



Service Provider Agreement

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This Service Provider Agreement (hereinafter called this “Agreement”) is made on this----- day of ----- 2023;¹

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) (having Market Operator License No. M0L10112022), 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 (Corporate Universal Identification No.0068608);

AND

2. _____, a company having its principal office at _____ in Pakistan, incorporated under the Companies Act, 2017, (hereinafter called the “[**Distribution Service Provider (DSP), Transmission Service Provider (TSP) or Metering Service Provider (MSP)**]”, 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 provide services in the Market organized and administered by the Market Operator;

WHEREAS M/s _____ has submitted an Admission Application for enrolment as a Service Provider to the Market Operator which is under process, and as a condition precedent for enrolment under the Market Commercial Code the Service Provider 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 Service Provider Agreement;

WHEREAS M/s _____ is registered with the FBR for GST and Income Tax and appearing in the Active Taxpayer List and has acquired all the relevant licenses/concurrence/registration/approvals from the Authority and any other relevant entity as required under the law;

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 service provider agreement be executed prior to the Applicant’s enrolment as a Service Provider by the Market Operator;

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

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;
 - 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. **"Codes"** means any code approved by the Authority under the Act;
 - ix. **"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;
 - x. **"Effective Date"** means the commercial market operations date of the Market;
 - xi. **"GOP"** means the Government of the Islamic Republic of Pakistan;
 - xii. **"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;

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- xiii. **“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;
- xiv. **“Market Operator” or “MO”** means a person licensed by the Authority under section 23A of the Act;
- xv. **“Service Provider”** means any person who is enrolled with the Market Operator and has also executed a Service Provider Agreement;
- xvi. **“System Operator”** means a person licensed by the Authority under section 23G of the Act;
- xvii. **“Termination Date”** means the date on which Applicant’s application to cancel its enrolment as Service Provider is approved or the date on which enrolment of a Service Provider is terminated by the Market Operator under the provisions of the Market Commercial Code; and
- xviii. **“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;
- 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 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 Service Provider.
- 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 Service Provider from the date of coming into force of such amendment.
- d. The Applicant hereby acknowledges and confirms that it shall promptly, within the time limits specified by the Market Operator, disconnect any Market Participant against which a disconnection request was issued by the Market Operator and failing which it shall be responsible for all of the financial obligations of such Market Participant, to the extent that such financial obligations are attributable to the Applicant's failure to comply with the disconnection request issued by the Market Operator;²

Metering Services

- e. The Applicant as a Metering Service Provider hereby, *inter alia*, also acknowledges and confirms that:³
 - i. it shall provide all the information regarding metering data of all Metering and/or Trading Points to the Market Operator in accordance with the Market Commercial Code and its operational procedures;
 - ii. it shall calculate the hourly network transmission losses as applicable from time to time and provide the same to the Market Operator;
 - iii. it shall submit all Metering Incident Reports to the Market Operator on timely basis in accordance with the Market Commercial Code and its operational procedures;
 - iv. it shall timely submit all relevant information regarding addition of any new Metering and/or Trading Points to the Market Operator as per the provisions of the Market Commercial Code and its operational procedures;
 - v. if applicable, it shall issue certification of historical data of a prospective Market Participant regarding its maximum value of demand during system peak hours, when approached by such prospective Market Participant;

² Only applicable for TSP and DSP

³ Only will be added in the SPA of MSP

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- vi. it has entered or shall enter into all required agreements with the Market Participants or prospective Market Participants and other service providers for the provision of all aspects of the metering services provided or to be provided by the Applicant, and that the metering data provided by the Applicant to the Market Operator shall be the conclusive basis for the Market Operator to execute the settlement as provided for in the Market Commercial Code and its operational procedures;
 - vii. it shall be solely responsible for collecting any and all fees from the respective Market Participants and Service Providers in relation to its provision of metering services thereto, and shall raise no such claim against the Market Operator;
 - viii. it shall be solely responsible for performing the meter reading at each Metering and Trading Point, and shall also perform the validity checks of the metered values, and transfer the information thereof to the Market Operator for settlement purposes;
 - ix. it shall timely resolve any issue / disputes related to the metering data with any Market Participant or Service Provider as per the procedures stipulated in their respective agreements and other applicable documents and the Market Operator shall not be involved in any such dispute; and
 - x. it shall submit a certificate to the Market Operator to the effect that the Commercial Metering System installed at all the Metering and/or Trading Points complies with the requirements of the Market Commercial Code, Grid Code, and other applicable documents. In addition to the aforesaid, it shall also organize and keep complete and accurate record containing all the information regarding the installation, commissioning, and testing of the Commercial Metering System.

