
**OPERATIONS, MANAGEMENT AND
MAINTENANCE CONTRACT**

EXECUTED AMONG

BALUCHISTAN PUBLIC-PRIVATE PARTNERSHIP AUTHORITY,
PLANNING & DEVELOPMENT DEPARTMENT, GOVERNMENT OF BALUCHISTAN
(As The “Primary Implementing Agency”)

AND

COMMUNICATION & WORKS DEPARTMENT, BALUCHISTAN
(As The “Co-Implementing Agency”)

And

[•]
(As The “Concessionaire”)

DATED: [•] [•], 2024

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OPERATIONS, MANAGEMENT AND MAINTENANCE
CONTRACT

This OPERATIONS, MANAGEMENT AND MAINTENANCE CONTRACT (this “Contract”) is made at on the [•] day of [•], 2024.

By & Between

BALUCHISTAN PUBLIC PRIVATE PARTNERSHIP AUTHORITY – PLANNING & DEVELOPMENT DEPARTMENT, GOVERNMENT OF BALUCHISTAN, having its registered offices at House # 49-A, Street 1, Jinnah Town, Samungli Road, Quetta, Baluchistan (hereinafter referred to as the “Primary Implementing Agency”, which expression shall, where the context so permits include its successors-in-interest and permitted assigns).

And

C&W DEPARTMENT, BALUCHISTAN having its registered offices at [•], Quetta, Baluchistan (hereinafter referred to as the “Co-Implementing Agency”, which expression shall, where the context so permits include its successors-in-interest and permitted assigns).

And

[•], registered under the laws of the Islamic Republic of Pakistan, having its registered office _____ through _____ an authorized representative, bearing CNIC No. _____ (hereinafter referred to as the “Concessionaire”, which expression shall, where the context so permits, include its successors- in-interest and permitted assigns).

(The Primary Implementing Agency and the Co-Implementing Agency shall hereinafter be collectively referred to as the “Implementing Agencies” and individually as an “Implementing Agency”. The Implementing Agencies can also be referred to as the “Government of Baluchistan”).

(The Primary Implementing Agency, the Co-Implementing Agency, and the Concessionaire shall hereinafter be collectively referred to as the “Parties” and individually as a “Party”).

RECITALS
WHEREAS:

- A. The Government of Baluchistan is desirous of outsourcing the Operation, Management and Maintenance of Phase -I; 128 Wholesale shops (urban market), Truck and Bus Terminals, Taxi Stand, Auction and Cargo Sheds and Cold Storages (Chaman Master Plan) Facility (“Facility”) and Phase -II; Design, Build, Finance, Operate and Maintain and Transfer (DBFOM&T) of Approximately 34 Acres Land available in the Facility. The Government of Baluchistan shall undertake the outsourcing through Baluchistan Public-Private Partnership framework. For this purpose, the GoB requires a private party to undertake the operation, management and maintenance of the Chaman Master Plan facility under Operation, Management and Maintenance contract with the works as included in the Scope of Work (SCHEDULE C – CONCESSIONAIRE’S SCOPE OF

WORK in this agreement).

- B.** In order to engage the private sector, On [•], 2024 a request for proposal (together with the related advertisements) (the “**RFP**”) was issued by the Primary Implementing Agency to prospective bidders for, *inter alia*, inviting submission of bids for grant of this Agreement for the implementation of the Project through Public Private Partnership and subsequently, upon conclusion of the bidding process pursuant to the RFP (the “**Bidding Process**”), the Concessionaire was selected by the Primary Implementing Agency for such purposes. The letter of award was issued to the Concessionaire by the Primary Implementing Agency on _____.
- C.** The Concessionaire was incorporated as a ‘special purpose vehicle’ by the Consortium for the purposes of undertaking the Project in accordance with the provisions of the Applicable Laws and this Agreement, for the purposes of implementing the Project. GOB shall also be issued shares in Concessionaire in accordance with Section 3A of this Agreement.
- D.** The Concessionaire represents and warrants that it possesses the requisite resources, skills and expertise to implement and run the Project as desired by the Implementing Agencies strictly in accordance with this Agreement.
- E.** The Parties are entering into this Contract to set out the terms and conditions applicable to, *inter alia*, the implementation of the Project and the relationship of Implementing Agencies and the Concessionaire and their rights and obligations.

NOW THEREFORE, in view of the foregoing promises and in consideration of the mutual benefits to be derived and the representations and warranties, covenants, and agreements contained herein, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Contract, unless the context otherwise requires, the following terms shall have the following meanings:

“Abandonment” or **“Abandon”** means the voluntary cessation of the operation, management and maintenance of the Project by the Concessionaire and/or the withdrawal of all, or substantially all, personnel by the Concessionaire from the Site;

“Affected Party” shall have the same meaning as ascribed thereto in Section 15.1.1 .

“Applicable Laws” shall mean any laws, promulgated or brought into force and effect by the GoP, the GoB or any local government having jurisdiction over the Project, as well as rules, regulations, orders, and notifications made pursuant to such laws, as well as, inter alia, judgments, decrees, injunctions, writs and orders of any Pakistan court, as may be applicable.

“Applicable Permits” shall mean any permissions, clearances, concessions, authorizations, consents, licenses, permits, waiver, privileges, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, lodgments or registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project and for the undertaking, performing or discharging the obligations contemplated by this Contract in accordance with the Applicable Laws.

“Arbitration” shall have the meaning given in Section 19.2.

“Arbitration Act” shall mean the Pakistan Arbitration Act, 1940.

“Arbitrator” shall have the meaning given in Section 19.2.

“Award” shall have the same meaning as ascribed thereto in Section 19.2.4.

“Bid” means the technical and financial proposal submitted by the Consortium under the Request for Proposal for the Project;

“Bidding Process” has the meaning ascribed thereto in the Recitals of this Agreement.

“Bid Due Date” shall mean the date on which the bidders were required to submit their bids for the Project in accordance with the RFP.

“Bid Security” shall mean the bank guarantee, pay order or demand draft for an amount constituting 02 (Two) million Rupees as submitted by the Concessionaire to the Primary Implementing Agency along with the Bid, as more particularly described in the RFP.

“Completion Conditions” means the completion of works as specified in Schedule [•];

“Completion Conditions Certificate” means the certificate issued by the Independent Engineer to the Concessionaire with a copy to GOB for each stage of the Works specified in Schedule [•] ([•]) confirming that the Completion Conditions for the relevant stage have been completed in accordance with this Agreement;

“Concession” shall have the same meaning as ascribed thereto in Section 2.1.2.

“Concessionaire” shall have the same meaning as set out in the preamble to this Contract.

“Concessionaire’s Employees” shall have the same meaning as ascribed thereto it in Section 10.1.1.

“Concessionaire’s Event of Default” shall mean any or all of the events that are listed in Section 16.1.1.

“Contract Period” shall mean the period of twenty (20) years commencing from the CP

Completion Date and ending on the Expiry date.

“Change in Ownership and/or Control” shall mean and includes any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type of description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results directly or indirectly in a change in Control, or cause the change in Control of the management of the Concessionaire or a significant aspect of its business.

“Change in Law” shall mean the occurrence of any of the following subsequent to the Bid Due Date:

- (a) the enactment of any new federal, provincial or local government law, as applicable in the Province of Balochistan;
- (b) the repeal, modification, or re-enactment of any existing federal, provincial, or local government law, as applicable in the Province of Balochistan;
- (c) the commencement of any federal, provincial or local government law, which has not entered into effect until the Bid Submission Date;
- (d) a change in the interpretation or application of any Applicable Law (as applicable in the Province of Balochistan) by a court of record as compared to such interpretation or application by a court of record prior to the Bid Due Date;
- (e) the imposition by a Government Authority of any additional Applicable Permit;

Provided, that any:

- (a) coming into effect, on or after the Bid Due Date, of any provision of a statute which is already gazetted in accordance with the Applicable Laws prior to the Bid Due Date; or
- (b) any new Applicable Law or any change in the existing Applicable Law under the active consideration of or in the contemplation of the GoB or the Government of Pakistan as of the Effective Date, which is already gazetted in accordance with the Applicable Laws prior to the Bid Due Date, shall not constitute a ‘Change in Law’;

“Commencement Date” means the date on which the *Commencement Notice* has been issued by the BPPPA after completion of due CP Formalities by both the parties as required under Section 3 of this Contract. The same day will be considered as the Commercial operation date;

“Conditions Precedents” (CP) shall mean the obligations of the Concessionaire and the Implementing Agencies that are set out in Section 3.

“Control” shall with respect to a person, means the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person; or the power to direct the management and policies of such person by operation of law, contract or otherwise.

“Corrupt Practice” shall mean the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

“Core Activities” means any job, work, service that relates directly to the operations, management and maintenance of the Facility by the Concessionaire and includes planning, design, supervision, financial management, sales and marketing related activities.

“CP Completion Certificate” means a certificate to be jointly issued in writing by the Independent Engineer and the Independent Auditor to the Concessionaire and copied to the Implementing Agencies in accordance with Section 3.4 (*CP Completion Certificate & CP Completion Date*);

“CP Completion Date” shall mean the date notified by the jointly issued in writing by the Independent Engineer and the Independent Auditor to the Concessionaire and copied to the Implementing Agencies by way of issuance of the CP Completion Certificate as being the date on which the Conditions Precedent are fulfilled, deferred or waived but in any case, not later than [•]

([•]) Days from Effective Date.

“Critical Project Milestones” means major construction milestones to be agreed by the Concessionaire and the Independent Engineer in light of the Project Schedule towards works;

“Day” shall mean a 24 (Twenty-Four) hour period beginning and ending at midnight Pakistan Standard Time.

“Defects” means any Works (or any part thereof) that fail to conform to the (i) requirements set forth in this Agreement; and/or (ii) Prudent Industry Practices, in each case, in any manner (including (without limitation) in services, performance, materials, design, execution, engineering and/or workmanship);

“Dispute” shall have the same meaning as ascribed thereto in Section 19.1.1 .

“Dispute Resolution Committee” shall have the same meaning as described thereto in Section 19.1.1.

“Effective Date” means the date on which this Contract is signed by each of the Parties.

“Emergency” shall mean a condition or situation that:

- (a) requires intervention by the Implementing Agencies to prevent harm, damage, danger or public unrest, or to maintain safe, adequate and continuous services, at the Facility; and
- (b) where performance of the O&M Works threatens the safety of the persons present at the Facility.

"Employment Criteria" shall mean the criteria to evaluate the performance of the Co-Implementing Agency employees, as set forth in **SCHEDULE J- EMPLOYMENT CRITERIA**.

“EOD Remedy Period” shall have the same meaning as ascribed thereto in Section 17.2.1(a).

“Escrow Agreement” shall mean the agreement to be executed between the Implementing Agencies and the Concessionaire.

“Event of Default” (EOD) shall mean the Concessionaire’s Event of Default or the Implementing Agencies’ Event of Default or both as the context may admit or require.

“Execution Date” means the date of signing of this Contract;

“Expiry Date” shall mean 20 years after completion of the Commencement Date.

“Facility” shall mean the Chaman Master Plan, comprising of the truck terminal & cargo depots, bus terminal and taxi stand, shops, cold storage and auction sheds as well as additional land available for zoning including all its present and future assets, fixed and current assets, movable and immovable properties.

“Financial Bid” shall mean the financial bid submitted by the Concessionaire during the bidding process and any subsequent revisions as permitted under the law, if any, and as appended in Schedule N to this agreement.

“Financial Model” means the financial model submitted as part of the Bid;

“Financial Year” shall mean the financial year of the Primary Implementing Agency on the instruction of the Government of Balochistan or Government of Pakistan, as the case may be.

“Force Majeure Event” shall have the same meaning as ascribed thereto in Section 15.1.1.

“Force Majeure Period” shall mean the period commencing from the date of occurrence of a Force Majeure Event and ending on the earlier of: (a) the date on which the Affected Party resumes or should have resumed such of its obligations the performance of which it was excused

in terms of Section 15.3.1 ; or (b) the Termination Date of the Contract, as applicable.

“Fraudulent Practice” shall mean any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

“Fundamental Change in Law” shall mean any change in Law that is not a qualifying change of Law and that:

- (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Contract.
- (b) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Contract.
- (c) has a material adverse effect on the Concessionaire.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of undertaking commercial operations pertaining to the project including the entire value chain.

“GOP” shall mean the Government of Pakistan.

“GOB” shall mean the Government of Balochistan.

“GOB Termination Date” has the meaning ascribed thereto in Section 16.1.6;

“Government Authority” shall mean the GoP, the GoB, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GOP or the GOB exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the Facility or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of the Contract.

“Handing over Criteria” shall mean the criteria for handing over the facility by the Co-Implementing Agency to the Concessionaire in accordance with this Contract, as set out in **SCHEDULE H – HANDING OVER CRITERIA**.

"Implementing Agencies Event of Default" shall bear the meaning ascribed thereto in 16.2.1

Independent Auditor” shall mean an independent third-party expert jointly appointed by the Parties in accordance with the relevant Section read with **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR AND THE INDEPENDENT ENGINEER**, who shall have the duties and functions stated in this Contract and Independent Auditor Agreement.

“Independent Auditor Contract” means the contract to be entered into between the Concessionaire and the Independent Auditor and any other Person agreed by the Parties, in accordance with this Contract.

“Independent Engineer” shall mean an independent third-party expert jointly appointed by the Parties in accordance with the relevant Section read with **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR AND THE INDEPENDENT ENGINEER**, who shall have the duties and functions stated in this Contract and the Independent Engineer Agreement.

“Independent Engineer Contract” means the contract to be entered into between the Concessionaire and the Independent Engineer and any other Person agreed by the Parties, in accordance with this Contract.

“KPIs” shall mean the Key Performance Indicators as set out in **SCHEDULE A – QUALITATIVE KEY PERFORMANCE INDICATORS & SCHEDULE B – QUANTITATIVE KEY PERFORMANCE INDICATORS**.

“Lapse of Consent” shall mean any Applicable Permit:

- (a) 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 Applicable Permit or, where a time period is not prescribed by the Applicable Laws, within 60 (Sixty) Days of such Applicable Permit ceasing to be in full force and effect.
- (b) not being issued upon application has 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 60 (Sixty) Days of proper application being made for such Applicable Permit.
- (c) being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Concessionaire’s ability to perform its obligations under this Contract.

“Major Maintenance” means the major/periodic maintenance of the Facility, as more particularly described in this Contract;

“Materials” means things of all kinds to be provided and incorporated into the Works by the Concessionaire which are to be sourced in the Country and the Imported Materials once these are in the Country;

“Material Adverse Effect” shall mean the effect of any act or event which materially and adversely affects the ability of a Party to exercise its material rights or perform any of its material obligations under and in accordance with the provisions of this Contract.

“Month” shall mean the calendar month as per the Gregorian calendar.

“Non-Political Event” shall have the meaning given in Section 15.1.2.

“Notice of Intent to Terminate” shall have the meaning given in Section 17.1.2.

“Contract” shall mean this Contract as of date hereof together with the schedules and annexures attached hereto as already ascribed into Contract.

“O&M Cost” shall mean the portion of Project Cost that is quoted by the Bidders in its Financial Bid and relates to the Performance of O&M Works. O&M Costs include all the expenses required to complete the O&M Works.

“O&M Works” or **“O&M”** shall mean the work relating to the operation and maintenance of the project during the Contract Period, as more particularly described in **SCHEDULE C – CONCESSIONAIRE’S SCOPE OF WORK**

“O&M Year” shall mean any one year of the Contract Period

“Ordinary Share Capital” means any (i) shares of the Concessionaire with voting or other rights of management and control, and (ii) any securities of the Concessionaire that are convertible into such shares at the option of the holder;

“Other Agreements” means:

- (a) the Escrow Agreement;
- (b) the Independent Auditor Contract;
- (c) the Independent Engineer Contract;

“Pakistan” shall mean the Islamic Republic of Pakistan.

“Party” shall mean the primary implementing Agency, Co-Implementing Agency or the

Concessionaire, as applicable, and “Parties” means the primary Implementing agency, Co-Implementing Agency and the Concessionaire collectively.

“**Performance Security**” means a bank guarantee, for the period commencing from the Effective Date till the date falling six (6) month after the expiry of this Contract, (in the form as provided there in **SCHEDULE F – FORM OF PERFORMANCE SECURITY**), issued by a scheduled bank in Pakistan (with a minimum credit rating of ‘A-’any reputable credit rating agency like JCR-VIS, PACRA, etc., rating scale for financial institutions) acceptable to the Implementing Agencies, of an amount, in Pakistani Rupee, **equal to the PKR Twenty (20) million**;

“**Performance Security Expiry Date**” shall have the meaning ascribed thereto in Section 9.1.5.

“**Permitted Events**” shall mean:

- (a) Force Majeure Events.
- (b) Primary or Co-Implementing Agency Events of Default.
- (c) Change in Law or Lapse of Consent.

In each of the above case causing a delay in the performance of the Concessionaire’s obligations under this Contract.

“**Person**” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization or any other legal entity.

“**PKR**” or “Pakistani Rupees” shall mean the lawful currency of Pakistan.

“**Political Event**” shall have the meaning given in Section 15.1.1(a) .

“**Project**” shall mean the following:

- (a) Taking over and exercising the possession, control, management and administration of the Facility, as per the terms of this Contract.
- (b) Performing the Works.
- (c) Ensuring to meet the KPIs at all times during the Contract Period.
- (d) Handing over the Facility back to the Co-Implementing Agency on the Termination Date.

“**Project Steering Committee**” or “**PSC**” shall be responsible for the overall policy support and implementation supervision of the facility, as stipulated in this Contract.

“**Prudent Industry Practices**” means those practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in the Country, and satisfying the health, safety and environmental standards of reputable international companies. Prudent Industry Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather, they are a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety applicable with reference to this project;

“**Qualifying Change in Law**” shall mean any Change in Law:

- (a) which applies specifically to:
 - (i) The Project and not to other similar projects within the Province of Balochistan.
 - (ii) The Concessionaire, but not to other Persons.

- (i) The provision of services that are the same as or substantially similar to the Works provided by the Concessionaire under this Contract, but not to other services.

- (b) Which was not reasonably foreseeable by the Concessionaire as at the Bid Due Date.

“**Remedial Action Notice**” shall have the same meaning as ascribed thereto in Section 17.1.1.

“**Remedial Period**” shall have the meaning given in Section 17.1.1.

“**Revenue**” means (as applicable) the amount of money collected by the Concessionaire from the processing and sale of parking through the Facility;

“**Sanction-able Practice**” shall mean any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

“**Site**” means the total area of the Facility with details in **Schedule M**;

“**Sub-Contract(s)**” means the sub-contract(s) granted by the Concessionaire to the Subcontractor(s), pursuant to the Sub-Contract Agreement(s) for the performance of services which do not constitute Core Activities (including Operations & Management and shall include the sub-sub-contracts granted by the Subcontractors to sub-sub-contractors for the performance of the Works; The concessionaire may sub-contract the security services, right to operate forklifting services, Janitorial services for cleaning and maintenance of the site, collection of rent and fee, site maintenance and utility services.

“**Sub-Contract Agreement**” means the legally binding agreement(s) between the Concessionaire and the Subcontractor(s) for the performance of Works and shall include the legally binding agreement(s) between the Subcontractors and the sub-sub-contractor(s);

“**Subcontractor(s)**” means any subcontractor of the Concessionaire or any person to whom a part of the Works has been subcontracted in accordance with Section 12.5 (Subcontractors), and the legal successors in title to such person, but not any assignee of such person and the term;

“**Taking Over Criteria**” shall mean the criteria for take-over of the Facility by the Co-Implementing Agency in accordance with this Contract, as set out in **SCHEDULE I – TAKING OVER CRITERIA**.

“**Termination Equity**” means, as of the date of Termination, the aggregate of the Equity reduced on a straight-line basis from the Commercial Operations Date through the term of this Agreement;

“**Termination Dividend Amount**” means the aggregate return on Equity for each of the three (3) Accounting Years falling immediately after the Termination Date, the same being an amount equal to the aggregate of Termination Equity IRR applied to the Equity for each of the three (3) Accounting Years falling after the Termination Date;

“**Termination Date**” means the date of issuance of the Termination Notice by GOB or Termination Notice by Concessionaire;

“**Termination Notice by GOB**” has the meaning ascribed thereto in Section 16.1.6;

“**Termination Payment Date**” means the date on which the GoB has made payment of the relevant Termination Payment to the Concessionaire such date not exceeding ninety (90) days following the Termination Date;

“**Termination Payment**” means:

- (a) in respect of Termination due to a Concessionaire Event of Default, the Concessionaire Default Termination Amount;
- (b) in respect of Termination due to a Corrupt Act, the Corrupt Act Termination Amount;
- (c) in respect of Termination due to a GoB Event of Default, the GoB Default Termination

Amount;

- (d) in respect of Termination due to a Political Event, the Political Event Termination Amount;
- (e) in respect of Termination due to a Non-Political Event, the Non-Political Event Termination Amount;
- (f) in respect of Termination due to a Change in Law, the Change in Law Termination Amount;

“Co-Implementing Agency Employees” shall mean all the existing employees employed at the Facility, whether providing services on a regular basis or on a contractual basis, if applicable.

“Taxes” shall mean all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value-added tax, service tax, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire.

“Termination” shall mean the termination of this Contract upon the issuance of a Termination Notice in accordance with the terms hereof.

“Termination Compensation” shall mean the compensation to be paid by either Party hereunder in respect of different termination events.

“Termination Date” shall mean the date on which this Contract is terminated by a Termination Notice.

“Termination Notice” shall mean a notice issued by a Party to the other Party terminating the Contract in accordance with the terms hereof.

“Termination Compensation Date” shall mean the date falling ninety (90) days following the Termination Date.

“Transfer Date” shall mean:

- (a) in case of early Termination of this Contract prior to the end of the Contract Period, the Termination Compensation Date is subject to the Authority making payment of the relevant Termination Compensation to the concessionaire on or prior to such date.
- (b) in case of the end of the Contract Period, the last day of the Contract Period.

“Unscheduled Closure” shall have the same meaning as ascribed thereto in Section 6.3.5 below.

“Utility” or **“Utilities”** means electricity, gas, water and telephone line;

“Works” means works to be performed by the Concessionaire on the Site for the Project, including design (as required), supply (as required), construction (as required), installation (as required), operation and maintenance of the facility collectively or singularly as the context may admit or require, including the value addition tasks undertaken in respect of the Project and any other permanent, temporary or urgent works required hereunder;

1.2 **RULES OF INTERPRETATION**

1.2.1 In this Contract unless the context otherwise requires:

- (a) 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;
- (b) 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;

- (c) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Contract 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;
- (d) any reference to any period of time means a reference to that according to Pakistan Standard Time;
- (e) any reference to day means a reference to a calendar day as per the Gregorian Calendar;
- (f) references to a “business day” shall be construed as a reference to a day (other than Saturday, Sunday or a gazetted holiday) on which banks in Pakistan are generally open for business;
- (g) any reference to month means a reference to a calendar month as per the Gregorian calendar;
- (h) the word importing the singular means the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa;
- (i) where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires;
- (j) the Schedules and Recitals to this Contract form an integral part of this Contract and shall be in full force and effect as though they were expressly set out in the body of this Contract;
- (k) references to Recitals, Articles, Sections, or Schedules in this Contract shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Contract, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Contract or of the Schedule in which such reference appears;
- (l) the headings and sub-headings in this Contract (and references to them) are included for convenience only and shall not be taken into account in interpreting this Contract;
- (m) the references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may, from time to time, be amended, varied, supplemented or novated;
- (n) a requirement that a payment be made on a Day which is not a business day shall be construed as a requirement that the payment be made on the next business day; and
- (o) the words “written” and “in writing” includes a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

1.2.2 The rule of interpretations, 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 Contract shall, unless otherwise defined or construed in this Contract, bear its ordinary English meaning.

1.3 COSTS FOR DOCUMENTS

1.3.1 Unless expressly provided otherwise in this Contract, any documentation required to be provided or furnished by the Concessionaire to the Implementing Agencies, the Independent Engineer and/or the Independent Auditor or any other relevant person so appointed or nominated by the Implementing Agencies and/or any other person legally so required shall be provided free of cost and in three (3) copies, and if the Implementing Agencies, 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 one (1) copy thereof.

2. CONCESSION

2.1 APPOINTMENT OF CONCESSIONAIRE

- 2.1.1 The Implementing Agencies hereby appoints the Concessionaire for the implementation of the Project and to perform all its obligations set out in this Contract, and the Concessionaire does hereby undertake and confirm to implement the Project and perform the obligations as per and in accordance with the terms and conditions set out in this Contract.
- 2.1.2 In consideration of the Concessionaire's obligations contained in this Contract and relying on the Concessionaire's representations, warranties and covenants contained herein, the Implementing Agencies, subject to the terms of this Contract, hereby authorizes the Concessionaire, for the duration of the Contract Period, to implement the Project in accordance with the terms and conditions as set forth in this Contract (the "**Concession**").
- 2.1.3 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Contract.

2.2 CONCESSION PERIOD

- 2.2.1 The Concession hereby is granted and shall be effective for start of the Contract Period.

2.3 EXPIRY OF CONTRACT PERIOD

- 2.3.1 This Contract will expire on the Expiry Date (if not extended), and upon expiry of the Contract Period, the Concessionaire shall hand-over the Facility to the Co-Implementing Agency on the Transfer Date as per and in accordance with the Taking-Over Criteria.

2.4 EXTENSION OF CONTRACT PERIOD

- 2.4.1 The Concessionaire may request an extension of the Contract Period by issuing a written notice to the Implementing Agencies at least six (6) months prior to the expiry of the Contract Period; provided, that at the time of the request, the Concessionaire is materially in compliance with its obligations under this Contract and is not otherwise facing a default therein.
- 2.4.2 Within sixty (60) days of receiving the Concessionaire's request, the Implementing Agencies have the right to accept or reject this request for extension at its sole and absolute discretion. The same may be assessed by the Implementing Agencies with the assistance from Independent Engineer and Independent Auditor. In the event the Implementing Agencies:
- (a) Accept the request, the Parties shall enter into such instruments, agreements, and arrangements (including any amendments in the Other Agreements) and on such terms and conditions, in each case, as mutually agreed between the Parties in accordance with the requirements of the Applicable Laws; or
 - (b) Reject the request, the Implementing Agencies may provide the Concessionaire with a written response.
- 2.4.3 Notwithstanding anything contained to the contrary, the Parties agree that in the event (upon the expiry of the Contract Period) the Implementing Agencies decide to incorporate changes in the existing terms and condition of this Contract and in current the Project structure that is a material change, the Implementing Agencies shall be entitled to offer the Project for rebidding to other prospective operators from the market to gauge competitive price.

3. CONDITIONS PRECEDENTS (CP)

3.1 CONDITIONS PRECEDENTS FOR THE CONCESSIONAIRE

- 3.1.1 Save and except as expressly provided herein, the respective obligations of the Parties shall be subject to the satisfaction (waiver and/or deferral (as applicable) in accordance with the terms herein) in full of the conditions precedent, as specified in Section 3.1.2., on or prior to the CP Completion Date.
- 3.1.2 The Concessionaire shall satisfy or procure the satisfaction of the following Conditions Precedent and provide the following information or copies of the following documents to the Implementing Agencies the Independent Engineer and the Independent Auditor in any event by the CP Completion Date and give notice to the Implementing Agencies not later than fifteen (15) Days after the date of satisfaction of each condition:
- (a) the Concessionaire has provided the Performance Security to the Primary Implementing Agency that remains effective and valid till the Performance Security Expiry Date;
 - (b) Certified true copies of all its constitutional documents, through which it was constituted/formed/incorporated.
 - (c) Certified true copies of all its resolution/minutes of meetings adopted by the board of directors (or other equivalent body) of the Concessionaire authorizing execution, delivery and performance of this Contract, as applicable.
 - (d) the Concessionaire has provided to the Primary Implementing Agency copies (with copies delivered to the Independent Engineer and Independent Auditor) of its board resolution that duly authorizes:
 - (i) the Concessionaire to enter into this Contract and to undertake the obligations, liabilities, as set out in this Contract, and the transactions as contemplated by this Contract;
 - (ii) a specified Person or Persons to:
 - (a) execute this Contract on behalf of the Concessionaire with all its obligations and liabilities as set out in this Contract; and
 - (b) undertake all other acts specifically relating to this Contract, as contemplated by this Contract;
 - (e) Undertaking from the Concessionaire (whether the same is a special purpose vehicle, trust, joint venture, or other entity, and its respective trustees, partners, or members (as applicable)), that in the event that there is a change in the direct or indirect ownership or control of the Concessionaire, represented through their trusteeship or governance structure, during the Contract Period, then such change shall not affect the operations of this Contract. The Concessionaire and any new or existing controlling party shall continue to abide by the provisions of this Contract. A change of control shall be deemed to have occurred if any of the following events occur
 - i. the sale or transfer of more than 50% of the shares or capital of the Concessionaire;
 - ii. a change in the composition of the board of directors (or other equivalent body) of the Concessionaire resulting in a change in the controlling interest of the Concessionaire;
 - iii. any merger, consolidation, or modification of the Trust Deed involving the Concessionaire that materially changes its objectives, governance, or control.; or
 - iv. any other transaction resulting in a change of control of the Concessionaire.

- (f) The Concessionaire shall ensure that it has obtained all necessary Applicable Permits for the purpose of performance of the Concessionaire's obligations and the exercise of the Concessionaire's rights under this Contract and that all such Applicable Permits are in full force and effect.
- (g) The Concessionaire shall provide written representation along with documentary proof that it has obtained all necessary Applicable Permits as mentioned in 3.1.1(f) above.
- (h) The concessionaire has undertaken the detailed technical design, engineering, procurement and construction study required with respect to the Facilities and submitted the same to PSC and the Independent Engineer / Independent Auditor for consideration. Based on advice of the IA and IE, the PSC shall approve the study for purposes of carrying out the works in the facility.
- (i) The Concessionaire has entered into the Independent Engineer Contract for the appointment of the Independent Engineer after due approval of the PSC.
- (j) The Concessionaire has entered into the Independent Auditor Contract for the appointment of the Independent Auditor after due approval of the PSC.
- (k) At least fourteen (14) days prior to the CP Closing Date, the Concessionaire has paid a success fee of PKR 1 million.
- (l) At least fourteen (14) days prior to the CP Closing Date, the Concessionaire has reimbursed transaction advisory cost financed through PDF account for this project.

3.2 CONDITIONS PRECEDENT FOR THE IMPLEMENTING AGENCIES

3.2.1 The Implementing Agencies shall satisfy or procure the satisfaction of the following Conditions Precedents as soon as reasonably possible and in any event by the CP (Completion Date) and give notice to the Independent Auditor, Independent Engineer, Independent Expert and the Concessionaire no later than fifteen (15) Days after the date of satisfaction of each condition; provided that the Implementing Agencies shall not be obligated to procure the satisfaction of any of the following Conditions Precedent unless the Concessionaire has fulfilled its Conditions Precedent specified in Section 3.1 :

- (a) The Co-Implementing Agency has handed over peaceful possession and reasonable control of the Facility to the Concessionaire in accordance with the Handing Over Criteria.
- (b) Prior to handover of the Facility, the Co-Implementing Agency has paid utility bills that are due and provide evidence of the same to the Concessionaire.
- (c) The Co-Implementing Agency has issued a notification, notifying the powers, responsibilities and authorities of the Concessionaire that are to be granted to the concessionaire by way of execution of this Contract, as applicable.
- (d) Issue a license to the Concessionaire with regards to the vacant possession of all the land and rights comprising of the Facility.

3.3 WAIVER AND/ OR DEFERRAL OF CONDITIONS AND EXTENSION OF THE CP COMPLETION DATE.

3.3.1 As applicable:

- (a) On mutual basis, Implementing Agencies may (at its discretion) waive and/or defer any of the Concessionaire's conditions precedent set forth in Section 3.1.2. For the avoidance of doubt, the Implementing Agencies may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit;
- (b) Concessionaire may (at its discretion) waive and/or defer any of the Implementing Agencies' conditions precedent set forth in Section 3.2. For the avoidance of doubt, the Concessionaire may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit.

- 3.3.2 Notwithstanding anything contained herein, the CP Completion Date may be extended up to a period of 180 (One Hundred and Eighty) Days or more, as mutually agreed between the Parties time to time with the mutual consent of the Parties.

3.4 CP COMPLETION CERTIFICATE & CP COMPLETION DATE

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

- 3.4.2 The Parties agree that:

- (a) within thirty (30) days of the Implementing Agencies' receipt from the Concessionaire, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of a Concessionaire's Condition Precedent, the Implementing Agencies 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's Condition Precedent. In the event the Implementing Agencies does not raise any objection in writing on the satisfaction of a Concessionaire's Condition Precedent within the fifteen (15) day period set out herein, such Concessionaire's Condition Precedent shall be deemed to be not objected to by the Implementing Agencies. In the event the Implementing Agencies raises any objections on the satisfaction of a Concessionaire's Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) within the fifteen (15) 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 Implementing Agencies) evidence of satisfaction of such Concessionaire's Condition Precedent and the process in this Section 3.4.2(a) shall be repeated until such time that the Implementing Agencies have not objected to or is deemed to have not objected to the satisfaction of such Concessionaire's Condition Precedent. The provisions of this Section 3.4.2(a) shall apply to each Concessionaire's Condition Precedent for which evidence of satisfaction is submitted by the Concessionaire to the Independent Engineer, Independent Expert and the Independent Auditor (with a copy to the Implementing Agencies) from time to time;
 - (b) within fifteen (15) days of the Concessionaire's receipt from the Implementing Agencies, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of a Implementing Agencies' Condition Precedent, the Concessionaire shall notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Implementing Agencies) whether it has any objections on the satisfaction of such Implementing Agencies' Condition Precedent. In the event the Concessionaire does not raise any objection in writing on the satisfaction of an Implementing Agencies' Condition Precedent within the fifteen (15) day period set out herein, such Implementing Agencies' Condition Precedent shall be deemed to be not objected to by the Concessionaire. In the event the Concessionaire raises any objections on the satisfaction of a Implementing Agencies' Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to Implementing Agencies) within the fifteen (15) day period set out herein, the Implementing Agencies shall address such objections and re-submit to the Independent Engineer, Independent Expert and the Independent Auditor (with a copy to the Concessionaire) evidence of satisfaction of such Implementing Agencies' 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 Implementing Agencies' Condition Precedent. The provisions of this Section 3.4.2(b) shall apply to each Implementing Agencies' Condition Precedent for which evidence of satisfaction is submitted by the Implementing Agencies to the Independent Engineer and the Independent Auditor (with a copy to Concessionaire) from time to time.
- 3.4.3 The Parties hereby jointly undertake to procure that the Independent Engineer and the Independent Auditor jointly issue the CP Completion Certificate within three (3) days of the date on which the Independent Engineer and the Independent Auditor are satisfied that each of the:
- (a) Concessionaire's Conditions Precedent stand satisfied (and/or waived or deferred by the Implementing Agencies in accordance with Section 3.3.1(a));
 - (b) Concessionaire's Conditions Precedent are not objected to or deemed not to have been

objected to by the Implementing Agencies in accordance with Section 3.4.2(a) and if any Concessionaire's Condition Precedent is objected to by the Implementing Agencies in accordance with Section 3.4.2(a), the Concessionaire has addressed such objections and re-submitted evidence of satisfaction of such Concessionaire's Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agencies) in accordance with Section 3.4.2(a);

- (c) Implementing Agencies' Conditions Precedent stand satisfied (and/or waived or deferred by the Concessionaire in accordance with Section 3.3.1(b)); and
- (d) Implementing Agencies' Conditions Precedent are not objected to or deemed to not have been objected to by the Concessionaire in accordance with Section 3.4.2(b) and if any Implementing Agencies' Condition Precedent is objected to by the Concessionaire in accordance with Section 3.4.2(b), the Implementing Agencies has addressed such objections and re-submitted evidence of satisfaction of such Implementing Agencies' Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) in accordance with Section 3.4.2(b).

3.4.4 The Independent Engineer and the Independent Auditor, jointly, shall set out in the CP Completion Certificate the date on which the CP Completion Date is achieved.

3.5 CONSEQUENCES OF FAILURE TO FULFILL THE CONDITIONS PRECEDENT

3.5.1 In the event:

- (a) the Concessionaire fails to fulfill any of the Conditions Precedents that it is required to fulfill under Section 3.1 by the CP Completion Date (unless waived or deferred by the Implementing Agencies in its absolute discretion), without valid reason and where such failure is not due to unforeseen circumstances, the Implementing Agencies shall be entitled to terminate this Contract by issuing a written notice of 30 (Thirty) Days to the Concessionaire.
- (b) of termination as provided in Section 3.5.1(a), the Implementing Agencies shall have the right to fully encash the Performance Security provided by the Concessionaire as a genuine and reasonable compensation for the loss and damages incurred by the Implementing Agencies due to the Concessionaire's failure to meet the Conditions Precedent and implement the Project in compliance with the provisions of this Contract. Moreover, except for the encashment of the Performance Security, in terms of this Section, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Contract.
- (c) the Implementing Agencies fail to fulfill any of the Conditions Precedents that it is required to fulfill under Section 3.2 by the CP Completion Date (unless waived or deferred by the Concessionaire in its absolute discretion), without valid reason and where such failure is not due to unforeseen circumstance, the Concessionaire shall be entitled to terminate this Contract by issuing a prior written notice of 30 (Thirty) Days to the Implementing Agencies. In the event of such termination, the Concessionaire shall be entitled to be compensated for all reasonable and direct costs, expenses, and losses incurred by the Concessionaire in fulfilling its obligations under this Contract, including without limitation, the costs and expenses incurred in preparing and submitting the proposal, and any loss of opportunity suffered by the Concessionaire as a result of the termination. Such compensation shall be determined by mutual agreement between the Implementing Agencies and the Concessionaire, and in the absence of such agreement, shall be determined by arbitration in accordance with the relevant provisions and Section in this Agreement, the Implementing Agencies shall procure the return of the Performance Security, as applicable, to the Concessionaire without any encashment, demands or claims.
- (d) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the CP Completion Date, (including the extended time, if any) due to reasons attributable to the Concessionaire and/or of occurrence of a Concessionaire Event of Default prior to the CP Completion Date;
- (e) then the Implementing Agencies shall have the right (to be exercised in its sole and absolute discretion) to terminate this Contract by issuance of a written Termination Notice to the Concessionaire. In such case, the Implementing Agencies shall be entitled to encash the

Construction Performance Security to its full value. Except for the encashment of the Construction Performance Security, in terms of this Section, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Contract.

- (f) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the CP Completion Date, (including the extended time, if any) due to reasons attributable to the Implementing Agencies and/or of occurrence of an Implementing Agencies' Event of Default prior to the CP Completion Date;
- (g) the Concessionaire shall have the right (to be exercised in its sole discretion) to Terminate this Contract by issuance of a written Termination Notice to the GoB. In such case, the GoB shall (within fifteen (15) days of its receipt of the Termination Notice) return the Construction Performance Security, as applicable, to the Concessionaire without any encashment, demands or claims. Each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Contract.

4. GRANT OF CONTRACT AND CONTRACT PERIOD

4.1 GRANT OF THIS CONTRACT

- 4.1.1 In consideration of the Concessionaire's obligations contained in this Contract and relying on the Concessionaire's representations, warranties, acknowledgments and undertakings contained herein, the Implementing Agencies, subject to the terms of this Contract, hereby grant the Concessionaire and authorizes it, for the duration of the Contract Period, to manage and implement the Project including the Facility and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Contract.
- 4.1.2 The Concessionaire agrees that the Implementing Agencies shall have the sole and exclusive right to require from the Concessionaire full availability of the Facility upon completion of the Contract Period in accordance with the KPIs and the Good Industry Practice.
- 4.1.3 The Implementing Agencies shall license to the Concessionaire with regards the vacant possession of all the land and rights comprising the Facility and all costs, fees, expenses, duties, charges and taxes relating to the same shall be borne by the Concessionaire for this Contract Period or any extension hereto.

4.2 CONTRACT PERIOD

- 4.2.1 The Contract Period for this Contract shall commence on the Commencement Date. The continuation of this Contract is subject to the will and mutual agreement of the Parties involved.
- 4.2.2 The Contract Period is initially for a single term comprising of period of twenty (20) years extendable for same period upon satisfactory performance of the Concessionaire and with mutual consent of the Parties according to revised terms and conditions, as decided for further terms. The extension shall be strictly based on satisfactory performance of the Concessionaire (the same being assessed by the Implementing Agencies with the assistance from Independent Engineer and Independent Auditor) and that the same shall be subject to Section 2.4.3.

4.3 RIGHT, TITLE AND INTEREST IN THE FACILITY

- 4.3.1 The Parties acknowledge that full ownership, rights and title to the Facility and all its assets shall be vested with the Co-Implementing Agency throughout the Contract Period and the Concessionaire shall not create any encumbrance or other third-party rights over the Facility or any part thereof or otherwise sub-let or part with the possession of the Facility at any time during the Contract Period. Any activity, over and above the scope of this Contract, which the Concessionaire tends to initiate and run during the Contract Period will require approval of the Implementing Agencies.
- 4.3.2 The Parties agree that (a) all the assets of the Institution whether movable or immovable, fixed or current and including any additions, modifications or construction thereon carried out by the Concessionaire pursuant to this Contract, (b) all equipment (whether originally provided by the Co-Implementing Agency or purchased or replaced by the Concessionaire) of the Facility, shall be the properties of the Co-Implementing Agency and shall be handed over to the Co-Implementing Agency, free from any encumbrances on the Transfer Date.
- 4.3.3 The Concessionaire undertakes that the Facility shall not be used for any private purposes or any unauthorized commercial purposes, including but not limited to public gatherings, functions, weddings, political events, other than any events specifically linked to the purposes for which this Contract is granted to the Concessionaire. The Implementing Agencies hereby undertake that they shall not permit or request the Concessionaire to facilitate any of the foregoing events at the Facility.
- 4.3.4 This Contract shall serve as a license, granting the Concessionaire the right to operate the Facility including carrying out expansion works, as applicable, including the use of its land (only to the limit prescribed herein this Contract) and any other rights necessary for such operation. Should any additional instruments be mandated by law or deemed necessary to facilitate the Concessionaire's activities, the Parties shall collaborate to execute the required instruments. The Concessionaire shall bear all costs, fees, expenses, duties, charges, and taxes associated with the registration of these instruments with the relevant Government Authority, if applicable.

4.3.5 For the avoidance of doubt, the Concessionaire accepts full responsibility for all matters set out in Section 4.3.1 – 4.3.4 and the Concessionaire shall:

- (a) not be entitled to make any claim against the Implementing Agencies whether in contract or otherwise on any ground relating to the matters in Section 4.3.1 – 4.3.4; and
- (b) indemnify the Implementing Agencies against all direct losses sustained by the Implementing Agencies and/or any third party in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials being any natural or artificial substance, whether in solid, gaseous or liquid form capable of causing harm to any human or any other living organism supported by the environment (including air, water, land, surface land and sub-surface land) or capable of 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 in each case liability or responsibility is imposed under applicable environment law at the Facility upon grant of license to the Concessionaire.

4.4 ASSISTANCE OF THE IMPLEMENTING AGENCIES

4.4.1 The Implementing Agencies shall provide and shall seek the co-operation of other relevant Government Authorities for providing such reasonable assistance as may be reasonably requested by the Concessionaire for obtaining the grant or renewal of the Applicable Permits (if any) required for the performance of the Concessionaire's obligations or the exercise of the Concessionaire's rights under this Contract.

4.5 GOOD FAITH AND FAIR DEALING

4.5.1 The Parties agree to act in good faith with respect to each other's rights under this Contract and to adopt reasonable procedures to achieve the purposes of this Contract. They shall cooperate with each other to the best of their abilities, communicate all relevant information as necessary for the proper execution of the Contract, and make decisions promptly and in a manner consistent with the objectives of this Contract.

4.6 CONCESSIONAIRE'S SCOPE OF WORK

4.6.1 The Concessionaire shall perform, undertake and achieve the KPIs as defined in this Contract with best professional expertise, skills for the due performance of its obligations under this Contract and for the smooth running of the Project. The Concessionaire shall ensure that all O&M Works (as provided therein **SCHEDULE C – CONCESSIONAIRE'S SCOPE OF WORK**) is conducted in a professional manner so as to ensure adherence to the terms and conditions of this Contract.

4A. PROJECT STEERING COMMITTEE

4A.1. Constitution and Purpose of the Committee

4A.1.1. The Project Steering Committee shall be constituted to provide overall policy support, supervisory oversight, conflict resolution, performance monitoring, provide clarity with reference to the terms of this Contract and strategic guidance for the project under this Contract.

4A.2. Composition of the Committee

4A.2.1. The Committee shall be comprised of:

- i. [•] representative(s) nominated from the [•], the Co-Implementing Agency and the Primary Implementing Agency, and the [•].
- ii. The Chief Executive Officer (CEO) of Balochistan Public Private Partnership Authority shall be the ex-officio chairman of the committee.
- iii. Two (2) senior representatives nominated by the Concessionaire.

- iv. The PSC may co-opt independent member(s) with a background in related field to provide impartial, expert advice. Such member will be non-voting member.

4A.3. Responsibilities And Functions Of The Project Steering Committee

- 4A.3.1. The PSC shall meet on a regular basis, at least quarterly, and as needed to discuss the progress of the project, resolve any outstanding issues and monitor performance against the KPIs.
- 4A.3.2. In the event of any conflict or disagreement between the Implementing Agencies and the Concessionaire that does not automatically fall under the purview of the Dispute Resolution Committee or Arbitration as provided under this Contract, the Committee shall provide a platform for discussion and strive to resolve such conflicts in a fair and amicable manner.
- 4A.3.3. The PSC shall also be responsible for the appointment of the Independent Auditor and Engineer ensuring that their appointments are conducted in a fair and transparent manner, in line with the procedures outlined in the contract.
- 4A.3.4. The Committee may invite other external experts or stakeholders to attend its meetings as observers or to provide specific inputs, as deemed necessary for the strategic oversight of the project.
- 4A.3.5. The day-to-day operational decision-making related to the running of the Facility shall rest with the Concessionaire and shall not fall under the purview of the PSC, except as specifically mentioned elsewhere in this Contract.
- 4A.3.6 Review and approve development of Zone A and Zone for further extension and promotion of cross border trade.

5. APPOINTMENT OF INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER

5.1 APPOINTMENT OF INDEPENDENT AUDITOR

- 5.1.1 As a Condition Precedents, the Concessionaire shall propose a list of candidates for a third-party auditor to the Project Steering Committee. The final selection and appointment of the Independent Auditor, who will fulfill the duties and obligations during the Contract Period, shall be made by the Project Steering Committee from the proposed list (the **“Independent Auditor”**).
- 5.1.2 The Independent auditor shall carry out annual audit of the books of accounts of the Facility and initial physical stock take of the inventory and equipment of the Facility.
- 5.1.3 The Independent Auditor shall be a reputable independent professional and shall not be considered employee, agent or representative of the Parties or any other stakeholder in the Project or any affiliate of any of them, for any purpose.
- 5.1.4 The appointment mechanism and indicative terms of reference of the Independent Auditor are set out at **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR, INDEPENDENT ENGINEER, AND INDEPENDENT EXPERT.**

5.2 APPOINTMENT OF INDEPENDENT ENGINEER

- 5.2.1 As a Condition Precedent, the Concessionaire shall propose a list of candidates for a third-party Engineer to the Project Steering Committee. The final selection and appointment of the Independent Engineer, who will fulfill the duties and obligations during the Contract Period, shall be made by the Project Steering Committee from the proposed list (the **“Independent Engineer”**).
- 5.2.2 The Independent Engineer shall be a reputable independent professional and shall not be considered employee, agent or representative of the Parties or any other stakeholder in the Project or any affiliate of any of them, for any purpose.
- 5.2.3 The appointment mechanism and indicative terms of reference of the Independent Engineer are set out at **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR, INDEPENDENT ENGINEER, AND INDEPENDENT EXPERT.**

5.3 REMUNERATIONS OF THE INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER

- 5.3.1 All fees, costs, charges and expenses payable to the Independent Auditor and the Independent Engineer shall be solely borne by the Concessionaire (forming part of the O&M Cost). All such fees, costs, charges and expenses shall be paid by the Concessionaire directly to the Independent Auditor and the Independent Engineer and the Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Auditor and Independent Engineer pursuant to the terms of the relevant contract.

5.4 INDEPENDENCE OF THE INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER

- 5.4.1 **Notwithstanding that the fees, costs, charges and expenses payable to the Independent Auditor and Independent Engineer:**
 - (a) the Independent Auditor and Independent Engineer shall act independently and in an unbiased manner and shall perform the assigned services for the benefit and in the best interests of the Project (strictly in accordance with the relevant contract entered into in accordance with this Contract) and not that of any other Person or entity and shall not act on any instructions issued by any Party in respect of the Project unless the same are:
 - i. Contemplated by this Contract to be issued by such party.
 - ii. Jointly issued by the Parties.
 - iii. Due to any reasons stipulated therein the Independent Engineer Contract and Independent Auditor Contract (as applicable).

- (b) The Independent Auditor and Independent Engineer shall be required to act reasonably, fairly, and expeditiously in fulfilling its duties and obligations under their relevant contracts and terms of reference as mentioned in **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER**.

5.5 REPLACEMENT OF INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER

5.5.1 The Concessionaire after due approval of the Project Steering Committee may replace the Independent Auditor and/or the Independent Engineer in any of the following circumstances:

- (a) If the Independent Auditor and Independent Engineer has not discharged the assigned duties in accordance with the requirements and relevant sections of this Contract.
- (b) If the Parties mutually agree not to renew the appointment of Independent Auditor and Independent Engineer.
- (c) If the Independent Auditor and Independent Engineer tender's resignation/ or termination of contract in accordance with the terms of their appointment.
- (d) In the event the Independent Auditor and Independent Engineer is adjudged insolvent and/or bankrupt and / or the winding up proceedings are filed against the Independent Auditor and Independent Engineer and/or Independent Auditor and Independent Engineer winding up proceedings in a court of law and/ or any action for malpractice and/or misadministration is filed against the Independent Auditor and Independent Engineer in a court of law.

Provided, the Parties shall comply with **SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER** in appointing such replacement of Independent Auditor and Independent Engineer.

5.6 RIGHT OF ACCESS

5.6.1 The Independent Auditor and Independent Engineer shall at all times during the Contract Period have the right to enter upon and access the Facility. The Concessionaire shall have the right to accompany the Independent Auditor and Independent Engineer during his/her attendance at the Facility. The Independent Auditor and Independent Engineer shall have no authority to delay or hinder the performance of the Works, except as expressly specified in this Contract or therein the Independent Engineer Contract and Independent Auditor Contract (as applicable).

5.7 LIABILITY OF THE CONCESSIONAIRE

- 5.7.1 The Concessionaire acknowledges and agrees that the Independent Auditor's approval or review of the Works, or the Concessionaire's compliance with the Independent Auditor's instructions, shall not relieve the Concessionaire of its sole responsibility for the Works, and the Concessionaire shall bear all risk and liability associated therewith.
- 5.7.2 The Concessionaire acknowledges and agrees that the Independent Auditor's or Independent Engineer's approval or review of the Works, or their compliance with any instructions provided by the Concessionaire or the Implementing Agencies, shall not relieve the Concessionaire of its sole responsibility for the Works. The Independent Auditor/Independent Engineer, however, shall bear responsibility for the accuracy and appropriateness of their professional advice and assessments within the scope of their engagement, in accordance with applicable standards of professional care and diligence.
- 5.7.3 The Concessionaire undertakes to indemnify, defend and hold the Implementing Agencies harmless from any and all 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 Contract.

5.8 DECISION OF INDEPENDENT AUDITOR & INDEPENDENT ENGINEER DISPUTE RESOLUTION

5.8.1 Subject to provisions of this agreement, any advice, instruction, decision, direction and / or award of the Independent Engineer and/or the Independent Auditor shall be binding on the Parties unless mutually agreed otherwise by the Parties.

5.8.2 In the event any Dispute arises between the Implementing Agencies and the Concessionaire with regard to any advice, instruction, decision, direction and/or award of the Independent Engineer and/or the Independent Auditor then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure under this Contract.

5.9 INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES

5.9.1 The Parties shall require the Independent Engineer and/or the Independent Auditor to designate and notify to the Implementing Agencies and the Concessionaire of the authorized representatives of the Independent Auditor that shall be authorized by the Independent Auditor to sign for and on behalf of the Independent Engineer and/or the Independent Auditor, and any communication or document required to be signed by the Independent Engineer and/or the Independent Auditor shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Engineer and/or the Independent Auditor; provided, that the Independent Engineer and/or the Independent Auditor may, by notice in writing to the Parties, substitute any of the authorized signatories.

5.10 THIRD PARTY MONITOR PAYMENT ACCOUNT

5.10.1 The Concessionaire shall establish and maintain a:

- (a) independent auditor payment account;
- (b) independent engineer payment account,

from the CP Completion Date and until the Expiry Date.

However, in case of any difficulty in effecting the due payments, the Implementing Agencies through the PSC may resort to a simplified payment mechanism ensuring effective monitoring mechanism are maintained.

5.10.2 The Concessionaire shall issue Irrecoverable standing instructions to the relevant account bank (in form and substance agreed between the Parties) in accordance with the Independent Auditor Contract, the Independent Engineer contract and/or the Independent Expert Contract (as applicable).

6. COMMENCEMENT OF O&M WORKS

6.1 PERFORMANCE OF O&M WORKS

- 6.1.1 The Concessionaire shall commence the O&M Works and commence performing its obligations under this Contract with respect to the Facility immediately upon the signing of this Contract and completion of the Facility's handover and CP condition from the parties.
- 6.1.2 The Concessionaire shall ensure full compliance with all terms and conditions of this Contract, in order to achieve the Key Performance Indicators (KPIs) at all times.
- 6.1.3 The Concessionaire shall at all times carry out or procure at its own cost and expense the operate and maintain the Facility (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and Prudent Industry Practices.
- 6.1.4 The Concessionaire shall employ qualified and skilled personnel and manpower to efficiently operate and maintain the Facility at its own cost and consequence.

6.2 GENERAL REQUIREMENTS

- 6.2.1 The Concessionaire shall undertake and be responsible for and shall perform the O&M Works in a manner that is in compliance with the terms & conditions of this Contract, the Applicable Laws, the Applicable Permits and Good Industry Practice.
- 6.2.2 Subject to the requirement provided in 6.2.1 above, the Concessionaire shall be solely responsible to undertake and perform its relevant obligation and to comply with the terms and conditions provided herein. The Concessionaire shall, under no circumstances unless otherwise agreed between the Parties, be permitted or consider itself entitled to undertake and perform the O&M Works through sub-contractors and/or agents possessing the requisite technical, financial, operational and teaching expertise and capability.
- 6.2.3 The Concessionaire shall at all times during the Contract Period, provide the Implementing Agencies, the Independent Auditor and the Independent Engineer and their representatives with reasonable access to the Facility for monitoring of the O&M Works and for conducting inspections and audits in accordance with this Contract.
- 6.2.4 During the Contract Period, the Concessionaire shall develop and implement a safety and surveillance program for the Facility, comply with the safety regulations, such as cleanliness of the Facility, disposal of wastes and effluents, ventilation and temperature, dust and fume, lightning, drinking water, precaution in case of fire etc. and adopt appropriate safeguards and measures for security of environment, human life and property at the Facility in accordance with the Applicable Laws and Good Industry Practice.
- 6.2.5 The Concessionaire shall develop and maintain appropriate measures of security of environment, human life, property at the Facility at all times during the Contract Period.
- 6.2.6 GoB shall provide and maintain all external security measures necessary for the safety and protection of the Facility. This includes, but is not limited to, deploying security personnel, surveillance systems, and any other measures deemed necessary to safeguard against any security threats.
- 6.2.7 GoB shall ensure the uninterrupted provision of all essential utilities to the Site premises, including but not limited to electricity, and telecommunication services. The responsibility of the GoB extends up to the point of entry into the Facility, ensuring that all connections and infrastructure necessary for the delivery of these utilities are adequately maintained and operational.
- 6.2.8 GoB shall enforce strict regulations prohibiting the parking of trucks, taxis, and buses outside of designated parking areas. This includes implementing measures to prevent illegal parking and ensuring compliance through regular monitoring and enforcement actions. GoB shall collaborate with local law enforcement and relevant authorities to ensure that these regulations are effectively upheld, thereby preventing any disruption to the operations of the Facility and maintaining orderly

traffic flow around the premises.

6.3 REPAIR AND MAINTENANCE OF THE FACILITY

- 6.3.1 The Concessionaire shall maintain the Facility in accordance with Good Industry Practice throughout the Contract Period to meet the KPIs. The Concessionaire shall ensure that the Facility remains fully operational and shall promptly address any deficiencies or issues that may arise. As of the date of signing this Contract, the Concessionaire understanding that there is pending construction or operational obligation on part of the Implementing Agencies for augmenting the storage facility and possibly installation of the value addition equipment and machinery along with installation and operational successful trials, in the event the Concessionaire fails to maintain the Facility in accordance with this Section 6.3.1 any and all remaining defect liability shall be on the part of the Concessionaire.
- 6.3.2 The Concessionaire shall not schedule any major repair or maintenance O&M work in respect of the Facility at any time during the Contract Period without the prior written consent of the Implementing Agencies.
- 6.3.3 The Concessionaire shall schedule all major repair and maintenance O&M work for the Facility at times when the Facility is not in use or when the impact on the Facility's operations is minimal and shall seek the prior written consent of the Implementing Agencies before undertaking such O&M work. The Concessionaire shall provide the Implementing Agencies with a schedule of the proposed O&M work and the expected time required to complete it.
- 6.3.4 The Concessionaire shall submit in writing to the Implementing Agencies the details and costs of all major maintenance and repair O&M works proposed to be undertaken by the Concessionaire in respect of the Facility at least thirty (30) days prior to such repair and maintenance O&M work planned to be undertaken. All major repair and maintenance O&M work and the costs thereof shall be borne by the Concessionaire. The Implementing Agencies shall certify, amend and/or approve (as applicable) the request of the Concessionaire within a period of thirty (30) days of receiving the Concessionaire's request.
- 6.3.5 When the need arises for an unscheduled closure in order to undertake emergency maintenance during an academic year ("**Unscheduled Closure**"), the Concessionaire shall advise the Implementing Agencies of such need and the commencement and estimated duration of such O&M work. The Implementing Agencies shall allow the Concessionaire to schedule such outage within a period of time that is reasonable under the circumstances and not exceeding the time required by Good Industry Practice. The Concessionaire shall advise the Implementing Agencies of the above matters by a notice in writing, and the Implementing Agencies shall respond within three (03) days from receiving such notice.
- 6.3.6 In case an extension is required in the Scheduled / Unscheduled Closure period, such extension shall be subject to the prior written approval of the Implementing Agencies.
- 6.3.7 In the event that the Concessionaire ceases to operate the Facility continuously for a period of thirty (30) days, excluding any period of cessation due to a Force Majeure Event or an Unscheduled Closure, or with the prior written consent of the Implementing Agencies for justifiable reasons, the Implementing Agencies shall have the right to step in and undertake the O&M Works at the Facility. The Concessionaire shall be responsible for all costs and expenses incurred by the Implementing Agencies in connection with such step-in. The Concessionaire shall be entitled to resume the normal operation of the Facility only after demonstrating to the satisfaction of the Implementing Agencies that it has the capacity to resume the O&M Works.
- 6.3.8 In the event that the Implementing Agencies step-in to undertake O&M and perform the O&M Works at the Facility pursuant to Section 6.3.7, and the Concessionaire fails to resume normal operation of the Facility within a period of 90 (ninety) days from the date of the step-in, the Contract shall automatically terminate. The Concessionaire shall bear all costs, risks and expenses incurred by the Implementing Agencies during the period of step-in. The Implementing Agencies shall not be required to make any payments to the Concessionaire during the period of step-in, except for those payments that are already due and payable to the Concessionaire under this Contract prior to the date of the step-in.

6.4 APPLICABLE PERMITS AND APPLICABLE LAWS

- 6.4.1 The Concessionaire shall be responsible for obtaining all necessary permits, licenses, and approvals required for the performance of the O&M Works in accordance with the Applicable Laws. The Concessionaire shall bear all costs and expenses associated with obtaining and maintaining such permits, licenses, and approvals, including all fees, charges, and expenses payable to any regulatory authority or government agency. The Concessionaire shall ensure that all permits, licenses, and approvals remain valid and in full force and effect throughout the Contract Period.
- 6.4.2 The Implementing Agencies shall use reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities; provided that the Concessionaire has complied with all the requirements contained in the Applicable Laws for applying for such Applicable Permits.
- 6.4.3 The Concessionaire shall comply with the conditions of all Applicable Permits, the provisions of all Applicable Laws and with Good Industry Practice in carrying out the O&M Works at the Facility at all times during the Contract Period.

6.5 RECORDS, REPORTING, ACCOUNTS AND AUDITS

- 6.5.1 The Concessionaire shall maintain records (in soft format and hard format may be provided if demanded by the Implementing Agencies or the Independent Auditor).
- 6.5.2 The Concessionaire shall maintain proper books of accounts, recording all expenditures incurred during the Contract Period and payments/revenues received.
- 6.5.3 The Concessionaire shall deliver to the Implementing Agencies, the following reports within the time specified below:
 - (a) Semi-annual reports in the form and manner mutually agreed between the parties that shall include, but not be limited to the performance of O&M Works at the Facility, meeting/non-meeting of KPIs and a summary of the income received and expenditure incurred during such six (6) months prepared substantially in the form set out in **SCHEDULE D – REPORTING FORMS**, and delivered to the Implementing Agencies in writing (by email or facsimile) within 30 (thirty) Days after the end of each six (6) month period.
- 6.5.4 Reports on any critical damage or security lapse at the Facility leading to any interruptions or outages of the Facility within seven (07) Days of each such occurrence.
 - (a) The Concessionaire shall promptly notify the Implementing Agencies of any material litigation, proceedings, or disputes that may affect the management of this Contract or the appointment of a receiver or administrator in relation to the business or assets of the Concessionaire. The Concessionaire shall also notify the Implementing Agencies of any adverse orders or judgments passed by any Government Authorities that may affect or are likely to affect the performance of the O&M Works, as soon as reasonably possible after the occurrence of such events.
 - (b) Reports on any critical damage or security lapse at the Institute leading to any interruptions or outages of the Institute within seven (07) Days of each such occurrence.
 - (c) The Concessionaire shall promptly notify the Implementing Agencies of any material litigation, proceedings, or disputes that may affect the management of this O&M Contract or the appointment of a receiver or administrator in relation to the business or assets of the Concessionaire. The Concessionaire shall also notify the Implementing Agencies of any adverse orders or judgments passed by any Government Authorities that may affect or are likely to affect the performance of the Works, as soon as reasonably possible after the occurrence of such events.
 - (d) Annual Audit Report within a period of 30 (thirty) days from the issuance date of the Audit report by the auditors.

6.5.5 Without limiting the Concessionaire's obligations under Applicable Laws, during the Contract Period and for a period of 1 (One) year thereafter, the Concessionaire shall on demand produce to the Implementing Agencies all such evidence as may be reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to any of the provisions of this Contract.

6.5.6 The Concessionaire shall:

- (a) make available to the Implementing Agencies all books and records maintained by the Concessionaire that are concerned with the operation and management of the Facility, upon a request being made by the Implementing Agencies;
- (b) make available to the Independent Auditor and Independent Engineer all books and records maintained by the Concessionaire that are relevant to their respective scopes of O&M work, upon a request being made by any of them; and
- (c) cause its employees to fully cooperate and provide all necessary assistance to the Implementing Agencies, Independent Auditor, and Independent Engineer in the conduct of their respective duties.

6.5.7 The Implementing Agencies, Independent Auditor, and/or Independent Engineer (as applicable to their scope of work) will have the right to access, and make copies of, all such books, records, accounts, financial statements, reports, evaluations, and any other information relating to the performance of the O&M Works, given reasonable advance notice and during normal business hours, or as otherwise agreed upon by both parties.

6.5.8 The Concessionaire shall provide the Implementing Agencies with 2 (two) copies of its audited financial statements, by the Independent Auditor, within 60 (Sixty) Days of the close of each year.

6.5.9 The Concessionaire shall provide the Implementing Agencies with two copies of the semi-annual KPI's report, duly reviewed by the Project Steering Committee, within sixty (60) days of the end of each six (6) month period to which they pertain. In the event of any justifiable reason(s) that may delay the submission of the report, the Concessionaire may request for an extension of thirty (30) days from the Implementing Agencies. The Implementing Agencies shall have the discretion to grant or deny such request for extension.

6.5.10 The Parties agree that the Independent Auditor shall conduct the financial audits in accordance with the Applicable Laws at the end of each Financial Year and provide the audited financial statements in accordance with this Contract.

6.5.11 The Concessionaire shall generate detailed invoices in terms of this Contract to the Independent Auditor claiming the expenditure incurred (along with the bills/ invoices for the amount spent) for the particular bi-annual period.

6.6 PROVISION OF UTILITIES

6.6.1 Prior to the start of O&M Work, the Co-Implementing Agency shall pay all utility bills that are due up to the date of hand-over of the Facility to the concessionaire and provide evidence of the same to the Concessionaire and the Independent Auditor. From the commencement of O&M Work, the Concessionaire shall be solely responsible for arranging for all utilities for the operation and maintenance of the Facility.

6.6.2 Where the Concessionaire seeks to procure any utilities from Government Authorities, the Implementing Agencies shall use reasonable endeavors to assist the Concessionaire in obtaining rates from such Government Authorities that are no higher than the rates offered to public sector users of such utilities.

6.7 INCOME TAX REQUIREMENTS

6.7.1 Upon becoming liable for income tax, the Concessionaire shall assume full responsibility for the payment and filing of all income tax returns and any other related tax obligations arising from the activities under this Contract.

6.7.2 The Concessionaire agrees to indemnify and hold harmless the Implementing Agencies, its officers, directors, employees, and agents from any claims, losses, damages, liabilities, or expenses arising out of or related to the Concessionaire's failure to comply with their income tax obligations as per this Section 6.7.

6.7.3 In case of any tax-related inquiries or audits by the relevant tax authorities, the Concessionaire agrees to cooperate fully with the Implementing Agencies and provide all necessary documentation and information as reasonably requested to address such inquiries or audits.

6.8 PAYMENTS TO GOB

6.8.1 The Concessionaire shall make payments to GOB of the amounts due and payable by the Concessionaire in accordance with the terms of this Agreement.

7. DIVIDEND SHARING ARRANGEMENT AND GOB GUARANTEE

- 7.1.1 The annual dividend value provided against each year in the Bid (financial proposal) forms the 'Minimum Annual Benchmark (share of) Dividends' for the GOB against the quoted free equity.
- 7.1.2 The Concessionaire must ensure that annual dividends to the GoB meet or exceed the Minimum Annual Benchmark Dividends as outlined.
- 7.1.3 If during any year, the actual dividend payment falls below the 'Minimum Annual Benchmark Dividend', then the differential amount will be cumulatively adjusted (including previous years if excess balance is available) and carried forward to the subsequent forward year (with the net present value of the differential dividend amount calculated/certified by the Independent Auditor) and paid to the GOB until complete adjustment.
- 7.1.4 If the actual annual dividend payment exceeds the benchmark, the excess will be used to offset future shortfalls.
- 7.1.5 The payments shall be made on a calendar year basis (on a prorated basis) as dividend payments to the GOB.
- 7.1.6 Persistent failure by the Concessionaire to meet the Minimum Annual Benchmark Dividends allows the GoB to terminate this agreement, subject to the terms and conditions outlined in this Contract.
- 7.1.7 That prejudice with other conditions of this agreement the GoB agreed that GoB share in profit of the first three year shall be given to the Concessionaire.
- 7.1.8 If Concessionaire required investment for his project(s) and investors required shareholding in the project than share-holding of the GoB cannot be changed in any case but in rare cases if necessary share-holding can be changed with written permission from GoB.

8. GENERAL COVENANTS

8.1 COVENANTS DURING THE CONTRACT PERIOD

8.1.1 The Concessionaire agrees and undertakes that, throughout the term of this Contract, it shall:

- (a) comply with and perform all duties, obligations, acts, deeds and obligations set out in, in each case, the Applicable Standards;
- (b) retain and maintain the Facility in the peaceful possession, in accordance with Good Industry Practices, and enjoy the benefits of the Facility in accordance with this Contract.
- (c) perform all its obligations under this Contract and ensure that it satisfies the KPIs.
- (d) except as specifically permitted under this Contract, not vacate or part with the possession of the Facility.
- (e) satisfy, unless deferred or waived in accordance with section 3.3 of this Contract, the Conditions Precedent relevant to it, on or prior to the CP Completion Date.
- (f) follow at minimum the applicable standards and good industry practices to run the facility.
- (g) undertake only dedicated, approved activities and market development as mutually agreed upon
- (h) not undertake any development or expansion activities without prior written consent from the Parties
- (i) during the entire Contract Period, obtain all Applicable Permits that are required for all activities contemplated under this Contract including the operation of the Facility unconditionally, or if such Applicable Permits are subject to conditions, then complying with all such conditions such that such Applicable Permits are and shall be kept in full force and effect for the entire Contract Period.
- (j) ensure compliance with all Applicable Laws.
- (k) undertake the provision of security of the Facility.
- (l) not undertake any structural changes without any prior written consent/approval of the Implementing Agencies.
- (m) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project.
- (n) 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 Contract.
- (o) ensure that no damage is caused to any property belonging to Implementing Agencies and/or other third parties in the execution of the Works.
- (p) provide to the Implementing Agencies, the Independent Auditor and the Independent Engineer all such information relating to the Works and the execution and completion of the same as is reasonably requested by the Implementing Agencies, the Independent Auditor and the Independent Engineer from time to time
- (q) notify the Implementing Agencies, 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.
- (r) undertake, do and perform from time to time, all such acts, deeds and things as may be necessary or required before commencement of Works (or any part thereof) for the

performance of the Works under and in accordance with the Applicable Standards.

- 8.1.2 At all times before, during or after the Contract Period, the Concessionaire shall hold harmless and indemnify all the staff of the Implementing Agencies from and against all loss, liability, damage, cost, expense, interest, fines, penalties, claims and amounts paid in settlement, suffered, incurred, paid or payable by the Primary Implementing Agency in relation to or arising from the Concessionaire's use of the Facility or any part thereof. Notwithstanding anything to the contrary, all risks (including any claims and liabilities) relating to the right, title and interests of the Co-Implementing Agency in the Facility or any part thereof shall, during or after the Contract Period, vest with the Co-Implementing Agency.
- 8.1.3 Notwithstanding anything to the contrary contained in Section 8.1.1 , the Concessionaire agrees that the Government Authorities shall have the right to enter upon and access the Facility in accordance with the Applicable Law. Provided that such access shall not interfere with or hinder the Concessionaire's operations unless it's necessary for safety, legal, or regulatory reasons. The Implementing Agencies shall provide the Concessionaire with a minimum notice of forty-eight (48) hours prior to any planned access, except in cases of emergencies where such notice might not be possible or practical.
- 8.1.4 The Concessionaire shall not engage in (and shall not authorize or permit any affiliate or any other Person acting on its behalf to engage in), with respect to the Project or any transaction contemplated by this Contract, any sanctionable Practices.

9. PERFORMANCE SECURITY

9.1 SUBMISSION OF THE PERFORMANCE SECURITY

9.1.1 Prior to the CP Completion Date, the Concessionaire shall provide and deliver to the Implementing Agencies the Performance Security. The Performance Security:

- (a) Shall be issued and maintained without any requirement for additional collateral or security from the Concessionaire, its assets or properties;
- (b) Shall not be secured through any 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 Performance Security shall be solely on account of the Concessionaire.

9.1.2 The Performance Security shall secure:

- (a) all of the Concessionaire's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under this Contract and any Other Agreements directly relevant to the Concessionaire's duties and obligations under this Contract, to which it is a party; and
- (b) all of the Concessionaire's obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Other Agreements, including the integrity and quality of the Concessionaire's workmanship, the timely and continuous performance of the Works, the performance of Works by the Concessionaire, compliance of the same with the Applicable Standards and all other works and services to be provided by the Concessionaire and any and all payments made as advance payment under the provisions of this O&M Contract.

9.1.3 The Performance Security shall come into force and become effective upon issuance and delivery of the same to the Implementing Agencies.

9.1.4 The Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Implementing Agencies' first written demand without any prior notice, reference or recourse to the Concessionaire, the Parent Company or any other entity.

9.1.5 The Concessionaire shall be obligated to maintain and keep valid the Performance Security until the date falling six (6) months following expiry of this Contract (the "**Performance Security Expiry Date**"). In the event the Performance Security expires prior to the Performance Security Expiry Date, the Concessionaire shall extend the validity of the Performance Security, at least forty five (45) business days prior to its expiry, so as to keep it valid and enforceable until the Performance Security Expiry Date.

Provided, in the event of failure by the Concessionaire to keep valid or extend the validity of the Performance Security in accordance with this Section 9.1.5, the Implementing Agencies shall provide a written notice to the Concessionaire and allow a reasonable period (as conveyed by the Implementing Agencies to the Concessionaire as per the sole discretion of the Implementing Agencies) of time for the Concessionaire to remedy the situation before encashing the Performance Security.

Provided further, in the event of failure by the Concessionaire does not keep valid or extend the validity of the Performance Security in accordance with proviso provided above, the Implementing Agencies shall have the right to encash the Performance Security at any time to its full outstanding value.

9.1.6 Upon the issuance of a certificate jointly issued by the Independent Engineer, the Independent Expert and the Independent Auditor evidencing the occurrence of Performance Security Expiry Date, the Performance Security shall be null and void and shall be returned to the Concessionaire by the Implementing Agencies within ten (10) business days of receipt by the Implementing Agencies of the afore-stated certificate.

9.2 ISSUANCE

9.2.1 The Performance Security shall be issued in favor of the Primary Implementing Agency.

9.2.2 The Performance Security shall be issued by a reputable and well-established bank/Insurance Company, acceptable to the Primary Implementing Agency.

9.3 LIMITATION OF LIABILITY

9.3.1 The total liability of the Concessionaire in respect of the Performance Security shall be limited to the amount of the Performance Security.

9.3.2 Nothing in this Section shall limit or exclude any other rights or remedies available to the Primary Implementing Agency under this Contract or at law.

9.4 PRIMARY IMPLEMENTING AGENCY RIGHT TO DRAW ON THE PERFORMANCE SECURITY

9.4.1 The Implementing Agencies shall promptly notify the Concessionaire of any substantial failure to meet its obligations under this Contract. In the event of such a failure, the Primary Implementing Agency may encash the bank guarantee provided by the Concessionaire. However, before encashing the bank guarantee, the Primary Implementing Agency shall provide the Concessionaire with a written notice specifying the alleged failure and a reasonable opportunity to cure such failure within a specified time period. If the Concessionaire successfully cures the failure within the specified time period, the Primary Implementing Agency shall not encash the bank guarantee.

10. EMPLOYEES

10.1 CONCESSIONAIRE’S EMPLOYEES – ENGAGEMENT OF STAFF AND LABOR

- 10.1.1 The Concessionaire shall employ and shall be entitled to directly offer employment to any suitably qualified, experienced and skilled personnel (the “**Concessionaire’s Employees**”) based on the agreed upon and pre-defined terms of references, and on such terms and conditions as it deems fit, subject to Good Industry Practice and Applicable Laws, for the purpose of undertaking the operations, management and maintenance of the Facility and the performance of the Works in accordance with the requirements set out in this Contract.
- 10.1.2 The Implementing Agencies are not and shall not be treated as the “principal employer” of or be deemed to have any contractual or other relationship with the Concessionaire’s Employees under any of the Applicable Laws or Applicable Permits relating to labor issues. The Concessionaire shall hold harmless and indemnify the Implementing Agencies against all losses that arise or that are incurred as a result of any claims made against the Implementing Agencies in respect of matters relating to health and safety and the employment or welfare of the Concessionaire’s Employees.
- 10.1.3 The Concessionaire shall be solely responsible to remunerate and make other payments, as per the relevant contracts, to the Concessionaire’s Employees. The Concessionaire shall also be responsible for and shall indemnify the Implementing Agencies against any costs or losses suffered by the Implementing Agencies in respect of any misconduct, violation of law, malpractice or mistreatment of students by any of the Concessionaire’s Employees.
- 10.1.4 The Implementing Agencies shall transfer its current employees working at the Facility, if any, as soon as practicable and allow the Concessionaire to hire suitable qualified, experienced and skilled personnel. The Concessionaire may retain any of the existing employees of the Implementing Agencies working at the Facility to their satisfaction (Schedule O).
- Provided that such transfer and hiring shall only be applicable where the subject employee illustrates to be a non-performing employee or that the same affects the performance of the Concessionaire with regards to the obligation provided herein this Contract.
- 10.1.5 The Concessionaire shall be solely responsible for the acts, omissions, failure to perform, breaches or defaults of the Concessionaire employees of the Applicable Standards as fully as if they were the acts, omissions, failures, breaches or defaults of the Concessionaire of the Applicable Standards under this Contract.

10.2 LABOR LAWS

- 10.2.1 The Concessionaire shall comply, and shall cause its agents, contractors, Subcontractors or Third Parties under the Third Party Agreements to comply, with all the relevant labour laws applying to their employees, and shall duly pay and afford to them all their legal rights under Applicable Laws and Applicable Permits. The Concessionaire shall require all such employees and agents, contractors, Subcontractors or Third Parties under the Third Party Agreements to obey all Applicable Laws and regulations concerning safety at work.
- 10.2.2 The Concessionaire shall be responsible for making all payments/contributions to its workers (including those employed indirectly through its subcontractors) or Competent Authority in accordance with the Applicable Laws and Applicable Permits. The Concessionaire shall immediately upon payment of such contributions provide copies of receipts issued by the concerned Competent Authority to GOB.

10.3 FACILITIES FOR STAFF AND LABOUR

- 10.3.1 The Concessionaire shall provide and maintain all necessary accommodation and welfare facilities for his agents, contractors, Subcontractors, staff and labour, as may be required under Applicable Laws and Applicable Permits at its own costs and expense. The Concessionaire shall also provide the facilities for GOB’s personnel as acceptable to GOB. The Concessionaire shall not permit any of his employees or any of the employees of its agents, contractors, Subcontractors to maintain any permanent living quarters within the structures forming part of the Works.

10.4 CONCESSIONAIRE’S Personnel

10.4.1 The Concessionaire shall provide and maintain sufficiently experienced and qualified personnel to execute and carry out the O&M Works and to perform other functions in a manner and on a schedule that will facilitate and support timely and efficient completion of the Works by the Concessionaire in accordance with this Agreement.

11. EMERGENCY STEP-IN

11.1 SUSPENSION OF WORKS BY THE IMPLEMENTING AGENCIES

11.1.1 Upon the occurrence of an Emergency, the Implementing Agencies reserves the right to suspend the performance of the Works by the Concessionaire and to step in and take control over the Works and the performance on temporary basis. The Implementing Agencies may only exercise such right of suspension by issuing a prior written notice of at least 48 (Forty-Eight) hours. The notice shall set out the following, to the extent possible in light of the circumstances of the Emergency:

- (a) The nature of the Emergency and the reason for the step-in.
- (b) The date on which the Works are suspended.
- (c) The likely duration of the suspension.
- (d) The effect of the suspension on the Concessionaire and any reasonable obligations of assistance required of the Concessionaire during the suspension period.

11.2 CONSEQUENCES OF SUSPENSION OF WORKS

11.2.1 During the suspension of the performance of the Works by the Implementing Agencies pursuant to Section 11.1:

- (a) The Concessionaire shall be relieved from its obligations to provide the Works but shall provide reasonable assistance to the Implementing Agencies upon request.
- (b) The Implementing Agencies shall be responsible for bearing all costs and expenses in relation to the O&M (including any agreed or scheduled maintenance) and the performance of the Works.
- (c) The Concessionaire shall be entitled to receive any revenues, during and in connection with such suspension and step-in, subject to verification by the Independent Auditors and approval by the PSC.

Provided that for the purposes of (c) above, the Concessionaire shall only be entitled to receive such sums in the event such an Emergency has not occurred due to any reasons attributable to the Concessionaire.

Further provided, in the event, such an Emergency has occurred due to any reasons attributable to the Concessionaire, the Implementing Agencies shall be entitled to encash the Performance Security in entirety.

11.3 TERMINATION OF THE CONTRACT DUE TO SUSPENSION OF WORKS

11.3.1 If the Implementing Agencies have not notified the end of the step-in after expiry of 90 days starting from date of step in by Implementing Agencies, and except as otherwise agreed by Parties, the Contract may be automatically terminated, and such termination may be considered as resulting from a Concessionaire Event of Default only if the conditions leading to the suspension were caused by the Concessionaire. The exercise of Implementing Agencies rights under this article shall be at the cost, risk, and expense of the Concessionaire. The Implementing Agencies shall not be required to make any payments to Concessionaire during the time of step in other than those payments that are already due and payable to Concessionaire under this Contract prior to step in.

11.4 CONSEQUENCES OF TERMINATION OF THE CONTRACT DUE TO SUSPENSION OF WORKS

11.4.1 On termination of this Contract pursuant to Section 11.3, the Primary Implementing Agency shall (subject to determinations and approval from the Independent Engineer and Independent Auditor) pay the Termination Compensation to the Concessionaire. Only for the purpose of determination of the Termination Compensation payable by the Primary Implementing Agency, the suspension of the Works to be provided by the Concessionaire and the performance of Works by the Implementing Agencies in accordance with this Section 11 shall be treated as an Implementing

Agencies Event of Default unless it is determined by the Independent Auditor and Independent Engineer that the Emergency or step-in was directly caused by a Concessionaire Event of Default.

11.5 OTHER CONSEQUENCES OF TERMINATION OF THIS CONTRACT

11.5.1 All other consequences of termination that are set out in the provisions of this Contract shall apply.

12. WORKS

12.1 General Obligations

12.1.1 The Concessionaire shall:

- (a) continuously, diligently and in accordance with the Technical Specifications and the timelines set out this Agreement, perform and execute the Works and all its obligations set out herein;
- (b) ensure that each Critical Project Milestone is completed in accordance with the timelines set out this Agreement;

12.1.2 The Concessionaire undertakes to perform the Works in accordance with Prudent Industry Practices pursuant to this Agreement at its own cost and risk.

12.1.3 The Concessionaire shall perform all its obligations and shall execute and complete the Works that is contemplated under this Agreement to be performed, executed and completed during the Term.

12.1.4 The Concessionaire shall make payments to GOB of the amounts due and payable by the Concessionaire in accordance with the terms of this Agreement.

12.1.5 The Concessionaire shall remedy any Defects at its own cost and risk.

12.1.6 The Concessionaire undertakes that to an extent appropriate from time to time, it shall itself and any of its employees, agents, contractors, Subcontractors, shall, in each case, be available to attend such meetings with the GOB at all reasonable times, as required and notified by the GOB to the Concessionaire in accordance with this Agreement. The Concessionaire and GOB agree that the Concessionaire's costs (including the costs of its employees, contractors, and Subcontractors) for attending such meetings shall be on Concessionaire's account.

12.1.7 The Concessionaire shall Notify GOB without undue delay upon becoming aware of any changes in the information to be provided to the GOB by the Concessionaire pursuant to this Agreement.

12.1.8 During the execution of the Works, the Concessionaire shall keep the Site free from all unnecessary obstructions and shall store or dispose of any its equipment (or any equipment of the Subcontractors) or surplus materials not required for the Works, in each case, in accordance with this Agreement and Prudent Industry Practices. The Concessionaire shall clear away and remove from the Site any wreckage, rubbish or temporary works no longer required for the performance of Works.

12.1.9 The Concessionaire shall be responsible for the coordination and general management of the Works.

12.1.10 The Concessionaire shall provide the GOB such information relating to the Works and the execution and completion of the same as is reasonably requested by the GOB from time to time including compliance reports in a mutually agreed format on a quarterly basis till the completion of the Expansion Works.

12.1.11 The Concessionaire shall allow GOB, GOB's Representative and the Independent Engineer (including each of their employees, representatives, nominated persons and advisors) clear access to the Site in order to examine the Works.

12.1.12 The Concessionaire shall not use the Site for any purpose other than the purposes of establishing the Facility as a Public Space/Parking Facility.

12.1.13 The Concessionaire shall be responsible for the operations, management and maintenance of the Project.

12.1.14 At all times, the concessionaire shall maintain the fixed assets register and ensure submission of the same to GOB on half-yearly basis for information and record purposes;

12.1.15 The Concessionaire shall commence the construction of the Project and begin construction activities and development activities strictly in accordance with the Technical Specifications,

Project Schedule and timelines set forth in this Agreement.

12.1.16 The Concessionaire shall be responsible for maintaining the Site in good condition, fair wear and tear expected, in accordance with this Agreement and Prudent Industry Practices at no cost to the GOB.

12.1.17 The Concessionaire shall provide annual audited financial statements including the auditors' report and directors' report to the GOB within thirty (30) Days of the close of each financial year.

12.1.18 The Concessionaire shall be responsible for engineering and design of the Works in accordance with this Agreement and Prudent Industry Practices. The Concessionaire shall bear the cost for modifications or replacements of Work (including any parts thereof) that may be necessitated as a result of the Concessionaire's deficiency in the totality and accuracy of design and engineering or which may arise due to any Defects.

12.1.19 The Concessionaire shall develop the Facility and do all such acts, deeds and things as may be necessary and expedient for that purpose and the Concessionaire shall:

- obtain or cause its agents, contractors and Subcontractors to obtain all the Applicable Permits required to carry out the construction of the Project in accordance with Applicable Law;
- either itself or through contractors appointed in accordance with the terms of this Agreement, procure at its own risk all services necessary for the construction, development, operation and maintenance of the Project; and
- provide the services and shall bear and pay the entire costs and expenses with regard to all such acts, deeds and things as stated in (a) and (b) above.

12.2 Construction and Operation

12.2.1 Upon the occurrence of the Commencement Date, the Concessionaire shall immediately proceed with the construction of Project in accordance with the Technical Specifications as detailed in Schedule [•] (*Scope of Work and Technical Specifications*), with Prudent Industry Practices and meet the Completion Conditions by or before the Scheduled Completion Date.

12.2.2 On the completion of the Completion Conditions, the Concessionaire shall apply to the Independent Engineer to confirm that the Completion Conditions have been satisfied. The application by the Concessionaire shall be supported by relevant documentation and the Independent Engineer shall be entitled to request further documentation, if so required. The Independent Engineer shall, within [•] from the receipt of the application made by the Concessionaire under this Section:

- i. Issue the Completion Conditions Certificate (with a copy to GOB and Independent Auditor) confirming that the Completion Conditions have been satisfied by the Concessionaire in accordance with this Agreement; or
- ii. Inform the Concessionaire (with a copy to GOB and Independent Auditor) that the Completion Conditions have not been completed to his satisfaction and inform the Concessionaire the steps required to be undertaken by the Concessionaire to complete the Completion Conditions.

Following the satisfaction of the Completion Conditions in accordance with Section 12.2.2(ii) (if applicable), the Concessionaire shall be entitled to apply to the Independent Engineer.

12.2.3 The Concessionaire shall meet all Critical Project Milestones in accordance with the requirements set forth in the Technical Specifications.

12.2.4 The Concessionaire shall ensure that any punch list items for the remaining portion of Works as agreed between the Concessionaire and GOB shall be completed within [•] from the date upon which such agreement is reached.

12.3 Concessionaire's Representative and Other Staff for Works

12.3.1 Concessionaire's Representative

- (a) The Concessionaire shall within [•] of the Effective Date, submit to GOB the name and particulars of the person whom the Concessionaire proposes to appoint as Concessionaire's representative (the "**Concessionaire's Representative**") for GOB's approval. The Concessionaire shall not revoke the appointment of the Concessionaire's Representative without notification to GOB.
- (b) The Concessionaire's Representative shall be an experienced and capable person who is a full time employee of the Concessionaire dedicated to directing the preparation of the Concessionaire's Documents, the execution of the Works and performing all obligations of the Concessionaire under this Agreement. Except as otherwise stated in the Agreement, the Concessionaire's Representative shall receive (on behalf of the Concessionaire) all Notices, instructions, consents, approvals, certificates, determinations and other communications under this Agreement. Whenever the Concessionaire's Representative is to be absent, a suitable replacement person shall be appointed as Concessionaire's Representative, and GOB shall be notified accordingly.
- (c) The Concessionaire's Representative may delegate any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. The Concessionaire's Representative and such persons shall be fluent in the English language, written and verbal, for day-to-day communications.
- (d) The Concessionaire shall replace the Concessionaire's Representative with another person fulfilling the requirements set out above if requested to do so by GOB in writing.

12.4 Coordination of the Works

- 12.4.1 The Concessionaire shall be responsible for the coordination and general management of the Works. The Concessionaire's responsibility shall include the obligation to coordinate and manage the progress of all Works on and off the Site and performance of all obligations during the term of this Agreement. The Concessionaire shall be responsible for *inter alia* construction management services, such as coordination, supervision and inspection of construction, erection and civil work activities at the Site, coordination of the activities of the Subcontractor(s), the labour and GOB's personnel, transmission to GOB of the progress reports and other reports, and any other services necessary to inform GOB of the progress of the Works.
- 12.4.2 The Concessionaire shall obtain, coordinate and submit to GOB, the Independent Engineer and the Independent Auditor for their information all details (including details of work to be carried out off the Site) from Subcontractors and suppliers, as applicable.

12.5 Subcontractors

- 12.5.1 The Concessionaire may sub-contract(s) to the Subcontractor(s), pursuant to the Sub-Contract Agreement(s) for the performance of services which do not constitute Core Activities (including Operations & Management and shall include the sub-sub-contracts granted by the Subcontractors to sub-sub-contractors for the performance of the Works; The concessionaire may sub-contract the security services, right to operate forklifting services, Janitorial services for cleaning and maintenance of the site, collection of rent and fee, site maintenance and utility services.
- 12.5.2 The Concessionaire shall be responsible for observance by all Subcontractors of all the provisions of the Agreement. The Concessionaire shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as fully as if they were the acts or defaults of the Concessionaire, his agents or employees. Any subcontracting by the Concessionaire of any portion of the Works shall not release or discharge the Concessionaire of any of its responsibilities or obligations under the Agreement.
- 12.5.3 The Concessionaire shall ensure that all Sub-Contract Agreements and purchase orders contain a provision providing for assignment of such Sub-Contracts or purchase orders to GOB in the event of termination of this Agreement. Such assignment will be at the discretion of GOB and at no cost to GOB.

12.6 Restriction on Creation of Encumbrance

The Concessionaire shall not at any time during the Term create an Encumbrance over the Site or the assets of the Concessionaires including any movable, immovable, tangible or intangible assets.

12.7 Representations, Warranties and Covenants

12.7.1 The Concessionaire hereby represents and warrants to GOB that:

- (a) it is duly incorporated, existing and in good standing under the laws of Pakistan, and has all requisite power and authority to conduct its business and to execute, to deliver and to perform its obligations under this Agreement;
- (b) it has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to carry out its obligations under this Agreement;
- (d) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Concessionaire or that could materially adversely affect the performance by the Concessionaire of its obligations or constitute an event of default under this Agreement;
- (e) this Agreement has been duly authorised, executed and delivered by it and constitutes the legal, valid and binding obligation of it;
- (f) to the best of its knowledge, the execution and delivery of, and performance of its obligations under this Agreement by the Concessionaire, subject to the granting and maintenance of the requisite Applicable Permits, does not and, subject to the granting and maintenance of the relevant additional Applicable Permits in the future, will not constitute a violation of its constitutional documents, or any Applicable Law or any agreements, understanding, judgment, order, decree or regulation or rule of any Competent Authority, court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its businesses;
- (g) it is in compliance with all the Applicable Laws including but not limited to Companies Act 2017;
- (h) no Corrupt Act has been committed by the Concessionaire or on its behalf;
- (i) it has adequate expertise and personnel to comply with its obligations under the Agreement;
- (j) it has received all relevant information it requires and no additional information relating to the Project in order to procure and construct the Works in accordance with the Agreement is required;
- (k) it has satisfied itself in every respect prior to the Signing Date regarding the design criteria provided in this Agreement and the accuracy of any information relating to the Site;
- (l) it has carried out the necessary due diligence and is aware of the risks and hazards that are likely to arise or which the Concessionaire may face in the course of the performance of its obligations hereunder; and
- (m) all statements/information provided by it are true and correct at the Signing Date.

12.7.2 The Concessionaire hereby covenants to GOB that:

- (a) It shall take full responsibility for the adequacy, stability and safety of all Site operations, of all means and methods of construction and of all the Works, irrespective of any approval or consent or the lack thereof by GOB;
- (b) it shall perform or cause to be performed the Works (incorporating and supplying only new, good quality Materials manufactured by reputable manufacturers and which are suitable for use as part of the Project) for all phases of the Project in accordance with the terms of this Agreement, and provide all labour, materials, equipment, machinery, tools, transportation, as may be required, during the Term), utilities, administration and other services or items required to complete the Works and otherwise in accordance with this Agreement, including the Technical Specifications, and in compliance with all Applicable Laws, Applicable Permits and Prudent Industry Practices;

- (c) it shall further design, engineer, supply, construct and execute the Works, in a manner consistent with the requirements of this Agreement;
- (d) the Works as completed by the Concessionaire shall be wholly in accordance with the Agreement and shall include any work which is necessary to satisfy the Technical Specifications and the requirements set out in the Schedules, or is implied by the Agreement and all works which (although not mentioned in the Agreement) are necessary for the stability or for the completion, or safe and proper operation of the Works;
- (e) it shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works;
- (f) it shall execute and complete the Works and achieve the Commercial Operations Date on or before the Scheduled Completion Date;
- (g) it shall provide all superintendence, labour, plant and materials, Concessionaire's Equipment, and all other things, whether of a temporary or permanent nature, required in and for the Project;
- (h) the Works will be carried out with all the skill and care to be expected of appropriately qualified and experienced professional concessionaires with experience in carrying out works of a similar type, nature and complexity to the Works; and
- (i) all Materials and any material used in the Works or any part thereof shall be brand new, unused, un-refurbished, undamaged and un-reconditioned.

12.8 Site Data

12.8.1 The Concessionaire has conducted the studies on geo technical investigations, seismic surveys and topography or under and around the Site, and studies on environmental impact as specified in Schedule [•] (*Site*) hereto. The Concessionaire shall be solely responsible for interpreting all data. The Concessionaire shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have satisfied himself prior to the Effective Date as to:

- (a) the form and nature of the Site, including all surface and sub-surface conditions;
- (b) all applicable geo technical investigations, seismic surveys, topography climatic conditions and environmental conditions (through Environment Impact Assessment), including those of the Site and the Country;
- (c) the extent and nature of the work, labour, manpower, services, Concessionaire's Equipment and Materials necessary for the execution and completion of the Works;
- (d) the social, political and security situation at and around the Site; and
- (e) the means of access to the Site and the accommodation required.

12.8.2 Without prejudice to Section 12.8.1, the Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Project.

12.8.3 The Concessionaire warrants that it has thoroughly investigated the Site and all other relevant matters or conditions that could affect execution of the Works, and, except for any express provisions of this Agreement stating otherwise, warrants that the Concessionaire shall not be entitled to and shall make no claim for additional compensation, extension of the Scheduled Completion Date, as the case may be, for any reason relating to any of the foregoing matters or for any matter relating to conditions encountered above, below, on or at the Site or on the ground of any allegation or fact that incorrect or insufficient information was given to him by GOB or any other person, whether in the employment of GOB or otherwise including GOB.

12.9 Temporary Rights of Way and Facilities

12.9.1 The Concessionaire shall provide, at his own cost, any additional facilities outside the Site

required by him for the purposes of the Works and procure any easements or right-of-way required for those facilities. GOB shall co-operate in obtaining necessary Applicable Permits and approvals for such right-of-way and/or facilities, if required.

12.10 Project Schedule

12.10.1 The Concessionaire shall submit a final Project Schedule to GOB which shall be binding on the Concessionaire within [•]. The Project Schedule shall be at least a level-3 program, in such detail as is reasonably acceptable to GOB and shall be in prepared in accordance with the Technical Specifications. The final Project Schedule shall be such that the Concessionaire is able to achieve the Completion Conditions by the Scheduled Completion Date and shall include the following:

- (a) the order in which the Concessionaire proposes to carry out the Works;
- (b) the times when submissions and approvals or consents by GOB are required, as indicated in the Technical Specifications; and
- (c) timelines for meeting the Completion Conditions.

12.10.2 The Project Schedule shall be developed using Critical Path Method (CPM) and precedence networking techniques, showing early start, late start, early finish and late finish dates. Latest versions of Primavera Professional Project Management software or MS Project shall be used and soft copies on compact discs shall be provided in compatible format to GOB for the Project Schedule, as well as any modifications or updates to such Project Schedule.

12.10.3 The Concessionaire shall, whenever required by GOB or GOB's Representative, provide in writing, for information, a general description of the arrangements and methods which the Concessionaire proposes to adopt for the execution of the Works. If the progress of the Works does not conform to the Project Schedule, GOB may instruct the Concessionaire to revise the Project Schedule, showing the modifications necessary to achieve the Completion Conditions by the Scheduled Completion Date.

12.11 Progress Reports

12.11.1 The Concessionaire shall submit a monthly report on the first day of the succeeding month, after mobilisation at the Site, to GOB, the Independent Engineer and the Independent Auditor covering all activities relating to the Works carried out in the previous month. The GOB and the Concessionaire along with the Independent Engineer and the Independent Auditor shall hold monthly meetings at the Site (or such other place as the Concessionaire and GOB may mutually agree) to discuss (i) the progress of the Works, (ii) the stage at which the Concessionaire has reached, and if any activity is behind the Project Schedule, and (iii) set out the explanation of any such delays and the consequences thereto and the corrective actions being taken by the Concessionaire to remedy the delay. The minutes of these meetings shall be prepared by the Concessionaire and sent to GOB for approval. These meetings will continue throughout until the Commercial Operations Date.

12.11.2 The Concessionaire shall provide a quarterly progress report ("**Quarterly Progress Report**" or "**QPR**") that provides a detailed schedule for the entire Project Schedule of Works with detailed task breakdown using such method and technique as may be acceptable to GOB. The QPR will highlight the Works conducted in the past quarter and the Works to be conducted in the next quarter. The QPR shall contain such information, be in such format and on such media as the Concessionaire shall prepare, subject to the approval of GOB and shall set out, as a minimum:

- (a) actual project situation, descriptions of progress, including photo documentation;
- (b) charts showing the status of the Concessionaire's Documents and the Project Schedule;
- (c) analysis of safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (d) comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion in accordance with the Project Schedule and this Agreement, and the measures being (or to be) adopted to overcome such aspects;

- (e) summary of unresolved claims or disputes that involve requests for extension to the Scheduled Completion Date, or adjustment to any other date or Critical Project Milestones set forth in this Agreement.
- (f) forecast of progress for the next month;
- (g) the analysis of the critical path activities should be identified;
- (h) if the progress of any activity is delayed relative to the dates indicated on the Project Schedule, an explanation of this and the likely consequences and stating the corrective action being taken to remedy the delay;
- (i) information on all critical aspects influencing the progress of the Works;
- (j) a general report on the status of the Works;
- (k) such other information as the GOB may reasonably require from time to time; and
- (l) information and data relating to the respective time period (calendar month) and cumulated data covering the time period up to the last Day of the respective month as well as main activities forecast for the subsequent month.

12.11.3 As soon as possible and in the reasonable consideration of the Concessionaire, the Concessionaire shall Notify GOB if the Concessionaire fails, or is reasonably likely to fail, to comply with the Project Schedule or to meet a milestone in the Project Schedule (such likely or actual failure constituting a “**Failure**”), identifying the nature of the Failure and the reason for the Failure, the impact which such Failure shall have, or in the Concessionaire’s reasonable opinion, is likely to have on its ability to achieve any of the milestones set out in the Project Schedule and the steps which the Concessionaire has taken, is taking and will take to mitigate the adverse consequences of such Failure. Nothing in this Section 12.11.3 shall relieve the Concessionaire from complying with the Project Schedule.

12.12 Safety Precautions

12.12.1 The Concessionaire shall, during the Term, take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction and for the safety of all persons entitled to be on the Site in relation to the Works, all Concessionaire’s Equipment and temporary works and structures and for the safety of all personnel entitled at the Site and shall keep the Site and the Works in an orderly state appropriate to the avoidance of danger to such persons.

12.12.2 The Concessionaire shall at its own cost take all due precautions to ensure the safety of its employees, agents and Subcontractor and, in collaboration with and to the requirements of the local health authorities.

12.12.3 The Concessionaire shall remain responsible at all time for the safety and security of the Works, Materials and the Concessionaire’s Equipment, the Concessionaire at its own cost shall procure, construct and install temporary fence, lighting, as deemed necessary, during the period of construction which shall comply with reasonable security standards and such fence shall be dismantled just prior to expiry of the Term.

12.12.4 The Concessionaire shall conduct monthly safety meetings with all its contractors, Subcontractors, employees, agents, Third Parties entering into Third Party Agreements or other officers working on the Site.

12.13 Protection of the Environment

12.13.1 The Concessionaire shall comply with all Applicable Laws and Applicable Permits in access arrangements and operations on Site, including those pertaining to protection of the environment. During construction, the Concessionaire shall take all necessary steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Concessionaire shall ensure adherence to values prescribed by Applicable Laws and Applicable Permits.

12.14 Encroachments on the Site

- 12.14.1 GOB shall be responsible for keeping unauthorized encroachment and/or persons off the Site. Any loss or damage to the property or Material or Works as a result of an encroachment shall be the responsibility of GOB and for whose rectification, the Concessionaire shall be entitled to an extension of the Scheduled Completion Date, if required.
- 12.14.2 The Concessionaire shall take all measures necessary or as advised in accordance with Prudent Industry Practice and all Applicable Laws to ensure safety, security and protection of the Site. Such measures shall include posting of trained security personnel at the Site, providing warning signs and utilizing closed/locked gates.
- 12.14.3 The Concessionaire shall be responsible to ensure that all of its employees, contractors, the Subcontractor, agents, any other officers shall at all times comply with all applicable safety and security requirements and all Applicable Laws.

12.15 Remedial Work

- 12.15.1 GOB may instruct the Concessionaire to remove and re-execute any Work which is not in accordance with this Agreement.
- 12.15.2 If the Concessionaire fails to comply with any such instruction, GOB shall be entitled to employ and pay other persons to carry out the work and the Concessionaire shall be responsible to reimburse GOB for all costs arising from this failure.
- 12.15.3 The Concessionaire shall be responsible for internal infrastructure linkages required for the Project including but not limited to road, electricity, supply, water supply, waste water and solid waste disposal and storm water drainage at its own costs. GOB will use reasonable efforts for the provisions with respective Competent Authority at no cost to itself and it shall be the Concessionaire's responsibility to fulfil any monetary or other compliances as may be required by such Competent Authority.

12.16 Operation and Maintenance

- 12.16.1 Upon the occurrence of Commercial Operations Date for Works, the Concessionaire shall proceed with operation and maintenance of the Facility as per **Section 6 of this Agreement**.
- 12.16.2 The Concessionaire shall at all times carry out or procure at its own cost and expense the operate and maintain the Facility (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and Prudent Industry Practices.
- 12.16.3 The Concessionaire shall employ qualified and skilled personnel and manpower to efficiently operate and maintain the Facility at its own cost and consequence.

12.17 Approvals

- 12.17.1 The Concessionaire shall be deemed to have itself of all Applicable Permits required for the performance of the Works and its obligation under this Agreement.
- 12.17.2 The Concessionaire shall be responsible for obtaining and thereafter maintaining all Applicable Permits at its own cost, risk and expense. The Concessionaire shall obtain all Applicable Permits on or before the Commencement Date.
- 12.17.3 The Concessionaire and GOB agree that in the event of a Lapse of Consent, the GOB shall, upon receipt of a written request by the Concessionaire, use reasonable efforts to assist the Concessionaire in obtaining such Applicable Permit provided however, such assistance shall not infer any obligation under this Section or any other part of this Agreement on the GOB to obtain the relevant Applicable Permit on behalf of the Concessionaire. Except as otherwise provided in Section 16, the Concessionaire shall neither be relieved nor absolved of any of its obligations under this Agreement as a result of Lapse of Consent and shall bear all risks and consequences relating to the same.
- 12.17.4 The Concessionaire shall reimburse any costs incurred by the GOB in providing assistance to the Concessionaire in obtaining any Applicable Permit.

12.18 Taxes and Subsidies

- 12.18.1 The Concessionaire shall be responsible to make all payments in respect of the rates, Taxes, charges, levies, assessments or equivalent Taxes levied.
- 12.18.2 The Concessionaire may raise any objections in terms of any charges, rates, Taxes, assessment or equivalent Taxes levied on it by the Competent Authority, provided that, such objections shall be filed and pursued at the Concessionaire's costs and the Concessionaire shall be entitled to any benefit accruing as a result of the Concessionaire's successful objection.

12.19 Sub-Contract

- 12.19.1 The Concessionaire may fulfil its obligations under this Agreement to perform the Works in accordance with this Agreement by granting Sub-Contracts to the Subcontractor pursuant to the Sub-Contract Agreement.
- 12.19.2 The Concessionaire and GOB agree that all Sub-Contract Agreement(s) entered into by the Concessionaire with the Subcontractor(s) shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate on or prior to the earlier of (a) termination of this Agreement; and (b) expiry of the Term.
- 12.19.3 The Concessionaire hereby undertakes that it shall:
- (a) ensure that the Sub-Contract(s) are granted and the Sub-Contract Agreement(s) are entered into on an arm's length basis;
 - (b) ensure that the assets created and/or constructed pursuant to the sub-contract vest in GOB upon the earlier of (a) termination of this Agreement; and (b) expiry of the Term;
 - (c) ensure that the Subcontractor(s) performs its obligations in the same manner that the Concessionaire is required to perform its obligations under this Agreement; and
 - (d) deliver copies of all Sub-Contract Agreement(s) to GOB within thirty (30) days of its execution.
- 12.19.4 Unless otherwise agreed to in writing by GOB, GOB shall not be liable for any costs, liabilities, claims, damages, costs, penalties, fines, expenses, fees and charges of any nature whatsoever in relation to the Sub-Contract(s) entered into by the Concessionaire with Sub-Contract(s) as a result of the expiry of the Term or termination of this Agreement.
- 12.19.5 Notwithstanding anything to the contrary, the Concessionaire shall be liable for all acts, deeds, omissions, breaches and defaults of the Subcontractor(s) and shall ensure that there is no change in the end-use by the Subcontractor(s).
- 12.19.6 Where a Concessionaire Event of Default occurs as a result of an event of default of a Subcontractor under its Sub-Contract Agreements or as a result of non-performance of the subcontracted part of Works in accordance with the terms of this Agreement, the Concessionaire shall have the right to remedy the default or breach or defect, as the case may be, at its own cost and without any recourse to GOB provided however, in case such defects, defaults or breach, as the case may be, is not remedied within thirty (30) days of the Subcontractor(s) default or breach, such event of default of the Subcontractor shall be considered as Concessionaire's Event of Default and the provisions of Section [•] (*Termination*) shall apply.
- 12.19.7 The Concessionaire shall not be permitted to Sub-Contract the entire Works and breach by the Concessionaire of the foregoing shall be deemed as a Concessionaire Event of Default.

13. CHANGE IN LAW

13.1 CONSEQUENCES OF QUALIFYING CHANGE IN LAW

13.1.1 If a Qualifying Change in Law occurs, then within 90 (Ninety) Days of its occurrence either Party may notify the other expressing its opinion on its likely effects, giving details of its opinion of:

- (a) Any necessary change in the Works to be performed.
- (b) Whether any changes are required to the terms of this Contract to deal with such Qualifying Change in Law.
- (c) Whether relief from compliance with obligations is required, including the obligation of the Concessionaire to meet the KPIs, on the occurrence of any relevant Qualifying Change in Law.
- (d) Any increase in costs or delay that will result from the Qualifying Change in Law.
- (e) Any Work that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Contract Period.
- (f) In each case give in full detail the procedure for implementing the change in the O&M or the performance of the Works.

13.1.2 A Party suffering from a Qualifying Change in Law shall not be entitled to claim any relief under this Section 13.1 unless it has served the notice within the time period set out in Section 13.1.1.

13.1.3 As soon as practicable after receipt of any notice from either Party under Section 13.1.1, the Parties shall discuss and attempt to agree on the issues referred therein and any ways in which the Concessionaire can mitigate the effect of (in collaboration with and subject to evaluation of the Independent Engineer, Independent Auditor and Independent Expert) the Qualifying Change in Law, including:

- (a) Providing evidence that the Concessionaire has used reasonable endeavors to minimize any increase in costs and maximize any reduction in costs.
- (b) Demonstrating to the Implementing Agency that the Qualifying Change in Law is the direct and primary cause of the increase in costs and/or delay and that the estimated increase in costs or delay could not reasonably be expected to be mitigated or recovered by the Concessionaire.
- (c) Demonstrating that any expenditure, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law, has been taken into account in the amount stated in its opinion presented under Section 13.1.1.

13.1.4 If the Parties have complied with Sections 13.1.1 and 13.1.2 and the Parties mutually agree or it is determined by the Independent Auditor that the Concessionaire is required to incur additional capital expenditure or the Concessionaire has suffered any increase in costs due to a Qualifying Change in Law, then the Concessionaire shall (subject to the provisions of this Section 13.1) be entitled to receive compensation from the Primary Implementing Agency either by way of a lump-sum payment or by any other means that the Parties mutually agree.

13.1.5 The quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under Section 13.1.4 shall be as agreed by the Parties or as determined by the Project Steering Committee, provided that the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.

13.2 CONSEQUENCES OF FUNDAMENTAL CHANGE IN LAW

13.2.1 If a Fundamental Change in Law occurs or is shortly to occur, then either Party may notify the other, within a period of 90 (Ninety) Days from the date of promulgation of such Law, expressing its opinion on:

- (a) The likely effects of such Fundamental Change in Law on the validity and enforceability

of this Contract or the rights and benefits accruing to the Concessionaire; and

- (b) The ability of the Parties to re-negotiate the terms of this Contract to mitigate the effects of such Fundamental Change in Law, while adhering to the original commercial and financial position of the Parties.

13.2.2 As soon as practicable after receipt of any notice from either Party under Section 13.2.1, the Parties shall meet to re-negotiate and agree on the amendments to the terms of this Contract as and where necessary.

13.2.3 If the Parties are unable to agree on necessary amendments to the terms of this Contract to give effect to the original commercial and financial position of the Parties within a period of 90 (Ninety) Days from the date on which a notice is issued under Section 13.2.1, then either Party shall be entitled to terminate this Contract by giving a notice of 30 (Thirty) Days.

13.2.4 On termination of this Contract pursuant to Section 13.2.3, the Primary Implementing Agency shall pay the Termination Compensation. Only for the purpose of determination of the Termination Compensation payable by the Primary Implementing Agency, the occurrence of a Fundamental Change in Law shall be treated as an Implementing Agencies Event of Default.

14. INDEMNITY AND INSURANCE

14.1 INDEMNITY

14.1.1 Subject to Section 14.1.2, the Concessionaire shall be responsible for, and indemnify the Implementing Agencies, its employees and contractors on demand from and against, all liability for:

- (a) Death or personal injury of any persons.
- (b) Loss of or damage to property (including the Facility or any other property linked to the Facility which essentially belongs to the Co-Implementing Agency or for which the Concessionaire is responsible).
- (c) Non-compliance by the Concessionaire with Applicable Laws or Applicable Permits.
- (d) Actions, claims, demands, costs, charges and expenses (including legal expenses) arising out or in relation to this Contract.
- (e) Any adverse site conditions or environmental damage at the Facility that may result from any action or inaction of the Concessionaire.
- (f) Any proceedings against the Implementing Agencies by any relevant Government Authority (including any withholding or deduction from amounts payable to the Primary Implementing Agency by that Government Authority) for failure of the Concessionaire to comply with any of its obligations hereunder which may arise out of, or in consequence of, the operation and maintenance of the Facility, the performance of the Works and any other performance or non-performance by the Concessionaire of its obligations under this Contract.
- (g) Any winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Concessionaire in a court of law.

14.1.2 The Concessionaire shall not be responsible or be obliged to indemnify the Implementing Agencies to the extent any injury, loss, damage, cost and expense caused by the negligence or willful misconduct of the Implementing Agencies its employees and contractors or breach by the Implementing Agencies of its obligations under this Contract.

14.1.3 The indemnification obligations of the Concessionaire under this Section 14.1 shall be limited to the extent that the liability, loss or damage incurred by the Implementing Agencies, its employees and contractors is connected with the operation of this Contract or the Facility. The Concessionaire shall not be responsible for indemnification for liability, loss or damage that arises from the work of the Implementing Agencies, its employees and contractors that is not related or connected with the operation of this Contract or the Facility.

14.1.4 The Implementing Agencies shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Contract, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Concessionaire.

14.2 INSURANCE

14.2.1 The Concessionaire shall at all times during the Contract Period, at its cost and expense by utilizing the Contract Amount Payments, procure and maintain the insurance.

14.2.2 The Concessionaire shall be solely responsible for obtaining, maintaining, and paying all premiums for adequate workers' compensation insurance, health insurance, passengers, drivers, vehicles, stocks any other applicable insurance coverage for all its employees, laborers, subcontractors, and any other personnel engaged in the Project. Such insurance shall provide coverage for bodily injury, death, sickness, disability, and any other related losses arising out of or in connection with the Project.

14.2.3The Concessionaire shall ensure that all insurance policies comply with all applicable laws, rules, and regulations. The Concessionaire shall provide the Implementing Agency with evidence of such insurance coverage upon request.

15. FORCE MAJEURE

15.1 FORCE MAJEURE EVENT

15.1.1A **“Force Majeure Event”** shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of either Party and that on or after the Effective Date materially and adversely affects the performance by such affected Party (the **“Affected Party”**) of its obligations under or pursuant to this Contract; provided, however, that, such material and adverse effect 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 Facility 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. 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:

- (a) The following political events that occur inside or directly involve the province of Balochistan and affect the Concessionaire’s ability to undertake the Works or operate the Facility (each a “Political Event”):
 - i. Any act of war (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage.
 - ii. Any Lapse of Consent of which report to the Implementing Agencies, and the Independent Auditor shall have been given under provisions of this Contract and that shall have existed for more than thirty (30) consecutive days.
 - iii. Any strike, work-to-rule, go-slow, or analogous labour action that directly affects the Concessionaire’s operations, or is a nationwide action specifically related to the industry in which the concessionaire operates or that which makes it difficult for the Concessionaire to fulfill its obligations under this Contract, if it has existed for more than thirty (30) consecutive days.

15.1.2 The following events beyond the reasonable control of the affected Party (each a “Non-Political Event”), including, but not limited to:

- i. Lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado.
 - ii. Any Lapse of Consent of which report to the Implementing Agencies, and the Independent Auditor shall have been given under provisions of this Contract and that shall have existed for less than thirty (30) consecutive days.
 - iii. Any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread province-wide or nationwide.
 - iv. 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).
 - v. Epidemic or plague.
- (b) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- i. Late delivery or interruption in the delivery of any equipment or consumables in respect of the Facility.

- ii. A delay in the performance of any Employee.
- iii. A breakdown in the Facility or any part thereof.
- iv. Normal wear and tear or random flaws in the Facility or the assets located thereon provided that each of the events described in (i), (ii), (iii) or (iv) 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 the Employees.

15.2 EFFECT OF FORCE MAJEURE

15.2.1 Neither GOB nor the Concessionaire shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure Event, provided that no Force Majeure Event shall relieve either Party from its payment obligations under this Agreement.

15.3 CONCESSIONAIRE'S RESPONSIBILITY

15.3.1 Upon occurrence of an event considered by the Concessionaire to constitute Force Majeure Event and which may affect performance of the Concessionaire's obligations, the Concessionaire shall promptly Notify GOB of such Force Majeure Event as soon as practicable, but in any event not later than twenty-four (24) hours (with a copy to the Independent Engineer) after it becomes aware of the occurrence of the circumstances giving rise to a Force Majeure Event or three (3) hours after the resumption of any means of providing Notice to GOB. Thereafter, the Concessionaire shall give GOB (with a copy to the Independent Engineer) a second Notice, describing the Force Majeure Events in detail, to the extent which can be reasonably determined at the time of such Notice, providing a preliminary evaluation of obligations affected, a preliminary estimate of the period of time that the Concessionaire shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than five (5) Days after the initial Notice of the occurrence of the Force Majeure Event.

15.3.2 Notwithstanding the above, the Concessionaire shall Notify the Independent Engineer for an extension in the Scheduled Completion Date or the Scheduled Expansion Completion Date for the relevant stage of the Expansion Works, as applicable, in accordance with the provisions of Section 13.1.5 (Extension of time) and shall continue to perform his obligations as far as reasonably practicable. The Concessionaire shall also Notify when appropriate and requested by GOB or the Independent Engineer to provide further Notices (with a copy to the Independent Engineer) more fully describing the Force Majeure Event and its causes and providing up to date information relating to the efforts made by the Concessionaire to avoid and/or mitigate the effects thereof and estimates, to the extent practicable, of the time that it expects it shall be unable to perform its obligations under the Agreement. Furthermore, the Concessionaire shall include in its Notices of any proposals, including any reasonable alternative means for performance, but shall not effect any proposals without the consent of the Independent Engineer.

15.4 GOB'S RESPONSIBILITY

Upon occurrence of an act considered by GOB to constitute Force Majeure Event and which may affect performance of GOB's obligations, GOB shall promptly Notify the Concessionaire (with a copy to the Independent Engineer) soon as practicable, but in any event not later than twenty-four (24) hours after it becomes aware of the circumstances giving rise to a Force Majeure Event or three (3) hours after the resumption of any means of providing Notice to the Concessionaire. Thereafter, GOB shall give the Concessionaire a second Notice (with a copy to the Independent Engineer), describing the Force Majeure Event in reasonable detail and, to the extent which can be reasonably determined at the time of such Notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that it shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than five (5) Days after the initial Notice. GOB shall continue to perform his obligations as far as reasonably practicable. GOB shall also Notify the Concessionaire (with a copy to the Independent Engineer) of any proposals with the objectives of completing the Works and mitigating any increased costs to GOB and Concessionaire.

15.5 DUTY TO MINIMIZE DELAY AND MITIGATE

15.5.1 Each of the Concessionaire and GOB shall at all times use all reasonable efforts to minimize any delay in the performance of the Agreement as a result of Force Majeure Event and mitigate the effects of such Force Majeure Event.

15.5.2 The Concessionaire shall endeavour to continue the performance of its obligations under the Agreement insofar as reasonably practicable and Notify GOB (with a copy to the Independent Engineer) of the steps it proposes to take including any reasonable alternative means for performance which are not prevented by the Force Majeure Event. The Concessionaire shall take such steps unless and to the extent GOB directs the Concessionaire not to do so.

15.5.3 A Party shall give Notice to the other Party when it ceases to be affected by the Force Majeure Event and mitigate any loss suffered by either Party as a result of the Force Majeure Event.

15.6 OPTIONAL TERMINATION AND RELEASE

15.6.1 If Force Majeure Event occurs which prevents the whole of the Works or substantially the whole of the Works and its effect continues for a period of [one hundred eighty (180) consecutive Days], the Concessionaire may give a Notice to GOB of its intention to terminate.

15.6.2 Within [fourteen (14) Days] of the date of such Notice, the senior executives of each of the Concessionaire and GOB shall meet to negotiate in good faith and with the aim of prevent the termination of the Agreement and achieving a resolution satisfactory to both Concessionaire and GOB. If, within [thirty (30) Days] of the date of the initial Notice of the Concessionaire's intention to terminate, the senior executives of each of the Concessionaire and GOB are unable to agree on a resolution satisfactory to both Concessionaire, the Concessionaire may give to GOB a Notice of termination, which shall take effect on a date specified in such Notice.

15.6.3 In the event this Agreement is terminated in accordance with this Section 15.6, the provisions of Section 18.1 (Consequences of Termination) will apply.

15.7 REMEDIES FOR FORCE MAJEURE

15.7.1 The Affected Party must at all times since the occurrence of the Force Majeure Event comply with the obligations of mitigation as provided above and shall continue to comply, for which the Affected Party shall be entitled to the following relief:

- (a) The obligations of the Affected Party (excluding payment obligations) to the extent they are affected by the Force Majeure Event shall be suspended for the period of the Force Majeure Event;
- (b) The time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended on a day for day basis for the period of Force Majeure Event provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 16.7.1 (b) to the extent that such failure to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred; and
- (c) The term of this Agreement shall be extended on a day for day basis for the period of the Force Majeure Event.

16. EVENTS OF DEFAULT

16.1 CONCESSIONAIRE'S EVENT OF DEFAULT

16.1.1A “**Concessionaire Event of Default**” means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred as a direct consequence of any Implementing Agencies Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or a Force Majeure Event and (unless otherwise provided for in this Contract) where the Concessionaire has failed to remedy the defects specified in the Remedial Action Notice:

- a. Abandonment by the Concessionaire which means a cessation of the performance of Works or other obligations of the Concessionaire for a period of 30 (Thirty) Days.
- b. The breach by the Concessionaire of its obligations to maintain insurance in accordance with the provisions of this Contract.
- c. The breach by the Concessionaire of its material obligations under this Contract.
- d. complete closure and/or non-availability of the Facility, (excluding scheduled outages as prescribed by the Govt. from time to time), for a period of 30 (Thirty) Days consecutively.
- e. Any material representation made or warranties given by the Concessionaire under this Contract being false or misleading.
- f. Failure of the Concessionaire to procure and maintain a valid Performance Security till the Performance Security Expiry Date.
- g. Breach of the Concessionaire's obligations under this Contract.
- h. The Concessionaire (whether the same is a special purpose vehicle, trust, joint venture, or other entity, and its respective trustees, partners, or members (as applicable) entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts as they fall due or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organization, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfill its obligations under this Contract or that otherwise has or may have a Material Adverse Effect (in the reasonable opinion of the Implementing Agencies).
- i. The occurrence of a sanctionable Practice.
- j. Failure of the Concessionaire to make any payments that are due to be made to the Authority under this Contract, and if such failure is not cured within a period of sixty (60) days.
- k. Failure of the Concessionaire to meet the KPI consistently for a period of one (1) year.
- l. Creation of any encumbrance on the Facility in favor of any person save and except as otherwise expressly permitted in terms of this Contract.
- m. The right of the Implementing Agencies to terminate this Contract in accordance with 3.5.1

16.1.2If an event of default has occurred and GOB wishes to terminate this Agreement, it shall serve a Notice of termination (the “Notice of Intent to Terminate by GOB”) on the Concessionaire.

16.1.3The Notice of Intent to Terminate by GOB shall specify the type and nature of the event of default that has occurred.

16.1.4In case of any other default arising under Section 16.1.1, the cure period for the Concessionaire shall be forty-five (45) Days (the “Cure Period for Concessionaire”).

16.1.5 In the event the Concessionaire rectifies the event of default prior to the expiry of the relevant Cure Period for Concessionaire, such Notice of Intent to Terminate by GOB shall be deemed to revoked and this Agreement shall continue in accordance with the terms and conditions hereof.

16.1.6 In the event the Concessionaire fails to rectify the event of default prior to the expiry of the relevant Cure Period for Concessionaire, GOB may terminate this Agreement by serving a Notice of termination (the “Termination Notice by GOB”) to the Concessionaire. This Agreement shall terminate on the date specified in the Termination Notice (the “GOB Termination Date”).

16.2 IMPLEMENTING AGENCIES EVENT OF DEFAULT

16.2.1 An “**Implementing Agencies Event of Default**” means any of the following events, caused occurring on behalf of either or both Implementing Agencies, unless such an event has occurred as a consequence of the Concessionaire Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or a Force Majeure Event and only where the Implementing Agencies have failed to remedy the defects specified in the Remedial Action Notice issued within the Remedial Period:

- a. Breach of the obligations with respect to transfer or assignment of their rights and obligations under this Contract as provided in provisions of this Act below.
- b. Any material representation made or warranties given by the Implementing Agencies under this Contract being false or misleading.
- c. A failure by the Implementing Agencies to fulfill any other material obligations under this Contract.
- d. A Change in Law that (a) renders this Contract unenforceable, or (ii) prevents any Party from exercising its rights and/or performing its obligations here-under, or (iii) prevents the Concessionaire from undertaking the Works pursuant to this Contract.
- e. Failure of the Implementing Agencies to make any payments that are due to be made to the Concessionaire under this Contract, and if such failure is not cured within a period of ninety (90) days.

16.3 CONSEQUENCES OF TERMINATION

16.3.1 In the event of Termination due to a Concessionaire Event of Default, the Concessionaire shall pay to the GoB on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Concessionaire Default Termination Amount.

16.3.2 In the event of Termination due to a GoB Event of Default, the GoB shall have the obligation to pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the GoB Default Termination Amount.

16.3.3 If Termination is on account of a Non-Political Event, the GoB 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.

16.3.4 If Termination is on account of a Political Event, the GoB 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.

16.3.5 The Termination Payment shall be payable to the Concessionaire by the GoB 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.

16.3.6 To the extent:

- (a) the Termination Payments are payable by the GoB to the Concessionaire upon Termination of this Agreement; and
- (b) the GoB fails to make payment of such due and payable Termination Payments (the “Unpaid Termination Amount”) by the date falling fifty (50) days following the Termination Payment Date,

then, the GoB shall (in addition to the payment of the due and payable Unpaid Termination 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 GoB makes payment of the Unpaid Termination Amount. The stipulation regarding additional amounts payable in respect of delayed Unpaid Termination Amount contained in this Section 16.3.6 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.

17. REMEDY OF DEFAULTS AND TERMINATION PROCEDURE

17.1 PERFORMANCE OF OBLIGATIONS

17.1.1 If at any time either Party has failed to perform any of Its obligations under this O&M Contract and that failure Is capable of remedy, then the non-defaulting Party may serve a notice (the "Remedial Action Notice") requiring defaulting Party to remedy that failure (and any damage resulting from that failure) within a justified period (the "Remedial Period").

17.1.2 If the Party, on whom a Remedial Action Notice is served, falls to remedy the Event of Default within the justified Remedial Period, or if no Remedial Action Notice is given, the non-defaulting Party may deliver a notice to the defaulting Party stating its intention to terminate this O&M Contract (the "Notice of Intent to Terminate"). The Notice of Intent to Terminate shall specify with reasonable detail, the grounds on which termination is sought and any relevant defaults committed by the defaulting Party.

17.1.3 The provisions of this O&M Contract, to the fullest extent necessary to give effect thereto, shall survive the term of this O&M Contract or the termination of this O&M Contract and the obligations of Parties to be performed or discharged following the termination of this O&M Contract, shall accordingly be performed or discharged by the Parties.

17.2 CONSEQUENCES OF DEFAULT

17.2.1 Event of Default Remedy Period:

- (a) Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of not less than 60 (Sixty) Days (the "EOD Remedy Period") to cure the Event of Default.
- (b) During the EOD Remedy Period, the defaulting Party may continue to undertake efforts to cure the Event of Default. During the EOD Remedy Period, the Parties shall continue to perform such of their respective obligations under this O&M Contract, which are capable of being performed with the objective, as far as possible, of ensuring the continued availability of the Project and the continued performance of the Works, failing which the Party in breach shall be liable to compensate the other Party for any loss or damage occasioned or suffered on account of breach of conditions of this O&M Contract.

17.2.2 Withdrawal of Notice of Intent to Terminate:

- (a) If, during the EOD Remedy Period, the defaulting Party rectifies or remedies the Event of Default to the satisfaction of the other Parties or the other Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default has ceased to exist, the other Party shall withdraw the Notice of Intent to Terminate In writing.
- (b) If following the end of the EOD Remedy Period, the breach has not been remedied or the defaulting Party has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of the innocent Party, then the other Party shall be entitled to Issue the Termination Notice to the defaulting Party, whereupon this O&M Contract shall terminate forthwith.

17.3 ACCRUED RIGHTS AND LIABILITIES

17.3.1 Notwithstanding anything to the contrary contained in this O&M Contract, any termination of this O&M Contract pursuant to the provisions contained herein shall be without prejudice to accrued rights of either Party Including its right to claim and recover damages and other rights and remedies, which it may have in law or contract. All accrued rights and obligations of either Party under this O&M Contract, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this O&M Contract, to the extent such survival Is necessary for giving effect to such rights and obligations.

17.3.2 Nothing in this Section shall prevent or restrict the right of the Parties to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

17.4 CONSEQUENCES OF TERMINATION

17.4.1 If this O&M Contract Is terminated prior to Its expiry:

- (a) by the Implementing Agencies due to Concessionaire Event of Default,
 - (i) The right of the Concessionaire to the Contract Amount Payments shall stand terminated with immediate effect and no Installation Costs and/or the Contract Amount Payments shall accrue and / or be payable to the Concessionaire from the date of the Termination Notice; provided, however, the Implementing Agencies shall effect payment of the undisputed, accrued and unpaid Installation Costs and/or the Contract Amount Payments up to the date of the Concessionaire's receipt of the Termination Notice.
 - (ii) The Concessionaire shall immediately and in any event on the Transfer Date, hand over the Institute to the Co-Implementing Agency in accordance with the Taking-Over Criteria.
 - (iii) The Primary Implementing Agency shall pay to the Concessionaire on or prior to the Termination Compensation Date, by way of Termination Compensation, an amount determined in accordance with provisions of this O&M Contract below.
- (b) by the Concessionaire due to an Implementing Agencies Event of Default,
 - (i) The Implementing Agencies shall pay to the Concessionaire on or prior to the Termination Compensation Date, by way of Termination Compensation, an amount determined in accordance with Section 18.

17.5 RIGHTS OF THE AUTHORITY ON TERMINATION AND OR FINAL EXPIRY DATE

17.5.1 In case of Termination of this O&M Contract for any reason whatsoever and subject to receipt by the Concessionaire of the Termination Compensation (if applicable) on or prior to the Transfer Date or in case of expiry of this O&M Contract on the Expiry Date, the Implementing Agencies shall, on the Transfer Date, have the power and authority to:

- (a) Take possession and control of the Institute.
- (b) Prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Institute or any part thereof.

17.6 MODE OF PAYMENT

17.6.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Compensation, and all other payments that are or may be payable by the Implementing Agencies under any of the provisions of this O&M Contract shall be made only by way of credit directly to the Concessionaire's specified Payment Account.

18. TERMINATION COMPENSATION

18.1 CONSEQUENCES OF TERMINATION

18.1.1 TERMINATION DUE TO CONCESSIONAIRE EVENT OF DEFAULT:

Upon termination of this O&M Contract on account of Concessionaire's Event of Default at any time, the Concessionaire shall be liable to pay to the Primary Implementing Agency; as Termination Compensation, an amount up to the value of the Performance Security, proportional to the extent and severity of the default. In this regard the Primary Implementing Agency may, as the Termination Compensation due from the Concessionaire, encash a portion or the entirety of the Performance Security.

18.1.2 TERMINATION DUE TO IMPLEMENTING AGENCIES EVENT OF DEFAULT, POLITICAL EVENT OR FUNDAMENTAL CHANGE IN LAW:

- (a) Upon termination of this O&M Contract due to an Implementing Agencies Event of Default, the Primary Implementing Agency shall pay to the Concessionaire, as Termination Compensation, an amount up to a maximum of [•] or operational cost actually accrued until occurrence of the Implementing Agencies Event of Default, whichever is higher. In accordance with a demand being made by the Concessionaire in writing and duly certified by Independent Auditor, Independent Engineer and/or Independent Expert. The Independent Auditor shall consider the Concessionaire's remaining contractual obligations, the severity of the Implementing Agency's default, the Concessionaire's lost profits, and any other relevant factors in determining the appropriate compensation.
- (b) Upon termination of this O&M Contract due to a Political Event or a Fundamental Change in Law, the Primary Implementing Agency shall pay to the Concessionaire, as Termination Compensation, an amount (as certified by the Independent Auditor, Independent Engineer and/or Independent Expert) that is mutually agreed between the Parties in accordance with a demand being made by the Concessionaire in writing.

18.1.3 TERMINATION DUE TO NON-POLITICAL EVENT:

Upon termination of this O&M Contract due to a Non-Political Event, neither of the Parties shall be liable to make any payments to each other in respect of Termination Compensation.

18.2 CALCULATION AND PAYMENT OF TERMINATION COMPENSATION

18.2.1 The final amount of the Termination Compensation payable pursuant to this O&M Contract shall be calculated by the Independent Auditor. The Independent Auditor shall submit a written report to the Parties setting out his findings within 30 (Thirty) Days of the date on which either Party first sends him a written request to calculate the Termination Compensation. The Parties shall provide all reasonable assistance to the Independent Auditor to enable him to achieve his mission within the prescribed deadline, including, as regards the Concessionaire, by giving full access to its accounts. The findings of the Independent Auditor as set out in his written report shall be final and binding on the Parties, save to the extent of any manifest error.

18.2.2 If any dispute regarding the final amount of Termination Compensation determined by the Independent Auditor arises, then such dispute may be referred to the Dispute Resolution Committee defined in Section 19.1.1. If the Dispute Resolution Committee is unable to resolve the dispute, then the Party disputing the Termination Compensation may refer the matter for resolution through Arbitration as provided under Section 19 below.

18.2.3 The Termination Compensation shall become due and payable to the Concessionaire by the Implementing Agencies within 60 (Sixty) Days of a demand being made by the Concessionaire, by way of written notice, for the amount set out in the Independent Auditor's written report.

18.3 FULL AND FINAL SETTLEMENT

18.3.1 Notwithstanding anything to the contrary elsewhere in this O&M Contract, any Termination Compensation determined pursuant to this Section shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against the Implementing Agencies, in relation to any misrepresentation, breach and/or termination of this O&M Contract, except in cases of gross negligence, willful misconduct, or fraud by the Implementing Agencies. The Concessionaire shall be excluded from all other rights and remedies in respect of such

misrepresentation, breach and/or termination, unless allowed by applicable law.

19. DISPUTE RESOLUTION

19.1 PRELIMINARY SETTLEMENT

19.1.1 Amicable Settlement

19.1.1.1 If any dispute or difference or claims of any kind arises between the Implementing Agencies and the Concessionaire in connection with the construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Contract, or the rights, duties or liabilities of any Party under this Contract, whether during the Contract Period or on expiry thereof, whether before or after the termination of this Contract (the “Dispute”), then the “Dispute Resolution Committee” which shall comprise of two representatives, each from the Implementing Agencies and the Concessionaire, along with the Independent Auditor, being duly notified by the Implementing Agencies as the “Dispute Resolution Committee” shall meet at the request of any Party or Parties of this Contract, to resolve such Dispute by discussion between them. The Dispute Resolution Committee shall meet within 14 days of a request being made by any party. The Independent Auditor shall chair the Dispute Resolution Committee in this regard.

19.1.1.2 The Dispute Resolution Committee shall meet as and when necessary, from time to time and attempt in good faith and use their best endeavors at all times to resolve the Dispute and produce written terms of settlement. If the Dispute is not resolved by discussion between the Parties through Dispute Resolution Committee, as evidenced by the signing of the written terms, within 30 (Thirty) Days of raising such Dispute, the Dispute shall be resolved in accordance with Section 19.2.

19.1.1.3 The existence, nature and consequences of a Change in Law, the Parties hereby agree to refer such matter for fast-track adjudication (subject always to final arbitration in terms of Section 19.2) to the Independent Auditor.

19.1.1.4 The Parties may also, if they so agree at that time, refer for determination to the Independent Auditor any other matter of a technical nature or if any specific dispute or difference or claims of any kind arises between the Implementing Agencies and the Concessionaire related to the determination of:

- a. Existence and the consequences of a Force Majeure Event.
- b. An Event of Default.
- c. The remedy of defaults and termination procedures as specified in Section 17,

19.1.1.5 If any such specific dispute is not resolved by the Independent Auditor, within 60 (Sixty) Days of its raising, it shall be resolved in accordance with Section 19.2.

19.2 DISPUTE SETTLEMENT BY ARBITRATION

19.2.1 Appointment of Arbitrator and Rules governing Arbitration.

The Parties acknowledge and agree that this Contract constitutes a commercial transaction.

19.2.1.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute:

- (a) To the submission of such Dispute to binding arbitration governed by the Arbitration Act, by appointment of three arbitrators, one to be appointed by the Implementing Agencies, one to be appointed by the Concessionaire and one to be appointed jointly by the two arbitrators appointed by the Implementing Agencies and the Concessionaire (“**Arbitrator**”). Any arbitration proceedings commenced pursuant to this Section 19.2 shall be referred to as the Arbitration (“**Arbitration**”).
- (b) Not to claim any right it may have under the laws of any jurisdiction to hinder, obstruct or nullify the submission of the Dispute to the Arbitration.

- (c) To accept the Award rendered by the Arbitrator and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any award rendered by the Arbitrator or court of competent jurisdiction.

19.2.2 Place of Arbitration

The place of the Arbitration shall be Chaman, Pakistan.

19.2.3 Language of Arbitration

The request for the Arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings pursuant to the Arbitration shall be in English and, if oral hearings take place, both English and Urdu shall be the languages used in the hearings.

19.2.4 Enforcement of the Award

Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties. The Parties hereby waive, to the extent permitted by Applicable Law, any rights to appeal or to review such Award by any court or tribunal. The Parties hereto, agree that an Award may be enforced against the Parties to the Arbitration proceeding or their assets, wherever they may be found, and that a judgment upon the Award may be entered in any court having jurisdiction thereof.

19.3 Fees and EXPENSES

The fees and expenses of the Arbitrator and all other expenses of the Arbitration shall be borne and paid by the respective Parties, subject to determination by the Arbitrators. The Arbitrators may provide in the Award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

19.4 Performance during Arbitration

Pending the submission of and/or decision on a Dispute or until the Award is published the Parties shall continue to perform all of their obligations under this Contract, without prejudice to a final adjustment in accordance with such Award, unless this Contract stands terminated. This Contract and the rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceedings hereunder.

19.5 Survival

- 19.5.1 The provisions of this Section shall survive the termination of this Contract for any reason whatsoever.

20. REPRESENTATIONS AND WARRANTIES

20.1 MUTUAL REPRESENTATIONS AND WARRANTIES

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

- (a) It has full power and authority to execute, deliver and perform its obligations under this Contract.
- (b) It has taken all necessary action to authorize the execution, delivery and performance of this Contract.
- (c) There are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal, which might materially and adversely affect its ability to meet or perform any of its obligations under this Contract.
- (d) This Contract constitutes its legal, valid, binding and enforceable obligation.

20.2 REPRESENTATION AND WARRANTIES OF THE IMPLEMENTING AGENCIES:

20.2.1 The Implementing Agencies represent that they will make arrangements for handing over the premises along with all budgetary provisions and necessary facilitation to the Concessionaire for the efficient operational management of the Institution.

20.3 CONCESSIONAIRE'S REPRESENTATIONS AND WARRANTIES

20.3.1 The Concessionaire represents and warrants to the Implementing Agencies that:

- (a) It has the financial and technical standing and capacity to undertake the Project in accordance with the terms of this Contract.
- (b) The execution, delivery and performance of this Contract will not conflict with, result in the breach of, or constitute a default under any of the terms of its Memorandum and Articles of Association or other constitutive 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.
- (c) All information contained in the Bid is true, complete, and not misleading.
- (d) 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 or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Contract.
- (e) No representation or warranty by it contained herein or in any other document furnished by it to the Implementing Agencies or to the GoP or the GoB in relation to Applicable Permits contains or will contain any untrue or misleading statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty.
- (f) Neither the Concessionaire nor any of its affiliates, nor any Person acting on its or their behalf, has committed or engaged in, with respect to the Project or any transaction contemplated by this Contract, any Sanctionable Practice.
- (g) The Concessionaire is not aware of any law, directive, notification, order or decree of any Provincial or Federal Government, or any Court in Pakistan, as the case may be, that prevents or may prevent either Party from legally performing its obligations under this Contract.

20.4 ACKNOWLEDGMENT

20.4.1 The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Contract on the basis of the representations, warranties and undertakings made by the Parties here

under.

20.5 CONCESSIONAIRE’S UNDERTAKINGS

20.5.1 The Concessionaire undertakes to the Implementing Agencies that:

- (a) Nothing herein contained or the Concessionaire’s performance under this Contract shall conflict with any of the provisions of its constitutive documents.
- (b) The Concessionaire has taken all the steps required under this Contract, has executed all documents required by the terms of this Contract, and has duly filed or registered each of these documents wherever required under any applicable laws or regulations.
- (c) The Concessionaire will promptly notify the Implementing Agencies of any material change in circumstances that might adversely affect its ability to fulfill its obligations under this Contract.

21. MISCELLANEOUS PROVISIONS

21.1 SURVIVAL OF OBLIGATIONS

21.1.1 Any cause of action which may have arisen in favor of either Party or any right which is vested in either Party under any of the provisions of this Contract 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 this Contract by expression of time or otherwise in accordance with the provisions of this Contract, shall survive the expiry of this Contract.

21.2 ENTIRE AGREEMENT

21.2.1 The Parties hereto acknowledge, confirm and undertake that this Contract, 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.

21.3 NOTICES

21.3.1 Any notice or request in reference to this Contract shall be written in English language and shall be sent by registered airmail or facsimile and shall be directed to the other Party at the address mentioned below:

**PUBLIC PRIVATE PARTNERSHIP AUTHORITY, PLANNING & DEVELOPMENT
DEPARTMENT, GOVERNMENT OF BALOCHISTAN**

Attention:	Chief Executive Officer
Address:	Balochistan Public Private Partnership Authority
Telephone:	
Email:	

[•]

Attention:	
Address:	
Telephone:	
Email:	

FOR CONCESSIONAIRE

Attention:	
Address:	
Telephone:	
Email:	

21.3.2 Any notice or demand served by registered post shall be deemed to be duly served 48 (Forty-Eight) hours after posting and a notice or demand sent by an official email shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and the case of email transmission, that such email was duly transmitted to a current/notified email address of the addressee at the address referred above in office hours.

21.3.3 Each Party may change the above address/email address by prior written notice to the other Party.

21.4 COUNTERPARTS

21.4.1 This Contract may be executed in two counterparts, each of which, when executed and delivered, will be an original, and both counterparts together shall constitute the same instrument.

21.5 LANGUAGE OF COMMUNICATION

- 21.5.1 All notices and communications between the Implementing Agencies, the Concessionaire and the Independent Auditor, required under this Contract, shall be drawn up in English.

21.6 CONFIDENTIALITY

- 21.6.1 Each of the Parties shall keep confidential and ensure that their employees, officers, consultants and advisers shall keep confidential, all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the Project and shall not, without the consent of the other Party, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required (i) by Applicable Laws or appropriate regulatory authorities, (ii) to perform its obligations under this Contract, or (iii) required to be shared with advisers in connection with the Project.

- 21.6.2 The provisions of Section 21.6.1 shall not apply to:

- a. Any information in the public domain otherwise than by breach of this Contract.
- b. Information in the possession of the receiving Party thereof before disclosure as aforesaid, and which was not obtained under any obligation of confidentiality.

21.7 AMENDMENTS

- 21.7.1 Any provision of this Contract must be recorded in an agreement in writing signed by the Parties as such it shall be recorded as 'Addendum' to this Contract and such Addendums shall describe the detail of any amendments and those Addendums shall be considered as part of this Contract.

21.8 WAIVERS AND CONSENTS

- 21.8.1 Any provision or breach of any provision of this Contract may be waived before or after it occurs only if evidenced by an agreement in writing signed by the waiving Party.
- 21.8.2 Any consent under or pursuant to any provision of this Contract must also be in writing and given prior to the event, action or omission for which it is sought.
- 21.8.3 Any such waiver or 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.

21.9 SEVERABILITY

- 21.9.1 If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Contract shall not be affected save as to any provisions which are reliant, linked, associated and/or connected with the provision barred by law and the performance of such connected provisions becomes unenforceable without the performance of such invalid and/or illegal provision.
- 21.9.2 The Parties will negotiate in good faith to agree on one or more provisions that may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to the Concessionaire and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

21.10 COSTS AND EXPENSES

- 21.10.1 The Concessionaire shall be responsible for paying its costs and expenses incurred in connection with the negotiation and execution of this Contract.

21.11 NO ASSIGNMENT

- 21.11.1 Except as otherwise provided in this Contract, the rights and obligations of the Concessionaire under this Contract shall not be assigned, novated or otherwise transferred to any Person without the prior written consent of the Implementing Agencies.
- 21.11.2 The rights and obligations of the Implementing Agencies under this Contract shall not be assigned, novated or otherwise transferred to any Person other than a public body or a government company or a statutory corporation that:
 - a. Is a single entity.
 - b. To whom the entire Contract is assigned and/or transferred.
 - c. Has the legal capacity, power and authority to become a party to and to perform the obligations of the Implementing Agencies under this Contract.

21.12 GOOD FAITH

- 21.12.1 Each Party shall act in good faith in exercising its rights and performing its obligations under this Contract.

21.13 GOVERNING LAW & JURISDICTION

- 21.13.1 this Contract shall be governed by and construed in accordance with the laws of Pakistan and the courts at Quetta shall have non-exclusive jurisdiction to hear and decide the matter.

21.14 ACHIEVING KPIS

- 21.14.1 The KPIS have been mutually agreed upon by the Parties.

21.15 PROCUREMENT UNDER PROJECT

- 21.15.1 All project procurement shall be undertaken in accordance with the Procurement Policies and Procedures Manual (PPM), which shall be submitted to and approved by the Project Steering Committee (PSC) prior to the commencement of the Project. The PPM shall outline detailed procedures for procurement planning, tendering, evaluation, contract management, and dispute resolution.
- 21.15.2 A Procurement Appraisal and Monitoring Committee (PAMC) shall be established to oversee the procurement process. The PAMC shall be composed of representatives from the Concessionaire and the Implementing Agency. The specific composition, roles, and responsibilities of the PAMC shall be detailed in the PPM.
- 21.15.3 The Concessionaire shall ensure that all procurement activities are conducted in a transparent, competitive, and cost-effective manner. The Concessionaire shall maintain detailed records of all procurement activities for audit purposes.
- 21.15.4 Notwithstanding the above, the Concessionaire shall comply with all applicable laws, rules, and regulations governing procurement.
- 21.15.5 The procurement process shall be transparent, fair, and competitive.
- 21.15.6 The Concessionaire shall be responsible for ensuring that all procurement is made in a timely and efficient manner and that the quality of goods and services procured is in accordance with the requirements specified in this Contract.
- 21.15.7 Any disputes or concerns related to the procurement process shall be brought to the attention of the PSC in writing.
- 21.15.8 The PSC shall be provided a record of all the procurement made under this Contract.

21.16 FIXED ASSET REGISTER

- 21.16.1 A fixed asset register shall be maintained to record all the fixed assets acquired by the Concessionaire. The register shall include information on the asset description, quantity, location, date of acquisition, cost, and any other relevant information.
- 21.16.2 The fixed asset register shall be updated on a regular basis and shall be made available for review by the Implementing Agencies, the Independent Auditor and the Independent Engineer upon request.
- 21.16.3 The Concessionaire shall be responsible for ensuring that all fixed assets are used solely for the purposes intended and are maintained in good condition throughout the term of this Contract.
- 21.16.4 The Concessionaire shall also be responsible for insuring all fixed assets against loss or damage, and for bearing the cost of such insurance.
- 21.16.5 In the event of any loss or damage to a fixed asset, the Concessionaire shall report the incident to the implementing agencies and the PSC immediately and take necessary steps to repair or replace the asset.
- 21.16.6 Any disputes or concerns related to the fixed asset register shall be brought to the attention of the implementing agencies and PSC in writing.
- 21.16.7 Upon the termination of this Contract, the Concessionaire shall be responsible for returning all fixed assets to the Co-Implementing Agency in good condition, fair wear and tear excepted.

21.17 Tax Exemption

- 21.17.1 Both parties shall make reasonable efforts to obtain tax exemptions from the Balochistan Revenue Authority for the duration of this Contract. Each party shall be responsible for complying with all necessary requirements to obtain such exemptions, including submitting all required documents and meeting all applicable criteria.

21.18 Future Expansion of the Facility

- 21.18.1 The concessionaire will have the first right of refusal, to develop approximately 34 acres of vacant land in the Master Plan within a specified time frame. Based on the experience gained during the initial years of operation, management, and maintenance of the Chaman Master Plan, the concessionaire will be well-positioned to identify high-demand business opportunities driven by cross-border trade. The concessionaire will be required to present the business case and feasibility studies of viable business opportunities to the Project Steering Committee for approval within Five years after the project's award. These opportunities may include expanding warehouses for dry goods, adding cold storage facilities, establishing iron scrap sorting and recycling centers, and creating zones for meat processing, poultry, and other allied facilities. The development will follow a design, build, finance, operate, and maintain and transfer (DBFOM&T) model, with the concessionaire managing the risks it can efficiently handle. The concessionaire will share dividends from the development of Zones A and B with the Government of Balochistan (GoB) at least at per quoted equity.
- 21.18.2 Prior to commencing any expansion activities on the Site, the Concessionaire shall obtain the express written consent of the Parties. Such consent shall be conditioned upon the Concessionaire submitting and obtaining approval for a detailed expansion plan, outlining the specific activities to be undertaken. Only those commercial operations associated with the expanded facility shall be permitted in respect of which all necessary governmental and regulatory approvals have been obtained.
- 21.18.3 Unless otherwise agreed upon, Concessionaire shall be solely responsible for all development charges, fees, taxes, and other costs associated with the expansion of the Facility. These costs shall include but not be limited to permits, licenses, circulatory works, and infrastructure improvements as well as marketing expenses required for the expanded facility.

SIGNATURE PAGE

IN WITNESS WHEREOF Parties has executed this Contract on the day, month and year first above written.

Public Private Partnership Authority,
Planning & Development Department,
Government Of Balochistan

Signature: _____

Name: _____

CNIC No.: _____

Designation: _____

[•]

Signature: _____

Name: _____

CNIC No.: _____

Designation: _____

[•]

Signature: _____

Name: _____

CNIC No.: _____

Designation: _____

The Parties in the presence of the following two witnesses have executed this Contract:

Signature: _____

Name: _____

CNIC No.: _____

Address: _____

Signature: _____

Name: _____

CNIC No.: _____

Address: _____

LIST OF SCHEDULES

<u>SR. NO.</u>	<u>REFERENCE</u>	<u>TITLE</u>
1.	<u>SCHEDULE A</u>	<i>Qualitative Key Performance Indicators</i>
2.	<u>SCHEDULE B</u>	<i>Quantitative Key Performance Indicators</i>
3.	<u>SCHEDULE C</u>	<i>Concessionaire's Scope Of Work</i>
4.	<u>SCHEDULE D</u>	<i>Reporting Forms</i>
5.	<u>SCHEDULE E</u>	<i>Terms Of References For The Independent Auditor And Independent Engineer</i>
6.	<u>SCHEDULE F</u>	<i>Form Of Performance Security</i>
7.	<u>SCHEDULE G</u>	<i>Not Used</i>
8.	<u>SCHEDULE H</u>	<i>Handing Over Criteria</i>
9.	<u>SCHEDULE I</u>	<i>Taking Over Criteria</i>
10.	<u>SCHEDULE J</u>	<i>Employment Criteria</i>
11.	<u>SCHEDULE K</u>	<i>Not Used</i>
12.	<u>SCHEDULE L</u>	<i>Not Used</i>
13.	<u>SCHEDULE M</u>	<i>Not Used</i>
14.	<u>SCHEDULE N</u>	<i>Financial Bid</i>
15.	<u>SCHEDULE O</u>	<i>List of Retained Employee</i>

SCHEDULE A – QUALITATIVE KEY PERFORMANCE INDICATORS

Sr.No	KPIs Name	KPIs Description	KPIs Minimum Value (if any)	KPIs Measurement/TestingMethodology
01	Tenant Satisfaction	Percentage of tenants satisfied with the services provided.	85%	Tenant feedback surveys, complaint resolution logs
02	Community Engagement	Level of engagement and satisfaction of the local community with the project.		Community surveys, stakeholder meetings
03	Environmental Impact	Assessment of the project's environmental impact and mitigation measures.		Environmental impact assessments, sustainability reports
04	Safety and Health Standards	Adherence to safety and health standards in all operations		Safety audits, health inspection reports
05	Customer Service Quality	Quality of customer service provided to tenants and users of the facility.		Customer service audits, tenant satisfaction surveys

06	Employee Satisfaction	Satisfaction levels of employees working within the project.		Employee satisfaction surveys, retention rates
07	Innovation and Improvement	Extent of innovative practices and continuous improvements implemented in the facility operations.		Improvement initiative logs
08	Safety Culture	Quality and extent of safety culture among employees and facility users		Safety culture surveys, incident and accident reports
09	Tenant Relationship Management	Effectiveness of tenant relationship management practices		Tenant relationship audits, feedback surveys
10	Quality of Maintenance Services	Quality and reliability of maintenance services provided		Maintenance service feedback, inspection reports
11	Dispute Resolution	Effectiveness of dispute resolution mechanisms for tenants and users		Dispute resolution records, feedback on resolution process

12	Crisis Management Preparedness	Readiness and effectiveness of crisis management and response plans		Crisis management drills, incident response reports
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SCHEDULE B – QUANTITATIVE KEY PERFORMANCE INDICATORS

Sr.No	KPIs Name	KPIs Description	KPIs Minimum Value (if any)	KPIs Measurement/TestingMethodology
01	Facility Occupancy Rate	Percentage of total facility space occupied (warehouses, shops, cold storage, etc.)	As per set Financial Model	IT-based tracking of space utilization, monthly occupancy reports
02	Cargo Handling Efficiency	Average time taken to handle and process cargo	2 hours	Field monitoring, cargo handling logs
03	Maintenance Response Time	Average time taken to respond to maintenance requests	24 hours	Maintenance logs, IT-based request tracking
04	Security Incident Response Time	Average time taken to respond to security incidents	15 minutes	Security incident reports, IT-based monitoring
05	Revenue Growth Rate	Annual growth rate of revenue generated from all facility components (warehouses, cold storage, shops,etc.)	05%	Financial reports, annual revenue analysis

06	Local Employment Ratio	Percentage of local workers employed in the project	60%	Employment records, periodic audits
07	Energy Efficiency	Percentage reduction in energy consumption per unit of output	5% annual reduction	Energy consumption reports, sustainability audits
08	IT System Uptime	Percentage of time the IT systems are operational	99%	IT system logs, uptime reports
09	Waste Management Efficiency	Percentage of waste correctly managed and recycled	90%	Waste management logs, periodic environmental audits
10	Guest House Occupancy Rate	Percentage of guest house occupancy	60%	Guest house booking logs, monthly reports
11	Firefighting Unit Response Time	Average time taken for the firefighting unit to respond to incidents.	10 minutes	Incident logs, response time tracking
12	Basic Health Unit (BHU) Utilization Rate	Percentage of BHU capacity utilized.	70%	BHU service logs, monthly reports

SCHEDULE C – CONCESSIONAIRE’S SCOPE OF WORK

The scope of work for the project comprises of complete day-to-day operations, management and maintenance of the facility which includes the following:

The Project is to be carried out under PPP mode, wherein, the Concessionaire would be handed a long term (20 years) lease of the Chaman Master Plan. The Concessionaire will be responsible for complete operation, management and maintenance as well as development of the multi-purpose trade facility.

The scope of work for the project comprises in two phases which includes the following:

1. Phase - I

A. Operations, Management, and Maintenance of 128 wholesales shops, Cold Storage, and Auction Sheds which includes:

- a) The Concessionaire shall enter into rent agreements on behalf of the GoB. These rent agreements must be registered with the relevant authorities. Any modifications to the rent agreement, including increases, decreases, or changes to any clause, require prior approval from the GoB.
- b) Develop marketing strategies to maximize the utilization of the 128 wholesales shops, cold storage facilities and auction sheds. Engage with potential clients and stakeholders to expand the customer base and enhance the facility's profitability.
- c) The private party will be responsible for the complete management and operation of the 128 wholesale shops, cold storage facilities and auction sheds. This includes day-to-day operations including cleanliness of the facilities and ensuring operational efficiency.
- d) Prepare a rental/fee structure for 128 wholesale shops, cold storages and auction sheds get it approved from the competent authority. Any proposed changes to the rental/fee structure must be submitted to the competent authority for prior approval.
- e) Establish a system for collection of revenue from 128 wholesale shops, cold storages and auction sheds and establish an effective billing system for services rendered to ensure transparent and accountable revenue collections. Further, also provide detailed monthly reports including revenue generated, and compliance with the rate structure to the reporting authority.
- f) Regular cleanliness and maintenance of the 128 wholesale shops, cold storages and auction sheds which include provision of water system, sanitation, cleaning services, Maintenance of streetlights and public baths and other related infrastructure, is required to ensure optimal performance.
- g) Provision of Basic Health Unit and Basic Fire Fighting Services.
- h) Implement energy-efficient practices to minimize energy consumption and reduce operational costs.
- i) Ensure the security of the 128 wholesale shops, cold storages and auction sheds, including the implementation of surveillance systems and access controls.
- j) Time payment of utility bills relating to Cold storage facilities.
- k) Any other services to be performed on the direction of the competent authority.

B. Operations, Management, and Maintenance of Truck Terminal and Cargo Shed which includes:

- a) Develop a system to efficiently allocate Truck parking spaces, maximizing usage while minimizing congestion.
- b) Implement strategies to manage the flow of trucks entering and exiting to prevent bottlenecks and delays.

- c) Prepare a fee structure for Truck Parking Spaces, loading and unloading services, cargo handling, and get it approved from the competent authority. Any proposed changes to the rental/fee structure must be submitted to the competent authority for prior approval.
- d) Establish a system for collection of revenue from parking, loading/unloading etc. and establish an effective billing system for services rendered to ensure transparent and accountable revenue collections. Further, also provide detailed monthly reports including revenue generated, and compliance with the rate structure.
- e) Ensure a regular and adequate supply of water for operations and sanitation. Also maintain cleanliness and functionality of the sewage systems and drainage channels.
- f) Implement the routine cleaning schedule covering the entire stand and cargo sheds. Conduct regular inspections and maintenance of the lighting, signage, pavements, and other infrastructure to ensure they are in good condition.
- g) Quickly address and resolve any identified repair needs to ensure the terminal remains operational and safe.
- h) Time payment of utility bills relating to Truck Terminals Cargo Depot.
- i) Maintain continuous surveillance to ensure safety and security of these facilities. Implement proactive measures to deter and prevent theft, vandalism, and other criminal activities.
- j) Work closely with local law enforcement agencies to ensure overall security and compliance with regulations.
- k) Provision of Basic Health Unit and Basic Fire Fighting Services.
- l) Any other services to be performed on the direction of the competent authority.

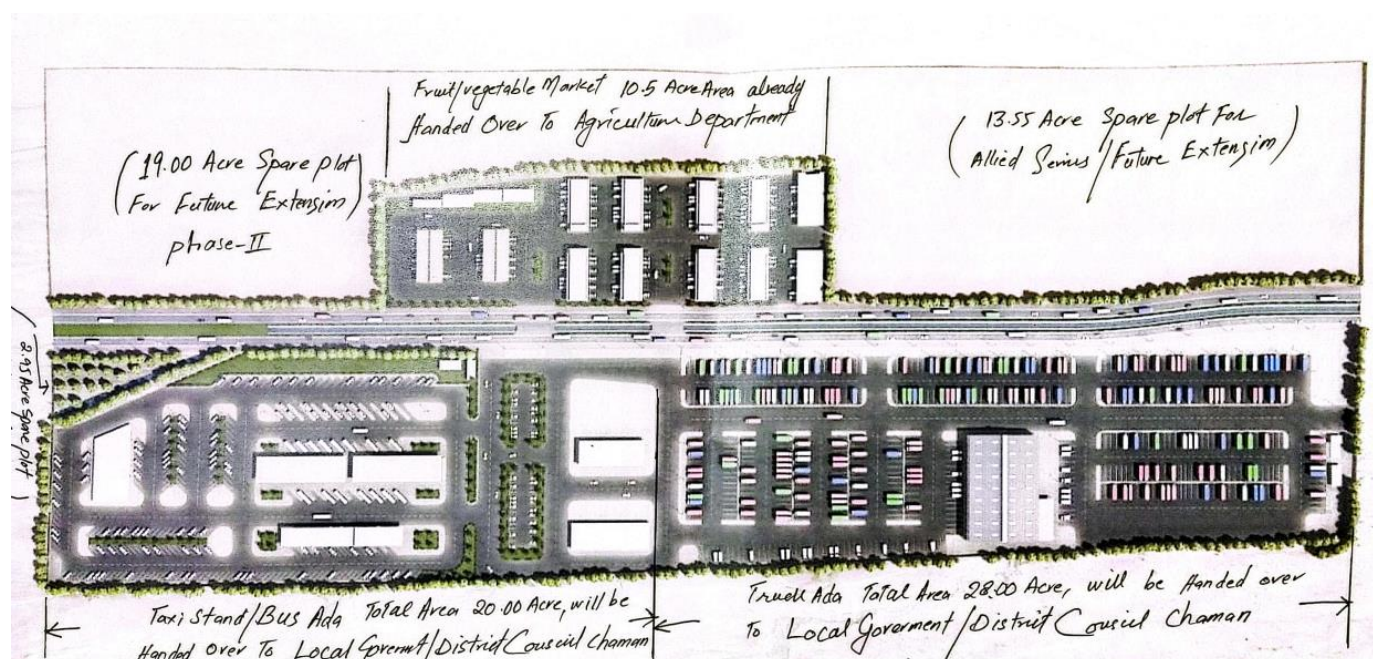
C. Operations, Management, and Maintenance of Bus Terminal and Taxi Stand which includes:

- a) Develop a system to efficiently allocate Bus and Taxi parking spaces, maximizing usage while minimizing congestion.
- b) Implement strategies to manage the flow of buses and Taxis entering and exiting to prevent bottlenecks and delays.
- c) Efficiently manage the scheduling of bus arrivals and departures to minimize wait times and avoid congestion. Further, also ensure smooth passengers flow within terminals/stand and prioritize safety in all operational aspects.
- d) Prepare a fee/rent structure for Bus Terminals including 30 shops for bus operators, taxi stand, get it approved from the competent authority. Any proposed changes to the rental/fee structure must be submitted to the competent authority for prior approval.
- e) Establish a system for collection of revenue from parking, rent collection from 30 shops etc. and establish an effective billing system for services rendered to ensure transparent and accountable revenue collections. Further, also provide detailed monthly reports including revenue generated, and compliance with the rate structure.
- f) Ensure a regular and adequate supply of water for operations and sanitation. Also maintain cleanliness and functionality of the sewage systems and drainage channels.
- g) Implement the routine cleaning schedule covering the entire terminal and stand. Conduct regular inspections and maintenance of the lighting, signage, pavements, and other infrastructure to ensure they are in good condition.
- h) Ensure high standards of cleanliness in passenger waiting areas, platforms, restrooms, and offices. Regularly maintain benches, shelters, and information boards to keep them in good condition and functional.

- i) Quickly address and resolve any identified repair needs to ensure the stand remains operational and safe.
- j) Time payment of utility bills relating to Bus Terminals (excluding 30 shops) and Taxi Stand.
- k) Maintain continuous surveillance to ensure safety and security of these facilities. Implement proactive measures to deter and prevent theft, vandalism, and other criminal activities.
- l) Provision of Basic Health Unit and Basic Fire Fighting Services.
- m) Work closely with local law enforcement agencies to ensure overall security and compliance with regulations.
- n) Any other services to be performed on the direction of the competent authority

2. Phase – II

A. **Design, Build, Finance & Operate and Maintain Additional Land approximately 34 Acres in Chaman Master Plan:**



The concessionaire will have the first right of refusal, to develop approximately 34 acres of vacant land in the Master Plan within a specified time frame. Based on the experience gained during the initial years of operation, management, and maintenance of the Chaman Master Plan, the concessionaire will be well-positioned to identify high-demand business opportunities driven by cross-border trade. The concessionaire will be required to present the business case and feasibility studies of viable business opportunities to the Project Steering Committee for approval within Five years after the project's award. These opportunities may include expanding warehouses for dry goods, adding cold storage facilities, establishing iron scrap sorting and recycling centers, and creating zones for meat processing, poultry, and other allied facilities. The development will follow a design, build, finance, operate, and maintain (DBFOM) model, with the concessionaire managing the risks it can efficiently handle. The concessionaire will share dividends from the development of Zones A and B with the Government of Balochistan (GoB) at least at per quoted equity.

SCHEDULE D – REPORTING FORMS

[To be developed by the Concessionaire with assistance and guidance from the Independent Auditor; and finalized within not more than 30 (Thirty) days of hiring of the Independent Auditor. Thereafter, to be approved by the Implementing Agencies within 15 (Fifteen) days thereof. For the sake of clarity, there shall be different Reporting Forms for bi-annually and annual reporting].

SCHEDULE E – TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR AND INDEPENDENT ENGINEER

TERMS OF REFERENCES FOR THE INDEPENDENT AUDITOR

The Independent Auditor shall fulfill the duties and responsibilities set out below:

1. Appointment

1.1. Appointment Of Independent Auditor

- 1.1.1. Within thirty (30) days from the Effective Date, the Concessionaire shall provide the PSC with a list of the Quality Control Review rated (QCR rated) reputable firms of chartered accountants for appointment of the Independent Auditor (the IA List).
- 1.1.2. Upon approval of the PSC of the IA List, the Concessionaire shall select a reputed firm of auditors from IA List and the Concessionaire shall appoint such firm as the Independent Auditor.
- 1.1.3. All appointments, payment and reporting will be done in accordance with the standard operating procedures of the Chaman Master Plan.

1.2. Duties And Responsibilities Of The Independent Auditor

The Independent Auditor shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Auditor in this OM&M Contract. Without limiting the generality of the foregoing, during the Contract Period, the Independent Auditor shall be responsible for:

- a) Conducting audit of the financial statements and other financial aspects in respect to this O&M Contract and the obligations set forth therein in consideration to the KPIs.
- b) Calculating Payable Contract Amount Payments, subject to Contract Amount Payment Adjustments, as well as calculating other payments as stipulated In the O&M Contract.
- c) Providing reports as envisaged in the O&M Contract.
- d) Assisting the Parties in determining the existence, nature and financial implications under various heads of the O&M Contract including but not limited to:
 - (i) Force Majeure Event,
 - (ii) Event of Default,
 - (ii) Change In Law,
 - (iii) Fundamental Change in Law,
 - (iv) Any of the Other relief Items set out In the O&M Contract, and/or reviewing and approving/certifying all activities associated with the fulfillment of KPIS by the Concessionaire.
- e) If required, assisting the Parties in resolving any dispute or making determinations referred to It pursuant to this OM&M Contract.
- f) Carrying out any other duties and functions specified In the OM&M Contract, other than those listed above.

1.3. Independence

In respect of all matters dealing with the O&M Contract the Independent Auditor shall be independent and shall ensure that It performs all its obligations in accordance with the OM&M Contract.

1.4. Deliverables

Following is the list of deliverables:

- a) Annual Audit Report of the Financial Statements.
- b) Review of Periodic KPI report, wherever applicable.
- c) Quarterly audit report for payment disbursement.
- d) Any other task/report as mutually agreed upon from time to time, subject to approval of the PSC

TERMS OF REFERENCES FOR THE INDEPENDENT ENGINEER

The Independent Engineer shall fulfill the duties and responsibilities set out below:

1. Appointment

1.1. Appointment Of Independent Engineer

- 1.1.1. Within thirty (30) days from the Effective Date, the Concessionaire shall provide the PSC with a list of the Independent Engineers for appointment of the Independent Engineer (the IE List).
- 1.1.2. Upon approval of the PSC of the IA List, the Concessionaire shall select a reputed firm of IE List and the Concessionaire shall appoint such firm as the Independent Engineer.
- 1.1.3. All appointments, payment and reporting will be done in accordance with the standard operating procedures of the Chaman Master Plan.

1.2. Duties And Responsibilities Of The Independent Engineer

The Independent Engineer shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Engineer in this OM&M Contract. Without limiting the generality of the foregoing, during the Contract Period, the Independent Engineer shall be responsible for:

- a) Confirming Authority's Conditions Precedent, Concessionaire's Conditions Precedent, and Joint Conditions Precedent of both Parties with Independent Auditor and subsequently upon completion of the same, the issuance of Effective Date Notification.
- b) Generating report on covenants on annually.
- c) Inspection of the building and maintenance.
- d) Preparing guidelines with the Concessionaire for building maintenance. (This is expected to be a one-time activity).
- e) If required, assisting the Parties in resolving any dispute or making determinations referred to it pursuant to the Agreement.
- f) Carrying out any other duties and functions specified in the Concession Agreement.

SCHEDULE F – FORM OF PERFORMANCE SECURITY

[On Appropriate Stamp Paper]

To:
**Balochistan Public Private Partnership Authority (BPPPA) –
Government Of Balochistan,**

Guarantee No:(hereinafter referred to as the
“**Guarantee**”)

Dated:

Guaranteed Amount:

[Insert Name of Bank], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “Contract” dated [●], 2023 (hereinafter referred to as the “Contract”) for the management and operation of [●] Facility in the Province of Balochistan under the public-private partnership Concessionaire mode:

- (i) **The Government of Balochistan** (Through [●] having its offices at [●] (hereinafter referred to as the “**Authority**”); and
- (ii) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] Phone No. _____, (hereinafter referred to as the “**CONCESSIONAIRE**”, which expression shall, where the context so permits, be deemed to mean and include its successors in interest, liquidators and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Contract, the CONCESSIONAIRE is required to provide the Authority with a bank guarantee in an amount equal to PKR [Insert Amount in Numbers]/- (Pakistani Rupees [Insert Amount in Words]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Authority, without any notice, reference or prior recourse to the CONCESSIONAIRE or any other entity or without any recourse or reference to the Contract, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of PKR Twenty (20) million (hereinafter referred to as the “**Guaranteed Amount**”) immediately, however not later than [three (3)] business days from the date of the Guarantor Bank’s Concessionaire of the Authority’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [Insert Address of the Guarantor Bank at which Demand will be made], such Demand stating:

- (i) the total amounts demanded.
- (ii) the bank account to which the amounts demanded pursuant to the demand are to be credited / transferred (hereinafter referred to as the “**Bank Account**”)

A Demand shall only be honored by the Guarantor Bank if it is made by and bears the signature of an authorized officer or representative of the Authority.

The Guarantor Bank shall unconditionally honor a Demand here-under (notwithstanding any direction to the contrary given or any dispute whatsoever raised by the CONCESSIONAIRE or any other person) immediately (however not later than [3 (Three)] business days) of its Concessionaire of the Authority’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholding of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any applicable law, the Guarantor Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Authority receives the full amount due hereunder as if no such withholding had occurred.

This Guarantee shall come into force and shall become automatically effective upon its issuance.

After having come into force, this Guarantee and the Guarantor Bank's obligations hereunder shall expire on [INSERT DATE AND TIME] (the **Expiry Date**) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, if the Authority issues a Demand to the Guarantor Bank on or immediately prior to the Expiry Date and the same is received by the Guarantor Bank on or prior to the Expiry Date, the Guarantor Bank shall honor such Demand.

Upon expiry, this Guarantee shall be returned to the CONCESSIONAIRE without undue delay. Demands may be made by the Authority under this Guarantee but the Guarantor Bank's aggregate liability shall be restricted up to the Guaranteed Amount.

The Guarantor Bank hereby agrees that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between the Authority and the CONCESSIONAIRE without:

- (i) in any way impairing or affecting the Guarantor Bank's liabilities hereunder.
- (ii) notice to the Guarantor Bank.
- (iii) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

The obligations of the Guarantor Bank herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Contract or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the CONCESSIONAIRE or any change in ownership of the CONCESSIONAIRE or any purported assignment by the CONCESSIONAIRE or any other circumstance whatsoever which might otherwise constitute a discharge or defense of a guarantor or a surety. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor Bank as the Concessionaire debtor.

This Guarantee for its validity period shall not be affected in any manner by any change in the Guarantor Bank's constitution or of the CONCESSIONAIRE's constitution or their successors and assignees and this Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract or other instruments are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Guarantee.

The Authority may assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee with prior notification to the Guarantor Bank. The Guarantor Bank shall not assign or transfer any of its rights or obligations under this Guarantee.

If one or more of the provisions of this Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

The Guarantor Bank hereby represents and warrants to the Authority that:

- (i) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorize the execution, delivery and performance by it of this Guarantee.
- (ii) the Guarantor Bank has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms.

- (iii) neither the execution, delivery or performance by the Guarantor Bank of this Guarantee, nor compliance by it with the terms and provisions hereof will:
 - a. contravene any material provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality.
 - b. conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor Bank is a party by which it or any of its property or assets is bound.
 - c. violate any provision of the Guarantor Bank’s constituent documents.
- (iv) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with:
 - a. the execution, delivery and performance of this Guarantee.
 - b. the legality, validity, binding effect or enforceability of this Guarantee.

Further, the Guarantor Bank hereby declares and confirms that the signatory(ies) to this Guarantee is/are its duly authorized officer(s) to execute this Guarantee.

This Guarantee and all rights and obligations arising from this Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Karachi, Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

**EXECUTED & ISSUED
FOR AND ON BEHALF OF THE GUARANTOR BANK**

Signature: _____

Name: _____

Designation: _____

Dated: _____

The precise form of the Performance Security (whether a, bank guarantee or a standby letter of credit) shall be agreed between the CONCESSIONAIRE and the Authority prior to signing of the Contract. The quantum, duration and renewal mechanism of the Performance Security shall follow the Concessionaires set out in the Contract.

SCHEDULE G – NOT USED

[Not Used]

SCHEDULE H – HANDING OVER CRITERIA

The Co-Implementing Agency shall hand over to the Concessionaire the Facility, in accordance with the handing over proforma, which will list down the **assets, furniture and fixtures** available at the Facility at the time of Handing Over. After the signing of this Contract, at the time of actual handing over of the Facility to the Concessionaire, handing over proforma will become an integral part of this Schedule.

SCHEDULE I– TAKING OVER CRITERIA

The Taking over Criteria of the Facility shall be similar to the Handing over Criteria specified in **SCHEDULE K** above and the Concessionaire shall ensure that the Facility is handed back to the Co-Implementing Agency after the Expiry Date and in accordance with the terms of this Contract in proper working condition.

SCHEDULE J– EMPLOYMENT CRITERIA

[To be finalized by the Concessionaire in accordance with their HR Policy and shared with the Implementing Agencies and the Independent Auditor within Thirty (30) days of the Effective Date.]

S. No.	Designation	Number of Positions	Duty Station	Criteria
1.	Operations Supervisor - (Shops, cold storage and auction sheds)	4	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Business Administration or related field Experience: 3-5 years in operations management
2.	Operations Supervisor - (Truck stand along with cargo shed)	2	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Business Administration or related field Experience: 3-5 years in logistics or transportation
3.	Operations Supervisor - (Bus and taxi stand)	2	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Business Administration or related field Experience: 3-5 years in transportation management
4.	Cleaning & Maintenance Staff	8	Chaman Master Plan – General Management	Qualification: Middle school or equivalent Experience: Minimum one year of relevant experience
5.	HR Manager	1	Chaman Master Plan – General Management	Qualification: Bachelors degree in Human Resources or Business Administration Experience: 3-5 years in HR management
6.	Finance Manager	1	Chaman Master Plan – General Management	Qualification: Masters in Finance or relevant Field / CA / ACCA Experience: Post qualification experience in finance field of more than 10 years

7.	Legal Advisor	1	Chaman Master Plan – General Management	Qualification: LLB (Bachelor of Laws) Experience: 3-5 years of legal practice
8.	IT Support Staff	1	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Computer Science or Information Technology Experience: 2-3 years of IT support experience
9.	Marketing and Public Relations Staff	1	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Marketing or Communications Experience: 2-3 years in marketing or public relations
10.	Administrative Staff (for managing leases, contracts, and paperwork)	1	Chaman Master Plan – General Management	Qualification: Bachelor's degree in Business Administration or related field Experience: 2-3 years of administrative experience
11.	Medical Facility Staff	2	Chaman Master Plan – General Management	Qualification: Diploma in healthcare or equivalent Experience: 2-3 years of experience in healthcare
12.	Firefighting Staff	2	Chaman Master Plan – General Management	Qualification: High school diploma or equivalent Experience: Basic firefighting training
13.	Generator Operator	1	Chaman Master Plan – General Management	Qualification: High school diploma or equivalent Experience: 2-3 years of experience in generator operation and maintenance
14.	Electrician	2	Chaman Master Plan – General Management	Qualification: Technical or vocational diploma in electrical trade

				Experience: Minimum three years of experience of electrical work
15.	Plumber	1	Chaman Master Plan – General Management	Qualification: Technical or vocational diploma in plumbing Experience: Minimum three years of experience of plumbing

SCHEDULE K– NOT USED

[To be Inserted Following Execution]

SCHEDULE L – NOT USED

[To be Inserted Following Execution]

SCHEDULE M – SITE DETAILS

[To be Inserted Following Execution]

SCHEDULE N - FINANCIAL BID

[To be Inserted Following Execution]

SCHEDULE O – LIST OF RETAINED EMPLOYEES, IF APPLICABLE

[To be Inserted Following Execution]