

THE [ ] AJ&K/PROVINCE  
for and on behalf of  
THE Government of the AJ&K/PROVINCE

- AND -

[NAME OF COMPANY]

---

**WATER USE LICENSE**

- RELATING TO -

THE USE OF WATER FROM THE \_\_\_\_\_ RIVER/CANAL  
FOR A HYDRO-ELECTRIC POWER GENERATION COMPLEX AT  
\_\_\_\_\_, [NAME OF GO AJ&K/PROVINCE], PAKISTAN

---

MADE AT

[ISLAMABAD], ISLAMIC REPUBLIC OF PAKISTAN

ON \_\_\_\_\_ 200\_

COUNSEL FOR [NAME OF PROVINCE]:

COUNSEL FOR THE COMPANY:

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### SCHEDULES

Schedule 1 - Upstream Impoundments and Diversions

Schedule 2 - Restrictions on Water Use

Schedule 3 - Pre-existing Upstream Impoundments/Diversions, Agricultural Water Uses and Industrial Water Uses

Schedule 4 - Location of Site

**THIS WATER USE LICENSE** (as may be amended from time to time, this “**Agreement**”) is issued at \_\_\_\_\_, Pakistan/AJ&K on \_\_ \_\_\_\_\_ 200\_, by the **OF THE AJ&K/PROVINCE FOR AND ON BEHALF OF] THE GOVERNMENT OF AJ&K/PROVINCE** (the “**AJ&K/Provincial Government**”) to the **[NAME OF COMPANY]**, a [public limited] [private unlimited] company incorporated under the laws of Pakistan, with its principal office located in (the “**Company**”).

**RECITALS**

- A. **WHEREAS**, the Government of the Islamic Republic of Pakistan (“**GOP**”) as a matter of policy has decided to involve the private sector in the generation of electricity for sale to the national grid;
- B. **WHEREAS**, within the borders of the [AJ&K/name of Province] there are rivers and canals that may support hydroelectric generating facilities, and the AJ&K/Provincial Government desires to involve the private sector in the generation of hydro-electric power for sale to the national grid;
- C. **WHEREAS**, the GOP/GOAJ&K Policy for Power Generation 2002 calls for parties developing hydro-electric generating facilities to enter into a water use agreement (sometimes hereinafter referred to as “**WUA**”) in connection therewith;
- D. **WHEREAS**, the Company desires to design, engineer, construct, insure, commission operate and maintain and transfer at the end of the Term a \_\_\_ MW hydro-electric facility (the “**Complex**”) (collectively, the “**Project**” (as hereinafter defined)) located at \_\_\_\_\_ on the \_\_\_\_\_ [River][Canal] (the “**Water Resource**”) in the AJ&K/Province of \_\_\_\_\_ to generate electricity for delivery to the national grid and the sale to the Power Purchaser (as hereinafter defined) in accordance with the provisions of the Power Purchase Agreement (as hereinafter defined) with the Power Purchaser;
- E. **WHEREAS**, the Company has determined solely on the basis of its own investigation and evaluation (and that of its experts and consultants) that the water flows of the Water Resource (taking into account the Pre-existing Upstream Impoundments/Diversions, the Restrictions and the Agricultural Water Uses and Industrial Water Uses (each term as hereinafter defined)) at [identify location of Site] will support the operation of the Complex in accordance with the terms of the Power Purchase Agreement and support and justify the investment in the Complex to be made by the Company and the obligations of the Company under the Power Purchase Agreement;
- F. **WHEREAS**, the Company has been issued a Letter of Support dated \_\_\_\_\_ by the GOP;
- G. **WHEREAS**, the Company has entered into an Implementation Agreement (as hereinafter defined) with the GOP to ensure the Company’s proposal to build the Complex is implemented in a manner that reflects the close cooperation between the

public and private sectors in the generation of electricity for sale on the national grid;  
and

- H. **WHEREAS**, the Company requires the permission of the Government of AJ&K/Province to [locate the Complex on the Site] and to use water from the Water Resource to generate Net Electrical Output (as hereinafter defined) at the Complex, and the Government of AJ&K/Province desires to grant such permission provided the Company agrees to and abides by the terms and conditions of this WUA.

**NOW, THEREFORE**, intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.1. Definitions

Whenever used in this Agreement, capitalized terms defined in the introductory paragraph and Recitals of this Agreement shall have the meanings given to such capitalized terms and capitalized terms defined in this Section 1.1 shall, unless otherwise provided, have the meanings given to such capitalized terms below:

“Agent” – The meaning ascribed thereto in Section 11.3(a).

“Agricultural Water Uses” – The existing and planned agricultural and irrigation uses of the Water Resource described in Schedule 3.

“Back-Up Metering System” – The meaning ascribed thereto in the Power Purchase Agreement.

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

“Company Invoice” – The meaning ascribed thereto in Section 5.1(a).

“Company Event of Default” – The meaning ascribed thereto in Section 11.1(a).

“Company Interconnection Facilities” – The meaning ascribed thereto in the Power Purchase Agreement.

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

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

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

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

“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.

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

“Election Notice” – The meaning ascribed thereto in Section 11.3(b).

“Emergency” – A condition or situation that, in the sole opinion of the Government of AJ&K/Province, does materially and adversely, or is likely materially and adversely, to present a physical threat to persons or property.

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

“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 Company, its Contractors or their employees or agents of any environmental Laws of Pakistan.

“Evaluation Period” – The meaning ascribed thereto in Section 11.3(b).

“Expert” – The meaning ascribed thereto in Section 13.2.

“Financial Closing” – The meaning ascribed thereto in the Implementation Agreement.

“Financing Documents” – The meaning ascribed thereto in the Implementation Agreement.

“Force Majeure Event” – The meaning ascribed thereto in Section 10.1.

“Government of AJ&K/Province Event of Default” – The meaning ascribed thereto in Section 11.1(b).

“Guarantee” – The meaning ascribed thereto in the Implementation Agreement.

“Hazardous Materials” – 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.

“Implementation Agreement” – The Implementation Agreement, dated as of \_\_\_\_ 200\_\_, by and between the GOP and the Company entered into in relation to the Project, as may be amended from time to time.

“Impoundment” – Means any upstream structure or alteration/modification thereof, construction, erection, diversion or impediment (other than impoundments or diversions permitted under this Agreement) which confines, diverts, restrains, holds up or in any way obstructs the natural flow of water including all upstream and downstream flows, or otherwise, so as to adversely effect the generation of the Complex.

“Index Factor” – The factor to be used to adjust the reference price for water usage to reflect price level variations in Pakistan, as measured by the Pakistan Wholesale Price Index (WPI), which factor shall be calculated as provided in Section 5.3.

“Industrial Water Uses” – The existing and planned commercial and industrial uses of the Water Resource described in Schedule 3.



“Interconnection Point” – The meaning ascribed thereto in the Power Purchase Agreement.

“Invoice Dispute Notice” – The meaning ascribed thereto in Section 5.6(a).

“kWh” – Kilowatt-hour.

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

“Lenders” – The meaning ascribed thereto in the Implementation Agreement.

“Extended Cure Period” – The meaning ascribed thereto in Section 11.3(b).

“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).

“Minimum Indemnification Amount” – The amount equal to the Rupee equivalent of one hundred thousand Dollars (\$100,000).

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

“MW” – Megawatt.

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

“Net Electrical Output” – The meaning ascribed thereto in the Power Purchase Agreement.

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

“Other Force Majeure Event” – The meaning ascribed thereto in Section 10.1(c).

“Ordinary Share Capital” – The meaning ascribed thereto in the Implementation Agreement.

“Pakistan Political Event” – The meaning ascribed thereto in Section 14.1(a).

