

PAKISTAN RAILWAY FREIGHT TRANSPORTATION COMPANY (PRIVATE) LIMITED
(ON BEHALF OF PAKISTAN RAILWAYS)
(THE TRANSPORTER)

AND –

HUANENG SHANDONG RUYI (PAKISTAN) ENERGY (PRIVATE) LIMITED
(THE COMPANY)

INLAND COAL TRANSPORT AGREEMENT

- RELATING TO -

AN APPROXIMATELY 1320 MW(GROSS) POWER GENERATION FACILITY
AT SAHIWAL, PROVINCE OF THE PUNJAB,
ISLAMIC REPUBLIC OF PAKISTAN

MADE AT LAHORE,
ISLAMIC REPUBLIC OF PAKISTAN
DATED AS OF 7TH JULY 2015



TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION.....	3
Section 1.1 Definitions	3
Section 1.2 Rules of Interpretation.....	9
ARTICLE II - COMMENCEMENT AND TERM OF AGREEMENT.....	11
Section 2.1 Term.....	11
Section 2.2 Renewal	11
ARTICLE III - START DATE AND THE GUARANTEE.....	12
Section 3.1 Prior to the Start Date	12
Section 3.2 [The Guarantee (PR)]	12
Section 3.3 Daily Scheduled Quantity.....	12
ARTICLE IV - FACILITIES AND POINTS OF TRANSPORTATION.....	13
Section 4.1 Facilities to be provided by the Company	13
Section 4.2 Facilities to be Provided by Transporter	14
Section 4.3 Loading	15
Section 4.4 Free time for loading and Offloading.....	15
Section 4.5 Verification of Quantity at the Loading Point	15
Section 4.6 Unloading of Coal	15
Section 4.7 Verification of Quantity at the Unloading Point	15
Section 4.8 Calibration of Weighing Stations.....	16
Section 4.9 Losses during transportation.....	16
ARTICLE V - SCHEDULING	18
Section 5.1 Year Ahead Estimates.....	18
Section 5.2 Start Date, firm orders and rolling forecast.....	18
ARTICLE VI - PAYMENT AND BILLING.....	19
Section 6.1 Freight Payments	19
Section 6.2 Transporter's Invoice.....	19
Section 6.3 Company's Invoice.....	20
Section 6.4 Payment by the Transporter and the Company	20
Section 6.5 Freight Deposit Account.....	22
Section 6.6 [Suspension].....	22
ARTICLE VII - OUTAGES	24
Section 7.1 Outages	24
ARTICLE VIII DAMAGES	25
Section 8.1 Failure of the Transporter to deliver Coal at or after the Start Date	25
Section 8.2 Failure of the Transporter to deliver Coal following the Commercial Operations Date	25
Section 8.3 Demurrage Charges	26

Section 8.4	Claims for Compensation	26
ARTICLE IX - FORCE MAJEURE		27
Section 9.1	Definition	27
Section 9.2	Notification Obligations	28
Section 9.3	Duty to Mitigate	29
Section 9.4	Delay Caused by Force Majeure	30
ARTICLE X - REPRESENTATIONS, WARRANTIES AND COVENANTS.....		32
Section 10.1	The Transporter's Warranties and Representations.....	32
Section 10.2	The Company's Warranties and Representations.....	33
ARTICLE XI - DEFAULT; TERMINATION.....		35
Section 11.1	Termination by Transporter for Company Default.....	35
Section 11.2	Termination by the Company for a Transporter Default.....	36
Section 11.3	Termination for Default	37
Section 11.4	Compensation upon Termination Due to a Company Event of Default	38
Section 11.5	Compensation upon Termination for Convenience by the Company	39
Section 11.6	Compensation Upon Termination Due to Transporter Event of Default	39
Section 11.7	Termination for a Prolonged Force Majeure Event or Termination of the Implementation Agreement.....	39
Section 11.8	No Further Obligations	39
Section 11.9	Other Remedies	39
ARTICLE XII - COORDINATION.....		41
Section 12.1	The Coordinators	41
Section 12.2	Operational Coordinators	41
Section 12.3	Principal Coordinators	42
Section 12.4	Procedures; No Amendment or Waiver.....	42
ARTICLE XIII - RESOLUTION OF DISPUTES		43
Section 13.1	Resolution by Parties.....	43
Section 13.2	Determination by Expert.....	43
Section 13.3	Arbitration.....	46
Section 13.4	Commercial Acts	48
Section 13.5	Sovereign Immunity; Jurisdiction.....	48
ARTICLE XIV - INDEMNIFICATION		50
Section 14.1	Indemnification by Parties.....	50
Section 14.2	Exceptions to Claims for Indemnification	50
Section 14.3	Rights to Legal Counsel.....	51
Section 14.4	Survival of Obligations	51
ARTICLE XV - MISCELLANEOUS.....		52
Section 15.1	Notices	52
Section 15.2	Amendment.....	53

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Section 15.3	Waivers	53
Section 15.4	Relationship of the Parties	53
Section 15.5	Language	54
Section 15.6	Governing Law	54
Section 15.7	Entirety	54
Section 15.8	Assignment of Right, Title or Interest.....	54
Section 15.9	Confidentiality.....	55
Section 15.10	Successors and Assigns	56
Section 15.11	No Liability for Review	56
Section 15.12	Counterparts	56
Section 15.13	Severability.....	57
Section 15.14	Partial Invalidity	57
Section 15.15	Shareholding of the Transporter	57
Section 15.16	Changes of Address	57
Section 15.17	Amendments to this Agreement.....	57

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INLAND COAL TRANSPORTATION AGREEMENT

THIS INLAND COAL TRANSPORTATION AGREEMENT(this “**Agreement**”) is made at Lahore, Pakistan and dated as of 7thJuly 2015 by and between **PAKISTAN RAILWAY FREIGHT TRANSPORTATION COMPANY (PRIVATE) LIMITED**,(a wholly owned subsidiary of Pakistan Railways),on behalf of Pakistan Railways (a statutory administrative body under the Ministry of Railways) (the “**Transporter**”), having its principal office at PRACS House Railway Station Road Rawalpindi;

AND

HUANENG SHANDONG RUYI (PAKISTAN) ENERGY (PRIVATE) LIMITED, a private limited company incorporated under the laws of Pakistan with its registered office at 10-B, Saint Mary Park, Main Boulevard, Gulberg III Lahore, Pakistan(the “**Company**”).

(The Transporterand the Company are each hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”).

WHEREAS:

Inland Coal Transportation Agreement



- (A) The Company intends to construct, finance, operate and maintain a power generation facility (the “**Complex**”) with a capacity of approximately 1320 MW (gross) to be situated at Sahiwal, in the Province of the Punjab, Pakistan;
- (B) The Company has entered into or will enter into an Implementation Agreement with the Government of Pakistan (“**GOP**”) and a Power Purchase Agreement (**PPA**) with National Transmission and Despatch Company (through its Central Power Purchasing Agency (Guarantee) Limited (the “**Power Purchaser**”);
- (C) The Company wishes to transport coal from the Loading Point to the Unloading Point and the Transporter wishes to provide such Transportation Services; and
- (D) The Parties are entering into this Agreement to record the terms and conditions upon and subject to which the Company is to offer coal for transport and receive such transported quantities of coal and the Transporter is to transport coal from the Loading Point to the Unloading Point.

NOW THEREFORE, in consideration of the mutual benefits to be derived and the terms and conditions contained herein, and intending to be legally bound, the Transporter and the Company hereby agree as follows:



ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the respective meanings given to them below:

"Agreement" – This Inland Coal Transportation Agreement, together with all schedules attached hereto, dated as of the date first written above between the Company and the Transporter as the same may be amended by the Parties from time to time.

"Agreement Year" - The meaning ascribed thereto in the Power Purchase Agreement.

"Business Day" - Any Day that banks in Pakistan are generally open for business.

"Capacity Price" - The meaning ascribed thereto in the Power Purchase Agreement.

"Capacity Payment" - The meaning ascribed thereto in the Power Purchase Agreement.

"Coal Quantity Shortfall" – The difference between the Coal quantity at the Loading Point and the Unloading Point (as measured by the weighing stations at the Loading Point and the Unloading Point).

"Change in Law" –

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

the case of any of the events described in clauses (a), (b), or (c) above establishes a material increase in costs or a material decrease in revenue as a consequence of any requirement for the operation or maintenance of the Complex that is materially more restrictive than the most restrictive requirements (i) under the Laws of Pakistan as 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.



"Coal Special" - A train load consisting of hopper trucks/wagons and locomotive (s) that will be moved as a full train for the transportation of coal.

"Commercial Operations Date"-The date following the date on which the Complex is Commissioned in accordance with the terms of the Power Purchase Agreement.

"Commissioned" - The meaning ascribed in the Power Purchase Agreement.

"Commissioning" - Testing the Complex in accordance with the Power Purchase Agreement.

"Company"- The meaning ascribed thereto in the description of the Parties.

"Company Consents" - All such approvals, consents, authorizations, notifications, concessions, acknowledgements, agreements, licenses, permits, decisions or similar items which is or are issued by a Relevant Authority and which the Company is required to obtain from any Relevant Authority.

"Company Event of Default" - The meaning ascribed thereto in Section 11.1.

"Company Facilities" -The Coal delivery and reception facilities which are necessary to load and deliver Coal at the Loading Point and to unload the Coal at the Unloading Point in accordance with this Agreement as further identified in Section 4.1.

"Complex" - The meaning ascribed in the Power Purchase Agreement.

"Contract Capacity" - The meaning ascribed thereto in the Power Purchase Agreement.

"Contractors" - Any direct contractor or supplier engaged by a Party in connection with the performance of its obligations under this Agreement and any of their direct sub-contractors integrally involved in the Project.

"Coordinators" - Each of the Operational Coordinators and the Principal Coordinators.

"Day" - A period of 24 hours, commencing at 12:00 midnight of each day, and "Daily" shall be construed accordingly.

"Daily Scheduled Quantity" - The quantity of Coal which the Transporter has undertaken to transport to the Unloading Point on any day subject to the Company offering this quantity for transportation.

"Delayed Payment Rate" - An amount calculated on the basis of the then applicable KIBOR rate plus two percent (2%).



“Delivered Coal Quantity” – The quantity of coal which the Transporter has delivered at the Unloading Point during any Month.

“Delivery Point” – The transportation point for deliveries of coal as described in Section 4.5 and Schedule [].

“Dispute” – The meaning ascribed thereto in Section 13.1.

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

“Event of Default” – A Transporter Event of Default or a Company Event of Default, as the case may be.

“Expert Adjudicator” – An expert appointed in accordance with Article XIII V.

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

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

“Freight Charge” – The sum of the Fixed Freight Charge and Variable Freight Charge.

“Freight Payments” – The product of the Freight Charge and the Monthly Received Coal Quantity (as be adjusted in accordance with Section by []).

“Fixed Freight Charge” – The amount identified as the Fixed Freight Charge in Schedule 1, as adjusted from time to time in accordance with the provisions thereof.

“Freight Deposit Account” – The meaning ascribed thereto in Section 6.6.

“Force Majeure Event” – The meaning ascribed thereto in Section 9.1.

“GOP” – The Federal Government of Pakistan.

“Guarantee (PR)” – The guarantee by the GOP of the payment obligations of the Transporter under this Agreement in the form of Schedule [].

“Guarantee (GOP)” – The guarantee by the GOP of the payment obligations of the Power Purchaser under the Power Purchase Agreement.

“Implementation Agreement” – The Implementation Agreement entered into or to be entered into by and between the GOP and the Company in relation to the Project.

“Internal Layout” – [].

“KIBOR” – The Karachi Inter-Bank Offer Rate for Rupee deposits and is the average “ask side” rate for a period equal to 3 months. The KIBOR rate shall be taken from



Reuters page "KIBOR" as published at 11:30 a.m. Pakistan Standard Time or as published by the Financial Market Association in the event the Reuters page is not available.

"Landed Coal Cost" - The total cost of Coal incurred, paid or payable by the Company for Coal delivered at the Unloading Point (including but not limited to Coal price, insurance, marine transport charges, port handling charges, taxes and duties, inland freight charges etc.)

"Lapse of Consent" - Any 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) not being issued or renewed 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 ability of a Party to perform its obligations under this Agreement or the Company'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" manner.

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

"Lenders" - The meaning ascribed thereto in the Implementation Agreement.

"Loading Point" - The existing Pakistan Railway facilities at Port Qasim

"Loss" - The meaning ascribed thereto in Section 14.1.

"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; and "Monthly" shall be construed accordingly.

"Monthly Committed Quantity" - 366,667 metric tons, the quantity of Coal which the Transporter has undertaken to transport to the Unloading Point in any Month subject to the Company offering this quantity for transportation.

"Monthly Committed Quantity Shortfall" - The difference between the Monthly Committed Quantity and Received Coal Quantity in any given Month.

"Monthly Freight Shortfall Payment" - The product of the Fixed Freight Charge and the Monthly Committed Quantity Shortfall in any given 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.

"Notice of Intent to Terminate" - The meaning ascribed thereto in Section 11.3.

"Operational Coordinators" - The meaning ascribed thereto in Section 12.1(a).

"Outage" - In relation to any of the Company Facilities or the Transporter Facilities the inspection, maintenance, repair, modification or replacement thereof in accordance with Section 15.1.

"Pakistan" - The Islamic Republic of Pakistan.

"Party" - Either the Transporter or the Company, and the "Parties" means both of them.

"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.

"Power Purchase Agreement" - The Power Purchase Agreement by and between the Power Purchaser and the Company.

"Power Purchaser" - National Transmission and Despatch Company, a public limited company established under the laws of Pakistan, with its registered office at WAPDA House, Lahore, Pakistan.

"Principal Coordinators" - The meaning ascribed thereto in Section 12.1(b).

"Project" - The meaning ascribed thereto in the Implementation Agreement.

"Provincial Government" - The Government of any Province of Pakistan.

"Public Sector Entity" - The GOP and the Provincial Government, any subdivision of either, any local governmental authority with jurisdiction over the Company, the Project, or any part thereof, courts and tribunals in Pakistan and any department, authority, instrumentality, agency, or judicial body of the GOP, any commission or regulatory body having jurisdiction over the Company in relation to its acts and activities related to the Project or any part thereof, the state government or any such local governmental authority.

"Reasonable and Prudent Operator" - A Person seeking in good faith to perform its covenants or obligations in accordance with this Agreement and in doing so and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a



skilled and experienced operator complying with all applicable laws engaged in the same type of undertaking under the same or similar circumstances and conditions.

“Received Coal Quantity” – The Coal loaded and delivered by the Company to the Transporter at the Loading Point for delivery to the Unloading Point.

“Required Coal Quantity” – The firm quantity of Coal notified by the Company, in any Month, in accordance with Section 5.2(b) that is expected to be loaded and delivered by the Company at the Loading Point and required to be transported by the Transporter to the Unloading Point.

“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 Transporter and this Agreement, as the case may be.

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

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

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

“Short-delivered Coal Quantity” – The difference between the weights of Coal recorded at the weighing station at the Loading Point and the weighing station at the Unloading Point

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

“Start Date” – The date on which the Transporter shall be required to make the first transportation of Coal to the Unloading Point pursuant to Section 5.2(a).

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



or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity

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

“Termination Notice” - The notice issued by either Party by which the Agreement will terminate immediately.

“Tonne” – 1000 kilograms of Coal.

“Transportation and Logistics Plan” - The transportation and logistics plan to be updated and provided by the Transporter to the Company from time to time and shall include a programme/schedule for completion of all Transporter Services, feasibility studies, financing arrangements, and details of rail track, rolling stock, locomotives and other facilities that are necessary for transportation by the Start Date to the Unloading Point.

“Transferee” - The meaning ascribed thereto in Section 15.8.

“Transporter Facilities” – The Coal transportation and delivery facilities comprising of the rail track, wagons, hopper trucks and all other facilities which are necessary to transport Coal from the Loading Point to the Unloading Point in accordance with this Agreement and specified in Schedule [].

“Transporter Event of Default” – The meaning ascribed thereto in Section 11.1.

“Transportation Services” – The services to be provided by the Transporter as specified in Section 4.2.

“Unloading Point” - The unloading point for Coal shall be the Coal offloading facility located at the Site as further illustrated in Schedule [].

“Variable Freight Charge” - The amount identified as the Variable Freight Charge in Schedule 1, as adjusted from time to time in accordance with the provisions thereof.

“Week” - Each period of seven consecutive Days beginning at 12:00 midnight falling between a Sunday and a Monday, and “Weekly” shall be construed accordingly.

“Year” - Each 12 Month period commencing at the start of the first hour of 1 January and ending at 12:00 midnight on the following 31 December.

Section 1.2 Rules of Interpretation.

In this Agreement:

- i. headings are only for convenience and shall be ignored in construing this Agreement;



- ii. the singular includes the plural and vice versa;
- iii. references to Articles, Sections, Recitals and Schedules are, unless the context otherwise requires, references to Articles, Sections and Schedules to this Agreement;
- iv. except as expressly provided to the contrary herein, references to times and dates are, and shall be construed to be, references to Pakistan standard time;
- v. except as expressly provided to the contrary herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- vi. in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- vii. 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
- viii. except as expressly provided to the contrary herein, nothing herein 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).
- ix. In the event of a conflict between the terms of the main body of this Agreement and the Schedules, the terms of the main body of this Agreement shall prevail.



ARTICLE II- COMMENCEMENT AND TERM OF AGREEMENT

Section 2.1 Term

Except for sections [1, 2.2,] which shall be effective on the date hereof, this Agreement shall come into full force and effect on the Financial Closing (the “**Effective Date**”) and the term of this Agreement shall commence from the Effective Date and shall continue, subject to the other provisions of this Agreement, upto and commensurate with the term of the Power Purchase Agreement (the “**Term**”)

Section 2.2 Renewal

This Agreement may be renewed for such further term as the Parties mutually agree.



ARTICLE III- START DATE AND THE GUARANTEE

Section 3.1 Prior to the Start Date

Following the Effective Date and prior to the Start Date:

- (a) The Transporter shall provide the Transportation and Logistics Plan to the Company quarterly and in 2017 onwards, monthly;
- (b) The Parties shall meet once in every three (3) months to discuss the Transportation and Logistics Plan and all operational interfaces between the Transporter and the Company;
- (c) 2017 onwards, the Parties shall meet once in every thirty (30) Days to discuss the Transportation and Logistics Plan and all operational interfaces between the Transporter and the Company;

Section 3.2 ¹[The Guarantee (PR)]

[The Transporter shall ensure that the Government of Pakistan delivers to the Company, the Guarantee (PR) within five (5) Business Days of receiving notice in writing from the agent of the Lenders that;

- (a) the Financing Documents have been executed between the Lenders and the Company which (together with equity commitments), evidence sufficient financing for the construction of the Complex; and
- (b) that all conditions precedent for the initial availability of funds under the Financing Documents have been satisfied or waived other than the receipt by the Company of the Guarantee(GOP) and the Guarantee (PR).]

Section 3.3 Daily Scheduled Quantity

During the Term the Company shall intimate the Transporter of the Daily Scheduled Quantity required by the Company, in accordance with the procedures developed by the Operational Coordinators(the “**Daily Scheduled Quantity**”).

