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LOAN NUMBER 2846-PAK

PROJECT AGREEMENT

(Power Transmission Enhancement Investment Program – Project 3)

between

ASIAN DEVELOPMENT BANK

and

NATIONAL TRANSMISSION AND DESPATCH COMPANY

DATED 18th January 2012

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PAK 37192

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 18 January 2012 between ASIAN DEVELOPMENT BANK (“ADB”) and NATIONAL TRANSMISSION AND DESPATCH COMPANY (“NTDC”).

### **WHEREAS**

(A) by a Loan Agreement between Islamic Republic of Pakistan (“Borrower”) and ADB, ADB has agreed to make to the Borrower a loan of two hundred forty-three million two hundred and forty thousand Dollars (\$243,240,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to NTDC and that NTDC agrees to undertake certain obligations towards ADB set forth herein; and

(B) NTDC, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) NTDC shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, NTDC shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to NTDC, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. NTDC shall make available, promptly as needed, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, NTDC shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, NTDC shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. NTDC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. NTDC shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) NTDC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, NTDC undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. NTDC shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and NTDC shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) NTDC shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and NTDC shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, NTDC and the Loan.

Section 2.08. (a) NTDC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning: (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the

Project; (iv) the administration, operations and financial condition of NTDC; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, NTDC shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, NTDC shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by NTDC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) NTDC shall: (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement and the Project Agreement), all in the English language. NTDC shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) NTDC shall enable ADB, upon ADB's request, to discuss NTDC's financial statements and its financial affairs from time to time with the auditors appointed by NTDC pursuant to subsection (a) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of NTDC unless NTDC shall otherwise agree.

Section 2.10. NTDC shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) NTDC shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) NTDC shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) NTDC shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, NTDC shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, NTDC shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, NTDC shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. NTDC shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its charter or license, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. NTDC shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify NTDC of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

**ARTICLE IV****Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2428.

For NTDC

National Transmission and Despatch Company  
Office of the Chief Executive NTDC  
414 – WAPDA House  
Lahore, Pakistan

Facsimile Number:

(92-42) 920-2053.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of NTDC may be taken or executed by its Chief Executive Officer or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) NTDC shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

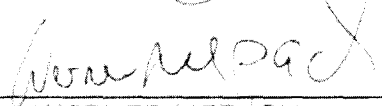
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default,

or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.


ASIAN DEVELOPMENT BANK

By

  
\_\_\_\_\_  
WERNER LIEPACH  
Country Director  
Pakistan Resident Mission

NATIONAL TRANSMISSION AND  
DESPATCH COMPANY

By

  
\_\_\_\_\_  
Authorized Representative

## SCHEDULE

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. NTDC shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement or the Project Agreement, the provisions of this Loan Agreement or the Project Agreement shall prevail.

#### Financial Performance

2. (a) Except as ADB shall otherwise agree, NTDC shall not incur any debt unless a reasonable forecast of the revenues and expenditures of NTDC shows that the estimated net revenues of NTDC for each fiscal year shall be, commencing from 2010, at least 1.2 times the maximum estimated debt service requirements of NTDC in such year on all debt of NTDC, including the debt to be incurred.

(b) For the purpose of this paragraph:

- (i) The term “debt” means any indebtedness of NTDC maturing by its terms more than 1 year after the date of which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term “net revenues” means the difference between:
  - (A) the sum of revenues from all sources related to operations and net non-operating income, after making adequate provisions for uncollectible debts; and
  - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt. Lease payments under finance leases must also be included.
- (iv) The term “net non-operating income” means the difference between:



- (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (iv)(A) above.
- (v) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt.
  - (vi) The term “reasonable forecast” means a forecast prepared by NTDC not earlier than 9 months prior to the incurrence of the debt in question, which both ADB and NTDC accept as reasonable and as to which ADB has notified NTDC of its acceptability.
  - (vii) The terms “operations” or “operating” refer to the operations of NTDC.
  - (viii) Whenever for the purposes of this paragraph it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is at the time of such valuation obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.
3. (a) Except as ADB shall otherwise agree, NTDC shall maintain a self financing ratio of at least 20% for each fiscal year from 2012.
- (b) Except as ADB shall otherwise agree, NTDC shall produce, for each of its fiscal years after its fiscal year ending on 30 June, cash from internal sources equivalent to not less than 20% of the annual average of NTDC’s capital expenditures incurred, or expected to be incurred, for that year, the previous fiscal year and the next 2 years following fiscal years.
- (c) Before 31 March in each of its fiscal years, NTDC shall, on the basis of forecasts prepared by NTDC and satisfactory to ADB, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to ADB a copy of such review, upon its completion.
- (d) If any such review shows that NTDC would not meet the requirements set forth in paragraph (b) for its fiscal years covered by such review, NTDC shall promptly take all necessary measures including without limitation, filing applications with National Electric Power Regulatory Authority seeking a tariff/rate increase to meet such requirements.

- (e) For the purposes of this Section:
- (i) The term “cash from internal sources” means the difference between:
    - (A) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, and net non-operating income; and
    - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends paid and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures.
  - (ii) The term “net non-operating income” means the difference between:
    - (A) revenues from all sources other than those related to operations, after making adequate provisions for uncollectible debts; and
    - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (ii)(A) above.
  - (iii) The term “working capital other than cash” means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
  - (iv) The term “current assets excluding cash” means all assets other than cash which could in the ordinary course of business be converted into cash within 12 months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.
  - (v) The term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within 12 months, including accounts payable, customer advances, debt service requirements taxes and payments in lieu of taxes, and dividends.

- (vi) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments if any) of, and interest and other charges on, debt, excluding interest charged to construction and financed from loans.
- (vii) The term “capital expenditures” means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (viii) The terms “operations” or “operating” refer to the operations of NTDC.
- (ix) Whenever for the purposes of this Section it shall be necessary to value, in terms, of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.

#### Environment

4. NTDC shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the each Subproject comply with: (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

5. NTDC shall ensure that all land and all rights-of-way required for each Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with: (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the LARF; and (d) all measures and requirements set forth in the respective LARP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report. For the avoidance of doubt, NTDC shall ensure that no land is acquired for the purpose of any Subproject under the emergency acquisition provisions of the Borrower's Land Acquisition Act 1894, as amended from time to time.

6. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the LARPs, NTDC shall ensure that no physical or economic displacement takes place in connection with any Subproject until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the respective LARP; and

- (b) a comprehensive income and livelihood restoration program has been established in accordance with the respective LARP.

#### Indigenous Peoples

7. No impact on indigenous people is expected for the Project. However, if there is any such impact, NTDC shall ensure that it shall adhere to applicable laws and regulations of the Borrower and the SPS.

#### Human and Financial Resources to Implement Safeguards Requirements

8. NTDC shall make available necessary budgetary and human resources to fully implement the EMPs and the LARPs.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. NTDC shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEEs, the EMPs and the LARPs, and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMPs or the LARPs;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

10. NTDC shall do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project

that were not considered in the IEEs, the EMPs or the LARPs, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs or the LARPs promptly after becoming aware of the breach.

#### Prohibited List of Investments

11. NTDC shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Labor Standards and Health

12. NTDC shall ensure that all civil works contractors: (a) comply with all applicable labor laws; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the projects financed under the Facility; (c) disseminate information at worksites on health safety for those employed during construction; (d) provide equal pay to men and women for work of equal type; (e) provide safe working conditions and separate culturally appropriate facilities for male and female workers; and (f) abstain from child labor.

#### Counterpart Support

13. NTDC shall provide timely release of counterpart funding for the implementation of Subprojects. For this purpose, NTDC shall ensure that: (a) the annual development program incorporates revised estimates of the funding requirements for the Subprojects under the Tranche; and (b) the funds are released to the designated accounts.

#### Governance and Anticorruption

14. NTDC shall: (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

15. NTDC shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.