

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

- AND -

[•]

IMPLEMENTATION AGREEMENT

- RELATING TO -

ABAGASSE/BIOMASS POWERED []MW(CONTRACT CAPACITY)CO-GENERATION COMPLEX

AT

[•],PUNJAB PROVINCE,PAKISTAN,

MADE AT

ISLAMABAD,PAKISTAN

ON [•], 2013

COUNSEL FOR THE GOP:

[•]

COUNSEL FOR THE SELLER:

[•]

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SCHEDULES

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

THIS IMPLEMENTATION AGREEMENT (this “**Agreement**”) is made at Islamabad as of the [●] Day of [●] 2013, by and between:

- (1) **THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN for and on behalf of THE ISLAMIC REPUBLIC OF PAKISTAN** (the “**GOP**”); and
- (2) [●],(the “**Seller**”),a company incorporated under the laws of Pakistan, with its principal office at [●], Pakistan.

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

RECITALS

- A. **WHEREAS**, the Seller has proposed to the Purchaser that the Seller will design, engineer, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [●] MW bagasse/biomass power cogeneration Complex (as hereinafter defined) to be located at [●], Pakistan;
- B. **WHEREAS**, the GOP, through the Alternative Energy Development Board (as hereinafter defined), issued to the Seller a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, Commissioning, operation and maintenance of the Complex;
- C. **WHEREAS**, on or before the date hereof the Seller has entered into an Energy Purchase Agreement with the Purchaser; and
- D. **WHEREAS**, the GOP is entering into this Agreement to encourage private investment in the electric power sector in Pakistan and to provide assurances of support for the Seller’s efforts to develop the Complex in an efficient and timely manner.

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

ARTICLE I DEFINITIONS

Section 1.1 Definitions

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

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

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

“Agent” – The meaning ascribed thereto in Section [14.4\(a\)](#).

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

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

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

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

“Change in Law” –

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

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

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

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

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

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

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

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

“Construction Start Date” – The date of the Seller’s issuance to the Construction Contractor, of the “notice to commence” as per undertaking provided by the Seller to the Purchaser of the Seller’s release to the Construction Contractor of funds equaling, in aggregate, at least seven percent (7%) of the total project cost in accordance with the Tariff Determination. “Contractors” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

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

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

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

“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.

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

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

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

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

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

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

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

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

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

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

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

“Expert” – The meaning ascribed thereto in Section [16.2\(a\)](#).

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

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

“Financial Closing” – (a) either of the following events:

- (i) The execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, completion of the Complex and Commissioning, and evidence of commitments for such equity as is required by the Seller to satisfy the requirements of the Lenders and the Letter of Support and the satisfaction or waiver of all conditions precedent for the initial availability of

funds under the Financing Documents (other than the effectiveness of this Agreement and the Energy Purchase Agreement), or

(ii) where the Project is developed through equity and debt capital of the Seller, the occurrence of Construction Start Date;

(b) the delivery of the Seller Letter of Credit in accordance with the terms of the Energy Purchase Agreement, and

(c) issuance of the Guarantee in accordance with the terms of this Agreement.

“Financing Documents” – (a) Loan agreements listed in Schedule 1 of the Direct Agreement, and all related notes, indentures, security agreements, guarantees, notices and schedules of disbursements, documents under any Islamic financing arrangements (including but not limited to mark up based financing), agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect of documents assigned as security to the Lenders) and other documents entered into by the Seller in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time, but excluding any loan, financing and security agreements and related instruments entered into by the Seller with any lenders for working capital or similar short-term credit facilities not listed in Schedule 1 to the Direct Agreement; or (b) where the Project is developed through equity and debt capital of the Seller, the loan agreements and other documents entered into by the Seller in relation to the construction and permanent financing of the Complex (or any part thereof).

“Force Majeure Events” – The meaning ascribed thereto in Section 13.1 (*Definition*).

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

“Foreign Investors” – Any such shareholders of the Seller who are foreigners or nonresident Pakistan nationals holding dual nationalities or companies established under a jurisdiction other than Pakistan.

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

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

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

“Guarantee” – The guarantee by the GOP of the payment obligations of the Purchaser under the Energy Purchase Agreement in the form of Schedule 3 (*Form of Guarantee*).

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

“Initial Shareholder” – [●]².

“Intended Transfer Date” – The meaning given to the term in Section 15.7; as such date may be revised in accordance with the terms thereof.

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

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

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

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

“Lead Investor” – [●]³.

²Since this is a standard document, this has been retained. In case of projects based on corporate finance, it will read “Initial Shareholder” - [Not applicable].

“Lenders” – The financial institutions:(a) that are listed in the Direct Agreement and party to the Financing Documents, or subsequent financial institutions that become parties to the Financing Documents, together with their respective successors and assigns; or (b) where the Project is developed through equity and debt capital of the Seller, that provide financing for the construction, testing, completion and Commissioning of the Complex.

“Letter of Support” – The Letter of Support dated [●], issued by AEDB, as may be amended, extended or clarified prior to Financial Closing.

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

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

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

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

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

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

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

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

“Notice of Election to Transfer” – The meaning given to the term in Section 15.7.

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

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

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

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

“Other Force Majeure Event” – The meaning ascribed thereto in Section 13.1(c).

“Pakistan” The Islamic Republic of Pakistan.

³ Since this is a standard document, this has been retained. In case of projects based on corporate finance, it will read “Lead Investor” - [Not applicable].

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

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

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

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

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

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

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

“Project Agreements” –

- (a) this Agreement;
- (b) Energy Purchase Agreement;
- (c) O&M Agreement, if any;
- (d) Construction Contract;
- (e) Financing Documents;
- (f) Insurance policies required to be procured and maintained by the Seller under the Energy Purchase Agreement and/or the Financing Documents;
- (g) Guarantee;
- (h) Carbon Credit Agreement (if any); and
- (i) Letter of Support.

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

“Protected Assets” The meaning ascribed thereto in Section [16.5\(a\)\(i\)](#).

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

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

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

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

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

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

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

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

“Reserve Fund” – The meaning ascribed thereto in Section 9.8 of the Energy Purchase Agreement. “Restoration” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

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

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

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

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

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

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

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

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

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

“Site” – The meaning ascribed thereto in the Energy Purchase Agreement. “Specified Consents” – The Seller Consents identified in Schedule 1 (*Specified Consents*).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.2 Rules of Interpretation

In this Agreement:

1.2.1 headings are only for convenience, and shall be ignored in construing this Agreement;

1.2.2 the singular includes the plural and vice versa;

1.2.3 references to Articles, Sections, Recitals and Schedules are, unless the context otherwise requires, references to Articles, Sections and Schedules to this Agreement;

- 1.2.4 unless the context requires otherwise, references to times and dates are, and shall be construed to be, references to Pakistan standard time;
- 1.2.5 unless otherwise expressly provided herein, whenever a consent or approval is required by one (1) Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised on reasonable grounds;
- 1.2.6 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.2.7 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- 1.2.8 the words “include”, “including, and “in particular” shall not be construed as, nor shall they have the effect of limiting the generality of the preceding words to which they are related;
- 1.2.9 except as expressly provided herein, nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Seller, to claim any benefit provided under the Laws of Pakistan (whether in effect now or in the future);
- 1.2.10 notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damages and/or losses for that particular event or occurrence; and
- 1.2.11 whenever under this Agreement a Party is required to exercise discretion by: (a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party, the Party exercising such discretion shall exercise such discretion fairly and reasonably.

ARTICLE II TERM

Section 2.1 Effectiveness of Agreement; Term

This Agreement shall commence and be effective on the later of: (a) date of Financial Closing; and (b) execution of this Agreement (the “**Effective Date**”). Unless terminated earlier in accordance with the terms of the Letter of Support or Article XIV

(*Termination*), as the case may be, this Agreement shall continue in full force and effect for a term equal to the Term of the Energy Purchase Agreement (the “**Term**”).

Section 2.2 Termination of Letter of Support

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

Section 2.3 Role of AEDB

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

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

ARTICLE III IMPLEMENTATION OF THE PROJECT

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

ARTICLE IV ACQUISITION OF SITE, TRANSPORTATION, AND CONSENTS

Section 4.1 Acquisition by the Seller of Site and Transportation

The Seller has already obtained or shall obtain physical possession of the Site, and adequate supplies for the Complex, make arrangements for delivery and receipt at port facilities in Pakistan of equipment and materials necessary to construct the Complex, and make arrangements for transport to the Site of all such equipment and materials from the port facilities. The Seller shall complete these activities in compliance with the terms of this Agreement and the Energy Purchase Agreement.

Section 4.2 Applications by the Seller for Consents

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

Section 4.3 Status of Seller Consent Applications

The Seller shall make or cause to be made at least quarterly reports listing its schedule for submitting Seller Consent application forms or renewal application forms, the status of any Seller Consent applications then outstanding, notifications of the granting or denial of any Seller Consent or Seller Consent renewal, and notifications of any violations of any Seller Consent. Each report shall be submitted to the AEDB and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Seller Consent or Seller Consent application that may materially affect the Seller’s performance under this Agreement and the Energy Purchase Agreement. In the event of any Lapse of Consent, the Seller shall submit a report pursuant to this Section 4.3 (*Status of Seller Consent Applications*) within three (3) Days after becoming aware thereof.

ARTICLE V SUPPORT OF THE GOP

Section 5.1 Support to Obtain Seller Consents

Subject to the Seller’s timely submission of reports required by Section 4.3 (*Status of Seller Consent Applications*), upon request of the Seller, the AEDB shall support and use all reasonable efforts to expedite consideration of the applications for the Seller Consents or reissuances thereof filed pursuant to Section 4.2 (*Applications by the Seller for Consents*), and the timely issuance thereof or reissuance of a Seller Consent subject to a

Lapse of Consent by any Relevant Authority or Public Sector Entity. Any request for support under this Section 5.1 (*Support to Obtain Seller Consents*) shall be made by the Seller and shall be accompanied with copies of the application for the Seller Consent, any notice that the issuance or reissuance of the Seller Consent was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Seller Consent to date.