“Pakistan Wholesale Price Index” – The average value of the end of Month values for the Wholesale Price Index for manufacturing as notified by the GOP’s Federal Bureau of Statistics (or any successor or replacement agency thereto or such replacement index established under and pursuant to Section 5.3) over the Quarter prior to Quarter that

includes the relevant Month “M”; provided, that if any values for any of such Quarter are not available, then the average of the end of Month values for the most recent available three Months shall be used.

“Party” – Either Government of AJ&K/Province or the Company, and together Parties.

“Power Purchaser” – The National Transmission and Despatch Company Limited, (through Central Power Purchasing Agency on behalf of ex-WAPDA distribution Companies), a public limited company incorporated under the Companies Ordinance, 1984, with its principal office at WAPDA House, Mall Road, Lahore, Pakistan, and its successors and assigns.

“Power Purchase Agreement” – The Power Purchase Agreement, dated \_\_\_\_ \_\_\_\_\_ 200\_\_, by and between the Power Purchaser and the Company, for the purchase and sale of electric generation capacity and electric power generated by the Complex, as may be amended by the parties thereto from time to time.

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

“Pre-existing Upstream Impoundments/Diversions” – The impoundments and diversions upstream of the Site that are identified in Schedule 1.

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

“Project Agreements” -

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

“Provincial Consent” – Any consent (other than this Agreement) that must be issued by the Government of AJ&K/Province listed in Schedule 1 of the Implementation Agreement or any other consent that must be issued by the Government of AJ&K/Province in favour of the Company to enable the Company (other than this Agreement) to construct, own, operate and maintain the Complex at the Site as contemplated herein and in the Power Purchase Agreement.

“Prudent Utility Practices” – Meaning ascribed thereto in the Power Purchase Agreement.

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

“Quarter” – A three (3)-Month period running from January-March, April-June, July-September, or October-December, as the case may be.

“Reference Date” – The date on which the electricity tariff under the Power Purchase Agreement is approved by NEPRA.

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

“Restrictions” – The restrictions on the use of the Water Resource by the Company, which restrictions are described in Schedule 2.

“Rules” – The meaning ascribed thereto in Section 13.3.

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

“Scheduled Outage” – The meaning ascribed thereto in the Power Purchase Agreement.

“Site” – The land, water-ways (including the Water Resource), roads, wells, rights-of-way, and other interests in land and any rights, permits and licences acquired by the Company for the purposes of the Complex on, through, above or below the ground on which all or any part of the Complex is to be built or pursuant to which access thereto is obtained or which is reasonably necessary or appropriate for the operation and maintenance of the Complex, which Site is more particularly described in Schedule 2.

“Standards” – The meaning ascribed thereto in the Implementation Agreement.

“Succession Notice” – The meaning ascribed thereto in Section 9.2(b)

“Term” – The meaning ascribed thereto in Section 2.1.

“Termination Notice” – A written notice of termination of this Agreement issued by the Government of AJ&K/Province or the Company, as the case may be, pursuant to Section 11.2(c).

“UNCITRAL Rules” – The meaning ascribed thereto in Section 13.3.

“Water Use Payment” – The meaning ascribed thereto in Section 5.2.

“Water Use Invoice” – The meaning ascribed thereto in Section 5.4(a).

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

Section 1.2. Rules of Interpretation.

In this Agreement:

- (a) The headings are for convenience only and shall be ignored in construing this Agreement;
- (b) The singular includes the plural and vice versa;
- (c) References to Sections, Recitals and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules and Recitals to, this Agreement;
- (d) the Schedules (and the schedules or tables thereto, if any) to this Agreement form part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and the schedules or tables thereto, if any) which are not defined therein shall have the meanings given to them in this Section 1.1.
- (e) Unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (f) In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- (g) the words “include”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (h) references to a Party are references to a Party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title; and
- (i) except as otherwise indicated in this Agreement, references to time are references to time in Pakistan.

**ARTICLE II**

**TERM**

Section 2.1. Term.

- a) On the date of execution of this Agreement by the Parties, only Article I (Definitions; Rules of Interpretation), this Section 2.1, Article VI (Representations and Warranties) and Article XV (Miscellaneous Provisions) shall become effective.
- b) The date on which PPIB acknowledges the occurrence of Financial Closing, this Agreement shall become effective in its entirety (the “**Effective Date**”).
- c) This Agreement shall commence and be effective from the Effective Date, and shall, unless terminated earlier in accordance with the terms of this Agreement continue in full force and effect until the later to occur of: (a) the [thirtieth / fiftieth (30<sup>th</sup>/50<sup>th</sup>)] anniversary of the Commercial Operations Date, and (b) the expiration of the “Term” (as defined in the Power Purchase Agreement) of the Power Purchase Agreement (the “**Term**”).
- d) 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 AJ&K/Provincial Government. Upon such termination, the Parties shall have no further obligations or liabilities under this Agreement.

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**ARTICLE III****GRANT OF RIGHTS BY THE AJ&K/PROVINCIAL GOVERNMENT**Section 3.1. Use of Water by the Company

- (a) The Company has obtained Provincial Consent and has been permitted to locate the Complex at the Site. The Government of AJ&K/Province hereby grants to the Company the right during the Term to use, subject to availability, the Water Resource:
- (i) to generate Net Electrical Output at the Complex at and only at the Site in accordance with the Power Purchase Agreement, and
  - (ii) for such reasonable purposes directly related and necessary to the generation of Net Electrical Output in accordance with this Agreement and the Power Purchase Agreement and consistent with the Laws of Pakistan and the Standards;

provided, however, that the grant to the Company to use the Water Resource is in all respects subject to the Restrictions, the Pre-existing Upstream Impoundments/ Diversions, the Agricultural Water Uses and the Industrial Water Uses.

- (b) During the Term, the AJ&K/Provincial Government shall not, subject to Section 3.1(c), [Section 3.2] authorize or permit any permanent impoundment to be erected on, or diversion of, the Water Resource upstream from the Complex [or downstream of the Complex within \_\_ kilometers], except for:
- (i) Pre-existing Upstream Impoundments/Diversions, and
  - (ii) impoundments or diversions required for the Agricultural Water Uses and Industrial Water Uses,

if such impoundment or diversion would materially and adversely affect the availability of water for the generation of Net Electrical Output at the Complex or the ability of the Complex to generate Net Electrical Output; provided, however, the AJ&K/Provincial Government shall have no obligation to restrict the authorization or permitting of any impoundment or diversion by any other AJ&K/Provincial Government or Public Sector Entity or any liability for any action taken by any Public Sector Entity outside of its authority or control.

- (c) Notwithstanding any provision of this Agreement including Section 3.1(b), the AJ&K/Provincial Government maintains full sovereign authority to authorize a temporary impoundment or diversion of the Water Resource either:
- (i) as may be required by an Emergency; or

- (ii) if reasonably necessary for the greater public good for a period not to exceed forty-eight (48) hours per impoundment or diversion and for a period not to exceed in the aggregate for all such impoundments or diversions one hundred and forty-four (144) hours in any twelve (12) month period; provided, however, that prior to such impoundment or diversion the AJ&K/Provincial Government shall to the extent practicable provide the Company not less than ninety (90) Days prior notice that the AJ&K/Provincial Government is considering authorization of a temporary impoundment or diversion, during which ninety (90) Day period the Company, the Power Purchaser and the GOP may review the proposed project necessitating the temporary impoundment or diversion of water and inform the AJ&K/Provincial Government of any objections relating to the proposed project's potential impact on the Company's ability to perform its obligations under the Power Purchase Agreement; provided, further, that the AJ&K/Provincial Government shall use all reasonable efforts to schedule such impoundment or diversion during a period of outage of the Complex so as to minimise the impact of such impoundment or diversion on the planned generation of Net Electrical Output.
- (d) The AJ&K/Provincial Government shall take all measures consistent with the authority and powers of the AJ&K/Provincial Government and the Laws of Pakistan to, remove or, cause removal of any impoundment or diversion of the Water Resource or its tributaries that materially and adversely affects the operation of the Complex and that is not authorized under Section 3.1(b).
- (e) Notwithstanding anything to the contrary expressed or implied in this Agreement, except for the express covenants and assurances of the AJ&K/Provincial Government described in Section 3.1(b), the AJ&K/Provincial Government makes no representations or covenants and gives no assurances as to the water flows of the Water Resource or as to the adequacy of the flows of the Water Resource for the generation of Net Electrical Output at the Complex or for any other purposes whatsoever, such evaluation and determination being the exclusive responsibility of the Company. The AJ&K/Provincial Government hereby expressly disavows and disclaims any and all statements or information, written or oral, of any kind that may have been provided by the AJ&K/Provincial Government or any of its officers, employees or agents to the Company or any of its employees, representatives, shareholders or agents in connection with the development of the Project. The Company acknowledges that it has not relied on any statements or information provided by the AJ&K/Provincial Government or any of its officers, employees or agents in connection with the development of the Project and that the Company is solely and exclusively responsible for the evaluation of the flows of the Water Resource at the Site

and the adequacy of such flows for the generation of Net Electrical Output as contemplated by the Power Purchase Agreement.

- (f) The AJ&K/Provincial Government may require for the Company to obtain and maintain consents or approvals for the location, construction, operation or maintenance of the Complex on or across the Water Resource, with appropriate restrictions including restrictions of water flows during construction and operation of the Complex, however not limited to restrictions contained in Section 4.2

Section 3.2. [Maintenance of Canals]

[This Section 3.2 to be included only if the Water Resource is a canal.]

Notwithstanding Section 3.1 or any other provisions to the contrary in this Agreement, the AJ&K/Provincial Government or any Public Sector Entity shall be entitled to:

- (a) restrict or terminate completely water flows in the Water Resource for up to [30] Days consecutive and [45] Days in the aggregate in each Year for the purpose of maintenance or repair of the Water Resource;
- (b) restrict or terminate the water flows in the Water Resource as necessary for long term maintenance, improvement, expansion and repair of the Water Resource or any upstream canal or waterway; or
- (c) restrict, reduce or interrupt the flows of water in the Water Resource as is reasonably necessary for the AJ&K/Provincial Government or the Public Sector Entity to satisfy its obligation under the then-prevailing Laws of Pakistan.

Any such restrictions, reductions or termination of water flows shall not be a breach or violation of this Agreement or give rise to any claim of damages or compensation or any other remedy whatsoever or permit the Company to terminate this Agreement.]

Section 3.3. Consents; Permits

- (a) Upon written request of the Company delivered in accordance with Section 14.1, the AJ&K/Provincial Government shall support and use all reasonable efforts to expedite the consideration of the Company's applications for any Provincial Consent. Any request for support under this Section 3.3 shall be accompanied by copies of the application for the Provincial Consent, any notice that the issuance or reissuance of the Provincial Consent was denied or deferred, and a statement of the Company's efforts in obtaining the issuance or reissuance of the Provincial Consent to date.
- (b) Upon reasonable request by the Company, the AJ&K/Provincial Government shall use all reasonable efforts to support the Company's performance of its obligations to build, own, and operate the Complex;



provided, however, that by committing to use such reasonable efforts to support the Company's performance, the AJ&K/Provincial Government has not relieved, and does not relieve in any way, the Company of its obligations under this Agreement or any other document comprising the Project Agreements.

- (c) For purposes of Section 28 of the Electricity Act, 1910, the AJ&K/Provincial Government hereby irrevocably consents to the generation of electricity by the Company at the Complex during the Term.

#### Section 3.4. Rights-of-Way

The AJ&K/Provincial Government shall use its reasonable efforts to facilitate and where necessary assist the Company to acquire any necessary rights-of-way by acquiring such rights-of-way itself and transferring them to the Company or, where and as permitted by the Laws of Pakistan, grant the power to the Company to acquire such rights-of-way for its use in the delivery of electric service as may be required to allow the Company to meet its obligations under this Agreement. The Company shall pay the required compensation to affected landowners in accordance with the Laws of Pakistan.

#### Section 3.5. Assurance Against Discriminatory Action

- (a) The AJ&K/Provincial Government shall not take any discriminatory action against the Company or the Complex that materially and adversely affects the Complex or the performance of the Company's obligations or the enjoyment of its rights under the Power Purchase Agreement; provided, however, that nothing in this Section 3.5(a) shall prejudice the AJ&K/Provincial Government's exercise of its rights and obligations under this Agreement.
- (b) Section 3.5(a) is not intended to prohibit or limit in any way the AJ&K/Provincial Government 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 AJ&K/Provincial Government or of a Provincial Consent. It is intended, however, to prohibit the arbitrary and unreasonable use of governmental authority, over, for example, the granting of Provincial Consents, so as to deprive the Company of the benefits of this Agreement by the application of a higher standard to the Company (alone, or together with others in a class) than to others similarly situated because of, for example, its foreign ownership, or so as to gain commercial, monetary or political advantage over the Company.

#### Section 3.6. Certification of Non-existence of Claims

Upon the expiration or termination of this Agreement, if the AJ&K/Provincial Government has no claims against the Company under this Agreement for unpaid Water Use Payments

or related to the condition of the Complex, then the AJ&K/Provincial Government shall provide a certificate to the Power Purchaser confirming the non-existence of any such claim.

**ARTICLE IV**

**OBLIGATIONS OF THE COMPANY**

Section 4.1. Prudent Utility Practices

The Company shall utilize Prudent Utility Practices in building, owning and operating the Complex and shall strictly adhere to the Standards and the Laws of Pakistan and shall comply with the terms of all agreements to which the Company may be a party, including those for the procurement of debt or equity funds for the setting up of the Complex.

Section 4.2. Operational Compliance

Further to Section 4.1, the Company shall at all times satisfy the following obligations:

- (a) construction of the Complex shall be carried out so as to result, both during construction and operation, in the minimum impairment of downstream water volumes and in a manner consistent with Prudent Utility Practices;
- (b) operation of the Complex shall be carried out so that water shall not be impounded or flow affected in any adverse respect for more than [\_\_\_\_\_] hours in any continuous twenty-four (24) hour period;
- (c) any structure to be used to dam the flow of the Water Resource shall be designed, constructed, operated and maintained in accordance with Provincial Consents, Prudent Utility Practices and shall comply with the Laws of Pakistan and such of the Standards as are applicable to such structures; and
- (d) the use by the Company of the Water Resource is restricted exclusively to the purposes described in Section 3.1 of this Agreement and is in all respects subject to the Restrictions, Pre-existing Upstream Impoundments/Diversions, the Agricultural Water Uses and Industrial Water Uses.

Section 4.3. Employment of Personnel

The Company shall employ only personnel, directly or indirectly, who are adequately qualified and experienced for operating and maintaining the Complex and shall ensure that the Complex is operated and maintained at all times in accordance with Prudent Utility Practices. The Company shall be deemed in compliance with this Section 4.3 if the Complex is operating in accordance with the provisions of the Power Purchase Agreement and the Implementation Agreement.

Section 4.4. Hazardous Materials

- (a) The Company shall comply with the Laws of Pakistan, including those regarding the storage of Hazardous Materials and shall not allow any Hazardous Materials to be discharged into the Water Resource or to

otherwise contaminate the Water Resource or the groundwater of the Complex or the Site.

- (b) The Company shall not and shall ensure that its employees and the Contractors and their employees do not introduce Hazardous Materials into the Water Resource, the groundwater of the Complex, the Site or the air and shall take all actions necessary to abate the effects of any discharge of Hazardous Materials immediately upon the occurrence of any such discharge and to prevent future occurrences.

#### Section 4.5. Insurance

The Company shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with Article XII of the Power Purchase Agreement. If and to the extent that the AJ&K/Provincial Government can be named as an additional insured on all fire, perils, casualty and liability insurance policies covering the Complex, the AJ&K/Provincial Government shall be so named by the Company; provided, however, that the AJ&K/Provincial Government shall agree to subordinate its interests in all such policies (except general liability coverage) to the interests of the Lenders therein.

#### Section 4.6. Observation Visits

The AJ&K/Provincial Government shall have the right, upon reasonable prior notice to the Company, to observe the construction, testing and operation and maintenance of the Complex. The Company shall comply with all reasonable requests of the AJ&K/Provincial Government for, and assist in arranging, any such observation visits to the Complex. All persons visiting the Complex on behalf of the AJ&K/Provincial Government shall comply with the reasonable instructions and directions of the Company or the Contractors. Such visits to the Complex shall not be construed in any manner as an endorsement or warranty by the AJ&K/Provincial Government of any aspect of the design, construction, operation or maintenance of the Complex.

#### Section 4.7. Right of Inspection

Upon reasonable notice to the Company, the AJ&K/Provincial Government shall have the right to inspect the Complex and Site for compliance with the environmental laws of Pakistan and shall advise the Company of any violations that are observed. Such visits to the Complex shall not be construed in any manner as an endorsement or warranty by the AJ&K/Provincial Government of any aspect of the environmental compliance of the Company or relieve the Company from conducting its own examinations for compliance with the environmental laws of Pakistan.

#### Section 4.8. Periodic Reports

The Company shall, as soon as available, furnish to the AJ&K/Provincial Government a copy of any reports furnished to the GOP or the Power Purchaser pursuant to the

Implementation Agreement or Power Purchase Agreement on any factors materially and adversely affecting, or that might materially and adversely affect, the Complex or the Company's business and operations or its financial condition, including without limitation, information regarding statutory notice of winding-up proceedings.

Section 4.9. Maintenance Reports and As-Built Drawings

- (a) During the last five (5) Years of the Term the Company shall provide the AJ&K/Provincial Government with copies of the annual maintenance reports for each such Year.
- (b) Not less than twelve (12) Months prior to the end of the Term, the Company shall make available during business hours to the AJ&K/Provincial Government for its examination all the as-built drawings of the Complex and all technical material related to the operation of the Complex. The AJ&K/Provincial Government shall have the right to photocopy any such documents so long as it does not materially affect the ability of the Company to operate the Complex. All such as-built drawings and technical material related to the operation of the Complex shall be transferred with the Complex on the transfer of the Complex to the AJ&K/Provincial Government.

Section 4.10. Training Programme

Six (6) Months before the end of the Term, the Company shall offer to the AJ&K/Provincial Government a training programme for at least five (5) AJ&K/Provincial Government personnel on the operation and maintenance of the Complex to facilitate the AJ&K/Provincial Government's assumption of operation and control of the Complex at the end of the Term. This training programme shall be provided at no cost to the AJ&K/Provincial Government; provided, however, that the AJ&K/Provincial Government shall assume all of the direct costs of its personnel's participation in the training programme.

## ARTICLE V

## COMPENSATION, PAYMENTS AND BILLING

Section 5.1. Copy of and Correction of Company Invoice

- (a) For each Month in which the Company delivers Despatched and Delivered Net Electrical Output and/or Net Electrical Output during testing for a continuous period of not less than six (6) hours to the Power Purchaser, simultaneously with the Company's delivery of its invoice (the "Company Invoice") to the Power Purchaser in accordance with Section 9.7 of the Power Purchase Agreement, the Company shall deliver to the AJ&K/Provincial Government a copy of such Company Invoice. The AJ&K/Provincial Government may require clarification or substantiation of any amount included in a Company Invoice by delivering notice of such requirement to the Company. Notwithstanding anything to the contrary expressed or implied in this Section 5.1, if the Company does not deliver a copy of the Company Invoice to the AJ&K/Provincial Government by the fifteenth (15<sup>th</sup>) of each Month following the Month in which the Commercial Operations Date has occurred, the Company shall deliver a certificate from its chief executive officer stating that (i) there were no deliveries of Net Electrical Output to the Power Purchaser during the previous Month for which payment is due from the Power Purchaser under the Power Purchase Agreement or (ii) explaining in reasonable detail the reason that no copy of the Company Invoice for the prior Month's sales of Net Electrical Output has been delivered to the AJ&K/Provincial Government.
- (b) If the Despatched and Delivered Net Electrical Output or Net Electrical Output paid for by the Power Purchaser under the Company Invoice is at any time adjusted (including pursuant to a final dispute resolution under the Power Purchase Agreement or for any other reason), then the Company shall be obligated to deliver written notice of such adjustment to the AJ&K/Provincial Government within ten (10) Days.

Section 5.2. Calculation of Water Use Payments

The Company shall, in accordance with the provisions of Section 5.5, pay to the AJ&K/Provincial Government each Month the "Water Use Payment," which shall be calculated for each Month as follows:

$$\text{WaterUsePayment}_M = (\text{TotalkWh}_M) * (\text{WaterUseCharge}_{\text{Ref}} * \text{IndexFactor}_Q)$$

Where,

$\text{WaterUsePayment}_M$  = The Water Use Payment for a given Month, M;

$\text{TotalkWh}_M$  = Either:

- (i) If the Company delivers a copy of the Company Invoice for Month M pursuant to Section 5.1, the Net Electrical Output delivered to the Power Purchaser by the Company in Month “M” for which the Power Purchaser is obligated to pay the Water use Charge pursuant to the terms of the Power Purchase Agreement, as shown in the copy of the Company Invoice for Month M; or
- (ii) If the Company fails to deliver to the AJ&K/Provincial Government a copy of the Company Invoice for Month “M” pursuant to Section 5.1 within five (5) Business Days following the delivery of the relevant Company Invoice to the Power Purchaser, the highest per Month amount of Net Electrical Output (as shown in a copy of the Company Invoice for such Month) provided by the Company to the Power Purchaser in any single Month within the immediately preceding thirty-six (36) Months, subject to Section 5.5(g);

$\text{WaterUseCharge}_{\text{Ref}} = [0.15] \text{ Rupees/kWh; and}$

$\text{IndexFactor}_Q = \text{The Index Factor applicable for the Quarter that includes Month “M”, as calculated pursuant to Section 5.3.}$

Section 5.3. Index Factor.

- (a) The Index Factor shall be set on the first Day that Net Electrical Output is delivered to the Power Purchaser for which the Power Purchaser has an obligation to pay the Water Use Charge pursuant to the Power Purchase Agreement and on the first Day of each Quarter thereafter using the most recent value for the Pakistan Wholesale Price Index available on that date.
- (b) Except as provided in Section 5.3(c) and Section 5.3(d), the Index Factor shall be calculated as follows:

$$\text{IndexFactor}_Q = \left( \frac{\text{IndexFactor}_d}{\text{IndexFactor}_{\text{Ref}}} \right)$$

Where,

$\text{IndexFactor}_Q = \text{The Index Factor applicable for a Quarter, Q, or applicable from the date that Net Electrical Output is delivered to the Power Purchaser until the end of such partial Quarter, as the case may be;}$

$\text{IndexFactor}_d$  = The most recent value of the Pakistan Wholesale Price Index as published by the GOP's Federal Bureau of Statistics (or other responsible agency) available on the first Day,  $d$ , of the relevant Quarter, or the first Day,  $d$ , on which Net Electrical Output is delivered to the Power Purchaser, as the case may be; and

$\text{IndexFactor}_{\text{Ref}}$  = The value on the Reference Date of the Pakistan Wholesale Price Index.

- (c) If at any time the Pakistan Wholesale Price Index is withdrawn, becomes unavailable for any reason, or becomes, in the reasonable opinion of the AJ&K/Provincial Government or the Company, inappropriate as a basis for indexation, then:
- (i) upon written notice from either Party, the AJ&K/Provincial Government and the Company shall use their best endeavors to identify a mutually acceptable alternative index and amend this Section 5.3 accordingly; and
  - (ii) if after fourteen (14) Days the Parties are unable to agree on an alternative index to be substituted for the index that requires replacement, the Parties shall appoint an expert pursuant to Section 13.2, who shall specify an alternative index or determine that the presently used index continues to be appropriate for the purposes of this Agreement, following which the Parties shall amend this Section 5.3 accordingly.
- (d) From the date the Pakistan Wholesale Price Index is withdrawn, becomes unavailable, or becomes inappropriate as a basis for indexation pursuant to Section 5.3(c) until the time an alternative index is identified pursuant to Section 5.3(c)(i) or Section 5.3(c)(ii), no adjustment shall be made to the Index Factor and the Index Factor shall remain equal to the value of the Index Factor at the date prior to the time when the Pakistan Wholesale Index was withdrawn, became unavailable, or became inappropriate as a basis for indexation pursuant to Section 5.3(c). Upon the identification of an alternative index pursuant to Section 5.3(c)(i) or Section 5.3(c)(ii), the Parties shall retroactively calculate the Index Factor for all periods for which the Pakistan Wholesale Price Index was withdrawn, became unavailable, or became inappropriate as a basis for indexation pursuant to Section 5.3(c) and shall true up all prior invoices and payments using the retroactively calculated Index Factors.

#### Section 5.4. Billing

- (a) At any time on or after the Day on which a copy of the Company Invoice for the prior Month is received by the AJ&K/Provincial Government (and on or



after any Day that a copy of any adjustment to any such Company Invoice is delivered to the AJ&K/Provincial Government pursuant to Section 5.1(b)), the AJ&K/Provincial Government may submit an invoice (the “Water Use Invoice”) to the Company stated in Rupees for the Water Use Payment. Such Water Use Invoice shall include adjustments to prior Water Use Invoices required pursuant to Section 5.5(f), Section 5.5(g), or Section 5.3(d).

- (b) The Company may require clarification or substantiation of any amount included in a Water Use Invoice by delivering notice of such requirement to the AJ&K/Provincial Government. Upon delivery of such request, the AJ&K/Provincial Government shall provide the requested clarification and substantiation of such invoice or statement within ten (10) Days.

Section 5.5. Payment

- (a) The Company shall pay to the AJ&K/Provincial Government the amount shown on an invoice delivered in accordance with Section 5.4(a), without any deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Company.
- (b) Any amount payable under this Agreement shall be paid in Rupees.
- (c) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable by the Expert or through arbitration.
- (d) Late payments of amounts due and payable under this Section 5.5 shall bear interest at a rate per annum equal to the Delayed Payment Rate.
- (e) Payments received by either Party shall be applied against outstanding invoices on the ‘first in, first out’ principle, so that the invoices that have been outstanding the longest (in whole or in part) shall be paid first.
- (f) If the Net Electrical Output paid for by the Power Purchaser under the Company Invoice is at any time adjusted (including pursuant to a final dispute resolution under the Power Purchase Agreement or for any other reason), the Water Use Payment shall be recalculated based upon such adjusted Net Electrical Output for the relevant Month.
- (g) If the Water Use Payment for a given Month is calculated based on an estimate of Net Electrical Output (using the highest per Month amount of Net Electrical Output within the immediately preceding thirty-six (36) Months, as described in Section 5.2) and the Company subsequently delivers a copy of

the relevant Company Invoice, the Water Use Payment shall be recalculated based upon the Net Electrical Output for such Month as shown in such Company Invoice.

Section 5.6. Payment Disputes.

- (a) At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an “Invoice Dispute Notice”) on the other Party that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, giving reasons as complete and as detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to Dispute resolution in accordance with Article XVIII, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this Section 5.6. A Party submitting an Invoice Dispute Notice may require such Dispute to be immediately referred to the Expert for determination pursuant to Section 13.2.
- (b) Upon resolution of the Dispute under Section 13.1 or the determination of the Dispute by the Expert under Section 13.2 and without prejudice to the right of either Party to refer a Dispute to arbitration, any amounts disputed and not paid but determined to be owed by a Party or any amounts paid and determined not to be owed shall be paid or repaid to the other Party, as the case may be, within seven (7) Business Days after such resolution or determination, together with interest thereon from but excluding the date initially owed or paid until and including the date paid or repaid, as the case may be, at the Delayed Payment Rate.
- (c) Following such resolution or determination by an Expert, neither Party may refer a Dispute regarding such matter to arbitration under Section 13.3, unless and until it has paid all amounts resolved or determined to be payable in accordance with Section 5.6(b).

**ARTICLE VI**

**REPRESENTATIONS AND WARRANTIES**

Section 6.1. Representations and Warranties by the Company

The Company hereby represents and warrants to the AJ&K/Provincial Government that:

- (a) The Company is a [private/public] limited company, duly organized, validly existing and in good standing under the Laws of Pakistan, and has, so far as it is material to the AJ&K/Provincial Government, complied fully with all requirements of the Companies Ordinance (XLVII) of 1984 and all other applicable Laws of Pakistan.
- (b) The Company has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Company, (i) has been duly authorized by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other Person are necessary for such authorization, and (ii) will not (A) violate (1) the Laws of Pakistan or any applicable order of any Public Sector Entity and (2) any provision of the Memorandum and Articles of Association of the Company, or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a Party or by which the Company or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Company or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid and binding obligation of the AJ&K/Provincial Government, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) to general principles of equity.
- (d) To the best of its knowledge after reasonable inquiry, except for the Specified Consents (as defined in Schedule 1 of the Implementation Agreement), no filing or registration with, no notice to and no permit, authorization, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Company.
- (e) The Company is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any

manner that would have a material adverse effect on its ability to perform its obligations hereunder, the validity or enforceability of this Agreement.

- (f) There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened, (i) for the dissolution of the Company, or (ii) against the Company which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, the validity or enforceability of this Agreement.

**ARTICLE VII**

**LIMITATION OF LIABILITY**

Section 7.1. Limitation of Liability

Except as required by Section 8.1, 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 or default under, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

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**ARTICLE VIII****INDEMNIFICATION**Section 8.1. Indemnification

- (a) AJ&K/Provincial Government's Indemnification Except as specifically provided elsewhere in this Agreement, the AJ&K/Provincial Government shall indemnify and defend the Company, for itself and as trustee for its officers, directors and employees against, and hold the Company, its officers, directors and employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the AJ&K/Provincial Government in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 8.1(a) shall apply to any Loss in respect of and to the extent which the Company receives proceeds from insurance policies or indemnification from another party.
- (b) The Company The Company shall indemnify and defend the AJ&K/Provincial Government, for itself and as trustee for its officers, directors and employees against, and hold the AJ&K/Provincial Government and its ministers, its officers, directors and employees harmless from, at all times after the date hereof, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the AJ&K/Provincial Government and its ministers, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Company or the Contractors in connection with this Agreement and the acts and activities contemplated hereby. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 8.1(b) shall apply to any Loss in respect of and to the extent to which the AJ&K/Provincial Government receives proceeds from insurance policies.
- (c) Joint Negligence In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.
- (d) Survival The provisions of this Section 8.1 shall survive for a period of five (5) years following termination of this Agreement (or such later date as the Company actually vacates the Site where the Complex has been or is to be transferred); provided, however, the obligations of the AJ&K/Provincial Government and the Company to indemnify and hold each other harmless will not terminate at such time with respect to any matter as to which either

the AJ&K/Provincial Government or the Company has made a claim for indemnification.

