

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

- AND -

[NAME OF COMPANY]

IMPLEMENTATION AGREEMENT

- RELATING TO -

A __ MW (NET) HYDRO-ELECTRIC POWER GENERATION COMPLEX

AT

[IDENTIFY LOCATION], PROVINCE OF _____, PAKISTAN

MADE AT

ISLAMABAD, PAKISTAN

ON __ _____, 200_

COUNSEL FOR THE GOP:

COUNSEL FOR THE COMPANY:

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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 _____ 200_, by and between:

(1) THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN for and on behalf of THE ISLAMIC REPUBLIC OF PAKISTAN (the "GOP"); and

(2) [NAME OF COMPANY] (the "Company"), a [public/private] limited company incorporated under the laws of Pakistan (as hereinafter defined), whose principal office is located at [identify location], Pakistan. Each of the GOP and the Company is hereinafter referred to individually as a "Party" and, collectively, as the "Parties."

RECITALS

A. WHEREAS, the Company has proposed to the Power Purchaser (as hereinafter defined) that the Company will design, engineer, construct, insure, Commission (as hereinafter defined), operate and maintain an approximately [] MW (gross ISO) hydro-electric generation facility (the "Complex", as hereinafter defined) to be located at _____, _____ Province, Pakistan and with a Contract Capacity _____ (as hereinafter defined) of [] MW (net);

B. WHEREAS, the GOP, through the Private Power and Infrastructure Board, on _____ 200_ issued to the Company a Letter of Support (as hereinafter defined) for the design, engineering, construction, insuring, Commissioning (as hereinafter defined), operation and maintenance of the Complex and the transfer of the Complex at the end of the Term (as hereinafter defined) (collectively, the "Project", as hereinafter defined);

C. WHEREAS, the Government of the Province of _____ (the "Provincial Government", as hereinafter defined), through its _____, on _____ 200_ issued to the Company and the Company has accepted a Water Use Agreement for the use of water from the _____ River to generate Net

Electrical Output (as hereinafter defined) and the location of the Complex on the Site (as hereinafter defined);

- C. WHEREAS, simultaneously herewith, the Company is entering into a Power Purchase Agreement with the Power 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 Company's efforts to develop the Project in an efficient and timely manner.

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

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:

“Abandonment” – The voluntary cessation of operation of the Complex, and the withdrawal of all, or substantially all, personnel by the Company from the Site for reasons other than (i) a breach or default by the Power Purchaser under the Power Purchase Agreement, or (ii) a breach or default by the GOP under this Agreement, or (iii) a Force Majeure Event.

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

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

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

“Available Average Capacity” – The meaning ascribed thereto in the Power Purchase Agreement.

“Business Day” – Any day that banks in [Lahore/Karachi], Pakistan are legally permitted to be open for business.

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

"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); or

(b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Company Consent after the date of this Agreement; or

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

that in the case of each of clause (a), (b) or (c) above establishes a material increase in cost or a material decrease in revenue as a consequence of any requirement relating to the design, construction, operation or maintenance of the Complex that is materially 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 Company Consent filed by the Company on or before the Commercial Operations Date, and (iii) agreed to by the Company in any agreement in the Project Agreements.

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

"Commissioning" or "Commissioned" – The meaning ascribed thereto in the Power Purchase Agreement.

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

"Company Consents" – All such approvals, consents, authorisations, notifications, concessions, acknowledgements, agreements, licences (including the Generation Licence

and the Water Use Agreement), permits, decisions or similar items which is or are issued by a Relevant Authority and which the Company or its EPC Contractor is required to obtain from any Relevant Authority (other than the Power Purchaser) and thereafter to maintain to fulfil its obligations under this Agreement, including the Specified Consents; provided, however, that in no event shall the Company Consents include any concessions or exemptions from the Laws of Pakistan unless they are expressly granted pursuant to the terms of this Agreement.

"Company Event of Default" – The meaning ascribed thereto in Section 14.1(a).

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

"Company Letter of Credit" – The meaning ascribed thereto in the Power Purchase Agreement.

"Compensation Amounts" – The compensation amounts shown in a matrix format in Part I of Schedule 2.

"Complex" - The hydro-electric power generation station located on the Site having a design capacity of approximately [] MW (net, at mean site hydrological conditions) to be designed, engineered, constructed, Commissioned, owned, operated and maintained by the Company during the Term, whether completed or at any stage in its construction, including without limitation or regard to the level of development, engineering and design documents, all energy producing equipment and its auxiliary equipment, temporary water-ponding facilities, water transportation and treatment systems, all spare parts stored at the Site, all Company Interconnection Facilities (but excluding the Power Purchaser Interconnection Facilities) and all other equipment or facilities necessary for delivery of electricity to the Power Purchaser at the Interconnection Point, which Complex is described in Schedule 2 to the Power Purchase Agreement.

"Contractors" – The EPC Contractor and the O&M Contractor, and any other direct contractors and any of their direct sub-contractors integrally involved in the Project.

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

“Construction Start Date” – The date on which the Company issues the “notice to proceed” to the EPC Contractor and the unconditional release by the Company to the EPC Contractor of funds equaling at least seven percent (7%) or more of the total capital cost of the Complex.

“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.

“Delayed Payment Rate” – [KIBOR/LIBOR] plus four and one half percent (4.5%) per annum, compounded semi-annually, calculated for the actual number of days which the relevant amount remains unpaid on the basis of a three hundred and sixty five (365) day year.

“Dispute” – Any dispute or disagreement or difference arising under, out of, or in connection with 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 or obligations of a Party under any provision hereof.

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

“Effective Date” – The meaning ascribed thereto in Section 2.1.

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

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

“Environmental Standards” – Collectively, the environmental guidelines and occupational health and safety standards established by the Pakistan Environmental Protection Agency and the relevant Environmental Protection Agency of the Provincial Government.

“EPC” – Engineering, procurement and construction.

“EPC Contract” – The agreement entered into or to be entered into between the Company and the EPC Contractor for the design, engineering, procurement, construction, completion, startup, testing, and Commissioning by the EPC Contractor of the Complex, as may be amended by the Parties thereto from time to time.

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

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

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

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

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

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

“Financial Closing” – (a) The execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, completion, and Commissioning of the Complex (following the resolution of any objections raised by PPIB to a term sheet or debt repayment schedule in accordance with the Implementation Agreement that sets out a principal repayment schedule and the other principal terms of the transaction between the Company and the Lenders) and evidence of commitments for such equity as is required by the Company to satisfy the requirements of the Lenders and the Letter of Support and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents and (b) the delivery of the Company Letter of Credit in accordance with the terms of this Agreement.

“Financing Documents” – Loan agreements for which the term sheets related thereto have not been objected to by the PPIB pursuant to Section 11.3, and all related notes, indentures, security agreements, guarantees, documents under Islamic financing arrangements, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders) and other documents entered into by the Company in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time in accordance with the provisions of Section 11.3.

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

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

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

“Generation Licence” – The licence No. [] dated [] issued by NEPRA permitting the generation and supply of electricity by the Company from the Complex in accordance with the terms and conditions of such licence.

“GOP” – The Islamic Republic of Pakistan.

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

“Guarantee” – The guarantee by the GOP of the payment obligations of, the Power Purchaser under this Agreement, AJ&K Entities under AJ&K IA and WUA, in the form set out in Schedule 3 to the Implementation Agreement.

“Hydrological Conditions” – The hydrological conditions, the nature of which impact the operation and generation of the Complex, existing at the Site, including the volumetric rate of water inflow, gross head, upstream and downstream water levels or any other condition, as decided by the Operating Committee, from time to time, as determined and recorded by the Water Meters.

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

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

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

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

“Japanese Yen” – The lawful currency of Japan.

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

“Lapse of Consent” – Any Company 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 or (b) (other than a Specified Consent) not being issued upon application having been properly and timely made and diligently pursued or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Party’s ability to perform its obligations under any document included within the Project Agreements, in each of the above instances despite such Party’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” (as explained in Section 12.4 of the Implementation Agreement) manner.

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

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

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

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

“Lien” – Any mortgages, pledges, liens, security interests, conditional and installment sales agreements, encumbrances, claims or charges of any kind.

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

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

“MW” – Megawatt or 1,000,000 Watts.

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

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

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

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

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

"O&M Agreement" – The operation and maintenance agreement to be entered into between the Company and the O&M Contractor for the operation and maintenance of the Complex, as may be amended by the Parties thereto from time to time.

"O&M Contractor" – Any operation and maintenance contractor(s), and any successor(s) thereto, appointed by the Company and not objected to by the GOP pursuant to Section 6.2(c).

"Other Force Majeure Event" - The meaning ascribed thereto in Section 13.1(c).

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

"Pakistan" – The Islamic Republic of Pakistan.

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

"Performance Guarantee" – An unconditional, irrevocable, on-demand bank guarantee provided by the Company in favour of GOP (PPIB) at the time the GOP through the PPIB issued the Letter of Support to Company, which secures the Company's obligation to achieve Financial Closing no later than the date that is twelve (12) months following the date of the Letter of Support, as such date may be extended in accordance with the terms of the Letter of Support .

"Person" - Any person, 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.

"Pound Sterling" – The lawful currency of the United Kingdom.

"Power Purchase Agreement" – The Power Purchase Agreement, dated [_____] 200_, by and between the Power Purchaser and the Company, for the purchase and sale of electric

generation capacity and electric power generated by the Complex, as may be amended by the parties thereto from time to time.

“Power Purchaser” – The National Transmission and Despatch Company Limited, a public limited company incorporated under the laws of Pakistan, with its principal office located at WAPDA House, Shahrah-e-Quaid-e-Azam, Lahore, Pakistan and its successors and permitted assigns.

“Power Purchaser Consents” – All approvals, consents, authorisations, notifications, concessions, acknowledgements, licences, permits, decisions or similar items which is or are issued by a Relevant Authority and which the Power Purchaser or any of its contractors is required to obtain from any Relevant Authority and thereafter to maintain to fulfil its obligations under the Power Purchase Agreement.

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

“PPIB” – Private Power & Infrastructure Board of the Ministry of Water & Power, Government of Pakistan, with its principal office at No. 50, Nazimuddin Road, F-7/4, Islamabad, and any successor or substitute board or agency that assumes the responsibilities of the Private Power & Infrastructure Board.

“Pre-Expiry Period” - The meaning ascribed thereto in Section 5.7(a).

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

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

“Project” – Each of the following activities:

- (a) the ownership and possession of the Complex, and the location of the Project on the Site;

- (b) the design, engineering, financing, refinancing (provided that the benefits of such refinancing are shared by the Parties in accordance with the requirements of the Implementation Agreement), construction, procurement, permitting, testing and Commissioning of the Complex;
- (c) the procurement, importation, exportation (for repair, maintenance or refurbishing) and contracting for goods, equipment and services for the Complex and the Company Interconnection Facilities;
- (d) the insuring, operation, maintenance and repair of the Complex, including any Restoration;
- (e) the use of water at the Complex from the Water Resource to generate electricity, the sale of Tested Capacity and the generation and sale of Net Electrical Output from the Complex hereunder; and
- (f) the recruitment, employment and training of staff for the Complex.

“Project Agreements” –

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

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

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

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

“Prudent Utility Practices”-The meaning ascribed thereto in the Power Purchase Agreement.

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

“Reference Debt Service Component” – The component, expressed in Rs./kW/hour, payable to the Company for making generating capacity available to the Power Purchaser that is intended to compensate the Company for debt servicing portions of the cost of the Available Capacity and which component (whether or not such component actually compensates the Company for providing such capacity) is set forth in Schedule 1 of the Power Purchase Agreement.

“Relevant Authority” – The department, authority, instrumentality, agency or other relevant entity from which a Company 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 Power Purchaser and this Agreement, as the case may be.

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

“Required Commercial Operations Date” – The date that is [_____] (__) months following the date on which Financial Closing occurs, as such date may be extended pursuant to Section 6.5 or Section 8.1(b) of the Power Purchase Agreement or by reason of a Force Majeure Event affecting the Company thereunder.

“Reserve Fund” – The meaning ascribed thereto in Section 9.9 of the Power Purchase Agreement.

"Restoration" – The meaning ascribed thereto in Section 15.6(a) of the Power Purchase Agreement.

"Restoration Cost Estimate" – The meaning ascribed thereto in Section 15.6(a)(iii) of the Power Purchase Agreement.

"Restoration Schedule" – The meaning ascribed thereto in Section 15.6(a) of the Power Purchase Agreement.

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

"Rupee" and "Rs." – The lawful currency of the Islamic Republic of Pakistan.

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

"Site" – The land, water-ways, roads, wells and any rights acquired or to be acquired by the Company for purposes of the Complex, on, through, above or below the ground, on which all or on any part of the Complex is to be built.

"Specified Consents" – The Company Consents identified in Schedule 1.

"Specified Foreign Currency" – The Euro, the Dollar, the Yen and the Pound Sterling.

"State Bank of Pakistan" – The State Bank of Pakistan, and its successors.

"Succession Notice" – The meaning ascribed thereto in Section 11.2(b) of this Agreement.

"Tariff" – The meaning ascribed thereto in the Power Purchase Agreement.

"Tariff Approval" – The order and decision of NEPRA dated [] regarding the Company's power generation tariff (Case No. []), and notified by the GOP in the official Gazette, as the same may be further amended by NEPRA from time to time, together, in each case, with any and all associated clarifications and explanations issued by NEPRA in writing.

"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 Relevant Authority, 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 Relevant Authority as consideration for goods or services provided by such Relevant Authority in relation to a commercial activity carried out by such Relevant Authority.

"Term" – The meaning ascribed thereto in Section 2.1.

"Termination Date" – The meaning ascribed thereto in Section 14.2(c).

"Termination Invoice" – The meaning ascribed thereto in Section 15.5.

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

"Transfer Date" – The meaning ascribed thereto in Section 15.5(b).

"Transferable Assets" – The meaning ascribed thereto in Section 15.6.

"Transfer of the Complex" – The meaning ascribed thereto in Section 11.2(d).

"Transferee" – The meaning ascribed thereto in Section d).

"UNCITRAL Rules" - The meaning ascribed thereto in Section 16.3(b).

"Water Use Agreement" – The licence issued by the Provincial Government and accepted by the Company for the construction of the Complex on the Water Resource and the location of the Complex on the Site, and the use of water from the Water Resource for the purpose of generating electricity in accordance with the terms and conditions of the Water Use Agreement, as such Agreement may be amended or modified by the Provincial Government and the Company in accordance with the terms of the Agreement.

"Water Resource" – [_____] [River][Canal] in the Province of [_____].

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

“Yen” – Lawful currency of Japan.

Section 1.2 Rules of Interpretation

In this Agreement:

- 1.1 headings are only for convenience, and shall be ignored in construing this Agreement;
- 1.2 the singular includes the plural and vice versa;
- 1.3 references to Articles, Sections, Recitals and Schedules are, unless the context otherwise requires, references to Articles, Sections and Schedules to this Agreement;
- 1.4 unless the context requires otherwise, references to times and dates are, and shall be construed to be, references to Pakistan time;
- 1.5 unless otherwise provided herein, whenever a consent or approval is required by one (1) Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.6 in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- 1.7 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; and
- 1.8 except as expressly provided herein, nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Company, to claim any benefit provided under the Laws of Pakistan (whether in effect now or in the future).

- 1.9 notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “ damages” in this Agreement shall be construed as representing the Parties reasonable and genuine estimates of the actual damages and/or losses for that particular event or occurrence and do not constitute a penalty; and
- 1.10 the use of the term “non-discriminatory” or “discriminatory” is not intended to prohibit or limit in any way the GOP 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 or Relevant Authority or of a Company Consent. It is intended, however, to prohibit the use of governmental authority, over Company Consents, for example, to deprive the Company of the benefits of this Agreement or the Power Purchase Agreement by the application of a higher standard to the Company (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 II.

TERM

Section 2.1 Effectiveness of Agreement; Term

Except for the provisions of this Section 2.1 and Sections 5.1, 5.2, 5.3 and 6.2, and Articles XI and XVIII, which shall become effective immediately upon execution and delivery of this Agreement, this Agreement shall commence and be effective on the date of Financial Closing (the "Effective Date"), and shall, unless terminated earlier in accordance with the terms of the Letter of Support or this Agreement, continue in full force and effect until the [thirtieth/fiftieth (30th/50th)] anniversary of the Commercial Operations Date (the "Term"), as such date may be extended pursuant to Section 2.2(b) of the Power Purchase Agreement.

Section 2.2 Termination of Letter of Support

If Financial Closing does not occur in accordance with the requirements of the Letter of Support, upon the termination of the Letter of Support this Agreement shall terminate in its entirety without notice and without further action by the GOP. Upon such termination, the Parties shall have no further obligations or liabilities under this Agreement. The Parties have agreed that the amount of the Performance Guarantee is reasonable and constitutes liquidated damages to the GOP for the Company's failure to timely achieve Financial Closing hereunder and under the Letter of Support, and it is further understood and agreed that the encashment in full of the Performance Guarantee by the GOP is in lieu of actual damages for such occurrence and the collection of such sums pursuant to such Performance Guarantee and the termination of this Agreement pursuant to this Section 2.2 is the sole remedy of the GOP for such event.

ARTICLE III.
IMPLEMENTATION OF THE PROJECT

Section 3.1 Implementation of the Project

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

ARTICLE IV.

ACQUISITION OF SITE, TRANSPORTATION, AND COMPANY CONSENTS

Section 4.1 Acquisition by the Company of Site and Transportation

The Company has identified and purchased the Site. The Company shall obtain adequate water 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 Company shall complete these activities in compliance with the terms of this Agreement and the Power Purchase Agreement.

Section 4.2 Applications by the Company for Company Consents

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

Section 4.3 Status of Consent Applications

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

Consent, the Company shall submit a report pursuant to this Section 4.3 within three (3) days after becoming aware thereof.

ARTICLE V.
SUPPORT OF THE GOP

Section 5.1 Support to Obtain Company Consents

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

Section 5.2 Conditions to Company Consents

The GOP or any Relevant Authority may attach such "non-discriminatory" terms and conditions (as explained in Section 12.4) to the issuance or renewal of any of the Company Consents as are in accordance with the Laws of Pakistan, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article XIII (unless it constitutes a Change in Law), or a GOP Event of Default under Section 14.1(b). The Company shall abide by all such terms and conditions. If the Company fails to abide by any term or condition of any Company Consent, then the GOP or any Relevant Authority may exercise any power pursuant to the Laws of Pakistan in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by the GOP, a Force Majeure Event under Article XIII, or a GOP Event of Default under Section 14.1(b); provided, however, that, with respect to all such Company 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 Company Consent earlier than the later of (i) thirty (30) days after delivery to the Company of written notice by the GOP or such Relevant Authority of such failure and (ii) the period of time, if any, that must expire

under the Laws of Pakistan or the relevant Company Consent prior to early termination or revocation of any such Company Consent; provided, further, that nothing in this Section 5.2 shall limit the GOP or any Relevant Authority from taking any action in relation to a breach of, or non-compliance with, a Company Consent (other than termination or revocation) which it is entitled to take under the Laws of Pakistan or to require the Company to cease operating the Complex.

Section 5.3 Support for Obligations

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

Section 5.4 Security Protection

The Company shall provide security personnel for the protection and security of the Site. From time to time, the Company 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 Company shall be reimbursed to the GOP by the Company as and when incurred by the GOP.

Section 5.5 Immigration Controls

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

Section 5.6 Procedure

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

ARTICLE VI.

CONSTRUCTION, OPERATION, MAINTENANCE, AND STAFFING

Section 6.1 Pakistan Essential Services (Maintenance) Act 1952

Except as otherwise provided herein, the Company 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 Company shall design, construct, install, Commission, operate and maintain the Complex; provided, however, that the Company may contract with the EPC Contractors to design, construct, install, and commission the Complex and the O&M Contractor to operate and maintain the Complex; provided, further, that the appointment of the EPC Contractor and the O&M Contractor by the Company shall not relieve the Company of any of its obligations or potential liability regarding the design, financing, insuring, acquisition, construction, completion, operation, or maintenance of the Complex.
- (b) EPC Contract; EPC Contractor. The Company shall deliver to the GOP/PPIB a copy of the EPC Contract and shall also provide the GOP with a certificate of a duly authorized officer of the Company setting out any proposed material terms and conditions ("Proposed Material Terms") of the EPC Contract including (i) material particulars of EPC Contractor, (ii) specifications of a major piece of equipment as to either its company or country of manufacture, (iii) any cost components to be re-opened during construction period (the "Re-Openers") in accordance with the hydel framework issued by NEPRA.

- (c) Amendments to EPC Contract. The Company shall provide the GOP with a certificate of a duly authorized officer of the Company setting out any proposed amendment (a "Proposed Material Amendment") to the EPC Contracts that would result in (i) a change in either of the EPC Contractors, or (ii) a change in a major piece of equipment as to either its company or country of manufacture, no later than fifteen (15) Business Days prior to execution thereof, setting forth the proposed changes. If the GOP does not object to such certificate on or before the end of the fifteen (15) Business Day period provided for herein, as the case may be, the GOP shall be deemed not to object have objected to the Proposed Material Amendment.
- (d) Review of EPC Contracts and Amendments. Within thirty (30) days after execution of the EPC Contract and any Proposed Material Amendment, the Company shall (i) deliver to the GOP a copy of the EPC Contract and each such Proposed Material Amendment with information that is confidential or proprietary deleted therefrom, and (ii) make available to an authorized representative of PPIB, during normal business hours and upon reasonable notice, at the Company's offices in _____, a complete copy of the EPC Contract and all Proposed Material Amendments; provided, however, that such representative may not make any photocopies or other mechanical reproductions of such documents. In addition, the confidentiality provisions contained in this Agreement shall apply to PPIB and its representative with respect to any confidential or proprietary information reviewed in the EPC Contract.
- (e) O&M Agreement; O&M Contractor. The Company shall deliver to the GOP a certificate of a duly authorized officer of the Company, describing any proposed O&M Agreement and setting out the name and nationality of the O&M Contractor and any major subcontractor, no later than fifteen (15) Business Days prior to execution thereof. The GOP shall then have the right, but not the obligation, to review the certificate, and may notify the Company prior to the proposed execution date that it objects to the O&M Contractor because, in its sole discretion, the appointment of the proposed O&M Contractor would be adverse to the national security interests of Pakistan; provided, however, that by not objecting to the O&M

Agreement, the GOP shall not be construed as having approved of the O&M Agreement nor as in any way having relieved the Company of its obligations under this Agreement or the Power Purchase Agreement. If the GOP does not object to the certificate on or before the end of the fifteen (15) Business Days period provided for herein, the GOP shall be deemed not to object to the particular O&M Agreement.

- (f) Operation of the Complex by the Company. Notwithstanding anything contained in this Article VI to the contrary, the Company 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 Company 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 GOP.

ARTICLE VII.
LIABILITY

Section 7.1 Limitation of Liability

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

Section 7.2 Indemnification for Fines and Penalties

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

Section 7.3 Double Jeopardy under Power Purchase Agreement

- a) Except disputes or breaches related to Section 2.3 (*Company Consents*), and Article XII (*Insurance*), Article XIV (*Taxes*), and Article XVI (*Termination*) of the Power Purchase Agreement,
 - (i) any settlement or waiver in writing by the Power Purchaser of any dispute or breach under the Power Purchase Agreement; or
 - (ii) provided that the GOP was given reasonable and timely notice of and the opportunity to participate in any proceedings (initiated by the Company or the Power Purchaser) concerning any dispute or breach of the Power Purchase Agreement, any final, non-appealable order or award issued or given in any such proceedings,

shall be binding on the GOP with respect to any issue or claim, as the case may be, based on the same facts or acts or omissions by the Company and/or the Power Purchaser. Subject to Section 7.3(b), settlement or waiver of any dispute or breach related to Section 2.3 (*Company Consents*), and Article XII (*Insurance*), Article XIV (*Taxes*), and Article XVI (*Termination*) of the Power Purchase Agreement shall be effective only if agreed to, in writing, by both the Power Purchaser and the GOP.

- b) The GOP hereby consents, at the request of the Company, to be timely joined in any proceedings (initiated by the Company or the Power Purchaser) concerning any claim of any breach of or other dispute related to the Power Purchase Agreement if and to the extent the Company's rights or obligations under this Agreement or under the Guarantee may be affected by such proceedings.
- c) Notwithstanding any other provision in this Agreement to the contrary, the Power Purchaser shall be responsible in the first instance for pursuing any claim against the Company based upon a failure of the Company to satisfy its obligations under the Power Purchase Agreement. The GOP shall not bring (or other than through the Power Purchaser, cause any proceedings to be brought) against the Company for any breach of its obligations under Article III and Section 4.1 and Section 4.2 (to the extent such Articles and Sections relate to substantially similar obligations of the Company under the Power Purchase Agreement) or Article XI of this Agreement, if the Power Purchaser has fully pursued, or is then pursuing, a claim or claims against the Company based upon an alleged breach of the Power Purchase Agreement. A final, non-appealable order issued in a proceeding initiated by the Power Purchaser and based upon a claim of a breach of the Power Purchase Agreement, shall be without prejudice to any proceedings against the Company that the GOP could otherwise bring for breach by the Company of substantially the same obligations under this Agreement. Nothing in this Section 7.3 shall prevent the GOP and the Power Purchaser from separately initiating proceedings to terminate this Agreement and the Power Purchase Agreement, respectively, pursuant to Section 14.1 and

Section 14.2 of this Agreement and Section 16.2 and Section 16.4 of the Power Purchase Agreement.

ARTICLE VIII
INSURANCE

The Company shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with Article XII of the Power Purchase Agreement. If and to the extent that the GOP can be named as an additional insured on any fire, perils, casualty, and liability insurance policies covering the Complex, the GOP shall be so named by the Company; provided however, that the GOP shall agree to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein. Subject to the provisions of Article XV of the Power Purchase Agreement, the proceeds of all such insurance (except general liability coverage) shall be used to repair or restore the Complex to the condition existing immediately prior to the event giving rise to such insurance claim and proceeds. Copies of any filed claims or the receipt of any insurance proceeds shall be notified to GOP within seven (7) Business Days of such filing or receipt of proceeds by the Company.

ARTICLE IX
TAXATION AND IMPORT CONTROLS

Section 9.1 Taxation of the Company

During the Term the Company shall not be subject to taxation in Pakistan on its profits and gains derived from electric power generation under the Power Purchase Agreement, whether such profit or gains are construed to have been earned in Pakistan or in AJ&K, as provided under Clause (132) of Part I of Second Schedule to the Income Tax Ordinance 2001, as in effect on the date hereof or on payments in lieu thereof, including payments made by the GOP to the Company under and pursuant to Section 15.1; provided, that any change in Clause (132) or its application to the Company shall not give rise to a breach or default of the GOP hereunder so long as such change results in a change in the Tariff as provided in Section 14.4 and Schedule 1 to the Power 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 Company 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 Company and its Contractors shall be entitled to import prior to the Commercial Operations Date without restriction and exempt from Sales Tax, but subject to the payment of the applicable Customs Duty, not to exceed five percent (5%) on value, determined under the Laws of Pakistan, of imported plant, machinery and equipment not manufactured locally and required for the design, construction, completion, operation and maintenance of the Complex, subject to compliance with any restrictions imposed by the Import Policy Order

(SRO 775(I)2006, dated 31st July 2006), as issued from time to time; provided, that, unless all Taxes are paid in full, such imported plant, machinery and equipment shall be used at the Site, in relation to the Project and will not be sold or otherwise transferred to or used by another Person other than the Company or its Contractors.

- b) From and after the Commercial Operations Date, the applicable Customs Duty shall be [ten percent (10%)] on plant, machinery and equipment not manufactured locally and required for the repair, operation and maintenance of the Complex.
- c) Provided that applicable Customs Duties are timely paid by the Company, all plant, machinery and equipment imported for incorporation into the Complex, or use in the Project shall be cleared for release from Customs and available for removal by the Company or its agents within fifteen (15) Business Days following delivery by the Company of written notice to the PPIB of a delay in the release by Customs of such plant, machinery and equipment. Such notice may be given at any time after a delay in the release of such plant, machinery or equipment of ten (10) days following the delivery to the proper authorities of all documents (including all information and details) required by the Laws of Pakistan for importation of plant, machinery and equipment into Pakistan. In the event that there is a claim for Customs Duties in excess of five percent (5%) on the value, as determined under the Laws of Pakistan, of plant, machinery or equipment not manufactured locally, imported prior to the Commercial Operations Date for incorporation into the Complex, or use in the Project, and the Company chooses to pay such duties under protest, upon notice to the GOP by the Company, such dispute shall be resolved consistent with the terms of this Agreement and the Laws of Pakistan within ninety (90) days after the Company files its refund claim.
- d) All items not consumed during the construction of the Complex or incorporated into the Complex may be freely re-exported by the Company, 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 Company to re-export any items of plant, equipment or machinery used in the construction of the Complex that are not reasonably required for the Company to operate and maintain the Complex, unless the Company agrees promptly to pay the applicable Custom Duties for those items of the plant, equipment or machinery.

Section 9.4 Export and Reimport

The Company shall be entitled to export all items of plant and machinery imported by it under this Article IX for permanent installation in the Complex for the purpose of remedying defects, repair or refurbishment outside Pakistan and to re-import the same upon payment of the applicable Customs Duties and the GOP shall, at the request of the Company, use its reasonable endeavours to expedite the issuance of any Company Consent required for the export and re-import of such plant, 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 Company's transactions related to the Project that require Foreign Currency, including debt servicing and repatriation of dividends and earnings, will be initiated through bank accounts in Pakistan; provided, however, that Foreign Currency provided by foreign Lenders, liquidated damages in Foreign Currency paid by foreign Contractors or vendors and any other Foreign Currency from foreign sources that is used to pay foreign Contractors, vendors, insurers, re-insurers 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 published by the State Bank of Pakistan, as in effect on the date hereof. Copies of all such payments shall be submitted to the GOP within twenty-one (21) days.

Section 10.3 Consent to Foreign Currency Accounts

Company Consents include Specified Consents required by the Company to (a) open, operate, and retain earnings in Specified Foreign Currency denominated bank accounts inside Pakistan (in accordance with the Laws of Pakistan prevailing on the date hereof), (b) maintain bank accounts outside Pakistan from the State Bank of Pakistan and 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) open, operate and retain earnings in such other bank accounts reasonably required to effect the arrangements provided under the Financing Documents and to carry out and perform its obligations under the Power Purchase Agreement are included as Specified Consents. Subsequent to the issuance of such Company 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 Company Consents shall constitute a Lapse of Consent. Nothing in this Agreement shall prevent the Company 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 Company in the Prescribed Form (such application having been made no less than fifteen (15) Business Days prior to the requested date for Specified Foreign Currency), the GOP shall, on such requested date, make available to the Company through the State Bank of Pakistan, to the extent that the Specified Foreign Currency is not available through normal commercial banking channels, Specified Foreign Currency in exchange for Rupees in the amount necessary for (i) meeting the Company's requirements for Foreign Currency necessary to meet its obligations under this Agreement, (ii) repatriation by the Company of dividends to Foreign Investors and repatriation upon conversion of Rupee proceeds of sales of Ordinary Share Capital purchased with Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation, (iii) after the Commercial Operations Date, the necessary Foreign Currency expenses of the Project (including, without limitation, remuneration of the O&M Contractor, where applicable, fees, salaries and other monetary emoluments and the purchase of spare parts), (iv) the payment of premiums and fees to offshore insurers and reinsurers, (v) all payments to the Lenders that require Foreign Currency in accordance with the terms of the Financing Documents (vi) any compensation payments to be made by the GOP pursuant to Section 15.1 in the event of a termination of this Agreement, which is required to be in Foreign Currency and (vii) in the event of a Restoration or modification of the Complex pursuant to Article XV of the Power Purchase Agreement, any financing provided by the GOP or the Power Purchaser, as the case may be, in Rupees and payable to foreign Contractors in Foreign Currency. The rate applicable to such conversion shall be the State Bank of Pakistan's TT&OD selling rate for purchases

of Specified Foreign Currency at 11:00 a.m. on the Business Day immediately preceding the requested date in such application.

Section 10.5 Free Transfer and Repatriation of Necessary Funds

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

ARTICLE XI
ASSIGNMENT AND SECURITY

Section 11.1 Assignment

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

Section 11.2 Creation of Security

- a) Notwithstanding the provisions of Section 11.1, for the purpose of financing the Project, in connection with the Financial Closing the Company may pursuant to the Financing Documents assign to, or create a security interest in favour of, the Lenders in the Company's rights and interests under or pursuant to (i) this Agreement, (ii) any agreement or document included within or contemplated by the Project Agreements, (iii) the Complex, (iv) the Site, (v) the present and future movable, immovable, and intellectual property of the Company, (vi) the present and future revenues or any of the rights or assets or actionable claims of or debts owed to, the Company and (vii) any other present or future interest, right, property or asset of the Company of any kind and wherever situated.
- b) The Lenders shall have no rights (except as expressly provided herein) or obligations to the GOP under this Agreement until such time as the Lenders or their designees succeed to the Company's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give notice of such succession ("the Succession Notice") to the GOP and shall assume liability for all of the Company's obligations under this Agreement, including payment of any amounts due and owing to the GOP for breaches or defaults by the Company and other liabilities arising under this Agreement prior to the Lenders' or such designees' succession to the Company's interest in and under this Agreement;

provided, however, that any liability of the Lenders or their designees shall be strictly limited to the interest of the Lenders in the Complex.

- c) Upon notification by the Lenders or the Agent to the GOP, of the occurrence and continuance of an event of default under the Financing Documents, the Lenders shall have the right, among others, to (i) take possession of the Complex and prior to the Commercial Operations Date, complete construction of the Complex and operate and maintain the same and, after the Commercial Operations Date, operate and maintain the same, and (ii) cure any continuing Company Event of Default as provided under Section 14.4 of this Agreement.
- d) In the event the Lenders desire to sell, transfer or assign the Complex as a going concern with all assets (present and future) together with possession thereof (hereinafter the "Transfer of the Complex") for the purposes of enforcing their rights under or pursuant to the Financing Documents, the following conditions shall apply:
 - i) Lenders shall obtain the prior written consent of the GOP for the purposes of the Transfer of the Complex, which consent shall not be unreasonably withheld or delayed;
 - ii) the Transfer of the Complex shall only be in favour of a transferee (the "Transferee") who will have been disclosed to and approved in writing by the GOP; and
 - iii) the GOP may impose such conditions (which will not be unreasonable) for granting its consent and approval as stated in sub-clause (i) and (ii) above, including the curing by the Transferee of any existing Company Event of Default within the period remaining for such cure by the Company and the Lenders and the payment of any amounts due and owing to the GOP by the Company hereunder on or before the date of Transfer of the Complex.

Provided that the Lenders and the Transferee have complied with the requirements of this Section 11.2(d), the GOP agrees to execute such agreements

and documents necessary or reasonably expedient to ensure that the Transferee has the benefit of all right, title and interest of the Company under this Agreement and assumes in writing for the benefit of the GOP all of the obligations and liabilities of the Company hereunder.

- e) Upon notice from the Lenders or the Agent to the GOP of a default by the Company under the Financing Documents (which the GOP shall be entitled to treat as valid without inquiry of any kind, and which notice for all purposes under this Agreement shall be binding on the Company), the GOP shall, at the request and expense of the Lenders or the Agent, cooperate with the Lenders in the exercise by the Lenders of their rights under this Agreement and the Financing Documents.
- f) At the request of the Company, delivered to the GOP no less than thirty (30) days in advance, the GOP shall execute and deliver, effective at the Financial Closing, acknowledgements to the Lenders with respect to any assignment by the Company to the Lenders pursuant to this Article XI and the creation of any security interests in favour of the Lenders in and to this Agreement, as the Company may reasonably request from the GOP in accordance with customary practices in transactions of this nature.

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

- (a) Prior to Financial Closing, the Company shall deliver to PPIB a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for debt repayment that is not less than revenues produced by the Reference Debt Service Component of the Tariff, using reasonable assumptions of Estimated Available Capacity, together with the maximum principal amounts and interest rate or rates and any schedules or formulae that will be included in the Financing Document for the computation of fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents, and shall also identify the equity

commitments, individually and in total, of the Initial Shareholders. The PPIB will evaluate the principal repayment schedule and other principal financial terms and the equity commitments in the Project, to ensure that the other principal financial terms are consistent with the principal repayment schedule, and that the principal repayment schedule is consistent with the Reference Debt Service Component of the Tariff, and to evaluate the impact on the GOP's obligations upon any termination of this Agreement. If the PPIB has any objections to the terms specified in such term sheet or schedule, it shall inform the Company thereof within fifteen (15) Business Days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms and the Company shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by the PPIB. Each loan agreement constituting part of the Financing Documents will provide that any liquidated damages received by the Company from its EPC Contractor for capacity or other testing shortfalls shall be used either to reduce the outstanding principal amount of debt under such loan agreement or in an effort to remedy such shortfalls. The Company shall provide PPIB with a copy of the loan agreements executed on the date of Financial Closing no later than fifteen (15) Business Days after Financial Closing.

- (b) Following Financial Closing, the Company shall deliver to PPIB, copies of all amendments to the executed Financing Documents within ten (10) days after the execution of each such document. The Company shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the PPIB, no less than thirty (30) days prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. Any reduction in the principal repayment schedule or interest rate

under the Financing Documents shall be shared with the Power Purchaser, and shall result in a reduction in the Reference Debt Service Component to provide sixty percent (60%) of the benefits of such reduction to the Power Purchaser. PPIB shall notify the Company of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule as soon as reasonably possible, and in any case within fifteen (15) Business Days of receipt of the term sheet or schedule, which objection, subject to the immediately following sentence, shall be based on a finding that the benefits of any reduction in the principal repayment schedule or interest rate under the Financing Documents have been shared with the Power Purchaser as provided above, and shall be subject to an amendment of the Power Purchase Agreement to incorporate such reduction in the Reference Debt Service Component. If the PPIB has not notified the Company of any objections to the term sheet or schedule related to the proposed modification to the principal re-payment schedule within such fifteen (15) Business Day period, such term sheet or schedule shall be deemed not objected to by the PPIB. At the request of PPIB, prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Company shall deliver to the PPIB, in a form satisfactory to the PPIB, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the GOP hereunder or under the Guarantee or affect in any way the right of the GOP to acquire the Complex free and clear of all Liens upon the GOP's payment of the applicable Compensation Amount.

ARTICLE XII
RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND
ASSETS

Section 12.1 Assurance Against Discriminatory Action

Neither the GOP nor any Public Sector Entity shall take any discriminatory action (as described in Section 12.4) which materially and adversely affects the Project or the performance of the Company's obligations, or the enjoyment of its rights or the interests of the Investors or Lenders under the Project Agreements. Nothing in the foregoing or in Section 12.2 shall apply to any actions taken by the GOP or the Power Purchaser pursuant to their respective rights and obligations arising under this Agreement and the Power Purchase Agreement.

Section 12.2 Acquisition of Shares or Assets

The GOP undertakes to the Company that neither it nor the Power Purchaser or any Public Sector Entity will expropriate, compulsorily acquire, nationalize, or otherwise compulsorily procure (except as provided in Section 15.1) any Ordinary Share Capital or material assets of the Company. Notwithstanding the foregoing, nothing in this Agreement shall be construed as a waiver by the GOP or the Power Purchaser of the Power Purchaser'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 Company's ability to perform its obligations under and enjoy the benefits of the Power Purchase Agreement or, without just and adequate compensation, adversely affects 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 Company shall make appropriate provisions in its Articles of Association to ensure compliance with the following provisions of this Section 12.3, which shall include appropriate legends on all share certificates

- evidencing Ordinary Share Capital of the Company 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 Company shall decline to register the transfer of issued Ordinary Share Capital to Persons of a nationality that is specifically proscribed by the Laws of Pakistan. The Company shall use reasonable means under the circumstances to investigate the declaration of nationality stated on any application for registration or transfer of Ordinary Share Capital if, as a result of such transfer, the investor making such application would hold five percent (5%) or more of the issued Ordinary Share Capital of the Company. In all other cases, the Company shall be entitled to rely on such declaration to determine whether registration is permitted under this Section 12.3(b). Where any such declaration discloses Pakistan nationality or the nationality of a state that is not specifically proscribed by the Laws of Pakistan, then the Company shall be at liberty to register the transfer or issue of the shares.
- c) The Company shall not issue any Ordinary Share Capital and no Initial Shareholder shall transfer any Ordinary Share Capital owned directly or beneficially by it at any time prior to the Commercial Operations Date or for a period of six (6) years after the Commercial Operations Date if following such issuance or such transfer the Initial Shareholders will own directly or beneficially less than fifty-one percent (51%) of the outstanding Ordinary Share Capital, except for a transfer of Ordinary Share Capital:
- (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents; or

- (iii) to which the GOP has given its prior written approval.
- d) The Lead Investor shall own directly or beneficially at all times during a period commencing on the date of this Agreement and continuing for six (6) years after the Commercial Operations Date, not less than twenty percent (20%) of the then outstanding Ordinary Share Capital, except where the reduction of ownership of Ordinary Share Capital below twenty percent (20%) by the Lead Investor results from a transfer of Ordinary Share Capital:
 - (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents; or
 - (iii) to which the GOP has given its prior written approval.
- e) After the expiry of a period of six (6) years from the Commercial Operations Date, no Initial Shareholder shall transfer any Ordinary Share Capital, except where:
 - (i) required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction;
 - (ii) resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Financing Documents; or
 - (iii) the GOP has given its prior written approval; provided however, that the GOP hereby agrees that such approval shall be granted unless the GOP determines in its sole 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 the GOP receiving a written request therefor.

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 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 by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. "Force Majeure Events" hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) the following political events that occur inside or directly involve Pakistan (each a "PPFME"):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive days or more; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide; or
 - (iv) any change in the legal or constitutional status of AJ&K or the territories now forming AJ&K; or

- (v) change in the operational pattern/water flow of river/canal for any reason whatsoever, compared with the historic pattern of water flow, which materially and adversely affects the in-flow and out-flow of water to or from the Complex;
- (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, but only where such event is on a level that exceeds the design criteria of the Power Station, except for the maximum credible seismic design event as specified in Schedule 2 to the Power Purchase Agreement; or
 - (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide; or
 - (iv) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation; or
 - (v) epidemic or plague.
- (d) Force Majeure Events shall expressly not include the following conditions, except and to the extent that such events or circumstances occur directly as a consequence of a Force Majeure Event:
 - (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor;

- (iii) breakdown in machinery or equipment; or
- (iv) normal wear and tear or random flaws in materials and equipment or breakdown in equipment.

Section 13.2 Notification Obligations

- (a) If, by reason of a Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, no later than the later of forty eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Company and the GOP, and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, no later than seven (7) days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate, or when reasonably requested so to do by the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (i) The affected Party shall provide notice to the other Party of (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event, and (ii) its ability to recommence performance of its obligations under this Agreement as soon as possible and in any event no later than seven (7) days after the occurrence of each of the clauses (i) and (ii) hereabove.

- (ii) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the forty eight (48) hour period or six (6) hour period required under Section (a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 13.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty eight (48) hour period or six (6) hour period required by Section 13.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 13.4 from the date of commencement of the relevant Force Majeure Event.

Section 13.3 Duty to Mitigate

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

Section 13.4 Delay Caused by Force Majeure

So long as the affected Party has, at all times since the occurrence of the Force Majeure Event complied with the obligations of, Section 13.3 and, relevant Sections of AJ&K IA and WUA and continues to so comply, then (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event, and (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 13.4 to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred. Other than for breaches of this Agreement by the other Party, the other Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event.

Notwithstanding the foregoing, the GOP shall not be entitled to claim for itself, and shall not be relieved of its obligations under this Agreement or under the Guarantee by the occurrence of a Pakistan Political Event or a Change in Law.

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

- (a) Any material modification or capital addition to the Complex necessitated by application of any Laws of AJ&K (as defined in the AJ&K Implementation Agreement) through adoption of any Laws of Pakistan enacted after the date of this Agreement shall constitute a Change in Law under this Agreement and be compensated by way of Supplemental Tariff which shall be payable by the Power Purchaser in accordance with the Power Purchase Agreement and to the extent not paid by the Power Purchaser to the Company by the GOP pursuant to this Article V.
- (b) Except as provided in Section 13.5.(c) below, if a Pakistan Political Force Majeure Event is also a State Political Force Majeure Event under, and as defined in, the AJ&K Implementation Agreement, then the Company shall be entitled to compensation by the GOP and the Power Purchaser, to the extent compensation is available under this Agreement and the Power Purchase Agreement (as the case may be), and the Company shall make no claim in respect thereof on the AJ&K Entities.
- (c) If a Pakistan Political Force Majeure Event (i) is an event or circumstance set out in Section 13.5(a) above, (ii) is also a State Political Force Majeure Event under, and as defined in, the AJ&K Implementation Agreement and (iii) occurs only inside AJ&K, then the Company shall only be entitled to be compensated by the GOAJK to the extent compensation is available under the AJ&K Implementation Agreement.

ARTICLE IV
TERMINATION

Section 14.1 Termination for Default

- (a) Company Event of Default; Termination by the GOP Each of the following events shall be an event of default by the Company (each a “Company Event of Default”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the GOP to terminate this Agreement pursuant to Section 14.2; provided, however, that no such event shall be a Company 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 Power Purchaser of the Power Purchase Agreement [or the Provincial Government of the Water Use Agreement] or (iii) if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(a)(x)) or if it results from a breach by the GOAJK or the Council of the AJ&K Implementation Agreement; or if it results from a breach by the GOAJK of the Water Use Agreement; or if it occurs as a result of or during an AJ&K Force Majeure Event for the period provided pursuant to Section [] of the AJ&K Implementation Agreement or Section [] of the Water Use Agreement (as the case may be) or if it results from non-availability of water within Technical Limits:
- (i) failure of the Company to have achieved Construction Start within ninety (90) days after Financial Closing;
 - (ii) failure of the Company to achieve the Commercial Operations Date within four hundred (400) days after the Required Commercial Operations Date;
 - (iv) after Construction Start but prior to the achievement of the Commercial Operations Date, the failure of the Company 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;

- (v) after the Commercial Operations Date, an Abandonment by the Company without prior notice to and the prior written consent of the GOP that continues for a period of thirty (30) consecutive days;
- (vi) other than the assignments to and by the Lenders contemplated under Section 11.2, the assignment or transfer of the Company's rights or obligations in the assets identified in Section 11.2(a) without obtaining the prior written consent of the GOP or the transfer, conveyance, loss, or relinquishment of the Company's right to own and/or operate the Complex or any material part thereof or to occupy the Site, to any Person (other than the Power Purchaser pursuant to the Power Purchase Agreement) without the prior written approval of the GOP;
- (vii) 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 Company for the winding up of the Company; (b) the voluntary filing by the Company 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 Company after notice to the Company 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 Company of an order winding up the Company that is not stayed or reversed by a court of competent authority within ninety (90) days;
- (viii) any statement, representation, or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made, and such failure or

incorrect statement, representation, or warranty having a material and adverse effect on the Company's ability to perform its obligations under this Agreement or on the obligations or liabilities of the GOP under this Agreement;

- (ix) exercise by the Lenders of their remedies under the Financing Documents with respect to either the Complex, its assets or the pledged Ordinary Share Capital, such that either the Company or its management are removed by the Lenders from control of the Complex or the Company and the failure by the Lenders to deliver an Election Notice (as defined in Section 14.4) or to transfer the Complex and the rights and obligations of the Company under the Agreement and the Power Purchase Agreement to a Transferee within two hundred and forty (240) days thereafter;
- (x) any material breach or default by the Company of or under this Agreement or the Power Purchase Agreement [or the Water Use Agreement] that is not remedied within thirty (30) days after notice from the GOP, Power Purchaser [or the Provincial Government], respectively, stating that a material breach of such agreement has occurred that could result in the termination of the agreement and identifying the material breach in question in reasonable detail; or
- (xi) any default by the Company in the making of any payment or payments required to be made by it under this Agreement or the Power Purchase Agreement [or the Water Use Agreement], as the case may be, on the due date specified in such agreement that continues unpaid for thirty (30) days.
- (xii) the revocation or termination by (A) the GOAJK or the Council, following the exhaustion of any cure rights of the Company (and the Lenders, if any) thereunder of the AJ&K Implementation Agreement due to a default or breach by the Company thereunder, or (B) the

GOAJK, following the exhaustion of any cure rights of the Company (and the Lenders, if any) thereunder, of the Water Use Agreement due to a default or breach by the Company thereunder;

(b) GOP Event of Default: Termination by the Company 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 Company to terminate this Agreement pursuant to Section 14.2; provided, however, that no such event shall be a GOP Event of Default if it results from a breach by the Company of the Power Purchase Agreement or this Agreement [or the Water Use Agreement], or if it occurs as a result of a Force Majeure Event (except in the case of Section 14.1(b)(ii)) or AJ&K Implementation Agreement or Water Use Agreement, or if it occurs as a result of a Force Majeure Event (except in the case of Section 16.2(b)):

- (i) the dissolution, pursuant to law of the Power Purchaser, except for an amalgamation, reorganization, reconstruction, or further privatization of the Power 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 Company provides an adequate alternative to the Guarantee and all of the Power Purchaser's obligations under the Power Purchase Agreement are assigned pursuant to law or contractually assumed, through novation or otherwise, by one (1) or more entities, each with the lead 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 of or under this Agreement that is not remedied within thirty (30) days after notice from the Company to the GOP stating that a material breach of the Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail;
- (iv) any material breach or default by the Power Purchaser or the AJ&K/Provincial Government of or under the Power Purchase Agreement or AJ&K IA or the Water Use Agreement that is not remedied within thirty (30) days after receipt of a notice from the Company to the Power Purchaser or the AJ&K/Provincial Government, respectively, with a copy of the notice to the GOP that states that a material breach of the Power Purchase Agreement or the Water use Agreement, as the case may be, has occurred that could result in the termination of the Power Purchase Agreement or the Water Use Agreement, as the case may be, identifies the breach in reasonable detail;
- (v) (A) any change in any applicable Laws of Pakistan (1) making unenforceable, invalid, or void any material undertaking of the GOP, the Power Purchaser or the AJ&K/Provincial Government under this Agreement, the Guarantee, the Power Purchase Agreement, or AJ&K Implementation Agreement or the Water Use Agreement or (2) making it unlawful for the Company, the Lenders or the Investors to make or receive any payment, to perform any 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 Power Purchase Agreement), or (3) 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 (1) (2) or (3) 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, or (B) any decision, determination or other action, on or after the date hereof, by NEPRA that does not result from a proceeding initiated by the Company or is not expressly provided in or contemplated by the Tariff Approval or this Agreement and that has the effect of reducing the Tariff or any component of the Tariff (each as in effect on the date of execution of this Agreement); or;

- (vi) any change in any of the Laws of Pakistan placing any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of the execution of this Agreement) on the ability of the Company to exchange Rupees for Specified Foreign Currency, or for Foreign Investors to repatriate, any capital, dividends, distributions or other proceeds from the Company (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 Company or its Foreign Investors from all such restrictions and limitations;
- (vii) The expropriation, compulsory acquisition, or nationalization by the GOP or any Public Sector Entity of (i) any Ordinary Share Capital, or (ii) any material asset or right of the Company (except as contemplated by the Project Agreements); or
- (viii) Any procurement by the GOP or any Public Sector 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 Company or its management (and there shall be an irrebuttable presumption that the ownership by the GOP and/or any Federal Entity of more than twenty five percent (25%) of the Ordinary Share Capital shall constitute such control).

- (ix) the revocation or termination of the AJ&K Implementation Agreement or the Water Use Agreement by the Company due to a default or breach by the GOAJK or the Council (as applicable) thereunder, following the exhaustion of any cure rights of the GOAJK or the Council (as applicable) thereunder.

Section 14.2 Termination Notices

- (b) Upon the occurrence of a GOP Event of Default or a Company 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 Company Event of Default or the GOP Event of Default, as the case may be, giving rise to such notice.
- (c) Following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the Company 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 Company 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 Company Event of Default or GOP Event of Default, as the case may be.

- (d) Subject to the provisions of Section 14.3 or Section 14.4, as the case may be, upon expiration of the cure period described in Section 14.2(b) and unless the Parties shall have otherwise agreed or unless the Company 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, whereupon this Agreement shall terminate on the date (the "Termination Date") specified in the Termination Notice, which date shall not be earlier than ten (10) Business days or later than thirty (30) days following the date of delivery of the Termination Notice to the other Party, and the provisions of Article XV (*Rights and Obligations of the Parties upon Termination*) shall apply.

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

- (a) Anything in this Agreement notwithstanding, the Company shall not seek to terminate the Power Purchase Agreement due to any default by the Power Purchaser thereunder or the Water Use Agreement due to any default by the Provincial Government thereunder without first giving, with respect to any such default, a copy of any notice required to be given to the Power Purchaser under Section 16.2 and Section 16.3 of the Power Purchase Agreement or to be given to the Provincial Government under Section 11.1 and Section 11.2 of the Water Use Agreement to the GOP, such notice to include a reasonable description of such default and shall provide to the GOP the opportunity to cure any such default within the same cure period as provided to the Power Purchaser under the Power Purchase Agreement or the Provincial Government under the Water Use Agreement and such cure period to commence upon delivery of each such notice to the GOP. Each such notice shall be deemed to have been delivered (a) when presented personally to the GOP, (b) when transmitted by facsimile, or (c)

five (5) days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the GOP, at the address indicated in Section 18.1(a) (or such other address as the GOP may have specified by written notice delivered in accordance therewith).