Section 5.2 Conditions to Seller Consents

The GOP or any Relevant Authority may attach such “non-discriminatory” terms and conditions (as explained in Section 12.4 (*Non-Discriminatory*)) to the issuance or renewal of any of the Seller Consents as are in accordance with the Laws of Pakistan and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article [XIII](#) (*Force Majeure*) (unless it constitutes a Change in Law), or a GOP Event of Default under Section [14.1\(b\)](#). The Seller and its Contractors shall abide by all such terms and conditions (subject to this Section 5.2 (*Conditions to Seller Consents*) and provisions in this Agreement relating to Change in Law and Lapse of Consent). If the Seller (including where it is acting through its Contractors) fails to abide by any term or condition of any Seller Consent, then the GOP or any Relevant Authority may exercise any power pursuant to the Laws of Pakistan (provided such power is exercised in a “non-discriminatory” manner) in respect of such failure and (subject to this Section 5.2 (*Conditions to Seller Consents*) and provisions in this Agreement relating to Change in Law and Lapse of Consent) such exercise shall not of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article [XIII](#) (*Force Majeure*), or a GOP Event of Default under Section [14.1\(b\)](#); provided, however, that, with respect to all such Seller Consents issued by the GOP or any Relevant Authority that is also a Federal Entity, the GOP shall not, and the GOP shall ensure that no such Relevant Authority shall, terminate prior to its expiration date or revoke any such Seller Consent earlier than the later of (i) thirty (30) Days after delivery to the Seller (or the relevant Contractor) of written notice by the AEDB or such Relevant Authority of such failure and (ii) the period of time, if any, that must expire under the

Laws of Pakistan or the relevant Seller Consent prior to early termination or revocation of any such Seller Consent; provided, further, that nothing in this Section 5.2 (*Conditions to Seller Consents*) shall limit the GOP or any Relevant Authority from taking any action in relation to a breach of, or non-compliance with, a Seller Consent (other than termination or revocation) which it is entitled to take under the Laws of Pakistan (provided such action is taken in a “non-discriminatory” manner).

Section 5.3 Support for Obligations

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

Section 5.4 Security Protection

To the extent required, the Seller shall provide security personnel for the protection and security of the Complex and the Site. The GOP shall ensure that the relevant law and order enforcement agencies shall extend reasonable security enforcement on a "nondiscriminatory" basis to the Complex at no cost or expense to the Seller on due cause shown. From time to time, the Seller may request additional security forces from the GOP to meet unusual security requirements. All such additional security forces shall remain under the exclusive control and direction of the GOP. All reasonable out-of-pocket expenses incurred by the GOP in providing such security forces requested by the Seller shall be reimbursed to the GOP (through the AEDB) by the Seller within twenty one (21) Days of such expenditure having been notified by the AEDB, provided, however, that, in no event shall the Seller have an obligation to reimburse such expenses in excess of seventy five thousand Dollars (US\$ 75,000) in any Year, which amount shall be increased by three percent (3%) per Year commencing with the Commercial Operations Date.

Section 5.5 Immigration Controls

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

Section 5.6 Procedure

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

ARTICLE VI CONSTRUCTION, OPERATION, MAINTENANCE, AND STAFFING

Section 6.1 Pakistan Essential Services (Maintenance) Act 1952

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

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

- (a) Construction, Operation, and Maintenance of the Complex. The Seller shall design, construct, install, Commission, operate and maintain the Complex; provided, however, that the Seller may contract with the Construction Contractor to design, construct, install, and Commission the Complex and the O&M Contractor to operate and maintain the Complex; provided, further, that the appointment of the Construction Contractor and the O&M Contractor, if any, by the Seller shall not relieve the Seller of any of its obligations or potential liability regarding the design, financing, insuring, acquisition, construction, completion, operation or maintenance of the Complex.
- (b) Construction Contractor. The Seller shall, unless approved prior to the date of execution of this Agreement, deliver to AEDB a certificate of a duly authorized officer of the Seller setting out the name and nationality of the Construction Contractor and the country of manufacture of major pieces of equipment not later than fifteen (15) Business Days prior to execution thereof. AEDB shall then have the right, but not the obligation, to review the certificate, and may notify the Seller prior to the proposed execution date that it objects to the Construction Contractor or the country of manufacture of major pieces of equipment in writing because, in its reasonable discretion (keeping national security considerations in due perspective), the appointment of the proposed Construction Contractor or the country of manufacture of major pieces of equipment would be adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the Construction Contractor or any country of manufacture of major pieces of equipment, it shall not be construed as in any way of having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to the certificate on or before the end of the fifteen (15) Business Days period provided for herein, GOP

(and AEDB) shall be deemed not to object to the Construction Contractor or any country of manufacture of major pieces of equipment, the Construction Contractor and the country of manufacture of major pieces of equipment shall be deemed to have been approved. Upon such deemed approval the Seller shall be relieved of any obligation under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the Construction Contractor or the country of manufacture of major pieces of equipment. Thereafter, the Seller shall provide the AEDB with a certificate of a duly authorized officer of the Seller setting out details of (i) a change in the Construction Contractor, or (ii) a change in the country of manufacture of a major piece of equipment, (a “**Proposed Material Amendment**”), no later than fifteen (15) Business Days prior to execution of an amendment to the Construction Contract, setting forth the proposed changes. The AEDB shall then have the right, but not the obligation, to review the certificate, and may notify the Seller prior to the proposed execution date that it objects to the Proposed Material Amendment because, in its reasonable discretion (keeping national security considerations in due perspective), the proposed Construction Contractor or the country of manufacture of a piece of equipment is adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the Proposed Material Amendment, AEDB or the GOP shall not be construed as having approved of the Proposed Material Amendment nor as in any way of having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to such certificate on or before the end of the fifteen (15) Business Days period provided for herein, as the case may be, the GOP shall be deemed not to have objected to the Proposed Material Amendment and such Proposed Material Amendment shall be deemed to have been approved. Upon such deemed approval the Seller shall be relieved of any obligations under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the Proposed Material Amendment. In addition, GOP agrees and shall ensure that the confidentiality provisions contained in this Agreement shall apply to GOP and AEDB and its representative with respect to any confidential or proprietary information provided in respect of any Proposed Material Amendment.

- (c) O&M Contractor. The Seller shall deliver to the AEDB a certificate of a duly authorized officer of the Seller setting out the name and nationality of the O&M Contractor and any major sub-contractor along with a description of the proposed O&M Agreement, no later than fifteen (15)

Business Days prior to execution thereof. The AEDB shall then have the right, but not the obligation, to review the certificate, and may notify the Seller prior to the proposed execution date that it objects to the O&M Contractor or a major sub-contractor in writing because, in its reasonable discretion (keeping national security considerations in due perspective), the appointment of the proposed O&M Contractor or a major sub-contractor would be adverse to the national security interests of Pakistan; provided, however, that, by not objecting to the O&M Contractor or any major sub-contractor, AEDB or the GOP shall not be construed as having approved of the O&M Agreement or any major sub-contractor nor as in any way of having relieved the Seller of its obligations under this Agreement or the Energy Purchase Agreement or any other Project Agreements. If the AEDB does not object to the certificate on or before the end of the fifteen (15) Business Days period provided for herein, GOP (and AEDB) shall be deemed not to object to the O&M Contractor or any major sub-contractor, the O&M Contractor and the major-subcontractor shall be deemed to have been approved. Upon such deemed approval the Seller shall be relieved of any obligation under this Agreement and all other relevant Project Agreements to obtain any further approval of AEDB only to the extent of the O&M Contractor or such major sub-contractor.

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

ARTICLE VII LIABILITY

Section 7.1 Limitation of Liability

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability (except under Section 18.13(c)), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages, provided that the GOP hereby agrees that the Compensation Amounts payable under this Agreement are not indirect, consequential,

incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of this Agreement or the Guarantee; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

Section 7.2 Indemnification for Fines and Penalties

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

Section 7.3 Double Jeopardy under Certain Project Agreements

- (a) Except Disputes or breaches related to Section 2.3, Article XII, Article XIV, and Article XVI of the Energy Purchase Agreement, any settlement or waiver in writing by the Purchaser of any dispute or breach under the Energy Purchase Agreement shall be binding on the GOP with respect to an issue or claim, as the case may be, based on the same facts or acts or omissions by the Seller. Settlement or waiver of any dispute or breach related to Section 2.3, and Article XII, Article XIV, and Article XVI of the Energy Purchase Agreement shall be effective only if agreed to, in writing, by both the Purchaser and the GOP..
- (b) Notwithstanding any other provision in this Agreement to the contrary, the Purchaser shall be responsible in the first instance for pursuing any claim against the Seller based upon a failure of the Seller to satisfy its obligations under the Energy Purchase Agreement. The GOP shall not bring (or other than through the Purchaser, cause any proceedings to be brought) against the Seller for any breach of its obligations under Article III(*Implementation of the Project*) and Section 4.1 (*Acquisition by the Seller of Site and Transportation*) and Section 4.2 (*Applications by the Seller for Consents*) (to the extent such Articles and Sections relate to substantially similar obligations of the Seller under the Energy Purchase Agreement) or Article XI (*Assignment and Security*) of this Agreement, if the Purchaser has pursued, or is then pursuing, a claim or claims against the Seller based upon an alleged breach of the Energy Purchase Agreement. A final, non-appealable order issued in a proceeding initiated by the Purchaser and based upon a claim of a breach of the Energy Purchase Agreement, shall preclude any proceedings against the Seller that the GOP could otherwise bring for breach by the Seller of substantially the same obligations under this Agreement. Nothing in this

Section 7.3 (*Double Jeopardy under Certain Project Agreements*) shall prevent the GOP and the Purchaser from separately initiating proceedings to terminate this Agreement and the Energy Purchase Agreement, respectively, pursuant to Section [14.1](#)(a) and Section [14.2](#) (*Termination Notices*) of this Agreement and Section 16.1 and Section 16.4 of the Energy Purchase Agreement.

