

BALUCHISTAN ENERGY COMPANY LIMITED

And

M/S XXX (PRIVATE) LIMITED

SITE SUB-LEASE AGREEMENT¹

-RELATING TO-

A SOLAR POWERED 50 MW (CONTRACT CAPACITY) POWER GENERATION COMPLEX

AT

WINDER

PROVINCE OF BALUCHISTAN, PAKISTAN

**MADE AT
[], PAKISTAN**

¹ Site Sub-Lease Agreement will be approved by GOB

SITE SUB-LEASE AGREEMENT

This **SITE SUB-LEASE AGREEMENT** (the “**Site Lease Agreement**”) is made at _____ on this XX day of XX, 20XX

By and Between

BALUCHISTAN ENERGY COMPANY (PRIVATE) LIMITED, a private limited company, incorporated under the laws of Pakistan, having its registered office at [•] (hereinafter referred to as “**BECL**” which expression shall, wherever the context requires or permits, include its successors in interest and permitted assigns)

And

M/S XXX (PRIVATE) LIMITED, a company incorporated under the laws of Pakistan, having its registered office at [•], Pakistan (hereinafter referred to as the “**Company**”, which expression shall, wherever the context so requires or permits, include its successors in interest and permitted assigns).

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

RECITALS

- A. WHEREAS**, pursuant to the Alternative and Renewable Energy Policy, 2019 (the “**ARE Policy 2019**”) of the Government of Pakistan, in order to involve the private sector in the development and generation of Alternate or Renewable Energy (as hereinafter defined), BECL has been established to promote and facilitate power generation through including *inter alia* Renewable Energy (as hereinafter defined) sources];
- B. WHEREAS**, consistent with the relevant policies and guidelines on the development and generation of Renewable Energy (as hereinafter defined), the Company intends to design, engineer, construct, commission, insure, finance, operate and maintain the Complex (as hereinafter defined), together with allied and incidental infrastructure and facilities at the Site (as hereinafter defined), for the supply of electric power in accordance with the Energy Purchase Agreement (as hereinafter defined);
- C. WHEREAS**, for the purposes mentioned in Recitals A and B above, BECL has procured certain parcels of land from the GOB under the Land Lease Policy, 2000 as governed under the Colonization of Government Lands Act, 1912 [•], and has further agreed to sub-lease the Site (as hereinafter defined) to the Company for purposes of the Project (as hereinafter defined) under this Site Lease Agreement;
- D. WHEREAS**, the Company, has been granted the Letter of Intent dated [•] by the Purchaser (as hereinafter defined) after being declared a successful bidder through Competitive Bidding (as hereinafter defined) under NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017 and has entered into the Energy Purchase Agreement; and
- E. WHEREAS**, BECL hereby agrees to demise to the Company, the Site by way of an exclusive sub-lease, together with all rights, easements, and privileges appurtenant thereto, to be held and enjoyed by the Company for the purposes of the Project (as hereinafter defined), upon the terms and conditions specified in this Site Lease Agreement.

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 & RULES OF INTERPRETATION

1.1 Definitions

Wherever used in this Site Lease Agreement, the following terms shall bear the meaning ascribed below:

“Arrears” - Any cesses, dues, demands, fees, impositions, levies, liabilities, rents, taxes, or similar other charges payable to the GOB or any Public Sector Entity on account of title, use or occupancy of the Site, except the lease payments and any payment claimed by the GOB on account of a default by the Company of the terms of this Site Lease Agreement.

“Company” - The meaning ascribed thereto in the Recitals to this Site Lease Agreement.

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

“Competitive Bidding” - The competitive process of pre-qualification, obtaining bids and award of bids, organized and carried out by the Purchaser as a “Supplier of Last Resort” under the NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017 ;.

“Dispute” – Any dispute or disagreement or difference arising under, out of, or in connection with or relating to this Site Lease Agreement, including any dispute or difference concerning the existence, legality, validity or enforceability of this Site Lease Agreement or any provision hereof or the obligations or performance of a Party of any obligations under any provision hereof.

“Encumbrances”- Any mortgage, charge, lien or any other arrangement or agreement having the legal effect of creating security on the whole or any part of the Site.

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

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

“GOB” - The Government of Balochistan.

