

CONCESSION AGREEMENT

BY & BETWEEN

**GOVERNMENT OF BALOCHISTAN REPRESENTED BY THE HEALTH DEPARTMENT AND THE
BALOCHISTAN PUBLIC PRIVATE PARTNERSHIP AUTHORITY
(IMPLEMENTING AGENCIES)**

AND

**[•]
(AS THE CONCESSIONAIRE)**

**IN RESPECT OF
THE CONCESSION FOR DESIGN, CONSTRUCT, RENOVATE, OPERATE, MANAGE AND TRANSFER OF
MATERNITY AND NEONATAL CHILD HEALTH (MNCH) FACILITY PROJECT
LOCATED AT THQ MASHKAI, DISTRICT AWARAN, BALOCHISTAN**

DATED: AS OF [•]

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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (this **Agreement**) is entered into on this _____ day of _____, 2025 at _____, Pakistan:

BY AND BETWEEN

THE GOVERNMENT OF BALOCHISTAN (THROUGH SECRETARY, HEALTH DEPARTMENT) having his offices at _____ Quetta, Pakistan for and on behalf of the Government of Balochistan (the **Agency**);

AND

[●], a company incorporated under the Applicable Laws of Pakistan, having its registered office located at [●] (the **Concessionaire**, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns);

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

RECITALS

- A. The Government received an unsolicited proposal for the facility. Now the Government is desirous to implement the Project on a Public Private Partnership basis, on [●] issued a Request for Proposals (together with the related advertisements) (the **RFP**) to prospective bidders for, *inter alia*, inviting submission of bids for grant of the Concession for the implementation of the Project and subsequently, upon conclusion of the bidding process pursuant to the RFP (the **Bidding Process**), the Sponsor was/were selected by the Agency for such purposes. The letter of award was issued to the Sponsor by the Agency on [●].
- B. In accordance with the requirements of the RFP and the terms of the Bid submitted by the Sponsor, the Sponsor incorporated the Concessionaire as a special purpose vehicle to implement the Project and the Agency has agreed to grant to the Concessionaire the right and obligation to implement the Project on the terms and conditions contained in this Agreement and the Concessionaire hereby accepts the same.
- C. The Concessionaire acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including technical, financial and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement.
- D. The Parties are now entering into this Agreement to set out the terms and conditions applicable to, *inter alia*, the Concession and the implementation of the Project and the relationship of the Agency and the Concessionaire and their rights and obligations.

NOW, THIS AGREEMENT WITNESSETH, and it is hereby agreed to by and between the Parties as follows:

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

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

Abandonment or **Abandoned** means the voluntary cessation of the implementation of the Project (including (without limitation) construction or Operation and Maintenance of the Concession Assets by the Concessionaire in accordance with the terms of this Agreement and/or the withdrawal of all, or substantially all, personnel by the Concessionaire from the Project Site for reasons other than a Permitted Event;

Accounting Firms means the list of firms, as notified by the State Bank of Pakistan, as Category A firm;

Accounting Standards means the accounting standards adopted from time to time by the Institute of Chartered Accountants of Pakistan;

Accounting Year means in respect of the Concessionaire, the financial year commencing from first (1st) day of July of any calendar year and ending on thirtieth (30th) day of June of the next calendar year;

Actual Availability means the difference between:

- (a) the Assured Availability; and
- (b) the Non Availability;

Additional Cost means the additional capital expenditure, the additional operating cost, any adverse financial impact on the Concessionaire , additional taxes and/or one or more of the above as the case may be, which the Concessionaire has or would be required to incur or suffer and which has/have arisen as a consequence of Change of Scope or Change in Law; provided, that the Additional Costs shall be paid directly to the Concessionaire by the Agency in terms of this Agreement and shall not form part of Total Project Cost (unless otherwise agreed with the Agency);

provided, that the Independent Engineer and Independent Auditor/Expert shall determine such Additional Cost;

provided, further, that for the purposes of determining such Additional Cost, information contained in the Financial Model shall be relied upon by the Independent Engineer and the Independent Auditor/Expert;

Affected Party shall bear the meaning as ascribed thereto in Section 21.1.1 (*Force Majeure Event*);

Agency shall bear the meaning as ascribed thereto in the Preamble;

Agency Agreements means:

- (a) this Agreement;
- (b) the Independent Auditor/Expert Agreement;
- (c) the Independent Engineer Agreement;
- (d) the Project Site Licence Agreement;
- (e) the Annuity Amount Payment Agreement;
- (f) any other agreement entered into in respect of the Project between the
 - (i) Agency; and
 - (ii) Concessionaire and/or the Sponsor

in respect of the Project and designated as a “*Agency Agreement*” with the written consent of the Agency;

Agency Annuity Amount Payment Account means the bank account to be established by the Agency and Notified to the Concessionaire as an Agency Condition Precedent, to be utilized for the purposes as mentioned in this Agreement;

Agency Annuity Amount Payment Account Bank means the financial institution mutually agreed between the Parties for the purposes of establishing and maintaining the Agency Annuity Amount Payment Account;

Agency Annuity Amount Payment Account Standing Instructions shall bear the meaning ascribed thereto in the Annuity Amount Payment Agreement;

Agency Conditions Precedent means the conditions precedent, to be fulfilled by the Agency in accordance with the satisfaction of the Concessionaire, as set out in part 2 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Agency Conditions Subsequent means the conditions subsequent, to be fulfilled by the Agency in accordance with the satisfaction of the Concessionaire, as set out in part 4 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Agency Default Termination Amount shall bear the meaning as ascribed thereto in **SCHEDULE T** (*Termination Payments*);

Agency Event of Default shall bear the meaning ascribed thereto in Section 22.2.1;

Agency Indemnified Persons shall bear the meaning as ascribed thereto in Section 9.1.1;

Agency Overriding Power Event shall bear the meaning as ascribed thereto in Section 8.8.1;

Agency Remedy Amount shall bear the meaning as ascribed thereto in Section 18.2.3;

Agency Remedy Invoice shall bear the meaning as ascribed thereto in Section 18.2.3;

Agreement means this 'Concession Agreement' including the Recitals, Main Body and all Schedules attached hereto;

Annuity Amount Payments means the monthly payments that the Agency shall make to the Concessionaire on a monthly basis during the Operations Period in accordance with this Agreement and the Annuity Amount Payment Agreement and it shall constitute of:

(a) the O&M Cost Component;

(b) the Taxes Component;

in each case, as further described in the Annuity Amount Payment Agreement;

Annuity Amount Payment Damages means, in relation to an Annuity Amount Payment Date, the adjustment of the damages (being an amount in Pakistani Rupees) to be made in respect of the relevant Annuity Amount Payment relating to such Annuity Amount Payment Date (excluding the first Annuity Amount Payment Date), as calculated in accordance with the mechanism provided in **SCHEDULE Z (Key Performance Indicators)**;

Annuity Amount Payment Damages Events shall bear the meaning ascribed thereto in **SCHEDULE Z (Key Performance Indicators)**;

Annuity Amount Payment Agreement means the agreement (in the form and substance agreed and substance agreed between the Parties in accordance with Applicable Laws) to be entered into between the Agency and the Concessionaire for the purposes of, inter alia, payment of the Annuity Amount Payments by the Agency to the Concessionaire;

Annuity Amount Payment Date means each such date on which the Annuity Amount Payments shall be paid by the Agency to the Concessionaire, being the dates set out in the Annuity Amount Payment Schedule and in the Annuity Amount Payment Agreement;

Annuity Amount Payment Evaluation Period shall bear the meaning ascribed thereto in the Annuity Amount Payment Agreement;

Annuity Amount Payment Period means each one month period with the first such period commencing on the day immediately following the Substantial Completion Date and continuing till the Final Expiry Date or the Termination Date, whichever may occur earlier, as further detailed in Annuity Amount Payment Agreement;

Annuity Amount Payments Reserve Amount means an amount equivalent to the Annuity Amount Payment payable in the relevant upcoming six (6) Annuity Amount Payment Periods;¹

Annuity Amount Payment Schedule means the schedule setting out, inter alia, the Annuity Amount Payment Dates, as to be set out in the Annuity Amount Payment Agreement, provided that the Annuity Amount Payment Schedule shall be based on the Annuity Amount Payment Schedule set out herein in **SCHEDULE R** (*Annuity Amount Payment Schedule*);

Applicable Laws means all applicable federal, provincial and local laws, promulgated or brought into force and effect in Pakistan, as the case may be, including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement;

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

- (a) the Project Works;
- (b) the Project and its implementation;
- (c) the Concession Assets; and
- (d) the performance by the Concessionaire and the Sponsor (as applicable) of their respective obligations under the Agency Agreements;

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

- (i) this Agreement (including all Schedules attached hereto);
- (ii) the Agency Agreements;
- (iii) the Applicable Laws;
- (iv) the Concessionaire Permits;
- (v) the Environmental Standards;
- (vi) the Specific Requirements; and
- (vii) any other standards, requirements and criterion (as applicable), mutually agreed between the Parties from time to time,

¹ Subject to the approval of PPP Policy Board

provided, however, that in the event of any discrepancy in the standards, requirements and criterion (as applicable) set out in the abovementioned, the standards, requirements and criterion in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise mutually agreed between the Parties);

Approved Detailed Engineering Design means the Detailed Engineering Design approved by the Independent Engineer in accordance with the Applicable Standards subject to (including (without limitation) Section 12.5 (*Approval of the Detailed Engineering Design*));

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

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

Assured Availability shall have the meaning ascribed thereto in **SCHEDULE P** (*Assured Availability Formula*);

Award shall bear the meaning as ascribed thereto in Section 30.3.4;

Base Case Financial Model means the financial model attached herewith as **SCHEDULE U** (*Financial Model*);

Bid means the technical and financial bid of the Sponsor with respect to the Project submitted to the Agency on [●];

Bid Submission Date means the date on which the Bid is submitted on [●];

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

Board of Arbitrators shall bear the meaning as ascribed thereto in Section 30.3.1;

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

Capital Cost Increase means, in relation to a Relief Compensation Relief Event, the amount (if any) by which:

- (a) Capital expenditure that is demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement as a direct consequence of such Relief Compensation Relief Event, the Concessionaire having taken all reasonable steps to minimize such Capital expenditure,

exceeds:

- (b) Capital expenditure which would have been demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement without such Relief Compensation Relief Event;

Capital Cost Saving means, in relation to a Relief Compensation Relief Event, the amount (if any) by which:

- (a) Capital expenditure that is demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement as a direct consequence of such Relief Compensation Relief Event, the Concessionaire having taken all reasonable steps to minimize such Capital expenditure,

is less than:

- (b) Capital expenditure which would have been demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement without such Relief Compensation Relief Event;

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

- (a) the issuance of any Class A Share to any Person other than the Sponsor; or
- (b) the transfer of direct and/or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Class A Shares of the Concessionaire; and
- (c) the Sponsor, as a result of (a) or (b) above, holding less than hundred percent (100%) of the Class A Shares and/or losing the power to direct the management, policies, control and/or decisions, in each case, of the Concessionaire;

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

- (a) the issuance of any Class A Share to any Person other than the Sponsor; or
- (b) the transfer of direct and/or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Class A Shares of the Concessionaire; and
- (c) the Sponsor, as a result of (a) or (b) above, holding less than fifty-one percent (51%) of the Class A Shares and/or loses the power to direct the management, policies and decisions, in each case, of the Concessionaire;

Change in Law means the occurrence of any of the following events at any time, commencing from twenty-eight (28) days prior to the Bid Submission 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 imposition by a Government Authority of any additional Concessionaire Permit;
- (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 date of this Agreement;
- (e) the commencement of any federal, provincial or local government law (or any provision thereof) (as applicable in the province of Balochistan), which has not entered into effect and the date of effectiveness whereof has not been notified or declared, in each case, until the Bid Submission Date;
- (f) any new tax imposition or withdrawal from any existing (applicable) zero tax rate regime, as applicable in the Province of Balochistan;

provided, that any:

- (i) coming into effect, on or after the Bid Submission Date, of any federal, provincial or local government law (or any provision thereof) (as applicable in the Province of Balochistan) which is already gazetted in accordance with the Applicable Laws and the date of effectiveness whereof has already been notified or declared, in each case, prior to the Bid Submission Date; or
- (ii) any new Applicable Law or any change in the existing Applicable Law, which is already gazetted in accordance with the Applicable Laws and the date of effectiveness whereof has already been notified or declared, in each case, prior to the Bid Submission Date,

shall not constitute a 'Change in Law';

Change in Law Termination Amount shall bear the meaning as ascribed thereto in **SCHEDULE T** (*Termination Payment*);

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

- (a) the issuance of any Class A Share to any Person other than the Sponsor; or
- (b) the transfer of direct and/or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Class A Shares of the Concessionaire; and
- (c) the Sponsor as a result, by virtue of (a) or (b) above holding not less than fifty one percent (51%) of Class A Shares provided that the Sponsor does not lose the power to direct the management, policies and decisions of the Concessionaire;

Change of Scope shall bear the meaning as ascribed thereto in Section 16.1.1 (*Change of Scope*);

Change of Scope Notice shall bear the meaning as ascribed thereto in Section 16.2.1;

Class A Share(s) means share capital held by the shareholders of the Concessionaire (excluding the Agency), from time to time;

Class B Dividends shall bear the meaning as ascribed thereto in Section 10.2.3;

Class B Share(s) means the non-voting and non-participating share capital of the Concessionaire held by the Agency;

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

Commencement Date means the date set out in the Commencement Certificate being the date on which each of the Conditions Precedent stand satisfied, waived and/or deferred;

Commercial Operations Date means the date on which the Project shall commence, such period commencing on the day immediately succeeding the Substantial Completion Date;

Commercial Rights Management Fee shall bear the meaning as ascribed thereto in Section 29.2.8;

Completion Check List shall bear the meaning as ascribed thereto in Section 14.3.2;

Completion Check List Items shall bear the meaning as ascribed thereto in Section 14.4.1;

Completion Tests means the tests required to be conducted for Substantial Completion, as listed in **SCHEDULE G** (*List of Tests & Completion Tests*);

Completion Tests Date Notice shall bear the meaning as ascribed thereto in Section 14.1.1;

Concession means the right granted by the Agency to the Concessionaire to develop, build, operate and maintain the Concession Assets and carry out all other works that may be required to carry out such development, operation and maintenance in accordance with the terms of this Agreement, during the Concession Period;

Concession Assets means the Temporary Concession Assets and Permanent Concession Assets;

Concession Period means, in respect of the Concession and the Concession Assets, the period commencing on the Commencement Date and ending on the Trigger Date;

Concessionaire shall bear the meaning as ascribed thereto in the Preamble;

Concessionaire Annuity Amount Payment Account means the account to be established by the Concessionaire and Notified to the Agency as a Concessionaire Condition Precedent to receive the Annuity Amount Payments under the Annuity Amount Payment Agreement;

Concessionaire Authorized Representative shall bear the meaning as ascribed thereto in Section 7.4.1(a);

Concessionaire Conditions Precedent means the conditions precedent, to be fulfilled by the Concessionaire in accordance with the satisfaction of the Agency, as set out in part 1 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Concessionaire Conditions Subsequent means the conditions subsequent to be fulfilled by the Concessionaire in accordance with the satisfaction of the Agency, as set out in part 3 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Concessionaire Default Termination Amount shall bear the meaning as ascribed thereto in **SCHEDULE T** (*Termination Payment*);

Concessionaire Engaged Persons means each of the Concessionaire's representatives (including the Concessionaire Authorized Representative and the Concessionaire Project Engineer), agents, executives, contractors, employees, subcontractors, vendors, suppliers, parties with whom it has entered into the Project Agreements, Contractors and

other personnel, in each case, that are engaged, hired, appointed, contracted (directly or indirectly) by the Concessionaire for the performance of Project Works or any part thereof;

Concessionaire Event of Default shall bear the meaning as ascribed thereto in Section 22.1.1 (*Concessionaire Event of Default*);

Concessionaire Indemnified Persons shall bear the meaning as ascribed thereto in Section 9.1.2;

Concessionaire Independent Auditor/Expert Payment Account means the bank account to be established by the Concessionaire and Notified to the Agency, in accordance with the terms of this Agreement and the Independent Auditor/Expert Contract;

Concessionaire Independent Auditor/Expert Payment Account Bank means a financial institution/banking company mutually agreed between the Parties for the purposes of establishing and maintaining the Concessionaire Independent Auditor/Expert Payment Account pursuant to the terms of the Independent Auditor/Expert Contract, the Agency Agreements and the Project Agreements;

Concessionaire Independent Auditor/Expert Payment Account Standing Instructions shall bear the meaning as ascribed thereto in Section 6.6.2;

Concessionaire Independent Engineer Payment Account means the bank account to be established by the Concessionaire and Notified to the Agency, in accordance with the terms of this Agreement and the Independent Engineer Contract;

Concessionaire Independent Engineer Payment Account Bank means a financial institution/banking company mutually agreed between the Parties for the purposes of establishing and maintaining the Concessionaire Independent Engineer Payment Account pursuant to the terms of this Agreement, the Independent Engineer Contract, the Agency Agreements and the Project Agreements;

Concessionaire Independent Engineer Payment Account Standing Instructions shall bear the meaning as ascribed thereto in Section 5.6.2;

Concessionaire Management Fee shall bear the meaning as ascribed thereto in Section 29.1.6;

Concessionaire Permits means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, Licence, permits, decisions or similar items that relate to the Project and its implementation including all such consents and authorizations issued by a Government Authority and which the Concessionaire is or its Contractors are required to obtain from any Government Authority and thereafter to maintain to fulfill its obligations under the Agency Agreements, including the Specified Concessionaire Permits; provided, however, that in no event shall the Concessionaire Permits include any concessions or exemptions from the Applicable Laws unless they are expressly granted pursuant to the terms of the Agency Agreements;

Concessionaire Preliminary Notice shall bear the meaning as ascribed thereto in Section 23.2.1;

Concessionaire Project Engineer shall bear the meaning as ascribed thereto in Section 7.4.1(c);

Conditions Precedent means the conditions precedent listed in part 1 and part 2 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Conditions Subsequent means the conditions subsequent listed in part 3 and part 4 of **SCHEDULE Y** (*Conditions Precedent and Conditions Subsequent*);

Construction Completion shall bear the meaning as ascribed thereto in Section 14.7.1;

Construction Completion Certificate shall bear the meaning as ascribed thereto in Section 14.6.1;

Construction Completion Date shall bear the meaning as ascribed thereto in Section 14.7.1;

Construction Completion Schedule means the schedule attached herewith as **SCHEDULE E** (*Construction Completion Schedule*) setting out:

- (a) the Scheduled Construction Completion Date;
- (b) the Scheduled Substantial Completion Date; and
- (c) the Project Construction Milestones;

Construction Drawings means the drawings, designs, calculations and documents prepared and/or to be prepared by the Concessionaire pursuant to the Applicable Standards and the Design Requirements that pertain to the Concession Assets and which are detailed in **PART I - SCHEDULE C** (*List of Construction Drawings*), as amended from time to time by the Concessionaire in accordance with the terms of this Agreement with the approval of the Independent Engineer (in consultation with Agency);

Construction Inspection Report shall bear the meaning as ascribed thereto in Section 13.6.2;

Construction Monthly Progress Report shall bear the meaning as ascribed thereto in Section 13.5.1;

Construction Performance Security means a first demand irrevocable, unconditional and without recourse guarantee, issued by a scheduled commercial bank in Pakistan (with a minimum credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Agency, in the form of a demand draft, bank guarantee or a pay order, guaranteeing the payment to the Agency of an amount equal to two percent (2%) of the Pre-Estimated Project Cost, in the form of the instrument attached herewith as **SCHEDULE L** (*Form of Construction Performance Security*);

Construction Performance Security Expiry Date shall bear the meaning as ascribed thereto in Section 11.1.6;

Construction Period means the period commencing on the Commencement Date and ending on the Construction Completion Date;

Construction Period Damages shall bear the meaning as ascribed thereto in Section 14.5.1;

Construction Period Damages Payment Date shall bear the meaning as ascribed thereto in Section 14.5.2;

Construction Period Insurances means the Insurances procured and/or obtained by the Concessionaire pursuant to the provisions of and in accordance with Section 20.1 (*Construction Period Insurances*) and **PART I** (*Construction Period Insurances*) - **SCHEDULE I** (*Insurances*);

Construction Programme shall bear the meaning as ascribed thereto in Section 13.2.1; **Construction Requirements** means the relevant standards, requirements and criterion (as applicable) that are set out in relation to and are applicable to the Construction Works, as set out in:

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the Design Requirements;
- (d) accordance with **SCHEDULE G** (*List of Tests & Completion Tests*);
- (e) accordance with **SCHEDULE C** (*List of Construction Drawings*);
- (f) the Construction Programme; and
- (g) any other standards, requirements and criterion (as applicable), mutually agreed between the Parties from time to time,

provided, however, in the event of any discrepancy in the standards, requirements and criterion (as applicable), set out in the abovementioned, the standards, requirements and criterion in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise mutually agreed between the Parties);

Construction Tests shall bear the meaning as ascribed thereto in Section 13.4.1;

Construction Time For Completion means the time permitted herein for performance and completion of Construction Works and all other obligations to be performed by the Concessionaire for the issuance of the Construction Completion Certificate, as set out in

and contemplated by the Applicable Standards and the Construction Programme, including the:

- (i) completion of engineering and design works and services on or prior to the date set out in the Construction Completion Schedule;
- (ii) submission of Construction Drawings on or prior to the dates contemplated by the Applicable Standards and the Construction Programme;
- (iii) performance and completion of each Project Construction Milestone on or prior to its Project Construction Milestone Date;
- (iv) achievement of Substantial Completion on or prior to the Scheduled Substantial Completion Date;
- (v) achievement of Substantial Completion on or prior to the Scheduled Substantial Completion Date; and/or
- (vi) achievement of Construction Completion on or prior to the Scheduled Construction Completion Date;

Construction Works means all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Construction Completion Date pursuant to the Applicable Standards including, *inter alia*, the obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire in respect of: (a) preparation, completion and delivery of Construction Drawings; (b) the engineering (including design), procurement and construction of the Concession Assets (including all activities and obligations incidental thereto); (c) the Site Construction Works; and (d) the activities consisting of, and for achievement of, in each case, each Project Construction Milestone. Notwithstanding anything contained herein, it must be noted that there will be separate tender/bidding process for procurement of medical equipment/machinery for the Project;

Corporate Documents means the constitutional documents and the corporate authorizations set out in **SCHEDULE K** (*Corporate Documents*);

Corrupt Act means:

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

- (ii) for showing or not showing favor or disfavor to any Person in relation to this Agreement or any other contract relating to this Agreement with the Agency and/or a Government Authority;
- (b) entering into this Agreement or any other contract relating to this Agreement with the Agency and/or a Government Authority in connection with which commission/discount has been paid/received (as the case may be) or has been agreed to be paid or received by the Concessionaire or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and the terms and conditions of any such contract for the payment of such commission/discount have been disclosed in writing to the Agency;
- (c) committing any offence:
 - (i) under any law, in respect of fraudulent acts in relation to this Agreement, from time to time dealing with bribery, corruption or extortion;
 - (ii) under any law, in respect of fraudulent acts in relation to this Agreement, creating offences in respect of fraudulent acts; or
 - (iii) in respect of fraudulent acts in relation to this Agreement;
- (d) in respect of fraudulent acts in relation to this Agreement, defrauding or attempting to defraud or conspiring to defraud the Agency or any other public body;

Corrupt Act Termination Amount shall bear the meaning as ascribed thereto in **SCHEDULE T** (*Termination Payments*);

CPI means the Pakistan Consumer Price Index, published by Pakistan Bureau of Statistics, being the rate published on the last working day of the last quarter of a calendar year;

Cure Period means:

- (a) in respect of a Concessionaire Event of Default:
 - (i) the period commencing on the date of receipt by the Concessionaire of the Agency Preliminary Notice and expiring on the date falling forty five (45) days thereafter;
- (b) in respect of an Agency Event of Default, the period commencing on the date of receipt by the Agency of the Concessionaire Preliminary Notice and expiring on the date falling sixty (60) days thereafter;

Decommissioned Project Area shall bear the meaning as ascribed thereto in Section 7.13.1;

Defects & Deficiencies means:

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

Defects Liability Period means the twenty-four (24) months period for notifying and rectifying the Defects & Deficiencies, being the period commencing on the Substantial Completion Date and expiring on the date falling twenty-four (24) months following the Substantial Completion Date;

Delayed Payment Rate means the six (6) months KIBOR plus one percent (1%), calculated for the actual number of days which the relevant amount remains unpaid on the basis of three hundred and sixty five (365) day year;

Design Requirements means the design requirements of the Concession Assets, as set out in **SCHEDULE B** (*Design Requirements*);

Detailed Engineering Design means the detailed engineering design for the Project prepared by the Concessionaire in accordance with Applicable Standards;

Dispute shall bear the meaning as ascribed thereto in Section 30.1.1;

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

Divestment Requirements shall bear the meaning as ascribed thereto in Section 24.1.1;

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

Effective Date means the date on which this Agreement is signed by each of the Parties;

EIA Approval means the approval to be obtained by the Concessionaire from the Balochistan Environmental Protection Agency (or a successor entity) in relation to the Project in accordance with (without limitation) the Environmental Standards;

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

Emergency Decommissioning shall bear the meaning as ascribed thereto in Section 7.12.1;

Encumbrance means any encumbrance on an asset, including (without limitation) mortgage, charge, pledge, lien, hypothecation and/or any security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Concession Assets and/or any part or portion thereof and physical encumbrances and encroachments thereon;

Environmental Standards means collectively, the applicable environmental guidelines and occupational health and safety standards established by the “Pakistan Environmental Protection Agency”, the Balochistan Environmental Protection Agency and the IFI Standards;

Exit Implementation Period means:

- (a) in case of Termination of this Agreement, the period commencing on the Termination Date and expiring on the Transfer Date;
- (b) in case of expiry of this Agreement on the Final Expiry Date, the period commencing thirty (30) days prior to the Final Expiry Date and expiring on the Final Expiry Date;

Final Expiry Date means the date falling on the fifth (5th) yearly anniversary of the Substantial Completion Date; provided, however, the Agency and the Concessionaire may agree to extend the Final Expiry Date (and, as a result, the Concession and the Concession Period) with mutual written consent in accordance with and subject to the Applicable Laws;

Financial Model means the Base Case Financial Model, as revised by the Independent Auditor/Expert in accordance with the terms of this Agreement and/or any Agency Agreement;

First IA List shall bear the meaning as ascribed thereto in Section 6.1.1;

First IE List shall bear the meaning as ascribed thereto in Section 5.1.1;

Force Majeure Costs means all such costs that are directly attributable to, arise from and are a direct result of, in each case, a Force Majeure Event; any additional capital expenditures; any additional construction costs; and any additional operating costs; provided, however, all such additional costs and payment of interest and principal shall be subject to confirmation by the Independent Auditor/Expert and the Independent Engineer and provided further, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon;

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

Force Majeure Notice shall bear the meaning as ascribed thereto in Section 21.2.1;

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

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

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

Handover List shall bear the meaning as ascribed thereto in Section 25.1.1;

IFI Standards means the environmental and social standards of International Finance Institutions (IFIs), as Notified by the Agency to the Concessionaire;

Indemnified Party shall bear the meaning as ascribed thereto in Section 9.3.1;

Indemnifying Party shall bear the meaning as ascribed thereto in Section 9.3.1;

Independent Auditor/Expert means the auditor appointed in respect of the Project in accordance with Article 6 (*Independent Auditor/Expert*) and in terms of the Independent Auditor/Expert Contract;

Independent Auditor/Expert Appointment Term shall bear the meaning as ascribed thereto in Section 6.2.1;

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

Independent Auditor/Expert Payments shall bear the meaning as ascribed thereto in Section 6.5.1;

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

Independent Engineer Appointment Term shall bear the meaning as ascribed thereto in Section 5.2.1;

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

Independent Engineer Payments shall bear the meaning as ascribed thereto in Section 5.5.1;

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

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

Insurances means all insurances, reinsurance, agreements of insurance and reinsurance and/or arrangement for insurance and/or reinsurance in relation to the Project, the Concession Assets, the Construction Works and/or any part or portion thereof procured or to be procured by the Concessionaire, including (without limitation) to the Construction Period Insurances and the Operations Period Insurances;

KIBOR means the Karachi Interbank Offered Rate, being the Average rate, Offer, for the relevant tenor, as published on State Bank of Pakistan page on that date or as published by the Financial Markets Association of Pakistan in case the State Bank of Pakistan page is unavailable;

Lapse of Consent means any Concessionaire 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 Concessionaire Permit or, where a time period is not prescribed by the

Applicable Laws, within sixty (60) days of such Concessionaire Permit ceasing to be in full force and effect; or

- (b) (other than a Specified Concessionaire Permit) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the Applicable Laws or where a time period is not prescribed by the Applicable Laws, within sixty (60) days of proper application being made for such Concessionaire Permit; or
- (c) being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Concessionaire's (or a Contractor's) ability to perform its obligations under any document included within the Agency Agreements and/or the Project Agreements,

in each of the above instances despite such party's compliance with the applicable procedural and substantive requirements as applied in a "*non-discriminatory*" (as explained in Section 8.6) manner;

Licence shall bear the meaning as ascribed thereto in Section 4.1.1;

Losses means, as certified by the Independent Engineer and the Independent Auditor/Expert, as determined by the Independent Engineer and the Independent Auditor/Expert, any loss, damage, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including, without limitation, reasonable legal fees);

Main Body means this Agreement *excluding* the Schedules;

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

Material Adverse Effect means, in the opinion of the Independent Engineer (in respect of technical matters) and/or in the opinion of the Independent Auditor/Expert (in respect of financial matters), there has occurred or could reasonably be expected to occur an effect, event, matter or circumstance or a change in the circumstances which materially and adversely impairs:

- (a) the business, operations, property, assets, present or future condition (financial or otherwise) or prospects of the Concessionaire, Sponsor or Contractor) in respect of the Project;
- (b) the ability or probability (financial or otherwise) of the Concessionaire, Sponsor or Contractor to perform and observe its respective obligations under the Project Agreements;
- (c) the legality, validity or enforceability of, or the rights, obligations or remedies of, the Agency under this Agreement; and/or

- (d) the Concessionaire's ability to implement, design, finance, construct, operate and maintain the Project in accordance with the terms of the Agency Agreements and the Project Agreements;

Material Adverse Impediment shall bear the meaning as ascribed to it in Section 4.14.1;

Material Breach means breach by either Party or the Sponsor of any of its/their obligations under the Agency Agreements which has/is likely to have a Material Adverse Effect on the Project and which such breaching Party shall have failed to cure (within the applicable Cure Period) and if such Cure Period is not applicable then by the date falling forty-five (45) days following the date of receipt of a Notice issued by the non-breaching Party to the breaching Party to cure such breach;

Material Breach of O&M Requirements shall bear the meaning as ascribed to it in Section 19.3.1;

Material Impediment Removal Period shall bear the meaning as ascribed to it in Section 4.14.2;

Minimum Indemnification Amount means the amount equal to PKR 1,000,000/- (Pakistani Rupees One Million only) that a Party's claims for indemnification pursuant to Article 9 (*Indemnities & Limitation of Liabilities*) must exceed in the aggregate before that Party shall be entitled to indemnification;

New IA List shall bear the meaning as ascribed thereto in Section 6.2.3;

New IE List shall bear the meaning as ascribed thereto in Section 5.2.3;

New O&M Performance Security shall bear the meaning as ascribed thereto in Section 11.3.8;

Non Availability means the period during which the Project is not available for use by the Users, due to the occurrence of the Annuity Amount Payment Damages Event, in the relevant Annuity Amount Payment Evaluation Period;

Non-Political Event shall bear the meaning as ascribed thereto in Section 21.1.1(b);

Non-Political Event Termination Amount shall bear the meaning as ascribed thereto in **SCHEDULE T** (*Termination Payments*);

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

Notice of Remedy shall bear the meaning as ascribed thereto in Section 18.2.1(c);

O&M Cost Component means a component of Annuity Amount Payment relating to the operations and maintenance expenses, as set out in the Financial Model and as adjusted from time to time on each Annuity Amount Payment Date on the following basis: (i) twenty percent (20%) of the operations component of the O&M Cost Component shall be indexed to a fixed rate of ten percent (10%); (ii) remaining operations component of the O&M Cost

Component shall be indexed to Consumer Price Index (CPI); and (iii) maintenance component of the O&M Cost Component shall be indexed to Wholesale Price Index (WPI);

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

O&M Inspection Report shall bear the meaning as ascribed thereto in Section 19.13.2;

O&M Manual shall bear the meaning as ascribed thereto in Section 19.7.2;

O&M Monthly Status Report shall bear the meaning as ascribed thereto in Section 19.12.1;

O&M Performance Security means the performance security, in the form of a bank guarantee, demand draft or pay order, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Agency, being in an amount equal to ten percent (10%) of the O&M Cost Component for the Operational Year furnished from time to time by the Concessionaire to the Agency in accordance with Section 11.3 (*O&M Performance Security*), in case of a bank guarantee, the same shall be in form and substance as attached hereto as **SCHEDULE M** (*Form of O&M Performance Security*);

O&M Programme shall bear the meaning as ascribed thereto in Section 19.7.2;

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

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the **SCHEDULE H** (*O&M Requirements*);
- (d) the O&M Manual;
- (e) the Safety Requirements;
- (f) the Applicable Standards being the requirements applicable in respect of matters relating to the Concession Assets;
- (g) in respect of each Operational Year following Substantial Completion Date, the O&M Programme prepared for such Operational Year in accordance with Section 19.8 (*O&M Programme*); and

- (h) any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

provided, however, in the event of any discrepancy in the standards, requirements and criterion (as applicable) set out in the abovementioned, the standards, requirements and criterion in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise agreed between the Parties);

O&M Tests shall bear the meaning as ascribed thereto in Section 19.14.1;

O&M Time For Completion means the time permitted herein for performance and completion of Operations and Maintenance and all other obligations to be performed by the Concessionaire during the Operations Period, as set out in and contemplated by the Applicable Standards and each O&M Programme, including (without limitation) performance and completion of each Project O&M Milestone on or prior to its Project O&M Milestone Date;

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

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

Operations Period means the period commencing on the Commercial Operations Date and ending on the Trigger Date;

Operations Period Insurances means the Insurances procured and/or obtained by the Concessionaire pursuant to the provisions of and in accordance with Section 20.2 (*Operations Period Insurances*) and **PART I** (*Operations Period Insurances*) - **SCHEDULE I** (*Insurances*);

Outstanding Termination Payment shall bear the meaning as ascribed thereto in Section 17.4.1(c);

Parties shall have the meaning ascribed thereto in the Preamble;

Adjustable Annuity Amount Payment Damages shall bear the meaning as ascribed thereto in Section 17.2.2;

Payable Termination Payment Amount Shortfall shall bear the meaning as ascribed thereto in Section 17.4.1(b);

Permanent Concession Assets means the Project including all Project Facilities and all rights, title, benefits and easements that may be required for the operation and maintenance of the Project, in accordance with this Agreement;

Permitted Events means:

- (i) Force Majeure Events;
- (ii) Agency Events of Default;
- (iii) Emergency Decommissioning, to the extent the same does not result from reasons attributable to the Concessionaire;
- (iv) Material Adverse Impediment, to the extent the same does not result from reasons attributable to the Concessionaire;
- (v) a Change in Law causing a delay in the performance of the Concessionaire's obligations under this Agreement;
- (vi) the occurrence of the circumstances set out in Section 4.9 (*Geological and Archeological Finds*) causing a delay in the performance of the Concessionaire's obligations under this Agreement; and
- (vii) the occurrence of the Agency Overriding Power Event, to the extent the same does not result from reasons attributable to the Concessionaire;

Persistent Breach of O&M Requirements means:

- (a) any reoccurring and persistent breach of the O&M Requirements that remains unremedied despite the issuance of Notice of Remedy by the Independent Engineer;
- (b) repeated occurrences of a breach that has been remedied pursuant to a Notice of Remedy, notwithstanding that the earlier occurrences of breach may have been remedied pursuant to the Notice of Remedy or otherwise,

in each case, sub-clause (a) and (b) above, that results in a Material Adverse Effect; provided, however, the Concessionaire shall not be deemed to be in Material Breach of the O&M Requirements in the afore-stated circumstances in the event such breach is caused by the Permitted Events;

Person means any individual, firm, company, corporation, society, partnership (whether or not having a separate legal personality), joint venture, trust, unincorporated organization, government state, association or Government Authority or any other legal entity and shall include successors and assigns;

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

Political Event shall bear the meaning as ascribed thereto in Section 21.1.1(a);

Political Event Termination Amount shall have the meaning ascribed thereto in **SCHEDULE T** (*Termination Payments*);

Pre-Estimated Project Cost means the estimated cost of the Project, as specified in the Base Case Financial Model and being funded through the proceeds of the Annuity payments;

Preservation Costs shall bear the meaning as ascribed thereto in Section 18.3.4;

Project includes Maternity and Neonatal Child Health (MNCH) Facility with Allied Hospital Services Project Located at THQ Mashkai, District Awaran, Balochistan, and means each of the following activities, as performed (in each case) in accordance with this Agreement:

- (i) the possession of the Concession Assets;
- (ii) the design and detailed design, engineering, construction, procurement, permitting, testing and commissioning of, in each case, the Concession Assets;
- (iii) the procurement and contracting for goods, equipment and services for the Concession Assets;
- (iv) the insuring and Operation and Maintenance of the Concession Assets;
- (v) the making available, on a continuous basis, of the Concession Assets for the Users;
- (vi) payments by the Parties of amounts due and payable under this Agreement;
- (vii) the recruitment, employment and training of staff for the Concession Assets;
- (viii) the transfer of the Concession Assets to the Agency on the Transfer Date;
- (ix) all activities incidental or related to any of the above;

Project Agreements means:

- (a) the Agency Agreements;
- (b) any other material contract entered into or to be entered into by the Concessionaire at any time after the Effective Date in connection with the Project and designated as a "*Project Agreement*" with the consent of the Agency;

Project Construction Milestones means the progressive milestones relating to the performance of Construction Works and other obligations to be performed by the

Concessionaire until the Construction Completion Date and the dates for achievement of each such milestone, as set out in:

- (a) this Agreement; and
- (b) the Construction Programme;

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

- (a) the Applicable Standards;
- (b) the Construction Programme;

Project Facilities means the facilities to be constructed, built, installed, erected and/or provided by the Concessionaire on the Project Site, as detailed in **SCHEDULE D** (*Project Facilities*);

Maternity and Neonatal Child Health (MNCH) Facility Project means the following:

- (i) _____
- (ii) _____
- (iii) _____

as more particularly described and indicated in the **SCHEDULE F** (*Project Site*);

Project Manager/Project Director shall bear the meaning as ascribed thereto in Section 8.12.1;

Project Management/Implementation Unit means the project management/implementation unit established by the Agency in accordance with the Applicable Laws for the purpose of overseeing the day to day implementation of the Project in accordance with the terms of this Agreement and Applicable Laws, particularly during the Construction Period, and shall be headed by the Project Manager/Project Director;

Project Milestone means:

- (a) in respect of Construction Works, the Project Construction Milestones;
- (b) in respect of the Operations and Maintenance, the Project O&M Milestones;

Project Milestone Date means:

- (a) in respect of a Project Construction Milestone, the respective Project Construction Milestone Date for such Project Construction Milestone;

- (b) in respect of a Project O&M Milestone, the respective Project O&M Milestone Date for such Project O&M Milestone;

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

- (a) the Applicable Standards and specifications; and
- (b) the O&M Programme for such Operational Year;

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

- (a) the Applicable Standards; and
- (b) the O&M Programme

Project Requirements means the Design Requirements, the Construction Requirements and the O&M Requirements, as applicable;

Project Site means the site on which the Project is to be implemented comprising of the immovable property including the right of way on which the Project Facilities (including the Concession Assets) are to be constructed, built, installed, erected and/or provided by the Concessionaire, in accordance with the terms of this Agreement as demarcated in the map attached hereto in **SCHEDULE F** (*Project Site*);

Project Site Conditions shall bear the meaning as ascribed to it in Section 4.4.1;

Project Site Licence Agreement means the agreement of licence (in the form and substance agreed between the Parties) to be entered into between the Agency and the Concessionaire pursuant to which the Agency shall licence the land comprising the Project Site to the Concessionaire;

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

- (a) the survey, investigation, design work and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Construction Completion Date;
- (b) the Construction Works and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Construction Completion Date; and

- (c) the Operations and Maintenance and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period;

Proposed Construction Programme shall bear the meaning as ascribed thereto in Section 13.2.1;

Proposed Completion Tests Date shall bear the meaning as ascribed thereto in Section 14.1.1;

Proposed Detailed Design shall bear the meaning as ascribed thereto in Section 12.5.3;

Proposed O&M Programme shall bear the meaning as ascribed to it in Section 19.7.1;

Protected Assets shall bear the meaning as ascribed thereto in Section 8.9.1(b);

Recurrent Cost means any expenditure (whether recurrent or not) which is not a Capital expenditure;

Recurrent Cost Increase means, in relation to a Relief Compensation Relief Event, the amount (if any) by which:

- (a) the Recurrent Costs demonstrably incurred and/or to be incurred by the Concessionaire in performing its obligations under this Agreement as a direct consequence of such Relief Compensation Relief Event, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under this Agreement) to minimize such Recurrent Costs insofar as they are attributable to such Relief Compensation Relief Event, exceeds:
- (b) the Recurrent Costs which would demonstrably have been incurred by the Concessionaire in performing its obligations under this Agreement without such Relief Compensation Relief Event;

Recurrent Cost Saving means, in relation to a Relief Compensation Relief Event, the amount (if any) by which:

- (a) the Recurrent Costs demonstrably incurred and/or to be incurred by the Concessionaire in performing its obligations under this Agreement as a direct consequence of such Relief Compensation Relief Event, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under this Agreement) to minimize such Recurrent Costs insofar as the Recurrent Costs are attributable to such Relief Compensation Relief Event, is less than:

the Recurrent Costs which would demonstrably have been incurred by the Concessionaire in performing its obligations under this Agreement without such Relief Compensation Relief Event;

Relief Compensation means, in respect of a Relief Compensation Relief Event, the compensation payable by the Agency to the Concessionaire in order to restore the Concessionaire to the same financial position the Concessionaire would have enjoyed if the Relief Compensation Relief Event had not occurred, which compensation shall be the sum of:

- (a) a Capital Cost Increase; and/or
- (b) a Recurrent Cost Increase; and/or

incurred by the Concessionaire as a direct consequence of the Relief Compensation Relief Event (the Concessionaire having taken all reasonable steps to mitigate such loss) to the extent the aggregate amounts referred to in paragraphs (a) and (b) above exceed the aggregate of any Capital Cost Saving, Recurrent Cost Saving and any other saving incurred as a direct consequence of such Relief Compensation Relief Event (the Concessionaire having taken all reasonable steps to maximize the same); provided, however, that all such elements of the Relief Compensation shall be subject to confirmation by the Independent Auditor/Expert and the Independent Engineer and for the purposes of determining the same, information contained in the Financial Model shall be relied upon; provided, further, that in determining the Relief Compensation, the Independent Auditor/Expert and the Independent Engineer shall also take into consideration the receipt of insurance proceeds by the Concessionaire as a result of the underlying Relief Compensation Relief Event, so as to avoid duplication of compensation to the Concessionaire;

Relief Compensation Relief Event means each Relief Event set out in Sections 15.1.1(a) to 15.1.1(j);

Relief Compensation Relief Event Period means the length of time the Relief Compensation Relief Event has subsisted as per the terms of this Agreement;

Relief Event(s) shall bear the meaning as ascribed thereto in Section 15.1.1;

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

Relief Order Proposal shall bear the meaning as ascribed thereto in Section 15.2.1;

Relief Order Request shall bear the meaning as ascribed thereto in Section 15.1.1;

Remedy Events shall bear the meaning as ascribed thereto in Section 18.2.1;

Remedy Time Period shall bear the meaning as ascribed thereto in Section 18.2.1(c);

RFP shall bear the meaning as ascribed to in Recital B above;

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

Scheduled Commencement Date means the date falling one hundred and eighty (180) days after the Effective Date, as may be extended from time to time in accordance with this Agreement;

Scheduled Construction Completion Date shall bear the meaning as ascribed thereto in Section 14.4.2 (a);

Scheduled Substantial Completion Date means the date falling twelve (12) months after the Commencement Date, as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order;

Scope of the Project means the scope of the Project, as set out in **SCHEDULE A** (*Scope of the Project*);

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

- (a) the drilling for, or extraction of, oil or natural gas;
- (b) the extraction (whether by underground or surface working) of minerals, including tunneling or boring, or constructing underground works, for that purpose;
- (c) clearance of the Project Site, to the extent such clearance is to be expressly performed by the Agency in accordance with the terms of this Agreement;

Specific Requirements means:

- (a) in respect of Construction Works, the Construction Requirements; and
- (b) in respect of Operations and Maintenance, the O&M Requirements;

Specified Concessionaire Permits means the Concessionaire Permits set out in **SCHEDULE J** (*Specified Concessionaire Permits*);

Sponsor(s) means [●], a company(ies) incorporated under the laws of [●], having its registered office located at [●];

Substantial Completion shall bear the meaning as ascribed thereto in Section 14.4.3;

Substantial Completion Certificate means the certificate issued by the Independent Engineer at the request of the Concessionaire in accordance with Section 14.4 (*Substantial Completion Certificate*);

Substantial Completion Date shall bear the meaning as ascribed thereto in Section 14.3.2;

Substantial Completion Delay Amount means, in respect of the Substantial Completion Date, an amount equal to the amount of the Construction Performance Security equally divided over a period of one hundred and twenty (120) days;

Suspension shall bear the meaning as ascribed thereto in Section 18.3.1;

Taxes Component means a component of Annuity Amount Payment relating to the federal, provincial, local or other taxes, cess, duties, etc. that are applicable in Balochistan province on the Concessionaire, as set out in the Financial Model, and as adjusted from time to time on the basis of Change in Law;

Temporary Concession Assets means the land, assets, rights, title, benefits and easements required for the development of the Permanent Concession Assets;

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

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

Termination Notice means a notice to be issued in writing, by a Party notifying the other Party of the Termination in accordance with the applicable provisions of this Agreement including, where applicable, following the expiry of the relevant Cure Period or such other cure period specified in this Agreement;

Termination Payment means:

- (a) in respect of Termination due to a Non-Political Event, the Non-Political Event Termination Amount;
- (b) in respect of Termination due to a Political Event, the Political Event Termination Amount;

- (c) in respect of Termination due to a Concessionaire Event of Default, the Concessionaire Default Termination Amount;
- (d) in respect of Termination due to the Agency Event of Default, the Agency Default Termination Amount;
- (e) in respect of Termination due to a Corrupt Act, the Corrupt Act Termination Amount;
- (f) in respect of Termination due to a Change in Law, the Change in Law Termination Amount;

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

Time For Completion means (as applicable):

- (a) in respect of Construction Works, the Construction Time For Completion; and
- (b) in respect of Operations & Maintenance, the O&M Time For Completion;

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

Transfer Date means:

- (a) in case of early Termination of this Agreement prior to the Final Expiry Date, the Termination Payment Date subject to: (i) the Agency making payment of the relevant Termination Payments to the Concessionaire; and (ii) the Concessionaire completing the Divestment Requirements on or prior to such date;
- (b) in case of achievement of Final Expiry Date pursuant to this Agreement, the Final Expiry Date;

Trigger Date means and includes, the Final Expiry Date, the Termination Date, and/or the Transfer Date as the case may be;

Unpaid Termination Payment Amount shall bear the meaning as ascribed thereto in Section 17.4.1;

Unpaid Termination Payment Amount Certificate shall bear the meaning as ascribed thereto in Section 17.4.1;

User means the patients or their attendants, doctors, nurses, staff, etc. who utilizes the Concession Assets or any portion thereof;

Vacant Possession means delivery to the Concessionaire by the Agency of possession of the Project Site in accordance with this Agreement, in accordance with Applicable Laws, and in accordance with the Project Site Licence Agreement free from all Encumbrances; and the grant of all Easementary Rights and all other rights appurtenant thereto, such that the Concessionaire enjoys complete uninterrupted and quiet possession and control of the Project Site from the grant of the Licence and throughout the Concession Period throughout the Concession Period;

provided, that the Concessionaire shall be liable to ensure clearance of the Project Site (including removal of all structures, physical impediments and clearing and grubbing at the Project Site) as part of the Site Construction Works;

Vesting Certificate shall bear the meaning as ascribed thereto in Section 24.4.1; and

WPI means the Wholesale Price Index as published by Pakistan Bureau of Statistics being the rate published for the last working day of the last quarter of a calendar year.

1.2 CONSTRUCTION

1.2.1 In this Agreement, 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) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (e) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (f) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (g) any reference to any period of time means a reference to that according to Pakistan Standard Time;
- (h) any reference to day means a reference to a calendar day as per the Gregorian Calendar;
- (i) 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;
- (j) any reference to month means a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date, period or Project Milestone means and include such date, period or Project Milestone as may be extended pursuant to Relief Order;
- (l) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided, that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (q) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, Licence or document of any description shall be construed as reference to that agreement, deed, instrument, Licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided, that this sub-section shall not operate so as to increase liabilities or obligations of the Agency hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party, the Independent Engineer or the Independent Auditor/Expert 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/Expert, as the case may be, in this behalf and not otherwise;

- (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, Articles, Sections, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (u) the damages (including the Construction Period Damages) payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and
- (v) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

1.3 COSTS FOR DOCUMENTS

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

1.4 MEASUREMENTS AND ARITHMETIC CONVENTIONS

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

1.5 PRIORITY OF AGREEMENTS, ARTICLES, SECTIONS AND SCHEDULES

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

- (a) this Agreement;
- (b) the Agency Agreements (other than this Agreement).

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

- (i) between two (2) or more Articles and/or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and/or Section;
- (ii) between the Article and/or Section of this Agreement and the Schedules, the Article and/or Section shall prevail unless the issue in question/matter is specifically provided for in the Schedule and only referred to in the Article and/or Section, as the case may be;
- (iii) between any two (2) Schedules, the Schedule relevant to the issue shall prevail;
- (iv) between the written description on the Construction Drawings and the Construction Requirements, the latter shall prevail;
- (v) between the written description on the O&M Documents and the O&M Requirements, the latter shall prevail;
- (vi) between the dimension scaled from the Construction Drawing and its specific written dimension, the latter shall prevail;
- (vii) between the dimension scaled from the O&M Documents and its specific written dimension, the latter shall prevail; and
- (viii) between any value written in numerals and that in words, the latter shall prevail.

2. CONCESSION

2.1 GRANT OF CONCESSION

- 2.1.1 In consideration of the Concessionaire's obligations contained in this Agreement and relying on the Concessionaire's representations, warranties and covenants contained herein, the Agency, subject to the terms of this Agreement, hereby authorizes the Concessionaire, for the duration of the Concession Period, to investigate, study, design, engineer, procure, finance, construct, develop, operate and maintain and implement the Project on a design, construct, renovate, operate, manage and transfer basis, and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (the **Concession**).
- 2.1.2 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Agreement and the Agency Agreements.

2.2 CONCESSION PERIOD

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

2.3 EXTENSION OF CONCESSION PERIOD

- 2.3.1 The Concessionaire may request an extension of the Concession Period at any time at least one (1) year prior to the Final Expiry Date; provided, that at the time of the request the Concessionaire is materially in compliance with its obligations under this Agreement and is not otherwise facing a default therein. The Agency has the right to accept or reject this request for extension at its sole and absolute discretion and to the extent the Agency accepts the extension in the Concession Period, the Parties shall enter into such instruments, agreements and arrangements (including any amendments in the Agency 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.

3. CONDITIONS

3.1 CONDITIONS PRECEDENT

- 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, in accordance with the terms herein) in full of the Conditions Precedent on or prior to the Scheduled Commencement Date.
- 3.1.2 The Concessionaire shall satisfy the Concessionaire Conditions Precedent to the satisfaction of the Agency, the Independent Engineer and the Independent Auditor/Expert prior to the Scheduled Commencement Date.
- 3.1.3 The Agency shall satisfy the Agency Conditions Precedent to the satisfaction of the Concessionaire, the Independent Auditor/Expert and the Independent Engineer prior to the Scheduled Commencement Date.

3.2 CONDITIONS SUBSEQUENT

- 3.2.1 In relation to the Conditions Subsequent:
 - (i) the Concessionaire undertakes to fulfill the Concessionaire Conditions Subsequent to the entire satisfaction of the Agency; and
 - (ii) The Agency undertakes to fulfill the Agency Conditions Subsequent to the satisfaction of the Concessionaire.

3.3 WAIVER AND/OR DEFERRAL OF CONDITIONS AND EXTENSION OF SCHEDULED COMMENCEMENT DATE

- 3.3.1 The:
 - (a) Agency may (at its discretion) waive and/or defer any of the Concessionaire Conditions Precedent and/or the Concessionaire Conditions Subsequent. For the avoidance of doubt, the Agency 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 Agency Conditions Precedent, and/or the Agency Conditions Subsequent. 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 Without prejudice to the terms of Section 3.3.1 above, failure by the Concessionaire or the Agency to satisfy the Conditions Subsequent in terms of this Agreement shall constitute a Material Breach.
- 3.3.3 Notwithstanding anything contained herein, the Scheduled Commencement Date may be extended from time to time with the mutual consent of the Parties.

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

3.4 COMMENCEMENT CERTIFICATE & COMMENCEMENT DATE

- 3.4.1 The Parties mutually agree that each Party shall promptly inform the other Party in writing (together with copies delivered to the Independent Engineer and the Independent Auditor/Expert) 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 Agency's receipt from the Concessionaire, through the Independent Engineer and the Independent Auditor/Expert, evidence of satisfaction of a Concessionaire Condition Precedent, the Agency shall notify the Independent Engineer and the Independent Auditor/Expert in writing (with a copy to the Concessionaire) whether it has any objections on the satisfaction of such Concessionaire Condition Precedent. In the event the Agency does not raise any objection in writing on the satisfaction of a Concessionaire Condition Precedent within the thirty (30) day period set out herein, such Concessionaire Condition Precedent shall be deemed to be not objected to by the Agency. In the event, the Agency raises any objections on the satisfaction of a Concessionaire Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Concessionaire) within the thirty (30) day period set out herein, the Concessionaire shall address such objections and re-submit to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency) evidence of satisfaction of such Concessionaire Condition Precedent and the process in this Section 3.4.2(a) shall be repeated until such time that the Agency has not objected to or is deemed to have not objected to the satisfaction of such Concessionaire Condition Precedent. The provisions of this Section 3.4.2(a) shall apply to each Concessionaire Condition Precedent for which evidence of satisfaction is submitted by the Concessionaire to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency) from time to time; and
- (b) within thirty (30) days of the Concessionaire's receipt from the Agency, through the Independent Engineer and the Independent Auditor/Expert, evidence of satisfaction of the Agency Condition Precedent, the Concessionaire shall notify the Independent Engineer and the Independent Auditor/Expert in writing (with a copy to the Agency) whether it has any objections on the satisfaction of such Agency Condition Precedent. In the event the Concessionaire does not raise any objection in writing on the satisfaction of the Agency Condition Precedent within the thirty (30) day period set out herein, such Agency 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 the Agency Condition Precedent and notifies

the same to the Independent Engineer and the Independent Auditor/Expert (with a copy to Agency) within the thirty (30) day period set out herein, the Agency shall address such objections and re-submit to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Concessionaire) evidence of satisfaction of such Agency 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 Agency Condition Precedent. The provisions of this Section 3.4.2(b) shall apply to each Agency Condition Precedent for which evidence of satisfaction is submitted by the Agency to the Independent Engineer and the Independent Auditor/Expert (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/Expert shall jointly issue the Commencement Certificate within three (3) days of the date on which the Independent Engineer and the Independent Auditor/Expert are satisfied that each of the:

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

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

3.5 TERMINATION PRIOR TO COMMENCEMENT DATE

3.5.1 In the event:

- (a) the Concessionaire Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling ninety (90) days following the Scheduled

Commencement Date (including the extended time, if any) due to reasons attributable to the Concessionaire; and/or

- (b) of occurrence of a Concessionaire Event of Default prior to the Commencement Date;

then the Agency shall have the right (to be exercised in its sole and absolute discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Concessionaire. In such case, the Agency 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 3.5.1, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement. It is clarified that the provisions of this Section 3.5 (*Termination Prior to Commencement Date*) shall only apply to any Termination of this Agreement occurring prior to the Scheduled Commencement Date.

3.5.2 In the event:

- (a) The Agency Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling ninety (90) days following the Scheduled Commencement Date (including the extended time, if any) due to reasons attributable to the Agency and/or a Force Majeure Event; and/or

- (b) of occurrence of the Agency Event of Default prior to the Commencement Date,

the Concessionaire shall have the right (to be exercised in its sole discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Agency. In such case, the Agency shall (within fifteen (15) days of its receipt of the Termination Notice) return the Construction Performance Security. Except as may be contemplated in this Agreement each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement.

3.5.3 It is clarified that the provisions of this Section 3.5 (*Termination Prior To Commencement Date*) shall only apply to any Termination of this Agreement occurring prior to the Commencement Date.

4. PROJECT SITE

4.1 LICENCE

- 4.1.1 The Agency shall, as a Condition Precedent to achievement of the Commencement Date, licence the Concessionaire, pursuant to the Project Site Licence Agreement, the Vacant Possession of all the land and rights comprising the Project Site (the **Licence**). The Project Site Licence Agreement shall be duly executed by the Parties and, to the extent required by the Applicable Laws, registered by the Concessionaire with the relevant Government Authority and all costs, fees, expenses, duties, charges and taxes (including charges relating to the registration of the Project Site Licence Agreement) relating to the same shall be borne by the Concessionaire.
- 4.1.2 The Concessionaire shall be responsible for payment of all charges in accordance with the Project Site Licence Agreement that relate to the Licence of the Project Site to the Concessionaire by the Agency.
- 4.1.3 The Licence shall commence on the physical handing over of the Vacant Possession of the Project Site to the Concessionaire by the Agency and upon commencement shall be co-terminus on the Transfer Date without the need for any action to be taken by the Parties to terminate the Licence. Any extension of the Concession Period shall also extend the Licence and the Concessionaire, and the Agency shall enter into such addendums, extensions or modifications of the Project Site Licence Agreement as are necessary to give effect to such extension.
- 4.1.4 The Agency shall grant such permission or exemptions as may be required under the Applicable Laws relating to and regulating land, as applicable in the province of Balochistan, Pakistan, so as to ensure that the Concessionaire can enjoy Vacant Possession and hold the area of land comprising the Project Site, except where failure to enjoy Vacant Possession has resulted from a breach by the Concessionaire of the Applicable Standards.

4.2 TITLE OF PROJECT SITE & DELIVERY OF VACANT POSSESSION

- 4.2.1 The Agency represents and warrants that it has the power and authority to grant the Licence in respect of the Project Site to the Concessionaire.
- 4.2.2 Subject to Section 15.2 (*Relief Events*), the Agency shall at its own cost and expense, deliver to the Concessionaire, the Vacant Possession of the Project Site (including all Easementary Rights) in accordance with the Project Site Licence Agreement.
- 4.2.3 The Parties agree and acknowledge that this Section 4.2.3 shall come into effect as of the Effective Date. In the event the Concessionaire is adversely affected and/or delayed in the performance of its obligations and/or there is any adverse financial impact on the Concessionaire, in each case, resulting from any delay and/or failure of the Agency to deliver Vacant Possession of the Project Site to the Concessionaire in accordance with the Project Site Licence Agreement, such delay and/or failure of the Agency shall entitle

the Concessionaire to issuance of a Relief Order Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

4.3 USE OF PROJECT SITE

- 4.3.1 The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the Agency shall enter into the Project Site Licence Agreement with the Concessionaire that shall grant the Licence of the Project Site to the Concessionaire for the sole purpose of implementation of the Project and for enjoying the rights and benefits of the Concession granted hereunder and that the Concessionaire shall use the Project Site only for the purposes of implementing the Project thereupon and for purposes incidental or necessary thereto subject to the terms and conditions of the Applicable Standards.
- 4.3.2 The Concessionaire hereby undertakes that it shall not without prior written consent of the Agency use the Project Site for any purpose other than:
- (a) for the purposes of the Project and purposes incidental thereto;
 - (b) as permitted under this Agreement (including for the purposes set out in Article 29 (*Additional Matters*)); or
 - (c) as may otherwise be approved by the Agency in writing.

4.4 CONCESSIONAIRE'S RESPONSIBILITY

- 4.4.1 Subject to Section 4.14 (*Removal of Material Adverse Impediment*), the physical and the ambient conditions (including climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions) of the Project Site (the **Project Site Conditions**) shall be the sole responsibility of the Concessionaire. Accordingly, without limiting any other obligations of the Concessionaire that are included in this Agreement, the Concessionaire shall be deemed as at the Effective Date to have:
- (a) carried out an investigation of all Project Site Conditions and of any extraneous material in or under the Project Site including its surface, sub-soil and ground water to enable the Concession Assets to be designed and constructed and for its obligations to be performed with due regard for the Project Site Conditions and the seismic activity (if any) in the region of the Project Site;
 - (b) for the purpose of such investigation in section (a), inspected and examined the Project Site and surroundings;
 - (c) satisfied itself as to the nature of the Project Site Conditions, the surface, sub-soil and ground water of the Project Site, the form and nature of the Project Site, the load-bearing and other relevant properties of the Project Site, the risk of damage to property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, its obligations and material necessary for the implementation of the Project;

- (d) satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and any accommodation it may require for the purposes of fulfilling any of its obligations included in this Agreement, such as any additional land or buildings located outside the Project Site;
 - (e) satisfied itself as to the possibility of interference by Persons with rights-of-way across, access to or use of the Project Site; and
 - (f) satisfied itself as to the precautions, times and methods of working necessary to prevent or minimize nuisance or interference being caused to any third parties.
- 4.4.2 For the avoidance of doubt, the Concessionaire accepts full responsibility for all matters in Section 4.4.1 and the Concessionaire shall, subject to Section 4.14 (*Removal of Material Adverse Impediment*):
- (a) not be entitled to make any claim against the Agency whether in contract, tort or otherwise on any ground relating to the matters in Section 4.4.1; and
 - (b) indemnify the Agency against all direct Losses sustained by the Agency 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 Project Site.

4.5 NO SALE OR CREATION OF ENCUMBRANCE

- 4.5.1 The Concessionaire shall not part with, dispose of, sell, sub-lease or create any Encumbrance of any nature whatsoever on the whole or any part of the Project Site and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance over all or any part of the Project Site or the Concession Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

4.6 PROTECTION OF SITE FROM ENCROACHMENTS

- 4.6.1 Following the delivery and handing over to the Concessionaire of the Vacant Possession of the Project Site by the Agency and until the Transfer Date, the Concessionaire shall be fully responsible for and shall protect the Project Site from, in each case, any and all occupations, thefts, encroachments and Encumbrances. The Concessionaire further undertakes, covenants and confirms to indemnify the Agency, any Government Authority

and the Agency from any costs, claims expenses or charges incurred resulting from any breach of its obligations under this Section 4.6 (*Protection of Site from Encroachments*).

4.7 SPECIAL/TEMPORARY RIGHT OF WAY

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

4.8 PROJECT SITE ACCESS

- 4.8.1 Following Licence of the Project Site and delivery of the Vacant Possession of the Project Site to the Concessionaire by the Agency, the Licence granted to the Concessionaire shall always be subject to the right of access of the Agency, any relevant Government Authority, the Independent Auditor/Expert and the Independent Engineer and their representatives, officers, employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement; provided, that the exercise of such right of access shall not interfere with the Concessionaire's performance of its rights and obligations under this Agreement. Further, the Licence granted to the Concessionaire shall always be subject to the right of access of the Users.

4.9 GEOLOGICAL AND ARCHAEOLOGICAL FINDS

- 4.9.1 It is expressly agreed between the Parties that mining, geological or archaeological rights do not form part of the Licence to be granted to the Concessionaire in terms of the Project Site Licence Agreement and the Concessionaire hereby acknowledges and agrees that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that all such rights, interest and property on or under the Project Site shall vest in and belong to the Agency or the relevant concerned Government Authority.
- 4.9.2 The Concessionaire shall procure all no-objection certificates and consents from the Government of Balochistan that may be required by the Concessionaire under the Applicable Laws, in respect of any potential geological and archeological finds on the Project Site, prior to commencement of the Project Works. Furthermore, the Concessionaire shall take all reasonable precautions to prevent its employees, workmen, agents, representatives and/ or any other persons appointed by the Concessionaire from having access to the Project Site, including the Contractors, from removing or damaging such interest or property (as set out in Section 4.9.1) and shall inform the Agency forthwith of the discovery thereof and comply with such instructions as the Agency and/or the concerned Government Authority may issue in relation to the protection and/or removal of such property. In the event any expenses are incurred by the Concessionaire in fulfilling its obligations as set out in this Section 4.9.2 and/or as a result of the geological and/or

archaeological finds being on the Project Site, then the same shall be reimbursed by the Agency (provided the same are duly certified by the Independent Engineer and the Independent Auditor/Expert) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Further, in the event the Concessionaire is delayed in performance of its obligations under this Agreement due to the occurrence of the circumstances set out in this Section 4.9 (*Geological and Archeological Finds*), the Concessionaire shall be granted extensions in the timeline in which it has to perform its obligations under this Agreement (provided that such extensions are duly certified by the Independent Engineer) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Notwithstanding anything contained herein, the Agency shall procure the issuance of the instructions required from the concerned Government Authority and referred to in this Section 4.9.2.

4.10 NOT USED

4.11 NOT USED

4.12 NOT USED

4.13 AGENCY INDEMNITIES IN RESPECT OF PROJECT SITE

4.13.1 The Agency shall indemnify and shall hold the Concessionaire harmless from any costs, claims expenses or charges incurred (in respect of the time period falling prior to delivery of Vacant Possession of Project Site to the Concessionaire) in relocating, rehabilitating or resettling persons in connection with making available the Project Site to the Concessionaire for implementation of the Project and for delivery of Vacant Possession of the Project Site to the Concessionaire.

4.13.2 The Agency hereby indemnifies and holds harmless the Concessionaire against all Losses arising in connection with or relating to any defect in title in the Concessionaire's Licenced interest in the Project Site, which prevents, impedes or delays the Concessionaire from constructing or, Operating and Maintaining the Concession Assets in accordance with this Agreement; provided, that such Losses are not the consequence of any breach or non-compliance by the Concessionaire of this Agreement, the Project Site Licence Agreement and the Applicable Standards; provided, further that such action is not a consequence of the Concessionaire's failure to maintain the Project Site in its possession free from encroachments and encumbrances by third parties and/or is not as a consequence or failure by the Concessionaire to meet its obligations under this Agreement.

4.14 REMOVAL OF MATERIAL ADVERSE IMPEDIMENT

4.14.1 Following delivery of the Vacant Possession of the Project Site to the Concessionaire by Agency, the Concessionaire shall be responsible for removal of all impediments, debris

(including any structures not in anyone's possession) on the Project Site, whether physical or legal, to the construction and, Operation and Maintenance of the Concession Assets; provided, however, that the Concessionaire shall Notify the Agency, within ten (10) days of any impediment (the **Material Adverse Impediment**) on the Project Site, whether physical or legal, to the construction and/or, Operation and Maintenance of the Concession Assets which:

- (a) causes a Material Adverse Effect;
- (b) is not attributable to the Concessionaire;
- (c) in the opinion of the Independent Engineer, could not have been identified or foreseen through any investigations of the Project Site Conditions carried out, or deemed to be carried out, by the Concessionaire, in terms of Section 4.4; and
- (d) does not result from any non-compliance by the Sponsor and/or the Concessionaire under any Agency Agreements.

provided, that the Concessionaire has taken all reasonable measures and steps to mitigate and minimize the Material Adverse Impediment.

4.14.2 Any Notice issued by the Concessionaire pursuant to Section 4.14.1 shall be duly verified and certified by the Independent Engineer prior to submission to the Agency and the Independent Engineer shall, prior to delivery of such Notice to the Agency, duly certify in the Notice, *inter alia*, the occurrence and subsistence of the Material Adverse Impediment and the time period required for removal of the same (the **Material Impediment Removal Period**). Upon receipt by the Agency of the Notice duly verified and certified by the Independent Engineer, the Agency shall act so as to remove such Material Adverse Impediment within the Material Impediment Removal Period. In the event the Concessionaire suffers delays in the performance of its obligations and/or incurs costs, in each case, as a direct result of the Material Adverse Impediment, the same shall entitle the Concessionaire to issuance of a Relief Order Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

5. INDEPENDENT ENGINEER

5.1 SELECTION

- 5.1.1 Within five (5) days from the Notification of the PSC, the Concessionaire shall initiate hiring of the IE with approval of the PSC. The PSC will consider and approve the entire procurement process including the RFP, procurement committee, grievance redressal committee and other areas, as applicable. After due procurement process, the concessionaire shall present the results to the PSC for final approval and appointment of the Independent Engineer.
- 5.1.2 The hiring process shall be completed within one (1) month of the PSC approval date (the **Independent Engineer Appointment Date**).
- 5.1.3 The Independent Engineer shall provide the services set out in the Independent Engineer Contract and as requested by the Parties with mutual consent from time to time. Unless mutually agreed otherwise between the Parties, the Independent Engineer Contract shall be in accordance with the Indicative Independent Engineer Terms of Reference.

5.2 TERM OF APPOINTMENT OF THE INDEPENDENT ENGINEER

- 5.2.1 The appointment of the Independent Engineer shall be for an initial term of three (3) years from the date of the effectiveness of the Independent Engineer Contract (the **Independent Engineer Appointment Term**); provided, however, that:
 - (a) the Independent Engineer Appointment Term shall be extended prior to expiry of the same with the mutual written consent of the Parties so as to ensure that at all times during the Concession Period an Independent Engineer is retained/appointed, for the purposes set out in this Agreement; or
 - (b) the Parties shall be entitled to appoint a new Independent Engineer prior to the expiry of the Independent Engineer Appointment Term (such appointment to be effective upon expiry of the Independent Engineer Appointment Term) so as to ensure that at all times during the Concession Period an Independent Engineer is retained/appointed for the purposes set out in this Agreement. In the event of the appointment of a new Independent Engineer upon expiry of the Independent Engineer Appointment Term, the provisions of Section 5.2.3 shall apply.
- 5.2.2 The appointment of the Independent Engineer may be terminated:
 - (a) by either Party if, the Independent Engineer is adjudged insolvent and/or bankrupt and/or the winding up proceedings are filed against the Independent Engineer and/or the Independent Engineer files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Engineer in a court of law;
 - (b) by the Parties with the mutual consent of the Parties.

5.2.3 Upon the occurrence of any of the events listed in Section 5.2.2, the Parties shall have the right to terminate the Independent Engineer Contract in accordance with the terms of the same and/or in the event of expiry of the Independent Engineer Appointment Term, the Parties shall appoint a new Independent Engineer in accordance with this Section 5.2.3. In the afore-stated circumstances, the Parties shall replace the appointed Independent Engineer with another consulting engineering firm or body corporate selected by the Agency from the First IE List provided by the Concessionaire pursuant to Section 5.1.1 above; provided, however, that the termination and/or replacement of the Independent Engineer shall not have effect till such time as the replacement Independent Engineer has been appointed. In the event the Agency objects to the appointment of any firm of engineers named in the First IE List, then the Concessionaire shall provide the Agency with a new list of three (3) reputable firms of engineers for appointment of the replacement Independent Engineer (the **New IE List**). Within ten (10) days of receipt by the Agency of the New IE List, the Agency shall either:

- (a) select a reputable firm of engineers from the New IE List and shall cause the Concessionaire to appoint such firm as the Independent Engineer; or
- (b) reject the appointment of any of the firms provided in the New IE List, in which case, the Parties shall appoint such firm of engineers as the new Independent Engineer as is mutually agreed by the Parties.

The provisions of this Article 5 (*Independent Engineer*) shall apply to any new Independent Engineer (including appointment and replacement of the same) appointed in accordance with the terms herein.

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

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

5.3 INDEPENDENT ENGINEER AUTHORIZED SIGNATORIES

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

5.4 DECISION OF INDEPENDENT ENGINEER & DISPUTE RESOLUTION

- 5.4.1 Subject to Section 5.4.2, any advice, verification, determination, certification, instruction, decision, direction and/or award of the Independent Engineer shall be binding on the Parties unless mutually agreed otherwise by the Parties.
- 5.4.2 In the event any Dispute arises between the Agency and the Concessionaire with regard to any advice, verification, determination, certification, instruction, decision, direction and/or award of the Independent Engineer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.5 INDEPENDENT ENGINEER REMUNERATION

- 5.5.1 The Concessionaire shall (in consultation with the Agency) be solely responsible for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract (the **Independent Engineer Payments**), notwithstanding that the Independent Engineer shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Engineer Contract.
- 5.5.2 The Concessionaire undertakes to affect the Independent Engineer Payments in a diligent and timely manner and in accordance with the Independent Engineer Contract.

5.6 CONCESSIONAIRE INDEPENDENT ENGINEER PAYMENT ACCOUNT

- 5.6.1 The Concessionaire shall establish and maintain the Concessionaire Independent Engineer Payment Account from the Commencement Date and until the Trigger Date.
- 5.6.2 The Concessionaire shall issue irrevocable standing instructions to the Concessionaire Independent Engineer Payment Account Bank (in form and substance agreed between the Parties) (the **Concessionaire Independent Engineer Payment Account Standing Instructions**) in accordance with the Independent Engineer Contract.
- 5.6.3 The Concessionaire Independent Engineer Payment Account Standing Instructions issued by the Concessionaire shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until the Trigger Date (or such other date as is mutually agreed between the Parties), and no withdrawal from the Concessionaire Independent Engineer Payment Account may be made by the Concessionaire, except as provided in this Agreement and the Concessionaire Independent Engineer Payment Account Standing Instructions. The Concessionaire Independent Engineer Payment Account Standing Instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.

6. INDEPENDENT AUDITOR/EXPERT

6.1 SELECTION

- 6.1.1 After notification of the PSC, the Concessionaire shall initiate hiring of the Independent Auditor after approval of the PSC. The Independent Auditor shall be reputable firm of chartered accountants placed in category 'A' in the SBP Panel of Auditors. The PSC will consider and approve the entire procurement process including the procurement RFP, procurement committee, grievance redressal committee and other areas, as applicable. After due procurement process, the concessionaire shall present the results to the PSC for final approval and appointment of the Independent Auditor.
- 6.1.2 The hiring process shall be completed within one (1) month of the PSC approval date (the **Independent Auditor/Expert Appointment Date**).
- 6.1.3 The Independent Auditor/Expert shall provide the services set out in the Independent Auditor/Expert Contract and as requested by the Parties with mutual consent from time to time. Unless mutually agreed otherwise between the Parties, the Independent Auditor/Expert Contract shall be in accordance with the Indicative Independent Auditor/Expert Terms of Reference.

6.2 TERM OF APPOINTMENT OF THE INDEPENDENT AUDITOR/EXPERT

- 6.2.1 The appointment of the Independent Auditor/Expert shall be for an initial term of two (2) years from the date of the effectiveness of the Independent Auditor/Expert Contract (the **Independent Auditor/Expert Appointment Term**); provided, however, that:
- (a) the Independent Auditor/Expert Appointment Term shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the Concession Period an Independent Auditor/Expert is retained/appointed for the purposes set out in this Agreement; or
 - (b) the Parties shall be entitled to appoint a new Independent Auditor/Expert prior to the expiry of the Independent Auditor/Expert Appointment Term (such appointment to be effective upon expiry of the Independent Auditor/Expert Appointment Term) so as to ensure that at all times during the Concession Period an Independent Auditor/Expert is retained/appointed for the purposes set out in this Agreement. In the event of the appointment of a new Independent Auditor/Expert upon expiry of the Independent Auditor/Expert Appointment Term, the provisions of Section 6.2.3 shall apply.
- 6.2.2 The appointment of the Independent Auditor/Expert may be terminated:
- (a) by either Party if the Independent Auditor/Expert is adjudged insolvent and/or bankrupt and/or winding up proceedings are filed against the Independent Auditor/Expert and/or the Independent Auditor/Expert files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Auditor/Expert in a court of law;

(b) by the Parties with the mutual consent of the Parties.

6.2.3 Upon the occurrence of any of the events listed in Section 6.2.2, the Parties shall have the right to terminate the Independent Auditor/Expert Contract in accordance with the terms of the same or and/or in the event of expiry of the Independent Auditor/Expert Appointment Term, the Parties shall appoint a new Independent Auditor/Expert in accordance with this Section 6.2.3. In the afore-stated circumstances, the Parties shall replace the appointed Independent Auditor/Expert with another firm of chartered accountants selected by the Agency from the First IA List provided by the Concessionaire pursuant to Section 6.1.1 above; provided, however, that the termination and/or replacement of the Independent Auditor/Expert shall not have effect till such time as the replacement Independent Auditor/Expert has been appointed. In the event the Agency objects to the appointment of any firm of chartered accountants named in the First IA List, then the Concessionaire shall provide the Agency with a new list of three (3) reputable firms of chartered accountants for appointment of the replacement Independent Auditor/Expert (the **New IA List**). Within ten (10) days of receipt by the Agency of the New IA List, the Agency shall either:

- (a) select a reputable firm of chartered accountants from the New IA List and shall cause the Concessionaire to appoint such firm as the Independent Auditor/Expert; or
- (b) reject the appointment of any of the firms provided in the New IA List, in which case, the Parties shall appoint one of the Big Four Accounting Firms with mutual consent of the Parties as the new Independent Auditor/Expert.

The provisions of this Article 6 (*Independent Auditor/Expert*) shall apply to any new Independent Auditor/Expert (including appointment and replacement of the same) appointed in accordance with the terms herein.

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

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

6.3 INDEPENDENT AUDITOR/EXPERT AUTHORIZED SIGNATORIES

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

6.4 DECISION OF INDEPENDENT AUDITOR/EXPERT & DISPUTE RESOLUTION

- 6.4.1 Subject to Section 6.4.2, any advice, instruction, decision, direction and/or award of the Independent Auditor/Expert shall be binding on the Parties unless mutually agreed otherwise by the Parties.
- 6.4.2 In the event any Dispute arises between the Agency and the Concessionaire with regard to any advice, instruction, decision, direction and/or award of the Independent Auditor/Expert, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.5 INDEPENDENT AUDITOR/EXPERT REMUNERATION

- 6.5.1 The Concessionaire shall (in consultation with the Agency) be solely responsible for the payment of the fees and expenses payable to the Independent Auditor/Expert pursuant to the Independent Auditor/Expert Contract (the **Independent Auditor/Expert Payments**), notwithstanding that the Independent Auditor/Expert shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Auditor/Expert Contract.
- 6.5.2 The Concessionaire undertakes to affect the Independent Auditor/Expert Payments in a diligent and timely manner and in accordance with the Independent Auditor/Expert Contract.

6.6 CONCESSIONAIRE INDEPENDENT AUDITOR/EXPERT PAYMENT ACCOUNT

- 6.6.1 The Concessionaire shall establish and maintain the Concessionaire Independent Auditor/Expert Payment Account from the Commencement Date and until the Trigger Date.
- 6.6.2 The Concessionaire shall issue irrevocable standing instructions to the Concessionaire Independent Auditor/Expert Payment Account Bank (in form and substance agreed between the Parties) (the **Concessionaire Independent Auditor/Expert Payment Account Standing Instructions**) in accordance with the Independent Auditor/Expert Contract.
- 6.6.3 The Concessionaire Independent Auditor/Expert Payment Account Standing Instructions issued by the Concessionaire shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until the Trigger Date (or such other date as is mutually agreed between the Parties), and no withdrawal from the Concessionaire Independent Auditor/Expert Payment Account may be made by the Concessionaire, except as provided in this Agreement and the Concessionaire Independent Auditor/Expert Payment Account Standing Instructions. The Concessionaire Independent Auditor/Expert Payment Account Standing Instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.

7. CONCESSIONAIRE'S REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS

7.1 CONCESSIONAIRE REPRESENTATIONS & WARRANTIES

7.1.1 The Concessionaire hereby represents and warrants to the Agency that:

- (a) it is duly organized and validly existing under the Applicable Laws, and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under the Applicable Laws to:
 - (i) authorize the execution, delivery and performance of this Agreement; and
 - (ii) validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (d) it has the financial standing and capability to undertake and implement the Project in accordance with the Applicable Standards and neither the Concessionaire nor the Sponsor have committed a breach in respect of their payment obligations in relation to a financial indebtedness;
- (e) it is subject to the Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) the execution, delivery and performance of this Agreement does not and shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any of its constitutive and corporate charters, filings with Government Authorities, documents, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform

its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect on the performance of its obligations under this Agreement;

- (i) 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 Agreement;
- (j) the Sponsor owns one hundred percent (100%) of the Class A Shares as of the Effective Date and no Encumbrances exist on such Class A Shares;
- (k) no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the Agency or to any Government Authority in relation to the Concessionaire Permits contains any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty misleading;
- (l) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Agency in connection therewith and neither the Concessionaire nor the Sponsor (together with their Affiliates) have engaged in any Corrupt Act in respect of the foregoing;
- (m) the Concessionaire and each of the Sponsor have complied with requirements of the Applicable Laws and the RFP (to the extent the same are applicable to the Concessionaire and the bidders) in the preparation, finalization, delivery and submission of its Bid for the award of the Project and the Concession to the Concessionaire and have undertaken all acts and deeds (to the extent the same are applicable to the Concessionaire and the bidders) necessary for award of the Concession and the Project to the Concessionaire in terms of the RFP and the Applicable Laws;
- (n) all representations, breach of which may cause a Material Adverse Effect, provided by the Concessionaire and/or Sponsor in the Bid submitted in response to the RFP, are true and accurate in all respects;
- (o) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity (if any) in any jurisdiction;
- (p) the Concessionaire has furnished a valid and effective Construction Performance Security to the Agency prior to the Effective Date and the Construction Performance Security is valid and subsisting;

7.1.2 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately Notify the other Party of the same. Such Notification shall not have

the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement or any Agency Agreement.

- 7.1.3 The Concessionaire shall repeat the representations and warranties under Section 7.1.1 at the Commencement Date.

7.2 CONCESSIONAIRE'S GENERAL UNDERTAKINGS

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

- (a) comply with and perform all duties, obligations, acts, deeds and obligations set out in, in each case, the Applicable Standards;
- (b) continuously and diligently undertake, perform and complete all Project Works and Concession Assets in accordance with the Applicable Standards and within the Time for Completion;
- (c) ensure that all Project Works and Concession Assets comply with the Applicable Standards;
- (d) investigate, study, finance, design, construct, Operate and Maintain the Concession Assets in accordance with the Applicable Standards;
- (e) ensure and achieve each Project Milestone on or prior to its Project Milestone Date in accordance with the Applicable Standards including:
 - (i) achieve Substantial Completion on or prior to the Scheduled Substantial Completion Date; and/or
 - (ii) achieve Construction Completion on or prior to the Scheduled Construction Completion Date;
- (f) remedy any Defects & Deficiencies in the Project Works (including in the performance of the same) and/or the Concession Assets at its own cost and risk;
- (g) obtain and maintain all Concessionaire Permits (including any renewals of the same) in conformity with the Applicable Laws and be in compliance thereof, and deliver copies of the same to the Agency, the Independent Engineer and the Independent Auditor/Expert from time to time;
- (h) be in compliance with and perform all its obligations in accordance with, in each case, the Applicable Laws and fulfill the requirements (including the environmental requirements) under the Applicable Laws,
- (i) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (j) appoint, supervise, monitor and control as necessary, the activities of the Concessionaire Engaged Persons (including those of the Contractors under their respective and relevant Project Agreements), provided that, at all times, the Concessionaire shall be fully responsible for all acts or omissions of the Concessionaire Engaged Persons, as further contemplated in Section 7.3;

- (k) make its own arrangements for materials (including construction materials), parts, components, supplies, tools, machinery etc. for performance of the Project Works;
- (l) be responsible for strict compliance with the relevant Applicable Standards notwithstanding the appointment and/or engagement by it of the Concessionaire Engaged Persons to implement the Project (or any part thereof) and performance of Project Works (or any part thereof);
- (m) keep and maintain the Project Site free from all encroachments and take all steps necessary to remove encroachments, if any;
- (n) except as provided in this Agreement, make payments to the relevant Government Authority, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (o) afford access of the Project Site to the authorized representatives of the Agency, the Independent Engineer, Independent Auditor/Expert and any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Works and the Concession Assets and, upon reasonable notice, to investigate any matter within their authority, and provide to such Persons assistance reasonably required to carry out their respective duties and functions;
- (p) not engage in any business or activity other than the business or related to, and conducted for, the purpose of the Project and/or other than as provided in this Agreement;
- (q) maintain its corporate existence and its rights to carry on operations of its business;
- (r) provide all necessary assistance to the Project Manager, as the Project Manager may reasonably require for the performance of its duties and services;
- (s) make all payments to the Agency of the amounts due and payable by the Concessionaire in accordance with the terms of this Agreement and the Agency Agreements;
- (t) ensure that no damage is caused to any property belonging to Agency and/or other third parties in the execution of the Project Works;
- (u) coordinate and manage all the Project Works and be responsible for the coordination and general management of the Project Works;
- (v) provide to the Agency, the Independent Auditor/Expert and the Independent Engineer all such information relating to the Project Works and the execution and completion of the same as is reasonably requested by the Agency, the Independent Auditor/Expert and the Independent Engineer from time to time;
- (w) notify the Agency, the Independent Engineer and/or the Independent Auditor/Expert (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;

- (x) provide all necessary assistance to the Independent Engineer and the Independent Auditor/Expert as the same may reasonably require for the performance of their duties and services in accordance with the Independent Engineer Contract and the Independent Auditor/Expert Contract, respectively, and for the performance of its roles and obligations contemplated under this Agreement and the Agency Agreements;
- (y) ensure that the Project Agreements entered into by the Concessionaire shall not be inconsistent with the terms and conditions of the Agency Agreements;
- (z) submit from time to time to the Agency and the Independent Engineer its detailed design, construction methodology and quality assurance procedures for implementation and completion of the Project in accordance with the Applicable Standards and the same shall be subject to the review and approval of the Independent Engineer;
- (aa) undertake, do and perform from time to time, all such acts, deeds and things as may be necessary or required before commencement of Project Works (or any part thereof) for the performance of the the Project Works under and in accordance with the Applicable Standards;
- (bb) construct, provide and maintain a reasonably furnished site office and accommodation for the Independent Engineer at the Project Site commencing from the Commencement Date and until the Transfer Date;
- (cc) ensure the safety of the Concession Assets and the Users in accordance with the Safety Requirements;
- (dd) maintain the Project Site and the Concession Assets in good condition;
- (ee) comply with the Design Requirements;
- (ff) the Concessionaire shall comply with all the conditions set-out in the EIA Approval obtained by the Concessionaire in accordance with the Applicable Laws and the same shall stand approved by the Balochistan Environmental Protection Agency and shall submit a copy of each of the same (i.e. the report and its approval) to the Agency (with a copy delivered to the Independent Engineer and the Independent Auditor/Expert);

7.3 CONCESSIONAIRE ENGAGED PERSONS

- 7.3.1 The Concessionaire shall, commencing from the Effective Date, have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to implement and supervise the Project, to deal with the Independent

Engineer/Independent Auditor/Expert/the Agency and to be responsible for all necessary exchange of information required pursuant to the Applicable Standards.

- 7.3.2 The Concessionaire shall ensure that the Concessionaire Engaged Persons are experienced and qualified for the purposes of Project implementation and performance of the Project Works and are at all times properly trained for their respective functions. The Concessionaire shall be responsible for maintaining harmony and good industrial relations among the Concessionaire Engaged Persons.
- 7.3.3 The Concessionaire shall be fully and solely responsible for:
- (a) observance by all the Concessionaire Engaged Persons of all the provisions and requirements of the Applicable Standards;
 - (b) the acts, omissions, failure to perform, breaches or defaults of the Concessionaire Engaged Persons 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 Agreement and the Agency Agreements.
- 7.3.4 The Concessionaire shall be responsible for strict compliance with the Applicable Standards notwithstanding the appointment and/or engagement by it of the Concessionaire Engaged Persons to implement the Project (or any part thereof) and performance of Project Works (or any part thereof) and any engagement by the Concessionaire of any of the Concessionaire Engaged Persons shall not release or discharge the Concessionaire of any of its liabilities, responsibilities or obligations under the Applicable Standards and the Concessionaire shall not be entitled to any relief or compensation (including any extension of Time For Completion and/or monetary compensations) under this Agreement or otherwise for any acts, omissions, failures, breaches or defaults of the Concessionaire Engaged Persons. Notwithstanding anything to the contrary, the Agency shall not be liable or responsible in any manner whatsoever under any Applicable Laws, in contract, tort or otherwise in respect of the Concessionaire Engaged Persons.
- 7.3.5 Employment of any foreign Concessionaire Engaged Persons shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall be the sole responsibility of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement or otherwise, refusal of or inability to obtain any such permits and approvals by the Concessionaire or the relevant Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under the Applicable Standards. The Concessionaire shall use reasonable efforts to promote local contractors and to employ and engage, to the extent practicable local employees and contractors.
- 7.3.6 The Concessionaire undertakes that it shall itself and/or any of its Concessionaire Engaged Persons shall be available to attend any meetings with the Agency, the Independent Engineer and/or the Independent Auditor/Expert at all reasonable times, as required and Notified by the Agency, the Independent Engineer and/or the Independent Auditor/Expert (as applicable) to the Concessionaire. All costs for attending such meetings

(including those relating to preparation and attendance in such meetings by the Concessionaire Engaged Persons) shall be on the Concessionaire's account.

7.4 CONCESSIONAIRE AUTHORIZED REPRESENTATIVE & CONCESSIONAIRE PROJECT ENGINEER

7.4.1 Within forty (40) days following the Effective Date, the Concessionaire shall:

- (a) appoint, with the prior written consent of the Agency (which consent shall be deemed to be accorded in case no response from Agency is received within twenty (20) days of Agency receipt of the Concessionaire's written request for such consent), and prior Notification to the Independent Engineer and the Independent Auditor/Expert, in accordance with Section 5 (*Independent Engineer*) and Section 6 (*Independent Auditor/Expert*) and all Applicable Laws; its representative duly authorized to deal with the Agency in respect of all matters under or arising out of or relating to this Agreement (the **Concessionaire Authorized Representative**);
- (b) appoint, in accordance with the criteria set out in **SCHEDULE A** (*Scope of Work*) and Applicable Laws with prior written consent of the Agency (which consent shall be deemed to be accorded in case no response from Agency is received within twenty (20) days of Agency receipt of the Concessionaire's written request for such consent), and prior Notification to the Independent Engineer, at its sole cost and expense one or more established consulting engineering firm(s) to design the Construction Works;
- (c) appoint, in accordance with the criteria set out in **SCHEDULE A** (*Scope of Work*) Applicable Laws, with prior written consent of the Agency (which consent shall be deemed to be accorded in case no response from Agency is received within twenty (20) days of Agency receipt of the Concessionaire's written request for such consent), and prior Notification to the Independent Engineer, at its sole cost and expense one or more established consulting engineering firm and/or individual(s) to: (i) supervise the Construction Works; (ii) co-ordinate with the Independent Engineer and Agency with respect to technical matters relating to the Project; and (iii) ensure that the Construction Works are performed in accordance with the Applicable Standards (the **Concessionaire Project Engineer**). In the event the Concessionaire Project Engineer is a consulting engineering firm, any personnel assigned to this Project shall also be required to satisfy the criteria set out in **SCHEDULE A** (*Scope of Work*);

7.4.2 The Concessionaire shall:

- (a) ensure that the Concessionaire Authorized Representative or the Concessionaire Project Engineer perform their respective obligations in the same manner as the Concessionaire is required to perform its obligations under this Agreement; and
- (b) prior to any substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer, the Concessionaire shall submit the details of the same to the Agency in writing (with copies to the Independent Engineer and the Independent Auditor/Expert) and shall provide any other information reasonably requested by the Agency in respect of the same.

7.4.3 The Concessionaire shall substitute the Concessionaire Authorized Representative and the Concessionaire Project Engineer with the prior approval of the Agency. The approval by the Agency shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event the Agency fails to grant its approval or disapproval to the Concessionaire for the appointment and/or substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer within fifteen (15) days following the receipt of such request by the Agency from the Concessionaire, the approval of the Agency for the appointment and/or substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer shall be deemed accorded. The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the liability of the Concessionaire for the performance of its obligation pursuant to this Agreement shall neither be rescinded, waived, reduced, cancelled, terminated and/or in any manner adversely impacted as a direct and/or indirect consequence of the approval or otherwise of the Agency pursuant to this Section.

7.5 NOT USED

7.6 CONCESSIONAIRE PERMITS

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

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

7.7 NOT USED

7.8 NOT USED

7.9 TAXES AND SUBSIDIES

- 7.9.1 The Concessionaire shall be responsible to make all payments in respect of the rates, taxes (as applicable), charges, levies, assessments or equivalent taxes levied on it.
- 7.9.2 The Concessionaire may raise any objections in terms of any charges levied on it by any Government Authority; provided, that such objections shall be filed and pursued at the Concessionaire's cost and the Concessionaire shall be entitled to any benefit accruing as a result of the Concessionaire's successful objection.
- 7.9.3 The Concessionaire fully understands that the Agency or any other Government Authority shall not provide any guarantee, subsidy, grant or any financial support of any nature to the Concessionaire in respect of the Project other than as provided under the Agency Agreements.

7.10 PROTECTION OF THE ENVIRONMENT

- 7.10.1 The Concessionaire shall comply with all Applicable Standards (including any condition which may from time to time be imposed by any Government Authority, including the '*Balochistan Environmental Protection Agency*' as regards collection, treatment and disposal or discharge of effluents or waste) pertaining to protection of the environment in its arrangements, execution of Project Works, procurement, construction and operations on the Project Site. The Concessionaire shall take all necessary steps to protect the environment (both on and off the Project Site) and shall not cause damage and nuisance to people and property resulting from pollution, noise and other results of its operations. The Concessionaire shall ensure that air emissions, surface discharges and effluents from the Project Site during the Concession Period shall not exceed the values prescribed by the Applicable Standards.
- 7.10.2 The Concessionaire shall provide properly designed storage areas for its hazardous materials that are impermeable to leakage into the surrounding soil for storage of hazardous wastes. Such storage shall also be covered and protected from inundation and overflow by rainfall into the surrounding soil. Any hazardous materials generated during completion of the Project Works by the Concessionaire (including any of its Concessionaire Engaged Persons) shall be properly disposed off by the Concessionaire on completion of the Works. The Concessionaire shall be responsible for keeping safe and disposing any hazardous materials and any dangerous substances on the Project Site generated from time to time during performance and completion of the Project Works or brought on to the Project Site by the Concessionaire.
- 7.10.3 The Concessionaire undertakes to indemnify, defend and hold the Agency 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 Section 7.10 (*Protection of the Environment*).

7.11 INTERNAL INFRASTRUCTURE LINKAGES

- 7.11.1 The Concessionaire shall be responsible for internal infrastructure linkages required for the Project such as wastewater and storm water drainage at the Project Site. The Agency

shall use reasonable efforts to facilitate for the provision with respective Government Authorities 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 Government Authorities.

7.12 EMERGENCY DECOMMISSIONING

7.12.1 In the event, during the Operations Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that warrants de-commissioning and/or the Users of the whole or any part of the Concession Assets (the **Decommissioned Project Area**), the Concessionaire shall be entitled to de-commission and close the whole or any part of the Decommissioned Project Area, as the case may be, and/or the Users for so long as such Emergency and the consequences thereof warrant (the **Emergency Decommissioning**); provided, however, that such Emergency Decommissioning and the particulars thereof shall be notified by the Concessionaire to the Agency and the Independent Engineer without any delay, and the Concessionaire shall diligently abide by the Applicable Standards (including the Safety Requirements) in dealing with such Emergency Decommissioning and act in accordance with the directions that the Independent Engineer may issue for dealing with such Emergency Decommissioning; provided, however:

- (a) that the Independent Engineer shall, within seven (7) days from the date of the Emergency Decommissioning, certify whether such Emergency Decommissioning was warranted; and
- (b) that the Concessionaire shall re-commission the Decommissioned Project Area, without any delay, whenever the Independent Engineer either: (i) notifies the Concessionaire to re-commission the same; or (ii) certifies that such Emergency Decommissioning was not warranted.

7.12.2 Without prejudice to the provisions of Section 7.12.1(b), the Concessionaire hereby undertakes to re-commission the Decommissioned Project Area efficiently and in a time sensitive manner and as quickly as practicable after the circumstances leading to the Emergency Decommissioning have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Decommissioned Project Area and shall notify the Agency and the Independent Engineer of the same without any delay.

7.12.3 The Emergency Decommissioning of the Decommissioned Project Area and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected Persons/Users by means of public announcements/notice by the Agency. The Independent Engineer shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Project Area and made the same available for Users as soon as practicable upon the termination/ceasing of the circumstances that have resulted in the Emergency Decommissioning.

7.12.4 All expenses, charges, fees, overheads and costs of any nature and all delays, in each case, resulting from and relating to the Emergency Decommissioning shall be borne by and shall be on account of the Concessionaire; provided, however, in the event the Emergency Decommissioning results from the Agency Event of Default and/or a Force Majeure Event, the Concessionaire shall be entitled to issuance of a Relief Order Request

and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

7.13 RESTORATION OF LOSS OR DAMAGE TO PROJECT

- 7.13.1 Save and except as a result of a Permitted Events (excluding a Non Political Event), in the event that the Project Works and/or Concession Assets or any part thereof suffers any loss or damage during the Concession Period, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith in accordance with the Applicable Standards so that the Project Works and the Concession Assets conform to the Applicable Standards.

7.14 ACCOUNTS AND REPORTS

7.14.1 APPOINTMENT OF AUDITORS

The Concessionaire shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment, as statutory auditors, of a reputed firm of independent chartered accountants placed in category 'A' in the SBP Panel of Auditors, reasonably acceptable to the Agency and the Independent Auditor/Expert.

7.14.2 SPECIFIC RECORDS

The Concessionaire shall maintain complete and accurate records accounting for all transactions relating to any Relief Order, Relief Compensation, extensions of Time For Completion, Class B Dividends, Change of Scope, minutes of board meetings and shareholder meetings and other records, which records shall be subject to inspection and audit by the Agency, the Independent Engineer and the Independent Auditor/Expert.

7.14.3 PERIODIC REPORTS

The Concessionaire shall in accordance with this Agreement furnish to the Agency, the Independent Engineer and the Independent Auditor/Expert,

- (i) Construction Monthly Progress Report; and
- (ii) the O&M Monthly Status Report.

The Concessionaire shall, as soon as available but in any event within sixty (60) days of filing, furnish to the Agency, the Independent Engineer and the Independent Auditor/Expert two (2) copies of all documents (including (without limitation) all tax returns, statutory returns and audited financial statements) filed in compliance with the requirements of the Companies Act, 2017 as amended or superseded from time to time or any other Applicable Laws.

The Concessionaire shall, as soon as available, furnish to the Agency, the Independent Engineer and the Independent Auditor/Expert, a report on any factors materially and

adversely affecting, or that might materially and adversely affect, the Project or the Concessionaire's business and operations.

7.14.4 REPORTING OF CHANGES

The Concessionaire shall, at least fourteen (14) days prior to it becoming effective, report to the Agency, the Independent Engineer and the Independent Auditor/Expert any contemplated (i) material change in its memorandum and articles of association; (ii) change in its fiscal year; (iii) change in the constitution of its board of directors; (iv) change in its chief executive officer, and (v) without prejudice to the provisions of Section 10.3 (*Change in Control*), registration of a transfer of Class A Shares and/or Class B Shares to any Person who thereby becomes a registered holder of greater than five percent (5%) of the issued Class A Shares and/or Class B Shares, or of a transfer of Class A Shares and/or Class B Shares to or from a Person or entity who, immediately prior to such transfer, held greater than five percent (5%) of the issued Class A Shares and/or Class B Shares; provided, however, that, reporting as aforesaid shall not relieve the Concessionaire from its obligations or liabilities towards any other Government Authority having jurisdiction over any such matter.

7.14.5 LISTS OF CREDITORS

Together with the periodic reports required by Section 7.14.3, the Concessionaire shall also furnish to the Agency, the Independent Engineer and the Independent Auditor/Expert a list of:

- (i) each of its creditors to which the Concessionaire has an outstanding obligation of PKR 1,000,000/- (Pakistani Rupees One Million only) or more,

in each case, along with statements or schedules of repayment of local and foreign loans/debts to such creditors duly certified by its statutory auditors on a six (6) monthly basis in each Accounting Year. The report shall also indicate any changes, as compared to the report submitted the previous Accounting Year that might have occurred.

7.14.6 INFORMATION REGARDING STATUTORY NOTICE/WINDING UP PROCEEDINGS

The Concessionaire shall, within seven (7) days of receipt thereof, provide to the Agency, the Independent Engineer and the Independent Auditor/Expert a copy of any notice that the Concessionaire may be served under Sections 301 and 302 (as such Sections may be amended, modified or re-enacted) of the Companies Act, 2017 by any of its creditors.

The Concessionaire shall provide to the Agency, the Independent Engineer and the Independent Auditor/Expert all information in respect of any further actions taken by its creditors following any notice under Sections 301 and 302 (as such Sections may be amended, modified or re-enacted) of the Companies Act, 2017.

7.14.7 FAILURE BY THE CONCESSIONAIRE TO SUBMIT REPORTS, DOCUMENTS AND INFORMATION

In addition to the rights the Agency may have under this Agreement or under the Applicable Laws, in the event that the Concessionaire fails to submit any of the documents,

reports or information as and when required under this Agreement, the Agency shall be entitled to assess against and recover from the Concessionaire reasonable costs established from time to time by the Agency for such non-compliance. Such reasonable costs shall be paid to the Agency within ten (10) days of notice of such non-compliance and assessment by the Agency; provided, that such costs shall not exceed an amount equal to PKR 15,000/- (Pakistani Rupees Fifteen Thousand only) for each day that each such document, report or information remains outstanding commencing from the date that notice thereof is delivered by the Agency to the Concessionaire.

7.15 AFFIRMATIONS

- 7.15.1 The Concessionaire hereby declares that it has not obtained or induced the procurement of this Agreement and/or any Project Agreement and/or any Agency Agreement and/or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement and/or any Agency Agreement and/or the Project from the Agency and/or any Government Authority through any corrupt (including Corrupt Act) or illegal business practice.
- 7.15.2 Without limiting the generality of the foregoing, the Concessionaire represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Concessionaire for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of any Agency Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to any Agency Agreement or the Project from the Agency or any Government Authority, except that which has been expressly declared pursuant hereto.
- 7.15.3 The Concessionaire accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Concessionaire agrees in the event that any of the representations and warranties made by it in Section 7.15.1 and 7.15.2 are proved to be materially incorrect, that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Agency, be voidable and without legal effect at the option of the Agency.
- 7.15.4 Notwithstanding any rights and remedies that are available to and may be exercised by the Agency in this regard, the Concessionaire agrees to indemnify the Agency for any loss (including Losses) or damage incurred by it on account of its corrupt business practices and further pay compensation to the Agency in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by

the Concessionaire (either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), as aforesaid for the purpose of obtaining or inducing the procurement of any Agency Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to any Agency Agreement or the Project from the Agency or any Government Authority.

7.16 NO RELIEF FROM LIABILITY

- 7.16.1 No review, non-objection or approval by the Agency, the Independent Engineer, the Independent Auditor/Expert or any Government Authority of any Concession Asset or Project Works (including any agreement, document, instrument, drawing, specifications or design proposed by the Concessionaire) shall relieve the Concessionaire from any liability that it would otherwise have had for its negligence in the performance and completion of the Project Works and the Concession Assets (including preparation of an agreement, document, instrument, drawing, specification or design) or failure to comply with the Applicable Laws with respect thereto, or to satisfy the Concessionaire's obligations under the Agency Agreements, nor shall the Agency, the Independent Engineer, the Independent Auditor/Expert or any Government Authority be liable to the Concessionaire or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.
- 7.16.2 The Concessionaire shall, at all times, be responsible and liable for all its obligations under the Applicable Standards notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

7.17 WITHOUT PREJUDICE

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

8. AGENCY REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS

8.1 AGENCY REPRESENTATIONS & WARRANTIES

8.1.1 The Agency hereby represents and warrants to the Concessionaire that:

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

8.1.2 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately Notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement or any Agency Agreement.

8.2 GENERAL UNDERTAKINGS

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

- (a) ensure peaceful use of the Project Site by the Concessionaire without any let or hindrance from the Agency and/or any person or Government Authority claiming through or under them;
- (b) procure police assistance for regulation on the Project and provide reasonable assistance to the Concessionaire in procuring police assistance for removal of trespassers, removal of encroachments and security on and/or in respect of the Project;
- (c) upon written request of the Concessionaire, provide police support at and/or near the Project Site as required by the Concessionaire; and
- (d) support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of the Agency Agreements.

8.3 SUPPORT FOR CONCESSIONAIRE PERMITS & CONDITIONS FOR CONCESSIONAIRE PERMITS

- 8.3.1 Subject to the Concessionaire's timely submission of reports required by Section 7.6.2, upon request of the Concessionaire, the Agency shall support and use reasonable efforts to expedite consideration of the applications for the Concessionaire Permits or reissuance(s) thereof filed pursuant to Section 7.6 (*Concessionaire Permits*), and the timely issuance thereof or reissuance of a Concessionaire Permit subject to a Lapse of Consent by any Government Authority. Any request for support under this Section shall be made by the Concessionaire and shall be accompanied with copies of the application for the Concessionaire Permit, any notice that the issuance or reissuance of the Concessionaire Permit was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Concessionaire Permit to date.
- 8.3.2 The Agency or any Government Authority may attach such "*non-discriminatory*" terms and conditions (as explained in Section 8.6 (*Non-Discriminatory*)) to the issuance or renewal of any of the Concessionaire Permits as are in accordance with the Applicable Laws and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Agency or a Permitted Event. The Concessionaire and its Contractors shall abide by all such terms and conditions (subject to this Section 8.3.2 and provisions in this Agreement relating to Change in Law and Lapse of Consent). If the Concessionaire (including where it is acting through its Contractors) fails to abide by any term or condition of any Concessionaire Permit, then the Agency or any Government Authority may exercise any power pursuant to the Applicable Laws (provided such power is exercised in a "*non-discriminatory*" manner) in respect of such failure and (subject to this Section 8.3.2 and provisions in this Agreement relating to Change in Law and Lapse of Consent) such exercise shall not of itself constitute a breach of this Agreement by the Agency or a Permitted Event; provided, however, that, with respect to all such Concessionaire Permits issued by the Agency or any Government Authority that is also a department or instrumentality of the Agency, the Agency shall not, and the Agency shall ensure that no such Government Authority shall, terminate prior to its expiration date or revoke any such Concessionaire Permit until the later of (a) thirty (30) days after delivery to the Concessionaire (or the relevant Contractor) of written notice by the Agency or such department or instrumentality of Agency of such failure and (b) the period of time, if any, that must expire under the Applicable Laws or the relevant Concessionaire Permit prior to

early termination or revocation of any such Concessionaire Permit; provided, further, that nothing in this Section shall limit the Agency or any Government Authority from taking any action in relation to a breach of, or non-compliance with, a Concessionaire Permit (other than termination or revocation) which it is entitled to take under the Applicable Laws (provided such action is taken in a “*non-discriminatory*” manner).

8.4 SUPPORT FOR OBLIGATIONS

- 8.4.1 Upon reasonable request by the Concessionaire, the Agency shall use its reasonable efforts and its good offices to support the Concessionaire’s performance of its obligations under and pursuant to this Agreement, including, its obligations to design, finance, insure, acquire, construct, complete, commission, own, operate and maintain the Concession Assets. If the Concessionaire has failed to comply with its obligations under any Agency Agreement and such failure is the principal cause of the Concessionaire’s difficulties in performing such activities, the Agency may advise the Concessionaire of such determination, and the Agency shall not be obligated to take any action to assist the Concessionaire until such time as the Concessionaire has fully complied with its obligations under the Agency Agreements. By agreeing to use its reasonable efforts and its good offices to support the Concessionaire’s efforts, the Agency has not relieved, and does not relieve in any way, the Concessionaire of its obligations or potential liability under the Agency Agreements and the other documents comprising the Project Agreements.

8.5 PROCEDURE

- 8.5.1 To the extent permitted under the Applicable Laws, all applications and any other necessary requisites, whether for the Concessionaire, its employees or Contractors, are to be routed through the Concessionaire.

8.6 NON-DISCRIMINATORY

- 8.6.1 The use of the term “*non-discriminatory*” or “*discriminatory*” in any Agency Agreement is not intended to prohibit or limit in any way the Agency or any Government Authority from making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the Agency or any Government Authority or of a Concessionaire Permit. It is intended, however, to prohibit the use of Government Authority, over Concessionaire Permits, for example, to deprive the Concessionaire of the benefits of the Agency Agreements or any other Project Agreement by the application of a higher standard to the Concessionaire (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

8.7 POWERS OF THE AGENCY TO CHARGE AND IMPLEMENT FEES & FINES

- 8.7.1 The Concessionaire expressly agrees and undertakes that the Agency shall either directly or through the Concessionaire shall have an exclusive right to demand and implement additional fees, revenues and fines on the Project in accordance with the Applicable Laws on the Users.

8.8 AGENCY OVERRIDING POWERS

- 8.8.1 Notwithstanding anything contained in this Agreement, the Agency shall have the right upon the occurrence of a national emergency, civil commotion and/or as a consequence of a Force Majeure Event, to take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by the Agency or as directed by the relevant Government Authority, and exercise such control over the Concession Assets and/or give such directions to the Concessionaire as may be deemed necessary by the Agency; provided, however, that the exercise of such overriding powers by the Agency shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which causes the exercise of such overriding power by the Agency (the **Agency Overriding Power Event**). The Concessionaire hereby agrees to act in accordance with the instructions issued by the Agency pursuant to the provisions of this Section and undertakes to provide assistance and co-operation to the Agency for performance of its obligations hereunder. In the event the Agency exercises its overriding powers under this Section 8.8 (*Agency Overriding Powers*) whereby the Concessionaire incurs any costs and expenses and/or is delayed in performance of its obligations under this Agreement, the Concessionaire shall be entitled to issuance of a Relief Order Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

8.9 SOVEREIGN IMMUNITY

- 8.9.1 The Agency unconditionally and irrevocably:
- (a) agrees that the execution, delivery and performance by it of the Agency Agreements and all other agreements, documents and writings relating to the same constitute private and commercial acts and not public or governmental acts;
 - (b) agrees that should any proceedings be brought against it or its assets (other than any of its assets which are significant in respect of national security of Pakistan (the **Protected Assets**)) in any jurisdiction in relation to the Agency Agreements or any transaction contemplated by the Agency Agreements, no immunity, sovereign or otherwise, from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Protected Assets); and
 - (c) waives any such right of immunity, sovereign or otherwise, which the Agency or its assets now has or may acquire in the future (other than the Protected Assets), in respect of proceedings under the Agency Agreements.

8.10 WITHOUT PREJUDICE

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

8.11 PROJECT MANAGEMENT/IMPLEMENTATION UNIT

8.11.1 The Project Management/Implementation Unit shall oversee day to day implementation of the Project in accordance with terms of the Agency Agreements.

8.12 AGENCY PROJECT MANAGER / PROJECT DIRECTOR

8.12.1 Unless already appointed prior to the Effective Date, the Agency shall, within seven (7) days following the Effective Date, appoint its representative duly authorized to deal on its behalf to facilitate on all matters under or arising out of or relating to the Agency Agreements (the **Project Manager/Project Director**). The Agency may, by notice in writing to the Concessionaire, substitute the Project Manager at its discretion at any time. The Agency shall ensure that at all times during the Concession Period, the Project Manager/Project Director remains appointed.

8.12.2 The Project Manager/Project Director shall have (without limitation) the following roles and duties:

- (a) execution of the Agency Agreements on behalf of the Agency, other than this Agreement;
- (b) opening all bank accounts on behalf of the Agency and issuance of standing instructions in relation to the same (if applicable), in each case, as contemplated in accordance with the terms of the Agency Agreements;
- (c) appointment of the Independent Engineer and the Independent Auditor/Expert in accordance with the terms of this Agreement;
- (d) such other roles and duties as assigned to the Project Manager/Project Director by the Agency from time to time;
- (e) to protect the interest of the Agency by ensuring through monitoring and inspecting that the progress of the Construction Works and O&M Works, the supervision of which shall be carried out by the Independent Engineer, in accordance with this Agreement, according to the Applicable Laws, Project Requirements, Good Industry Practices and international standards;
- (f) oversee that the Concessionaire complies with all highway safety standards in accordance with Good Industry Practice;
- (g) coordinate and organize services to be provided by other agencies;
- (h) clarify and resolve with the Concessionaire Authorized Representative, the Independent Engineer, and the Independent Auditor/Expert any difficulties and disputes arising pursuant to this Agreement and manage any complaints by or against third parties; and

- (i) to supervise the fulfillment of obligations of the Agency in this Agreement and Agency Agreements.

8.12.3 The Project Manager shall oversee the day to day implementation of the Project and facilitate implementation of the Project in accordance with the Agency Agreements.

9. INDEMNITIES & LIMITATION OF LIABILITY

9.1 GENERAL INDEMNITY

9.1.1 THE CONCESSIONAIRE

The Concessionaire shall indemnify and defend the Agency, for itself and its officers, servants, agents, Government Authority and Government owned and/or controlled entities/enterprises relating to the Project (the **Agency Indemnified Persons**) against, and hold the Agency Indemnified Persons harmless from, at all times after the Effective Date, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Agency Indemnified Persons for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Concessionaire in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 9.1.1 shall apply to any Loss in respect of and to the extent of which the Agency receives proceeds from insurance policies relating to the Project.

9.1.2 THE AGENCY

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

9.1.3 JOINT NEGLIGENCE

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

9.2 ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT

- 9.2.1 Each Party shall be solely liable and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current accounting year or Accounting Year (as the case may be), exceed the Minimum Indemnification Amount. For the purposes of this Section 9.2 (*Assertion of*

Claims to Exceed Minimum Indemnification Amount), a Loss (or claim for indemnification) shall be deemed to arise in the accounting year or Accounting Year (as the case may be) in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one (1) accounting year or Accounting Year (as the case may be), in the accounting year or Accounting Year (as the case may be) in which such event ends.

9.3 NOTICE AND CONTEST OF CLAIMS

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

9.4 DEFENSE OF CLAIMS

- 9.4.1 The Indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defense of such claim, action, suit or proceeding, subject to the prior approval of the Indemnified Party; provided, however, it gives prompt notice of its intention to do so to the Indemnified Party, and reimburses, subject to the approval of the Independent Engineer and the Independent Auditor/Expert, the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to assumption by the Indemnifying Party of such defense.
- 9.4.2 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 9.4.1, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.
- 9.4.3 Upon assumption by the Indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of the Indemnified Party in the defense of the claim, suit, action or proceeding prior to the Indemnifying Party's acknowledgment of the Indemnification and assumption of the defense.
- 9.4.4 Following acknowledgment of the indemnification and assumption of the defense by the Indemnifying Party, the Indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically Notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement.

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

9.5 NO CONSEQUENTIAL CLAIMS

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

9.6 SURVIVAL ON TERMINATION

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

9.7 LIMITATION OF LIABILITY & INDEMNIFICATION FOR FINES AND PENALTIES

- 9.7.1 Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability (except as may be expressly provided in any Agency Agreement), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages; provided, that the Parties hereby agrees that the Termination Payments payable under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of any Agency

Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to any Agency Agreement or to any activity not contemplated by the same.

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

10. FUNDING REQUIREMENTS & SHAREHOLDING MATTERS

10.1 NOT USED

10.1.1 Not Used

10.2 CHANGE IN COMPLETE CONTROL, CHANGE IN CONTROL AND CHANGE IN SHAREHOLDING

10.2.1 The Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change in Complete Control until the second (2nd) anniversary of the Substantial Completion Date unless such Change in Complete Control:

- (a) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Authority with appropriate jurisdiction; or
- (b) is affected with the prior written approval of the Agency.

10.2.2 The Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor (in case of a consortium the lead consortium member) does not undertake or permit any Change In Control until the Transfer Date unless such Change In Control:

- (a) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Authority with appropriate jurisdiction; and
- (b) is affected with the prior written approval of the Agency provided, that the Agency shall exercise its discretion to grant such approval under this Section 10.3.2 in accordance with, *inter alia*, the Applicable Laws.

10.2.3 Following the second (2nd) anniversary of the Substantial Completion Date, the Concessionaire may undertake or permit and the Sponsor may undertake or permit, in each case, any Change in Shareholding, without the consent of the Agency but with prior Notification to the Agency; provided, that the Person(s) acquiring and/or subscribing to the Class A Shares resulting in the Change in Shareholding is:

- (a) not from a nationality proscribed by the Applicable Laws;
- (b) not blacklisted by any Government Authority; and
- (c) not a defaulter of any bank or financial institution.

In each case above, as evidenced by such documentary support as is acceptable to the Agency, the Independent Engineer and the Independent Auditor/Expert.

10.3 NOT USED

11. CONSTRUCTION PERFORMANCE SECURITY & O&M PERFORMANCE SECURITY

11.1 CONSTRUCTION PERFORMANCE SECURITY

11.1.1 Prior to the Effective Date, the Concessionaire has provided and delivered to the Agency the Construction Performance Security. The Construction Performance Security:

- (a) has been issued and maintained without any recourse on the Concessionaire, its assets or properties; and
- (b) has not been secured through any Concession Assets and no Encumbrance of any nature has been 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 Construction Performance Security are solely on account of the Sponsor.

11.1.2 The Construction Performance Security shall secure:

- (a) all of the Sponsor's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Agency Agreements 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 Agency Agreements, including the integrity and quality of the Concessionaire's and its Contractors' workmanship, the timely and continuous performance of the Project Works, the quality and quantity of any equipment, materials, items and components supplied, the performance of Project Works by the Concessionaire and compliance of the same with the Applicable Standards and all other works and services to be provided by the Concessionaire under the Agency Agreements.

11.1.3 The Construction Performance Security came into force and became effective upon issuance and delivery of the same to the Agency.

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

11.1.5 The Concessionaire shall be obligated to adjust the Construction Performance Security from time to time to reflect any amounts payable by the Agency pursuant to Article 16 (*Change of Scope*), such increase being an amount equal to two percent (2%) of the amounts payable to the Concessionaire from time to time in accordance with Article 16 (*Change of Scope*). In addition, the Construction Performance Security shall be adjusted, as condition precedent to issuance of the Construction Completion Certificate, prior to the Construction Completion Date so that it is equal in value to two percent (2%) of the Total

Project Cost less the aggregate of any encashments made by the Agency prior to the date of adjustment.

- 11.1.6 The Concessionaire shall be obligated to maintain and keep valid the Construction Performance Security until the date falling twenty four (24) months following Substantial Completion Date (the **Construction Performance Security Expiry Date**), as evidenced by a certificate jointly issued by the Independent Engineer and the Independent Auditor/Expert. In the event the Construction Performance Security expires prior to the Construction Performance Security Expiry Date, the Concessionaire shall extend the validity of the Construction Performance Security, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the Construction Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of the Construction Performance Security in accordance with this Section 11.1.6, the Agency shall have the right to encash the Construction Performance Security at any time to its full outstanding value.
- 11.1.7 Upon the issuance of a certificate jointly issued by the Independent Engineer and the Independent Auditor/Expert evidencing the occurrence of Construction Performance Security Expiry Date, the Construction Performance Security shall be null and void and shall be returned to the Concessionaire by the Agency within fifteen (15) days of receipt by the Agency of the afore-stated certificate.

11.2 O&M PERFORMANCE SECURITY

- 11.2.1 The Concessionaire hereby undertakes to procure issuance and delivery to the Agency of the O&M Performance Security from time to time in accordance with this Section 11.2 (*O&M Performance Security*).
- 11.2.2 The Concessionaire shall deliver the O&M Performance Security to the Agency at least ninety (90) days prior to the Construction Performance Security Expiry Date. Following the Construction Performance Security Expiry Date, and until the Trigger Date, the Concessionaire shall replace the O&M Performance Security thirty (30) days prior to commencement of each Operational Year. Each O&M Performance Security shall become effective simultaneously upon issuance.
- 11.2.3 The O&M Performance Security:
- (a) shall be issued and maintained without any recourse on the Concessionaire, its assets or properties; and
 - (b) shall not be secured through any Concession Assets and no Encumbrance of any nature shall be created on the assets and properties of the Concessionaire in respect of the same.

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

- 11.2.4 The O&M Performance Security shall secure:

- (a) all of the Sponsor's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Agency Agreements 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 Agency Agreements, including the integrity and quality of the Concessionaire's and its Contractors' workmanship, the timely and continuous performance of the Project Works during the Operations Period, the quality and quantity of any equipment, materials, items and components supplied, the performance of Project Works during the Operations Period by the Concessionaire and compliance of the same with the Applicable Standards and all other works and services to be provided by the Concessionaire under the Agency Agreements.

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

11.2.6 The O&M Performance Security provided by the Concessionaire in respect of an Operational Year shall remain in force and effect until the date that falls on the expiry of such Operational Year subject to receipt by the Agency of a fully valid and effective O&M Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the **O&M Performance Security Expiry Date**). In the event an O&M Performance Security is to expire prior to the O&M Performance Security Expiry Date, the Concessionaire shall extend the validity of the O&M Performance Security, at least fifteen (15) days prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of any O&M Performance Security in accordance with this Section 11.2.6, the Agency shall have the right to encash such O&M Performance Security at any time prior to its expiry to its full outstanding value.

11.2.7 Upon the delivery and commencement of a O&M Performance Security for an Operational Year (the **New O&M Performance Security**) to the Agency by the Concessionaire in accordance with this Section 11.2 (*O&M Performance Security*) on or prior to the commencement of such Operational Year, the previous O&M Performance Security issued for the previous Operational Year shall be null and void and shall be returned to the Concessionaire by the Agency simultaneously with the provision of the New O&M Performance Security.

11.2.8 Notwithstanding anything to the contrary, the Concessionaire hereby undertakes and agrees that the O&M Performance Security shall remain valid:

- (a) in case of Termination, at least for one (1) year after the Termination Notice has been issued; and/or
- (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date.

12. CONSTRUCTION DRAWINGS

12.1 PREPARATION OF CONSTRUCTION DRAWINGS

- 12.1.1 The Concessionaire shall prepare the Construction Drawings in accordance with the Applicable Standards and shall complete and deliver the same to the Agency and the Independent Engineer from time to time within the Construction Time For Completion. Further, the Concessionaire hereby undertakes that the Construction Drawings shall comply with the Applicable Standards.
- 12.1.2 Defects & Deficiencies, errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Drawings or arising therefrom shall be rectified by the Concessionaire at its sole cost and risk.
- 12.1.3 The Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) may use the Construction Drawings for such purposes as the same may require for the purposes of the Project.
- 12.1.4 The Concessionaire may at its discretion and subject to the Applicable Standards and the Design Requirements, propose with or without modifications the drawings made available by the Agency or adopt its own Construction Drawings after prior approval of the Independent Engineer; provided, however, that the Concessionaire shall always remain solely responsible and liable for the adequacy and accuracy of the Construction Drawings and shall not hold the Agency responsible or liable for the adequacy and/or the accuracy of the drawings provided by the Agency.
- 12.1.5 Notwithstanding the Concessionaire's decision to adopt the drawings as provided by the Agency, irrespective of whether such drawings are adopted with or without modifications, or the adoption by the Concessionaire of its own Construction Drawings, the Concessionaire hereby confirms and agrees that all Construction Drawings shall remain subject to the review, approval and acceptance by the Independent Engineer prior to the adoption of the same by the Concessionaire.
- 12.1.6 The Agency and the Independent Engineer shall have the right to review and inspect all Construction Drawings. The Concessionaire shall provide all such Construction Drawings to the Agency and the Independent Engineer as may be reasonably required by the Agency and/or the Independent Engineer to inspect in respect of the Construction Works. It is made clear that nothing in the above shall diminish the Concessionaire's responsibility to provide the Agency and the Independent Engineer with sufficient information to enable the same to satisfy themselves regarding the Construction Works.

12.2 DETAILS OF CONSTRUCTION DRAWINGS

- 12.2.1 The Construction Drawings to be submitted by the Concessionaire to the Independent Engineer shall include but not be limited to the following details:
 - (a) structural drawings;

- (b) such further information and details as may be requested by the Independent Engineer and the Agency acting reasonably.

12.2.2 All Construction Drawings submitted by the Concessionaire shall comply with and shall be in accordance with the Design Requirements and the Applicable Standards.

12.3 REVIEW & APPROVAL OF CONSTRUCTION DRAWINGS

12.3.1 The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit four (4) copies of the Construction Drawings to the Independent Engineer and the Agency.

12.3.2 The submission of the Construction Drawings by the Concessionaire to the Independent Engineer and the Agency pursuant to the provisions of Section 12.3.1 shall constitute the representation of the Concessionaire that the Concessionaire has verified and determined that the Construction Drawings submitted by the Concessionaire are in conformity with the Design Requirements.

12.3.3 Within fifteen (15) days of receipt of the Construction Drawings, the Independent Engineer shall review and comment on the same taking into account, *inter alia*, the comments of the Agency, if any, thereon, and convey its comments/observations to the Concessionaire on the conformity of the Construction Drawings with Design Requirements.

12.3.4 The Concessionaire hereby undertakes to revise the Construction Drawings to the extent necessary and to re-submit the same for the review of the Independent Engineer and the Agency, in the event the comments and the observations of the Independent Engineer and/or the Agency indicate that the Construction Drawings initially submitted by the Concessionaire for review by the Independent Engineer pursuant to the provisions of Section 12.3.1, are not in conformity with the Design Requirements. The Independent Engineer shall provide its observations and comments on such re-submitted Construction Drawings, if any, within fifteen (15) days of receipt of such revised Construction Drawings.

12.3.5 The Concessionaire shall simultaneously with the submission of Construction Drawings to the Independent Engineer prepare and submit to the Independent Engineer the construction plan providing, *inter alia*, the "*critical path method*" in respect of the Project.

12.3.6 Notwithstanding anything contained herein:

- (a) in the event the response of the Agency is not provided within the period stipulated in Section 12.3.3, the same shall stand deemed approved, then the Independent Engineer may, at its discretion proceed with the approval of Construction Drawings, on the basis of the Construction Drawings submitted by the Concessionaire to the Independent Engineer;
- (b) the Concessionaire shall be solely liable for the Construction Drawings and their compliance and conformity with the Design Requirements, and shall not be relieved and/or absolved in any manner whatsoever of its obligations hereunder, irrespective of whether or not the Independent Engineer has provided its

observations and comments in accordance with this Section 12.3 (*Review & Approval of Construction Drawings*);

- (c) the Concessionaire shall continue to be liable for the Concessionaire's obligations and liabilities set out in this Agreement and shall neither be relieved of the same nor shall the same be transferred to any other Person, including, but not restricted to the Independent Engineer and/or the Agency, as a consequence of the requirement for the Independent Engineer to provide its observations and comments pursuant to Section 12.3.3 and/or Section 12.3.4. Neither the review of the Construction Drawings by the Independent Engineer, the failure of the Independent Engineer to provide its observations and comments in the approval nor the provision of the observations and comments by the Independent Engineer and/or the Agency on the Construction Drawings shall relieve the Concessionaire of its obligations and liabilities hereunder, nor shall the same be construed as a waiver of the Concessionaire's obligations contained herein; nor shall the Agency be held liable for the observations and comments provided by the Independent Engineer on the Construction Drawings;
- (d) the Concessionaire shall be obligated to provide a copy of the approved Construction Drawings to the Agency and the Independent Engineer prior to commencement of the Construction Works in accordance with the terms of this Agreement.

12.3.7 The Concessionaire hereby undertakes that the Concessionaire shall be solely responsible and liable for:

- (a) achieving completion of each Project Construction Milestone on or prior to its respective Project Construction Milestone Date;
- (b) achieving Substantial Completion Date on or prior to the Scheduled Substantial Completion Date; and/or
- (c) achieving Construction Completion on or prior to the Scheduled Construction Completion Date;

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

12.4 SUBMISSION OF FINAL CONSTRUCTION DRAWINGS PRIOR TO CONSTRUCTION COMPLETION DATE

12.4.1 Within forty-five (45) days of the Substantial Completion Date and in any event as one of the Conditions Precedent to the issuance of the Construction Completion Certificate, the Concessionaire shall submit to the Agency, in respect of each Project Construction Milestone, the "*as built*" Construction Drawings, duly verified and approved (in form and substance) by the Independent Engineer, including "*as built*" survey, illustrating the layout of the Project and the Project Facilities and setback lines, if any, of the buildings and

structures forming part of the Project and the Project Facilities and reflecting the same as actually designed, engineered and constructed.

- 12.4.2 The Construction Drawings to be submitted by the Concessionaire pursuant to this Section 12.4 (*Submission of Final Construction Drawings Prior to Construction Completion Date*) shall be in such form as may be requested by the Agency, including but not restricted to paper format (hard copies), digital format, micro films or such other format as may be acceptable to the Agency.
- 12.4.3 The Concessionaire shall be responsible for amending, modifying and updating the Construction Drawings from time to time during the Operations Period including, carrying out any amendments and modifications resulting from the operations, repairs, maintenance and other activities relating to the Operations and Maintenance subject to the approval of Independent Engineer. All updated, amended and/or modified Construction Drawings shall be submitted by the Concessionaire to the Agency and the Independent Engineer and shall be subject to review of the same. Preparation, completion and delivery of the updated, amended and/or modified Construction Documents pursuant to this Section 12.4.3 shall form part of the Concessionaire's obligations relating to the O&M Documents.

12.5 APPROVAL OF THE DETAILED ENGINEERING DESIGN

- 12.5.1 Notwithstanding anything to the contrary, the Concessionaire shall, as part of the process of the Concessionaire Conditions Precedent, submit its Detailed Engineering Design, to the Independent Engineer (with a copy to Agency) prior to the Scheduled Commencement Date for the approval of the Independent Engineer (the **Proposed Detailed Design**). The process of approval of the Detailed Engineering Design and issuance of the Approved Detailed Engineering Design shall be in accordance with **Part I - SCHEDULE X** (*Proposed Detailed Design Approval Process*). Within thirty (30) days of receipt of the Proposed Detailed Design, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference of the conformity of the same with Applicable Standards. In case, no comments/observations are provided by the Independent Engineer, as the case may be, within twenty (20) days of receipt of the Proposed Detailed Design, the Concessionaire shall notify the Independent Engineer about such inactivity. In case, no comments are received from the Independent Engineer within ten (10) days following such notification, the Proposed Detailed Design, as submitted by the Concessionaire, shall be deemed to be approved by the Independent Engineer.

Provided, however, upon receipt of the Proposed Detailed Design, the Agency shall communicate its objections or reservations (if any) to the Independent Engineer and the Independent Engineer shall ensure that the same are adequately addressed and where necessary form an approval requirement for such Proposed Detailed Design.

- 12.5.2 In the event the specific observations of the Independent Engineer on the Proposed Detailed Design (or part thereof) indicate that the Proposed Detailed Design is not in conformity with the Applicable Standards, the Proposed Detailed Design (or part thereof) shall be revised by the Concessionaire, at the cost and expense of the Concessionaire,

and resubmitted to the Independent Engineer (with a copy to Agency) for its review and approval within a period of fifteen (15) days after receiving the observations of the Independent Engineer on the Proposed Detailed Design. Following receipt of the observations on the revision (within the time periods contemplated herein), the Independent Engineer shall give its observations, if any, within seven (7) days of its receipt of the revised Detailed Engineering Design from the Concessionaire. In the event the Independent Engineer gives its observations on the revised Detailed Engineering Design, the Concessionaire shall revise the Detailed Engineering Design and submit the same to the Independent Engineer (with a copy to Agency) within fifteen (15) days after receiving of observations on the same.

The Parties hereby acknowledge and agree that the delivery of Vacant Possession of the Project Site, the exact area, location, and other relevant matters relating to the same are a function of the Approved Detailed Engineering Design.

13. CONSTRUCTION WORKS

13.1 CONSTRUCTION WORKS

- 13.1.1 The Concessionaire shall commence the Construction Works in accordance with the Applicable Standards and shall perform and complete the same in accordance with the Construction Time For Completion. The Concessionaire shall commence the Site Construction Works on the Commencement Date. The Concessionaire shall immediately upon commencement of the Site Construction Works Notify the Agency, the Independent Engineer and the Independent Auditor/Expert of the same.
- 13.1.2 The Concessionaire shall perform the Construction Works in accordance with the Applicable Standards and shall ensure that the same complies with the Applicable Standards.
- 13.1.3 Without limiting the provisions of Section 13.1.2, the Concessionaire shall be in particular responsible for the performance and compliance, in each case, of the Construction Works with the Construction Requirements.
- 13.1.4 The Concessionaire shall perform the Construction Works within the Construction Time For Completion and hereby undertakes to perform and complete each Project Construction Milestone on or prior to its Project Construction Milestone Date.
- 13.1.5 The Concessionaire shall perform the Construction Works, and the Concessionaire shall be responsible and liable for performance (within the Construction Time For Completion) and compliance of the Construction Requirements with the Applicable Standards.

13.2 CONSTRUCTION PROGRAMME

- 13.2.1 Within two (2) days following the execution of the Independent Engineer Contract, the Concessionaire shall submit to the Independent Engineer, a proposed program, to be prepared in compliance with the Applicable Standards and Good Industry Practices, for performance of the Construction Works and achievement of each Project Construction Milestone (the **Proposed Construction Programme**). The Proposed Construction Programme shall not amend or vary the timelines for achievement of the Project Construction Milestones set out in the Construction Completion Schedule. The Proposed Construction Programme shall include, (without limitation), the following:
- (a) the Project Construction Milestones to be achieved and the respective Project Construction Milestone Dates for each of the same;
 - (b) the detailed order in which the Construction Works shall be performed, together with timelines for performance of the same;
 - (c) arrangements and procedures for carrying out the Construction Works;
 - (d) the timelines, intervals and procedures for conducting the inspection of all elements of the Construction Works and any completed Concession Assets;

- (e) arrangements and procedures for conducting safety related measures in relation to the Construction Works; and
- (f) all major events and activities in the preparation of the Construction Drawings, the Construction Monthly Progress Report and submission of the same to the Agency, the Independent Engineer and/or the Independent Auditor/Expert (as applicable) for the review and approval (as applicable).

13.2.2 Within fourteen (14) days of the receipt of the Proposed Construction Programme by the Independent Engineer, the Independent Engineer shall finalize its comments on the same and shall ensure the incorporation of its comments and submit the same to the Agency. The Agency shall prior to granting its approval in respect of the Proposed Construction Programme, within fifteen (15) days of the Independent Engineer's request for the same, revert to the Independent Engineer in respect of any observations and comments that it may have, if any; provided, however, that the approval of the Proposed Construction Programme shall be granted by Agency within fifteen (15) days of the Independent Engineer's request for such approval if the Proposed Construction Programme is recommended by the Independent Engineer for approval after addressing any comments and observations of the Agency on the same. The Proposed Construction Programme, as approved by the Agency on the Independent Engineer's recommendation, shall be binding on the Parties (the **Project Construction Programme**); provided, however, that the Project Construction Programme may be amended from time to time by the mutual agreement between the Parties and the Independent Engineer.

13.2.3 The Concessionaire shall, whenever required by the Agency, the Independent Engineer and/or the Independent Auditor/Expert, provide in writing, a general description of the arrangements and methods which the Concessionaire proposes to adopt for the execution of the Construction Works. Any alteration to such arrangements and methods shall be made by the Concessionaire with prior written consent of the Independent Engineer and the Agency.

13.2.4 Any reports (including the Construction Monthly Progress Report) submitted by the Concessionaire and covering the execution of the Construction Works shall also emphasize any delays in the Construction Time For Completion.

13.3 **NOT USED**

13.4 **NOT USED**

13.5 **CONSTRUCTION MONTHLY PROGRESS REPORT**

13.5.1 Commencing from the Effective Date, the Concessionaire shall until issuance of the Construction Completion Certificate, no later than ten (10) days after the end of each calendar month, furnish to the Agency, the Project Manager, the Independent Auditor/Expert and the Independent Engineer a monthly report (the **Construction Monthly Progress Report**), stating in reasonable detail the status and condition of the

Construction Works and the Concession Assets including its compliance or otherwise with the Applicable Standards and shall promptly give such other relevant information as may be required by the Independent Engineer, the Independent Auditor/Expert and/or the Agency. In particular, the Construction Monthly Progress Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the Construction Works and/or the Concession Assets that require rectification and any delays in the Construction Time For Completion. The Construction Monthly Progress Report shall also expressly highlight all Defects & Deficiencies in the Construction Works and/or the Concession Assets identified by the Independent Engineer in its Construction Inspection Report and shall set out all actions taken, and arrangements made by the Concessionaire for remedying the same.

13.5.2 The Construction Monthly Progress Report shall be updated by the Concessionaire based on any observations and comments made by the Independent Engineer and/or the Agency and shall be provided again to each of the Agency and the Independent Engineer until such time that it is approved by the Independent Engineer; provided, that the Independent Engineer shall not accord its approval of the Construction Monthly Progress Report until it is satisfied that all reasonable comments and observations of the Agency on the Construction Monthly Progress Report are addressed.

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

13.6 CONSTRUCTION INSPECTION REPORT

13.6.1 Commencing from the appointment of the Independent Engineer and until the issuance of the Construction Completion Certificate, the Concessionaire shall procure that the Independent Engineer inspects the Construction Works and the Concession Assets at least once a month and shall make all arrangements for the same.

13.6.2 The Independent Engineer shall make a report of such inspection (the **Construction Inspection Report**) stating in reasonable detail the Defects & Deficiencies, if any, in the Construction Works and /or the Concession Assets with particular reference to the Applicable Standards.

13.6.3 The Independent Engineer shall, within ten (10) days of commencement of a month, provide a copy of the Construction Inspection Report to the Concessionaire and the Agency.

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

13.6.5 The inspection or submission of the Construction Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.7 DELAYS DURING CONSTRUCTION

- 13.7.1 In the event the Concessionaire fails to achieve any Project Construction Milestone or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project cannot achieve the Construction Completion on or before the Scheduled Construction Completion Date, then the Independent Engineer shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within seven (7) days of such notice, inform the Independent Engineer in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress and the period within which it shall achieve Construction Completion by the Scheduled Construction Completion Date and the Substantial Completion by the Scheduled Substantial Completion Date.
- 13.7.2 In the event the Concessionaire fails to achieve Substantial Completion Date on or prior to the Scheduled Substantial Completion Date, (due to reasons attributable to the Concessionaire), the Concessionaire shall solely bear all such costs.
- 13.7.3 In the event of any extension in the Scheduled Substantial Completion Date in accordance with Section 15.2.1 (*Relief Events*). All costs relating to such extension shall be determined in accordance with Section 15 (*Relief Extension & Relief Compensations*).

14. COMPLETION

14.1 COMPLETION TESTS

- 14.1.1 At least thirty (30) days prior to the expected Commercial Operations Date, the Concessionaire shall issue a Notice to the Agency and the Independent Engineer (the **Completion Tests Date Notice**) fixing a date and time for performance of the Completion Tests (the **Proposed Completion Tests Date**).
- 14.1.2 The Proposed Completion Tests Date proposed by the Concessionaire shall be final for the conducting of the Completion Tests; provided, however, that in the event the Proposed Completion Tests Date is unacceptable to the Independent Engineer and/or the Agency, the Concessionaire, the Agency and the Independent Engineer shall meet within seven (7) days of the Agency and Independent Engineer's receipt of the Completion Tests Date Notice with an aim to mutually agree on an alternative date and time for performance of the Completion Tests, which date shall be no later than ten (10) days from the Proposed Completion Tests Date. If the Parties are unable to mutually agree on an alternative date and time for performance of the Completion Tests, the Concessionaire shall be entitled (with prior Notification to the Independent Engineer and the Agency) to carry out the Completion Tests on or after the tenth (10th) day from the Proposed Completion Tests Date.
- 14.1.3 Subject to the terms of this Agreement, in the event any Completion Tests are to be repeated due to reasons not attributable to the Agency, as determined by the Independent Engineer, such Completion Tests shall be repeated on account of the Concessionaire.
- 14.1.4 The Completion Tests shall be attended by the Project Manager and such other representatives of the Agency as the Agency may nominate in writing, subject to notification of the same to the Concessionaire and the Independent Engineer.
- 14.1.5 The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Completion Tests.

14.2 SCHEDULED SUBSTANTIAL COMPLETION DATE

- 14.2.1 The Concessionaire hereby guarantees that the Substantial Completion shall be achieved in accordance with the provisions of the Applicable Standards and that the Substantial Completion Date shall occur on or before the Scheduled Substantial Completion Date.

14.3 SUBSTANTIAL COMPLETION CERTIFICATE

- 14.3.1 The Completion Tests shall be conducted in accordance with the provisions of Section 14.1 (*Completion Tests*) and **SCHEDULE G** (*List of Tests & Completion Tests*).
- 14.3.2 The Independent Engineer shall (in consultation with the Agency), at the request of the Concessionaire, issue a Substantial Completion Certificate if the Completion Tests applicable to the Substantial Completion are successful though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the

Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **Completion Check List**); provided, that the Independent Engineer shall not withhold the Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Agency (as determined by the Independent Engineer). The Independent Engineer shall set out the date in the Substantial Completion Certificate on which the Completion Tests applicable to the Substantial Completion are successfully passed (the **Substantial Completion Date**) and Substantial Completion is achieved.

- 14.3.3 The Parties hereto expressly agree that a Substantial Completion Certificate under this Section shall, upon request of the Concessionaire to this effect, be issued by the Independent Engineer, if at least ninety-five percent (95%) of the Project has been completed, the Completion Tests applicable to the Substantial Completion are successfully passed and if the movement and safety of the Users is not affected, as determined by the Independent Engineer (the **Substantial Completion**). Upon issuance of such Substantial Completion Certificate in terms of this Section 14.3.3, the Substantial Completion shall be achieved.

14.4 COMPLETION CHECK LIST & FAILURE TO ACHIEVE SUBSTANTIAL COMPLETION

- 14.4.1 Notwithstanding that the Substantial Completion Certificate (as applicable) shall be signed by the Independent Engineer, the Completion Check List shall be jointly signed by the Independent Engineer and the Concessionaire as a confirmation of the outstanding works, actions and things required to be completed by the Concessionaire in line with the relevant Project Requirements (the **Completion Check List Items**).
- 14.4.2 The Concessionaire undertakes to complete all Completion Check List Items by the date determined by the Independent Engineer and set out in the Substantial Completion Certificate (the **Scheduled Construction Completion Date**); provided, however, the Parties agree that the Scheduled Construction Completion Date shall not be determined by the Independent Engineer to fall on any date that falls ninety (90) days following the Substantial Completion Date.
- 14.4.3 The Concessionaire shall be liable for payment of Construction Period Damages to the Agency in the event the Concessionaire fails to achieve Substantial Completion on or prior to the Scheduled Substantial Completion Date. In the event the Concessionaire fails to achieve Substantial Completion within a period of one hundred and twenty (120) days from the Scheduled Substantial Completion Date, then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the Agency may, at its sole discretion and without prejudice to its other rights and remedies available under the Agency Agreements, terminate this Agreement in accordance with Article 23 (*Termination*).

14.5 CONSTRUCTION PERIOD DAMAGES

- 14.5.1 In the event the Concessionaire fails to achieve Substantial Completion by the Scheduled Substantial Completion Date, then the Concessionaire shall pay to the Agency damages in case of delay in achieving Substantial Completion, an amount equal to the Substantial Completion Delay Amount per day of delay in achievement of Substantial Completion, as determined by the Independent Engineer and Independent Auditor/Expert (the **Construction Period Damages**), provided that such Construction Period Damages shall not exceed, in aggregate, the Construction Performance Security.
- 14.5.2 All Construction Period Damages becoming due and payable by the Concessionaire in terms of this Section 14.5 (*Construction Period Damages*) shall be demanded, in writing, by the Agency from the Concessionaire and shall become due and payable on the date falling thirty (30) days following the Concessionaire's receipt of such invoice (the **Construction Period Damages Payment Date**). In the event of failure by the Concessionaire to pay the Construction Period Damages to the Agency by the Construction Period Damages Payment Date, the Agency shall have the right to encash the Construction Performance Security in an amount equal to the Construction Period Damages. Notwithstanding anything contained herein, the recovery of Construction Period Damages under this Section 14.5.2 shall be without prejudice to the rights of the Agency under the Agency Agreements (including the right of Termination in accordance with Section 14.4.3).
- 14.5.3 The Parties agree that the amounts of Construction Period Damages provided under this Section 14.5 (*Construction Period Damages*) are in lieu of actual damages and are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

14.6 CONSTRUCTION COMPLETION CERTIFICATE

- 14.6.1 Within ninety (90) days from the date of issuance of the Substantial Completion Certificate, the Independent Engineer shall issue a certificate certifying that the Project has achieved Construction Completion (the **Construction Completion Certificate**); provided, however, the Construction Completion Certificate may be issued only upon the confirmation by the Independent Engineer (in consultation with the Agency) that the Completion Check List Items have been completed in accordance with the Applicable Standards.

14.7 CONSTRUCTION COMPLETION DATE

- 14.7.1 The Project shall be deemed to achieve project construction completion (the **Construction Completion**) on the date of issuance of the Construction Completion Certificate (the **Construction Completion Date**).
- 14.7.2 For avoidance of doubt, the Parties hereby agree that in the event the Substantial Completion Certificate is issued prior to the Scheduled Substantial Completion Date, the Concession Period shall remain the same.

14.8 SCHEDULED CONSTRUCTION COMPLETION DATE

- 14.8.1 Subject to the terms of this Agreement, the Concessionaire hereby guarantees that the Construction Completion Date shall be achieved in accordance with the provisions of this Agreement and that the Construction Completion Date shall occur on or before the Scheduled Construction Completion Date.

14.9 TITLE TO PROJECT SITE, CONSTRUCTION WORKS AND CONCESSION ASSETS

- 14.9.1 The Agency shall retain all rights and title to the Project Site throughout the Concession Period. Subject to the terms of this Agreement, the Concessionaire has, and shall have, no title to, ownership interest in or lien over, the Project Site nor shall it create any Encumbrance with respect thereto.
- 14.9.2 The Agency shall retain all legal and beneficial rights and ownership of the Concession Assets (including the Construction Works) as and when the same are performed and/or completed until the Transfer Date.
- 14.9.3 On the Transfer Date and subject to:
- (a) receipt by the shareholders of Class A Shares of the Termination Payment in accordance with Section 23.5 (*Termination Payments*);
 - (b) resolution of Disputes (if any);
 - (c) settlement of outstanding payments and accounts of the Concessionaire with regards to any due and payable payments under this Agreement, as verified by the Independent Engineer and Independent Auditor/Expert;

the Concessionaire shall transfer the possession of the Concession Assets to the Agency and at the Agency's option (to be exercised in its sole discretion) transfer all the Class A Shares to the Agency in accordance with the terms of this Agreement. In the event the Agency:

- (a) elects to acquire Class A Shares on the Transfer Date and if the Concessionaire is publicly listed on the Transfer Date, the Concessionaire and Agency shall mutually agree on a mechanism to acquire Class A Shares held by any shareholders other than the Sponsor; or
- (b) elects not to exercise its discretion of acquiring Class A Shares from the Concessionaire to the Agency, then the Concessionaire hereby undertakes to cancel the Class B Shares in compliance with the Applicable Laws.

15. RELIEF EXTENSIONS & RELIEF COMPENSATIONS

15.1 RELIEF EVENTS

15.1.1 The Concessionaire shall only be entitled to initiate a request to the Independent Engineer and Independent Auditor/Expert (the **Relief Order Request**) for issuance by the same of a Relief Order relating to, as applicable, an extension of the Time For Completion and/or payment of Relief Compensation by the Agency in the event of occurrence of the following event which event (or its effects) continues for a period of more than fifteen (15) days as certified by the Independent Engineer (the **Relief Events**):

- (a) a Material Adverse Impediment; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and to Relief Compensation that, in each case, directly result from the Material Adverse Impediment and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (b) a Political Event; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and to Relief Compensation that, in each case, directly result from the Political Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (c) an Emergency Decommissioning directly resulting from the Agency Event of Default or a Political Event; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and to Relief Compensation that, in each case, directly result from Emergency Decommissioning caused by a Political Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (d) the occurrence of the circumstances set out in Section 4.9 (*Geological and Archeological Finds*) causing a delay in the performance of the Concessionaire's obligations under this Agreement; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and to Relief Compensation that, in each case, directly result from the occurrence of the circumstances set out in Section 4.9 (*Geological and Archeological Finds*) and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (e) the occurrence of the Agency Overriding Power Event; provided, that the Concessionaire shall be entitled to only an extension in Time for Completion for any delays and to Relief Compensation that, in each case, directly result from the Agency Overriding Power Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (f) a delay by the Agency in providing the Vacant Possession of the Project Site in accordance with the terms of this Agreement; provided, that the Concessionaire shall be entitled to an extension in Time For Completion for any delays and to Relief Compensation that, in each case, directly result from such delay in providing

Vacant Possession and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;

- (g) a Non-Political Event; provided, that the Concessionaire shall be entitled to only an extension in Time for Completion for any delays that directly result from the Non-Political Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (h) an Emergency Decommissioning directly resulting from a Non-Political Event; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays that directly result from Emergency Decommissioning caused by a Non-Political Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order;
- (i) the occurrence of the Agency Overriding Power Event resulting from a Non Political Event; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays directly result from such Agency Overriding Power Event and as are determined by the Independent Engineer and Independent Auditor/Expert in the Relief Order; and
- (j) a delay caused as a result of Suspension, provided that such Suspension is caused due to a Permitted Event; the Concessionaire shall be entitled to an extension in Time For Completion for any delays that directly result from such delay due to Suspension, as determined by the Independent Engineer and the Independent Auditor/Expert in the Relief Order;

15.1.2 If due to the occurrence of a Relief Event the Concessionaire is entitled to initiate a Relief Order Request, the Concessionaire shall prepare and deliver to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency) a Relief Order Request, together with the Relief Order Proposal that is prepared in accordance with and is subject to Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.3 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*). Each Relief Order Request prepared in accordance with Section 15.2 (*Relief Order Procedure*) and, if applicable, Section 15.3 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*) shall specifically set out in detail the events and circumstances constituting the Relief Event, together with all supporting satisfactory documentary evidence relating thereto.

15.1.3 Following submission to the Independent Engineer and the Independent Auditor/Expert of a Relief Order Request pursuant to Section 15.1.2, the Independent Engineer and the Independent Auditor/Expert shall proceed in accordance with Section 15.2 (*Relief Order Procedure*) and Section 15.3 (*Additional Requirements for Relief Orders Relating to Extension of Time for Completion*).

15.1.4 Notwithstanding anything to the contrary, the Parties agree that the Concessionaire shall not be entitled to any extensions of Time For Completion and/or Relief Compensation, as applicable, due to occurrence of a Relief Event, until such time the same is determined by the Independent Engineer and the Independent Auditor/Expert and set out in the Relief Order issued by the same in accordance with this Agreement provided further that the

Independent Engineer certifies that the Concessionaire has no space for parallel or alternate sequencing of works available for carrying out its obligations within the prescribed timelines and until the Concessionaire has proved to have made all its efforts to avoid such Relief Event according to Good Industry Practices.

15.2 RELIEF ORDER PROCEDURE

15.2.1 In case the Concessionaire submits a Relief Order Request to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency) pursuant to Section 15.1 (*Relief Events*) then prior to the Independent Auditor/Expert and the Independent Engineer issuing a Relief Order, the Concessionaire shall prepare and submit to the Independent Auditor/Expert and the Independent Engineer (with a copy to the Agency), as soon as practicable, a detailed proposal (the **Relief Order Proposal**) containing:

- (a) a description of the proposed work to be performed and a detailed programme for its execution;
- (b) the Concessionaire's proposal for any necessary modifications to the Construction Programme and/or the O&M Programme, as applicable;
- (c) the Concessionaire's proposal for any Relief Compensation and any adjustments to Time For Completion and/or any Project Milestone Date, accompanied by detailed pricing and documentary evidence;
- (d) a statement whether and the extent to which, in the Concessionaire's opinion, the proposed proposals contained in the Relief Proposal would, notwithstanding the exercise of all due skill and care, result in defective Project Works or prevent the Concessionaire from performing its obligations under this Agreement, including defects liability,

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

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

provided, further, however, the Concessionaire shall keep and maintain such contemporary records (as may be necessary to substantiate any proposals contained in the Relief Order Proposal and/or the Relief Order Request) as may reasonably be requested by the Independent Engineer, the Independent Auditor/Expert and/or the Agency and the Concessionaire shall permit the Independent Engineer, the Independent Auditor/Expert and/or the Agency to inspect all such records and shall provide the same to the Project Manager with copies as required.

15.2.2 The Parties agree that compliance by the Concessionaire with the provisions of this Article 15 (*Relief Extensions & Relief Compensation*) shall be a condition precedent to the issuance, by the Independent Engineer and the Independent Auditor/Expert, of a Relief Order, unless waived in writing by the Agency. Further, notwithstanding anything to the contrary contained herein:

- (a) if the Project Works (or any part thereof) are not in accordance with this Agreement, any rectification in that respect undertaken by the Concessionaire shall not entitle the Concessionaire to issuance of a Relief Order;
- (b) the Concessionaire is expressly precluded from any extension of the Time For Completion and any extension of a Project Milestone Date for Project Milestone or to payment of any Relief Compensation due to delays resulting from any act or omission of the Concessionaire and/or the Concessionaire Engaged Persons;
- (c) the Concessionaire shall not be entitled to any extensions of the Time For Completion for any delays or failure to perform and hence shall not be entitled to Relief Compensation or to initiate a Relief Order Request for issuance of a Relief Order to the extent the Concessionaire is, in any case, in delay of performance of its obligations under this Agreement.

15.2.3 Following receipt by the Independent Engineer and the Independent Auditor/Expert from the Concessionaire of the Relief Order Proposal and the Relief Order Request, the Independent Engineer and the Independent Auditor/Expert shall review the Concessionaire's proposals contained in the Relief Order Proposal and the Relief Order Request, for the purpose of determining:

- (a) the occurrence and subsistence of the Relief Event and the Concessionaire's entitlement to issuance of the Relief Order Request;
- (b) whether to proceed with the proposals submitted by the Concessionaire in its submitted Relief Order Proposal;
- (c) (if applicable) any amendments or modifications to the estimates and proposals submitted by the Concessionaire in the Relief Order Proposal;
- (d) other matters set forth in the Relief Order Proposal and the Relief Order Request including determination of extension of Time For Completion and Relief Compensation; and
- (e) any other matters considered necessary by the Independent Engineer and the Independent Auditor/Expert for the purposes of issuance of the Relief Order.

15.2.4 Following the Independent Engineer and the Independent Auditor/Expert's determination of matters set out in Section 15.4.3 (together with any other matters relating to their evaluation for issuance of a Relief Order), the Independent Engineer and the Independent Auditor/Expert shall either amend, approve or disapprove in writing the Concessionaire's submitted proposals contained in the Relief Order Proposal and the Relief Order Request within twenty one (21) days following receipt by the Independent Engineer and the

Independent Auditor/Expert from the Concessionaire of the Relief Order Proposal and the Relief Order Request. If the Independent Engineer and the Independent Auditor/Expert amend, modify or reject the Relief Order Proposal and the Relief Order Request, in each case, submitted by the Concessionaire, the Concessionaire shall submit a revised Relief Order Proposal and Relief Order Request taking into account the amendments, modifications and comments on the same made by the Independent Engineer and the Independent Auditor/Expert, which shall be subject to approval by the Independent Engineer and the Independent Auditor/Expert within twenty one (21) days of submission of the revised Relief Order Proposal and the Relief Order Request. In the event of the Independent Engineer and the Independent Auditor/Expert's approval of the Relief Order Proposal and the Relief Order Request or, if applicable, a revision of the same approved by the Independent Engineer and the Independent Auditor/Expert, it is agreed that the Independent Engineer and the Independent Auditor/Expert shall jointly issue a written order of Relief Order to the Agency and the Concessionaire simultaneously. All extensions in Time For Completion and in any Project Milestone Date for achievement of a Project Milestone and all Relief Compensation, as applicable, shall be expressly set out in the Relief Order and shall be (subject to Section 15.4 (*Disputes and Burden of Proof*) below) binding on the Parties; provided, however, that such extensions in Time For Completion and in any Project Milestone Date for achievement of a Project Milestone and the Relief Compensation set in the Relief Order shall not be in excess of the Concessionaire's request under the Relief Order Proposal and the Relief Order Request; provided, further, that any Relief Compensation shall be paid by the Agency to the Concessionaire within ninety (90) days of receipt of the Relief Order by the Agency.

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

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

15.2.6 Subject to the terms of this Agreement, the Project Works shall not be delayed pending the issuance of a Relief Order by the Independent Auditor/Expert and the Independent Engineer or by the granting of an extension of Time For Completion or payment of Relief Compensation.

15.3 ADDITIONAL REQUIREMENTS FOR RELIEF ORDERS RELATING TO EXTENSION OF TIME FOR COMPLETION

15.3.1 The Parties agree that the provisions of this Section 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*) shall apply to each Relief Order Proposal and the Relief Order Request that, in each case, proposes an extension to the Time for Completion or to any Project Milestone Date for a Project Milestone.

15.3.2 Any Relief Order Proposal and/or, if applicable, the Relief Order Request submitted by the Concessionaire shall be subject to the Concessionaire otherwise being ready to progress

with the aspect of the Project Works for which an extension is being sought. In the event the Concessionaire is in any event delayed in the performance of its obligations due to reasons other than the Relief Event, the Concessionaire shall not be granted any extension of Time For Completion to the extent of its delay.

- 15.3.3 In all cases where the Concessionaire submits a Relief Order Proposal and the Relief Order Request, the Concessionaire shall consult with the Agency, the Project Manager, the Independent Engineer and the Independent Auditor/Expert in order to determine steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Concessionaire shall thereafter comply with all reasonable instructions that the Independent Engineer and the Independent Auditor/Expert shall give in order to overcome or minimize such delay.
- 15.3.4 If the Concessionaire intends to initiate a Relief Order Request for issuance of a Relief Order for an extension of Time For Completion, the Concessionaire shall give Notice to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency) of such intention as soon as possible and in any event within seven (7) days of the day the Concessionaire should reasonably have become aware of the start of the Relief Event giving rise to the delay, together with any other notice required by this Agreement and relevant to such cause. The Concessionaire is further required to submit to the Independent Engineer and the Independent Auditor/Expert (with a copy to the Agency), as part of the Relief Order Proposal relating to the Relief Order Request that pertains to an extension of Time for Completion, an acceleration strategy and schedule to demonstrate how such delay can be eliminated and/or mitigated.
- 15.3.5 Within twenty eight (28) days of the first day of a delay that has resulted from the Relief Event in initiation of the Relief Order Request by the Concessionaire for issuance of a Relief Order by the Independent Engineer and the Independent Auditor/Expert for an extension of Time for Completion, the Concessionaire shall submit full supporting details of its request, including, without limitation, a critical path analysis of the alleged delay reflecting the considerations set forth in this Section. If the Concessionaire cannot submit all relevant details within such period because the cause of delay has continued for a period exceeding seven (7) days, the Concessionaire shall submit interim details at intervals of not more than twenty eight (28) days (from the first day of such delay) and full and final supporting details of its request within sixty (60) days of the last day of delay. In the appropriate circumstances, the Agency shall have the right to waive the time periods set out as above.

15.4 DISPUTES AND BURDEN OF PROOF

- 15.4.1 Any Dispute between the Parties in reference to the issuance of a Relief Order and/or any matters relating to the same shall be resolved pursuant to Article 30 (*Dispute Resolution*).
- 15.4.2 In case of a Dispute regarding the application of the provisions of this Article 15 (*Relief Extensions & Relief Compensation*), the Concessionaire shall have the burden of proof as to its entitlement to relief under this Article 15 (*Relief Extensions & Relief Compensation*).

15.5 FULL COMPENSATION

15.5.1 Any:

- (a) extensions of Time For Completion; and/or
- (b) payment of Relief Compensation,

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

16. CHANGE OF SCOPE

16.1 CHANGE OF SCOPE

16.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Agency may require a change/amendment in the Scope of the Project (the **Change of Scope**); provided, that the accrued and cumulative change at any given time does not result in a variation in the Pre-Estimated Project Cost by more than to fifteen percent (15%) (as such percentage is revised from time to time in accordance with the terms of the Applicable Laws), as determined by the Independent Engineer and the Independent Auditor/Expert. All Additional Costs to be paid by the Agency in respect of the Change of Scope and any extensions in the timelines for the performance by the Concessionaire of its obligations resulting from a Change of Scope shall be in accordance with Section 16.2 and Section 16.3.

16.2 CHANGE OF SCOPE NOTICE

16.2.1 The Agency may request for the Change of Scope by issuing a Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*).

16.2.2 The Agency may request for a Change of Scope by issuing a notice in writing to the Concessionaire through the Independent Engineer (the **Change of Scope Notice**):

- (a) at least ninety (90) days prior to the Scheduled Substantial Completion Date in the event the Change of Scope is required during the Construction Period; and
- (b) at any time in the event the Change of Scope is required during the Operations Period.

16.2.3 In the event at any time during the Construction Period and/or the Operations Period, the Concessionaire determines that a Change of Scope is necessary for providing safer and improved services to the Users, the Concessionaire shall issue a request in writing to the Agency through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The Agency shall within forty five (45) days from the date of receipt of such notice, either accept such request for Change of Scope, on an “as is” basis or with modifications and issue the requisite Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*) or communicate its reasons for not accepting the same to the Concessionaire.

16.3 CHANGE OF SCOPE ORDER

16.3.1 The Concessionaire shall, within fifteen (15) days of receipt of the Change of Scope Notice, provide to the Independent Engineer such information as is necessary and reasonable together with the preliminary documentation and details, including the calculations, where necessary, in support of the following (as applicable):

- (a) the impact which the Change of Scope is likely to have on the Construction Requirements in the event the Change of Scope applicable during the Construction

Period and/or the O&M Requirements in the event the Change of Scope applicable during the Operations Period;

- (b) the budgeted estimate of the Additional Cost to be incurred by the Concessionaire for implementing the Change of Scope;
- (c) the estimated additional time (number of days) that the Concessionaire would require to achieve Substantial Completion and/or Construction Completion consequent to the Change of Scope and any delay, if any, in the Final Expiry Date;
- (d) any extensions in the Construction Completion Schedule resulting from the Change of Scope; and
- (e) any extensions in the timelines for performance by the Concessionaire of its obligations under this Agreement resulting from the Change of Scope.

16.3.2 The Independent Engineer shall after reviewing the information, documentation and the budgeted estimate of the Additional Cost submitted by the Concessionaire pursuant to Section 16.3.1, settle the rates, approve the designs and forward the budgeted estimates of the Additional Cost, as duly certified by the (Independent Engineer and the Independent Auditor/Expert) in consultation with the Concessionaire, to the Agency.

16.3.3 The Agency may, within a period of fifteen (15) days from the date of receipt of such statement, issue an order in writing to the Concessionaire, through the Independent Engineer instructing the Concessionaire to affect the Change of Scope (the **Change of Scope Order**).

16.3.4 In the event, the Agency for any reason whatsoever decides not to issue a Change of Scope Order in accordance with Section 16.3.1, then the Agency shall reimburse the Concessionaire for the cost/expenses actually incurred by the Concessionaire in the preparation and submission of the drawings, documents, estimates and other information in compliance with the Change of Scope Notice; provided, such costs and expenses are duly certified by the Independent Auditor/Expert and the Independent Engineer.

16.3.5 The mode for payment of the Additional Costs to the Concessionaire shall be as follows and shall be complied by the Agency within forty-five (45) days of the issuance of a Change of Scope Order and until such time that the following conditions are complied with by the Agency, the Concessionaire shall not be obligated to commence and/or perform the works forming part of the Change of Scope Order:

- (a) to ten percent (10%) of the Additional Cost shall be paid in advance upon issuance of the Change of Scope Order (or as agreed between the Parties in accordance with Applicable Laws);
- (b) the remaining to ninety percent (90%) shall be transferred by the Agency to an escrow account pursuant to an escrow arrangement agreed with the Concessionaire wherefrom the same shall be utilized progressively upon certification by the Independent Engineer of the performance of works.

- 16.3.6 The Change of Scope Order shall be effective from the date that the Agency notifies the mode of reimbursement of the Additional Cost to the Concessionaire pursuant to sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*).
- 16.3.7 Save for the advance payment under Section 16.3.5(a), the Agency shall progressively pay the Additional Cost in accordance with sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*) or any other modality as mutually agreed between the Parties, only upon receiving a certificate from the Independent Engineer confirming that the Concessionaire has completed the relevant milestone(s) of the works in accordance with the Change of Scope Order.

17. ANNUITY AMOUNT PAYMENTS

17.1 ANNUITY AMOUNT PAYMENTS

- 17.1.1 Subject to the provisions of this Agreement and in consideration of the Concession and the undertaking by the Concessionaire to perform and discharge its obligations in accordance with the terms and conditions set out in the Agency Agreements, the Agency agrees and undertakes to pay (a) an amount equivalent to the construction and renovation cost of the Project as per BOQ and cost schedule given **Schedule Q (BOQ)** in this Agreement, which shall be pre-funded twelve (12) months prior to the Scheduled Substantial Completion Date (the “**Construction/Renovation Annuity**”). The Concessionaire shall only be entitled to withdraw the said Construction/Renovation Annuity amount from the Agency Annuity Amount Payment Account only upon receipt of payment release certificate from the Independent Engineer in this regard; (b) each payable Annuity Amount Payments to the Concessionaire on its corresponding Annuity Amount Payment Date strictly in accordance with the terms of this Article 17 (Annuity Amount Payments) and the terms (including the terms relating to the mechanism and parameters for funding and payment of the Annuity Amount Payments) of the Annuity Amount Payment Agreement.
- 17.1.2 After the Substantial Completion Date, the Agency shall fund the Annuity Amount Payments Reserve Amount in the Agency Annuity Amount Payment Account on every following July 1st and January 1st until the end of Operations Period.
- 17.1.3 Subject to Article 17.1.4, on the first Annuity Amount Payment Date, only the O&M Cost Component out of the total payable Annuity Amount Payment shall be paid to the Concessionaire. However, on the subsequent Annuity Amount Payment Dates the following portions of the Annuity Amount Payment shall be paid to the Concessionaire:
- (a) Taxes Component of the relevant Annuity Amount Payment Period
 - (b) O&M Cost Component of the immediately succeeding Annuity Amount Payment Period
- The Concessionaire shall only be entitled to withdraw the said Annuity Amount Payment from the Agency Annuity Amount Payment Account only upon receipt of payment release certificate from the Independent Auditor/Expert on monthly basis in this regard, in a way that 30% of the O&M Cost Component shall be paid in advance at the start of each Annuity Amount Payment Period and the remaining 70% of the O&M Cost Component and the Tax Component shall be paid upon receipt of payment release certificate from the Independent Auditor/Expert.
- 17.1.4 It is highlighted that during the Defects Liability Period, the Concessionaire shall remain responsible to bear the maintenance cost incurred during such time but shall not include maintenance cost in the O&M Cost Component forming part of the Annuity Amount Payments.

17.2 ANNUITY AMOUNT PAYMENT DAMAGES EVENTS & ANNUITY AMOUNT PAYMENT DAMAGES

17.2.1 The Annuity Amount Payments payable by the Agency to the Concessionaire on each Annuity Amount Payment Date shall be subject to Annuity Amount Payment Damages due to occurrence of the Annuity Amount Payment Damages Events during the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date.

17.2.2 The Annuity Amount Payment Damages, in respect of each Annuity Amount Payment Evaluation Period, shall be up to a maximum of following amount:

- (a) fifty percent (50%) of the O&M Cost Component; of the relevant Annuity Amount Payments;

(collectively the “**Adjustable Annuity Amount Payment Damages**”)

17.2.3 The Adjustable Annuity Amount Payment Damages shall only be adjusted from the following components of the relevant Annuity Amount Payment, in the following order:

- (a) Out of fifty percent (50%) of the O&M Cost Component;

In case, the Annuity Amount Payment Damages is more than the Adjustable Annuity Amount Payment Damages in respect of relevant Annuity Amount Payment, the remaining Annuity Amount Payment Damages shall be carried forward and shall be adjusted from the Adjustable Annuity Payment Damages of the immediately succeeding Annuity Amount Payment. This process of carrying forward and adjustment of the remaining Annuity Amount Payment Damages shall continue till the entire Annuity Amount Payment Damages is adjusted from the Adjustable Annuity Amount Payment Damages in relation to the relevant Annuity Amount Payments.

17.2.4 In case, the Annuity Amount Payment Damages Event occurs in or continue for three (3) consecutive Annuity Amount Payment Periods, the same shall constitute a Concessionaire Event of Default.

17.2.5 In the event:

- (a) the Actual Availability is less than eighty percent (80%) of the Assured Availability for a consecutive period of thirty (30) days during any two (2) Annuity Amount Payment Periods falling in any Operational Year; and/or
- (b) the Actual Availability is less than eighty percent (80%) of the Assured Availability for an aggregate period of ninety (90) days during any Operational Year,

then, in each case above, the same shall constitute a Concessionaire Event of Default and the Agency may at its discretion Terminate this Agreement in accordance with Section 22.1.1 (*Concessionaire Event of Default*) except in cases where the same is due to the Permitted Events.

17.2.6 In the event the entire Project (or any portion thereof) is unavailable for Users for a period of ten (10) consecutive days, then the same shall constitute a Concessionaire Event of Default except in cases where the same results from Permitted Events.

17.3 NOT USED

17.4 PAYMENT OF TERMINATION PAYMENT BY DEBIT OF AGENCY ANNUITY AMOUNT PAYMENT ACCOUNT

17.4.1 In the event of Termination of this Agreement and to the extent the Termination Payment (or any part thereof) remains due, payable and outstanding on the Termination Payment Date (as certified in a certificate (the **Unpaid Termination Payment Amount Certificate**) issued by the Independent Engineer and the Independent Auditor/Expert) (the **Unpaid Termination Payment Amount**), the Unpaid Termination Payment Amount shall be paid to the Concessionaire in the following manner on the Termination Payment Date:

- (a) the Agency Annuity Amount Payment Account Bank shall, in accordance with the Agency Annuity Amount Payment Account Standing Instructions, debit the Agency Annuity Amount Payment Account on the date of its receipt of the Unpaid Termination Payment Amount Certificate in an amount equal to the Unpaid Termination Payment Amount and credit the same to the Concessionaire Annuity Amount Payment Account;
- (b) in the event the Payable Termination Payment Amount Shortfall is not paid in full in accordance with Section 17.4.1(a), the Agency shall pay the unpaid portion of the Payable Termination Payment Amount Shortfall (the **Outstanding Termination Payment**) to the Concessionaire by credit of the Outstanding Termination Payment to the Concessionaire Annuity Amount Payment Account.

18. DEFECTS & DEFICIENCIES, NOTICE OF REMEDY, SUSPENSION

18.1 REMEDYING DEFECTS & DEFICIENCIES

18.1.1 The Concessionaire warrants that the:

- (a) Project Works shall be performed in good workmen like manner in accordance with the Applicable Standards and shall be free from all Defects & Deficiencies;
- (b) the Concession Assets shall comply with the Applicable Standards; and
- (c) the Project, following Substantial Completion, shall meet the Assured Availability.

18.1.2 In order that the Project Works and the Concession Assets comply with the foregoing warranties and that the same are in the condition required by this Agreement, the Concessionaire shall execute all works and services relating to amendment, reconstruction and remedying of Defects & Deficiencies (including the removal, replacement and reinstallation of materials and equipment, remedying of Defects & Deficiencies and retesting of repaired or replaced portions of the Project Works (if appropriate in accordance with Good Industry Practices)) at its own cost, risk and expense; provided, however, that the amendment, reconstruction and remedying of such Defects & Deficiencies shall be at the cost, risk and expense of the Agency in the event the same is caused by a Permitted Events (except for a Non Political Event).

18.1.3 If the remedying of any Defect & Deficiency or damage is such that it may significantly affect the performance of the Project Works and/or the Concession Assets, the Independent Engineer and/or the Agency may require that certain Construction Tests, O&M Tests and/or the Completion Tests (as the case may be) to be repeated to the extent necessary. The requirement shall be made by written Notice after the Defect & Deficiency or damage is remedied. Such tests shall be carried out by the Concessionaire in accordance with the Applicable Standards and all costs and expenses of any nature associated with re-performance of such tests shall be allocated in accordance with Section 18.1.2.

18.2 NOTICE REMEDY

18.2.1 In the event (the **Remedy Events**):

- (a) the Project Works (or any part thereof) are not performed in accordance with the Applicable Standards; and/or
- (b) the Project Works (or any part thereof) fail to comply with the Applicable Standards;
- (c) the Concession Assets (or any part thereof) fails to comply with the Applicable Standards, then the Independent Engineer and/or the Agency (through the Independent Engineer) shall be entitled to issue a Notice to the Concessionaire to rectify and remedy the same (the **Notice of Remedy**). The Notice of Remedy shall set out the reasonable time period (as determined by the Independent Engineer)

(the **Remedy Time Period**) in which the Concessionaire shall remedy and rectify the Remedy Events in accordance with the Applicable Standards; and/or

(d) [●]².

18.2.2 In the event of failure by the Concessionaire to remedy the Remedy Events within the Remedy Time Period, the Agency shall, without prejudice to any of its other rights and remedies under this Agreement, be entitled to, with the prior approval of the Independent Engineer and at the risk and cost of the Concessionaire, cause the remedying and rectification of the Remedy Events.

18.2.3 The Concessionaire shall reimburse all costs incurred by the Agency (as certified by the Independent Auditor/Expert and the Independent Engineer) on account of such remedying and rectification of the Remedy Events within thirty (30) days of receipt of the Agency' claim thereof set out in an invoice approved by the Independent Engineer and the Independent Auditor/Expert (the **Agency Remedy Invoice**). In the event of failure by the Concessionaire to pay the amounts set out in the Agency Remedy Invoice (the **Agency Remedy Amount**) within the time period set out herein, the Agency shall be entitled to receive such Agency Remedy Amount through encashment of (as in effect at such time) the Construction Performance Security or O&M Performance Security. In the event the funds received by the Agency through encashment of the Construction Performance Security and/or the O&M Performance Security are less than the Agency Remedy Amount, the Concessionaire shall be obligated to pay the Agency the shortfall within three (3) days of the Agency's written demand.

18.3 **SUSPENSION**

18.3.1 The:

- (a) Agency may by Notice in writing to the Concessionaire (with a copy to the Independent Engineer and the Independent Auditor/Expert) require the Concessionaire to suspend forthwith the whole or any part of the Project Works if, in the reasonable opinion of the Agency: (i) such work threatens the safety of the Users and pedestrians; or (ii) such Project Works are not in accordance with the Applicable Standards and/or Good Industry Practices; and/or
- (b) Independent Engineer may, by Notice to the Concessionaire (with a copy to the Agency and the Independent Auditor/Expert), require the Concessionaire to suspend forthwith the whole or any part of the Project Works which in the reasonable opinion of the Independent Engineer is being carried on/conducted in a manner that is not in conformity with the Applicable Standards and/or is not in accordance with Good Industry Practice,

(the **Suspension, Suspend and its grammatical variations**).

18.3.2 The Concessionaire shall, pursuant to any notice issued under Section 18.3.1, Suspend the Project Works or any part thereof for such time and in such manner as may be

² to advise whether the Remedy events are to include any further events;

specified by the Agency and/or the Independent Engineer and thereupon carry out remedial measures to secure the safety of Suspended works and the Users and for compliance of the Suspended Project Works with the Applicable Standards and Good Industry Practices.

- 18.3.3 The Concessionaire may by Notice (with a copy to the Agency) require the Independent Engineer to inspect such remedial measures forthwith and the Independent Engineer shall, following such inspection, make a report to the Agency recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the Agency shall either revoke such Suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Agency, and the procedure set forth in this Section 18.3 (*Suspension*) shall be repeated till such time as the Suspension hereunder is revoked.
- 18.3.4 All reasonable costs incurred for maintaining and protecting the Project Works (or part thereof) during the period of Suspension (the **Preservation Costs**) shall be borne by the Concessionaire; provided, that if the Suspension has occurred as a result of a Permitted Event, the provisions of Article 21 (*Force Majeure*) and Article 15 (*Relief Extensions & Relief Compensation*), as the case may be, shall apply.
- 18.3.5 All delays caused as a result of the Suspension shall be on account of the Concessionaire; provided, however, in the event the Suspension is caused due to a Permitted Event, any extensions of the Time For Completion shall be subject to the provisions of Article 15 (*Relief Extensions & Relief Compensation*) and Article 21 (*Force Majeure*), as the case may be.

19. OPERATION AND MAINTENANCE

19.1 OPERATION AND MAINTENANCE

- 19.1.1 The Concessionaire shall perform the Operation and Maintenance in accordance with the Applicable Standards and shall ensure that the same complies with the Applicable Standards. During the Operations Period, the Concessionaire shall be responsible for Operating and Maintaining the Concession Assets on a twenty-four (24) hours per day, three-sixty-five (365) days per year basis according to the Applicable Standards so as to ensure that the same comply with the Applicable Standards.
- 19.1.2 Without limiting the provisions of Section 19.1.1, the Concessionaire shall be in particular responsible for the performance and compliance, in each case, of the Operation and Maintenance in accordance with the O&M Requirements.
- 19.1.3 The Concessionaire shall perform the Operation and Maintenance within the O&M Time For Completion and hereby undertakes to perform and complete each Project O&M Milestone on or prior to its Project O&M Milestone Date.
- 19.1.4 The Concessionaire shall perform the Operation and Maintenance in accordance with the terms of this Agreement; and the Concessionaire shall be responsible and liable for performance (within the O&M Time For Completion) and compliance of the Operations and Maintenance with the Applicable Standards.

19.2 OPERATION AND MAINTENANCE OBLIGATIONS OF THE CONCESSIONAIRE

- 19.2.1 The Concessionaire undertakes to perform the Operation and Maintenance of the Concession Assets during the Operations Period in accordance with the provisions of Section 19.1 (*Operation and Maintenance*) and undertakes to modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Concession Assets in accordance with the Applicable Standards.
- 19.2.2 The Concessionaire hereby agrees that the Operation and Maintenance obligations of the Concessionaire hereunder shall include, without limitation, the performance of the following obligations in accordance with the Applicable Standards and Good Industry Practices and within the O&M Time For Completion:
 - (a) ensuring that during the Operations Period, the Concession Assets are in a condition to permit safe, smooth and uninterrupted utilization during normal operating conditions;
 - (b) minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project and by providing a rapid and effective response and maintaining liaison with emergency services of the Agency;
 - (c) carrying out routine maintenance and the periodic preventive maintenance of the Concession Assets;

- (d) undertaking routine maintenance;
- (e) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Concession Assets;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- (g) protecting the environment (to the extent of the Concessionaire's activities) and providing equipment and materials therefor;
- (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Concession Assets;
- (i) maintaining a public relations unit to interface with and attend to suggestions from the Users, the Agency, the Government Authorities, media and other agencies;
- (j) complying with Safety Requirements;
- (k) promptly removing from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keeping the Project Site in a clean, tidy and orderly condition, in each case, in conformity with the Applicable Standards; and
- (l) performing all other activities and obligations relating to Operation and Maintenance so as to comply with the Applicable Standards and also so as to result in the Concession Assets complying with the Applicable Standards.

19.3 MATERIAL BREACH OF O&M REQUIREMENTS

19.3.1 The Concessionaire shall be deemed to be in material breach of the O&M Requirements (the **Material Breach of O&M Requirements**) if the Independent Engineer and/or the Agency (through the Independent Engineer), acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (a) there has been a failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
- (b) there has been a material failure in performance by the Concessionaire of the Operation and Maintenance (or any part thereof) within the O&M Time For Completion which has resulted in a Material Adverse Effect;
- (c) the riding quality of the Project or any part thereof has materially deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;

- (d) there has been a serious or persistent let up in adhering to Safety Requirements and thereby the Concession Assets or any part thereof is not safe for operations;
- (e) there has been Persistent Breach of O&M Requirements; and

19.4 AGENCY' RIGHTS WITH REGARD TO MATERIAL BREACH OF O&M REQUIREMENTS

- 19.4.1 Upon the occurrence of a Material Breach of O&M Requirements, the Agency shall without prejudice to and notwithstanding any other consequences provided therefor shall have the right and be entitled to Terminate this Agreement in accordance with Section 23 (*Termination*).

19.5 NOT USED

19.6 O&M MANUAL

- 19.6.1 No later than twenty (20) days prior to the Scheduled Substantial Completion Date the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall jointly prepare and submit to Agency, separate operations, repair, maintenance and safety manual (together with arrangements and procedures for conducting safety related measures) in respect of the Concession Assets that shall comply with the Applicable Standards and Good Industry Practices and shall set out, *inter alia*, the regular preventive maintenance and operating procedures for the Concession Assets, as to be performed pursuant to the Applicable Standards and Good Industry Practices. Such operations, repair, maintenance and safety manual shall include provisions for operation and maintenance of the Concession Assets and shall, *inter alia*, provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Concession Assets, including replacement thereof, such that their overall condition conforms to the Applicable Standards. The operations, repair, maintenance and safety manual shall also set out certain Project O&M Milestones and their respective Project O&M Milestone Dates.
- 19.6.2 The operations, repair, maintenance and safety manual jointly prepared by the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall be subject to approval of the Agency; provided, however, such approval shall be granted by Agency within fifteen (15) days of the Concessionaire's request for such approval if the operations, repair, maintenance and safety manual is recommended by the Independent Engineer for approval after addressing any comments and observations of the Agency on the same. The operations, repair, maintenance and safety manual, as approved by the Agency, shall be binding on the Parties (the **O&M Manual**).
- 19.6.3 Four (4) copies of the O&M Manual shall be provided by the Concessionaire to each of Agency and the Independent Engineer.
- 19.6.4 The O&M Manual shall be revised and updated on first (1st) anniversary of its initial preparation and subsequently every one (1) year thereafter, in each case, with mutual consent of the Parties and in consultation with the Independent Engineer; provided,

however, the Parties may revise, update and/or amend the O&M Manual with mutual consent at any time.

19.7 O&M PROGRAMME

19.7.1 Ninety (90) days prior to commencement of the Operations Period and thereafter thirty (30) days prior to the commencement of each Operational Year during the Operations Period, the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall jointly prepare and provide to the Agency, a proposed annual program, to be prepared in compliance with the Applicable Standards and Good Industry Practices, of Operation and Maintenance during the upcoming each Operational Year (including preventive, urgent and other scheduled maintenance of the Concession Assets) (the **Proposed O&M Programme**). The Proposed O&M Programme shall include, (without limitation) the following:

- (a) the Project O&M Milestones to be achieved during the upcoming each Operational Year and the respective Project O&M Milestone Dates for each of the same;
- (b) routine maintenance and preventive maintenance schedule;
- (c) arrangements and procedures for carrying out urgent repairs in respect of the Concession Assets;
- (d) criteria to be adopted for determining and ascertaining the Maintenance Requirements of the Concession Assets;
- (e) the timelines, intervals and procedures for conducting the inspection of all elements of the Concession Assets;
- (f) the timelines and intervals at which the Concessionaire shall conduct periodic maintenance in respect of the Concession Assets;
- (g) arrangements and procedures for conducting safety related measures in relation to the Concession Assets;
- (h) timelines and intervals for maintenance works and the scope thereof; and
- (i) all major events and activities in the preparation of the O&M Documents and submission of the same to the Agency, the Independent Engineer and/or the Independent Auditor/Expert (as applicable) for the review and approval (as applicable);

19.7.2 The Proposed O&M Programme jointly prepared by the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall be subject to approval of the Agency; provided, however, that such approval shall be granted by the Agency within twenty one (21) days of the Concessionaire's request for such approval if the Proposed O&M Programme is recommended by the Independent Engineer for approval after addressing any comments and observations of the Agency on the same. The Proposed O&M Programme prepared in respect of each Operational Year, as

approved by the Agency on the Independent Engineer's recommendation, shall be binding on the Parties for such Operational Year (the **O&M Programme**).

19.7.3 The Concessionaire shall, whenever required by the Agency, the Independent Engineer and/or the Independent Auditor/Expert, provide in writing, a general description of the arrangements and methods which the Concessionaire proposes to adopt for the execution of the Operation and Maintenance. Any alteration to the O&M Programme or to such arrangements and methods shall be made by the Concessionaire with prior written consent of the Independent Engineer.

19.7.4 Any reports (including the O&M Monthly Status Reports) submitted by the Concessionaire and covering the execution of the Operation and Maintenance shall emphasize any delays in the O&M Time For Completion.

19.8 NOT USED

19.9 O&M DOCUMENTS

19.9.1 The Concessionaire shall prepare the O&M Documents in accordance with the Applicable Standards and shall complete and deliver the same to the Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) from time to time within the O&M Time for Completion. Further, the Concessionaire hereby undertakes that the O&M Documents shall comply with the Applicable Standards.

19.9.2 The Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) shall have the right to review and inspect all O&M Documents. The Concessionaire shall provide all such O&M Documents that the Agency, the Independent Engineer and the Independent Auditor/Expert may reasonably require to inspect in respect of the Operation and Maintenance. It is made clear that nothing in the above shall diminish the Concessionaire's responsibility to provide the Agency, the Independent Engineer and the Independent Auditor/Expert with sufficient information to enable the same to satisfy themselves regarding the Operation and Maintenance.

19.9.3 For each part of the Operation and Maintenance, if the Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) wish to modify any O&M Documents, the Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) shall immediately submit their proposal for modification to the Concessionaire. Subject to Section 19.12.4, performance of such modification shall be subject to mutual agreement between the Parties.

19.9.4 Defects & Deficiencies, errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the O&M Documents or arising therefrom shall be rectified by the Concessionaire at its sole cost and risk.

19.9.5 The Agency, the Independent Engineer and the Independent Auditor/Expert (as applicable) may use the O&M Documents for such purposes as it may require for the purposes of the Project.

19.10 MODIFICATIONS TO THE PROJECT

- 19.10.1 The Concessionaire shall not carry out any material modifications to the Concession Assets, save and except where such modifications are necessary for: (a) the Operation and Maintenance of the Concession Assets in conformity with the Applicable Standards; and (b) compliance by the Concession Assets with the Applicable Standards; provided, however, the Concessionaire shall Notify the Independent Engineer and the Agency of the proposed modifications along with particulars thereof at least thirty (30) business days before commencing work on such modifications and shall only implement such modifications upon receipt of the Independent Engineer's and/or Agency's approval of the same, which approval shall be provided or declined by the Independent Engineer and/or the Agency within fifteen (15) days of its receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Standards.

19.11 BARRIERS AND DIVERSIONS

- 19.11.1 The Agency shall procure that during the Operations Period, no barriers are erected or placed by any Government Agency and/or the Agency on the Concession Assets, except for reasons of Emergency, national security, law and order; provided, that all such barriers shall be in accordance with the Applicable Standards (including the Safety Requirements).

19.12 O&M MONTHLY STATUS REPORT

- 19.12.1 During the Operations Period Operations Period, the Concessionaire shall, no later than seven (7) days after the end of each calendar month of the Operations Period, furnish to the Agency and the Independent Engineer a monthly report (the **O&M Monthly Status Report**) stating in reasonable detail the condition of the Concession Assets including its compliance or otherwise with the Applicable Standards and shall promptly give such other relevant information as may be required by the Independent Engineer, the Independent Auditor/Expert and/or and the Agency. In particular, the O&M Monthly Status Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the Concession Assets and/or the Operation and Maintenance that require rectification and any delays in the performance of its obligations by the Concessionaire set out in the O&M Programme. The O&M Monthly Status Report shall also expressly highlight all Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets identified by the Independent Engineer in its O&M Inspection Report and shall set out all actions taken, and arrangements made by the Concessionaire for remedying the same.
- 19.12.2 Each O&M Monthly Status Report shall be updated by the Concessionaire based on any observations and comments made by the Independent Engineer and shall be provided again to each of the Agency and the Independent Engineer until such time that it is approved by the Independent Engineer; provided, that the Independent Engineer shall not accord its approval of the O&M Monthly Status Report until it is satisfied that all reasonable comments and observations of the Agency on the O&M Monthly Status Report are addressed.

- 19.12.3 The O&M Monthly Status Report shall be in the form and substance approved by the Independent Engineer from time to time.

19.13 O&M INSPECTION REPORT

- 19.13.1 During the Operations Period, the Concessionaire shall enable the Independent Engineer to inspect the Operation and Maintenance and the Concession Assets at least once a month and the Concessionaire shall make all arrangements for the same. In addition, the Independent Engineer shall be entitled to undertake spot checks from time to time to inspect the Operation and Maintenance and the Concession Assets, without prior notice to the Concessionaire.
- 19.13.2 The Independent Engineer shall make a report of such inspection (the **O&M Inspection Report**) stating in reasonable detail the Defects & Deficiencies, if any, in the Operation and Maintenance and /or the Concession Assets with particular reference to the Applicable Standards.
- 19.13.3 The Independent Engineer shall, within seven (7) days of commencement of a month, provide a copy of the O&M Inspection Report to the Concessionaire and the Agency.
- 19.13.4 The Concessionaire hereby undertakes that, within fifteen (15) days from receipt of the O&M Inspection Report, it shall rectify and remedy the Defects & Deficiencies, if any, stated in the O&M Inspection Report, on its own cost and expense.
- 19.13.5 The inspection or submission of the O&M Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

19.14 O&M TESTS

- 19.14.1 The Concessionaire shall conduct or procure to be conducted such tests, as specified in **SCHEDULE G** (*List of Tests & Completion Tests*) in order to determine whether the Operation and Maintenance and/or the Concession Assets conform to the Applicable Standards (the **O&M Tests**). The O&M Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer and the Agency. In the event the timing and frequency of any O&M Tests is specified by the Agency and it is determined that the Operation and Maintenance is not in accordance with the O&M Requirements (as determined by the Independent Engineer), the cost of such O&M Tests shall be borne by the Concessionaire; provided, however, in the event it is determined that the Operation and Maintenance are in accordance with the O&M Requirements (as determined by the Independent Engineer), the cost of such O&M Tests shall be borne by the Agency.
- 19.14.2 Subject to Section 19.14.1, the Concessionaire hereby undertakes to conduct the O&M Tests under the supervision of the Independent Engineer (in consultation with the Agency) and in accordance with the Applicable Standards at its own cost and expense.

- 19.14.3 The Concessionaire hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets that are identified in the O&M Tests and to ensure that as a consequence of such remedial measures the Operation and Maintenance and the Concession Assets conform to the Applicable Standards. The Concessionaire further undertakes that the remedial measures required to be undertaken by the Concessionaire pursuant to this Section 19.14.3 shall be repeated by the Concessionaire at its sole cost till such time as the Operation and Maintenance and the Concession Assets conform to the Applicable Standards to the satisfaction of the Independent Engineer. In the afore stated circumstances, the Independent Engineer may require the Concessionaire to conduct additional tests to determine whether the Defects & Deficiencies are rectified and in such case the costs of such additional tests shall be borne by the Concessionaire.
- 19.14.4 The Concessionaire shall maintain proper record of the O&M Tests and the remedial measures taken to cure the Defects & Deficiencies, if any, indicated by the O&M Test results.
- 19.14.5 Results of all O&M Tests shall be jointly recorded by the Independent Engineer and the Concessionaire.

19.15 REMEDIAL MEASURES

- 19.15.1 The Concessionaire shall repair or rectify the Defects & Deficiencies, if any, set forth in the O&M Inspection Report or in the O&M Tests results referred to in Section 19.15 (*O&M Tests*) and furnish a report in respect thereof to the Independent Engineer and the Agency within seven (7) days of receiving the O&M Inspection Report or the O&M Tests results, as the case may be; provided, that where the remedying of such Defects & Deficiencies is likely to take more than seven (7) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.15.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the O&M Tests, at its own cost, to determine that such remedial measures have brought the relevant Concession Assets into compliance with the Applicable Standards and the procedure set forth in this Section 19.15 (*Remedial Measures*) shall be repeated until the Concession Assets conform to the Applicable Standards.
- 19.15.3 The provisions of this Section 19.15 (*Remedial Measures*) shall not in any manner limit the obligations of the Concessionaire relating to remedying of Defects & Deficiencies set out elsewhere in this Agreement.

20. INSURANCES

20.1 CONSTRUCTION PERIOD INSURANCES

20.1.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Construction Period all such Insurances, as described in **PART I** (*Construction Period Insurances*) - **SCHEDULE I** (*Insurances*), that are necessary and required to be procured by the Concessionaire in accordance with the Applicable Laws.

20.2 OPERATIONS PERIOD INSURANCES

20.2.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Operations Period all such Insurances, as described in **PART II** (*Operations Period Insurances*) - **SCHEDULE I** (*Insurances*), that are necessary and required to be procured by the Concessionaire in accordance with the Applicable Laws.

20.3 INSURANCE COMPANIES

20.3.1 The Concessionaire agrees that it shall procure the Insurances from such insurance companies that are acceptable to the Agency and further agrees that the Concessionaire shall only procure Insurances through foreign insurance companies if the relevant Insurances are not being offered by local companies at comparable rates, subject always to the prior consent of the Agency.

20.3.2 Further, the Insurances to be maintained in terms of this Agreement and in accordance with the terms set out herein shall be maintained throughout until the Trigger Date.

20.4 EVIDENCE OF INSURANCES

20.4.1 The Concessionaire shall, from time to time, provide to the Agency copies (duly attested as certified to be a true and correct copy by the relevant insurance company) of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

20.4.2 Failure by the Concessionaire to obtain the Insurance coverage or certificates of Insurance required by this Article 20 (*Insurances*) shall not in any way relieve or limit the Concessionaire's obligations and liabilities under any provision of this Agreement.

20.4.3 In case the Concessionaire fails to procure or maintain any Insurance required pursuant to this Article 20 (*Insurances*), then the Agency shall have the right to procure such Insurance in accordance with the requirements of **SCHEDULE I** (*Insurances*) and shall be entitled to offset the premiums paid for such Insurance against any amounts owed to the Concessionaire pursuant to the terms of this Agreement and the Agency Agreements. The Concessionaire shall be named as the loss payee on any such Insurance procured by the Agency pursuant to this Section 20.4.3.

20.4.4 The Concessionaire shall provide the Agency with copies of any underwriters' reports or other reports received by the Concessionaire from any insurance company; provided, that the Agency shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement or any other Agency Agreement or as may be required by any Government Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

20.5 APPLICATION OF INSURANCE PROCEEDS

20.5.1 All moneys received under the Insurance shall be promptly applied by the Concessionaire towards repair, renovation, restoration and/or substitution of the Concession Assets or any part thereof which may have been damaged or destroyed; provided, that all costs relating to such repair, renovation, restoration and/or substitution shall be duly certified by the Independent Engineer and the Independent Auditor/Expert.

20.5.2 Not Used

20.5.3 The Concessionaire shall carry out the repair, renovation, restoration and/or substitution to the extent possible in such manner that the Concession Assets or any part thereof, shall, after such repair, renovation, restoration and/or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

20.6 VALIDITY OF INSURANCES

20.6.1 The Concessionaire hereby undertakes to promptly pay the insurance premium in respect of the Insurances and to keep the policies in force and valid during the entire Concession Period. The Concessionaire shall provide to the Agency, copies of the renewed policies and other documentary evidence of the payment of the insurance premium in respect of the Insurances.

20.6.2 The Concessionaire shall ensure, subject to market availability, that each instrument, contract and/or policy issued in respect of the Insurances shall provide that the Insurance may not be cancelled and/or terminated without at least ten (10) days prior written notice to the Agency of such cancellation and/or termination.

20.6.3 Notwithstanding anything contained herein, in the event the Concessionaire fails to comply with its obligations to procure the Insurances in accordance with Section 20.1 (*Construction Period Insurances*) and/or Section 20.2 (*Operations Period Insurances*), then the Agency may, without prejudice to its other rights and remedies for breach, at its option, obtain and maintain such Insurance and all sums incurred by the Agency therefor shall be reimbursed by the Concessionaire to the Agency within seven (7) days from the receipt of a claim by the Concessionaire in respect thereof from the Agency.

20.6.4 The Concessionaire shall notify the Agency in advance, prior to any material variation of the Insurances.

20.7 MAINTENANCE OF "OCCURRENCE" FORM POLICIES

20.7.1 A coverage required under this Article 20 (*Insurances*) and **SCHEDULE I** (*Insurances*) and any “umbrella” or excess coverage shall be “occurrence” form policies. In the event the Concessionaire has “claims-made” form coverage, the Concessionaire must obtain prior approval of all “claims-made” policies from the Agency.

20.8 POLICY ENDORSEMENTS

20.8.1 The Concessionaire shall cause the insurance companies to provide the following endorsement items in the commercial general liability and, if applicable, umbrella or excess liability policies relating to the construction, Operation and Maintenance of the Concession Assets provided pursuant to this Article 20 (*Insurances*) and **SCHEDULE I** (*Insurances*):

- (a) the Agency, its officers, servants and agents shall be additionally insured under such policies with respect to claims arising out of or in connection with this Agreement;
- (b) the insurance shall be primary with respect to the interest of the Agency, its officers, servants and agents and any other insurance maintained by them is excess and not contributory with such policies;
- (c) the following separation of interests’ clause shall be made a part of the policy:

“In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance.”;
- (d) the insurer shall waive all rights of subrogation against the Agency, its officers, servants and agents; and
- (e) notwithstanding any provision of the policy, the policy may not be canceled or not renewed without the insurer endeavoring to give thirty (30) days written notice to the Agency except in the case of non-payment, in which case it shall be ten (10) days with prior written notice to the Agency. All other terms and conditions of the policy shall remain unchanged.

21. FORCE MAJEURE

21.1 FORCE MAJEURE EVENT

21.1.1 A **Force Majeure Event** means any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Commencement Date materially and adversely affects the performance by such affected Party (the **Affected Party**) of its obligations under or pursuant to this Agreement; 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 Concession Assets from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. 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 Pakistan (each a **Political Event**):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent of which report to the Agency, the Independent Engineer and the Independent Auditor/Expert shall have been given under Section 7.6.2 and that shall have existed for thirty (30) consecutive days or more; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide and that (or its effects) shall have existed for thirty (30) consecutive days or more;
- (b) the following events beyond the reasonable control of the Affected Party (each a **Non-Political Event**), including, (without limitation)
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, which has, in each case, affected the work or operations for more than fifteen (15) consecutive days; or
 - (ii) any Lapse of Consent of which report to Agency, the Independent Engineer and the Independent Auditor/Expert shall have been given under Section 7.6.2 and that shall have existed for less than thirty (30) consecutive days; or

- (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide and that shall have existed for thirty (30) consecutive days or more; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation; or
 - (v) epidemic or plague.
- (c) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor;
 - (iii) a breakdown in machinery and/or equipment;
 - (i) normal wear and tear or random flaws in materials and equipment; and
 - (ii) a delay caused by rains and monsoons;

provided, that each of the events described in clauses (c)(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 by one of its Contractors.

21.2 OBLIGATION TO NOTIFY

21.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, Notify the Independent Engineer, the Independent Auditor/Expert and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

21.2.2 The Affected Party shall provide all relevant details in respect of the Force Majeure Event in the Force Majeure Notice, including but not restricted to the following:

- (a) the nature and extent of the Force Majeure Event;
- (b) the estimated Force Majeure Period;
- (c) the nature of and the extent to which, performance of any of the Affected Party's obligations under this Agreement are affected by the Force Majeure Event;
- (d) the measures which the Affected Party has taken or proposes to undertake to alleviate/mitigate the impact of the Force Majeure Event and to resume

performance of such of its obligations that are affected by the Force Majeure Event; and

- (e) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

21.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within five (5) days from the date of receipt of the same, convene a meeting, along with the Independent Engineer for the purpose of conducting discussions, in good faith, and where necessary the Parties shall agree to conduct inspections and/or surveys of the Project in order to:

- (a) assess the impact of the underlying Force Majeure Event;
- (b) to determine the likely duration of the Force Majeure Period; and
- (c) to formulate damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

21.2.4 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports in respect of the matters set out Section 21.2.3 and such other information, details and/or documents that the other Party may reasonably require.

21.3 CONSEQUENCE OF FORCE MAJEURE EVENT

21.3.1 Upon occurrence of a Force Majeure Event, the following shall apply:

- (a) there shall be no Termination of this Agreement except in accordance with the provisions of Section 21.5 (*Termination Notice for Force Majeure Event*), Section 21.6 (*Termination Payment for Force Majeure Event*) and Article 23 (*Termination*);
- (b) in the event of occurrence of a Force Majeure Event:
 - (i) subject to Section 21.8, the Concessionaire shall have the right to apply for a Relief Order Request with respect to the extension of the Project Milestone Dates for the Project Milestones (affected by the Force Majeure Event), to be performed (together with the timelines for performance by the Concessionaire of its relevant obligations to be performed) shall be extended by the Force Majeure Period (as determined by the Independent Engineer and the Independent Auditor/Expert in accordance with the provisions of Article 15 (*Relief Extensions & Relief Compensations*);
 - (ii) all costs, fees, expenses and charges arising from and relating to the Force Majeure Event shall be allocated in accordance with Section 21.4 (*Allocation of Costs Arising out of Force Majeure*).

provided, however, that no relief, including extension of Time For Completion, shall be granted to the Affected Party to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred.

21.4 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE

21.4.1 Upon occurrence of a Force Majeure Event, the allocation of costs, expenses and/or Losses attributable to such Force Majeure Event shall be as follows:

- (a) upon occurrence of a Non-Political Event, all costs, expenses and/or Losses attributable to such Non Political Event shall be on the account of the Concessionaire and the Agency shall not be liable or responsible for the same in any manner;
- (b) upon occurrence of a Political Event, the Agency shall fund and bear the Force Majeure Costs (as set out in a Relief Order) and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

21.4.2 Further, in the event during the Operations Period:

- (a) the Actual Availability is less than the Assured Availability as a result of a Non-Political Event, the same shall be an Annuity Amount Payment Damages Event and result in, *inter alia*, reduction in the Annuity Amount Payments in accordance with Section 17.2.
- (b) the Actual Availability is less than the Assured Availability as a result of a Political Event, the same shall neither be an Annuity Amount Payment Damages Event nor result in, *inter alia*, any reduction in the Annuity Amount Payments during the Force Majeure Period.

21.4.3 Save and except as expressly provided in this Section 21.4 (*Allocation of Costs Arising out of Force Majeure*) and, if applicable, Section 21.5 (*Termination Notice For Force Majeure Event*) and Section 21.6 (*Termination Payment For Force Majeure Event*), neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

21.5 TERMINATION NOTICE FOR FORCE MAJEURE EVENT

21.5.1 If:

- (a) a Force Majeure Event subsists for a continuous period of one hundred and twenty (120) days, either Party may in its discretion Terminate this Agreement by issuing a Termination Notice to the other Party; or

- (b) in case of a Political Event, the Agency determines that the Relief Compensation relating the same are unacceptable then the Agency may in its discretion Terminate this Agreement by issuing a Termination Notice to the Concessionaire,

in each case above, without being liable in any manner whatsoever, save as provided in this Section 21.5 (*Termination Notice for Force Majeure*) and Section 21.6 (*Termination Payments for Force Majeure Event*), and upon issuance of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand Terminated forthwith; provided, that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days' time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

21.6 TERMINATION PAYMENTS FOR FORCE MAJEURE EVENT

- 21.6.1 If Termination is on account of a Non-Political Event, the Agency shall make a Termination Payments to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Non-Political Event Termination Amount.
- 21.6.2 If Termination is on account of a Political Event, the Agency shall make a Termination Payments to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Political Event Termination Amount.

21.7 FORCE MAJEURE DISPUTE RESOLUTION

- 21.7.1 In the event the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided, that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

21.8 EXCUSE FROM PERFORMANCE OF OBLIGATIONS

- 21.8.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations (except payment obligations) to the extent it is unable to perform on account of such Force Majeure Event; provided, that:
 - (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event and/or the effects of the same;
 - (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party (with a copy to the Independent Engineer

and the Independent Auditor/Expert) notice to that effect and shall promptly resume performance of its obligations hereunder.

22. EVENTS OF DEFAULT

22.1 CONCESSIONAIRE EVENT OF DEFAULT

22.1.1 Any of the following events shall constitute an event of default by the Concessionaire (the **Concessionaire Event of Default**) unless such event has occurred as a consequence of Permitted Events and/or as a consequence of events or circumstances for which the Concessionaire is relieved of its obligations under this Agreement::

- (a) any Material Breach by the Concessionaire or the Sponsor of any Agency Agreement for which Material Breach has not been cured within sixty (60) days from the date of written notice thereof by the Agency, or within such time period as provided in the relevant Agency Agreement, respectively;
- (b) the Concessionaire fails to commence the Site Construction Works within thirty (30) days from the Commencement Date;
- (c) the Concessionaire fails to achieve Substantial Completion by the date falling sixty (60) days following the Scheduled Substantial Completion Date;
- (d) any statement, representation or warranty made by the Concessionaire in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Concessionaire's ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the rights and/or obligations of the Agency hereunder or under the Agency Agreements;
- (e) the Concessionaire creates any Encumbrance on the Concession Assets in favor of any Person;
- (f) the transfer of the rights and/or obligations of the Concessionaire under this Agreement, save and except as permitted in terms of this Agreement; and/or
- (g) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and further; provided, that such amalgamation has been agreed to by the Agency), the occurrence of any of the following events:
 - (i) the passing of a resolution for the dissolution or winding up of the Concessionaire;
 - (ii) the voluntary filing by the Concessionaire of a petition of bankruptcy, moratorium, winding up, or other similar relief;
 - (iii) the appointment of a provisional liquidator in a proceeding for the winding up of the Concessionaire after notice to the Concessionaire and due

hearing, which appointment has not been set aside or stayed within ninety (90) days of such appointment;

- (iv) the making by a court with jurisdiction over the Concessionaire of an order winding up the Concessionaire that is not stayed or reversed by a court of competent authority within ninety (90) days; and/or
- (v) any proceeding being validly instituted under the Applicable Laws for the dissolution of the Concessionaire or attachment of the Concession Assets in accordance with the Applicable Laws that has a Material Adverse Effect and that is not stayed or suspended in ninety (90) days; provided, that, if, within seven (7) business days of the Concessionaire becoming aware of such proceedings being filed, the Concessionaire:
 - (A) confirms to the Agency that such proceedings relate to the recovery of a claim against the Concessionaire that is disputed bona fide by the Concessionaire as payable, and
 - (B) furnishes a certificate by the Independent Auditor/Expert to the effect that the Concessionaire is and shall remain solvent despite the payment of the claim subject to the said insolvency proceedings,

then, in such case, the Concessionaire Event of Default set forth in Section 22.1.1(g)(v) shall not constitute a Concessionaire Event of Default until such time that the said certificate by the Independent Auditor/Expert is revoked or otherwise ceases to remain accurate;

- (h) an Abandonment by the Concessionaire, without the prior written consent of the Agency, for a period of thirty (30) consecutive days or for an aggregate period of sixty (60) days during any Accounting Year; provided, however, that the Concessionaire shall not be deemed to have Abandoned the Concession Assets so long as it is using all reasonable efforts (as determined by the Independent Engineer) to regain control of the Concession Assets and reinstate its construction and/or Operation and Maintenance, as applicable;
- (i) the Concessionaire is in Material Breach of O&M Requirements;
- (j) any other events or circumstances expressly set out in this Agreement as a Concessionaire Event of Default;
- (k) the Construction Performance Security or the O&M Performance Security in each case, is not issued, renewed, replaced or provided (as the case may be) in accordance with this Agreement or becomes inoperative or ceases to remain valid or in force in breach of the relevant provisions of this Agreement;
- (l) a breach by the Concessionaire of its obligation to take out and maintain the required insurances in accordance with Article 20 (*Insurances*);

- (m) a Change in Complete Control, Change in Control and/or Change in Shareholding has occurred in breach of this Agreement;
- (n) the Concessionaire or the Sponsor repudiate/terminate any of the Agency Agreements or otherwise evidence an intention not to be bound by the same;
- (o) termination of the Project Site Licence Agreement as a result of a material breach by the Concessionaire that is not remedied in accordance with the terms of the Project Site Licence Agreement;
- (p) the Concessionaire has delayed any payment that has fallen due and payable under this Agreement and/or any of the Agency Agreements and if such delay exceeds sixty (60) days, save where such payment is duly Disputed by the Concessionaire in accordance with this Agreement;
- (q) a material breach by any subcontractor or any of the parties to the Agency Agreements or any of their respective contracts with the Concessionaire having a Material Adverse Effect;
- (r) the Concessionaire fails to achieve the Construction Completion in accordance with the Applicable Standards and/or the timelines set-out in the Applicable Standards (in each case, as certified by the Independent Engineer), which failure continues for a period of thirty (30) days; and
- (s) the right of the Agency to terminate this Agreement in accordance with Section 3.5.1.

22.2 AGENCY EVENT OF DEFAULT

22.2.1 The following events shall constitute events of default by the Agency (the **Agency Event of Default**), unless the same has occurred and/or results from a Concessionaire Event of Default or a Force Majeure Event:

- (a) any Material Breach by the Agency of any Agency Agreement and the same has not been cured within forty-five (45) days from the date of written notice thereof by the Concessionaire, or within such time period as provided in the relevant Agency Agreement, respectively;
- (b) any statement, representation or warranty made by the Agency in any Agency Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Concessionaire's ability to perform its obligations under this Agreement and/or on the Project;
- (c) any termination, cancellation, resumption or revocation of the Concessionaire's interest established under the Project Site Licence Agreement in respect of the Project Site (otherwise than for a breach of the conditions of the Project Site Licence Agreement by the Concessionaire entitling such termination, cancellation, resumption or revocation);

- (d) any change in any Applicable Laws:
 - (i) making unenforceable, invalid, or void any material undertaking of the Agency under the Agency Agreements; and/or
 - (ii) making:
 - (A) it unlawful for the Concessionaire, or the Sponsor to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any Agency Agreement (other than a Change in Law for which compensation is provided in accordance with this Agreement); or
 - (B) any payment, the performance of any material obligation or the enjoyment or enforcement of any material right unenforceable under any Agency Agreement, invalid or void as a result of any such change in Applicable Laws (other than a Change in Law for which compensation is provided in accordance with this Agreement);
- (e) the expropriation, compulsory acquisition, or nationalization by the Agency or any Government Authority of: (i) any Class A Shares in the Concessionaire; or (ii) of any Concession Assets or rights of the Concessionaire;
- (f) any change in, or any change in the interpretation of, any of the Applicable Laws (including the Constitution of Pakistan and any other Applicable Laws that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making:
 - (i) unlawful, unenforceable, invalid, or void any material undertaking of the Agency under any Agency Agreement; or
 - (ii) unlawful for the Concessionaire to make or receive or the Sponsors to receive any payment (including interest or return), for the Concessionaire to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project; or
 - (iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the Applicable Laws,

which in the case of (i) (ii) or (iii) above, has a continuing effect for more than one hundred and eighty (180) days without an arrangement being provided to exempt the affected party from the effect of such Change in Law (other than a Change in Law for which compensation is provided in accordance with this Agreement);

- (g) a Change in Law for which no relief is provided under Article 28 (*Change in Law*) provided however, the afore stated shall not constitute an Agency Event of Default if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden beyond that contemplated in the Financial Model, the aggregate financial effect of which is less than PKR 5,000,000/- (Pak Rupees Five Million only) in any Accounting Year (as determined by the Independent Auditor/Expert and the Independent Engineer);
- (h) the Agency has delayed any payment that has fallen due and payable under this Agreement and/or any of the Agency Agreements and if such delay exceeds ninety (90) days, save where such payment is duly Disputed by the Agency in accordance with this Agreement and/or Agency Agreements; provided, however, this subsection (h) is only applicable to such payments in respect of which there is no bona fide Dispute and / or conflict between the Parties;
- (i) the right of the Concessionaire to terminate this Agreement in accordance with Section 3.5.2; and
- (j) failure by the Agency to fund the Agency Annuity Amount Payment Account in an amount equal to the payable Annuity Amount Payment on its relevant Annuity Amount Payment Date, which failure remains un-rectified by the Agency after the date falling sixty (60) days following Agency's receipt of a Notice issued by the Concessionaire to this effect.

23. TERMINATION

23.1 TERMINATION FOR CONCESSIONAIRE EVENT OF DEFAULT

- 23.1.1 Without prejudice to any other right or remedy which the Agency may have in respect thereof under this Agreement, upon the occurrence and continuation of a Concessionaire Event of Default, the Agency shall be entitled to Terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided, that before issuing the Termination Notice, the Agency shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the **Agency Preliminary Notice**).
- 23.1.2 In the event the underlying Concessionaire Event of Default is not cured within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Agency shall be entitled to:
- (a) Terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period; and
 - (b) encash the Construction Performance Security or the O&M Performance Security, as applicable and in effect as such time, on or following the issuance of the Termination Notice.
- 23.1.3 The following shall apply in respect of the Cure Period relating to a Concessionaire Event of Default:
- (a) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages (as expressly set out in this Agreement), if any, caused by its underlying breach or default giving rise to the Agency Preliminary Notice;
 - (b) the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
 - (c) if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Agency and/or the Government Authority hereunder, the applicable Cure Period shall be extended from the date the Concessionaire notifies the Agency of the same until the date that the Agency, and/or the Government Authority, as the case may be, accords the required approval;
- 23.1.4 Upon issuance of a Termination Notice by the Agency (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, the right of the Concessionaire to receive Annuity Amount Payments shall stand terminated, with immediate effect and no Annuity Amount Payments shall accrue and/or be payable to the Concessionaire from the date of occurrence of the Concessionaire's receipt of the Termination Notice; provided, however, the Agency shall

effect payment of the undisputed, accrued and unpaid Annuity Amount Payments up to the date of the Concessionaire's receipt of the Termination Notice.

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

23.2 TERMINATION FOR AGENCY EVENT OF DEFAULT

- 23.2.1 Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence and continuation of any of the Agency Event of Default, the Concessionaire shall by a notice in writing inform the Agency of its intention to issue the Termination Notice (the **Concessionaire Preliminary Notice**).
- 23.2.2 In the event the underlying Agency Event of Default is not cured by the Agency within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Concessionaire shall be entitled to terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period.
- 23.2.3 In the event of Termination due to the Agency Event of Default, the Agency shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payments, an amount equal to the Agency Default Termination Amount.

23.3 TERMINATION FOR CORRUPT ACTS

- 23.3.1 The Concessionaire warrants that in entering into this Agreement it has not committed any Corrupt Act.
- 23.3.2 If any Corrupt Act is committed, then the Agency shall be entitled to act in accordance with the following provisions of this Section 23.3; provided, that at all times the Agency shall bear the burden of proof for establishing that a Corrupt Act has been committed:
- (a) if the Corrupt Act is committed by the Concessionaire or any Associate of the Concessionaire, as the case may be, then in any such case, the Agency may issue a notice to the Concessionaire of its intent to issue a Termination Notice;
 - (b) if the Corrupt Act is committed by an employee of the Concessionaire, then in such case, the Agency may give written notice to the Concessionaire of its intention to issue a Termination Notice; provided, however, the Agency shall not be entitled to issue a Termination Notice in the event the Concessionaire, within forty-five (45) days of its receipt the Agency's notice stating its intention to issue a Termination Notice, terminates such employee's involvement in the Project and (if necessary) provides evidence to the Agency of the performance of any part of the Project deliverables previously performed by such employee by another person;
 - (c) if the Corrupt Act is committed by any other person not specified in sub-section (b) above but involved in the Project as a subcontractor or supplier to any Contractor or to the Concessionaire, then the Agency may give notice to the Concessionaire

of its intention to issue a Termination Notice; provided, however, that the Agency shall not be entitled to issue a Termination Notice in the event the Concessionaire, within thirty (30) days of its receipt of the Agency's notice stating its intention to issue a Termination Notice, procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant contract and procures the performance of the relevant part of the Project Works by another person.

23.3.3 Any notice of intention to issue a Termination Notice by the Agency under this Section 23.3 shall specify:

- (a) the nature of the Corrupt Act;
- (b) the identity of the party or parties who the Agency believes has committed the Corrupt Act; and
- (c) the date on which the Termination Notice shall be issued, which date shall be subject to the timelines provided in Section 23.3.2(b) and (c), as applicable.

23.3.4 Without prejudice to its other rights or remedies under this Section, the Agency shall be entitled to recover from the Concessionaire, the greater of:

- (a) the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and
- (b) any direct losses (including Losses) sustained by the Agency in consequence of any breach of this Section by the Concessionaire.

23.3.5 Nothing contained in this Section shall prevent the Concessionaire from paying any proper commission or bonus to its employees within the agreed terms of their employment.

23.3.6 In the event of Termination due to a Corrupt Act in accordance with this Section 23.3, the Agency shall to pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payments, an amount equal to the Corrupt Act Termination Amount.

23.4 RIGHTS OF THE AGENCY ON TERMINATION AND/OR FINAL EXPIRY DATE

23.4.1 In case of Termination of this Agreement for any reason whatsoever and subject to receipt by the Concessionaire of the Termination Payments on or prior to the Transfer Date or in case of expiry of this Agreement on the Final Expiry Date, the Agency shall, on the Transfer Date, have the power and authority to:

- (a) take possession and control of the Concession Assets; and
- (b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Concession Assets or dealing with or any part thereof except in the case where the Concessionaire and any person claiming

through or under the Concessionaire enters the Concession Assets or deals with or any part thereof as a User.

23.5 TERMINATION PAYMENTS

23.5.1 The Termination Payment shall be payable to the Concessionaire by the Agency 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/Expert. If the Termination Payment becomes subject to any tax (corporate tax, minimum tax or alternate corporate tax), the Agency shall pay to the Concessionaire such additional compensation (as determined by the Independent Auditor/Expert) such that the net amount received by the Concessionaire after deduction of any tax shall be equal to the total Termination Payment that would have been received had no such tax been paid or incurred.

23.5.2 The recipients of the Termination Payment shall be shareholders of the Class A Shares.

23.6 MODE OF PAYMENT

23.6.1 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including (without limitation) Termination Payments, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

24. DIVESTMENT OF RIGHTS AND INTEREST

24.1 REQUIREMENTS FOR DIVESTMENT

24.1.1 In case of (as applicable):

- (a) Termination of this Agreement prior to Final Expiry Date and subject to the Agency fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date; or
- (b) one (1) year prior to expiry of this Agreement on the Final Expiry Date,

the Concessionaire shall comply with and conform complete compliance with the following requirements by the Transfer Date (the **Divestment Requirements**):

- (i) Notify to the Agency forthwith the location and particulars of all Concession Assets;
- (ii) deliver forthwith the actual or constructive possession of the Concession Assets, free and clear of all Encumbrances;
- (iii) unless this Agreement is Terminated due to a Permitted Event (excluding Non-Political Event), cure all Concession Assets of all Defects & Deficiencies in accordance with the Handover List; provided, that in the event of Termination during the Construction Period, all Concession Assets shall be handed over on '*as is where is*' basis after bringing them to a safe condition;
- (iv) deliver and transfer all relevant records, reports, intellectual property and other Licence pertaining to the Concession Assets and its design, engineering, construction, Operation and Maintenance, including all programs and manuals pertaining thereto, and complete '*as built*' Construction Drawings, other Construction Drawings and the O&M Documents as on the Transfer Date;
- (v) transfer and/or deliver to the Agency, all Concessionaire Permits to the extent permissible under the Applicable Laws;
- (vi) execute such deeds of conveyance, documents and other writings as the Agency may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Concession Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, absolutely unto the Agency or its nominee;
- (vii) train all staff notified by the Agency for Operations and Maintenance in accordance with the O&M Manual; and

- (viii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Concession Assets, free from all Encumbrances, absolutely unto the Agency or to its nominee.

24.1.2 The Agency may, in its sole discretion, waive any of the Divestment Requirements set forth in Section 24.1.1.

24.2 Inspection and Cure

24.2.1 In case of:

- (a) Termination during the Operations Period, not earlier than thirty (30) days prior to Termination but not later than fifteen (15) days prior to the Transfer Date; or
- (b) expiry of this Agreement on the Final Expiry Date, not earlier than twelve (12) months prior to Transfer Date but not later than six (6) months prior to the Transfer Date,

the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Applicable Standards, and if required, cause appropriate tests to be carried out. In the event of Termination (excluding Termination due to Political Event or the Agency Event of Default) or expiry of this Agreement on the Final Expiry Date, the Concessionaire shall bear the cost for this purpose. In the event of Termination due to Agency Event of Default or Political Event, the Agency shall bear the cost for this purpose. All Defects & Deficiencies shall be cured by the Concessionaire at its cost unless the same is due to a Political Event or the Agency Event of Default in which case, the Agency shall bear such costs.

24.2.2 Until the Transfer Date, all risks shall vest with the Concessionaire for loss of or damage to the whole or any part of the Concession Assets and following the Transfer Date, all risks in relation to the same shall be deemed to have been transferred to and vest with the Agency.

24.3 COOPERATION AND ASSISTANCE FOR TRANSFER OF THE CONCESSION ASSETS

24.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Concession Assets in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Project Site and the Concession Assets.

24.3.2 The Parties shall provide to each other (as applicable):

- (a) in case of Termination of this Agreement, two (2) months prior to the Termination Payment Date in the event of Termination and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be; or

- (b) in case of expiry of this Agreement on the Final Expiry Date, six (6) months prior to the Final Expiry Date,

as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Agency, its appointed concessionaire or agent may reasonably require for operation of the Project until the Transfer Date.

24.4 VESTING CERTIFICATE

24.4.1 Subject to:

- (a) in case of Termination of this Agreement, the Agency fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date; or
- (b) expiry of this Agreement on the Final Expiry Date,

the divestment of all rights, title and interest in the Project shall be deemed to be complete on the Transfer Date, and the Independent Auditor/Expert and the Independent Engineer shall jointly, without unreasonable delay, thereupon issue a certificate (the **Vesting Certificate**) substantially in the form and substance set forth in **SCHEDULE O (Form of Vesting Certificate)**, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Concession Assets, and their vesting in the Agency pursuant hereto.

24.5 TRANSFER CONSIDERATION

- 24.5.1 The Parties agree that the Concession Assets shall be transferred to the Agency on the Transfer Date for a sum of (as consideration) Pak Rupees One only (PKR 1/-).

24.6 DIVESTMENT COSTS

- 24.6.1 Subject to Section 24.6.2, the Concessionaire shall bear and pay, in case of Termination due to a Concessionaire Event of Default and/or due to Corrupt Act and/or due to a Non Political Event or in case of expiry of this Agreement on the Final Expiry Date, all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Concession Assets in favor of the Agency, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Agency. In the event of Termination due to a Force Majeure Event and/or the Agency Event of Default, the Agency shall bear and pay all the above-mentioned costs.
- 24.6.2 The Agency shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Concession Assets to the Agency or its nominated agency on the Transfer Date. The Agency shall at its own cost obtain or effect all clearances, permits, authorizations, consents and

approvals under or pursuant to the Applicable Laws and take such other actions as may be necessary for such transfer.

24.6.3 In the event of any Dispute relating to matters covered by and under this Article 24 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

25. DEFECTS LIABILITY DURING EXIT IMPLEMENTATION PERIOD

25.1 LIABILITY FOR DEFECTS DURING EXIT IMPLEMENTATION PERIOD

25.1.1 Without prejudice to any obligation of the Concessionaire in this Agreement, the Concessionaire shall be responsible for all Defects & Deficiencies in the Concession Assets during the Exit Implementation Period in accordance with this Section 25.1.1 and it shall have the obligation to repair or rectify all Defects & Deficiencies observed by the Independent Engineer in the Concession Assets during the aforesaid period, as set out in a list jointly prepared by the Independent Engineer and the Concessionaire (the **Handover List**) within:

- (a) in case of Termination of this Agreement, one (1) year of the issuance of a Termination Notice;
- (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date;

25.1.2 Notwithstanding anything to the contrary set out herein, the provisions of this Article 25 (*Defects Liability During Exit Implementation Period*) shall not apply to any Defects & Deficiencies caused by an Agency Event of Default or a Political Event that has resulted in Termination.

26. DISCLAIMER

26.1 DISCLAIMER

- 26.1.1 Subject to the terms of this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of the Project, Project Requirements, the Project Site, existing structures, local conditions, physical qualities of ground, and all information provided by the Agency or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder and on the basis of such examination and determinations is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement. Except as expressly provided in this Agreement, the Agency makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Agency in this regard.
- 26.1.2 Subject to the terms of Agreement, the Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Section 26.1.1 and hereby acknowledges and agrees that the Agency shall not be liable for the same in any manner whatsoever to the Concessionaire, the Sponsor and their Associates or any person claiming through or under any of them.
- 26.1.3 Any mistake or error in or relating to any of the matters set forth in Section 26.1.1 shall not vitiate this Agreement or render it voidable.
- 26.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Section 26.1.1, such Party shall immediately Notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the Agency to give any notice pursuant to this Section 26.1.4 shall not prejudice the disclaimer of the Agency contained in Section 26.1.1 and shall not in any manner shift to the Agency any risks assumed by the Concessionaire pursuant to this Agreement.
- 26.1.5 Except as otherwise provided in this Agreement, all risks relating to the Concession Assets shall be borne by the Concessionaire and the Agency shall not be liable in any manner for such risks or the consequences thereof.

27. ASSIGNMENT AND CHARGES

27.1 RESTRICTION ON ASSIGNMENT AND CHARGES

27.1.1 Subject to Section 27.2 (*Permitted Assignment and Charges*), this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Agency, which consent the Agency shall be entitled to decline without assigning any reason.

27.1.2 The Concessionaire shall not:

- (a) create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement; or
- (b) create or permit to subsist any Encumbrance on the Concession Assets or otherwise transfer or dispose of the Concession Assets.

27.2 NOT USED

27.3 NOT USED

27.4 NOT USED

27.5 NOT USED

27.6 ASSIGNMENT BY THE AGENCY

27.6.1 Notwithstanding anything to the contrary contained in this Agreement or any other Agency Agreement, the Agency shall not assign and/or transfer any of its rights and benefits and/or obligations under this Agreement or any Agency Agreement to an assignee or any Person without the consent of the Concessionaire.

27.7 NOT USED

28. CHANGE IN LAW

28.1 INCREASE IN COSTS

28.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or any other financial liability beyond that contemplated in the Financial Model, the aggregate financial effect of which exceeds of PKR 5,000,000/- (Pakistani Rupees Five Million only) in any Accounting Year (as determined by the Independent Auditor/Expert and the Independent Engineer), the Concessionaire may so Notify the Agency and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon Notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of Notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement; provided, that if no agreement is reached within sixty (60) days of the aforesaid Notice, the Concessionaire may by Notice to Agency (as certified by the Independent Engineer and the Independent Auditor/Expert) require the Agency to pay the Additional Costs (as determined and certified by the Independent Engineer and the Independent Auditor/Expert), and within thirty (30) days of receipt of such Notice, along with particulars thereof, the Agency shall pay the amount specified therein.

28.1.2 In the event as a result of a Change in Law the Concessionaire is delayed in performance of any of its obligations under this Agreement, then the Concessionaire shall be entitled to and shall be granted an extension in the timelines for performance of its obligations under this Agreement, in accordance with Article 15 (*Relief Extensions & Relief Compensations*). Further, the Concessionaire shall be excused from performance of its obligations to the extent it is unable to perform on account of such Change in Law.

28.1.3 Notwithstanding anything contained to the contrary in this Agreement, in the event:

- (a) of failure by the Agency to pay the Additional Costs (as determined by the Independent Engineer and the Independent Auditor/Expert) within thirty (30) days of receipt of a Notice (as certified by the Independent Engineer and the Independent Auditor/Expert) issued by the Concessionaire in accordance with Section 28.1.1; and/or
- (b) the Change in Law (together with its effects) subsists for a period of sixty (60) days or more,

the Concessionaire shall have the right to issue a Concessionaire Preliminary Notice to Agency of its intent to Terminate this Agreement and, subsequently (at any time after the date falling thirty (30) days from the date of issuance by the Concessionaire of the afore stated Concessionaire Preliminary Notice) immediately Terminate this Agreement by issuance of a Termination Notice.

28.1.4 If Termination is on account of a Change in Law, the Agency shall pay a Change in Law Termination Amount to the Concessionaire.

28.2 REDUCTION IN COSTS

28.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds PKR 5,000,000/- (Pakistani Rupees Five Million only) in any Accounting Year (as determined by the Independent Auditor/Expert and the Independent Engineer), the Agency may so Notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon Notice by the Agency, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of Notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement; provided, that if no agreement is reached within sixty (60) days of the aforesaid Notice, the Agency may by Notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within fifteen (15) days of receipt of such Notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Agency; provided, that if the Concessionaire shall Dispute such claim of the Agency, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 28.2 (*Reduction in Costs*) shall be restricted to such Change in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

28.3 RESTRICTION ON CASH COMPENSATION

28.3.1 The Parties acknowledge and agree that the demand for cash compensation under this Article 28 (*Change in Law*) shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one (1) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than one (1) year from the close of such Accounting Year.

29. NOT USED

30. DISPUTE RESOLUTION

30.1 DISPUTE RESOLUTION

- 30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the **Dispute**) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Section 30.2 (*Conciliation*).
- 30.1.2 The Parties agree to use their best efforts for resolving all Disputes promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

30.2 CONCILIATION

- 30.2.1 In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer and/or the Independent Auditor/Expert, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer and/or the Independent Auditor/Expert as the case may be, either Party may request for their departmental heads to meet to resolve such Dispute. In the event the Parties are unable to resolve the matters through conciliation, within thirty (30) days of commencement of the conciliation process in terms of this Section 30.2.1, either Party may refer the Dispute to arbitration in accordance with the provisions of Section 30.3 (*Arbitration*).

30.3 ARBITRATION

- 30.3.1 Any Dispute that is not resolved amicably by conciliation, as provided in Section 30.2 (*Conciliation*), shall be finally decided by reference to arbitration by a board of arbitrators (the **Board of Arbitrators**) appointed in accordance with Section 30.3.3. Such arbitration shall be held in accordance with the provisions of the Arbitration Act.
- 30.3.2 The venue and seat of such arbitration shall be _____.
- 30.3.3 There shall be a Board of Arbitrators of three (3) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two (2) arbitrators so selected, and in the event the two (2) arbitrators are unable to agree on the third arbitrator, then the same shall be appointed in accordance with the Arbitration Act.
- 30.3.4 The arbitrators shall make a reasoned award (the **Award**). Any Award made in any arbitration held pursuant to this Article 30 (*Dispute Resolution*) shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Agency agree and undertake to carry out such Award without delay.

- 30.3.5 The Concessionaire and the Agency agree that an Award may be enforced against the Concessionaire and/or the Agency, as the case may be, and their respective assets wherever situated.
- 30.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

31. MISCELLANEOUS

31.1 GOVERNING LAW AND JURISDICTION

- 31.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the Applicable Laws and the courts of appropriate jurisdiction in the province of Balochistan shall have the exclusive jurisdiction over all Disputes or matters arising out of or relating to this Agreement.
- 31.1.2 The regulation, rights and responsibilities of the Agency as specified in the West Pakistan Highways Ordinance, 1959 as amended by the West Pakistan Highways (Balochistan Amendment) Act, 1973, shall continue to be in force in respect of the Project except in so far as they are removed or amended, explicitly or implicitly, by this Agreement which in all respects shall take precedence (subject to Change in Law and the relevant provisions of this Agreement).

31.2 WAIVER

- 31.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- 31.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

31.3 SURVIVAL

- 31.3.1 Termination of this Agreement (a) shall not relieve the Concessionaire or the Agency of any obligations hereunder which expressly or by implication survives Termination hereof; and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

31.4 AMENDMENTS

- 31.4.1 This Agreement and the Schedules together constitute a complete and an exclusive statement of the terms of this Agreement between the Parties on the subject hereof and

no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

31.5 NOTICES

31.5.1 Unless otherwise stated, notices to be given under this Agreement including (without limitation) a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in **SCHEDULE S** (*Notices*) or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

31.6 CONFIDENTIALITY

31.6.1 Each of the Parties and their Contractors (including the Concessionaire Engaged Persons), subcontractors, consultants, employees and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the design, construction, insurance, Operation and Maintenance, transfer, and management of the Concession Assets, and all information and documents obtained in accordance with the terms of the Agency Agreements, and shall not, without the consent of the other Party, save as required by the Applicable Laws or appropriate regulatory authorities, prospective lenders to, or investors in the Concessionaire and their professional advisers, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in the Agency Agreements and the other agreements referred to herein and in agreements prepared and issued or to be prepared and issued in connection with other projects by the Agency.

31.6.2 The provisions of paragraph (a) hereinabove shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement or any other Agency Agreement;
- (b) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality.

31.7 SEVERABILITY

31.7.1 If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall

negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

31.8 NO PARTNERSHIP

31.8.1 Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

31.8.2 Notwithstanding anything to the contrary set out in this Agreement or elsewhere, nothing contained in this Agreement shall be construed or interpreted as the Concessionaire providing designing and/or engineering consulting services to the Agency.

31.9 LANGUAGE

31.9.1 All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

31.10 EXCLUSION OF IMPLIED WARRANTIES

31.10.1 This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement (except the Agency Agreements) between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

31.11 COUNTERPARTS

31.11.1 This Agreement shall be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

31.12 SET-OFF

31.12.1 The Agency shall have the right to withhold and set-off against any amount it is liable to pay to the Concessionaire hereunder, the amount of any payment due to the Agency from the Concessionaire under this Agreement.

31.13 INDEPENDENCE

31.13.1 In respect of all matters dealing with this Agreement, the Independent Engineer and the Independent Auditor/Expert shall be independent and shall ensure that it performs all its obligations in accordance with their respective terms of reference and this Agreement.

31.14 ENTIRE AGREEMENT

31.14.1 The Parties hereto acknowledge, confirm and undertake that this Agreement (and Agency Agreements, as applicable), 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.

31.15 SUCCESS FEE: 1% OF THE BID AMOUNT (NEGOTIABLE). [●].

31.16 PDF REIMBURSEMENT FEE: [●]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day, month and year first above mentioned.

AS THE AGENCY

For and on behalf of
**HEALTH DEPARTMENT, GOVERNMENT
OF BALOCHISTAN / BALOCHISTAN
PPP AUTHORITY**
through its authorised signatory

}

SIGNATURE

.....

Name:
Designation:

Name:
Designation:

.....

SIGNATURE

in the presence of
WITNESSES:

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

AS THE CONCESSIONAIRE

For and on behalf of [•] through its
authorised signatory

}

SIGNATURE

Name:

Designation:

.....

in the presence of

WITNESSES:

SIGNATURE

1-

Name:

Address:

CNIC / Passport No:

.....

2-

Name:

Address

CNIC / Passport No:

.....

SCHEDULE A (*Scope of the Project*)

SCHEDULE B (*Design Requirements*)

SCHEDULE C (*List of Construction Drawings*)

SCHEDULE D (*Project Facilities*)

SCHEDULE E (*Construction Completion Schedule*)

SCHEDULE F (*Project Site*)

SCHEDULE G (*List of Tests & Completion Tests*)

SCHEDULE H (*O&M Requirements*)

SCHEDULE I (*Insurances*)

SCHEDULE J (*Specified Concessionaire Permits*)

SCHEDULE K (*NOT USED*)

SCHEDULE L (*Form of Construction Performance Security*)

SCHEDULE M (*Form of O&M Performance Security*)

SCHEDULE N - PART I (*Indicative Independent Auditor/Expert Terms of Reference*)

SCHEDULE N - PART II (*Indicative Independent Engineer Terms of Reference*)

SCHEDULE O (*Form of Vesting Certificate*)

SCHEDULE P (*Assured Availability Formula*)

SCHEDULE Q (BOQ)

SCHEDULE R (*Annuity Amount Payment Schedule*)

SCHEDULE S (*Notices*)

SCHEDULE T (*Termination Payments*)

SCHEDULE U (*Financial Model*)

SCHEDULE V (*Illustrations – Termination Equity Amount and Termination Dividend Amount*)

SCHEDULE W (Project Steering Committee)

1. GOVERNANCE MECHANISM

1.1. Project Steering Committee

A Project Steering Committee will be formed to ensure efficient and timely decision-making for fund allocation based on milestone completion for each healthcare facility.

Committee Members	Tentative Composition (to be finalized)
Experienced Professionals (20+ years)	<ul style="list-style-type: none">- 3 Doctors- 2 Independent Members- 3 BPPPA Representatives- Health Department Representatives- Healthcare Commission Representatives- Concessionaire Representatives

1.2. GOVERNANCE STRUCTURE

Governance Body	Responsibilities	Key Functions
Project Steering Committee	Oversees financial allocations, project progress, and approvals. Meets bi-annually for follow-ups.	<ul style="list-style-type: none">- Conduct bi-annual meetings- Review CAPEX and OPEX allocations and make changes where and when necessary- Review hiring plan and amend the same from time to time- Assess project progress- Assess and approve Concessionaire invoices- Evaluate IA recommendations- Approve all project-related matters
Independent Auditor (IA)/ Expert	Supervises processes, certifies procurement and infrastructure completion, and assesses performance.	<ul style="list-style-type: none">- Conduct physical inspections for certification- Assess percentage completion of infrastructure- Approve payments based on certification- Ensure payments are net of health card-based payments- Assess performance using key performance indicators

Schedule X (*Proposed Detailed Design Approval Process*)

SCHEDULE Y (*Conditions Precedent and Conditions Subsequent*)

SCHEDULE Z (*Key Performance Indicators*)