**Foreword to the Model PPP Agreement**

Public-Private Partnerships (“**PPP**”) are recognized as an essential mode of public service delivery as PPP’s attract private capital investment, increase efficiency through profit motivation of the private sector and help reform public sectors and service delivery through the reallocation of available resources.

The Punjab Public Private Partnership, Act 2014 (the “**Punjab PPP Act**”) has been enacted to foster an enabling environment for private sector participation in Punjab through PPP’s.   
All PPP projects in Punjab are required to be prepared (at project proposal stage), processed for approval and implemented in accordance with the provisions of the Punjab PPP Act.

The Punjab PPP Act defines ***“PPP agreements”*** as *“a contract between the public sector represented by a Government Agency and a private party for the provision of an infrastructure facility or service through a project and includes a contract described in Second Schedule”.*

This Model PPP Agreement has been prepared for the purposes of the *“Downloads”* section of the PPP Cell website. The PPP Cell has already made available online a comprehensive series of Guidelines relating to various aspects of a PPP project including, inception, social and environmental assessment, risk allocation matrices, availing project development facility for project proposal preparation and transaction execution. This Model PPP Agreement and the Guidelines are available for use by the relevant parties (i.e., transaction advisers, private parties and the PPP nodes housed in the relevant Government Agencies) preparing project proposals (solicited or unsolicited) for PPP projects.

The Model PPP Agreement is a comprehensive agreement that covers the main concepts applicable to a project being implemented on the Build Operate and Transfer (BOT) basis including*, inter alia*, license for project land, requirements and operative provisions for each of the design, construction and operation stages along with the relevant performance securities, appointment and role of the independent engineer and independent auditor, service charge(s) recoverable from users of concession assets, dispute resolution, compliance with applicable standards and key performance indicators, insurances, termination, force majeure and other miscellaneous provisions. Please note that this document does not deal with project specific matters or other issues that may be relevant to a particular sector. Nevertheless, many provisions in this Model PPP Agreement (including but not limited to dispute resolution, insurances, termination, force majeure and change in law) will be applicable and relevant to projects implemented in different PPP arrangements/modalities.

Note that any concessions/support by the Government of Punjab set out in this Model PPP Agreement are only indicative. The concession/forms of Government of Punjab support available for each project shall be as approved by the Steering Committee on a project to project basis in accordance with Section 11 of the Punjab PPP Act.

This Model PPP Agreement may be adapted as required for PPP arrangements (i.e., other than BOT), including as specified in the Second Schedule to the Punjab PPP Act. In preparing a Draft PPP Agreement for a specific project, various sections in this document may require revision and modification to cater for project specific matters and structures. Nevertheless, any changes to the following sections (as set out in this Model PPP Agreement) in the preparation of the Draft PPP Agreement should be justified in the project proposal submitted for approval: Section 9 *(Indemnities & Limitation of Liability)*; Section 15 (*Relief Extensions & Relief Compensations*); Section 16 *(Change of Scope)*; Section 20 *(Insurances)* not as regards the specific types of insurance required; Section 21 *(Force Majeure)*; Section 23 *(Termination)*; Section 26 *(Disclaimer)*, other than to the project-specific language in square brackets; Section 27 *(Assignment and Charges)*; Section 28 *(Change in Law)*; Section 30 *(Dispute Resolution)*; Section 31 *(Miscellaneous)*.

An indicative list of schedules to a Draft PPP Agreement has also been included for reference and provides a framework for project specific material required to be appended thereto. A financial model shall also be available on the PPP Cell website and is required to be used in conjunction with this Model PPP Agreement.

Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to cover project and sector specific matters.

Please note that financial, tax, technical, insurance, legal provisions should be reviewed and revised (where necessary) with input from relevant experts as such concepts and requirements may vary with specific project requirements and structures.

Unless emanating from requirements under the applicable laws, please note that all PKR amounts, percentages and timelines (i.e., provided in days, months or years) are included in square brackets and may be revised on a case to case basis for each project.

In preparing this document reference has been made to various resources on PPP’s, including precedent Concession Agreements for projects that have reached operational stage in Punjab and Sindh, various draft concession agreements and legal guidance on contractual provisions maintained by the World Bank and Standard Form PPP Agreements in the United Kingdom and New Zealand.

This Model PPP Agreement has been prepared on the basis of the following key assumptions:

- the sponsors (consortium or otherwise) i.e., private party is entering into the PPP Agreement through a special purpose vehicle. Furthermore, the private party remains responsible and liable for any project works or services carried out/provided by the persons engaged by the private party providing services for which the private party remains responsible;

- the project cost is funded through (i) financing raised by the private party from financial institutions; and (ii) equity injection (based on the agreed funding amounts) by the private party;

- there is no transfer of personnel from the public sector to the private party;

- the proposed PPP project is a “greenfield project” and all project facilities are to be developed by the private party.

This Model PPP Agreement may be revised, modified, amended and updated from time to time.

**Model PPP Agreement**

**Concession Agreement**

**by & between**

**[Insert Name of Government Agency/Authority]**

**(Through The [Insert Designation])**

and

**[Insert Name]**

(as the **Concessionaire)**

**Dated as of [◙]**

**In respect of**

The Concession For [insert Project description]

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**Concession Agreement**

This **Concession Agreement** (this **Agreement**) is entered into on this [Date] day of [Month], [Year] at [Insert Location], Pakistan:

**by and between**

**[The Governor of Punjab** (through **Secretary, [Insert Details of Government Agency/Department]**) having its offices at [Insert Address Details] for and on behalf of **The Government of the Punjab** (the **Authority**);]

[OR]

**[Insert Details of Authority]**, a statutory body constituted pursuant to section [◙] of the [Insert Authority Act] (as amended from time to time) with its headquarters at [Insert Address Details] (hereinafter referred to as the **Authority** which expression shall, where the context so permits, be deemed to mean and include its successors in interest, administrators and permitted assigns);][[1]](#footnote-2)

**And**

**[Insert Details of Concessionaire]**, a company incorporated under the Applicable Laws of Pakistan/ relevant jurisdiction’s applicable laws], having its registered office located at [Insert Address] (the **Concessionaire**, which expression shall, where the context so permits, be deemed to mean and include its successors in interest and permitted assigns);]

(the Authority and the Concessionaire are hereinafter collectively referred to as the **Parties** and each individually as a **Party**).



**Recitals**

1. [The Authority, in discharge of its functions under the Authority Act, is desirous to implement the Project.] OR [The Authority has identified the Project that is to be implemented, through Public Private Partnership, on a [Insert Mode of Concession e.g., BOT] basis.][[2]](#footnote-3)
2. On [Insert Date] a Request for Proposals (together with the related advertisements) (the **RFP**) was issued by the Authority to prospective bidders for, *inter alia*, inviting submission of bids for grant of the Concession for the implementation of the Project and subsequently, upon conclusion of the bidding process pursuant to the RFP (the **Bidding Process**), the [Concessionaire/ Consortium/ Sponsor][[3]](#footnote-4) was selected by the Authority for such purposes. The letter of intent was issued to the [Concessionaire/ Consortium/ Sponsor] by the Authority on [Insert Date] (the **Letter of Intent**).
3. [The Concessionaire was incorporated by the Sponsor, in accordance with the provisions of the Applicable Laws[[4]](#footnote-5): (i) in order to enable the Parties to enter into this Agreement and for the Concessionaire to seek and avail the grant of the Concession for the purposes of the implementation of the Project and for the purposes of the Authority to grant the Concession to the Concessionaire for implementation of the Project; and (ii) for the purpose of implementing the Project on a [Insert Mode of Concession e.g., BOT] basis, in each case, in accordance with the terms of this Agreement.][[5]](#footnote-6)
4. The Concessionaire acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including the technical and financial viability and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement.
5. The Parties are now entering into this Agreement to set out the terms and conditions applicable to, *inter alia*, the Concession and the implementation of the Project and the relationship of the Authority and the Concessionaire and their rights and obligations.

# Definitions & Interpretation

## Definitions

In this Agreement (including the recitals), unless the context shall otherwise require:

**Abandonment or Abandon Abandonment or Abandon** means the cessation of the construction or Operation and Maintenance of the Concession Assets by the Concessionaire and/or the withdrawal of all, or substantially all, personnel (including the Concessionaire Engaged Persons) by the Concessionaire from the Project Site for a period of thirty (30) consecutive days or for an aggregate period of sixty (60) days during any Accounting Year, for reasons other than a Permitted Event, without the prior written approval of the Authority;

**Accounting Year** means in respect of each Party, the financial year commencing from 1stday of July of any calendar year and ending on 30th day of June of the next calendar year;

**Act** means the Punjab Public Private Partnership Act, 2014, as amended from time to timeand shall include all future enactments in replacement thereof;

**Additional Cost** means the additional capital expenditure and/or the additional operatingcost and/or, any adverse financial impact on the Concessionaire and/or additional taxes and/or all of the above as the case may be, which the Concessionaire has or would be required to incur and which has/have arisen as a consequence of Change of Scope or Change in Law; provided, that the Additional Costs shall be paid directly to the Concessionaire by the Authority in terms of this Agreement and shall not form part of Total Project Cost;

**Advertising Proceeds** shall have the meaning ascribed thereto in Section 29.1 (*Advertising**& Advertising Revenues*);

**Affected Party** shall have the meaning ascribed thereto in Section 21.1 (*Force Majeure**Event*);

**Affiliate** means, in relation to either Party and/or the Sponsor, a Person whocontrols, is controlled by, or is under the common control with such Party and/or the Sponsor (as used in this definition, the expression “***control***” means, with respect to a Person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person and the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise), and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise);

**Agreement** means this ‘Concession Agreement’;

**Additional Facilities** means the facilities including, but not limited to, service stations,motels, hotels, restaurants, shopping areas, amusement parks and other facilities provided or procured to be provided for the benefit of the Users, and that are in addition to (and not part of) the Concession Assets, and are situated along the right of way;

**Ancillary Facilities** shall have the meaning as ascribed thereto in **Schedule [◙] (*Project* *Facilities*)[[6]](#footnote-7)**;

**Applicable Laws** means all applicable federal, provincial and local laws of Pakistan, and all orders, rules, regulations, statutory regulatory orders, decrees, judicial decisions, notifications, executive orders, or other similar directives pursuant thereto issued by any Governmental Authority that in each case have the effect of law and are enforceable under law, as may be in force and effect during the subsistence of this Agreement and as may be amended, re-promulgated, substituted or replaced from time to time;

**Applicable Permits** means the Concessionaire Permits and all such approvals, consents,authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions or similar items that relate to the Project and its implementation;

**Applicable Standards** means the standards, specifications, requirements, criterion andtimelines (as applicable) set out in relation to and applicable to:

1. the Project Works;
2. the Project and its implementation;
3. the Concession Assets; and
   1. the performance by the Concessionaire and the Sponsor (as applicable) of their respective obligations under the Authority Agreements;

in each case above, as contained and set out in (as applicable):

1. this Agreement (including all Schedules attached hereto);
2. the Authority Agreements;
3. Applicable Laws;
4. Applicable Permits;
5. Environmental Standards;
6. Project Requirements; and
7. any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

provided, however, that in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the standards, requirements, criterion and timelines in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise mutually agreed between the Parties) provided further, that in the event there is any deficiency in the technical standards and requirements (as applicable) the ASTM Standards and [Insert other applicable standards][[7]](#footnote-8) (as certified by the Independent Engineer) shall apply;

**Approved Detailed Engineering Design** means the Proposed Detailed Engineering Design approvedby the Independent Engineer (in consultation with the Authority) in accordance with the Applicable Standards in accordance with Section 12.5 of this Agreement);

**Approved Major Maintenance Contract(s)** shall have the meaning ascribed thereto inSection 19.8.3(a);

**Approved Major Maintenance Programme** shall have the meaning ascribed thereto inSection 19.8.3(a);

**Arbitration Act** means the Arbitration Act, 1940 and shall include modifications to or anyre-enactment thereof as in force from time to time;

[**ASTM Standards** means tests and standards prescribed by ‘American Society for Testingand Materials’ as prescribed internationally;][[8]](#footnote-9)

**[Authority** means the Government of Punjab, its respective departments or any other authorities,agencies and instrumentalities functioning under the direction or control of the Government of Punjab, and its administrators, successors and permitted assigns;] OR [means the ‘*[Insert Name]*’ established pursuant to Section [◙] of the [Insert Law], for and on behalf of the Government of Punjab, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Punjab, and its administrators, successors and permitted assigns;]

**Authority Agreements** means:

1. this Agreement;
2. the MRG Agreement;
3. the Equity Funding & Utilization Agreement;
4. the Project Site Licence Agreement;
5. the Escrow Agreement;
6. the Concession Direct Agreement; and
7. any other agreement entered into in respect of the Project between the: (i) Authority; and (ii) Concessionaire and/or the Financiers and/or the Sponsor in respect of the Project and designated as a “*Authority Agreement*” with the written consent of the Authority;

**Authority Advertising Plan** shall have the meaning ascribed thereto in Section 29.1 (*Advertising**& Advertising Revenues*);

**Authority Conditions Precedent** shall have the meaning ascribed thereto in Section 3.1(*Conditions Precedent*);

**Authority Default Termination Amount** shall have the meaning ascribed thereto in **Schedule [◙]** (***Termination Payments*)**;

**Authority Event of Default** shall have the meaning ascribed thereto in Section 22.2 (*Authority Event**of Default*);

**Authority Indemnified Persons** shall have the meaning ascribed thereto in Section 9.1 (*General**Indemnity*);

**Authority Overriding Power Event** shall have the meaning ascribed thereto in Section 8.6 (*Authority**Overriding Powers*);

**Authority Preliminary Notice** shall have the meaning ascribed thereto in Section23.1 (*Termination for Concessionaire Event of Default*);

**Authority Representative** means the representative of the Authority appointed by the Authority forpurposes of this Agreement in accordance with Section 8.5 *(Authority Representative)*;

**Authority Windfall** shall have the meaning ascribed thereto 17.3.1;

**Award** shall have the meaning ascribed thereto in Section 30.3.4;

**Base Case Equity IRR** means post tax internal rate of return (expressed as percentage) on the Equity of Ordinary Shares, as expressly set out in the Base Case Financial Model;

**Base Case Financial Model** means the financial model attached herewith as **Schedule [◙]** (***Financial Model***);

**Base Case** means the projections of cash flows contained in the Base Case Financial Modelthat are used to compute the Base Case Equity IRR;

**Base Funding Amount** means the Sponsor Base Equity Amount;

**Benchmark Service Charge(s) Revenues** meansthe benchmark Service Charge(s) Revenues as set out in the Financial Model;

**Bid** means the technical and financial proposal of the Sponsor(s) with respect to the Projectsubmitted to the Authority on **[•]**;

**Bidding Process** shall have the meaning ascribed thereto in Recital B above;

**Bid Security** means the bank guarantee submitted by the Sponsor pursuant to the RFP inconnection with its Bid for the Concession rights which shall remain valid and in effect until the Bid Security Expiry Date;

**Bid Submission Date** shall mean the date on which the Bid is submitted**;**

**Bid Security Expiry Date** shall have the meaning ascribed thereto in Section 11.1.4;

**Big Four Accounting Firms[[9]](#footnote-10)** means:

1. A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network);
2. Ernst & Young Ford Rhodes Sidat Hyder;
3. KPMG Taseer Hadi & Co.;
4. M. Yousuf Adil Saleem & Co. (a member firm of Deloitte Touche Tohmatsu);

and/or any other successor chartered accountancy firm categorized as one of the Big Four Accounting Firms;

**Board of Arbitrators** shall have the meaning ascribed thereto in Section 30.3.1;

**Board Resolution** means a resolution passed by the board of directors of the Concessionaireauthorizing the Concessionaire to, *inter alia*, enter into this Agreement;

**Change in Complete Control** means any issuance, sale, transfer, conveyance, disposal orany event, transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in:

1. the issuance of any Ordinary Share to any Person other than the Sponsor; or
2. the transfer of direct and/or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor’s legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Ordinary Shares of the Concessionaire; and

1. the Sponsor, as a result of (a) or (b) above, divesting 100% of the Ordinary Shares and/or holding less than 100% of the Ordinary shares and/or losing the power to direct the management, policies, control and/or decisions, in each case, of the Concessionaire;

**Change in Control** means any issuance, sale, transfer, conveyance, disposal or any event,transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in:

1. the issuance of any Ordinary Share to any Person other than the Sponsor; or
2. the transfer of direct and/or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor’s legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Ordinary Shares of the Concessionaire; and
3. the Sponsor, as a result of (a) or (b) above, divests more than or equal to 51% of the Ordinary Shares and/or holds less than 51% of the Ordinary Shares and/or loses the power to direct the management, policies and decisions, in each case, of the Concessionaire;

**Change in Law** means the occurrence of any of the following events on or after the Effective Date as a result of which the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds [ten (10%) percent of the Total Project Cost][[10]](#footnote-11):

1. the enactment of any new federal, provincial or local government law, as applicable in the Province of Punjab;
2. the repeal, modification or re-enactment of any existing federal, provincial or local government law, as applicable in the Province of Punjab;
3. the commencement of any federal, provincial or local government law, which has not entered into effect (in the Province of Punjab) until the date of this Agreement;
4. a change in the interpretation or application of any Applicable Law (as applicable in the Province of Punjab) by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement;

1. the imposition by a Government Authority of any additional Concessionaire Permit;

provided, that any:

1. coming into effect, on or after the Effective Date, of any provision of a statute or Applicable Law which is already gazetted in accordance with the Applicable Laws prior to the Effective Date; or
2. any new Applicable Law or any change in the existing Applicable Law [under the active consideration of or in the contemplation of the Authority, the Government of Punjab or the Government of Pakistan as of the Effective Date,][[11]](#footnote-12) which is already gazetted in accordance with the Applicable Laws prior the Effective Date,

shall not constitute a ‘Change in Law’;

**Change in Law Termination Amount** shall have the meaning ascribed thereto in **Schedule [◙] (*Termination Payment*)**;

**Change of Scope** shall have the meaning ascribed thereto in Section 16.1 (*Change of**Scope*);

**Change of Scope Determination Notice** shall have the meaning ascribed thereto in Section 16.3.2;

**Change of Scope Notice** shall have the meaning ascribed thereto in Section 16.2 (*Change**of Scope Notice*);

**Change of Scope Order** shall have the meaning ascribed thereto in Section 16.3.3;

**Commencement Certificate** means a certificate to be jointly issued in writing by theIndependent Engineer and the Independent Auditor to the Concessionaire and copied to the Authority in accordance with Section 3.4 (*Commencement Certificate & Commencement Date*);

**Commencement Date** means the date set out in the Commencement Certificate;

**Commercial Operations Date** means the date on which the Operations Period shallcommence, such period commencing on the day immediately succeeding the Substantial Completion Date;

**Completion Tests** means the tests required to be conducted for Substantial Completion, in accordance with Section 14.1 (*Completion Tests*) and **Schedule [◙] (*Detailed Project Report*)**;

**Completion Tests Date Notice** shall have the meaning ascribed thereto in Section 14.1.1;

**Concession** shall have the meaning ascribed thereto in Section 2.1.1;

**Concessionaire** shall have the meaning ascribed thereto in the Preamble;

**Concessionaire Windfall** shall have the meaning ascribed thereto in Section 17.3.1;

**Concession Assets** means and includes all tangible and intangible assets of the Project Site, the Project Facilities [insert any other relevant assets][[12]](#footnote-13) and all rights, title, benefits, facilities and easements, whether directly and / or indirectly related thereto, relating to and forming part of the Project including but not limited to (a) rights over the Project Site in the form of License, right of way or otherwise, (b) tangible assets such as civil works including [insert relevant description for tangible assets for the project], and (c) the Project Facilities including as may be situated on the Project Site;

**Concession Direct Agreement** means the direct agreement [that has/shall be] entered intobetween the Concessionaire, the Authority and the Financiers, if required by the Financiers[[13]](#footnote-14);

**Concession Period** means theperiod commencing on the Commencement Date and ending on the [twenty fifth (25) anniversary] unless this Agreement is terminated earlier in accordance with the terms hereof;

**Concessionaire Authorized Representative** shall have the meaning ascribed thereto inSection 7.4.1;

**Concessionaire Conditions Precedent** shall have the meaning ascribed thereto in Section3.1 (*Conditions Precedent*);

**Concessionaire Default Termination Amount** shall have the meaning ascribed thereto in **Schedule [◙]**(***Termination Payment*)**;

**Concessionaire Engaged Persons** means each of the Concessionaire’s representatives(including the Concessionaire Authorized Representative and the Concessionaire Project Engineer), agents, executives, contractors, employees, subcontractors, vendors, suppliers, parties with whom it has entered into the Project Agreements, Contractors and other personnel, in each case, that are engaged, hired, appointed, contracted (directly or indirectly) by the Concessionaire for the performance of Project Works or any part thereof;

**Concessionaire Event of Default** shall have the meaning ascribed thereto in Section 22.1(*Concessionaire Event of Default*);

**Concessionaire Indemnified Persons** shall have the meaning ascribed thereto in Section9.1.2;

**Concessionaire Preliminary Notice** shall have the meaning ascribed thereto in Section23.2 (*Termination for Authority Event of Default*);

**Concessionaire Project Engineer** shall have the meaning ascribed thereto in Section 7.4.1;

**Concessionaire’s Ownership And Management Control** means, with respect to theConcessionaire, the ownership, directly or indirectly, legal or beneficial, of 100% (one hundred per cent) of the Ordinary Shares; and the power to direct the management, policies and all decisions, in each case, of the Concessionaire, whether by operation of law or by contract or otherwise;

**Concessionaire Permits** means all such approvals, consents, authorizations, notifications,concessions, acknowledgements, licences, permits, decisions or similar items which is or are issued by a Government Authority and which the Concessionaire is or its Contractors are required to obtain from any Governmental Authority and thereafter to maintain to fulfill its obligations under the Authority Agreements, including the Specified Concessionaire Permits;

**Concessionaire Related Person** means any Affiliate of: (a) the Concessionaire; or (b) the Concessionaire Engaged Persons;

**Condition(s) Precedent** means the conditions precedent to the achievement ofCommencement Date, as listed in Section 3.1 (*Conditions* *Precedent*);

**Condition(s) Subsequent** means the conditions subsequent listed in Section 3.2(*Conditions Subsequent*);

**Conditions** means the Conditions Precedent and the Conditions Subsequent set out inArticle 3 (*Conditions*);

**Construction Drawings** means the drawings, designs, calculations and documents preparedand/or to be prepared by the Concessionaire pursuant to the Applicable Standards and the Design Requirements that pertain to the Project and the Concession Assets and which are detailed in **Schedule [◙]** (***Detailed Project Report***), as amended from time to time by the Concessionaire in accordance with the terms of this Agreement with the approval of the Independent Engineer (in consultation with Authority);

**Construction Inspection Report** has the meaning ascribed thereto in Section 13.5.2;

**Construction Monthly Progress Report** has the meaning ascribed thereto in Section13.4.1;

**Construction Performance Security** means a first demand irrevocable and unconditionalbank guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least [‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA)][[14]](#footnote-15) acceptable to the Authority, in the form of a demand guarantee or a standby letter of credit, of an amount equal to [five percent (5%) of the Total Project Cost] in the form of the instrument attached herewith as **Schedule [◙]** (***Form of Construction Performance Security***);

**Construction Performance Security Expiry Date** shall have the meaning ascribed theretoin Section 11.2.5;

**Construction Period Damages Payment Date** shall have the meaning ascribed thereto inSection 14.4 (*Construction Period Damages*);

**Construction Period Damages** has the meaning ascribed thereto in Section 14.4(*Construction Period Damages*);

**Construction Period Insurances** means the Insurances procured and/or obtained by theConcessionaire pursuant to the provisions of and in accordance with Section 20.1 (*Construction Period Insurances*) and **Part I (*Construction Period Insurances*) of Schedule [◙] (*Insurances*)**;

**Construction Period** means the period commencing on the Commencement Date andending on the Project Construction Completion Date;

**Construction Programme** shall have the meaning ascribed thereto in Section 13.2.2;

**Construction Requirements** means the relevant standards, requirements, criterion andtimelines (as applicable) that are set out in relation to and are applicable to the Construction Works, as set out in:

1. the Main Body;
2. the Scope of the Project;
3. the Design Requirements;
4. accordance with **Schedule [◙]** (***Detailed Project Report***);
5. accordance with **Schedule [◙] (*Construction Requirements)***;

1. the Construction Programme; and
2. any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

provided, however, in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the standards, requirements, criterion and timelines in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise mutually agreed between the Parties); provided further, that in the event there is any deficiency in the standards and requirements (as applicable) the ASTM Standards and [Insert other applicable standards][[15]](#footnote-16) (as certified by the Independent Engineer) shall apply;

**Construction Tests** shall have the meaning ascribed thereto in Section 13.3.1;

**Construction Time For Completion** means the time permitted herein for performance andcompletion of Construction Works and all other obligations to be performed by the Concessionaire until issuance of the Final Project Construction Completion Certificate, as set out in and contemplated by the Applicable Standards and the Construction Programme, including the:

1. completion of engineering and design works and services on or prior to the date set out in the Project Construction Completion Schedule;
2. submission of Construction Drawings on or prior to the dates contemplated by the Applicable Standards and the Construction Programme;
3. performance and completion of each Project Construction Milestone on or prior to its Project Construction Milestone Date;
4. achievement of Substantial Completion on or prior to the Scheduled Substantial Completion Date;
5. achievement of Project Construction Completion on or prior to the Scheduled Project Construction Completion Date;

**Construction Works** means all obligations, works, services and duties undertaken and/orperformed and/or to be undertaken and/or performed by the Concessionaire during the Construction Period pursuant to the Applicable Standards including, *inter alia*, the obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire in respect of: (a) preparation, completion and delivery of Construction Drawings; (b) the engineering (including design), procurement, construction commissioning and completion of the Concession Assets (including all activities and obligations incidental thereto); (c) construction, alteration, up-gradation, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, forming or to form, part of the Project Site, whether permanent or not, on which the Concession Assets shall be situated; and (d) performing all obligations and activities for performance and completion of each Project Construction Milestone;

**Contractor(s)** means the [EPC Contractor and the O&M Contractor][[16]](#footnote-17) and any of theConcessionaire’s other direct contractors and any of their direct sub-contractors integrally involved in the Project for the performance of Project Works (or any part thereof);

**Corporate Documents** means the constitutional documents and the corporateauthorizations set out in **Schedule** **[◙]** (***Corporate Documents***);

**Corrupt Act** means:

1. offering, giving or agreeing to give to the Authority, a Government Authority or to any Person employed by or on behalf of the Authority and/or a Government Authority any gift or consideration of any kind as an inducement or reward:
2. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract relating to this Agreement with the Authority and/or a Government Authority; or
3. for showing or not showing favor or disfavor to any Person in relation to this Agreement or any other contract relating to this Agreement with the Authority and/or a Government Authority;

(b) entering into this Agreement or any other contract relating to this Agreement with the Authority and/or a Government Authority in connection with which commission / discount has been paid / received (as the case may be) or has been agreed to be paid or received by the Concessionaire or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and the terms and conditions of any such contract for the payment of such commission / discount have been disclosed in writing to the Authority;

(c) committing any offence:

i. under any law, in respect of fraudulent acts in relation to this Agreement, from time to time dealing with bribery, corruption or extortion;

ii. under any law, in respect of fraudulent acts in relation to this Agreement, creating offences in respect of fraudulent acts; or

iii. in respect of fraudulent acts in relation to this Agreement;

(d) in respect of fraudulent acts in relation to this Agreement, defrauding or attempting to defraud or conspiring to defraud the Authority or any other public body;

**Corrupt Act Termination Amount** shall have the meaning ascribed thereto in **Schedule [◙]**(***Termination Payments*)**;

**Cure** means curing of breach or default of this Agreement by the Party responsible for suchbreach or default;

**Cure Period** means:

1. in respect of a Concessionaire Event of Default:
2. during any period when any Financing Due is outstanding, the period commencing on the date of receipt by the Concessionaire of the Authority Preliminary Notice and expiring on the date specified in the relevant notice, which shall in any event not be less than [◙], or such other time period as may be agreed in the Concession Direct Agreement;
3. during any period when any Financing Due is not outstanding, the period commencing on the date of receipt by the Concessionaire of the Authority Preliminary Notice and expiring on the date specified in the relevant notice, which shall in any event not be less than [◙];
4. in respect of an Authority Event of Default, the period commencing on the date of receipt by the Authority of the Concessionaire Preliminary Notice and expiring on the date falling [forty-five (45) days] thereafter;

**Decommissioned Project Area** shall have the meaning ascribed thereto in Section 7.11(*Emergency Decommissioning*);

**Defects & Deficiencies** means:

1. in respect of Project Works, any Project Works (or any part thereof) that fail to conform to the Applicable Standards in any manner (including (without limitation) in services, performance, materials, design, execution, engineering, operations and maintenance and/or workmanship);
2. in respect of the Concession Assets, any Concession Asset (or any part thereof) that fail to conform to the Applicable Standards;

**Delayed Payment Rate** means the [six (6) month Karachi Interbank Offered Rate plus two percent (2%) OR 1%][[17]](#footnote-18), compounded semi-annually, calculated for theactual number of days which the relevant amount remains unpaid on the basis of 365 day year;

**Designated EPC Contractor** means[●];

**Designated O&M Contractor** means [●];

**Design Requirements** means the design requirements of the Concession Assets, as set outin **Schedule [◙]** (***Design Requirements***);

**Development Rights** means such additional rights, property or assets that are not part ofand are not anticipated to be part of the Project as on the Effective Date but are available to the Authority in accordance with Section 29.2 (*Commercial Rights & Additional Facilities*) and may include, without in any manner limited to, provision of Additional Facilities[[18]](#footnote-19);

**Dispute** shall have the meaning ascribed thereto in Section 30.1.1;

**Dispute Resolution Procedure** means the procedure for resolution of Disputes as set out inArticle 30 (*Dispute Resolution*);

**Divestment Delay Damages** has the meaning ascribed thereto in Section 24.3.3;

**Divestment Delay Damages** **Payment Date** has the meaning ascribed thereto in Section 24.3.3;

**Divestment Requirements** shall have the meaning ascribed thereto in Section 24.1(*Requirements for Divestment*);

**Easementary Rights** means all easements, reservations, rights-of-way, utilities and othersimilar purposes, or zoning or other restrictions relating to the Project Site and to the use of real property relating to the Project Site, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Concession Assets;

**Effective Date** means the date on which this Agreement is duly executed by each of theParties;

**[EIA/IEE Approval][[19]](#footnote-20)** means the approval obtained by the Concessionaire from the Punjab EnvironmentalProtection Agency in relation to the Project;

**Emergency Decommissioning** shall have the meaning ascribed thereto in Section 7.11.1;

**Emergency** means a condition or situation that is likely to endanger the security of theindividuals on or about the Project Site including Users thereof or which poses an immediate threat of material damage to any of the Concession Assets or the Project Site;

**Encumbrance** means any encumbrance on an asset, including but not restricted tomortgage, charge, pledge, lien, hypothecation and/or any security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Concession Assets and/or any part or portion thereof and physical encumbrances and encroachments thereon;

**Environmental Management Plan** shall have the meaning ascribed thereto in Section 7.9 *(Protection of the Environment)*;

**Environmental Standards** means collectively, the applicable environmental guidelinesand occupational health and safety standards established by the “Pakistan Environmental Protection Agency” and the Punjab Environmental Protection Agency, the Environmental Management Plan and the Performance Standards;

**EPC Contract(s)** means the agreement entered or to be entered into between theConcessionaire and the Designated EPC Contractor(s) in accordance with this Agreement, for, *inter alia*, the design, engineering, procurement, construction, completion, testing of the Concession Assets and the commissioning of the same, as such agreement may be amended by the parties thereto from time to time;

**EPC Contractor(s)** means the contractor(s) engaged by the Concessionaire in for thepurposes of performance of Construction Works;

**Equity Funding & Utilization Agreement** means the agreement (in the form agreed between the Parties and the Sponsor(s)) to be entered into, *inter alia*, between the Authority, the Sponsor(s) and the Concessionaire for the purposes of, *inter alia*, the Sponsor(s) contribution towards the Equity (issuance of Ordinary Shares in respect thereof) and utilization of the same, in each case, in accordance with the terms thereof;

**Equity** means the share capital of the Concessionaire, represented in PKR, subscribed to by any of the Concessionaire’s shareholders (subject to the requirements of this Agreement) for meeting the equity component of the Total Project Cost and it shall consist of (unless otherwise approved by the Authority) only one class of shares i.e. Ordinary Shares;

**Escrow Account** means the account established by the Concessionaire with the Escrow Agent in accordance with the Escrow Agreement;

**Escrow Agent** means the bank selected by the parties to the Escrow Agreement to managethe revenues, compensation and expenditures of the Concessionaire; provided, that till the Financing Termination Date, such bank shall be one of the Financiers (or a financial institution designated by the same);

**Escrow Agreement** means the agreement entered into between,*inter alios*, the Authority, theFinanciers, the Escrow Agent and the Concessionaire requiring all Service Charge(s) Revenuesto be deposited in and utilized from the Escrow Account and managed by the Escrow Agent;

**Exempted Users** means Users exempted from the payment of Service Charge(s)[[20]](#footnote-21) and as specifically listed in **Schedule [◙] (*Service Charge(s) Notification Structure*)**;

**Excess Service Charge(s) Revenues** shall have the meaning ascribed thereto in Section 17.3.1;

**Excess Delta** shall have the ascribed thereto in Section 17.3.2;

**Exit Implementation Period** means:

1. in case of Termination of this Agreement, the period commencing on the Termination Date and expiring [thirty (30) days] from the Termination Date as may be extended from time to time in accordance with this Agreement;
2. in case of expiry of this Agreement on the Final Expiry Date, the period commencing [thirty (30) days] prior to the Final Expiry Date and expiring on the Final Expiry Date;

**External Auditor** shall have the meaning ascribed thereto in Section 17.2;

**Final Expiry Date** means the date falling on the [◙][[21]](#footnote-22) yearly anniversary ofthe Scheduled Commencement Date; provided, however, the Authority and the Concessionaire may agree to extend the Final Expiry Date (and, as a result, the Concession and the Concession Period) with prior written consent of the Authority;

**Final Project Construction Completion Certificate** means the certificate to be issued upon Project Construction Completion and subject to fulfillment of, without limitation, the following conditions:

1. submission of “as built” Construction Drawings in accordance with Section 12.4.1;
2. confirmation by the Independent Engineer (in consultation with Authority) that the items on the Project Construction Completion Check List have been completed in accordance with the Applicable Standards to the satisfaction of the Independent Engineer;

**Financial Close** means the execution and delivery of the Financing Documents that(together with Equity commitments) evidence sufficient financing for the construction, testing, and commissioning of the Project and achievement of Project Construction Completion (following the resolution of any objections raised by the Authority and/or the Independent Auditor to the Financing Term Sheet that sets out a principal repayment schedule and the other principal terms of the transaction between the Concessionaire and the Financiers) and evidence of commitments for such equity as is required by the Concessionaire to satisfy the requirements of the Financiers and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents and the Concessionaire having immediate access to the Financing;

**Financiers** means the financial institutions, banks, Islamic financiers, funds, trusts ortrustees of the holders of debentures or other securities their successors and assigns, that extend Financing to the Concessionaire pursuant to the Financing Documents; provided, however, the relevant Financier is not an Ineligible Financier;

**Financial Close Achievement Notice** shall have the meaning ascribed in Section 27.4(*Financial Closing*);

**Financial Model** means the Base Case Financial Model, as revised by the IndependentAuditor in accordance with the terms of this Agreement;

**Financing** means the finance facilities, loans, advances, financial accommodation and/orarrangement, subscription and/or issuance of debentures/bonds/redeemable capital, risk participation, take out financing and/or any other financial obligation availed by the Concessionaire from the Financiers in respect of the Project, pursuant to the Financing Documents;

**Financing Amendment Term Sheets** shall have the meaning ascribed thereto in Section27.3.3;

**Financing Component** means the component that relates to the repayment and servicing ofFinancing Due (i.e. both Principal repayment and interest/mark-up payments), as set out in the Financial Model;

**Financing Due** means the aggregate of the following sums expressed in [Pak Rupees] [[22]](#footnote-23)outstanding and payable to the Financier up to the date immediately preceding the Termination Payment Date pursuant to the Financing Documents:

1. the principal amount of the financing provided and disbursed by the Financiers under the Financing Documents for financing the Project (the **Principal**) in accordance with the Financial Model and the Financing Term Sheet and Financing Amendment Term Sheets (if any) delivered to and not objected to by Authority and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet & the* *Financing Amendment Term Sheets*);
2. the interest or mark-up (or any other term connoting the return paid to the Financiers on financing) accruing on the Principal in accordance with the Financial Model and the Financing Term Sheet and the Financing Amendment Term Sheets delivered to and not objected to by Authority and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet & the Financing Amendment Term Sheets*);
3. only in the event of Termination due to Authority Event of Default, penal interest or charges payable under the Financing Documents to the Financiers;

less (without double counting):

1. all credit balances held on any bank accounts held by or on behalf of the Concessionaire on the Termination Date;
2. all amounts payable by the Financiers to the Concessionaire as a result of a prepayment of amounts outstanding under the Financing Documents or Termination of this Agreement; and
3. all other amounts received or due to be received by the Financiers on or after the Termination Date and before the date on which compensation is payable by the Authority to the Concessionaire as a result of enforcing any other rights that they may have;

**Financing Documents** means the loan/financing agreements for which the Financing TermSheets related thereto have not been objected to or deemed not to have been objected to by the Authority and/or the Independent Auditor pursuant to Section 27.3 (*Financing Term Sheet &* *the Financing Amendment Term Sheets*) and all related notes, indentures, securityagreements, guarantees, documents under any Islamic financing arrangements (including but not limited to markup based financing), agreements or other instruments providing security to the Financiers (including consents and acknowledgements of assignment and direct agreements in respect of documents assigned as security to the Financiers) and other documents entered into by the Concessionaire in relation to the construction and permanent financing (including any refinancing) of the Concession Assets (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time in accordance with the provisions of Section 27.3 (*Financing Term Sheet & the Financing* *Amendment Term Sheets*);

**Financing Term Sheet** shall have the meaning ascribed thereto in Section 27.3.1;

**Financing Termination Date** means the date on which no part of the Financing Due isoutstanding and all amounts due and payable by the Concessionaire to the Financiers are paid in accordance with the Financing Documents, as confirmed in writing by the Independent Auditor;

**First IA List** shall have the meaning ascribed thereto in Section 6.1 (*Selection*);

**First IE List** shall have the meaning ascribed thereto in Section 5.1 (*Selection*);

**First Major Maintenance** means the Major Maintenance to be undertaken by theConcessionaire during the First Major Maintenance Period in accordance with the Approved Major Maintenance Programme;

**First Major Maintenance Commencement Date** means the date certified by theIndependent Engineer as the date for commencement of the First Major Maintenance in its approval for the Proposed Major Maintenance Programme in respect of the First Major Maintenance Period;

**First Major Maintenance Expiry Date** means the earlier of (a) the date falling [two (2)years] from the First Major Maintenance Commencement Date; and (b) the date of completion of the First Major Maintenance, as certified by the Independent Engineer;

**First Major Maintenance Period** means the period commencing on the First MajorMaintenance Commencement Date and expiring on the First Major Maintenance Expiry Date;

**Force Majeure Costs** means all such costs that are directly attributable to, arise from andare a direct result of, in each case, a Force Majeure Event provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon;

**Force Majeure Event** means the occurrence of any or all of the Non Political Events and/orthe Political Events;

**Force Majeure Notice** shall have the meaning ascribed thereto in Section 21.2 (*Obligation**to Notify*);

**Force Majeure Period** means, as determined by the Independent Engineer, the periodcommencing from the date of occurrence of a Force Majeure Event and ending on (a) the date on which the Affected Party resumes or should have resumed (as determined by the Independent Engineer) such of its obligations the performance of which it was excused in terms of Section 21.8 (*Excuse from Performance of Obligations*); or (b) the Termination Date; as applicable;

**Geological Finds** means any underlying minerals, fossils, antiquities, structures or things of geological or archaeological interest found on the Project Site;

**Good Industry Practice** means those practices, methods, techniques, standards, skills,diligence and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged in respect of the Concessionaire under this Agreement and acting generally in accordance with the provisions of the Applicable Laws, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project in accordance with the Applicable Standards. “Good Industry Practices” are not limited to optimum practices, methods, techniques, standards, skills, diligence, prudence or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods, techniques, standards, skills, diligence, prudence or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety;

**Government Authority(ies)** means the Government of Pakistan, the Government of Punjab, anygovernmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body having jurisdiction over the Concessionaire, the Project, Project Site, the Concession Assets or any part thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**Handover List** shall have the meaning ascribed thereto in Section 25.2 (*Liability for Defects**During Exit Implementation Period*);

**Indemnified Party** shall have the meaning ascribed thereto in Section 9.3 (*Notice and**Contest of Claims*);

**Indemnifying Party** shall have the meaning ascribed thereto in Section 9.3 (*Notice and**Contest of Claims*);

**Independent Auditor** means the auditor appointed in respect of the Project in accordancewith Article 6 (*Independent Auditor*) and in terms of the Independent Auditor Contract;

**Independent Auditor Appointment Term** shall have the meaning ascribed thereto inSection 6.2 (*Term of Appointment of the Independent Auditor*);

**Independent Auditor Authorized Representative(s)**) shall have the meaning ascribed thereto inSection 6.3 *(Independent Auditor Authorized Representative(s))*;

**Independent Auditor Contract** means the contract to be entered into between the Authority, theConcessionaire, the Independent Auditor and any other Person agreed by the Parties in accordance with Article 6 (*Independent Auditor*);

**Independent Auditor Payments** shall have the meaning ascribed thereto in Section 6.5(*Independent Auditor Remuneration*);

**Independent Auditor Payment Account** means the account to be established by theConcessionaire and Notified to the Authority, in accordance with the terms of this Agreement and the Independent Auditor Contract;

**Independent Auditor Payment Account Bank** means a banking company mutually agreedbetween the Parties for the purposes of establishing and maintaining the account pursuant to the terms of the Independent Auditor Contract, the Authority Agreement and the Project Agreements;

**Independent Auditor Payment Account Standing Instructions** shall have the meaningascribed thereto in Section 6.6.2 (*Independent Auditor Payment Account*);

**Independent Engineer** means the engineer appointed in respect of the Project inaccordance Article 5 (*Independent Engineer*) and in terms of the Independent Engineer Contract;

**Independent Engineer Appointment Term** shall have the meaning ascribed thereto inSection 5.2 (*Term of Appointment of the Independent Engineer*);

**Independent Engineer Authorized Representative(s)** shall have the meaning ascribed thereto inSection 5.3 (***Independent Engineer Authorized Representative(s)****)*;

**Independent Engineer Contract** means the contract to be entered into between the Authority,the Concessionaire, the Independent Engineer and any other Person agreed by the Parties, in accordance with Article 5 (*Independent Engineer*);

**Independent Engineer Payments** shall have the meaning ascribed thereto in Section 5.5(*Independent Engineer Remuneration*);

**Independent Engineer Payment Account** means the account to be established by theConcessionaire and Notified to the Authority, in accordance with the terms of this Agreement and the Independent Engineer Contract;

**Independent Engineer Payment Account Bank** means a banking company mutuallyagreed between the Parties for the purposes of establishing and maintaining the account pursuant to the terms of the Independent Engineer Contract, the Authority Agreement and the Project Agreements;

**Independent Engineer Payment Account Standing Instructions** shall have the meaningascribed thereto in Section 5.6.2 (*Independent Engineer Payment Account*);

**Indicative Independent Auditor Terms of Reference** means the duties, functions and thescope of work to be performed by the Independent Auditor, as indicatively attached herewith as **Schedule [◙]- PART** **I** (***Indicative Independent Auditor Terms of Reference***); provided, however, upon execution of the Independent Auditor Contract, the scope of work of the Independent Auditor set out therein shall be deemed to replace **Schedule [◙]- PART** **I** (***Indicative Independent Auditor Terms of Reference***);

**Indicative Independent Engineer Terms of Reference** means the duties, functions andthe scope of work to be performed by the Independent Engineer, as indicatively attached herewith as **Schedule [◙]**-**PART** **II** (***Indicative Independent Engineer Terms of*** ***Reference***); provided, however, upon execution of the Independent Engineer Contract, thescope of work of the Independent Engineer set out therein shall be deemed to replace **Schedule [◙]- PART II** (***Indicative Independent Engineer Terms of Reference***);

**Ineligible Financiers** means such financial institutions that are: *[Insert Ineligibility Criteria][[23]](#footnote-24)*;

**Insurances** means all insurances, reinsurance, agreements of insurance and reinsuranceand/or arrangement for insurance and/or reinsurance to be maintained in terms of this Agreement and in accordance with the terms set out herein, in relation to the Project, the Concession Assets, the Construction Works and/or any part or portion thereof procured or to be procured by the Concessionaire, including but not restricted to the Construction Period Insurances and the Operations Period Insurances;

**Lapse of Consent** means any Concessionaire Permit:

1. ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the Applicable Laws for the renewal or replacement of such Concessionaire Permit or, where a time period is not prescribed by the Applicable Laws, within [sixty (60) days] of such Concessionaire Permit ceasing to be in full force and effect; or
2. (other than a Specified Concessionaire Permit) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the Applicable Laws or where a time period is not prescribed by the Applicable Laws, within [sixty (60) days] of proper application being made for such Concessionaire Permit; or
3. being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Concessionaire’s (or a Contractor’s) ability to perform its obligations under any document included within Authority Agreements and/or the Project Agreements,

in each of the above instances despite such party’s compliance with the applicable procedural and substantive requirements;

**Letter of Intent** shall have the meaning ascribed to in Recital B above;

**Licence** shall have the meaning ascribed thereto in Section 4.1 (*Licence*);

**Losses** means any loss, damage, liability, payment and obligation (excluding any indirector consequential loss, damage, liability, payment or obligation), and all expenses (including, without limitation, reasonable legal fees);

**Main Body** means this Agreement*excluding*the Schedules;

**Maintenance Requirements** means maintenance requirements for the maintenance of theProject, as prescribed by the Applicable Standards;

**Major Maintenance** shall have the meaning ascribed thereto in the O&M Manual;

**Major Maintenance Commencement Date** means (as the context may require) the First Major Maintenance Commencement Date and/or the Second Major Maintenance Commencement Date;

**Major Maintenance Costs** means the costs of each of the Major Maintenances as expressly set out in the Financial Model;

**Major Maintenance Cost Certificate** shall have the meaning ascribed thereto in Section 19.10;

**Major Maintenance Costs Funding Date** means in respect of the First Major MaintenancePeriod and the Second Major Maintenance Period, the date falling [three (3) months] prior to the First Major Maintenance Commencement Date and the Second Major Maintenance Commencement Date, respectively;

**Major Maintenance Milestone** means the progressive milestones relating to theperformance of the Major Maintenance and the dates for achievement of each such milestone, as set out in the Approved Major Maintenance Programme;

**Major Maintenance Milestone Certificate** means the certificate issued by the IndependentEngineer certifying completion of a Major Maintenance Milestone and achievement of the corresponding Major Maintenance Milestone Date;

**Major Maintenance Milestone Date** means each date of achievement of a MajorMaintenance Milestone, as certified by the Independent Engineer in the relevant Major Maintenance Milestone Certificate;

**Major Maintenance Milestone Payment** means the payment to be made by theConcessionaire upon achievement of a Major Maintenance Milestone and achievement of the corresponding Major Maintenance Milestone Date;

**Major Maintenance Payment Account** means the account to be established and maintained by theConcessionaire from the Commencement Date and until the Transfer Date, and Notified to the Authority as a Concessionaire Condition Subsequent;

**Major Maintenance Payment Account Standing Instructions** shall have the meaningascribed thereto in Section 19.9.2;

**Major Maintenance Payment Account Bank** means the bank mutually agreed betweenthe Concessionaire and the Authority for the purposes of establishing the Major Maintenance Payment Account;

**Major Maintenance Period** means (as the context may require) the First Major Maintenance Period and/or the SecondMajor Maintenance Period;

**Material Adverse Effect** means, in the opinion of the Independent Engineer (in respect oftechnical matters) and/or in the opinion of the Independent Auditor (in respect of financial matters), there has occurred an effect, event, matter or circumstance or a change in the circumstances which materially and adversely impairs:

1. the ability of any Project Party to perform and observe its respective obligations under the Project Agreements;
2. the rights of the Authority under any Project Agreement; or
3. the legality, validity or enforceability of, or the rights, obligations or remedies of, the Authority under this Agreement;

**Material Breach** means breach by either Party or Sponsor of any of its /their obligationsunder the Authority Agreements which has/is likely to have a Material Adverse Effect on the Project and which such breaching party shall have failed to cure by the date falling [forty-five (45)] days following the date of receipt of a notice issued by the non-breaching party to the breaching party to cure such breach;

**Material Breach of O&M Requirements** shall have the meaning ascribed to it in Section19.3.1;

**Minimum Indemnification Amount** means the amount equal to PKR [◙][[24]](#footnote-25) that a Party’s claims for indemnification pursuant to Article 9 (*Indemnities &Limitation of Liabilities*) must exceed in the aggregate before that Party will be entitled to indemnification;

**Minimum Revenue Guarantee** or **MRG** means the amount that Authority undertakes to provideaccording to the MRG Agreement for meeting the Excess Delta which will be shared equally between Authority and the Concessionaire;

**MRG Agreement** means the Minimum Revenue GuaranteeAgreement for thepurposes of, *inter alia*, [insert accordingly][[25]](#footnote-26);

**New IA List** shall have the meaning ascribed thereto in Section 6.2.3;

**New IE List** shall have the meaning ascribed thereto in Section 5.2.3;

**New O&M Performance Security** shall have the meaning ascribed to it in Section11.3.6;

**New Operational Year** shall have the meaning ascribed to it in Section 11.3.6;

**Non Political Event** shall have the meaning ascribed thereto in Section 21.1.1(b);

**Non Political Event Termination Amounts** shall have the meaning ascribed thereto in **Schedule [◙]** (***Termination Payments*)**;

**Notice, Notify, Notification and its grammatical variations** means as notified in writing;

**O&M Costs** means the operations and maintenance expenses, as set out in the FinancialModel and as adjusted from time to time for inflation in accordance with the Financial Model and in accordance with the terms of the O&M Contract;

**O&M Contract** means the contract entered into or that may be entered into by theConcessionaire in accordance with this Agreement for the provision of the Operation and Maintenance in accordance with O&M Requirements and the O&M Manual;

**O&M Contractor** means the Person of good repute with whom the Concessionaire hasentered into or may enter into the O&M Contract;

**O&M Documents** means all such reports, records, surveys, plans, analyses, calculations,manuals, operating procedures, guides and manuals, updated ‘as built’ drawings and documentation of any nature prepared, updated and submitted by the Concessionaire in connection with the Operations and Maintenance to the Authority, the Independent Engineer and/or the Independent Auditor pursuant to the Applicable Standards and any requests made in accordance with the Applicable Standards by the Authority, the Independent Engineer and or the Independent Auditor from time to time;

**O&M Inspection Report** has the meaning ascribed thereto in Section 19.14.2;

**O&M Manual** shall have the meaning ascribed thereto in Section 19.5 (*O&M Manual*);

**O&M Monthly Status Report** shall have the meaning ascribed thereto in Section 19.13.1;

**O&M Performance Security** means a first demand irrevocable and unconditionalguarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least [‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) ][[26]](#footnote-27) acceptable to the Authority in the form of a demand guarantee or a standby letter of credit (being in an amount equal to [◙%]of the O&M Costs for the Operational Year to which it pertains) that is furnished from time to time by the Concessionaire to the Authority in accordance with Section 11.3 (*O&M* *Performance Security*), in the form of the instrument attached herewith as**Schedule [◙]** (***Form of O&M Performance Security***);

**O&M Performance Security Expiry Date** shall have the meaning ascribed thereto in Section 11.3.5;

**O&M Programme** shall have the meaning ascribed thereto in Section 19.6.3;

**O&M Requirements** means the relevant standards, requirements, criterion and timelines(as applicable) that are set out in relation to and are applicable to the Operation and Maintenance, as set out in:

1. the Main Body;
2. the Scope of the Project;
3. the **Schedule [◙]** (***O&M Requirements***);
4. the O&M Manual;
5. the Safety Requirements;
6. the Applicable Standards being the requirements applicable in respect of matters relating to the Concession Assets;
7. the **Schedule [◙]** (***Detailed Project Report***);
8. in respect of each Operational Year following Substantial Completion Date, the O&M Programme prepared for such Operational Year in accordance with Section 19.6 (*O&M Programme*); and
9. any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

provided, however, in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the standards, requirements, criterion and timelines in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise agreed between the Parties) provided further, that in the event there is any deficiency in the standards and requirements (as applicable) the ASTM Standards and [Insert other applicable standards][[27]](#footnote-28) (as certified by the Independent Engineer) shall apply;

**O&M Tests** shall have the meaning ascribed thereto in Section 19.15 (*O&M Tests*);

**O&M Time For Completion** means the time permitted herein for performance andcompletion of Operations and Maintenance and all other obligations to be performed by the Concessionaire during the Operations Period, as set out in and contemplated by the Applicable Standards and each O&M Programme, including, performance and completion of each Project O&M Milestone on or prior to its Project O&M Milestone Date;

**Operation and Maintenance** or **Operate and Maintain** means all obligations, works,services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period pursuant to the Applicable Standards including (a) the preparation, completion and delivery of all O&M Documents; (b) the operation and maintenance of the Concession Assets during [the Construction Period and][[28]](#footnote-29) the Operations Period; (c) functions of operations, maintenance, safety measurements etc. and performance of other services and obligations incidental thereto; and (d) achievement of Project O&M Milestones;

**Operational Year** means a period of one (1) year commencing on each consecutiveanniversary of the Commercial Operations Date and ending as of the end of the day preceding the next anniversary of the Commercial Operations Date, except for the first (1st) Operational Year which shall start on the Commercial Operations Date;

**Operations Period** means the period commencing on the Commercial Operations Date andending on the Transfer Date;

**Operations Period Insurances** means the Insurances procured and/or obtained by theConcessionaire pursuant to the provisions of and in accordance with Section 20.2 (*Operations Period Insurances*) and **Part** **I (*Operations Period Insurances*)** **of Schedule [◙] (*Insurances*)**;

**Ordinary Share(s)** means share capital issued to the shareholders of the Concessionaire from time to time and shall be the main recipient of Base Case Equity IRR in accordance with this Agreement. Moreover, these shares shall be recipients of the Termination Payment (if applicable in terms of this Agreement) as well; provided, however, for purposes of calculating the Termination Payment, the term “Equity” shall exclude all amounts comprising injections to the Equity effected after Project Construction Completion Date; provided, that such amounts shall constitute Equity to the extent the same are part of the Pre Estimated Project Cost and determined by the Independent Auditor to be part of the Total Project Cost;

**Ordinary Shares Invested Equity** means the aggregate of funds invested (as Equity) by the Sponsor(s) and shareholders of Ordinary Shares for funding of the Sponsor Base Equity Amount in accordance with the Equity Funding & Utilization Agreement;

**Parties** shall have the meaning ascribed thereto in the Preamble;

**Performance Standards** mean *[insert relevant standards]*[[29]](#footnote-30);

**Permitted Amalgamation or Reconstruction** means any amalgamation or reconstruction that:

* 1. does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement;
  2. establishes a new entity which is at least as credit-worthy as the Concessionaire was immediately prior to the Permitted Amalgamation of Reconstruction; and
  3. is received prior approval by the Authority in writing;

**Permitted Events** means:

1. Political Event;
2. Authority Events of Default;
3. the occurrence of the Authority Overriding Power Event, to the extent the same does not result from reasons attributable to the Concessionaire;

**Person** means any individual, firm, company, corporation, society, partnership (whether ornot having a separate legal personality), joint venture, trust, unincorporated organization, government state, association or Government Authority or any other legal entity and shall include successors and assigns;

**Political Event** shall have the meaning ascribed thereto in Section 21.1.1(a);

**Political Event Termination Amounts** shall have the meaning ascribed thereto in **Schedule [◙]** (***Termination Payments*)**;

**Pre Estimated Project Cost** means the estimated cost of the Project, as specified in theBase Case Financial Model and being funded through the proceeds of the Financing and the Base Funding Amount[and any revenue collection during the Construction Period];

**Preliminary Termination Notice** means (as the context may require) either the Authority Preliminary Notice or the Concessionaire Preliminary Notice;

**Preservation Costs** shall have the meaning ascribed thereto in Section 18.2.4;

**Project** means each of the following activities, as performed (in each case) in accordancewith this Agreement:

1. the ownership and possession of the Concession Assets;
2. the design and detailed design, engineering, financing, construction, procurement, permitting, testing and commissioning of, in each case, the Concession Assets;
3. the procurement and contracting for goods, equipment and services for the Concession Assets;
4. the insuring and Operation and Maintenance of the Concession Assets;
5. the making available, on a continuous basis, of the Concession Assets for the Users;
6. payments by the Parties of amounts due and payable under this Agreement;
7. the recruitment, employment and training of staff for the Concession Assets;
8. the transfer of the Concession Assets to the Authority on the Transfer Date;
9. all activities incidental or related to any of the above;

**Project Agreements** means:

1. this Agreement;
2. the Financing Documents;
3. the O&M Contract;
4. the EPC Contract;
5. any other material contract entered into or to be entered into by the Concessionaire at any time after the Effective Date in connection with the Project and designated as a “Project Agreement” with the consent of the Authority;

**Project Construction Completion** shall have the meaning ascribed thereto in Section14.6.1;

**Project Construction Completion Check List** shall have the meaning ascribed thereto inSection 14.2.2;

**Project Construction Completion Date** shall have the meaning ascribed thereto in Section14.6.1;

**Project Construction Completion Schedule** means the schedule attached herewith as **Schedule [◙]** (***Project Construction Completion Schedule***) setting out:

1. the Scheduled Project Construction Completion Date;
2. the Scheduled Substantial Completion Date;
3. the Project Construction Milestones (along with (where possible) the Project Construction Milestone Dates);

**Project Construction Milestones** means the progressive milestones relating to the performance of Construction Works and other obligations to be performed by the Concessionaire by the respective Project Construction Milestone Date;

**Project Construction Milestone Date** means the date permitted herein for achievement ofeach Project Construction Milestone, as set out and contemplated (in respect of each Project Construction Milestone) in:

1. this Agreement;
2. the Applicable Standards;
3. the Construction Programme;

**Project Facilities** means the facilities to be constructed, built, installed, erected and/orprovided by the Concessionaire on the Project Site, as detailed in **Schedule [◙]** (***Project Facilities***);

**Project Manager/Project Director** means the project manager of the ProjectPPP node, appointed by the Authority for purposes of this Agreement;

**Project PPP Node** means the PPP node established by the Authority in accordance with the Applicable Laws for the purpose of overseeing the day to day implementation of the Project in accordance with the terms of this Agreement and Applicable Laws and shall be headed by the Project Manager;

**Project Milestone** means:

1. in respect of Construction Works, the Project Construction Milestones;
2. in respect of the Operations and Maintenance, the Project O&M Milestones;

**Project Milestone Date** means:

2. in respect of a Project Construction Milestone, the respective Project Construction Milestone Date for such Project Construction Milestone;
3. in respect of a Project O&M Milestone, the respective Project O&M Milestone Date for such Project O&M Milestone;

**Project O&M Milestones** means the progressive milestones relating to the performanceand completion of Operation and Maintenance that are to be achieved by the Concessionaire pursuant to the Applicable Standards during an Operational Year of the Operation Period, as set out in:

1. this Agreement;
2. the Applicable Standards and specifications;
3. the O&M Programme for such Operational Year;

**Project O&M Milestone Date** means the date permitted herein for achievement of eachProject O&M Milestone, as set out and contemplated (in respect of each Project O&M Milestone) in:

(a) the Applicable Standards; and

(b) the O&M Programme;

**Project Party** means the Concessionaire, the Sponsor and/or any Contractor, as the casemay be;

**Project Requirements** means the Design Requirements, the Construction Requirementsand the O&M Requirements, applicable;

**Project Site** means the site on which the Concession Assets are to be located and the Project is to be implemented comprising of theimmovable property including the right of way on which the Project Facilities are to be constructed, built, installed, erected and/or provided by the Concessionaire, in accordance with the terms of this Agreement, as demarcated in the map attached hereto in **Schedule [◙]** (***Project Site***)[[30]](#footnote-31);

**Project Site Conditions** shall have the meaning ascribed to it in Section 4.4.1;

**Project Site Licence Agreement** means the agreement of Licence (in the form agreedbetween the Parties) [entered/to be entered][[31]](#footnote-32) into between the Authority and the Concessionaire pursuant to which the Authority shall Licence the land comprising the Project Site to the Concessionaire;

**Project Works** means all obligations, works, services and duties undertaken and/orperformed and/or to be undertaken and/or performed by the Concessionaire pursuant to the Applicable Standards and shall include:

1. the Construction Works and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Project Construction Completion Date;
2. the Operations and Maintenance and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period;

**PKR** or **Pak Rupees** means the lawful currency of the Islamic Republic of Pakistan;

**Proposed Construction Programme** shall have the meaning ascribed thereto in Section13.2.1;

**Proposed Completion Tests Date** shall have the meaning ascribed thereto in Section14.1.1;

**Proposed Detailed Engineering Design** means the detailed engineering design for the Projectprepared by the Concessionaire in accordance with Applicable Standards, and shall set out, in addition to any other matters determined by the Independent Engineer, the exact area, location of the Project Site, the relocation of existing utilities etc., and all other relevant matters relation to any relocations/impediments in relation to the Project Site;

**Proposed Major Maintenance Contract(s)** shall have the meaning ascribed thereto inSection 19.8.1;

**Proposed Major Maintenance Programme** shall have the meaning ascribed thereto inSection 19.8.1;

**Proposed O&M Manual** shall have the meaning ascribed to it in Section 19.5.1;

**Proposed O&M Programme** shall have the meaning ascribed to it in Section 19.6.1;

**Protected Assets** shall have the meaning ascribed thereto in Section 8.7.1(b);

**Public-Private Partnership** means public-private partnership as ascribed in the Act;

**Related Party Transaction** means any transaction relating in any way directly or indirectly to the Project in which the Concessionaire, or any Concessionaire Engaged Person leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or enters into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, a Concessionaire Related Person excluding any transaction of a minor nature which is entered into or effected on arm's length terms in the ordinary course of the Concessionaire's business;

**Relief Costs** means the increase in such capital expenditures and costs and/or the operatingcosts, in each case, that are set out in the Financial Model and which directly result from a Relief Event (excluding such Relief Events that are set out in Section 15.1.1 (c) and (e)), as determined by the Independent Engineer and the Independent Auditor pursuant to Article 15 (*Relief Extensions & Relief Compensations*) and which are set out in the Relief Order; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon by the Independent Engineer and the Independent Auditor;

**Relief Event(s)** shall have the meaning ascribed thereto in Section 15.1;

**Relief Order** means a written order jointly issued by the Independent Auditor and theIndependent Engineer to the Parties pursuant to Article 15 (*Relief Orders*) authorizing an extension of Time For Completion and/or payment of Relief Costs in accordance with Article 15 (*Relief Extensions & Relief Compensations*);

**Relief Order Proposal** shall have the meaning ascribed thereto in Section 15.2.1;

**Relief Order Request** shall have the meaning ascribed thereto in Section 15.1.1;

**RFP** shall have the meaning ascribed to in Recital B above;

**Safety Requirements** means the arrangements and procedures for conducting safety relatedmeasures in respect of the Concession Assets, as set out in the O&M Manual;

**Scheduled Commencement Date** means the date [one hundred and eighty (180) days][[32]](#footnote-33) afterthe Effective Date, as may be extended from time to time in accordance with this Agreement;

**Scheduled Project Construction Completion Date** shall have the meaning ascribedthereto in Section 14.3.1;

**Scheduled Substantial Completion Date** means the date falling [◙][[33]](#footnote-34) months afterthe Effective Date, as such date as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order;

**Scope of the Project** means the scope of the Project, as set out in **Schedule [◙]** (***Scope of* *the Project***);

**[Second Major Maintenance** means the Major Maintenance to be undertaken by theConcessionaire during the Second Major Maintenance Period in accordance with the Approved Major Maintenance Programme;

**Second Major Maintenance Commencement Date** means the date certified by theIndependent Engineer as the date for commencement of the Second Major Maintenance in its approval for the Proposed Major Maintenance Programme in respect of the Second Major Maintenance Period;

**Second Major Maintenance Expiry Date** means the earlier of (a) the date falling two (2)years from the Second Major Maintenance Commencement Date; and (b) the date of completion of the Second Major Maintenance, as certified by the Independent Engineer;

**Second Major Maintenance Period** means the period commencing on the Second MajorMaintenance Commencement Date and expiring on the Second Major Maintenance Expiry Date;][[34]](#footnote-35)

**[Service Charge(s)** means the amount of money determined, levied, imposed, demanded, charged,collected, retained and appropriated by the Concessionaire and/or to be determined, levied, demanded, charged, collected, retained and appropriated by the Concessionaire, from the Users of the Concession Assets (except the Exempted Users) ([including for any other commercial rights and advertisement rights]) or part thereof as the fee for the use of the Concession Assets or part thereof pursuant to the Service(s) Charge Concession during the Service Charge(s) Concession Period;

**Service Charge(s) Commencement Date** means the day the Concessionaire shall be entitled to commence collection of the Service Charge(s);

**Service Charge(s) Commencement End Date** means the date on which the Concessionaire’sright tocollect Service Charge(s) in terms of this Agreement shall stand cancelled and shall cease to exist, such date being the earlier of:

1. the Final Expiry Date; or
2. in case the Concession is Terminated prior to the Final Expiry Date, such date shall be the Termination Date;

**Service Charge(s) Concession** means all concessions and rights granted to the Concessionaire hereunderand under the Authority Agreements in relation to Service Charge(s) and all matters relating to the same including determination, levying, imposing, demanding, charging, collection, retention and appropriation of the same by the Concessionaire during the Service Charge(s) Concession Period;

**Service Charge(s) Concession Period** means the period commencing from the Service Charge(s) Commencement Date until the Service Charge(s) Commencement End Date;

**Service Charge(s) Notification Structure** means the structure for, inter alia, imposition and adjustmentsin the Service Charge(s) and the list of Exempted Users, as specifically contemplated by **Schedule [◙] (*Service Charge(s) Notification Structure*)**;

**Service Charge(s) Notification** means the notification issued by the Authority (substantially, in the form set out in **Schedule [◙] (*Form of Service Charge(s) Notification*)** and in accordance with **Schedule [◙] (*Service Charge(s)*** ***Notification Structure*)** and the Applicable Laws in order to implement theService Charge(s) Notification Structure;

**Service Charge(s) Revenues** means all income derived by the Concessionaire from the Project fromcollection of the Service Charge(s);

**Service Charge(s) Progress Report** shall have the meaning ascribed thereto in Section 17.2;**]**

**Specific Term Sheet Parameters** shall have the meaning ascribed thereto in Section 27.3.1;

**Specified Concessionaire Permits** means the Concessionaire Permits set out in **Schedule [◙]** (***Specified Concessionaire Permits***);

**Sponsor(s)** means [●], being the shareholder(s) of the Concessionaire that is/are required,together with their Affiliates (if any), subject to the terms of this Agreement, to hold (directly and/or indirectly) one hundred percent (100%) of the total Equity of Ordinary Shares in accordance with the proposed shareholdings as submitted in the Bid;

**Sponsor Base Equity Amount** means the amount set out in the Financial Model;

**Substantial Completion** shall have the meaning ascribed thereto in Section 14.2.1;

**Substantial Completion Certificate** means the certificate issued by the IndependentEngineer at the request of the Concessionaire in accordance with Section 14.2 (*Substantial* *Completion Certificate*);

**Substantial Completion Date** shall have the meaning ascribed thereto in Section 14.2.1.

**Suspension** shall have the meaning ascribed thereto in Section 18.2.1;

**Termination** means the termination of this Agreement and the Concession hereunder uponthe issuance of a Termination Notice in accordance with the terms hereof and to the extent stated herein;

**Termination Date** means the date of issuance of the Termination Notice;

**Termination Dividend Amount** means the aggregate return on Equity for Ordinary Sharesfor each of the [[◙] Accounting Years] of the Concessionaire falling immediately after the Termination Date, the same being an amount equal to the aggregate of Termination Equity IRR applied to the Equity (Ordinary Shares) for each of the [[◙] Accounting Years] falling after the Termination Date;

**Termination Equity** means, as of the Transfer Date occurring due to Termination, theaggregate of the Ordinary Shares Invested Equity reduced on a straight-line basis from the Substantial Completion Date through the term of this Agreement;

**Termination Equity IRR** means the post-tax internal rate of return, the same being [[◙]%],on the Equity Ordinary Shares;

**Termination Notice** means a notice to be issued in writing by a Party, following expiry of the relevant Cure Period, notifying the otherParty of the Termination of this Agreement in accordance with the applicable provisions of this Agreement;

**Termination Payment** means:

1. in respect of Termination due to a Concessionaire Event of Default, the Concessionaire Default Termination Amount;
2. in respect of Termination due to a Corrupt Act, the Corrupt Act Termination Amount;
3. in respect of Termination due to an Authority Event of Default, the Authority Default Termination Amount;
4. in respect of Termination due to a Political Event, the Political Event Termination Amount;
5. in respect of Termination due to a Non Political Event, the Non Political Event Termination Amount;
6. in respect of Termination due to a Change in Law, the Change in Law Termination Amount;

**Termination Payment Date** means the date falling [one hundred fifty (150) days] following theTransfer Date;

**Time For Completion** means (as applicable):

1. in respect of Construction Works, the Construction Time For Completion; and
2. in respect of Operations & Maintenance, the O&M Time For Completion;

**Total Project Cost** means the actual capital cost of the Project upon completion of theProject, as certified by the Independent Auditor; provided, that the same shall not include (unless otherwise agreed with the Authority) the Additional Cost;

**Transaction Advisory Fees** shall have the meaning ascribed thereto in Section 29.3.2;

**Transaction Advisor** means the advisory consortium appointed by the Authority for the purposesof the Project;

**Transfer Date** means:

(a) in case of early Termination of this Agreement prior to the Final Expiry Date, the completion of the Exit Implementation Period;

(b) in case of achievement of Final Expiry Date pursuant to this Agreement, the Final Expiry Date;

**Unpaid Termination Equity Amount** shall have the meaning ascribed thereto in Section23.4.2;

**User** means the Person who uses the Concession Assets or anyportion thereof;

**Utilities Affected Assets** shall have the meaning ascribed thereto in Section 4.12.2;

**Vacant Possession** means delivery to the Concessionaire by the Authority of possession of theProject Site in accordance with this Agreement and in accordance with Applicable Laws, free from all Encumbrances, encroachments, existing trees, existing structures and utilities on the Project Site (unless otherwise stated in this Agreement), etc.; and the grant of all Easementary Rights and all other rights appurtenant thereto, so that the Concessionaire enjoys complete uninterrupted and quiet possession and control of the Project Site throughout the Concession Period; and

**Vesting Certificate** shall have the meaning ascribed thereto in Section 22.3 (*Vesting**Certificate*).

**1.2** **Construction**

1.2.1 In this Agreement, unless the context otherwise requires:

1. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
2. references to laws of Pakistan or Pakistan law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;
3. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
4. the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
5. references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
6. references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
7. any reference to any period of time means a reference to that according to Pakistan Standard Time;
8. any reference to day means a reference to a calendar day as per the Gregorian Calendar;
9. references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Pakistan are generally open for business;
10. any reference to month means a reference to a calendar month as per the Gregorian calendar;
11. references to any date, period or Project Milestone means and include such date, period or Project Milestone as may be extended pursuant to Relief Order or by the Authority (as the context may provide);
12. any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided, that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
13. the words importing singular shall include plural and vice versa;
14. references to any gender shall include the other and the neutral gender;
15. “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
16. references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
17. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, Licence or document of any description shall be construed as reference to that agreement, deed, instrument, Licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided, that this sub-section shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
18. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party, the Independent Engineer or the Independent Auditor shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, the Independent Engineer or the Independent Auditor, as the case may be, in this behalf and not otherwise;
19. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
20. references to Recitals, Articles, Sections, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
21. the damages (including the Construction Period Damages) payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and
22. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

**1.3** **Costs For Documents**

1.3.1 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority, the Independent Engineer and/or the Independent Auditor or any other relevant person so appointed or nominated by the Authority, the Financiers or any other person legally so required shall be provided free of cost and in three (3) copies, and if the Authority, the Independent Engineer and/or the Independent Auditor is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two (2) copies thereof.

**1.4** **Measurements And Arithmetic Conventions**

1.4.1 All measurements and calculations in respect of financial matters shall be in the metric system and calculations done to two (2) decimal places, with the third digit of five (5) or above being rounded up and below five (5) being rounded down, however all calculations in respect of technical matters shall be in SI/foot pound and second system.

**1.5** **Priority Of Agreements, Articles, Sections And Schedules**

1.5.1 This Agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and the other Authority Agreement and other documents and agreements forming part thereof or referred to therein shall, in the event of any conflict between them, be in the following order (unless otherwise agreed between the Parties):

1. this Agreement;
2. the Authority Agreements (other than this Agreement).

1.5.2 Subject to the provisions of Section 1.5.1, in the event of any ambiguity and/or discrepancies with regard to this Agreement, the following shall apply:

1. between two or more Articles and/or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and/or Section;
2. between the Article and/or Section of this Agreement and the Schedules, the Article and/or Section shall prevail unless the issue in question/matter is specifically provided for in the Schedule and only referred to in the Article and / or Section, as the case may be;
3. between any two Schedules, the Schedule relevant to the issue shall prevail;
4. [between the written description on the Construction Drawings and the Construction Requirements, the latter shall prevail;
5. between the written description on the O&M Documents and the O&M Requirements, the latter shall prevail;
6. between the dimension scaled from the Construction Drawing and its specific written dimension, the latter shall prevail;
7. between the dimension scaled from the O&M Documents and its specific written dimension, the latter shall prevail; and][[35]](#footnote-36)
8. between any value written in numerals and that in words, the latter shall prevail.

# Concession

## Grant of Concession

## In consideration of the Concessionaire’s obligations contained in this Agreement and relying on the Concessionaire’s representations, warranties and covenants contained herein, the Authority, subject to the terms of this Agreement, hereby grants to the Concessionaire the [Service Charge(s) Concession][[36]](#footnote-37) and authorizes it, for the duration of the Concession Period, to [investigate, study, design, engineer, procure, finance, construct, develop, Operate and Maintain][[37]](#footnote-38) and implement the Project on a [design, build, operate, finance and transfer basis][[38]](#footnote-39), and to exercise and enjoy the rights, powers, benefits, privileges, [collect Service Charge(s)] [[39]](#footnote-40), authorizations and entitlements as set forth in this Agreement (the Concession).

## This Agreement shall not be deemed to grant the Concessionaire any right or impose any obligations on the Authority or any Government Agency except as specifically stated in this Agreement or otherwise imposed under Applicable Laws. Furthermore, no instructions or approvals given by the Independent Engineer, Independent Auditor or the Authority in accordance with the Applicable Law and the provisions of this Agreement will affect the Concessionaire's responsibility to undertake the Project and the Concessionaire shall continue to be liable for any liabilities arising in relation to the Project Works.

## The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Agreement and the Authority Agreements.

**2.2** **Concession Period**

2.2.1 The Concession is granted and shall be effective for the Concession Period.

**2.3** **Extension Of Concession Period**

2.3.1 The Concessionaire may request an extension of the Concession Period at any time at least [one (1) year] prior to the Final Expiry Date; provided, that at the time of the request the Concessionaire is materially in compliance with its obligations under this Agreement and no Concessionaire Event of Default has occurred or is on-going.

2.3.2 The Authority has the right to accept or reject the Concessionaire’s request for extension at its sole and absolute discretion. To the extent the Authority accepts the extension in the Concession Period, the Parties shall enter into such instruments, agreements and arrangements (including any amendments in the Authority Agreements) on such terms and conditions, in each case, as mutually agreed between the Parties.

# Conditions

## Conditions Precedent

## The respective obligations of the Parties shall be subject to the satisfaction (except for waiver and/or deferral, in accordance with the terms herein) in full of the conditions precedent specified in Sections 3.1.2 and 3.1.3 (the Conditions Precedent) on or prior to the Scheduled Commencement Date.

## The Concessionaire shall satisfy the following Conditions Precedent to the satisfaction of the Authority, the Independent Engineer and the Independent Auditor prior to the Scheduled Commencement Date (the Concessionaire Conditions Precedent).

1. the Concessionaire has provided copies of its Corporate Documents to the Authority (with copies delivered to the Independent Engineer and the Independent Auditor), duly certified as true copies by the company secretary or director of the Concessionaire;
2. the Concessionaire has provided to the Authority copies (with copies delivered to the Independent Engineer and Independent Auditor) of its Board Resolution that duly authorizes:
3. the Concessionaire to enter into this Agreement and to undertake the obligations, liabilities, as set out in this Agreement, and the transactions as contemplated by this Agreement;
4. a specified Person or Persons to:
   * 1. execute this Agreement on behalf of the Concessionaire; and
     2. undertake all other acts specifically relating to this Agreement, as contemplated by this Agreement;
5. the Concessionaire has provided the Construction Performance Security to the Authority that remains effective and valid till the end of the Construction Performance Security Expiry Date;
6. each of the Specified Concessionaire Permits have been procured by the Concessionaire and the same are effective and valid and have not been cancelled and/or rescinded and the Concessionaire has provided copies of the same to the Authority (with copies delivered to the Independent Engineer and the Independent Auditor);
7. the Concessionaire has provided to the Authority, the Independent Auditor and the Independent Engineer:
8. a certified true copy of the duly signed Financing Term Sheet that is not objected to or deemed not to be objected to by the Authority and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet and* *Financing Amendment Term Sheet*);
9. certified true copies of the signed Financing Documents;
10. the Financial Close Achievement Notice, as issued by the Financiers (or an agent of the same);
11. the Authority has received the following legal opinions:
12. a legal opinion from the legal counsel of the Concessionaire confirming that the Concessionaire has been duly organized and is validly existing under the [Applicable Laws/applicable laws][[40]](#footnote-41) and has the requisite power and authority to enter into the Authority Agreements and to undertake the transactions as contemplated by the Authority Agreements and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire;
13. a legal opinion from the legal counsel of the Sponsor confirming that such Sponsor is validly existing under the [Applicable Laws/applicable laws][[41]](#footnote-42) and that such Sponsor has the requisite authority and power to enter into the Authority Agreement(s) and the Project Agreement(s) to which such Sponsor is a party and to assume the obligations as contained therein and the enforceability of the same against the Sponsor;
14. the Concessionaire has entered into the Project Site Licence Agreement with the Authority for Licence of the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*);
15. the Concessionaire has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the counterparties to such contract;
16. the Concessionaire has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the counterparties to such contract;
17. the Concessionaire and the Sponsor have entered into the Equity Funding & Utilization Agreement with the Authority;
18. the Concessionaire has entered into the Escrow Agreement and established the Escrow Account;
19. the Concessionaire providing an alternate relocation plan for the removal of utilities (as certified by the Independent Engineer) in accordance with Section 4.10;
20. the Concessionaire has obtained the Approved Detailed Engineering Design for the Project in accordance with Section 12.5; and
21. the Concessionaire has submitted copies of documents evidencing satisfaction of each of the Concessionaire Conditions Precedent to the Independent Engineer and the Independent Auditor.

## The Authority shall satisfy the following Conditions Precedent to the satisfaction of the Concessionaire, the Independent Auditor and the Independent Engineer prior to the Scheduled Commencement Date (the Authority Conditions Precedent).

1. the Authority has Licenced the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*) and the Project Site Licence Agreement;
2. subject to: (i) the Concessionaire obtaining the Approved Detailed Engineering Design in accordance with Section 12.5; and (ii) the Concessionaire providing an alternate relocation plan (as certified by the Independent Engineer) for removal of utilities from the Project Site in accordance with Section 4.10, the Authority has handed over Vacant Possession of the Concession Assets Project Site to the Concessionaire in accordance with Article 4 (*Project Site*) and Schedule [◙] (*Delivery of Project Site*);

1. the Authority has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the other counterparties to such contract;
2. the Authority has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the other counterparties to such contract;
3. the Authority has entered into the Escrow Agreement;
4. the Authority has entered into the MRG Agreement; and
5. the Authority has submitted copies of documents evidencing satisfaction of each of the Authority Conditions Precedent to the Independent Engineer and the Independent Auditor.

## Conditions Subsequent

## The Concessionaire undertakes to fulfill the following Conditions Subsequent to the satisfaction of the Authority:

1. [[ninety (90)] days prior to the Scheduled Substantial Completion Date, the Concessionaire shall provide the Authority (with copies to the Independent Engineer and the Independent Auditor) with evidence of appointment of the O&M Contractor;
2. [ninety (90)] days prior to the Scheduled Substantial Completion Date, the Concessionaire shall provide evidence that the Major Maintenance Payment Account has been established.][[42]](#footnote-43)

3.2.2 The Authority undertakes to fulfill the following Conditions Subsequent to the satisfaction of the Concessionaire:

1. [On the issuance of the Commencement Certificate by the Independent Engineer and the Independent Auditor, the Authority shall issue the Service Charge(s) Notification in accordance with Article 17 (*Service Charge(s) Arrangement*) authorizing the Concessionaire to begin charging the Service Charge(s) set forth in **Schedule [◙] (*Service Charge(s) Notification Structure*)** ][[43]](#footnote-44).

## Waiver And/Or Deferral Of Conditions And Extension Of Scheduled Commencement Date

## The:

1. Authority may (at its discretion) waive and/or defer any of the Concessionaire Conditions Precedent set forth in Section 3.1.2 of Section 3.1 (*Conditions Precedent*) and/or the Conditions Subsequent set out in Section 3.2 (*Conditions Subsequent*) upon such conditions as it deems fit;
2. Concessionaire may (at its discretion) waive and/or defer any of the Authority Conditions Precedent set forth in Section 3.1.3 of Section 3.1 (*Conditions Precedent*) upon such conditions as it deems fit;

## Any deferral and/or waiver of a Condition Precedent and/or Condition Subsequent in terms of this Section 3.3 (*Waiver and/or Deferral or Conditions and Extension of Scheduled Commencement Date*) shall be notified in writing to the Independent Engineer and the Independent Auditor by the Party granting such deferral and/or waiver of such condition in accordance with this Agreement.

## Commencement Certificate & Commencement Date

## Each Party shall promptly inform the other Party in writing (together with copies delivered to the Independent Engineer and the Independent Auditor) when the Conditions Precedent for which it is responsible have been satisfied.

## The Parties agree that:

1. within [thirty (30) days] of the Authority’s receipt from the Concessionaire, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of a Concessionaire Condition Precedent, the Authority shall notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Concessionaire) whether it has any objections on the satisfaction of such Concessionaire Condition Precedent. In the event the Authority does not raise any objection in writing on the satisfaction of a Concessionaire Condition Precedent within the [thirty (30) day] period set out herein, such Concessionaire Condition Precedent shall be deemed to be satisfied. In the event the Authority raises any objections on the satisfaction of a Concessionaire Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) within the [thirty (30)] day period set out herein, the Concessionaire shall address such objections and re-submit to the Independent Engineer and the Independent Auditor (with a copy to Authority) evidence of satisfaction of such Concessionaire Condition Precedent. The process in this Section 3.4.2(a) shall be repeated until such time that the Authority has not objected to or is deemed to have not objected to the satisfaction of such Concessionaire Condition Precedent at which point the Concessionaire Condition Precedent shall be satisfied. The provisions of this Section 3.4.2(a) shall apply to each Concessionaire Condition Precedent for which evidence of satisfaction is submitted by the Concessionaire to the Independent Engineer and the Independent Auditor (with a copy to the Authority) from time to time;
2. within [thirty (30) days] of the Concessionaire’s receipt from the Authority, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of a Authority Condition Precedent, the Concessionaire shall notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Authority) whether it has any objections on the satisfaction of such Authority Condition Precedent. In the event the Concessionaire does not raise any objection in writing on the satisfaction of a Authority Condition Precedent within the [thirty (30)] day period set out herein, such Authority Condition Precedent shall be deemed to be satisfied. In the event the Concessionaire raises any objections on the satisfaction of a Authority Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to Authority) within the [thirty (30) day] period set out herein, the Authority shall address such objections and re-submit to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) evidence of satisfaction of such Authority Condition Precedent and the process in this Section 3.4.2(b) shall be repeated until such time that the Concessionaire has not objected to or is deemed to have not objected to the satisfaction of such Authority Condition Precedent at which point the Authority Condition Precedent shall be satisfied. The provisions of this Section 3.4.2(b) shall apply to each Authority Condition Precedent for which evidence of satisfaction is submitted by the Authority to the Independent Engineer and the Independent Auditor (with a copy to Concessionaire) from time to time.

## The Parties hereby jointly undertake to procure that the Independent Engineer and the Independent Auditor jointly issue the Commencement Certificate within [three (3) days] of the date on which the Independent Engineer and the Independent Auditor are satisfied that each of the:

1. Concessionaire Conditions Precedent stand satisfied (and/or waived or deferred by the Authority in accordance with Section 3.3.1(a));
2. Authority Conditions Precedent stand satisfied (and/or waived or deferred by the Concessionaire in accordance with Section 3.3.1(b));
3. The Independent Engineer and the Independent Auditor, jointly, shall set out in the Commencement Certificate the date on which the Commencement Date is achieved.

## Termination Prior to Commencement Date

## In the event:

1. the Concessionaire Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling [ninety (90) days] following the Scheduled Commencement Date; and/or
2. of occurrence of a Concessionaire Event of Default prior to the Commencement Date;

then the Authority shall have the right to Terminate this Agreement by issuance of a written Termination Notice to the Concessionaire. The Authority shall be entitled to encash the Bid Security or the Construction Performance Security (as in effect at such time) to its full value.

## In the event:

1. the Authority Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling [ninety (90) days] following the Scheduled Commencement Date; and/or
2. of occurrence of an Authority Event of Default prior to the Commencement Date,

the Concessionaire shall have the right (to be exercised in its sole discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Authority. In such case, the Authority shall (within [forty-five (45) days] of its receipt of the Termination Notice) return the Bid Security or the Construction Performance Security (as in effect at such time) to the Concessionaire.

## Except as may be contemplated in the Equity Funding & Utilization Agreement, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement pursuant to Section 3.5.2.

# 

# Project Site[[44]](#footnote-45)

## Licence

# The Authority hereby agrees to license the Project Site for the Concession Period to the Concessionaire for the purposes set out herein in this Agreement (the License) [[45]](#footnote-46). The Project Site License Agreement shall be duly executed by the Parties and, to the extent required by Applicable Laws, registered by the Concessionaire with the relevant Government Authority and all costs, fees, expenses, duties, charges and taxes (including charges relating to the registration of the Project Site License Agreement) relating to the same shall be borne by the Concessionaire.

# The License shall commence when Vacant Possession of the Project Site is granted to the Concessionaire by the Authority and automatically terminate on the Transfer Date without the need for any action to be taken by the Parties to terminate the License. Any extension of the Concession Period, with the Authority’s consent, shall also extend the License and the Concessionaire and the Authority shall enter into such addendums, extensions or modifications of the Project Site License Agreement as are necessary to give effect to such extension.

## 

## Title of Project Site & Delivery of Vacant Possession

* + 1. The Authority represents and warrants that it has the power and authority to grant the License in respect of the Project Site to the Concessionaire.
    2. Subject to Section 15.1 (*Relief Events*), the Authority shall at its own cost and expense, deliver to the Concessionaire, the Vacant Possession of the Project Site (including all Easementary Rights)[[46]](#footnote-47).

## Use Of Project Site

4.3.1 The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the Authority shall enter into the Project Site Licence Agreement with the Concessionaire that shall grant the Licence of the Project Site to Concessionaire for the sole purpose of implementation of the Project and for enjoying the rights and benefits of the Concession granted hereunder and that the Concessionaire shall use the Project Site only for the purposes of implementing the Project thereupon and for purposes incidental or necessary thereto subject always to the terms and conditions of the Applicable Standards.

4.3.2 The Concessionaire hereby undertakes that it shall not without prior written consent of the

Authority use the Project Site for any purpose other than as permitted under this Agreement.

**4.4** **Project Site Conditions**

4.4.1 The physical and the ambient conditions (including climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions) of the Project Site (the **Project Site Conditions**) shall be the sole responsibility of the Concessionaire. Accordingly, without limiting any other obligations of the Concessionaire that are included in this Agreement, the Concessionaire shall be deemed as at the Effective Date to have:

1. carried out an investigation of all the Project Site Conditions and of any extraneous material in or under the Project Site including its surface, sub-soil and ground water to enable the Concession Assets to be designed and constructed and for its obligations to be performed with due regard for the Project Site Conditions and the seismic activity (if any) in the region of the Project Site;
2. for the purpose of such investigation in section (a), inspected and examined the Project Site and surroundings;
3. satisfied itself as to the nature of the Project Site Conditions, the surface, sub-soil and ground water of the Project Site, the form and nature of the Project Site, the load-bearing and other relevant properties of the Project Site, the risk of damage to property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, its obligations and material necessary for the implementation of the Project;
4. satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and any accommodation it may require for the purposes of fulfilling any of its obligations included in this Agreement, such as any additional land or buildings located outside the Project Site;
5. satisfied itself as to the precautions, times and methods of working necessary to prevent or minimize nuisance or interference being caused to any third parties; and
6. developed a security protocol for security of the Project Site, for the duration of the Concession Period, in accordance with Applicable Standards and arranged for at its own cost the requisite number of appropriately trained and qualified security personnel (including all accommodation and transport for the same) to undertake the security of the Project Site.

4.4.2 For the avoidance of doubt, the Concessionaire accepts full responsibility for all matters in Section 4.4.1 above and the Concessionaire shall, subject to Section 4.11 (*Removal of* *Impediment*):

1. not be entitled to make any claim against the Authority whether in contract, tort or otherwise on any ground relating to the matters in Section 4.4.1 above; and
2. indemnify the Authority against all direct Losses sustained by the Authority and/or any third party in consequence of cleaning-up and otherwise dealing with any potentially hazardous natural or artificial materials substance capable of: (i) causing harm to any human or any other living organism; or (ii) damaging the environment or public health or posing a threat to public safety, including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances, and all substances (for which responsibility is imposed under the Applicable Standards) at the Project Site.

**4.5** **No Sale Or Creation Of Encumbrance**

4.5.1 The Concessionaire shall not, or permit any Concessionaire Engaged Persons to, dispose of, sell, sublease or create any Encumbrance of any nature whatsoever on the whole or any part of the Project Site or the Concession Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

**4.6** **Protection Of Site From Encroachments**

4.6.1 From the grant to the Concessionaire of the Vacant Possession of the Project Site by the Authority until the Transfer Date, the Concessionaire shall be fully responsible for and shall protect the Project Site from occupations, thefts, encroachments and Encumbrances. The Concessionaire hereby undertakes to indemnify the Authority, any Government Authority from any Losses, costs, claims expenses or charges incurred resulting from any breach of its obligations under this Section 4.6 (*Protection of Site from Encroachments*).

**4.7** [**Special/Temporary Right Of Way**

4.7.1 The Concessionaire shall, at its own cost and risk, obtain any special or temporary right of way that is not included in the Scope of the Project and description of Project Site and the Concession Assets, and is required by the Concessionaire in connection with access to the Project Site and shall also obtain (at its cost and expense) such other facilities, the provision of which is not the responsibility of the Authority under the Authority Agreements, as may be required by the Concessionaire for the purposes of the Project and its implementation in accordance with the Applicable Standards; provided, that the Authority shall reasonably facilitate the Concessionaire in obtaining the aforesaid special or temporary right of way.][[47]](#footnote-48)

**4.8** **Project Site Access**

4.8.1 The Authority, any relevant Government Authority, the Independent Auditor and the Independent Engineer and their representatives, officers, employees and agents shall have the right to access the Project Site for inspection and exercise of their rights and performance of their obligations under this Agreement and/or the Authority Agreements throughout the Concession Period; provided, that the exercise of such right of access shall not interfere with the Concessionaire’s performance of its rights and obligations under this Agreement. Further, during the Operations Period the Licence granted to the Concessionaire shall always be subject to the right of access of the Users.

**4.9** **Geological And Archaeological Finds**

4.9.1 Mining, geological or archaeological rights do not form part of the Licence and the Concessionaire agrees that it shall not have any mining rights or interest in the Geological Finds and that all rights and interests in the Geological Finds shall vest in the Authority or the relevant Government Authority.

4.9.2 The Concessionaire shall promptly, and in any event prior to starting construction and thereafter as and when there is a Geological Find, procure all no-objection certificates and consents from the Culture Department, Government of Punjab required under the Applicable Laws in respect of any Geological Finds found during the Concession Period. Furthermore, the Concessionaire shall take all reasonable precautions to prevent its employees, workmen and any other persons appointed by the Concessionaire having access to the Project Site, including the Concessionaire Engaged Persons, from removing or damaging the Geological Finds. The Concessionaire shall promptly inform the Authority of the discovery of Geological Finds and comply with such instructions as the Authority and/or the concerned Government Authority may issue in relation to the protection and/or removal of the Geological Finds.

4.9.3 Any expenses incurred by the Concessionaire as a result of the Geological Finds shall be reimbursed by the Authority (provided the same are duly certified by the Independent Engineer and the Independent Auditor) and in such case the provisions of Article 15 (*Relief Extensions & Relief* *Compensations*) shall apply.

4.9.4 In the event the Concessionaire is delayed inperformance of its obligations under this Agreement due to the occurrence of the circumstances set out in this Section 4.9 (*Geological and Archeological Finds*), the Concessionaire shall be granted extensions in the timeline in which it has to perform its obligations under this Agreement (provided that such extensions are duly certified by the Independent Engineer) and in such case the provisions of Article 15 (*Relief Extensions &* *Relief Compensations*) shall apply.

**4.10** **Existing Utilities And Roads[[48]](#footnote-49)**

4.10.1 [Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing [roads, right of way or] utilities on, under or above the Project Site are enabled by the Concessionaire to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that [road, right of way or] utility. The Concessionaire shall be responsible for not damaging the existing utilities [and roads] and in the event of any breach by the Concessionaire of its obligations under this Section 4.10.1, the Concessionaire shall be responsible for rectification of the same at its own cost, risk and expense; provided further the Authority shall only be responsible for the relocation of public utilities and delivery of Vacant Possession within [ninety (90) days] of the Concessionaire providing an alternate relocation plan for the removal of utilities as certified by the Independent Engineer. It is also clarified that the obligation of the Authority to shift the utilities shall be subject to the Concessionaire providing (i) an alternate duct/corridor to relocate such utilities, where such duct/corridor is on the Project Site; or (ii) a proposed re-location plan if the alternate duct/corridor is required to be off the Project Site, as determined by the Authority with the prior written approval of the relevant Government Authority, provided further, in certain cases where shifting of utilities does not require any alternate relocation plan/duct and/or corridor (as certified by the Independent Engineer) the Authority shall remove such utilities from the Project Site as a part of Vacant Possession.]

**4.11** **Removal Of Impediment**

4.11.1 Following delivery of Vacant Possession of the Project Site to the Concessionaire by the Authority, the Concessionaire shall be responsible for removal of all impediments, on the Project Site, whether physical or legal, to the construction and, Operation and Maintenance of the Concession Assets.

**4.12** **New Utilities And Roads**

4.12.1 The Concessionaire shall allow utility companies (subject to the prior consent of the Authority), access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities. This Section 4.12.1 shall not waive and/or relieve the obligations of the Concessionaire contained in the Authority Agreements.

4.12.2 The Concessionaire shall restore any damage to the Concession Assets caused pursuant to sub-section 4.12.1 (the **Utilities Affected** **Assets**) in accordance with the Applicable Standards and Good IndustryPractice at its own cost.

4.12.3 The Authority exclusively reserves the right to charge fees from the utility company or any other entity for allowing the passage of the telephone lines, water pipes, electric cables or other public utilities over or under the Project Site.

**4.13 Felling Of Trees**

4.13.1 The Concessionaire may at its own cost and as required by the Design Requirements and/or Construction Requirements fell the trees at the Project Site, provided that the Concessionaire shall be responsible for procuring any required approvals and/or permits from the Authority or any other Government Authority.

4.13.2 The trees removed by the Concessionaire shall be deemed to be owned by the Authority and shall be disposed in such manner as the Authority deems appropriate at the expense of the Concessionaire.

4.13.3 The Concessionaire shall (as a condition precedent to achievement of Substantial Completion), at its sole cost and expense, plant and maintain the trees required under the Applicable Standards.

**4.14** **Authority Indemnities In Respect Of Project Site**

4.14.1 The Authority shall indemnify and shall hold the Concessionaire harmless from:

1. any costs, claims expenses or charges incurred (in respect of the time period falling prior to delivery of Vacant Possession of Project Site to the Concessionaire) in relocating, rehabilitating or resettling persons in connection with making available the Project Site to the Concessionaire for implementation of the Project and for delivery of Vacant Possession of the Project Site to the Concessionaire; and
2. all Losses arising in connection with any defect in title in the Concessionaire’s License, which prevents, impedes or delays the Concessionaire from constructing or, Operating and Maintaining the Concession Assets in accordance with this Agreement; provided, that such Losses are not the consequence of any breach by the Concessionaire of this Agreement, the Project Site Licence Agreement and the Applicable Standards.

# Independent Engineer

## Selection

5.1.1 Within [fifteen (15) days] from the Effective Date, the Concessionaire shall provide the Authority with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer (the **First IE List**).

5.1.2 Within [fifteen (15) days] of receipt by the Authority of the First IE List, the Authority shall (subject to one (1) of the firms in the First IE List being acceptable to the Authority) select one firm from First IE List and the Parties shall appoint such firm as the Independent Engineer pursuant to the Independent Engineer Contract.

5.1.3 If the firms of on the First IE List are not acceptable to the Authority, the Concessionaire and the Authority shall appoint as the Independent Engineer a firm mutually acceptable to both Parties pursuant to the Independent Engineer Contract.

5.1.4 The Independent Engineer shall provide the services set out in the Independent Engineer Contract which shall be in accordance with the [Indicative Independent Engineer Terms of Reference/Draft Independent Engineer Contract].

**5.2** **Term Of Appointment Of The Independent Engineer**

5.2.1 The appointment of the Independent Engineer shall initially be for a term equivalent to the Construction Period (the **Independent** **Engineer Appointment Term**).

5.2.2 The Concessionaire shall ensure that at all times during the Concession Period an Independent Engineer is retained/appointed, for the purposes set out in this Agreement, provided that if delay in appointment is due to Authority delay, it shall constitute an Authority breach of this Agreement.

5.2.3 The Parties shall have the right to terminate the Independent Engineer Contract:

1. if, the Independent Engineer is adjudged insolvent and/or bankrupt and / or the winding up proceedings are filed against the Independent Engineer and/or the Independent Engineer files winding up proceedings in a court of law and / or any action for malpractice and/or misadministration is filed against the Independent Engineer in a court of law;
2. by mutual consent,

provided that the Parties shall not terminate the Independent Engineer Contract till such time as the replacement Independent Engineer has been appointed in accordance with Section 5.2.4.

5.2.4 In the event of termination of the Independent Engineer Contract, the Parties shall appoint a new Independent Engineer. The Authority shall select a firm or person from the First IE List or, if the Authority objects to the appointment of the firms named in the First IE List, the Concessionaire shall provide the Authority with a new list of three (3) reputable firms of engineers for appointment of the replacement Independent Engineer (the **New IE List**). Within [ten (10) days] of receipt by the Authority of the New IE List:

1. the Authority shall select a reputable firm from the New IE List and the Concessionaire shall appoint such firm as the Independent Engineer; or
2. if the Authority rejects the appointment of any of the firms provided in the New IE List, the Parties shall mutually agree to appoint a firm of engineers as the new Independent Engineer.

5.2.5 The term of appointment of the replacement Independent Engineer shall be the unexpired period of the Independent Engineer Appointment Term or such other term as may be mutually agreed between the Parties.

5.2.6 The Concessionaire shall ensure that all provisions of this Agreement pertaining to the Independent Engineer and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Engineer Contract.

**5.3** **Independent Engineer Authorized Representatives**

5.3.1 The Parties shall require the Independent Engineer to designate and notify representatives authorized to represent the Independent Engineer in all matter relating to this Agreement and sign for and on behalf of the Independent Engineer any communication or document required to be signed by the Independent Engineer (the **Independent Engineer Authorized Representative(s)**). Any document shall be valid and effective only if signed by such Independent Engineer Authorized Representative(s). The Independent Engineer may, by prior notice in writing to the Parties, substitute the Independent Engineer Authorized Representative.

**5.4** **Decision Of Independent Engineer & Dispute Resolution**

5.4.1 Subject to Section 5.4.2, any advice or instruction of the Independent Engineer shall be binding on the Parties.

5.4.2 Any Dispute between the Authority and the Concessionaire with regard to any advice or instruction of the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure.

**5.5** **Independent Engineer Remuneration**

5.5.1 The Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract (the **Independent Engineer Payments**). A breach of this Section 5.5 shall constitute a Material Breach of the Concessionaire’s obligations hereunder.

**5.6** [**Independent Engineer Payment Account**

5.6.1 The Concessionaire shall establish and maintain the Independent Engineer Payment Account from the Commencement Date and until the Transfer Date.

5.6.2 The Concessionaire shall issue irrevocable standing instructions to the Independent Engineer Payment Account Bank (in form and substance agreed between the Parties) (the **Independent Engineer Payment Account Standing Instructions**) in accordance with theIndependent Engineer Contract.

5.6.3 The Independent Engineer Payment Account Standing Instructions issued by the Concessionaire shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until the Transfer Date (or such other date as is mutually agreed between the Parties), and no withdrawal from the Independent Engineer Payment Account may be made by the Concessionaire, except as provided in this Agreement and the Independent Engineer Payment Account Standing Instructions. The Independent Engineer Payment Account Standing Instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.][[49]](#footnote-50)

# Independent Auditor

## Selection

6.1.1 Within [fifteen (15) days] from the Effective Date, the Concessionaire shall provide the Authority with a list of four (4) reputable firms of chartered accountants for appointment of the Independent Auditor (the **First IA List**).

6.1.2 Within [fifteen (15) days] of receipt by the Authority of the First IA List, the Authority shall (subject to one (1) of the firms in the First IA List being acceptable to the Authority) select a reputed firm of auditors from First IA List and the Parties shall appoint such firm as the Independent Auditor pursuant to the Independent Auditor Contract.

6.1.3 If the firms of auditors on the First IA List are not acceptable to the Authority, the Parties shall appoint as the Independent Auditor a firm a firm mutually acceptable to the Parties pursuant to the Independent Auditor Contract.

6.1.4 The Independent Auditor shall provide the services set out in the Independent Auditor Contract, which shall be in accordance with the [Indicative Independent Auditor Terms of Reference/ Draft Independent Auditor Contract].

## Term Of Appointment Of The Independent Auditor

* + 1. The appointment of the Independent Auditor shall initially be for a term equivalent to the Construction Period (the **Independent** **Auditor Appointment Term**).
    2. The Concessionaire shall ensure that at all times during the Concession Period an Independent Auditor is retained/appointed for the purposes set out in this Agreement provided that if delay in appointment is due to Authority delay, it shall constitute an Authority breach of this Agreement.
    3. The Parties shall have the right to terminate the Independent Auditor Contract:

1. if the Independent Auditor is adjudged insolvent and/or bankrupt and/or the winding up proceedings are filed against the Independent Auditor and/or the Independent Auditor files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Auditor in a court of law;
2. by mutual consent,

provided that the Parties shall not terminate the Independent Auditor Contract till such time as the replacement Independent Auditor has been appointed in accordance with Section 6.2.4.

6.2.4 In the event of termination of the Independent Auditor Contract, the Parties shall appoint a new Independent Auditor. The Authority shall select a firm or person from the First IA List or, if the Authority objects to the appointment of the firms named in the First IA List, the Concessionaire shall provide the Authority with a new list of three (3) reputable firms of chartered accountants for appointment of the replacement Independent Auditor (the **New IA List**). Within [ten (10) days] of receipt by the Authority of the New IA List the Authority shall:

1. select a reputable firm of chartered accountants from the New IA List and the Concessionaire shall appoint such firm as the Independent Auditor; or
2. if the Authority rejects the appointment of any of the firms provided in the New IA List, in which case, the Parties shall mutually agree to appoint one of the Big Four Accounting Firms as the new Independent Auditor.

6.2.5 The term of appointment of the replacement Independent Auditor shall be the unexpired period of the Independent Auditor Appointment Term or such other term as may be mutually agreed between the Parties.

6.2.6 The Concessionaire shall ensure that all provisions of this Agreement pertaining to the Independent Auditor and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Auditor Contract.

**6.3** **Independent Auditor Authorized Representative**

6.3.1 The Parties shall require the Independent Auditor to designate and notify representatives authorized to represent the Independent Auditor in all matters relating to this Agreement and sign for and on behalf of the Independent Auditor any communication or document required to be signed by the Independent Auditor (the **Independent Auditor Authorized Representative(s)**). Any document shall be valid and effective only if signed by such Independent Auditor Authorized Representative(s). The Independent Auditor may, by prior notice in writing to the Parties, substitute the Independent Auditor Authorized Representative.

**6.4** **Decision Of Independent Auditor & Dispute Resolution**

6.4.1 Subject to Section 6.4.2, any advice or instruction of the Independent Auditor shall be binding on the Parties.

6.4.2 Any Dispute between the Authority and the Concessionaire with regard to any advice or instruction of the Independent Auditor shall be resolved in accordance with the Dispute Resolution Procedure.

**6.5** **Independent Auditor Remuneration**

6.5.1 The Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Contract (the **Independent Auditor Payments**). A breach of this Section 6.5.1 shall constitute a Material Breach of the Concessionaire’s obligations hereunder.

**6.6** [**Independent Auditor Payment Account**

6.6.1 The Concessionaire shall establish and maintain the Independent Auditor Payment Account from the Commencement Date and until the Transfer Date.

6.6.2 The Concessionaire shall issue irrevocable standing instructions to the Independent Auditor Payment Account Bank (in form and substance agreed between the Parties) (the **Independent Auditor Payment Account Standing Instructions**) in accordance with theIndependent Auditor Contract.

6.6.3 The Independent Auditor Payment Account Standing Instructions issued by the Concessionaire shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until the Transfer Date (or such other date as is mutually agreed between the Parties), and no withdrawal from the Independent Auditor Payment Account may be made by the Concessionaire, except as provided in this Agreement and the Independent Auditor Payment Account Standing Instructions. The Independent Auditor Payment Account Standing Instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.][[50]](#footnote-51)

# Concessionaire’s Representations, Warranties And Certain Obligations & Undertakings[[51]](#footnote-52)

## Concessionaire Representations & Warranties

## The Concessionaire hereby represents and warrants to the Authority that:

1. it is duly organized and validly existing under the [Applicable Laws/applicable laws][[52]](#footnote-53), and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
2. it has taken all necessary corporate and other actions under the Applicable Laws to:

(i) authorize the execution, delivery and performance of this Agreement; and

(ii) validly exercise its rights and perform its obligations under this Agreement;

1. this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
2. it has the financial standing and capability to undertake and implement the Project in accordance with the Applicable Standards and neither the Concessionaire nor the Sponsors have committed a breach in respect of their payment obligations in relation to a financial indebtedness;
3. it is subject to the Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or any matters arising hereunder including any obligation, liability or responsibility hereunder;
4. the execution, delivery and performance of this Agreement does not and shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or of its constitutive and corporate charters, filings with Government Authorities, documents, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

1. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
2. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect on the performance of its obligations under this Agreement;
3. it has complied with Applicable Laws in all material respects, for the avoidance of doubt this includes obligations regarding declaration and payment of tax;
4. it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
5. the Sponsor has the Concessionaire’s Ownership And Management Control as of the Effective Date;
6. the Concessionaire and the Sponsor (along with its Affiliates (if any)) have the financial standing and resources to fund the required Equity for Ordinary Shares and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
7. no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the Authority or to any Government Authority in relation to the Concessionaire Permits contains any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading;
8. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority or any other Government Authority in connection therewith and neither the Concessionaire nor the Sponsor (together with their Affiliates) have engaged in any Corrupt Act in respect of the foregoing;
9. the Concessionaire and the Sponsors have complied with requirements of the Applicable Laws and the RFP in the preparation, finalization, delivery and submission of its Bid for the award of the Project and the Concession to the Concessionaire and have undertaken all acts and deeds necessary for award of the Concession and the Project to the Concessionaire in terms of the RFP and the Applicable Laws;
10. all representations, breach of which may cause a Material Adverse Effect, provided by the Concessionaire and/or Sponsor in its Bid submitted in response to the RFP, is true and accurate in all respects; and
11. it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity (if any) in any jurisdiction.

7.1.2 In the event that any occurrence or circumstance comes to the attention of the Concessionaire that renders any of its representations or warranties incorrect, the Concessionaire shall immediately Notify the Authority of the same. Such Notification shall not have the effect of remedying any such breach nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement or any Authority Agreement.

## Concessionaire’s General Undertakings

7.2.1 The Concessionaire hereby undertakes that it shall, at its own cost and expense:

1. comply with and perform all duties, obligations, acts, deeds and obligations set out in, in each case, the Applicable Standards;
2. continuously and diligently undertake, perform and complete all Project Works and Concession Assets in accordance with the Applicable Standards and within the Time For Completion;
3. ensure that all Project Works and Concession Assets comply with the Applicable Standards;
4. investigate, study, finance, design, construct, Operate and Maintain the Concession Assets in accordance with the Applicable Standards;
5. ensure and achieve:
6. each Project Milestone on or prior to its Project Milestone Date in accordance with the Applicable Standards including:
7. Substantial Completion on or prior to the Scheduled Substantial Completion Date;
8. Project Construction Completion on or prior to the Scheduled Project Construction Completion Date;
9. remedy any Defects & Deficiencies in the Project Works (including in the performance of the same) and/or the Concession Assets at its own cost and risk;
10. obtain and maintain all Concessionaire Permits (including any renewals of the same) in conformity with the Applicable Laws and be in compliance thereof, and deliver copies of the same to the Authority, the Independent Engineer and the Independent Auditor from time to time;
11. be in compliance with and perform all its obligations in accordance with, in each case, the Applicable Laws and fulfill the requirements (including the environmental requirements) under the Applicable Laws,
12. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, Licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
13. appoint, supervise, monitor and control as necessary, the activities of the Concessionaire Engaged Persons (including be responsible for those of the Contractors under their respective and relevant Project Agreements);
14. make its own arrangements for materials (including construction materials), parts, components, supplies, tools, machinery etc., for performance of the Project Works;

1. be responsible for strict compliance with the relevant Applicable Standards notwithstanding the appointment and/or engagement by it of the Concessionaire Engaged Persons to implement the Project (or any part thereof) and performance of the Project Works (or any part thereof);
2. keep and maintain the Project Site free from all encroachments and take all steps necessary to remove encroachments, if any;
3. except as provided in this Agreement, make payments to the relevant Government Authority, if required, for provision of such services as are not provided in the normal course or are available only on payment;
4. afford access of the Project Site to the authorized representatives of the Authority, the Independent Engineer, Independent Auditor and any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Works and the Concession Assets and, upon reasonable notice, to investigate any matter within their authority, and provide to such Persons assistance reasonably required to carry out their respective duties and functions;
5. not engage in any business or activity other than the business or related to, and conducted for, the purpose of the Project and/or other than as provided in this Agreement;
6. maintain its corporate existence and its rights to carry on operations of its business;
7. provide all necessary assistance to the Authority Representative, as the Authority Representative may reasonably require for the performance of its duties and services;

1. make all payments to the Authority of the amounts due and payable by the Concessionaire in accordance with the terms of this Agreement and the Authority Agreements;
2. ensure that no damage is caused to any property belonging to the Authority and/or other third parties in the execution of the Project Works;
3. coordinate and manage all the Project Works and be responsible for the coordination and general management of the Project Works;
4. provide to the Authority, the Independent Auditor and the Independent Engineer all such information relating to the Project Works and the execution and completion of the same as is reasonably requested by the Authority, the Independent Auditor and the Independent Engineer from time to time;
5. Notify the Authority, the Independent Engineer and/or the Independent Auditor (as applicable) without undue delay upon becoming aware of any changes in the information provided and/or to be provided to the same by the Concessionaire pursuant to the Applicable Standards;
6. provide all necessary assistance to the Independent Engineer and the Independent Auditor as the same may be reasonably required for the performance of their duties and services in accordance with the Independent Engineer Contract and the Independent Auditor Contract, respectively, and for the performance of their roles and obligations contemplated under this Agreement and the Authority Agreements;
7. ensure that the Project Agreements entered into by the Concessionaire shall not be inconsistent with the terms and conditions of the Authority Agreements;
8. submit from time to time to the Authority and the Independent Engineer its detailed design, construction methodology and quality assurance procedures for implementation and completion of the Project in accordance with the Applicable Standards and the same shall be subject to the review and approval of the Independent Engineer;
9. undertake, do and perform from time to time, all such acts, deeds and things as may be necessary or required before commencement of the Project Works (or any part thereof) for the performance of the Project Works under and in accordance with the Applicable Standards;
10. construct, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer at the Project Site commencing from the Commencement Date until the Transfer Date;
11. ensure the safety of the Concession Assets and the Users in accordance with the Safety Requirements;
12. maintain the Project Site and the Concession Assets in good condition;
13. comply with the Project Requirements;
14. the Concessionaire has complied with all the conditions set-out in the [IEE/EIA Approval][[53]](#footnote-54) as issued and approved by the Punjab Environmental Protection Agency and has submitted a copy of each of the same (i.e. the report and its approval) to the Authority (with a copy delivered to the Independent Engineer and the Independent Auditor);
15. the Concessionaire shall supervise the works during the relocation of existing utilities, and all utility stakeholders, in relation to the agreed alignments (for excavation, laying, back-filling, erection of utility poles etc.) by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities and roads for the relocation of utilities if encountered.

## Concessionaire Engaged Persons

7.3.1 The Concessionaire shall throughout the Concession Period engage and have the requisite staff and officers as its Concessionaire Engaged Persons as it may be required for complying and fulfilling its obligations under this Agreement including as may be required to implement and supervise the Project (or any part thereof) and carry out the Project Works (or any part thereof), to deal with the Independent Engineer, Independent Auditor, the Authority and to be responsible for all necessary exchange of information required pursuant to the Applicable Standards.

7.3.2 The Concessionaire shall ensure that the Concessionaire Engaged Persons are experienced and qualified for the purposes of the Project. The Concessionaire shall be responsible for maintaining harmony and good industrial relations among the Concessionaire Engaged Persons.

7.3.3 The Concessionaire shall be fully and solely responsible for:

1. observance by the Concessionaire Engaged Persons of all the provisions of the Authority Agreements and requirements of the Applicable Standards;
2. the acts, omissions, failure to perform, breaches or defaults of the Concessionaire Engaged Persons of the Applicable Standards and/or the Authority Agreements.

7.3.4 Notwithstanding anything to the contrary, the Authority shall not be liable or responsible in any manner whatsoever under any Applicable Laws, in contract, tort or otherwise in respect of the Concessionaire Engaged Persons and any engagement by the Concessionaire of any of the Concessionaire Engaged Persons shall not release or discharge the Concessionaire of any of its liabilities, responsibilities or obligations under the Applicable Standards and the Authority Agreements. Furthermore, the Concessionaire shall not be entitled to any relief or compensation (including any extension of Time For Completion and/or monetary compensations) under this Agreement or otherwise for any acts, omissions, failures, breaches or defaults of the Concessionaire Engaged Persons.

7.3.5 The Concessionaire shall use reasonable efforts to engage local employees and contractors as its Concessionaire Engaged Persons. Employment of any foreign Concessionaire Engaged Persons shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, (if required), and the obligation to apply for and obtain the same shall be the sole responsibility of the Concessionaire. Refusal of or inability to obtain any such permits and approvals by the Concessionaire or the relevant Concessionaire Engaged Persons shall not constitute a Force Majeure Event, and shall not excuse the Concessionaire from the performance and discharge of its obligations and liabilities under the Applicable Standards and the Authority Agreements.

7.3.6 The Concessionaire shall ensure that the Concessionaire Engaged Persons are available to attend any meetings with the Authority, the Independent Engineer and/or the Independent Auditor at all reasonable times, as required and Notified by the Authority, the Independent Engineer and/or the Independent Auditor (as applicable) to the Concessionaire. All costs for attending such meetings by (including those relating to preparation and attendance in such meetings by the Concessionaire Engaged Persons) shall be on the Concessionaire’s account.

## Concessionaire Authorized Representative & Concessionaire Project Engineer

7.4.1 Within [seven (7) days] following the Effective Date, the Concessionaire shall:

1. appoint in accordance with the Applicable Standards and Notify to the Authority, the Independent Engineer and the Independent Auditor of its representative duly authorized to deal with the Authority, the Independent Engineer and the Independent Auditor in respect of all matters under or arising out of or relating to this Agreement (the **Concessionaire Authorized** **Representative**);
2. appoint (at its sole cost and expense) in accordance with the Applicable Standards and with the: (i) prior written consent of the Authority (which consent shall be deemed to be accorded in case no response from the Authority is received within fifteen (15) days of Authority’s receipt of the Concessionaire’s written request for such consent); and (ii) Notification to the Independent Engineer and the Independent Auditor, one or more established consulting engineering firm and/or individual(s) to design and supervise the Construction Works and ensure that the Construction Works are performed and are in accordance with the Applicable Standards and Good Industry Practice (the **Concessionaire Project Engineer**);
3. ensure that the Concessionaire Authorized Representative and the Concessionaire Project Engineer perform their respective obligations in the same manner as the Concessionaire is required to perform its obligations under this Agreement and in accordance with Applicable Standards; and
4. prior to the appointment or any substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer, the Concessionaire shall submit the details of the same to the Authority in writing (with copies to the Independent Engineer and the Independent Auditor) and shall provide any other information reasonably requested by the Authority in respect of the same.

7.4.2 The Concessionaire shall substitute the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer only with the prior written approval of the Authority; provided, however, in the event the Authority fails to grant its approval or disapproval to the Concessionaire for the appointment and/or substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer within fifteen (15) days following the receipt of such request by the Authority from the Concessionaire, the approval of the Authority for the appointment and/or substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer shall be deemed accorded. The approval by the Authority shall not be unreasonably withheld, conditioned or delayed. The liability of the Concessionaire for the performance of its obligations pursuant to this Agreement shall not be rescinded, waived, reduced, or in any manner adversely impacted by the approval or otherwise of the Authority pursuant to this Section.

## the EPC Contractor & The O&M Contractor

7.5.1 The Concessionaire shall:

1. enter into the EPC Contract and the O&M Contracts on an arm’s length basis and on commercially viable terms;
2. ensure that the EPC Contractor or the O&M Contractor perform their respective obligations in the same manner as the Concessionaire is required to perform under this Agreement; and
3. deliver copies of each of the EPC Contract(s) and the O&M Contract(s) to the Authority within [five (5) days] of signing of each of the aforesaid EPC Contract(s) and the O&M Contract(s).

7.5.2 The Concessionaire shall be liable for losses (including any Losses) resulting from the EPC Contract and the O&M Contract as a result of the expiry of the Concession Period or Termination.

7.5.3 The Concessionaire hereby represents and acknowledges that acceptance of the Bid was on reliance, that the EPC Contractor shall be the Designated EPC Contractor and the O&M Contractor shall be the Designated O&M Contractor

7.5.4 Any substitution and/or replacement of the Designated EPC Contractor or the Designated O&M Contractor shall be subject to the approval of the Authority, which approval shall be at the sole and absolute discretion of the Authority. The Concessionaire shall ensure that the substitute EPC Contractor or the O&M Contractor is, at least, technically, financially and otherwise capable in terms of the criteria provided in the RFP.

7.5.5 The Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters) shall have the right to approve and/or disapprove any substitution of the Designated EPC Contractor and/or the Designated O&M Contractor, if any, in the event (in the reasonable opinion of the Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters)):

1. such substitute EPC Contractor is at least as technically and financially capable of performing the Construction Works as the Designated EPC Contractor; or
2. such substitute O&M Contractor is at least as technically and financially capable of performing the Operations and Maintenance as the Designated O&M Contractor;

and that the substitute EPC Contractor and/or the O&M Contractor is/are, at least, technically, financially and otherwise capable in terms of the criteria provided in the RFP.

7.5.6 The execution of the EPC Contract(s) and/or the O&M Contract(s), or any amendment thereof shall be subject to the prior approval of the Independent Engineer to ensure conformity with the terms of this Agreement. The Concessionaire shall deliver to the Independent Engineer copies of the proposed EPC Contract(s) and O&M Contract(s), or any amendment thereof (with a copy to the Authority).

7.5.7 The Authority shall, within [fifteen (15) days] of its receipt of the proposed EPC Contract(s) and/or the O&M Contract(s), provide its comments or observation on the same, if any, to the Independent Engineer. The Independent Engineer shall within [twenty-eight (28) days] of the delivery of the proposed EPC Contract(s) and O&M Contract(s) and/or any amendments thereof by the Concessionaire, grant its approval or disapproval of the same, in consultation with the Authority, and/or after removing any objection by the Authority.

7.5.8 If the Independent Engineer disapproves, the Concessionaire shall ensure that the EPC Contract(s) and/or the O&M Contracts and/or any amendments thereof are revised and re-submitted for approval in accordance with this Section 7.5.8. In the event no approval or objections to the proposed EPC Contract(s) and/or the O&M Contracts is granted by the Independent Engineer within [twenty-eight (28) days] of the delivery of the same by the Concessionaire, it shall be deemed to be approved by the Independent Engineer.

7.5.9 The Concessionaire shall, within [seven (7) days] of signing, deliver certified (as being true and correct) copies of the signed EPC Contract(s) and O&M Contract(s), together with all amendments thereto, to the Authority, the Independent Engineer and the Independent Auditor.

## concessionaire Permits

7.6.1 The Concessionaire shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Concessionaire Permits in the prescribed form and with the prescribed fee (in each case, in accordance with the Applicable Standards) to the relevant Government Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the Applicable Standards.

7.6.2 The Concessionaire shall make or cause to be made, at least monthly prior to the Project Construction Completion Date, and at least quarterly thereafter, reports listing its schedule for obtaining the Concessionaire Permits including filing of the application forms or renewal application forms, the status of any Concessionaire Permit applications then outstanding, notifications of the granting or denial of any Concessionaire Permit or Concessionaire Permit renewal, and notifications of any violations of any Concessionaire Permit. Each report shall be submitted to the Authority, the Independent Engineer and the Independent Auditor and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Concessionaire Permit or Concessionaire Permit application that may materially affect the Concessionaire’s performance under any Authority Agreement. In the event of any Lapse of Consent, the Concessionaire shall submit a report pursuant to this Section 7.6.2 within [three (3) days] after becoming aware thereof.

## Access Route & Transportation

7.7.1 The Concessionaire shall be responsible for selection and usage of all transportation means, transportation routes, roads, bridges, highways and routes within, and to and from the Project Site in respect of performance of the Project Works and the Concessionaire shall be responsible for any claims arising from any Person in respect of the same. The Concessionaire shall (as between the Parties) be responsible for the repair of access routes damaged by the Concessionaire and/or the Concessionaire Engaged Persons.

## taxes And Subsidies

7.8.1 The Concessionaire shall be responsible to make all payments in respect of the rates, taxes (as applicable), charges, levies, assessments or equivalent taxes levied on it.

7.8.2 The Concessionaire recognizes that the Authority or any other Government Authority shall not provide any guarantee, subsidy, grant or any financial support of any nature to the Concessionaire in respect of the Project other than as provided under the Authority Agreements.

## Protection Of The Environment

## The Concessionaire shall comply with all Applicable Standards pertaining to protection of the environment in its arrangements and execution of Project Works on the Project Site. The Concessionaire shall take all necessary steps to protect the environment (both on and off the Project Site), and shall not cause damage and nuisance to people and property resulting from pollution, noise and other results of the Project Works and its operations.

## The Concessionaire shall develop the Project health, safety and environmental management plan, which plan shall be developed on the basis of:

# international guidelines, Applicable Standards and Good Industry Practices applicable to the performance of the Project Works; and

# in accordance with the Schedule [◙] *(Minimum Environmental Management Requirements)* (the “Environmental Management Plan”).

## The Concessionaire shall submit its Environmental Management Plan to the Independent Engineer (with a copy to the Authority) for approval within [fourteen (14) days] of the Effective Date.

## Within [fifteen (15) days] of receipt, the Independent Engineer and the Authority shall review the Environmental Management Plan, and the Independent Engineer (following consultation with the Authority), shall either:

(a) approve the Environmental Management Plan; or

(b) reject the Environmental Management Plan and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Environmental Management Plan is granted in accordance with Section 7.9.4 above, the Environmental Management Plan shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised Environmental Management Plan no later than [ten (10) days] from receipt of the rejection and/or comments/observations under Section 7.9.4 (b) above, and the approval process under this Section 7.9 shall be repeated.

## The Concessionaire undertakes to indemnify, defend and hold the Authority harmless from any and all Losses, liabilities, claims, damages, costs, penalties, fines, expenses, fees (including reasonable attorney's fees) and charges of any nature associated with any non-compliance by the Concessionaire of its obligations contained in this Section 7.9 *(Protection of* *Environment)*.

## Internal Infrastructure Linkages

## The Concessionaire shall be responsible (at its own cost and risk) for internal infrastructure linkages required (if any) for the Project such as waste water and storm water drainage at the Project Site. Where requested by the Concessionaire, the Authority shall use reasonable efforts to facilitate the Concessionaire in liaising with the respective Government Authorities, provided, however it shall at all times remain the Concessionaire’s responsibility to fulfil any monetary or other compliances, as may be required by such Government Authorities and the Applicable Standards.

## Emergency Decommissioning

## If during the Operations Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that requires de-commissioning and closure to the Users of the whole or any part of the Concession Assets (the Decommissioned Project Area), the Concessionaire shall be entitled to de-commission and close the Decommissioned Project Area to the Users for so long as such Emergency and the consequences thereof warrant (the Emergency Decommissioning). The Concessionaire shall immediately notify the Authority and the Independent Engineer of the Emergency Decommissioning and the particulars thereof.

## The Concessionaire shall abide by (i) the Applicable Standards (including the Safety Requirements); and (ii) any directions issued by the Independent Engineer, in dealing with such Emergency Decommissioning.

## The Independent Engineer shall, within [seven (7) days] from the date of the Emergency Decommissioning certify whether the Emergency Decommissioning was:

1. required; or
2. not required, and notify the Concessionaire to re-commission the Decommissioned Project Area, without any delay.

## The Concessionaire shall re-commission the Decommissioned Project Area as soon as the Emergency Decommissioning is no longer required including following the Independent Engineer’s certification in accordance with Section 7.11.3(b). The Concessionaire shall notify the Authority and the Independent Engineer of the re-commissioning of the Decommissioned Project Area immediately.

## The Emergency Decommissioning of the Decommissioned Project Area and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected Persons/Users by means of public announcements/notice by the Concessionaire.

## Upon re-commissioning, the Independent Engineer shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Project Area and made the same available for the Users.

## Subject to Section 7.11.8, all Losses, expenses, charges, fees, overheads and costs and all delays resulting from the Emergency Decommissioning (and re-commissioning of the Decommissioned Project Area) shall be borne by the Concessionaire.

## Where the Emergency Decommissioning results directly from an Authority Event of Default and/or a Political Event, the Concessionaire shall be entitled to issuance of a Relief Request and the provisions of Article 15 *(Relief Extensions & Relief Compensations)* shall apply, unless the Independent Engineer certifies that the Emergency Decommissioning was not required and notifies the Concessionaire to re-commission the Decommissioned Project Area under Section 7.11.3(b).

## Restoration Of Loss Or Damage To Project

## Save as a direct result of a Permitted Event, if the Project Works and/or Concession Assets suffer any damage during the Concession Period, the Concessionaire shall, at its cost, remedy such damage in accordance with the Applicable Standards so that the Project Works and the Concession Assets at all times conform to the Applicable Standards.

## Accounts And Reports

## Appointment Of Auditors

The Concessionaire shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment, as statutory auditors, of a reputed firm of independent chartered accountants reasonably acceptable to the Authority and the Independent Auditor.

## Specific Records

The Concessionaire shall maintain complete and accurate records of all transactions relating to the Project Works, including but not limited to any Relief Order, Relief Costs, extensions of Time For Completion, Change of Scope, minutes of board meetings and shareholder meetings. All such records shall be subject to inspection and audit by the Authority, the Independent Engineer and the Independent Auditor as and when required during the Concession Period.

## Periodic Reports

The Concessionaire shall furnish to the Authority, the Independent Engineer and the Independent Auditor:

1. the Construction Monthly Progress Report and the O&M Monthly Status Report;
2. as soon as available but in any event within [sixty (60) days] of filing, two (2) copies of all documents filed in compliance with the requirements of the Companies Act, 2017 as amended or superseded from time to time or any other Applicable Laws; and
3. as soon as available, a report on any factors materially and adversely affecting, or that might materially and adversely affect, the Project, the Project Works or the Concessionaire’s business and operations.

## Reporting Of Changes

The Concessionaire shall, at least [fourteen (14) days] prior to its becoming effective, report to the Authority, the Independent Engineer and the Independent Auditor any contemplated:

1. material change in its memorandum and articles of association;
2. change in its fiscal year;
3. change in the constitution of its board of directors;
4. change in its chief executive officer, and
5. registration of a transfer of Ordinary Shares to any Person who thereby becomes a registered holder of the issued Ordinary Shares, or of a transfer of Ordinary Shares to or from a Person or entity who, immediately prior to such transfer, held greater than [five percent (5%)] of the issued Ordinary Shares; provided, however, that, reporting as aforesaid shall not relieve the Concessionaire from its obligations or liabilities towards any other Government Authority having jurisdiction over any such matter.

## Lists Of Financiers And Creditors

Together with the periodic reports required by Section 7.13.3, the Concessionaire shall also furnish to the Authority, the Independent Engineer and the Independent Auditor a list of:

1. the Financiers; and
2. each of its creditors to which the Concessionaire has an outstanding obligation of PKR [◙] or more, in each case, along with statements or schedules of repayment of local and foreign loans/debts to such Financiers and creditors duly certified by its statutory auditors on a six-monthly basis in each Accounting Year. The report shall also indicate any changes, as compared to the report submitted the previous Accounting Year that might have occurred.

## Information Regarding Statutory Notice/Winding Up Proceedings

## The Concessionaire shall, within [seven (7) days] of receipt thereof, provide to the Authority, the Independent Engineer and the Independent Auditor a copy of any notice that the Concessionaire is served under Sections 301 and 302 (as such Sections may be amended, modified or relocated) of the Companies Act, 2017.

## The Concessionaire shall provide to the Authority, the Independent Engineer and the Independent Auditor all information in respect of any further actions taken following any notice under Sections 301 and 301 (as such Sections may be amended, modified or relocated) or any other element of the Companies Act, 2017.

## Additional Information

## Within ten (10) days of a request by the Authority, the Concessionaire shall provide all information reasonably requested by the Authority in connection with the Project, the Project Works, the Concessionaire Engaged Persons and/or the Concession Assets.

## Corrupt Acts

## The Concessionaire represents and warrants that it has:

1. not obtained or induced the procurement of this Agreement and/or any Project Agreement and/or any Authority Agreement and/or any contract, Concessionaire Permit, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement and/or any Authority Agreement and/or the Project from the Authority and/or any Government Authority through any corrupt (including Corrupt Act) or illegal business practice;
2. fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Concessionaire for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project;
3. not given or agreed to give and shall not give, or agree to give to any Person directly or indirectly, including its Affiliates, Concessionaire Engaged Persons, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder’s fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of any Authority Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to any Authority Agreement or the Project Agreement except that which has been expressly declared pursuant hereto.

## The Concessionaire undertakes to the Authority that it will throughout the Concession Period use all reasonable endeavours to have in place adequate procedures designed to prevent persons associated with the Concessionaire from committing any Corrupt Act.

## The Concessionaire accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. If any of the representations and warranties made by the Concessionare in this Section 7.15 are proved to be materially incorrect then:

1. in addition to constituting a Concessionaire Event of Default under Section 22.1 *(Concessionaire Event of Default),* at the option of the Authority any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Authority, be voidable and without legal effect;
2. the Concessionaire shall indemnify the Authority for any loss (including Losses) or damage incurred by it and further pay compensation to the Authority in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder’s fee or kickback paid or given by the Concessionaire (either directly or indirectly through any natural or juridical Person, including its Affiliates, Concessionaire Engaged Persons, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors).

## No Relief From Liability

## Notwithstanding anything to the contrary contained in this Agreement:

1. the examination, review, non-objection or the giving or withholding of consent or approval by the Authority, the Independent Engineer, the Independent Auditor or any Government Authority, or the making of objections, representations, comments or suggestions; and/or
2. any other act or omission of the Authority, the Independent Engineer, the Independent Auditor, any Government Authority or of any other Person acting or purporting to act on their behalf,

in relation to any aspect of the Concession Asset or Project Works (including any agreement, document, instrument, drawing, specifications or design proposed by the Concessionaire), shall not, in each case relieve the Concessionaire of any duty, obligation or liability in relation to the Concession Asset and the Project Works whether under this Agreement, Applicable Standards or otherwise, or diminish or vary any such duty, obligation or liability, whether by way of contribution or otherwise. Furthermore, the Authority, the Independent Engineer, the Independent Auditor or any Government Authority shall not be liable to the Concessionaire or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

## The Concessionaire shall, at all times, be responsible and liable for all its obligations under the Applicable Standards notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

## Related Party Transactions

## Except with the prior written approval of the Authority, the Concessionaire shall not enter into any Related Party Transactions, other than Related Party Transactions which are no less favourable to the Concessionaire than those that could have been obtained in a comparable arm's-length transaction by the Concessionaire with an unrelated Person.

## The Authority shall have the right to review the basis for all costs charged, directly or indirectly, to the Concessionaire by a Concessionaire Related Person. The Concessionaire shall give prior written notice to the Authority of any Related Party Transaction to be entered into by the Concessionaire prior to entry therein together with all relevant details relating thereto.

## 

## Without Prejudice

## The representations, warranties, undertakings, obligations, roles and responsibilities of the Concessionaire set out in this Article 7 (*Concessionaire’s Representations, Warranties And* *Certain Obligations & Undertakings*) shall not limit or prejudice in any manner therepresentations, warranties, undertakings, obligations, roles and responsibilities of the Concessionaire set out elsewhere in the Authority Agreements.

# Authority Representations, Warranties And Certain Obligations & Undertakings

## Authority Representations & Warranties

## The Authority hereby represents and warrants to the Concessionaire that:

1. it has taken all necessary actions under the Applicable Laws to:

(i)  authorize the execution, delivery and performance of this Agreement; and

(ii) validly exercise its rights and perform its obligations under this Agreement;

1. this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
2. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
3. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a Material Adverse Effect;
4. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its material obligations under this Agreement; and
5. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil liabilities which in the aggregate have or may have a Material Adverse Effect.

## General Undertakings

8.2.1 The Authority hereby undertakes to the Concessionaire that it shall:

1. ensure peaceful use of the Project Site by the Concessionaire without any let or hindrance from the Authority and/or any person or Government Authority (except as may be required under the Applicable Laws) claiming through or under them;
2. upon written request of the Concessionaire, provide police support at and/or near the Project Site as required by the Concessionaire; and
3. reasonably support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of the Authority Agreements.

## Support For Concessionaire Permits & Conditions For Concessionaire Permits

8.3.1 Subject to the Concessionaire’s full compliance with Section 7.6 (*Concessionaire Permits*), where it becomes necessary and upon request of the Concessionaire, the Authority shall use reasonable efforts to assist the Concessionaire to enable it to secure the Concessionaire Permits or reissuance(s) thereof filed pursuant to Section 7.6 (*Concessionaire Permits*) where there has been unnecessary delay by the relevant Government Authority in granting the Concessionaire Permit. Any request for support under this Section shall be made by the Concessionaire and shall be accompanied with copies of the application for the Concessionaire Permit, any notice that the issuance or reissuance of the Concessionaire Permit was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Concessionaire Permit to date.

8.3.2 Subject to this Section 8.3.2 and provisions in this Agreement relating to Change in Law and Lapse of Consent, the Authority or any Government Authority may attach such terms and conditions to the issuance or renewal of any of the Concessionaire Permits as are in accordance with the Applicable Laws and the attachment of such terms and conditions shall not in and of itself constitute a Lapse of Consent, breach of this Agreement by the Authority, a Force Majeure Event, or an Authority Event of Default. The Concessionaire and its Concessionaire Engaged Persons shall abide by all such terms and conditions. If the Concessionaire and/or its Concessionaire Engaged Persons fails to abide by any term or condition of any Concessionaire Permit, then the Authority or any Government Authority may exercise any power pursuant to the Applicable Laws in respect of such failure. The exercise of any such aforesaid power pursuant to the Applicable Laws shall not of itself constitute a Lapse of Consent, breach of this Agreement by the Authority, a Force Majeure Event, or an Authority Event of Default; provided, further, that nothing in this Section shall limit the Authority or any Government Authority from taking any action in relation to a breach of, or non-compliance with, a Concessionaire Permit which it is entitled to take under the Applicable Laws.

## Procedure

## To the extent permitted under the Applicable Laws, all applications and any other necessary requisites for Concessionaire Permits, whether for the Concessionaire and its Concessionaire Engaged Persons, are to be routed through the Concessionaire.

## Authority Representative

## Unless already appointed prior to the Effective Date, the Authority shall, within [fourteen (14) days] following the Effective Date, appoint its representative duly authorized to deal on its behalf to facilitate on all matters under or arising out of or relating to the Authority Agreements (the Authority Representative). The Authority may, by notice in writing to the Concessionaire, substitute the Authority Representative at its discretion at any time.

## The Authority Representative shall oversee the day to day implementation of the Project and facilitate implementation of the Project in accordance with the Authority Agreements.

## The function of the Authority Representative shall be:

1. to protect the interest of the Authority by monitoring and inspecting the progress of the Project Works that at all times shall be carried out under the supervision of the Independent Engineer, in accordance with this Agreement, the Applicable Standards, Project Requirements and Good Industry Practices;
2. coordinate and organize services to be provided by other Government Authorities, agencies including public utility agencies, emergency services and traffic policing, during the construction of the Project Facilities; and
3. clarify and resolve with the Concessionaire Authorized Representative, the Independent Engineer, the Independent Auditor any difficulties and Disputes arising pursuant to this Agreement.

## Authority Overriding Powers

## Notwithstanding anything contained in this Agreement, the Authority shall, to the extent deemed necessary by the Authority or as directed by the relevant Government Authority, have the right upon the occurrence of a Force Majeure Event, [or if it reasonably believes there to be a serious risk to the environment or health or safety of persons, or in order to discharge a statutory duty][[54]](#footnote-55), to take over the performance of any or all the obligations of the Concessionaire (the Authority Overriding Power Event).

## Upon occurrence of an Authority Overriding Power Event, the Authority shall exercise such control over the Concession Assets and / or give such directions to the Concessionaire and/or the Concessionaire Engaged Persons as may be deemed necessary by the Authority; provided, however, that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required for the Authority Overriding Power Event.

## The Concessionaire undertakes to act in accordance with the instructions issued by the Authority pursuant to the provisions of this Section 8.6 (*Authority Overriding Powers*) and to provide assistance and co-operation to the Authority.

## In the event the Authority exercises its overriding powers under this Section 8.6 (*Authority Overriding Powers*) as a direct result of which the Concessionaire incurs any costs and expenses and/or is delayed in performance of its obligations under this Agreement, the Concessionaire shall be entitled to issuance of a Relief Request and in such case, the provisions of Article 15 *(Relief Extensions & Relief* *Compensations)* shall apply.

## Sovereign Immunity

## The Authority unconditionally and irrevocably:

1. agrees that the execution, delivery and performance by it of the Authority Agreements constitute private and commercial acts and not public or governmental acts;
2. agrees that should any proceedings be brought against it or its assets (other than any of its assets which are significant in respect of national security of Pakistan (the **Protected Assets**)) in any jurisdiction in relation to the Authority Agreements or anytransaction contemplated by the Authority Agreements, no immunity, sovereign or otherwise, from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Protected Assets); and
3. waives any such right of immunity, sovereign or otherwise, which the Authority or its assets (other than the Protected Assets) now has or may acquire in the future, in respect of proceedings under the Authority Agreements.

## Without Prejudice

## The representations, warranties, undertakings, obligations, roles and responsibilities of the Authority set out in this Article 8 (*Authority Representations, Warranties And Certain Obligations Undertakings*) shall not limit or prejudice in any manner the representations, warranties,undertakings, obligations, roles and responsibilities of the Concessionaire set out elsewhere in the Authority Agreements.

## Project PPP Node

## The Project PPP Node shall oversee day to day implementation of the Project in accordance with the Authority Agreements.

# Indemnities & Limitation of Liability

****

## General Indemnity

## The Concessionaire

The Concessionaire shall indemnify and defend the Authority, for itself and its officers, servants, agents, Government Authority and Government owned and/or controlled entities/enterprises relating to the Project (the **Authority Indemnified Persons**) against, and hold the Authority Indemnified Persons harmless from, at all times after the Effective Date, any and all Losses (including any environmental damages) or liability, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Authority Indemnified Persons for:

1. personal injury or death to persons;
2. damage to property; and
3. third party actions, claims and expenses;

arising out of the performance or non-performance of the Concessionaire and the Concessionaire Engaged Persons of its obligations under this Agreement.

9.1.2 The Authority

Except as specifically provided elsewhere in this Agreement, the Authority shall indemnify and defend the Concessionaire, for itself and as trustee for its officers, directors and employees against (the **Concessionaire Indemnified Persons**), and hold the Concessionaire Indemnified Persons harmless from, at all times after the Effective Date, any and all Loss incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon the Concessionaire Indemnified Persons for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Authority in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 9.1.2 shall apply to any Loss in respect of and to the extent of which the Concessionaire receives proceeds from insurance policies or indemnification from another party relating to the Project.

9.1.3 Joint Negligence

In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties (as determined by the Independent Engineer and the Independent Auditor), each Party shall be liable under this indemnification in proportion to its relative degree of fault, as determined by the Independent Engineer and the Independent Auditor.

**9.2** **Assertion Of Claims To Exceed Minimum Indemnification Amount**

9.2.1 Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Accounting Year, exceed the Minimum Indemnification Amount. For the purposes of this Section 9.2 (*Assertion of Claims to Exceed Minimum* *Indemnification Amount*), a Loss (or claim for indemnification) shall be deemed to arise inthe Accounting Year in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one (1) Accounting Year, in the Accounting Year such event ends.

**9.3** **Notice And Contest Of Claims**

9.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 9 *(Indemnities&* *Limitation of Liability)* (the**Indemnified Party**) it shall notify the other Party (the**Indemnifying Party**) within [twenty-one (21) days] of receipt of the claim or demand andshall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

**9.4** **Defence Of Claims**

9.4.1 The Indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defence of such claim, action, suit or proceeding, subject to the prior approval of the Indemnified Party; provided, however, it gives prompt notice of its intention to do so to the Indemnified Party.

9.4.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 9.4.1, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder provided that the Indemnified Party may not make any admission of guilt or propose settlement without prior written consent of the Indemnifying Party.

9.4.3 Upon assumption by the Indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding prior to the Indemnifying Party’s acknowledgment of the Indemnification and assumption of the defence.

9.4.4 Following acknowledgment of the indemnification and assumption of the defence by the Indemnifying Party, the Indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

1. the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party; or
2. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
3. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
4. the Indemnified Party shall have reasonably concluded and specifically Notified the Indemnifying Party either:
5. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement.

Provided that if Sections 9.4.4, (b), (c) or (d) shall be applicable, then the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**9.5** **No Consequential Claims**

9.5.1 Notwithstanding anything to the contrary contained in this Article 9 (*Indemnities &* *Limitation of Liability*), the indemnities herein provided shall not include any claim orrecovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**9.6** **Survival On Termination**

9.6.1 The provisions of this Article 9 (*Indemnities & Limitation of Liability*) shall survive Termination by a period of [five (5) years] and the provisions of this Article 9 (*Indemnities & Limitation of Liability*) shall apply solely in respect of claims that arose immediately on or prior to the Termination Date.

**9.7** **Limitation Of Liability & Indemnification For Fines And Penalties**

9.7.1 Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability (except as may be expressly provided in any Authority Agreement), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages; provided, that the Authority hereby agrees that the Termination Payments payable under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of any Authority Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to any Authority Agreement or to any activity not contemplated by the same.

9.7.2 Any fines or other penalties incurred by the Concessionaire for non-compliance with the Applicable Laws or other governmental directions issued pursuant thereto and in accordance therewith or the Applicable Permits shall not be reimbursed by the Authority or any Government Authority but shall be the sole responsibility of the Concessionaire.

# Funding Requirements & Shareholding Matters[[55]](#footnote-56)

## Funding of Equity

10.1.1 The Concessionaire hereby undertakes to procure funding by the Sponsor(s) from time to time of the Sponsor Base Equity Amount through subscription in cash in Pak Rupees for Ordinary Shares in accordance with the Equity Funding & Utilization Agreement.

**10.2** **Ordinary Shares**

10.2.1 Upon funding of the Sponsor Base Equity Amount (or any part thereof) by the Sponsor(s) from time to time in accordance with the Equity Funding & Utilization Agreement, the Sponsor(s) shall be issued Ordinary Shares by the Concessionaire in accordance with the Applicable Laws. The obligation to fund the Sponsor Base Equity Amount shall be independent of the shareholding of the Sponsor(s) in the Concessionaire.

10.2.2 The Concessionaire shall not create any classes of its shares other than Ordinary Shares without the prior approval of the Authority.

**10.3** **Change In Complete Control and Change In Control[[56]](#footnote-57)**

10.3.1 The Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change In Complete Control until the Project Construction Completion Date unless such Change In Complete Control:

1. is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Authority with appropriate jurisdiction; or
2. is effected with the prior written approval of the Authority (subject to the receipt of necessary consents, permits or approvals and otherwise complying with all requirements under the Applicable Laws and terms of any contracts, licenses, permits etc., applicable to the Concessionaire and/or the Sponsor(s)).

10.3.2 The Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change In Control until the Transfer Date unless such Change In Control:

1. is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Authority with appropriate jurisdiction; or
2. is affected with the prior written approval of the Authority (subject to the receipt of necessary consents, permits or approvals and otherwise complying with all requirements under the Applicable Laws and terms of any contracts, licenses, permits etc., applicable to the Concessionaire and/or the Sponsor(s)).

**[10.4** **Public Listing Of The Concessionaire**

10.4.1 On the best effort basis and subject to the commercial considerations of the Concessionaire and its stakeholders, the Concessionaire shall make all necessary plans and arrangements to publicly list itself on the stock market within [[◙] years] of the Commercial Operations Date so that the shares of the Concessionaire are available to general public as an investment option.][[57]](#footnote-58)

# Bid Security, Construction Performance Security & O&M Performance Security

## Bid Security[[58]](#footnote-59)

11.1.1 Pursuant to the requirements of the RFP, the Sponsor has submitted a duly valid and effective Bid Security to the Authority and the Concessionaire hereby represents and warrants that:

1. the Bid Security is fully secured by the Sponsor as a principal debtor and not as surety without any recourse on the Concessionaire, its assets or properties;

1. all costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Bid Security are solely on account of the Sponsor.

11.1.2 The Bid Security shall secure:

1. all of the Sponsor’s obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the RFP and any Authority Agreement to which they are a party; and
2. all of the Concessionaire’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Authority Agreements.

11.1.3 The Bid Security shall be encashable in accordance with the terms thereof and shall be payable on the Authority’s first written demand without any prior notice, reference or recourse to the Concessionaire, the Sponsors or any other entity or person.

11.1.4 The Concessionaire shall ensure that Sponsor takes all necessary steps to, maintain and keep valid the Bid Security until submission by the Concessionaire of a fully valid and effective Construction Performance Security in accordance with the terms of this Agreement (the **Bid Security Expiry Date**). In the event the Bid Security expires prior to the Bid Security Expiry Date, the Concessionaire shall ensure the extension of the validity of the Bid Security, at least [fifteen (15) business days] prior to its expiry, so as to keep it valid and enforceable until the Bid Security Expiry Date. In the event of failure by the Concessionaire to ensure or keep valid or extend the validity of the Bid Security in accordance with this Section 11.1.4, the Authority shall have the right to encash the Bid Security at any time prior to its expiry to its full outstanding value at any time.

11.1.5 Upon delivery of a valid and effective Construction Performance Security by the Concessionaire to the Authority in accordance with Section 11.2 (*Construction Performance* *Security*) the Bid Security shall automatically terminate and be simultaneously returned tothe Concessionaire.

**11.2** **Construction Performance Security**

11.2.1 At any time prior to the Bid Security Expiry Date, the Concessionaire shall provide and deliver the Authority the Construction Performance Security. The Construction Performance Security:

1. shall be issued and maintained without any recourse on the Concessionaire, its assets or properties;
2. shall not be secured through any Concession Assets and no Encumbrance of any nature shall be created on the assets and properties of the Concessionaire in respect of the same;
3. all costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Construction Performance Security are solely on account of the Concessionaire/Sponsor.

11.2.2 The Construction Performance Security shall secure:

1. all of the Sponsor’s obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Authority Agreements to which they are a party; and
2. all of the Concessionaire’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Authority Agreements.

11.2.3 The Construction Performance Security shall come into force and shall become automatically effective upon issuance and delivery of the same to the Authority.

11.2.4 The Construction Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Authority’s first written demand without any prior notice, reference or recourse to the Concessionaire, the Sponsors or any other entity.

11.2.5 The Concessionaire shall maintain and keep valid the Construction Performance Security until the date falling [[◙] months] following Substantial Completion Date (the **Construction Performance Security Expiry Date**), as evidenced by a certificate jointly issued by the Independent Engineer and the Independent Auditor. In the event the Construction Performance Security expires prior to the Construction Performance Security Expiry Date, the Concessionaire shall extend the validity of the Construction Performance Security, at least [fifteen (15) business days] prior to its expiry, so as to keep it valid and enforceable until the Construction Performance Security Expiry Date.

11.2.6 If the Concessionaire breaches Section 11.2.5, the Authority shall have the right to encash the Construction Performance Security at any time to its full outstanding value.

11.2.7 Upon the issuance of a certificate jointly issued by the Independent Engineer and the Independent Auditor evidencing the occurrence of the Construction Performance Security Expiry Date, the Construction Performance Security shall be returned to the Concessionaire by the Authority within [ten (10) business days] of receipt by the Authority of the afore-stated certificate.

**11.3** **O&M PERFORMANCE SECURITY**

11.3.1 The Concessionaire shall procure the issuance and delivery of the O&M Performance Security to the Authority prior to the Construction Performance Security Expiry Date and shall replace the same [thirty (30) days] prior to commencement of each Operational Year falling after the expiry of Construction Performance Security Expiry Date. The O&M Performance Security provided in the first instance shall become effective simultaneously upon return of the Construction Performance Security to the Concessionaire by the Authority and thereafter, each O&M Performance Security provided prior to commencement of an Operational Year shall become automatically effective simultaneously upon return of the O&M Performance Security for the previous Operational Year.

11.3.2 The O&M Performance Security:

1. shall be issued and maintained without any recourse to the Concessionaire, its assets or properties;
2. shall not be secured through any Concession Assets and no Encumbrance of any nature shall be created on the assets and properties of the Concessionaire in respect of the same.

All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the O&M Performance Security are solely on account of the Sponsors.

11.3.3 The O&M Performance Security shall secure:

1. all of the Sponsor’s obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Authority Agreements to which they are a party; and
2. all of the Concessionaire’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Authority Agreements.

11.3.4 The O&M Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Authority’s first written demand without any prior notice, reference or recourse to the Concessionaire, the Sponsors or any other entity.

11.3.5 The O&M Performance Security provided by the Concessionaire in respect of an Operational Year shall remain in force and effect until the date that falls on the expiry of such Operational Year subject to receipt by the Authority of a fully valid and effective O&M Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the **O&M Performance Security Expiry Date**). In the event an O&M Performance Security expires prior to the O&M Performance Security Expiry Date, the Concessionaire shall extend the validity of the O&M Performance Security, at least [fifteen (15) business days] prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of any O&M Performance Security in accordance with this Section 11.3.5, the Authority shall have the right to encash such O&M Performance Security at any time prior to its expiry to its full outstanding value.

11.3.6 Upon the delivery of an O&M Performance Security for an Operational Year (the **New** **O&M Performance Security**) to the Authority by the Concessionaire in accordance with thisSection 11.3 (*O&M Performance Security*) on or prior to the commencement of such Operational Year (the **New Operational Year**), the previous O&M Performance Security issued for the previous Operational Year shall be returned to the Concessionaire by the Authority immediately upon the provision of the New O&M Performance Security.

11.3.7 The O&M Performance Security shall remain valid:

1. in case of Termination, at least for [one (1) year] after the Termination Notice has been issued;
2. in case of expiry of this Agreement on the Final Expiry Date, [one (1) year] after the Final Expiry Date.

# Construction Drawings

## Preparation of Construction Drawings

12.1.1 The Concessionaire shall prepare the Construction Drawings and shall complete and deliver the same to the Authority and the Independent Engineer from time to time within the Construction Time For Completion in accordance with the Construction Programme.

12.1.2 Defects & Deficiencies, errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Drawings or arising there from the same shall be rectified by the Concessionaire at its sole cost and risk in accordance with Section 18.1 *(Remedying Defects & Deficiencies)*.

12.1.3 The Authority, the Independent Engineer and the Independent Auditor (as applicable) may use the Construction Drawings for the purposes of the Project.

12.1.4 The Concessionaire may at its own cost, risk and discretion and subject to the Applicable Standards, propose with or without modifications the drawings made available by the Authority (if any) or adopt its own Construction Drawings (in each case) after prior approval of the Independent Engineer; provided, however, that the Concessionaire shall always remain solely responsible and liable for the adequacy and accuracy of the Construction Drawings and shall not hold the Authority responsible or liable for the adequacy and / or the accuracy of the drawings provided by the Authority.

12.1.6 The Authority and the Independent Engineer shall have the right to review and inspect all Construction Drawings and the Concessionaire shall provide all such Construction Drawings as may be reasonably required by the Authority and/or the Independent Engineer. Nothing in the above shall diminish the Concessionaire’s responsibility to provide the Authority and the Independent Engineer with the Construction Drawings in accordance with Section 12.3 and any other sufficient information as may be required to satisfy themselves regarding the Construction Works.

## Details Of Construction Drawings[[59]](#footnote-60)

12.2.1 The Construction Drawings to be submitted by the Concessionaire to the Independent Engineer shall include but not be limited to the following details:

1. detailed structural drawings;
2. *[to be inserted]*; and
3. such further information and details as may be requested by the Independent Engineer and the Authority acting reasonably.

## Review & Approval Of Construction Drawings

## The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit four (4) copies of the Construction Drawings to the Independent Engineer and the Authority along with a confirmation that the Construction Drawings are in compliance with the Applicable Standards.

## Within [fifteen (15) days] of receipt, the Independent Engineer and the Authority shall review the Construction Drawings, and the Independent Engineer (following consultation with the Authority), shall either:

## approve the Construction Drawings; or

## reject the Construction Drawings and convey their comments/observations (if any) to the Concessionaire.

## 

## In the event no approval or objections to the Construction Drawings is granted in accordance with Section 12.3.2 above, the Construction Drawings shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised Construction Drawings no later than [ten (10) days] from receipt of the rejection and/or comments/observations under Section 12.3.2(b) above, and the approval process under this Section 12.3 shall be repeated.

## The Concessionaire shall simultaneously with the submission of Construction Drawings to the Independent Engineer prepare and submit to the Independent Engineer a document setting out the “*critical path method*” in respect of the Project.

12.3.6 Notwithstanding anything contained herein, the Concessionaire shall:

1. continue to be solely liable for: (i) the Concessionaire’s obligations and liabilities set out in this Agreement; and (ii) the Construction Drawings including their compliance and conformity with the Applicable Standards, and shall not be relieved and/or absolved in any manner whatsoever of its obligations hereunder, irrespective of whether or not the Independent Engineer and Authority has provided its approval, observations and comments in accordance with this Section 12.3 (*Review of Construction Drawings*); nor shall the same be construed as a waiver of the Concessionaire’s obligations contained herein; nor shall the Authority be held liable for the observations and comments provided by the Independent Engineer on the Construction Drawings
2. the Concessionaire shall provide a copy of the approved Construction Drawings to the Authority and the Independent Engineer prior to commencement of Construction Works in accordance with the terms of this Agreement.

12.3.7 The Concessionaire shall be solely responsible and liable for:

(a) achieving completion of each Project Construction Milestone on or prior to its respective Project Construction Milestone Date;

(b) achieving Substantial Completion Date on or prior to the Scheduled Substantial Completion Date;

(c) achieving Project Construction Completion on or prior to the Scheduled Project Construction Completion Date,

and, in each case above, the said obligation and liability of the Concessionaire shall not be reduced, negated, rescinded and/or waived by any delay and/or failure of the Independent Engineer to fulfill its obligations as set out in this Section 12.3 (*Review of Construction* *Drawings*).

## Submission Of Final Construction Drawings Prior To Project Construction Completion Date

## Within [forty-five (45) days] of the Substantial Completion Date the Concessionaire shall submit to the Authority, in respect of each Project Construction Milestone, the “*as built*” Construction Drawings, duly verified and approved (in form and substance) by the Independent Engineer, including “*as built*” survey, illustrating the layout of the Concession Assets reflecting the same as actually designed, engineered and constructed on the Project Site.

12.4.2 The Construction Drawings to be submitted by the Concessionaire pursuant to this Section 12.4 (*Submission of Construction Drawings Prior to Final Construction Completion Date*) shall be in such form as may be requested by the Authority, including but not restricted to paper format (hard copies), digital format, micro films or any other format.

12.4.3 The Concessionaire shall amend, modify and update the Construction Drawings from time to time during the Operations Period and (following approval of the Independent Engineer and the Authority on any amendment, modification and update in the Construction Drawings) carry out any amendments and modifications resulting from the operations, repairs, maintenance and other activities relating to the Operations and Maintenance. Preparation, completion and delivery of the updated, amended and/or modified Construction Documents pursuant to this Section 12.4.3 shall form part of the Concessionaire’s obligations relating to the O&M Documents.

## Approval Of Detailed Engineering Design

## The Concessionaire shall submit its Proposed Detailed Engineering Design to the Independent Engineer (with a copy to the Authority) for approval within [fifteen (15) days] of the Effective Date.

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the Proposed Detailed Engineering Design and the Independent Engineer (following consultation with the Authority) shall either:

1. approve the Proposed Detailed Engineering Design (the **Approved Detailed Engineering Design**); or
2. reject the Proposed Detailed Engineering Design and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Proposed Detailed Engineering Design is granted in accordance with Section 12.5.2 above, the Proposed Detailed Engineering Design shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall promptly (at its own cost and expense) re-submit the revised Proposed Detailed Engineering Design, no later than [fifteen (15) days] from receipt of the aforesaid observations under Section 12.5.2(b), and the approval process under this Section 12.5 shall be repeated.

12.5.5 The Concessionaire shall ensure that it submits the Proposed Detailed Engineering Design (including any revised versions) and procure issuance of the Approved Detailed Engineering Design within [ninety (90) days] of the Effective Date. Provided, the Parties agree that the approval of the Proposed Detailed Engineering Design by the Independent Engineer or the Authority shall not in any way relieve the Concessionaire of any liabilities arising from the Detailed Engineering Design.

# Construction Works

## Construction Works

## The Concessionaire shall commence the Construction Works on the Commencement Date and hereby undertakes to perform and complete the same:

1. in accordance with the Applicable Standards and the Construction Requirements; and
2. within the Construction Time For Completion including completion of each Project Construction Milestone on or prior to its respective Project Construction Milestone Date.

Upon commencement of the Construction Works, the Concessionaire shall immediately Notify the Authority, the Independent Engineer and the Independent Auditor of the same.

## The Concessionaire shall perform the Construction Works either itself, or through the EPC Contractor(s) and other Concessionaire Engaged Persons. In the event the Construction Works are undertaken by the EPC Contractor(s) and other Concessionaire Engaged Persons the Concessionaire shall at all times remain solely responsible and liable for performance of the EPC Contractor(s) and other Concessionaire Engaged Persons.

## Construction Programme

## The Concessionaire shall prepare, a proposed construction programme, that shall comply with the Project Construction Completion Schedule, Applicable Standards and Good Industry Practices, and shall include, without limitation, the following:

1. the Project Construction Milestones to be achieved and the respective Project Construction Milestone Dates for each of the same;
2. the detailed order in which the Construction Works shall be performed, together with timelines for performance of the same;
3. arrangements and procedures for carrying out the Construction Works;
4. the timelines, intervals and procedures for conducting the inspection of all elements of the Construction Works and any completed Concession Assets;
5. arrangements and procedures for conducting safety related measures in relation to the Construction Works; and
6. all major events and activities in the preparation of the Construction Drawings and the Construction Monthly Progress Reports and submission of the same to the Authority, the Independent Engineer and/or the Independent Auditor (as applicable) for the review and approval (as applicable),

(the **Proposed Construction Programme**).

## The Concessionaire shall submit the Proposed Construction Programme to the Independent Engineer (with a copy to the Authority) for approval within [fourteen (14) days] following the Effective Date.

## Within [twenty-five (25) days] of receipt, the Independent Engineer and Authority shall review the Proposed Construction Programme, and the Independent Engineer (following consultation with the Authority), shall either:

## approve the Proposed Construction Programme (the Construction Programme); or

## reject the Proposed Construction Programme and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Proposed Construction Programme is granted in accordance with Section 13.2.3 above, the Proposed Construction Programme shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised Proposed Construction Programme no later than [fifteen (15) days] from receipt of the rejection and/or comments/observations under Section 13.2.3 (b) above, and the approval process under this Section 13.2 shall be repeated.

## The Construction Programme shall be binding on the Parties including for performance of the Construction Works within the Construction Time for Completion and achievement of each Project Construction Milestone.

## The Construction Programme may be amended from time to time by the mutual agreement between the Parties and the Independent Engineer.

## Construction Tests

## The Concessionaire shall conduct or procure to be conducted such tests, as specified in Schedule [◙] (*Detailed Project Report*), in order to determine whether the Construction Works conform to the Applicable Standards (the Construction Tests). The Construction Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer and the Authority in accordance with Schedule [◙] (*Detailed Project Report*).

## The Concessionaire hereby undertakes to conduct the Construction Tests under the supervision of the Independent Engineer and the Authority in accordance with the Applicable Standards. If during the Construction Period, the Authority determines that the Construction Works are not in accordance the Applicable Standards, then the Authority shall conduct separate tests to determine the quality of the Construction Works. In the event it is determined that the Construction Works are not in accordance with the Applicable Standards (as determined by the Independent Engineer) the Concessionaire shall be required at its own cost and risk to repair the same. The costs and expenses of all the aforesaid Construction Tests shall be borne by the Concessionaire.

## The Concessionaire shall carry out, at its sole cost, the measures required to rectify the Defects & Deficiencies in the Construction Works and/or the Concession Assets that are identified in the Construction Tests until they conform to the Applicable Standards as verified by the Independent Engineer. Following remedial work, the Independent Engineer may require the Concessionaire to conduct additional tests to determine whether the Defects & Deficiencies are rectified and in such case the costs of such additional tests shall be borne by the Concessionaire.

## The Concessionaire, the Independent Engineer and the EPC Contractor shall maintain proper record of the Construction Tests and the remedial measures taken to cure the Defects & Deficiencies, if any, indicated by the Construction Test results.

## Construction Monthly Progress Reports

## Commencing from the Effective Date and until issuance of the Final Project Construction Completion Certificate, the Concessionaire shall, no later than [ten (10) days] after the end of each calendar month, furnish to the Authority, the Independent Auditor and the Independent Engineer a monthly report (the Construction Monthly Progress Report) stating in reasonable detail:

1. the status and condition of the Construction Works andthe Concession Assets in line with the Applicable Standards;

1. any other relevant information as may be required by the Independent Engineer, the Independent Auditor or the Authority;
2. the Defects & Deficiencies in the Construction Works and/or the Concession Assets that require rectification, including Defects & Deficiencies identified by the Independent Engineer in its Construction Inspection Report along with all actions taken and arrangements made by the Concessionaire for remedying the same;
3. any delays in the Construction Time For Completion.

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the Construction Monthly Progress Report and the Independent Engineer (following consultation with the Authority), shall either:

## approve the Construction Monthly Progress Report; or

## reject the Construction Monthly Progress Report and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Construction Monthly Progress Report is granted in accordance with Section 13.4.2 above, the Construction Monthly Progress Report shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised Construction Monthly Progress Report no later than [fifteen (15) days] from receipt of the rejection and/or comments/observations under Section 13.4.2 (b) above, and the approval process under this Section 13.4 shall be repeated.

## The Construction Monthly Progress Report shall be in the form approved by the Independent Engineer from time to time.

## Construction Inspection Report

## Commencing from the appointment of the Independent Engineer and until the issuance of the Final Project Construction Completion Certificate, the Concessionaire shall procure that the Independent Engineer shall within [four (4) days] of commencement of each month, inspect the Construction Works and the Concession Assets and the Concessionaire shall make all arrangements for the same.

## The Independent Engineer shall, within [ten (10) days] of commencement of a month, provide a copy of a report of such inspection (the Construction Inspection Report) to the Concessionaire and the Authority. The Construction Inspection Report shall include in reasonable detail: (a) the Defects & Deficiencies, if any, in the Construction Works and /or the Concession Assets; and (b) any non-compliance with the Applicable Standards.

## The Concessionaire hereby undertakes that, within [fifteen (15) days] from receipt of the Construction Inspection Report, it shall rectify and remedy the Defects & Deficiencies, if any, stated in the Construction Inspection Report, on its own cost and risk.

## The inspection or submission of the Construction Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities under this Agreement, and the Concessionaire shall remain liable for all Defects & Deficiencies regardless of whether the same are included in the Construction Inspection Report.

## Delays During Construction

## In the event the Concessionaire:

1. fails to achieve any Project Construction Milestone by the respective Project Construction Milestone Date; or
2. the Independent Engineer reasonably determines that the rate of progress of Construction Works is such that the Project cannot achieve Project Construction Completion on or before the Scheduled Project Construction Completion Date;

then the Independent Engineer shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within [seven (7) days] of such notice, inform the Independent Engineer in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress.

# Completion

## Completion Tests

## At least [forty-five (45) days] prior to the expected Commercial Operations Date, the Concessionaire shall issue a Notice to the Authority and the Independent Engineer (the Completion Tests Date Notice) fixing a date and time for performance of the Completion Tests (the Proposed Completion Tests Date).

14.1.2 The Proposed Completion Tests Date shall be final unless it is unacceptable to the Independent Engineer and/or the Authority. In such case, the Concessionaire, the Authority and the Independent Engineer shall meet within [seven (7) days] of the Authority and Independent Engineer’s receipt of the Concessionaire’s Completion Tests Date Notice to mutually agree on an alternative date and time for performance of the Completion Tests.

14.1.3 Any Completion Tests required to be repeated by the Independent Engineer shall be repeated at the cost and risk of the Concessionaire.

14.1.4 The Completion Tests shall be attended by the Authority Representative and such other representatives of the Authority as the Authority may nominate.

14.1.5 The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Completion Tests.

## Substantial Completion Certificate[[60]](#footnote-61)

## If the Completion Tests are successfully passed, as determined by the Independent Engineer (the Substantial Completion) then upon the Concessionaire’s request, the Independent Engineer shall (in consultation with the Authority), issue a Substantial Completion Certificate setting out the date on which the Completion Tests were successfully passed (the Substantial Completion Date) and Substantial Completion is achieved.

## If the Completion Tests are successful but certain works or things forming part thereof are outstanding and not yet complete then the Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the Project Construction Completion Check List).

## Project Construction Completion Check List & Failure To Achieve Substantial Completion

## The Concessionaire undertakes to complete all items on the Project Construction Completion Check List by the date determined by the Independent Engineer and set out in the Substantial Completion Certificate (the Scheduled Project Construction Completion Date); provided, however that the Scheduled Project Construction Completion Date shall not be later than the date falling ninety [90] days after the Substantial Completion Date.

## The Concessionaire shall be liable for payment of Construction Period Damages to the Authority in the event the Concessionaire fails to:

1. achieve Substantial Completion on or prior to the Scheduled Substantial Completion Date; or
2. complete all items on Project Construction Completion Check List by the Scheduled Project Construction Completion Date.

## In the event the Concessionaire fails to:

1. achieve Substantial Completion within a period of [ninety (90) days] from the Scheduled Substantial Completion Date; or
2. complete all items on Project Construction Completion Check List within a period of [ninety (90) days] from the Scheduled Project Construction Completion Date;

then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the Authority may, at its sole discretion and without prejudice to its other rights and remedies available under the Authority Agreements, terminate this Agreement in accordance with Article 23 (*Termination*).

## Construction Period Damages

## Pursuant to Section 14.3, the Concessionaire shall pay damages to the Authority in a sum calculated at the rate of [*please insert relevant rate, likely to be between 1-2% of the Construction Performance Security]* for each full day of delay in achieving Substantial Completion beyond the Scheduled Substantial Completion Date up to a maximum of [one hundred percent (100%) of the amount of the Construction Performance Security] (the Construction Period Damages).

## All Construction Period Damages shall be invoiced by the Authority to the Concessionaire and shall become due and payable on the date falling [thirty (30) days] following the Concessionaire’s receipt of such invoice (the Construction Period Damages Payment Date). In the event of failure by the Concessionaire to pay the Construction Period Damages to the Authority by the Construction Period Damages Payment Date, the Authority shall have the right to encash the Construction Performance Security in an amount equal to the Construction Period Damages. Notwithstanding anything contained herein, the recovery of Construction Period Damages under this Section 14.4.2 shall be without prejudice to the rights of the Authority under the Authority Agreements (including the right of Termination in accordance with Section 14.3.3).

## 

## The Parties agree that the amounts of Construction Period Damages provided under this Section 14.4 (*Construction Period Damages*) are in lieu of actual damages and are the Parties’ reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

## Final Project Construction Completion Certificate

## Upon completion of the Project Construction Completion Check List, the Independent Engineer shall issue a certificate certifying that the Project has achieved Project Construction Completion (the Final Project Construction Completion Certificate).

## Project Construction Completion Date

## The Project shall be deemed to achieve project construction completion (the Project Construction Completion) on the date of issuance of the Final Project Construction Completion Certificate (the Project Construction Completion Date).

## Scheduled Project Construction Completion Date

## Subject to the terms of this Agreement, the Concessionaire hereby guarantees that the Project Construction Completion Date shall occur on or before the Scheduled Project Construction Completion Date.

## Title To Project Site, Construction Works And Concession Assets

## The Authority shall retain all rights and title to the Project Site throughout the Concession Period. Subject to the terms of this Agreement, the Concessionaire has, and shall have, no title to, ownership interest in or lien over, the Project Site nor shall it create any Encumbrance with respect thereto.

## Subject to Section 14.8.1, the Concessionaire shall retain all legal and beneficial rights and ownership on the Concession Assets (including the Construction Works) as and when the same are performed and/or completed until the Transfer Date.

## On the Transfer Date, the Concessionaire shall transfer the ownership rights to the Concession Assets to the Authority or a nominee thereof and transfer the Ordinary Shares (if any) to the Authority or a nominee thereof in accordance with the terms of this Agreement.

# Relief Extensions & Relief Compensations

## Relief Events

## The Concessionaire shall be entitled to initiate a request to the Independent Engineer and Independent Auditor for issuance of a Relief Order (the Relief Order Request) upon occurrence of any of the following events:

1. a Political Event;
2. an Emergency Decommissioning directly resulting from a Authority Event of Default or a Political Event;
3. the occurrence of the Authority Overriding Power Event;
4. a Non Political Event;
5. an Emergency Decommissioning directly resulting from a Non Political Event;
6. any other event set out in this Agreement in respect of which Article 15 (*Relief* *Extensions & Relief Compensation*) is applicable,

provided that the event listed in sub-sections (a) to (f) above (or its effects) continues for a period of more than [fifteen (15) days] as certified by the Independent Engineer (the **Relief Events**).

## The Concessionaire shall only be entitled to an extension in Time For Completion for any delays and, where applicable, to Relief Costs that directly result from the Relief Event specified in the Relief Order Request, as determined by the Independent Engineer and Independent Auditor in the Relief Order.

## The Relief Order Request shall be for (as applicable), an extension of the Time For Completion for any delays and/or payment of Relief Costs by the Authority.

## Upon the occurrence of a Relief Event the Concessionaire shall prepare and deliver to the Independent Engineer and the Independent Auditor (with a copy to the Authority) a Relief Order Request, together with the Relief Order Proposal in accordance with Section 15.2 (*Relief Order Procedure*) and, if applicable, Section 15.3 (*Additional Requirements For* *Relief Orders Relating To Extension Of Time For Completion*). Each Relief Order Requestprepared in accordance with Section 15.2 (*Relief Order Procedure*) and, if applicable, Section 15.3 (*Additional Requirements For Relief Orders Relating To Extension Of Time* *For Completion*) shall specifically set out in detail the events and circumstances constitutingthe Relief Event, together with all supporting satisfactory documentary evidence relating thereto.

## Following receipt of a Relief Order Request pursuant to Section 15.2.1, the Independent Engineer and the Independent Auditor shall proceed in accordance with Section 15.2 (*Relief Order Procedure*) and Section 15.3 (*Additional Requirements For Relief Orders Relating To Extension Of Time For* *Completion*).

## Prior to issuing the Relief Order the Independent Engineer must be satisfied (and the Concessionaire shall provide all relevant evidence in this regard) and certify in the Relief Order that the Concessionaire: (a) is unable to carry out Project Works within the prescribed timelines due to a Relief Event, and cannot effectively alter the sequencing of the Project Works; and (b) has made all efforts to avoid such Relief Event according to Good Industry Practices.

## Relief Order Procedure

## The Concessionaire shall prepare and submit to the Independent Auditor and the Independent Engineer (with a copy to the Authority) along with a Relief Order Request a detailed proposal (the Relief Order Proposal) containing:

1. a description of the proposed work to be performed and a detailed programme for its execution;
2. the Concessionaire's proposal for any necessary modifications to the Construction Programme and/or the O&M Programme, as applicable;
3. the Concessionaire’s proposal for any Relief Costs and any adjustments to Time

For Completion and/or any Project Milestone Date, accompanied by detailed pricing and documentary evidence;

1. a statement whether and the extent to which, in the Concessionaire’s opinion, the proposed proposals contained in the Relief Order Proposal would, notwithstanding the exercise of all due skill and care, result in defective Project Works or prevent the Concessionaire from performing its obligations under the Agreement,

provided, however, each Relief Order Request and Relief Order Proposal submitted by the Concessionaire that proposes an extension to Time For Completion or any Project Milestone Date shall be additionally subject to the provisions and requirements of Section 15.3 (*Additional Requirements For Relief Orders Relating To Extension Of Time* *For Completion*);

provided, further, however, in the event of submission of any Relief Order Request and a Relief Order Proposal, the Concessionaire shall provide such additional information as the Authority, the Independent Engineer and/or the Independent Auditor may from time to time reasonably request; and

provided, the Concessionaire shall maintain contemporary records necessary to substantiate any proposals contained in the Relief Order Proposal and/or the Relief Order Request, and permit the Independent Engineer, the Independent Auditor and/or the Authority to inspect all such records and provide copies as may be requested.

## Further, notwithstanding anything to the contrary contained herein the Concessionaire shall not be entitled to issuance of a Relief Order: if the delays result from any act or omission of the Concessionaire and/or the Concessionaire Engaged Persons.

## The Independent Engineer and the Independent Auditor shall review any Relief Order Proposal and the Relief Order Request, for the purpose of determining:

1. the occurrence and subsistence of the Relief Event and the Concessionaire’s entitlement to issuance of the Relief Order Request;
2. whether to proceed with the proposals submitted by the Concessionaire in its submitted Relief Order Proposal;
3. (if applicable) any amendments or modifications to the estimates and proposals submitted by the Concessionaire in the Relief Order Proposal;
4. other matters set forth in the Relief Order Proposal and the Relief Order Request including determination of extension of Time For Completion and Relief Costs; and
5. any other matters considered necessary for the purposes of issuance of the Relief Order.

## Within [twenty-one (21) days] of receipt of a Relief Order Proposal and Relief Order Request, the Independent Engineer, the Independent Auditor and the Authority shall review the Relief Order Proposal and Relief Order Request, and the Independent Engineer and the Independent Auditor (following consultation with the Authority), shall either:

1. approve the Relief Order Proposal and the Relief Order Request; or

## reject the Relief Order Proposal and the Relief Order Request and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Relief Order Proposal and the Relief Order Request is granted in accordance with Section 15.2.4 above, the Relief Order Proposal and the Relief Order Request shall be deemed to be approved by the Independent Auditor, the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised the Relief Order Proposal and the Relief Order Request Proposed no later than [fifteen (15) days] from receipt of the rejection and/or comments/observations under Section 15.2.4 (b) above, and the approval process under this Section 15.2 shall be repeated.

## If the Independent Engineer and the Independent Auditor approve the Relief Order Proposal and the Relief Order Request under Section 15.2.4(a) above they shall issue a Relief Order to the Authority and the Concessionaire simultaneously, which shall be (subject to Section 15.4 below) binding on the Parties.

## The Authority shall pay any Relief Costs to the Concessionaire within [ninety (90) days] of receipt of the Relief Order.

## Notwithstanding anything to the contrary, in the event of occurrence of a Relief Event (excluding a Non Political Event and an Emergency Decommissioning directly resulting from a Non Political Event, for which no Relief Costs shall be payable), the Concessionaire shall be only entitled to Relief Costs that:

1. are directly attributable to the Relief Event; and
2. represent increase (as a result of a Relief Event) in such costs that are expressly set out in the Financial Model.

## Subject to the terms of this Agreement, the Project Works shall not be delayed pending the issuance of a Relief Order by the Independent Auditor and the Independent Engineer.

## Additional Requirements For Relief Orders Relating To Extension Of Time For Completion

## Where a Relief Order Proposal and Relief Order Request that, propose an extension to the Time For Completion or to any Project Milestone Date for a Project Milestone, the Concessionaire shall:

1. give Notice to the Independent Engineer and the Independent Auditor (with a copy to the Authority) of its intention to initiate a Relief Order Request as soon as possible and in any event within [seven (7) days] of the day the Concessionaire should reasonably have become aware of the start of the Relief Event giving rise to the delay, together with any other notice required by the Agreement;
2. submit to the Independent Engineer and the Independent Auditor (with a copy to the Authority), an acceleration strategy and schedule to demonstrate how such delay can be eliminated and/or mitigated;
3. consult with the Authority, the Independent Engineer and the Independent Auditor to determine steps, and comply with any reasonable instructions of the Independent Engineer and Independent Auditor, to overcome or minimize the actual or anticipated delay; and
4. within [twenty-eight (28) days] of the relevant Relief Event, submit full supporting details of its request, including, without limitation, a critical path analysis of the alleged delay.

## Disputes And Burden Of Proof

## In case of a Dispute regarding the application of the provisions of this Article 15 (*Relief* *Extensions & Relief Compensation*), the Concessionaire shall have the burden of proof as toits entitlement to relief under this Article 15 (*Relief Extensions & Relief Compensation*).

## Full Compensation

## Any:

1. extensions of Time For Completion; and/or
2. payment of Relief Costs,

in each case, granted pursuant to a Relief Order shall be deemed to be full and complete compensation to the Concessionaire by the Authority in respect of matters relating to the Relief Order.

# Change of Scope[[61]](#footnote-62)

## Change of Scope

16.1.1 The Authority may require a change/amendment in the Scope of the Project; provided, that the accrued and cumulative change at any given time does not result in a variation in the Pre-Estimated Project Cost by more than [fifteen percent (15%)], as determined by the Independent Engineer and the Independent Auditor (the **Change of Scope**).

**16.2** **Change Of Scope Notice**

16.2.1 In order to request a Change of Scope, the Authority shall, through the Independent Engineer, issue a notice in writing to the Concessionaire (the **Change of Scope Notice**):

1. at least [ninety (90) days] prior to the Scheduled Substantial Completion Date if the Change of Scope is required in respect of the Construction Period; and
2. at any time in Concession Period if the Change of Scope is required in respect of the Operations Period.

16.2.2 If at any time during the Concession Period the Concessionaire determines that a Change of Scope is necessary for providing safer and improved services to the Users, the Concessionaire shall issue a request in writing to the Authority through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The Authority shall within [forty-five (45) days] from the date of receipt of such Notice, either accept such request for Change of Scope, on an “*as is*” basis or with modifications, and issue the requisite Change of Scope Notice or communicate its reasons for not accepting the same to the Concessionaire.

**16.3** **Change Of Scope Order**

16.3.1 The Concessionaire shall, within [fifteen (15) days] of receipt of the Change of Scope Notice, provide to the Independent Engineer such information as is necessary and reasonable, including calculations where necessary, detailing:

1. the impact which the Change of Scope is likely to have: (i) during the Construction Period on the Construction Requirements; and (ii) during the Operations Period on the O&M Requirements;
2. the estimated Additional Cost to be incurred by the Concessionaire for implementing the Change of Scope; and
3. any required extensions in performance of the Concessionaire’s obligations hereunder including extensions to the Project Construction Completion Schedule, the estimated additional time (number of days) required to achieve Substantial Completion and/or Project Construction Completion caused by the Change of Scope.

16.3.2 The Independent Engineer shall, after reviewing the information submitted by the Concessionaire pursuant to Section 16.3.1 and consulting with the Concessionaire, settle the rates, approve the designs and forward the budgeted estimates of the Additional Cost to the Authority in a Notice certified by the Independent Auditor and Independent Engineer (the **Change of Scope Determination Notice**). If the Concessionaire disagrees with the Change of Scope Determination Notice, the decision of the Authority shall be final.

16.3.3 The Authority may, within a period of [fifteen (15) days] from the date of receipt of the Change of Scope Determination Notice, issue an order in writing to the Concessionaire, through the Independent Engineer instructing the Concessionaire to effect the Change of Scope (the **Change of Scope Order**).

16.3.4 If the Authority for any reason whatsoever decides not to issue a Change of Scope Order, then the Authority shall reimburse the Concessionaire for the cost/expenses actually incurred by the Concessionaire in the preparation and submission of the drawings, documents, estimates and other information in compliance with the Change of Scope Notice; provided, such costs and expenses are duly certified by the Independent Auditor and the Independent Engineer.

16.3.5 The Authority shall pay any Additional Costs due following a Change of Scope Order to the Concessionaire within [forty five (45) days] of the issuance of a Change of Scope Order in the following manner:

1. Ten percent (10%) of the Additional Cost upon issuance of the Change of Scope Order (or as agreed between the Parties);
2. the remaining ninety percent (90%) transferred by the Authority to an escrow account pursuant to an escrow arrangement agreed with the Concessionaire, with disbursements from the escrow payable only upon receipt of a certificate by the Independent Engineer confirming the performance of works.

16.3.6 The Change of Scope Order shall be effective from the date of its issuance and the Concessionaire shall commence and/or perform the works forming part of the Change of Scope Order pursuant to the Project Construction Completion Schedule, as amended in the Change of Scope Order.

# Service Charge(s)Arrangement

## Service Charge(s) Collection Operations

17.1.1 All Service Charge(s) shall be deposited immediately with the EscrowAgent and allocated in accordance with the terms of the Escrow Agreement.

**17.2 Service Charge(S) Audit**

17.2.1 From the Service Charge(s) Commencement Date until the Service Charge(s) Commencement End Date, the Independent Engineer shall, no later than [ten (10) days] after the end of each calendar month, furnish to the Authority, the Independent Auditor and the Financiers (until such time Financing Due is outstanding) a monthly report stating in reasonable detail the status of the Service Charge(s) collected from the Project (the **Service Charge(s) Progress Report**) and shall promptly give such other relevant information as may be required by the Authority, the Independent Auditor and the Financiers in respect of the Service Charge(s).

If the Financiers or the Authority is not satisfied with the Service Charge(s) Progress Report, the Authority and/or the Financiers may appoint an external auditor (the **External Auditor**) to survey and collect the data relating to the Service Charge(s) from the Project. The cost of the External Auditor shall be borne by the Concessionaire. The Concessionaire shall provide reasonable assistance and access to the records and equipment relevant to collection of Service Charge(s) to conduct such external audit. If the External Auditor deems there to be a discrepancy in the records of the Concessionaire and/or the Independent Auditor in the Service Charge(s), the decision of the External Auditor shall be final and binding on the Concessionaire. To the extent any amounts are payable to the Authority as a result of determination by the External Auditor, the Concessionaire shall pay the same to the Authority, within [thirty (30) days] of the External Auditor’s decision.

**17.3** **Service Charge(S) Revenue Sharing**

17.3.1 Following Substantial Completion Date, in the event the Service Charge(s) Revenues during an Operational Year are greater than Benchmark Service Charge(s) Revenues for such Operational Year (the **Excess** **Service Charge(s) Revenues**), such Excess Service Charge(s) Revenues shall be shared between the Authority and theConcessionaire on an [equal basis /*[Insert Percentage]*] in accordance with the Escrow Agreement. The Authority’s share of the Excess Service Charge(s) Revenues (the **Authority Windfall**) and the Concessionaire’s share of the Excess Service Charge(s) Revenues (the **Concessionaire Windfall**) shall be utilized by the Authority and the Concessionaire respectively in their sole and absolute discretion.

17.3.2 If, after the Substantial Completion Date, the Service Charge(s) Revenues fall below the Benchmark Service Charge(s) Revenues (the **Excess Delta**), the Authority and the Concessionaire shall fund the Excess Delta on [an equal basis /*[Insert Percentage]*], as further set out in terms of the MRG Agreement.

**17.4** **Issuance Of Service Charge(s) Notification**

17.4.1 During the Service Charge(s) Concession Period, the Authority shall issue a yearly Notice substantially, in the form set out in **Schedule [◙] (*Form of Service Charge(s) Notification*)** and in accordance with **Schedule [◙] (*Service Charge(s)*** ***Notification Structure*) (the Service Charge(s) Notification)** in order to implement theService Charge(s) Notification Structure. Each Service Charge(s) Notification issued shall set-out the Service Charge(s) applicable during the relevant year of the Concession Period. The Authority may revise the Service Charge(s) Notification (the **Revised** **Service Charge(s) Notification**) in line with **Schedule [◙] (*Service Charge(s) Notification* *Structure*)**. The Authority may reduce the Service Charge(s)s at any time (with the authorizationof the Independent Auditor) provided that the Benchmark Service Charge(s) Revenues and/or other mutually agreed parameters are not adversely affected (as determined by the Independent Auditor) by the Revised Service Charge(s) Notification. If the Authority reduces the Service Charge(s) so as to adversely impact the Benchmark Service Charge(s) Revenues and/or other mutually agreed parameters, the Concessionaire shall be entitled to submit a Relief Request.

# Defects & Deficiencies and Suspension

## Remedying Defects & Deficiencies

18.1.1 The Concessionaire warrants that the:

1. Project Works shall be performed in good workmen like manner in accordance with the Applicable Standards and shall be free from all Defects &Deficiencies;
2. Concession Assets shall comply with the Applicable Standards.

18.1.2 In order that the Project Works and the Concession Assets comply with the foregoing warranties and that the same are in the condition required by this Agreement, the Concessionaire shall execute all works and services relating to amendment, reconstruction and remedying of Defects & Deficiencies (including the removal, replacement and reinstallation of materials and equipment, remedying of Defects & Deficiencies and retesting of repaired or replaced portions of the Project Works (if appropriate in accordance with Good Industry Practices)) at its own cost, risk and expense; provided, however the amendment, reconstruction and remedying of such Defects &Deficiencies shall be at the cost, risk and expense of the Authority in the event the same is directly caused by a Permitted Event.

18.1.3 If the remedying of any Defect & Deficiency or damage is such that it may significantly affect the performance of the Project Works and/or the Concession Assets, the Independent Engineer and/or the Authority may require that certain Construction Tests, O&M Tests and/or the Completion Tests (as the case may be) to be repeated to the extent necessary. The requirement shall be made by written Notice and such tests shall be carried out by the Concessionaire in accordance with the Applicable Standards and all costs and expenses of any nature associated with re-performance of such tests shall be allocated in accordance with Section 18.1.2.

**18.2** **Suspension**

18.2.1 The:

1. Authority may by Notice in writing to the Concessionaire (with a copy to the Independent Engineer and the Independent Auditor) require the Concessionaire to suspend forthwith the whole or any part of the Project Works if, in the reasonable opinion of the Authority:(i) such work threatens the safety of the Users; or (ii) such Project Works are not in accordance with the Applicable Standards and/or Good Industry Practices; and/or
2. Independent Engineer may, by Notice to the Concessionaire (with a copy to the Authority and the Independent Auditor), require the Concessionaire to suspend forthwith the whole or any part of the Project Works which in the reasonable opinion of the Independent Engineer is being carried on/conducted in a manner that is not in conformity with the Applicable Standards and/or is not in accordance with Good Industry Practice,

(the **Suspension, Suspend and its grammatical variations**).

18.2.2 The Concessionaire shall, pursuant to the notice issued under Section 18.2.1, Suspend the Project Works or any part thereof for such time and in such manner as may be specified by the Authority and/or the Independent Engineer and thereupon carry out remedial measures to secure the safety of Suspended works and the Users and for compliance of the Suspended Project Works with the Applicable Standards and Good Industry Practices.

18.2.3 The Concessionaire may by Notice (with a copy to the Authority) require the Independent Engineer to inspect such remedial measures forthwith and the Independent Engineer shall, following such inspection, make a report to the Authority recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either: (a) revoke such Suspension; or (b) instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Section 18.2 (*Suspension*) shall be repeated till such time as the Suspension hereunder is revoked under part (a) above.

18.2.4 All reasonable costs incurred for maintaining and protecting the Project Works (or part thereof) including the Suspended works during the period of Suspension (the **Preservation Costs**) shall be borne by the Concessionaire; provided, that if the Suspension has occurred as a result of a Permitted Event, the provisions of Article 21 (*Force Majeure*) and Article 15 (*Relief Extensions &* *Relief Compensation*), as the case may be, shall apply.

18.2.5 All delays caused as a result of the Suspension shall be on account of the Concessionaire; provided, however, in the event the Suspension is caused due to a Permitted Event, any extensions of the Time For Completion shall be subject to the provisions of Article 15 (*Relief* *Extensions & Relief Compensation*) and Article 21 (*Force Majeure*), as the case may be.

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# Operation and Maintenance

## Operation and Maintenance

## During the Operations Period, the Concessionaire shall be responsible for Operating and Maintaining the Concession Assets on a twenty-four (24) hours per day, three-sixty-five (365) days per year basis according to the Applicable Standards.

## The Concessionaire shall perform the Operation and Maintenance either itself, or through the O&M Contractor and other Concessionaire Engaged Persons. The Concessionaire shall remain solely responsible and liable for performance (within O&M Time For Completion) and compliance of the Operations and Maintenance with the Applicable Standards irrespective of whether the Operation and Maintenance is undertaken by the Concessionaire, O&M Contractor or any other Concessionaire Engaged Persons.

## Operation And Maintenance Obligations Of The Concessionaire[[62]](#footnote-63)

## The Concessionaire agrees that, during the Operations Period, the Operation and Maintenance obligations of the Concessionaire shall include performance of the following obligations in accordance with the Applicable Standards and Good Industry Practices and any other additional matters as may be determined by the Independent Engineer and/or the Authority as being necessary to Operations and Maintenance:

1. to perform and complete each Project O&M Milestone on or prior to its Project O&M Milestone Date;
2. modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Concession Assets in accordance with the Applicable Standards;
3. carrying out routine maintenance and the periodic preventive maintenance of the Concession Assets;
4. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Concession Assets;
5. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
6. protecting the environment (to the extent of the Concessionaire’s activities) and providing equipment and materials therefor;
7. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Concession Assets;
8. maintaining a public relations unit to interface with and attend to suggestions from the Users, the Authority, the Government Authorities, media and other agencies;
9. complying with Safety Requirements;
10. promptly removing from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keeping the Project Site in a clean, tidy and orderly condition, in each case, in conformity with the Applicable Standards;
11. performing all other activities and obligations relating to Operation and Maintenance so as to comply with the Applicable Standards and also so as to result in the Concession Assets complying with the Applicable Standards.

## Material Breach Of O&M Requirements

## The Concessionaire shall be deemed to be in material breach of the O&M Requirements (the Material Breach of O&M Requirements) if the Independent Engineer and/or the Authority (through the Independent Engineer), acting reasonably and in accordance with the provisions of this Agreement, has determined that there has been:

1. a failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
2. a material failure in performance by the Concessionaire of the Operation and Maintenance (or any part thereof) within the O&M Time For Completion;
3. a failure/undue delay in adhering to Safety Requirements;
4. a breach of the O&M Requirements that is un-remedied within the Cure Period specified in the Authority Preliminary Notice issued regarding that breach,

provided, however, the Concessionaire shall not be deemed to be in Material Breach of the O&M Requirements in the afore-stated circumstances in the event such breach is caused by the Permitted Events.

## Authority’ Rights With Regard To Material Breach Of O&M Requirements

## Upon a Material Breach of O&M Requirements, the Authority shall, without prejudice to any other permitted consequences, have the right to Terminate this Agreement in accordance with Section 23*(Termination)*.

## O&M Manual

## The Concessionaire shall, in consultation with the Concessionaire Project Engineer and the Independent Engineer, prepare an operations, repair, maintenance and safety manual in respect of the Concession Assets that shall comply with the Applicable Standards and Good Industry Practices and set out, *inter alia*:

1. the arrangements and procedures for conducting safety related measures;
2. the regular preventive maintenance and operating procedures for the ConcessionAssets;
3. the provisions for operation and maintenance of the Concession Assets;
4. provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Concession Assets, including replacement thereof;
5. the Project O&M Milestones and their respective Project O&M Milestone Dates,

(the **Proposed O&M Manual**)

## The Concessionaire shall submit the Proposed O&M Manual to the Independent Engineer (with a copy to the Authority) for approval [Ninety (90) days] prior to the anticipated date for commencement of the Operations Period (as determined by the Independent Engineer).

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the Proposed O&M Manual, and the Independent Engineer (following consultation with the Authority), shall either:

## approve the Proposed O&M Manual (the O&M Manual); or

## reject the Proposed O&M Manual and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Proposed O&M Manual is granted in accordance with Section 19.5.3 above, the Proposed O&M Manual shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall (at its own cost and expense) re-submit the revised Proposed O&M Manual no later than [fifteen (15) days] from receipt of the rejection and/or comments/observations under Section 19.5.3 (b) above, and the approval process under this Section 19.5 shall be repeated.

## The O&M Manual shall be binding on the Parties.

## The Concessionaire shall provide four (4) hard copies and a soft copy of the O&M Manual to each of the Authority and the Independent Engineer.

## The Concessionaire shall revise and update the O&M Manual on [[◙] anniversary] of its initial preparation and subsequently every [[◙]] years[[63]](#footnote-64) thereafter, in each case, with approval of the Authority and in consultation with the Independent Engineer.

## O&M Programme

## The Concessionaire shall, in consultation with the Concessionaire Project Engineer and the Independent Engineer, prepare a proposed program for Operation and Maintenance for the upcoming Operational Year that shall include performance of the following obligations in accordance with the Applicable Standards and Good Industry Practices and any other additional matters as may be determined by the Independent Engineer and/or the Authority as being necessary to Operations and Maintenance:

1. preventive, urgent and other scheduled maintenance of Concession Assets;
2. the Project O&M Milestones to be achieved during the upcoming Operational Year and the respective Project O&M Milestone Dates for each of the same;
3. routine maintenance and preventive maintenance schedule;
4. arrangements and procedures for carrying out urgent repairs in respect of the Concession Assets;
5. criteria to be adopted for determining and ascertaining the maintenance requirements of the Concession Assets;
6. the timelines, intervals and procedures for conducting the inspection of all elements of the Concession Assets;
7. the timelines and intervals at which the Concessionaire shall conduct periodic maintenance in respect of the Concession Assets;
8. arrangements and procedures for conducting safety related measures in relation to the Concession Assets;
9. timelines and intervals for maintenance works and the scope thereof; and
10. all major events and activities in the preparation of O&M Documents and submission of the same to the Authority, the Independent Engineer and/or the Independent Auditor (as applicable) for the review and approval (as applicable),

(the **Proposed** **O&M Programme**).

## The Concessionaire shall submit the Proposed O&M Programme to the Independent Engineer (with a copy to the Authority) for approval [Ninety (90) days] prior to commencement of the Operations Period and thereafter [thirty (30) days] prior to the commencement of each Operational Year during the Operations Period.

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the Proposed O&M Programme, and the Independent Engineer (following consultation with the Authority), shall either shall either:

## approve the Proposed O&M Programme (the O&M Programme); or

## reject the Proposed O&M Programme and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Proposed O&M Programme is granted in accordance with Section 19.6.3 above, the Proposed O&M Programme shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall promptly (at its own cost and expense) re-submit the revised Proposed O&M Programme, no later than [fifteen (15) days] from receipt of the aforesaid observations under Section 19.6.3(b), and the approval process under this Section 19.6 shall be repeated.

## The Proposed O&M Programme shall be binding on the Parties.

## Any amendment to the O&M Programme shall be made by the Concessionaire with prior written consent of the Independent Engineer and the Authority.

## Timing Of Major Maintenance And Major Maintenance Costs

## Pursuant to the Applicable Standards the Concessionaire shall carry out the:

1. First Major Maintenance on or after a date falling [◙] years after the Substantial Completion Date; and
2. the Second Major Maintenance on or after a date falling [◙] years after the First Major Maintenance Commencement Date.

## Major Maintenance Programme, Major Maintenance Contract(S) And Approvals

## The Concessionaire shall prepare a proposed program for Major Maintenance during the upcoming Major Maintenance Period (the Proposed Major Maintenance Programme) and any contracts for Major Maintenance (the Proposed Major Maintenance Contract(s)). The Proposed Major Maintenance Programme shall include performance of the following obligations in accordance with the Applicable Standards and Good Industry Practices and any other additional matters as may be determined by the Independent Engineer and/or the Authority as being necessary to Operations and Maintenance:

1. the Major Maintenance Milestones to be achieved during the upcoming Major Maintenance Period and the respective completion dates for each of the same;
2. the manner and methodology for implementation of the Major Maintenance;
3. the arrangements and procedures for conducting safety related measures in relation to the Concession Assets during the upcoming Major Maintenance Period; and
4. the timelines for implementation of the Major Maintenance.

## The Concessionaire shall submit the Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s) to the Independent Engineer (with a copy to the Authority) for approval [six (6) months] prior to (i) the First Major Maintenance Commencement Date; and (ii) the Second Major Maintenance Commencement Date.

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s), and the Independent Engineer (following consultation with the Authority), shall either:

## (a) approve the Proposed Major Maintenance Programme (the Approved Major Maintenance Programme) and the Proposed Major Maintenance Contract(s) (the Approved Major Maintenance Contract(s)); or

## (b) reject the Proposed Major Maintenance and the Proposed Major Maintenance Contract(s) and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the Proposed Major Maintenance and the Proposed Major Maintenance Contract(s) is granted in accordance with Section 19.8.3 above, the Proposed Major Maintenance and the Proposed Major Maintenance Contract(s) shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall promptly (at its own cost and expense) re-submit the revised Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s), no later than [fifteen (15) days] from receipt of the aforesaid observations under Section 19.8.3(b), and the approval process under this Section 19.8 shall be repeated.

## The Approved Major Maintenance Programme and the Approved Major Maintenance Contract(s) shall be binding on the Parties.

## The Concessionaire shall sign the Approved Major Maintenance Contract(s) prior to the Major Maintenance Costs Funding Date and deliver certified (as being true and correct) copies of the Approved Major Maintenance Programme and the Approved Major Maintenance Contract(s), to the Authority, the Independent Engineer and the Independent Auditor within [seven (7) days] of signing of the same.

## Major Maintenance Payment Account

## The Concessionaire shall establish and maintain the Major Maintenance Payment Account from the Commencement Date and until the Transfer Date.

## Immediately upon establishing the Major Maintenance Payment Account, the Concessionaire shall issue, in form and substance approved by the Authority, standing instructions to the Major Maintenance Payment Account Bank to (i) debit the Major Maintenance Payment Account on each Major Maintenance Milestone Date (upon receipt of a Major Maintenance Milestone Certificate relating to such Major Maintenance Milestone Date) in an amount equal to the Major Maintenance Milestone Payment; and (ii) credit the same to the Escrow Account (the Major Maintenance Payment Account Standing Instructions).

## The Major Maintenance Payment Account Standing Instructions shall only be revocable (in whole or in part) pursuant to a written revocation Notice duly executed and confirmed by the authorized representatives of the Authority and the Concessionaire.

## Except as provided in this Agreement, the Authority may not make a withdrawal from the Major Maintenance Payment Account.

## The Concessionaire hereby undertakes and covenants that it shall not:

1. create, incur, permit, assume or suffer to exist any Encumbrance whatsoever upon or with respect to the Major Maintenance Payment Account; and
2. transfer or dispose of all or any of its rights and benefits under or in respect of the Major Maintenance Payment Account.

## Funding And Payment

## Not later than [six (6) months] prior to the Major Maintenance Commencement Date, the Independent Auditor and the Independent Engineer shall jointly issue a certificate to the Concessionaire specifying the Major Maintenance Costs payable on the relevant Major Maintenance Costs Funding Date (Major Maintenance Cost Certificate).

## The Concessionaire shall fund the Major Maintenance Costs on each Major Maintenance Costs Funding Date based on the Major Maintenance Cost Certificate.

## O&M Documents

## The Concessionaire shall prepare the O&M Documents and deliver the same to the Authority, the Independent Engineer and the Independent Auditor (as applicable) within the Operations Period for their review and inspection.

## Submission of the O&M Documents shall not diminish the Concessionaire’s responsibility to provide the Authority, the Independent Engineer and the Independent Auditor with any other information reasonably requested regarding the Operation and Maintenance.

## The Authority, the Independent Engineer and the Independent Auditor (as applicable) may within [ten (10) days] of receipt submit their proposals for modification of the O&M Documents to the Concessionaire. Any proposed modification to the O&M Documents shall be subject to mutual agreement between the Parties.

## Defects & Deficiencies, errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the O&M Documents or arising there from shall be rectified within [three (3) days] of being identified by either Party, the Independent Engineer or Independent Auditor, by the Concessionaire at its sole cost and risk.

## Modifications To The Project

## The Concessionaire shall not carry out any material modifications to the Concession Assets, save and except where such modifications are necessary for compliance with and Operation and Maintenance in conformity with the Applicable Standards.

## The Concessionaire shall Notify the Independent Engineer and the Authority of any proposed modifications along with particulars thereof at least [thirty (30) business days] before commencement of any work. Any modifications shall be subject to receipt of prior written approval of the Independent Engineer and the Authority.

## O&M Monthly Status Report

## During the Operations Period, the Concessionaire shall, no later than [seven (7) days] after the end of each calendar month, submit to the Independent Engineer (with a copy to the Authority) for approval a report (the O&M Monthly Status Report) stating in reasonable detail:

* + - 1. the condition of the Concession Assets including their compliance or otherwise with the Applicable Standards;
      2. identify and state in reasonable detail the Defects & Deficiencies in the Concessionaire Assets and/or the Operation and Maintenance that require rectification;
      3. any delays in the performance of the Concessionaire’s obligations as set out in the O&M Programme and in the O&M Time For Completion;
      4. all Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets identified by the Independent Engineer in its O&M Inspection Report and all actions taken and arrangements made by the Concessionaire for remedying the same; and
      5. any other relevant information as may be required by the Independent Engineer, the Independent Auditor and the Authority.

## Within [fifteen (15) days] of receipt, the Independent Engineer and Authority shall review the O&M Monthly Status Report, and the Independent Engineer (following consultation with the Authority), shall either:

## (a) approve the O&M Monthly Status Report; or

## reject the O&M Monthly Status Report and convey their comments/observations (if any) to the Concessionaire.

## In the event no approval or objections to the O&M Monthly Status Report is granted in accordance with Section 19.13.2 above, the O&M Monthly Status shall be deemed to be approved by the Independent Engineer and the Authority.

## The Concessionaire shall promptly (at its own cost and expense) re-submit the revised O&M Monthly Status Report, no later than [fifteen (15) days] from receipt of the aforesaid observations under Section 19.13.2(b), and the approval process under this Section 19.13 shall be repeated.

## O&M Inspection Report

## During the Operations Period, within [four (4) days] of commencement of each month, the Concessionaire shall make arrangements for the Independent Engineer to inspect the Operation and Maintenance and the Concession Assets.

## The Independent Engineer shall, within [seven (7) days] of commencement of each month, provide a report of such inspection (the O&M Inspection Report) to the Concessionaire and the Authority. The O&M Inspection Report shall include in reasonable detail: (a) the Defects & Deficiencies, if any, in the Operation and Maintenance and /or the Concession Assets; and (b) any non-compliance with the Applicable Standards.

## The Concessionaire shall, within [fifteen (15) days] from receipt of the O&M Inspection Report, rectify and remedy the Defects & Deficiencies, if any, stated in the O&M Inspection Report, on its own cost and expense[[64]](#footnote-65).

## The inspection or submission of the O&M Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder.

## O&M Tests

## The Concessionaire shall (at its own cost, risk and expense) conduct or procure to be conducted the tests specified in Schedule [◙] *(Detailed Project Report)* to determine whether the Operation and Maintenance and/or the Concession Assets conform to the Applicable Standards (the O&M Tests). The O&M Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer and the Authority.

## The Concessionaire shall conduct the O&M Tests under the supervision of the Independent Engineer (in consultation with the Authority) and in accordance with the Applicable Standards.

## The Concessionaire shall carry out, at its sole cost and risk, the remedial measures required to rectify any Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets identified in the O&M Tests.

## The Concessionaire shall repeat the remedial measures conducted in line with sub-section 19.15.3 until the Independent Engineer is satisfied that the Operation and Maintenance and the Concession Assets conform to the Applicable Standards, and provides the Authority with written confirmation of its satisfaction. The Independent Engineer may require the Concessionaire to conduct (at its own cost, risk and expense) additional tests.

## The Concessionaire shall maintain proper record of the O&M Tests and the remedial measures taken to cure the Defects & Deficiencies, if any, indicated by the O&M Test results.

## Results of all O&M Tests shall be jointly recorded by the Independent Engineer and the Concessionaire.

## Remedial Measures

## Within[seven (7) days] of receiving the O&M Inspection Report or the O&M Tests results, the Concessionaire shall submit a report to the Independent Engineer and the Authority detailing the repair and rectification works required to address any Defects & Deficiencies set forth in the O&M Inspection Report or identified by the O&M Tests. If the remedying of such Defects & Deficiencies is expected to take more than [seven (7) days], the Concessionaire shall submit weekly progress reports to the Authority and the Independent Engineer until such works are completed in conformity with this Agreement.

## The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the O&M Tests, at its own cost and risk, to determine that remedial measures taken pursuant to Section 19.16.1 have brought the relevant Concession Assets into compliance with the Applicable Standards. The procedure set forth in this Section 19.16 *(Remedial Measures)* shall be repeated until the Concession Assets conform to the Applicable Standards.

## The provisions of this Section 19.16 *(Remedial Measures)* shall not in any manner limit the obligations of the Concessionaire relating to remedying of Defects & Deficiencies set out elsewhere in this Agreement.

# Insurances

**20.1** **Construction Period Insurances**

20.1.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Construction Period all such Insurances, as described in **Part** **I (*Construction Period*** ***Insurances*)ofSchedule[◙] (*Insurances*)**[[65]](#footnote-66) and any other Insurances as may be additionally required by the Authority, the Financiers or the Applicable Standards, that are necessary and required to be procuredby the Concessionaire in accordance with this Agreement, the Financing Documents, Applicable Standards and Good Industry Practices.

**20.2** **Operations Period Insurances**

20.2.1 The Concessionaire shall, at its sole cost and expense, procure and maintain in effect during the Operations Period all such Insurances, as described in **Part** **II (*Operations Period*** ***Insurances*)ofSchedule[◙] (*Insurances*)** and any other Insurances as may be additionally required by the Authority, the Financiers or the Applicable Standards, that are necessary and required to be procuredby the Concessionaire in accordance with this Agreement, the Financing Documents, Applicable Standards and Good Industry Practices.[[66]](#footnote-67)

**20.3** **Insurance Companies**

20.3.1 The Concessionaire shall:

1. procure the Insurances from insurance companies that are acceptable to the Authority; and
2. only procure Insurances through foreign insurance companies if the relevant Insurances are not being offered by local companies at comparable coverage and rates, subject always to the prior consent of the Authority.

20.3.2 The Insurance’s shall be maintained throughout the Concession Period notwithstanding the expiry of the Financing Documents.

**20.4** **Evidence Of Insurances**

20.4.1 The Concessionaire shall, within [thirty (30) days] of the first date upon which the Insurance is required, and upon request, provide to the Authority copies (duly attested as certified to be a true and correct copy by the relevant insurance company) of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

20.4.2 Failure by the Concessionaire to obtain the Insurance coverage or certificates of Insurance required by this Article 20 (*Insurances*) shall not in any way relieve or limit the Concessionaire’s obligations and liabilities under any provision of this Agreement.

20.4.3 The Concessionaire shall provide the Authority with copies of any underwriters’ reports or other reports received by the Concessionaire from any insurance company; provided, that the Authority shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement or any other Authority Agreement or as may be required by any Government Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

**20.5** **Application Of Insurance Proceeds**

20.5.1 Subject to the provisions of the Financing Documents, all moneys received under the Insurance shall be promptly applied by the Concessionaire towards repair, renovation, restoration and/or substitution of the Concession Assets or any part thereof which may have been damaged or destroyed; provided, that all costs relating to such repair, renovation, restoration and/or substitution shall be duly certified by the Independent Engineer and the Independent Auditor.

20.5.2 The Concessionaire may, with the prior approval of the Authority, designate the Financiers as the loss payees under the Insurance and/or assign the Insurance in their favor as security for the Financing availed by the Concessionaire from the Financiers pursuant to the Financing Documents.

20.5.3 The Concessionaire shall carry out the repair, renovation, restoration and/or substitution to the extent possible in such manner that the Concession Assets or any part thereof, shall, after such repair, renovation, restoration and/or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

**20.6** **Validity Of Insurances**

20.6.1 The Concessionaire hereby undertakes to promptly pay the insurance premium in respect of the Insurances and to keep the policies in force and valid during the entire Concession Period. The Concessionaire shall provide to the Authority, copies of the renewed policies and other documentary evidence of the payment of the insurance premium in respect of the Insurances.

20.6.2 Notwithstanding anything contained herein, in the event the Concessionaire fails to comply with its obligations to procure the Insurances in accordance with Section 20.1 (*Construction* *Period Insurances*) and/or Section 20.2 (*Operations Period Insurances*), then the Authority may,without prejudice to its other rights and remedies for breach, at its option, obtain and maintain such Insurance.

20.6.3 All sums incurred by the Authority pursuant to Section 20.6.2 shall:

1. be offset against any amounts owed to the Concessionaire pursuant to the terms of this Agreement and the Authority Agreements; or
2. be reimbursed by the Concessionaire to the Authority within [seven (7) days] from the receipt of a claim by the Concessionaire in respect thereof from the Authority.

20.6.4 The Concessionaire shall notify the Authority at least [ten (10) days] prior to any material variation of the Insurances, and the Authority may withdraw its consent to the Insurance where the scope of the coverage is materially reduced and require the Concessionaire to obtain a different Insurance on substantially the same terms as the original Insurance.

**20.7** **Maintenance Of “Occurrence” Form Policies**

20.7.1 All Insurances and any “umbrella” or excess coverage shall be “occurrence” form policies. The Concessionaire must obtain prior written approval from the Authority for any “claims-made” policies.

**20.8** **Policy Endorsements**

20.8.1 The Concessionaire shall cause the insurance companies to provide the following endorsement items in the Insurances[[67]](#footnote-68) :

1. the Authority, its officers, servants and agents shall be additionally insured under such policies with respect to claims arising out of or in connection with this Agreement;
2. the Insurance shall be primary with respect to the interest of the Authority, its officers, servants and agents and any other insurance maintained by them is excess and not contributory with such policies;
3. the following separation of interests clause shall be made a part of the policy:

*“In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance.”;*

1. the insurer shall waive all rights of subrogation against the Authority, its officers, servants and agents; and
2. notwithstanding any provision of the policy, the policy may not be canceled or not renewed without the insurer endeavoring to give [thirty (30) days] written notice to the Authority except in the case of non-payment, in which case it will be [ten (10) days] with prior written notice to the Authority. All other terms and conditions of the policy shall remain unchanged.

# Force Majeure

**21.1** **Force Majeure Event**

**21.1****.1** A “Force Majeure Event” means any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Commencement Date directly causes such affected Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement; provided, that:

# the effect of this event or circumstance could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Concession Assets from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures;

# the event is not, or was not, the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement;

1. the Affected Party has made all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such event and to cure the same with due diligence; and

# the Affected Party has given Force Majeure Notice in accordance with Section 21.2.

# Without limiting the generality of the foregoing, “Force Majeure Events” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

1. the following political events that occur inside Pakistan (each a **Political Event**):
2. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
3. any Lapse of Consent of which report to the Authority, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 [and that shall have existed for thirty (30) consecutive days or more][[68]](#footnote-69); or
4. any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide [and that (or its effects) shall have existed for thirty (30) consecutive days or more], excluding such events where they are unique to the Project and specific to the Concessionaire or occur outside Pakistan;
5. the following events beyond the reasonable control of the affected Party (each a **Non Political Event**), including, but not limited to:
6. lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, which has, in each case, affected the work or operations [for more than fifteen (15) consecutive days]; or
7. any Lapse of Consent of which report to the Authority, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 [and that shall have existed for less than thirty (30) consecutive days]; or
8. any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide [and that shall have existed for thirty (30) consecutive days or more], excluding such events where they are unique to the Project and specific to the Concessionaire and occur outside Pakistan; or
9. explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Political Event, in which case such event or circumstance shall constitute a Political Event); or
10. epidemic or plague.

(c) Force Majeure Events shall expressly not include the following conditions, events or circumstances:

1. late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
2. a delay in the performance of any Contractor;
3. a breakdown in machinery and/or equipment;
4. a delay caused by rains and monsoons; and
5. normal wear and tear or random flaws in materials and equipment;

provided, that each of the events described in sections (c)(i)-( v), shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is in itself a Force Majeure Event whether experienced directly by the Concessionaire or by one of its Contractors.

**21.2** **Obligation To Notify**

21.2.1 The Affected Party shall, as soon as practicable, and in any case within [seven (7) days] of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, Notify the Independent Engineer, the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

21.2.2 The Affected Party shall provide all relevant details in respect of the Force Majeure Event in the Force Majeure Notice, including but not restricted to the following:

1. the nature and extent of the Force Majeure Event;
2. the estimated Force Majeure Period;
3. the nature of and the extent to which, performance of any of the Affected Party’s obligations under this Agreement are affected by the Force Majeure Event;
4. the measures which the Affected Party has taken or proposes to undertake to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations that are affected by the Force Majeure Event; and
5. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

21.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within [five (5) days] from the date of receipt of the same, convene a meeting, along with the Independent Engineer for the purpose of conducting discussions, in good faith, and where necessary the Parties shall agree to conduct inspections and / or surveys of the Project in order to:

1. assess the impact of the underlying Force Majeure Event;
2. to determine the likely duration of Force Majeure Period; and
3. to formulate damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

21.2.4 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports in respect of the matters set out Section 21.2.3 and such other information, details and / or documents that the other Party may reasonably require.

21.2.5 When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party (with a copy to the Independent Engineer and the Independent Auditor) notice to that effect and shall promptly resume performance of its obligations hereunder.

**21.3** **Consequence Of Force Majeure Event**

21.3.1 Upon occurrence of a Force Majeure Event, the following shall apply:

1. there shall be no Termination of this Agreement except in accordance with the provisions of Section 21.5 (*Termination Notice for Force Majeure Event*), Section 21.6 (*Termination Payment for Force Majeure Event*) and Article 23 (*Termination*);
2. subject to Section 21.8 *(Excuse From Performance Of Obligations)*, the Project Milestone Dates for the Project Milestones (affected by the Force Majeure Event) to be performed (together with the timelines for performance by the Concessionaire of its relevant obligations to be performed) shall be extended by the Force Majeure Period (as determined by the Independent Engineer and the Independent Auditor in accordance with Article 15 (*Relief Orders*)) and in such case, the provisions of Article 15 (*Relief Orders*) shall apply;
3. all costs, fees, expenses and charges arising from and relating to the Force Majeure Event shall be allocated in accordance with Section 21.4 (*Allocation of Costs Arising out of Force Majeure*),

provided, however, that no relief, including extension of Time For Completion, shall be granted to the affected Party to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred.

**21.4** **Allocation Of Costs Arising Out Of Force Majeure**[[69]](#footnote-70)

21.4.1 Upon occurrence of a Force Majeure Event, other than a Force Majeure Event which results in termination pursuant to Section 21.5, the Force Majeure Costs shall be allocated as follows:

1. upon occurrence of a Non Political Event, all Force Majeure Costs shall be on the account of the Concessionaire and the Authority shall not be liable or responsible for the same in any manner;
2. upon occurrence of a Political Event, the Authority shall fund and bear the Force Majeure Costs (as set out in a Relief Order) and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

21.4.2 Save and except as expressly provided in this Section 21.4 (*Allocation of Costs Arising out* *of Force Majeure*) and, if applicable, Section 21.5 (*Termination Notice For Force Majeure Event*) and Section 21.6 (*Termination Payment For Force Majeure Event*), neither Partyshall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**21.5** **Termination Notice For Force Majeure Event**

21.5.1 If:

1. a Force Majeure Event subsists for a continuous period of [one hundred and twenty (120) days],[[70]](#footnote-71) either Party may in its discretion Terminate this Agreement by issuing a Termination Notice to the other Party; or
2. in case of a Political Event, the Authority determines that the Force Majeure Costs relating to the same are unacceptable then the Authority may in its discretion Terminate this Agreement by issuing a Termination Notice to the Concessionaire,

in each case above, without being liable in any manner whatsoever, save as provided in this Section 21.5 (*Termination Notice for Force Majeure*) and Section 21.6 (*Termination* *Payment for Force Majeure Event*), and upon issue of such Termination Notice, thisAgreement shall, notwithstanding anything to the contrary contained herein, stand Terminated forthwith; provided, that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant [fifteen (15) days’] time to make a representation, and may after the expiry of such [fifteen (15) days] period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

**21.6** **Termination Payment For Force Majeure Event**[[71]](#footnote-72)

21.6.1 If Termination is on account of a Non Political Event, the Authority shall make a Termination Payment to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Non Political Event Termination Amount.

21.6.2 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Political Event Termination Amount.

**21.7** **Force Majeure Dispute Resolution**

21.7.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided, that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

**21.8** **Excuse From Performance Of Obligations**

21.8.1 The Affected Party shall be excused from performance of its obligations (except payment obligations) to the extent it is unable to perform on account of such Force Majeure Event.

# Events Of Default

**22.1** **Concessionaire Event Of Default**[[72]](#footnote-73)

22.1.1 For the purposes of this Agreement, each of the events and circumstances set out in Part I of **Schedule [◙]** (*Events of Default*) is an event of default by the Concessionaire (the **Concessionaire Event of Default**).

**22.2** **Authority Event Of Default**[[73]](#footnote-74)

22.2.1 For the purposes of this Agreement, each of the events and circumstances set out in Part II of **Schedul**e [◙] (*Events of Default*) is an event of default by the Authority (the **Authority Event of** **Default**).

# Termination[[74]](#footnote-75)

**23.1 Termination For Concessionaire Event Of Default[[75]](#footnote-76)**

23.1.1 Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence and continuation of a Concessionaire Event of Default, the Authority shall be entitled to Terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided, that before issuing the Termination Notice, the Authority shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the **Authority Preliminary Notice**).

23.1.2 In the event the underlying Concessionaire Event of Default is not cured within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Authority shall be entitled to:

* + 1. Terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period; and
    2. encash the [Construction Performance Security or the O&M Performance Security][[76]](#footnote-77), as applicable and in effect as such time, on or following the issuance of the Termination Notice.

23.1.3 The following shall apply in respect of Cure Period relating to a Concessionaire Event of Default:

1. the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages[[77]](#footnote-78)(as expressly set out in this Agreement), if any, caused by its underlying breach or default giving rise to the Authority Preliminary Notice;
2. the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
3. if the cure of the breach including as identified in the Authority Preliminary Notice by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority and/or any other Government Authority hereunder, the applicable Cure Period shall be extended from the date the Concessionaire notifies the Authority of the same until the date that the Authority and/or any other Government Authority, as the case may be, accords the required approval;
4. during any period when any Financing Due is outstanding, the rights of the Parties and the Financiers during the pendency of the Cure Period shall be as set out in the Financing Documents.[[78]](#footnote-79)

23.1.4 [Upon issuance of a Termination Notice by the Authority (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, the right of the Concessionaire to [charge the Users][[79]](#footnote-80) shall stand transferred to the Authority with immediate effect and thereafter all [revenues from Users] shall accrue and/or be payable to the Authority.][[80]](#footnote-81)

23.1.5 In the event of Termination for a Concessionaire Event of Default, the Authority shall (to the extent available under the Applicable Laws) be entitled to:

1. pursue any remedies, including the recovery of any Losses or damages suffered by the Authority as a result of a Concessionaire Event of Default that gave rise to such Termination; and
2. recover any Losses and damages incurred by the Authority and any extra costs of completing the Project Works.

**23.2 Termination For Authority Event Of Default**

23.2.1 Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence and continuation of any of the Authority Event of Default, the Concessionaire shall by a notice in writing inform the Authority of its intention to issue the Termination Notice (the **Concessionaire Preliminary Notice**).

23.2.2 In the event the underlying Authority Event of Default is not cured by the Authority within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Concessionaire shall be entitled to terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period.

23.2.3 In the event of Termination due to an Authority Event of Default, the Authority shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Authority Default Termination Amount.

23.2.4 [Upon issuance of a Termination Notice by the Concessionaire (following expiry of the Cure Period) on account of occurrence and continuation of an Authority Event of Default during the Operations Period, the right of the Concessionaire to [charge the Users][[81]](#footnote-82) shall stand transferred to the Authority with immediate effect and thereafter all [revenues from Users] shall accrue and/or be payable to the Authority.][[82]](#footnote-83)

**23.3 Termination For Corrupt Acts**

23.3.1 The Concessionaire warrants that in entering into this Agreement it has not committed any Corrupt Act.

23.3.2 If any Corrupt Act is committed, then the Authority shall be entitled to act in accordance with the following provisions of this Section 23.3.2:

1. if the Corrupt Act is committed by the Concessionaire or any Affiliate of the Concessionaire, as the case may be, then in any such case, the Authority may issue an Authority Preliminary Notice;
2. if the Corrupt Act is committed by an employee of the Concessionaire acting independently of the Concessionaire, the Authority may an Authority Preliminary Notice; provided, however, the Authority shall not be entitled to issue a Termination Notice in the event the Concessionaire, within [thirty (30) days] of its receipt of the Authority Preliminary Notice, terminates such employee’s involvement in the Project and (if necessary) procures and evidences the performance of any part of the Project deliverables previously performed by such employee by another person;
3. if the Corrupt Act is committed by any other person not specified in sub-section (b) above but involved in the Project as a subcontractor or supplier to any Contractor or to the Concessionaire, then the Authority may issue an Authority Preliminary Notice; provided, however, that the Authority shall not be entitled to issue a Termination Notice in the event the Concessionaire, within [thirty (30) days] of its receipt of the Authority Preliminary Notice, procures the termination of such person’s involvement in the Project and (if necessary) procures the performance of the relevant contract or part of the Project Works by another person.

23.3.3 Any Authority Preliminary Notice under this Section 23.3 shall specify:

(a) the nature of the Corrupt Act; and

(b) the identity of the party or parties who the Authority believes has committed the Corrupt Act; and

(c) the date on which the Termination Notice will be issued, which date shall be subject to the timelines provided in Section 23.3.2(b) and (c), as applicable.

23.3.4 Without prejudice to its other rights or remedies under this Section, the Authority shall be entitled to recover from the Concessionaire, the greater of:

(a) the amount or value of the gift, consideration or commission which may be the subject of the Corrupt Act; and

(b) any direct losses (including Losses) sustained by the Authority in consequence of any breach of this Section by the Concessionaire.

23.3.5 In the event of Termination due to a Corrupt Act in accordance with this Section 23.3, the Authority shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Corrupt Act Termination Amount.

**23.4** **Termination Payments**[[83]](#footnote-84)

23.4.1 Where due, the Termination Payment shall be payable to the Concessionaire by the Authority on or prior to the Termination Payment Date in accordance with a demand being made by the Concessionaire in writing, subject to the same being duly certified by the Independent Engineer and Independent Auditor.

23.4.2 To the extent:

(a) the [Termination Equity and/or Termination Dividend Amount] is payable by the Authority to the Concessionaire upon Termination of this Agreement; and

(b) the Authority fails to make payment of such due and payable Termination Equity and/or Termination Dividend Amount (the **Unpaid Termination Equity Amount**) by the date falling [fifty (50) days] following the Termination Payment Date, then, the Authority shall (in addition to the payment of the due and payable Unpaid Termination Equity Amount) make payment to the Concessionaire of late payment interest on the Unpaid Termination Equity Amount at the rate of Delayed Payment Rate, such interest commencing to accrue on the date falling [fifty (50) days] following the Termination Payment Date and ending on the actual date on which the Authority makes payment of the Unpaid Termination Equity Amount. The stipulation regarding additional amounts payable in respect of delayed Unpaid Termination Equity Amount contained in this Section 23.4.2 shall not be construed nor be deemed to authorize any delay in payment of any amount due to the Concessionaire nor be construed or deemed to be a waiver of the underlying breach of payment obligations, in each case, in the afore-stated circumstances.

**23.5 Mode Of Payment**

23.5.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Payment, and all other payments that are or may be payable by the Authority under any of the provisions of this Agreement shall, so long as the Financing Due is outstanding, be made only by way of credit directly to a bank account designated therefor by the Financiers and advised to the Authority and the Concessionaire in writing and in the event the Financing Due is not outstanding, to a bank account notified by the Concessionaire.

23.5.2 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract[[84]](#footnote-85).

# Requirements For Divestment

**24.1 Requirements For Divestment**

24.1.1 On the Termination Date or in case of expiry of this Agreement on the Final Expiry Date, the Authority shall, have the power and authority to select and substitute a new concessionaire for the Concessionaire.[[85]](#footnote-86)

24.1.2 The Concessionaire shall comply with the following requirements by the Transfer Date (the **Divestment Requirements**):

1. notify the Authority of the location and particulars of all Concession Assets;
2. no longer have the right to use, operate and/or enjoy the Concession Assets;
3. deliver forthwith the actual or constructive possession of the Concession Assets, free and clear of all Encumbrances provided, however, in the event Termination is prior to completion of the Concession Assets (in whole or in part), the Concessionaire shall transfer any uncompleted Concession Assets including all items purchased for the purpose of the Project;
4. cure all Concession Assets of all Defects & Deficiencies in accordance with Section 25.1; provided, that in the event of Termination during the Construction Period, all Concession Assets shall be handed over on ‘*as* *is where is*’ basis after bringing them to a safe condition;
5. deliver and transfer all relevant records, reports, intellectual property and other Licences pertaining to the Concession Assets and its design, engineering, construction, Operation and Maintenance, including all programs and manuals pertaining thereto, and complete ‘*as built*’ Construction Drawings, other Construction Drawings and the O&M Documents as on the Transfer Date;
6. transfer and/or deliver to the Authority, all Concessionaire Permits to the extent permissible under Applicable Laws;
7. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Concession Assets, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, absolutely unto the Authority or its nominee;
8. train all staff notified by the Authority for Operations and Maintenance in accordance with the O&M Manual; and
9. comply with all other requirements as may be prescribed or required under Applicable Standards for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Concession Assets, free from all Encumbrances, absolutely unto the Authority or to its nominee[[86]](#footnote-87).

24.1.3 Upon Termination or expiry of this Agreement, the Authority shall:

1. be entitled, and the O&M Contract shall so provide, to require the O&M Contractor (subject to the Authority or a nominee thereof assuming the obligations of the Concessionaire under such contract with effect from the date of such termination or expiry) to continue to operate and maintain the Project for a period of [six (6) months] from the Termination Date or the Final Expiry Date on the terms and conditions specified in the O&M Contract or such longer time as shall be agreed with each O&M Contractor; and
2. be entitled, and the O&M Contract shall so provide, to purchase all the property of the O&M Contractor at fair market value upon termination or expiry of the O&M Contract.][[87]](#footnote-88); and
3. [be entitled to audit the employees, identify key staff and senior management of the Concessionaire and, at its own costs and on a discretionary basis, elect to retain any employee it considers useful for the safe and continuous operation of the Concession Assets. Provided where the Concession Assets are being managed and operated by an independent third party, the Authority may, at its own cost, elect to continue with such third-party subject to terms of the agreement to be agreed with the third party][[88]](#footnote-89).

24.1.4 The Parties shall provide to each other (as applicable):

1. in case of Termination of this Agreement, upon issuance of the Preliminary Termination Notice; or
2. in case of expiry of this Agreement on the Final Expiry Date, [six (6) months] prior to the Final Expiry Date, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its appointed concessionaire, nominee or agent may reasonably require for operation of the Project until the Transfer Date.

**24.2** **Cooperation And Assistance For Transfer Of The Concession Assets**

24.2.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Concession Assets in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Project Site and the Concession Assets.

**24.3** **Vesting Certificate**

24.3.1 Subject to Section 25.2 *(Liability for Defects During Exit Implementation Period)*, in case of Termination or expiry of this Agreement the Concessionaire shall complete by the Transfer Date: (a) the divestment of all rights, title and interest in the Project (including the Concession Assets); (b) fulfillment of all Divestment Requirements; and (c) cure of all Defects & Deficiencies in accordance with Section 25.1 *(Liability For Defects Following Termination or Expiry)*.

24.3.2 Provided that the conditions set out in Section 24.3.1 above have been fulfilled, on a date set by the Concessionaire, being a date on or before the Transfer Date the Independent Auditor and the Independent Engineer shall jointly, issue a certificate (the **Vesting Certificate**) substantially in the form set forth in **Schedule** [◙] (***Form of Vesting Certificate***). The Vesting Certificate will constitute evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project (including the Concession Assets), and their vesting in the Authority pursuant hereto.

24.3.3 If the Vesting Certificate is not issued by the Transfer Date, then the Concessionaire shall pay to the Authority damages in a sum calculated at the rate of [*please insert relevant rate]* for each full day of delay (the **Divestment Delay Damages**). All Divestment Delay Damages becoming due and payable by the Concessionaire in terms of this Section 24.3.3 shall be invoiced by the Authority to the Concessionaire and shall become due and payable on the date falling [thirty (30) days] following the Concessionaire’s receipt of such invoice (the **Divestment Delay Damages** **Payment Date**). In the event of failure by the Concessionaire to pay the Divestment Delay Damages to the Authority by the Divestment Delay Damages Payment Date, the Authority shall have the right to encash the Construction Performance Security and/or the O&M Performance Security (as may be in full force and effect) in an amount equal to the Divestment Delay Damages. Notwithstanding anything contained herein, the recovery of Divestment Delay Damages under this Section 24.3.3 shall be without prejudice to the rights of the Authority under the Authority Agreements.

24.3.4 The Parties agree that the amounts of Divestment Delay Damages provided under this Section 24.3 are in lieu of actual damages and are the Parties’ reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

**24.4** **Transfer Consideration**

24.4.1 The Parties agree that the Concession Assets shall be transferred to the Authority on the Transfer Date for a sum of (as consideration) PKR 1/- (Pakistani Rupees One only).

**24.5** **Divestment Costs**

24.5.1 Subject to Section 24.5.2, the Concessionaire shall bear and pay, in case of Termination due to a Concessionaire Event of Default and/or due to Corrupt Act and/or due to a Non Political Force Majeure Event or in case of expiry of this Agreement on the Final Expiry Date, all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Concession Assets in favor of the Authority or its nominated agency on the Transfer Date, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority. In the event of Termination due to a Political Force Majeure Event and/or an Authority Event of Default, the Authority shall bear and pay all the above-mentioned costs.

24.5.2 In the event of any Dispute relating to matters covered by and under this Article 24 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

# Defects Liability

**25.1** **Liability For Defects Following Termination or Expiry**

25.1.1 In case of:

1. Termination during the Operations Period, then not later than [five (5) days] following the Termination Date; or
2. expiry of this Agreement on the Final Expiry Date, then not later than [twelve (12) months] prior to the Transfer Date,

the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Applicable Standards, and if required, cause appropriate tests to be carried out to identify any Defects & Deficiencies (other than any Defects & Deficiencies that are not cured during the Cure Period and are the reason for issuance of a Termination Notice by the Authority for a Concessionaire Event of Default) that are to be cured prior to the Transfer Date.

25.1.2 Subject to Section 25.2 *(Liability for Defects During Exit Implementation Period)* all Defects & Deficiencies identified by the Independent Engineer, following the aforesaid verification and testing in accordance with Section 25.1.1, shall be cured by the Concessionaire prior to the Transfer Date at its cost and risk.

25.1.3 Until the Transfer Date, all risks shall vest with the Concessionaire for loss of or damage to the whole or any part of the Concession Assets and following the Transfer Date, all risks in relation to the same shall be deemed to have been transferred to and vest with the Authority.

**25.2** **Liability For Defects During Exit Implementation Period**

25.2.1 Without prejudice to any obligation of the Concessionaire in this Agreement, the Concessionaire shall be responsible for all Defects & Deficiencies in the Concession Assets identified during the Exit Implementation Period in accordance with this Section 25.2.1 and it shall have the obligation to repair or rectify all Defects & Deficiencies observed by the Independent Engineer in the Concession Assets during the aforesaid period, as set out in a list jointly prepared by the Independent Engineer and the Concessionaire (the **Handover** **List**)within:

1. in case of Termination of this Agreement, [●]of the issuance of a Termination Notice;
2. in case of expiry of this Agreement on the Final Expiry Date, [●]after the Final Expiry Date.[[89]](#footnote-90)

25.2.2 Notwithstanding anything to the contrary set out herein, the provisions of this Section 25.2 *(Liability for Defects During Exit Implementation Period)* shall not apply to any Defects & Deficiencies caused by an Authority Event of Default or a Political Event that has resulted in Termination.

# Disclaimer

**26.1** **Disclaimer**

26.1.1 Subject to the terms of this Agreement,[[90]](#footnote-91) the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, Project, Scope of the Project, Project Requirements, [Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology *[Insert any other relevant Project description]]*[[91]](#footnote-92) and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Except as expressly provided in this Agreement, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority or its advisers including for any act, error, misrepresentation, misstatement or omission of the Authority in this regard.

26.1.2 Subject to the terms of this Agreement, the Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Section 26.1.1 and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, [the Sponsor(s)] and their Affiliates or any person claiming through or under any of them.

26.1.3 Any mistake or error in or relating to any of the matters set forth in Section 26.1.1 shall not vitiate this Agreement or render it voidable.

26.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Section 26.1.1 above, such Party shall immediately notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the Authority to give any notice pursuant to this Section 26.1.4 shall not prejudice the disclaimer of the Authority contained in Section 26.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

26.1.5 Except as otherwise provided in this Agreement, all risks relating to the Concession Assets shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

# Assignment And Charges

**27.1** **Restriction On Assignment And Charges**

27.1.1 Subject to Section 27.2 (*Permitted Assignment and Charges*) and the Financing Documents, this Agreement shall not be assigned by the Concessionaire to any person[[92]](#footnote-93), save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

27.1.2 Subject to the provisions of Section 27.2 (*Permitted Assignment and Charges*), the

Concessionaire shall not:

1. create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement; or
2. create or permit to subsist any Encumbrance on the Concession Assets or otherwise transfer or dispose of the Concession Assets;

in each case above, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

**27.2** **Permitted Assignment And Charges**

27.2.1 The restriction set forth in Section 27.1.2 of Section 27.1 (*Restriction on Assignment* *and Charges*) shall not apply to:

1. liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
2. assignment of rights, interest and obligations of the Concessionaire under this Agreement, the Authority Agreements, and/or the Project Agreements, Encumbrances, pledges/hypothecation of goods/assets, and any and all other bank accounts of the Concessionaire, a mortgage/charge in relation to the [Construction Works][[93]](#footnote-94) and the Concession Assets [(excluding the Project Site)][[94]](#footnote-95), a charge on the present and future movable, immovable and intellectual property of the Concessionaire, in each case, arising or created as security only for indebtedness to the Financiers under the Financing Documents in accordance with the Financing Term Sheet or the Financing Amendment Term Sheets, as the case may be.

**27.3** **Financing Term Sheet & Financing Amendment Term Sheets**

27.3.1 Prior to Financial Close, the Concessionaire shall deliver to the Authority and the Independent Auditor a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for debt repayment that is not greater than the aggregate of the Financing Component set out in the Financial Model using the assumptions of the Financial Model, together with the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae that will be included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Financiers upon the winding up for early termination of the Financing under the Financing Documents, and shall also identify the equity commitments, individually and in total, [of the Sponsor(s)] and other key investors and shareholders (the **Specific Term Sheet Parameters**). The Authority and the Independent Auditor will evaluate the Specific Term Sheet Parameters to ensure that the principal financial terms are not greater than the aggregate of the Financing Component set out in the Financial Model using the assumptions of the Financial Model, and to evaluate the impact on the Authority’s obligations upon any Termination of this Agreement. If the Authority and/or the Independent Auditor has any objections to the terms specified in such term sheet or schedule, it shall inform the Concessionaire thereof within [thirty (30) days] of its receipt thereof; otherwise, the Authority and the Independent Auditor shall be deemed not to have objected to those terms (the **Financing Term Sheet**) and the Concessionaire shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by Authority and/or the Independent Auditor. The Concessionaire shall provide the Authority, the Independent Engineer and the Independent Auditor with a copy of the Financing Documents no later than [fifteen (15) Business Days] of its execution (provided that, to the extent that the commercial terms of these executed Financing Documents do not deviate from the Financing Term Sheet, the Authority and the Independent Auditor shall have no further right to raise any objection in respect of these Financing Documents).

27.3.2 Following Financial Close, the Concessionaire shall deliver to the Authority and the Independent Auditor, copies of all amendments (if any) to the executed Financing Documents within [ten (10) Business Days] after the execution of each such document. The Concessionaire shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the Authority and the Independent Auditor, no less than [thirty (30) Business Days] prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other key financial terms or material modifications related thereto.

27.3.3 The Authority and the Independent Auditor shall notify the Concessionaire of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule as soon as reasonably possible, and in any case within [thirty (30) days] of receipt of the term sheet or schedule. In case no objection has been received by the Concessionaire on or before the expiry of the [thirty (30) days] after receipt of the term sheet or schedule related to the proposed modification, the Authority and the Independent Auditor shall be deemed[[95]](#footnote-96) not to object to those amendments or terms (the **Financing Amendment Term Sheets**). Prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Concessionaire shall deliver to the Authority and the Independent Auditor, in a form satisfactory to the Authority, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the Authority hereunder or under any Authority Agreement or affect in any way the right of the Authority to acquire the Concession Assets free and clear of all Encumbrances [upon the Authority’s payment of the applicable Termination Payment].

27.3.4 Notwithstanding anything to the contrary, the Concessionaire shall not make any addition, replacement or amendments to any of the Financing Documents without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority.

**27.4** **Financial Closing**

27.4.1 Upon achievement of Financial Close, the Concessionaire shall procure issuance by Financiers (or an agent of the same) of a Notice issued to the Authority (with a copy to the Independent Auditor and the Independent Engineer) certifying the achievement of Financial Close (the **Financial Close Achievement Notice**).

**27.5** **Assignment By The Authority**

27.5.1 Notwithstanding anything to the contrary contained in this Agreement or any other Authority Agreement, the Authority shall not assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement or any Authority Agreement to an assignee or any Person without the consent of the Concessionaire, not to be unreasonably withheld or delayed.[[96]](#footnote-97)

# Change In Law[[97]](#footnote-98)

**28.1** **Increase In Costs**

28.1.1 In the event of Change in Law in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the Concessionaire may so Notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than [thirty (30) days] from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement provided, that if there is no agreement on the amendments to this Agreement or no arrangement is agreed as aforesaid, then the same shall be settled in accordance with the Dispute Resolution Procedure.

28.1.2 The Concessionaire shall be excused from performance of its obligations and entitled to and shall be granted an extension in the timelines for performance of its obligations under this Agreement, as determined by the Independent Engineer to the extent it is prevented, hindered or delayed in performance of its obligations under this Agreement by reason of the Change in Law and for the avoidance of doubt a mere loss of profits shall not be considered as a hindrance or prevention of performance of its obligations under this Agreement.

28.1.3 Notwithstanding anything contained to the contrary in this Agreement, in the event the Change in Law (together with its effects) subsists for a period of [one hundred and twenty (120) days] or more, the Concessionaire shall have the right to issue a Concessionaire Preliminary Notice to the Authority of its intent to terminate this Agreement and, subsequently (at any time after the date falling [thirty (30) days] from the date of issuance by the Concessionaire of the afore stated Concessionaire Preliminary Notice) immediately Terminate this Agreement by issuance of a Termination Notice.

28.1.4 If Termination is on account of a Change in Law, the Authority shall pay a Change in Law Termination Amount to the Concessionaire.

**28.2** **Reduction In Costs**

28.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds [ten (10%) percent of the Total Project Cost]][[98]](#footnote-99) in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than [thirty (30) days] from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement; provided, that if no agreement is reached within [sixty (60) days] of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [fifteen (15) days] of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided, that if the Concessionaire shall Dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure.

**28.3** **Restriction On Cash Compensation**

28.3.1 The Parties acknowledge and agree that the demand for cash compensation under this Article 28 (*Change in Law*) shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after close of such Accounting Year, but no later than one (1) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the close of the Accounting Year to which the demand pertains, but no later than one (1) year from the close of such Accounting Year.

# Additional Matters

**29.1** **Advertising & Advertising Revenues[[99]](#footnote-100)**

29.1.1 The Authority shall have a right to propose from time to time a plan for various advertising activities to be implemented on the Concession Assets (the **Authority Advertising Plan**). The Authority shall submit the Authority Advertising Plan to the Independent Engineer and the Independent Auditor for each of their approval.

29.1.2 Upon approval of the Authority Advertising Plan by the Independent Engineer and the Independent Auditor, the Authority shall be fully responsible for the implementation of the Authority Advertising Plan. Subject to approval of the Authority Advertising Plan by the Independent Engineer and the Independent Auditor and subject to mutual agreement between the Authority and the Concessionaire, the Parties agree to enter into an advertising agreement for the implementation of the approved Authority Advertising Plan.

29.1.3 The Authority exclusively reserves the right to the revenues relating to and/or generated through the approved Authority Advertising Plan from the implementation of the approved Authority Advertising Plan, as determined by the Independent Auditor) (the **Advertising Proceeds**). In case the Advertising Proceeds are paid to the Concessionaire, the same shall be paid to the Authority.

**29.2** **Commercial Rights & Additional Facilities**

29.2.1 At any time prior to the expiration of the Concession Period, the Authority shall have the exclusive right to establish Additional Facilities along the Project Site or Ancillary Facilities either through the Concessionaire (with mutual agreement between the Parties) or any other party at its sole and absolute discretion. Nothing contained in this Agreement shall prevent the Authority from granting Development Rights to any person who is not affiliated with the Concessionaire or its shareholders, provided further that the development of any Additional Facilitates and/or Ancillary Facilities shall not hinder with any construction activities of the Concessionaire.

29.2.2 Subject to Section 29.2.1, nothing contained in this Agreement shall obligate the Authority in any way to grant or deny such Development Rights and its decision regarding such rights will be carried out at its complete discretion. For the avoidance of doubt, Development Rights are not a part of the Concession Assets.

29.2.3 For the purposes of implementation by the Authority of its development rights the Concessionaire shall enter into all such agreements as may be reasonably required by the Authority to give full effect to the grant of Development Rights and to enable the Authority to use the Development Rights granted by the Authority and are solely for the benefit of Authority and/or its designated (as notified to the Concessionaire) nominee.

29.2.4 The Authority shall make use of all Development Rights in such a manner so as not to impair the general integrity of the Concession Assets and with full regard for the safety of all Users and shall implement the Development Rights so as to avoid danger to any such Persons.

**[29.3** **Transaction Advisors & Transaction Advisory Fees**

29.3.1 The Parties each acknowledge that the Transaction Advisors have been retained as consultants for assisting the Authority in developing an effective framework for the development of the Project and selection of the Concessionaire through a fair and transparent competitive bidding process.

29.3.2 The Concessionaire hereby undertakes to pay to the Transaction Advisor (the **Transaction** **Advisory Fees**) an amount equal to [[0.15] percent of the construction cost / EPC Cost] as setout in the Base Case Financial Model within [fifteen (15) days] of the Effective Date;

29.3.3 The Concessionaire shall be responsible for payment of all taxes applicable under the Applicable Laws on the Transaction Advisory Fees.][[100]](#footnote-101)

# Dispute Resolution

**30.1** **Dispute Resolution**

30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the **Dispute**) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Section 30.2 (*Conciliation*).

30.1.2 The Parties agree to use their best efforts for resolving all Disputes promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

**30.2** **Conciliation**

30.2.1 In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer and/or the Independent Auditor, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer and/or the Independent Auditor as the case may be, either Party may request for their departmental heads to meet to resolve such Dispute. Failing such resolution the Dispute shall be referred for mediation by an independent and impartial person appointed by the Steering Committee] in accordance with the Punjab PPP Act, for amicable settlement.[[101]](#footnote-102) In the event the Parties are unable to resolve the matters through conciliation either Party may refer the Dispute to arbitration in accordance with the provisions of Section 30.3 (*Arbitration*).

**30.3** **Arbitration**

30.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Section 30.2 (*Conciliation*), shall be finally decided by reference to arbitration by a board of arbitrators (the **Board of Arbitrators**) appointed in accordance with Section 30.3.3. Such arbitration shall be held in accordance with the provisions of the Arbitration Act.

30.3.2 The venue of such arbitration shall be [Lahore][[102]](#footnote-103) and the language of arbitration proceedings shall be English.

30.3.3 There shall be a Board of Arbitrators of three (3) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two (2) arbitrators so selected, and in the event the two (2) arbitrators are unable to agree on the third arbitrator, then the same will be appointed in accordance with the Arbitration Act.

30.3.4 The arbitrators shall make a reasoned award (the **Award**). Any Award made in any arbitration held pursuant to this Article 30 (*Dispute Resolution*) shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

30.3.5 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

30.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

# Miscellaneous

## 31.1 Governing Law And Jurisdiction

31.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the Applicable Laws of Pakistan[[103]](#footnote-104) and the courts of appropriate jurisdiction in the [Province of Punjab][[104]](#footnote-105) shall have the exclusive jurisdiction[[105]](#footnote-106) over all Disputes or matters arising out of or relating to this Agreement.

**31.2** **Waiver**[[106]](#footnote-107) **And Consents**

31.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

1. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
2. shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
3. shall not affect the validity or enforceability of this Agreement in any manner.

31.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

31.2.3 Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought. Any such consent may be given subject to any conditions thought fit by the Person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.

**31.3** **Survival**

31.3.1 Any cause or action which may have arisen in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the term of the Agreement by effluxion of time or otherwise in accordance with the provisions of this Agreement, shall survive the expiry of the Agreement.

**31.4** **Amendments**

31.4.1 No amendment or modification to this Agreement or the Schedules shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

**31.5** **Notices**

31.5.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in **Schedule** **[◙]** (***Notices***) or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address; and (b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

**31.6** **Confidentiality**

31.6.1 Each of the Parties and their Contractors (including the Concessionaire Engaged Persons), subcontractors, consultants, employees and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to:

1. the Project (including the Concession Assets);
2. the performance of obligations under this Agreement, and
3. the terms of the Authority Agreements, and shall not, without the consent of the other Party, save as required by Applicable Laws or appropriate regulatory authorities, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

31.6.2 The confidentiality requirements of Section 31.6.1 above shall not apply to any information in: (a) the public domain otherwise than by breach of this Agreement or any other Authority Agreement; and (b) the possession of the receiving Party on a non-confidential basis before disclosure by the disclosing party thereof before divulgence as aforesaid.

31.6.3 The provisions of this Article 31 *(Confidentiality)* shall survive for a maximum period of [five (5) years] following Termination or expiry of this Agreement.

**31.7** **Severability**

31.7.1 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

**31.8** **No Partnership And Authority**

31.8.1 Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

31.8.2 Nothing in this Agreement shall be construed to give any Party, and no Party shall hold itself out to have, the authority or power to enter into any obligation on behalf of the other Party except as specifically authorised by the other Party in writing.

31.8.3 Notwithstanding anything to the contrary set out in this Agreement or elsewhere, nothing contained in this Agreement shall be construed or interpreted as the Concessionaire providing designing and/or engineering consulting services to the Authority.

**31.9** **Language**

31.9.1 All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**31.10** **Exclusion Of Implied Warranties**

31.10.1 This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement (except the Authority Agreements) between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

**31.11** **Entire Agreement**

31.11.1 The Parties hereto acknowledge, confirm and undertake that this Agreement [and where applicable the Authority Agreements], as at the date hereof, constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project[[107]](#footnote-108).

**31.12** **Costs And Expenses**

31.12.1 [Subject to Section 29.3,][[108]](#footnote-109) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

**31.13** **Set-off**

31.13.1 The Authority shall have the right to withhold and set-off against any amount it is liable to pay to the Concessionaire hereunder, the amount of any payment due to the Authority from the Concessionaire under this Agreement.

**31.14** **Independence**

31.14.1 In respect of all matters dealing with the Agreement the Independent Engineer and the Independent Auditor shall be independent and shall ensure that it performs all its obligations in accordance with their respective terms of reference and this Agreement.

**31.15 Further Assurances**

31.15.1 Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

**31.16 Successors And Assigns**

31.16.1 This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors, permitted assigns and transferees of the Parties hereto.

**31.17** **Counterparts**

31.17.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, and all the counterparts shall together constitute the one agreement.

**Signature Page**

|  |  |  |
| --- | --- | --- |
| For and on behalf of **[Authority]** through its authorised signatory  Name:  Designation:  CNIC/Passport No:  in the presence of:  signature of **Witnesses**  1- Name:  Address:  CNIC/Passport No:  2- Name:  Address  CNIC/Passport No: |  | signature  ………………………………..  signature  ………………………………..  ………………………………… |

|  |  |  |
| --- | --- | --- |
| For and on behalf ofthe **[Concessionaire]** through its authorised signatory  Name:  Designation:  CNIC/Passport No:  in the presence of:  signature of **Witnesses**  1- Name:  Address:  CNIC/Passport No:  2- Name:  Address  CNIC/Passport No: |  | signature  ………………………………..  signature  ………………………………..  ………………………………… |

1. As per Section 3(g) of the Punjab PPP Act, the *“Government Agency”* that may be a signatory to a concession agreement can be *“a department, attached department of the Government, a local government, or a body corporate owned or controlled by the Government or a local government”*. The preamble with details of the relevant signatory are required to be inserted accordingly. In this Model PPP Agreement, options have been included for where the signatory is a: (i) body corporate/statutory body established under a statute; or (ii) a Department of the Provincial Government. [↑](#footnote-ref-2)
2. Refer to footnote above. To be inserted accordingly based on whether the “Authority” is a statutory body or department. [↑](#footnote-ref-3)
3. To be inserted accordingly. The private party to whom the Letter of Intent is issued may be a (1) a single entity; or (2) a consortium of members that have been selected as the successful private party following the bidding process. If the private party (single entity or consortium), before signing the PPP agreement, elects to establish a special purpose vehicle (SPV) (see Section 23(1) of the Punjab PPP Act) then the SPV executes the PPP agreement as the Concessionaire and the successful private party (single entity or consortium) having shareholding in the SPV is referred to as the Sponsor. [↑](#footnote-ref-4)
4. “Applicable Laws” have been defined to refer to the federal and provincial laws in Pakistan only. Where the Concessionaire/ Sponsor has been incorporated outside Pakistan the defined term should be replaced with a lower case reference to “applicable laws”. [↑](#footnote-ref-5)
5. To be inserted accordingly where the successful private party i.e., Sponsor elects to form a special purpose vehicle in accordance with Section 23 of the Punjab PPP Act. [↑](#footnote-ref-6)
6. Ancillary Facilities may include facilities such as a residential complex, maintenance yards or service areas as may be required on a case to case basis to be developed by the Concessionaire on the Project Site. [↑](#footnote-ref-7)
7. Other standards relevant to the sector in which the Project is being implemented may be inserted on a case to case basis. These standards may be referred to where there is any deficiency in the technical standards and requirements be followed in respect of the Project. [↑](#footnote-ref-8)
8. May be followed as desired on a case to case basis. ASTM Standards are developed and published by ASTM International that provides international voluntary consensus standards for materials, products, systems and services. For more information refer to the following link: <https://www.astm.org/FAQ/> [↑](#footnote-ref-9)
9. May be updated as required on a case to case basis. [↑](#footnote-ref-10)
10. May be updated on a case to case basis. [↑](#footnote-ref-11)
11. To be considered at the time on a case to case basis. [Impact bid price for a change in law that might not happen] [↑](#footnote-ref-12)
12. Any assets forming part of the Concession Assets may be expressly identified and listed in the definition of *‘Concession Assets’*. [↑](#footnote-ref-13)
13. The step-in rights of lenders/financiers are covered in the Concession Direct Agreement. The Concession Direct Agreement entitles the Financiers to be alerted of the occurrence of a Concessionaire Event of Default and potential termination and to take steps to prevent termination by curing the Concessionaire Event of Default. Concessionaire Direct Agreement enables the Financiers to engage directly with the Authority and to negotiate solutions in a default/termination scenario rather than the Authority proceeding towards termination. [↑](#footnote-ref-14)
14. Please review and include minimum credit rating requirements for performance security issuing banks on a case to case basis. [↑](#footnote-ref-15)
15. Other standards relevant to the sector in which the Project is being implemented may be inserted on a case to case basis. These standards may be referred to where there is any deficiency in the technical standards and requirements be followed in respect of the Project. [↑](#footnote-ref-16)
16. Since this Model PPP Agreement has been made in BOT mode the definition of “Contractors” includes reference to EPC and O&M contracts. The definition of “Contractors” may be updated on a case to case basis depending on the applicable mode of concession. [↑](#footnote-ref-17)
17. The ‘Delayed Payment Rate’ may be revised on a case to case basis. This Model PPP Agreement includes (for reference only) the Delayed Payment Rate from precedent transactions. [↑](#footnote-ref-18)
18. This Model PPP Agreement provides the Authority with discretion as to the party it grants the Development Rights (which may be the Concessionaire or any third party). Alternatively, based on the Project structure the Development Rights may at the outset be granted to the Concessionaire. In the latter scenario the definition may be amended to read as follows: *“Development Rights means such additional rights, property or assets that are not part of and are not anticipated to be part of the Project as on the Effective Date but are granted to the Concessionaire by the Authority in accordance with Section 29.2 (Commercial Rights & Additional Facilities) and the Development Rights Agreement, and may include, without in any manner limited to, provision of Additional Facilities,”.* Corresponding changes may be required in the relevant provisions (as applicable). [↑](#footnote-ref-19)
19. Either the IEE or EIA approval may be required for the Project as may be determined on a case to case basis. [↑](#footnote-ref-20)
20. Any Users i.e., persons, entities or vehicles (in case of road projects) that may be exempt from paying for the services/use of the Project being provided in PPP mode may be inserted as applicable on a case to case basis. [↑](#footnote-ref-21)
21. Insert number of years reflecting the Concession Period. [↑](#footnote-ref-22)
22. Reference to PKR may be updated where any foreign loan is being obtained. [↑](#footnote-ref-23)
23. Insert criteria such as recognized global sanctions list, or any financial institution the Government of Punjab does not wish to engage with in respect of its PPP projects. [↑](#footnote-ref-24)
24. Either Party shall only be required to indemnify the other Party (under Section 9) where claimed indemnification amount exceeds in Minimum Indemnification Amount expressed in PKR herein. [↑](#footnote-ref-25)
25. The MRG may be available on a case to case basis depending on whether it has been approved by the Steering Committee in accordance with Section 11 of the Punjab PPP Act as one of the Government of Punjab supports being made available to the Project. [↑](#footnote-ref-26)
26. Please review and include minimum credit rating requirements for performance security issuing banks on a case to case basis. [↑](#footnote-ref-27)
27. Other standards relevant to the sector in which the Project is being implemented may be inserted on a case to case basis. These standards may be referred to where there is any deficiency in the technical standards and requirements be followed in respect of the Project. [↑](#footnote-ref-28)
28. To be inserted as applicable. [↑](#footnote-ref-29)
29. Insert relevant international performance standards that the Concessionaire shall be required to comply with to ensure protection of the environment during the Project Works e.g., IFC’s Performance Standards on Social & Environmental Sustainability, dated 30 April 2006. [↑](#footnote-ref-30)
30. For the purposes of this Model PPP Agreement the Project Site (for which License shall be provided) is where the Project, including Concession Assets for which Concession is being granted shall be located. However, where Development Rights for developing Additional Facilities are also granted to the Concessionaire, the Project Site may be demarcated into the Concession Assets Project Site (where Concession Assets are located) and the Additional Facilities Project Site (where Additional Facilities are located) and the Authority’s obligations in respect of the Concession Assets Project Site and the Additional Facilities Project Site may be reflected in the Concession Agreement accordingly. [↑](#footnote-ref-31)
31. The signing of the Project Site Licence Agreement is listed as a CP in this Model PPP Agreement. However, it may be advisable to enter into the Project Site Licence Agreement at the same time as the Concession Agreement. [↑](#footnote-ref-32)
32. Insert as applicable. [↑](#footnote-ref-33)
33. Insert as applicable. [↑](#footnote-ref-34)
34. Maintenance requirements may be included on a case to case basis depending on the specific Project requirements. [↑](#footnote-ref-35)
35. To be reviewed and updated on a case to case basis depending on the concession mode and project requirements. [↑](#footnote-ref-36)
36. To be updated on a case to case basis depending on the adopted concession mode. [↑](#footnote-ref-37)
37. To be updated on a case to case basis depending on the adopted concession mode. [↑](#footnote-ref-38)
38. To be updated on a case to case basis depending on the adopted concession mode. [↑](#footnote-ref-39)
39. Will not be relevant in annuity-based PPPs. In which case the concept of Service Charges may be replaced with an annuity-based mechanism in the Concession Agreement. [↑](#footnote-ref-40)
40. “Applicable Laws” has been defined to refer to the federal and provincial laws of Pakistan. Where the Concessionaire has been incorporated outside Pakistan the defined term should not be used instead reference should be replaced with “applicable laws”. [↑](#footnote-ref-41)
41. “Applicable Laws” has been defined to refer to the federal and provincial laws of Pakistan. Where the Concessionaire has been incorporated outside Pakistan the defined term should not be used instead reference should be replaced with “applicable laws”. [↑](#footnote-ref-42)
42. To be updated on a case to case basis in light of specific project requirements. [↑](#footnote-ref-43)
43. To be updated on a case to case basis in light of specific project requirements. [↑](#footnote-ref-44)
44. Note that these provisions are only relevant where the Authority is providing the land. Where the private entity provides the land these provisions are not relevant. [↑](#footnote-ref-45)
45. Where the land is being leased to the Concessionaire, all references to ‘License’ shall be amended to ‘Lease.’ [↑](#footnote-ref-46)
46. If there at the time of transfer of Vacant Possession any possibility of interference by Persons with rights-of-way across, access to or use of the Project Site with particular regard to the owners and users of any land adjacent to the Project Site then the same should be expressly stated/ built into the Concession Agreement and Project Site Licence Agreement. [↑](#footnote-ref-47)
47. This may be relevant on a case to case basis. Where the Concessionaire requires a Special/Temporary Right of way it shall obtain the same at its own cost and risk. [↑](#footnote-ref-48)
48. Refer to definition of “Vacant Possession” and this Section 4.10, Vacant Possession of the Project Site includes, *inter alia*, removal of existing utilities on the Project Site by the Authority. The Authority may on a case to case basis determine whether removal of existing utilities (as part of handing over Vacant Possession) is an obligation to be undertake by the Authority or shifted to the Concessionaire. In the latter scenario, the following proposed provision may be inserted: *“The Concessionaire shall make the necessary applications to the relevant Government Authorities for any and all approvals or authorisations required for the clearance of the Project Site and for the relocation and diversion of utilities and where the Concessionaire is unable within a reasonable period to obtain any such approval or authorisation the Authority may use its reasonable efforts to assist in the obtaining of such approval or authorization”.* [↑](#footnote-ref-49)
49. The inclusion of an Independent Engineer Payment Account is optional. Furthermore, please ensure that detailed payment provisions are included in the Independent Engineer Contract. [↑](#footnote-ref-50)
50. The inclusion of an Independent Engineer Payment Account is optional. Furthermore, please ensure that detailed payment provisions are included in the Independent Auditor Contract. [↑](#footnote-ref-51)
51. The Authority should consider whether collateral warranties from Sub-Contractors are required. Such warranties grant the Authority the right to claim directly from the Sub-Contractor, and step-in to the contracts in certain circumstances. [↑](#footnote-ref-52)
52. “Applicable Laws” has been defined to refer to the federal and provincial laws of Pakistan. Where the Concessionaire has been incorporated outside Pakistan the defined term should not be used instead reference should be replaced with “applicable laws”. [↑](#footnote-ref-53)
53. Insert reference as applicable on a project to project basis. [↑](#footnote-ref-54)
54. The Authority may wish to retain a step-in right in circumstances broader than Force Majeure. If this is included, where the step-in is exercised without Concessionaire breach, the Concessionaire should be compensated for any direct losses. [↑](#footnote-ref-55)
55. Provisions relating to funding and shareholder matters will need to be revised and updated on a case to case basis depending on the project funding structure for the relevant project. Current wording envisages equity contribution by the Government of Punjab in the form of ordinary shares. [↑](#footnote-ref-56)
56. The RFP should include a requirement for submission of a Shareholder’s Agreement amongst the Sponsors (as part of their bid). The Shareholders Agreement shall include relevant obligations of the Sponsors relating to restriction on share transfer and otherwise set out in this Model PPP Agreement. [↑](#footnote-ref-57)
57. May be inserted on a case to case basis. [↑](#footnote-ref-58)
58. Where the Bid Security is being provided by the Sponsor, please ensure that the relevant obligations (including maintenance of a valid bid security) in relation thereto are included in the Shareholders Agreement (or equivalent agreement) entered into between the Sponsors. [↑](#footnote-ref-59)
59. Minimum requirements to be included in the Construction Drawings may be inserted on a case to case basis with input from the Authority’s Technical Adviser. [↑](#footnote-ref-60)
60. This staggered completion will not be appropriate for all projects. Accepting stages of work (approving the attainment of certain KPIs etc.) prior to handover can dilute risk transfer. In road or accommodation projects this may be suitable as the road/accommodation may become usable prior to full completion. To be considered in light of the specifics of the relevant project. [↑](#footnote-ref-61)
61. Given the long term nature of many PPPs, changes to the service requirements may occur. Prior to entering into the contract the Authority should consider whether some of these changes can be anticipated, and detailed/costed within the contract. Where changes are anticipated but cannot be specified in great detail, the Authority should consider whether additional flexibility can be worked into the contract. Such a mechanism should clearly set out the process for change (roles, obligations and timings), retain transparency and always provide value for money. [↑](#footnote-ref-62)
62. Parties should consider whether it would be appropriate to stipulate an annual meeting between the Authority and the Concessionaire to review contract performance. This could be harmonized with the obligation to update the O&M Manual periodically, as set out in 19.58. This grants the parties an opportunity to review performance and discuss possible improvements to efficiency, or discuss any un-remedied performance issues. The Concessionaire should be responsible for ensuring continuous improvement of the efficiency of the services, where possible. The Concessionaire may be required to submit a report of its ‘efficiency review’ periodically, e.g. every two years. Any savings arising from a joint review of contract performance efficiency should be shared between the parties. Where the private party is required to provide an ‘efficiency report’, the Authority may retain the right to designate an independent efficiency review of the services provided by the Concessionaire, who should be required to cooperate with the review and bear the cost of the reviewer’s services. [↑](#footnote-ref-63)
63. Appropriate timelines will vary depending on the project timetable. [↑](#footnote-ref-64)
64. In this document all defects and deficiencies (including as identified by the Independent Engineer in the O&M Inspection Report any non-compliance with Applicable Standards) are required to be cured by the Concessionaire. The Authority may on a case to case basis consider including an option, that where there is delay by the Concessionaire the Authority has the option to step in and cure such defects and deficiencies itself and the cost of the same is borne by the Concessionaire. Please refer to proposed language: *“If the Concessionaire has failed to Operate and Maintain the Project in accordance with the Applicable Standards, the Authority may, in addition to pursuing all other rights and remedies under this Agreement, give notice thereof and, if any such failure is not remedied within fourteen (14) business days or any longer period reasonably determined by the Independent Engineer, the Authority shall be entitled to remedy such failure, either itself or through a third party, (and shall have access to the Project Site and Concession Assets for such purpose) at the expense of the Concessionaire which shall promptly make payment to the Authority for its costs, expenses and other damages suffered or incurred in connection with such remedial acts. If the Concessionaire fails to perform its obligations under this Section, the Authority shall be entitled to draw on the O&M Performance Security to the extent of the costs, expenses and any other damages”*. [↑](#footnote-ref-65)
65. This is likely to include but not be limited to, all risks insurance, employer's liability insurance, and project performance guarantee insurance. [↑](#footnote-ref-66)
66. This is likely to include but not be limited to, insurance for completed construction, employer's liability insurance, business indemnity liability insurance, heavy equipment safety insurance. [↑](#footnote-ref-67)
67. On a case to case basis may be determined. [↑](#footnote-ref-68)
68. As a general comment for this Section, note that the time periods during which the relevant event must exist to constitute a force majeure is not always required. [↑](#footnote-ref-69)
69. Allocation of costs during force majeure may be understood in context of uninsurable events (i.e., events for which the private partner is unable to obtain the project insurance policies required under the PPP contract on reasonable terms or at reasonable cost so as to render it as uninsurable). Since Non-Political Events are generally insurable events all Force Majeure Costs are to the account of the Concessionaire and the Concessionaire shall be entitled to receive insurance proceeds for the same. Whereas, Political Event i.e., Political Force Majeure Events are generally uninsurable and therefore the Authority funds and bears the Force Majeure Costs. If the Authority determines that the Force Majeure Costs relating the Political Event are unacceptable then the Authority may in its discretion Terminate this Agreement. For further details, please refer to the following resource:

    <https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/EPEC_Termination_Report_public_version_2013.pdf> [↑](#footnote-ref-70)
70. Typically an agreement may be terminated if a Force Majeure Event lasts for a period between six to twelve months. [↑](#footnote-ref-71)
71. Force Majeure Provisions may require tailoring in light of Lenders comments/requirements. Lenders would in a termination scenario seek to minimize exposure to financial loss and thus would require that compensation payments include atleast all sums owed to the lenders (i.e., principal and markup). [↑](#footnote-ref-72)
72. PPP agreements typically have a concession period of 15-30 years. Such long term contracts cannot possibly cover all events that may occur during such period. However, to deliver value for money and reduce uncertainty it is essential that the Authority consider and include all possible events of default that may occur and that may affect the Project performance. Reducing uncertainty is important specially to give comfort to the key private stakeholders involved in the project, including sponsors, equity investors, lenders, contractors, service providers and suppliers. Reducing uncertainty will ensure greater value-for-money is achieved, since uncertainty will attract a risk premium. [↑](#footnote-ref-73)
73. It is generally in the Authority’s interest to opt for a closed list of default events so that it may better understand what actions should be taken, avoided, or complied with to fulfill its contractual obligations. [↑](#footnote-ref-74)
74. Note that termination is only upon occurrence of events of default and option for voluntary termination by the Authority has not been included as it may undermine private sector confidence in PPPs. Voluntary termination would allow the Authority to unilaterally terminate the agreement (citing public interest or without assigning any reason) even where the private party is performing satisfactorily. [↑](#footnote-ref-75)
75. If the Authority elects to terminate the Agreement for Concessionaire Event of Default (listed in Section 22.1) following expiry of the relevant cure periods, it may do so upon giving an Authority Preliminary Notice (setting out its intent to terminate) followed by the final Termination Notice. The prescribed procedure must be followed to validly terminate the Agreement. [↑](#footnote-ref-76)
76. This BOT Agreement provides for performance securities for construction and operation stage. This provision may be updated on a case to case basis to include any other or additional performance securities being provided. [↑](#footnote-ref-77)
77. The damages payable by the Concessionaire following termination for Concessionaire’s event of default may depend on the maturity of the project at the time of termination. [↑](#footnote-ref-78)
78. Given the close interlinking of the Finance Document and this Agreement, it is key that the Government Agency is aware of the content of the Financing Documents and how this affects their rights under this Agreement. [↑](#footnote-ref-79)
79. The form of charge may vary project to project and may be inserted accordingly. For instance, in road projects the appropriate term is the ‘Toll’ charge. [↑](#footnote-ref-80)
80. To be inserted as necessary. In some Concession Agreement, the Concessionaire is entitled to charge the Users for the infrastructure developed and operated by the Concessionaire e.g., Toll for use of the roads developed by Concessionaire on a PPP basis. This section requires that that where the Authority elects to terminate the Concession Agreement for a default of the Concessionaire then upon issuance of the termination notice the right of the Concessionaire to charge Users is transferred to the Authority. [↑](#footnote-ref-81)
81. The form of charge may vary project to project and may be inserted accordingly. For instance, in road projects the appropriate term is the ‘Toll’ charge. [↑](#footnote-ref-82)
82. To be inserted as necessary. In some Concession Agreements, the Concessionaire is entitled to charge the Users for the infrastructure developed and operated by the Concessionaire e.g., Toll for use of the roads developed by Concessionaire on a PPP basis. This section requires that that where in the event of termination the right of the Concessionaire to charge Users is transferred to the Authority. [↑](#footnote-ref-83)
83. Compensation upon termination may be (1) Book Value Compensation or (2) Financing Based Compensation. – In Book value compensation *“the investment costs incurred for the PPP project are used as the basis for calculating the compensation. A distinction is typically drawn between termination during the construction phase and termination during the operational phase. During construction, the calculation is based on the investments effectively incurred at the date of termination by the Private Partner for the construction of the PPP assets. During operation, the value of the assets is reduced to take account of depreciation”* and in Financing-based compensation *“compensation is defined by reference to the financing raised by the Private Partner for the project, typically senior debt, subordinated debt and equity.”* This Agreement is based on the Financing Based Compensation (refer to Schedule on Termination Payments for detail). Note that book value compensation may fail to make the lenders whole. As this compensation is independent of the financing raised for the PPP project, there is a risk of underpayment (which would create bankability issues for lenders) or overpayment (which may incentivize sponsors to prompt an Authority default). Lenders generally prefer a more transparent calculation, where compensation is based on the value of financing they have provided. Lenders while providing financing for a project will review the project documents and seek assurances that they will be “made whole” following termination where the private party is not at fault.

    Compensation on termination is essential to promote fairness and avoid unjust enrichment of either party to the contract.

    For further details refer to: <https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/EPEC_Termination_Report_public_version_2013.pdf>] [↑](#footnote-ref-84)
84. This provision creates a contractual right to exercise any and all remedies in the Agreement or at law. Thus, the exercise of one remedy in the contract does not prevent the exercise of other remedies. For example, terminating the contract does not prevent suing to recover past due payments as well. [↑](#footnote-ref-85)
85. In some cases the Authority may wish to retain the following powers upon the Termination Date: ‘(i) enter and take immediate operational control of the Project (including the Concession Assets) and all related Construction Works (as may be applicable); and (ii) prohibit the Concessionaire, any Concessionaire Engaged Persons or Affiliates from entering upon the Project Site, or dealing with the Concession Assets or any part thereof except in the case where the Concessionaire, any Concessionaire Engaged Persons or Affiliates enters the Project Site or deals with the Concession Assets or any part thereof as a User.’ However, if the Authority retains these powers the risk sharing mechanism from the Termination Date to the Transfer Date may need to be reviewed. [↑](#footnote-ref-86)
86. By ensuring divestment and assignment of all rights, title and interest of the Concessionaire in the Concession Assets, free from all Encumbrances, absolutely to its nominee the Authority is able to assign the aforesaid rights directly to any substitute entity appointed in place of the Concessionaire to continue with the Project following termination of this Agreement. This language is key in ensuring the Authority gains full control of the Concession Asset at the end of the Concession Period. [↑](#footnote-ref-87)
87. Option to take control and appoint a substitute entity following termination (in respect of Construction Works or O&M of the Project) may be included as desired by the Authority/Government Agency on a case to case basis. [World Bank Draft Concession Agreement]. [↑](#footnote-ref-88)
88. To be considered on a case to case basis. In specialized projects where relevant skilled personnel are not available in the market or where the Government lacks capacity and skill, the option may be include for retaining the Concessionaire’s skilled employees following termination. However, this may not be acceptable to the Concessionaire in all circumstances. Should be discussed in the pre-bid meetings. [↑](#footnote-ref-89)
89. The time within which defects must be remedied will vary project to project. These defects cannot affect the provision of the services. Further, it can be decided that the Concessionaire should submit a programme for remedy of each item of the Handover List, with timelines to be approved by the IE and Authority. This permits greater specification of the method and timing of rectification of any defects. If this option is elected, suggested drafting is as follows: *“A. The Independent Engineer shall submit the Handover List to the Concessionaire within five (5) days of the end of the Exit Implementation Period. B. The Concessionaire shall submit a programme setting out the proposed plan and dates for rectification of each Defect & Deficiency identified in the Handover List within ten (10) days of receipt of the Handover List (the “Handover Programme”). C. The Parties shall seek to agree the Handover Programme within [●]. If no agreement is reached it shall be referred to the dispute resolution procedure set forth in section [●]. D. The Concessionaire shall make good each item on the Handover List in accordance with the Handover Programme to the satisfaction of the Independent Engineer. Where any item on the Handover List has not been made good to the satisfaction of the Independent Engineer by the date set out in the Handover Programme, the Authority may rectify the item and recover the cost from the Concessionaire.”* [↑](#footnote-ref-90)
90. Note that the disclaimer is not a blanket disclaimer and is “subject to the terms of this Agreement” thus if the Authority has elsewhere expressly agreed to undertake any obligation or provided a guarantee, the Authority would be bound by the same and may not rely this Clause 26 to disclaim liability. Thus, while finalizing the Concession Agreement it is important for the Government Agency to be aware any obligations undertaken/guarantees provided hereunder. [↑](#footnote-ref-91)
91. Any relevant Project related information may be included in the Disclaimer provision. [↑](#footnote-ref-92)
92. A restriction on assignment prevents transfer of this Agreement by the Concessionaire to any person except where written consent from the Authority is obtained. Note that the Concessionaire should be promptly informed by the Authority of the decision on consent (which may be given or denied in the sole discretion of the Authority) without assigning any reason. [↑](#footnote-ref-93)
93. Reference to “Construction Works” may be deleted where the mode of concession does not include construction works. [↑](#footnote-ref-94)
94. Note that in precedent transactions where the Project Site is owned by the Authority/relevant Government Agency no mortgage/encumbrance is permitted in favour of the Financiers. While mortgage over project land is routinely common in commercial lending to private sector projects, the same is not the case in PPP projects and in negotiations the Financiers should be informed of this at the outset by the private party. [↑](#footnote-ref-95)
95. The Government Agency may elect to delete concept of deemed acceptance and require that acceptance shall be expressly in writing. However, this is likely to be objected by the private party as the concept of deemed acceptance provides a way forward in instances where the relevant Authority/ Government Agency is non-responsive. [↑](#footnote-ref-96)
96. If any assignment of this Agreement is contemplated to any other Government department or statutory body to be formed subsequently for the Project the same may be included in this provision at the time of signing so as to pre-approve the same, for example including a list of Permitted Assignees. [↑](#footnote-ref-97)
97. This structure does not distinguish between general and discriminatory changes in law. Introducing this distinction can be considered on a project specific basis. [↑](#footnote-ref-98)
98. May be updated on a case to case basis. [↑](#footnote-ref-99)
99. This may be retained where Advertising Proceeds may be generated by the Authority through advertising on the Concession Assets. [↑](#footnote-ref-100)
100. May be included on a case to case basis where cost of Transaction Advisers is shifted to the Concessionaire. [↑](#footnote-ref-101)
101. The Concessionaire may request the ‘independent and impartial person’ to be identified prior to execution of the contract, or alternatively a list of possible persons to be agreed. This should be acceptable to the Authority. [↑](#footnote-ref-102)
102. Please refer to Section 25 *(Dispute Resolution)* of the Punjab PPP Act whereby the disputes between the parties may be resolved *“by arbitration in the city of Lahore or any other place agreed to by the parties in Pakistan or abroad in accordance with the arbitration clause contained in the PPP agreement and the arbitral award may be enforced in any court of competent jurisdiction”.*  [↑](#footnote-ref-103)
103. This provision sets out the governing law to be used to interpret this Agreement. While the governing law in precedent concession agreements in Punjab has been the laws of Pakistan an argument may be made for foreign governing law - note that under Section 25(2) of the Punjab PPP Act *“The disputes shall be decided in accordance with the laws of Pakistan or under any other law as may be specified in the PPP agreement.”* [↑](#footnote-ref-104)
104. To be inserted as agreed between the parties in accordance with Section 25 of the Punjab PPP Act. [↑](#footnote-ref-105)
105. This provision identifies the courts in the province of Punjab having jurisdiction over disputes arising hereunder. By virtue of this provision each party hereby agrees to submit any legal proceedings arising hereunder to be heard and determined by the courts in Punjab and waives any right to object to such filing of a claim in the competent court on any grounds including for being forum non-convenient. [↑](#footnote-ref-106)
106. This provision means that failure to enforce a term in under this Agreement does not mean that the relevant party has elected not to enforce that term later. [↑](#footnote-ref-107)
107. This means that this Agreement [and where applicable the Authority Agreements] is the only agreement that a court will examine to determine what the "deal" or agreement between the parties was. No other written documents or verbal statements can be used as evidence in a dispute over the agreement. [↑](#footnote-ref-108)
108. To be inserted as applicable. [↑](#footnote-ref-109)