¹Further provisions to be added following review/finalization of the Guarantee



ARTICLE IV- FACILITIES AND POINTS OF TRANSPORTATION

Section 4.1 Facilities to be provided by the Company

- (a) The Company shall, or the Company shall procure, at its own cost and expense and not later than thirty (30) Days prior to the scheduled Start Date design, construction, installation and maintenance of the following facilities:
 - (i) loading facilities at the Loading Point;
 - (ii) unloading facilities located at the Complex capable of unloading a minimum of 15,000 metric tonnes per day;
 - (iii) storage area at the Complex capable of storing up to sixty (60) Days of the aggregate requirement of Coal for the Complex based on the Complex running at one hundred percent (100%) of the Contract Capacity of the Complex; and
 - (iv) other facilities described in Schedule 5.
- (b) The Company Facilities constructed, installed and maintained by the Company to receive, store, and use Coal transported pursuant to this Agreement shall be constructed and maintained in accordance with a Reasonable and Prudent Operator. The Company shall be responsible for maintaining the safety of the Complex and for the ownership, handling, storage, and use of Coal after receipt at the Unloading Point.
- (c) Both the Loading Point and the Unloading Points shall have the arrangement to take full train load for loading and unloading without the need for shunting of coal wagons/ hopper trucks after placement at the desired locations.
- (d) The Company shall or the Company shall procure, the Company Facilities are fully and properly designed, constructed, installed and commissioned prior to the Start Date.
- (e) Throughout the Term the Company shall or the Company shall procure maintenance, repair and operation of the Company Facilities.
- (f) The Company shall provide the Transporter with all necessary easements, rights-of-way as and where required to allow for the construction, operation and maintenance of the Internal Layout



and for all necessary rights of ingress and egress thereto and therefrom for the construction, operation and maintenance of the Internal Layout.

- (g) The Company shall bear all costs and expenses relating to the construction, operation and maintenance of the Internal Layout.

Section 4.2 **Facilities to be Provided by Transporter**

- (a) The Transporter's obligations under this Agreement include the transportation of Coal to the Unloading Point that has been properly committed and loaded on the Coal Special by the Company in conformance with the terms and conditions of this Agreement. During the Term the Transporter shall:

- (i) take delivery of such quantities of Coal as are loaded and delivered by the Company on the coal wagons at the Loading Point in accordance with this Agreement;
 - (ii) transport through the railway network and deliver to the Company at the Unloading Point the Daily Scheduled Quantity and the Required Coal Quantity;

(the "Transportation Services").

- (b) The Transporter shall arrange to have in place locomotives, hopper trucks and other facilities or arrangements as the Transporter, in its sole discretion, deems necessary in order to be able to effect transport of Coal in accordance with its obligations under this Agreement.
- (c) The Transporter will make the required number of coal wagons/hopper trucks available at the Loading Point in accordance with Section []. All the coal wagons/hopper trucks made available under this Agreement shall be mechanically fit and adequately maintained by Transporter.
- (d) Subject to Section 4.1(f), the Transporter shall be responsible for the construction, operation and maintenance of such Internal Layout.
- (e) The Transporter shall provide the Company no later than [] Months prior to the Start Date, an estimate of the cost of construction, operation and maintenance of the Internal Layout.



Section 4.3 **Loading**

The responsibility for loading shall solely be of the Company's.

The Loading Point shall operate twenty four (24) hours, three hundred and sixty five (365) days of the year.

Section 4.4 **Free time for loading and Offloading**

The Company shall be allowed two and a half (2.5) hours free time for loading each Coal Special at the Loading Point. The two and a half hour period shall commence after the placement of coal wagons/hopper trucks at the Loading Point and shall finish when the time removal memo is issued for the removal of the coal wagons/ hopper truck by the Company.

If the coal wagons/ hopper trucks are not removed by the Transporter after issuance of the removal memo by the Company within the two and a half hour period set out above, the Company shall not to be subjected to levy of any demurrage charges.

In the event the Company fails to issue the removal memo in the said time (due to reasons attributable to the Company), the Company shall pay to the Transporter the applicable demurrage charges, in accordance with the Railways demurrage charges rules.

Section 4.5 **Verification of Quantity at the Loading Point**

The Company's and the Transporter's representatives shall jointly witness the weighing of the coal wagons at the Loading Point weighing facility. The Transporter's representative shall issue a railway receipt certifying, for each consignment, the quantity of coal loaded.

Section 4.6 **Unloading of Coal**

The Company shall be responsible for safe unloading of the hopper trucks at its Complex and shall provide all necessary equipment for such safe unloading and shall be responsible for any loss, leakage or contamination of any Coal after it is delivered by the Transporter at the Unloading Point.

Section 4.7 **Verification of Quantity at the Unloading Point**

The Company's and the Transporter's representatives shall jointly witness the weighing of coal wagons at the Complex weighing facility. The Company's representative shall issue the acknowledgement receipt as per standard operating procedures. The acknowledgement receipt



shall contain the measured quantity of Coal received.

Section 4.8 **Calibration of Weighing Stations**

The Company shall test the weighing stations for accuracy in accordance with Schedule 5 at intervals of not greater than three hundred sixty five (365) Days. In addition, the Company will also conduct a test, at any time within ten (10) Days after request by the Transporter if the Transporter believes that the weighing station is inaccurate by more than one-half per cent (0.5%), after giving the Company no less than forty eight (48) hours' notice. The Parties may have a representative present during all testing, as well as during any inspection of the weighing station or adjustment thereof. The costs of tests requested by Transporter shall be borne by the Company provided, however, that, if a test requested by the Transporter indicates that the weighing station is accurate to within one-half percent (0.5%), the Transporter shall bear the cost of such test.

Section 4.9 **Losses during transportation**

- (a) The Transporter shall be responsible for any loss, leakage or contamination before the Unloading Point of any Coal deliverable under this Agreement.
- (b) *Quantity*: The Coal shall be measured at the weighing station at the Loading Point and at the weighing station at the Unloading Point. In the event the Short-delivered Coal Quantity for any shipment is more than one percent (1%) of the Received Coal Quantity for such shipment, the Transporter shall pay liquidated damages to the Company calculated in accordance with Schedule 3 which shall be calculated as the product of the Landed Coal Price at the Unloading Point and Short-delivered Coal Quantity. The Company shall invoice such amounts on a monthly basis.
- (c) *Quality*: Sampling and testing of samples of Coal shall be carried out at the Complex prior to unloading at the Unloading Point. The Transporter and the Company agree at all times to comply with testing procedures detailed in Schedule 3 which are consistent with national and international coal industry standards. Testing and sampling of Coal shall be conducted by a representative of the Company at which a representative of the Transporter may at the option of the Transporter be present and the results thereof signed by the representatives of the Parties. In the event the sampling and testing results indicate a variation in the coal quality specifications beyond the permitted

tolerance limit defined in Schedule 3, the Transporter shall pay to the Company the liquidated damages as specified in Schedule 3.

P.C.

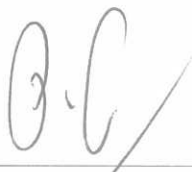
ARTICLE V- SCHEDULING

Section 5.1 Year Ahead Estimates

The Parties shall consult from time to time to develop estimates of future requirements of Coal for the Complex to be transported by the Transporter, with the aim of providing the Transporter with the best available estimates of future Coal transportation requirements.

Section 5.2 Start Date, firm orders and rolling forecast

- (a) The Start Date shall be five (5) months prior to the Scheduled Commercial Operations Date. The Company shall notify such date not less than four (4) months prior to such date and shall specify the quantity of Coal required by the Complex on a monthly basis up until the Commercial Operations Date.
- (b) The Company shall provide the Transporter with a six month rolling forecast where the first month of each forecast shall provide firm orders of Coal ("the **Required Coal Quantity**") and the remaining five (5) months shall be indicative and non-binding. This rolling forecast will be provided not less than six (6) months prior to the Scheduled Commercial Operations Date and every thirty (30) days thereafter.
- (c) The Transporter and the Company shall cooperate and coordinate regarding deliveries of Coal hereunder based on the estimates and firm orders agreed by the Parties. At least once in each Month, the Operational Coordinators shall meet to review the probable delivery requirements from the Transporter for the succeeding Month and the remaining five (5) months referred to in (b) above.
- (d) If the Company or the Transporter is or will be unable to deliver at the Loading Point or transport Coal or to take delivery of any quantity of Coal at the Unloading Point then the Company and the Transporter shall forthwith give notices to other Party of such inability to deliver or to take delivery of Coal.



ARTICLE VI- PAYMENT AND BILLING

Section 6.1 Freight Payments

- (a) From and after the Start Date, the Company shall pay the Transporter the Freight Payments, in accordance with the procedures specified in Section 6.3 and 6.5, for the Received Coal Quantity for each Month (or part-Month), such payments being calculated in accordance with this Section 6.1 and the provisions of Schedule 1.
- (b) From and after the Commercial Operations Date, the Company shall pay the Transporter the Freight Payments, in accordance with the procedures specified in Section 6.3 and 6.5, for the Received Coal Quantity for each Month (or part-Month), such payments being calculated in accordance with this Section 6.1 and the provisions of Schedule 1.
- (c) Except when the failure of the Company to receive Coal is excused under the terms of this Agreement, from and after the Commercial Operations Date, the Company shall also pay the Transporter the Monthly Freight Shortfall Payment, in accordance with the procedures specified in Section 6.3 and 6.5, for the Monthly Committed Quantity Shortfall for each Month (or part-Month), such payments being calculated in accordance with this Section 6.1 and the provisions of Schedule 1.
- (d) For clarity in any given Agreement Year the sum of the Monthly Freight Payments and Monthly Freight Shortfall Payments shall not exceed the product of the applicable Freight Charge and 12-times the Monthly Committed Quantity.

Section 6.2 Transporter's Invoice

- (a) For each Coal Special a railway receipt ("RR"), shall be issued showing the Received Coal Quantity and Freight Charge thereof. The Transporter shall, prepare and give to the Company on last day of each Month following the Start Date, an invoice, substantiated with RR of each Coal Special, in respect of the relevant Month the following information:
 - i. The applicable Freight Charge (as indexed from time to time);
 - ii. The Required Coal Quantity;
 - iii. The Received Coal Quantity;

- iv. The Delivered Coal Quantity;
- v. The Reduced Coal Quantity and any payments due from the Transporter in respect of such Reduced Coal Quantity;
- vi. the Monthly Committed Quantity Shortfall for the previous Month
- vii. Monthly Freight Shortfall Payment for the previous Month
- viii. Any Delayed Payment Charge at the Delayed Payment Rate
- ix. Any applicable taxes due for payment by the Company;
- x. Any other amount due and owing from the Company to the Transporter in accordance with this Agreement.

Section 6.3 **Company's Invoice**

The Company shall prepare and shall give to the Transporter at any time after the first (1st) Business Day of each Month an invoice which shall show in respect of the preceding Month the following information:

- i. The Reduced Coal Quantity and any payments due from the Transporter in respect of such Reduced Coal Quantity;
- ii. The applicable Landed Coal Cost;
- iii. The relevant Capacity Price;
- iv. The Contract Capacity;
- v. Any applicable taxes due for payment by the Company;
- vi. All liquidated damages payable by the Transporter under this Agreement;
- vii. Any delayed payment charges at the Delayed Payment Rate;
- viii. Any other amount due and owing from the Transporter to the Company in accordance with this Agreement.

Section 6.4 **Payment by the Transporter and the Company**

- (a) (i) the Company shall pay the Transporter the amount shown on an invoice delivered as per the provisions of




Section 6.2 as per the procedure specified in Section 6.6, less deductions for any disputed amounts or portions of amounts shown in the invoice.

- (ii) the Transporter shall pay the Company the amount shown on an invoice delivered in accordance with this Agreement, less deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the 30th Day following the Day the invoice is received by the Transporter,

(in each case, the “**Due Date**”); provided that, if such date is not a Business Day, the Due Date shall be the next following Business Day.

- (b) Any invoice delivered pursuant to this Section 6.5 shall be paid in Rupees.
- (c) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable by the Expert Adjudicator or through arbitration.
- (d) Late payments by either Party of the amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate.
- (e) The Transporter’s obligation to pay any amount under this Agreement shall remain in full force and effect, and shall not be affected by the provisions of the Guarantee, except to the extent that the Transporter’s obligation to the Company has been discharged in accordance with the Guarantee.
- (f) Payments received by either Party shall be applied against outstanding invoices on the ‘first in, first out’ principle, so that the invoices that have been outstanding the longest (in whole or in part) shall be paid first.
- (g) All payments due in accordance with this Agreement shall be made by electronic funds transfer to the appropriate bank account specified below or to such other bank account as a Party may from time to time give notice of to the other Party:



Payment due to the Transporter:

Bank name: []

Account number: []

Account name: []

Payments due to the Company:

Bank name: []

Account number: []

Account name: []

- (h) The liability of a Party to make payment in accordance with this Agreement shall be discharged upon the receipt of that payment by the Party due to receive such payment into its specified bank account.

Section 6.5 **Freight Deposit Account**

Thirty (30) days prior to Start Date, the Transporter shall open and maintain an account into which the Company shall pay, an amount of Rs. 1,000,000,000/- (Pakistan Rupees One Thousand Million Only) as advance freight (Freight Deposit Account") against an advance invoice raised by the Transporter for the following Month. The Monthly Freight Charges shall be adjusted against the Advance Freight Payment. A Deposits in the Freight Deposit Account shall be deposited in advance and such deposit shall be maintained thereafter throughout the Term. The Freight Deposit Account, in case of any draw downs in a particular month, will be replenished latest by the 3rd day of every following Month. In case the said deposit not made, the Transporter will not be in any obligation under this Agreement to provide services.

The Monthly Freight Charges in excess of the amount available in the Freight Deposit Account following replenishment shall be paid by the Company to the Transporter within five (5) Business Days of the receipt of the Transporter's Invoice.

Section 6.6 **[²Suspension]**

[Suspension provisions to reflect Section 9.10 of the PPA. Claims related to minimum quantity shortfall payments under this Agreement to be incorporated in such provisions]

²To be finalized



Section 6.7 **Taxes**

The Company shall pay or procure the payment of all Taxes relating to the Coal being delivered by the Transporter under this Agreement and the Transporter shall pay or procure the payment of all Taxes arising in respect of the Transportation Services.



ARTICLE VII- OUTAGES

Section 7.1 Outages

- (a) The Company and the Transporter may undertake Outages of no more fifteen (15) Days in any Agreement Year.
- (b) The Parties shall, as soon as practicable but in any event, at least fifteen (15) Days before the Outage is scheduled, notify the other Party its proposed schedule for Outages.
- (c) The Transporter and the Company shall immediately consult in the event of any unscheduled maintenance or repairs required to be done on the Complex, Company Facilities and Transporter Facilities to ensure the minimum possible disruption to the operation of the Complex.



ARTICLE VIII

DAMAGES

Section 8.1 **Failure of the Transporter to deliver Coal at or after the Start Date**

Except when the failure of the performance of the Transporter is excused under the terms of this Agreement, the Transporter shall pay the Company for any costs, damages, losses or penalties described in sub-clauses (a) and (b) below that are caused by the failure of the Transporter to commence delivery of the Required Coal Quantity or the Received Coal Quantity, as the case may be, in accordance with this Agreement by the Start Date:

- (a) any liquidated damages payable to the Power Purchaser under Section 9.4(d) of the Power Purchase Agreement arising from the delay in the Commissioning of the Complex; and
- (b) the Capacity Payments or any part thereof which the Company would have been entitled to receive from the Power Purchaser under Section 9.1 of the Power Purchase Agreement but which the Company cannot due to the failure of the Transporter to deliver Coal by the Start Date.

Section 8.2 **Failure of the Transporter to deliver Coal following the Commercial Operations Date**

Except when the failure of the Transporter to transport Coal is excused under the terms of this Agreement, if the Transporter fails to transport the Required Coal Quantity or Received Coal Quantity, as the case may be, for any Month, except to the extent such failure is as a result of the non-supply of coal at the Loading Point caused solely by the action or non-action of the Company, the Transporter shall pay to the Company as liquidated damages an amount equivalent to:

- (a) any liquidated damages payable to the Power Purchaser under Section 9 of the Power Purchase Agreement; and
- (b) the Capacity Payments or any part thereof which the Company would have been entitled to receive from the Power Purchaser under Section 9.1 of the Power Purchase Agreement but which the Company cannot due to the failure of the Transporter to deliver Coal.

Section 8.3 **Demurrage Charges**

Subject to a maximum Daily Received Coal Quantity of 12,000 metric tons, the Transporter shall ensure the timely availability of the Coal Special at the Loading Point. In the event the Transporter fails to or delays to make available the Coal Special within the timelines stipulated in the a port handling agreement to be entered into with the port operator by the Company, the Transporter shall pay the Company, on monthly basis, any demurrage charges / penalties imposed by the port operator for such delay or failure.

Within thirty (30) Business Days of entering into the port handling agreement, the Company shall provide to the Transporter details of any demurrage and other related charges set out in the port handling agreement.

Section 8.4 **Claims for Compensation**

- (a) Any claims for compensation submitted to one Party by the other shall, in the absence of a Dispute thereon, be paid within thirty (30) Days of presentation.
- (b) If there shall be a Dispute relating to compensation under this Agreement, the Dispute resolution procedure specified in Article XIIIIV shall apply, and either Party may refer the matter thereto.



ARTICLE IX- FORCE MAJEURE

Section 9.1 Definition

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party that, on or after the Effective Date, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement, provided that such material and adverse effect has not occurred due to the failure of the Company or the Transporter, as the case may be, to design, construct, operate or maintain the Complex or the transportation facilities in accordance with this Agreement or any other agreements within the Project Agreements and to internationally accepted Coal and electric generation industry standards and Reasonable and Prudent Operator; and provided further, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex and the equipment which are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur and the likely efficacy of such protection measures. Without limiting the generality of the foregoing, “**Force Majeure Events**” hereunder shall include each of the following events and circumstances to the extent that each satisfies the above requirements and to the extent also a Force Majeure Event:

- (a) (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;
- (ii) any Lapse of Consent;
- (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide or otherwise;
- (iv) radioactive contamination or ionizing radiation resulting from another Pakistan Political Event;
- (v) any Change in Law;



- (vi) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
 - (vii) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation;
 - (viii) epidemic or plague; or
 - (ix) non-availability of Coal due to a force majeure event under the port handling agreement;
 - (x) non-availability of Coal due to a force majeure event under the Coal Supply Agreement.
- (b) Force Majeure Events shall expressly not include the following conditions:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (other than in accordance with (iv) and (x) above);
 - (ii) a delay in the performance of any Contractor; or
 - (iii) breakdown in machinery or equipment; or;
 - (iv) normal wear and tear or random flaws in materials and equipment.

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

Section 9.2 **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, then the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, not later than the later of forty-eight (48) hours after the affected Party becomes aware of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Company and the Transporter and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice,

providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not 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 to do so 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 will be unable to carry out any of its affected obligations due to the Force Majeure Event.

- (b) The affected Party shall also 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) the affected Party's ability to recommence performance of its obligations under this Agreement, each notice to be given as soon as possible but, in any event, not later than seven (7) Days after the occurrence of each of clauses (i) and (ii) above.
- (c) Failure by the affected Party to give notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or six (6) hour period required by Section 9.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 9.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Section 9.2(a) has been given. If such notice is given within the forty-eight (48) hour period or twenty four (24) hour period as required by Section 9.2(a) the affected Party shall be excused for such failure or delay pursuant to Section 9.4 from the date of commencement of the relevant Force Majeure Event.

Section 9.3 **Duty to Mitigate**

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including the payment of all reasonable sums of money by or on behalf of the affected Party which sums are reasonable in light of the likely efficacy of the mitigation measures.



Section 9.4 **Delay Caused by Force Majeure**

- (a) So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Sections 9.2 and 9.3 and continues to so comply, then notwithstanding any other provision of this Agreement, (i) the affected Party shall not be liable for any failure or delay in performing its affected obligations (other than an obligation to make a payment and as provided in 9.4(b), it being expressly understood that in no event shall inadequacy of funds be considered a Force Majeure Event under this Agreement) under or pursuant to this Agreement during the existence of a Force Majeure Event (including the effects thereof) to the extent that the affected Party's performance of covenant or obligation is prevented impeded or delayed by the Force Majeure Event and (ii) any affected performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; provided, however, that no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 9.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred; provided, further, that, in the case of a Force Majeure Event which damages the Complex, in no event shall the obligations of the affected Party to meet performance deadlines be extended beyond the period of a Restoration Period.
- (b) Each Party shall to the greatest extent possible continue to perform its covenants and obligations in accordance with this Agreement to the extent not prevented impeded or delayed by the Force Majeure Event.
- (c) If a Force Majeure Event occurs the affected Party shall acting in accordance with the Standard of Reasonable and Prudent Operator act to bring the Force Majeure Event to an end and resume full and proper performance of the covenant or obligation to which Force Majeure Event relates.
- (d) The affected Party shall bear the burden of proving that an event or circumstance constitutes the Force Majeure Event and that it has complied with the notice requirements.
- (e) No Liability. Other than for breaches of this Agreement by the other Party and without prejudice to the affected Party's right to indemnification pursuant to Section [] or for payment pursuant



to Article XI 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.

- (f) If the Transporter is unable by the reason of Force Majeure Event to provide the Transportation Services to the Company when required in accordance with this Agreement then the Company may enter into an agreement for the transportation of the Coal by a third party for the anticipated duration of the Force Majeure Event and to the extent of the Transporter's anticipated inability to deliver Coal then Transporter shall give or procure such access to and use of the Transporter Facilities as may be necessary to facilitate such transportation of Coal by the Company;
- (g) Termination for prolonged Force Majeure Event: If during the Term, a Party is relieved in accordance with the terms of this Section then either Party may terminate this Agreement if:
 - (i) such Force Majeure Event has subsisted for a continuous period of not less than one hundred and eighty (180) Days and is continuing;
 - (ii) such Force Majeure Event has resulted in the non-transportation by the Transporter or the non-taking of Delivery by the Company at the Unloading Point of a quantity of Coal over such period of one hundred and eighty (180) Days.
- (h) Where the aforesaid conditions apply a Party may terminate this Agreement upon giving not less than thirty (30) Days' notice of Termination to the other Party after the expiration of the period stated above.
- (i) This Agreement shall terminate upon the expiry of the period of the notice given in accordance with this Article.



ARTICLE X- REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 10.1 The Transporter's Warranties and Representations

The Transporter warrants and represents to the Company that:

- i. the Transporter is duly incorporated and validly existing in accordance with the Laws of Pakistan, is a legal entity capable of suing and being sued and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated in this Agreement;
- ii. neither the execution of this Agreement nor the performance of its covenants and obligations in accordance with this Agreement by the Transporter does or will violate any law or regulation to which the Transporter is subject to or violate or breach any documents or agreements to which the Transporter is party to or which are binding on the Transporter or any of its assets, or will the execution or performance of this Agreement result in the existence of, or oblige the Transporter to create any, security over any of such assets;
- iii. this Agreement constitutes a valid, binding and enforceable obligation of the Transporter in accordance with its terms and this Agreement is in the proper legal form for enforcement against the Transporter in Pakistan and contains no provision which is contrary to Laws of Pakistan or which would not be upheld by the courts of Pakistan;
- iv. as at the Start Date the Transporter shall have full legal title to and be in possession of the Transporters Facilities and there shall be no third Party interest (including any lien, mortgage, ledge, escrow, option, lease, licence) or in over any of the Transporter Facilities;
- v. the Transporter is not party to any litigation, arbitration or other proceedings nor subject to any investigation or enquiry nor bound by any order, injunction, declaration, judgment or award of any court, arbitrator or other forum which could adversely affect the ability of the Transporter to perform its covenants and obligations in accordance with this Agreement;



- vi. the Transporter is not entitled to any immunity from suit, execution, attachment, or other legal or arbitral proceedings in Pakistan;
- vii. the Transporter has not entered into any agreements or obligations which would have any adverse effect on the Transporter's ability to perform its covenants and obligations in accordance with this Agreement; and
- viii. all quantities of Coal delivered by the Transporter to the Company at the Unloading Point in accordance with this Agreement shall at the Unloading Point be free of all liens, charges encumbrances and adverse claims as to title.

Section 10.2 **The Company's Warranties and Representations**

The Company warrants and represents to the Transporter that:

- i. the Company is duly incorporated and validly existing in accordance with Laws of Pakistan, is a legal entity capable of suing and being sued and has the capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated in this Agreement;
- ii. neither the execution of this Agreement nor the performance of its covenants and obligations in accordance with this Agreement by the Company does or will violate any law or regulation to which the Company is subject to or violate or breach any documents or agreements to which the Company is party to or which are binding on the Company or any of its assets, nor will the execution or performance of this Agreement result in the existence of, or oblige the Company to create any, security over any of such assets;
- iii. this Agreement constitutes a valid, binding and enforceable obligation of the Company in accordance with its terms and this Agreement is in the proper legal form for enforcement against the Company in Pakistan and contains no provision which is contrary to Laws of Pakistan or which would not be upheld by the courts of Pakistan;
- iv. as at the Start Date the Company shall have fully legal title to and be in possession of the Company Facilities;



- v. the Company is not party to any litigation, arbitration or other proceedings nor subject to any investigation or enquiry nor bound by any order, injunction, declaration, judgment or award of any court, arbitrator or other forum which could adversely affect the ability of the Company to perform its covenants and obligations in accordance with this Agreement;
- vi. the Company is not entitled to any immunity from suit, execution, attachment, or other legal or arbitral proceedings in Pakistan;
- vii. the Company has not entered into any agreements or obligations which would have an adverse effect on the Company's ability to perform its covenants and obligation in accordance with this Agreement; and

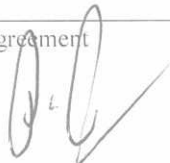


ARTICLE XI- DEFAULT; TERMINATION

Section 11.1 Termination by Transporter for Company Default

Transporter may give a notice of termination of this Agreement (a **"Transporter Notice of Intent to Terminate"**) upon the occurrence of any of the following events, unless resulting from (i) a Force Majeure Event; (ii) a breach or default by the Power Purchaser under the Power Purchase Agreement; (iii) a breach or default by the Government of Pakistan under the Implementation Agreement; (iv) a breach or default by the Transporter of this Agreement (each a **"Company Event of Default"**):

- (a) except for the purpose of amalgamation or reconstruction (provided, however, that such amalgamation or reconstruction does not affect or interrupt the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (i) the passing of a resolution by the shareholders of the Company for the winding up of the Company; (ii) the voluntary filing by the Company of a petition of bankruptcy, moratorium or other similar relief; (iii) the appointment of a provisional liquidator, except solely in accordance with the enforcement of security provided for under its financing documents, 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; or (iv) the making by a court with jurisdiction over the Company of an order winding up the Company which is not stayed or reversed by a court of competent authority within thirty (30) Days;
- (b) any statement, representation or warranty by the Company in this Agreement transpiring to have been incorrect, in any material respect, when made or when deemed to have been made or repeated and such failure or incorrect statement, representation or warranty having a material and adverse effect on the Transporter's or on the Company's ability to perform its obligations under this Agreement;
- (c) the termination of the Implementation Agreement by the GOP or the Power Purchase Agreement by the Power Purchaser for a Company Event of Default thereunder;



- (d) any material breach by the Company of this Agreement that is not remedied within ninety (90) Days of notice from Transporter stating that a material breach of the Agreement which could result in the termination of the Agreement has occurred identifying the material breach in reasonable detail and demanding remedy thereof; or
- (e) the Company utilizes services of any party other than Transporter to transport Coal except in furtherance of its duties of mitigation under this Agreement.

Section 11.2 **Termination by the Company for a Transporter Default**

The Company may give a notice of termination of this Agreement (a **"Company Notice of Intent to Terminate"**) upon the occurrence of any of the following events, unless resulting from a breach by the Company of this Agreement (each a **"Transporter Event of Default"**):

- (a) except for the purpose of amalgamation, reorganization or reconstruction that does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligation under this Agreement, the occurrence of any of the following events: (i) the GOP for the winding up of Transporter; (ii) the voluntary filing by Transporter of a petition for bankruptcy, moratorium or other similar relief; (iii) the appointment of a provisional manager in a winding up proceeding after notice to Transporter and due hearing, which appointment has not been set aside or stayed within ninety (90) Days of such appointment; or (iv) the making by a court of law of an order for winding up Transporter;
- (b) failure for more than ten (10) days in any Month, by the Transporter to deliver Coal to the Complex which is not excused by the terms of this Agreement; or
- (c) other than (b) above, any material breach by the Transporter of this Agreement that is not remedied within ninety (90) Days of notice from the Company to the Transporter, stating that a material breach of this Agreement has occurred which could result in the termination of this Agreement, identifying the material breach in question in reasonable detail and demanding remedy thereof; provided, however, that a breach which, with the passing of time or the fulfillment of any other condition specified in paragraphs (a) and (b) above, would constitute an event or circumstance falling within any such paragraph shall



not be a Transporter Event of Default under this paragraph (c);

- (d) If during the Term the aggregate quantity of the Reduced Coal Quantity is equal to or greater than five (5)% of the Delivered Coal Quantity in any Month and the Transporter has not timely paid the paid liquidated damages in accordance with this Agreement;
- (e) If during the Term the Transporter permanently ceases the transportation of Coal and or provides the Transportation Services.
- (f) the Guarantee (PR) ceasing to remain valid and in full force and effect in accordance with its terms.

