

CONCESSION AGREEMENT

BY & BETWEEN

GOVERNOR OF SINDH

(THROUGH THE SECRETARY, LOCAL GOVERNMENT DEPARTMENT)

AND

[•]

(AS THE CONCESSIONAIRE)

IN RESPECT OF

**THE CONCESSION FOR ENGINEERING, PROCUREMENT, CONSTRUCTION, FINANCE,
OPERATIONS AND MAINTENANCE OF
MALIR EXPRESSWAY PROJECT**

DATED: AS OF [•]

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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (this **Agreement**) is entered into on this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR] at Karachi, Pakistan:

BY AND BETWEEN

THE GOVERNOR OF SINDH (THROUGH SECRETARY, LOCAL GOVERNMENT DEPARTMENT) having his offices at [•] for and on behalf of **THE GOVERNMENT OF SINDH** (the **GoS**);

AND

[•] (the **Concessionaire**, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns);

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

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RECITALS

- A. On January 04, 2019 a ‘Stage Two Request for Proposals’ (together with the related advertisements) (the **RFP**) was issued by the GoS to Stage One Qualified 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 selected by the GoS for such purposes. The letter of intent was issued to the Sponsor by the GoS on [●] (the **Letter of Intent**).
- B. In accordance with the requirement 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 GoS has agreed to grant to the Concessionaire the right and obligation to implement the Project on the terms and conditions contained in this Agreement.
- C. The Concessionaire acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including the technical and financial viability and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement.
- 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 GoS and the Concessionaire and their rights and obligations.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED TO BY AND BETWEEN THE PARTIES AS FOLLOWS:

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1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

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

AASHTO Standards means the standards applicable to roads and highways published in the relevant publication of the American Association of State Highway and Transportation Officials;

Abandonment or **Abandoned** means the voluntary cessation of the construction or Operation and Maintenance of the Concession Assets by the Concessionaire and/or the withdrawal of all, or substantially all, personnel by Concessionaire from the Project Site for reasons other than a Permitted Event;

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

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

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

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

Agreement means this ‘Concession Agreement’ including the Main Body and all Schedules attached hereto;

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

Ancillary Facilities shall bear the meaning as ascribed thereto in **SCHEDULE D** (*Project Facilities*);

Applicable Laws means all applicable laws, promulgated or brought into force and effect by the GoS or the Government of 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;

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

Applicable Standards means the standards, specifications, requirements, criterion and timelines (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 GoS Agreements;

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

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

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

Approved Detailed Engineering Design means the Detailed Engineering Design approved by the Independent Engineer (in consultation with the GoS) in accordance with the Applicable Standards (including Section 12.5 of this Agreement);

Approved Major Maintenance Contract(s) shall have the meaning ascribed thereto in Section 19.13(b);

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Approved Major Maintenance Programme shall have the meaning ascribed thereto in Section 19.13(a);

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 50% (fifty per cent) of the voting shares of such person and the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise), and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise);

ASTM Standards means tests and standards prescribed by ‘American Society for Testing and Materials’ as prescribed internationally;

Award shall have the meaning ascribed thereto in Section 30.3.4;

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

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

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

Base Funding Amount means collectively the sum of:

- (a) the GoS Funding Amount; and
- (b) the Sponsor Base Equity Amount;

Base Price means the price of the Escalable Items at the rate prevailing twenty-eight (28) days prior to the Bid Submission Date (in accordance with FIDIC), as confirmed and notified by the Independent Engineer in accordance with the Price Escalation Agreement;

Benchmark Toll Revenue(s) means the benchmark toll revenues as set out in **SCHEDULE Q** (*Benchmark Toll Revenue & MRG Schedule*);

Bid means the technical and financial proposal of the Sponsor with respect to the Project submitted to the GoS on [•] 2019;

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

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

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the an initial period of one hundred and twenty (120) Days plus twenty-eight (28) Days beyond the original bid validity period making it a total of one hundred and forty-eight (148) days from the Bid Submission Date;

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

Big Four Accounting Firms means:

- (a) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network);
- (b) Ernst & Young Ford Rhodes Sidat Hyder;
- (c) KPMG Taseer Hadi & Co.;
- (d) M. Yousuf Adil Saleem & Co. (a member firm of Deloitte Touche Tohmatsu);

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

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

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

Certified Impediment Notice shall have the meaning ascribed thereto in Section 4.15.2;

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, divesting of the Class A Shares and/or holding less than 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

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- (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, divests more than or equal to 51% of the Class A Shares and/or holds less than 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 on or after the Bid Submission Date:

- (a) the enactment of any new federal, provincial or local government law, as applicable in the Province of Sindh;
- (b) the repeal, modification or re-enactment of any existing federal, provincial or local government law, as applicable in the Province of Sindh;
- (c) the commencement of any federal, provincial or local government law, which has not entered into effect until the date of this Agreement;
- (d) a change in the interpretation or application of any Applicable Law (as applicable in the Province of Sindh) 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 imposition by a Government Authority of any additional Concessionaire Permit;
- (f) change in the list of Exempted Vehicles as set-out in this Agreement as of the Effective Date;

provided, that any:

- (i) coming into effect, on or after the Effective Date, of any provision of a statute which is already gazetted in accordance with the Applicable Laws prior to the Effective Date; or
- (ii) any new Applicable Law or any change in the existing Applicable Law under the active consideration of or in the contemplation of the GoS or the Government of Pakistan as of the Effective Date, which is already gazetted in accordance with the Applicable Laws prior the Effective Date,

shall not constitute a ‘Change in Law’;

Change in Law Termination Amount shall have the meaning ascribed thereto in **SCHEDULE T (TERMINATION PAYMENT)**;

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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, by virtue of (a) or (b) above, divests up to 49% of the Class A Shares, does not hold up to 49% of Class A Shares and/or does not lose the power to direct the management, policies and decisions of the Concessionaire;

Change of Scope Notice shall have the meaning ascribed thereto in Section 16.2.2;

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

Class A Share(s) means share capital issued to the shareholders of the Concessionaire (excluding the GoS) from time to time and shall be the main recipient of Base Case Equity IRR in accordance with this Agreement. Moreover, these shares shall be recipients of the Termination Payment (if applicable in terms of this Agreement) as well; provided, however, for purposes of calculating the Termination Payment, the term **Equity** shall exclude the following:

- (a) all amounts comprising injections to the Equity effected after Project Construction Completion Date; provided, that such amounts shall constitute Equity to the extent the same are part of the Pre-Estimated Project Cost and determined by the Independent Auditor to be part of the Total Project Cost;

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

Class B Dividends shall have the meaning ascribed thereto in Section 10.2.4;

Class B Share(s) means share capital issued to the GoS (in case the GoS Funding Amount (or any part thereof) is funded as equity pursuant to Equity Funding & Utilization Agreement) which shall not be liable for non-performance by the Concessionaire under any circumstances whatsoever and for which the Base Case Equity IRR shall not be paid, accrued and/or applied and it shall have the right to Class B Dividends;

Commercial Loan means a contract for valuable consideration, under which the Concessionaire obtains funds from a financier / lender or permission to use movable assets loaned or temporarily provided by the latter. This includes all borrowings, whether in the form of a bank loan, bonds, Islamic financing *etc.*

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

Commencement Date means the date set out in the Commencement Certificate jointly by the Independent Engineer and the Independent Auditor in accordance with Section 3.4 (*Commencement Certificate & Commencement Date*) of this Agreement, 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 Operations Period shall commence, such period commencing on the day immediately succeeding the Substantial Completion Date;

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

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

Concession shall have the meaning ascribed thereto in Section 2.1.1;

Concessionaire shall have the meaning ascribed thereto in the Preamble;

Concessionaire Windfall shall bear the meaning ascribed thereto in Section 17.4.2;

Concession Assets means and includes all tangible and intangible assets of the Concession Assets Project Site, the Project Expressway, the Toll Plazas and the Project Facilities and all rights, title, benefits, facilities and easements, whether directly and / or indirectly related thereto, relating to and forming part of the Project including (only to the extent of the Project Expressway, the Project Site and the Project Facilities) but not limited to (a) rights over the Project Site in the form of Licence, right of way or otherwise, (b) tangible assets such as civil works including foundations, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, roads over-bridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, equipment relating to regulation of traffic, road furniture, electrical works for lighting on the Project Expressway, toll plazas, toll gates, the Project Facilities and/or the Project Site, telephone and other communication systems and communication equipment for the Project, wayside amenities, administration maintenance facilities, relief centers, equipment, vehicles etc. on the Project Expressway and the Project Facilities, and (c) the Project Facilities situated on the Project Site;

Concession Assets Project Site means such part of the Project Site on which the Concession Assets are situated and on which the Concession Assets shall be located in terms of this Agreement;

Concession Direct Agreement means the direct agreement that may be entered into between the Concessionaire, the GoS and the Financiers, if required by the Financiers;

Concession Period means, in respect of the Concession and the Concession Assets, the period commencing on the Commencement Date (provided, however, that the Concession

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Period in respect of the Preliminary Works (if any) shall commence on the Effective Date) and ending on the Trigger Date;

Concessionaire Authorized Representative shall have the meaning ascribed thereto in Section 7.4.1;

Concessionaire Conditions Precedent shall have the meaning ascribed thereto in Section 3.1.2;

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

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

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

Concessionaire Indemnified Persons shall have the meaning ascribed thereto in Section 22.1.1;

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

Concessionaire Project Engineer shall have the meaning ascribed thereto in Section 7.4.1(b);

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

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

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

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Concessionaire Revenue Account means the account established by the Concessionaire for receiving the Toll Revenues in accordance with the Escrow Agreement;

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

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 Project and the Concession Assets and which are detailed in 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 GoS);

Construction Inspection Report has the meaning ascribed thereto in Section 13.6.2;

Construction Monthly Progress Report has the meaning ascribed thereto in Section 13.5.1;

Construction Performance Security means a first demand irrevocable and unconditional bank guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS, in the form of a demand guarantee or a standby letter of credit, of an amount equal to two per cent (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 have the meaning ascribed thereto in Section 11.2.6;

Construction Period Damages Payment Date shall have the meaning ascribed thereto in Section 14.6.2;

Construction Period Damages has the meaning ascribed thereto in Section 14.6.1;

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*) OF SCHEDULE I (*Insurances*);

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

Construction Programme shall bear the meaning ascribed thereto in Section 13.2.2;

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

- (a) the Main Body;

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- (b) the Scope of the Project;
- (c) the AASHTO Standards (to the extent adopted by the National Highway Authority in the “NHA General Specifications of 1998”), being the requirements applicable in respect of matters relating to the Concession Assets
- (d) the Design Requirements;
- (e) accordance with **SCHEDULE G (*List of Tests & Completion Tests*)**;
- (f) accordance with **SCHEDULE C (*List of Construction Drawings*)**;
- (g) the Construction 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, criterion and timelines (as applicable) set out in the abovementioned, the standards, requirements, criterion and timelines in accordance with nationally and internationally accepted standards as per Good Industry Practice (as applicable), shall apply (unless otherwise mutually agreed between the Parties); provided further, that in the event there is any deficiency in the standards and requirements (as applicable) the ASHTO Standards, ASTM Standards and NHA Standards (as certified by the Independent Engineer) shall apply;

Construction Tests shall bear the meaning 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 until issuance of the Final Project Construction Completion Certificate, as set out in and contemplated by the Applicable Standards and the Construction Programme, including the:

- (i) completion of engineering and design works and services on or prior to the date set out in the Project 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 Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date;
- (v) achievement of Substantial Completion on or prior to the Scheduled Substantial Completion Date;

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- (vi) achievement of Project Construction Completion on or prior to the Scheduled Project Construction Completion Date

Construction Works means all obligations, works, services and duties undertaken and/or performed and / or to be undertaken and/or performed by the Concessionaire until the Project 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;

Contractor(s) means the EPC Contractor and the O&M Contractor and any of the Concessionaire's other direct contractors and any of their direct sub-contractors integrally involved in the Project for the performance of Project Works (or any part thereof);

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

Corrupt Act means:

- (a) offering, giving or agreeing to give to the GoS, a Government Authority or to any Person employed by or on behalf of the GoS 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 GoS 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 GoS and/or a Government Authority;
- (b) entering into this Agreement or any other contract relating to this Agreement with the GoS 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 GoS;
- (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;

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- (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 GoS or any other public body;

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

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

Cure Period means:

- (a) in respect of a Concessionaire Event of Default:
 - (i) during any period when any Financing Due is outstanding, the period commencing on the date of receipt by the Concessionaire of the GoS Preliminary Notice and expiring on the date falling ninety (90) days thereafter, or such other time period as may be agreed in the Concession Direct Agreement;
 - (ii) during any period when any Financing Due is not outstanding, the period commencing on the date of receipt by the Concessionaire of the GoS Preliminary Notice and expiring on the date falling forty-five (45) days thereafter;
- (b) in respect of a GoS Event of Default, the period commencing on the date of receipt by the GoS of the Concessionaire Preliminary Notice and expiring on the date falling forty-five (45) days thereafter;

Debt Repayment Date means the earlier of (a) the date falling on the tenth anniversary of the Substantial Completion Date; and (b) the date on which the Commercial Loan is scheduled to be fully repaid pursuant to the Financing Documents;

Decommissioned Project Area shall have the meaning 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;

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Delayed Payment Rate means the 1%, compounded semi-annually, calculated for the actual number of days which the relevant amount remains unpaid on the basis of 365-day year;

Designated EPC Contractor means [●];

Designated Specific Malir Material Site means River Malir river bed, being the location and site from which the Specific Malir Construction Material may be utilized, as certified by the Independent Engineer, to the extent permitted in terms of this Agreement and the Specific Malir Construction Material Utilization Decision, for the purposes of Specific Malir Construction Material Utilization;

Designated O&M Contractor means [●];

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 Expressway prepared by the Concessionaire in accordance with Applicable Standards;

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

Dispute shall have the meaning ascribed thereto in Section 30.1.1;

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

Divestment Requirements shall have the meaning 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 Concession Assets Project Site and to the use of real property relating to the Concession Assets Project Site, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Concession Assets;

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

EIA Approval means the approval obtained by the GoS from the Sindh Environmental Protection Agency in relation to the Project;

Emergency Decommissioning shall have the meaning ascribed thereto in Section 7.13.1;

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;

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Encumbrance means any encumbrance on an asset, including but not restricted to 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” and the Sindh Environmental Protection Agency;

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

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

Equity Funding & Utilization Agreement means the agreement (in the form agreed between the Parties and the Sponsors) to be entered into, *inter alia*, between the GoS, the Sponsor and the Concessionaire for the purposes of, *inter alia*, the GoS’s and the Sponsor(s)’ contribution towards the Equity (Class B Shares) (to the extent the GoS Funding Amount (or any part thereof) is to be funded as Equity) and Equity (Class A Shares) respectively and utilization of the same, in each case, in accordance with the terms thereof;

Equity means the share capital of the Concessionaire, represented in PKR, subscribed to by any of the Concessionaire’s shareholders for meeting the equity component of the Total Project Cost and it shall consist of two classes of shares i.e. Class A Shares and Class B Shares;

Escalable Items means:

- (a) cement;
- (b) bitumen;
- (c) steel; and
- (d) POL for construction machinery and equipment;

Escalation Cost has the meaning ascribed thereto in Section 10.5.2;

Escrow Account means the account established by the Concessionaire with the Escrow Agent;

Escrow Agent means the bank selected by the parties to the Escrow Agreement to manage the toll revenues, compensation and expenditures of the Concessionaire; provided, that till

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the Financing Termination Date, such bank shall be one of the Financiers (or a financial institution designated by the same);

Escrow Agreement means the agreement entered into between, *inter alios*, the GoS, the Financiers, the Escrow Agent and the Concessionaire requiring all Toll Revenues to be deposited in and utilized from the Escrow Account and managed by the Escrow Agent;

Excavation Plan has the meaning ascribed thereto in Section 13.8.3;

Exempted Vehicles means the following vehicles exempted from Toll:

- (a) ambulances;
- (b) defence vehicles;
- (c) flag cars;
- (d) fire fighting vehicles;
- (e) funeral vans;
- (f) official vehicles of the Authority or the Concessionaire;
- (g) Police vehicles;
- (h) Vehicles bearing the plates of:
 - Presidency;
 - Prime Minister Secretariat;
 - Governor House;
 - Chief Minister Secretariat;
 - A Foreign dignitary on State visit to Pakistan;
- (i) Vehicles deputed for essential services like cleaning, maintenance of green areas etc;

Excess Toll Revenues shall bear the meaning ascribed thereto in Section 17.4.2;

Excess Delta shall bear the ascribed thereto in Section 17.4.3;

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;

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Extended GoS Financial Instrument shall have the meaning ascribed thereto in Section 17.8.3(a)(iii);

Extended GoS Financial Instrument Extension Failure Certificate shall have the meaning ascribed thereto in Section 17.8.4(c);

External Auditor shall bear the meaning ascribed thereto in Section 17.3.2;

Final Expiry Date means the date falling on the twenty-fifth (28th) yearly anniversary of the Commencement Date; provided, however, the GoS 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;

Final Project Construction Completion Certificate shall have the meaning ascribed thereto in Section 14.6.1;

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

Financiers means the financial institutions, banks, Islamic financiers, funds, trusts or trustees of the holders of debentures or other securities their successors and assigns, that extend Financing to the Concessionaire pursuant to the Financing Documents;

Financial Close Achievement Notice shall have the meaning ascribed in Section 27.4.1;

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

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

Financing Amendment Term Sheets shall have the meaning ascribed thereto in Section 27.3.3;

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

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Financing Due means the aggregate of the following sums expressed in Pakistani Rupees outstanding and payable to the Financier up to the date immediately preceding the Termination Payment Date pursuant to the Financing Documents:

- (a) the principal amount of the financing provided and disbursed by the Financiers under the Financing Documents for financing the Project (the **Principal**) in accordance with the Financial Model and the Financing Term Sheet and Financing Amendment Term Sheets (if any) delivered to and not objected to by GoS and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet & the Financing Amendment Term Sheets*);
- (b) the interest or mark-up (or any other term connoting the return paid to the Financiers on financing) accruing on the Principal in accordance with the Financial Model and the Financing Term Sheet and the Financing Amendment Term Sheets delivered to and not objected to by GoS and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet & the Financing Amendment Term Sheets*);
- (c) only in the event of Termination due to GoS Event of Default, penal interest or charges payable under the Financing Documents to the Financiers, provided further that in case the Concessionaire continues to collect Toll Revenues until the Transfer Date the Concessionaire shall be required to make payments to the Financiers in relation to any penal interest or charges payable to the Financiers in accordance with Financial Model;

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

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

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

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

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

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First GoS Financial Instrument means an instrument in the nature of a guarantee or standby letter of credit issued by or on behalf of GoS in the form and substance mutually acceptable to the Parties;

First GoS Financial Instrument Amount shall have the meaning ascribed thereto in Section 17.8.3(a)(i);

First GoS Financial Instrument Expiry Date shall have the meaning ascribed thereto in Section 17.8.4(a);

First GoS Financial Instrument Extension Failure Certificate shall have the meaning ascribed thereto in Section 17.8.4(a);

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

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

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

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

Force Majeure Costs means all such costs that are directly attributable to, arise from and are a direct result of, in each case, a Force Majeure Event and shall include interest and principal payments under the Financing Documents that are in accordance with the Financing Term Sheets and the Financing Amendment Term Sheets; any additional capital expenditures; any additional construction costs; and any additional operating costs; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon;

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

Force Majeure Notice shall have the meaning 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

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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;

GoS means the Government of Sindh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Sindh, and its administrators, successors and permitted assigns;

GoS Advertising Plan shall have the meaning ascribed thereto in Section 29.1.1;

GoS Agreements means:

- (a) this Agreement;
- (b) the Equity Funding & Utilization Agreement;
- (c) the Project Site Licence Agreement;
- (d) the Escrow Agreement;
- (e) the Price Escalation Agreement;
- (f) the Concession Direct Agreement; and
- (g) any other agreement entered into in respect of the Project between the:
 - (i) GoS; and
 - (ii) Concessionaire and/or the Financiers and/or the Sponsor in respect of the Project and designated as a “*GoS Agreement*” with the written consent of the GoS;

GoS Conditions Precedent shall have the meaning ascribed thereto in Section 3.1.4;

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

GoS Event of Default shall have the meaning ascribed thereto in Section 22.2.1;

GoS Financial Instrument means the First GoS Financial Instrument and/or each Extended GoS Financial Instrument;

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GoS Financial Instrument Extension Amount shall have the meaning ascribed thereto in Section 17.8.3(a)(ii);

GoS Financial Instrument Extension Certificate shall have the meaning ascribed thereto in Section 17.8.3(a)(ii);

GoS Financial Instrument Extension Period shall have the meaning ascribed thereto in Section 17.8.3(a)(iii);

GoS Financial Instrument Issuing Bank means the financial institution acceptable to the Concessionaire that shall issue the GoS Financial Instrument;

GoS Funding Amount means an amount not exceeding PKR 10,000,000,000/- (Pakistani Rupees Ten Billion only), as requested by the Concessionaire from GoS, in its Bid, as set out in the Financial Model and to be funded through Equity Funding & Utilization Agreement;

GoS Indemnified Persons shall have the meaning ascribed thereto in Section 9.1.1;

GoS Overriding Power Event shall have the meaning ascribed thereto in Section 8.9.1;

GoS Remedy Amount shall have the meaning ascribed thereto in Section 18.2.3;

GoS Remedy Invoice shall have the meaning ascribed thereto in Section 18.2.3;

GoS Representative means the representative of the GoS appointed by the GoS for purposes of this Agreement in accordance with Section 8.8 (*GoS Representative*);

GoS Windfall shall bear the meaning ascribed thereto in Section 17.4.2;

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

Handover List shall have the meaning ascribed thereto in Section 25.1.1;

Indemnified Party shall have the meaning ascribed thereto in Section 9.3.1;

Indemnifying Party shall have the meaning ascribed thereto in Section 9.3.1;

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

Independent Auditor Appointment Term shall have the meaning ascribed thereto in Section 6.2.1;

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

Independent Auditor Payments shall have the meaning ascribed thereto in Section 6.5.1;

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

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

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

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

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

Independent Engineer Contract means the contract to be entered into between the GoS, 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 ascribed thereto in Section 5.5.1;

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

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

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

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

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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 but not restricted to the Construction Period Insurances and the Operations Period Insurances;

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 GoS 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 8.3.2) manner;

Licence shall have the meaning ascribed thereto in Section 4.1.1;

Losses means 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;

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

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Major Maintenance Costs shall have the meaning ascribed thereto in Section 19.12(a);

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

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

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

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

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

Major Maintenance Payment Account means the account to be established by the Concessionaire and Notified to the GoS as a Concessionaire Condition Subsequent;

Major Maintenance Payment Account Standing Instructions shall have the meaning ascribed thereto in Section 19.14(b);

Major Maintenance Payment Account Bank means the bank mutually agreed between the Concessionaire and the GoS for the purposes of establishing the Major Maintenance Payment Account;

Major Maintenance Period means the First Major Maintenance Period and/or the Second Major Maintenance Period;

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 (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 any Project Party in respect of the Project;
- (b) the ability or probability (financial or otherwise) of any Project Party 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 GoS 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 Project Agreements;

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Material Adverse Impediment shall have the meaning ascribed to it in Section 4.15.1;

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

Material Breach of O&M Requirements shall have the meaning ascribed to it in Section 19.4.1;

Material Impediment Removal Period shall have the meaning ascribed to it in Section 4.15.2;

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;

Minimum Revenue Guarantee Amounts means the amount of the Benchmark Toll Revenue(s) that the GoS guarantees to provide to the Concessionaire until the Debt Repayment Date based on the annual percentage calculations provided under **SCHEDULE Q** (*Benchmark Toll Revenue & MRG Schedule*), in accordance with the Escrow Agreement;

MRG Payment Date means the relevant date(s) on which the GoS is required make payment of the Minimum Revenue Guarantee Amounts into the Escrow Account as outlined under **SCHEDULE Q** (*Benchmark Toll Revenue & MRG Schedule*) and pursuant to the terms of the Escrow Agreement;

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

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

New O&M Performance Security shall have the meaning ascribed to it in Section 11.3.8;

New Operational Year shall have the meaning ascribed to it in Section 11.3.8;

NHA Standards means the relevant standards adopted by 'National Highway Authority';

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

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

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

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

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

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

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

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

O&M Inspection Report has the meaning ascribed thereto in Section 19.22.2;

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

O&M Monthly Status Report shall have the meaning ascribed thereto in Section 19.21.1;

O&M Performance Security means a first demand irrevocable and unconditional guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS in the form of a demand guarantee or a standby letter of credit (being in an amount equal to ten percent (10%) of the O&M Costs for the Operational Year to which it pertains) that is furnished from time to time by the Concessionaire to the GoS in accordance with Section 11.3 (*O&M Performance Security*), in the form of the instrument attached herewith as **SCHEDULE M (*Form of O&M Performance Security*)**;

O&M Programme shall have the meaning ascribed thereto in Section 19.8.2;

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

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the AASHTO Standards (to the extent adopted by the National Highway Authority in the “NHA General Specifications of 1998”), being the requirements applicable in respect of matters relating to the Concession Assets;
- (d) the **SCHEDULE H (*O&M Requirements*)**;

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- (e) the O&M Manual;
- (f) the Safety Requirements;
- (g) the Applicable Standards being the requirements applicable in respect of matters relating to the Concession Assets;
- (h) not used;
- (i) 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
- (j) any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

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

O&M Tests shall have the meaning ascribed thereto in Section 19.23.1;

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, performance and completion of each Project O&M Milestone on or prior to its Project O&M Milestone Date;

Operation and Maintenance or **Operate and Maintain** means all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period pursuant to the Applicable Standards including (a) the preparation, completion and delivery of all O&M Documents; (b) the operation and maintenance of the Concession Assets during the Construction Period and the Operations Period; (c) functions of operations, maintenance, traffic movement, 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;

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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*) OF SCHEDULE I (*Insurances*)**;

Outstanding Termination Payment shall have the meaning ascribed thereto in Section 17.9.1 (c);

Parties shall have the meaning ascribed thereto in the Preamble;

Payable Termination Payment Amount Shortfall shall have the meaning ascribed thereto in Section 17.9.1 (b);

Permitted Events means:

- (a) Force Majeure Events;
- (b) GoS Events of Default;
- (c) Emergency Decommissioning, to the extent the same does not result from reasons attributable to the Concessionaire;
- (d) Material Adverse Impediment, to the extent the same does not result from reasons attributable to the Concessionaire;
- (e) a Change in Law causing a delay in the performance of the Concessionaire's obligations under this Agreement;
- (f) 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
- (g) the occurrence of the GoS Overriding Power Event, to the extent the same does not result from reasons attributable to the Concessionaire;

Persistent Breach of O&M Requirements means:

- (i) any reoccurring and persistent breach of the O&M Requirements that remains unremedied despite the issuance of Notice of Remedy by the Independent Engineer;
- (ii) 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 (i) and (ii) 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;

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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;

Political Event shall have the meaning 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 Financing and the Base Funding Amount;

Preliminary Works means such works as are mutually agreed between the Parties to be performed by the Concessionaire prior to the Commencement Date;

Preservation Costs shall have the meaning ascribed thereto in Section 18.3.4;

Price Escalation Agreement means the agreement (in the form and substance agreed between the Parties in accordance with Applicable Laws) to be entered into between the GoS, the Sponsors and the Concessionaire for purposes of, inter alia, funding by the GoS and the Sponsors of Escalation Costs;

Principal has the meaning ascribed thereto in the definition of ‘Financing Due’;

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

- (a) the ownership and possession of the Concession Assets;
- (b) the design and detailed design, engineering, financing, construction, procurement, permitting, testing and commissioning of, in each case, the Concession Assets;
- (c) the procurement and contracting for goods, equipment and services for the Concession Assets;
- (d) the insuring and Operation and Maintenance of the Concession Assets;
- (e) the making available, on a continuous basis, of the Concession Assets for the Users;
- (f) payments by the Parties of amounts due and payable under this Agreement;
- (g) the recruitment, employment and training of staff for the Concession Assets;
- (h) the transfer of the Concession Assets to the GoS on the Transfer Date;
- (i) all activities incidental or related to any of the above;

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Project Agreements means:

- (a) this Agreement;
- (b) the Financing Documents;
- (c) the O&M Contract;
- (d) the EPC Contract;
- (e) 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 GoS;

Project Construction Completion shall have the meaning ascribed thereto in Section 14.7.1;

Project Construction Completion Check List shall have the meaning ascribed thereto in Section 14.4.2;

Project Construction Segment Completion Check List shall have the meaning ascribed thereto in Section 14.3.2

Project Construction Completion Check List Items shall have the meaning ascribed thereto in Section 14.5.1;

Project Construction Completion Date shall have the meaning ascribed thereto in Section 14.7.1;

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

- (a) the Scheduled Project Construction Completion Date;
- (b) the Schedule Segment Substantial Completion Date;
- (c) the Scheduled Substantial Completion Date;
- (d) the Project Construction Milestones;

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

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

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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)**;

Project Expressway means almost 39.4 km long road, namely Malir Expressway as more particularly described and indicated in the **SCHEDULE F (Project Site)** including bridges, culverts and other appurtenances thereto, which shall form part of the Concession Assets and shall be developed in accordance with the Applicable Standards;

Project Expressway Segment means the area starting from the Creek Avenue and ending on Quaidabad;

Project Manager / Project Director shall have the meaning ascribed thereto in Section 8.13.1;

Project Management / Implementation Unit means the project management / implementation unit established by the GoS 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 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 Operation Period, as set out in:

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- (a) the Applicable Standards and specifications;
- (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 Party means the Concessionaire, the Sponsor and/or any Contractor, as the case may be;

Project Requirements means the Design Requirements, the Construction Requirements and the O&M Requirements, 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 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 have the meaning ascribed to it in Section 4.4.1;

Project Site Licence Agreement means the agreement of Licence (in the form agreed between the Parties) to be entered into between the GoS and the Concessionaire pursuant to which the GoS 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 Construction Works and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Project Construction Completion Date;
- (b) the Operations and Maintenance and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period;

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

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

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

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Proposed Major Maintenance Contract(s) shall have the meaning ascribed thereto in Section 19.13(b);

Proposed Major Maintenance Programme shall have the meaning ascribed thereto in Section 19.13(a);

Proposed O&M Programme shall have the meaning ascribed to it in Section 19.8.1;

Protected Assets shall have the meaning ascribed thereto in Section 8.10.1(b);

Relief Costs means the increase in such capital expenditures and costs and/or the operating costs, in each case, that are set out in the Financial Model and which directly result from a Relief Event (excluding such Relief Events that are set out in Section 15.2.1 (d) and (e)), as determined by the Independent Engineer and the Independent Auditor pursuant to Article 15 (*Relief Extensions & Relief Compensations*) and which are set out in the Relief Order; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon by the Independent Engineer and the Independent Auditor;

Relief Event(s) shall have the meaning ascribed thereto in Section 15.2.1;

Relief Order means a written order jointly issued by the Independent Auditor 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 Costs in accordance with Article 15 (*Relief Extensions & Relief Compensations*);

Relief Order Proposal shall have the meaning ascribed thereto in Section 15.4.1;

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

Remedy Events shall have the meaning ascribed thereto in Section 18.2.1;

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

RFP shall have the meaning ascribed to in Recital A 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 one hundred and eighty (180) days after the Effective Date, as may be extended from time to time in accordance with this Agreement;

Scheduled Project Construction Completion Date shall have the meaning ascribed thereto in Section 14.5.2A;

Scheduled Segment Construction Completion Date shall have the meaning ascribed thereto in Section 14.5.2;

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Scheduled Segment Substantial Completion Date means the date falling eighteen (18) months after the Commencement Date, as such date as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order;

Scheduled Substantial Completion Date means the date falling thirty (30) months after the Commencement Date, as such date as may be extended from time to time in accordance with the terms of this Agreement solely pursuant to a Relief Order;

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

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

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

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

Second Major Maintenance Period means the period commencing on the Second Major Maintenance Commencement Date and expiring on the Second Major Maintenance Expiry Date;

Segment Substantial Completion Date has the meaning ascribed thereto in Section 14.3.2

Segment Substantial Completion has the meaning ascribed thereto in Section 14.3.3;

Segment Substantial Completion Certificate means the certificate issued by the Independent Engineer at the request of the Concessionaire in accordance with Section 14.3 (*Segment Substantial Completion Certificate*)

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 Concession Assets 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, upgradation, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, forming or to form, part of the Concession Assets 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;

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- (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 GoS in accordance with the terms of this Agreement

Specific Judicial Forum means the Honorable Supreme Court of Islamic Republic of Pakistan;

Specific Malir Construction Material means the material available for excavation on the Designated Specific Malir Material Site;

Specific Malir Construction Material Judgement means the Constitution Petition No. 38 of 2016, being the decision of the Specific Judicial Forum;

Specific Malir Construction Material Utilization Decision means any decision of the Specific Judicial Forum that permits, as an exemption to or otherwise of the Specific Malir Construction Material Judgement, the Specific Malir Construction Material Utilization;

Specific Malir Construction Material Utilization means the usage and utilization of the Specific Malir Construction Material from the Designated Specific Malir Material Site for the purposes of Malir Expressway Project;

Specific Malir Construction Material Utilization Conditions means the following conditions:

- (a) the Concessionaire shall not expose or damage any existing utilities;
- (b) the Concessionaire shall not expose the foundation of existing bridge or structures and maintain an adequate distance of excavation from such existing bridge or structures;
- (c) the Concessionaire shall not carry out excavation within thirty (30) meters from the toe of protection bund/embankment;
- (d) the Concessionaire shall procure approval of the Evaluation Plan from the Independent Engineer; and
- (e) any other conditions specified in the Specific Malir Construction Material Utilization Decision.

Specific Malir Construction Material Liability Amount means an amount (in Pakistani Rupees), as determined by the Independent Engineer, not exceeding the Specific Malir Construction Material Liability Amount Cap;

Specific Malir Construction Material Liability Amount Cap means an amount (in Pakistani Rupees) equal to Pakistani Rupees Two and a half Billion only (PKR 2,500,000,000);

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

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

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

Stage One Qualified Bidders shall have the meaning ascribed to such term in the RFP;

Substantial Completion shall have the meaning 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 have the meaning ascribed thereto in Section 14.4.2;

Suspension shall have the meaning ascribed thereto in Section 18.3.1;

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 and this shall be the date on which the actual Termination occurs following the Exit Implementation Period;

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

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

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Termination Equity IRR means the post-tax internal rate of return, the same being 17%, on the Equity Class A Shares;

Termination Notice means a notice to be issued in writing by a Party notifying the other Party of the Termination of this Agreement in accordance with the applicable provisions of this Agreement;

Termination Payment means:

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

Termination Payment Date means the date falling 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

Toll(s) means the amount of money determined, levied, imposed, demanded, charged, collected, retained and appropriated by the Concessionaire and/or to be determined, levied, demanded, charged, collected, retained and appropriated by the Concessionaire, from the Users of the Concession Assets (except the Exempted Vehicles) (including for any weigh bridges, or other commercial rights and advertisement rights) or part thereof as the fee for the use of the Concession Assets or part thereof, commencing from the Toll Commencement Date (unless otherwise mutually agreed between the Parties) until the Trigger Date. The words “Toll”, “Tolling”, “Tolled” and other grammatical variations of the word “Tolls” shall be construed accordingly;

Toll Commencement Date means the Segment Substantial Completion Date;

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Toll Commencement End Date means the date on which the Concessionaire's right to collect Toll in terms of this Agreement shall stand cancelled and shall cease to exist, such date being the earlier of:

- (a) Final Expiry Date; or
- (b) in case the Concession is Terminated prior to the Final Expiry Date (other than due to a Concessionaire Event of Default), such date shall be the Transfer Date; or
- (c) in case the Concession is Terminated prior to the Final Expiry Date due to a Concessionaire Event of Default, such date as set out in Section 23.1.4;

Toll Concession means all concessions and rights granted to the Concessionaire hereunder and under the GoS Agreements in relation to Toll and all matters relating to the same including determination, levying, imposing, demanding, charging, collection, retention and appropriation of the same by the Concessionaire from the Toll Commencement Date until the Toll Commencement End Date;

Toll Notification Structure means the structure for, inter alia, imposition and adjustments in the Toll and fines and penalties in relation to overweight vehicles and the list of exempted vehicles, as specifically contemplated by **SCHEDULE P (Toll Notification Structure)**;

Toll Notification shall bear the meaning ascribed thereto in Section 17.5.1;

Toll Notification Event shall bear the meaning ascribed thereto in Section 17.5.2;

Toll Notification Relief Event shall bear the meaning ascribed thereto in Section 17.5.2;

Toll Operations Manual has the meaning ascribed thereto in Section 17.2.2;

Toll Plazas means the toll plazas to be built and established by the Concessionaire as part of the Concession Assets along the Project Expressway (as contemplated by Section 8 of **SCHEDULE B (Design Requirements)**) that are planned to be established by Concessionaire and any other toll plazas created, or caused to be created, by GoS after the Effective Date for the collection of the Tolls and/or management of Tolling operations and the related management of the Project Expressway;

Toll Revenues means all income derived by the Concessionaire from the Project from collection of the Tolls;

Toll Progress Report shall bear the meaning ascribed thereto in Section 17.3.1;

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

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

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Transaction Advisor means the advisory consortium appointed by the GoS for the purposes of the Project;

Transfer Date means:

- (a) in case of early Termination of this Agreement prior to the Final Expiry Date, the Termination Payment Date subject to the GoS making payment of the relevant Termination Payment to the Concessionaire 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 and/or the Termination Date, as the case may be;

Unpaid Termination Payment Amount shall have the meaning ascribed thereto in Section 17.9.1;

Unpaid Termination Equity Amount shall have the meaning ascribed thereto in Section 23.5.2(b);

Unpaid Termination Payment Amount Certificate shall have the meaning ascribed thereto in Section 17.9.1;

User(s) means the Person who traverses or travels over or on the Concession Assets or any portion thereof;

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

Utility Dividends shall have the meaning ascribed to it Section 4.12.3;

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

Vesting Certificate shall have the meaning ascribed thereto in Section 24.4.1.

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;

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- (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 a Sunday) 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;

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- (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 GoS 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 shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, the Independent Engineer or the Independent Auditor, as the case may be, in this behalf and not otherwise;
- (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.

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

1.4 **MEASUREMENTS AND ARITHMETIC CONVENTIONS**

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

- (a) between two or more Articles and/or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and/or Section;
- (b) 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;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;

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- (d) between the written description on the Construction Drawings and the Construction Requirements, the latter shall prevail;
- (e) between the written description on the O&M Documents and the O&M Requirements, the latter shall prevail;
- (f) between the dimension scaled from the Construction Drawing and its specific written dimension, the latter shall prevail;
- (g) between the dimension scaled from the O&M Documents and its specific written dimension, the latter shall prevail; and
- (h) between any value written in numerals and that in words, the latter shall prevail.

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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 GoS, subject to the terms of this Agreement, hereby grants to the Concessionaire the Toll Concession and authorizes it, for the duration of the Concession Period, to investigate, study, design, engineer, procure, finance, construct, develop, operate, maintain and implement the Project on a design, build, operate, finance and transfer basis, and to exercise and enjoy the rights, powers, benefits, privileges, Toll collection, 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 GoS 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 GoS has the right to accept or reject this request for extension at its sole and absolute discretion and to the extent the GoS accepts the extension in the Concession Period, the Parties shall enter into such instruments, agreements and arrangements (including any amendments in the GoS Agreements) and on such terms and conditions, in each case, as mutually agreed between the Parties.

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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 specified in Section 3.1.2, Section 3.1.3 and Section 3.1.4 (the **Conditions Precedent**) on or prior to the Scheduled Commencement Date.

3.1.2 The Concessionaire shall satisfy the following Conditions Precedent to the satisfaction of the GoS, the Independent Engineer and the Independent Auditor prior to the Scheduled Commencement Date (the **Concessionaire Conditions Precedent**):

- (a) the Concessionaire has provided copies of its Corporate Documents to the GoS (with copies delivered to the Independent Engineer and the Independent Auditor), duly certified as true copies by the company secretary or director of the Concessionaire;
- (b) the Concessionaire has provided to the GoS copies (with copies delivered to the Independent Engineer and Independent Auditor) of its Board Resolution that duly authorizes:
 - (i) the Concessionaire to enter into this Agreement and to undertake the obligations, liabilities, as set out in this Agreement, and the transactions as contemplated by this Agreement;
 - (ii) a specified Person or Persons to:
 - (aa) execute this Agreement on behalf of the Concessionaire; and
 - (bb) undertake all other acts specifically relating to this Agreement, as contemplated by this Agreement;
- (c) Not Used;
- (d) each of the Specified Concessionaire Permits have been procured by the Concessionaire and the same are effective and valid and have not been cancelled and/or rescinded and the Concessionaire has provided copies of the same to the GoS (with copies delivered to the Independent Engineer and the Independent Auditor);
- (e) Not Used;
- (f) the Concessionaire has provided to the GoS, the Independent Auditor and the Independent Engineer:
 - (i) a certified true copy of the duly executed Financing Term Sheet that is not objected to or deemed not to be objected to by the GoS and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet & Financing Amendment Term Sheet*);

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- (ii) certified true copies of the executed Financing Documents;
 - (iii) the Financial Close Achievement Notice, as issued by the Financiers (or an agent of the same);
- (g) the GoS has received the following legal opinions:
- (i) a legal opinion from the legal counsel of the Concessionaire confirming that the Concessionaire has been duly organized and is validly existing under the Applicable Laws and has the requisite power and authority to enter into the GoS Agreements and to undertake the transactions as contemplated by the GoS Agreements and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire;
 - (ii) a legal opinion from the legal counsel of the Sponsor confirming that such Sponsor is validly existing under the applicable laws and that such Sponsor has the requisite authority and power to enter into the GoS Agreement(s) and the Project Agreement(s) to which such Sponsor is a party and to assume the obligations as contained therein and the enforceability of the same against the Sponsor;
- (h) the Concessionaire has entered into the Project Site Licence Agreement with the GoS for Licence of the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*);
- (i) the Concessionaire has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the counterparties to such contract, within one (1) month of the Effective Date;
- (j) the Concessionaire has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the counterparties to such contract;
- (k) the Concessionaire and the Sponsor have entered into the Equity Funding & Utilization Agreement with the GoS;
- (l) the Concessionaire has entered into the Escrow Agreement and has established the Escrow Account;
- (m) the Concessionaire and the Sponsor have entered into the Price Escalation Agreement with the GoS;
- (n) the Concessionaire's Approved Detailed Engineering Design of the Project stands approved by the Independent Engineer and the GoS in accordance with Section 12.5; and
- (o) the Concessionaire has submitted copies of documents evidencing satisfaction of each of the Concessionaire Conditions Precedent to the Independent Engineer and the Independent Auditor.

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3.1.3 Not Used.

3.1.4 The GoS shall satisfy the following Conditions Precedent to the satisfaction of the Concessionaire, the Independent Auditor and the Independent Engineer prior to the Scheduled Commencement Date (the **GoS Conditions Precedent**):

- (a) the GoS has Licenced the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*) and the Project Site Licence Agreement;
- (b) subject to Section 12.5, the GoS has handed over Vacant Possession of the Concession Assets Project Site to the Concessionaire in accordance with Article 4 (*Project Site*) and the Project Site License Agreement;
- (c) the GoS has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the other counterparties to such contract, within one (1) month of the Effective Date;
- (d) the GoS has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the other counterparties to such contract;
- (e) the GoS has entered into the Equity Funding & Utilization Agreement with the Concessionaire;
- (f) the GoS has entered into the Escrow Agreement;
- (g) the GoS has provided the First GoS Financial Instrument in accordance with Section 17.8;
- (h) the GoS has entered into the Price Escalation Agreement with the Concessionaire;
- (i) the GoS has obtained the Specific Malir Construction Material Utilization Decision from the Specific Judicial Forum; and
- (j) the GoS has submitted copies of documents evidencing satisfaction of each of the GoS Conditions Precedent to the Independent Engineer and the Independent Auditor.

3.2 **CONDITIONS SUBSEQUENT**

3.2.1 The Concessionaire undertakes to fulfill the following Conditions Subsequent to the entire satisfaction of the GoS:

- (a) ninety (90) days prior to the Scheduled Substantial Completion Date, the Concessionaire shall provide the GoS (with copies to the Independent Engineer and the Independent Auditor) with evidence of appointment of the O&M Contractor; and
- (b) ninety (90) days prior to the Scheduled Substantial Completion Date, the Concessionaire shall provide evidence that the Major Maintenance Payment Account has been established.

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

- (a) On the issuance of the Commencement Certificate by the Independent Engineer and the Independent Auditor, the GoS shall issue the Toll Notification in accordance with Article 17 (*Tolling Arrangement*) authorizing the Concessionaire to begin charging the Toll set forth in **SCHEDULE P (*Toll Notification Structure*)**.

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

3.3.1 The:

- (a) GoS may (at its discretion) waive and/or defer any of the Concessionaire Conditions Precedent set forth in Section 3.1.2 and/or the Conditions Subsequent set out in Section 3.2 (*Conditions Subsequent*). For the avoidance of doubt, the GoS 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 GoS Conditions Precedent set forth in Section 3.1.4. For the avoidance of doubt, the Concessionaire may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit.

3.3.2 Notwithstanding anything contained herein, the Scheduled Commencement Date may be extended from time to time with the mutual consent of the Parties.

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

3.4 **COMMENCEMENT CERTIFICATE & COMMENCEMENT DATE**

3.4.1 The Conditions Precedent shall be satisfied, waived and/or deferred by the Scheduled Commencement Date in accordance with this Agreement. Each Party shall promptly inform the other Party in writing (together with copies delivered to the Independent Engineer and the Independent Auditor) when the Conditions Precedent for which it is responsible have been satisfied.

3.4.2 The Parties agree that:

- (a) within thirty (30) days of the GoS's receipt from the Concessionaire, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of a Concessionaire Condition Precedent, the GoS shall notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Concessionaire) whether it has any objections on the satisfaction of such Concessionaire Condition Precedent.

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In the event the GoS 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 GoS. In the event the GoS raises any objections on the satisfaction of a Concessionaire Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) within the thirty (30) day period set out herein, the Concessionaire shall address such objections and re-submit to the Independent Engineer and the Independent Auditor (with a copy to GoS) 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 GoS 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 (with a copy to the GoS) from time to time;

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

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

- (a) Concessionaire Conditions Precedent stand satisfied (and/or waived or deferred by the GoS 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 GoS (acting through the GoS Representative) in accordance with Section 3.4.2(a) and if any Concessionaire Condition Precedent is objected to by the GoS in accordance with Section 3.4.2(a), the Concessionaire has addressed such

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objections and re-submitted evidence of satisfaction of such Concessionaire Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the GoS) in accordance with Section 3.4.2(a);

- (c) GoS Conditions Precedent stand satisfied (and/or waived or deferred by the Concessionaire in accordance with Section 3.3.1(b));
- (d) GoS 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 GoS Condition Precedent is objected to by the Concessionaire in accordance with Section 3.4.2(b), the GoS has addressed such objections and re-submitted evidence of satisfaction of such GoS Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the Concessionaire) in accordance with Section 3.4.2(b); and

The Independent Engineer and the Independent Auditor, 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 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 GoS 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 GoS shall be entitled to encash the Bid Security or the Construction Performance Security (as in effect at such time) to its full value. Except as may be contemplated in the Equity Funding & Utilization Agreement and except for the encashment of the Bid Security or the Construction Performance Security (as in effect at such time) 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.

3.5.2 In the event:

- (a) the 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 GoS and/or a Force Majeure Event; and/or
- (b) of occurrence of a GoS Event of Default prior to Commencement Date,

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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 GoS. In such case, the GoS shall (within fifteen (15) days of its receipt of the Termination Notice) return the Bid Security or the Construction Performance Security (as in effect at such time) to the Concessionaire without any encashment, demands or claims. Except as may be contemplated in this Agreement and the Equity Funding & Utilization Agreement, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement.

- 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.

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4. PROJECT SITE

4.1 LICENSE

- 4.1.1 The GoS hereby agrees to license the Concession Assets Project Site for the Concession Period to the Concessionaire for the purposes set out herein in the Concession Agreement (the **License**) and in accordance with the mechanism set out in Project Site License Agreement. The Project Site License Agreement shall be duly executed by the Parties and, to the extent required by Applicable Laws, registered by the Concessionaire with the relevant Government Authority and all costs, fees, expenses, duties, charges and taxes (including charges relating to the registration of the Project Site License Agreement) relating to the same shall be borne by the Concessionaire.
- 4.1.2 The Concessionaire shall be responsible for payment of all charges in accordance with the Project Site License Agreement that relate to the License of the Concession Assets Project Site to the Concessionaire by GoS.
- 4.1.3 The License shall commence on the physical handing over of the Vacant Possession of the Concession Assets Project Site to the Concessionaire by the GoS 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 License. Any extension of the Concession Period shall also extend the License and the Concessionaire and the GoS shall enter into such addendums, extensions or modifications of the Project Site License Agreement as are necessary to give effect to such extension.
- 4.1.4 The GoS 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 Sindh, Pakistan, so as to ensure that the Concessionaire can enjoy Vacant Possession and hold the area of land comprising the Concession Assets Project Site, other than where failure to enjoy Vacant Possession results from a breach by the Concessionaire of the Applicable Standards.

4.2 TITLE OF CONCESSION ASSETS PROJECT SITE & DELIVERY OF VACANT POSSESSION

- 4.2.1 The GoS represents and warrants that it has the power and authority to grant the License in respect of the Concession Assets Project Site to the Concessionaire.
- 4.2.2 Subject to Section 15.2 (*Relief Events*), the GoS 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 License Agreement.

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 GoS to deliver Vacant Possession of the Project Site to the Concessionaire in accordance with the Project Site License Agreement, such delay and / or failure of the GoS shall be classified and designated as a ‘*Relief Event*’ and the Concessionaire shall be entitled to relief and compensations and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

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4.3 **USE OF PROJECT SITE**

4.3.1 The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the GoS shall enter into the Project Site Licence Agreement with the Concessionaire that shall grant the Licence of the Concession Assets Project Site to Concessionaire for the sole purpose of implementation of the Project and for enjoying the rights and benefits of the Concession granted hereunder and that the Concessionaire shall use the Concession Assets Project Site only for the purposes of implementing the Project thereupon and for purposes incidental or necessary thereto subject always to the terms and conditions of the Applicable Standards. The Concessionaire shall, in carrying out its obligations under this Agreement, utilize all existing roads and land areas at the Concession Assets Project Site.

4.3.2 The Concessionaire hereby undertakes that it shall not without prior written consent of the GoS 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 GoS in writing.

4.4 **CONCESSIONAIRE’S RESPONSIBILITY**

4.4.1 Subject to Section 4.15 (*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 of the Agreement 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;

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- (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 with particular regard to the owners and users of any land adjacent to 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 above and the Concessionaire shall, subject to Section 4.15 (*Removal of Adverse Impediment*):

- (a) not be entitled to make any claim against the GoS whether in contract, tort or otherwise on any ground relating to the matters in Section 4.4.1 above; and
- (b) indemnify the GoS against all direct Losses sustained by the GoS 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 Concession Assets Project Site.

4.5 **NO SALE OR CREATION OF ENCUMBRANCE**

4.5.1 The Concessionaire shall not part with, dispose off, sell, sublease 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 Concession Assets Project Site by the GoS and until the Transfer Date, the Concessionaire shall be fully responsible for and shall protect the Concession Assets Project Site from, in each case, any and all occupations, thefts, encroachments and Encumbrances. The Concessionaire further undertakes, covenants and confirms to indemnify the GoS, any Government Authority and the GoS from any costs, claims expenses or charges incurred

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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 GoS under the GoS 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 GoS shall reasonably facilitate the Concessionaire in obtaining the aforesaid special or temporary right of way.

4.8 **PROJECT SITE ACCESS**

4.8.1 Following License of the Project Site and delivery of the Vacant Possession of the Concession Assets Project Site to the Concessionaire by the GoS, the Licence granted to the Concessionaire shall always be subject to the right of access of the GoS, any relevant Government Authority, the Independent Auditor 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 GoS or the relevant concerned Government Authority.

4.9.2 The Concessionaire shall procure all no-objection certificates and consents from the Culture Department, Government of Sindh 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 GoS forthwith of the discovery thereof and comply with such instructions as the GoS 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 GoS

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(provided the same are duly certified by the Independent Engineer and the Independent Auditor) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. 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 GoS shall procure the issuance of the instructions required from the concerned Government Authority and referred to in this Section 4.9.2.

4.10 **EXISTING UTILITIES AND ROADS**

4.10.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Project Site are enabled by the Concessionaire to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the GoS shall, upon written request from the Concessionaire (as certified by the Independent Engineer), initiate and undertake, at the GoS's cost, legal proceedings for acquisition of any right of way necessary for such diversion. The Concessionaire shall be responsible for identifying the existing utilities and roads through a detailed design submitted by the Concessionaire to the Independent Engineer and during the activity of relocation of Existing Utilities their supervision in relation to the agreed alignment (for excavation, laying, backfilling, erection of utility, poles and etc.) by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities and roads. In the event of any breach by the Concessionaire of its obligations under this Section 4.10.1, the Concessionaire shall be responsible for rectification of the same at its own cost, risk and expense.

4.11 **NOT USED**

4.12 **NEW UTILITIES AND ROADS**

4.12.1 The Concessionaire shall allow utility companies (subject to consent of GoS and subject to such conditions as the GoS may specify and subject to mutual agreement between the GoS, Concessionaire and the utility companies), access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities; provided, that nothing contained in this Section 4.12.1 shall waive and/or relieve or be deemed to waive and / or relieve the obligations of the Concessionaire contained in the GoS Agreements and any damage caused to the Concession Assets by such access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities shall be restored forthwith.

4.12.2 The affected part of the Concession Assets (or any part thereof) (the **Utilities Affected Assets**) shall be restored in accordance with the Applicable Standards and Good Industry Practice by the Concessionaire and the costs relating to the same shall be borne by the Concessionaire and/or the utility companies in accordance with the terms mutually agreed between the Concessionaire and the utility companies; provided, however, any such terms

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(including any amendments of the same) shall be subject to the prior approval of the GoS (which approval shall not be unreasonably delayed, conditioned or withheld). Notwithstanding anything to the contrary set out herein, the GoS shall neither be responsible for restoration of any Utilities Affected Assets nor for any costs relating to the same.

4.12.3 The GoS (through its Class B shares or otherwise) exclusively reserves the right to charge fees from the utility company or any other entity for allowing the passage of the telephone lines, water pipes, electric cables or other public utilities over or under the Project Site and such fee, in case being paid to the Concessionaire, shall be paid to the GoS as dividends for Class B Shares or otherwise; provided, that any amounts payable to the GoS by the Concessionaire hereunder as dividends for Class B Shares or otherwise, shall be adjusted for any adverse tax impact on the Concessionaire resulting from receipt of such fee (the **Utility Dividends**).

4.13 **FELLING OF TREES**

4.13.1 The GoS undertakes to fell at least twenty five thousand (25,000) trees at the Concession Assets Project Site, to be identified by the Concessionaire, the cost of which shall be borne by the Concessionaire, provided further the Concessionaire shall be responsible for procuring any approvals and/or permits from the GoS or any other governmental agency for compliance with this Section 4.13 (*Felling of Trees*).

4.13.2 The trees removed by the Concessionaire shall be deemed to be owned by the GoS and shall be disposed in such manner and subject to such conditions as the GoS may in its sole discretion deem appropriate provided however all costs, fees and expenses of such disposal shall be borne by the Concessionaire.

4.13.3 The Concessionaire hereby undertakes that it shall (as condition precedent to achievement of Substantial Completion), at its sole cost and expense, plant atleast 40,000 trees of local variety of large trees including Neem, Peepal, Moringa, Pilkhan, (bearded Peepal), Imli (tamrand), Jaaman, Babool. Furthermore, the Concessionaire undertakes to maintain in accordance with the Applicable Standards all the trees planted by it pursuant to this Section 4.13 (*Felling of Trees*) till the Transfer Date and shall ensure that at all times until Transfer Date, such number of trees as required under the Applicable Permits.

4.14 **GOS INDEMNITIES IN RESPECT OF PROJECT SITE**

4.14.1 The GoS 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 Concession Assets Project Site to the Concessionaire) in relocating, rehabilitating or resettling persons in connection with making available the Concession Assets Project Site to the Concessionaire for implementation of the Project and for delivery of Vacant Possession of the Concession Assets Project Site to the Concessionaire.

4.14.2 The GoS 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 Concession Assets 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

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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 .

4.15 **REMOVAL OF MATERIAL ADVERSE IMPEDIMENT**

4.15.1 Following delivery of the Vacant Possession of the Concession Assets Project Site to the Concessionaire by GoS, the Concessionaire shall be responsible for removal of all impediments, debris (including any structures not in anyone's possession) on the Concession Assets 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 GoS of any impediment (the **Material Adverse Impediment**) on the Concession Assets 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; and
- (c) does not result from any non-compliance by the Sponsor and/or the Concessionaire under any GoS Agreements.

4.15.2 Any Notice issued by the Concessionaire pursuant to Section 4.15.1 shall be duly verified and certified by the Independent Engineer prior to submission to the GoS and the Independent Engineer shall, prior to delivery of such Notice to the GoS, 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 GoS of the Notice duly verified and certified by the Independent Engineer (the **Certified Impediment Notice**), the GoS 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 Relief Costs, in each case, as a direct result of the Material Adverse Impediment, the same shall entitle the Concessionaire to issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

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5. INDEPENDENT ENGINEER

5.1 SELECTION

- 5.1.1 Within fifteen (5) days from the Effective Date, the Concessionaire shall provide the GoS with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer (the **First IE List**).
- 5.1.2 Within fifteen (5) days of receipt by the GoS of the First IE List, the GoS shall (subject to one (1) of the firms in the First IE List being acceptable to the GoS) select a reputed firm of engineers from First IE List and the GoS and the Concessionaire shall appoint such firm as the Independent Engineer in terms of the Independent Engineer Contract.
- 5.1.3 In the event the firms of engineers identified by the Concessionaire in the First IE List are not acceptable to the GoS, the Concessionaire and the GoS shall appoint (in terms of the Independent Engineer Contract) such firm as the Independent Engineer as is mutually acceptable to the GoS and the Concessionaire and such appointment shall be in terms of the Independent Engineer Contract.
- 5.1.4 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 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/

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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 or 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 GoS 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 GoS objects to the appointment of any firm of engineers named in the First IE List, then the Concessionaire shall provide the GoS 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 GoS of the New IE List, the GoS shall either:

(a) select a reputable firm of engineer 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 GoS 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.

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5.4 **DECISION OF INDEPENDENT ENGINEER & DISPUTE RESOLUTION**

5.4.1 Subject to Section 5.4.2, any advice, 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 GoS and the Concessionaire with regard to any advice, 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 GoS) 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 **INDEPENDENT ENGINEER PAYMENT ACCOUNT**

5.6.1 The Concessionaire shall establish and maintain the Independent Engineer Payment Account from the Commencement Date and until the Trigger Date. Subject to the rights of the Lenders in terms of the Financing Documents, the GoS may create a lien over the funds standing to the credit of the Independent Engineer Payment Account.

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

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

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6. INDEPENDENT AUDITOR

6.1 SELECTION

- 6.1.1 Within fifteen (15) days from the Effective Date, the Concessionaire shall provide the GoS with a list of four (4) reputable firms of chartered accountants for appointment of the Independent Auditor (the **First IA List**).
- 6.1.2 Within fifteen (15) days of receipt by the GoS of the First IA List, the GoS shall (subject to one of the firms in the First IA List being acceptable to the GoS) select a reputed firm of auditors from First IA List and the GoS and the Concessionaire shall appoint such firm as the Independent Auditor in terms of the Independent Auditor Contract.
- 6.1.3 In the event the firms of auditors identified by the Concessionaire in the First IA List is not acceptable to the GoS, the Concessionaire and the GoS shall appoint (in terms of the Independent Auditor Contract) such firm as the Independent Auditor as is mutually agreed by the GoS and the Concessionaire and such appointment shall be in terms of the Independent Auditor Contract.
- 6.1.4 The Independent Auditor 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 Auditor Contract shall be in accordance with the Indicative Independent Auditor Terms of Reference.

6.2 TERM OF APPOINTMENT OF THE INDEPENDENT AUDITOR

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

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for malpractice and/or misadministration is filed against the Independent Auditor 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 Contract in accordance with the terms of the same or and/or in the event of expiry of the Independent Auditor Appointment Term, the Parties shall appoint a new Independent Auditor in accordance with this Section 6.2.3. In the aforementioned circumstances, the Parties shall replace the appointed Independent Auditor with another firm of chartered accountants selected by the GoS 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 shall not have effect till such time as the replacement Independent Auditor has been appointed. In the event the GoS objects to the appointment of any firm of chartered accountants named in the First IA List, then the Concessionaire shall provide the GoS with a new list of three (3) reputable firms of chartered accountants for appointment of the replacement Independent Auditor (**the New IA List**). Within ten (10) days of receipt by the GoS of the New IA List, the GoS 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; 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.

The provisions of this Article 6 (*Independent Auditor*) shall apply to any new Independent Auditor (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 shall be the unexpired period of the Independent Auditor Appointment Term or such other term as may be mutually agreed between the Parties.

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

6.3 **INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

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

6.4 **DECISION OF INDEPENDENT AUDITOR & DISPUTE RESOLUTION**

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6.4.1 Subject to Section 6.4.2, any advice, instruction, decision, direction and/or award of the Independent Auditor shall be binding on the Parties unless mutually agreed otherwise by the Parties.

6.4.2 In the event any Dispute arises between the GoS and the Concessionaire with regard to any advice, instruction, decision, direction and / or award of the Independent Auditor, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.5 **INDEPENDENT AUDITOR REMUNERATION**

6.5.1 The Concessionaire shall (in consultation with the GoS) be solely responsible for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Contract (the **Independent Auditor Payments**), notwithstanding that the Independent Auditor shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Auditor Contract.

6.5.2 The Concessionaire undertakes to affect the Independent Auditor Payments in a diligent and timely manner and in accordance with the Independent Auditor Contract.

6.6 **INDEPENDENT AUDITOR PAYMENT ACCOUNT**

6.6.1 The Concessionaire shall establish and maintain the Independent Auditor Payment Account from the Commencement Date and until the Trigger Date. Subject to rights of Lenders in terms of the Financing Documents, the GoS may create a lien over the funds standing to the credit of the Independent Auditor Payment Account.