- (b) No such rescission or termination of this Agreement or the Power Purchase Agreement or the Water Use Agreement by the Company 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 or to perform any act required of the Power Purchaser under the Power Purchase Agreement or the Provincial Government under the Water Use Agreement with the same effect as if the payment or act had been made or performed by the Power Purchaser. If the GOP fails to cure or is unable or unwilling to cure a default of the Power Purchaser or the Provincial Government within the cure periods provided to the Power Purchaser under the Power Purchase Agreement or the Provincial Government under the Water Use Agreement, as the case may be, the Company shall have all of its rights and remedies with respect to such default as set forth in this Agreement and the Power Purchase Agreement and the Water Use Agreement; provided, however, that if the GOP is diligently attempting to cure any default other than a payment default of the Power Purchaser or the Provincial Government, as the case may be, and demonstrable progress toward affecting such cure is being made, the GOP shall be granted an additional period not exceeding ninety (90) days to affect such cure before the Company may exercise its rights and remedies with respect to such default set forth in this Agreement and the Power Purchase Agreement and the Water Use Agreement.

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

- a) Anything in this Agreement notwithstanding, from and after the occurrence of the Financial Closing, the GOP shall not seek to terminate this Agreement as the

result of any default of the Company without first giving a copy of any notices required to be given to the Company under Section 14.2 to the Lenders. The Lenders shall be entitled to cure any such default within the cure period specified in Section 14.2(b), such cure period shall commence upon delivery of each such notice to the Lenders. If there is more than one (1) Lender, the Lenders will designate in writing to the GOP in the acknowledgement contemplated by Section 11.2(f) an agent (the "Agent"), and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders. Each such notice shall be in writing and shall be deemed to have been delivered (a) when presented personally to the Lender or the Agent, (b) when transmitted by facsimile to the number specified in accordance with the procedure set forth below, or (c) five (5) days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the Lender at the address indicated in the acknowledgement contemplated by Section 11.2(f) (or such other address or to the Agent at such address as the Lenders may have specified by written notice delivered in accordance herewith). Any notice given by facsimile under this Section 14.4 shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lender or the Agent. Notwithstanding the foregoing, if the address of the Lender or Agent is outside Pakistan, any notice delivered to the Lender or Agent pursuant to this Section 14.4 shall be sent by international courier or facsimile, and if sent by facsimile, confirmed by international courier. The address and facsimile number for Lender or Agent shall be provided to the GOP by the Company in the acknowledgement contemplated by Section 11.2(f) and thereafter may be changed by the Lender or the Agent by subsequent delivery of a notice to the GOP at the address or facsimile number for the GOP provided in Section 18.1(a) (or at such other address or facsimile number subsequently delivered to the Lender or the Agent in accordance with this Section 14.4) and otherwise in accordance with the requirements of Section 18.1(a).

b) No rescission or termination of this Agreement by the GOP shall be valid or binding upon the Lenders without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 14.4. The Lenders may make or procure, but shall be under no obligation to make, any payment or perform any act required to be made or performed by the Company, with the same effect as if made or performed by the Company. If the Lenders fail or are unable or unwilling to cure or to procure the cure of any Company Event of Default within the cure period under Section 14.2(b) as provided to the Company in this Agreement, the GOP shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, however, that if the cure by the Lenders of the Company Event of Default requires the Lenders to take control of and occupy the Complex, then before termination of the cure period provided to the Company pursuant to Section 14.2(b), such cure period commencing on the delivery of such notice to the Lenders, the Lenders shall have a further period (the "Evaluation Period") during which the Lenders shall evaluate such default, the condition of the Complex and other matters relevant to the actions to be taken by the Lenders concerning such default, and which Evaluation Period shall end on the sooner to occur of (i) the Lenders' delivery to the GOP of a notice ("Election Notice") that the Lenders have elected to pursue their remedies under the Financing Documents and assume the rights and obligations of the Company under the Agreement as provided in Section 14.2, or (ii) thirty (30) days following the end of the cure period under Section 14.2. Upon delivery of the Election Notice, the Lenders shall be granted, to the extent that they diligently attempt to cure or to procure the cure of such Company Event of Default, an additional period of one hundred and eighty (180) days to cure any Company Event of Default (the "Extended Cure Period"). In the event that the Lenders fail to cure any Company Event of Default required to be cured pursuant to Section 14.2 on or before the expiration of the Extended Cure Period, the GOP may exercise its rights and remedies with respect to such default set forth in this Agreement, the

GOP may immediately terminate this Agreement, and such termination shall be effective on delivery to the Lenders or the Agent of a notice of such termination.

Section 14.5 Termination due to Political Events or Change in Law

If the Power Purchase Agreement is terminated pursuant to Article XV of the Power Purchase Agreement as a result of a PPFME, a Change in Law or a Restoration schedule failure by the Company or by the Power Purchaser with the approval of the GOP, as applicable, and the GOP is required or elects to acquire the Complex as provided in Article XV, this Agreement shall immediately terminate and the GOP shall pay to the Company 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, the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party; provided, that the remedies and Compensation Amounts provided in Article XV are the exclusive remedies available to each Party with respect to any termination of this Agreement as a consequence of the events described therein.

Section 14.7 Termination of the AJ&K Implementation Agreement

Notwithstanding anything to the contrary in this Agreement or in the Guarantee, no termination of the AJ&K Implementation Agreement by the GOAJK due to a State Political Force Majeure Event or Change in Law (as defined in the AJ&K Implementation Agreement) or election by the GOAJK to acquire the Complex pursuant to the AJ&K Implementation Agreement shall be effective without the prior written approval of the GOP; provided, however, that any Minimum Monthly Energy Payments to which the Company may be entitled under the AJ&K Implementation Agreement shall continue to be

payable to the Company until the termination of the AJ&K Implementation Agreement becomes effective.

ARTICLE XV
RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

Section 15.1 Compensation Upon Termination

- a) Company Event of Default In the event the GOP terminates this Agreement pursuant to Section 14.1(a) as a result of a Company Event of Default, the GOP or its designee shall have the right, but shall not be required, to acquire all of the Company's rights, title and interests in and to the Complex; provided, however, that if the GOP elects to acquire the Complex, the Complex will be transferred to the GOP or its designee and the GOP or its designee will acquire the Complex and simultaneously pay to the Company the Compensation Amount set forth in Row 1 of Part I of Schedule 2 in accordance with the transfer provisions set out in Section 15.5 and Section 15.6. If the GOP has not elected to purchase the Complex within ninety (90) days following the Termination Date, the GOP shall have no further rights or interest in the Complex, or obligations to, the Company.
- b) GOP Event of Default In the event the Company terminates this Agreement pursuant to Section 14.1(b)(i) through (vi) as a result of a GOP Event of Default, the Company may elect to transfer the Complex to the GOP or its designee and, in such event, the Complex shall be transferred to the GOP or its designee and the GOP or its designee shall simultaneously pay the Company the Compensation Amount set forth in Row 2 of Part I of Schedule 2 in accordance with the transfer provisions set out in Section 15.5 and Section 15.6.
- c) Termination Following Change in Law In the event of a termination of the Power Purchase Agreement by the Power Purchaser or Company following a Change in Law pursuant to Article XV of the Power Purchase Agreement, the Complex shall be transferred to the GOP or its designee and the GOP or its designee shall simultaneously pay the Company the Compensation Amount set forth in Row 3 of Part I of Schedule 2 in accordance with the transfer provisions set out in Section 15.5 and Section 15.6.

d) Termination for Company Schedule Failure Following Other Force Majeure Event If, following an Other Force Majeure Event, the Power Purchaser (with the approval of the GOP) terminates the Power Purchase Agreement pursuant to Article XV thereof as a result of the Company's failure to timely complete the Restoration, the GOP or its designee shall have the right, but shall not be required, to acquire all of the Company's rights, title, and interests in and to the Complex; provided, however, that the Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Company the Compensation Amount set forth in Row 4 of Part I of Schedule 2, in accordance with the transfer provisions of Section 15.5 and Section 15.6. If the GOP does not elect to purchase the Complex within thirty (30) days of receipt of a copy of a Termination Notice (as defined in the Power Purchase Agreement) delivered by the Company to the Power Purchaser thereunder, the GOP shall have no further rights to or interest in the Complex, whereupon this Agreement shall terminate.

e) Termination following Pakistan Political Event

(i) If, following a Pakistan Political Event, the Power Purchaser and the Company agree or an expert determines that Restoration is feasible, but the Power Purchaser, with the approval of the GOP, elects to terminate the Power Purchase Agreement, the GOP shall pay the Company the Compensation Amount set forth in Row 5 of Part I of Schedule 2. The Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay such Compensation Amount in accordance with the transfer provisions of Section 15.5 and Section 15.6.

(ii) If, following a Pakistan Political Event, the Power Purchaser (with the approval of the GOP) and the Company agree or an expert determines that Restoration is not feasible, the Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall

simultaneously pay the Compensation Amount set forth in Row 6 of Part I of Schedule 2 in accordance with the transfer provisions of Section 15.5 and Section 15.6.

- (iii) If, following a Pakistan Political Event, the Power Purchaser (with the approval of the GOP) and the Company agree or an expert determines that Restoration is feasible, but the Company while using diligent efforts is unable to obtain financing for the Restoration, the Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Compensation Amount set forth in Row 7 of Part I of Schedule 2 in accordance with the transfer provisions of Section 15.5 and Section 15.6.
- (iv) If, following a Pakistan Political Event, the Power Purchaser, with the approval of the GOP, terminates the Power Purchase Agreement in accordance with Article XIII thereof as a result of a failure to timely complete a Restoration by the Company using demonstrable good faith efforts to effect the Restoration pursuant to the Power Purchase Agreement, the Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Compensation Amount set forth in Row 8 of Part I of Schedule 2 in accordance with the transfer provisions of Section 15.5 and Section 15.6. Where the Company is not shown to have used demonstrable good faith efforts, such transfer shall occur, but the Compensation Amount shall be as set forth in Row 11 of Part I of Schedule 2.
- (v) If, pursuant to the Power Purchase Agreement, a Pakistan Political Event materially affecting the operation of the Complex has continued uninterrupted for more than one hundred and eighty (180) days (without regard to the period of time that the effects thereof may have continued), intermittent Pakistan Political Events materially affecting the operation of the Complex have occurred for one hundred and eighty (180) days

(without regard to the time period that the effects thereof may have continued) in any Year, or following a Change in Law, an expert has determined that Restoration or modification of the Complex is not technically feasible or the Power Purchaser, with the approval of the GOP, has determined that the costs of Restoration or modification are unacceptable and the Change in Law has not been modified or rescinded to make such Restoration or modification technically or financially acceptable to the Power Purchaser and the Complex has not been operated for one hundred and eighty (180) days, and either the Power Purchaser (with the approval of the GOP) or the Company terminates the Power Purchase Agreement pursuant to Article XIII or Article XIV thereof, the Company shall transfer the Complex to the GOP or its designee and the GOP or its designee shall simultaneously pay the Compensation Amount set forth in Row 9 (for a Power Purchaser termination) or Row 10 (for a Company termination) of Part I of Schedule 2 in accordance with the transfer provisions in Section 15.5 and Section 15.6.

- (vi) If, following a revision of the Restoration Cost Estimate or the Restoration Schedule pursuant to Article XIII of the Power Purchase Agreement, the Power Purchaser, with the approval of the GOP, elects to terminate the Power Purchase Agreement, the Company shall transfer the Complex to the 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 transfer provisions of Section 15.5 and Section 15.6.
- f) Expiration of the Natural Term. At the end of the Term (as such Term may be extended pursuant to Section 2.1), the Company (or any assignee or designee) or Transferee who has assumed or otherwise acquired the rights, title and interests of the Company in the Complex and in this Agreement) shall transfer the Complex and all of the Transferable Assets to the GOP (or its designee) for

consideration of one Rupee (Rs.1) in accordance with the transfer provisions in Section 15.5 and Section 15.6. This obligation of the Company to transfer the Complex and all Transferable Assets to the GOP at the end of the Term (as such Term may be extended pursuant to Section 2.1) shall survive any early termination of this Agreement where the GOP elects not to acquire or the Company elects not to transfer the Complex and the Transferable Assets to the GOP (or its designee). However in case of projects located in AJ&K the Company or the Transferee or the GOP (in the event that GOP acquires the Complex upon payment of the Compensation due in accordance with the terms and conditions of this Agreement) shall transfer the Complex and all of the Transferable Assets to the Government of AJ&K.

- g) Use of Certain Insurance Proceeds. Whenever the Power Purchase Agreement is terminated pursuant to Article XV thereof following a Force Majeure Event, and the GOP is obligated to pay compensation to the Company pursuant to this Section 15.1 and insurance proceeds are available in connection with the Force Majeure Event, the total amount of the net proceeds made available or to be made available under the insurance policies with respect to the Complex shall, if not used to effect a Restoration or make repairs to the Complex, be used to pay the following items in the following order of priority:
- i) to the payment of all indebtedness secured by the Complex;
 - ii) then to the other compensation, if any, payable by the GOP to the Company as set forth in Schedule 2; and
 - iii) then to the Company.
- h) Assignment and Assumption of Water Use Agreement In the event of a termination of this Agreement and the termination of the Power Purchase Agreement and the transfer of the Complex to the GOP in accordance with the provisions of this Article XV , at the written election of the GOP, the Company

shall assign, as of the date of transfer of the Complex, the Water Use Agreement to the GOP (or its designee), as required by the GOP in such election, and the GOP (or its designee) shall assume all of the rights, benefits and obligations of the Company under the Water Use Agreement from and after the date of such transfer.

i) Transfer of the Complex – Termination of the AJ&K Implementation Agreement

Upon the earlier termination of the AJ&K Implementation Agreement pursuant to the terms of the AJ&K Implementation Agreement, if the GOAJK elects not to acquire the Complex or if the Company elects to transfer the Complex to the GOAJK and the GOAJK fails to pay the applicable compensation amount due and payable in accordance with the AJ&K Implementation Agreement, the GOP shall have the option to terminate this Agreement and elect to acquire the Complex; provided, however, that upon such election and transfer the GOP pays the Company the applicable compensation amount that would have been due and payable in accordance with the AJ&K Implementation Agreement together with any interest/return (including default interest/return at the default rate, calculated in accordance with the AJ&K Implementation Agreement), late payment charges, costs, fees that have accrued between the date the GOAJK should have paid the compensation and the date the compensation amount is paid by the GOP, which payment shall be made by a date which is [] Days after the later of (A) the day on which the GOP elects to acquire the Complex and (B) the last day of the period provided for transfer of the Complex under the AJ&K Implementation Agreement. In the event that the GOP acquires the Complex as aforesaid, the Company shall have no further title to or rights or interest in the Complex. The rights and remedies available to the Company pursuant to the terms of this Agreement and the Guarantee shall be subject to the provision of this Section. In the case where the GOP exercises its option to acquire the Complex in accordance with this Section but fails to pay the applicable compensation that would have been due and payable in accordance with the AJ&K Implementation Agreement, the Company shall be free to make a claim under the Guarantee to the extent permitted by the provisions

of the Guarantee. In the case where the GOP fails to exercise its option to acquire the Complex in accordance with this Section, the Company shall be free to make a claim under the Guarantee to the extent permitted by the provisions of the Guarantee.

Section 15.2 Reimbursement

In the event of a termination of this Agreement for any reason other than a GOP Event of Default, a Pakistan Political Event, or a Change in Law, prior to the Commercial Operations Date, the Company shall reimburse the GOP for all costs and expenses (including reasonable attorneys' fees and expenses) relating to the Project incurred by the GOP prior to the termination, which amount in any event shall not exceed two hundred thousand Dollars (\$200,000).

Section 15.3 Obligations Upon Termination

Upon expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Agreement, provided, however, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Article X (Foreign Currency Exchange and Transfer of Funds), Article IX (Taxation and Import Controls), Article XVI (Resolution of Disputes), and this Article XV (Rights and Obligations of the Parties on Termination) shall survive any termination or expiration of this Agreement until all provisions are fulfilled and all funds payable hereunder by the GOP are received by the Company 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 Company under or pursuant to the Project Agreements have been repatriated and, if the Company or the Foreign Investors so desire in the case of Rupee funds, converted by the Company 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 Company agrees that:

- (a) Not later than the Transfer Date, the Company shall, at its sole cost and expense, provide to the GOP a report by a reputable and qualified engineer or engineering consulting firm reasonably acceptable to the GOP certifying that as of the date of the report the Complex is in the condition and state of repair and maintenance required by this Agreement (including, without limitation, an adequate spare parts inventory on the Site), together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in such report or, if such is not the case, a list of any discrepancies and/or deficiencies in such condition and a remediation plan and a cost estimate of the work required to remedy such discrepancies and/or deficiencies as soon as reasonably practicable and in any event prior to the Transfer Date. The Company, 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 Company shall within thirty (30) days of delivery of the engineer's report deposit funds in escrow sufficient, in the reasonable judgment of GOP, to ensure the full execution of such plan, the amount of which funds shall be estimated by the engineer and specified in the engineer's report or, if not so estimated in such report, shall be determined in the reasonable judgment of the 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 Company. If the Company fails to place funds into escrow as required hereunder, the GOP may deduct such amount from any payments due to the Company hereunder.

- (b) Not later than the Transfer Date, the Company shall provide to the GOP an inspection report by a reputable environmental consulting firm selected by the Company and reasonably satisfactory to the Power Purchaser certifying that, as of the date of the report, the Complex and the Site are in compliance with all applicable Laws of Pakistan the regulation of the environment, including the Environmental Standards, and that no Hazardous Materials are present on, in or under the Complex or the Site or are leaking from the Site or, if such firm cannot so certify due to the condition of the Complex or the Site or presence of Hazardous Materials on, in or under, or Hazardous Materials are leaking from, the Site of 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 Company 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 Power Purchaser, to ensure the full execution of the plan. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remedial response plan, 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 GOP. 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 Company. If the Company fails to place funds into escrow as required hereunder, such amounts may be deducted from any payments due to the Company hereunder, and the GOP shall apply such funds to the purposes contemplated hereunder.

- (c) If there is a long term services agreement that the Company has used as the basis for satisfying the obligation to establish a Reserve Fund under Section 9.9 of the Power Purchase Agreement, such agreement must be assignable through novation to the GOP or its designee upon the transfer of the Complex to the GOP or its designee pursuant to this Article XV. In connection with and at the time of, any transfer of the Complex to the GOP or its designee, the GOP shall have the right but not the obligation to have the long term services agreement assigned through novation to it or its designee. The Company 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

- (d) As soon as reasonably practicable and in any event no later than sixty (60) days after the Termination Date, the Company shall submit an invoice (the "Termination Invoice") to the GOP setting out the amounts payable by GOP, if any, to the Company pursuant to Section 15.1 (*Compensation upon Termination*). The Termination Invoice shall be accompanied by a certification of a reputable international accountancy firm, experienced in the methods of valuation of utility assets and agreed upon by the Parties or otherwise appointed by the President of the Pakistan Institute of Chartered Accountants pursuant to Section 16.2 (*Determination by Expert*), verifying the calculation of all of the elements listed in the Termination Invoice, which calculation shall be used in the preparation of the Termination Invoice.
- (e) In the case of an early termination of this Agreement, the GOP shall pay to the Company the amount shown in the Termination Invoice (less any amounts the GOP or the Power Purchaser is owed by the Company under this Agreement or under the Power Purchase Agreement) no later than the one hundred and eighty

(180) days following the Termination Date. On the transfer date, such payment shall be made by the GOP and simultaneously the Transferable Assets shall be transferred to the GOP or its designee (the "Transfer Date").

- (f) 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.
- (g) If any Tax is imposed on or withheld from payments to be made by the GOP to the Company under this Article XV in connection with a transfer to the GOP or its designee of the Transferable Assets, then such payments to the Company shall be increased by an amount such that the Company will receive the same amount which it would in exchange for the Transferable Assets had no such Tax been imposed or withheld.
- (h) The Parties acknowledge and agree that it would be difficult or impossible to determine at the date of this Agreement with absolute precision the amount of damages that would or might be incurred by the Company or the GOP as a result of the termination of this Agreement (and the Power Purchaser as a result of termination of the Power Purchase Agreement). The Parties agree that the Compensation Amounts payable by the GOP under and pursuant to this Article XV and Schedule 2 (Compensation Amounts) are the Parties' reasonable and genuine estimates for the actual damages and losses that may reasonably be anticipated from such termination, and do not constitute a penalty.

Section 15.6 Transfer of the Complex to the GOP following Termination

- (a) Following any termination of this Agreement where the GOP has the right and elects or is required to acquire the Complex, on the Transfer Date, the Company shall transfer to the GOP or its designee and the GOP or its designee shall pay the applicable Compensation Amount and shall simultaneously acquire from the Company, all of the Company's right, title and interest in and to the Transferable Assets. The "Transferable Assets" shall comprise the Complex, the

Site and the Back-Up Metering System, in each case together with all equipment and machinery, including spare parts and vehicles, and all operating manuals and design drawings relating thereto. If there is a long term services agreement that the Company has used as the basis for satisfying the obligation to establish a Reserve Fund under Section 9.9 of the Power Purchase Agreement, such agreement shall constitute a part of the Transferable Assets.

- (b) Where the GOP elects or is required to acquire the Complex, the Company shall transfer the Transferable Assets to the GOP or its designee, as applicable, on the Transfer Date. The Company 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.

Section 15.7 Limitation on Compensation

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

ARTICLE XVI
RESOLUTION OF DISPUTES

Section 16.1 Resolution by Parties

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

Section 16.2 Determination by Expert

- a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 16.1 within the time periods set forth therein, then either Party, in accordance with this Section 16.2, may refer the Dispute to an expert (the "Expert") for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 16.3 without first referring it to an Expert.
- b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the Person it proposes to be the Expert. Within fifteen (15) days of receiving such notice, the other Party shall notify the initiating Party whether such Person is acceptable, and if such nominated expert is not acceptable to the responding Party, the responding Party shall propose a Person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the Person is not acceptable or nominates an expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business days and discuss in good faith for a period of five (5) days to agree upon a Person to be the Expert. Failing nomination by the responding Party of an expert within the period provided or failing such agreement by the Parties of the Expert, at the end of the

meeting, the President of the Pakistan Institute of Chartered Accountants (for financial or billing matters) or the Vice-Chancellor of University of Engineering and Technology, Lahore (UET) (for technical matters) shall be requested to select the Expert, and the selection of the Expert shall be binding on the Parties; provided, however, that the selecting entity shall be directed that the Expert shall not be an employee or agent or former employee or agent or have an interest in the business of either Party or any Affiliate of either Party.

- c) (i) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (A) a description of the Dispute;
 - (B) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (C) copies of records supporting the initiating Party's position.
- (ii) Within ten (10) days of the date that a Party has submitted the materials described in Section 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)(i)(b), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- f) The Expert shall provide a recommendation within fifteen (15) days after the ten (10) day response period provided in Section 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) day period, as may be extended by the Parties, the Parties may review and discuss the recommendation with each other in good faith for a period of ten (10) days following delivery of the recommendation before proceeding with any other actions.
- g) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- h) Unless the Parties agree in writing at the time the Expert is selected, stating that the recommendation of the Expert shall be binding, the recommendation of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 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 shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from terminating the Expert proceedings and referring the matter immediately to arbitration in accordance with Section 16.3 (*Arbitration*).
- l) Either Party may serve a written notice on the other Party within thirty (30) days of the Expert's decision having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the decision of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty-five (45) days period after serving such notice. Notwithstanding anything to the contrary expressed in this Article XVI, either Party may require arbitration of a Dispute pursuant to Section 16.3 without reference to an Expert under this Section 16.2.

Section 16.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 16.1 (*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 the rules of the London Court of International Arbitration as in effect on the date of this Agreement (the "Rules") by one (1) arbitrator appointed in accordance with the Rules. The arbitration

proceedings shall be conducted, and the award shall be rendered, in the English language.

- (b) If under the Laws of Pakistan the application of the Rules to the arbitration established for the resolution of a Dispute would not result in an enforceable award then such Dispute shall be finally settled by arbitration under the Rules of Arbitration of the United Nations Commission and International Trade Law ("UNCITRAL Rules") as in effect on the date of this Agreement by one (1) arbitrator appointed in accordance with the UNCITRAL Rules.
- (c) The arbitration shall be conducted in Islamabad, Pakistan; provided, however, that if the amount in Dispute is greater than five Million Dollars (\$5,000,000) or the amount of such Dispute together with the amount of all previous Disputes submitted for arbitration pursuant to this Section 16.3 exceeds Seven Million Dollars (\$7,000,000) or an issue in Dispute is (i) the legality, validity or enforceability of this Agreement or any material provision hereof, or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require that the arbitration be conducted in London, United Kingdom in which case the arbitration shall be conducted in London. Except as awarded by the arbitrator and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with arbitration hereunder. Notwithstanding the foregoing, if either Party requires that arbitration of any Dispute be conducted in London the arbitration shall be conducted in London and if the Dispute is not of a type that could have been conducted in London in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London shall pay all costs of arbitration as and when incurred by the other Party (including out of pocket costs but excluding any award made by the arbitrator) in excess of the costs that would have been otherwise incurred by such other Party had the arbitration been conducted in Islamabad, Pakistan; provided, further, that the Party requiring that arbitration be conducted in London may seek a determination that the Dispute or the

defence thereof is spurious and without any merit whatsoever, and upon such a final and binding determination, any amounts paid to the other Party to cover such excess costs shall be returned to the paying Party.

- (d) Unless the Parties otherwise agree, no arbitrator appointed pursuant to this Section 16.3 shall be a national of the jurisdiction of either Party or of the jurisdiction of any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Power Purchaser, the Company, the Lenders or any Investor that directly or beneficially owns five percent (5%) or more of the Ordinary Share Capital.

Section 16.4 Commercial Acts

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

Section 16.5 Sovereign Immunity; Jurisdiction

- (a) The GOP hereby irrevocably and unconditionally agrees that:
 - (i) should any proceedings be brought against the GOP or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges provisions of any legislation (the "Protected Assets") in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the GOP on behalf of itself or any of its assets (other than the Protected Assets);
 - (ii) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and

- (iii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use.

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

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

ARTICLE XVII
GUARANTEE

The GOP shall execute and deliver to the Company the Guarantee, within five (5) Business Days of receiving notice in writing from the Agent that:

- a. the Financing Documents have been executed, which, together with equity commitments, evidence sufficient financing for the construction of the Complex;
- b. all conditions precedent (other than the receipt by the Company of the Guarantee) for the initial availability of funds under the Financing Documents have been satisfied or otherwise waived;
- c. the Company has delivered the Company Letter of Credit to the Power Purchaser in accordance with the terms of the Power Purchase Agreement.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

Section 18.1 Notices

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

If to the GOP:

Private Power & Infrastructure Board
50, Nazimuddin Road, F-7/4,
Islamabad, Pakistan

Attention: Managing Director
Telephone No: 92 51 9205421
Facsimile No:

If to the Company:

Attention: [Chief Executive Officer]
Telephone No:
Facsimile No:

- (b) All notices shall be deemed delivered (i) when presented personally, (ii) if received on a business day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified hereabove and, if received on a day that this is not a business day for the receiving Party, on the first business day of the receiving Party following the date transmitted by facsimile to the receiving Party's facsimile number specified hereabove, (iii) two (2) days after being delivered to a courier for overnight delivery, addressed to the receiving

Party, at the address indicated hereabove or, (iv) five (5) days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address specified hereabove (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

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

Section 18.2 Governing Law

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

Section 18.3 Amendment

This Agreement can be amended only by agreement between the Parties in writing, executed by a duly authorized representative of each of the Parties. No amendment, modification, supplement, extension or restatement of the Power Purchase Agreement or the AJ&K Implementation Agreement or the Water Use Agreement shall be effective without the prior written consent of the GOP if such amendment increases or potentially increases the liability of the GOP under this Agreement or the Guarantee.

Section 18.4 Third Parties

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

Section 18.5 No Waiver

- (a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement:
 - (i) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or
 - (ii) shall be effective unless in writing duly executed by a duly authorized representative of such Party.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one (1) Party to the other, shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

Section 18.6 Relationship of the Parties

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

Section 18.7 Survival

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

Section 18.8 Language

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

Section 18.9 Entirety

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

Section 18.10 Confidentiality

- (a) Each of the Parties and their Contractors, subcontractors, consultants and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the design and construction of the Power Purchaser Interconnection Facilities and the design, construction, insurance, operation, maintenance, transfer, management and financing of the Complex, and all information and documents obtained by it in the course of any inspection performed in accordance with the terms of this Agreement, and shall not, without the consent of the other Party, save as required by law or appropriate regulatory authorities, prospective lenders to, or investors in the Company and their professional advisers, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other Agreements referred to herein and in agreements prepared and issued or to be prepared and issued in connection with other projects by the GOP.

- (b) The provisions of paragraph (a) hereinabove 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 Liability for Review

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

Section 18.13 Affirmation

- (a) The Company hereby declares that it has not obtained or induced the procurement of this Agreement or the Power Purchase Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP, any Relevant Authority or any Public Sector Entity through any corrupt or illegal business practice.
- (b) Without limiting the generality of the foregoing, the Company represents and warrants that it has fully disclosed in writing all commissions, brokerage and

other fees, and other compensation (other than compensation paid to employees of the Company for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of this Agreement or the Power Purchase Agreement or any contract, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP, any Relevant Authority or any Public Sector Entity, except that which has been expressly declared pursuant hereto.

- (c) The Company accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained in this Section 18.13 and the declarations required by this Section 18.13. It agrees that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the GOP, shall be voidable and without legal effect at the option of the GOP.
- (d) Notwithstanding any rights and remedies that are available to and may be exercised by the GOP in this regard, the Company 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 Company (either directly or indirectly through any natural or juridical Person, including its affiliates, employees, agents, associates, brokers,

consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), as aforesaid for the purpose of obtaining or inducing the procurement of this Agreement or the Power Purchase Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement or the Project from the GOP, any Relevant Authority 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 Company 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 GOP.
- (b) Right of Inspection. The Company shall permit representatives of the GOP, on reasonable notice, to enter upon and inspect the Complex and the design, construction, operation, and maintenance thereof. The Company shall maintain complete and accurate records accounting for all transactions relating to any Restoration of the Complex, which records shall be subject to inspection and audit by the GOP.
- (c) Periodic Reports.
 - (i) The Company shall, as soon as available but in any event within sixty (60) days of filing, furnish to the GOP two (2) copies of all documents filed in

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

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

- (d) Reporting of Changes. The Company shall, at least fourteen (14) days prior to its becoming effective, report to PPIB any contemplated (i) material change in its Memorandum and Articles of Association; (ii) change in its fiscal year; (iii) change in the constitution of its Board of Directors; (iv) change in its Chief Executive Officer, and (v) without prejudice to Section 12.3, registration of a transfer of Ordinary Share Capital to any Person who thereby becomes a registered holder of greater than five (5) percent of the issued Ordinary Share Capital, or of a transfer of Ordinary Share Capital to or from a Person or entity who, immediately prior to such transfer, held greater than five (5) percent of the issued Ordinary Share Capital.

- (e) Lists of Lenders and Creditors. Together with the periodic reports required by Section (i)a.i(i) and (ii), the Company shall also furnish to GOP a list of the Lenders and each of its creditors to which the Company has an outstanding obligation of five hundred thousand Dollars (\$500,000) or more, along with statements or schedules of repayment of local and foreign loans/debts to such Lenders and creditors duly certified by its auditors on a six (6) Monthly basis in each Year. The report shall also indicate any changes, as compared to the report submitted the previous Year that might have occurred.

- (f) Information Regarding Statutory Notice/Winding Up Proceedings
- (i) The Company shall, within seven (7) days of receipt thereof, provide a copy of any notice that the Company may be served under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984 by any of the Lenders or its creditors.
 - (ii) The Company shall provide to the GOP 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 Company 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 Company 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 Company fines and costs established from time to time by the PPIB for such non-compliance. Such fines and costs shall be paid to the PPIB within ten (10) Business Days of notice of such non-compliance and assessment by the PPIB.

18.16 Non-Availability of Water

To the extent that the Company is unable in whole or in part to Commission (as defined in the Power Purchase Agreement) or operate the Complex as a result of non-availability of water in a flow rate within the Technical Limits, the Company shall:

- (a) not be liable for any failure or delay in performing its obligations under or pursuant to this Agreement as a result thereof; and
- (b) be entitled to claim an extension to any performance deadline that the Company is obligated to meet under or pursuant to this Agreement as a result thereof;

provided, however, that no relief, including, without limitation, excuse for any failure or delay in performing its obligations or extension of any performance deadlines, shall be granted to the Company pursuant to this Section to the extent that such failure or delay would have nevertheless been experienced by the Company had the non-availability of water in a flow rate within the Technical Limits not occurred.

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

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

For and on behalf of
THE ISLAMIC REPUBLIC OF PAKISTAN

By: _____
Title: _____

[NAME OF COMPANY]

By: _____
Title: Chief Executive Officer

Witness: _____
Name: _____

Witness: _____
Name: _____

SCHEDULE 1
(SPECIFIED CONSENTS)

SCHEDULE I
KEY

SCHEDULE 2
COMPENSATION AMOUNTS

This Schedule 2 consists of two (2) parts. Part I is a Compensation Table showing in a matrix format the amounts payable by the GOP in connection with a transfer of the Complex following a termination of the Implementation Agreement in accordance with Article XV and Section 14.1. The table refers to various compensation elements, labeled as a, b, c, d and e, which are set forth in Part II.

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

PART I OF SCHEDULE 2 – COMPENSATION TABLE

S.No	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
1.	Termination for a Company Event of Default (other than a Restoration Schedule Default) where the GOP elects to purchase the Complex – Section 15.1(a).	a
2.	Termination for a GOP Event of Default – Section 15.1(b).	a + b + c + d
3.	Termination following a Change in Law – Section 15.1(c).	a + b + c + d
4.	Termination by Power Purchaser (with GOP approval) for a Restoration Schedule Default following an Other Force Majeure Event – Section 15.1(d).	a + e
5.	Termination of the Power Purchase Agreement following a Pakistan Political Event where the Report concludes that Restoration is feasible but the Power Purchaser (with GOP approval) elects to terminate – Section 15.1(e)(i).	a + b + c + d

S.No	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
6.	Termination of the Power Purchase Agreement following a Pakistan Political Event where Restoration is not feasible – Section 15.1(e)(ii).	a + b + d
7.	Termination of the Power Purchase Agreement following a Pakistan Political Event where Restoration is feasible but financing is not available – Section 15.1(e)(iii).	a + b + d
8.	Termination of the Power Purchase Agreement by the Power Purchaser (with GOP approval) for a Restoration Schedule default despite diligence following a Pakistan Political Event – Section 15.1(e)(iv).	a + e
9.	Termination of the Power Purchase Agreement by the Power Purchaser (with GOP approval) after one hundred and eighty (180) days of a Pakistan Political Event – Section 15.1(e)(v).	a + b + c + d (provided, that if the termination occurs prior to the Commercial Operations Date, the component “c” shall be multiplied by a ratio the numerator of which is the equity invested by the Company at the time of termination and the denominator of which is the equity investment commitment shown in the financing plan delivered to the PPIB in accordance with Section 11.3 of this Agreement.

S.No	TERMINATION EVENT	COMPENSATION PAYABLE BY THE GOP
10.	Termination of the Power Purchase Agreement by the Company after one hundred and eighty (180) days of a Pakistan Political Event – Section 15.1(e)(v).	a + b + (c/2) + d (provided, that if the termination occurs prior to the Commercial Operations Date, the component “c” shall be multiplied by a ratio not to exceed one-half, the numerator of which is the equity invested by the Company at the time of termination and the denominator of which is the equity investment commitment shown in the financing plan delivered to the PPIB in accordance with Section 11.3 of this Agreement.
11.	Termination of the Power Purchase Agreement for a Restoration Schedule default without diligence following a Pakistan Political Event – Section 15.1(e)(iv).	a + (e/1.25)
12.	Termination of the Power Purchase Agreement by the Power Purchaser (with the approval of the GOP) following a revision of the Restoration Schedule by the Expert – Section 15.1(e)(vi).	a + b + d

PART II OF SCHEDULE 2 – COMPENSATION ELEMENTS

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

a = the sum of (i) the outstanding principal amount payable to the Lenders under the Financing Documents at the Commercial Operations Date in accordance with the term sheet delivered to and not objected to by the GOP in compliance with Section 11.3 of the Implementation Agreement plus interest accruing thereon in accordance with the term sheet delivered to and not objected to by the GOP in compliance with Section 11.3 of the Implementation Agreement, reduced by payments made on account of the Reference Debt Service Component of the Tariff, plus interest or mark-up (or any other term connoting the return paid to the Lenders on debt) accruing thereon in accordance with the term sheet delivered to and not objected to by the GOP in compliance with Section 11.3 (as may have been adjusted by NEPRA pursuant to the Tariff Approval as of the Commercial Operations Date),(as defined in the Power Purchase Agreement,) plus (ii) the total amount outstanding under any loan agreements for capital improvements to the Complex that are required as a result of a Change in Law or a Pakistan Political Force Majeure Event under the Power Purchase Agreement, as approved by the Power Purchaser pursuant to the terms thereof, taking into account all Supplemental Tariffs, made by the Power Purchaser, less any insurance proceeds received by the Company following a Force Majeure Event and not spent for Restoration, plus (iii) except in the case of termination due to a Company Event of Default, any winding-up costs, breakage costs, prepayment penalties and charges, or similar charges or costs passed through by or payable to the Lenders in accordance with the Financing Documents. For the purpose of clauses (i) and (iii) of this item 'a', the total amount outstanding to the Lenders under the Financing Documents shall be an amount equal to all unpaid principal, reduced by payments made on account of the Reference Debt Service Component of the Tariff accrued interest (excluding default interest, except where such default interest results from a payment default by the Power Purchaser under

the Power Purchase Agreement and the GOP under the Guarantee), or mark-up (or any other term connoting the return paid to the Lenders on debt), fees, and expenses owing to the Lenders as of the date of payment by the GOP which shall be determined and certified by an international accounting firm approved by the Parties. Notwithstanding the foregoing, no accrued interest or mark-up (or any other term connoting the return paid to the Lenders on debt) shall be paid by the GOP for any interest or mark-up (or any other term connoting the return paid to the Lenders on debt) that accrued under the Financing Documents or other loan agreements from and after a default by the Company thereunder unless such default results from a GOP Event of Default or a Power Purchaser Event of Default under the Power Purchase Agreement. The sum of all amounts owing to the Lenders under clauses (i) and (iii) here above shall, within thirty (30) days of a request by the GOP, prior to termination by the GOP, be specified by the Lenders as to such amounts owing on a date no less than sixty (60) days following the request and specified in the request by the GOP; provided, that if termination occurs before the Commercial Operations Date, the "a" component be equal to the amount outstanding under the Financing Documents at the date of the transfer of the Complex to the GOP plus the amounts under clauses (i) and (ii).

- b = as of the date of transfer of the Complex to the GOP, the actual initial equity investment in the Complex, not to exceed the equity investment approved by the GOP in relation to the Financial Closing, reduced on a straight-line basis from the Commercial Operations Date through the Term to zero (0) at the end of the Term; which amount shall be further reduced by the estimated cost of maintenance to be performed during the then Scheduled Outage or Scheduled Outages and the estimated cost of the maintenance to be performed during the next major maintenance overhaul, in each case prorated by the ratio of (i) the number of days in the period from the last such maintenance until the date of termination to (ii) the number of days in the period between the last such maintenance and the scheduled date for the next such maintenance.