Section 8.2. Indemnification for Fines and Penalties

Any fines or other penalties incurred by the Company for non-compliance with the applicable Laws of Pakistan or other governmental actions taken pursuant thereto or the Consents, unless they result directly from an act or omission of the other Party (in which case, they shall be reimbursed by the other Party), shall not be reimbursed by the AJ&K/Provincial Government but shall be the sole responsibility of the Company.

Section 8.3. Notice of Claims

Each Party shall promptly notify the other Party of any Loss, claim, proceeding or other matter in respect of which it is or it may be entitled to indemnification under this Article VIII Such notice shall be given as soon as is reasonably practicable after the relevant Party becomes aware of such Loss, claim, proceeding or other matter.

Section 8.4. Assertion of Claims to Exceed Minimum Indemnification Amount

- (a) Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Year, exceed the Minimum Indemnification Amount. For the purposes of this Section 8.4, a Loss (or claim for indemnification) shall be deemed to arise in the Year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Year, in the Year such event ends.
- (b) Neither the AJ&K/Provincial Government nor the Company shall be entitled to indemnification under Section 8.1 if and to the extent that payment in full has been received in respect of a Loss or proceeding under the indemnities contained in the Power Purchase Agreement, the Implementation Agreement, or any other document comprising the Project Agreements in respect of the relevant act or omission.

Section 8.5. Defense of Claims

- (a) The indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defense of such claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obligated to indemnify the other party hereunder, subject to the prior approval of such counsel by the indemnified Party; provided, however, it gives prompt notice of its intention to do so to the indemnified Party, and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defense.

- (b) Notwithstanding the provisions of Section 8.1(a) and 8.1(b)), unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 8.5(a), the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- (c) Upon assumption by the indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defense of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defense.
- (d) such consent is unreasonably withheld, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.
- (e) Following acknowledgment of the indemnification and assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defense of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clause (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.



**ARTICLE IX**

**ASSIGNMENT AND SECURITY**

Section 9.1. 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 9.2(a) and (c).

Section 9.2. Creation of Security

- (a) Notwithstanding the provisions of Section 9.1, for the purpose of financing the Project, in connection with the Financial Closing the Company may assign to, or create a security interest in favour of, the Lenders in the Company'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 Company, and (vi) the revenues or any of the rights or assets of the Company.
- (b) The Lenders shall have no rights (except as expressly provided herein) or obligations to the AJ&K/Provincial Government under this Agreement until such time as the Lenders or their designees succeed to the Company'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 AJ&K/Provincial Government and shall assume liability for all of the Company's obligations under this Agreement, including payment of any amounts due and owing to the AJ&K/Provincial Government for breaches or defaults by the Company and other liabilities arising under this Agreement prior to the Lenders' or such designees' succession to the Company'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 AJ&K/Provincial Government, 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 Company Event of Default as provided under Article XI.
- (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 AJ&K/Provincial Government 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 AJ&K/Provincial Government; and
- (iii) The AJ&K/Provincial Government 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 Company Event of Default within the period remaining for such cure by the Company and the Lenders and the payment of any amounts due and owing to the AJ&K/Provincial Government by the Company 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 9.2(d), the AJ&K/Provincial Government 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 Company under this Agreement and assumes in writing for the benefit of the AJ&K/Provincial Government all of the obligations and liabilities of the Company hereunder.

- (e) Upon notice to the AJ&K/Provincial Government of a default under the Financing Documents, the AJ&K/Provincial Government 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 Company, delivered to the AJ&K/Provincial Government no less than thirty (30) days in advance, the AJ&K/Provincial Government 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.

## ARTICLE X

## FORCE MAJEURE

Section 10.1. Definition

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

- (a) the following political events that occur inside or directly involve Pakistan (each a “**Pakistan Political Event**”):
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
  - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive days or more; or
  - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide; or
  - (iv) except as permitted in the Agreement, any Impoundment caused, authorized or permitted or (if not caused, authorized or permitted) the failure to diligently prosecute the removal of such Impoundment (in accordance with the Laws of Pakistan/AJ&K), by the AJ&K/Provincial Government, or any works associated therewith whether used for power generation or irrigation and each of the above events or combination of such events, materially and adversely affecting the Net Electrical Output;
- (b) any Change in Law; or
- (c) Other events beyond the reasonable control of the affected Party (each an “**Other Force Majeure Event**”), including, but not limited to:

- (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
  - (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive days; or
  - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
  - (iv) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation; or
  - (v) epidemic or plague.
- (d) Force Majeure Events shall expressly not include the following conditions, except and to the extent that events or circumstances of this Section 10.1 (d)(i) & (ii) occur directly as a consequence of a Force Majeure Event:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (including fuel);
  - (ii) a delay in the performance of any Contractor; or
  - (iii) normal wear and tear or random flaws in materials and equipment or breakdown in equipment.

#### Section 10.2. Notification Obligations

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 Company 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.

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.

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 10.2 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 10.4 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 10.2, the affected Party shall be excused for such failure or delay pursuant to Section 10.4 from the date of commencement of the relevant Force Majeure Event.

#### Section 10.3. 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 10.4. 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 10.3 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) under or pursuant to this Agreement during the existence of a Force Majeure Event (or the effects thereof on such Party), 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 10.4 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.

#### Section 10.5. Company Remedies

In the event the Company is unable to operate or fully operate the Complex due to breach of Section 10.1(a)(iv) by the AJ&K/Provincial Government, and as a result the Company suffers loss of Capacity Payments and Energy Payments under the Power Purchase Agreement, then to the extent the Complex is not despatched, the Provincial Government shall be liable to pay to the Company a differential amount equivalent to loss or reduction in

the Capacity Payments and Energy Payments computed on the average historical hydrology for the immediately preceding five (5) years during the same period as that during which the breach has occurred.



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**ARTICLE XI****TERMINATION**Section 11.1. Termination for Default

- (a) Termination by the AJ&K/Provincial Government Each of the following events shall be an event of default by the Company (each a “**Company 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 AJ&K/Provincial Government to terminate this Agreement pursuant to Section 11.2; provided, however, that no such event shall be a Company Event of Default (i) if it results from a breach or default by the AJ&K/Provincial Government of or under this Agreement or the Power Purchaser of or under the Power Purchase Agreement or the GOP of or under the Implementation Agreement or (ii) if it occurs as a result of a Force Majeure Event during the period provided in Section 10.4:
- (i) any statement, representation, or warranty by the Company 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 Company’s ability to perform its obligations under this Agreement;
  - (ii) termination of the Power Purchase Agreement by the Power Purchaser for the Company’s failure to achieve Construction Start or the Commercial Operations Date as required in the Power Purchase Agreement;
  - (iii) any material breach by the Company of this Agreement that is not remedied within thirty (30) Days after notice from the AJ&K/Provincial Government stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;
  - (iv) after the Construction Start, termination of the Power Purchase Agreement by the Power Purchaser due to a Company Event of Default thereunder, unless the GOP or its designee by notice to the AJ&K/Provincial Government succeeds to the ownership of the Complex and assumes the ongoing rights and obligations of the Company under this Agreement arising on and after the date of such assumption;



- (v) any default by the Company in the making of any payment or payments required to be made by it under this Agreement on the due date specified in this Agreement that continues unpaid for thirty (30) Days; or
  - (vi) except as permitted by the terms and provisions of the this Agreement, the assignment or transfer of the Company's rights or obligations in the assets identified in Section 9.2(a) without obtaining the prior written consent of the AJ&K/Provincial Government or the transfer, conveyance, Loss, or relinquishment of the Company's right to own and/or operate the Complex or any material part thereof or to occupy the Site to any person without the prior written approval of the AJ&K/Provincial Government.
- (b) Termination by the Company Each of the following events shall be an event of default by the AJ&K/Provincial Government (each a "**Azad Jammu & Kashmir/Provincial Government 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 Company to terminate this Agreement pursuant to Section 11.2(c); provided, however, that no such event shall be a AJ&K/Provincial Government Event of Default (i) if it results from a breach or default by the Company of or under this Agreement or of the Power Purchase Agreement or the Implementation Agreement or (ii) if it occurs as a result of or during a Force Majeure Event during the period provided in Section 10.4:
- (i) any material breach by the AJ&K/Provincial Government of this Agreement, which is not remedied within thirty (30) Days after notice from the Company to the AJ&K/Provincial Government, which notice states that a material breach of such license has occurred that could result in the termination of such license, identifies the breach in question and demands remedy thereof;
  - (ii) any expropriation, compulsory acquisition, or nationalization by the AJ&K/Provincial Government of (A) any Ordinary Share Capital, or (B) any material asset or right of the Company (except as contemplated by any document or agreement contained in the Project Agreements);
  - (iii) any default or defaults by the AJ&K/Provincial Government in the making of any payment or payments required to be made by it under this Agreement on the due date specified in this Agreement that continues unpaid for thirty (30) Days; or
  - (iv) any statement, representation or warranty by the AJ&K/Provincial Government in this Agreement proving to

have been incorrect, in any material respect, when made or when deemed to have been made and such incorrect representation or warranty having a material adverse effect on the Company's ability to perform its obligations under this Agreement.

Section 11.2. Termination Notices.

- (a) Upon the occurrence of a Company Event of Default or a AJ&K/Provincial Government Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the AJ&K/Provincial Government or the Company, as the case may be, 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 or, if permitted under Section 11.2(b), immediately deliver a Termination Notice to the other Party. The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or AJ&K/Provincial Government Event of Default, as the case may be, giving rise to such notice.
- (b) Following the delivery of a Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default for a period (commencing on the delivery of such notice) of forty-five (45) Days in case of a failure by a Party to make any payment when due, and ninety (90) Days with respect to any other Company Event of Default or AJ&K/Provincial Government 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 11.2(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default; provided, however, that no cure period shall be available to the Company for a Company Event of Default under Section 11.1(a)(ii) [or Section 11.1(a)(iv)], and immediately upon the occurrence of any such Company Event of Default, the AJ&K/Provincial Government shall be entitled to deliver a Termination Notice pursuant to Section 11.2(c).
- (c) Subject to the provisions of Section 11.3 and Section 11.4, as the case may be, upon expiration of the period, if any, allowed to cure the Company Event of Default or the AJ&K/Provincial Government Event of Default, as the case may be, described in Section 11.2(b) and unless the Parties shall have otherwise agreed or unless the Company Event of Default or the AJ&K/Provincial Government Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall have been remedied, the non-defaulting Party may terminate this Agreement by delivering a Termination Notice to the defaulting Party, whereupon this Agreement shall immediately terminate and the provisions of Article XII shall apply.

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Section 11.3. Notice to the Lenders of the Company's Default

- (a) Anything in this Agreement notwithstanding, from and after the occurrence of the Financial Closing, the AJ&K/Provincial Government shall not seek to terminate this Agreement as the result of any Company Event of Default without first giving a copy of any notices required to be given to the Company under Section 11.2 to the Lenders and giving the Lenders the opportunity to cure any such Company Event of Default within the cure period specified in Section 11.2(b), which 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 AJ&K/Provincial Government in the acknowledgement contemplated by Section 9.2(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 9.2(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 11.3 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 11.3 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 AJ&K/Provincial Government by the Company in the acknowledgement contemplated by Section 9.2(f) and thereafter may be changed by the Lender or the Agent by subsequent delivery of a notice to the AJ&K/Provincial Government at the address or facsimile number for the AJ&K/Provincial Government provided in Section 14.1(a) (or at such other address or facsimile number subsequently delivered to the Lender or the Agent in accordance with this Section 11.3) and otherwise in accordance with the requirements of Section 14.1(a).
- (b) No rescission or termination of this Agreement by the AJ&K/Provincial Government 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 provided in this Section 11.3. The Lenders may make or procure, but shall be under no obligation to make or procure, any payment or perform any act required to be made or performed by the Company, with the same effect as if made or performed by the Company. If the Lenders fail or are unable or

unwilling to cure or to procure the cure of any Company Event of Default within the cure period under Section 11.2(b) as provided to the Company in this Agreement, the AJ&K/Provincial Government 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 Company Event of Default requires the Lenders to take control of and occupy the Complex, then before termination of the cure period provided to the Company pursuant to Section 11.2(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 AJ&K/Provincial Government 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 Company under the Agreement as provided in Section 11.2, or (ii) thirty (30) Days following the end of the cure period under Section 11.3. 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 Company Event of Default, an additional period of one hundred and eighty (180) Days to cure any Company Event of Default (the "Extended Cure Period"). In the event that the Lenders fail to cure any Company Event of Default required to be cured pursuant to Section 11.2 on or before the expiration of the Extended Cure Period, the AJ&K/Provincial Government may exercise its rights and remedies with respect to such default set forth in this Agreement, the AJ&K/Provincial Government 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 11.4. Notice to the AJ&K//GOP of the Provincial Government's Default

- (a) Anything in this Agreement notwithstanding, the Company shall not seek to terminate this Agreement as a result of any AJ&K/Provincial Government Event of Default without first giving a copy of any notices required to be given to the AJ&K/Provincial Government under Section 11.2 to the GOP, such notices to be coupled with a statement of the period available to cure any such AJ&K/Provincial Government Event of Default within the same cure period as provided to the AJ&K/Provincial Government hereunder 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 of the Implementation Agreement (or such other address as the GOP may have specified by written notice delivered in accordance therewith).

- (b) No rescission or termination of this Agreement by the Company shall be of any effect without such notice and expiration of such Cure Period. The GOP may, but shall be under no obligation, to make any payment or to perform any act required of the AJ&K/Provincial Government hereunder with the same effect as if the payment or act had been made or performed by the AJ&K/Provincial Government. If the GOP fails to cure or is unable or unwilling to cure a AJ&K/Provincial Government Event of Default within the cure periods provided to the AJ&K/Provincial Government under this Agreement, the Company shall have all of its rights and remedies with respect to such AJ&K/Provincial Government Event of Default as set forth in this Agreement; provided, however, that, with respect to any AJ&K/Provincial Government Event of Default other than a payment default, if the GOP is diligently attempting to cure such AJ&K/Provincial Government Event of Default and demonstrable progress toward affecting such cure is being made, the GOP shall be granted an additional period not exceeding ninety (90) Days to effect such cure before the Company may exercise its rights and remedies with respect to such AJ&K/Provincial Government Event of Default set forth in this Agreement.

**ARTICLE XII**

**RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

Section 12.1. Obligations Upon Termination.

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

Section 12.2. Assignment and Assumption of Water Use Agreement.

Notwithstanding anything to the contrary in this Agreement, in the event of a termination of the Implementation Agreement and the termination of the Power Purchase Agreement as a result of default thereunder by the Company, the Power Purchaser or the GOP and a transfer of the Complex to the GOP/GOAJ&K or its designee in relation thereto, the AJ&K/Provincial Government hereby covenants to the Company, as trustee for the GOAJ&K/GOP or its designee, to permit the assignment of this Agreement to any subsequent owner of the Complex in connection with any such transfer of the Complex, and agrees to novate this Agreement to any subsequent transferee of the Complex on the same terms and conditions of this Agreement for the remainder of the natural term of the Power Purchase Agreement as if it had not been so terminated.

Section 12.3. Other Remedies.

- (a) Remedies Cumulative. 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.
- (b) Limitation of Damages of Company Notwithstanding Section 12.4(a), the Parties agree that the Company may be damaged in amounts that may be difficult or impossible to determine in the event that this Agreement is terminated by the Company as a result of a AJ&K/Provincial Government Event of Default. Therefore, the Parties have agreed that the termination of this Agreement and the remedies provided therefor under the Implementation Agreement, including, if applicable, the termination of the Implementation Agreement by the Company under Section 14.1(b) of the Implementation Agreement and the payment to the Company by the GOP of the compensation provided under Article XV of the Implementation Agreement as a result thereof, is in lieu of actual damages and any other liquidated damages which would otherwise be payable under this Agreement in respect of such termination and the collection of such amount (and, if applicable, the termination of the Implementation Agreement) is the sole remedy of the

Company in respect of such termination. The provisions of this Section 12.4(b) shall be without prejudice to any right or remedy of the Company which arises prior to termination of this Agreement.

- (c) Limitation of Damages of AJ&K/Provincial Government Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that the GOP terminates the Implementation Agreement as a result of a Company Event of Default pursuant to Section 14.1(a) of the Implementation Agreement and the GOP elects to purchase the Project and the Company transfers the Project to the GOP pursuant to Article XVII of the Implementation Agreement, then, upon such transfer, any claims by the AJ&K/Provincial Government against or liability of the Company under this Agreement (except as provided in Section 12.1) shall be fully extinguished and the AJ&K/Provincial Government shall have no further claim or recourse against the Company under this Agreement arising prior to the date that the Complex is transferred to the GOP or its designee.

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**ARTICLE XIII****RESOLUTION OF DISPUTES**Section 13.1. 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; provided, however, that if the Dispute involves the proposed authorization of an upstream diversion or impoundment of the Water Resource under Section 3.1(c), and after ten (10) Days of mutual discussion either Party believes in good faith that further discussion will not resolve the Dispute to its satisfaction, such Party may immediately refer the matter to the expert for consideration pursuant to Section 13.2. During such mutual discussions and any resolution procedure instituted pursuant to this Article XIII the Parties shall faithfully continue to perform their respective obligations under this Agreement.

Section 13.2. Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 13.1 within the time periods set forth therein, then either Party, in accordance with this Section 13.2, 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; provided, however, that with respect to Disputes that involve the proposed authorization of an Impoundment, either party may require that an expert be appointed in accordance with the provision of Section 13.2(b) to consider a Dispute in advance of occurrence of such a Dispute, and shall nominate a person it proposes to be the expert. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 13.3 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 President of the Pakistan Institute of Chartered Accountants (for financial or billing matters) or the Vice-Chancellor of University of Engineering and



Technology, Lahore (UET) (for technical matters) shall be requested to select the Expert, and the selection of the Expert shall be binding on the Parties; provided, however, that the selecting entity shall be directed that the Expert shall not be an employee or agent or former employee or agent or have an interest in the business of either Party or any Affiliate of either Party.

- (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 13.2(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

13.2(c)(i)(B), 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 13.2(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) day 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 recommendation 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 13.3 (*Arbitration*) 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 13.2(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 13.2(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 13.2(f), either Party may initiate arbitration proceedings in accordance with Section 13.3.
- (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 13.2 shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from terminating the Expert proceedings and referring the matter immediately to arbitration in accordance with Section 13.3.
- (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 XIII, either Party may require arbitration of a Dispute pursuant to Section 13.3 without reference to an Expert under this Section 13.2.

Section 13.3. 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 13.1 and 13.2 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 under the Laws of Pakistan the application of the Rules to the arbitration established for the resolution of a Dispute would not result in an enforceable award then 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 13.3 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 arbitration hereunder. Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in London the arbitration shall be conducted in London and if the 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) Unless the Parties otherwise agree, no arbitrator appointed pursuant to this Section 13.3 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 Power Purchaser, the Company, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.

Section 13.4. Commercial Acts

The AJ&K/Provincial Government unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes its private and commercial acts.

**ARTICLE XIV**

**MISCELLANEOUS PROVISIONS**

Section 14.1. Notices

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

If to the AJ&K/Provincial Government:

[address]  
[address]  
Attention:  
Telephone No:  
Facsimile No:

If to the Company:

[address]  
[address]  
Attention:  
Telephone No:  
Facsimile No:

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

- (c) 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 14.2. 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 14.3. 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 interconnection facilities and the design, construction, insurance, operation, maintenance, transfer, management and financing of the Complex, and the use of the Water Resource pursuant to this Agreement and all information related thereto, and all information and documents obtained by such Party 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 Company 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 AJ&K/Provincial Government. The provisions of this Section 14.3 shall survive the termination of this Agreement, but shall expire and be of no further effect upon the fifth (5<sup>th</sup>) anniversary of the date of termination of this Agreement.

- (b) The provisions of Section 14.3(a) 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 14.4. 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 14.5. 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 14.6. 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 14.7. Affirmation

- (a) The Company hereby declares that it has not obtained or induced the procurement of this Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the AJ&K/Provincial Government or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Company 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 Company 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 Power Purchase Agreement or any contract, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the AJ&K/Provincial Government or any Public Sector Entity, except that which has been expressly declared pursuant hereto.

- (c) The Company 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. The Company 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 AJ&K/Provincial Government, be voidable and without legal effect at the option of the AJ&K/Provincial Government.
- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the AJ&K/Provincial Government in this regard, the Company agrees to indemnify the AJ&K/Provincial Government for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to the AJ&K/Provincial Government 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 Company (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 Power Purchase Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the AJ&K/Provincial Government or any Public Sector Entity.

#### Section 14.8. 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 14.9. Amendment

This Agreement can be amended, modified or supplemented only by agreement between the Parties in writing, executed by a duly authorized representative of each of the Parties. No amendment or modification of the Power Purchase Agreement shall increase the liability of the AJ&K/Provincial Government or reduce the benefits to the AJ&K/Provincial Government under this Agreement, unless such amendment or modification is approved in writing by the AJ&K/Provincial Government.



**Section 14.10. 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 14.11. Language**

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

**Section 14.12. 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. 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.

**Section 14.13. No Liability for Review**

No review, non-objection or approval by the AJ&K/Provincial Government or any Relevant Authority of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company 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 Company's obligations under this Agreement, nor shall the AJ&K/Provincial Government be liable to the Company or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

**Section 14.14. 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.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the AJ&K/Provincial Government is granting this Agreement as of the date first above written and under the above terms and conditions as accepted and agreed to by the Company:

THE GOVERNMENT OF AJ&K/[NAME OF PROVINCE]

By: \_\_\_\_\_

Title: \_\_\_\_\_

**AGREED AND ACCEPTED:**

[NAME OF COMPANY]

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1.  
EXISTING UPSTREAM IMPOUNDMENTS AND DIVERSIONS**

**SCHEDULE 2.  
RESTRICTIONS ON WATER USE**

[Describe any restrictions on the use of the Water Resource by the Company, including, among other things, the maximum quantity of water that the Company will be entitled to use for generation of Net Electrical Output at the Complex.]

**SCHEDULE 3.  
AGRICULTURAL USES AND INDUSTRIAL USES**

A. Agricultural Water Uses

[Describe any existing or planned agricultural and irrigation uses of the Water Resource.]

B. Industrial Water Uses

[Describe any existing or planned industrial and commercial uses of the Water Resource.]

**SCHEDULE 4.  
LOCATION OF SITE**

[attach detailed map showing location of Site, including the location of the water intake structure on the Water Resource].