



NEPL NAUDERO ENERGY (PVT) LIMITED.

Date: May 23, 2014

The Registrar
National Electric Power Regulatory Authority
Islamabad

Subject: Naudero Energy (Pvt.) Limited - Modification In Generation License

31

Dear Sir:

In compliance to the NEPRA Licensing Regulations 1999 – Modification procedure, we submit the following:

1. Text of proposed modification;
Power Purchaser definition may be changed as following:
"Power Purchaser" means an entity purchasing electricity from the Licensee, pursuant to a Power Purchase Agreement
2. A statement of the reason in support of the modification;
Naudero Energy has earlier entered into a PPA with HESCO (subsequently novated to SEPCO) while installing Phase I of 16.5 MW, therefore Power Purchaser definition was written as the distribution licensee. The PPA has expired and now Naudero Energy has received a consent from GoS (Government of Sindh) to purchase electricity for its various department consumers through a wheeling agreement with SEPCO from Naudero Energy (draft Wheeling Agreement already submitted). Since GoS is not distributing the electricity and therefore having no distribution license, definition has to be amended as proposed above.
3. A statement of the impact on tariff, quality of service and the performance by the licensee of its obligations under the license
There is no impact on tariff, quality of service and the performance due to this modification

We shall appreciate that since Wheeling is a new concept in the country, we therefore request NEPRA to guide Naudero Energy for any other modification required to achieve the Wheeling transaction with GoS and SEPCO.

Head Office

1st Floor, Block-3, Hockey Club of Pakistan Stadium,
Liaquat Baraaka, Karachi-75350--(Pakistan)
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Page 1 of 2

S.I.T.E

Naudero,
District Larkana
Sindh



NEPL NAUDERO ENERGY (PVT) LIMITED.

Find enclosed;

- i) Demand Draft No. 0005420 of Rs.202,092/-against LPM Fee
- ii) BOD Resolution.
- iii) Certificate of incorporation
- iv) Articles & Memorandum
- v) Three years audited Financials

Thanking you and with regards,

Khawaja Anver Majid
CEO & Director

Head Office

1st Floor, Block-3, Hockey Club of Pakistan Stadium,
Liaquat Barracks, Karachi-75350 - (Pakistan)
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S.I.T.E

Naudero,
District Larkana
Sindh



Karachi dated 29th April, 2014

To,

✓
Mr. Syed Zeeshan Ali Warsi,
Group Chief Accountant,
Naudero Energy (Pvt.) Limited,
Karachi.

Subject: Intent to purchase electricity for various Government of Sindh Consumers under Wheeling Arrangement.

I am directed to refer to your submission in response to Energy Department, Government of Sindh (GoS) invitation for the already developed / under develop gas based power projects.

The GoS intend to purchase electricity from Naudero Energy for various GoS consumers under Wheeling Arrangement, subject to the signing of Power Purchase Agreement and under an already mutually agreed with tariff. The contract capacity will be approximately 12 MW.

This Letter of Intent is issued for submission to National Electric Power Regulatory Authority for approving the Wheeling Arrangement.

(ENGR. KARIM BAKHSH SHAIKH)
ADDITIONAL SECRETARY (POWER)

C.C to: -

1. P.S to Advisor for kind perusal of Honorable Advisor w/r to his telephonic conversation on 28th April 2014.
2. P.S to Secretary, Energy Deptt: GoS, for kind perusal of Worthy Secretary.

(ENGR. KARIM BAKHSH SHAIKH)
ADDITIONAL SECRETARY (POWER)



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

2nd Floor, OPF Building, G-5/2, Islamabad

Ph: 9206500, 9207200, Fax : 9210215

E-mail: registrar@nepra.org.pk

Registrar

No. NEPRA/R/LAG-176/160-162

January 07, 2011

Khawaja Nimr Majid
Director Operations
Naudero Energy (Pvt.) Limited
1st Floor, Block-3,
Hockey Club of Pakistan Stadium,
Liaquat Barracks, Karachi

Subject: **Generation Licence No. SGC/68/2011**
Licence Application No. LAG-176
Naudero Energy (Pvt.) Limited (NEPL)


Reference: *Your letter No. nil, dated September 30, 2010*

Enclosed please find herewith Generation Licence No. SGC/68/2011 granted by National Electric Power Regulatory Authority (NEPRA) to Naudero Energy (Pvt.) Limited for its 17.66 MW thermal power plants located at Deh Naudero, Taluka Ratodero, District Larkana, Sindh pursuant to Section 15 of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997). Further, the determination of the Authority in the subject matter is also attached.

2. Please quote above mentioned Generation Licence No. for future correspondence.

Enclosure: **Generation Licence**
[No. SGC/68/2011]




(Syed Safeer Hussain)

Copy to:

1. Chief Executive Officer, Hyderabad Electric Supply Company (HESCO), WAPDA Water Wing Complex, Hussainabad, Hyderabad
2. Director General, Pakistan Environmental Protection Agency, House No. 311, Main Margalla Road, F-11/3, Islamabad.

**National Electric Power Regulatory Authority
(NEPRA)**

Islamabad – Pakistan

GENERATION LICENCE

No. SGC/68/2011

In exercise of the Powers conferred upon the National Electric Power Regulatory Authority (NEPRA) under Section 15 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), the Authority hereby grants a Generation licence to:

NAUDERO ENERGY (PVT.) LIMITED

Incorporated under the Companies Ordinance, 1984

Under Certificate of Incorporation

No. 0073157, dated July 20, 2010

For its Plant located at Deh Naudero, Taluka Ratodero, District
Larkana, Sindh

(Installed Capacity: 17.66 MW Gross ISO)

to engage in generation business subject to and in accordance with the Articles of this Licence.

Given under my hand this 7th day of January, Two Thousand & Eleven, and expires on 29th day of November, Two Thousand & Thirty Six.


Registrar



ENERGY WHEELING AGREEMENT

This **ENERGY WHEELING AGREEMENT** is made at Karachi, on the _____, 2014 (this "**Agreement**").

AMONGST:

- (1) **Naudero Energy (Private) Limited** a company incorporated under the laws of Pakistan, with its office located at 1st Floor, Block-3, Hockey Club of Pakistan Stadium, Liaquat Barracks, Karachi – 75350 (the "**Supplier**"); and
- (2) **Sukkur Electric Power Company Limited**, a company incorporated under the laws of Pakistan, with its office located at [Office Address] ("**SEPCO**").

RECITALS:

WHEREAS

- (A) The Supplier holds a Generation License No. SGC/68/2011 dated 07-Jan-2011 granted by National Electric Power Regulatory Authority (**NEPRA**) for 17.66 MW thermal power plant located at Deh Naudero, Taluka Ratodero, District Larkana, Sindh ("Site") by NEPRA authorizing the Supplier to engage in the in the Second-tier Supply Business (the "**Licence and Authorization**").
- (B) The Supplier is currently installing 13.2 MW power generation facility in First Phase and will enter in to a Power Purchase Agreement with Govt. of Sind for the sale of electricity generat from the facility.
- (C) In accordance with Section 20 of the NEPRA Act, NEPRA granted **SEPCO** a Distribution Licence No. 21/DL/2011 dated 18 August 2011 which permits **SEPCO** to enter into an Agreement with the Supplier for use of the Distribution System (the "**SEPCO Licence**") and charge for the same in terms of **SEPCO's** tariff determination No. _____ dated as _____ amended from time to time by NEPRA (the "**SEPCO Tariff Determination**").
- (D) The Supplier is desirous of using the Distribution System for transport of the Input Energy to the BPCs and the DISCO has agreed to allow the Supplier to use the Distribution System, subject to the terms and condition provided for herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS, SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Actual Output Energy" means the electrical energy, expressed in kWh, that is transported by **SEPCO** to each Exit Point, as measured by the Exit Meter or the relevant Exit Point Check Meter, as the case may be.

"Agent" has the meaning given to that term in Section 16.3(b) (*Termination for Default*).

"Agreement" means this Energy Wheeling Agreement, including the recitals and schedules attached hereto (including the Connectivity Protocol).

"Agreement Year" means a period of twelve (12) consecutive months, with the first Agreement Year commencing on the Commencement Date.

"Applicable Laws" means the federal, provincial and local laws of Pakistan and all orders, rules, regulations, statutory regulatory orders, executive orders, decrees, judicial decisions, notifications or other similar directives issued pursuant thereto by any competent entity having jurisdiction over **SEPCO**, the Supplier or any part of their respective businesses, including the **SEPCO** Licence, the **SEPCO** Tariff Determination, the Licence and Authorisation and any new authorisation that enhances the scope of the Supplier's Second-tier Business.

"Banked Energy" has the meaning given to that term in Section 11.1 (*Banked Energy*).

"BPC(s)" means:

- (a) the bulk power consumers as specified in Schedule 2 (*Bulk Power Consumers*); and
- (b) any other bulk power consumer which NEPRA, where necessary, authorizes the Supplier to engage with in the Second-tier Supply Business using the Distribution System, as notified by the Supplier to SEPCO, from time to time,

provided that, a person shall cease to be a BPC, for the purposes of this Agreement, on notification by the Supplier to SEPCO.

"Business Day" means a Day that the banks in Pakistan are open for business.

"Check Meters" means the Entry Point Check Meter and the Exit Point Check Meter together and **"Check Meter"** means either the Entry Point Check Meter or any Exit Point Check Meter, as the case may be.

"Commencement Date" means the date on which the Supplier shall commence delivery of the Input Energy to the Entry Point, which date shall be notified in writing by the Supplier to SEPCO at least seven (7) Days in advance.

"Committed Capacity" means, as of the signing date of this Agreement, up to twelve [12] MW of electric power to be generated by the Facility or such other capacity, as notified from time to time by

the Supplier to **SEPCO**, that the Supplier is authorized by NEPRA to disperse to **SEPCO** as part of the Supplier's Second-tier Supply Business.

"Connectivity Protocol" means the protocol to be drafted by the Coordination Committee as specified in Section 13.5(a) (*Functions*), which protocol, shall deem to be an integral part of this Agreement.

"Coordination Committee" means the committee described in Section 13.4 (*Coordination Committee*).

"Day" means a period of twenty-four (24) hours, commencing at 12:00 midnight of each day.

"Daily Rate" means Rs.808,128/- (per day)

"Delayed Payment Rate" means KIBOR plus three (3) percent per annum, calculated for the actual number of Days which the relevant amount remains unpaid on the basis of a three hundred and sixty five (365) Day year.

"Distribution Licensing Rules" means the NEPRA Distribution Licensing Rules, 1999, notified through SRO 476(I)/99 dated April 10, 1999.

"Distribution System" means the distribution system of **SEPCO** to be used to transport the Input Energy from the Entry Point to the Exit Point(s) as specified in the Licence and Authorization.

"Due Date" has the meaning given to that term in Section 8.2 (*Payment*).

"Election Notice" has the meaning given to that term in Section 16.3(b) (*Termination for Default*).

"Entry Meter" means the meter to be procured and installed by the Supplier, at its expenses, at the Entry Point to measure the Input Energy from the Facility delivered by the Supplier to the Entry Point.

"Entry Meter Reading Confirmation" has the meaning given to that term in Section 6.2(a) (*Reading*).

"Entry Point" means the physical point where Input Energy from the Facility is delivered by the Supplier, as specified in the site plan in Schedule 3 (*Entry Point*) or such other point as may be agreed by the Parties.

"Entry Point Check Meter" means the back-up meter to be procured and installed by the Supplier, at its cost, at the Entry Point to measure Input Energy generated from the Facility and delivered to the Entry Point.

"Evaluation Period" has the meaning given to that term in Section 16.3(b) (*Termination for Default*).

"Excusable Event" means a Force Majeure Event, a Scheduled Outage (not exceeding the Scheduled Outage Allowance) or an Unscheduled Outage (not exceeding the Unscheduled Outage Allowance).

"Exit Meter(s)" means the separate meters to be procured and installed by the relevant BPC, at its cost, at each Exit Point to measure the Actual Output Energy.

"Exit Meter Reading Confirmation" has the meaning given to that term in Section 6.2(b) (*Reading*) and

"Exit Meter Reading Confirmations" means the Exit Meter Reading Confirmations, for any given month, for all the Exit Meters.

"Exit Point(s)" means the physical point or points where the Actual Output Energy exits the Distribution System, as agreed by the Parties and the relevant BPC.

"Exit Point Check Meter(s)" means the separate back-up meter(s) to be procured and installed by the relevant BPC, at its expenses at the relevant Exit Point to measure the Actual Output Energy received at the Exit Point from the Distribution System.

"Facility" has the meaning given to that term in the recitals.

"Financiers" mean the financial institutions and investment vehicles, agencies and funds extending financing (including any refinancing) to the Supplier in relation to the Facility (or any part thereof), together with their respective successors and assigns.

"Financiers' Cure Period" has the meaning given to that term in Section 16.3(b) (*Termination for Default*).

"Force Majeure Event" has the meaning given to that term in Section 14.1 (*Force Majeure - Definition*).

"Independent Expert" shall be Mr. Abdul Malik Memon, Ex General Manager, Pakistan Electric Power Company Limited

"Initial Cure Period" has the meaning given to that term in Section 16.3(b) (*Termination for Default*).

"Input Energy" means the electrical energy, expressed in kwh, that is generated by the Facility and delivered to the Entry Point for purposes of onward transport by SEPCO to the Exit Points, as measured by the Entry Meter or the Entry Point Check Meter, as the case may be.

"Invoice Dispute Notice" has the meaning given to that term in Section 10 (*Payment Disputes*).

"KIBOR" means the average "ask side" Karachi Inter-Bank Offer Rate for Rupee deposits for a period equal to three (3) months which appears on the appropriate page of the Reuters service at or about 11:30 a.m. in Karachi on the last available Business Day, or in the event that the Reuter's service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the average "ask side" Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi inter-bank market;

"Licence and Authorization" has the meaning given to that term in the recitals and includes any new authorization issued by NEPRA with respect to a new BPC.

"SEPCO" has the meaning given to that term in the preamble.

"SEPCO Interconnection Works" means all the works and activities, to be undertaken by SEPCO (including procurement of equipment and materials), required to connect the Entry Point to the Distribution system, to be defined in detail in the Connectivity Protocol.

"SEPCO Licence" has the meaning given to that term in the recitals.

"SEPCO Tariff Determination" has the meaning given to that term in the recitals.

"**NEPRA**" means the National Electric Power Regulatory Authority established by the NEPRA Act and any successor or substitute regulatory agency with authority and jurisdiction over the electricity sector in Pakistan.

"**NEPRA Act**" means the Regulation of Generation, Transmission and Distribution Act, 1997 (Act XL of 1997).

"**Notice of Intent to Terminate**" has the meaning given to that term in Section 16.3(a) (Termination for Default).

"**Output Energy**" means the electrical energy, expressed in kWh, that SEPCO is obliged to transport to each Exit Point, as stated in the Wheeling Notice or the Revised Wheeling Notice, as the case may be.

"**Party**" means each of the Supplier and SEPCO and "**Parties**" means both of them.

"**Revised Wheeling Notice**" has the meaning given to that term in Section 13.1(c) (Wheeling Notice and Revised Wheeling Notice).

"**Required SEPCO Interconnection Date**" means the date by which SEPCO is required to complete the SEPCO Interconnection Works, as notified and, if applicable, revised by the Supplier to SEPCO in accordance with Section 3 (SEPCO Interconnection Work).

"**Rupees**" means the lawful currency of Pakistan.

"**Scheduled Outage**" means a planned interruption of SEPCO's ability to accept delivery of electrical energy generated by the Facility at the Entry Point or its ability to transport the same to any Exit Point, due to inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Distribution System (or any part thereof), in each case, undertaken in accordance with the Scheduled Outage Notification.

"**Scheduled Outage Allowance**" means one hundred twenty (120) hours in any Agreement Year.

"**Scheduled Outage Notification**" has the meaning given to that term in Section 12 (*Outages*).

"**Second-tier Supply Business**" has the meaning given to that term in the Distribution Licensing Rules.

"**Signing Date**" means the date on which both Parties have signed this Agreement. "**Supplier**" has the meaning given to that term in the preamble.

"**Term**" means the period commencing from the signing date and ending on the last day of the Wheeling Period.

"**Termination Date**" has the meaning given to that term in Section 16.4 (*Termination Notice*).

"**Termination Notice**" has the meaning given to that term in Section 16.4 (*Termination Notice*).

"**Unscheduled Outage Allowance**" means one hundred twenty (120) hours in any Agreement Year.

"**Unscheduled Outage**" means an interruption or delay in **SEPCO** accepting delivery of electrical energy generated by the Facility at the Entry Point or SEPCO transporting the same to any Exit Point (in accordance

with any Wheeling Notice and Revised Wheeling Notice, submitted by the Supplier, pursuant to Section 13.1) that is not a result of a Schedule Outage or a Force Majeure Event.

"Use of System Charge" means the charge, expressed in Rupees/kWh, to be levied by SEPCO for use of the Distribution System as specified in Schedule 1 (*Use of System Charge*).

"Use of System Payment" means, for any given month, following the Commencement Date, the amount to be paid by the Supplier to SEPCO, in terms of Section 8 (*Invoicing and Payment*), calculated by multiplying the Use of System Charge by the lower of: (a) the Input Energy, as stated in the Entry Meter Reading Confirmations; and (b) the aggregate Actual Output Energy (for all the Exit Meters), as stated in the Exit Meter Reading Confirmations.

"Wheeling Meters" means the Entry Meter and the Exit Meter(s).

"Wheeling Notice" means the notice submitted by the Supplier, pursuant to Section 13.1 (*Wheeling Notice and Revised Wheeling Notice*), to SEPCO stating the electrical energy to be delivered, in that month, at each Exit Point.

"Wheeling Period" means the period commencing from the Commencement Date and ending on the earlier of, twenty (20) Agreement Years from the Commencement Date (as such period may be extended by written agreement of the Parties) or the date of termination of this Agreement in terms hereof.

1.2 Interpretation

In this Agreement, except where the context requires otherwise:

- (a) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (b) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (c) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (d) references to recitals, Sections and Schedules are, unless the context otherwise requires, references to recitals, sections of, and schedules to, this Agreement;
- (e) a reference to any legislation or legislative provision includes any statutory modification, amendment, or re-enactment of or legislative provision substituted for, and any subordinate legislation under that legislation or legislative provision;
- (f) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (g) - headings shall not be taken into consideration in the interpretation of this Agreement; and

- (h) unless otherwise specifically provided in this Agreement, a reference to an agreement, licence, determination, authorisation or permission shall be a reference to that agreement, licence, determination, authorisation or permission as amended, re-stated, supplemented, modified or novated from time to time in accordance with the terms thereof.

In this Agreement the following abbreviations shall have the following meanings:

MW means megawatt or 1,000,000 Watts kWh

means kilowatt hour

kV means kilovolt or 1,000 volt

1.3 Priority

In case of any conflict between the terms of this Agreement and the Applicable Laws, the Applicable Laws will prevail.

2. EFFECTIVE DATE AND TERM

2.1 Effectiveness

This Agreement shall become effective upon execution by both Parties.

2.2 Term

This Agreement shall continue in full force and effect for the Term unless earlier terminated otherwise by either Party in accordance with Section 16.3 (*Termination for Event of Default*). Subject to obtaining any necessary consent, the Parties may mutually agree to extend the Term for such additional period as they deem appropriate.

2.3 Renewal of Distribution License

DISCO hereby agrees to apply to NEPRA for renewal of the Distribution License No. 21/DL/2011 at least six (6) months prior to the expiration of the Distribution License. For the avoidance of doubt, DISCO shall ensure that the Distribution License remains valid for the entire Wheeling Period.

3. SEPCO INTERCONNECTION WORK

3.1 Completion of SEPCO Interconnection Work

Within six (6) months following the signing date, the Supplier shall notify SEPCO of the Required SEPCO Interconnection Date, provided however, the Required SEPCO Interconnection Date notified by the Supplier shall not be earlier than twelve (12) months from the Signing Date. Following the receipt of such notice, SEPCO shall commence the SEPCO Interconnection Works. Thereafter, SEPCO shall give the Supplier monthly reports on the progress of the SEPCO Interconnection Works until the same are completed. SEPCO shall complete the SEPCO

Interconnection Works by the Required SEPCO Interconnection Date. All costs and expenses relating to the SEPCO Interconnection Works shall be borne by SEPCO.

At any time after issuance of the notice referred to in this Section 3.1 (*Completion of SEPCO Interconnection Work*), the Supplier may elect by notice to SEPCO to revise the Required SEPCO Interconnection Date, provided however, the revised Required SEPCO Interconnection Date shall not be earlier than the original Required SEPCO Interconnection Date unless SEPCO has consented to such a revised earlier date. In the event the revised Required SEPCO Interconnection Date is later than the originally notified Required SEPCO Interconnection Date or SEPCO has consented to an earlier Required SEPCO Interconnection Date, then such revised Required SEPCO Interconnection Date shall be the Required SEPCO Interconnection Date.

3.2 Failure to Achieve SEPCO Interconnection Work by Required SEPCO Interconnection Date

Where SEPCO has failed to complete the SEPCO Interconnection Work to the satisfaction of the Supplier on or before the Required SEPCO Interconnection Date, SEPCO shall pay the Supplier as liquidated damages an amount equal to Schedule 4 item (a) for each day that the completion of the SEPCO Interconnection Work is delayed. Payment of liquidated damages under this Section 3.2 shall be made in accordance with the terms of Section 9.2 below.

4. USE OF SYSTEM

4.1 Use of System

Subject to the terms and conditions set out in this Agreement, during the Wheeling Period:

- (a) **SEPCO** agrees that it will use the Distribution System to transport the Input Energy from the Entry Point to each Exit Point, in accordance with the Wheeling Notice or the Revised Wheeling Notice, as the case may be; and
- (b) in consideration thereof, the Supplier agrees to pay to **SEPCO**, the Use of System Payment.

4.2 Transport

SEPCO undertakes that it shall transport the Input Energy to each Exit Point, in accordance with the Wheeling Notice or the Revised Wheeling Notice, as the case may be, without any interruption or delay, unless an Excusable Event occurs.

4.3 Shortfall

In the event of any shortfall in the Committed Capacity, **SEPCO** shall supply to the relevant BPC as stated in the Wheeling Notice or Revised Wheeling Notice (as the case may be), any such shortfall in the electrical energy that the Supplier is unable to deliver to the Entry Point. For such shortfall, **SEPCO** shall directly invoice the BPC at the tariff approved by NEPRA. Such an invoice shall take account of measurements stated in the Entry Meter Reading Confirmation and the applicable Exit Meter Reading Confirmation.

5. TRANSFER OF TITLE

The title and ownership of the Input Energy shall vest in and shall at all times remain with the Supplier until transferred to a BPC in terms of the relevant power purchase agreement signed between the Supplier and the relevant BPC.

6. METERING

6.1 Meters

- (a) The Supplier shall, at its expense, procure and install the Entry Meter and the Entry Point Check Meter as close to the Entry Point as reasonably practicable and as agreed by the Parties. The Entry Meter and the Entry Point Check Meter shall each have an accuracy class of zero point two percent (0.2%). The specifications, installation, testing, commissioning and calibration (or recalibration, if necessary) of:
 - (i) the Entry Meter shall be coordinated by the Coordination Committee; and
 - (ii) the Entry Point Check Meter shall be coordinated by the Coordination Committee.
- (b) The relevant BPC shall, at its expense, procure and install the Exit Meter and the Exit Point Check Meter, as close to the Exit Point as reasonably practicable and as agreed by the Parties. The Exit Meter and the Exit Point Check Meter shall each have an accuracy class of zero point two percent (0.2%). The specification, installation, testing, commissioning and calibration (or recalibration, if necessary) of:
 - (i) the Exit Meter shall be coordinated by the Coordination Committee; and
 - (ii) the Exit Point Check Meter shall be coordinated by the Coordination Committee together with the relevant BPC.
- (c) The Supplier shall include necessary provisions in the power purchase agreements signed between the Supplier and the BPCs, to ensure that each BPC shall comply with Section 6.1 (b) (Meters).

6.2 Reading

- (a) On the Commencement Date and thereafter on the last Business Day of each month (during normal business hours and at a time agreed by the Parties), the Entry Meter shall be read jointly by representatives of both the Parties and results thereof signed by the representative of the Parties (the "**Entry Meter Reading Confirmation**").
- (b) On the Commencement Date and thereafter on the last Business Day of each month (during normal business hours and at a time agreed by the Parties), the Exit Meter shall be read by representatives of both the Parties and the relevant BPC (being the BPC to whom the Output Energy is intended to be delivered) and results thereof signed by the representative of the Parties and the relevant BPC (the "**Exit Meter Reading Confirmation**").

6.3 Attendance

Where a Party, and if applicable the relevant BPC fails to attend any meter reading, the representative of the attending Party shall read the Entry Meter and / or the Exit Meter and such reading shall be binding on the Parties and the relevant BPC, provided that, the attending Party shall deliver the readings to the non-attending Party, and, if applicable, the relevant BPC, within two (2) Business Days after the reading is taken.

6.4 Tampering

The Parties shall ensure that their respective contractors, employees, agents and invitees shall not tamper with any of the meters.

6.5 Testing

The Parties may test the accuracy of the Wheeling Meters (and where necessary recalibrate the same) at any time the reading between any Wheeling Meter and its corresponding Check Meter differ by more than zero decimal point *five* percent (0.5%). Wheeling Meters shall have an accuracy class of zero point two percent (0.2%).

6.6 Use of Check Meters

The Wheeling Meters shall be used to measure the Input Energy at the Entry Point and the Actual Output Energy at the Exit Point. Where any Wheeling Meter is out of service due to repair, maintenance or testing, the relevant Check Meter shall be used to record the electrical energy transported between Entry Point and the Exit Point.

6.7 Inaccuracies

Where any Wheeling Meter is found to be inaccurate by more than zero decimal point five percent (0.5%) (in terms of Section 6.5 (*Testing*)), or is otherwise unavailable or functioning improperly, then the correct amount of electrical energy delivered to the Entry Point and amount of electrical energy, exiting at the Exit Point, for the period when inaccurate measurements were made shall be determined, as follows:

- (a) the readings of the relevant Check Meters shall be used, unless a test of the Check Meter reveals that the Check Meter is inaccurate by more than zero decimal point five percent (0.5%) or is otherwise unavailable or functioning improperly;
- (b) if the Check Meter is found to be inaccurate by more than zero decimal point five percent (0.5%), or is otherwise unavailable or functioning improperly, then the Parties shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may be determined by the Coordination Committee;
- (c) if the Parties fail to agree upon an estimate for the correct reading, the dispute shall be referred by either Party for resolution in accordance with Section 28 (*Dispute Resolution*); and
- (d) the difference between the previous payments by the Supplier for the period of inaccuracy

and the recalculated amount shall be offset against or added to the next payment to SEPCO under this Agreement, as appropriate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date which is midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate.

6.8 Costs

All costs and expenses associated with the repair, testing, commissioning, calibration and recalibration of (i) the Entry Meter and Entry Point Check Meter shall be borne by the Supplier, (ii) the Exit Meter and Exit Points Check Meters shall be borne by the relevant BPC.

6.9 Sealing

The Wheeling Meters and the Check Meters will be jointly sealed by the Parties. Seals shall only be broken in the presence of representatives of both the Parties.

6.10 BPC Presence

Subject to Section 6.3 (*Attendance*), any repair, testing, commissioning, reading, sealing, calibration and recalibration of (a) the Exit Meters and the Exit Point Check Meter, shall be done in the presence of the relevant BPC, and (b) the Entry Point Check Meter in the presence of all the Parties.

7. USE OF SYSTEM PAYMENT

For using the Distribution System to transport Input Energy to the Exit Point(s) the Supplier shall pay SEPCO the Use of System Payment calculated in accordance with Schedule 1 (*Use of System Charge*) and invoiced in accordance with Section 8 (*Invoicing and Payment*), subject to adjustments in accordance with Section 6.7(d).

8. INVOICING AND PAYMENT

8.1 Invoicing

Following the Commencement Date, on the tenth (10th) Day of each month, SEPCO shall submit an invoice to the Supplier for the Use of System Payment calculated in accordance with Schedule 1 (*Use of System Charge*) applicable for the previous month.

8.2 Payment

Subject to Section 10 (*Payment Disputes*), the Supplier shall pay the Use of System Payment thirty (30) Days following the Day the invoice was received by the Supplier (the "**Due Date**"), provided that, if such date is not a Business Day, the Due Date shall be the next following Business Day.

9. FAILURE TO TRANSPORT

9.1 Failure to Transport

Notwithstanding any other provision of this Agreement, if, from and after the Commencement Date, **SEPCO** cannot, or fails to accept delivery of electrical energy from the Facility, at the Entry Point (in terms of the Wheeling Notice or the Revised Wheeling Notice, as the case may be), for reasons other than an Excusable Event, then **SEPCO** shall pay liquidated damages to the Supplier calculated in terms of Schedule 4 (*Liquidated Damages*) item (b).

9.2 Payment

The Supplier shall be entitled to submit an invoice to **SEPCO**, stated in Rupees, on the 1st Business Day of every month for the amount of liquidated damages due to the Supplier (calculated in terms of Section 3.2 (Failure to achieve Interconnection Works), and/or Section 9.1 (Failure to Transport) and/or Section 11.1 (Banked Energy)) for the previous month (or part-month). Subject to Section 10 (Payment Disputes), within 15 Days of receipt of such invoice, **SEPCO** shall pay the Supplier the amount shown thereon.

10. PAYMENT DISPUTES

At any time within two (2) months after receipt of an invoice, a Party may dispute the amount of such invoice (or any part thereof) by notice on the other Party (the "Invoice Dispute Notice"). The Invoice Dispute Notice shall specify the invoice concerned, the amount disputed and the reasons for disputing the invoice. Within five (5) Business Days of receiving the Invoice Dispute Notice, the Parties shall meet to resolve the dispute. If the Parties cannot resolve the dispute within twenty (20) Days of receipt of the Invoice Dispute Notice, the matter will be settled in terms of Section 28 (Dispute Settlement).

11.1 Banked Energy

- (i) Any Input Energy that the DISCO fails to deliver to BPC or BPC is unable to accept delivery for any reason, shall be treated as banked energy ("Banked Energy"). In the event the DISCO fails to deliver the Banked Energy to BPC it shall be obligated to purchase the same from the Supplier at the same rate which would have been payable by the BPC ("**Default Sale**"). At the beginning of each month the Supplier shall raise an invoice for the Mandatory Sale relating to the immediately preceding month and the DISCO shall pay the same within fourteen (14) days. .
- (ii) In the event BPC is unable to accept delivery of Input Energy for any reason, **SEPCO** shall be obligated to deliver such Banked Energy at the Exit Point, requested by the Supplier, within thirty (30) Days of such request **SEPCO**. If **SEPCO** fails to deliver the Banked Energy within the aforesaid thirty (30) Days, it shall purchase the same from the Supplier at the same rate which would have been payable by the BPC ("**BPC Default Sale**"). At the beginning of each month the Supplier shall raise an invoice for the BPC Default Sale relating to the immediately preceding month and the DISCO shall pay the same within fourteen (14) days.

11.2 Use of System Payment Charges

. Use of System Payment shall not be applicable for sale of any Banked Energy to **SEPCO** pursuant to clause 11.1. In case the Supplier has already paid the Use of System Payment for the Banked Energy, such amount of Use of System Payment corresponding to the Banked Energy, shall be deducted by **SEPCO** from the next invoice delivered in terms of Section 8.1 (Invoicing).

11.3 Approval

For the purposes of implementing the transaction contemplated in Section 11.2 (*Optional Sale*), **SEPCO** shall (if necessary), prior to the Commencement Date, obtain NEPRA's permission for power acquisition from the Supplier.

12. OUTAGES

In any given Agreement Year, **SEPCO** may undertake Scheduled Outages for an aggregate period not exceeding the Scheduled Outage Allowance, provided that, **SEPCO** has given ninety (90) Days prior written notice of the Scheduled Outage to the Supplier (the "**Scheduled Outage Notification**"). The Scheduled Outage Notification shall state the time, date, reason, duration of the Scheduled Outage, which Exit Points will be affected and shall detail the duration of previous Scheduled Outages in the same Agreement Year.

13. OPERATIONS

13.1 Wheeling Notice and Revised Wheeling Notice

- (a) No later than 00:00 hours on the Commencement Date, the Supplier shall issue a Wheeling Notice to **SEPCO**.
- (b) No later than twenty four (24) hours prior to the beginning of each month, following the Commencement Date, the Supplier shall issue a Wheeling Notice to **SEPCO**.
- (c) The Supplier may revise any instructions contained in the Wheeling Notice referred to in Sections 13.1(a) and (b) (*Wheeling Notice and Revised Wheeling Notice*) at any time, prior to the start of each Day by issuing a revised wheeling notice to **SEPCO** (the "**Revised Wheeling Notice**"). The Revised Wheeling Notice may revise upwards or downwards the electrical energy stated in the Wheeling Notice. If the Supplier fails to issue a Revised Wheeling Notice, the electrical energy to be transported to each Exit Point shall be the same as stated in the relevant Wheeling Notice.

13.2 Compliance

The Parties shall operate and maintain their respective facilities and systems in accordance with the Applicable Laws.

13.3 Protection

Each Party shall install and maintain such equipment necessary (as detailed in the Connectivity Protocol) to automatically isolate their respective facilities and systems in case of any fault occurring such that the other Party's facilities and systems are not damaged in any way.

13.4 Coordination Committee

The Parties shall, within [30] Days of the Signing Date, constitute the Coordination Committee by designating one (1) member each to represent it on the Coordination Committee. Any Party may

replace its designee from the Coordination Committee upon notice to the other Party.

13.5 Functions

- (a) Within [30] Days of its constitution, the Coordination Committee shall finalize the Connectivity Protocol. The Connectivity Protocol shall include the following:
 - (i) details and specifications of the equipment required to be used to connect the Facility to the Distribution System;
 - (ii) details of the works and activities, to be undertaken by **SEPCO**, required to connect the Entry Point to the Distribution System;
 - (iii) test and procedures to be followed to connect the Facility to the Distribution System and maintain such connection throughout the Wheeling Period; and
 - (iv) such other matters which the Parties may jointly agree should be part of the Connectivity Protocol.

If the Coordination Committee fails to finalize the Connectivity Protocol within the aforesaid 30 Day period, then either Party may refer the matter to an Independent Expert for determination of the issues not agreed upon.

The Parties hereby agree that the recommendations of the Independent Consultant shall be binding on the Parties. The costs for the Independent shall be shared equally by both Parties.

The Connectivity Protocol, upon finalization, shall be deemed to be an integral part of this Agreement, as Schedule 5 hereto.

- (b) The Coordination Committee shall coordinate the following activities:
 - (i) Scheduled Outages;
 - (ii) reading, testing, commissioning, sealing, calibration and recalibration of the Wheeling Meters and the Check Meters;
 - (iii) development of safety and emergency provisions;
 - (iv) invoicing and payments; and
 - (v) such other matters as the Parties may jointly agree to refer to the Coordination Committee from time to time.

13.6 Meetings

All decisions taken by the Coordination Committee shall be recorded in writing and signed by the designees of the Parties. Where either Party deems it necessary for the Coordination Committee to better understand a matter under discussion, a representative of the BPC may also be invited to attend the meeting of the Coordination Committee.

14. FORCE MAJEURE

14.1 Definition

A "**Force Majeure Event**" shall mean any event or circumstance or a combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement, provided that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party by exercise of care and diligence. Force Majeure Events shall not include:

- (a) breakdown of: (i) machinery or equipment; (ii) the Distribution System or (iii) any part of the transmission facilities (as defined in the NEPRA Act) on which **SEPCO** relies for uninterrupted distribution and transport of electrical energy to a BPC or accepting of electrical energy at the Entry Point;
- (b) events or circumstances that arose due to a breach of any obligation of the affected Party under this Agreement or otherwise due to non-compliance with any Applicable Law; or
- (c) Scheduled Outages or Unscheduled Outages.

14.2 Notice

On occurrence of a Force Majeure Event, the affected Party shall within 24 hours give the other Party written notice of the Force Majeure Event (including reasonable details thereof). Such notice shall include a reasonable estimate by the affected Party of when it expects the Force Majeure Event to end and allow the affected Party to resume its obligation's under this Agreement.

14.3 Effect of Force Majeure

So long as the Party affected by the Force Majeure Event complies with the requirements of Section 14.2 (*Notice*) and has taken reasonable steps to mitigate the effects of a Force Majeure Event, then the affected Party shall not be liable for any failure or delay in performing its obligations (other than payment obligations) under or pursuant to this Agreement during the pendency of the Force Majeure Event, provided however, that no relief shall be granted to the affected Party pursuant this Section 14.3 (*Effect of Force Majeure*) to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

14.4 Cessation

On cessation of the Force Majeure Event, the affected Party shall within 24 hours notify in writing to the other Party of its ability to recommence performance of its affected obligations under this Agreement.

15. REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties

Each Party hereby represents and warrants to the other Party that:

- (a) it is a limited liability company, duly organized, validly existing and in good standing under the laws of Pakistan, and has, so far as it is material to it, complied fully with all requirements of the Companies Ordinance (XLVII) of 1984 and all other Applicable Laws;
- (b) it has full corporate power and authority to execute and deliver this Agreement, and to own its properties and to execute, to deliver and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by it:
 - (i) has been duly authorized by all requisite corporate action on its part, and no other proceedings or any other person are necessary for such authorization; and
 - (ii) will not: (A) violate: (1) the Applicable Laws; and (2) any provision of its memorandum and articles of association; or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which it is a party or by which it or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on its business, properties, financial condition or results of operation or on its ability to perform its obligations hereunder;
- (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to:
 - (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - (ii) to general principles of equity;
- (d) to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Agreement;
- (e) it is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or the validity or enforceability of this Agreement;
- (f) there is no action, suit, proceeding or investigation pending or, to its knowledge, threatened, (i) for its dissolution, or (ii) against it which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or the validity or enforceability of this Agreement.

15.2 Repeating of Representations and Warranties

The representations and warranties set out in this Agreement shall stand repeated on the Commencement Date.

16. EVENT OF DEFAULT AND TERMINATION

16.1 Supplier Event of Default

The following events shall be events of default by the Supplier (each a "**Supplier Event of Default**"):

- (a) the Supplier's failure to pay any undisputed amount of the Use of System Payment due from it by the Due Date for the relevant invoice, that is not remedied within one hundred and twenty (120) Days following notice from **SEPCO** to the Supplier stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail;
- (b) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) the passing of a resolution for the dissolution or winding up of the Supplier;
 - (ii) the voluntary filing by the Supplier of a winding up petition;
 - (iii) the making by a court with jurisdiction over the Supplier of an order for winding up the Supplier which order is not stayed or reversed by a court of competent jurisdiction within one hundred and eighty (180) Days;
- (c) any statement, representation or warranty by the Supplier in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Supplier's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of **SEPCO** under this Agreement;
- (d) any material breach or material default by the Supplier of this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.1 (*Supplier Event of Default*)), which is not remedied within ninety (90) Days after notice to the Supplier from **SEPCO**, stating that a material breach or default under this Agreement has occurred and is continuing, and identifying the material breach or default in question in reasonable detail;
- (e) fraudulent tampering on three (3) or more separate occasions by the Supplier (or its employees acting in the course of their employment) with the Wheeling Meters or the Check Meters.

16.2 SEPCO Event of Default

The following events shall be events of default by **SEPCO** (each a "**SEPCO Event of Default**"):

- (a) Failure of **DISCO** to complete the Interconnection Works by the Required **SEPCO** Interconnection Date to the satisfaction of the Supplier;

- (b) Failure to deliver the electricity to the BPC listed in the relevant Wheeling Notice, subject to Section 11.1 (i) (*Banked Energy*).
- (c) Where the Actual Output Energy read by the Exit Meter and delivered by the DISCO to a BPC is [20%] less than the Output Energy that the DISCO is obligated to supply to the relevant BPC.
- (d) **SEPCO's** failure to pay any amount due from it under the provisions of this Agreement by the due date thereof for the relevant invoice or to make any other payment when required to be made, in each case, that is not remedied within thirty (30) Days following notice from the Supplier to SEPCO stating that a payment default has occurred and is continuing and describing such payment default in reasonable detail;
- (e) except for the purpose of amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) the passing of a resolution for the dissolution or winding up of SEPCO;
 - (ii) the voluntary filing by SEPCO of a winding up petition;
 - (iii) the making by a court with jurisdiction over SEPCO of an order for winding up SEPCO that is not stayed or reversed by a court of competent jurisdiction within one hundred and eighty (180) Days;
- (c) any statement, representation or warranty made by SEPCO in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on SEPCO's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Supplier under this Agreement;
- (d) any material breach or material default by SEPCO of this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.2 (*SEPCO Event of Default*)) which is not remedied within ninety (90) Days after notice from the Supplier to SEPCO, stating that a material breach or default has occurred under this Agreement and is continuing, and identifying the material breach or default in question in reasonable detail;
- (e) tampering, on three (3) or more separate occasions by SEPCO (or its employees acting in the course of their employment) with the Wheeling Meters or the Check Meters.

16.3 Termination for Default

- (a) Upon the occurrence of an event of default by either Party that is not cured within the applicable period, if any, the non-defaulting Party may, at its option, pursuant to Section 16.1 (*Supplier Event of Default*) or Section 16.2 (*SEPCO Event of Default*), as the case may be, initiate termination of this Agreement by delivering a notice (each a "Notice of Intent to Terminate") of its intention to terminate this Agreement to the Party in default provided, however, that no Notice of Intent to Terminate may be delivered where, and so long as, the matter giving rise to Supplier Event of Default or the SEPCO Event of Default, as the case may be, involves a dispute that is the subject

of expert determination or arbitration in accordance with the provisions of this Agreement. The Notice of Intent to Terminate shall specify in reasonable detail the Supplier Event of Default or the SEPCO Event of Default (as the case may be) giving rise to such notice.

- (b) Anything in this Agreement notwithstanding, from and after the Signing Date, where the Supplier has notified SEPCO of the names and details of the Financiers, SEPCO shall not seek to terminate this Agreement as the result of any Supplier Event of Default without first giving a copy of any notice required to be given to the Supplier by SEPCO under Section 16.1 (*Supplier Event of Default*) or Section 16.3(a) (*Termination for Default*) to the Financiers. The Financiers shall be entitled to cure or procure the cure of any such default within the cure period, if any, allowed to the Supplier under Section 16.1 (*Supplier Event of Default*) (the "Initial Cure Period") which period shall commence upon
- (c) delivery of such notice to the Financiers.
- (d) If there is more than one Financier, the Financiers will designate in writing to SEPCO an agent (the "Agent") and any notice required hereunder shall be delivered only to the Agent and such notice shall be effective upon delivery to the Agent as if delivered to each of the Financiers. Each such notice shall be in writing and shall be deemed to have been delivered (i) when presented personally to the Financiers or the Agent, (ii) when transmitted by facsimile to the number specified in accordance with the procedure set forth below, or (iii) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, registered acknowledgment due, addressed to the Financiers or the Agent at the address notified by the Supplier (or such other address or to the Agent at such address as the Financiers may have specified by written notice delivered in accordance herewith). Any notice given by facsimile under this Section 16.3 (*Termination for Default*) shall be confirmed in writing delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Financiers or the Agent.
- (e) No rescission or termination of this Agreement by SEPCO shall be valid or binding upon the Supplier and its Financiers without such notice and the expiration of such Initial Cure Period. The Financiers may make, but shall be under no obligation to make, any payment or perform any act required to be made or performed by the Supplier with the same effect as if made or performed by the Supplier. If the Financiers fail to cure or are unable or unwilling to cure the relevant default or defaults within the Initial Cure Period the Supplier shall have all its rights and remedies with respect to such default or defaults as set forth in this Agreement (without further reference to the Financiers). Notwithstanding the foregoing if the cure by the Financiers of the Suppliers' Event of Default requires the Financiers to take control of and occupy the Facility, the Financiers, upon the expiration of the Initial Cure Period may request a further period of ninety (90) Days (the "Evaluation Period") during which the Financiers shall evaluate such default, the condition of the Facility, and other matters relevant to the actions of the Financiers concerning such default and which Evaluation Period shall end on the sooner to occur of: (i) the Financiers' delivery to SEPCO with a copy to the Supplier of a notice that the Financiers have elected to pursue their remedies under the financing documents and assume the rights and obligations of the Supplier under the Agreement ("Election Notice"), or (ii) the lapse of the Evaluation Period. Upon the delivery of an Election Notice, the Financiers shall be granted an additional period of thirty (30) Days to cure the Supplier Event(s) of Default (the "Financiers' Cure Period"). In the event that the Financiers fail to cure any Supplier Event of Default as required to be cured on or before the expiration of the Financiers' Cure Period, SEPCO may exercise its rights and remedies with respect to such default set forth in this Agreement.

16.4 Termination Notice

In the event that a defaulting Party has not, following its receipt of a Notice of Intent to Terminate, remedied the Supplier Event of Default or **SEPCO** Event of Default, as the case may be, described therein before the expiry of the relevant cure period, the non-defaulting Party may terminate this Agreement by delivering a notice of termination (the "**Termination Notice**") to the defaulting Party. This Agreement shall terminate on the date specified in the Termination Notice (the "**Termination Date**"), which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

16.5 Obligations upon Termination

Upon expiration *or* termination of this *Agreement*, the Parties shall *have no further* obligations or liabilities hereunder except for those obligations and liabilities that:

- (a) arose prior to such termination; and
- (b) expressly survive such termination, including without limitation, the obligation to pay amounts due under this Agreement (including damages and liquidated damages).

16.6 Non Default Termination

Notwithstanding any provision of this Agreement, the Supplier shall have the right to terminate this Agreement, without cause, subject to ten (10) Day prior written notice to **SEPCO**. The provisions of Section 16.5 (*Obligations upon Termination*) shall apply to such termination.

16.7 Other Remedies

The rights of the Parties provided herein to terminate this Agreement do not preclude Parties from exercising other remedies that are provided herein or may be available by law. Remedies are cumulative, and the exercise, or failure to exercise, one or some of them shall not operate or be construed as a waiver of such remedy or any other remedy available.

17. LIQUIDATED DAMAGES

The Parties acknowledge and admit that:

- (a) the amount of liquidated damages payable under Section 3.2 (*Failure to Achieve Required **SEPCO** Interconnection Date*), Section 9 (*Failure to Transport*), and Section 11 (*Banked Energy*), are not by way of a fine or penalty and constitute the actual loss suffered by the Supplier;
- (b) it is entirely possible to predetermine the actual loss that may be suffered by the Supplier; and

- (c) the liquidated damages payable under Section 3.2, Section 9 (*Failure to Transport*) and Section 11 (*Banked Energy*) are reasonable compensation and are without prejudice to the other remedies that may be available to the Supplier.

18. LATE PAYMENTS

Late payments by either Party of amounts due or payable under this Agreement shall bear mark up at a rate per annum equal to the Delayed Payment Rate.

19. SET-OFF

Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable in terms of Section 28 (*Dispute Resolution*).

20. DIRECT AGREEMENT WITH FINANCIERS

SEPCO acknowledges that the Supplier may finance the development of the Facility by way of project financing techniques (or otherwise) supported by various Financiers. If required, SEPCO shall consent to the assignment of the Supplier's rights under this Agreement and SEPCO shall enter into a direct agreement with the Financiers and the Supplier (within fifteen (15) Days of SEPCO's receipt of a notice of such requirements from the Financiers), which agreement will include cure, step-in and novation rights and any other provisions reasonably required by any Financier in relation to a transaction of this type.

21. ASSIGNMENT

21.1 Assignment Restriction

Neither this Agreement nor any right, privilege or delegation hereunder may be assigned or transferred in whole or in part by either Party without the prior written consent of the other Party and any attempted assignment or transfer without such written consent shall be void.

21.2 Assignment to Financiers

Notwithstanding the provisions of Section 21.1 (*Assignment Restriction*), SEPCO's written consent of the Supplier's assignment or transference shall not be required for assignment or transference in favor of the Financiers or any further assignment or transference by the party providing such financing. SEPCO agrees, if required by the parties providing such financing, to enter into agreements evidencing its consent to assignment of this Agreement, to make any payments due to the Supplier pursuant to this Agreement directly into a collateral security account maintained by or on behalf of the Financiers and to provide notice to such parties and a reasonable opportunity for such parties to remedy the event giving rise to a right of termination prior to exercising any such right.

22. NOTICES

22.1 Addresses etc.

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:

(a) IF TO SEPCO:

Attention: [.]

Facsimile: [•]

(b) IF TO THE SUPPLIER:

Attention: [•]

Facsimile No: [0]

provided that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 22.1 (*Addresses etc...*).

22.2 Effective Notice

No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:

- (a) when delivered if personally delivered;
- (b) two (2) Business Days after sending, if sent by courier;
- (c) five (5) Business Days after sending, if sent by registered post; or
- (d) upon sending if sent by facsimile, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is despatched not later than the following Business Day to the recipient by courier or personal delivery._

23. AMENDMENT

An amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties, provided that, where necessary, the prior approval of NEPRA has been obtained.

24. THIRD PARTIES

Except for the rights expressly granted to the Financiers herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to

create any rights in, duty to, standard of care to, or any liability to, any person not a Party .

25. NO WAIVER

No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. No waiver by either Party of any default by the other in the performance of or compliance with any of the provisions of this Agreement (including payment due for liquidated damages) shall operate or be construed as a waiver of any other or further default whether of a like or different character.

26. RELATIONSHIP OF THE PARTIES

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- (b) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party and neither Party shall hold itself out to any third-party as having such right, power, or authority.

27. GOVERNING LAW

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

28. DISPUTE RESOLUTION

In the event a dispute arises between the Parties, the Parties shall attempt in good faith to settle such dispute by mutual discussions within thirty (30) days from the date that the Party arising the dispute delivers written notice of the dispute to the other Party. If the dispute is not resolved within the aforesaid thirty (30) day period, the dispute shall be exclusively and definitively resolved through final and binding arbitration, in accordance with the Arbitration Act, 1940 and the rules framed thereunder. The arbitration shall be conducted in Karachi by a single arbitrator who shall be a retired judge of the Sindh High Court or Supreme Court of Pakistan

29. ENTIRETY

This Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. All written or oral representations, understandings, offers or other communications of every kind between the Parties in relation to the matters contained herein prior to this Agreement are hereby abrogated and withdrawn.

30. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective

permitted successors and permitted assigns.

31. SEVERABILITY

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination in any way.

32. COUNTERPARTS

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

[SIGNATURE PAGES]

SCHEDULE 1 (USE OF SYSTEM CHARGE)

$$\text{UOSC} = \text{DM} \times \frac{(1 - \text{Overall Losses})}{(1 - \text{Technical Losses})}$$

Where:

USOC = the Use of System Charge, expressed in paisa / kWh

DM = the Distribution Margin as stated in the **SEPCO** Tariff Determination

Overall Losses = the Overall Losses ('L') as stated in the **SEPCO** Tariff Determination

Technical Losses = the Technical Losses as stated in the **SEPCO** Tariff Determination applicable where both the 132 kV system and the 11 kV system are involved

As of the Signing Date: DM = Rs..... per kWh; Overall Losses = %; and Technical Losses = %

Schedule 2 (*BULK POWER CONSUMERS*)

- (1)
- (2)
- (3)
- (4)

Note: Additional BPC(s) shall be notified by the Supplier to SEPCO in terms of this Agreement.

Schedule 3 (ENTRY POINT)

SCHEDULE 4
(LIQUIDATED DAMAGES)

(a) Failure to Achieve SEPCO Interconnection Work by Required SEPCO Interconnection Date

LD = Daily Rate x Number of days of delay

(b) Failure to Transport

LD = Rs.33,672/- per hour x Number of hours during which DISCO failed to accept delivery of electrical energy from the Facility, at the Entry Point.



NEPL NAUDERO ENERGY (PVT) LIMITED.

**AN EXTRACT OF THE MINUTES OF THE MEETING OF
THE BOARD OF DIRECTORS OF M/S. NAUDERO ENERGY (PVT) LIMITED.
HELD ON 20TH MAY 2014.**

Resolved that an application to be filed for the Proposed Modification in Generation License with M/s. National Electric Power Regulatory Authority (NEPRA), Islamabad.

Further Resolved that MR. KHAWAJA ABDUL GHANI MAJID Director & Chief Executive of the Company and MR. KHURSHID ANWER JAMALI S/o SYED SHAFEEQ AHMED holding CNIC No:42101-1970607-1 Director of ME Consultant (Pvt) Limited, Technical Consultant to the Project of M/s. Naudero Energy (Pvt) Limited's Power Generation are hereby authorized to sign singly the necessary documents /papers, pay the filing fees, appear before the authority as required, to do and cause to be done all acts, deeds and things which may be necessary to give effect of this resolution and to do all acts necessary for completion and processing of the application for Proposed Modification in Generation License.

Further Resolved that a certified true copy of the resolution be submitted to M/s. National Electric Power Regulatory Authority (NEPRA), Islamabad under signature of the Company Secretary.

**CERTIFIED TRUE COPY
For and on behalf of
NAUDERO ENERGY (PVT) LIMITED.**

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