

**THE PRESIDENT OF THE ISLAMIC
REPUBLIC OF PAKISTAN
for and on behalf of
THE ISLAMIC REPUBLIC OF PAKISTAN**

- AND -

[Name of Project Company]

IMPLEMENTATION AGREEMENT

- RELATING TO -

A [●] MW (NET) HYRDO-ELECTRIC POWER GENERATION COMPLEX

AT

[●]

MADE AT

ISLAMABAD, PAKISTAN

ON

COUNSEL FOR THE GOP

COUNSEL FOR THE SELLER

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SCHEDULES

SCHEDULE 1	SPECIFIED CONSENTS
SCHEDULE 2	COMPENSATION AMOUNTS
SCHEDULE 3	FORM OF GUARANTEE

THIS IMPLEMENTATION AGREEMENT (this “**Agreement**”) is made at Islamabad as of the _____ Day of _____ 201●, by and between:

- (1) **THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN for and on behalf of THE ISLAMIC REPUBLIC OF PAKISTAN** (the “**GOP**”); and
- (2) [**Name of Project Company**], (the “**Seller**”), a [public] [private] limited company incorporated under the Companies Ordinance, 1984, with its registered office at [●], Pakistan.

Each of the GOP and the Seller is hereinafter referred to individually as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS

- A. **WHEREAS**, the Seller has proposed to the Purchaser that the Seller will design, engineer, construct, insure, Commission, operate, maintain and transfer an approximately [●] MW (net, at Reference Hydrological Conditions) hydro-electric generation facility (the “**Complex**”, as further defined hereinafter) to be located at [●], on build-own-operate-transfer (BOOT) basis;
- B. **WHEREAS**, the Seller has received a Letter of Support for the design, engineering, construction, insuring, Commissioning, operation, maintenance and transfer of the Complex;
- C. **WHEREAS**, simultaneously herewith, the Seller is entering into a Water Use Agreement with the [Provincial Government] [GOAJ&K] for the construction of the Complex on [River] [Stream/Canal] at [●] (the “**Water Resource**”, as further defined hereinafter) and the location of the Complex at the Site, and the use of water from the Water Resource in accordance with the terms and conditions of the Water Use Agreement;
- D. **WHEREAS**, simultaneously herewith, the Seller is entering into, (i) an Energy Purchase Agreement with the Purchaser, [(ii) an AJ&K Implementation Agreement with the AJ&K Entities,]¹ and (iii) has entered into or will enter into the Site Lease² with the [Provincial Government] / [GOAJ&K]; and
- E. **WHEREAS**, the GOP is entering into this Agreement to encourage private investment in the electric power sector in Pakistan and to provide assurances of support for the Seller’s efforts to develop the Project in an efficient and timely manner.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and undertakings herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

¹ Only in case where the Complex is located in AJK and having AJK IA.

² Or Site Sub-Lease, depending on the project-specific situation. For projects using their own land, the references to Site Lease will be removed. Grant of Site Sub-lease protections is contingent on a Government-to-Government Coordination Agreement being made by AEDB acting for the Federal Government, as was done for upfront wind with the GOS and upfront solar with GOPunjab.

ARTICLE I DEFINITIONS

Section 1.1 Definitions

Whenever the following terms appear in this Agreement (including its Recitals and Schedules), whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below:

“Abandonment” – The meaning ascribed thereto in the Energy Purchase Agreement.

“AEDB” – The Alternative Energy Development Board, a statutory body corporate formed under the Alternative Energy Development Board Act, 2010, and means and includes its successors.

“Affiliates” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Agent” – The meaning ascribed thereto in Section 14.4(a).

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

“Agreement Year” – The meaning ascribed thereto in the Energy Purchase Agreement.

[“AJ&K” – The Azad State of Jammu & Kashmir.]

[“AJ&K Entities” – The GOAJ&K and/or the Council, as the case may be.]

[“AJ&K Implementation Agreement” - The Implementation Agreement dated [_____] by and between the AJ&K Entities and the Seller, as may be amended from time to time with the prior written consent of the GOP.]³

“Bilateral Tax Treaties” – One or more conventions or treaties executed or to be executed between certain other countries and Pakistan for the avoidance of double taxation.

“Business Day” – Any Day on which banks are legally permitted to be open in Lahore and Islamabad, Pakistan.

“Change in Law” –

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

³ All references of AJK IA and the AJ&K Entities in this Agreement to be deleted where there is no AJK IA.

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

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

“Change in Law Force Majeure Event” or “CLFME” – The meaning ascribed thereto in Section 13.1(b).

“Change in Tax” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Commercial Operations Date” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Commission” or “Commissioning” or “Commissioned” – The meanings ascribed thereto in the Energy Purchase Agreement.

“Compensation Amounts” – The compensation amounts shown in a matrix format in Part I of Schedule 2 (*Compensation Amounts*).

“Complex” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Constitution” – The Constitution of the Islamic Republic of Pakistan, 1973, as amended from time to time.

“Construction Start Date” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Contractors” – The meaning ascribed thereto in the Energy Purchase Agreement.

[“Council” - The Azad Jammu & Kashmir Council constituted under the Azad Jammu & Kashmir Interim Constitution Act 1974.]

“Customs” - The agency or agencies of the GOP responsible for collection of Customs Duties and the release of plant, equipment and machinery following import into or before export out of, Pakistan.

“Customs Duties” – All Taxes (other than Sales Tax) on or relating to the import into or export from Pakistan of plant, machinery and equipment, and levied by any Federal Entity including Federal Excise Duty (levied under the Federal Excise Act 2005).

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

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

“Dispute” – Any dispute or disagreement or difference arising under, out of, or in connection with or relating to this Agreement, including, without limitation, any dispute or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof or the performance of a Party under any provision hereof.

“Direct Agreement” – The tripartite agreement between the Lenders, Seller and the GOP pertaining to rights and responsibilities of the Lenders relating to this Agreement and the Guarantee as provided under Section 11.2(1).

“Dollars” and “\$” – The lawful currency of the United States of America.

“Effective Date” – The meaning ascribed thereto in Section 2.1 (*Effectiveness of Agreement; Term*).

“Emergency” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Energy Purchase Agreement” – The Energy Purchase Agreement, entered or to be entered into by and between the Purchaser and the Seller, for the purchase and sale of electric energy generated by the Complex, as may be amended by the parties thereto from time to time

“Environmental Liabilities” – All Losses (including, without limitation, reasonable costs of investigation, testing, containment, removal, cleanup, abatement or remediation, and reasonable attorney’s fees and costs), whether or not quantified in amounts relating to the presence in the environment of Hazardous Materials attributable to the Complex or any liabilities or obligations arising from any violation by the Seller, its Contractors or their employees or agents of any environmental Laws of Pakistan.

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

“EPC” – Engineering, procurement and construction.

“EPC Contract” – The meaning ascribed thereto in the Energy Purchase Agreement.

“EPC Contractor” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Euro” – The lawful currency of the European Monetary Union.

“Evaluation Period” – The meaning ascribed thereto in Section 14.4(b).

“Expert” – The meaning ascribed thereto in Section 16.2(a).

“Extended Cure Period” – The meaning ascribed thereto in Section 14.4(b).

“Federal Entity” – Any Public Sector Entity subject to the overall control or direction as to matters of policy by the GOP or which is otherwise under or controlled by the GOP.

“Financial Closing” – (a) The execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, completion and Commissioning of the Complex, and evidence of commitments for such equity as is required by the Seller to satisfy the requirements of the Lenders and the Letter of Support and the

satisfaction or waiver of all conditions precedent for the initial availability of funds under the Financing Documents (other than the effectiveness of this Agreement and the Energy Purchase Agreement), (b) the delivery of the Seller Letter of Credit in accordance with the terms of the Energy Purchase Agreement, and (c) issuance of the Guarantee in accordance with the terms of this Agreement.

“Financing Documents” – (A) Senior Loan Agreements listed in Schedule 1 to the Direct Agreement, and (B) where applicable, Subordinated Loan Agreements listed in Schedule 2 to the Direct Agreement, provided that, if the Lenders in their sole discretion elect not to enter into a Direct Agreement with the GOP, the Senior Loan Agreements and the Subordinated Loan Agreements listed in the certificate furnished to AEDB by the Lenders pursuant to Section 18.15(e)(i), and all related notes, indentures, security agreements, guarantees, notices and schedules of disbursements, documents under any Islamic financing arrangements (including but not limited to mark up based financing), agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect of documents assigned as security to the Lenders) and other documents entered into by the Seller with the Lenders, as such agreements, instruments, guarantees and documents may be amended from time to time, but excluding any loan, financing and security agreements and related instruments entered into by the Seller with any short-term creditors for working capital or similar short-term credit facilities for the purposes of operations of the Complex and not listed in Schedule 1 or Schedule 2 to the Direct Agreement or in the certificate furnished to AEDB pursuant to Section 18.15(e)(i).

“Force Majeure Events” – The meaning ascribed thereto in Section 13.1.

“Foreign Currency” – Any legal currency other than Rupees.

“Foreign Investors” – Shareholders of the Seller who are foreigners or non-resident Pakistan nationals holding dual nationality or companies established under a jurisdiction other than Pakistan.

“Generation License” – The meaning ascribed thereto in the Energy Purchase Agreement.

[“GOAJ&K” – The Azad Government of the State of Jammu & Kashmir.]

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

“GOP Event of Default” – The meaning ascribed thereto in Section 14.1(b).

“Guarantee” – The guarantee by the GOP of the payment obligations of (i) the Purchaser under the Energy Purchase Agreement, [(ii) the AJ&K Entities under the AJ&K Implementation Agreement,] and (iii) the [Provincial Government] [GOAJ&K] under the Water Use Agreement in the form of Schedule 3 (*Form of Guarantee*).

“Hazardous Material” – Any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive or radioactive materials regulated under, or subject to any Laws of Pakistan.

“Initial Shareholder” – [●].

“Interest Charges Component” — The meaning ascribed thereto in the Energy Purchase Agreement.

“Interest Margin Savings” – The meaning ascribed thereto in Section 11.3(b).

“Investor” – The holder, from time to time of Ordinary Share Capital, and the holder of any securities convertible at the option of the holder into Ordinary Share Capital, in a manner not inconsistent with the terms of this Agreement.

“KIBOR” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Lapse of Consent” – Any Seller Consent (a) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the applicable Laws of Pakistan for the renewal or replacement of such Seller Consent or, where a time period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of such Seller Consent ceasing to be in full force and effect, or (b) (other than a Specified Consent listed in Part I of Schedule 1 (*Specified Consents*)) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the applicable Laws of Pakistan or where a time period is not prescribed by the applicable Laws of Pakistan, within sixty (60) Days of proper application being made for such Seller Consent or (c) being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Seller’s (or a Contractor’s) ability to perform its obligations under any document included within the Project Agreements, in each of the above instances despite such party’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” manner (as explained in Section 12.4 (*Non-Discriminatory*)).

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

“Lead Investor” – [●].

“Lenders” – The financial institutions listed in the Direct Agreement or, if the Lenders in their sole discretion elect not to execute the Direct Agreement, then as listed in the certificate furnished to AEDB by the Lenders pursuant to Section 18.15(e)(i), that are parties to the Financing Documents, or subsequent financial institutions that become parties to the Financing Documents, together with their respective successors and assigns.

“Letter of Support” – The [tripartite] Letter of Support dated •, issued by the [AEDB] / [Provincial Government] as may be amended, extended or clarified prior to Financial Closing.

“LIBOR” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Local Investor” – Any Investor who is not a Foreign Investor.

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

“Month” – The meaning ascribed thereto in the Energy Purchase Agreement.

“MW” – Megawatt or one million (1,000,000) Watts.

“NEPRA” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Notice of Intent to Succeed” – The meaning ascribed thereto in Section 11.2(b).

“Notice of Intent to Terminate” – The meaning ascribed thereto in Section 14.2(a).

“O&M Agreement” – The meaning ascribed thereto in the Energy Purchase Agreement.

“O&M Contractor” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Other Force Majeure Event” or “OFME” — The meaning ascribed thereto in the Energy Purchase Agreement.

“Pakistan” – The Islamic Republic of Pakistan.

“PPFME” – The meaning ascribed thereto in Section 13.1(a).

“Pakistan Political Force Majeure Event” or “PPFME” – The meaning ascribed thereto in Section 13.1(a).

“Payment Date” – The meaning ascribed thereto in Section 15.5(b).

“Performance Guarantee” – An unconditional, irrevocable, on-demand bank guarantee provided by the Seller in favour of AEDB at the time the AEDB issued the Letter of Support to the Seller or any other such guarantee provided by the Seller upon extension of the Letter of Support by AEDB, which secures the Seller’s obligation to achieve Financial Closing by the date specified in the Letter of Support.

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

“Prescribed Fee” – With respect to any Seller Consent, the charge or fee, if any, prescribed by the Laws of Pakistan.

“Prescribed Form” – With respect to any Seller Consent, the form, if any, (including all information and details) prescribed by the Laws of Pakistan for the application for or renewal of such Seller Consent.

“Principal Repayment Component” — The meaning ascribed thereto in the Energy Purchase Agreement.

“Project” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Project Agreements” –

- (a) this Agreement;
- (b) Energy Purchase Agreement;
- (c) O&M Agreement, if any;
- (d) EPC Contract;
- (e) Site Lease;
- (f) Financing Documents;
- (g) Insurance policies required to be procured and maintained by the Seller under the Energy Purchase Agreement and/or the Financing Documents;
- (h) Guarantee;
- (i) Carbon Credit Agreement;
- (j) Letter of Support;
- (k) Water Use Agreement; and
- [(l) AJ&K Implementation Agreement.]

“Proposed Material Amendment” – The meaning ascribed thereto in Section 6.2(b).

“Protected Assets” – The meaning ascribed thereto in Section 16.5(a)(i).

[“Provincial Government” – The Government of the Province of •.]

“Prudent Utility Practices” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Purchaser” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Purchaser Event of Default” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Purchaser Interconnection Facilities” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Reference Interest Margin” – The margins of interest on the principal sum of debt over LIBOR and KIBOR for the local and foreign financing for the Project assumed by NEPRA in the Tariff Determination for calculation of the Reference Tariff.

“Reference Tariff” – The reference tariff set forth in the Reference Tariff Table.

“Reference Tariff Table” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Required Commercial Operations Date” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Reserve Fund” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Restoration” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Restoration Cost Estimate” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Restoration Schedule” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Rules” – The meaning ascribed thereto in Section 16.3(a).

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

“Sales Tax” – Sales tax levied under the Sales Tax Act 1990, as may be amended or superseded from time to time.

“Seller” – [●], a company incorporated under the Companies Ordinance, 1984, with its registered office at ●, and its permitted successors and permitted assigns and permitted Transferee.

“Seller Consents” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses (including the Generation License and the Water Use Agreement), permits, decisions or similar items issued by a Relevant Authority or a Public Sector Entity which the Seller (and its Contractors) is required to obtain and thereafter to maintain to fulfill its obligations under the Energy Purchase Agreement or this Agreement, including the Specified Consents; provided, however, that in no event shall the Seller Consents include any concessions or exemptions from the Laws of Pakistan unless they are expressly granted pursuant to the terms of this Agreement.

“Seller Event of Default” – The meaning ascribed thereto in Section 14.1(a).

“Seller Interconnection Facilities” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Seller Letter of Credit” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Senior Loan Agreements” -Loan agreements other than Subordinated Loan Agreements between the Lenders and the Seller for debt in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof).

“Site” – The meaning ascribed thereto in the Energy Purchase Agreement.

[“Site Lease”– The lease for the Site granted by the [Provincial Government] / [GOAJ&K] for the construction of the Complex.]

“Specified Consents” – The Seller Consents identified in Schedule 1 (*Specified Consents*).

“State Bank of Pakistan” – The State Bank of Pakistan, and its successors.

“Subordinated Loan Agreements” – The loan agreements between the Seller and its Investors in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof) and subordinated to the Senior Loan Agreements.

“Succession Notice” – The meaning ascribed thereto in Section 11.2(b).

“Supplemental Tariff” – The meaning ascribed thereto in the Energy Purchase Agreement.

“Tariff Determination” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Term” – The meaning ascribed thereto in Section 2.1 (*Effectiveness of Agreement; Term*).

“Termination Date” – The date that any termination of this Agreement shall be effective, as provided in Section 14.2(c).

“Termination Invoice” – The meaning ascribed thereto in Section 15.5(a).

“Termination Notice” – A written notice of termination of this Agreement issued by the GOP or the Seller, as the case may be, pursuant to Section 14.2(c).

“Transfer Date” – The date on which the Complex is to be transferred to the GOP or its designee pursuant to and in accordance with the provisions of Article XV (*Rights and Obligations of Parties upon Termination*).

“Transferable Assets” – The meaning ascribed thereto in Section 15.6(a).

“Transferee” – The meaning ascribed thereto in Section 11.2(i).

“Water Use Agreement” – The meaning ascribed thereto in the Energy Purchaser Agreement.

“Water Resource” - The meaning ascribed thereto in the Energy Purchaser Agreement.

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

Section 1.2 Rules of Interpretation

In this Agreement:

- 1.2.1 headings are only for convenience, and shall be ignored in construing this Agreement;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to Articles, Sections, Recitals and Schedules are, unless the context otherwise requires, references to Articles, Sections and Schedules to this Agreement;
- 1.2.4 unless the context requires otherwise, references to times and dates are, and shall be construed to be, references to Pakistan standard time;
- 1.2.5 unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised, if at all, on reasonable grounds;
- 1.2.6 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.2.7 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- 1.2.8 the words “include”, “including, and “in particular” shall not be construed as, nor shall they have the effect of limiting the generality of the preceding words to which they are related;
- 1.2.9 except as expressly provided herein, nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Seller, to claim any benefit provided under the Laws of Pakistan (whether in effect now or in the future);
- 1.2.10 notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damages and/or losses suffered for that particular event or occurrence;
- 1.2.11 whenever under this Agreement a Party is required to exercise discretion by: (a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party, the Party exercising such discretion shall exercise such discretion fairly and reasonably; and

1.2.12 the expression “interest” when used in the context of return on any form of financing for or in relation to the Project means and includes mark-up, cost of funds and any other form of return on debt, credit, loan or return on Islamic mode of financing.

ARTICLE II TERM

Section 2.1 Effectiveness of Agreement; Term

Except for the provisions of Article I (*Definitions*), Article II (*Term*), Article IV (*Acquisition of Site, Transportation and Consents*), Section 5.1 (*Support to Obtain Seller Consents*), Section 5.2 (*Conditions to Seller Consents*), Section 5.3 (*Support for Obligations*), Section 5.5 (*Immigration Controls*), Section 6.2 (*Construction, Operation, and Maintenance of Complex; Appointment of Contractors*), Article XI (*Assignment and Security*), Article XVII (*Guarantee*) and Article XVIII (*Miscellaneous Provisions*), which shall become effective immediately upon execution and delivery of this Agreement, this Agreement shall commence and be effective in its entirety on the date of Financial Closing (the “**Effective Date**”). Unless terminated earlier in accordance with the terms of the Letter of Support or Article XIV (*Termination*), as the case may be, this Agreement shall continue in full force and effect for a term equal to the “Term” (as defined in the Energy Purchase Agreement) of the Energy Purchase Agreement (the “**Term**”).

Section 2.2 Termination of Letter of Support

If Financial Closing does not occur in accordance with the requirements of the Letter of Support and the Letter of Support is terminated by AEDB in accordance with the terms of the Letter of Support, then this Agreement (together with any GOP or AEDB obligations under any Project Agreement that has become effective) shall terminate in its entirety without notice and without further action by the GOP or AEDB. Upon such termination, the GOP, AEDB or the Seller shall have no further obligations or liabilities under this Agreement. The Parties have agreed that the amount of the Performance Guarantee is reasonable and constitutes liquidated damages to the GOP and AEDB for the Seller’s failure to timely achieve Financial Closing hereunder and under the Letter of Support, and it is further understood and agreed that the encashment in full of the Performance Guarantee by the AEDB is in lieu of actual damages for such occurrence and the collection of such sums pursuant to such Performance Guarantee and the termination of this Agreement pursuant to this Section 2.2 (*Termination of Letter of Support*) is the sole remedy of the GOP and AEDB for such event.

Section 2.3 Role of AEDB

Except where the context expressly requires otherwise, the Parties hereby agree that:

- (i) all references herein to AEDB shall be deemed to refer to the GOP;
- (ii) wherever in this Agreement any action or performance is required of AEDB, such action or performance (or non-performance) by AEDB shall be deemed to be the action or performance (or non-performance) of the GOP and shall be binding on the GOP; and
- (iii) wherever in this Agreement any action or performance is required of the Seller to or in favour of AEDB, such action or performance (or non-performance) by the Seller shall be deemed to be the action or performance (or non-performance) to or in favour of GOP and shall be binding on the Seller.

ARTICLE III
IMPLEMENTATION OF THE PROJECT

The Seller shall design, insure, finance, acquire, construct, complete, and Commission the Complex, and shall own, operate, maintain, and transfer the Complex, in each case, in accordance with all applicable Laws of Pakistan, the Seller Consents, this Agreement, the Site Lease, the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] and the Water Use Agreement.

ARTICLE IV
ACQUISITION OF SITE, TRANSPORTATION, AND CONSENTS

Section 4.1 Acquisition by the Seller of Site and Transportation

[The Seller has identified and will have acquired the Site before Financial Closing.] / [The [Provincial Government] / [GOAJ&K] has leased the Site to the Seller pursuant to the Site Lease.] The Seller shall obtain adequate supplies for the Complex, make arrangements for delivery and receipt at port facilities in Pakistan of equipment and materials necessary to construct the Complex, and make arrangements for transport to the Site of all such equipment and materials from the port facilities. The Seller shall complete these activities in compliance with the terms of this Agreement, the Energy Purchase Agreement [and the Site Lease].

[(b) The GOP hereby indemnifies and holds harmless the Seller against all Losses arising in connection with or relating to any defect in title in the Seller's leasehold interest under the Site Lease, which prevents, impedes or delays the Seller from constructing, Commissioning, operating or transferring the Complex in accordance with the Project Agreements provided such Losses are not the consequence of any breach by the Seller of its obligations under the Site Lease, this Agreement, the Energy Purchase Agreement, or the Water Use Agreement, and provided further, that such action is not a consequence of (i) the Seller's failure to maintain the Site in its possession free from encroachments and encumbrances by third parties, or (ii) the Seller's breach of or failure to comply with Sections 14.3(c) and (d).]⁴

Section 4.2 Applications by the Seller for Seller Consents

The Seller shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Seller Consents in the Prescribed Form and with the Prescribed Fee to the appropriate Relevant Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of Pakistan applied in a "non-discriminatory" manner.

Section 4.3 Status of Seller Consent Applications

The Seller shall make or cause to be made, at least Monthly prior to the Commercial Operations Date, and at least quarterly thereafter, reports listing its schedule for submitting Seller Consent application forms or renewal application forms, the status of any Seller Consent applications then outstanding, notifications of the granting or denial of any Seller Consent or Seller Consent renewal, and notifications of any violations of any Seller Consent. Each report shall be submitted to the AEDB and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Seller Consent or Seller Consent application that may materially affect the Seller's performance under this Agreement, the Energy Purchase Agreement, the Water Use Agreement, [or the Site Lease]. In the event of any Lapse of Consent,

⁴ To be included if Site Lease given by Site Lease given by Provincial Government/GOAJK subject to the terms of the Site Lease being satisfactory by the GOP and the Coordination Agreement having been executed between the GOP and the Provincial Government/GOAJK.

the Seller shall submit a report pursuant to this Section 4.3 (*Status of Seller Consent Applications*) within three (3) Days after becoming aware thereof.

ARTICLE V SUPPORT OF THE GOP

Section 5.1 Support to Obtain Seller Consents

Subject to the Seller's timely submission of reports required by Section 4.3 (*Status of Seller Consent Applications*), upon request of the Seller, the AEDB shall support and use all reasonable efforts to expedite consideration of the applications for the Seller Consents or reissuances thereof filed pursuant to Section 4.2 (*Applications by the Seller for Seller Consents*), and the timely issuance thereof or reissuance of a Seller Consent subject to a Lapse of Consent by any Relevant Authority or Public Sector Entity. Any request for support under this Section 5.1 (*Support to Obtain Seller Consents*) shall be made by the Seller and shall be accompanied with copies of the application for the Seller Consent, any notice that the issuance or reissuance of the Seller Consent was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Seller Consent to date.

Section 5.2 Conditions to the Seller Consents

The GOP or any Relevant Authority may attach such "non-discriminatory" terms and conditions (as explained in Section 12.4 (*Non-Discriminatory*)) to the issuance or renewal of any of the Seller Consents as are in accordance with the Laws of Pakistan and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article XIII (*Force Majeure*) (unless it constitutes a CLFME or Lapse of Consent), or a GOP Event of Default under Section 14.1(b). The Seller and its Contractors shall abide by all such terms and conditions (subject to this Section 5.2 (*Conditions to Seller Consents*) and provisions in this Agreement relating to CLFME and Lapse of Consent). If the Seller (including where it is acting through its Contractors) fails to abide by any term or condition of any Seller Consent, then the GOP or any Relevant Authority may exercise any power pursuant to the Laws of Pakistan (provided such power is exercised in a "non-discriminatory" manner) in respect of such failure and (subject to this Section 5.2 (*Conditions to Seller Consents*) and provisions in this Agreement relating to CLFME and Lapse of Consent) such exercise shall not of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article XIII (*Force Majeure*), or a GOP Event of Default under Section 14.1(b); provided, however, that, with respect to all such Seller Consents issued by the GOP or any Relevant Authority that is also a Federal Entity, the GOP shall not, and the GOP shall ensure that no such Relevant Authority shall, terminate prior to its expiration date or revoke any such Seller Consent earlier than the later of (i) thirty (30) Days after delivery to the Seller (or the relevant Contractor) of written notice by the AEDB or such Relevant Authority of such failure and (ii) the period of time, if any, that must expire under the Laws of Pakistan or the relevant Seller Consent prior to early termination or revocation of any such Seller Consent; provided, further, that nothing in this Section 5.2 (*Conditions to Seller Consents*) shall limit the GOP or any Relevant Authority from taking any action in relation to a breach of, or non-compliance with, a Seller Consent (other than termination or revocation) which it is entitled to take under the Laws of Pakistan (provided such action is taken in a "non-discriminatory" manner).

Section 5.3 Support for Obligations

Upon reasonable request by the Seller, the AEDB shall use its reasonable efforts and its good offices to support the Seller's performance of its obligations to design, finance, insure, acquire, construct, complete, Commission, own, operate, maintain and transfer the Complex. If the Seller

has failed to comply with its obligations under this Agreement and such failure is the principal cause of the Seller's difficulties in performing such activities, the AEDB may advise the Seller of such determination, and the GOP or the AEDB shall not be obligated to take any action to assist the Seller pursuant to this Article V (*Support of the GOP*) until such time as the Seller has fully complied with its obligations under this Agreement. By agreeing to use its reasonable efforts and its good offices to support the Seller's efforts, the GOP has not relieved, and does not relieve in any way, the Seller of its obligations or potential liability under this Agreement, the Energy Purchase Agreement, and the other documents comprising the Project Agreements.

Section 5.4 Security Protection

The Seller shall provide security personnel, adequate security facilities and equipment for the protection and security of the Complex and the Site. The GOP shall ensure that the relevant law and order enforcement agencies shall extend security enforcement on a "non-discriminatory" basis to the Complex at no cost or expense to the Seller. From time to time, the Seller may request additional security forces from the GOP to meet unusual security requirements. All such additional security forces shall remain under the exclusive control and direction of the GOP. All reasonable out-of-pocket expenses incurred by the GOP in providing such security forces requested by the Seller shall be reimbursed to the GOP (through the AEDB) by the Seller within twenty one (21) Days of such expenditure having been notified by the AEDB, provided, however, that, in no event shall the Seller have an obligation to reimburse such expenses in excess of US\$150,000 in any Year, which amount shall be increased by three percent (3%) per Year commencing with the Commercial Operations Date.

Section 5.5 Immigration Controls

Provided the Seller and its Contractors comply with all applicable Laws of Pakistan, the GOP will expeditiously grant applications of the Seller (and its Contractors) for work permits, employment passes, visas, and other permits, as necessary for individuals involved in the Project. Notwithstanding the foregoing, however, the GOP may, in any individual case, decline to grant an application, or expel a person previously admitted, to protect the national security interests and public health and safety of Pakistan, as determined by the GOP.

Section 5.6 Procedure

To the extent permitted under the applicable Laws of Pakistan, all applications and any other necessary requisites, whether for the Seller, its employees or Contractors, are to be routed through the Seller.

ARTICLE VI
CONSTRUCTION, OPERATION, MAINTENANCE, AND STAFFING

Section 6.1 Pakistan Essential Services (Maintenance) Act 1952

The Seller shall be treated on the same basis as any public sector power station or in the absence of any public sector power station, any other similar entity that provides an essential service for the purpose of the Pakistan Essential Services (Maintenance) Act, 1952, as amended from time to time.

Section 6.2 Construction, Operation, and Maintenance of Complex; Appointment of Contractors

- (a) The Seller shall design, procure, construct, install, Commission, operate and maintain the Complex; provided, however, that the Seller may contract with the EPC Contractor to design, procure, construct, install, and Commission the Complex and the O&M Contractor to operate and maintain the Complex; provided, further, that the appointment of the EPC Contractor and the O&M Contractor, if any, by the Seller shall not relieve the Seller of any of its obligations or potential liability regarding the design, procurement, financing, insuring, acquisition, construction, completion, operation or maintenance of the Complex.
- (b) EPC Contractor. The Seller shall deliver to AEDB a certificate of a duly authorized officer of the Seller setting out the name and nationality of the EPC Contractor and the country of manufacture of major pieces of equipment not later than fifteen (15) Business Days prior to execution thereof. AEDB shall then have the right, but not the obligation, to review the certificate, and it may without liability to the Seller notify the Seller that it objects to the EPC Contractor or the country of manufacture of major pieces of equipment in writing because, in its reasonable discretion (keeping national security considerations in due perspective), the appointment of the proposed EPC Contractor or the country of manufacture of major pieces of equipment would be adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the EPC Contractor or any country of manufacture of major pieces of equipment, it shall not be construed as in any way of having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to the certificate on or before the end of fifteen (15) Business Days following the delivery to AEDB of the aforesaid certificate AEDB shall be deemed not to object to the EPC Contractor or any country of manufacture of major pieces of equipment, and the EPC Contractor and the country of manufacture of major pieces of equipment shall be deemed to have been approved. Upon such deemed approval the Seller shall be relieved of any obligation under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the EPC Contractor or the country of manufacture of major pieces of equipment. Thereafter, the Seller shall provide the AEDB with a certificate of a duly authorized officer of the Seller setting out details of (i) a change in the EPC Contractor, or (ii) a change in the country of manufacture of a major piece of equipment, (a “**Proposed Material Amendment**”), no later than

fifteen (15) Business Days prior to execution of an amendment to the EPC Contract, setting forth the proposed changes. The AEDB shall then have the right, but not the obligation, to review the certificate, and may notify the Seller prior to the proposed execution date that it objects to the Proposed Material Amendment because, in its reasonable discretion (keeping national security considerations in due perspective), the proposed EPC Contractor or the country of manufacture of a piece of equipment is adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the Proposed Material Amendment, AEDB shall not be construed as having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to such certificate on or before the end of the fifteen (15) Business Days period provided for herein, as the case may be, it shall be deemed not to have objected to the Proposed Material Amendment and such Proposed Material Amendment shall be deemed approved. Upon such deemed approval the Seller shall be relieved of any obligations under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the Proposed Material Amendment. In addition, AEDB agrees and shall ensure that the confidentiality provisions contained in this Agreement shall apply to AEDB and its representative with respect to any confidential or proprietary information provided in respect of any Proposed Material Amendment.

- (c) Review of EPC Contract and Amendments. Within thirty (30) days after execution of the EPC Contract and any Proposed Material Amendment, the Seller shall (i) deliver to the AEDB a copy of the EPC Contract and each such Proposed Material Amendment with information that is confidential or proprietary deleted therefrom, and (ii) make available to an authorized representative of AEDB, during normal business hours and upon reasonable notice, at the Seller's offices in, a complete copy of the EPC Contract and all Proposed Material Amendments; provided, however, that such representative may not make any photocopies or other mechanical reproductions of such documents. In addition, the confidentiality provisions contained in this Agreement shall apply to AEDB and its representative with respect to any confidential or proprietary information reviewed in the EPC Contract.

- (d) O&M Contractor. The Seller shall deliver to AEDB a certificate of a duly authorized officer of the Seller setting out the name and nationality of the O&M Contractor and any major sub-contractor along with a description of the proposed O&M Agreement, no later than fifteen (15) Business Days prior to execution thereof. AEDB shall then have the right, but not the obligation, to review the certificate, and it may without liability to the Seller notify the Seller that it objects to the O&M Contractor or a major sub-contractor in writing because, in its reasonable discretion (keeping national security considerations in due perspective), the appointment of the proposed O&M Contractor or a major sub-contractor would be adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the O&M Contractor or any major sub-contractor, AEDB shall not be construed as having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to the certificate on or

before the end of fifteen (15) Business Days following the delivery to AEDB of the aforesaid certificate, AEDB shall be deemed not to object to the O&M Contractor or any major sub-contractor, and the O&M Contractor and the major-subcontractor shall be deemed approved. Upon such deemed approval the Seller shall be relieved of any obligation under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the O&M Contractor or such major sub-contractor.

- (e) Operation of the Complex by the Seller. Notwithstanding anything contained in this Article VI (*Construction, Operation, Maintenance, and Staffing*) to the contrary, the Seller shall be entitled to engage its own personnel and operate the Complex or, if the O&M Agreement then in effect has been terminated by the Seller or otherwise expired in accordance with its terms, engage some or all of the personnel of the former O&M Contractor and operate the Complex, in either case, with prior notice to AEDB. Nothing contained in this Section 6.2(d) shall be deemed or construed to (i) impose an obligation on the Seller to obtain AEDB's consent in relation to the exercise of its rights under this Section 6.2(d); or (ii) affect any GOP rights, including but not limited to, those under Section 5.5 (*Immigration Controls*); or (iii) relieve the Seller of its obligations under this Agreement, the Energy Purchase Agreement, the Water Use Agreement, [and the AJ&K Implementation Agreement].

ARTICLE VII LIABILITY

Section 7.1 Limitation of Liability

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability (except under Section 18.13(c)), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages, provided that the Parties hereby agree that the Compensation Amounts, indemnities and any other payments agreed to by the Parties under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of this Agreement or the Guarantee; 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 Agreement or to any activity not contemplated by this Agreement.

Section 7.2 Indemnification for Fines and Penalties

Any fines or other penalties incurred by the Seller for non-compliance with applicable Laws of Pakistan or other governmental directions issued pursuant thereto and in accordance therewith or the Seller Consents shall not be reimbursed by any Relevant Authority but shall be the sole responsibility of the Seller.

Section 7.3 Double Jeopardy under Certain Project Agreements

- (a) Except Disputes or breaches related to [Section 2.3, Article XII, Article XIV, and Article XVI]⁵ of the Energy Purchase Agreement: (A) any settlement or waiver in writing (i) by the Purchaser of any dispute or breach under the Energy Purchase Agreement, or (ii) by the [Provincial Government] / [GOAJ&K] or the Seller of any dispute or breach under the Site Lease to the extent such settlement or waiver (1) does not alter or increase the obligations of the GOP under this Agreement, or (2) does not cause the GOP to be in breach of or default under this Agreement, [including a GOP Event of Default under Sections 14.1(b)(iv) or (v)]; (B) provided that the GOP was given reasonable and timely notice of and the opportunity to participate in any proceedings (initiated by the Seller or the Purchaser) concerning any dispute or breach of the Energy Purchase Agreement, any final, non-appealable order or award issued or given in any such proceedings, shall be binding on the GOP with respect to an issue or claim been settled or waived, or award been issued, as the case may be, based on the same facts or acts or omissions by the Seller. Settlement or waiver of any Dispute or breach related to Section 2.3, and Article XII, Article XIV, and Article XVI of the Energy Purchase Agreement shall be effective only if agreed to, in writing, by both the Purchaser and the GOP. The GOP hereby consents, at the request of the Seller, to be timely joined in any proceedings (initiated by the Seller or the Purchaser) concerning any claim of any breach of or other dispute related to the Energy Purchase Agreement if and to the extent the

⁵ To be reconfirmed in execution versions.

Seller's rights or obligations under this Agreement or under the Guarantee may be affected by such proceedings.

- (b) Notwithstanding any other provision in this Agreement to the contrary, the Purchaser shall be responsible in the first instance for pursuing any claim against the Seller based upon a failure of the Seller to satisfy its obligations under the Energy Purchase Agreement. The GOP shall not bring (or other than through the Purchaser, cause any proceedings to be brought) against the Seller for any breach of its obligations under Article III(*Implementation of the Project*) and Section 4.1 (*Acquisition by the Seller of Site and Transportation*) and Section 4.2 (*Applications by the Seller for Consents*) (to the extent such Articles and Sections relate to substantially similar obligations of the Seller under the Energy Purchase Agreement) or Article XI (*Assignment and Security*) of this Agreement, if the Purchaser has pursued, or is then pursuing, a claim or claims against the Seller based upon an alleged breach of the Energy Purchase Agreement. A final, non-appealable order issued in a proceeding initiated by the Purchaser and based upon a claim of a breach of the Energy Purchase Agreement, shall preclude any proceedings against the Seller that the GOP could otherwise bring for breach by the Seller of substantially the same obligations under this Agreement. Nothing in this Section 7.3 (*Double Jeopardy under Certain Project Agreements*) shall prevent the GOP and the Purchaser from separately initiating proceedings to terminate this Agreement and the Energy Purchase Agreement, respectively, pursuant to Article XIV of this Agreement and Article XVI of the Energy Purchase Agreement.

ARTICLE VIII INSURANCE

The Seller shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with Article XII of the Energy Purchase Agreement. The GOP shall be included as an additional insured on any property and liability insurance policies covering the Complex; provided however, that the GOP hereby agrees to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein. Subject to the provisions of Section 15.1(f) of this Agreement, Article XV of the Energy Purchase Agreement and the Financing Documents (which may have different requirements regarding the use of insurance proceeds), the proceeds of all such insurance (except loss of revenue/profits or business interruption coverage) shall be used to repair or restore the Complex to the condition existing immediately prior to the event giving rise to such insurance claim and proceeds. Copies of any filed claims or the receipt of any insurance proceeds shall be notified to AEDB within seven (7) Business Days of such filing or receipt of proceeds by the Seller.

ARTICLE IX TAXATION AND IMPORT CONTROLS

Section 9.1 Taxation of the Seller

During the Term the Seller shall not be subject to taxation in Pakistan on its profits and gains derived from sale of electricity under the Energy Purchase Agreement, as provided under Clause 132 of Part I of Second Schedule to the Income Tax Ordinance, 2001, as in effect on the date hereof or payments in lieu thereof, including payments made by the GOP to the Seller under Section 15.1 (*Compensation upon Termination*); provided, that any change in [Clause 132]⁶ of Part I of Second Schedule to the Income Tax Ordinance, 2001 or its application to the Seller shall not give rise to a breach or default of the GOP hereunder so long as such change results in a Change in Tax as provided in Section 14.4 and Schedule 1 to the Energy Purchase Agreement.

Section 9.2 Taxation of Investors

Local Investors will be taxed according to the applicable Laws of Pakistan while Foreign Investors will be governed by the Bilateral Tax Treaties (if any) with the respective countries. Foreign Investors, where no Bilateral Tax Treaties exist with the respective countries shall be taxed in accordance with the applicable Laws of Pakistan.

Section 9.3 Right to Import; Customs Duties

- (a) The GOP encourages the Seller and its Contractors to incorporate as much locally produced material, equipment, and supplies as possible for the design, construction, completion, operation and maintenance of the Complex. Nonetheless, the Seller and its Contractors shall be entitled to import without restriction and, shall be exempt from (or shall enjoy a reduced rate of) Customs Duty and Sales Tax on, plant, machinery, equipment and spare parts, and replacements therefor required for the design, construction, completion, operation, repair and maintenance of the Complex as provided in the [Finance Act, 2014, the Fifth Schedule to the Customs Act, 1969 and the Sixth Schedule to the Sales Tax Act, 1990]⁷ (as each is in effect on the date hereof) and any other item or items of plant, equipment or machinery that are incorporated into the Complex or whose use is dedicated to the operation and/or maintenance of the Complex as confirmed by the AEDB and by the Federal Board of Revenue, subject to the conditions and compliance with any additional requirements and restrictions (including, to the extent applicable, relating to locally manufactured items) imposed and benefits extended by the Finance Act, 2014, the Fifth Schedule to the Customs Act, 1969 and the Sixth Schedule to the Sales Tax Act, 1990 (as each may be amended, modified, replaced or substituted from time to time, and including subsequent notifications and circulars issued pursuant thereto); provided, that such imported plant, machinery and equipment, spare parts and replacements shall be dedicated for use by the Project and located at the Site, and will not be used for any purpose other than the

⁶ Latest status to be confirmed at the time of execution of the IA.

⁷ *ibid*

Project or sold or otherwise transferred to any Person other than the Lenders or their designee as a result of enforcement of security; and provided, further, that any amendment, modification, replacement or substitution of the applicable provisions of the [Finance Act, 2014, the Customs Act or Sales Tax Act] that results in the withdrawal of exemption from or loss of the preferential rate of Customs Duty or Sales Tax shall not give rise to a breach or a GOP default hereunder so long as such withdrawal of exemption or loss of the preferential rate results in (i) a Change in Tax as provided in Section 14.4 and Schedule 1 to the Energy Purchase Agreement or (ii) is allowed by NEPRA within one hundred and twenty (120) Days of the Seller's application being filed with NEPRA for modification of the Reference Tariff to permit pass-through of the Customs Duties and/or Sales Tax and/or the change in the applicable rate thereof, as the case may be.

- (b) Provided that applicable Customs Duties and Sales Tax, if any, are timely paid, all plant, machinery, equipment, spare parts and replacements imported for incorporation into the Complex or use in the Project, will be cleared for release from Customs and be available for removal by the Seller or its agents within fifteen (15) Business Days following delivery by the Seller of written notice to AEDB of a delay in the release by Customs of such plant, machinery and equipment, spare parts or replacements. For release of such plant, machinery or equipment, spare parts or replacements, such notice may be given at any time after a delay of ten (10) Days following delivery to the proper authorities of all documents (including all information and details) required by the Laws of Pakistan for importation of plant, machinery and equipment, spare parts and replacements into Pakistan. In the event that there is a claim for Customs Duties or Sales Tax, as determined under the Laws of Pakistan, on plant, machinery or equipment, spare parts and replacements not manufactured locally, imported prior to the Commercial Operations Date for incorporation into the Complex or for use in the Project, and the Seller chooses to pay such duties under protest, upon the Seller's notice to AEDB, such Dispute shall be resolved consistent with the terms of this Agreement within ninety (90) Days after the Seller files its refund claim.
- (c) All items not consumed during construction of the Complex or incorporated into the Complex, may be freely re-exported by the Seller within twelve (12) Months following the Commercial Operations Date, without incurring further liability for Customs Duties in Pakistan. The GOP may, as provided by the Laws of Pakistan, require the Seller to re-export any items of plant, equipment or machinery used in the construction of the Complex that are not reasonably required for the Seller to operate and maintain the Complex, unless the Seller agrees promptly to pay the applicable import fees and Customs Duties therefor.

Section 9.4 Export and Reimport

The Seller shall be entitled to export all items of plant, machinery, equipment spare parts and replacements imported by it under this Article IX (*Taxation and Import Controls*) for permanent installation in the Complex for the purpose of remedying defects, repair or refurbishment outside Pakistan and, where applicable, to re-import the same, to the extent permitted under the Laws of Pakistan without payment of any Customs Duties in respect of the same, provided however the Seller has complied with the provisions of Section 9.3 (*Right to Import; Customs Duties*) in respect of such items of plant, equipment, spare parts and machinery. The GOP shall, at the

request of the Seller, use its reasonable endeavours to expedite the issuance of any Seller Consent required for the export and re-import of such machinery and equipment.

ARTICLE X
FOREIGN CURRENCY EXCHANGE AND TRANSFER OF FUNDS

Section 10.1 Foreign Exchange Regulation

The exchange and transfer abroad of all Foreign Currency related to the Project shall be governed by the Laws of Pakistan including, but not limited to, the Foreign Exchange Regulation Act, 1947 of Pakistan and the Protection of Economic Reforms Act, 1992 of Pakistan.

Section 10.2 Use of Pakistan Bank Accounts; Exceptions

All of the Seller's transactions related to the Project that require Foreign Currency, including debt servicing and repatriation of earnings and dividends, will be initiated through bank accounts in Pakistan; provided, however, that Foreign Currency provided by foreign Lenders and Foreign Investors, liquidated damages in Foreign Currency paid by foreign Contractors or vendors, proceeds of insurance and reinsurance by foreign insurers and any other Foreign Currency from foreign sources that is used to pay foreign Contractors, vendors, insurers, reinsurers, Investors or Lenders may be paid directly to such Persons and need not be conducted through bank accounts in Pakistan, as provided in the Foreign Exchange Manual of the State Bank of Pakistan, as in effect on the date hereof.

Section 10.3 Consent to Foreign Currency Accounts

Consents for the Seller (a) to open, operate, and retain earnings in Foreign Currency bank accounts inside Pakistan (in accordance with the Laws of Pakistan prevailing on the date hereof), (b) to maintain bank accounts outside Pakistan and to transfer any funds from its accounts in Pakistan to its accounts maintained outside Pakistan as are necessary to implement and carry out the Project in accordance with the Project Agreements and (c) to open, operate and retain earnings in such other bank accounts (including reserve accounts) reasonably required to effect the arrangements provided under the Financing Documents and to carry out and perform its obligations under the Energy Purchase Agreement are included in the Specified Consents. Subsequent to the issuance of such Seller Consents, in the forms issued by the State Bank of Pakistan or other Relevant Authority, as the case may be, any withdrawal, revocation, modification, suspension or repeal of such Seller Consents shall constitute a Lapse of Consent. Nothing in this Agreement shall prevent the Seller from opening, operating and retaining Foreign Currency in additional Foreign Currency bank accounts outside Pakistan from time to time after the date of this Agreement, if and to the extent that it is or becomes otherwise permitted under the Laws of Pakistan.

Section 10.4 Availability of Foreign Exchange

Upon application having been made by the Seller in the Prescribed Form (such application having been made no less than fifteen (15) Business Days prior to the requested date for Dollars or Euros, as the case may be), the GOP shall, on such requested date, make available to the Seller through the State Bank of Pakistan, to the extent that Dollars or Euros, as the case may be, are not available through normal commercial banking channels, Dollars or Euros, as the case may be, in exchange for Rupees in the amount necessary for (not in order of priority) (i) meeting the Seller's requirements for Foreign Currency to meet its obligations under this Agreement including payments in Foreign Currency to the EPC Contractor under the EPC Contract, (ii) repatriation by the Seller of dividends to Foreign Investors and repatriation upon conversion of

Rupee proceeds of sales of Ordinary Share Capital purchased with the Rupee proceeds of Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation or expiry of Term of foreign investment in the share capital of the Seller, (iii) after the Commercial Operations Date, the necessary Foreign Currency expenses of the Project (including, without limitation, remuneration of the O&M Contractor, where applicable, fees, salaries and other monetary emoluments and the purchase of spare parts), (iv) the payment of premiums and fees to offshore insurers and reinsurers, (v) all payments to the Lenders that require Foreign Currency in accordance with the terms of the Financing Documents (vi) any Foreign Currency compensation payments to be made by the GOP in the event of termination of this Agreement pursuant to Section 15.1 (*Compensation upon Termination*) (and compensation payments for a loan denominated and payable in Foreign Currency under the Financing Documents shall, unless otherwise provided, be deemed to be required to be paid in such Foreign Currency), and (vii) in the event of a Restoration or modification of the Complex pursuant to Article XV of the Energy Purchase Agreement, any financing provided by the GOP or the Purchaser, as the case may be, in Rupees and payable to foreign Contractors in Foreign Currency. The exchange rate applicable to such conversion shall be the State Bank of Pakistan's "weighted average rate" (offer) (or the substitute or replacement rate thereto) for Dollars or Euros, as the case may be, announced or made available on the Business Day immediately preceding the requested date for payment in such application; provided that if more than two (2) such rates are made available on the relevant Business Day, the last such rate announced or made available shall be the applicable rate.

Section 10.5 Free Transfer and Repatriation of Necessary Funds

Without prejudice to Section 10.4 (*Availability of Foreign Exchange*), the GOP shall permit the free transfer of all funds and financial settlements necessary to the extent needed in Foreign Currency to implement and carry out the Project or as contemplated by this Agreement, and shall ensure full, timely, and unencumbered repatriation rights with respect to all Foreign Currency converted from Rupees pursuant to Section 10.4 (*Availability of Foreign Exchange*), whether converted through normal commercial banking channels or through the State Bank of Pakistan.

ARTICLE XI
ASSIGNMENT AND SECURITY

Section 11.1 Assignment

Except as provided in Section 11.2, no assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party.

Section 11.2 Creation of Security

- (a) Notwithstanding the provisions of Section 11.1 (*Assignment*), for the purpose of financing the Project in connection with the Financial Closing, the Seller may assign to, or create a security interest in favour of, the Lenders in the Seller's rights, obligations and interests under or pursuant to (i) this Agreement, the Guarantee and the Site Lease, (ii) any other agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the present and future movable, immovable, and intellectual property of the Seller, and (vi) the present and/or future revenues, actionable claims, debts or any of the rights or assets of the Seller, and (vii) any other present or future right, interest, property or asset of any kind and wherever situated, [provided, however, unless caused by a GOP Event of Default, the enforcement of any security interest by the Lenders (or the short term creditors) in respect of the Site Lease shall not in and of itself constitute a GOP Event of Default under Sections 14.1(b)(iv) or 14.1(b)(v).]

The Seller may also create security interests in its rights and assets identified in sub-items (iii) through (vii) in the preceding paragraph in favour of financial institutions acting as short-term creditors providing working capital or other short-term credit facilities required for its operations by the Seller or on the Complex for the purposes of the Seller Letter of Credit, subject to an unconditional undertaking furnished by the short-term creditors in favour of and delivered to AEDB (in form and content acceptable to AEDB) prior to the creation of any security interests stipulating that any such security interests on or in respect of the Transferrable Assets shall *ipso facto* stand vacated, released and cancelled upon payment of Compensation Amounts by the GOP to the Lenders (or to the Seller where applicable) pursuant to Article XV of this Agreement in connection with the transfer of the Transferable Assets to the GOP.

- (b) The Lenders shall have the rights expressly granted in their favour in this Agreement and the Direct Agreement. Except in respect of such rights, the Lenders shall not exercise any of the rights of the Seller under this Agreement, the Guarantee or the Site Lease (to the extent assigned or subject to a security interest pursuant to Section 11.2(a) unless and until such time as the Lenders (or the Agent) deliver a notice in writing to AEDB (the "**Succession Notice**") specifying that the Lenders or their designee are exercising their rights to succeed to the Seller's interest under this Agreement, the Guarantee or the Site Lease, as the case may be, whether by exercise of the rights or remedies of the Lenders under the Financing Documents to take control of and occupy or transfer the Complex or otherwise as contemplated by paragraph (c) below. The

Succession Notice shall not be effective unless the AEDB shall have, not less than thirty (30) Days prior to the receipt of the Succession Notice, received from the Lenders (or the Agent) a notice (“**Notice of Intent to Succeed**”) specifying (i) the occurrence and continuance of an event of default under the Financing Documents; (ii) the intent of the Lenders to exercise their rights to succeed; and (iii) the anticipated date of issuance of the Succession Notice, which anticipated date shall not be earlier than thirty (30) Days following the date of receipt by AEDB of the Notice of Intent to Succeed. The Parties agree that the Notice of Intent to Succeed to the extent it relates to any succession rights of the Lenders under this Section 11.2 (*Creation of Security*) shall not be binding upon the Lenders or their designee and shall not constitute a Succession Notice. Within twenty (20) Days of receipt of the Notice of Intent to Succeed, the GOP shall notify the Lenders (or the Agent) of all Seller Events of Default (or events that with delivery of notice and the passage of time would become Seller Events of Default) which are, or after delivery of a Succession Notice would be, required to be cured by the Lenders or their designee in accordance with Section 11.2(c). Such notice by the AEDB to the Lenders (or the Agent) shall state (A) all amounts due to the AEDB and the GOP under this Agreement as at the date of such notice, (B) all amounts which may become due to the AEDB and the GOP under this Agreement as at the date of such notice and the events which have occurred under this Agreement and giving rise to such amounts, (C) all amounts claimed by the AEDB and the GOP under this Agreement as at the date of such notice which are then in dispute with the Seller, (D) any additional amounts (contingent or otherwise) accruing as at the date of such notice under this Agreement until paid to the AEDB and the GOP and the events which have occurred under this Agreement giving rise to such amounts, together with formulae for determining such amounts, and (E) to the extent AEDB is able to ascertain, any amounts (contingent or otherwise, disputed and undisputed) due to the [Provincial Government] / [GOAJ&K] under the Site Lease. Such notice by the AEDB to the Lenders (or the Agent) may be updated by AEDB to re-quantify such amounts and/or identify any additional events and the amounts related thereto by further written notice or notices to the Lenders (or the Agent) at any time prior to the receipt of the Succession Notice by the AEDB under this Section 11.2(b).

- (c) Subject to Section 11.2(b) and (d), upon delivery of Succession Notice to the AEDB, the Lenders either directly or through their designee shall have the right, among others, to (A) take possession of the Complex and, prior to the Commercial Operations Date, complete construction and Commissioning of the Complex and after the Commercial Operations Date, operate and maintain the same and (B) cure any continuing Seller Event of Default as provided under Section 14.4 (*Notice to the Lenders of the Seller’s Default*) of this Agreement. With effect from the delivery to the AEDB of a Succession Notice until the delivery of a notice terminating the Lenders’ (or their designee’s) obligations pursuant to Section 11.2(f), the Lenders (or their designee, as the case may be) shall assume and enjoy the rights, powers and privileges and, subject to Section 11.2(g), shall become jointly and severally liable with the Seller to perform and discharge the obligations, liabilities and duties of the Seller under this Agreement and the Site Lease and the GOP shall perform and discharge the

obligations, liabilities and duties of the GOP under this Agreement and the Guarantee as if the Lenders (or their designee) were an original party thereto on a joint and several basis with the Seller from the date of execution thereof; provided that during any such period, all notices, demands and other communications delivered to or made on AEDB in exercising the Seller's rights under this Agreement shall only be delivered or made by the designee (as identified by the Agent in the Succession Notice) or the Agent (if a designee has not been so identified). Notwithstanding the foregoing, the Lenders (or their designee) shall have no obligation to cure any Seller Event of Default that is not capable of being cured, provided that notice of such default was given in the Notice of Intent to Succeed specifying that in the Lenders' view such default is not capable of being cured by the Lenders (or their designee), and no right will exist for the GOP to terminate this Agreement based upon any such Seller Events of Default occurring prior to the Succession Notice.

- (d) Upon succession by the Lenders or their designee to the Seller's interest under this Agreement and the Guarantee in accordance with Section 11.2 (*Creation of Security*), the Lenders or their designee, as applicable, shall settle all amounts due and payable by the Seller (if any) and shall cure all defaults by the Seller under this Agreement within the Extended Cure Period (other than those that are not required to be cured pursuant to Section 11.2(c)) arising during the period prior to the Lenders' or their designee's succession to the Seller's interest under this Agreement and the Guarantee, and that were notified by the AEDB to the Lenders (or their Agent or designee) in writing on or before the delivery of the Succession Notice in accordance with Section 11.2(b); provided, however, that the aggregate liability of the Lenders or their designee, as the case may be, shall strictly be limited to the Seller's and the Lenders' or their designee's ownership, contractual rights and security interest in the Complex, and; provided further, that the Lenders or their designee, as the case may be, shall have no liability for breaches of the Seller arising prior to the delivery of a Succession Notice other than to cure the breaches notified by AEDB pursuant to Section 11.2(b), and the liability of the Lenders or their designee to the GOP in respect of all liabilities of the Seller under or relating to this Agreement prior to the delivery of a Succession Notice shall not exceed the total amount specified by AEDB in the latest notice delivered by AEDB to the Lenders (or the Agent or their designee) in accordance with Section 11.2(b), as such amount may be adjusted in accordance with the formulae specified by AEDB in such notice.
- (e) Except as otherwise set forth in this Section 11.2 (*Creation of Security*), neither the Lenders, the Agent nor the Lenders' designee shall be liable for the performance or observance of any of the obligations or duties of the Seller under this Agreement, nor shall the assignment by the Seller of this Agreement or the Guarantee (or any other agreement or document included within or contemplated by the Project Agreements, to the extent assignable) to the Lenders pursuant to Section 11.2 (*Creation of Security*) give rise to any duties or obligations whatsoever on the part of any of the Lenders, the Agent or their designee owing to AEDB or the GOP.

- (f) The Lenders or their designee may at any time following the delivery of a Succession Notice give AEDB on behalf of the GOP notice terminating the Lenders' or their designee's obligations and rights under this Agreement and the Guarantee (without affecting the continuation of the Seller's obligations towards the GOP thereunder). Such notice shall designate a date on which the Lenders' or their designee's obligations and rights will terminate and on and after such designated date the Lenders or their designee shall be released from all obligations and liabilities thereunder (other than those obligations and liabilities which have arisen prior to such designated date). Upon such designated date, subject to the expiration of the applicable cure period provided in Section 14.4 (*Notice to the Lenders of the Seller's Default*), AEDB (acting for itself and the GOP) may exercise without restriction all of its rights under this Agreement.
- (g) Subject to this Section 11.2 (*Creation of Security*) but without the requirement of obtaining any further consent from the AEDB (acting for itself and the GOP), upon the exercise by the Lenders or their designee of any of the remedies set forth in the Financing Documents, the Lenders may assign or transfer by novation their rights and interests and the rights of the Seller under this Agreement and the Guarantee (or any other agreement or document included within or contemplated by the Project Agreements, to the extent assignable) to any Transferee (hereinafter defined) so long as such Transferee shall assume in writing for the benefit of the GOP (and for the benefit of the relevant party under any other agreement or document included within or contemplated by the Project Agreements) all of the obligations of the Seller under this Agreement, provided that the Transferee shall not be liable for any outstanding obligations under this Agreement which were not disclosed by AEDB to the Lenders or the Agent in accordance with Section 11.2(b). Upon such assignment or transfer and assumption, the Lenders the Agent or their designee and the Seller, as the case may be, shall be relieved of all obligations assigned or transferred to and assumed by a Transferee under this Agreement.
- (h) Upon notice to the AEDB from Lenders or the Agent of the Lenders' assignment or transfer by novation to a Transferee, as set out in Section 11.2(g) above, the AEDB shall effect on behalf of the GOP the transfer of the Seller's rights and obligations under this Agreement and the Seller's rights and obligations under the Guarantee to a Transferee.
- (i) As used herein, a "**Transferee**" shall be a person who (i) either is an experienced hydro power plant operator or shall have agreed to engage the services of a person who is an experienced hydro power plant operator, (ii) shall have paid all amounts, if any, then due and payable to the GOP under this Agreement, (iii) shall have expressly assumed in writing for the benefit of the GOP the obligations of the Seller under this Agreement including (but not limited to) the obligation of the Seller to maintain and operate the Complex in accordance with the requirements of the Energy Purchase Agreement and the Site Lease, (iv) has not been objected to by AEDB in a written notice delivered by AEDB to the Lenders not later than ten (10) Days after the Lenders have delivered notice identifying the Transferee to AEDB on the basis that a majority of the capital of the Transferee is held or controlled by persons of a nationality that the GOP

reasonably considers to be prejudicial to the national security of Pakistan, (v) is a corporate body established in Pakistan, and (vi) shall have procured from any Relevant Authority or any Public Sector Entity, any prior approvals that may be required under the Laws of Pakistan to acquire interests pursuant to such assignment or transfer and a written notice of such approvals shall have been delivered to the AEDB and the AEDB shall not have objected thereto within ten (10) Days of receipt of such written notice.

- (j) With respect to all Seller Consents issued by the GOP or any Relevant Authority, the GOP shall not, and the GOP shall ensure that no Relevant Authority shall, exercise any power under Section 5.2 (*Conditions to Seller Consents*) unless the Lenders shall have first been given written notice of such failure (which notice shall specify, in reasonable detail, the nature of such failure) and the Lenders or their designee are given the opportunity and fail within a reasonable period of time after receipt of such notice to so rectify, remedy or cure such failure, which period shall not in any event exceed the cure period provided to the Seller or to the Contractors, as the case may be, under Section 5.2 (*Conditions to Seller Consents*). The GOP shall ensure that, in connection with any transfer or sale of the Complex or the shares of the Seller to the Lenders or their designee, as applicable, to any Transferee, each Seller Consent issued by the GOP or any Relevant Authority shall be transferred or, if unable to be transferred for any reason, shall be re-issued in the same form to the Lenders, or their designee or the Transferee, as applicable. Subject to Section 11.2(g), the GOP shall ensure that such transfer or re-issuance is made within the period of time, if any, prescribed by applicable Laws of Pakistan as applied in a non-discriminatory manner pursuant to Section 12.1 (*Assurance Against Discriminatory Action*) and, in any event, within one hundred and eighty (180) Days after the date of proper and complete application therefor. Subject to 11.2(g), provided that the Seller shall have requested in writing from a Relevant Authority its consent to any security interest in any Seller Consent granted or to be granted by such Relevant Authority to the Lenders or the Agent and shall have diligently pursued obtaining the consent of such Relevant Authority to such security interest, the GOP hereby covenants and shall procure that such Relevant Authority consents to the grant by the Seller to the Lenders or the Agent of a security interest in any such Seller Consent to the extent that such Consent is assignable to the Lenders or the Agent by way of security, and such security interest is available, under the Laws of Pakistan.
- (k) Upon receipt of the Notice of Intent to Succeed, the GOP shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders or the Agent in the exercise of their rights under this Section 11.2 (*Creation of Security*).
- (l) At the request of the Seller, delivered to the AEDB no less than thirty (30) Days in advance, the GOP shall execute and deliver, effective at the Financial Closing, the Direct Agreement with the Seller and the Lenders including acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Article XI (*Assignment and Security*) and the rights of such parties in and to this Agreement and the Guarantee, as the Lenders may

reasonably request in accordance with customary practices in transactions of this nature.

- (m) [At the request of the Seller, delivered to the AEDB no less than thirty (30) Days in advance, the GOP shall use its good offices to support the request of the Seller to the [Provincial Government] / [GOAJ&K] in its capacity as lessor under the Site Lease to execute and deliver, effective at the Financial Closing, a direct agreement with the Seller and the Lenders including acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Article XI (*Assignment and Security*) and the rights of such parties in and to the Site Lease, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature. By agreeing to extend its support for the aforesaid requests of the Seller to the Provincial Government, the GOP does not represent or warrant to the Seller that such requests will be acceded to by the Provincial Government.]⁸

Section 11.3 Financing Documents; Interest Margin Savings

- (a) In case the Termination Notice is issued, the Seller shall deliver to AEDB copies of the Financing Documents and all amendments thereto (duly certified by the Agent as to accuracy and completeness) and including the originally executed principal repayment schedule at Financial Closing together with all revisions thereto that provides for debt repayment, the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents, and identifying the actual equity contributions, individually and in total, of the Investors. The Seller covenants that each loan agreement constituting part of the Financing Documents will provide that any liquidated damages received by the Seller from its EPC Contractor for capacity or other testing shortfalls shall be used either to reduce or pay the outstanding amount of debt under such loan agreement or in an effort to remedy such shortfalls or to make payments required under the Energy Purchase Agreement, if any.
- (b) If the actual interest margin over LIBOR or KIBOR (or other interest rate indices) contracted by the Seller under the Financing Documents at Financial Closing is lower than the Reference Interest Margin or if the margin over LIBOR or KIBOR (or other interest rate indices) under the Financing Documents (including by re-financing) is subsequently reduced below the Reference Interest Margin (“**Interest Margin Savings**”), the Seller shall forthwith and without delay notify the Interest Margin Savings in writing to AEDB and the Purchaser and thereupon:
- (i) the Interest Charges Component shall be reduced by an amount that represents sixty percent (60%) of the Interest Margin Savings;

⁸ Delete if privately acquired land.

- (ii) the Energy Purchase Agreement shall be amended to reflect such reduction in the Interest Charges Component to the extent relevant or applicable to all payment obligations of the Purchaser under the Energy Purchase Agreement (including, without limitation, under Article VI, Article VIII, Article XV and Schedule 1⁹ of the Energy Purchase Agreement); and
 - (iii) any payment obligations of the GOP under this Agreement and the Guarantee, including the obligation to pay Compensation Amounts under Article XV and Schedule 2 of this Agreement, shall be based on and shall reflect such reduction in the Interest Charges Component.
- (c) The Seller covenants that no terms or conditions of the Financing Documents (or any other loans, credit facilities or similar agreements) nor any amendment, modification or substitution (including on refinancing or additional financing or sell-down of loans thereunder) to or of the Financing Documents shall in any way increase the obligations of the GOP under this Agreement or the Guarantee beyond that stated in Schedule 2 nor affect in any way the right of the GOP to acquire the Complex free and clear of all Liens upon the GOP's payment of the applicable Compensation Amount.

⁹ Cross referencing to be confirmed in the execution draft.

ARTICLE XII
RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS

Section 12.1 Assurance Against Discriminatory Action

Neither the GOP nor any Federal Entity shall take any discriminatory action (as described in Section 12.4 (*Non-Discriminatory*)) which materially and adversely affects the Project or the performance of the Seller's obligations, or the enjoyment of its rights or the interests of the Investors or Lenders under the Project Agreements. Nothing in the foregoing or in Section 12.2 (*Acquisition of Shares or Assets*) shall apply to any actions taken by the GOP or any Federal Entity or the Purchaser pursuant to their respective rights and obligations arising under this Agreement and the Energy Purchase Agreement.

Section 12.2 Acquisition of Shares or Assets

The GOP undertakes to the Seller that neither it nor the Purchaser nor any Public Sector Entity will directly or indirectly expropriate, compulsorily acquire, nationalize, or otherwise compulsorily procure (except as provided in Section 15.1 (*Compensation Upon Termination*)) any Ordinary Share Capital, Complex or other assets of the Seller relevant to the Project including, without limitation, [but subject to the Laws of Pakistan governing the exercise of executive authority of the Provincial Government in relation to the Site and the Site Lease,]¹⁰ the leasehold interest of the Seller under the Site Lease. Notwithstanding the foregoing, [but without prejudice to the Seller's rights set out in Section 14.1(b)(iii),]¹¹ nothing in this Agreement shall be construed as a waiver by the GOP's exercise of its power of eminent domain, so long as it is exercised in accordance with the Laws of Pakistan and the effect of such exercise does not materially and adversely affect the Seller's ability to perform its obligations under and enjoy the benefits of the Energy Purchase Agreement, the Complex and/or its other assets relevant to the Project or, without just and adequate compensation (which compensation, in the event of the Seller being deprived substantially of its rights under this Agreement or the Energy Purchase Agreement, shall be no less than the Compensation Amounts contemplated under Section 15.1(b)), adversely affect its use and enjoyment of the Site.

Section 12.3 Restriction on Transfer of Shares

- (a) With respect to the transfer of the registered ownership of any Ordinary Share Capital, the Seller shall make appropriate provisions in its Articles of Association to ensure compliance with the following provisions of this Section 12.3 (*Restriction on Transfer of Shares*), which shall include appropriate legends on all share certificates evidencing Ordinary Share Capital of the Seller to put prospective purchasers of such Ordinary Share Capital on notice of the restrictions in the following provisions and to the extent permitted by the Laws of Pakistan, and shall not register or give effect to any purported transfer of Ordinary Share Capital that is not in compliance with such restrictions or does not bear such legend.

¹⁰ Where the Site is leased out by the Provincial Govt./AJK.

¹¹ Ibid.

- (b) The Seller shall decline to register the transfer of issued Ordinary Share Capital to Persons of a nationality or origin of a state that the GOP reasonably considers to be prejudicial to the national security of Pakistan or that is specifically proscribed by the Laws of Pakistan. The Seller shall use reasonable means under the circumstances to investigate the declaration of nationality or origin stated on any application for registration or transfer of Ordinary Share Capital if, as a result of such transfer, the investor making such application would hold five percent (5%) or more of the issued Ordinary Share Capital of the Seller. In all other cases, the Seller shall be entitled to rely on such declaration to determine whether registration is permitted under this Section 12.3(b). Where any such declaration discloses Pakistan nationality or the nationality or origin of a state that is not specifically proscribed by the Laws of Pakistan, then the Seller shall be at liberty to register the transfer or issue of the shares.
- (c) The Seller shall not issue any Ordinary Share Capital and the Initial Shareholder shall not transfer any Ordinary Share Capital owned directly or beneficially by it at any time prior to the Commercial Operations Date if following such issuance or such transfer the Initial Shareholder will own directly or beneficially less than fifty-one percent (51%) of the outstanding Ordinary Share Capital, except for a transfer of Ordinary Share Capital:
- (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by an order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents or transfer of any Ordinary Share Capital to a Transferee under Section 11.2 (*Creation of Security*); or
 - (iii) to which AEDB has given its prior written approval, which approval shall be deemed given unless it is specifically denied in writing within thirty (30) Days of the AEDB having received a written request by the Seller.
- (d) The Lead Investor shall own directly or beneficially at all times up to the Commercial Operations Date, not less than twenty percent (20%) of the then outstanding Ordinary Share Capital, except where the reduction of ownership of Ordinary Share Capital below twenty percent (20%) by the Lead Investor results from a transfer of Ordinary Share Capital:
- (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents or transfer of any Ordinary Share Capital to a Transferee under Section 11.2 (*Creation of Security*); or

- (iii) to which GOP has given its prior written approval, which approval shall be deemed given unless it is specifically denied in writing within thirty (30) Days of the AEDB having received a written request by the Seller.
- (e) After the Commercial Operations Date, no Initial Shareholder may transfer any Ordinary Share Capital, except where:
 - (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents or transfer of any Ordinary Share Capital to a Transferee under Section 11.2 (*Creation of Security*); or
 - (iii) the AEDB has given its prior written approval; provided however, AEDB hereby agrees that such approval shall be granted unless AEDB determines in its sole but reasonable discretion that such a transfer would be prejudicial to the national security interests of Pakistan; provided further, that such approval shall be deemed given unless it is refused in writing within thirty (30) Days of AEDB receiving a written request therefor.
- (f) The Seller shall provide AEDB a copy of the Articles of Association of the Seller incorporating the requirements of this Section 12.3 (*Restriction of Transfer of Shares*) no later than thirty (30) Days prior to the Effective Date.

Section 12.4 Non-Discriminatory

The use of the term “non-discriminatory” or “discriminatory” in this Agreement is not intended to prohibit or limit in any way the GOP, AEDB or any Relevant Authority from making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the GOP, AEDB or Relevant Authority or of a Seller Consent. It is intended, however, to prohibit the use of governmental authority, over Seller Consents, for example, to deprive the Seller of the benefits of this Agreement, the Guarantee or the Energy Purchase Agreement or any other Project Agreement by the application of a higher standard to the Seller (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

ARTICLE XIII
FORCE MAJEURE

Section 13.1 Definition

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the date of Financial Closing materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party’s ability to deliver or receive energy from the Complex); provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limiting the generality of the foregoing, “Force Majeure Events” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) the following political events that occur inside or directly involve Pakistan (each a “Pakistan Political Event” and, to the extent also a Force Majeure Event, a “Pakistan Political Force Majeure Event” or “PPFME”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, , riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide; or
 - [(iv) any change in the legal or constitutional status of AJ&K or the territories now forming AJ&K;]¹²
- (b) any Change in Law (and, to the extent also a Force Majeure Event, a “Change in Law Force Majeure Event” or “CLFME”); or
- (c) other events beyond the reasonable control of the affected Party (each an “Other Force Majeure Event”), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, but only where such event is on a level that exceeds the design criteria of the Complex, except for the maximum credible seismic design event as specified in [Schedule 2] to the Energy Purchase Agreement; or

¹² May be removed where the Complex is not located in the AJ&K.

- (ii) any Lapse of Consent of which report to AEDB shall have been given under Section 4.3 (*Status of Seller Consent Applications*) and that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a PPFME, in which case such event or circumstance shall constitute a PPFME); or
 - (v) epidemic or plague; or
 - (vi) a final non-appealable order of a court of competent jurisdiction declaring the EPC Contractor insolvent and ordering its winding-up.
- (d) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor (except as provided under Section 13.1(c)(vi) above);
 - (iii) a breakdown in machinery and/or equipment; and
 - (iv) normal wear and tear or random flaws in materials and equipment,

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

Section 13.2 Notification Obligations

- (a) If, by reason of a Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, no later than the later of forty eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or twenty-four (24) hours after the resumption of any means of providing notice between the Seller and the GOP, and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, no later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate, or when reasonably requested so to do by

the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.

- (b) The affected Party shall provide notice to the other Party of (i) the cessation of the Force Majeure Event notified under Section 13.2(a) along with an estimate of the date it would be able to recommence performance of its obligations under this Agreement, and (ii) the date it was able to recommence performance of its obligations under this Agreement, as soon as possible and in any event no later than seven (7) Days after the occurrence of each of the events mentioned in clauses (i) and (ii) hereabove.
- (c) 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 twenty-four (24) hour period required under Section 13.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 13.4 (*Delay Caused by Force Majeure*) for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty eight (48) hour period or twenty-four (24) hour period required by Section 13.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 13.4 (*Delay Caused by Force Majeure*) from the date of commencement of the relevant Force Majeure Event.

Section 13.3 Duty to Mitigate

The affected Party shall use all reasonable efforts (or shall ensure that its Contractors use all reasonable efforts) to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party (or such Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures.

Section 13.4 Delay Caused by Force Majeure

So long as the affected Party has, at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 13.3 (*Duty to Mitigate*) and continues to so comply, then (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event, and (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 13.4 (*Delay Caused by Force Majeure*) to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred. Other than for breaches of this Agreement by the unaffected Party, the unaffected Party shall not bear any liability for any Loss suffered by the affected Party as a result of a Force Majeure Event. Notwithstanding the foregoing, the GOP shall not be entitled to claim for itself, and shall not be relieved of its obligations under this Agreement or under the Guarantee by the occurrence of a PPFME or CLFME.

[Section 13.5 Change in Law and Pakistan Political Force Majeure Event under this Agreement and the AJ&K Implementation Agreement

- (a) Any material modification or capital addition to the Complex necessitated by application of any Laws of AJ&K (as defined in the AJ&K Implementation Agreement) through adoption of any Laws of Pakistan enacted after the date of this Agreement shall constitute a Change in Law under this Agreement and, to the extent also a CLFME, shall be compensated by way of Supplemental Tariff payable by the Purchaser subject to and in accordance with the Energy Purchase Agreement, and, to the extent not paid by the Purchaser, by the GOP pursuant to this Section 13.5.
- (b) Except as provided in Section 13.5(c) below, if a Pakistan Political Force Majeure Event is also a State Political Force Majeure Event under, and as defined in, the AJ&K Implementation Agreement, then the Seller shall be entitled to compensation by the GOP and the Purchaser to the extent compensation is payable under this Agreement and the Energy Purchase Agreement (as the case may be), and the Seller shall make no claim in respect thereof on the AJ&K Entities.
- (c) If a Pakistan Political Force Majeure Event is also a State Political Force Majeure Event under and as defined in the AJ&K Implementation Agreement, and occurs only inside AJ&K, then the Seller shall only be entitled to be compensated by the GOAJ&K under the AJ&K Implementation Agreement.]¹³

¹³ Only where the Complex is located in AJK and the Seller is entering into an AJK IA.

ARTICLE XIV TERMINATION

Section 14.1 Termination for Default

- (a) Seller Event of Default; Termination by the GOP. Each of the following events shall be an event of default by the Seller (each a “**Seller Event of Default**”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the GOP to terminate this Agreement pursuant to Section 14.2 (*Termination Notices*); provided, however, that no such event shall be a Seller Event of Default: (i) if it results from a breach by the GOP of this Agreement or the Guarantee, (ii) if it results from a breach by the Purchaser of the Energy Purchase Agreement, [(iii) if it results from a breach by the AJ&K Entities of the AJ&K Implementation Agreement,] (iv) if it results from a breach by the [Provincial Government] / [GOAJ&K] of the Water Use Agreement, (v) if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(a)(x)), [(vi) if it results from a breach by the [Provincial Government] / [GOAJ&K] of the Site Lease,]¹⁴ or [(vii) if, and only to the extent that, it results from non-availability of water within Technical Limits]¹⁵;
- (i) failure of the Seller to achieve the Construction Start Date within ninety (90) Days following Financial Closing;
 - (ii) failure of the Seller to achieve the Commercial Operations Date within four hundred (400) Days after the Required Commercial Operations Date;
 - (iii) after Construction Start Date but prior to the achievement of the Commercial Operations Date, the failure of the Seller to prosecute the Project in a diligent manner for a period of thirty (30) consecutive Days, without prior notice to and the prior written consent of the GOP;
 - (iv) after the Commercial Operations Date, an Abandonment by the Seller without prior notice to and the prior written consent of the GOP that continues for a period of thirty (30) consecutive Days, provided however, the Seller shall not be deemed to have Abandoned its Complex so long as it is using all reasonable efforts to regain control of the Complex or reinstate its commercial operations;
 - (v) other than the assignments and transfers to and by the Lenders and the short-term creditors contemplated under Section 11.2 (*Creation of Security*), the assignment or transfer of the Seller’s rights or obligations in this Agreement and in the assets identified in Section 11.2(a) (other than the transfer in accordance with the Laws of Pakistan of the non

¹⁴ NA, if privately acquired land.

¹⁵ Only where HR is with Purchaser.

material assets, the transfer of which does not affect the performance of the Seller's obligations hereunder) without obtaining the prior written consent of the GOP or the transfer, conveyance, loss, or relinquishment of the Seller's right to own and/or operate the Complex or any material part thereof or to any Person (other than the Purchaser pursuant to the Energy Purchase Agreement) or failure to retain possession of the Site without the prior written approval of the GOP;

- (vi) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and further provided that such amalgamation has been agreed to by the GOP), the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of the Seller for the winding up of the Seller; (b) the voluntary filing by the Seller of a petition of bankruptcy, moratorium, or other similar relief; (c) the appointment of a provisional liquidator in a proceeding for the winding up of the Seller after notice to the Seller and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; (d) the making by a court with jurisdiction over the Seller of an order winding up the Seller that is not stayed or reversed by a court of competent authority within ninety (90) Days;
- (vii) any statement, representation, or warranty by the Seller in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made, and such incorrect statement, representation, or warranty having a material and adverse effect on the Seller's ability to perform its obligations under this Agreement or on the obligations or liabilities of AEDB or the GOP under this Agreement or the Guarantee;
- (viii) the exercise by the Lenders of their remedies under the Financing Documents or by the short-term creditors under their respective security interests as contemplated under Section 11.2, with respect to either the Complex assets or the pledged Ordinary Share Capital such that either the Seller or its management are removed by the Lenders or by the short-term creditors from control of the Complex and the failure by the Lenders or the Agent to deliver a Succession Notice (as defined in Section 11.2(b)) or to transfer the Complex and the rights and obligations of the Seller under this Agreement and the Energy Purchase Agreement and the rights of the Seller under the Guarantee to a Transferee within two hundred and forty (240) Days after the Seller or its management are removed by the Lenders from control of the Complex;
- (ix) any material breach or default by the Seller of or under this Agreement, the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] or the Water Use Agreement that is not remedied within: (A) thirty (30) Days in case of this Agreement, and (B) the respective

cure period under the other agreements, after notice from the AEDB, the Purchaser, or the [Provincial Government] / [GOAJ&K], as the case may be, stating that a material breach of or default under this Agreement or the other agreement has occurred that could result in the termination of this Agreement or the other agreement and identifying the material breach or default in question in reasonable detail;

- (x) any default by the Seller in the making of any payment or payments required to be made by it under this Agreement, the Energy Purchase Agreement, or the Water Use Agreement, as the case may be, on the due date specified in such agreement, that continues unpaid beyond the due date for thirty (30) Days;
 - (xi) the revocation or termination of [the AJ&K Implementation Agreement,] the Energy Purchase Agreement, or the Water Use Agreement, in each case, following the exhaustion of any cure rights of the Seller (and the Lenders), if any, thereunder due to a default or breach by the Seller thereunder; and
 - (xii) [any material breach or default by the Seller under the Site Lease, that is not remedied within the cure or grace period permitted thereunder after issuance of a notice of intent to terminate under the Site Lease.]¹⁶
- (b) **GOP Event of Default; Termination by the Seller.** Each of the following events shall be an event of default by the GOP (each a “**GOP Event of Default**”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Seller to terminate this Agreement pursuant to Section 14.2 (*Termination Notice*); provided, however, that no such event shall be a GOP Event of Default: (A) if it results from a breach by the Seller of: (i) this Agreement, [(ii) the AJ&K Implementation Agreement,] (iii) the Energy Purchase Agreement, (iv) the Water Use Agreement, or (v) the Site Lease; or (B) if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(b)(ii)):
- (i) the dissolution, pursuant to law, of the Purchaser, except for an amalgamation, reorganization, reconstruction, or further privatization of the Purchaser, where the GOP without interruption guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligation of the succeeding entity or entities that in the reasonable business judgment of the Seller provides an adequate alternative to the Guarantee and all of the Purchaser’s obligations under the Energy Purchase Agreement are assigned pursuant to law or contractually assumed, through novation or otherwise, by one (1) or more entities, each with the legal capacity and appropriate commercial function to perform its obligations thereunder;

¹⁶ Delete if privately acquired land.

- (ii) any default or defaults by the GOP in the making of any payment or payments required to be made by it hereunder or under the Guarantee on the due date for payment specified herein or in the Guarantee that continues unpaid for thirty (30) Days;
- (iii) any material breach or default by the GOP of or under this Agreement or the Guarantee that is not remedied within thirty (30) Days after issuance of a notice of the breach or default by the Seller identifying the breach or default in reasonable detail and demanding remedy thereof;
- (iv) [subject to Sections 14.3(c) and (d), any termination, cancellation, resumption or revocation of the Seller's leasehold interest under the Site Lease, otherwise than for a breach of the conditions of the Site Lease by the Seller entitling such termination, cancellation, resumption or revocation;]¹⁷
- (v) [subject to Sections 14.3(c) and (d), a breach of or default by the Provincial Government under the terms of the Site Lease that (1) prevents the Seller materially from constructing, owning, Commissioning or operating the Complex or prevents the Lenders from enforcing their security interests, (2) is not caused by the Seller's breach of or default under this Agreement, the Energy Purchase Agreement or the Site Lease, (3) is not a consequence of the Seller's failure to keep and maintain its leasehold rights and possession of the Site free and clear of adverse claims and encroachments by third parties, and (4) has not been remedied by the Provincial Government within ninety (90) Days after notice by the Seller to the Provincial Government (with a copy of such notice delivered simultaneously to AEDB) identifying the breach or default in reasonable detail and demanding remedy thereof, and that is not remedied thereafter within thirty (30) Days after delivery of a notice by the Seller to the GOP, identifying the material breach or default in reasonable detail and demanding remedy thereof;]¹⁸
- (vi) a material breach of or default by: (1) the Purchaser under the Energy Purchase Agreement, [(2) the AJ&K Entities under the AJ&K Implementation Agreement,] or (3) the [Provincial Government] / [GOAJ&K] under the Water Use Agreement, as the case may be, that is not remedied within the respective cure period (if any) under each agreement after receipt of a notice from the Seller to the Purchaser, the AJ&K Entities, or the [Provincial Government] / [GOAJ&K], as the case may be, with a copy of the notice to AEDB, that states that a material breach of or event of default under either agreement has occurred that could result in the termination of such agreement,

¹⁷ Delete for private land

¹⁸ *ibid*

identifies the breach or event of default in reasonable detail and demands remedy thereof;

- (vii) any change in any applicable Laws of Pakistan (A) making unenforceable, invalid, or void any material undertaking of the GOP, [the AJ&K Entities,] the Purchaser, or the [Provincial Government] / [GOAJ&K] under this Agreement or the Guarantee, [the AJ&K Implementation Agreement,] the Energy Purchase Agreement, [the Site Lease,] or the Water Use Agreement (as applicable); or (B) making (1) it unlawful for the Seller, the Lenders or the Investors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other document or agreement in the Project Agreements (other than a CLFME for which compensation is provided in accordance with the Energy Purchase Agreement), or (2) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right unenforceable, invalid or void as a result of any such change in law (other than a CLFME for which compensation is provided in accordance with the Energy Purchase Agreement), which in case of (A) or (B) above, has a continuing effect for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the affected party from the effect of such change in law;
- (viii) any change in any of the Laws of Pakistan placing any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of the execution of this Agreement) on the ability of the Seller to exchange Rupees for Dollars, or for Foreign Investors to repatriate, any capital, dividends, distributions or other proceeds from the Seller (provided that such distributions do not arise in connection with a breach of this Agreement), which restrictions or limitations remain in place for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the Seller or its Foreign Investors from all such restrictions and limitations;
- (ix) the expropriation, compulsory acquisition, or nationalization by the GOP or any Public Sector Entity of (i) any Ordinary Share Capital, or (ii) any material asset or right of the Seller (except as contemplated by the Project Agreements [and, subject to Section 12.2, the Seller's leasehold interest under the Site Lease]);
- (x) any procurement by the GOP or any Federal Entity or any combination thereof of (i) any Ordinary Share Capital if the result would be for the GOP and/or one or more Federal Entities to acquire control of the Seller or its management (and there shall be an irrebuttable presumption that the ownership by the GOP and/or any Federal Entity of more than twenty five percent (25%) of the Ordinary Share Capital shall constitute such control);

- (xi) any change in, or any change in the interpretation of, any of the Laws of Pakistan (including the Constitution of Pakistan and any other Laws of Pakistan that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making (A) unlawful, unenforceable, invalid, or void any material undertaking of the GOP, the AJ&K Entities, the Purchaser, or the [Provincial Government] / [GOAJ&K] under this Agreement or the Guarantee, [the AJ&K Entities,] the Energy Purchase Agreement, [the Site Lease,] or the Water Use Agreement, as the case may be; or (B) unlawful for the Seller to make or receive or the Lenders or the Investors to receive any payment (including interest or return), for the Seller to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project, or (C) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the Laws of Pakistan, which in the case of (A) (B) or (C) above, has a continuing effect for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the affected party from the effect of such change in law;
- (xii) the suspension or revocation of the Generation License other than for a breach by the Seller of its obligations under the Generation License;
- (xiii) the Guarantee or a substitute commercial security provided and accepted in accordance with sub-item (i) of this Section 14.1(b) ceasing to remain valid and in full force and effect in accordance with its terms;
- (xiv) a revocation or termination by the Seller of any of the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] or the Water Use Agreement, as the case may be, due to a default of or breach by the Purchaser, [the AJ&K Entities,] or the [Provincial Government] / [GOAJ&K] thereunder following the exhaustion of any cure rights of the Purchaser, [the AJ&K Entities,] or the [Provincial Government] / [GOAJ&K] under the respective agreement; or
- (xv) any statement, representation, or warranty by the GOP in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made, and such incorrect statement, representation, or warranty having a material and adverse effect on the Seller's ability to perform its obligations or enjoy its rights and benefits under this Agreement.

Section 14.2 Termination Notices

- (a) Upon the occurrence of a GOP Event of Default or a Seller Event of Default, as the case may be, that is not cured within the applicable cure period, if any, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a notice (a “**Notice of Intent to Terminate**”) of its intent to terminate

this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Seller Event of Default or the GOP Event of Default, as the case may be, giving rise to such notice.

- (b) Following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the Seller Event of Default or the GOP Event of Default, as the case may be, for a period of forty five (45) Days commencing on the delivery date of such notice in the case of a failure by either Party to make payments, or for a period of ninety (90) Days commencing on the delivery of such notice in the case of any other Seller Event of Default or GOP Event of Default, as the case may be, (or such longer period as the Parties may mutually agree) and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 14.2(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Seller Event of Default or GOP Event of Default, as the case may be.
- (c) Subject to the provisions of Section 14.3 (*Notice to the GOP of the Purchaser's Default*) or Section 14.4 (*Notice to the Lenders of the Seller's Default*), as the case may be, upon expiration of the cure period described in Section 14.2(b) and unless the Parties shall have otherwise agreed or unless the Seller Event of Default or GOP Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Party. This Agreement shall terminate on the date specified in the Termination Notice ("**Termination Date**"), which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

Section 14.3 Notice to the GOP of the Purchaser's / Provincial Government's Default

- (a) Anything in this Agreement notwithstanding, the Seller shall not seek to terminate the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] the Water Use Agreement, [or the Site Lease] due to any default by the Purchaser, [the AJ&K Entities,] or the [Provincial Government] / [GOAJ&K], as the case may be, under the respective agreements without first giving to the AEDB, with respect to any such default, a copy of any notice required to be given to: (i) the Purchaser under Section [16.3] of the Energy Purchase Agreement, [(ii) the AJ&K Entities under Section [●] of the AJ&K Implementation Agreement,] or (iii) the [Provincial Government] / [GOAJ&K] under Section [●] of the Water Use Agreement, [or (iv) the [Provincial Government] / [GOAJ&K] under the Site Lease,] such notice to include a reasonable description of such default and providing the GOP the opportunity to cure any such default within the same cure period as provided to: (i) the Purchaser under the Energy Purchase Agreement, [(ii) the AJ&K Entities under the AJ&K Implementation Agreement,] or (iii) the [Provincial Government] / [GOAJ&K] under the Water Use Agreement, [and within a cure period of forty five (45) Days in case of a default of the [Provincial Government] / [GOAJ&K] under the Site Lease,] such cure period to commence upon delivery of each such

notice to AEDB. Each such notice shall be deemed to have been delivered (a) when presented personally to AEDB, (b) when transmitted by facsimile, or (c) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to AEDB, at the address indicated in Section 18.1(a) (or such other address as AEDB may have specified by written notice delivered in accordance therewith).

- (b) No such rescission or termination of this Agreement, [the AJ&K Implementation Agreement], the Energy Purchase Agreement, the Water Use Agreement, [or the Site Lease] by the Seller shall be valid or effective without notice and expiration of the cure period as provided in Section 14.3(a), and in case of rescission or termination of this Agreement the cure period as provided in Section 14.2(b). The GOP may make or perform, but shall be under no obligation to make any payment (other than is required under the Guarantee or this Agreement) or to perform, any act required by the Purchaser under the Energy Purchase Agreement, or [by the AJ&K Entities under the AJ&K Implementation Agreement], [or by the [Provincial Government] / [GOAJ&K] under the Site Lease] or the Water Use Agreement (as the case may be), with the same effect as if the payment or act had been made or performed by the Purchaser, [the AJ&K Entities] or the [Provincial Government] / [GOAJ&K], as the case may be. If the GOP fails to cure or is unable or unwilling to cure a default of the Purchaser, [the AJ&K Entities], or the [Provincial Government] / [GOAJ&K], as the case may be, within the cure period provided in Section 14.3(a), the Seller shall have all of its rights and remedies with respect to such default as set forth in this Agreement, the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] the Water Use Agreement, [and the Site Lease]; provided, however, that if the GOP is diligently attempting to cure any default, other than a payment default, of (i) the Purchaser under the Energy Purchase Agreement, [(ii) the AJ&K Entities under the AJ&K Implementation Agreement,] or (iii) the [Provincial Government] / [GOAJ&K] under the Water Use Agreement or the Site Lease (as the case may be), and demonstrable progress toward affecting such cure is being made, the GOP shall be granted by the Seller an additional period not exceeding ninety (90) Days to effect such cure before the Seller may exercise its rights and remedies with respect to such default set forth in this Agreement, the Energy Purchase Agreement, [the AJ&K Implementation Agreement,] the Water Use Agreement, [and the Site Lease].
- (c) [The Seller shall not enter into any amendment of or variation to the terms of the Site Lease (including upon any renewal of the Site Lease) without the prior written approval of the GOP.]
- (d) [The Seller in order to cause the GOP to agree to the circumstances stated in Sections 14.1(b)(iv) and (v) as GOP Events of Default (subject to the conditions stated therein) undertakes, represents and warrants to the GOP that:
 - (i) the Seller, after making reasonable inquires, has not identified and is not aware of any encumbrances, claims and encroachments of or by third parties over the Site;

- (ii) the Seller shall forthwith and without delay inform the GOP of any encumbrances, claims and encroachments of or by third parties over the Site;
- (iii) the Seller shall furnish a copy of all material correspondence and notices between the Seller, the [Provincial Government] / [GOAJ&K] and its departments (including the Land Utilisation Department) relating to the Site and the Site Lease to AEDB immediately on receipt or dispatch by the Seller; and
- (iv) it shall on request of the GOP join in any proceedings initiated by or joined by the GOP to remedy or prevent a breach or potential breach of or default or potential default by the GOP under this Agreement or by the [Provincial Government] / [GOAJ&K] under the Site Lease or to discharge or vacate the claim of or encroachment by any Person on or over the Site. The Seller shall not issue a Termination Notice in result of GOP Event of Default pursuant to Sections 14.1(b)(iv) and (v) or terminate the Site Lease for so long as the proceedings initiated or joined by the GOP enable (including by way of appropriate injunctive orders passed by a competent court or other Public Sector Entity) the Seller to continue in possession of the Site and to continue construction, commissioning and operation of the Complex without any material breach of the Seller under the Project Agreements. The Seller shall extend full cooperation to the GOP in any such measures or proceedings including by way of provision of information in the possession and control of the Seller and deputing and authorizing its officers, agents and contractors to participate in such measures or proceedings without, however, being obligated to incur any material expense or liability in each case.]¹⁹

Section 14.4 Notice to the Lenders of the Seller's Default

- (a) Anything to the contrary in this Agreement notwithstanding, from and after the occurrence of Financial Closing, neither AEDB nor GOP shall seek to terminate this Agreement as the result of any default of the Seller without first giving a copy of any notices required to be given to the Seller under Section 14.2 (*Termination Notices*) to the Lenders (or the Agent), such notice to be coupled with a request to the Lenders (or the Agent) to cure any such default within the period specified in Section 14.2(b) (the "**Initial Cure Period**"). The Lenders shall be entitled to cure any such default within the Initial Cure Period, and such cure period shall commence upon delivery of each such notice to the Lenders (or the Agent). If there is more than one (1) Lender, the Lenders will designate in writing to the GOP in the Direct Agreement an agent (the "**Agent**"), and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders. Each such notice shall be in writing and shall be deemed to have been delivered (a)

¹⁹ NA for private land.

when presented personally to the Lender or the Agent, (b) when transmitted by facsimile to the number specified in accordance with the procedure set forth below, or (c) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the Lender at the address indicated in the Direct Agreement contemplated by Section 11.2(l) or in the certificate issued pursuant to Section 18.15(e)(i), as applicable (or such other address or to the Agent at such address as the Lenders may have specified by written notice delivered in accordance herewith). Any notice given by facsimile under this Section 14.4 (*Notice to the Lenders of the Seller's Default*) shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lender or the Agent. Notwithstanding the foregoing, if the address of the Lender or Agent is outside Pakistan, any notice delivered to the Lender or Agent pursuant to this Section 14.4 (*Notice to the Lenders of the Seller's Default*) shall be sent by international courier or facsimile, and if sent by facsimile, confirmed by international courier. The address and facsimile number for Lender or Agent shall be provided to the GOP by the Seller in the Direct Agreement contemplated by Section 11.2(l) or in the certificate issued pursuant to Section 18.15(e)(i), as applicable, and thereafter may be changed by the Lender or the Agent by subsequent delivery of a notice to the AEDB at the address or facsimile number for the AEDB provided in Section 18.1(a) (or at such other address or facsimile number subsequently delivered to the Lender or the Agent in accordance with this Section 14.4 (*Notice to the Lenders of the Seller's Default*)) and otherwise in accordance with the requirements of Section 18.1(a).

- (b) No rescission or termination of this Agreement or the Guarantee by the GOP (whether pursuant to its rights or remedies under this Agreement or at law) shall be valid or binding upon the Lenders without (i) notice having been delivered as required pursuant to Section 14.4(a); (ii) the expiration of the Initial Cure Period; (iii) the expiration of the Evaluation Period (as defined below) and (iv) the expiration of the Extended Cure Period (as defined below), in each case as provided in this Section 14.4 (*Notice to the Lenders of the Seller's Default*). The Lenders (or their designee) may make, but shall be under no obligation to make, any payment or perform or procure the performance of any act required to be made or performed by the Seller, with the same effect as if made or performed by the Seller. If the Lenders (or their designee) fail to cure, or procure the cure of, or are unable or are unwilling to cure, or procure the cure of, any Seller Event of Default within the Initial Cure Period or do not mitigate such Seller Event of Default within the Initial Cure Period, the GOP shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that, notwithstanding the expiration of the Initial Cure Period, the Lenders (or their designee) shall have a further period (the “**Evaluation Period**”), during which the Lenders (or their designee) may evaluate such Seller Event of Default, the condition of the Complex, and other matters relevant to the actions to be taken by the Lenders (or their designee) concerning such Seller Event of Default including the possible issuance of a Notice of Intent to Succeed pursuant to Section 11.2 (*Creation of Security*). The Evaluation Period shall end on the sooner to occur of (i) the Agent’s delivery to AEDB of a Succession

Notice as provided under Section 11.2 (*Creation of Security*) or (ii) forty-five (45) Days following the end of the Initial Cure Period, unless, within thirty (30) Days following the end of the Initial Cure Period, the Lenders or the Agent shall have delivered a Notice of Intent to Succeed pursuant to Section 11.2 (*Creation of Security*), in which case the Evaluation Period shall not end prior to the date that is 10 Days after delivery by AEDB of the statement of liabilities referred to in Section 11.2(b). Upon the delivery of a Succession Notice, the Lenders (or their designee or Transferee) shall be granted an additional period of one hundred and eighty (180) Days within which to cure, remedy, or procure the cure or remedy of any such Seller Event of Default (the “**Extended Cure Period**”) that is required to be cured pursuant to Section 11.2 (*Creation of Security*). If the Purchaser has assumed the operation of the Complex pursuant to Section 5.13 of the Energy Purchase Agreement and the Complex is being operated by the Purchaser, the AEDB shall extend the Initial Cure Period, Evaluation Period and/or the Extended Cure Period, as the case may be, for an additional period of six (6) Months. During the Initial Cure Period, the Evaluation Period and the Extended Cure Period and any extensions thereof including any such additional period of six (6) months, the GOP’s right to terminate this Agreement in respect of any Seller Event of Default shall be suspended so long as the Lenders (or their designee or Transferee) are diligently attempting to cure or mitigate or procure the cure or mitigation of such Seller Event of Default or are pursuing the enforcement of their rights and remedies under the Financing Documents against the Seller, including by way of exercise of succession rights under Section 11.2 (*Creation of Security*). In the event that the Lenders (or the Agent) fails to deliver a Succession Notice or the Lenders or their designee or the Transferee fail to cure any such Seller Event of Default on or before the expiration of the Extended Cure Period, as it may have been extended, the GOP may exercise any and all of its rights and remedies with respect to such default set forth in this Agreement including the right to immediately terminate this Agreement, and such termination shall be effective on delivery to the Agent of notice of such termination. During such Extended Cure Period, the Agent shall keep the AEDB apprised of the Lenders’ or their designee’s efforts to cure such Seller Event of Default. Notwithstanding any provisions of this Section 14.4 (*Notice to the Lenders of the Seller’s Default*) to the contrary, the Initial Cure Period, the Evaluation Period and the Extended Cure Period, as the case may be, shall be extended on a Day-for-Day basis for each Day during any such period in which the breaches, conditions or events set forth in sub clauses (i), (ii), (iii) or (iv) of the preamble of Section 14.1(a) are in existence or in effect or subsist or a Seller Consent has not been transferred to or issued in favour of the Lenders, their designee or any Transferee, or is not in full force or effect within thirty (30) Days after the Lenders, the Agent, the Lenders’ designee or the Transferee have made due application therefor and otherwise complied with the obligations applicable to them under Section 4.2 (*Application by the Seller for Consents*) and such circumstance has not arisen due to (i) a failure by the Lenders, the Agent, the Lenders’ designee or the Transferee to comply with the obligations applicable to them under Section 4.3 (*Status of Seller Consent Applications*) or (ii) the GOP or any Relevant Authority exercising any power in accordance with Section 12.1 (*Assurance Against Discriminatory Action*) in relation to any such Seller

Consents following the issuance thereof in favour of the Lenders, the Agent, the Lenders' designee or the Transferee.

Section 14.5 Termination due to PPFME or CLFME

If the Energy Purchase Agreement is terminated pursuant to Article XV of the Energy Purchase Agreement as a result of a PPFME, a CLFME or a Restoration Schedule failure by the Seller or by the Purchaser with the approval of the GOP, as applicable, and the GOP is required or elects to acquire the Complex as provided in Article XV, this Agreement shall immediately terminate and the GOP shall pay to the Seller the compensation provided in Article XV (*Rights and Obligations of Parties upon Termination*) and the Complex shall be transferred to the GOP or its designee in accordance with Article XV (*Rights and Obligations of Parties upon Termination*).

Section 14.6 Other Remedies

Subject to Section 7.1 (*Limitation of Liability*), the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party; provided, that the remedies and Compensation Amounts provided in Article XV (*Rights and Obligations of Parties upon Termination*) are the exclusive remedies available to each Party with respect to any termination of this Agreement as a consequence of the events described therein.

[Section 14.7 Termination of the AJ&K Implementation Agreement

Notwithstanding anything to the contrary in this Agreement or in the Guarantee, no termination of the AJ&K Implementation Agreement by the AJ&K Entities due to a State Political Force Majeure Event or a Change in Law (as defined in the AJ&K Implementation Agreement) or election by the GOAJ&K to acquire the Complex pursuant to the AJ&K Implementation Agreement shall be effective without the prior written approval of the GOP.]²⁰

²⁰ To be deleted where there is no AJK IA.

ARTICLE XV
RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

Section 15.1 Compensation Upon Termination

- (a) Seller Event of Default. In the event the GOP terminates this Agreement pursuant to Section 14.1(a) as a result of a Seller Event of Default (other than a failure to timely complete a Restoration pursuant to Section 15.9(d) of the Energy Purchase Agreement), the GOP or its designee shall have the right, but shall not be required, to acquire all of the Seller's rights, title and interests in and to the Complex; provided, however, that if the GOP elects to acquire the Complex, the GOP or its designee will acquire the Complex and simultaneously pay the Seller the Compensation Amount set forth in Row 1 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions set out in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*). If the GOP has not elected to purchase the Complex within ninety (90) Days following the Termination Date, the GOP shall have no further rights or interest in, or obligations to, the Complex.
- (b) GOP Event of Default. In the event the Seller terminates this Agreement pursuant to Section 14.1(b) as a result of a GOP Event of Default, the Seller may elect to transfer the Complex to the GOP or its designee and, in such event, the Complex shall be transferred to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 2 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions set out in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (c) Termination Following CLFME. In the event of a termination of the Energy Purchase Agreement by the Purchaser (with the approval of the GOP) or the Seller following a CLFME pursuant to Article XV of the Energy Purchase Agreement, the GOP shall simultaneously pay the Seller the Compensation Amount set forth in Row 3 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions set out in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (d) Termination Following Other Force Majeure Event.

If, following an Other Force Majeure Event, the Purchaser (with the approval of GOP) terminates the Energy Purchase Agreement pursuant to Section 15.9(d) thereof as a result of the Seller's failure to timely complete the Restoration, the GOP or its designee shall have the right, but shall not be required, to acquire all of the Seller's rights, title, and interests in and to the Complex; provided, however, that the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 4 of Part I of Schedule 2 (*Compensation Amounts*), in accordance with the payment provisions of Section 15.5 (*Payment*

of Compensation Amounts) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*). If the GOP does not elect to purchase the Complex within thirty (30) Days of receipt of a copy of a Termination Notice (as defined in the Energy Purchase Agreement) delivered by the Purchaser to the Seller thereunder, the GOP shall have no further rights to or interest in the Complex, whereupon this Agreement shall terminate.

(e) Termination following PPFME

- (i) If, following a PPFME, the Purchaser and the Seller agree or an expert determines that Restoration is technically feasible and financially viable, but the Purchaser, with the approval of the GOP, elects to terminate the Energy Purchase Agreement under Section 15.6(e) thereof, the GOP shall pay the Seller the Compensation Amount set forth in Row 5 of Part I of Schedule 2 (*Compensation Amounts*). The Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller such Compensation Amount in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (ii) If, following a PPFME, the Energy Purchase Agreement is terminated under Section 15.6(k)(iii) thereof, the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 6 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (iii) If, following a PPFME, the Energy Purchase Agreement is terminated because the Purchaser and the Seller agree or an expert determines that Restoration is technically feasible and financially viable, but the Seller while using diligent efforts is unable to obtain financing for the Restoration and the Purchaser thereafter remains unable to procure the financing as provided in Section 15.6(e)(ii)(A) of the Energy Purchase Agreement, the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 7 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (iv) If, following a PPFME, the Purchaser, with the approval of the GOP, terminates the Energy Purchase Agreement in accordance with Section 15.9(d) thereof as a result of a failure to timely complete a Restoration by the Seller pursuant to the Energy Purchase Agreement, the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount

set forth in Row 8 (where the Seller has used demonstrable good faith efforts to effect the Restoration) or Row 11 (where the Seller has failed to use demonstrable good faith efforts to effect the Restoration) of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).

- (v) If, pursuant to Section 15.6(k)(i) or (ii) of the Energy Purchase Agreement, a PPFME materially affecting the construction, commissioning or operation of the Complex has continued uninterrupted for more than one hundred and eighty (180) Days (without regard to the period of time that the effects thereof may have continued), intermittent PPFMEs materially affecting the operation of the Complex have occurred for one hundred and eighty (180) Days (without regard to the period of time that the effects thereof may have continued) in any Year and either the Purchaser or the Seller terminates the Energy Purchase Agreement pursuant to Article XV of the Energy Purchase Agreement, the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 9 (for a Purchaser termination) or Row 10 (for a Seller termination) of Part I of Schedule 2 in accordance with the payment provisions in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (vi) If, following PPFME and following a revision of the Restoration Cost Estimate or the Restoration Period pursuant to Section 15.9(c) of the Energy Purchase Agreement, the Purchaser, with the approval of the GOP, elects to terminate the Energy Purchase Agreement under Section 15.9(c) thereof, the Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall pay the Compensation Amount set forth in Row 12 of Part I of Schedule 2 in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (f) Expiry of the Natural Term. At the end of the Term, the Seller (or any assignee or designee) or Transferee [or the GOAJ&K (in the event that GOAJ&K acquires the Complex upon payment of the compensation due in accordance with the terms and conditions of this Agreement or the AJ&K Implementation Agreement)] and who has assumed or otherwise acquired the rights, title and interests of the Seller in the Complex and in this Agreement) shall transfer the Complex and all of the Transferable Assets, subject to the last sentence of this Section 15.1(f), to the [GOP (or its designee)] free and clear of all encumbrances for consideration of one Rupee (Rs.1). This obligation of the Seller or the Transferee [or the GOAJ&K] to transfer the Complex and all Transferable Assets to the GOP at the end of the Term shall survive any early termination of this Agreement where the GOP elects not to acquire or the

Seller elects not to transfer the Complex and the Transferable Assets to the GOP (or its designee).

- (g) Use of Certain Insurance Proceeds. Whenever the Energy Purchase Agreement is terminated pursuant to Article XV (*Rights and Obligations of Parties upon Termination*) thereof following a Force Majeure Event, and the GOP is obligated to pay compensation to the Seller pursuant to this Section 15.1 (*Compensation upon Termination*) and insurance proceeds are available in connection with the Force Majeure Event, the total amount of the net proceeds made available or to be made available under the insurance policies with respect to the Complex shall, if not used to effect a Restoration or make repairs to the Complex, be used to pay the following items in the following order of priority:
- (i) to the payment of all indebtedness secured by the Complex;
 - (ii) then to the other compensation, if any, payable by the GOP to the Seller as set forth in Schedule 2; and
 - (iii) then to the Seller.
- (h) Assignment and Assumption of Water Use Agreement. In the event of a termination of this Agreement and the termination of the Energy Purchase Agreement and the transfer of the Complex to the GOP in accordance with the provisions of this Article XV, at the written election of the GOP, the Seller shall assign, as of the date of transfer of the Complex, the Water Use Agreement to the GOP (or its designee), as required by the GOP in such election, and the GOP (or its designee) shall assume all of the rights, benefits and obligations of the Seller under the Water Use Agreement from and after the date of such transfer.
- [(i) Transfer of the Complex – Termination of the AJ&K Implementation Agreement. Upon the earlier termination of the AJ&K Implementation Agreement pursuant to the terms of the AJ&K Implementation Agreement, if the GOAJ&K elects not to acquire the Complex or if the Seller elects to transfer the Complex to the GOAJ&K and the GOAJ&K fails to pay the applicable compensation amount due and payable in accordance with the AJ&K Implementation Agreement, the GOP shall have the option to terminate this Agreement and elect to acquire the Complex; provided, however, that upon such election and transfer the GOP pays the Seller the applicable compensation amount that would have been due and payable in accordance with the AJ&K Implementation Agreement together with any interest/return (including default interest/return at the default rate, calculated in accordance with the AJ&K Implementation Agreement), late payment charges, costs, fees that have accrued between the date the GOAJ&K should have paid the compensation and the date the compensation amount is paid by the GOP, which payment shall be made by a date which is ninety (90) Days after the later of (A) the Day on which the GOP elects to acquire the Complex and (B) the last Day of the period provided for transfer of the Complex under the AJ&K Implementation Agreement. In the event that the GOP acquires the Complex as aforesaid, the Seller shall have no further title to or rights or interest in the Complex. The rights and remedies available to the Seller pursuant to the terms of this Agreement and the Guarantee shall be subject to the provision of this Section 15.1(i). In the case where the GOP exercises its

option to acquire the Complex in accordance with this Section but fails to pay the applicable compensation that would have been due and payable in accordance with the AJ&K Implementation Agreement, the Seller shall be free to make a claim under the Guarantee to the extent permitted by the provisions of the Guarantee.]²¹

Section 15.2 Reimbursement

In the event of a termination of this Agreement for a Seller Event of Default, prior to the Commercial Operations Date, the Seller shall reimburse the GOP for all costs and expenses (including reasonable attorneys' fees and expenses) relating to the Project incurred by the GOP prior to the termination, which amount in any event shall not exceed one hundred and fifty thousand Dollars (\$150,000).

Section 15.3 Obligations Upon Termination

Upon expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Agreement, provided, however, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Section 4.1(b), Article X (*Foreign Currency Exchange and Transfer of Funds*), Article IX (*Taxation and Import Controls*), Article XVI (*Resolution of Disputes*), and this Article XV (*Rights and Obligations of Parties upon Termination*) shall survive any termination or expiration of this Agreement until all provisions are fulfilled and all funds payable hereunder by the GOP are received by the Seller or the Lenders upon the sale or other disposal of the assets related to the Project, including, without limitation, proceeds from the enforcement by the Lenders of the security created by the Seller under or pursuant to the Project Agreements have been repatriated and, if the Seller or the Foreign Investors so desire in the case of Rupee funds, converted by the Seller or the Foreign Investors into Foreign Currency in accordance with the terms of this Agreement and repatriated.

Section 15.4 Conditions of Transfer; Maintenance and Environmental Audit; and Assignment of Maintenance Agreement.

Any transfer to the GOP (or its designee) of the Transferable Assets shall be free and clear of all Liens and free and clear of all Environmental Liabilities and any Hazardous Materials, except as are contained and maintained in accordance with Prudent Utility Practices and all applicable Laws of Pakistan and have been notified to the GOP or its designee. In furtherance of the foregoing, the Seller agrees that:

- (a) Not later than the Transfer Date, the Seller shall, at its sole cost and expense, provide to the GOP a report by a reputable and qualified engineer or engineering consulting firm reasonably acceptable to the GOP certifying that as of the date of the report the Complex is in the condition and state of repair and maintenance required by this Agreement, making allowances for any Force Majeure Event or

²¹ To be deleted where there is no AJK IA.

GOP Event of Default that may have affected the Complex and for which the Seller shall not be responsible; (including, without limitation, an adequate spare parts inventory on the Site), together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in such report or, if such is not the case, a list of any discrepancies and/or deficiencies in such condition and a remediation plan and a cost estimate of the work required to remedy such discrepancies and/or deficiencies as soon as reasonably practicable and in any event prior to the Transfer Date. The Seller, at its sole cost and expense, shall cause any such discrepancies and/or deficiencies including without limitation, deficiencies in the spare parts inventory on the Site that would be maintained at a power generation facility of a like-type to the Complex in accordance with Prudent Utility Practices for a going concern to be fully corrected in accordance with the engineer's remediation plan, if any, contained in the report prior to the Transfer Date. If such report includes a remediation plan, the Seller shall within thirty (30) Days of delivery of the engineer's report deposit funds in escrow sufficient, to ensure the full execution of such plan the amount of which funds shall be estimated by the engineer and specified in the engineer's report, or if not so estimated in the report, shall be determined in the reasonable judgment of GOP. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remediation plan. Following the completion of all required remediation work, as certified by the engineer, any funds remaining in the escrow account shall be released to the Seller. If the Seller fails to place funds into escrow as required hereunder, the GOP may deduct such amount from any payments due to the Seller hereunder in respect of compensation elements (b), (c), (d) or (e) (but not (a)) set out in Schedule 2 hereto and shall apply such funds to the purposes contemplated hereunder.

- (b) Not later than the Transfer Date, the Seller shall provide to the GOP an inspection report by a reputable environmental consulting firm selected by the Seller and reasonably satisfactory to the Purchaser certifying that, as of the date of the report, no Hazardous Materials are present on, in or under the Complex or the Site or are leaking from the Site except as are contained and maintained in accordance with Prudent Utility Practices and all applicable Laws of Pakistan and have been notified to the GOP or its designee or, if such firm cannot so certify due to the presence of Hazardous Materials on, in or under, or Hazardous Materials are leaking from, the Site or the Complex, the report shall identify the Hazardous Materials present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination and provide a remedial response plan and covering such other environmental matters as the GOP shall reasonably request in writing not later than ninety (90) Days prior to the due date of such report. The consulting firm's report shall be updated with respect to all matters required to be included following the completion of any remedial action required to be undertaken under the report or plan. If the consulting firm's report, or any update thereof includes a remedial response plan the Seller shall within thirty (30) Days of the delivery of the consulting firms' report or any update thereof deposit funds into an escrow account sufficient, in the reasonable judgment of the Purchaser, to ensure the full execution of the plan the amount of which funds shall be estimated by the

consulting firm and specified in the consulting firm's report, or, if not so estimated in the report, shall be determined in the reasonable judgment of AEDB. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remedial response plan. Following the completion of all required remediation work, as certified by the environmental consulting firm, any funds remaining in the escrow account shall be released to the Seller. If the Seller fails to place funds into escrow as required hereunder, the GOP may deduct from any payments due to the Seller hereunder in respect of compensation elements (b), (c), (d), or (e) (but not (a)) set out in Schedule 2 hereto and shall apply such funds to the purposes contemplated hereunder.

- (c) If there is a long term services agreement that the Seller has used as the basis for satisfying the obligation to establish a Reserve Fund under Section 9.8 of the Energy Purchase Agreement, such agreement must be assignable through novation to the GOP or its designee upon the transfer of the Complex to the GOP or its designee pursuant to this Article XV (*Rights and Obligations of Parties upon Termination*). In connection with and at the time of, any transfer of the Complex to the GOP or its designee, the GOP shall have the right but not the obligation to have the long term services agreement assigned through novation to it or its designee. The Seller shall take all actions reasonably necessary to effect such novation following notice of such election from the GOP.

Section 15.5 Payment of Compensation Amounts

- (a) As soon as reasonably practicable and in any event no later than sixty (60) Days after the Termination Date (or other event contemplated in this Agreement making the GOP liable to pay Compensation Amounts to the Seller), the Seller shall submit an invoice to the GOP setting out the amounts payable by GOP, if any, to the Seller pursuant to Section 15.1 (*Compensation upon Termination*) (the "**Termination Invoice**"). The Termination Invoice shall be accompanied by a certification of a reputable international accountancy firm operating in Pakistan, agreed upon by the Parties or appointed by the President of the Institute of Chartered Accountants of Pakistan pursuant to Section 16.2 (*Determination by Expert*), experienced in the methods of valuation of utility assets, verifying the calculation of all of the elements listed in the Termination Invoice in reasonable detail, which calculation shall be used in the preparation of the Termination Invoice.
- (b) In the case of an early termination of this Agreement, the GOP shall pay to the Seller the amount shown in the Termination Invoice (less any amounts the GOP or the Purchaser is owed by the Seller under this Agreement or under the Energy Purchase Agreement) no later than one hundred and eighty (180) Days following the date of delivery of the Termination Invoice to the GOP (the "**Payment Date**").
- (c) Payments of amounts due and payable in respect of any Termination Invoice not made by the GOP by the date specified in Section 15.5(b) shall bear interest at a rate per annum equal to the Delayed Payment Rate.

- (d) If any Tax is imposed on or withheld from payments to be made by the GOP to the Seller under this Article XV (*Rights and Obligations of Parties upon Termination*) in connection with a transfer to the GOP or its designee of the Transferable Assets, then such payments to the Seller shall be increased by an amount such that the Seller will receive the same amount which it would in exchange for the Transferable Assets had no such Tax been imposed or withheld.
- (e) The Parties agree that the termination amounts provided under Section 15.1 (*Compensation upon Termination*) and Schedule 2 (*Compensation Amounts*) are the Parties' reasonable and pre-agreed genuine estimates of the actual losses that the Seller would incur as a result of termination of this Agreement and the Energy Purchase Agreement, and do not constitute a penalty.

Section 15.6 Transfer of the Complex to the GOP following Termination

- (a) Following payment by the GOP of the amount shown in the Termination Invoice in accordance with Section 15.5(b), the Seller shall transfer to the GOP or its designee and the GOP shall acquire from the Seller, free and clear of all Liens, all of the Seller's right, title and interest in and to the Transferable Assets (the date of such transfer, the "**Transfer Date**"). The "**Transferable Assets**" shall comprise the Complex, the Site, and the Back-Up Metering System, in each case together with all equipment and machinery, including spare parts and vehicles, and all operating manuals and design drawings relating thereto. If there is a long-term services agreement that the Seller has used as the basis for satisfying the obligation to establish a Reserve Fund under Section 9.8 of the Energy Purchase Agreement, such agreement shall constitute a part of the Transferable Assets.
- (b) The Seller shall have the right, but not the obligation, to transfer the Transferable Assets to the GOP or its designee prior to the Transfer Date on not less than thirty (30) Days prior notice to the GOP. Such transfer shall not relieve the GOP of its payment obligations under this Article XV (*Rights and Obligations of Parties upon Termination*).
- (c) The GOP shall pay the stamp duty and registration tax if any payable in respect of the transfer of the Complex to the GOP.

Section 15.7 Limitation on Compensation

Notwithstanding anything contained in Section [], to the extent that an event or ground qualifies both as an event or ground for termination under this Agreement and an event or ground for termination under the AJ&K Implementation Agreement and this Agreement and the AJ&K Implementation Agreement are terminated on the basis of such ground or event and the Seller becomes entitled to compensation on termination, the Seller shall only be entitled to receive compensation for termination under the AJ&K Implementation Agreement to the extent provided for in the AJ&K Implementation Agreement. Except as set out in Section [], the Seller will be prohibited from initiating any claim for compensation arising or resulting from termination of this Agreement on such event or ground and shall not cause or bring any proceedings against the GOP with respect to claim for compensation upon termination under this Agreement arising from such event; provided, however, nothing contained herein shall impair or affect the Seller's rights

under the AJ&K Implementation Agreement and/or the Guarantee in respect of any claim which has not been settled in full or waived by the Seller against the AJ&K Entities.]²²

²² To be deleted where there is no AJK IA.

ARTICLE XVI
RESOLUTION OF DISPUTES

Section 16.1 Resolution by Parties

In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party gives written notice of the Dispute to the other Party. During such mutual discussions and any resolution procedure instituted pursuant to this Article XVI (*Resolution of Disputes*) the Parties shall faithfully continue to perform their respective obligations under this Agreement.