“Late Payment Surcharge” - KIBOR plus [•] per annum, calculated for the actual number of days that the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) day year.

“Laws of Pakistan” - The meaning ascribed thereto in the Energy Purchase Agreement.

“Lenders” - The meaning ascribed thereto in the Energy Purchase Agreement.

“Letter of Intent” - The award of the Project by the Purchaser after successful Competitive Bidding.

“Master Lease Deed” – means the relevant document between the GOB and BECL with respect to the Site.

“Party” or “Parties” - The meaning ascribed thereto in the Recitals to this Site Lease Agreement.

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

“Public Sector Entity” – The meaning ascribed thereto in the Energy Purchase Agreement.

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

“Renewable Energy” – Electric energy generated from solar energy from the use of solar photovoltaic modules.

“Site” - All that piece and parcel of land, measuring [245-02-26 acres of land situated in Winder, Balochistan] and more particularly described in Schedule I (*Description of the Site*), being sub-leased to the Company by BECL under this Site Lease Agreement, including the water-ways, roads, wells, rights-of-way, and other interests in land and any rights, permits and licences acquired or leased to the Company for the purposes of the Complex on, through, above or below the land described in Schedule I (*Description of the Site*) on which all or any part of the Complex is to be built or pursuant to which access thereto is obtained or which is reasonably necessary or appropriate for the operation and maintenance of the Complex.

“Schedule” - A schedule to this Site Lease Agreement, which shall constitute an integral part of this Site Lease Agreement.

“BECL” - The meaning ascribed thereto in the Recitals to this Site Lease Agreement.

“Term” - The term of this Site Lease Agreement as set out in Article IV (*Term and Termination of the Site Lease Agreement*).

1.2 Rules of Interpretation

In this Site Lease Agreement:

- (a) headings are for convenience only and shall be ignored in construing this Site Lease Agreement;
- (b) other than where the context determines otherwise, the singular includes the plural and vice versa;
- (c) references to Articles, Clause and Schedules are, unless otherwise specified, references to Articles and Clauses of, and Schedules to, this Site Lease Agreement;
- (d) unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised on reasonable grounds. Whenever under this Site Lease Agreement a Party is required to exercise discretion by: (a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party, the Party exercising such discretion shall exercise such discretion fairly and reasonably;
- (e) the words “include”, “including, and “in particular” shall not be construed as, nor shall they have the effect of limiting the generality of the preceding words to which they are related;
- (f) references to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- (g) in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith. Notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Site Lease Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damages and/or losses for that particular event or occurrence;
- (h) reference to any Laws of Pakistan shall include reference to such Laws of Pakistan, as amended, re-promulgated, substituted or replaced from time to time;

- (i) the Schedules (and if any schedules or tables thereto) to this Site Lease Agreement form part of this Site Lease Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in Clause 1.1 of this Site Lease Agreement; and
- (j) except as otherwise indicated in this Site Lease Agreement, references to time are references to time and dates are, and shall be construed to be, references to Pakistan standard time.

ARTICLE II GRANT OF SUB-LEASE

- 2.1 BECL represents and warrants to, and covenants with, the Company that BECL is well seized of and has, and shall have and maintain during the Term, good and valid legal and beneficial leasehold ownership, right, title and interest in and to the Site, and is entitled under the laws of Pakistan to grant the exclusive rights in respect of the Site to the Company, for the purposes of the Project in accordance with the terms of this Site Lease Agreement.
- 2.2 In consideration of the Company agreeing to enter into, and performing its obligations under the Energy Purchase Agreement and agreeing to pay the lease payments to BECL in accordance with Article III below, BECL hereby demises unto the Company the Site, by way of an exclusive sub-lease, together with all rights, easements and privileges appurtenant thereto, free from any Encumbrances, encroachments, claims or Arrears, to be held and enjoyed by the Company for the Term and under the other terms and conditions herein specified. BECL hereby indemnifies and holds harmless the Company against all losses arising in connection with or relating to any defect in title pertaining to BECL's (either directly or through its relevant entities) interest or right in or relating to the Site which prevents, impedes or delays the Company from constructing, commissioning or operating the Project in accordance with the Project Agreements provided such losses are not the consequence of any material breach by the Company under this Site Lease Agreement.
- 2.3 The Company accepts the Site, and as a sub-lessee thereof and undertakes to develop at the Site, in accordance with the Project Agreements, the Project in an efficient and timely manner, in accordance with the terms of the Energy Purchase Agreement, including in particular this Site Lease Agreement. Schedule I annexed as part of this agreement (*Description of the Site*).
- 2.4 For the purposes of this Site Lease Agreement, it shall be a breach or default by BECL hereunder, if any representation or warranty given by BECL herein is or proves to be incorrect or misleading.