ARTICLE VIII INSURANCE

The Seller shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with Article XII of the Energy Purchase Agreement. Subject to the provisions of Section 15.1(f) of this Agreement, Article XV of the Energy Purchase Agreement and the Financing Documents which may have different requirements regarding the use of insurance proceeds), the proceeds of all such insurance (except loss of revenue/profits or business interruption coverage) shall be used to repair or restore the Complex to the condition existing immediately prior to the event giving rise to such insurance claim and proceeds. Copies of any filed claims or the receipt of any insurance proceeds shall be notified to AEDB within seven (7) Business Days of such filing or receipt of proceeds by the Seller.

ARTICLE IX TAXATION AND IMPORT CONTROLS

Section 9.1 Taxation of the Seller

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

Section 9.2 Taxation of Investors

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

Section 9.3 Right to Import; Customs Duties

- (a) The GOP encourages the Seller and its Contractors to incorporate as much locally produced material, equipment, and supplies as possible for the design, construction, completion, operation and maintenance of the Complex. Nonetheless, the Seller and its Contractors shall be entitled to import without any restriction, and exempt from Customs Duty and Sales Tax, to import plant, machinery and equipment not manufactured locally, spare parts and replacements required for the design, construction, completion, operation, repair and maintenance of the Complex, subject to compliance with any restrictions imposed and benefits extended by the statutory revisionary order [(SRO) 575 (I) 2006, dated 5th June 2006,] (as amended from time to time and including subsequent circulars issued pursuant thereto) provided, that such imported plant, machinery and equipment, spare parts and replacements shall be used at the Site, in relation to the Project and will not be sold or otherwise transferred to or used by another Person other than the Seller or its Contractors, or Lenders as a result of enforcement of security, provided further, that any amendment, revocation or substitution of [(SRO) 575 (I) 2006, dated 5th June 2006,] resulting in the withdrawal of exemption from Customs Duty or Sales Tax

shall not constitute a Change in Law or give rise to a breach or default of the GOP hereunder so long as such withdrawal of exemption results in (A) a Change in Tax as provided in Section 14.4 and Schedule 1 to the Energy Purchase Agreement, or (B) as allowed by NEPRA within one hundred and twenty (120) Days of an application being filed by the Seller with NEPRA for modification of the Tariff to permit pass-through of the Customs Duties and Sales Tax.

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

Section 9.4 Export and Reimport

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

ARTICLE X FOREIGN CURRENCY EXCHANGE AND TRANSFER OF FUNDS

Section 10.1 Foreign Exchange Regulation

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

Section 10.2 Use of Pakistan Bank Accounts; Exceptions

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

Section 10.3 Consent to Foreign Currency Accounts

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

Section 10.4 Availability of Foreign Exchange

Upon application having been made by the Seller in the Prescribed Form (such application having been made no less than fifteen (15) Business Days prior to the requested date for Dollars or Euros, as the case may be), the GOP shall, on such requested date, make available to the Seller through the State Bank of Pakistan, to the extent that Dollars or Euros, as the case may be, are not available through normal commercial banking channels, Dollars or Euros, as the case may be, in exchange for Rupees in the amount necessary for (not in order of priority) (i) meeting the Seller's requirements for Foreign Currency to meet its obligations under this Agreement including payments in Foreign Currency to the Construction Contractor under the Construction Contract, (ii) repatriation by the Seller of dividends to Foreign Investors and repatriation upon conversion of Rupee proceeds of sales of Ordinary Share Capital purchased with the Rupee proceeds of Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation or expiry of Term of foreign investment in the share capital of the Seller, (iii) after the Commercial Operations Date, the necessary Foreign Currency expenses of the Project (including, without limitation, remuneration of the O&M Contractor, where applicable, fees, salaries and other monetary emoluments and the purchase of spare parts), (iv) the payment of premiums and fees to offshore insurers and reinsurers, (v) all payments to the Lenders that require Foreign Currency in accordance with the terms of the Financing Documents (vi) any compensation payments to be made by the GOP pursuant to Section 15.1 (*Compensation upon Termination*) in the event of a termination of this Agreement, which is required to be in Foreign Currency and (vii) in the event of a Restoration or modification of the Complex pursuant to Article XV of the Energy Purchase Agreement, any financing provided by the GOP or the Purchaser, as the case may be, in Rupees and payable to foreign Contractors in Foreign Currency. The exchange rate applicable to such conversion shall be the State Bank of Pakistan's "weighted average rate" (offer) (or the substitute or replacement rate thereto) for Dollars or Euros, as the case may be, announced or made available on the Business Day immediately preceding the requested date for payment in such application; provided that if more than two (2) such rates are made available on the relevant Business Day, the last such rate announced or made available shall be the applicable rate.

Section 10.5 Free Transfer and Repatriation of Necessary Funds

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

ARTICLE XI ASSIGNMENT AND SECURITY

Section 11.1 Assignment

No assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party, except as provided in Sections 11.2(a) and (c).

Section 11.2 Creation of Security

- (a) Notwithstanding the provisions of Section 11.1 (*Assignment*), for the purpose of financing the Project in connection with the Financial Closing, the Seller may assign to, or create a security interest in favour of, the Lenders in the Seller's rights, obligations and interests under or pursuant to (i) this Agreement and the Guarantee (ii) any other agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the present and future movable, immovable, and intellectual property of the Seller, and (vi) the present and/or future revenues, actionable claims, debts or any of the rights or assets of the Seller, and (vii) any other present or future right, interest, property or asset of any kind and wherever situated.

The Seller may also create security interests in its rights and assets identified in sub-items (iii) through (vii) in the preceding paragraph in favour of financial institutions acting as short-term lenders providing working capital or other short-term credit facilities required for its operations by the Seller.

- (b) The Lenders shall have the rights expressly granted in their favour in this Agreement and the Direct Agreement. Except in respect of such rights, the Lenders shall not exercise any of the rights of the Seller under this Agreement or the Guarantee unless and until such time as the Lenders (or the Agent) deliver a notice in writing to AEDB (the "**Succession Notice**") specifying that the Lenders or their designee are exercising their rights to succeed to the Seller's interest under this Agreement or the Guarantee, as the case may be, whether by exercise of the rights or remedies of the Lenders under the Financing Documents to take control of and occupy or transfer the Complex or otherwise as contemplated by paragraph (c) below. The Succession Notice shall not be effective unless the AEDB shall have, not less than thirty (30) Days prior to the receipt of the Succession Notice, received from the Lenders (or the Agent) a notice ("**Notice of Intent to Succeed**") specifying (i) the occurrence and

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

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

the rights, powers and privileges and, subject to Section 11.2(g), shall become jointly and severally liable with the Seller to perform and discharge the obligations, liabilities and duties of the Seller under this Agreement and the GOP shall perform and discharge the obligations, liabilities and duties of the GOP under this Agreement and the Guarantee as if the Lenders (or their designee) were an original party thereto on a joint and several basis with the Seller from the date of execution thereof; provided that during any such period, all notices, demands and other communications delivered to or made on AEDB in exercising the Seller's rights under this Agreement shall only be delivered or made by the designee (as identified by the Agent in the Succession Notice) or the Agent (if a designee has not been so identified). Notwithstanding the foregoing, the Lenders (or their designee) shall have no obligation to cure any Seller Event of Default that is not capable of being cured, including, but not limited to, a default under Sections 14.1(a)(vi), (vii) or, (viii), provided that notice of such default was given in the Notice of Intent to Succeed specifying that in the Lenders' view such default is not capable of being cured by the Lenders (or their designee), and no right will exist for the GOP to terminate this Agreement based upon any such Seller Events of Default occurring prior to the Succession Notice.

- (d) Upon succession by the Lenders or their designee to the Seller's interest under this Agreement and the Guarantee in accordance with Section 11.2 (*Creation of Security*), the Lenders or their designee, as applicable, shall settle all amounts due and payable by the Seller (if any) and shall cure all defaults by the Seller under this Agreement within the Extended Cure Period (other than those that are not required to be cured pursuant to Section 11.2(c)) arising during the period prior to the Lenders' or their designee's succession to the Seller's interest under this Agreement and the Guarantee, and that were notified by the AEDB to the Lenders (or their Agent or designee) in writing on or before the delivery of the Succession Notice in accordance with Section 11.2(b); provided, however, that the aggregate liability of the Lenders or their designee, as the case may be, shall strictly be limited to the Seller's and the Lenders' or their designee's ownership, contractual rights and security interest in the Complex, and; provided further, that the Lenders or their designee, as the case may be, shall have no liability for breaches of the Seller arising prior to the delivery of a Succession Notice other than to cure the breaches notified by AEDB pursuant to Section 11.2(b), and the liability of the Lenders or their designee to the GOP in respect of all liabilities of the Seller under or relating to this Agreement prior to the delivery of a Succession Notice shall not exceed the total amount specified by AEDB in the latest notice

delivered by AEDB to the Lenders (or the Agent or their designee) in accordance with Section 11.2(b), as such amount may be adjusted in accordance with the formulae specified by AEDB in such notice.

- (e) Except as otherwise set forth in this Section 11.2 (*Creation of Security*), neither the Lenders, the Agent nor the Lenders' designee shall be liable for the performance or observance of any of the obligations or duties of the Seller under this Agreement, nor shall the assignment by the Seller of this Agreement or the Guarantee (or any other agreement or document included within or contemplated by the Project Agreements, to the extent assignable) to the Lenders pursuant to Section 11.2 (*Creation of Security*) give rise to any duties or obligations whatsoever on the part of any of the Lenders, the Agent or their designee owing to AEDB or the GOP.
- (f) The Lenders or their designee may at any time following the delivery of a Succession Notice give AEDB on behalf of the GOP notice terminating the Lenders' or their designee's obligations and rights under this Agreement and the Guarantee (without affecting the continuation of the Seller's obligations towards the GOP thereunder). Such notice shall designate a date on which the Lenders' or their designee's obligations and rights will terminate and on and after such designated date the Lenders or their designee shall be released from all obligations and liabilities thereunder (other than those obligations and liabilities which have arisen prior to such designated date). Upon such designated date, subject to the expiration of the applicable cure period provided in Section 14.4 (*Notice to the Lenders of the Seller's Default*), AEDB (acting for itself and the GOP) may exercise without restriction all of its rights under this Agreement.
- (g) Subject to this Section 11.2 (*Creation of Security*) but without the requirement of obtaining any further consent from the AEDB (acting for itself and the GOP), upon the exercise by the Lenders or their designee of any of the remedies set forth in the Financing Documents, the Lenders may assign or transfer by novation their rights and interests and the rights of the Seller under this Agreement and the Guarantee (or any other agreement or document included within or contemplated by the Project Agreements, to the extent assignable) to any Transferee (hereinafter defined) so long as such Transferee shall assume in writing for the benefit of the GOP (and for the benefit of the relevant party under any other agreement or document included within or contemplated by the Project Agreements) all of the obligations of the Seller under this Agreement, provided that the Transferee shall not be liable for any

outstanding obligations under this Agreement which were not disclosed by AEDB to the Lenders or the Agent in accordance with Section 11.2(b). Upon such assignment or transfer and assumption, the Lenders the Agent or their designee and the Seller, as the case may be, shall be relieved of all obligations assigned or transferred to, and assumed by, a Transferee under this Agreement.

- (h) Upon notice to the AEDB from Lenders or the Agent of the Lenders' assignment or transfer by novation to a Transferee, as set out in Section 11.2(g) above, the AEDB shall effect on behalf of the GOP the transfer of the Seller's rights and obligations under this Agreement and the Seller's rights and obligations under the Guarantee to a Transferee.
- (i) As used herein, a "**Transferee**" shall be a person who (i) either is an experienced bagasse/biomass power plant operator or shall have agreed to engage the services of a person who is an experienced bagasse/biomass power plant operator, (ii) shall have paid all amounts, if any, then due and payable to the GOP under this Agreement, (iii) shall have expressly assumed in writing for the benefit of the GOP the obligations of the Seller under this Agreement including (but not limited to) the obligation of the Seller to maintain and operate the Complex in accordance with the requirements of the Energy Purchase Agreement, (iv) has not been objected to by AEDB in a written notice delivered by AEDB to the Lenders not later than ten (10) Days after the Lenders have delivered notice identifying the Transferee to AEDB on the basis that a majority of the capital of the Transferee is held or controlled by persons of a nationality that the GOP reasonably considers to be prejudicial to the national security of Pakistan, (v) is a corporate body established in Pakistan, and (vi) shall have procured from any Relevant Authority or any Public Sector Entity, any prior approvals that may be required under the Laws of Pakistan to acquire interests pursuant to such assignment or transfer and a written notice of such approvals shall have been delivered to the AEDB and the AEDB shall not have objected thereto within ten (10) Days of receipt of such written notice.
- (j) With respect to all Seller Consents issued by the GOP or any Relevant Authority, the GOP shall not, and the GOP shall ensure that no Relevant Authority shall, exercise any power under Section 5.2 (*Conditions to Seller Consents*) unless the Lenders shall have first been given written notice of such failure (which notice shall specify, in reasonable detail, the nature of such failure) and the Lenders or their designee are given the opportunity and fail within a reasonable period of time after receipt of

such notice to so rectify, remedy or cure such failure, which period shall not in any event exceed the cure period provided to the Seller or to the Contractors, as the case may be, under Section 5.2 (*Conditions to Seller Consents*). The GOP shall ensure that, in connection with any transfer or sale of the Complex or the shares of the Seller to the Lenders or their designee, as applicable, to any Transferee, each Seller Consent issued by the GOP or any Relevant Authority shall be transferred or, if unable to be transferred for any reason, shall be re-issued in the same form to the Lenders, or their designee or the Transferee, as applicable. Subject to Section 11.2(g), the GOP shall ensure that such transfer or re-issuance is made within the period of time, if any, prescribed by applicable Laws of Pakistan as applied in a non-discriminatory manner pursuant to Section 12.1 (*Assurance Against Discriminatory Action*) and, in any event, within one hundred and eighty (180) Days after the date of proper and complete application therefor. Subject to 11.2(g), provided that the Seller shall have requested in writing from a Relevant Authority its consent to any security interest in any Seller Consent granted or to be granted by such Relevant Authority to the Lenders or the Agent and shall have diligently pursued obtaining the consent of such Relevant Authority to such security interest, the GOP hereby covenants and shall procure that such Relevant Authority consents to the grant by the Seller to the Lenders or the Agent of a security interest in any such Seller Consent to the extent that such Consent is assignable to the Lenders or the Agent by way of security, and such security interest is available, under the Laws of Pakistan.

- (k) Upon receipt of the Notice of Intent to Succeed, the GOP shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders or the Agent in the exercise of their rights under this Section 11.2 (*Creation of Security*).
- (l) At the request of the Seller, delivered to the AEDB no less than thirty (30) Days in advance, the GOP shall execute and deliver, effective at the Financial Closing, the Direct Agreement with the Seller and the Lenders including acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Article XI (*Assignment and Security*) and the rights of such parties in and to this Agreement and the Guarantee, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature.

Section 11.3 Delivery of Financing Documents

- (a) In case the Termination Notice is issued, the Seller shall deliver to AEDB copies of the Financing Documents and all amendments thereto (duly certified by the Agent as to accuracy and completeness) and including the principal repayment schedule (and all revisions thereto) that provides for debt repayment, the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents, and identifying the equity commitments, individually and in total, of the Initial Shareholders. The Seller covenants that any liquidated damages received by the Seller from its Construction Contractor for capacity or other testing shortfalls shall be used either to reduce or pay the outstanding amount of debt under such loan agreement or in an effort to remedy such shortfalls or to make payments required under the Energy Purchase Agreement, if any.
- (b) Not Used.

ARTICLE XII
RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS

Section 12.1 Assurance Against Discriminatory Action

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

Section 12.2 Acquisition of Shares or Assets

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

Section 12.3 Restriction on Transfer of Shares

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

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

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

Section 12.4 Non-Discriminatory

The use of the term “non-discriminatory” or “discriminatory” in this Agreement is not intended to prohibit or limit in any way the GOP, AEDB or any Relevant Authority from

making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the GOP, AEDB or Relevant Authority or of a Seller Consent. It is intended, however, to prohibit the use of governmental authority, over Seller Consents, for example, to deprive the Seller of the benefits of this Agreement, the Guarantee or the Energy Purchase Agreement or any other Project Agreement by the application of a higher standard to the Seller (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

ARTICLE XIII
FORCE MAJEURE

Section 13.1 Definition

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

- (a) the following political events that occur inside or directly involve Pakistan (each a “**Pakistan Political Event**”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, , riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide;
- (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 of which report to AEDB shall have been given under Section 4.3 (*Status of Seller Consent Applications*) and that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Pakistan Political Event, in which case such event or circumstance shall constitute a Pakistan Political Event);
 - (v) epidemic or plague
 - (vi) a final non-appealable order of a Court of competent jurisdiction declaring the Construction Contractor insolvent and ordering its winding-up.
- (d) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor (except as provided under Section 13.1(c)(vi) above);
 - (iii) [a breakdown in machinery and/or equipment; and]
 - (iv) normal wear and tear or random flaws in materials and equipment,

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

Section 13.2 Notification Obligations

- (a) If, by reason of a Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, no later than the later of forty eight (48)

hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or twenty-four (24) hours after the resumption of any means of providing notice between the Seller and the GOP, and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, no later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate, or when reasonably requested so to do by the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.

- (b) The affected Party shall provide notice to the other Party of (i) the cessation of the Force Majeure Event notified under Section 13.2(a) along with an estimate of the date it would be able to recommence performance of its obligations under this Agreement, and (ii) the date it was able to recommence performance of its obligations under this Agreement, as soon as possible and in any event no later than seven (7) Days after the occurrence of each of the events mentioned in clauses (i) and (ii) hereabove.
- (c) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the forty eight (48) hour period or twentyfour (24) hour period required under Section 13.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 13.4 (*Delay Caused by Force Majeure*) for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty eight (48) hour period or six (6) hour period required by Section 13.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 13.4 (*Delay Caused by Force Majeure*) from the date of commencement of the relevant Force Majeure Event.

Section 13.3 Duty to Mitigate

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

Section 13.4 Delay Caused by Force Majeure

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

ARTICLE XIV TERMINATION

Section 14.1 Termination for Default

- (a) Seller Event of Default; Termination by the GOP. Each of the following events shall be an event of default by the Seller (each a “**Seller Event of Default**”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the GOP to terminate this Agreement pursuant to Section 14.2 (*Termination Notices*); provided, however, that no such event shall be a Seller Event of Default (i) if it results from the GOP’s breach of this Agreement or the Guarantee, (ii) if it results from a breach by the Purchaser of the Energy Purchase Agreement or (iii) if it occurs as a result of a Force Majeure Event;
- (i) to achieve the Financial Closing within ninety (90) Days from the Effective Date;

- (ii) failure of the Seller to achieve the Commercial Operations Date within four hundred (400) Days after the Required Commercial Operations Date;
- (iii) after Financial Closing but prior to the achievement of the Commercial Operations Date, the failure of the Seller to prosecute the Project in a diligent manner for a period of thirty (30) consecutive Days, without prior notice to and the prior written consent of the GOP;
- (iv) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and further provided that such amalgamation has been agreed to by the GOP), the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of the Seller for the winding up of the Seller; (b) the voluntary filing by the Seller of a petition of bankruptcy, moratorium, or other similar relief; (c) the appointment of a provisional liquidator in a proceeding for the winding up of the Seller after notice to the Seller and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; (d) the making by a court with jurisdiction over the Seller of an order winding up the Seller that is not stayed or reversed by a court of competent authority within ninety (90) Days;
- (v) any statement, representation, or warranty by the Seller in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made, and such incorrect statement, representation, or warranty having a material and adverse effect on the Seller's ability to perform its obligations under this Agreement or on the obligations or liabilities of AEDB or the GOP under this Agreement or the Guarantee;
- (vi) the exercise by the Lenders of their remedies under the Financing Documents or by the short-term lenders under their respective security interests as contemplated under Section 11.2, with respect to either the Complex assets or the pledged Ordinary Share Capital such that either the Seller or its management are removed by the Lenders from control of the Complex and the failure by the Lenders or the Agent to deliver a Succession Notice (as defined in Section 11.2(b)) or to transfer the Complex and the rights and obligations of the Seller under the Agreement and the Energy Purchase Agreement

and the rights of the Seller under the Guarantee to a Transferee within two hundred and forty (240) Days after the Seller or its management are removed by the Lenders from control of the Complex;

- (vii) any material breach or default by the Seller of or under this Agreement that is not remedied within thirty (30) Days (or such longer cure or grace period permitted under the relevant agreement) after notice from the AEDB, stating that a material breach of or default under this Agreement or other agreement has occurred that could result in the termination of this Agreement or the other agreement and identifying the material breach or default in question in reasonable detail;
 - (viii) any default by the Seller in the making of any payment or payments required to be made by it under this Agreement, on the due date specified that continues unpaid for thirty (30) Days; and
 - (ix) any material breach or default by the Seller under the Energy Purchase Agreement, that is not remedied within the cure or grace period permitted thereunder after issuance of a notice of intent to terminate pursuant to the Energy Purchase Agreement.
- (b) GOP Event of Default; Termination by the Seller. Each of the following events shall be an event of default by the GOP (each a “**GOP Event of Default**”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Seller to terminate this Agreement pursuant to Section 14.2 (*Termination Notice*); provided, however, that no such event shall be a GOP Event of Default (i) if it results from a breach by the Seller of the Energy Purchase Agreement or this Agreement, or (ii) if it occurs as a result of a Force Majeure Event, (except in the case of Section 14.1(b)(ii)):
- (i) the dissolution, pursuant to law, of the Purchaser, except for an amalgamation, reorganization, reconstruction, or further privatization of the Purchaser, where the GOP without interruption guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligation of the succeeding entity or entities that in the reasonable business judgment of the Seller provides an adequate alternative to the Guarantee and all of the Purchaser’s obligations under the Energy

Purchase Agreement are assigned pursuant to law or contractually assumed, through novation or otherwise, by one (1) or more entities, each with the legal capacity and appropriate commercial function to perform its obligations thereunder;

- (ii) any default or defaults by the GOP in the making of any payment or payments required to be made by it hereunder or under the Guarantee on the due date for payment specified herein or in the Guarantee that continues unpaid for thirty (30) Days;
- (iii) any material breach or default by the GOP or AEDB acting on behalf of the GOP of or under this Agreement or the Guarantee that is not remedied within thirty (30) Days after issuance of a notice of the breach or default by the Seller identifying the breach or default in reasonable detail and demanding remedy thereof;
- (iv) (a) any action by AEDB without just cause which materially prevents the Seller from constructing, Commissioning or operating the Complex; or (b) any breach of the GOP's obligations under Section 4.1(b) or Section 12.2 (*Acquisition of Shares or Assets*) hereof;

in any such case (except (d) above, where a longer period is provided) that is not remedied within thirty (30) Days after notice from the Seller to AEDB or the GOP stating that a material breach of the Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail and demanding remedy thereof;

- (v) any material breach or event of default by the Purchaser of or under the Energy Purchase Agreement that is not remedied within thirty (30) Days after receipt of a notice from the Seller to the Purchaser, with a copy of the notice to AEDB that states that a material breach of or event of default under the Energy Purchase Agreement has occurred that could result in the termination of the Energy Purchase Agreement, identifies the breach or event of default in reasonable detail and demands remedy thereof;
- (vi) any change in any applicable Laws of Pakistan (A) making unenforceable, invalid, or void any material undertaking of the GOP or the Purchaser or the AEDB under this Agreement, the Guarantee or the Energy Purchase Agreement, or (B) making (1) it

unlawful for the Seller, the Lenders or the Investors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other document or agreement in the Project Agreements (other than a Change in Law for which compensation is provided in accordance with the Energy Purchase Agreement), or (2) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right unenforceable, invalid or void as a result of any such change in law (other than a Change in Law for which compensation is provided in accordance with the Energy Purchase Agreement);

- (vii) any change in any of the Laws of Pakistan placing any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of the execution of this Agreement) on the ability of the Seller to exchange Rupees for Dollars, or for Foreign Investors to repatriate, any capital, dividends, distributions or other proceeds from the Seller (provided that such distributions do not arise in connection with a breach of this Agreement), which restrictions or limitations remain in place for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the Seller or its Foreign Investors from all such restrictions and limitations;
- (viii) the expropriation, compulsory acquisition, or nationalization by the GOP or any Public Sector Entity of (i) any Ordinary Share Capital, or (ii) any material asset or right of the Seller (except as contemplated by the Project Agreements);
- (ix) any procurement by the GOP or any Federal Entity or any combination thereof of (i) any Ordinary Share Capital if the result would be for the GOP and/or one or more Federal Entities to acquire control of the Seller or its management (and there shall be an irrebuttable presumption that the ownership by the GOP and/or any Federal Entity of more than twenty five percent (25%) of the Ordinary Share Capital shall constitute such control);
- (x) any change in, or any change in the interpretation of, any of the Laws of Pakistan (including the Constitution of Pakistan and any other Laws of Pakistan that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date

of this Agreement having the effect of making (A) unlawful, unenforceable, invalid, or void any material undertaking of the GOP or the Purchaser or the AEDB under this Agreement, the Guarantee or the Energy Purchase Agreement as the case may be; or (B) unlawful for the Seller to make or receive or the Lenders or the Investors to receive any payment (including interest or return), for the Seller to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project, or (C) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the Laws of Pakistan, which in the case of (A) (B) or (C) above, has a continuing effect for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the affected party from the effect of such change in law;

- (xi) the suspension or revocation of the Generation License other than for a breach by the Seller of its obligations under the Generation License; and
- (xii) the Guarantee ceasing to remain valid and in full force and effect in accordance with its terms.

Section 14.2 Termination Notices

- (a) Upon the occurrence of a GOP Event of Default or a Seller Event of Default, as the case may be, that is not cured within the applicable cure period, if any, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a notice (a “**Notice of Intent to Terminate**”) of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Seller Event of Default or the GOP Event of Default, as the case may be, giving rise to such notice.
- (b) Following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the Seller Event of Default or the GOP Event of Default, as the case may be, for a period of forty five (45) Days commencing on the delivery date of such notice in the case of a failure by either Party to make payments, or for a period of ninety (90) Days commencing on the delivery of such notice in the case of any other Seller Event of Default or GOP Event of Default, as the case

may be, (or such longer period as the Parties may mutually agree) and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 14.2(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Seller Event of Default or GOP Event of Default, as the case may be.

- (c) Subject to the provisions of Section 14.3 (*Notice to the GOP of the Purchaser's Default*) or Section 14.4 (*Notice to the Lenders of the Seller's Default*), as the case may be, upon expiration of the cure period described in Section 14.2(b) and unless the Parties shall have otherwise agreed or unless the Seller Event of Default or GOP Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Party. This Agreement shall terminate on the date specified in the Termination Notice ("**Termination Date**"), which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

Section 14.3 Notice to the GOP of the Purchaser's Default

- (a) Anything in this Agreement notwithstanding, the Seller shall not seek to terminate this Agreement pursuant to Sections 14.1(b)(iv), (v) or (vi) without first giving, with respect to any such default, a copy of any notice required to be given to the Purchaser under Section 16.3 of the Energy Purchase Agreement, such notice to include a reasonable description of such default and shall provide to the GOP the opportunity to cure any such default within the same cure period as provided to the Purchaser under the Energy Purchase Agreement and such cure period to commence upon delivery of each such notice to AEDB. Each such notice shall be deemed to have been delivered (a) when presented personally to AEDB, (b) when transmitted by facsimile, or (c) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to AEDB, at the address indicated in Section [18.1\(a\)](#) (or such other address as AEDB may have specified by written notice delivered in accordance therewith).
- (b) No such rescission or termination of this Agreement or the Energy Purchase Agreement by the Seller shall be effective without notice and expiration of the cure period as provided in Section 14.3(a). The GOP

may make or perform, but shall be under no obligation to make any payment (other than is required under the Guarantee or this Agreement) or to perform any act required of the Purchaser under the Energy Purchase Agreement with the same effect as if the payment or act had been made or performed by the Purchaser or the AEDB. If the GOP fails to cure or is unable or unwilling to cure a default of the Purchaser or the AEDB within the cure periods provided to the Purchaser under the Energy Purchase Agreement, the Seller shall have all of its rights and remedies with respect to such default as set forth in this Agreement and the Energy Purchase Agreement; provided, however, that if AEDB or the GOP is diligently attempting to cure any default other than a payment default of the Purchaser and demonstrable progress toward affecting such cure is being made, the GOP shall be granted by the Seller an additional period not exceeding ninety (90) Days to effect such cure before the Seller may exercise its rights and remedies with respect to such default set forth in this Agreement and the Energy Purchase Agreement.

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

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

notice to be effective upon delivery to the Agent as if delivered to each of the Lenders. Each such notice shall be in writing and shall be deemed to have been delivered (a) when presented personally to the Lender or the Agent, (b) when transmitted by facsimile to the number specified in accordance with the procedure set forth below, or (c) five (5) Days after

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

- (b) No rescission or termination of this Agreement or the Guarantee by the GOP (whether pursuant to its rights or remedies under this Agreement or at law) shall be valid or binding upon the Lenders without (i) notice having been delivered as required pursuant to Section 14.4(a); (ii) the expiration of the Initial Cure Period; (iii) the expiration of the Evaluation Period (as defined below) and (iv) the expiration of the Extended Cure Period (as defined below), in each case as provided in this Section 14.4 (*Notice to the Lenders of the Seller's Default*). The Lenders (or their designee) may make, but shall be under no obligation to make, any payment or perform or procure the performance of any act required to be made or performed by the Seller, with the same effect as if made or performed by the Seller. If the Lenders (or their designee) fail to cure, or procure the cure of, or are unable or are unwilling to cure, or procure the cure of, any Seller Event of Default within the Initial Cure Period or do not mitigate such Seller Event of Default

within the Initial Cure Period, the GOP shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that, notwithstanding the expiration of the Initial Cure Period, the Lenders (or their designee) shall have a further period (the “**Evaluation Period**”), during which the Lenders (or their designee) may evaluate such Seller Event of Default, the condition of the Complex, and other matters relevant to the actions to be taken by the Lenders (or their designee) concerning such Seller Event of Default including the possible issuance of a Notice of Intent to Succeed pursuant to Section 11.2 (*Creation of Security*). The Evaluation Period shall end on the sooner to occur of (i) the Agent’s delivery to AEDB of a Succession Notice as provided under Section 11.2 (*Creation of Security*) or (ii) forty-five (45) Days following the end of the Initial Cure Period, unless, within thirty (30) Days following the end of the Initial Cure Period, the Lenders or the Agent shall have delivered a Notice of Intent to Succeed pursuant to Section 11.2 (*Creation of Security*), in which case the Evaluation Period shall not end prior to the date that is 10 Days after delivery by AEDB of the statement of liabilities referred to in Section 11.2(b). Upon the delivery of a Succession Notice, the Lenders (or their designee or Transferee) shall be granted an additional period of one hundred and eighty (180) Days within which to cure, remedy, or procure the cure or remedy of any such Seller Event of Default (the “**Extended Cure Period**”) that is required to be cured pursuant to Section 11.2 (*Creation of Security*). If the Purchaser has assumed the operation of the Complex pursuant to Section 5.13 of the Energy Purchase Agreement and the Complex is being operated by the Purchaser, the AEDB shall extend the Initial Cure Period, Evaluation Period and/ or the Extended Cure Period, as the case may be, for an additional period of six (6) Months. During the Initial Cure Period, the Evaluation Period and the Extended Cure Period and any extensions thereof including any such additional period of six (6) months, the GOP’s right to terminate this Agreement in respect of any Seller Event of Default shall be suspended so long as the Lenders (or their designee or Transferee) are diligently attempting to cure or

mitigate or procure the cure or mitigation of such Seller Event of Default or are pursuing the enforcement of their rights and remedies under the Financing Documents against the Seller, including by way of exercise of succession rights under Section 11.2 (*Creation of Security*). In the event that the Lenders (or the Agent) fails to deliver a Succession Notice or the Lenders or their designee or the Transferee fail to cure any such Seller Event of Default on or before the expiration of the Extended Cure Period, as it may have been extended, the

GOP may exercise any and all of its rights and remedies with respect to such default set forth in this Agreement including the right to immediately terminate this Agreement, and such termination shall be effective on delivery to the Agent of notice of such termination. During such Extended Cure Period, the Agent shall keep the AEDB apprised of the Lenders' or their designee's efforts to cure such Seller Event of Default. Notwithstanding any provisions of this Section 14.4 (*Notice to the Lenders of the Seller's Default*) to the contrary, the Initial Cure Period, the Evaluation Period and the Extended Cure Period, as the case may be, shall be extended on a Day-for-Day basis for each Day during any such period in which the breaches, conditions or events set forth in sub clauses (i), (ii), (iii) or (iv) of the preamble of Section 14.1(a) are in existence or in effect or subsist or a Seller Consent has not been transferred to or issued in favour of the Lenders, their designee or any Transferee, or is not in full force or effect within thirty (30) Days after the Lenders, the Agent, the Lenders' designee or the Transferee have made due application therefor and otherwise complied with the obligations applicable to them under Section 4.2 (*Application by the Seller for Consents*) and such circumstance has not arisen due to (i) a failure by the Lenders, the Agent, the Lenders' designee or the Transferee to comply with the obligations applicable to them under Section 4.3 (*Status of Seller Consent Applications*) or (ii) the GOP or any Relevant Authority exercising any power in accordance with Section 12.1 (*Assurance Against Discriminatory Action*) in relation to any such Seller Consents following the issuance thereof in favour of the Lenders, the Agent, the Lenders' designee or the Transferee.

Section 14.5 Termination due to Political Events or Change in Law

If the Energy Purchase Agreement is terminated pursuant to Article XV of the Energy Purchase Agreement as a result of a Pakistan Political Event, a Change in Law or a Restoration Schedule failure by the Seller or by the Purchaser with the approval of the GOP, as applicable, and the Seller elects to transfer the Complex as provided in Article

XV, this Agreement shall immediately terminate and the GOP shall pay to the Seller the compensation provided in Article [XV](#) (*Rights and Obligations of Parties upon Termination*) and the Complex shall be transferred to the GOP or its designee in accordance with Article XV (*Rights and Obligations of Parties upon Termination*).

Section 14.6 Other Remedies

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

ARTICLE XV
RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

Section 15.1 Compensation Upon Termination

- (a) Seller Event of Default. In the event the GOP terminates this Agreement pursuant to Section [14.1\(a\)](#) as a result of a Seller Event of Default (other than a failure to timely complete a Restoration pursuant to Section 15.9(d) of the Energy Purchase Agreement), the Seller shall not be entitled to payment of compensation amounts and the GOP shall not have any right to acquire the Complex.
- (b) GOP Event of Default. In the event the Seller terminates this Agreement pursuant to Section [14.1\(b\)](#) as a result of a GOP Event of Default, the Seller may elect, but shall not be required, to transfer the Complex to the GOP or its designee and, in such event, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 2 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions set out in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (c) Termination Following Change in Law. In the event of a termination of the Energy Purchase Agreement by the Purchaser (with the approval of the GOP) or the Seller following a Change in Law pursuant to Article XV of the Energy Purchase Agreement, the Seller may elect, but shall not be required, to transfer the Complex to the GOP or its designee and, in such event, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to the GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 3 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions set out in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (d) Termination Following Other Force Majeure Event.

If, following an Other Force Majeure Event, the Purchaser (with the approval of GOP) terminates the Energy Purchase Agreement pursuant to

Section 15.9(d) thereof as a result of the Seller's failure to timely complete the Restoration, the Seller may elect, but shall not be required, to transfer the Complex to GOP or its designee and in such event, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to the GOP or its designee; and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 4 of Part I of Schedule 2 (*Compensation Amounts*), in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).

(e) Termination following Pakistan Political Event

- (i) If, following a Pakistan Political Event, the Purchaser and the Seller agree or an expert determines that Restoration is technically feasible and financially viable, but the Purchaser, with the approval of the GOP, elects to terminate the Energy Purchase Agreement under Section 15.6(e) thereof, the Seller shall have the option, but shall not be required, to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 5 of Part I of Schedule 2 (*Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (ii) If, following a Pakistan Political Event, the Energy Purchase Agreement is terminated under Section 15.6(k)(iii) thereof, the Seller shall have the option, but shall not be required, to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 6 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (iii) If, following a Pakistan Political Event, the Energy Purchase Agreement is terminated because the Purchaser and the Seller

agree or an expert determines that Restoration is technically feasible and financially viable, but the Seller while using diligent efforts is unable to obtain financing for the Restoration and the Purchaser thereafter remains unable to procure the financing as provided in Section 15.6(e)(ii)(x) of the Energy Purchase Agreement, the Seller shall have the option, but shall not be required, to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 7 of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).

- (iv) If, following a Pakistan Political Event, the Purchaser, with the approval of the GOP, terminates the Energy Purchase Agreement in accordance with Section 15.9(d) thereof as a result of a failure to timely complete a Restoration by the Seller pursuant to the Energy Purchase Agreement, the Seller shall have the option, but shall not be required, to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 8 (where the Seller has used demonstrable good faith efforts to effect the Restoration) or Row 11 (where the Seller has failed to use demonstrable good faith efforts to effect the Restoration) of Part I of Schedule 2 (*Compensation Amounts*) in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (v) If, pursuant to Section 15.6(k)(i) or (ii) of the Energy Purchase Agreement, a Pakistan Political Event materially affecting the construction, commissioning or operation of the Complex has continued uninterrupted for more than one hundred and eighty (180) Days (without regard to the period of time that the effects thereof may have continued), intermittent Pakistan Political Events

materially affecting the operation of the Complex have occurred for one hundred and eighty (180) Days (without regard to the

period of time that the effects thereof may have continued) in any Year and either the Purchaser or the Seller terminates the Energy Purchase Agreement pursuant to Section 15.6(k) (i) or (ii) of the Energy Purchase Agreement, the Seller shall have the option to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Row 9 (for a Purchaser termination) or Row 10 (for a Seller termination) of Part I of Schedule 2 in accordance with the payment provisions in Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).

- (vi) If, following Pakistan Political Event and following a revision of the Restoration Cost Estimate or the Restoration Period pursuant to Section 15.9(c) of the Energy Purchase Agreement, the Purchaser, with the approval of the GOP, elects to terminate the Energy Purchase Agreement under Section 15.9(c) thereof, the Seller shall have the option to transfer the Complex to the GOP or its designee. If the Seller elects to transfer the Complex, the Complex shall, subject to Section 15.7 (*Seller's Notice of Election to Transfer the Complex*), be transferred to GOP or its designee and the GOP or its designee shall simultaneously pay the Compensation Amount set forth in Row 12 of Part I of Schedule 2 in accordance with the payment provisions of Section 15.5 (*Payment of Compensation Amounts*) and the transfer provisions in Section 15.6 (*Transfer of the Complex to the GOP following Termination*).

- (f) Use of Certain Insurance Proceeds. Whenever the Energy Purchase Agreement is terminated pursuant to Article XV (*Rights and Obligations of Parties upon Termination*) thereof following a Force Majeure Event, and the GOP is obligated to pay compensation to the Seller pursuant to this Section 15.1 (*Compensation upon Termination*) and insurance proceeds are available in connection with the Force Majeure Event, the total amount of the net proceeds made available or to be made available under the insurance policies with respect to the Complex shall, if not used

to effect a Restoration or make repairs to the Complex, be used to pay the following items in the following order of priority:

- (i) to the payment of all indebtedness secured by the Complex;
- (ii) then to the other compensation, if any, payable by the GOP to the Seller as set forth in Schedule 2; and

- (vii) then to the Seller.

Section 15.2 Reimbursement

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

Section 15.3 Obligations Upon Termination

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

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

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

- (a) Not later than the Transfer Date, the Seller shall, at its sole cost and expense, provide to the GOP a report by a reputable and qualified engineer or engineering consulting firm reasonably acceptable to the GOP certifying that as of the date of the report the Complex is in the condition and state of repair and maintenance required by this Agreement, making allowances for any Force Majeure Event or GOP Event of Default that may have affected the Complex and for which the Seller shall not be responsible (including, without limitation, an adequate spare parts inventory on the Site), together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in such report or, if such is not the case, a list of any discrepancies and/or deficiencies in such condition and a remediation plan and a cost estimate of the work required to remedy such discrepancies and/or deficiencies as soon as reasonably practicable and in any event prior to the Transfer Date. The Seller, at its sole cost and expense, shall cause any such discrepancies and/or deficiencies including without limitation, deficiencies in the spare parts inventory on the Site that would be maintained at a power generation facility of a like-type to the Complex in accordance with Prudent Utility Practices for a going concern to be fully corrected in accordance with the engineer's remediation plan, if any, contained in the report prior to the Transfer Date. If such report includes a remediation plan, the Seller shall within thirty (30) Days of delivery of the engineer's report deposit funds in escrow sufficient, to ensure the full execution of such plan the amount of which funds shall be estimated by the Engineer (as defined in the Energy Purchase Agreement) and specified in the engineer's report, or if not so estimated in the report, shall be determined in the reasonable judgment of GOP. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remediation plan. Following the completion of all required remediation work, as certified by the engineer, any funds remaining in the escrow account shall be released to the Seller. If the Seller fails to place funds into escrow as required hereunder, the GOP may deduct such amount from any payments due to the Seller hereunder in respect of compensation elements (b), (c), (d) or (e) (but not (a)) set out in Schedule 2 hereto and shall apply such funds to the purposes contemplated hereunder.
- (b) Not later than the Transfer Date, the Seller shall provide to the GOP an inspection report by a reputable environmental consulting firm selected by the Seller and reasonably satisfactory to the Purchaser certifying that, as of the date of the report, no Hazardous Materials are present on, in or under the Complex or the Site or are leaking from the Site except as are

contained and maintained in accordance with Prudent Utility Practices and all applicable Laws of Pakistan and have been notified to the GOP or its designee or, if such firm cannot so certify due to the presence of

Hazardous Materials on, in or under, or Hazardous Materials are leaking from, the Site or the Complex, the report shall identify the Hazardous Materials present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination and provide a remedial response plan and covering such other environmental matters as the GOP shall reasonably request in writing not later than ninety (90) Days prior to the due date of such report. The consulting firm's report shall be updated with respect to all matters required to be included following the completion of any remedial action required to be undertaken under the report or plan. If the consulting firm's report, or any update thereof includes a remedial response plan the Seller shall within thirty (30) Days of the delivery of the consulting firms' report or any update thereof deposit funds into an escrow account sufficient, in the reasonable judgment of the Purchaser, to ensure the full execution of the plan the amount of which funds shall be estimated by the consulting firm and specified in the consulting firm's report, or, if not so estimated in the report, shall be determined in the reasonable judgment of AEDB. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remedial response plan. Following the completion of all required remediation work, as certified by the environmental consulting firm, any funds remaining in the escrow account shall be released to the Seller. If the Seller fails to place funds into escrow as required hereunder, the GOP may deduct from any payments due to the Seller hereunder in respect of compensation elements (b), (c), (d), or (e) (but not (a)) set out in Schedule 2 hereto and shall apply such funds to the purposes contemplated hereunder.

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

Section 15.5 Payment of Compensation Amounts

- (a) As soon as reasonably practicable and in any event no later than sixty (60) Days after the Termination Date, the Seller shall submit an invoice to the GOP setting out the amounts payable by GOP, if any, to the Seller pursuant to Section [15.1](#) (*Compensation upon Termination*) (the “**Termination Invoice**”). The Termination Invoice shall be accompanied by a certification of a reputable international accountancy firm operating in Pakistan, agreed upon by the Parties or appointed by the President of the Institute of Chartered Accountants of Pakistan pursuant to Section 16.2 (*Determination by Expert*), experienced in the methods of valuation of utility assets, verifying the calculation of all of the elements listed in the Termination Invoice in reasonable detail, which calculation shall be used in the preparation of the Termination Invoice.
- (b) In the case of an early termination of this Agreement, the GOP shall pay to the Seller the amount shown in the Termination Invoice (less any amounts the GOP or the Purchaser is owed by the Seller under this Agreement or under the Energy Purchase Agreement) on the later of: (i) one hundred and eighty (180) Days following the date of delivery of the Termination Invoice to the GOP; and (ii) the Intended Transfer Date specified in the Notice of Election to Transfer in accordance with the provisions of Section 15.7 (*Seller’s Notice of Election to Transfer the Complex*) (the “**Payment Date**”).
- (c) Payments of amounts due and payable in respect of any Termination Invoice not made by the GOP by the date specified in Section 15.5(b) shall bear interest at a rate per annum equal to the Delayed Payment Rate.
- (d) If any Tax is imposed on or withheld from payments to be made by the GOP to the Seller under this Article XV (*Rights and Obligations of Parties upon Termination*) in connection with a transfer to the GOP or its designee of the Transferable Assets, then such payments to the Seller shall be increased by an amount such that the Seller will receive the same amount which it would in exchange for the Transferable Assets, had no such Tax been imposed or withheld.
- (e) The Parties agree that the termination amounts provided under Section 15.1 (*Compensation upon Termination*) and Schedule 2 (*Compensation Amounts*) are the Parties’ reasonable and pre-agreed genuine estimates of the actual losses that the Seller would incur as a result of termination of

this Agreement and the Energy Purchase Agreement, and do not constitute a penalty.

Section 15.6 Transfer of the Complex to the GOP following Termination

- (a) Following payment by the GOP of the amount shown in the Termination Invoice in accordance with Section 15.5(b) the Seller shall transfer to the GOP or its designee and the GOP shall acquire from the Seller, free and clear of all Liens, all of the Seller's right, title and interest in and to the Transferable Assets (the date of such transfer, the "**Transfer Date**"). The "**Transferable Assets**" shall comprise the Complex, the Site, Anemometry System and the Back-Up Metering System, in each case together with all equipment and machinery, including spare parts and vehicles, and all operating manuals and design drawings relating thereto, provided however that spare parts shall not be included in the Transferable Assets unless the Seller elects to transfer such spare parts, in which case the GOP shall pay to the lenders with a security interest over such spare parts the outstanding amount of the debt incurred to finance the acquisition of the spare parts and simultaneously with such payments such lenders shall transfer to the GOP such spare parts; provided further that the Transferrable Assets shall not include the Sugar Mills or such structures that are not part of the Complex. If there is a long term services agreement that the Seller has used as the basis for satisfying the obligation to establish a Reserve Fund under Section 9.8 of the Energy Purchase Agreement, such agreement shall constitute a part of the Transferable

Assets.

- (b) The Seller shall have the right, but not the obligation, to transfer the Transferable Assets to the GOP or its designee prior to the Transfer Date on not less than thirty (30) Days prior notice to the GOP. Such transfer shall not relieve the GOP of its payment obligations under this Article XV (*Rights and Obligations of Parties upon Termination*).
- (c) The GOP shall pay the stamp duty and registration tax if any payable in respect of the transfer of the Complex to the GOP.

Section 15.7 Seller's Notice of Election to Transfer the Complex

- (a) Upon termination of this Agreement for any reason other than a Seller Event of Default, the Seller may by notice to AEDB elect to transfer the Complex to

GOP or its designee (such notice the “**Notice of Election to Transfer**”). The Notice of Election to Transfer shall be delivered to AEDB within sixty (60) days of the Termination Date and shall specify the intended date of transfer of the Complex as contemplated by the Seller (“**Intended Transfer Date**”). The Seller may revise the Intended Transfer Date upon notice to the AEDB; provided that the Intended Transfer Date shall not exceed a maximum of twenty-four (24) months from the Termination Date.

- (b) The GOP or its designee shall pay the amounts shown on the Termination Invoice in accordance with Section 15.5 (*Payment of Compensation Amounts*) and the Seller shall transfer the Complex to GOP or its designee pursuant to the Notice of Election to Transfer and in accordance with Section 15.6 (*Transfer of the Complex to the GOP following Termination*).
- (c) No increase whatsoever shall be claimed by the Seller in the Compensation Amount on account of the time period between the Termination Date and the Intended Transfer Date.
- (d) Notwithstanding the termination of this Agreement and up to the Intended Transfer Date:
 - (i) the Seller shall continue to fulfill its obligations under Section 15.4 and, in particular, the Seller shall be responsible to provide the report specified under clause (a) of Section 15.4 at the Termination Date and the Intended Transfer Date. In the event of any loss, deterioration or discrepancy in the Complex, the same shall be quantified through a reputable and qualified engineer or engineering consulting firm acceptable to the Parties and the amount so quantified shall be adjusted against the Compensation Amount payable by the GOP to the Seller;
 - (ii) the Seller shall, at its cost and expense, be responsible for full operation and maintenance of the Complex and shall keep it insured against commercially insurable risks;
 - (iii) the provisions relating to Force Majeure shall continue to be in full force and effect;
 - (iv) the Seller may sell electric power produced by the Complex to third parties and use it for self-consumption;
 - (v) any profits made by the Seller on account of self-consumption of electric power and its sale to third parties shall be shared by the GOP and the Seller in equal proportions; and

- (vi) separate books of accounts shall be kept and maintained by the Seller for the Complex which shall be audited by a reputed firm of independent chartered accountants reasonably acceptable to the AEDB.

ARTICLE XVI RESOLUTION OF DISPUTES

Section 16.1 Resolution by Parties

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

Section 16.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 16.1 (*Resolution by Parties*) within the time periods set forth therein, then either Party, in accordance with this Section 16.2 (*Determination by Expert*), may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 16.3 (*Arbitration*) without first referring it to an Expert.
- (b) Subject to (a) above, the Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the Person it proposes to be the Expert. The Expert may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in the field of expertise relevant to the Dispute which is the subject matter of the determination. The Party shall nominate an Expert who does not have any conflicts-of-interest in the matter, provided, that any current or former employees of either Party shall be deemed to have a conflict-of-interest. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such Person is acceptable, and if such nominated Expert is not acceptable to the responding Party, the responding Party shall propose a Person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the Person is not acceptable or nominates an Expert that is not acceptable

to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of five (5) Days to agree upon a Person to be the Expert. Failing nomination by the responding Party of an Expert within the period provided or failing such agreement by the Parties

of the Expert, at the end of the meeting the President of the Pakistan Institute of Chartered Accountants (for financial and billing matters) or the Vice-Chancellor of the University of Engineering and Technology (UET), Lahore or the Vice-Chancellor of the Lahore University of Management Sciences (LUMS) or the Vice-Chancellor of the Ghulam Ishaq Khan Institute (GIK) (for technical matters) shall be requested to select the Expert in the sequence/order given above, and the selection of the Expert by the relevant selecting entity shall be binding on the Parties; provided, however, that the selecting entity shall be directed that, unless the Parties otherwise agree in writing, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any Investor or group of Investors holding directly or beneficially more than five percent (5%) of the Ordinary Share Capital nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.

- (c) (i) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (A) a description of the Dispute;
 - (B) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (C) copies of records supporting the initiating Party's position.

(ii)

Within ten (10) Days of the date that a Party has submitted the materials described in Section 16.2(c)(i), the other Party may submit to the Expert, with copies to the other Party:

- (A) a description of the Dispute;
- (B) a statement of such Party's position and, if not already requested, whether a hearing is requested by such Party; and
- (C) copies of any records supporting the Party's position.

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

- (d) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (e) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 16.2(c), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (f) The Expert shall provide a recommendation within fifteen (15) Days after the ten (10) Day response period provided in Section 16.2(c) has expired, or within such further time as is agreed in writing by the Parties. If the Expert's recommendation is given within such fifteen (15) Days period, as may be extended by the Parties, the Parties may review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- (g) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be

regarded as an arbitration and the laws relating to commercial arbitration shall not apply.

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

Section 16.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 16.1 (*Resolution by Parties*) and 16.2 (*Determination by Expert*), or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with Pakistan's law of arbitration and the seat of arbitration shall be Islamabad, Pakistan. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- (b) No arbitrator appointed pursuant to this Section 16.3 (*Arbitration*) shall be a national of the jurisdiction of either Party unless the Parties belong to the same jurisdiction, or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Purchaser, the Seller, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.
- (c) In relation to the Parties, or any parties claiming through the Parties, the provisions of Sections 16.3(a) and 16.3(b) hereinabove shall override and have effect, notwithstanding any arbitration clause or provision to the contrary or otherwise in any Bilateral Investment Treaty to which Pakistan is or may become a party.

Section 16.4 Commercial Acts

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

Section 16.5 Sovereign Immunity; Jurisdiction

- (a) The GOP hereby irrevocably and unconditionally agrees that:
- (x) should any proceedings be brought against the GOP or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges provisions of any legislation (the "**Protected Assets**") in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from

such proceedings will be claimed by or on behalf of the GOP on behalf of itself or any of its assets (other than the Protected Assets);

- (i) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (ii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use.
- (b) The Seller hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction for any action filed by the GOP to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the parties. The Seller waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 16.5(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Seller agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Seller irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.
- (c) For the avoidance of doubt, any Dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in this Section 16.5 (*Sovereign Immunity; Jurisdiction*) shall be referred for determination under Section 16.3 (*Arbitration*) and shall fall within the definition of Dispute.

ARTICLE XVII

GUARANTEE

Within five (5) Business Days of receiving notice in writing from all Lenders (or, if an Agent is appointed, from the Agent), or the Seller that the Seller Letter of Credit has been issued, the GOP shall execute and deliver to the Seller, the Guarantee.

prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address specified hereinabove (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The Parties agree that all notices or communication to, and from the GOP, required to be given under this Agreement or any other communication between the Parties, if addressed to or given by GOP, shall be deemed valid when addressed to or given by the AEDB in terms of this Agreement.

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

Section 18.2 Governing Law

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

Section 18.3 Amendment

This Agreement can be amended only by agreement between the Parties in writing, executed by a duly authorized representative of each of the Parties. No amendment of the Energy Purchase Agreement or any other Project Agreement shall affect this Agreement or increase the liability of the GOP under this Agreement or the Guarantee, unless such amendment is approved in writing by the GOP, prior to such amendment being executed between the parties thereto.

Section 18.4 Third Parties

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

Section 18.5 No Waiver

- (a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement:
 - (i) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or

- (ii) shall be effective unless in writing duly executed by a duly authorized representative of such Party.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one (1) Party to the other, shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

Section 18.6 Relationship of the Parties

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

Section 18.7 Survival

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

Section 18.8 Language

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

Section 18.9 Entirety

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

Section 18.10 Confidentiality

- (a) Each of the Parties and their Contractors, subcontractors, consultants, employees and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the design and construction of the Purchaser Interconnection Facilities and the design, construction, insurance, operation, maintenance, transfer, management and financing of the Complex, and all information and documents obtained in accordance with the terms of this Agreement, and shall not, without the consent of the other Party, save as required by law or appropriate regulatory authorities, prospective lenders to, or investors in the Seller and their professional advisers (subject to restrictions under Article XII (*Restrictions on Acquisitions and Transfers of Shares and Assets*)), publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein and in agreements prepared and issued or to be prepared and issued in connection with other projects by the GOP. (b) The provisions of paragraph (a) hereabove shall not apply to:

- (i) any information in the public domain otherwise than by breach of this Agreement;
- (ii) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality.

Section 18.11 Successors and Assigns

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

Section 18.12 No Liability for Review

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

reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

Section 18.13 Affirmation

- (a) The Seller hereby declares that it has not obtained or induced the procurement of this Agreement or the Energy Purchase Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Seller represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Seller for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of this Agreement or the Energy Purchase Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP or any Public Sector Entity, except that which has been expressly declared pursuant hereto.
- (c) The Seller accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Seller agrees in the event that any of the representations and warranties made by it in Section 18.13(a) and (b) are proved to be materially incorrect, that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the GOP, be voidable and without legal effect at the option of the GOP.

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

Section 18.14 Counterparts

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

Section 18.15 Accounts and Reports

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

compliance with the requirements of the Companies Ordinance, 1984 as amended or superseded from time to time or any other Laws of Pakistan.

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

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

- (e) Lists of Lenders and Creditors. Together with the periodic reports required by Section 18.15(c)(i) and (ii), the Seller shall also furnish to the AEDB a list of the Lenders and each of its creditors to which the Seller has an outstanding obligation of five hundred thousand Dollars (\$500,000) or more. The report shall also indicate any changes, as compared to the report submitted the previous Year that might have occurred.

- (f) Information Regarding Statutory Notice/Winding Up Proceedings
 - (i) The Seller shall, within seven (7) Days of receipt thereof, provide to the AEDB a copy of any notice that the Seller may be served under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies

Ordinance, 1984 by any of the Lenders or its creditors.

(iii)The Seller shall provide to the AEDB all information in respect of any further actions taken by the Lenders or its creditors following any notice under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984.

- (g) Failure by the Seller to submit Reports, Documents and Information. In addition to the rights the GOP may have under this Agreement or under the Laws of Pakistan, in the event that the Seller fails to submit any of the documents, reports or information as and when required under this Agreement, the GOP shall be entitled to assess against and recover from the Seller reasonable costs established from time to time by the AEDB for such non-compliance subject to a reasonable period to cure the noncompliance. Such reasonable costs shall be paid to the AEDB within ten (10) Business Days of notice of such non-compliance to be issued on expiry of the cure period; provided that such costs shall not exceed an amount equal to three hundred (300) Dollars for each Day that such documents, reports or information remains outstanding commencing from the date that notice thereof is delivered by the AEDB to the Seller.

Section 18.16 Applicability

The provisions of Sections 11.2 and 14.4(a) & (b) shall only apply if AEDB/GOP is required to enter in to a Direct Agreement with the Lender(s). The provisions of Sections 12.3 and 18.15 shall only apply if the Project is constructed, owned or operated through a special purpose company incorporated by *[name of the relevant sugar mill to be inserted]* and not by *[name of the relevant sugar mill to be inserted]* itself.

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

For and on behalf of:

**THE PRESIDENT OF THE ISLAMIC
PAKISTAN ON BEHALF**

For and on behalf of:

[●] REPUBLIC OF

By: _____

By: _____

Title: Chief Executive Officer
AEDB

Title:

Witness: _____

Witness: _____

Name: _____

Name: _____