) days before execution of the Works at the Site.
- (iv) When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.
- (v) Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- (vi) Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- (vii) Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.
- (viii) Payments by one Party to the other Party shall be subject to Clause 2.4 (*Employer's Claims*) or Clause 20.1 (*Contractor's Claims*), as applicable.
- (ix) The Contractor shall notify the Employer of changes in the nature, the extent and/or the duration of the Works and shall ensure the adequacy of the respective insurance cover as required by this agreement and compliance with applicable insurance policies, endorsements, procedures, terms and conditions at all times.
- (x) The Contractor shall notify the Employer, and confirm in writing, all incidents giving rise to a possible claim under the insurance policies procured and maintained by the Parties pursuant to this Contract. In respect of Marine and Transit Insurance, Third Party Liability Insurance, Construction All Risk Insurance, the Contractor shall, promptly notify insurers

and the appointed loss adjusters of any actual or likely claim under such policies.

## **18.2 Contractors Insurances**

- (a) The Contractor shall obtain and maintain during the term of the Contract the insurances required to be obtained and/or maintained by it as set out in Annex I (*Insurance*) and in accordance with the requirements set out therein. The term of the insurance shall be from the Commencement Date until the date of the Performance Certificate.
- (b) The Contractor shall cause the insurers to provide the following endorsement items in the comprehensive or commercial general liability and, if applicable, umbrella or excess liability policies relating to the Works provided pursuant to this Clause:
  - (i) the Employer, the Contractor the Power Purchaser, the Lenders, their directors, officers and employees shall be additional insureds under such policies with respect to claims arising out of or in connection with this Contract;
  - (ii) the insurance shall be primary with respect to the interest of the Contractor, Employer, Power Purchaser, the Lenders, their directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;
  - (iii) the following cross liability clause shall be made a part of the policy:

In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance; and
  - (iv) Notwithstanding any provision of the policy, the policy may not be cancelled, non-renewed or materially changed by the insurer without giving forty (40) days, except in the case of non-payment, in which case it will give fifteen (15) days, prior written notice to the Employer. All other terms and conditions of the policy shall remain unchanged.
- (c) The Contractor shall cause its insurers or agents to provide the Employer with certificates of insurance evidencing the policies and endorsements listed above.
- (d) In the case of Employer insurance coverage where the Contractor does not have insured party status, the Contractor shall be obligated to perform in a manner so that the insurance cover is not jeopardized. In the case of marine perils insurance the Contractor shall provide information regarding shipments to allow warranted marine surveys to be undertaken and shall communicate with the surveying company appointed by the insurers to ensure that surveys are conducted in accordance with the provisions of the insurance policies.]

## **19 FORCE MAJEURE**

### **19.1 Definition of Force Majeure**

A “**Force Majeure Event**” shall mean any event which is not foreseeable to the affected Party on or prior to the Effective Date, is of such a nature no affected Party can prevent or avoid it, is demonstrably beyond the control of the Employer and the Contractor, which has the effect of making it impossible or illegal for a Party to perform an obligation, and includes each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

- (a) Political events that occur inside or directly involve Pakistan (“**Pakistan Political Force Majeure Events**”), including, but not limited to:
  - (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.
  - (ii) any Lapse of Consent (as defined under the Power Purchase Agreement) that shall have existed for thirty (30) consecutive Days or more;
  - (iii) strikes, works to rule or go-slows that extend beyond the Works, are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labour actions associated with or directed against a Pakistan political party, or those that are directed against the Employer or its contractors as part of a broader pattern of labour actions against companies or facilities with foreign ownership or management.
- (b) Any Change in Law.
- (c) Other events beyond the reasonable control of the affected Party (“**Other Force Majeure Events**”), including, but not limited to uncontrollable events including, but not limited to:
  - (i) lightning, severe drought, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
  - (ii) fire, explosion or chemical contamination, radioactive contamination or ionising radiation other than resulting from a nuclear reactor referred to in Clause 19.1(a)(i) (*Definition of Force Majeure*), in which case it shall be a Pakistan Political Force Majeure Event; or
  - (iii) epidemic or plague.
- (d) Force Majeure Events shall expressly not include the following conditions, except and to the extent that they result directly from a Force Majeure Event:
  - (i) late delivery of Plant, Materials, spare parts or consumables;
  - (ii) a delay in the performance of any Subcontractor or supplier; or
  - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