Section 11.3 **Termination for Default**

- (a) Upon the occurrence of an Event of Default by either Party under Section 11.1 or Section 11.2 (as the case may be) that is not cured within the applicable 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 intention to terminate this Agreement to the Party in default. The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or Transporter Event of Default (as the case may be) giving rise to such notice.
- (b) Following the issuance of a Notice of Intent to Terminate, the Parties shall consult for a period commencing on such delivery date of up to fortyfive (45) Days in the case of a failure of a Party to make payments when due, and of up to ninety (90) Days (or such longer period as they may agree for other defaults), as to what steps shall be taken with a view to mitigating the consequences of the relevant event giving regard to all the circumstances. During the period following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default and if the default is cured at any time prior to the delivery of a Termination Notice under Section 11.3(c) then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- (c) At the expiry of the said period unless:
 - (i) the Parties shall have otherwise agreed; or
 - (ii) the event giving rise to the Termination Notice 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 immediately terminate.

- (d) The Company shall provide the Coal at the Loading Point and the Transporter shall transport all quantities of Coal to the Unloading Point up to the end of the Month in which the termination is actually to take place in the manner set forth and in accordance with the provisions of this Agreement and this Agreement shall terminate only upon completion of such supplies.

Section 11.4 **Compensation upon Termination Due to a Company Event of Default**

[If this Agreement is terminated due to a Company Event of Default, the Company shall, until the earlier of:

- (i) such time as the Transporter has entered into an arrangement for the utilization of the Transporter Facilities with another prospective customer; or
- (ii) six (6) Months following the issuance of the Termination Notice;

pay to Transporter an amount equal to the monthly product of Monthly Committed Quantity and the applicable Fixed Freight Charge during such period,

provided however, in the event:

- (a) the Company Event of Default occurs after the first ten years following the Commercial Operations Date,
- (b) the GOP elects to transfer the Complex to itself; or
- (c) the Lenders or a transferee has taken over the obligations of the Company under this Agreement,

the Company shall not be liable to pay any compensation payments to the Transporter under this Agreement



Section 11.5 **Compensation upon Termination for Convenience by the Company**

If following the Start Date, but within a period of 10 years from the Commercial Operations Date, the Company **solely for its convenience decides not to utilize the Transportation Services and terminate this Agreement**, the Transporter shall be entitled to receive from the Company an amount equal to the product of the Monthly Committed Quantity and the applicable Freight Charge for a 12-month period as a compensation. Payment of such compensation is the sole and exclusive remedy of the Transporter for termination of this Agreement by the Company for convenience. Furthermore no compensation under Section of 15.4 of this Agreement shall be payable if the provisions of this Section apply.

Section 11.6 **Compensation Upon Termination Due to Transporter Event of Default**

If this Agreement is terminated by the Company due to a Transporter Event of Default, such event of default shall be treated as a 'GOP Event of Default' under the Implementation Agreement and the Transporter shall be liable to pay to the Company the same Compensation Amounts as would be due by the GOP for a GOP Event of Default under the Implementation Agreement.

Section 11.7 **Termination for a Prolonged Force Majeure Event or Termination of the Implementation Agreement**

If this Agreement is terminated due to a prolonged Force Majeure Event as provided in Section [] hereof or upon the termination of the Implementation Agreement, no further liability of either Party shall arise hereunder.

Section 11.8 **No Further Obligations**

Upon any such termination pursuant to this Article XI and, if applicable, the payment of compensation as required by Section 18.2 or Section 11.4, the Parties shall have no further obligations hereunder except for obligations that arose prior to such expiration or termination and obligations that expressly arise upon or survive such expiration or termination pursuant to this Agreement.

Section 11.9 **Other Remedies**

The rights of the Parties provided herein to terminate this Agreement do not preclude Parties from exercising other remedies that are



provided herein or are provided in the Implementation Agreement or may be available at law. Remedies are cumulative, and the exercise, or failure to exercise, one or some of them shall not operate or be construed as a waiver of such remedy or any other remedy available.



ARTICLE XII- COORDINATION

Section 12.1 **The Coordinators**

Section 12.1.1 **Coordinators.**

At least one hundred twenty (120) Days prior to the Start Date each of the Parties shall appoint the following tiers of coordinators who shall have the respective powers and duties set out in Sections 12.2 and 12.3 below:

- (a) Two operational coordinators, which, for Transporter, based on its present organization, would be the _____ concerned and the _____; and
- (b) One principal coordinator, which, for Transporter, based on its present organization, would be the _____.

Each Party shall nominate two persons for the Operational Coordinators and Principal Coordinators. Any of the Operational Coordinators and Principal Coordinators may be substituted by the Party appointing them with prior written notice to the other Party of five (5) Business Days.

Section 12.2 **Operational Coordinators**

The Operational Coordinators shall be generally responsible for the Day-to-Day implementation of all agreed operating procedures and all local matters not relating to policy and pricing. Without limiting the generality of the foregoing, the responsibilities of the Operational Coordinators shall include:

- (i) coordination of the respective programs and procedures for the administration of the facilities for Coaltransportation and receipt to be provided by the Company and the Transporter under this Agreement;
- (ii) determination of the operational steps to be taken upon any shutdown of/or reduction in the Coaltransportation;
- (iii) coordination of scheduled maintenance and inspection programs;
- (iv) co-ordination of the operation of the Coaltransportation and measurement facilities with that of the Complex;



- (v) determining the local procedures to be used for operational communications;
- (vi) agreement of the detailed notification procedures to be instituted for transportation of the quantities of Coal required under Section [];
- (vii) consideration of proposed or anticipated long term changes in the levels of transport of or demand for Coal;
- (viii) general consideration of matters of an operational nature not relating to policy or pricing.

Section 12.3 **Principal Coordinators**

The Principal Coordinators shall be generally responsible for supervising and coordinating all aspects of this Agreement and for dealing with all matters relating to policy and pricing, including the following:

- (i) all matters relating to policy, pricing and amendments to or modifications of this Agreement or any waivers hereunder;
- (ii) consideration of proposed or anticipated long-term changes in the levels of transport for Coal;
- (iii) coordination of policy planning;
- (iv) issuance of notices as permitted hereunder including notices or communications in respect of Force Majeure Events, termination and damages; and
- (v) producing an agreed manual of operating procedures for the proposed methods of implementing this Agreement.

Section 12.4 **Procedures; No Amendment or Waiver**

- (a) The Operational Coordinators and the Principal Coordinators may each agree on their respective procedures for the holding of meetings, the taking of minutes and the appointment of alternates and of committees and sub-committees to deal with any issue or issues.
- (b) Nothing in this Article XVI shall entitle the Operational Coordinators or the Principal Coordinators to agree to any modification or amendment of this Agreement or to waive any provision of this Agreement.




ARTICLE XIII- RESOLUTION OF DISPUTES

Section 13.1 Resolution by Parties

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

Section 13.2 Determination by Expert


- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 13.1 within the time periods set forth therein, then either Party, in accordance with this Section 13.2, may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 13.3 without first referring it to an Expert.
- (b) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the Person it proposes to be the Expert. Within fifteen (15) days of receiving such notice, the other Party shall notify the initiating Party whether such Person is acceptable, and if such nominated expert is not acceptable to the responding Party, the responding Party shall propose a Person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the Person is not acceptable or nominates an expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business days and discuss in good faith for a period of five (5) days to agree upon a Person to be the Expert. Failing nomination by the responding Party of an expert within the period provided or failing such agreement by the Parties of the expert, at the end of the meeting, the President of the Pakistan Institute of Chartered Accountants, established under the Chartered Accountants Ordinance, 1961 (for financial and billing matters) or Vice-Chancellor of the University of Engineering and Technology (UET), Lahore (for technical matters) shall be



requested to select the Expert, and the selection of the Expert by the relevant selecting entity shall be binding on the Parties; provided, however, that the selecting entity shall be directed that, unless the Parties otherwise agree in writing, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any investor or group of investors holding directly or beneficially more than five percent (5%) of the Company nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.

- (c) (i) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (A) a description of the Dispute;
 - (B) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (C) copies of records supporting the initiating Party's position.
- (ii) Within ten (10) days of the date that a Party has submitted the materials described in Section 13.2(c)(i), the other Party may submit to the Expert, with copies to the other Party:
 - (A) a description of the Dispute;
 - (B) a statement of such Party's position and, if not already requested, whether a hearing is requested by such Party; and
 - (C) copies of any records supporting the Party's position.

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



- (d) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (e) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 13.2(c), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (f) The Expert shall provide a recommendation within fifteen (15) days after the ten (10) day response period provided in Section 13.2(c) has expired, or within such further time as is agreed in writing by the Parties. If the Expert's recommendation is given within such fifteen (15) days period, as may be extended by the Parties, the Parties may review and discuss the recommendation with each other in good faith for a period of ten (10) days following delivery of the recommendation before proceeding with any other actions.
- (g) The proceedings shall be without prejudice to any Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- (h) Unless the Parties agree in writing at the time the Expert is selected, stating that the recommendation of the Expert shall be binding, the recommendation of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 13.3 have not been commenced within seventy-five (75) days from the date the Expert's recommendation was received by the Parties in accordance with Section 13.2(f) the Expert's recommendation shall be final and binding on the Parties, and any right of such Parties to resort to arbitral, judicial or other proceedings in relation to the subject matter of the recommendation shall stand waived to the fullest extent permitted by law.
- (i) Subject to Section 13.2(h), if a Party does not accept the recommendation of the Expert with respect to the Dispute or if



the Expert has not provided a recommendation within the time period specified in Section 13.2(f), either Party may initiate arbitration proceedings in accordance with Section 13.3.

- (j) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for, and making presentations to, the Expert.
- (k) The failure of any Party to comply with the provisions and time periods set out in this Section 13.2 shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Section 13.3.
- (l) Either Party may serve a written notice on the other Party within thirty (30) days of the Expert's decision having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the decision of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty five (45) days period after serving such notice. Notwithstanding anything to the contrary expressed in this Article XIIIIV, either Party may require arbitration of a Dispute pursuant to Section 17.3 without reference to an Expert under this Section 13.2.

Section 13.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 13.1 and 13.2 or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with the rules of the London Court of International Arbitration as in effect on the date of this Agreement (the "Rules") by one (1) arbitrator appointed in accordance with the Rules. The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.
- (b) If for any reason 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 Lahore, Pakistan; provided, however, that if the amount in Dispute is greater than Ten Million Dollars (\$10,000,000) or the amount of such Dispute together with the amount of all previous Disputes submitted for arbitration pursuant to this Section 13.3 exceeds Fifteen Million Dollars (\$15,000,000) or an issue in Dispute is (i) the legality, validity or enforceability of this Agreement or any material provision hereof, or (ii) the termination of this Agreement, then either Party may, unless otherwise agreed by the Parties, require that the arbitration be conducted in London, United Kingdom in which case the arbitration shall be conducted in London. Except as awarded by the arbitrator and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder. Notwithstanding the aforesaid, if either Party requires that arbitration of any Dispute be conducted in London the arbitration shall be conducted in London and such Dispute is not of a type that could have been conducted in London in accordance with the provisions of the foregoing sentence, the Party requiring that arbitration be conducted in London shall pay all costs of arbitration as and when incurred by the other Party (including out of pocket costs but excluding any award made by the arbitrator) in excess of the costs that would have been otherwise incurred by such other Party had the arbitration been conducted in Lahore, Pakistan; provided, further, that the Party requiring that arbitration be conducted in London may seek a determination that the Dispute or the defence thereof is spurious and without any merit whatsoever, and upon such a final and binding determination, any amounts paid to the other Party to cover such excess costs shall be returned to the paying Party.
- (d) Unless the Parties otherwise agree, no arbitrator appointed pursuant to this Section 13.3 shall be a national of the jurisdiction of either Party or of the jurisdiction of any investor that directly or beneficially owns five percent (5%) or more of the ordinary share capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Power Purchaser, the Company, the Lenders or any investor that directly or beneficially owns five percent (5%) or more of the ordinary share capital.

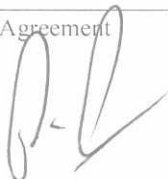


Section 13.4 **Commercial Acts**

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

Section 13.5 **Sovereign Immunity; Jurisdiction**

- (a) The Transporter hereby irrevocably and unconditionally agrees that:
- (i) should any proceedings be brought against the Transporter 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 Transporter 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 Transporter 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 13.5(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 13.5 shall be referred for determination under Section 17.3 and shall fall within the definition of Dispute.

A handwritten signature in dark ink, consisting of a large, stylized 'P' followed by a smaller 'L' and a long, sweeping diagonal stroke.A handwritten signature in dark ink, featuring a stylized 'J' or 'I' shape with a small horizontal line above it and a short horizontal stroke to the right.

ARTICLE XIV- INDEMNIFICATION

Section 14.1 Indemnification by Parties

- (a) Company. TheTransporter agrees to indemnify and hold the Company, and its Contractors harmless from, at all times after the date hereof, any and all 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) (collectively "**Loss**") incurred, suffered, sustained or required to be paid by, or sought to be imposed upon the Company or its Contractors for personal injury or death to persons or damage to property arising out of Transporter intentional or reckless acts or omissions or its gross negligence. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 14.1(a) shall apply to any Loss in respect of which the Company is fully indemnified pursuant to the terms of the Implementation Agreement, the Power Purchase Agreement or under any policy of insurance.
- (b) Transporter. The Company agrees to indemnify and hold the Transporter harmless from, at all times after the date hereof, any and all Loss incurred, suffered, sustained or required to be paid by, or sought to be imposed upon, any such Person for personal injury or death to persons or damage to property arising out of any gross negligence or intentional or reckless acts or omissions by the Company or its Contractors. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 14.1(b) shall apply to any Loss in respect of which Transporter is fully indemnified pursuant to any policy of insurance.

Section 14.2 Exceptions to Claims for Indemnification

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all losses of such Party, in the aggregate, during the then-current Year, exceed the Rupees Thirty Million (Rs. 30,000,000). For the purposes of this Section a Loss (or claim for indemnification) shall be deemed to arise in the Year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Year, in the Year such event ends.



Section 14.3 **Rights to Legal Counsel**

The indemnified Party shall have the right, but not the obligation to contest, defend and litigate, and to retain counsel of its choice in connection therewith, any claim, action, suit or proceeding by a third party alleged or asserted against such Party in respect of resulting from, related to or arising out of any Loss for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder; provided, however, that, if the indemnifying Party acknowledges in writing its obligations to indemnify the indemnified Party in respect of such Loss to the full extent provided by Section 18.1, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and with counsel of its selection if it gives prompt written notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of the Defense. The indemnified Party shall not be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld.

Section 14.4 **Survival of Obligations**

The rights and obligations of the Parties shall expressly survive any termination or expiry of this Agreement for a period of thirty six (36) months from the date of such expiry or termination.

A handwritten signature in dark ink, appearing to be 'J.L.' followed by a long, sweeping horizontal stroke.A handwritten signature in dark ink, consisting of a stylized, cursive letter 'A' or 'N' with a small flourish at the top.

ARTICLE XV- MISCELLANEOUS

Section 15.1 Notices

(a) Except as otherwise expressly provided in this Agreement, all notices and other communications required or permitted to be given by a Party shall be in writing and either delivered personally or by courier or sent by facsimile to the address or number of the other Party specified below:

(i) **If to the Company:**

Attention:

Address:

Facsimile:

(ii) **If to Transporter:**

Attention:

Address:

Facsimile:

All notices shall be deemed delivered (a) when presented personally, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a Day that is not a Business Day for the receiving Party, on the first business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one (1) Business Day after being delivered to a courier for overnight transportation, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith) or (d) five (5) Business 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 above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith). 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.

Section 15.2 **Amendment**

This Agreement can be amended only by agreement between the Parties in writing.

No amendment to the Implementation Agreement or the Power Purchase Agreement which has a material adverse effect on the Transporter under this Agreement, shall be made without the prior written consent of the Transporter, and made without such consent shall not to the extent, be binding on the Transporter

Section 15.3 **Waivers**

- (a) No waiver by either Party of any default or defaults by the other 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 or defaults whether of a like or different character; or
 - (ii) shall be effective unless in writing duly executed by a duly authorized representative of the Party.
- (b) The failure by either Party to insist on any occasion upon the performance of any term, condition or provision of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or the acceptance of any variation.

Section 15.4 **Relationship of the Parties**

- (a) 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.
- (b) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third-party as having such right, power, or authority.



Section 15.5 **Language**

This Agreement has been drafted in English and the English version shall prevail over any translations. All notices, certificates and other documents and communications (including copies) given or made under or in connection with this Agreement will be in English.

Section 15.6 **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 15.7 **Entirety**

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect thereto as of the Effective Date, and no alteration, modification or interpretation of this Agreement shall be binding unless in writing and signed by both Parties.

Section 15.8 **Assignment of Right, Title or Interest**

- (a) 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 this Section 15.8.
- (b) Notwithstanding the provisions of Section 15.8 (a), the Transporter's written consent of the Company's assignment or transference shall not be required for assignment or transference in favour of the Lenders financing the project or any further assignment or transference by the party providing such financing. The Transporter agrees, if required by the parties providing such financing, to enter into agreements evidencing its consent to assignment of this Agreement, to make any payments due to the Company pursuant to this Agreement directly into a collateral security account maintained by or on behalf of the Lenders and to provide notice to such parties and a reasonable opportunity for such parties to remedy the event giving rise to a right of termination prior to exercising any such right. The Transporter shall cooperate with the Company in the negotiation and execution of any reasonable amendment to or modification of or assignment of, in each case, this Agreement required by any Lenders.



- (c) The Transporter shall provide at the Company's expense such documents and other technical assistance as the Lenders may reasonably request, through the Company, in connection with obtaining financing for the project.
- (d) During the validity of this Agreement, the Transporter shall, at the request of the Owner, make available to the Lenders information relating to the status of the Transporter works including information relating to the design, engineering and supply of equipment for the project and such other matters as the Lenders may, through the Company, reasonably request. The Lenders and their engineers and consultants shall be permitted, at the option and cost of the Company, to participate in all inspections conducted by the Company under this Agreement and the Transporter hereby consents to the same. The Company shall cause all such persons to observe the Transporter's security and safety regulations at all applicable locations and to refrain from interfering with the Transporter's performance of the works.
- (e) The Transporter acknowledges that the Company will finance the development of the project by way of project financing techniques (or otherwise) supported by various Lenders. The Transporter will consent to the assignment of the Company's rights under this Agreement and the Transporter and will enter into the direct agreement with the Lenders and the Company (within fifteen (15) days of the Transporter's receipt of a notice of such requirements from the Lenders), which agreement will include cure, step-in and novation rights and any other provisions reasonably required by any Lender in relation to a project of this type
- (f) The Transporter hereby consents to the assignment of this Agreement by the Company to the GOP in the event that the Implementation Agreement or the Power Purchase Agreement is terminated and the assignment will be effective with the termination thereof upon assumption by the GOP, the Company shall be released from its further obligations under this Agreement.

Section 15.9 **Confidentiality**

Each of the Parties 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 construction, operation,



maintenance, management and financing of the Complex and the Coaltransportation facilities and shall not, save as required by law or appropriate regulatory authorities, prospective lenders or investors in the Company and/or the Transporter and their professional advisers, publish or otherwise disclose or use this information 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 in agreements prepared and issued in connection with other projects. The obligations of the Parties under this Section 15.9 shall survive for a period of three (3) years following the termination of this Agreement.

Section 15.10 **Successors and Assigns**

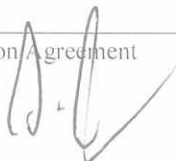
This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.