Transmission Network Operator Services

- f. The Applicant as a Transmission Service Provider hereby, *inter alia*, also acknowledges and confirms that:⁴

Interconnection

- i. it has entered or shall enter into all required agreements with the Market Participants or prospective Market Participants and other Service Providers for the provision of all aspects of the transmission and related services provided or to be provided by the Applicant;
- ii. it has entered or shall enter in all required agreements with all relevant Market Participants regarding the treatment of the quantum and financial implication for losses in its network;
- iii. it shall be solely responsible for collecting any and all fees from the respective Market Participants and Service Providers in relation to its provision of transmission and related services thereto, and shall raise no such claim against the Market Operator;

⁴ Only for agreement of TSP

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- iv. it shall be liable to settle the obligations regarding any excess losses arrived at on the basis of difference between the actual losses calculated by the MSP and the reference transmission losses determined by the Authority;
 - g. The Applicant (Distribution Service Provider) hereby, *inter alia*, also acknowledges and confirms that:⁵

Interconnection

- i. it has entered or shall enter into all required agreements with the Market Participants or prospective Market Participants and other Service Providers for the provision of all aspects of the transmission, distribution and related services provided or to be provided by the Applicant;
- ii. it has entered or shall enter into all required agreements with all relevant Market Participants regarding the treatment of the quantum and financial implication for losses in its network;
- iii. it shall be solely responsible for collecting any and all fees from the respective Market Participants and Service Providers in relation to its provision of transmission, distribution and related services thereto, and shall raise no such claim against the Market Operator;
- iv. it shall verify and certify the data provided by a BPC to the Market Operator about the maximum value of its demand during system peak hours as per the procedure set forth in the Market Commercial Code;

Others⁶

- v. it shall submit to the Market Operator in a timely manner the information stipulated in the Market Commercial Code or as may be required by the Market Operator in accordance with the Market Commercial Code;⁷
- vi. it shall inform the Market Operator of any material change related to its business and to the information included in its Admission Application; and
- vii. the applicant confirms that it may be subject to an enforcement action in accordance with the Market Commercial Code for failure to comply with the provisions of Market Commercial Code;

2. SCOPE

After the execution of this Agreement and thereafter with effect from the date of enrolment of the Applicant by the Market Operator and until the termination of this Agreement, the Applicant shall be granted the status of a Service Provider for the purposes of the Market Commercial Code and shall have the obligation to provide services as stipulated in this Agreement, its License/registration, and the relevant provisions of the Act and rules and regulations made thereunder and the Codes approved by the Authority from time to time.

⁵ This will be only for a Distribution Company.

⁶ This section will apply on all i.e. MSP, TNO, DISCO.

⁷ Clauses under Others for both TNO and MSP and DSP.

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 Service Provider by the Market Operator, this Agreement shall automatically terminate on the earlier of:
 - i. the date of suspension, revocation or cancellation of license or registration of the Applicant by the Authority in accordance with the Act or rules and regulations made thereunder; 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 Service Provider which were incurred or arose under the 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 Service Provider:

- a. the execution, delivery and performance of this Agreement by it has been duly 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 Service Provider; and (ii) to enroll the

Applicant as a Service Provider under the Market Commercial Code for providing services in the market:

- 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 entities and in the Applicant's good faith belief and after making reasonable inquiries 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 Service Provider, 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 Service Provider as described in the Market Commercial Code and in this Agreement;
- f. the information provided in support of its application for enrolment as a Service Provider, 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 Service providers.

ARTICLE-IV – 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.

2. LIABILITY AND INDEMNIFICATION

Market Operator

- 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, 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 thereby 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 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 Commercial Code or this Agreement be deemed not to constitute willful misconduct or a negligent act or omission. Further, the Service Provider 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.

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, 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 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 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 license 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

Any waiver of any default, breach or non-compliance of or under this Agreement shall not be effective unless mutually agreed upon in writing by the Parties.

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 Service Provider or the representatives identified in the Admission Application, or to any representative as changed and notified by the Service Provider 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.

Signature of Authorized Representative of Service Provider

Name: _____ Title: _____ Date: _____

Signature of Authorized Representative of Market Operator

Name: _____ Title: _____ Date: _____

1.

Witness:

Name:

Designation:

CNIC:

2.

Witness:

Name:

Designation:

CNIC: