

USE OF SYSTEM AGREEMENT

[DRAFT]

This Use of System Agreement is made on this [] day of [], [2023]

by and between:

[insert name], a [insert form of business organization] duly [incorporated/formed/registered] and organized under the laws of Pakistan, having its registered address at [] and its principal place of business at [] (the “[Distribution] Licensee/Distribution Company”)

- and -

[insert name], a [insert form of business organization] duly [incorporated/formed/registered] and organized under the laws of [], having its [registered/head] address at [] and its principal place of business at [] (the “Competitive Supplier Licensee”)

WHEREAS:

- A. The Distribution Company (DISCO) has been granted a Distribution Licence by the Authority authorizing it to transmit and distribute Electric Power and to provide the Transmission and Distribution Services in respect of its Transmission and Distribution System;
- B. The Competitive Supplier has been granted an Electric Power Supply license (Competitive Supplier Licence) by the Authority authorizing it to supply electric power to its Bulk Power Consumers (BPCs);
- C. The National Electric Power Regulatory Authority Open Access (Interconnection and Wheeling of Electric Power) Regulations, 2022 and the Competitive Supplier Licence require the Competitive Supplier Licensee to enter into a Use of System Agreement with the DISCO;
- D. The DISCO and the Competitive Supplier wish to enter into this Agreement in order to comply with the terms and conditions of their respective Licences, and provisions of National Electric Power Regulatory Authority Open Access (Interconnection and Wheeling of Electric Power) Regulations, 2022 and National Electric Power Regulatory Authority Performance Standards (Electric Power Suppliers) Regulations, 2022;
- E. The Competitive Supplier acknowledges that the DISCO can disconnect its BPCs upon disconnection order issued by the Market Operator under the Market Commercial Code;
- F. The BPCs of the Competitive Supplier have signed a Connection Agreements with

the DISCO;

- G. The Competitive Supplier acknowledges that it shall comply with its capacity obligations and other terms and conditions stipulated in the Market Commercial Code.

Now therefore, in consideration of the mutual covenants set forth herein and of other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE-1
DEFINITIONS AND INTERPRETATION

1.1 **Incorporation of Definitions:** Capitalized expressions used in this Agreement have the meanings ascribed thereto in the Act, the Grid Code, the Distribution Code, the Market Commercial Code, or rules and regulations made under the Act as it corresponds.

1.2 **Supplementary Definitions:** In this Agreement, the following capitalized expressions shall have the meanings set forth below unless the context otherwise requires:

- (i) **“Act”** means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 as amended from time to time;
- (ii) **“Applicable Law”** means the laws of Pakistan including federal, provincial, and local laws;
- (iii) **“Applicable Documents”** means the rules, regulations, licences, registrations, codes, standards, guidelines, determinations, approvals and authorizations issued or granted from time to time by the Authority in exercise of its powers under the Act;
- (iv) **“Authority”** means the National Electric Power Regulatory Authority established under Section 3 of the Act;
- (v) **“Agreement”** means this Use of System Agreement, together with all schedules annexed hereto, dated as of the date first written above between the DISCO and the Competitive Supplier, as may be amended, supplemented, restated, novated or assigned from time to time in writing with mutual consent;
- (vi) **“Billing Cycle”** means the period equal to one month, for which DISCO will issue the monthly invoice to the Competitive Supplier, the start and end date of this cycle will be agreed between the Parties;
- (vii) **“Bulk Power Consumer (BPC)”** shall have the meaning assigned to the term in the Act;
- (viii) **“Business Day”** means a day on which the Banks in Pakistan are operational;
- (ix) **“Commencement Date”** means the date on which the commencement of electric power to the BPCs will be established subject to the provisions provided in Article [7.2];
- (x) **“Competitive Supplier”** means a person licensed under section 23E of the Act to supply electric power to Bulk Power Consumers;
- (xi) **“Connection Agreement”** means the agreement signed between the DISCO and an individual BPC of the Competitive Supplier;
- (xii) **“Confidential Information”** means the proprietary information of any Party or such other information which has been explicitly specified as confidential by one Party to another under this Agreement;

- (xiii) **“Distribution Code”** means the distribution code 2005, prepared and maintained by the Distribution Licensee and approved by the Authority which may be amended from time to time;
- (xiv) **“Distribution Licence”** means a licence for distribution of electric power granted by the Authority under section 20 of the Act;
- (xv) **“Disconnection”** means the temporary or permanent disconnection of a Bulk Power Consumer from the Transmission and Distribution System of the DISCO as provided in the Connection Agreement, Distribution Service Manual and other Applicable Documents;
- (xvi) **“Energisation”** means the switching on any isolator, breaker, switch or the insertion of a fuse link so as to enable energy to flow from DISCO Inter-connection Facilities to the BPC Inter-connection Facilities;
- (xvii) **“Event of Default”** means a DISCO Event of Default, or a Competitive Supplier Licensee Event of Default, as may be applicable;
- (xviii) **“Effective Date”** means the date on which this Agreement is executed;
- (xix) **“Force Majeure Event”** means, in relation to a Party, any event or circumstance, or combination of events or circumstances, (a) that is beyond the reasonable control of that Party; (b) that adversely affects the performance by that Party of its obligations under this Agreement or the Grid Code or the Distribution Code or the Market Commercial Code; and (c) the adverse effects of which could not have been foreseen and prevented, overcome, remedied or mitigated in whole or in part by that Party through the exercise of diligence and reasonable care, and includes acts of war (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, civil disobedience or disturbances, vandalism or act of terrorism; strikes, lockouts, restrictive work practices or other labour disturbances; unlawful arrests or restraints by governments or governmental, administrative or regulatory agencies or authorities; orders, regulations or restrictions imposed by governments or governmental, administrative or regulatory agencies or authorities unless the result of a violation by the person of a permit, licence or other authorisation or of any Applicable Law; and acts of God including lightning, earthquake, fire, flood, landslide, unusually heavy or prolonged rain or lack of water arising from weather or environmental problems; provided however, for greater certainty, that (i) the lack, insufficiency or non-availability of funds shall not constitute a Force Majeure Event; and (ii) an act of a Party effected in accordance with the Grid Code, Distribution Code or the Market Commercial Code shall not constitute a Force Majeure Event in respect of the other Party;
- (xx) **"GOP"** means the Government of the Islamic Republic of Pakistan;
- (xxi) **“Grid Code”** means the code prepared and maintained by the System Operator pursuant to sections 23G and 23H of the Act and approved by the Authority or the Grid Code 2005, as the case may be;
- (xxii) **“Licence”** shall have the meaning assigned to the term in the Act and the word “Licensee” shall be construed accordingly;
- (xxiii) **“Market Commercial Code”** means a code prepared and maintained by

the Market Operator and approved by the Authority pursuant to section 23B of the Act including its operational procedures as amended from time to time;

- (xxiv) "**Market Operator**" or "**MO**" means a person licensed by the Authority under section 23A of the Act;
- (xxv) "**Metering Service Provider**" or "**MSP**" means an entity responsible for the organization and administration of the commercial metering system duly authorized by the Authority and performing the functions of meter reading and validation at metering points and transferring those values to the Parties, [which is currently NTDC];
- (xxvi) "**Use of System Charges**" means the charges payable by the Competitive Supplier to the DISCO, which shall include all charges related to use of distribution system, use of transmission system, system operator services, market operator services, metering service provider services, cross-subsidy, costs arising due to advent of the open access and market liberalization and any other charges as may be determined by the Authority:

Provided that the fee for market operator services and where applicable system operator services shall be paid directly to the Market Operator by the market participants (that is Competitive Supplier in this case) in accordance with the Market Commercial Code;
- (xxvii) "**Party**" means a party to this Agreement and "**Parties**" means both the parties;
- (xxviii) "**Reconnection**" means the act of restoring the connection of the BPC as per the provisions of the Connection Agreement that was disconnected;
- (xxix) "**Termination Date**" means the date on which this Agreement is terminated due to the reasons provided in Article [10];
- (xxx) "**Transmission and Distribution Services**" means the services provided by the DISCO to the BPCs of the Competitive Supplier;
- (xxxi) "**Transmission and Distribution System**" means the transmission and distribution facilities situated within the service territory owned or operated by the DISCO for distribution of electric power as per its distribution Licence;
- (xxxii) "**Security Cover**" means the financial protection against the estimated Use of System Charges provided to the DISCO by the Competitive Supplier under Article 7 of this Agreement;
- (xxxiii) "**Supplier of Last Resort**" means a distribution company (DISCO) who holds an electric power supply license for the service territory specified in its licence and is obligated to supply electric power to all consumers located in that service territory at the rates determined by the Authority and is also obligated to provide electric power supply to the consumers, located within its service territory, of any competitive supplier who defaults on its obligations of electric power supply; and
- (xxxiv) "**Supply Contract**" means an agreement, executed in accordance with the provisions of the Market Commercial Code, between the Competitive

Supplier and a BPC for the bilateral sale and purchase of electric power.

1.3 **Interpretations:** In this Agreement, unless the context otherwise requires:

- a) The headings are for convenience only and shall be ignored in construing this Agreement;
- b) Other than where the context determines otherwise, the singular includes the plural and vice versa;
- c) References to Articles, Recitals and Schedules are, unless otherwise specified, references to Articles of, and Schedules and Recitals to, this Agreement;
- d) The words “include”, “including” and “in particular” shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- e) References to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- f) In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith;
- g) The Schedules (and if any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in clause 1.1 of this Agreement, respectively;
- h) Except as otherwise indicated in this Agreement, references to time are references to the Pakistan Standard Time (PST);
- i) A reference to any statute, regulation, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, rules and by-laws of a legislative nature issued under that statute; and
- j) A reference to a document or provision of a document, including this Agreement, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto.

