

NOTICE OF TENTH EXTRAORDINARY GENERAL MEETING

Notice is hereby given that the Tenth Extraordinary General Meeting of Kot Addu Power Company Limited ("**Company**") will be held at 10.00 a.m. at the Islamabad Marriott Hotel, Agha Khan Road, Shalimar 5, Islamabad and through video-link (as requested) on Wednesday, March 24, 2021 to transact the following business:

Ordinary Business:

To confirm the minutes of the 24th Annual General Meeting of the Company held on October 28, 2020.

Special Business

1. To consider and if deemed fit, pass the following resolutions as special resolutions, with or without modifications, in terms of Article 41 of the Articles of Association of the Company:
 - (A) **RESOLVED** that the following agreements executed be and are hereby ratified and approved:
 - a) Master Agreement dated February 11, 2021 ("**Master Agreement**") between the Company and the Pakistan Water and Power Development Authority ("**WAPDA**") to cover the general terms and conditions of the agreements and matters agreed between the Company and the Government Implementation Committee;
 - b) Third Amendment to the Power Purchase Agreement (and annexed Settlement Terms) dated February 11, 2021 ("**Third PPA Amendment Agreement**") between the Company and WAPDA amending the Power Purchase Agreement dated June 27, 1996 (as amended by the First Amendment to the PPA dated October 3, 2000 and Second Amendment to the PPA dated April 20, 2002);
 - c) Novation Agreement dated February 15, 2021 ("**Novation Agreement**"); amongst WAPDA, the Company and the Central Power Purchasing Agency (Guarantee) Limited ("**CPPA-G**") for transferring the rights, obligations and liabilities of WAPDA under the PPA (as amended by the Third PPA Amendment Agreement) in favour of CPPA-G.

(B) **RESOLVED** that the Board of Directors be and is hereby authorized to execute and sign the following agreements:

- i. Amendment Agreement to the Facilitation Agreement ("**Facilitation Amendment Agreement**") amending the Facilitation Agreement dated June 27, 1996 consequent to the Company entering into the Third PPA Amendment Agreement and the Novation Agreement and any other agreements/documents that may be incidental to give full force and effect to the Facilitation Amendment Agreement;
- ii. Amendment Agreement to the Guarantee ("**Guarantee Amendment Agreement**") between the President of the Islamic Republic of Pakistan for and on behalf of the Islamic Republic of Pakistan and the Company amending the GoP Guarantee dated June 27, 1996 (as amended on January 11, 2005) issued in favour of the Company consequent to the Company entering into the Third PPA Amendment Agreement and the Novation Agreement and any other agreements/documents that may be incidental to give full force and effect to the Guarantee Amendment Agreement.

(C) **RESOLVED** that the Company be and is hereby authorized to agree on the following changes/amendments to the Power Purchase Agreement dated June 27, 1996 (as amended by the First Amendment to the PPA dated October 3, 2000 and Second Amendment to the PPA dated April 20, 2002) and as amended by the Third PPA Amendment Agreement (together, the "**PPA**"):

- (i) capacity payments and variable O&M be reduced by 11%; USD exchange rate and US CPI indexations be discontinued on 50% of the reduced capacity payment (locked at National Bank of Pakistan's TT/OD selling PKR/USD exchange rate of Rs. 168.60/USD without any local or international currency indexation or inflation adjustment for the future and US CPI of August 2020);
- (ii) USD exchange rate and US CPI indexations on reduced variable O&M and 50% of the reduced capacity payment to continue as per existing arrangement; without prejudice to the terms of its generation license the Company will have the option to participate in the Competitive Trading Arrangement when it is implemented and becomes fully operational;
- (iii) subject to agreement on the terms and conditions and completion of legal and corporate formalities, to agree with the Power Purchaser on the extension of the term of the PPA for an additional term following the expiry of the existing term of the PPA; and

- (iv) such other terms and conditions as may be mutually agreed with the Power Purchaser.
- (D) **RESOLVED** that the Company be and is hereby authorized to agree and settle all claims and counter claims currently in Arbitration (ICC Case No. 23521/PTA/ASB/HTG) including by (a) agreeing with the Power Purchaser to treat the outage period (2009 to 2016) due to fuel shortage as Other Force Majeure Event under the Power Purchase Agreement dated June 27, 1996 (as amended by the First Amendment to the PPA dated October 3, 2000 and Second Amendment to the PPA dated April 20, 2002) and the Third Amendment to the PPA dated February 11, 2021 (together, the PPA); and existing Term of the PPA be extended by 485 days (approximately 16 (sixteen) months); (b) settlement of the liquidated damages claimed by the Power Purchaser and disputed by the Company; (c) settlement of the Company's claim for late payment interest on the delayed payment of its late payment interest invoices; and (d) withdrawal / disposal of the arbitration proceedings before the ICC Tribunal.
- (E) **RESOLVED** that the Company be and is hereby authorized to agree on the payment of outstanding receivables from the Power Purchaser in two tranches of 40% and 60% respectively through cash and financial instruments and if the Power Purchaser defaults in payment (with a cure period) the discount given in capacity payments and variable O&M shall be suspended in accordance with the terms of the Power Purchase Agreement dated June 27, 1996 (as amended by the First Amendment to the PPA dated October 3, 2000 and Second Amendment to the PPA dated April 20, 2002) and the Third Amendment to the PPA dated February 11, 2021.