Section 15.11 **No Liability for Review**

No review and approval by the other Party of any agreement, document, instrument, drawing, specifications, or design proposed by the first Party nor any inspection of any facilities carried out by other Party pursuant to this Agreement shall relieve the first Party 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 the carrying out of such works or failure to comply with the applicable Laws of Pakistan with respect thereto, or to satisfy such Party's Company's obligations under this Agreement nor shall such Party be liable to the other Party or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification or design or such inspection.

Section 15.12 **Counterparts**

This Agreement may be executed in two 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 be an original, but all of which shall together constitute one and the same instrument.



Section 15.13 **Severability**

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, illegal, unenforceable or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination if any.

Section 15.14 **Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

Section 15.15 **Shareholding of the Transporter**

The Transporter is one hundred percent (100%) owned by Pakistan Railways, and shall ensure that the shareholding of the Transporter shall continue to be one hundred percent (100%) held by Pakistan Railways.

Section 15.16 **Changes of Address**

Any Party may by notice change the addressees or addresses to which such notices and communications to it are to be delivered or mailed.

Section 15.17 **Amendments to this Agreement**

All payment and monetary obligations of the Company contained in this Agreement are subject to the tariff determination or consent issued by NEPRA. In the event NEPRA disallows any payments/costs/charges or provisions of this Agreement or does not provide a consent on the same, the same shall be void in this Agreement and the Agreement shall be renegotiated with the mutual consent of the Parties.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

TRANSPORTER

By: M/s Pakistan Railway Freight Transportation Company (Pvt) Ltd

Name: Zafar Zaman Ranjha

Title Chief Executive Officer

WITNESSES: 1

SANIYA AWAIS
MD PPDB

WITNESSES: 2

ABDUL RAUF
Director Finance PPDB

COMPANY

By: Huaneng Shandong Ruyi (Pakistan) Energy Pvt Ltd.

Name: Song Taiji

Title: Vice President:

WITNESSES: 1

张超

WITNESSES: 2

张震

SCHEDULE 1

FREIGHT PAYMENTS

PART I: GENERAL

1) Introduction

a) This Schedule 1 is attached to and constitutes an integral part of the Inland Coal Transportation Agreement (the "ICTA") dated as of July 7th, 2015 by and between the Transporter and the Company. This Schedule 1 specifies the methods for calculating:

- i) The Fixed Freight Charge and Variable Freight Charge for the Monthly Fixed Freight Payments and Monthly Variable Freight Payments (collectively "Monthly Freight Payments") to be made to the Transporter by the Company after Start Date under Article VI of the ICTA, calculated in the manner provided in Part II.
- ii) The Monthly Freight Shortfall Payments to be made to the Transporter by the Company under Article VI of the ICTA, calculated in the manner provided in Part II
- iii) The procedure for indexation and adjustments for change in fuel price variation and O&M cost variation against the reference values are set forth in Part III.

b) The billing, payment and adjustment procedures as set forth in Article VI of the ICTA shall apply to all payment obligations referred to in this Schedule 1.

2) Definitions

Capitalized terms used but not defined in this Schedule 1 shall have the meaning given to them in the ICTA. Wherever the following terms appear in this Schedule 1, they shall have the meanings stated below:

Reference Fixed Freight Charge " FFC_{REF} "¹ means the Fixed Freight Charge as appearing in Annex 1 to this Schedule 1.

Reference Fuel Cost Component " FCC_{REF} "² means the Fuel Cost Component as appearing in Annex 1 to this Schedule 1.

Reference O&M Cost Component " OCC_{REF} "³ means the O&M Component as appearing in Annex 1 to this Schedule 1



Revised Fixed Freight Component “FFC_{REV}” means the Reference Fixed Freight Component adjusted from time to time in accordance with Part III of Schedule 1.

Revised Fuel Cost Component “FCC_{REV}” means the Reference Fuel Cost Component i.e. FCC_{REF} adjusted from time to time in accordance with Part III of Schedule 1.

Revised O&M Cost Component “OCC_{REV}” means the Reference O&M Component i.e. O&M_{REF} adjusted from time to time in accordance with Part III of Schedule 1.

Other Freight Charges “OFC”⁴ means the Other Freight Charges component as appearing in in Annex 1 to this Schedule 1.

Variable Freight Charge “VFC” means the sum of FCC_{REV}, OCC_{REV} and OFC.

3) Interpretation

- a) This Schedule 1 (including the Annexes) shall be read in conjunction with and subject to Article VI of the ICTA. To the extent that any provision of this Schedule is inconsistent with Article VI or any other article or section of the ICTA, the provisions of Article VI or the other relevant article or section of the ICTA, as the case may be, shall prevail unless otherwise specified.
- b) This Schedule 1 (including the Annexes) is subject to the consent of the National Electric Power Regulatory Authority (“NEPRA”).
- c) References to Parts and Sections in this Schedule 1 are to Parts and Sections of this Schedule 1, unless indicated otherwise. References to Tables and Annexes in this Schedule 1 are to the Tables and Annexes of this Schedule 1, unless indicated otherwise. References to Articles and Sections of the ICTA are to articles and sections contained in the body of the ICTA.


PART II: FREIGHT PAYMENTS

4) FREIGHT PAYMENTS

- a) **MONTHLY FREIGHT PAYMENT (“MFP_m”)**: In relation to Section 6.1 (a) and 6.1 (b) of the ICTA, the Company shall pay to the Transporter, the Monthly Freight Payments as set out below:

$$MFP_m = \sum_{n=1}^n RCQ_m \times (FFC_m + VFC_m)$$

where



MFP _m =	Monthly Freight Payment for the relevant Month
RCQ _m =	Received Coal Quantity for shipment _n in any Month
FFC _m =	Fixed Freight Charge as provided in Annex 1
VFC _m =	means the Variable Freight Charge being the sum of FCC _{REV} , OCC _{REV} and OFC

- b) **MONTHLY FREIGHT SHORTFALL PAYMENT (“MFSP_m”):** In relation to Section 6.1 (c) of the ICTA, the Company shall pay to the Transporter, the Monthly Freight Shortfall Payment as set out below:

$$MFSP_m = FFC_m \times (MCQ_m - \sum_{n=1}^n RCQ_m)$$

where

MFSP _m =	Monthly Freight Shortfall Payment for the relevant Month
RCQ _m =	Received Coal Quantity for shipment _n in any Month
FFC _m =	Fixed Freight Charge as provided in Annex 1
MCQ _m =	Monthly Committed Quantity for the relevant month i.e. 366,667 tonnes

- c) The payment obligations of the Company towards the Transporter in relation to the above mentioned payments and each component thereof, are limited to the extent of payment by the Company to the Transporter, whether or not such payments actually compensate the Transporter for the cost(s) actually incurred by the Transporter in relation to each of the components of the payments.

PART III: INDEXATION AND ADJUSTMENT FACTORS

- 5) Indexation and adjustment of the Fixed Freight Component as well as the FCC and O&M components of the Variable Freight Charge shall be calculated as provided below.
- a) The Fixed Freight Component (“FFC”) shall be indexed on an the 1st January and 1st July of each calendar year as follows:

$$FFC_{REV} = (X\% \times FFC_{REF}) + (Y\% \times FFC_{REF} \times \frac{CPI_{REV}}{CPI_{REF}})$$

CPI _{REV} =	The average value of the Pakistan Consumer Price Index (General) for the immediately preceding 6 months as notified by the Statistics Division, Government of Pakistan
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CPI_{REF} = The value of the Pakistan Consumer Price Index (General) for the month of June 2015 as notified by the Statistics Division, Government of Pakistan i.e. [●]

- b) The Fuel Cost Component ("FCC") shall be indexed on a monthly basis and will be calculated as follows:

$$FCC_{REV} = FCC_{REF} \times \frac{DFP_{REV}}{DFP_{REF}}$$

where

DFP_{REV} = The average diesel fuel price in Pak Rupees per liter as notified by the Oil & Gas Regulatory Authority for the relevant month

DFP_{REF} = The average diesel fuel price in Pak Rupees per liter as notified by Oil & Gas Regulatory Authority for the Month June 2015

- c) The O&M Cost Component ("OCC") shall be indexed on a quarterly basis at each January 1st and July 1st and will be calculated as follows:

$$OCC_{REV} = OCC_{REF} \times \frac{CPI_{REV}}{CPI_{REF}}$$

where

CPI_{REV} = The average value of the Pakistan Consumer Price Index (General) for the immediately preceding 6 months as notified by the Statistics Division, Government of Pakistan

CPI_{REF} = The value of the Pakistan Consumer Price Index (General) notified for the month of June 2015 as notified by the Statistics Division, Government of Pakistan i.e. [●]

- 6) If any index used herein ceases to be available, the Parties shall request Statistics Division of GOP/NEPRA to determine an alternative index, which determination when made shall be binding on the Parties for all purposes of such index hereunder. Pending the determination by Statistics Division/NEPRA, the last available value of such index shall be used for all relevant purposes hereunder. Upon the determination of such index by Statistics Division/NEPRA, all payments made by either Party during the period of unavailability of a current value of the relevant index, shall be recomputed using the applicable value of the replacement index, and the differences, if any, shall be paid by the owing Party without any interest / mark-up.



ANNEX1

⁵REFERENCE FREIGHTCHARGE

Fixed Freight Charge ("FFC") kilometer/ton	Pak Rupees [1.330] per Pak Rupees [●] per ton
Reference Fuel Cost Component ("FCC _{REF} ") kilometer/ton	Pak Rupees [0.404] per Pak Rupees [●] per ton
Reference O&M Cost Component ("O&M _{REF} ") kilometer/ton	Pak Rupees [0.304] per Pak Rupees [●] per ton
Other Freight Cost Component ("OFC") kilometer/ton	Pak Rupees [0.952] per Pak Rupees [●] per ton
Total kilometer/ton	Pak Rupees [2.990] per Pak Rupees [●] per ton

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