1.4 **Currency:** All references in this Agreement to a monetary amount are expressed in Pakistani Rupees and any payment required to be made by or to the DISCO or by or to the Competitive Supplier pursuant to this Agreement shall be made in Pakistani Rupees.

ARTICLE-2

COMPLIANCE WITH THE DISTRIBUTION CODE, GRID CODE, AND MARKET COMMERCIAL CODE

2.1 The provisions of this Agreement shall be in addition to the provisions of the Market Commercial Code, Distribution Code, Grid Code and other Applicable Documents. This Agreement shall be construed, to the extent possible, in a manner consistent with the rights and obligations of the Parties under the Market Commercial Code, the Grid Code, the Distribution Code and other Applicable Documents.

2.2 Parties to Comply with Legal Obligations, Codes and License Obligations:

2.2.1 Nothing in this Agreement shall be construed as affecting the obligation of each of the Parties to comply with the provisions of any law, Market Commercial Code and Licenses issued by the Authority. In the event of any inconsistency between this Agreement and the provisions of any relevant Applicable Documents, the latter shall prevail to the extent of such inconsistency.

ARTICLE-3

SCOPE OF THIS AGREEMENT

3.1 This Agreement shall apply to the relationship of DISCO with the Competitive Supplier for provision of Transmission and Distribution Services including the billing of Use of System Charges by the DISCO and payment of such charges as well as provision of the Security Cover by the Competitive Supplier.

3.2 The list and details of each BPC connected with the DISCO and who will be supplied electric power by the Competitive Supplier is attached as [Schedule-I], which shall be updated from time to time.

ARTICLE-4

CONNECTION AND ENERGISATION

- 4.1 **Conditions of Connection and Energisation:** The Competitive Supplier acknowledges and agrees that the DISCO shall not connect the facilities or equipment of the Competitive Supplier's BPCs to the Transmission and Distribution System and shall also not energise such facilities unless all applicable conditions for Connection and Energisation set forth in the Grid Code, Distribution Code and the relevant Connection Agreement entered into between the DISCO and the BPCs have been fulfilled.

ARTICLE-5

MAINTENANCE, OUTAGES AND PLANNED WORK

- 5.1 **Notification by DISCO:** The DISCO shall notify the Competitive Supplier's BPCs and the Competitive Supplier, if so, requested by the Competitive Supplier, of any maintenance, outages and planned work that may be intended to be performed in respect of the Transmission and Distribution System and that may interrupt the Transmission and Distribution Services. Such notification will be in accordance with the conditions established in the corresponding Connection Agreements.

ARTICLE-6

DISCONNECTION AND RECONNECTION

- 6.1 **Involuntary Disconnection:** The Competitive Supplier acknowledges and agrees that the DISCO may Disconnect a BPC's connected facilities and equipment from the Transmission and Distribution System at any Connection Point at any time in any of the circumstances established in the corresponding Connection Agreement and this Agreement. All charges which have accrued till the Disconnection time of relevant BPC shall be payable by the Competitive Supplier.
- 6.2 **Payment of Use of System Charges Pending Disconnection:** Where the DISCO has decided to Disconnect the BPC, in such case the Competitive Supplier shall continue to pay all applicable Use of System Charges required to be paid pursuant to Article [7] of this Agreement for so long as the BPC or BPCs remain to be the Competitive Supplier's Consumers and connected to the transmission and distribution facilities of the DISCO.
- 6.3 **DISCO's Costs Associated with Disconnection:** Where a Disconnection was caused by the action or inaction of the DISCO or the Competitive Supplier's BPCs or as provided in the Connection Agreement, the DISCO shall not require the Competitive Supplier to bear any of the costs associated with the Disconnection of

facilities or equipment of the Competitive Supplier's BPCs under this Article and with any associated operating and decommissioning procedures, including the cost of removing any of the equipment of the DISCO from the BPC's property. Such costs associated with Disconnection shall be payable by the relevant BPC directly to the DISCO as per the Connection Agreement.

6.4 Disconnection due to non-payment of Use of System Charges: If the Competitive Supplier has not fulfilled its obligations related to the payment of Use of System Charges as provided in Article [7], the DISCO shall notify such non-payment to the respective BPC and temporarily disconnect the relevant BPC or BPCs till the time, issue of non-payment is resolved as per Article [7].

6.5 Reconnection After Disconnection: The DISCO shall Reconnect the facilities or equipment of the Competitive Supplier's BPCs that have been Disconnected under this Article, provided that:

- (a) the Competitive Supplier is not in default of its obligations under this Agreement as far as it relates to those BPCs;
- (b) the Competitive Supplier's BPCs meet the requirements set out in the Market Commercial Code, Grid Code, Distribution Code and the Connection Agreement entered into between the DISCO and those BPCs;
- (c) Where a Disconnection was caused by the action or inaction of the Competitive Supplier's BPCs, the DISCO has received all costs from Competitive Supplier's BPCs associated with such Reconnection and any associated commissioning procedures, including the costs of installing any of the equipment of the DISCO onto the BPC's property; and
- (d) Where a Disconnection was caused by the action or inaction of the Competitive supplier including the non-payment of Use of System Charges or its security cover, the DISCO has received all the pending payments and security cover amount from the Competitive Supplier and any cost associated with Reconnection shall be borne by the BPC, who may settle the same with the Competitive Supplier as per their mutual agreement.

ARTICLE-7

PROVISION OF TRANSMISSION AND DISTRIBUTION SERVICES, USE OF SYSTEM CHARGES AND SECURITY COVER

- 7.1 Manner of Providing Transmission and Distribution Services:** The DISCO shall provide the Transmission and Distribution Services to each of the Competitive Supplier's BPCs in accordance with all applicable provisions of this Agreement, the Grid Code, the Distribution Code and the relevant Connection Agreement with such BPCs.
- 7.2 Provision of Transmission and Distribution Services:** The DISCO shall commence provision of electric power to the facilities or equipment of the Competitive Supplier's BPCs connected to the Transmission and Distribution System and other Transmission and Distribution Services on the date and time agreed between DISCO, Competitive Supplier and the BPC, subject only to:
- (a) provision of Security Cover by the Competitive Supplier as required under this Article [7.15];
 - (b) satisfaction of all applicable metering requirements, as required by the applicable Grid Code, Market Commercial Code and Connection Agreement, in respect of such facilities and equipment;
 - (c) satisfaction of all relevant terms and conditions of Market Commercial Code; and
 - (d) satisfaction of the relevant terms of the Grid Code, the Distribution Code and the relevant Connection Agreements.
- 7.3 Addition of a New BPC(s) by the Competitive Supplier:**
- 7.3.1 Where the Competitive Supplier intends to supply electric power to any new BPC in the service territory of the DISCO, then in such case the Competitive Supplier shall inform and notify the DISCO in advance about the addition of such new BPC including the proposed commencement date of electric power supply to such new BPC or any other information as may be required by the DISCO.
- 7.3.2 The Competitive Supplier shall fulfill all the conditions required under the Applicable Documents for supply of electric power to such new BPC(s).
- 7.3.3 Upon such notification, the DISCO shall perform all the necessary checks required under the Grid Code and Distribution Code regarding the connection of such new BPC including the execution of Connection Agreement.
- 7.3.4 The DISCO shall also calculate the revised security cover as required under Article [7.16] and shall inform the Competitive Supplier to submit the revised security

cover payment in [xx] days.

7.3.5 Upon submission of revised security cover payment by the Competitive Supplier, both the Parties shall revise the list of BPCs as provided in Schedule-I by adding the information related to this new BPC.

7.3.6 The commencement of provision of electric power to the facilities or equipment of such additional new BPC(s) shall be subject to the satisfaction of all the conditions provided in Article [7.2].

7.4 Payment for Transmission and Distribution Services:

7.4.1 The Competitive Supplier shall make the following payments to the DISCO in respect of each BPC:

i. Use of System Charges against the Transmission and Distribution Services calculated each month; and

ii. Security Cover payments in accordance with Articles [7.12, 7.14, 7.15, and 7.16].

7.4.2 Where the BPC of the Competitive Supplier has terminated its existing Supply Contract and has agreed to take supply from another Competitive Supplier or from the Supplier of Last Resort, then in such case the DISCO shall invoice the Use of System Charges only for the period for which the Competitive Supplier supplied the electric power to such BPC. Further, in case of another Competitive Supplier, such competitive supplier shall start billing the Use of System Charges to the BPC from the date and time agreed between the BPC, DISCO and the new Competitive Supplier.

7.4.3 Where switching of a BPC from a Competitive Supplier to another Competitive Supplier or the Supplier of Last Resort was carried out on any day other than first day of the Billing Cycle, in such event, the DISCO shall invoice the Use of System Charges to the relevant Competitive Supplier on pro-rata basis.

7.5 Communication of Use of System Charges:

7.5.1 The DISCO shall promptly provide the Competitive Supplier with a copy of its Use of System Charges as approved by the Authority from time to time.

7.5.2 The DISCO may vary the Use of System charges as per the determination of the Authority from time to time.

7.6 Monthly Invoicing:

7.6.1 The DISCO shall issue the invoice to the Competitive Supplier for all BPCs, as listed in Schedule-I, for payments due under this Agreement on a monthly basis as agreed between the Parties. The invoice shall, inter alia, consist of the following details:

(a) the energy[kWh] consumed and the MDI (MW) of each BPC from the metering data provided by the Metering Service Provider;

- (b) the amounts payable on the basis of Use of System Charges for each BPC, supported by sufficient detail to enable the Competitive Supplier to validate the invoice with minimal administration;
- (c) any tax and surcharges levied by the Government;
- (d) the due date of payment; and
- (e) any other amount.

7.6.2 The invoices shall be issued substantially as per the format included in Schedule-II

7.7 Payment Terms: The Competitive Supplier shall make payments on or before the due date to the DISCO according to the invoice. All payments against each BPC under this Agreement shall be made:

- (a) in immediately available and freely transferable funds to such account and with such bank as the DISCO may designate from time to time for such purpose;
- (b) without deduction, set off or deferment in respect of sums which are subject to any disputes or claims whatsoever; and
- (c) together with any taxes and surcharges payable in respect thereof.

7.8 Continuing Payment Performance: The Competitive Supplier shall pay each invoice on or before its due date during the continuation of any dispute resolution process under this Agreement. Upon resolution of any dispute in relation to an invoice or invoices in accordance with this Agreement, any amount which the Competitive Supplier may have overpaid will be credited with interest at the rate [x%], which shall accrue daily on the amount overpaid. If it is determined that the amount was underpaid, the amount shall be debited with interest at the rate [x%] which shall accrue daily on the amount underpaid (as the case may be) to an invoice to be issued to the Competitive Supplier under this Agreement.

7.9 Interest on Overdue Payments: The DISCO shall be entitled to charge interest on any amount due against the Competitive Supplier under this Agreement at a rate equal to [xx%], the interest shall accrue daily on the amount unpaid on and from such due date to the date of actual payment.

7.10 Non-Payment: Where the Competitive Supplier fails to make payment in full to the DISCO of any amount invoiced under Article [7.6], the DISCO shall, on the first Business Day after the due date, notify the Competitive Supplier and shall be entitled to encash the Security Cover provided by the Competitive Supplier under Article [7.11].

7.11 Obligation to Provide Security Cover: The Competitive Supplier shall provide the Security Cover to the DISCO for all the BPCs listed in Schedule-I, up to the maximum amount determined in accordance with Articles [7.14,7.15,7.16] of this Agreement.

7.12 Timing and Form of Security Cover:

7.12.1 The Competitive Supplier shall provide the Security Cover referred to in Article [7.14] within ten (10) Business Days of execution of this Agreement. If the Competitive Supplier does not comply with this Article 7, the DISCO may in its discretion, acting reasonably, by notice to the Competitive Supplier given at any time terminate this Agreement with effect from the date specified in such notice. In case of addition of new BPCs during the currency of this Agreement, the Security Cover shall be submitted prior to the date of commencement of supply of electric power to new BPCs and subject to provisions of Article [7.3].

7.12.2 The Security Cover shall be in accordance with one of the following means:

- (a) a cash deposit; or
- (b) an irrevocable standby letter of credit.

7.13 Interest on Cash Deposits: Where the Competitive Supplier provides Security Cover in the form of a cash deposit, it shall not receive any interest on its deposit from the DISCO.

7.14 Security Cover Amount: Subject to Article [7.15] the Security Cover that the DISCO will require from a Competitive Supplier shall be equal to the DISCO's estimate of the maximum required security, determined in accordance with Articles [7.15 and 7.16].

7.15 Maximum Required Security:

The DISCO's maximum required security in respect of the Competitive Supplier shall be calculated in the following way:

$$\textit{Security Cover Amount} = A * \textit{Factor}$$

where:

"A" is the DISCO's estimate of the amount towards Competitive Supplier against all BPCs in a typical month, such amount shall be based on:

- (a) estimated billing information including energy [kWh], sanctioned load [MW], MDI [MW] and if available, historical consumptions of all BPCs of the Competitive Supplier, adjusted to reflect any foreseen change in conditions that would affect the use of the transmission and distribution system by BPCs;
- (b) the applicable Use of System Charges payable in a month; and
- (c) any taxes and Surcharges;

"Factor" is equal to two (2).

[add the explanation and example in Schedule III for the purpose of clarity]

7.16 Revisions of the Security Cover Amount:

7.16.1 In the event that the Competitive Supplier fails to make payment to the DISCO on the due date of the invoiced amount, and where a delay occurs for any three (3) Billing Cycles over any 12 months period, the DISCO shall be entitled to revise the factor used in Article [7.15] from 2 to 2.5.

7.16.2 In the event that the DISCO revises a Competitive Supplier's maximum Security Cover payable in accordance with above Article [7.16.1], and the Competitive Supplier does not delay in making payments for any Billing Cycle over the next 12 months subsequent to the revision, the DISCO shall thereafter re-adjust the factor from 2.5 to 2.

7.16.3 Nothing herein shall prejudice the rights of the DISCO provided under Article [7.15].

7.16.4 The amount of Security Cover shall also be revised automatically by the DISCO subject to the variation in the Use of System Charges as determined by the Authority, or any periodic indexation/adjustment provided in such determination from time to time.

7.16.5 The amount of Security Cover shall also be revised in case where any new BPC is added as per Article [7.3] or any BPC listed in Schedule I is switched to another Electric Power Supplier.

7.16.6 The amount of Security Cover shall also be revised in case where sanctioned load of any BPC of the Competitive Supplier increases or decreases.

7.17 Replenish Mechanism: In the event, where the Security Cover amount has been utilized by the DISCO in full or in partial against any non-payment in any month, the DISCO shall notify the Competitive Supplier to replenish its Security Cover within [10] Business Days. Failure to replenish the Security Cover by the Competitive Supplier shall entitle the DISCO to terminate this Agreement and disconnect the BPCs.

7.18 Failure to Provide Security Cover: Where a Competitive Supplier fails to provide the Security Cover required under the Article [7], the DISCO may refuse to energise such facilities or equipment of the BPCs and commencement of electric power supply to BPC until such time all the provisions provided in Article [7.2] have been fulfilled and the required Security Cover has been submitted.

7.19 Where Security Becomes Inadequate or Invalid: Where a Competitive Supplier fails to provide additional or replacement Security Cover, required under Articles [7.16 and 7.17], the DISCO may terminate this Agreement.

ARTICLE-8
EVENTS OF DEFAULT

8.1. Events of Default: An Event of Default means, in respect of a Party:

- (a) a breach by that Party of a material provision of this Agreement or of any applicable material provision of the Grid Code, the Distribution Code, the Market Commercial Code other than a breach by the Competitive Supplier of Article 7;
- (b) a license, permit or other authorization necessary to enable that Party to carry on its principal business or activities is suspended, revoked or otherwise ceases to be in full force and effect;
- (c) that Party ceases or threatens to cease to carry on its principal business or a substantial part of its principal business; or
- (d) the occurrence of insolvency.

8.2. Occurrence of Event of Default: If an Event of Default occurs in respect of a Party, the non-defaulting Party may serve the defaulting Party with a notice (the “Default Notice”) specifying the Event of Default.

8.3. Cure Periods: Upon receipt of a Default Notice, the defaulting Party shall in respect of an Event of Default under clause 8.1(a) only, be entitled to remedy the Event of Default within a period of [10] Business Days or such longer period of time as may be agreed between the Parties (the “Cure Period”). During such Cure Period, the defaulting Party shall diligently seek to remedy the Event of Default specified in the Default Notice.

8.4. Failure to Remedy: If :

- (a) the defaulting Party fails to remedy an Event of Default under clause 8.1(a) within the applicable Cure Period or such longer period of time as may have been agreed between the Parties; or
- (b) an Event of Default has occurred under clauses 8.1(b), **Error! Reference source not found.**, (c) and (d),

the non-defaulting Party may terminate this Agreement upon notice to the defaulting Party and the provisions of Article [10] shall apply.

8.5. Remedy Includes Payment of Costs: In respect of an Event of Default under clause 8.1(a), a defaulting Party shall not be held as having remedied an Event of Default unless it has paid to the non-defaulting Party all of the non-defaulting Party’s costs and expenses relating to or arising from enforcement by the non-defaulting Party of the defaulting Party’s obligations.

8.6. Exceptions: Nothing in this Article shall:

- (c) apply to the prejudice of the provisions of Article 12.4; be construed as affecting any other right or remedy which the non-defaulting Party may

have under this Agreement or Applicable Law, including a right to seek damages or indemnification where applicable, relating to or arising from an Event of Default; or

- (d) apply to a default in payment for Transmission and Distribution Services or a failure by the Competitive Supplier to provide Security Cover, which shall be governed by the provisions of Article 7.

ARTICLE-9

FORCE MAJEURE

9.1 Effect of Force Majeure Event: Subject to the provisions of this Article, neither Party shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement, other than the obligation to make payments of money, to the extent that such failure or delay is due to a Force Majeure Event, provided that the Party invoking a Force Majeure Event shall only be excused from performance pursuant to this Article:

- (a) for so long as the Force Majeure Event continues and for such reasonable period of time thereafter as may be necessary for the Party to resume performance of the obligation; and
- (b) where and to the extent that the failure or delay in performance would not have been experienced but for such Force Majeure Event.

9.2 Notice: Where a Party invokes a Force Majeure Event, it shall give notice to the other Party:

- a. of the invocation of the Force Majeure Event as soon as reasonably practical but in any event within two Business Days of the date on which the Party becomes aware of the occurrence of the Force Majeure Event, which notice shall include full particulars of the Force Majeure Event and of the effect that such Force Majeure Event is having on the Party's performance of its obligations under this Agreement; and
- b. of the cessation of the Force Majeure Event and of the cessation of the effects of the Force Majeure Event on the Party's performance of its obligations under this Agreement.

9.3 Duty to Mitigate: Each Party shall have a duty to mitigate its losses, liabilities or damages arising out of or in connection with the execution of this Agreement.

9.4 Exception for Emergencies Etc.: Nothing in Articles 9.1 to 9.3 shall excuse a Party from performing any of their respective emergency related obligations under this Agreement or the Grid Code or the Market Commercial Code or the Distribution Code during an emergency.