Lahore
February 18, 2021

By Order of the Board



A. Anthony Rath
(Company Secretary)

Notes:

1. The share transfer books of the Company will remain closed from 17-03-2021 to 24-03-2021 (both days inclusive). Transfers received in order at the office of the Company's Share Registrar, THK Associates (Private) Limited at the close of business on 16-03-2021 will be treated in time for purposes of attending and voting at the EGM.
2. A Member entitled to attend and vote at the EGM is entitled to appoint a proxy to attend and vote on his behalf, provided such proxy is also a Member.
3. An instrument of proxy and the Power of Attorney or other authority (if any) under which it is signed, or a Notary Public certified copy of such Power of Attorney, in order to be valid, must be deposited with the Company's Registrars, THK Associates (Private) Limited, , Plot No. C-32, Jami Commercial Street No.2, DHA, Phase-VII, Karachi-75500 not later than (48) forty eight hours before the time of holding the EGM.
4. CDC account holders will in addition have to follow the under mentioned guidelines as laid down in Circular No.1 dated January 26, 2000 of the Securities & Exchange Commission of Pakistan for attending the EGM:
 - (i) **In case of individuals:** The account holder or sub account holder and / or the person whose securities are registered on CDS; and their registration details are uploaded as per the regulations, shall authenticate his/her identity by showing his/her original Computerized National Identity Card (CNIC) or original passport at the time of attending the EGM. The Members are also required to bring their Participants' I.D. number and account numbers in CDS.
 - (ii) **In case of corporate entity:** The Board of Directors Resolution / Power of Attorney with specimen signature of the nominee shall be produced (unless it has been provided earlier) at the time of Meeting.
5. In compliance with the requirements of Section 72 of the Companies Act, 2017, every existing listed company shall be required to replace his/her physical shares with book-entry form in a manner as may be specified and from the date notified by the Commission, within a period not exceeding four years from the commencement of this Act, i.e. May 30, 2017.

The shareholders having physical shareholding are encouraged to open CDC sub-account with any of the broker or Investor Account directly with CDC to induct their physical shares into electronic form. This will facilitate the shareholders including safe custody and sale of shares, as the trading of physical shares is not permitted as per existing regulations of the Pakistan Stock Exchange.

6. Due to the prevailing situation caused by Covid-19 pandemic, SECP has instructed listed companies to modify their usual planning for general meetings. Accordingly, Member(s) may attend the EGM virtually. To attend the EGM virtually, a Member is required to send an email at general.meetings@kapco.com.pk with email address, name, folio number, CNIC number and number of shares held in his/her name with subject "Registration for 10th EGM of KAPCO". Video link to join the EGM will be shared with only those Members whose emails, containing all the required particulars, are received at the aforementioned email address not later than 48 (forty-eight) hours before the time of the EGM.

Members attending the EGM in person will be required to comply with SoPs protocols/guidelines for their own and others safety.

7. Members are requested to immediately notify any change of address to the Company's Share Registrar, THK Associates (Private) Limited, Plot No. C-32, Jami Commercial Street No.2, DHA, Phase-VII, Karachi-75500.

**STATEMENT OF MATERIAL FACTS UNDER SECTION 134(3) OF THE COMPANIES ACT,
2017**

This statement sets out the material facts pertaining to the special business to be transacted at the Extraordinary General Meeting to be held on March 24, 2021.

The Government of Pakistan ("GoP") set-up a Committee for Negotiations ("G-NC") with Independent Power Producers ("IPPs") vide Notification dated June 3, 2020 for alteration in the existing contractual arrangements. The Company, at the request of the GoP and in the larger national interest agreed to amend the Power Purchase Agreement dated June 27, 1996 (as amended) for sustainability of the power sector. Subsequently, a Memorandum of Understanding dated August 19, 2020 ("MoU") was executed between the Company and G-NC, subject to certain conditions. GoP, thereafter set-up an Implementation Committee ("G-IC") constituted through notification dated October 7, 2020. G-IC, the Company and the Central Power Purchasing Agency (Guarantee) Limited ("CPPA-G") entered into negotiations for tariff reduction and to resolve other outstanding issues between the Company and the Power Purchaser including the settlement of the LDs Arbitration before the International Chamber of Commerce (ICC). Following extensive negotiations, the Board of Directors authorised the Chief Executive to sign the Master Agreement, and the Third PPA Amendment Agreement, subject, inter alia, to shareholder approval as a special resolution matter under the Company's Articles of Association. The terms of the aforesaid agreements were duly disclosed to the Pakistan Stock Exchange Limited and the Securities and Exchange Commission of Pakistan as required under the applicable provisions of the Securities Act, 2015 and Rule Book of Pakistan Stock Exchange Limited.

By way of background, in 2006, Power Purchaser breached its payment obligations under the terms of the PPA and consistently delayed payment of the Company's invoices. This had a crippling effect on the liquidity and cash-flow available to the Company for the purposes of operating its Power Complex. Despite arranging extensive working capital facilities, the Company was unable to procure enough fuel oil and the Company's Complex experienced outages, which the Power Purchaser classed as 'Forced Outages' and / or 'Partial Forced Outages' and purported to issue Liquidated Damages invoices for such outages. These Liquidated Damages invoices, albeit for outages commencing from July 2008 to October 2015, were issued from 2012 to 2016. The Company, in accordance with the terms of the Power Purchase Agreement, duly disputed all of the Liquidated Damages imposed by the Power Purchaser. Thereafter till 2016 the Company's Complex kept experiencing more outages caused by non-payment/delayed payments by the Power Purchaser, resulting in Liquidated Damages being imposed by the Power Purchaser.

Further, not only did the Power Purchaser delay payment of capacity payment and energy payment invoices, but also the payment of the Company's late payment interest invoices. Under the terms of the Power Purchase Agreement, the Company is entitled to receive late payment interest on the delayed payment of its invoices. The Company's view is that this is also applicable to the delayed payment of its late payment interest invoices.

As no resolution could be reached between the Power Purchaser and the Company on the abovementioned disputes, the Company referred the same to arbitration under Article XV of the PPA, that is, ICC Case No. 23521/PTA/ASB/HTG. Through the Settlement Terms annexed to the Third PPA Amendment, the Company and the Power Purchaser have agreed to withdraw / dispose of the arbitration in terms of the Settlement Terms.

Through the Settlement Terms, the parties agree to treat the outage period (financial years 2009 to 2016) due to fuel shortage as an Other Force Majeure Event ("OFME") under the PPA. The total number of days that the OFME subsisted was equivalent to 485 days (approximately 16 (sixteen) months). To this extent, the Company and the Power Purchaser have agreed that:

- (a) the Power Purchaser will irrevocably forego and waive all of its Liquidated Damages and interest disputed by the Company in their totality;
- (b) the Company will not charge the Power Purchaser any capacity payments for making its complex available for dispatch for an extended period of 485 days (approximately 16 (sixteen) months) beyond thereby extending the Term of the PPA for the said period in lieu of the capacity payments already received by the Company during the OFME Period which will not be returned to Power Purchaser under OFME terms (for the avoidance of doubt, the Company will receive all other payments it is entitled to under the terms of the PPA); and
- (c) the Company will forego its claim of Late Payment interest on Late Payment interest.

Following the unbundling of WAPDA under reforms introduced, from time to time by GoP to the power sector, WAPDA continues to be the Power Purchaser under the Power Purchase Agreement. However, all of the functions of WAPDA under the Power Purchase Agreement are being managed and performed by CPPA-G. In keeping with GoP policy, and as CPPA-G is the market operator, inter alia, for facilitating the power market transition from the current single buyer to competitive market, the rights, obligations and liabilities of WAPDA under the Power Purchase Agreement (including as amended by the Third PPA Amendment Agreement) are being transferred to in favour of CPPA-G under the Novation Agreement.

The Settlement Terms directly and indirectly involve WAPDA. WAPDA has three nominee directors on the Company's Board of Directors against a total of eight directors (including Chief Executive). It directly involves WAPDA as a counterparty to the Power Purchase Agreement and for the Novation Agreement. It also indirectly relates to WAPDA because WAPDA is a statutory corporation controlled by GoP and WAPDA is also an affiliate of CPPA-G (both being under common control), key participants and beneficiaries in the settlement.

Consequent to changes being made in the Power Purchase Agreement due to the Third PPA Amendment Agreement and the Novation Agreement, changes/amendments are required to be

made to the Facilitation Agreement to ensure, inter alia, that the assurances and agreements of GoP continue.

Consequent to changes being made in the PPA due to the Third PPA Amendment Agreement and the Novation Agreement, changes/amendments are required to be made to the GoP Guarantee to ensure, inter alia, that the guarantee of GoP continues uninterrupted.

In terms of Article 41 of the Articles of Association of the Company, the initiation, conduct, defense, compromise or settlement of any claim or series of claims by or against the Company involving an amount which either individually or in the aggregate is in excess of USD 5,000,000 are to be approved by shareholders through special resolution. Further, under Article 41 of the Articles, amendments, exercise or waiver of rights, compromise, defence or settlement of any claim by or against the Company under the Facilitation Agreement, the GoP Guarantee, and/or the Power Purchase Agreement are to be approved by shareholders through special resolution. Accordingly, the proposed arrangement in terms of various agreements as detailed herein is being placed before the shareholders for approval by passing the resolutions as special resolution as proposed in the notice of meeting.

Availability of Relevant Documents and Inspection

Copies of the Agreements stated in the resolutions and other relevant information/documents are available for inspection at the Corporate Office of the Company (5, B/3, Gulberg III, Lahore 54660 from 10.00 a.m. to 5.00 p.m. (excluding Saturday, Sunday and any other public holiday), up to the last working day before the date of the EGM. The said Agreements same shall also be available for inspection by the Members at the EGM.