ARTICLE III LEASE PAYMENTS

- 3.1 The Company shall pay to BECL an amount of PKR 1,065.61 million (Pakistani Rupees One Billion Sixty Five Million Six Hundred Ten Thousand) as consideration for the lease of the Site to the Company. BECL acknowledges the receipt of the aforesaid payment shall be made upfront as full and final lease payment due from the Company in respect of leasehold rights being granted hereunder and the same shall be credited in the designated account of BECL notified in writing to the Company. The lease payment under this Clause 3.1 is to be made within thirty (30) days from issuance of the letter of intent by KE or thirty (30) days from the date of execution of this Site Lease Agreement, whichever is later.

- 3.2 Failure to pay the full and final lease payment within the period set out in Clause 3.1 above shall result in the imposition of the Late Payment Surcharge on the Company by BECL. However, no Late Payment Surcharge shall be payable by the Company if there subsists at the time of payment of the lease payments under this Site Lease Agreement, a breach by the Purchaser under the Energy Purchase Agreement or by the BECL under this Site Lease Agreement.
- 3.3 The lease payment envisaged in terms of Clause 3.1 is all inclusive and shall not be subject to any variation, upwards or downwards,. The Company shall not be liable to pay to the GOB or any Public Sector Entity, any additional amounts, rates, charges, taxes, levies, cesses or other impositions of whatever nature and howsoever called in relation to the sub-lease of the Site by BECL to the Company hereunder, except any such demand on account of default by the Company of this Site Lease Agreement.
- 3.4 The lease payment payable hereunder, shall be liable to withholding tax and deduction in accordance with the laws of Pakistan, and the Company shall furnish to BECL, evidence of payment of such withholding tax or deduction promptly.

ARTICLE IV TERM AND TERMINATION OF SITE SUB-LEASE

- 4.1 This Site Lease Agreement shall commence and be effective on the date hereof and shall, subject to Clause 4.2 below, continue in full force for a period till the thirtieth (30th) anniversary of the execution of this Site Lease Agreement (“**Term**”). For the avoidance of doubt, in the event there is an extension in the term of the Energy Purchase Agreement or on the expiry of the term of the Energy Purchase Agreement, the Company enters into an agreement for the sale of electrical output of the Complex with a prospective purchaser, the term of this Site Lease Agreement shall be correspondingly extended and for such purpose, BECL and the Company shall enter into and execute such further agreements, deeds, instruments or documents as may be necessary or required to give effect to such extension, with the written mutual consent of both Parties.
- 4.2 Notwithstanding anything to the contrary herein contained, this Site Lease Agreement shall be deemed void *ab initio* and of no legal effect if the Company does not achieve the project milestones in accordance with the Letter of Intent.
- 4.3 In the event Clause 4.2 becomes applicable, the Company covenants to immediately hand over peaceful possession of the Site to BECL. Upon such handing over possession of the Site to BECL as aforesaid, BECL shall immediately refund to the Company, the full and final lease payments paid by the Company to BECL in advance. The Parties agree that in the event of any delay in handing over the possession of the Site to BECL as aforesaid, BECL shall be entitled to deduct corresponding lease payments for such period of delay plus the imposition of Late Payment Surcharge.
- 4.4 In the event this Site Lease Agreement expires in accordance with Clause 4.1 at any time after the Company has achieved Financial Closing or project targeted milestones, the Parties shall enter into and execute such further agreements, deeds, instruments or documents as may be necessary or reasonably required by BECL or the Company to give effect to Clause 4.1

**ARTICLE V
MISCELLANEOUS**

- 5.1 Any notice, demand, or communication required or permitted under this Site Lease Agreement shall be in writing and shall be either: (i) delivered personally; (ii) mailed by certified mail, return receipt requested; (iii) sent by courier delivery service; or (iv) facsimile machine, to the respective Parties at the following addresses, unless and until a different address has been designated by written notice to the other Party:

BECL:
Balochistan Energy Company (Private) Limited

[Address]
Email:

The Company:

Address; []
Attention:
Tel No.: +92 []
Email:

- 5.2 The Company shall not assign or transfer any of its rights under this Site Lease Agreement, except to the Lenders as permitted under the Project Agreements, and for the purposes of this Site Lease Agreement, the Lenders shall be entitled to exercise the rights conferred under the Project Agreements in the same manner hereunder, with all references to the “GOB” being construed as references to BECL (in its capacity as lessor under the Site Lease Agreement), all references to the “Seller” shall be construed as references to the Company (in its capacity as lessee under the Site Lease Agreement), and all references to “this Agreement” being construed as references to the Site Lease Agreement. At the request of the Company, BECL shall execute and deliver acknowledgements to the Lenders with respect to any assignment granted to the Lenders pursuant to this Clause 5.2, and the rights of such parties in and to this Site Lease Agreement, as the Lenders may reasonably request in accordance with customary practices in transactions of this nature. BECL shall not assign or transfer any of its rights and obligations under this Site Lease Agreement or under the Master Lease Deed (to the extent sub-leased to the Company hereunder) without the prior written consent of the Company. For the avoidance of doubt, the Parties agree and acknowledge that the Company shall only assign or transfer only such rights to the Lenders, as are granted to it under this Site Lease Agreement. Further, the Parties agree and acknowledge that notwithstanding the foregoing, the ownership rights in respect of the Site shall, without any limitation and qualification, at all times vest with the GOB.
- 5.3 This Site Lease Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings and communications between the Parties in respect thereof, however, nothing herein shall derogate from or supersede any obligation of the Company under any of the Project Agreements.
- 5.4 This Site Lease Agreement shall not be amended or modified orally and no amendment or modification of this Site Lease Agreement shall be effective unless and until the same is in writing and duly executed as an instrument by both Parties.
- 5.5 The failure to exercise or delay in exercising a right or remedy under this Site Lease Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Site Lease Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

- 5.6 This Site Lease Agreement shall be governed by and construed in accordance with the laws of the Islamic Republic of Pakistan.
- 5.7 The Parties shall enter into and execute such further agreements, deeds, instruments or documents as may be necessary or desirable to give effect to this Site Lease Agreement.
- 5.8 Each Party represents and warrants to the other that it has all power, authority and approval required to enter into, execute and deliver this Site Lease Agreement and to perform fully its obligations hereunder, and that it has duly executed and delivered this Site Lease Agreement, which constitutes its valid and binding obligations, enforceable in accordance with the terms hereof.
- 5.9 Subject to Clause 5.2, BECL shall not dispose of, or create or allow any Encumbrance against its interest and estate in the Site or any part thereof, provided that nothing herein shall affect the rights of the Company in this regard under this Site Lease Agreement.
- 5.10 Any Disputes between the Parties hereunder shall be resolved through arbitration in accordance with [the Arbitration Act of 1940].
- 5.11 The Parties recognize that the Site can be used for power generation without adversely affecting, among others, the erection, construction, maintenance and the production output of the Project. As a further commitment to enhancing the adoption of renewable sources for power generation, the Company is encouraged to undertake the plantation of *Jatropha* or other similar plants producing bio fuel throughout the Term of this Site Lease Agreement, subject, however, to soil conditions to be verified by BECL. The Company is encouraged to start plantation as aforesaid within three (3) years after the Commercial Operations Date (as defined in the Energy Purchase Agreement) to the extent it does not adversely affect the Project.

IN WITNESS WHEREOF the Parties acting through their authorized representatives, have caused this Site Lease Agreement to be executed their respective name and on its behalf and have set their hands and seals as of the date first above written, in the presence of subscribing witnesses:

SIGNED, SEALED AND DELIVERED

On behalf of BECL

On behalf of Company

By:.....

By:.....

Title:

Title: Company Secretary

Signature:

Signature:.....

In the presence of Witnesses:

(1)

(2)

SCHEDULE I

DESCRIPTION OF SITE

Details of the land: [245-02-26 acres of land in Winder, Balochistan], coordinates of which are as follows:

[To be inserted]

Measurement and plan of land bounded by: -

[To be inserted]