ARTICLE 10
TERM AND TERMINATION

- 10.1 Term:** This Agreement shall come into force on the Effective Date and shall remain in full force and effect until terminated by either party in accordance with Article [7] or [10.2] .
- 10.2 Termination Upon Voluntary Disconnection:** This Agreement may be terminated by any Party upon the voluntary Disconnection of all facilities or equipment of the Competitive Supplier's BPCs from the Transmission and Distribution System and where no Re-connection has occurred within 30 days of such Disconnection. Where only some of the BPC's facilities or equipment have been voluntarily Disconnected from the Transmission and Distribution System, or where the Competitive Supplier remains as Competitive Supplier for some of its BPCs, this Agreement shall remain in full force and effect in respect of those remaining BPCs.
- 10.3 Ongoing Liability:** Notwithstanding termination of this Agreement, in whole or in part, for any reason, each Party shall remain liable in respect of all obligations and liabilities owed to the other Party that were incurred or arose under this Agreement prior to the Effective Date of termination regardless of the date on which any claim relating thereto may be made.
- 10.4 Survival:** Termination of this Agreement for any reason shall not release the Parties from any obligations relating to this Agreement that by their nature survive termination, including all ongoing warranties, liabilities, indemnities and confidentiality obligations.
- 10.5 Return of Security Cover:** Upon termination of this Agreement , the DISCO shall, once it is satisfied that the Competitive Supplier has no remaining financial obligations or liabilities under this Agreement, return to the Competitive Supplier all Security Cover held by the DISCO in respect of such obligations no later than [30] Business Days after such termination or upon completion of all remaining financial obligations or liabilities that occurred before the date of termination.
- 10.6 Realization on Security Cover:** Upon termination of this Agreement in respect of all of the Competitive Supplier's BPC's facilities and equipment, the DISCO may, where the Competitive Supplier has financial obligations under this Agreement that are outstanding for more than ten (10) Business Days from the effective date of termination, take such steps as may be necessary to realize on such Security Cover to the extent required to offset any such outstanding financial obligations. Where the Security Cover exceeds the value of such outstanding financial obligations, including the costs of the DISCO in realizing on such Security Cover, the DISCO shall return to the Competitive Supplier any remaining Security Cover amount held by the DISCO.

ARTICLE-11
REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of DISCO: The DISCO hereby represents and warrants as follows to the Competitive Supplier, and acknowledges and confirms that the Competitive Supplier is relying on such representations and warranties in executing this Agreement:

- a. the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate actions; and
- b. this Agreement constitutes a legal and binding obligation on the DISCO, enforceable against the DISCO in accordance with its terms.

11.2 Representations and Warranties of the Competitive Supplier: The Competitive Supplier hereby represents and warrants as follows to the DISCO and acknowledges and confirms that the DISCO is relying on such representations and warranties without independent inquiry:

- a. it has all the necessary corporate powers to enter into and perform its obligations under this Agreement;
- b. the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action and in the Competitive Supplier's good faith belief and after making reasonable inquiry 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 Competitive Supplier; (ii) any contracts or instruments to which the Competitive Supplier is a party or by which the Competitive Supplier 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 Competitive Supplier have been duly authorized to execute this Agreement and have the full power and authority to bind the Competitive Supplier;
- d. this Agreement constitutes a legal and binding obligation on the Competitive Supplier, enforceable against the Competitive Supplier in accordance with its terms;
- e. it holds all permits, licenses and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a Competitive Supplier in this Agreement;

- f. the information provided in support of this Agreement, is true, accurate and complete in all respects;
- g. the Competitive Supplier has or will have 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 Competitive Supplier;

ARTICLE-12

MISCELLENEOUS

12.1 Dispute Resolution:

- a. In the event that any dispute arises between the Parties with respect to this Agreement, the Parties shall in good faith, attempt to resolve the dispute by mutual discussion and agreement. The aggrieved Party shall give a notice to the other Party, highlighting in detail the dispute that requires resolution, and good faith negotiations between the Parties shall be undertaken within a period of thirty days of such notice.
- b. If any dispute remains unresolved after good faith negotiations as per above clause, then such dispute shall be resolved under Arbitration Act, 1940.
- c. The courts at _____ shall have exclusive jurisdiction regarding any dispute arising under this Agreement.
- d. Notwithstanding with above, where both Parties agree in writing, they may refer the dispute matter to the Authority for resolution.
- e. Irrespective of any dispute pending resolution, both the Parties shall continue to perform their respective obligations and fulfill their liabilities as per provisions of this Agreement.

12.2 LIABILITY AND INDEMNIFICATION

12.2.1 DISCO

- a. Except as may be specifically provided to the contrary elsewhere in this Agreement, the DISCO shall not be liable for any claims, losses, costs, liabilities, obligations, actions, judgements, suits, expenses, disbursements or damages of the Competitive Supplier whatsoever, howsoever arising and whether as claims in contract, claims in tort or otherwise, arising out of any act or omission of the DISCO in the exercise or

performance or the intended exercise or performance of any power or obligation under this Agreement or any other Applicable Document.

- b. Subject to the above Clause (a), the DISCO shall indemnify and hold harmless the Competitive Supplier and the Competitive Supplier'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 Competitive Supplier 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 DISCO in the exercise or performance or the intended exercise or performance of any power or obligation under this Agreement.
- c. For the purposes of Clauses (a) and (b) above, an act or omission of the DISCO effected in compliance with this Agreement or any other Applicable Documents shall be deemed not to constitute willful misconduct or gross negligence. Further, the DISCO 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 Competitive Supplier shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the Competitive Supplier.

12.2.2 Competitive Supplier

- a. The Competitive Supplier shall not be liable for any claims, losses, costs, liabilities, obligations, actions, judgements, suits, expenses, disbursements or damages of the DISCO whatsoever, howsoever arising and whether as claims in contract, claims in tort or otherwise, arising out of any act or omission of the Competitive Supplier in the exercise or performance or the intended exercise or performance of any power or obligation under this Agreement.
- b. Subject to Clause (a) above, the Competitive Supplier shall indemnify and hold harmless the DISCO, the DISCO'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 DISCO, 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 Competitive Supplier in the exercise or performance or the intended exercise or performance of any power or obligation under this Agreement.
- c. For the purposes of Clauses (a) and (b) above, an act or omission of the Competitive Supplier effected in compliance with this Agreement be deemed not to constitute willful misconduct or a negligent act or omission. Further, the Competitive Supplier 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. The DISCO shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the DISCO, including but not limited to, seeking recovery under any applicable policies of insurance to which the DISCO or the Competitive Supplier, as the case may be, is a beneficiary.

12.3 DATA PRIVACY

- 12.3.1 Each Party acknowledges and agrees that, while performing their obligations and exercising their rights under this Agreement, it may receive or have access to personal or Confidential Information of the other Party, directors, officers, employees, governance committee members and/or authorized representatives.
- 12.3.2 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.

12.4 CONFIDENTIALITY

- 12.4.1 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 to be its respective intellectual property and shall always remain the property solely of said Party.
- 12.4.2 Each Party shall protect Confidential Information with reasonable precautions, but no less than in the same manner as it treats its own confidential and proprietary information.
- 12.4.3 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 obligations under this Agreement.

12.5 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of Pakistan as amended from time to time.

12.6 AMMENDMENT 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.

12.7 SUCCESSORS AND ASSIGNS

12.7.1 This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective heirs, administrators, executors, successors and permitted assigns.

12.7.2 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.

12.8 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.

12.9 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.

12.10 NOTICES

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 DISCO:

Attention: The Chief Executive Officer,

Facsimile:

(ii) If to Competitive Supplier:

Attention: The Chief Executive Officer,

Facsimile:

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.

Signature of Authorized Representative of Competitive Supplier

Name: _____ Title: _____ Date: _____

Signature of Authorized Representative of DISCO

Name: _____ Title: _____ Date: _____

1.

Witness:

Name:

Designation:

CNIC:

2.

Witness:

Name:

Designation:

CNIC:

Schedule II

[Reference [ARTICLE-7](#)]

[Monthly Invoice]

Monthly Invoice by DISCOs to Competitive Supplier may be made on the format provided hereunder:

Name of Bulk Power Consumer	Ref. No	Metering Point	Monthly Energy Recorded (kWh) (as communicated by MSP)	Monthly MDI Recorded (as communicated by MSP)	NEPRA Determined UoSC (PKR/kWh)	NEPRA Determined UoSC (PKR/kW) (in case NEPRA determine any fixed charge component)	Amount of UoSC for Individual BPC
Labels →			A	B	C	D	E=(A*C) + (B*D)
BPC 1							E ₁
BPC 2							E ₂
BPC 3							E ₃
BPC 4...							E ₄
Total Amount of Monthly Charge (F= E ₁ + E ₂ + E ₃ + E ₄) (PKR)							
Tax(if Applicable)(G= F* xx%) (PKR)							
Total Invoice of UoSC for a Month (H=F+G) (PKR)							

Schedule III

[Reference [ARTICLE-7](#)]

[Maximum Security Cover¹]

Example of Maximum Required Security Cover

Let assume in this agreement Competitive Supplier is providing supply of electric power to 3 BPC in the territory of DISCO.

BPC₁ Expected Monthly Energy Consumption (kWh)(A) = 2,016,000

BPC₂ Expected Monthly Energy Consumption (kWh) (B) = 2,520,000

BPC₃ Expected Monthly Energy Consumption (kWh) (C) = 1,512,000

Total Expected Monthly Energy Consumption of all BPCs (kWh) (D=A+B+C) = 6,048,000

NEPRA Determined UoSC (PKR/KWh) (E) = 12

Total Expected Amount (PKR) (F= D*E) = 72,576,000

Taxes (%) (G) = 5%

Total Expected Amount *including taxes* (PKR) (H = F (1+G)) = 76,204,800

Factor (I) = 2

Total Security Cover Amount of Competitive Supplier (PKR) (J= H*I) = 152,409,600

¹ This may be modified subject to the Determination of the Authority on the Use of System Charges.