

1st Revised Discussion (changes-tracked) Draft - AEDB

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

- AND -

[NAME OF SELLER]

IMPLEMENTATION AGREEMENT

- RELATING TO -

A POWER GENERATION COMPLEX

AT

[_____],

MADE AT

ISLAMABAD, PAKISTAN

ON _____, 20____

COUNSEL FOR THE GOP:

COUNSEL FOR THE SELLER:

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THIS IMPLEMENTATION AGREEMENT (this “Agreement”) is made at Islamabad as of the ___ Day of _____ 200_, 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 SELLER] (the “Seller”), a [public/private] limited company incorporated under the laws of Pakistan (as hereinafter defined), whose principal office is located at [identify location], 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 and maintain an approximately [] MW (gross ISO) wind powered electric generation facility to be located at _____, _____ Province, Pakistan ;
- B. **WHEREAS**, the GOP, through the Alternative Energy Development Board, on _____ 200_ issued to the Seller a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, commissioning, operation and maintenance of the said electric generation facility. ;
- C. **WHEREAS**, simultaneously herewith, the Seller is entering into a Energy Purchase Agreement with the Purchaser; and
- D. **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 said electric generation facility 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:

ARTICLE I DEFINITIONS

Section 1.1 Definitions

Wherever used in this Agreement or the Schedules, terms defined in the Energy Purchase Agreement (as defined below) shall have the same meanings herein unless otherwise defined herein. In addition, the following terms have the meanings opposite them:

"AEDB" - The Alternative Energy Development Board, a statutory body corporate formed under the Alternative Energy Development Board Ordinance, 2006.

"Agent" – The meaning ascribed thereto in Section [14.4](#).

"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.

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

"Compensation Amounts" – The compensation amounts shown in a matrix format in [Part I of Schedule 2](#).

"Customs" - The agency or agencies of the GOP responsible for collection of Custom 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.

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“Dispute” – Any dispute or disagreement or difference arising under, out of, or in connection with 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.

“Effective Date” – The meaning ascribed thereto in Section [2.1](#).

“Election Notice” – The meaning ascribed thereto in Section [14.4\(b\)](#).

“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 Pakistan Environmental Protection Agency and the relevant Environmental Protection Agency of the Provincial Government.

“EPC Contractor” – _____, and any successor thereto appointed by the Seller and not objected to by the GOP pursuant to Section [6.2\(b\)](#).

“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 (following the resolution of any objections raised by AEDB to a term sheet or debt repayment schedule in accordance with the Implementation Agreement that sets out a principal repayment schedule and the other principal terms of the transaction between the Seller and the Lenders) 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 of all conditions precedent for the initial availability of funds under the Financing Documents.

“Financing Documents” – Loan agreements for which the term sheets related thereto have been approved by AEDB pursuant to Section [11.3](#), and all related notes, indentures, security agreements, guarantees, documents under Islamic financing arrangements, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect of documents assigned as security to the Lenders) and other documents entered into by the Seller in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time in accordance with the provisions of Section 11.3.

“Force Majeure Events” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Foreign Investors” – Shareholders of the Seller who are foreigners or non-resident Pakistan nationals holding dual nationalities.

“GOP” – 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 the Purchaser under the Energy Purchase Agreement in the form of Schedule [3](#).

“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 Shareholders” – [insert name of pre-qualified Sponsors, which are also companies of substance].

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

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

“Lead Investor” – [insert name of pre-qualified lead Sponsor, which is also a company of substance].

“Lenders” – The financial institutions party to the Financing Documents, or subsequent financial institutions that become parties to the Financing Documents not objected to by the GOP in accordance with the terms of this Agreement, together with their respective successors and assigns.

“Letter of Support” – That certain Letter of Support dated __ _____ 200_ issued by AEDB¹, as may be amended from time to time.

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

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

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“Net Cash Flow” – The net cash profits of the Seller with respect to the Complex less all principal repayment and interest payment amounts but without regard to depreciation, all as shown in the audited financial statements of the Seller for the last completed financial year prior to the date of termination of this Agreement.

“Non-Escalable Component” – The meaning ascribed thereto in Schedule 1 to the Energy Purchase Agreement.²

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

“O&M Contractor” – Any operation and maintenance contractor(s), and any successor(s) thereto, appointed by the Seller and not objected to by the GOP pursuant to Section [6.2\(c\)](#).

“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.

“Pakistan” – The Islamic Republic of Pakistan.

² To be revisited after NEPRA's tariff order.

“Energy Purchase Agreement” – The Energy Purchase Agreement, dated _____ 200_, by and between the Purchaser and the Seller, for the purchase and sale of electricity generated by the Complex, as may be amended by the parties thereto from time to time.

“Purchaser” – [Name of Purchaser], a [public] limited company incorporated under the Laws of Pakistan, with its principal office located at _____, _____, Pakistan and its successors and permitted assigns.



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

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

“Project Agreements” –

- (a) Implementation Agreement;
- (b) Energy Purchase Agreement;
- (c) O&M Agreement, if any;
- (d) EPC Contract;
- (e) Site Sub-lease;
- (f) Financing Documents; and
- (g) Guarantee.

“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 _____.

“Rules” – The meaning ascribe thereto in Section [16.3\(a\)](#).

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

“Seller” – _____, a [public/private] limited company incorporated under the Laws of Pakistan, with its principal office at _____ Pakistan, and its permitted successors and permitted assigns and any permitted Transferee.

“Seller Event of Default” – The meaning ascribed thereto in Section [14.1\(a\)](#)

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

“Succession Notice” – The meaning ascribed thereto in Section [11.2\(b\)](#) of this Agreement.

“Term” – The meaning ascribed thereto in Section [2.1](#).

“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\(c\)](#).

“Termination Invoice” – The meaning ascribed thereto in Section [15.5](#).

“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](#).

“Transferable Assets” – The meaning ascribed thereto in Section [15.6](#).

“Transfer of the Complex” – The meaning ascribed thereto in Section [11.2\(d\)](#).

“Transferee” – The meaning ascribed thereto in Section [11.2 \(d\)](#).

“UNCITRAL Rules” - The meaning ascribed thereto in Section [16.3\(b\)](#).

Section 1.2 Rules of Interpretation

The rules of interpretation referred in Section 1.2 of the Energy Purchase Agreement shall apply to the interpretation of this Agreement and are, mutatis mutandis, incorporated herein by reference.

ARTICLE II TERM

Section 2.1 Effectiveness of Agreement; Term

Except for the provisions of this Section 2.1 and Sections [5.1](#), [5.2](#), [5.3](#) and [6.2](#), and Articles [XI](#) and [XVIII](#), which shall become effective immediately upon execution and delivery of this Agreement, this Agreement shall commence and be effective on the date of Financial Closing (the “Effective Date”), and shall, unless terminated earlier in accordance with the terms of the Letter of Support or this Agreement, continue in full force and effect for a term equal to the Term of the Energy Purchase Agreement (the “Term”), as such date may be extended pursuant to Section 2.2(b) of the Energy Purchase Agreement.

Section 2.2 Termination of Letter of Support

If Financial Closing does not occur in accordance with the requirements of the Letter of Support, upon the termination of the Letter of Support this Agreement shall terminate in its entirety without notice and without further action by the GOP. Upon such termination, the Parties 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 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 GOP 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 is the sole remedy of the GOP for such event.

ARTICLE III
IMPLEMENTATION OF THE PROJECT

The Seller shall design, insure, finance, acquire, construct, complete, and Commission the Complex, and shall own, operate, [and] maintain [and transfer] the Complex, in each case, in accordance with all applicable Laws of Pakistan, the Seller Consents, this Agreement and the Energy Purchase 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 sub-leased the Site. 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 and the Energy Purchase Agreement.

Section 4.2 Applications by the Seller for 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 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 Consent application forms or renewal application forms, the status of any Consent applications then outstanding, notifications of the granting or denial of any Consent or Consent renewal, and notifications of any violations of any Consent. Each report shall be submitted to 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 material Consent or Consent application that may affect the Seller’s performance under this Agreement or the Energy Purchase Agreement. In the event of any Lapse of Consent, the Seller shall submit a report pursuant to this Section 4.3 within three (3) Days after becoming aware thereof.

ARTICLE V SUPPORT OF THE GOP

Section 5.1 Support to Obtain Consents

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

Section 5.2 Conditions to Consents

The GOP or any Relevant Authority may attach such “non-discriminatory” terms and conditions (as explained in Section [12.4](#)) 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](#) (unless it constitutes a Change in Law), or a GOP Event of Default under Section [14.1\(b\)](#). The Seller shall abide by all such terms and conditions. If the Seller fails to abide by any term or condition of any Consent, then the GOP or any Relevant Authority may exercise any power pursuant to the Laws of Pakistan in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article XIII, 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 Consent earlier than the later of (i) thirty (30) Days after delivery to the Seller of written notice by the GOP 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 Consent; provided, further, that nothing in this Section 5.2 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 or to require the Seller to cease operating the Complex.

Section 5.3 Support for Obligations

Upon reasonable request by the Seller, the GOP shall use its good offices, acting through AEDB, to support the Seller's performance of its obligations to design, finance, insure, acquire, construct, own, operate, [and] maintain [and transfer] the Complex. If the GOP reasonably determines that the Seller has failed to comply with its obligations under this Agreement and that such failure is the principal cause of the Seller's difficulties in performing such activities, the GOP, acting through AEDB, may advise the Seller of such determination, and the GOP shall not be obligated to take any action to assist the Seller pursuant to this Article V until such time as the Seller has fully complied with its obligations under this Agreement. By agreeing to use 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 for the protection and security of the Complex and the Site. 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 by the Seller as and when incurred by the GOP.

Section 5.5 Immigration Controls

Provided the Seller and the Contractors comply with all applicable Laws of Pakistan, the GOP will expeditiously grant applications of the Seller and the 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.

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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) Construction, Operation, and Maintenance of the Complex. The Seller shall design, construct, install, Commission, operate and maintain the Complex; provided, however, that the Seller may contract with the EPC Contractors to design, 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 by the Seller shall not relieve the Seller of any of its obligations or potential liability regarding the design, financing, insuring, acquisition, construction, completion, operation, or maintenance of the Complex.
- (b) EPC Contract; EPC Contractor. Prior to the date of execution of this Agreement, the EPC Contractor has been approved by AEDB. The Seller shall provide AEDB with a certificate of a duly authorized officer of the Seller setting out any proposed amendment (a “Proposed Material Amendment”) to the EPC Contract that would result in (i) a change in the EPC Contractor, or (ii) a change in a major piece of equipment as to either its Seller or country of manufacture, no later than fifteen (15) Business Days prior to execution thereof, setting forth the proposed changes. 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 sole discretion, the proposed EPC Contractor or the Seller or 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 EPC Contract or the Proposed Material Amendment, AEDB shall not be construed as having approved of the EPC Contract or the Proposed Material Amendment nor as in any way of having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement. If 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, AEDB shall be deemed not to have objected to the Proposed Material Amendment. Within thirty (30) Days after execution of the EPC Contract and any Proposed Material Amendment, the Seller shall (i) deliver to 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.

- (c) O&M Agreement; O&M Contractor. The Seller shall deliver to AEDB a certificate of a duly authorized officer of the Seller, describing any proposed O&M Agreement and setting out the name and nationality of the O&M Contractor and any major subcontractor, 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 may notify the Seller prior to the proposed execution date that it objects to the O&M Contractor because, in its sole discretion, the appointment of the proposed O&M Contractor would be adverse to the national security interests of Pakistan; provided, however, that by not objecting to the O&M Agreement, AEDB shall not be construed as having approved of the O&M Agreement nor as in any way having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement. If AEDB does not object to the certificate on or before the end of the fifteen (15) Business Days period provided for herein, AEDB shall be deemed not to object to the particular O&M Agreement.

- (d) Operation of the Complex by the Seller. Notwithstanding anything contained in this Article VI 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 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.

ARTICLE VII LIABILITY

Section 7.1 Limitation of Liability

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of this Agreement or the Guarantee; provided, however, that this provision is not intended to constitute a waiver of any rights of one (1) 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 Energy Purchase Agreement

- (a) Except Disputes or breaches related to Section 2.3 (Consents), and Article XII (Insurance), Article XIV (Taxes), and Article XVI (Termination) of the Energy Purchase Agreement, settlement or waiver in writing by the Purchaser of any dispute or breach under the Energy Purchase Agreement shall be binding on the GOP with respect to an issue or claim, 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 (Consents), and Article XII (Insurance), Article XIV (Taxes), and Article XVI (Termination) of the Energy Purchase Agreement shall be effective only if agreed to, in writing, by both the Purchaser and the GOP.
- (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](#) and Section [4.1](#) and Section [4.2](#) (to the extent such Articles and Sections relate to substantially similar obligations of the Seller under the Energy Purchase Agreement) or Article [XI](#) of this Agreement, if the Purchaser has fully 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 be without prejudice to 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 shall prevent the GOP and the Purchaser from separately initiating proceedings to terminate this Agreement and the Energy

Purchase Agreement, respectively, pursuant to Section [14.1](#) and Section [14.2](#) of this Agreement and Section 16.1 and Section 16.4 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. If and to the extent that the GOP can be named as an additional insured on any fire, perils, casualty, and liability insurance policies covering the Complex, the GOP shall be so named by the Seller; provided however, that the GOP shall agree to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein. Subject to the provisions of Article XV of the Energy Purchase Agreement, the proceeds of all such insurance (except general liability 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 GOP 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; provided, that any change in Clause (132) 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 the Tariff 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 prior to the Commercial Operations Date, exempt from Customs Duty and Sales Tax,

plant, machinery and equipment not manufactured locally, and required for the design, construction, completion, operation and maintenance of the Complex, subject to compliance with any restrictions imposed by the statutory revisionary order (SRO)575(I)2006, dated 5th June 2006), provided, that such imported plant, machinery and equipment shall be used at the Site, in relation to the Project and will not be sold or otherwise transferred to or used by another Person other than the Seller or its Contractors, provided further, that any amendment, revocation or substitution of SRO 575(I)/2006 resulting in the withdrawal of exemption from Customs Duty or Sales Tax shall not constitute a Change in Law or give rise to a breach or default of the GOP hereunder so long as such withdrawal of exemption results in a change in the Tariff (A) as provided in Schedule 1 to the Energy Purchase Agreement, or (B) as allowed by NEPRA within ninety (90) Days of an application being filed by the Seller with NEPRA for modification of the Tariff to permit pass-through of the Customs Duty and Sales Tax.

- (b) Provided that applicable Customs Duties and Sales Tax, if any, are timely paid, all plant, machinery and equipment imported for incorporation into the Complex, or use in the Project will be cleared for release from Customs and available for removal by the Seller or its agents within thirty (30) 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. Such notice may be given at any time after a delay in the release of such plant, machinery or equipment of ten (10) Days following the 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 into Pakistan. In the event that there is a claim for Customs Duties or Sales Tax , as determined under the Laws of Pakistan, of plant, machinery or equipment not manufactured locally, imported prior to the Commercial Operations Date for incorporation into the Complex, or use in the Project, and the Seller chooses to pay such duties under protest, upon notice to the GOP by the Seller, such Dispute shall be resolved consistent with the terms of this Agreement and the Laws of Pakistan within ninety (90) Days after the Seller files its refund claim.
- (c) All items not consumed during the 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 duties and customs fees for those items of the plant, equipment or machinery.

Section 9.4 Export and Reimport

The Seller shall be entitled to export all items of plant and machinery imported by it under this Article IX for permanent installation in the Complex for the purpose of repair or refurbishment

outside Pakistan and to re-import the same upon payment of the applicable Customs Duties and 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 in conjunction with the Protection of Economic Reforms Act, 1992 of Pakistan, each as amended from time to time.

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, will be initiated through bank accounts in Pakistan; provided, however, that Foreign Currency provided by foreign Lenders, liquidated damages in Foreign Currency paid by foreign Contractors or vendors and any other Foreign Currency from foreign sources that is used to pay foreign Contractors, vendors, insurers, reinsurers 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. Copies of all such payments shall be submitted to AEDB within twenty-one (21) Days.

Section 10.3 Consent to Foreign Currency Accounts

Consents for the Seller (a) to open, operate, and retain earnings in Dollar denominated 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 in Pakistan 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 as 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), the GOP shall, on such requested date, make available to the Seller through the State Bank of Pakistan, to the extent that Dollars are not available through normal commercial banking channels, Dollars in exchange for Rupees in the amount necessary for (i) meeting the Seller's requirements for Foreign Currency necessary to meet its obligations under this Agreement, (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 Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation, (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 compensation payments to be made by the GOP pursuant to Section 15.1 in the event of a termination of this Agreement, which is required to be in 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 rate applicable to such conversion shall be the State Bank of Pakistan's settlement rate for Dollars at 11:00 a.m. on the Business Day immediately preceding the requested date in such application.

Section 10.5 Free Transfer and Repatriation of Necessary Funds

Without prejudice to Section 10.4, 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 Dollars converted from Rupees pursuant to Section 10.4, whether converted through normal commercial banking channels or through the State Bank of Pakistan.

ARTICLE XI ASSIGNMENT AND SECURITY

Section 11.1 Assignment

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, except as provided in Sections 11.2(a) and (c).

Section 11.2 Creation of Security

- (a) Notwithstanding the provisions of Section 11.1, 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 and interests under or pursuant to (i) this Agreement, (ii) any agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the movable, immovable, and intellectual property of the Seller, and (vi) the revenues or any of the rights or assets of the Seller.
- (b) The Lenders shall have no rights (except as expressly provided herein) or obligations to the GOP under this Agreement until such time as the Lenders or their designees succeed to the Seller's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give notice of such succession ("the Succession Notice") to the GOP and shall assume liability for all of the Seller's obligations under this Agreement, including payment of any amounts due and owing to the GOP for breaches or defaults by the Seller and other liabilities arising under this Agreement prior to the Lenders' or such designees' succession to the Seller's interest in and under this Agreement; provided, however, that any liability of the Lenders or their designees shall be strictly limited to the interest of the Lenders in the Complex.
- (c) Upon notification by the Lenders or the Agent to the GOP, of the occurrence and continuance of an event of default under the Financing Documents, the Lenders shall have the right, among others, to (i) take possession of the Complex and prior to the Commercial Operations Date, complete construction of the Complex and operate and maintain the same and, after the Commercial Operations Date, operate and maintain the same, and (ii) cure any continuing Seller Event of Default as provided under Section [14.4](#) of this Agreement.
- (d) In the event the Lenders desire to sell, transfer or assign the Complex as a going concern with all assets (present and future) together with possession thereof (hereinafter the "Transfer of the Complex") for the purposes of enforcing their rights under or pursuant to the Financing Documents, the following conditions shall apply:

- (i) Lenders shall obtain the consent of the GOP for the purposes of the Transfer of the Complex, which consent shall not be unreasonably withheld or delayed;
- (ii) The Transfer of the Complex shall only be in favour of a transferee (the “Transferee”) who will have been approved by the GOP; and
- (iii) The GOP may impose such conditions (which will not be unreasonable) for granting its consent and approval as stated in sub-clause (i) and (ii) above, including the curing by the Transferee of any existing Seller Event of Default within the period remaining for such cure by the Seller and the Lenders and the payment of any amounts due and owing to the GOP by the Seller hereunder on or before the date of Transfer of the Complex.

Provided that the Lenders and the Transferee have complied with the requirements of this Section 11.2(d), the GOP agrees to execute such agreements and documents necessary or reasonably expedient to ensure that the Transferee has the benefit of all right, title and interest of the Seller under this Agreement and assumes in writing for the benefit of the GOP all of the obligations and liabilities of the Seller hereunder.

- (e) Upon notice to the GOP of a default under the Financing Documents, the GOP shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders in the exercise of such rights by the Lenders under this Agreement and the Financing Documents.
- (f) At the request of the Seller, delivered to the GOP no less than thirty (30) Days in advance, the GOP shall execute and deliver, effective at the Financial Closing, acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Article XI and the rights of such parties in and to this Agreement, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature.

Section 11.3 Delivery of Financing Documents; Evaluation of Principal Repayment Schedule

- (a) Prior to Financial Closing, the Seller shall deliver to AEDB a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for debt repayment that is not less than revenues produced by the [Non-Escalable Component³] of the Tariff, using reasonable assumptions of annual plant factor , together with the maximum principal amounts and interest rate or rates and any schedules or formulae that will be included in the Financing Documents for the computation of fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents, and shall also identify the equity commitments, individually and in total, of the Initial

³ NEPRA's Tariff determination awaited.

Shareholders. The AEDB will evaluate the principal repayment schedule and other principal financial terms and the equity commitments in the Project, to ensure that the other principal financial terms are consistent with the principal repayment schedule, and that the principal repayment schedule is consistent with the **Non-Escalable Component of the Tariff**, and to evaluate the impact on the GOP's obligations upon any termination of this Agreement. If AEDB has any objections to the terms specified in such term sheet or schedule, it shall inform the Seller thereof within fifteen (15) Business Days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms and the Seller shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by AEDB. 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 the outstanding principal amount of debt under such loan agreement or in an effort to remedy such shortfalls. The Seller shall provide AEDB with a copy of the loan agreements executed on the date of Financial Closing no later than fifteen (15) Business Days after Financial Closing.

- (b) Following Financial Closing, the Seller shall deliver to AEDB, copies of all amendments to the executed Financing Documents within ten (10) Days after the execution of each such document. The Seller shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to AEDB, no less than thirty (30) Days prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. Any reduction in the principal repayment schedule or interest rate under the Financing Documents shall be shared with the Purchaser, and shall result in a reduction in the **Non-Escalable Component** to provide sixty percent (60%) of the benefits of such reduction to the Purchaser. AEDB shall notify the Seller of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule as soon as reasonably possible, and in any case within fifteen (15) Business Days of receipt of the term sheet or schedule, which objection, subject to the immediately following sentence, shall be based either (i) on a finding that the benefits of any reduction in the principal repayment schedule or interest rate under the Financing Documents have not been shared with the Purchaser as provided above or, (ii) to the extent of any impact on the Tariff, on the need, if any, for approval by NEPRA under the Laws of Pakistan, and shall be subject to appropriate amendment of the Energy Purchase Agreement to incorporate such reduction in the **Non-Escalable Component**. At the request of AEDB, prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Seller shall deliver to AEDB, in a form satisfactory to AEDB, assurances, undertakings or agreements that no alteration or enhancement as a

result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the GOP hereunder or under the Guarantee or effect 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.

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) 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 shall apply to any actions taken by the GOP 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 any Public Sector Entity will expropriate, compulsorily acquire, nationalize, or otherwise compulsorily procure (except as provided in Section 15.1) any Ordinary Share Capital or material assets of the Seller. Notwithstanding the foregoing, 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 or, without just and adequate compensation, 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, 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.
- (b) The Seller shall decline to register the transfer of issued Ordinary Share Capital to Persons of a nationality that is specifically proscribed by the Laws of Pakistan. The Seller shall use reasonable means under the circumstances to investigate the declaration of nationality 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 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 no Initial Shareholder shall transfer any Ordinary Share Capital owned directly or beneficially by it at any time prior to the Commercial Operations Date or for a period of six (6) years after the Commercial Operations Date if following such issuance or such transfer the Initial Shareholders 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 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
 - (iii) to which AEDB has given its prior written approval.
- (d) The Lead Investor shall own directly or beneficially at all times during a period of six (6) years after 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
 - (iii) to which AEDB has given its prior written approval.
- (e) After the expiry of a period of six (6) years from the Commercial Operations Date, no Initial Shareholder shall 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
 - (iii) AEDB has given its prior written approval; provided however, that such approval shall be granted unless AEDB on advice of the GOP (such

advice to be given in the sole discretion of GOP) notifies to the requesting Initial Shareholder 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.

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 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 or the Energy Purchase 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

The definitions of Force Majeure Events provided in Section 15.1 of the Energy Purchase Agreement are, mutatis mutandis, incorporated herein by reference. DayDay

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 six (6) 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) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event, and (ii) its ability 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 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 six (6) 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 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 six (6) hour period required by Section 13.2(a), the affected Party shall

be excused for such failure or delay pursuant to Section 13.4 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 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 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 other Party, the other Party shall not bear any liability for any loss or expense 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 Pakistan Political Event or a Change in Law.

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; provided, however, that no such event shall be a Seller Event of Default (i) if it results from the GOP’s breach of this Agreement or the Guarantee, (ii) if it results from a breach by the Purchaser of the Energy Purchase Agreement or (iii) if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(a)(x)):
- (i) failure of the Seller to achieve Construction Start Date within ninety (90) Days after 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 the 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;
 - (v) other than the assignments to and by the Lenders contemplated under Section [11.2](#), the assignment or transfer of the Seller’s rights or obligations in the assets identified in Section 11.2(a) 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 occupy the Site, to any Person (other than the Purchaser pursuant to the Energy Purchase Agreement) 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 failure or 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 the GOP under this Agreement;
 - (viii) exercise by the Lenders of their remedies under the Financing Documents with respect to either the Complex, its assets or the pledged Ordinary Share Capital, such that either the Seller or its management are removed by the Lenders from control of the Complex or the Seller and the failure by the Lenders to deliver an Election Notice (as defined in Section 14.4) or to transfer the Complex and the rights and obligations of the Seller under the Agreement and the Energy Purchase Agreement to a Transferee within two hundred and forty (240) Days thereafter;
 - (ix) any material breach or default by the Seller of or under this Agreement or the Energy Purchase Agreement that is not remedied within thirty (30) Days after notice from the GOP or the Purchaser, as the case may be, stating that a material breach of or default under such agreement has occurred that could result in the termination of the agreement and identifying the material breach or default in question in reasonable detail; or
 - (x) any default by the Seller in the making of any payment or payments required to be made by it under this Agreement or the Energy Purchase Agreement, as the case may be, on the due date specified in such agreement that continues unpaid for thirty (30) Days.
- (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; provided, however, that no such event shall be a GOP Event of Default (i) if it results from a breach by the Seller of the Energy Purchase Agreement or this Agreement, or (ii) if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(b)(ii)):
- (i) (A) the Guarantee ceasing to remain in full force and effect; or (B) upon assignment by Purchaser under Section 19.9(h) of the Energy Purchase Agreement, (1) the obligations of the successor entity ceasing to

be guaranteed under the Guarantee or, (2) where a substitute guarantee is offered for the performance of the obligations of the successor entity, such guarantee being issued by an entity with credit rating inferior to the then prevailing credit rating of the GOP or being on terms and conditions materially inferior to the terms and conditions of the Guarantee;;

(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 that is not remedied within thirty (30) Days after notice from the Seller to the GOP stating that a material breach of the Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail and demanding remedy thereof;

(iv) any material breach or default by the Purchaser of or under the Energy Purchase Agreement that is not remedied within thirty (30) Days after receipt of a notice from the Seller to the Purchaser, with a copy of the notice to the GOP that states that a material breach of the Energy Purchase Agreement has occurred that could result in the termination of the Energy Purchase Agreement, identifies the breach in reasonable detail and demands remedy thereof;

(v) any change in any applicable Laws of Pakistan (A) making unenforceable, invalid, or void any material undertaking of the GOP or the Purchaser under this Agreement, the Guarantee, or the Energy Purchase Agreement, 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 Change in Law 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 Change in Law for which compensation is provided in accordance with the Energy Purchase Agreement); or

(vi) 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.

(vii) 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).

(viii) 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).

(ix) 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 or the Purchaser under this Agreement, the Guarantee or the Energy Purchase 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), 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.

(x) The suspension or revocation of the Generation Licence.

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 or Section 14.4, 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, 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 Default

- (a) Anything in this Agreement notwithstanding, the Seller shall not seek to terminate this Agreement due to any default by the Purchaser thereunder without first giving, with respect to any such default, a copy of any notice required to be given to the Purchaser under Section 16.3 of the Energy Purchase Agreement to the GOP, such notice to include a reasonable description of such default and shall provide to the GOP the opportunity to cure any such default within the same cure period as provided to the Purchaser under the Energy Purchase Agreement and such cure period to commence upon delivery of each such notice to the GOP. Each such notice shall be deemed to have been delivered (a) when presented personally to the GOP, (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 the GOP, at the address indicated in Section [18.1\(a\)](#) (or such other address as the GOP may have specified by written notice delivered in accordance therewith).
- (b) No such rescission or termination of this Agreement or the Energy Purchase Agreement by the Seller shall be effective without notice and expiration of the cure period as provided in Section 14.3(a). The GOP may make or perform, but shall be under no obligation to make any payment (other than is required under the Guarantee) or to perform any act required of the Purchaser under the Energy Purchase Agreement with the same effect as if the payment or act had been made or performed by the Purchaser. If the GOP fails to cure or is unable or unwilling to cure a default of the Purchaser within the cure periods provided to the Purchaser under the Energy Purchase Agreement, the Seller shall have all of its rights and remedies with respect to such default as set forth in this Agreement and the Energy Purchase Agreement; provided, however, that if the GOP is diligently

attempting to cure any default other than a payment default of the Purchaser and demonstrable progress toward affecting such cure is being made, the GOP shall be granted an additional period not exceeding ninety (90) Days to affect such cure before the Seller may exercise its rights and remedies with respect to such default set forth in this Agreement and the Energy Purchase Agreement.

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

- (a) Anything in this Agreement notwithstanding, from and after the occurrence of the Financial Closing, the GOP shall not seek to terminate this Agreement as the result of any default of the Seller (other than a Seller Event of Default under Section 14.1(a)(viii) without first giving a copy of any notices required to be given to the Seller under Section 14.2 to the Lenders. The Lenders shall be entitled to cure any such default within the cure period specified in Section 14.2(b), such cure period shall commence upon delivery of each such notice to the Lenders. If there is more than one (1) Lender, the Lenders will designate in writing to the GOP in the acknowledgement contemplated by Section [11.2\(f\)](#) 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) 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 acknowledgement contemplated by Section [11.2\(f\)](#) (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 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 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 acknowledgement contemplated by Section 11.2(f) and thereafter may be changed by the Lender or the Agent by subsequent delivery of a notice to the GOP at the address or facsimile number for the GOP 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) and otherwise in accordance with the requirements of Section 18.1(a).
- (b) No rescission or termination of this Agreement by the GOP shall be valid or binding upon the Lenders without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 14.4. The Lenders may make or procure, but shall be under no obligation

to make, any payment or perform 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 fail or are unable or unwilling to cure or to procure the cure of any Seller Event of Default within the cure period under Section [14.2\(b\)](#) as provided to the Seller in this Agreement, the GOP shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that if the cure by the Lenders of the Seller Event of Default requires the Lenders to take control of and occupy the Complex, then before termination of the cure period provided to the Seller pursuant to Section 14.2(b), such cure period commencing on the delivery of such notice to the Lenders, the Lenders shall have a further period (the “Evaluation Period”) during which the Lenders shall evaluate such default, the condition of the Complex and other matters relevant to the actions to be taken by the Lenders concerning such default, and which Evaluation Period shall end on the sooner to occur of (i) the Lenders’ delivery to the GOP of a notice (“Election Notice”) that the Lenders have elected to pursue their remedies under the Financing Documents and assume the rights and obligations of the Seller under the Agreement as provided in Section 14.2, or (ii) thirty (30) Days following the end of the cure period under Section 14.2. Upon delivery of the Election Notice, the Lenders shall be granted, to the extent that they diligently attempt to cure or to procure the cure of such Seller Event of Default, an additional period of one hundred and eighty (180) Days to cure any Seller Event of Default (the “Extended Cure Period”). In the event that the Lenders fail to cure any Seller Event of Default required to be cured pursuant to Section 14.2 on or before the expiration of the Extended Cure Period, the GOP may exercise its rights and remedies with respect to such default set forth in this Agreement, the GOP may immediately terminate this Agreement, and such termination shall be effective on delivery to the Lenders or the Agent of a notice of such termination.

Section 14.5 Termination due to Political Events or Change in Law

If the Energy Purchase Agreement is terminated pursuant to Article XV of the Energy Purchase Agreement as a result of a Pakistan Political Force Majeure Event, a Change in Law 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](#) and the Complex shall be transferred to the GOP or its designee in accordance with Article XV.

Section 14.6 Other Remedies

Subject to Section [7.1](#), 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 are the exclusive remedies available to each Party with respect to any termination of this Agreement as a consequence of the events described therein.

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, 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 pay to the Seller the Compensation Amount set forth in Row 1 of [Part I of Schedule 2](#) in accordance with the transfer provisions set out in Section [15.5](#) and Section [15.6](#). If the GOP has not elected to purchase the Complex within ninety (90) Days following the effective date of the termination, 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 pay the Seller the Compensation Amount set forth in Row 2 of Part I of Schedule 2 in accordance with the transfer provisions set out in Section 15.5 and Section 15.6.
- (c) [Intentionally Left Blank]
- (d) Termination for Seller Restoration Schedule Failure Following Other Force Majeure Event. If, following an Other Force Majeure Event, the Purchaser 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 pay the er the Compensation Amount set forth in Row 4 of [Part I of Schedule 2](#), in accordance with the transfer provisions of Section [15.5](#) and Section [15.6](#). 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 Seller to the Purchaser thereunder, the GOP shall have no further rights to or interest in the Complex.
- (e) Termination following Pakistan Political Event
- (i) If, following a Pakistan Political Event, the Purchaser and the Seller agree or an expert determines that Restoration is feasible, 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. The

Seller shall transfer the Complex to the GOP or its designee and the GOP or its designee shall pay such Compensation Amount in accordance with the transfer provisions of Section 15.5 and Section 15.6.

- (ii) If, following a Pakistan Political Event, the Energy Purchase Agreement is terminated because the Purchaser and the Seller agree or an expert determines that Restoration is not feasible, 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 6 of Part I of Schedule 2 in accordance with the transfer provisions of Section 15.5 and Section 15.6.
- (iii) If, following a Pakistan Political Event, the Energy Purchase Agreement is terminated because the Purchaser and the Seller agree or an expert determines that Restoration is feasible, 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)(i) of the Energy Purchase Agreement, 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 7 of [Part I of Schedule 2](#) in accordance with the transfer provisions of Section [15.5](#) and Section [15.6](#).
- (iv) If, following a Pakistan Political Event, 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 pay 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 in accordance with the transfer provisions of Section 15.5 and Section 15.6.
- (v) If, pursuant to Section 15.6(k) of the Energy Purchase Agreement, a Pakistan Political Event materially affecting the 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 Pakistan Political Events materially affecting the operation of the Complex have occurred for one hundred and eighty (180) Days (without regard to the time period that the effects thereof may have continued) in any Year, or following a Change in Law, an expert has determined that Restoration or modification of the Complex is not technically feasible or the Purchaser, with the agreement of the GOP, has determined that the costs of Restoration or modification are unacceptable and the Change in Law has not been modified or rescinded to make such Restoration or modification technically or financially acceptable to the Purchaser and the Complex has not been operated for one hundred and eighty (180) Days following such determination of the

expert or the Purchaser, and either the Purchaser or the Seller terminates the Energy Purchase Agreement pursuant to Section 15.6(k) 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 9 (for a Purchaser termination) or Row 10 (for a Seller termination) of [Part I of Schedule 2](#) in accordance with the transfer provisions in Section [15.5](#) and Section [15.6](#).

- (vi) If, following a revision of the Restoration Cost Estimate or the Restoration Schedule 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 transfer provisions of Section 15.5 and Section 15.6.

- (f) Use of Certain Insurance Proceeds. Whenever the Energy Purchase Agreement is terminated pursuant to Article XV thereof following a Force Majeure Event, and the GOP is obligated to pay compensation to the Seller pursuant to this Section 15.1 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.

Section 15.2 Reimbursement

In the event of a termination of this Agreement for any reason other than a GOP Event of Default, a Pakistan Political Event, or a Change in Law, 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 two hundred thousand Dollars (\$200,000).

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 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 the Parties on 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 (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, in the reasonable judgment of GOP, to ensure the full execution of such plan. 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.

- (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 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. 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, such amounts may be deducted from any payments due to the Seller hereunder, 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. 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 date of early termination, 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](#) (the "Termination Invoice"). The Termination Invoice shall be accompanied by a certification of a reputable international accountancy firm, experienced in the methods of valuation of utility assets, verifying the calculation of all of the elements listed in the Termination Invoice, 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. On the date that such payment is made by the GOP, the Transferable Assets shall be transferred to the GOP or its designee (the "Transfer 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 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 acknowledge and agree that it would be difficult or impossible to determine at the date of this Agreement with absolute precision the amount of damages that would or might be incurred by the Seller or the GOP as a result of the termination of this Agreement (and the Purchaser as a result of termination of the Energy Purchase Agreement). The Parties agree that the termination amounts provided under Section 15.1 and Schedule 2 are in lieu of actual damages and are the Parties' reasonable and genuine estimates for the losses that may reasonably be anticipated from such termination, and do not constitute a penalty.

Section 15.6 Transfer of the Complex to the GOP following Termination

- (a) Following any termination of this Agreement where the GOP elects or is required to acquire the Complex, on the Transfer Date, the Seller shall transfer to the GOP or its designee and the GOP or its designee shall acquire from the Seller, all of the Seller's right, title and interest in and to the Transferable Assets. 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.

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 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 within the time periods set forth therein, then either Party, in accordance with this Section 16.2, may refer the Dispute to an expert (the “Expert”) for consideration of the Dispute and to obtain a recommendation 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 without first referring it to an Expert.
- (b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the Person it proposes to be the Expert. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such Person is acceptable, and if such nominated expert is not acceptable to the responding Party, the responding Party shall propose a Person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the Person is not acceptable or nominates an expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of five (5) Days to agree upon a Person to be the Expert. Failing nomination by the responding Party of an expert within the period provided or failing such agreement by the Parties of the expert, at the end of the meeting, the [_____ (for financial and billing matters) and NEPRA (for technical matters) shall be requested to select the Expert, 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 recommendation 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 recommendation is given within such fifteen (15) Days period, as may be extended by the Parties, the Parties may review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- (g) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.

- (h) Unless the Parties agree in writing at the time the Expert is selected, stating that the decision of the Expert shall be binding, the recommendation of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 16.3 have not been commenced within seventy-five (75) Days from the date the Expert's recommendation was received by the Parties in accordance with Section 16.2(f) the Expert's recommendation 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 recommendation shall stand waived to the fullest extent permitted by law.
- (i) Subject to Section 16.2(h), if a Party does not accept the recommendation of the Expert with respect to the Dispute or if the Expert has not provided a recommendation within the time period specified in Section 16.2(f), either Party may initiate arbitration proceedings in accordance with Section 16.3.
- (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 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.
- (l) Either Party may serve a written notice on the other Party within thirty (30) Days of the Expert's decision having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the decision 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, either Party may require arbitration of a Dispute pursuant to Section 16.3 without reference to an Expert under this Section 16.2.

Section 16.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 16.1 and 16.2 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 of this Agreement (the "Rules") by one (1) arbitrator appointed in accordance with the Rules. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- (b) If for any reason the Dispute cannot be settled pursuant to the Rules, such Dispute shall be finally settled by arbitration under the Rules of Arbitration of the United

Nations Commission and International Trade Law (“UNCITRAL Rules”) as in effect on the date of this Agreement by one (1) arbitrator appointed in accordance with the UNCITRAL Rules.

- (c) the arbitration shall be conducted in 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 submitted for arbitration pursuant to this Section 16.3 exceeds Seven Million Dollars (\$7,000,000) or an issue in Dispute is (i) the legality, validity or enforceability of this Agreement or any material provision hereof, or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require that the arbitration be conducted in London, United Kingdom in which case the arbitration shall be conducted in London. Except as awarded by the arbitrator and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder. If either Party requires that arbitration of any Dispute be conducted in London 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 arbitrator) 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 .

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 shall be referred for determination under Section 16.3 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, that the Financing Documents have been executed between the Lenders and the Seller which (together with equity commitments), evidence sufficient financing for the construction of the Complex and that all conditions precedent for the initial availability of funds under the Financing Documents have been satisfied other than the receipt by the Seller of the Guarantee, the GOP shall execute and deliver to the Seller the Guarantee.

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.

- (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 of the Energy Purchase Agreement shall increase the liability of the GOP under this Agreement or the Guarantee, unless such amendment is approved in writing by the GOP.

Section 18.4 Third Parties

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 a like 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, 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 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 by it in the course of any inspection performed 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, 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 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 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 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. It agrees 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, shall 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 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.

Section 18.14 Counterparts

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties, shall 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 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 GOP or 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 GOP (through 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.

- (ii) The Seller shall, as soon as available, furnish to the GOP (through 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](#), registration of a transfer of Ordinary Share Capital to any Person who thereby becomes a registered holder of greater than five (5) percent 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.
- (e) Lists of Lenders and Creditors. Together with the periodic reports required by Section 18.15(c)(i) and (ii), the Seller shall also furnish to 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, along with statements or schedules of repayment of local and foreign loans/debts to such Lenders and creditors duly certified by its auditors on a six (6) Monthly basis in each Year. 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 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 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 AEDB for such non-compliance. Such reasonable costs shall be paid to AEDB within ten (10) Business Days of notice of such non-compliance and assessment by AEDB.

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

For and on behalf of
THE PRESIDENT OF THE ISLAMIC REPUBLIC
OF PAKISTAN

For and on behalf of
THE ISLAMIC REPUBLIC OF PAKISTAN

By: _____
Title: _____

[NAME OF SELLER]

By: _____
Title: Chief Executive Officer

Witness: _____
Name: _____

Witness: _____
Name: _____

**SCHEDULE 1
CONSENTS**

(Project Sponsors to circulate initial draft for discussion based on their due diligence)

Particulars of Consent

Relevant Authority
(see key at end of Schedule)

KEY

Central Board of Revenue	CBR
Security & Exchange Commission of Pakistan	SECP
Government of Baluchistan	GOB
Government of Sindh	GOS
Government of Punjab	GOPb
Ministry of Communications	MCM
Ministry of Commerce (Chief Controller, Imports & Exports)	MOC(CCI&E)
Ministry of Finance	MOF
Ministry of Finance (Economic Affairs Division)	MOF(EAD)
Ministry of Finance (External Finance Wing)	MOF(EFW)
Ministry of Industries (Investment Promotion Bureau)	MOI (IPB)
Ministry of Petroleum & Natural Resources	MOP&NR
Ministry of Water & Power	MW&P
State Bank of Pakistan	SBP

**SCHEDULE 2
COMPENSATION AMOUNTS**

This Schedule 2 consists of two (2) parts. Part I is a Compensation Table showing in a matrix format the amounts payable by the GOP in connection with a transfer of the Complex following a termination of the Implementation Agreement in accordance with Article [XV](#) and Section [14.1](#).

The table refers to various compensation elements, labeled as a, b, c, d, e, and f, which are set forth in Part II.

The calculations with respect to each such compensation element shall be verified by an international accounting firm acceptable to the Parties.

PART I OF SCHEDULE 2 – COMPENSATION TABLE

	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
1.	Termination for a Seller Event of Default (other than a Restoration Schedule Default) where the GOP elects to purchase the Complex - Section 15.1(a).	a
2.	Termination for a GOP Event of Default - Section 15.1(b).	a + b + c + d
	NOT USED	
4.	Termination by Purchaser (with GOP approval) for a Restoration Schedule Default following an Other Force Majeure Event - Section 15.1(d).	a + e
5.	Termination of the Energy Purchase Agreement following a Pakistan Political Event where the Report concludes that Restoration is feasible but the Purchaser (with GOP approval) elects to terminate - Section 15.1(e)(i).	a + b + c + d
6.	Termination of the Energy Purchase Agreement following a Pakistan Political Event where Restoration is not feasible - Section 15.1(e)(ii).	a + b + d

	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
7.	Termination of the Energy Purchase Agreement following a Pakistan Political Event where Restoration is feasible but financing is not available - Section 15.1(e)(iii).	a + b + d
8.	Termination of the Energy Purchase Agreement by the Purchaser (with GOP approval) for a Restoration Schedule default despite diligence following a Pakistan Political Event - Section 15.1(e)(iv).	a + e
9.	Termination of the Energy Purchase Agreement by the Purchaser (with GOP approval) after one hundred and eighty (180) Days of a Pakistan Political Event – Section 15.1(e)(v).	a + b + c + d (provided, that if the termination occurs prior to the Commercial Operations Date, the component “c” shall be multiplied by a ratio the numerator of which is the equity invested by the Seller at the time of termination and the denominator of which is the equity investment commitment shown in the financing plan delivered to AEDB in accordance with Section 11.3 of this Agreement.
10.	Termination of the Energy Purchase Agreement by the Seller after one hundred and eighty (180) Days of a Pakistan Political Event - Section 15.1(e)(v).	a + b + (c/2) + d (provided, that if the termination occurs prior to the Commercial Operations Date, the component “c” shall be multiplied by a ratio not to exceed one-half, the numerator of which is the equity invested by the Seller at the time of termination and the denominator of which is the equity investment commitment shown in the financing plan delivered to AEDB in accordance with Section 11.3 of this Agreement.

	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
11.	Termination of the Energy Purchase Agreement for a Restoration Schedule default without diligence following a Pakistan Political Event - Section 15.1(e)(iv).	a + (e/1.25)
12.	Termination of the Energy Purchase Agreement by the Purchaser (with the approval of the GOP) following a revision of the Restoration Schedule by the expert - Section 15.1(e)(vi).	a + b + d

PART II OF SCHEDULE 2 – COMPENSATION ELEMENTS

In this Schedule 2, the letters a, b, c, d, e, and f are used to identify the various elements of compensation to be paid upon the occurrence of the events described in Article XV and this Schedule 2. The letters shall equal the following amounts:

- a = the sum of (i) the outstanding principal amount payable to the Lenders under the Financing Documents at the Commercial Operations Date in accordance with the term sheet delivered to and not objected to by AEDB in compliance with Section 11.3 of the Implementation Agreement plus interest accruing thereon in accordance with the term sheet delivered to and not objected to by AEDB in compliance with Section 11.3 of the Implementation Agreement, reduced by payments made on account of the [Non-Escalable Component] of the Tariff, (as defined in the Energy Purchase Agreement,) plus (ii) the total amount outstanding under any loan agreements for capital improvements to or Restoration of the Complex that are required as a result of a Change in Law or a Pakistan Political Force Majeure Event under the Energy Purchase Agreement, as approved by the Purchaser pursuant to the terms thereof, taking into account all Supplemental Tariffs, made by the Purchaser, less any insurance proceeds received by the Seller following a Force Majeure Event and not spent for Restoration, plus (iii) except in the case of termination due to a Seller Event of Default, any winding-up costs, breakage costs, prepayment penalties and charges, or similar charges or costs passed through by or payable to the Lenders in accordance with the term sheet delivered to and not objected to by AEDB in compliance with Section 11.3 of the Implementation Agreement . For the purpose of clauses (i) and (iii) of this item ‘a’, the total amount outstanding to the Lenders under the Financing Documents shall be an amount equal to all unpaid principal, accrued interest (excluding default interest, except where such default interest results from a payment default by the Purchaser under the Energy Purchase Agreement and the GOP under the Guarantee), fees, and expenses owing to the Lenders as of the date of payment by the GOP which shall be determined and certified by an international accounting firm approved by the Parties. Notwithstanding the foregoing, no accrued interest shall be paid by the GOP for any interest that accrued under the Financing Documents or other loan agreements from and after a default by the Seller thereunder unless such default results from a GOP Event of Default or a Purchaser Event of Default under the Energy Purchase Agreement. The sum of all amounts owing to the Lenders under clauses (i) and (iii) here above shall, within thirty (30) Days of a request by the GOP, prior to termination by the GOP, be specified by the Lenders as to such amounts owing on a date no less than sixty (60) Days following the request and specified in the request by the GOP; provided, that if termination occurs before the Commercial Operations Date, the “a” component be equal to the amount outstanding under the Financing Documents at the date of the transfer of the Complex .
- b = as of the date of transfer of the Complex to the GOP, the actual initial equity investment in the Complex, not to exceed the equity investment approved by AEDB in relation to the Financial Closing, reduced on a straight-line basis from the Commercial Operations Date through the term of this Agreement to twenty percent (20%) of the initial value of such equity; .

- c = for a period equal to the lesser of (i) four (4) years and (ii) the remainder of the initial term of the Energy Purchase Agreement, an amount equal to the Net Cash Flow for such period, discounted to its present value by applying a discount rate equal to [the discount rate used by NEPRA for calculating the internal rate of return in its determination for the Tariff] shown in the audited financial statements of the Seller for the last completed financial year prior to the date of termination.
- d = any additional equity amounts that are contributed by the shareholders of the Seller for any of the events described under Article XV of the Energy Purchase Agreement plus any such other equity contributions, approved by either the GOP or the Purchaser, as the case may be, in each case reduced on a straight-line basis for each year following the date of such equity contribution to the end of the Term.
- e = The summation of (i) any additional equity amounts, that are contributed by the shareholders of the Seller for any of the events that are described under Article XV of the Energy Purchase Agreement consequent upon the occurrence of a Force Majeure Event (as defined in the Energy Purchase Agreement) giving rise to the Restoration which led to termination of the Energy Purchase Agreement pursuant to Article XV thereof, reduced on a straight-line basis for each year following the date of such equity contribution to the end of the Term, plus (ii) original equity contributions, adjusted in the manner described in item (b) hereabove, plus other equity contributions, prior to such Force Majeure Event and approved by the GOP or the Purchaser, as the case may be, reduced on a straight-line basis for each year following the date of such equity contribution to the end of the Term.

**SCHEDULE 3
FORM OF GUARANTEE**

THIS GUARANTEE is made at Islamabad as of the ___ of _____ 200_ by and between:

- (1) THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN for and on behalf of THE ISLAMIC REPUBLIC OF PAKISTAN (the “Guarantor”); and
- (2) [NAME OF SELLER], a [public/private] limited Seller incorporated under the Laws of Pakistan, whose registered office is located at _____, Pakistan (the “Seller”).

RECITALS

- (A) **WHEREAS**, the Guarantor and the Seller have entered into an Implementation Agreement (the “Implementation Agreement”);
- (B) **WHEREAS**, the Purchaser has entered into or will enter into a Energy Purchase Agreement with the Seller (the “Energy Purchase Agreement”); and
- (C) **WHEREAS**, in accordance with Article XVII of the Implementation Agreement, the Guarantor has agreed to enter into this Guarantee of the payment obligations of the Purchaser under the Energy Purchase Agreement.

NOW IT IS HEREBY AGREED as follows:

1. GUARANTEE

1.1 Guarantee

In consideration of the Seller entering into the Energy Purchase Agreement with the Purchaser, the Guarantor hereby irrevocably and unconditionally Guarantees and promises to pay the Seller any and every sum of money the Purchaser is obligated to pay to the Seller under or pursuant to the Energy Purchase Agreement that the Purchaser has failed to pay when due in accordance with the terms of that agreement, which obligation of the GOP shall include monetary damages arising out of any failure by the Purchaser to perform its obligations under the Energy Purchase Agreement to the extent that any failure to perform such obligations gives rise to monetary damages.

1.2 Waiver of Defences

The obligations of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all the covenants, terms, and agreements set forth in the Energy Purchase Agreement shall have been completely discharged and performed, unless waived by the Seller in writing. The obligations of the Guarantor shall not be modified or impaired upon (and the Guarantor waives any defence to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- 1.2.1 the extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of the Purchaser set forth in the Energy Purchase Agreement;
- 1.2.2 Subject to Section 18.3 of the Implementation Agreement, amendments to the Energy Purchase Agreement;
- 1.2.3 the failure, omission, or delay by the Seller to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Energy Purchase Agreement or this Guarantee;
- 1.2.4 the bankruptcy, insolvency, or other failure or financial disability of the Purchaser or the Seller;
- 1.2.5 the addition, or partial or entire release of any guarantor, maker, or other party (including the Purchaser) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Energy Purchase Agreement or by any extension, waiver, amendment, or thing or circumstance whatsoever in law or in equity that may release or create a defence or discharge for a guarantor (other than complete performance in accordance with the terms of the Energy Purchase Agreement);
- 1.2.6 any failure of the Purchaser to comply with the requirements of any law, regulation or order;
- 1.2.7 the dissolution, privatisation, reorganization or any other legal alteration of the legal structure of the Purchaser ; and
- 1.2.8 any assignment pursuant to Section 11.2(a) of the Implementation Agreement or the Energy Purchase Agreement, by the Seller.

1.3 Continuing Guarantee

This Guarantee shall be a continuing security and, accordingly, shall extend to cover the balance due to the Seller at any time from the Purchaser under the Energy Purchase Agreement. No demand made by the Seller hereunder shall prejudice or restrict the right of the Seller to make further or other demands.

1.4 Additional Security

- 1.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Seller may at any time hold in respect of the obligations of the Purchaser under the Energy Purchase Agreement.
- 1.4.2 The Seller may enforce this Guarantee notwithstanding that it may hold any other guarantee, Lien, or security of or for the obligations of the Purchaser under the Energy Purchase Agreement or have available to it any other remedy at law or equity.

1.5 Preliminary Demand

- 1.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from the GOP, the Seller agrees to notify the GOP of the non-payment by the Purchaser and make demand in writing for payment from the Purchaser. After thirty (30) Days from the date notice of such non-payment was delivered to the GOP, the Seller may notify the GOP in writing that payment from the Purchaser, continues to be past due, and make a demand for payment from the GOP under this Guarantee, and the GOP shall make payment within ten (10) Business Days following such demand for payment. Late payments hereunder shall bear mark-up at an annual rate equal to the Delayed Payment Rate.
- 1.5.2 Except as provided in Section 1.5.1, the Seller shall not be obliged before taking steps to enforce this Guarantee, to exercise any other remedies that may be available to it under or in respect of the Energy Purchase Agreement, or to initiate any proceedings or obtain judgment against the Purchaser thereon.

1.6 Certification

Any demand for payment made pursuant to this Guarantee shall be made in person by a duly authorized officer of the Seller at the Guarantor's offices at [identify location], and shall be accompanied by a certificate signed by a duly authorized officer of the Seller, stating that:

“We hereby certify that (A) _____ (the “Seller”) is making this demand on the Government of the Islamic Republic of Pakistan (the “Guarantor”) in the amount of Rupees [insert amount] in accordance with Section 1 of the Guarantee dated ____ 200_, by and between the Guarantor and the Seller; (B) the amount specified hereinabove is due and payable by the (“the Purchaser”) under the Energy Purchase Agreement between the Seller and the Purchaser; (C) demand in writing for payment from the Purchaser was delivered to the Purchaser on or after the date payment was due and notice of such non-payment was delivered to the GOP not less than thirty (30) Days prior to the date hereof; and (D) such amount, on the date hereof, remains unpaid by the Purchaser.”

1.7 Subordination

Any right that the Guarantor may at any time have to be indemnified by the Purchaser in respect of sums paid out by the Guarantor in performance of this Guarantee, shall be subordinated to the rights of the Seller to recover from the Purchaser in full all sums that are then due from the Purchaser under the Energy Purchase Agreement.

1.8 No Set-off

No set-off, counterclaim, reduction, or diminution of any obligation that the Guarantor has or may have against the Seller, nor any right of subrogation that the Guarantor has or may have against the Seller, shall be available to the Guarantor against the Seller in connection with any obligation of the Guarantor to the Seller under this Guarantee.

1.9 Arbitration; Jurisdiction

1.9.1 Arbitration

The Parties irrevocably agree that any dispute or difference arising under, out of, in connection with, or relating to, this Guarantee, including, without limitation, any dispute or difference concerning the existence, validity, or enforceability of this Guarantee or any provisions hereof (including the existence, validity or enforceability of the agreements contained in this Section 1.9.1) or as to whether this Guarantee or any provisions hereof (including agreements contained in this Section 1.9.1) are invalid, illegal, or unenforceable (each a “Dispute”) shall be resolved in accordance with the provisions of Section 16.3 of the Implementation Agreement, which provisions are, mutatis mutandis, incorporated herein by reference. Each Party hereby consents to the jurisdiction of any courts of competent jurisdiction for any action filed by the other Party under this Guarantee to enforce any award or decision of any tribunal duly appointed under this Guarantee to resolve any Dispute hereunder between the Parties.

1.9.2 Commercial Acts

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

1.9.3 Sovereign Immunity; Jurisdiction

- (a) The Guarantor irrevocably and unconditionally:
 - (i) agrees that should any proceedings be brought against it or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges under the Laws of Pakistan (the “Protected Assets”), no claim of immunity from such proceedings will be claimed by or on behalf of the Guarantor, on behalf of itself or any of its assets (other than the Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
 - (ii) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in connection with any such proceedings; and
 - (iii) consents generally to the jurisdiction of any court of competent jurisdiction for any action filed by the Seller to enforce any award or decision of any tribunal which was duly appointed under this Guarantee to resolve any Dispute between the Parties (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, and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Guarantor 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.

- (b) The Seller hereby waives any and all rights it may have to enforce any judgment claim against the Protected Assets in the courts of any jurisdiction.

2. UNDERTAKING

2.1 Duration

This Guarantee shall remain in full force and effect from and after the date hereof until the termination of the initial term of the Energy Purchase Agreement, and for so long thereafter as any amount owed to the Seller by the Guarantor or Purchaser in relation to such initial term is or may be outstanding.

2.2 Tax

In addition to any amount then due and payable to the Seller by the Purchaser under the Energy Purchase Agreement and payable by the Guarantor under the terms of this Guarantee, the Guarantor shall be liable for any duty, impost, levy, charge, fee, or tax of whatsoever nature (“Tax”) levied or imposed by a Federal Entity or any political subdivision or authority thereof on or with regard to any payment hereunder, unless the payment, if made by the Purchaser would itself have caused the Seller to become liable for the Tax. If, under the applicable law the Guarantor is unable to pay the Tax and the Seller is required to pay the Tax, the amount to be paid to the Seller hereunder shall be increased by an amount sufficient so that such payment, net of the Tax, would equal the payment the Seller would have received from the Purchaser, net of any Taxes applicable to payment from the Purchaser to the Seller.

3. NO WAIVER; REMEDIES CUMULATIVE

3.1 No Waiver

No failure or delay by the Seller to exercise any right or remedy under this Guarantee shall constitute a waiver of such right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy. No waiver by the Seller shall be effective unless it is in writing.

3.2 Remedies Cumulative

The rights and remedies of the Seller provided by this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

4. NOTICES

The Guarantor may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Seller.

5.2 Assignment by the Seller

The Seller may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor. Notwithstanding the provision of the immediately preceding sentence, for the purpose of construction or permanent financing of the Complex, the Seller may assign by way of security or create a security interest over its rights and interests in and to this Guarantee in favour of the Lenders.

5.3 Successors

This Guarantee shall be binding upon and inure to the benefit of the Guarantor and the Seller and the respective successors and permitted assigns of each.

6. **GOVERNING LAW**

The rights and obligations of the Parties under or pursuant to this Guarantee shall be governed by and construed according to the Laws of Pakistan.

7. **MISCELLANEOUS**

7.1 Severability

If one (1) or more provisions contained in this Guarantee is held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law, and the invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

7.2 Definitions

Capitalized terms used but not defined in this Guarantee, shall have the meanings ascribed thereto to them in the Implementation Agreement.

IN WITNESS WHEREOF, this Guarantee has been executed on the Day first hereabove written.

For and on behalf of
THE PRESIDENT OF THE ISLAMIC REPUBLIC
OF PAKISTAN

For and on behalf of
THE ISLAMIC REPUBLIC OF PAKISTAN

By: _____
Title: _____

[NAME OF SELLER]

By: _____
Title: _____

Witness: _____
Name: _____

Witness: _____
Name: _____