- c = for a period equal to the lesser of (i) four (4) years and (ii) the remainder of the initial term of the Power Purchase Agreement, an amount equal to the Net Cash Flow multiplied by the lesser of four (4) and the number of years (including any fraction thereof) remaining in the Term, and discounted to its present value by applying a discount rate equal to twelve percent (12%) shown in the audited financial statements of the Company for the last completed financial year prior to the date of termination.
- d = any additional equity amounts that are contributed by the shareholders of the Company for any of the events described under Article XV of the Power Purchase Agreement plus any such other equity contributions, approved by either the GOP or the Power Purchaser, as the case may be, in each case reduced on a straight-line basis for each year following the date of such equity contribution to zero (0) at the end of the Term.
- e = The summation of (i) any additional equity amounts, that are contributed by the shareholders of the Company for any of the events that are described under Article XV of the Power Purchase Agreement prior to the Force Majeure Event (as defined in the Power Purchase Agreement) giving rise to the Restoration which led to termination of the Power Purchase Agreement pursuant to Article XV thereof, reduced on a straight-line basis for each year following the date of such equity contribution to zero (0) at the end of the Term, plus (ii) original equity contributions, adjusted in the manner described in item (b) hereabove, plus other equity contributions, prior to such Force Majeure Event and approved by the GOP or the Power Purchaser, as the case may be, reduced on a straight-line basis for each year following the date of such equity contribution to zero (0) at the end of the Term.

SCHEDULE 3
FORM OF GUARANTEE

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

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

RECITALS

- (A) WHEREAS, the Guarantor and the Company have entered into an Implementation Agreement (the "Implementation Agreement");
- (B) WHEREAS, the Power Purchaser has entered into or will enter into a Power Purchase Agreement with the Company (the "Power Purchase Agreement"); and
- (C) WHEREAS, the AJ&K Entities have entered into or will enter into a AJ&K Implementation Agreement with the Company (the "AJ&K IA"); and
- (D) WHEREAS, the GOAJ&K has entered into or will enter into a Water Use Agreement with the Company (the "WUA"); and
- (E) WHEREAS, in accordance with Article XVII of the Implementation Agreement, the Guarantor has agreed to enter into this Guarantee of the payment obligations of the Power Purchaser under the Power Purchase Agreement and of the payment obligations of the AJ&K/Provincial Government under the AJ&K IA and Water Use Agreement.

NOW IT IS HEREBY AGREED as follows:

1. GUARANTEE

1.1 Guarantee

- (a) In consideration of the Company entering into the Power Purchase Agreement with the Power Purchaser, the Guarantor hereby irrevocably and unconditionally Guarantees and promises to pay the Company any and every sum of money the Power Purchaser is obligated to pay to the Company under or pursuant to the Power Purchase Agreement that the Power Purchaser has failed to pay when due in accordance with the terms of that agreement, which obligation of the GOP shall include monetary damages arising out of any failure by the Power Purchaser to perform its obligations under the Power Purchase Agreement to the extent that any failure to perform such obligations gives rise to monetary damages.
- (b) In consideration of the Company entering into the AJ&K IA with the AJ&K and WUA with the Provincial Government /AJ&K, the Guarantor hereby irrevocably and unconditionally Guarantees and promises to pay the Company any and every sum of money the Provincial Government/AJ&K is obligated to pay to the Company under or pursuant to the AJ&K and WUA that the Provincial Government/AJ&K has failed to pay when due in accordance with the terms of those Agreements , which obligation of the GOP shall include monetary damages arising out of any failure by the Provincial Government/AJ&K to perform its obligations under the AJ&K and Water Use Agreement to the extent that any failure to perform such obligations gives rise to monetary damages.

1.2 Waiver of Defences

The obligations of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all the covenants, terms, and agreements set

forth in the Power Purchase Agreement, AJ&K IA and the Water Use Agreement shall have been completely discharged and performed, unless waived by the Company in writing. The obligations of the Guarantor shall not be modified or impaired upon (and the Guarantor waives any defence to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- 1.2.1 the extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of the Power Purchaser set forth in the Power Purchase Agreement or of the Provincial Government/AJ&K set forth in the AJ&K IA and Water Use Agreement;
- 1.2.2 Subject to Section 0 of the Implementation Agreement, amendments to the Power Purchase Agreement, AJ&K IA or the Water Use Agreement;
- 1.2.3 the failure, omission, or delay by the Company to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Power Purchase Agreement, AJ&K IA , the Water Use Agreement, or this Guarantee;
- 1.2.4 the bankruptcy, insolvency, or other failure or financial disability of the Power Purchaser, the Provincial Government/AJ&K, or the Company;
- 1.2.5 the addition, or partial or entire release of any guarantor, maker, or other party (including the Power Purchaser and the Provincial Government/AJ&K) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Power Purchase Agreement, AJ&K IA and the Water Use Agreement or by any extension, waiver, amendment, or thing or circumstance whatsoever in law or in equity that may release or create a defence or discharge for a guarantor (other than complete performance in accordance with the terms of the Power Purchase Agreement, AJ&K IA or the Water Use Agreement, as the case may be);
- 1.2.6 any failure of the Power Purchaser or the AJ&K/Provincial Government to comply with the requirements of any law, regulation or order;

- 1.2.7 the dissolution, privatisation, reorganization or any other legal alteration of the legal structure of the Power Purchaser;
- 1.2.8 any assignment pursuant to Section a) of the Implementation Agreement of the Power Purchase Agreement, AJ&K IA or the Water Use Agreement by the Company; and
- 1.2.9 the invalidity or unenforceability of the Power Purchase Agreement or any of its terms, conditions or provisions, caused solely by the GOP or the Power Purchaser.

1.3 Continuing Guarantee

This Guarantee shall be a continuing security and, accordingly, shall extend to cover the balance due to the Company at any time from the Power Purchaser under the Power Purchase Agreement or from the Provincial Government/ AJ&K under the AJ&K IA and Water Use Agreement. No demand made by the Company hereunder shall prejudice or restrict the right of the Company to make further or other demands.

1.4 Additional Security

- 1.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Company may at any time hold in respect of the obligations of the Power Purchaser under the Power Purchase Agreement or of the Provincial Government/ AJ&K under the AJ&K IA and Water Use Agreement.
- 1.4.2 The Company may enforce this Guarantee notwithstanding that it may hold any other guarantee, Lien, or security of or for the obligations of the Power Purchaser under the Power Purchase Agreement or of the AJ&K / Provincial Government under the Water Use Agreement or have available to it any other remedy at law or equity.

1.5 Preliminary Demand

- 1.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from

the GOP, the Company agrees to notify the GOP of the non-payment by the Power Purchaser or the non-payment of the AJ&K/Provincial Government and make demand in writing for payment from the Power Purchaser or the AJ&K /Provincial Government, as the case may be. After thirty (30) days from the date notice of such non-payment was delivered to the GOP, the Company may notify the GOP in writing that payment from the Power Purchaser or AJ&K / Provincial Government, continues to be past due, and make a demand for payment from the GOP under this Guarantee, and the GOP shall make payment within ten (10) Business days following such demand for payment. Late payments hereunder shall bear mark-up at an annual rate equal to the Delayed Payment Rate.

1.5.2 Except as provided in Section 1.5.1, the Company shall not be obliged before taking steps to enforce this Guarantee, to exercise any other remedies that may be available to it under or in respect of the Power Purchase Agreement, or to initiate any proceedings or obtain judgment against the Power Purchaser thereon, or to exercise any other remedies that may be available to it under or in respect of the AJ&K IA or Water Use Agreement, or to initiate any proceedings or obtain judgment against the AJ&K / Provincial Government thereon.

1.6 Certification

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

"We hereby certify that (A) _____ (the "Company") is making this demand on the Government of the Islamic Republic of Pakistan (the "Guarantor") in the amount of Rupees [insert amount] in accordance with Section 1 of the Guarantee dated ____ _____ 200_, by and between the Guarantor and the Company; (B) the amount specified hereinabove is due and payable by the ["Power Purchaser"

under the Power Purchase Agreement between the Company and the Power Purchaser] OR [“AJ&K /Provincial Government” under the Water Use Agreement and AJ&K IA between the Company and the Provincial Government]; (C) demand in writing for payment from the [Power Purchaser] OR [Provincial Government] was delivered to the [Power Purchaser] OR [AJ&K Provincial Government] on or after the date payment was due and notice of such non-payment was delivered to the GOP not less than thirty (30) days prior to the date hereof; and (D) such amount, on the date hereof, remains unpaid by the [Power Purchaser] OR [AJ&K Provincial Government].”

1.7 Subordination

Any right that the Guarantor may at any time have to be indemnified by the Power Purchaser or by the Provincial Government in respect of sums paid out by the Guarantor in performance of this Guarantee, shall be subordinated to the rights of the Company to recover from the Power Purchaser or the Provincial Government, as the case may be, in full all sums that are then due from the Power Purchaser under the Power Purchase Agreement, or from the AJ&K/Provincial Government under the Water Use Agreement and AJ&K IA.

1.8 No Set-off

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

1.9 Arbitration; Jurisdiction

1.9.1 Arbitration

The Parties irrevocably agree that any dispute or difference arising under, out of, in connection with, or relating to, this Guarantee, including, without limitation, any dispute or difference concerning the existence, validity, or enforceability of this Guarantee or any provisions hereof (including the existence, validity or enforceability of the agreements contained in this Section 1.9.1) or as to whether this Guarantee or any provisions hereof (including agreements contained in this Section 1.9.1) are invalid, illegal, or unenforceable (each a "Dispute") shall be resolved in accordance with the provisions of Section 16.3 of the Implementation Agreement, which provisions are, mutatis mutandis, incorporated herein by reference. Each Party hereby consents to the jurisdiction of any courts of competent jurisdiction (including the courts of England) for any action filed by the other Party under this Guarantee, to enforce any award or final decision of any tribunal duly appointed under this Guarantee to resolve any Dispute hereunder between the Parties. Notwithstanding the foregoing, provided that the Guarantor was given reasonable notice of and provided the opportunity to participate in any proceeding initiated by the Company or the Power Purchaser and based upon a claim of a breach or non-performance by the Power Purchaser under the Power Purchase Agreement, any final, non-appealable order or any award issued or given in any such proceeding shall be binding on the Guarantor with respect to any claim by the Company for payment under this Guarantee for any amount finally determined to be owing by the Power Purchaser under the Power Purchase Agreement and not paid by the Power Purchaser as and when required.

1.9.2 Commercial Acts

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

1.9.3 Sovereign Immunity; Jurisdiction

- (a) The Guarantor irrevocably and unconditionally:
- (i) agrees that should any proceedings be brought against it or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges under the Laws of Pakistan (the "Protected Assets"), no claim of immunity from such proceedings will be claimed by or on behalf of the Guarantor, on behalf of itself or any of its assets (other than the Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
 - (ii) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in connection with any such proceedings; and
 - (iii) consents generally to the jurisdiction of any court of competent jurisdiction (including the courts of England) for any action or proceeding filed by the Company under this Guarantee to resolve any dispute between the Parties hereunder or to enforce any award or decision of any tribunal which was duly appointed under this Guarantee to resolve any Dispute between the Parties (including, without limitation, the making, enforcement or execution against or in respect of any assets of the Guarantor whatsoever (other than the Protected Assets)) regardless of its or their use or intended use, and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Guarantor agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

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

3. UNDERTAKING

3.1 Duration

This Guarantee shall remain in full force and effect from and after the date hereof until, with respect to the obligations of the Power Purchaser, the termination of the initial term of the Power Purchase Agreement, and for so long thereafter as any amount owed to the Company by the Guarantor or Power Purchaser in relation to such initial term is or may be outstanding or until, with respect to the obligations of the Provincial Government, the termination of the initial term of the AJ&K IA and Water Use Agreement, and for so long thereafter as any amount owed to the Company by the Guarantor or Provincial/AJ&K Government in relation to such initial term is or may be outstanding

3.2 Tax

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

4. NO WAIVER; REMEDIES CUMULATIVE

4.1 No Waiver

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

4.2 Remedies Cumulative

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

5. NOTICES

5.1 Address for Notices

All notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by registered or certified mail or facsimile. All notices shall be deemed delivered (a) when presented personally, (b) if received on a business day of the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a day that is not a business day of the receiving Party, on the first business day of the receiving Party following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one (1) day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated below (or such other address as such Party may have specified by notice delivered to the delivering Party at its address or facsimile number specified below), or (d) five (5) days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated below (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 below). 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 address for service of each Party and its respective facsimile number shall be:

5.1.1 For the Guarantor: Private Power & Infrastructure Board
50, Nazimuddin Road, F-7/4,
Islamabad, Pakistan.

Attention: Managing Director

Address:

Facsimile:

5.1.2 For the Company:

Attention: [Chief Executive Officer]

Address:

Facsimile:

or such other addresses or facsimile numbers as either Party may have notified to the other Party in accordance with this Section 4.1. Notwithstanding the foregoing, if the address of the Lender or Agent is outside Pakistan, any notice delivered to the Lender or Agent pursuant to Section 14.4 shall be sent by international courier or facsimile, and if sent by facsimile confirmed by international courier.

6. ASSIGNMENT

6.1 Assignment by the Guarantor

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

6.2 Assignment by the Company

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

6.3 Successors

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

7. GOVERNING LAW

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

8. MISCELLANEOUS

8.1 Severability

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

8.2 Definitions

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

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

<p>THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN For and on behalf of THE ISLAMIC REPUBLIC OF PAKISTAN</p> <p>By: _____</p> <p>Title: _____</p>	<p>NAME OF THE COMPANY</p> <p>By: _____</p> <p>Title By: _____</p>
<p>Witness: _____</p> <p>Name: _____</p>	<p>Witness: _____</p> <p>Name: _____</p>