



# **System Operator and Market Operator Collaboration Agreement**

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This System Operator and Market Operator Collaboration Agreement (hereinafter called this “Agreement”) is made on this----- day of ----- 2023;

**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 Licence 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. National Transmission and Despatch Company Limited (hereinafter called the “**System Operator**”, which expression shall include its successors in interest and assigns) (having System Operator Licence No. S0L/01/2023), a company having its principal offices at 414 WAPDA House, Lahore, Pakistan, incorporated under the Companies Act, 2017 (Corporate Universal Identification No. L09689 of 1998-99);

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

**RECITALS:**

**WHEREAS** M/s National Transmission and Despatch Company holds a licence of System Operator from the Authority and will provide system operation services in the Market;

**WHEREAS** under the Market Commercial Code, the System Operator is required to provide certain information and data to the Market Operator in order for the latter to make settlements among the Market Participants;

**WHEREAS** coordination and collaboration between the System Operator and the Market Operator is necessary in order to ensure the efficient and effective operation of the CTBCM;

**WHEREAS** coordination and collaboration between the Market Operator and the System Operator needs to be contractually guaranteed in order to ensure the efficient and effective functioning of the Market;

**WHEREAS** the Market Operator and the System Operator wish to execute this Agreement in order to bring their collaboration and coordination in the Market under a contractual framework;

**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:

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## 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. **"Applicable Law"** means the laws of Pakistan including federal, provincial, and local laws;
  - iii. **"Authority"** means the National Electric Power Regulatory Authority established under section 3 of the Act;
  - iv. **"Clause"** means a clause of this Agreement;
  - v. **"Confidential Information"** shall have the same meaning as assigned to the term in the Market Commercial Code;
  - vi. **"Codes"** means any code approved by the Authority under the Act;
  - vii. **"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;
  - viii. **"Effective Date"** means the commercial market operations date of the Market;
  - ix. **"GOP"** means the Government of the Islamic Republic of Pakistan;
  - x. **"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;
  - xi. **"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;
  - xii. **"Market Operator" or "MO"** means a person licenced by the Authority under section 23A of the Act;
  - xiii. **"Service Provider"** means any person who is enrolled with the Market Operator and has also executed a Service Provider Agreement;
  - xiv. **"System Operator"** means a person licenced by the Authority under section 23G of the Act; and
  - xv. **"Termination Date"** means the date on which this Agreement comes to an end following the procedure laid down in this Agreement.

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- (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 System Operator 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 System Operator.
- b. The Market Operator 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 Market Operator.
- c. The System Operator acknowledges and agrees that the Market Commercial Code may be amended from time to time in accordance with the procedure specified therein and that any such amendment shall be applicable upon the System Operator from the date of coming into force of such amendment.
- d. The System Operator hereby, *inter alia*, also acknowledges and confirms that:

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- i. it has entered or shall enter into all required agreements with the Market Participants or prospective Market Participants particularly with generation companies and other service providers for the provision of services related to the system operations including central despatch and procurement of must run and related ancillary services in accordance with the Grid Code and Market Commercial Code and its operational procedures;
  - ii. it shall provide all required information to the Market Operator in accordance with the Market Commercial Code and its operational procedures;
  - iii. it shall calculate the hourly marginal prices and the energy units to be compensated for must run generation and ancillary services and provide the same to the Market Operator within the time limits set by the Market Operator according to the Market Commercial Code and its operational procedures;
  - iv. it shall develop, within the specified time limits, all the relevant methodologies and Commercial Code Operational Procedures (CCOPs) as stipulated in the Market Commercial Code;
  - v. 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 services thereto, and shall raise no such claim against the Market Operator; and
  - vi. it shall timely resolve any issue / disputes related to its services 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.

## **2. SCOPE**

After the execution of this Agreement, both the Parties shall share all the data and information as stipulated in the Market Commercial Code, Grid Code and other applicable legal documents including the rules and regulations made under the Act and perform their respective functions as assigned to them under the law.

## **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. This Agreement may be terminated by any of the Parties on the earlier of:
  - i. the date of suspension, revocation or cancellation of licence of the System Operator or the Market Operator by the Authority in accordance with the Act or rules and regulations made thereunder; or

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- ii. the date on which both the Parties agree in writing to terminate this Agreement.
  - b. Notwithstanding Clause (a) above, both the Parties shall remain subject to and liable for all of their respective obligations and liabilities, which were incurred or arose under the Market Commercial Code or Grid 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 System Operator, and acknowledges and confirms that the System Operator is relying on such representations and warranties for the execution of this Agreement:

- 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 SYSTEM OPERATOR**

The System Operator 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 for execution of this Agreement:

- a. the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and / or governmental approvals;
- b. the individual(s) executing this Agreement, and any document in connection herewith on behalf of the System Operator have been duly authorized to execute this Agreement and have the full power and authority to bind the System Operator;
- c. 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 the System Operator as described in the Market Commercial Code, the Grid Code and this Agreement; and
- d. this Agreement constitutes a legal and binding obligation on the System Operator, enforceable against it in accordance with its terms.

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## **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 System Operator 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 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 System Operator and the System 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 System Operator 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 System 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 System Operator.



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## **System Operator**

- a. The System Operator 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 System Operator in the exercise or performance or the intended exercise or performance of any power or obligation under the Market Commercial Code, Grid Code or this Agreement.
- b. Subject to Clause (a) above, the System Operator 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 System Operator in the exercise or performance or the intended exercise or performance of any power or obligation under the Market Commercial Code, Grid Code or this Agreement
- c. For the purposes of Clauses (a) and (b) above, an act or omission of the System Operator effected in compliance with the Market Commercial Code, Grid Code or this Agreement be deemed not to constitute willful misconduct or a negligent act or omission. Further, the System Operator 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

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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 System Operator that in future if a company other than present signatory as Market Operator is incorporated and the Market Operator licence is assigned / transferred to such company, the System Operator shall be bound to execute a novation agreement with that new company, or in case in future if a company other than present signatory as System Operator is incorporated and the System Operator licence is assigned / transferred to such company, the Market Operator 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:

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- 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 their respect representatives as identified by them, or to any of their representative as changed and notified by them.

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 System Operator**

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: