



# **Market Participation Agreement**

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This Market Participation Agreement (hereinafter called this “Agreement”) is made on this----- day of ----- 2023;<sup>1</sup>

**BY AND BETWEEN:**

1. The Central Power Purchasing Agency (Guarantee) Limited (hereinafter called the “**Market Operator**”, which expression shall include its successors in interest and assigns), a company having its principal offices at Shaheen Plaza, Plot No. 73-West, Fazl-e-Haq Road, Blue Area, Islamabad, Pakistan, incorporated under the Companies Act, 2017 and wholly owned by the Government of Pakistan (the “**GOP**”);

**AND**

2. \_\_\_\_\_, a company having its principal office at \_\_\_\_\_ in Pakistan, incorporated under the Companies Act, 2017, (hereinafter called the “**Applicant**”, which expression shall include its successors in interest and permitted assigns);

Each of the parties shall be referred to individually as a “Party” and collectively as “Parties”.

**RECITALS:**

**WHEREAS** M/s \_\_\_\_\_ wishes to participate in the CTBCM administered by the Market Operator;

**WHEREAS** M/s \_\_\_\_\_ submitted an Admission Application for enrolment as a Market Participant to the Market Operator, which is under process and as a condition precedent for enrolment under the Market Commercial Code, the Market Participation Agreement shall be executed;

**WHEREAS** the Market Commercial Code will have the effect of a contract between the Market Operator and the Applicant by virtue of the execution of this Market Participation Agreement;

**WHEREAS** M/s \_\_\_\_\_ has valid registration with the FBR for GST and Income Tax and has acquired all the relevant licenses / concurrence from the Authority and any other relevant forum as required under the law;

**WHEREAS** M/s \_\_\_\_\_ has signed a valid Connection Agreement with the distribution / transmission company or in the case of M/s \_\_\_\_\_ having an existing connection, has provided an undertaking to the Market Operator that it shall sign a Connection Agreement with said distribution / transmission company within six (6) months of signing this Agreement, the execution of said Connection Agreement being a mandatory condition for the effectiveness of this Agreement;<sup>2</sup>

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<sup>1</sup> This is a generic draft Agreement. Minor adjustments will be made at the time of execution with the relevant Applicant.

<sup>2</sup> This clause is to be included only in the MPA of an Applicant which requires physical connection.

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**WHEREAS** M/s \_\_\_\_\_ has acquired the requisite Firm Capacity Certificates from the Market Operator, if applicable, and has received the requisite certification from System Operator or distribution licensee as required under the market registration Commercial Code Operating Procedure;<sup>3</sup>

**WHEREAS** M/s \_\_\_\_\_ has the requisite meters installed at the connection points and the meters are integrated with the system of the Metering Service Provider (MSP) / National Transmission and Despatch Company Limited (NTDC), and has obtained certification from the MSP / NTDC in this regard as per the Market Commercial Code Operational Procedures;

**WHEREAS** M/s \_\_\_\_\_ has signed a valid Use of System Agreement with the respective Distribution Company / Supplier of Last Resort;<sup>4</sup>

**WHEREAS** the Applicant and the Market Operator wish to execute this Agreement in part to satisfy the conditions contained in the Market Commercial Code that a market participation agreement be executed prior to the Applicant's enrolment as a Market Participant by the Market Operator;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and adequacy thereof is hereby acknowledged, the Parties agree as follows:

## **ARTICLE-I - DEFINITIONS AND INTERPRETATION**

### **1. DEFINITIONS**

- (a) When applying the provisions contained in this Agreement, and unless otherwise specified or the context otherwise requires, the following words and expressions shall have the meaning:-
- i. **"Act"** means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 as amended from time to time;
  - ii. **"Admission Application"** means the document which an Applicant is required to submit when applying for enrolment with the Market Operator, in the form set forth in the applicable Market Commercial Code Operational Procedure or such other form as the Market Operator may from time to time determine;
  - iii. **"Applicable Law"** means the laws of Pakistan including federal, provincial, and local laws;
  - iv. **"Applicant"** means any person who has initiated the application process to enrol with the Market Operator in accordance with the provisions of Market Commercial Code;

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<sup>3</sup> This is only relevant for the Generator Applicant.

<sup>4</sup> This will be included only for the Competitive Supplier.

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- v. **“Authority”** means the National Electric Power Regulatory Authority established under section 3 of the Act;
  - vi. **“Clause”** means a clause of this Agreement;
  - vii. **“Confidential Information”** shall have the same meaning as assigned to the term in the Market Commercial Code;
  - viii. **“Market Commercial Code” or “Commercial Code”** means a code prepared and maintained by the Market Operator and approved by the Authority pursuant to section 23B of the Act and shall also include its operational procedures;
  - ix. **“Effective Date”** means the commercial market operations date of the Market;
  - x. **“GOP”** means the Government of the Islamic Republic of Pakistan;
  - xi. **“Grid Code”** means the grid code prepared and maintained by the System Operator pursuant to sections 23G and 23H of the Act and approved by the Authority or till the time the same is approved by the Authority, the Grid Code 2005;
  - xii. **“Market”** means the Competitive Trading Bilateral Contract Market (CTBCM) of Pakistan organized for wholesale buying and selling of energy and/or capacity mainly through bilateral contracts;
  - xiii. **“Market Operator” or “MO”** means a person licenced by the Authority under section 23A of the Act;
  - xiv. **“Market Participant” or “Participant”** means any person who is enrolled with the Market Operator and has also executed a Market Participation Agreement;
  - xv. **“System Operator”** means a person licenced by the Authority under section 23G of the Act;
  - xvi. **“Termination Date”** means the date on which the Applicant’s application to cancel its enrolment as Market Participant is approved or the date on which enrolment of a Market Participant is terminated by the Market Operator under the provisions of the Market Commercial Code; and
  - xvii. **“Termination Order”** means an order issued by the Market Operator pursuant to the relevant provisions of the Market Commercial Code.
- (b) Words and expressions used but not defined in this Agreement shall have the same meanings as assigned to them in the Market Commercial Code.

## 2. INTERPRETATION

In this Agreement unless the context otherwise specifies or requires:

- a. Capitalized words used shall have the meanings assigned to them in the definitions of this Agreement and the Market Commercial Code;
- b. references to the masculine include the feminine and references to the singular include plural;

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- c. PKR means Pakistani Rupees;
  - d. the word “include” shall be construed without limitation;
  - e. a reference to a “person” includes any individual, partnership, firm, company, corporation (statutory or otherwise), joint venture, trust, association, organization, or other entity, in each case whether having separate legal personality;
  - f. a reference to a law or the Act shall be construed to include any amendment, modification, extension, re-enactment, or replacement thereof; and
  - g. a derivative term of any defined or interpreted term or expression shall be construed in accordance with the relevant definition or interpretation.

### **3. INCONSISTENCIES**

In the event of any inconsistency between this Agreement and the Market Commercial Code or the Grid Code, the provisions of the Market Commercial Code or the Grid Code, as applicable, shall prevail to the extent of such inconsistency.

## **ARTICLE-II - COMPLIANCE, SCOPE AND EXTENT OF THIS AGREEMENT**

### **1. COMPLIANCE WITH THE MARKET COMMERCIAL CODE**

- a. The Applicant hereby agrees to be bound by and to comply with all of the provisions of the Market Commercial Code and its operational procedures so far as they are applicable to the Applicant, including once it has been enrolled by the Market Operator as a Market Participant.
- b. The Market Operator hereby agrees to be bound by and to comply with all the provisions of the Market Commercial Code and its operational procedures so far as they are applicable to the Market Operator.
- c. The Applicant acknowledges and agrees that the Market Commercial Code may be amended from time to time in accordance with the procedure specified in the Market Commercial Code and that any such amendment shall be applicable upon the Applicant as a Market Participant from the date of coming into force of such amendment.
- d. The Applicant hereby also, *inter alia*, acknowledges and confirms that:

#### **Interconnection, Metering Services and System Operations**

- i. it has already secured the requisite interconnection arrangements with the NTDC and / or with the relevant Distribution Company pursuant to the Connection Agreement and the Market Commercial Code, and it shall resolve any issues related to said interconnection directly with NTDC and / or the relevant Distribution Company;

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- ii. it has already secured the requisite metering service arrangements with the MSP / NTDC as per the provisions of the Market Commercial Code and its operational procedures. It shall resolve any issues related to the metered values directly with the MSP / NTDC. The Market Operator shall prepare Settlement Statements and perform calculations thereof based on the metered values provided by the MSP. The Market Operator shall entertain only such issues raised by the Applicant as are related to the calculations based on the metered values already provided to it by the MSP;
  - iii. if technically capable, it shall provide the necessary services, including *inter alia* Must Run Generation, Ancillary Services (voltage and frequency stability etc.) to the System Operator as and when required in accordance with the provisions of the Grid Code. The Applicant shall be compensated for its provision of such services by the Market Operator as communicated by the System Operator in accordance with the provisions of the Market Commercial Code;<sup>5</sup>
  - iv. it shall resolve any issues related to the calculation of Marginal Price, Must Run, Provision of Ancillary Services and availability of Generators directly with the System Operator. The Market Operator shall perform calculations based on the data provided by the System Operator and shall entertain only issues related to those calculations;<sup>6</sup>
  - v. it shall abide by the instructions of the System Operator or the Distribution Network Operator as the case may be;

### **Financial Obligations**

- vi. it has fully read and understood the Market Commercial Code and all of its operational procedures, and that all payments shall be made to and from the Market Operator according to the mechanism established in the Market Commercial Code and its operational procedures;
- vii. it acknowledges that energy and capacity imbalances and charges thereof, as well as other services or charges for services from service providers, shall always remain with the relevant Market Participant / Service Provider and such shall never pass on to the Market Operator while settling payments for imbalances and other charges, and that the Market Operator shall act as an independent entity without assuming any payment liability, and the obligation of payment shall always remain with the relevant Market Participants, as set forth in the Market Commercial Code;
- viii. it shall be liable to make and receive monthly and yearly payments for imbalances, Market Operator fee and other market charges from and / or to the Market Operator calculated by the Market Operator on the basis of metering data received from the MSP and system operation data from the System Operator in accordance with the Market Commercial Code and its operating procedures;

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<sup>5</sup> This clause will be applicable in the case of a generator.

<sup>6</sup> This clause will be applicable in the case of a generator.

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- ix. it has already deposited / if applicable shall deposit in cash the amounts of the Security Cover and the Settlement Guarantee Cover with the Market Operator in advance as determined by the Market Operator as per the procedure set forth in the Market Commercial Code and its operational procedures against its expected imbalances and other market charges, and accordingly for handling these deposits the Market Operator shall open and maintain bank accounts as per provisions of the Market Commercial Code;
  - x. it shall maintain at all times the amount of the Security Cover and the Settlement Guarantee Cover with the Market Operator, which shall be updated from time to time as per the procedure laid down in the Market Commercial Code and its operational procedures, failing which it shall be liable to enforcement / remedial action including disconnection as provided in the Market Commercial Code;
  - xi. it shall make and receive all payments according to the monthly and yearly Settlement Statements prepared by the Market Operator in accordance with the Market Commercial Code and its operational procedures. In case of any default by the Applicant in making said payments on time, the Applicant shall be liable for Default Interest on all such delayed payments. Further, in case of a default by the Applicant in making its monthly payments due under the Commercial Code, the requisite payment may be made by the Market Operator to the relevant Market Participant from the Settlement Guarantee Cover, provided however that the Applicant shall remain liable to make the outstanding payments under the monthly and yearly Settlement Statements to the Market Operator and in case of a continuing default, the Market Operator, in addition to other actions available thereto under this Agreement and the Market Commercial Code, shall also have the right to take all legal actions against the Applicant available to the Market Operator under the laws of Pakistan for recovery of the outstanding amounts;
  - xii. in the case the Applicant is a Supplier of Last Resort, the Applicant shall be responsible for the supply of electric power to bulk power consumers (who are not Market Participants) whose competitive supplier has defaulted on its obligations, from the time as specified by the Market Operator;<sup>7</sup>
  - xiii. in addition to charging the Applicant Default Interest for late payments, the Market Operator shall also have the right to request the relevant Service Provider (Distribution or Transmission Company) to disconnect the Applicant due to the latter's default in making payments as required under the Market Commercial Code or for other violations of this Agreement or the Market Commercial Code, and upon issuance of such disconnection request by the Market Operator the Applicant shall not withdraw electric power from the grid and in case of any unauthorized withdrawal of electric power the Applicant shall be liable at its sole risk and cost towards the relevant Service Provider for any such unauthorized withdrawal of electric power from the grid;

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<sup>7</sup> This clause will only be added in the SOLR's MPA.

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- xiv. it shall pay or receive any amount to / from the Market Operator as per the Final or Extraordinary Settlement Statements, regardless of any dispute. Any disputes shall be resolved in accordance with the provisions of the Market Commercial Code after the due amount is paid / received in full;
  - xv. it has opened a bank account at a bank acceptable to the Market Operator which shall be used for making / receiving payments to / from the Market Operator as per the procedure set forth in the Market Commercial Code;
  - xvi. it shall be liable to pay all surcharges as well as all applicable taxes on Market transactions arising out of Settlement Statements, whether federal, local or provincial including but not limited to withholding tax, income tax, sales tax, excise tax or any other tax as applicable in Pakistan at present or as may be imposed in future. Further, the Applicant shall also facilitate the Market Operator to discharge the latter's responsibility with regard to the filing of tax returns and for fulfilling all other codal formalities under the tax laws of Pakistan.
  - xvii. The Applicant shall accept the determination of Market Operator regarding the designation of the relevant Market Participant(s) for sales tax purposes for adjustment of input / output tax and shall pay the requisite amount of tax within the time period prescribed under the sales tax laws;

### **Others**

- xviii. where applicable, the Applicant shall obtain the necessary Firm Capacity Certificates from the Market Operator to trade in the Market according to the provisions of the Market Commercial Code and its operational procedures;<sup>8</sup>
- xix. it has already registered / shall register all of its bilateral contracts and provide all the requisite information as required by the Market Operator in order to properly register those contracts;
- xx. it shall comply with the Capacity Obligations, if any, as determined by the Market Operator pursuant to the Market Commercial Code;
- xxi. in the event of non-compliance by the Applicant with the Market Commercial Code, the Market Operator has the right to take, without prejudice, any necessary enforcement action including but not limited to the suspension of enrolment or contracts, disconnection (permanent or temporary), termination of registration, and enforcement of penalties as per provisions of the Market Commercial Code and its operating procedures;
- xxii. the commercial allocation mechanism applicable to the Market Participant and the settlement thereof shall be as per Annexure-I to this Agreement;<sup>9</sup>

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<sup>8</sup> It will only be included in the MPA of a Generator.

<sup>9</sup> This shall be included only in the MPA of ex-WAPDA DISCOs as supplier of last resort

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- xxiii. it hereby acknowledges that notwithstanding the above it shall be liable to disconnection from the Grid for failing on any of its financial obligations under the Market Commercial Code and its operating procedures in accordance with the procedure laid down therein;

## **2. SCOPE**

After the execution of this Agreement and thereafter with effect from the date of enrolment with the Market Operator and until termination of this Agreement, the Applicant shall be granted the status of a Market Participant for the purposes of the Market Commercial Code and shall have the right to participate in the Market subject to its fulfilment of all applicable legal and contractual requirements.

## **3. COMMENCEMENT AND TERM**

This Agreement shall come into force and become effective on the Effective Date hereof and shall remain in full force and effect until terminated in accordance with clause 4 of Article II of this Agreement.

## **4. TERMINATION**

- a. After the enrolment of the Applicant as a Market Participant by the Market Operator, this Agreement shall automatically terminate on the earlier of:
  - i. the date of issuance by the Market Operator to the Applicant of a Termination Order in accordance with the Market Commercial Code; or
  - ii. the date on which the withdrawal of the Applicant is approved by the Market Operator, in accordance with the withdrawal provisions stipulated in the Market Commercial Code.
- b. Notwithstanding Clause (a) above, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a Market Participant which were incurred or arose under the Market Commercial Code prior to the date referred to in Clause (a) (i) or (a) (ii) above, regardless of the date on which any claim relating thereto may be made.
- c. Notwithstanding any other provision of this Agreement and, for greater certainty, the provisions of Clause (b) above shall survive the termination of this Agreement without limit as to time.

## **ARTICLE-III - REPRESENTATIONS AND WARRANTIES**

### **1. REPRESENTATIONS AND WARRANTIES OF THE MARKET OPERATOR**

The Market Operator hereby represents and warrants as follows to the Applicant, and acknowledges and confirms that the Applicant is relying on such representations and warranties in applying to become enrolled as a Market Participant:

- a. the execution, delivery, and performance of this Agreement by it has been duly

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authorized by all necessary corporate and / or governmental approvals; and

- b. this Agreement constitutes a legal and binding obligation on the Market Operator, enforceable against the Market Operator in accordance with its terms.

## **2. REPRESENTATIONS AND WARRANTIES OF THE APPLICANT**

The Applicant hereby represents and warrants as follows to the Market Operator and acknowledges and confirms that the Market Operator is relying on such representations and warranties without independent inquiry (save and except for any testing or inspection that the Market Operator may have participated in) (i) to ascertain whether the Applicant satisfies the requirements for enrolment as a Market Participant; and (ii) to enroll the Applicant as a Market Participant under the Market Commercial Code for carrying out trade in the market:

- a. it has all the necessary corporate powers to enter into and perform its obligations under this Agreement;
- b. it possesses all due and necessary authorizations and approvals for the execution, delivery and performance of this Agreement as required by law and contract and in the Applicant's good faith belief and after making reasonable inquiry such execution, delivery and performance of this Agreement does not result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any legal instruments of the Applicant; (ii) any contracts or instruments to which the Applicant is a party or by which the Applicant is bound; or (iii) any laws applicable to it;
- c. the individual(s) executing this Agreement, and any document in connection herewith, on behalf of the Applicant have been duly authorized to execute this Agreement and have the full power and authority to bind the Applicant;
- d. this Agreement constitutes a legal and binding obligation on the Applicant, enforceable against the Applicant in accordance with its terms;
- e. except for its enrolment as a Market Participant and registration of its Contracts by the Market Operator pursuant to the Market Commercial Code, as applicable, it holds all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a Market Participant as described in the Market Commercial Code and in this Agreement;
- f. the information provided in support of its application for enrolment as a Market Participant, is true, accurate and complete in all respects;
- g. the Applicant has or will have prior to the first date that the Applicant participates in the CTBCM, adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of the functions and obligations applicable to Market Participants.

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## ARTICLE IV – REMEDIAL ACTION

1. The Applicant accepts and agrees that the Market Operator may issue non-compliance warning letters and / or take other remedial actions against the Applicant once it is enrolled as a Market Participant for breaches of this Agreement and / or the Market Commercial Code. The Market Operator shall determine the level of non-compliance referred hereto as follows:
  - a. Level “L1” shall be determined where the Market Participant has complied in part, but not in whole, with all the requirements of a Clause or a provision of this Agreement or the Market Commercial Code and where the Market Participant has, on its own initiative, informed the Market Operator on a timely basis of the non-compliance, the reasons for said non-compliance, and the manner in and the time within which such non-compliance will be remedied;
  - b. Level “L2” shall be determined where the Market Participant has failed to comply with all of the requirements of a Clause or a provision of this Agreement or Market Commercial Code and where the Market Participant has, on its own initiative, informed the Market Operator on a timely basis of the non-compliance, the reasons for said non-compliance and the manner in which and the time within which such non-compliance will be remedied;
  - c. Level “L3” shall be determined where the Market Participant has failed to comply, in whole or in part, with all of the requirements of a Clause or a provision of this Agreement or the Market Commercial Code and has failed to inform the Market Operator of the non-compliance on its own initiative and on a timely basis but, at the Market Operator’s notice and within the time specified in the notice, informs the Market Operator of the reasons for non-compliance and the manner in which and the time within which such non-compliance will be remedied; and
  - d. Level “L4” shall be determined where the Market Participant has failed to comply, in whole or in part, with all of the requirements of a Clause or provision of this Agreement and the Market Commercial Code and has failed to inform the Market Operator of the non-compliance on its own initiative, and on a timely basis, and has failed to respond to the Market Operator’s notice, within the time specified in the notice, for a statement of the reasons for such non-compliance and of the manner in which and the time within which such non-compliance will be remedied.
2. Subject to the above provisions, and based on the determinations made by the Market Operator in its Market Commercial Code and the provisions of the table set forth below, the Market Operator may issue a warning letter for non-compliance and / or impose a financial penalty within the ranges specified in the following table:

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**Table 1: Remedial Actions**

Level of Non-Compliance	Range of Sanctions
L1	Non-Compliance warning letter
L2	Non-Compliance warning letter and / or penalty of Rs.2 million
L3	Non-Compliance warning letter and / or penalty of Rs.3 million
L4	Non-Compliance warning letter and penalty of Rs.5 million

## **ARTICLE-V – MISCELLANEOUS**

### **1. DISPUTE RESOLUTION**

- a. All disputes between the Parties shall be resolved as per the dispute resolution mechanism stipulated in the Market Commercial Code.
- b. Each Party agrees not to institute an action involving any matter arising from or in connection with such dispute before the courts or other quasi-judicial bodies without resorting first to the dispute resolution process provided under this Agreement and Chapter 14 of the Market Commercial Code.
- c. The courts at Islamabad shall have exclusive jurisdiction regarding any dispute arising under this Agreement or the Market Commercial Code.
- d. Notwithstanding the above:
  - i. Any disputes related to the metering values reported by the MSP to the Market Operator shall not be raised by the Applicant with the Market Operator and shall instead be bilaterally settled between the MSP and the Applicant.
  - ii. Any disputes related to the data provided by the System Operator regarding the Marginal Prices, availability of generators, and provision of Ancillary Services shall not be raised with the Market Operator and shall instead be settled bilaterally between the System Operator and the Applicant.
  - iii. The Applicant may only raise issues with the Market Operator related to the functions performed by the Market Operator in accordance with the provisions of the Market Commercial Code.

### **2. LIABILITY AND INDEMNIFICATION**

#### **Market Operator**

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- a. Except as may be specifically provided to the contrary elsewhere in this Agreement, the Market Operator shall not be liable for any claims, losses, costs, liabilities, obligations, actions, judgements, suits, expenses, disbursements or damages of the Applicant whatsoever and howsoever arising and whether as claims in contract, claims in tort or otherwise, arising out of any act or omission of the Market Operator in the exercise or performance or the intended exercise or performance of any power or obligation under this Agreement or the Market Commercial Code.
  - b. Subject to the above Clause (a), the Market Operator shall indemnify and hold harmless the Applicant and the Applicant's Directors, officers and employees from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Applicant or its directors, officers or employees to the extent that such claims, losses, liabilities, actions, judgements, suits, costs, expenses, disbursements or damages arise out of any willful misconduct by or any act or omission that constitutes gross negligence of the Market Operator in the exercise or performance or the intended exercise or performance of any power or obligation under the Market Commercial Code or this Agreement.
  - c. For the purposes of Clauses (a) and (b) above, an act or omission of the Market Operator effected in compliance with the Market Commercial Code or this Agreement shall be deemed not to constitute willful misconduct or gross negligence. Further, the Market Operator shall not be liable in respect of any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages; or any loss of profit, loss of contract, loss of opportunity or loss of goodwill. The Applicant shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the Applicant.

### **Applicant**

- a. The Applicant shall not be liable for any claims, losses, costs, liabilities, obligations, actions, judgements, suits, expenses, disbursements or damages of the Market Operator whatsoever, howsoever arising and whether as claims in contract, claims in tort or otherwise, arising out of any act or omission of the Applicant in the exercise or performance or the intended exercise or performance of any power or obligation under the Market Commercial Code or this Agreement.
- b. Subject to Clause (a) above, the Applicant shall indemnify and hold harmless the Market Operator, the Market Operator's directors, officers and employees from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Market Operator, its directors, officers or employees to the extent that such claims, losses, liabilities, actions, judgements, suits, costs, expenses, disbursements or damages arise out of any willful misconduct by or any negligent act or omission of the

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Applicant in the exercise or performance or the intended exercise or performance of any power or obligation under the Market Commercial Code or this Agreement

- c. For the purposes of Clauses (a) and (b) above, an act or omission of the Applicant effected in compliance with the Market Commercial Code or this Agreement be deemed not to constitute willful misconduct or a negligent act or omission. Further, the Applicant shall not be held liable in respect of any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages, or any loss of profit, loss of contract, loss of opportunity or loss of goodwill. Nothing in this Article shall be read as limiting the right of the Market Operator to impose a financial penalty or other sanction including, but not limited to, the issuance of a suspension order, a disconnection order or a termination order, on the Applicant in accordance with the provisions of the Market Commercial Code and this Agreement. The Market Operator shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the Market Operator, including but not limited to, seeking recovery under any applicable policies of insurance to which the Market Operator or the Applicant, as the case may be, is a beneficiary.

### **3. DATA PRIVACY**

- a. Each Party acknowledges and agrees that, while performing their respective obligations and exercising their respective rights under this Agreement, it may receive or have access to personal or Confidential Information of the other Party, its directors, officers, employees, governance committee members and / or authorized representatives;
- b. Each Party represents and warrants that its collection, access, use, storage, disposal, and disclosure of any personal or Confidential Information shall always comply with the Applicable Law.

### **4. CONFIDENTIALITY**

- a. All Confidential Information, including any concepts and related documentation and all other information and materials provided by each Party in relation to this Agreement shall remain its respective intellectual property and shall always remain the sole property of said Party.
- b. Each Party shall take all reasonable precautions to protect Confidential Information, but no less than in the same manner as it treats its own confidential and proprietary information.
- c. Each Party shall, at its own expense and without need of notice, deliver to the other Party within ten (10) days following the termination or expiration of this Agreement, all documents, and all other materials, in whatever form, containing or reflecting any Confidential Information, together with any copies thereof. Each Party shall, upon the request of the other Party destroy such Confidential Information and provide the other Party with a sworn statement attesting to such destruction. Each Party acknowledges that neither the return of any Confidential Information nor the destruction of the same will release the other Party from its

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obligations under this Agreement.

## **5. APPLICABLE LAWS**

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

## **6. AMENDMENT TO THIS AGREEMENT**

No amendment to this Agreement shall be effective unless it is made in writing by mutual consent and signed by both Parties.

## **7. SUCCESSORS, ASSIGNS AND NOVATION**

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective heirs, administrators, executors, successors and permitted assigns. It is expressly agreed by the Applicant that in future if a company other than present signatory is incorporated and the Market Operator licence is assigned / transferred to such company, the Applicant shall be bound to execute a novation agreement with that new company.

## **8. DOCUMENTS AND INFORMATION**

Each Party shall promptly execute and deliver or cause to be executed and delivered all documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.

## **9. WAIVERS**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver.

## **10. NOTICES**

Any notice, demand, consent, request, or other communication required or permitted to be given or made under this Agreement shall:

- a. be given or made in the manner set forth in the Market Commercial Code or the Grid Code, as applicable: and
- b. be addressed to the Market Participant or the representatives identified in the Admission Application, or to any representative as changed and notified by the Market Participant to the Market Operator.

Either Party may change its address and representative for notice by written notice to the other Party. Such change shall not constitute a modification of this Agreement.

*In witness whereof* the Parties hereto have, by their respective duly appointed and authorized representatives, executed this Agreement on the date set forth hereinabove.

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**Signature of Authorized Representative of Market Participant**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

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**Signature of Authorized Representative of Market Operator**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

1.

Witness:

Name:

Designation:

CNIC:

2.

Witness:

Name:

Designation:

CNIC:

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## ANNEXURE I - COMMERCIAL ALLOCATION OF LEGACY CONTRACTS

1. The Applicant hereby agrees to the commercial allocation of the Energy and Capacity procured through the Legacy Contracts for all EX-WAPDA DISCOs as per mechanism given in the Commercial Code. For the purposes of Settlement under the Market Commercial Code and the registration of contracts with the Market Operator in the Contract Register maintained thereby, this allocation shall be treated and shall be binding as a contract for capacity and energy among all Ex-WAPDA DISCOs.
2. The Applicant (being one of the EX-WAPDA DISCOs) understands and agrees that it will withdraw the Energy and Capacity procured through Legacy Contracts as per the Capacity and Energy (as amended from time to time) contracted thereunder. and in case of any Imbalance, it shall be liable to pay for such Imbalances as notified by the Market Operator in accordance with the Market Commercial Code as summarized hereunder:

### **Imbalances of Energy:**

For each hour, the net consumption of Energy (of bilateral Contracts) of each EX-WAPDA DISCO shall be covered by way of the Legacy Contracts. For the calculation of Imbalances, the mechanism of hourly Contracts for Energy (Commercial Allocation) shall be applied as per the following:

- a. The Contract for Energy in each hour shall be determined as the total available Energy of the Legacy Generators in that hour multiplied by the Allocation Factor of the respective EX-WAPDA DISCO to arrive at the Contract for Energy.
- b. The Energy available from the Legacy Generators and its quantum available for each EX-WAPDA DISCO shall be determined on an hourly basis. The total available Energy of the Legacy Generators shall be determined as follows:

$$\begin{aligned} AE_h (MWh) = & AEG(vre) + AEG(hydro - run\ of\ river) \\ & + AEG(test\ run) + AEG(others) \\ & + PC(hydro_{storage}) + AC(thermal) \end{aligned}$$

Where:

$AE_h$  is the available Energy of the Legacy Generators in the hour “h”;

$AEG_{(vre)}$  is Actual Energy injected in the Grid by the Generation Plants based on VRE technology (wind + solar etc.) in the hour “h”;

$AEG_{(hydro\_run\ of\ river)}$  is the Actual Energy injected into the Grid by the Generation Plants based on the hydro run of river technology in the hour “h”;;

$AEG(test\ run)$  is the Actual Energy injected into the Grid by the Generation Plants, which are running on test run basis, in hour “h”;

$AEG(others)$  means the actual Energy of all those Thermal Generation Plants whose Capacity is not being paid through the Legacy Contracts, but rather payments are made on Energy basis;

$PC(hydro\_storage)$  is the Peak Capability of all hydro reservoir based power plants in the hour “h” as reported by the System Operator. The System Operator shall report Peak Capability of reservoir based hydro plants on daily basis and it will be considered equal in all hours of the day for the purpose of calculating this  $AE_h$ ;

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AC(thermal) is the Actual Available Capacity of all Thermal Generation Plants as reported by the System Operator. For the avoidance of doubt, a Generation Unit on scheduled maintenance shall also be considered as available for this calculation;

- c. Energy of the each EX-WAPDA DISCO shall be determined as:

$$\text{Contract Energy}_{i,h} \text{ (MWh)} = AE_h * AF_i$$

Where:

- Contract Energy<sub>i,h</sub> is the Contracted Energy of EX-WAPDA DISCO “i” in hour “h” from Legacy Generators;
- AE<sub>h</sub> is the available Energy of the Legacy Generators in the hour “h”;
- AF<sub>i</sub> is the Allocation Factor of EX-WAPDA DISCO “i”.