Section 16.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 16.1 (*Resolution by Parties*) within the time periods set forth therein, then either Party, in accordance with this Section 16.2 (*Determination by Expert*), may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a determination from the Expert as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 16.3 (*Arbitration*) without first referring it to an Expert.
- (b) Subject to (a) above, the Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the Person it proposes to be the Expert. The Expert may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in the field of expertise relevant to the Dispute which is the subject matter of the determination. The Party shall nominate an Expert who does not have any conflicts-of-interest in the matter, provided, that any current or former employees of either Party shall be deemed to have a conflict-of-interest. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such Person is acceptable, and if such nominated Expert is not acceptable to the responding Party, the responding Party shall propose a Person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the Person is not acceptable or nominates an Expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of five (5) Days to agree upon a Person to be the Expert. Failing nomination by the responding Party of an Expert within the period provided or failing such agreement by the Parties of the Expert, at the end of the meeting the President of the Pakistan Institute of Chartered Accountants (for financial and billing matters) or the Vice-Chancellor of the University of Engineering and Technology (UET), Lahore or the Vice-Chancellor of the Lahore University of Management Sciences (LUMS) or the Vice-Chancellor of the Ghulam Ishaq Khan Institute (GIK) (for technical matters) shall be requested to select the Expert in the sequence/order given above, and the selection of the Expert by the relevant selecting entity shall be binding on the Parties; provided, however, that the selecting entity shall be directed that, unless the Parties otherwise agree in writing, the Expert shall not be a national of the jurisdiction of either Party or of

the jurisdiction of any Investor or group of Investors holding directly or beneficially more than five percent (5%) of the Ordinary Share Capital nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.

- (c) (i) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (A) a description of the Dispute;
 - (B) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (C) copies of records supporting the initiating Party's position.
- (ii) Within ten (10) Days of the date that a Party has submitted the materials described in Section 16.2(c)(i), the other Party may submit to the Expert, with copies to the other Party:
 - (A) a description of the Dispute;
 - (B) a statement of such Party's position and, if not already requested, whether a hearing is requested by such Party; and
 - (C) copies of any records supporting the Party's position.

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

- (d) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (e) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 16.2(c), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (f) The Expert shall provide a determination within fifteen (15) Days after the ten (10) Day response period provided in Section 16.2(c) has expired, or within such further time as is agreed in writing by the Parties. If the Expert's determination is given within such fifteen (15) Days period, as may be extended by the Parties, the Parties may review and discuss the determination with each other in good

faith for a period of ten (10) Days following delivery of the determination before proceeding with any other actions.

- (g) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- (h) Unless the Parties agree in writing at the time the Expert is selected, stating that the determination of the Expert shall be binding, the determination of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 16.3 (*Arbitration*) have not been commenced within seventy-five (75) Days from the date the Expert's determination was received by the Parties in accordance with Section 16.2(f), the Expert's determination shall be final and binding on the Parties, and any right of such Parties to resort to arbitral, judicial or other proceedings in relation to the subject matter of the determination shall stand waived to the fullest extent permitted by law.
- (i) Subject to Section 16.2(h), if a Party does not accept the determination of the Expert with respect to the Dispute or if the Expert has not provided a determination within the time period specified in Section 16.2(f), either Party may initiate arbitration proceedings in accordance with Section 16.3 (*Arbitration*).
- (j) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for, and making presentations to, the Expert.
- (k) The failure of any Party to comply with the provisions and time periods set out in this Section 16.2 (*Determination by Expert*) shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Section 16.3 (*Arbitration*).
- (l) Subject to Section 16.2(h), either Party may serve a written notice on the other Party within thirty (30) Days of the Expert's determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the determination of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty-five (45) Days period after serving such notice. Notwithstanding anything to the contrary expressed in this Article XVI (*Resolution of Disputes*), either Party may require arbitration of a Dispute pursuant to Section 16.3 (*Arbitration*) without reference to an Expert under this Section 16.2 (*Determination by Expert*).

Section 16.3 Arbitration

- (a) Any Dispute that has not been resolved following the procedures set forth in Section 16.1 (*Resolution by Parties*) and Section 16.2 (*Determination by Expert*), or has been required by a Party to be referred to arbitration without reference to

an Expert, shall be settled by arbitration in accordance with the rules of the London Court of International Arbitration as in effect on the date hereof (“Rules”). The arbitral tribunal shall comprise (one) 1 arbitrator; provided, that, (i) if the amount in Dispute is five million (5,000,000) Dollars or more, or (ii) if any arbitration under this Section 16.3 is consolidated with an arbitration under the Energy Purchase Agreement, then, on request of either Party, the arbitral tribunal shall comprise three (3) arbitrators. The arbitration proceedings shall be conducted and the award shall be rendered in English. Except where all the Investors and Lenders are residents of, incorporated or established in Pakistan, or except where otherwise agreed by the Parties at the time of commencement of arbitration, the seat of arbitration shall be London, United Kingdom. The award of the arbitration tribunal duly constituted under this Section 16.3 shall be final and binding on the Parties, and any Party may apply to a court of competent jurisdiction for the enforcement of such award.

- (b) The arbitration shall be conducted at Islamabad, Pakistan, provided, however, that, if the amount in Dispute is greater than five million Dollars (\$5,000,000) or the amount of such Dispute together with the amount of all previous Disputes, if any, submitted for arbitration pursuant to this Section 16.3 (Arbitration) exceeds an aggregate of ten million Dollars (\$10,000,000) or the issue in Dispute is (i) the legality, validity or enforceability of this Agreement or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require arbitration to be conducted in London, United Kingdom. Except as otherwise determined in arbitration, and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with such arbitration.
- (c) Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in London, United Kingdom, and such Dispute is not of a type that could have been conducted in London in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London shall pay all costs of arbitration as and when incurred by the other Party (including out-of-pocket costs but excluding any award made by the arbitral tribunal) in excess of the costs that would have been otherwise incurred by such other Party had the arbitration been conducted in Islamabad, Pakistan; provided, further, that the Party requiring that arbitration be conducted in London may seek a determination that the Dispute or the defence thereof is spurious and without any merit whatsoever, and upon such a final and binding determination, any amounts paid to the other Party to cover such excess costs shall be returned to the paying Party.
- (d) No arbitrator appointed pursuant to this Section 16.3 shall be a national of the jurisdiction of either Party or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Purchaser, the Seller, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.

- (e) In relation to the Parties, or any parties claiming through the Parties, the provisions of Sections 16.3(a) and 16.3(b) hereinabove shall override and have effect, notwithstanding any arbitration clause or provision to the contrary or otherwise in any Bilateral Investment Treaty to which Pakistan is or may become a party.

Section 16.4 Commercial Acts

The GOP unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitute its private and commercial acts.

Section 16.5 Sovereign Immunity; Jurisdiction

- (a) The GOP hereby irrevocably and unconditionally agrees that:
 - (i) should any proceedings be brought against the GOP or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges provisions of any legislation (the “**Protected Assets**”) in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the GOP on behalf of itself or any of its assets (other than the Protected Assets);
 - (ii) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (iii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use.
- (b) The Seller hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction for any action filed by the GOP to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the parties. The Seller waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 16.5(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Seller agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Seller irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.

- (c) For the avoidance of doubt, any Dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in this Section 16.5 (*Sovereign Immunity; Jurisdiction*) shall be referred for determination under Section 16.3 (*Arbitration*) and shall fall within the definition of Dispute.

ARTICLE XVII
GUARANTEE

Within five (5) Business Days of receiving notice in writing from all Lenders or, if an Agent is appointed, from the Agent, of satisfaction or waiver of all conditions precedent to disbursement pursuant to or under the Financing Documents (other than the effectiveness of [the AJ&K Implementation Agreement,] the Energy Purchase Agreement, the Water Use Agreement, this Agreement and the issuance of the Guarantee) and that the Seller Letter of Credit has been delivered to the Purchaser, the GOP shall execute and deliver the Guarantee to the Seller.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

Section 18.1 Notices

- (a) Except as otherwise expressly provided in this Agreement, all notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the persons indicated herein below, and shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The addresses for service of the Parties and their respective facsimile numbers shall be:

If to the GOP: Alternative Energy Development Board
2nd Floor OPF Building
Shahrah-e-Jamhuriat
Sector G – 5 / 2
Islamabad, Pakistan

Attention: Chief Executive Officer
Telephone No: +92 51 9222365
Facsimile No: +92 51 9222364

If to The Seller: [Name of Company]
[Address]

Attention: Chief Executive Officer
Telephone No: •
Facsimile No: •

All notices shall be deemed delivered (i) when presented personally, (ii) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number specified hereinabove and, if received on a Day that this is not a business Day for the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number specified hereinabove, (iii) two (2) Days after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated hereinabove or, (iv) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address specified hereinabove (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The Parties agree that all notices or communication to, and from the GOP, required to be given under this Agreement or any other communication between the Parties, if addressed to or given by GOP, shall be

deemed valid when addressed to or given by the AEDB in terms of this Agreement.

- (b) Any Party may by notice change the addressee and/or address to which such notices and communications to it are to be delivered or mailed.

Section 18.2 Governing Law

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

Section 18.3 Amendment

This Agreement can be amended only by agreement between the Parties in writing, executed by a duly authorized representative of each of the Parties. No amendment, modification, supplement, extension, or reinstatement of [the AJ&K Implementation Agreement,] the Energy Purchase Agreement, the Water Use Agreement, [the Site Lease,] or any other Project Agreement shall affect this Agreement or increase the liability of the GOP under this Agreement or the Guarantee, unless such amendment is approved in writing by the GOP, prior to such amendment being executed between the parties thereto.

Section 18.4 Third Parties

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

Section 18.5 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 Agreement:
 - (i) shall operate or be construed as a waiver of any other or further default whether of alike or different character; or
 - (ii) shall be effective unless in writing duly executed by a duly authorized 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 Agreement, nor time or other indulgence granted by one (1) 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.

Section 18.6 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. 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.

Section 18.7 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that, by their nature, should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

Section 18.8 Language

The language for the purpose of administering this Agreement shall be English.

Section 18.9 Entirety

Upon the occurrence of Financial Closing and the full effectiveness of this Agreement, this Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. Except for the Letter of Support, which until Financial Closing will govern the Project and supersede all documents and agreements between the Parties in relation to the Project, all written or oral representations, understandings, offers or other communications of every kind between the Parties in relation to the Project prior to this Agreement are hereby abrogated and withdrawn. Until the occurrence of Financial Closing, to the extent of any difference between the provisions of the Letter of Support and the provisions of this Agreement which are then effective in terms of Section 2.1 (*Effectiveness of Agreement; Term*), the Letter of Support shall be controlling as to the rights and obligations of the Parties in relation to the Project.

Section 18.10 Confidentiality

- (a) Each of the Parties and their Contractors, subcontractors, consultants, employees and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the design and construction of the Purchaser Interconnection Facilities and the design, construction, insurance, operation, maintenance, transfer, management and financing of the Complex, and all information and documents obtained in accordance with the terms of this Agreement, and shall not, without the consent of the other Party, save as required by law or appropriate regulatory authorities, prospective lenders to, or investors in the Seller and their professional advisers (subject to restrictions under Article XII (*Restrictions on Acquisitions and Transfers of Shares and Assets*)), publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein and in agreements prepared and issued or to be prepared and issued in connection with other projects by the GOP.
- (b) The provisions of paragraph (a) hereabove shall not apply to:
 - (i) any information in the public domain otherwise than by breach of this Agreement;

- (ii) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality.

Section 18.11 Successors and Assigns

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

Section 18.12 No Liability for Review

No review, non-objection or approval by the GOP, the AEDB or any Relevant Authority of any agreement, document, instrument, drawing, specifications or design proposed by the Seller shall relieve the Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or failure to comply with the applicable Laws of Pakistan with respect thereto, or to satisfy the Seller's obligations under this Agreement, nor shall the GOP, the AEDB or any Relevant Authority be liable to the Seller or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

Section 18.13 Affirmation

- (a) The Seller hereby declares that it has not obtained or induced the procurement of this Agreement or the Energy Purchase Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Seller represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Seller for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of this Agreement or the Energy Purchase Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP or any Public Sector Entity, except that which has been expressly declared pursuant hereto.
- (c) The Seller accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Seller

agrees in the event that any of the representations and warranties made by it in Section 18.13(a) and (b) are proved to be materially incorrect, that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the GOP, be voidable and without legal effect at the option of the GOP.

- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the GOP in this regard, the Seller agrees to indemnify the GOP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to the GOP in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by the Seller (either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), as aforesaid for the purpose of obtaining or inducing the procurement of this Agreement or the Energy Purchase Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP, the Relevant Authority or any Public Sector Entity.

Section 18.14 Counterparts

This Agreement may be executed in two (2) or more originals and each such original may be executed by each of the Parties in separate counterparts, each of which, when executed and delivered by the Parties, shall constitute an original, but all of which shall together constitute one (1) and the same instrument.

Section 18.15 Accounts and Reports

- (a) Appointment of Auditors. The Seller shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment, as auditors, of a reputed firm of independent chartered accountants reasonably acceptable to the AEDB.
- (b) Right of Inspection. The Seller shall permit representatives of the GOP or AEDB, on reasonable notice, to enter upon and inspect the Complex and the design, construction, operation, and maintenance thereof. The Seller shall maintain complete and accurate records accounting for all transactions relating to any Restoration of the Complex, which records shall be subject to inspection and audit by the AEDB.
- (c) Periodic Reports.
 - (i) The Seller shall, as soon as available but in any event within sixty (60) Days of filing, furnish to the AEDB two (2) copies of all documents filed in compliance with the requirements of the Companies Ordinance, 1984 as amended or superseded from time to time or any other Laws of Pakistan.

- (ii) The Seller shall, as soon as available, furnish to the AEDB: (A) a report on any factors materially and adversely affecting, or that might materially and adversely affect, the Project or the Seller's business and operations; and (B) copies of the Monthly progress reports and any other construction related reports given to the Purchaser.

- (d) Reporting of Changes. The Seller shall, at least fourteen (14) Days prior to its becoming effective, report to AEDB any contemplated (i) material change in its Memorandum and Articles of Association; (ii) change in its fiscal year; (iii) change in the constitution of its Board of Directors; (iv) change in its Chief Executive Officer, and (v) without prejudice to Section 12.3 (*Restriction on Transfer of Share*), registration of a transfer of Ordinary Share Capital to any Person who thereby becomes a registered holder of greater than five percent (5%) of the issued Ordinary Share Capital, or of a transfer of Ordinary Share Capital to or from a Person or entity who, immediately prior to such transfer, held greater than five (5) percent of the issued Ordinary Share Capital, provided, however, that, reporting as aforesaid shall not relieve the Seller from its obligations or liabilities towards any other Relevant Authority having jurisdiction over any such matter.

- (e) Lists of Lenders and Creditors
 - (i) If the Lenders in their sole discretion elect not to enter into a Direct Agreement, the Lenders shall furnish to AEDB before the Financial Closing a list of the Lenders parties to the Financing Documents together with a list of the Financing Documents executed by the Lenders.

 - (ii) Where the Lenders elect not to enter into the Direct Agreement, the Lenders may, without the prior approval of the GOP but with written notice to AEDB, sell down or otherwise transfer the rights and obligations under the Financing Documents to a bank or a financial institution which is regularly engaged in making, purchasing or investing in project loans, provided:
 - (A) (1) the bank is a scheduled bank as defined in the Banking Companies Ordinance, 1962, or a financial institution that in each case has been awarded a minimum long-term credit rating of "A" or a mutual fund that has received a minimum rating of A(f), three star, MFR three star or equivalent by a credit rating agency registered with the Securities and Exchange Commission of Pakistan and meets the rules and regulations of the State Bank of Pakistan; or

 - (2) in any other case, has been awarded a minimum long term credit rating of "A" by Moody's or equivalent rating by Fitch or Standard and Poor or any Pakistani credit rating agency approved by the Securities and Exchange Commission of Pakistan; and

- (B) no amendment, supplement or other modification to the Financing Documents or any sell-down or other form of transfer of rights and obligations thereunder shall affect or increase the obligations or liabilities of the GOP under the Implementation Agreement or the Guarantee beyond that stated in Schedule 2 without the GOP's prior written consent.
 - (iii) Together with the periodic reports required by Section 18.15(c)(i) and (ii), the Seller shall also furnish to the AEDB a list of the Lenders and each of its creditors to which the Seller has an outstanding obligation of five hundred thousand Dollars (\$500,000) or more. The report shall also indicate any changes, as compared to the report submitted the previous Year that might have occurred.
- (f) Information Regarding Statutory Notice/Winding Up Proceedings
 - (i) The Seller shall, within seven (7) Days of receipt thereof, provide to the AEDB a copy of any notice that the Seller may be served under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984 by any of the Lenders or its creditors.
 - (ii) The Seller shall provide to the AEDB all information in respect of any further actions taken by the Lenders or its creditors following any notice under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984.
- (g) Failure by the Seller to submit Reports, Documents and Information. In addition to the rights the GOP may have under this Agreement or under the Laws of Pakistan, in the event that the Seller fails to submit any of the documents, reports or information as and when required under this Agreement, the GOP shall be entitled to assess against and recover from the Seller reasonable costs established from time to time by the AEDB for such non-compliance. Such reasonable costs shall be paid to the AEDB within ten (10) Business Days of notice of such non-compliance and assessment by the AEDB provided that such costs shall not exceed an amount equal to three hundred (300) Dollars for each Day that such documents, reports or information remains outstanding commencing from the date that notice thereof is delivered by the AEDB to the Seller.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first here above written.

For and on behalf of:
**THE PRESIDENT OF THE ISLAMIC
REPUBLIC OF PAKISTAN ON BEHALF OF
THE ISLAMIC REPUBLIC OF PAKISTAN**

For and on behalf of:
[•]

By: _____

By: _____

Title: Chief Executive Officer
AEDB

Title:

Witness: _____

Witness: _____

Name: _____

Name: _____