## 19.2 Notice of Force Majeure Event

- (a) If a Party is or will be wholly or partially unable to carry out any of its obligations under the Contract by reason of a Force Majeure Event, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure Event in reasonable detail and shall specify the obligations, the performance of which is or will be prevented and a preliminary estimate of the period of time that it will be unable to perform such obligations and other relevant matters. The notice shall be given as soon as practicable, but in any event not later than the later of (i) forty-eight (48) hours after the Party becomes aware, or should have become aware, of the relevant event or circumstance constituting the Force Majeure Event, and (ii) twenty-four (24) hours after the resumption of any means of providing notice between the Employer and the Contractor. 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 will be unable to carry out any of its affected obligations due to the Force Majeure Event(s).
- (b) 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 and its causes and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be prevented from carrying out any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notice to the other Party of (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event, and (ii) its ability to commence performance of its obligations under this Contract as soon as possible and in any event not later than seven (7) days after the occurrence of each of (i) and (ii) above.
- (d) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or the twenty-four (24) hour period required above 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 Clause 19.4 (*Consequences of Force Majeure Event*) for any failure or delay in complying with its obligations under or pursuant to this Contract until such notice has been given. If said notice is given within the forty-eight (48) hour period or the twenty-four (24) hour period required above, the affected Party shall be excused for such failure or delay pursuant to Clause 19.4 (*Consequences of Force Majeure Event*) from the date of commencement of the relevant Force Majeure Event.
- (e) The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure Event prevents it from performing them.
- (f) Notwithstanding any other provision of this Clause, a Force Majeure Event shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **19.3 Duty to Minimise Delay and Mitigate**

- (a) Each Party shall at all times use all reasonable efforts to minimise any delay in the performance of the Contract as a result of a Force Majeure Event and mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of

money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

- (b) The Contractor shall endeavor to continue the performance of its obligations under the Contract insofar as reasonably practicable and notify the Employer of the steps it proposes to take including any reasonable alternative means of performance which are not prevented by the Force Majeure Event. The Contractor shall take such steps unless and to the extent the Employer directs the Contractor not to do so.
- (c) A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure Event and mitigate any loss suffered by either Party as a result of the Force Majeure Event.

#### **19.4 Consequences of Force Majeure Event**

So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Clause 19.3 (*Duty to Minimise Delay and Mitigate*) and continues to so comply, then subject to Clause 20.1 (*Contractor's Claims*):

- (a) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Contract during the existence of such Force Majeure Event (or the effects thereof on such Party) to the extent that such failure or delay has been caused by such Force Majeure Event;
- (b) the Contractor subject to Clause 20.1 (*Contractor's Claims*) or the Employer subject to Clause 2.4 (*Employer's Claims*) (as the case may be) shall be entitled to an extension to any performance deadline it is obligated to meet under this Contract, taking into account any extensions of time granted to the Employer under the Project Documents, provided, that, no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this Clause 19.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred or that such failure or delay was caused by the failure of the affected Party to comply with its obligations under Clause 19.3 (*Duty to Minimise Delay and Mitigate*);
- (c) if the Force Majeure Event is of the kind described in sub-paragraph (a) or (b) of Clause 19.1 (*Definition of Force Majeure*) the Contractor subject to Clause 20.1 (*Contractor's Claims*) shall be entitled to the payment of any such Cost attributable solely to such Force Majeure Event provided that, such payment shall only be payable if and to the extent that, (i) it is a Restoration Event (as defined in Clause 19.8 (*Restoration and Compensation*) below) and the Employer has instructed the Contractor to proceed with the Restoration (as defined under the Power Purchase Agreement), provided that such Costs shall not exceed the Restoration Cost Estimate (as defined under the Power Purchase Agreement) and/or (ii) the Employer receives payments from the insurers under the insurances in respect of such Cost subject always to the provisions in the Financing Documents regarding the use of any insurance provisions; and
- (d) the Employer shall proceed in accordance with Clause 3.5 (Determination) to agree or determine these matters.

#### **19.5 Force Majeure Event Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle it to relief under this Clause.

## 19.6 Optional Termination, Payment and Release

- (a) If the execution of substantially all the Works in progress is prevented for a continuous period of one hundred and ninety (190) days by reason of a Force Majeure Event of which notice has been given in accordance with Clause 19.2 (*Notice of Force Majeure Event*), or for multiple periods which total more than one hundred and ninety (190) days due to the same notified Force Majeure, the Contract may be terminated as follows:
- (i) the Employer may give to the Contractor a notice of termination of the Contract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Contractor shall proceed in accordance with Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*); or
  - (ii) if the Project Documents permit the Employer to terminate the Power Purchase Agreement due to such prolonged Force Majeure Event and the Contractor is not compensated for its Costs in terms of Clause 19.4(c), then the Contractor may give the Employer a notice of termination of the Contract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Contractor shall proceed in accordance with Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*).
- (b) The Employer may elect to extend, by written notice to the Contractor, the periods which must elapse (as referred to in Clause 9.6 (a)) before either Party may terminate the Contractor's engagement under the Contract in accordance with Clause 9.6(a), provided that:
- (i) such extension may not exceed a further one hundred and eighty-two (182) days, without the Contractor's consent; and
  - (ii) the Employer shall, in respect of a Force Majeure Event persisting into such extended period, pay to the Contractor any Costs incurred by it of the extension for the period until the cessation of the effects of the Force Majeure Event or termination pursuant to Clause 9.6(a).
- (c) Upon such termination, the Employer shall pay to the Contractor:
- (i) the value of all Milestones completed and in respect of which Milestone Certificates have been issued but not paid to date;
  - (ii) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

- (iii) in the case of termination by the Employer, any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (iv) in the case of termination by the Employer, the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in its country (or to any other destination at no greater cost); and
- (v) in the case of termination by the Employer, the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination,

in each case, only if and to the extent that the Employer receives compensation for such amounts pursuant to the Project Documents or the insurances.

## 19.7 Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, a Force Majeure Event) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Clause 19.6 (*Termination, Payment and Release*) if the Contract had been terminated under Clause 19.6 (*Termination, Payment and Release*).]

## 19.8 Restoration and Compensation

The Parties acknowledge the provisions of Section 15.6 of the Power Purchase Agreement relating to Force Majeure Events that result in damage to the Works and Changes in Law that require a material modification or a material capital addition to the Works (a "**Restoration Event**"). The Contractor shall, as and when requested by the Employer, provide the Employer in a timely manner with all such assistance it may require in order to enable the Employer to fulfil its obligations thereunder including assistance in preparing any Report (as defined under the Power Purchase Agreement) and, if so instructed by the Employer, shall apply for all necessary consents for the Restoration and proceed with any Restoration in accordance with the agreed Restoration Schedule (as defined under the Power Purchase Agreement) within the Restoration Cost Estimate.

## 20 CLAIMS, DISPUTES AND ARBITRATION

### 20.1 Contractor's Claims

- (a) If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of this Contract or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing

the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty-eight (28) days (or such shorter period expressly stated herein) after the Contractor became aware, or should have become aware, of the event or circumstance.

- (b) If the Contractor fails to give notice of a claim within such period of twenty-eight (28) days (or such shorter period expressly stated herein), the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply.
- (c) The Contractor shall also submit any other notices which are required by the Contract or the Employer, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (d) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer. Without admitting liability, the Employer may, after receiving any notice under this Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.
- (e) Within forty-two (42) days (or such shorter period expressly stated herein) after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
  - (iii) this fully detailed claim shall be considered as interim;
  - (iv) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and
  - (v) the Contractor shall send a final claim within twenty-eight (28) days (or such shorter period expressly stated therein) after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.
- (f) Within forty-two (42) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, or where the Employer requires the approval of the Lenders, the Power Purchaser or a counterparty to a Project Document, within Lenders, the Power Purchaser or the counterparty's response period set out in the relevant agreement plus a further five (5) days, the Employer shall respond with approval, or with disapproval and detailed comments. It may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time.
- (g) Each interim payment shall include such amounts for any claim as have been reasonably



substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as it has been able to substantiate.

- (h) The Employer shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 8.4 (*Extension of Time for Completion*), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract, and, in the case of (i) taking into account any extensions of time granted by the Power Purchaser or the counterparty's to the Project Documents for such claim.
- (i) The requirements of this Clause are in addition to those of any other Clause which may apply to a claim. If the Contractor fails to comply with this or another Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under paragraph (b) of this Clause.

## **20.2 Appointment of the Expert**

Upon the written request for the appointment of an Expert of either Party, the Parties agree to appoint an Expert for the purpose of facilitating the hearing of any Dispute to be referred to an Expert in accordance with the terms of this Contract. In default of an agreement upon such appointment within thirty (30) days of the receipt of a Party's written request as aforesaid, the Expert shall be appointed at the request of either of the Parties by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules of Expertise of the International Chamber of Commerce.

## **20.3 Obtaining the Expert's Decision**

- (a) If a Dispute arises between the Parties, then after the Expert has been appointed pursuant to Clause 20.2 (*Appointment of the Expert*) above, the Dispute shall be referred in writing by either Party to the Expert for its decision, with a copy to the other Party. The Expert will use his discretion to resolve or settle each Dispute referred to it hereunder within the terms of this Contract and having regard to all the circumstances. The Expert shall give his decision in writing within thirty (30) days of the Dispute being referred to him. If either Party is dissatisfied with the Expert's decision, then either Party may, within thirty (30) days after receiving the Expert's decision, give notice to the other Party of its dissatisfaction. If the Expert fails to give its decision within thirty (30) days of the Dispute being referred to him, either Party may, within seven [(7)] days after this period has expired, give notice to the other Party of its dissatisfaction. If the Expert has given its decision as to the Dispute to both Parties, and no notice of dissatisfaction has been given by either Party within thirty (30) days after it received the Expert's decision, then the decision shall become final and binding upon both Parties. Any decision of the Expert that has become final and binding shall be implemented by the Parties forthwith.
- (b) Subject to Clause 20.3(c) below, the fees and expenses of the Expert arising from the resolution or settlement of a Dispute which has been referred to it shall be borne by the losing Party, unless the Expert determines otherwise.

- (c) Where a Dispute has been referred to arbitration pursuant to Clause 20.6 (*Arbitration*), the arbitral tribunal shall also make the final decision on how the Parties are to bear the fees and expenses of the Expert, unless one Party has disregarded the decision of the Expert, in which case such Party shall bear all the fees and expenses of the Expert.

#### **20.4 Performance to Continue During Dispute**

Notwithstanding any reference of a Dispute to the Expert, arbitration or amicable settlement herein, the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.

#### **20.5 Amicable Settlement**

Where notice of dissatisfaction has been given under Clause 20.3 (*Obtaining the Expert's Decision*) above, both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth (56<sup>th</sup>) day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

#### **20.6 Arbitration**

Any Dispute in respect of which the Expert's decision (if any) has not become final and binding (unless settled amicably) or any Non-Compliance Dispute (as defined in Clause 20.7 (*Failure to Comply with the Expert's Decision*)) shall be finally settled by international arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "**ICC Rules**"). The venue for such arbitration shall be London, England and the Dispute shall be settled by three arbitrators appointed in accordance with the ICC Rules. The arbitration shall be conducted in English.

#### **20.7 Failure to Comply with the Expert's Decision**

In the event that:

- (a) neither Party has given notice of dissatisfaction within the period stated in Clause 20.3 (*Obtaining the Expert's Decision*),
- (b) the Expert's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

then the other Party may, without prejudice to any other rights it may have, refer the failure itself ("Non-Compliance Dispute") to arbitration under Clause 20.6 (*Arbitration*). Clause 20.3 (*Obtaining the Expert's Decision*) and Clause 20.5 (*Amicable Settlement*) shall not apply to this reference. In such a case, the sole issue for the arbitral tribunal to determine is whether the Parties have complied with the Expert's decision.

### **21 LENDERS**

#### **21.1 Direct Agreement with Lenders**

The Contractor acknowledges that the Employer will finance the development of the Works by way

of project financing techniques supported by various Lenders. The Contractor will consent or procure consent to the assignment of the Employer's rights under various agreements, including this Contract, the Performance Security, and the Advance Payment Guarantee and enter into the Direct Agreement which will include cure, step-in and novation rights and any other provisions reasonably required by any Lender in relation to a project of this type.

## **21.2 Conditions to Financing**

The Contractor acknowledges that, as a condition precedent to making funds available to Employer the Lenders may require the right to review and approve Milestone Certificates, payment invoices, supporting documentation and the Works and may require certain certificates, documents and other information from the Contractor. The Contractor shall cooperate promptly with the Employer and the Lenders to meet all the reasonable requirements of the Lenders. The Contractor will reasonably cooperate in the establishment and implementation of procedures dictated by the Financing Documents for the disbursement of funds thereunder.

## **21.3 Amendments required by Lenders**

The Parties hereto recognise that the Lenders may from time to time require alterations or additions to the terms of this Contract as a condition of their financing. The Parties agree to cooperate in making appropriate alterations and additions to this Contract required by the Lenders and in making all necessary alterations and additions to reflect the requirements of the Project Documents.

## **21.4 Security over Insurance Proceeds**

The Contractor acknowledges that the Employer may, at the Employer's sole discretion, enter into security arrangements with any Lender in respect of the proceeds payable under policies of insurance required to be obtained and maintained by the Employer and the Contractor under Clause 18 (*Insurance*) including arranging for proceeds of such policies of insurance to be paid into accounts secured to the Lenders as collateral for the Employer's indebtedness. The Contractor hereby consents to such arrangements.

## **21.5 Cooperation with a Lender and its Advisers**

- (a) The Contractor shall, if required by the Employer, liaise and co-operate with any Lender, (and its representatives and advisers) and provide it with copies of all notices, reports and other documents it provides to the Employer hereunder, together with all information in connection with the Works which it may reasonably require. The Contractor shall notify the Employer of any matter in relation to the Works which may materially affect the respective interests of any Lender.
- (b) In addition, the Contractor shall permit any Lender and its representatives and advisers access to any part of the Site in the same manner as if the Lender and its representatives and advisers were part of the Employer's Personnel under this Contract.

## **21.6 Costs Relating to Financing**

- (a) All costs associated with the foregoing activities of the Contractor set out in this Clause 21 (*Lenders*) have been included in the Contract Price.

\* \* \*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Contract to be executed on the date first above written.

SIGNED by: \_\_\_\_\_

SIGNED by: \_\_\_\_\_

Name: Waseem Pasha Tajammal

Name: Rod A. Johnson

Designation: Managing Director

Designation: President

For and on behalf of **CAVALIER ENERGY CORPORATION** in the presence of:

For and on behalf of **GLOBAL EDISON CORPORATION** in the presence of:

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