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

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

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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 GoS 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 Sponsors 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 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

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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 has the Concessionaire's Ownership And Management Control as of the Effective Date;
- (k) the Concessionaire and the Sponsor (along with its Associates (if any)) have the financial standing and resources to fund the required Equity for Class A Shares and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the GoS 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;
- (m) 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 GoS 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;
- (n) the Concessionaire and the Sponsors 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;
- (o) all representations, breach of which may cause a Material Adverse Effect, provided by the Concessionaire and/or Sponsor in its Bid submitted in response to the RFP, is true and accurate in all respects;
- (p) 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; and
- (q) the Concessionaire has furnished the Construction Performance Security to the GoS prior to the Effective Date.

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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 GoS Agreement.

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 Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date;
 - (ii) achieve Substantial Completion on or prior to the Scheduled Substantial Completion Date;
 - (iii) achieve Project Construction Completion on or prior to the Scheduled Project 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 GoS, the Independent Engineer and the Independent Auditor 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,

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- (i) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, Licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (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);
- (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 GoS, the Independent Engineer, Independent Auditor and any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Works and the Concession Assets and, upon reasonable notice, to investigate any matter within their authority, and provide to such Persons assistance reasonably required to carry out their respective duties and functions;
- (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 GoS Representative, as the GoS Representative may reasonably require for the performance of its duties and services;
- (s) make all payments to the GoS of the amounts due and payable by the Concessionaire in accordance with the terms of this Agreement and the GoS Agreements;
- (t) ensure that no damage is caused to any property belonging to GoS 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;

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- (v) provide to the GoS, the Independent Auditor and the Independent Engineer all such information relating to the Project Works and the execution and completion of the same as is reasonably requested by the GoS, the Independent Auditor and the Independent Engineer from time to time;
- (w) Notify the GoS, the Independent Engineer and/or the Independent Auditor (as applicable) without undue delay upon becoming aware of any changes in the information provided and/or to be provided to the same by the Concessionaire pursuant to the Applicable Standards;
- (x) provide all necessary assistance to the Independent Engineer and the Independent Auditor 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 Contract, respectively, and for the performance of its roles and obligations contemplated under this Agreement and the GoS Agreements;
- (y) ensure that the Project Agreements entered into by the Concessionaire shall not be inconsistent with the terms and conditions of the GoS Agreements;
- (z) submit from time to time to the GoS 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 Project Works under and in accordance with the Applicable Standards;
- (bb) construct, provide and maintain a reasonably furnished site office 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 has complied with all the conditions set-out in the EIA Approval obtained by the GoS in accordance with the Applicable Laws and the same stands approved by the Sindh Environmental Protection Agency and has submitted a copy of each of the same (i.e. the report and its approval) to the GoS (with a copy delivered to the Independent Engineer and the Independent Auditor).

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- (gg) provide the Project Management / Implementation Unit with vehicles in accordance with **Schedule W (*Project Management and Implementation Unit Vehicles*)**;
- (hh) the Concessionaire shall supervise the works during the relocation of existing utilities, and all utility stakeholders, in relation to the agreed alignments (for excavation, laying, back-filling, erection of utility poles etc.) by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities and roads for the relocation of utilities if encountered.

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/the GoS 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 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 GoS Agreement.

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 GoS 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

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

7.4 **CONCESSIONAIRE AUTHORIZED REPRESENTATIVE & CONCESSIONAIRE PROJECT ENGINEER**

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

- (a) appoint, with the prior Notification to the GoS, the Independent Engineer and the Independent Auditor, in accordance with performance and Applicable Laws, its representative duly authorized to deal with the GoS in respect of all matters under or arising out of or relating to this Agreement (the **Concessionaire Authorized Representative**);
- (b) appoint, with the prior consent of the GoS, in accordance with performance and Applicable Laws (which consent shall be deemed to be accorded in case no response from GoS is received within fifteen (15) days of GoS's receipt of the Concessionaire's written request for such consent) and prior Notification to the Independent Engineer and the Independent Auditor, at its sole cost and expense one or more established consulting engineering firm and/or individual (s) to design and supervise the Construction Works and in particular to ensure that the Construction Works are performed and are in accordance with the Applicable Standards and Good Industry Practice (the **Concessionaire Project Engineer**);
- (c) 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
- (d) prior to the appointment or any substitution of the Concessionaire Authorized Representative and/or the Concessionaire Project Engineer, the Concessionaire shall submit the details of the same to the GoS in writing (with copies to the Independent Engineer and the Independent Auditor) and shall provide any other information reasonably requested by the GoS in respect of the same.

7.4.2 The Concessionaire shall substitute the Concessionaire Authorized Representative and the Concessionaire Project Engineer with the prior approval of the GoS. The approval by the

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GoS shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event the GoS 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 GoS from the Concessionaire, the approval of the GoS 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 GoS pursuant to this Section.

7.5 THE EPC CONTRACTOR & THE O&M CONTRACTOR

7.5.1 The Concessionaire hereby undertakes that it shall:

- (a) ensure that the EPC Contract and the O&M Contracts are entered into on an arm’s length basis and on commercially viable terms;
- (b) ensure that the assets created and/or constructed forming part of the Concession Assets pursuant to the EPC Contract and the O&M Contract vest in GoS on the Transfer Date;
- (c) ensure that the EPC Contractor or the O&M Contractor perform their respective obligations in the same manner that the Concessionaire is required to perform its obligations under this Agreement; and
- (d) deliver copies of each of the EPC Contract(s) and the O&M Contract(s) to GoS within five (5) days of its execution prior to EPC Contractors’ mobilization.

7.5.2 The GoS shall not be liable for losses (including any Losses) of any nature resulting from the EPC Contract and the O&M Contract entered into by the Concessionaire as a result of the expiry of the Concession Period or Termination of this Agreement.

7.5.3 The Concessionaire hereby represents, warrants and undertakes that the EPC Contractor in respect of the Project shall be the Designated EPC Contractor and the O&M Contractor in respect of the Project shall be the Designated O&M Contractor and hereby acknowledges that the acceptance of the Bid has been on reliance of the Authority that the EPC Contractor shall be the Designated EPC and the O&M Contractor shall be the Designated O&M Contractor.

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

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granting its approval, the Authority shall consider the determinations of the Independent Auditor and Independent Engineer, as provided in terms of Section 7.5.5 below

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

- (a) such EPC Contractor is technically and financially incapable (to the extent of its scope of work) of performing the Construction Works (or any part thereof); or
- (b) such O&M Contractor is technically and financially incapable (to the extent of its scope of work) to perform the Operations and Maintenance (or any part thereof);

provided, in their determination of the afore-stated, the Independent Engineer and the Independent Auditor shall ensure, at the very minimum, that the substitute EPC Contractor and/or the O&M Contractor is/are, at least, technically, financially and otherwise capable in terms of the criteria provided in the RFP.

7.5.6 The execution of the EPC Contract(s) and/or the O&M Contract(s), or any amendment thereof shall be subject to the prior approval of the Independent Engineer in respect of payment terms, payment milestones, scope of the relevant Project Works and technical matters to ensure conformity with the terms of the Concession Agreement. The Concessionaire shall deliver to the Independent Engineer copies of the proposed EPC Contract(s) and O&M Contract(s) (with a copy to the GoS), or any amendment thereof. The GoS shall, within fifteen (15) days of its receipt of the proposed EPC Contract(s) and/or the O&M Contract(s), provide its comments or observation on the same, if any, to the Independent Engineer. The Independent Engineer shall within twenty-eight (28) days of the delivery of the proposed EPC Contract(s) and O&M Contract(s) and/or any amendments thereof by the Concessionaire, grant its approval or disapproval of the same, in consultation with GoS, and/or after removing any objection by GoS). In the event no approval or objections to the proposed EPC Contract(s) and/or the O&M Contracts is granted by the Independent Engineer within twenty-eight (28) days of the delivery of the same by the Concessionaire, it shall be deemed not to have been objected to by the Independent Engineer.

7.5.7 The Concessionaire shall deliver certified (as being true and correct) copies of the executed EPC Contract(s) and O&M Contract(s), together with all amendments thereto, to the GoS, the Independent Engineer and the Independent Auditor within seven (7) days of execution of the same.

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

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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 Project 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 GoS, the Independent Engineer and the Independent Auditor and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Concessionaire Permit or Concessionaire Permit application that may materially affect the Concessionaire’s performance under any GoS 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 **PRELIMINARY WORKS**

7.7.1 The Concessionaire shall perform the Preliminary Works in accordance with this Agreement, as mutually agreed between the Parties. The costs of all Preliminary Works shall be deemed to be included in the Pre-Estimated Project Cost and the Total Project Cost.

7.8 **NOT USED**

7.9 **ACCESS ROUTE & TRANSPORTATION**

7.9.1 The Concessionaire shall be responsible for selection and usage of all transportation means, transportation routes, roads, bridges, highways and routes within, and to and from the Project Site in respect of performance of its Project Works and the GoS shall not be responsible for any claims attributable to Concessionaire in respect of the same. The Concessionaire shall (as between the Parties) be responsible for the repair of access routes damaged by the Concessionaire and/or the Concessionaire Engaged Persons.

7.10 **TAXES AND SUBSIDIES**

7.10.1 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.

7.10.2 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.

7.10.3 The Concessionaire fully understands that the GoS 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 GoS Agreements.

7.11 **PROTECTION OF THE ENVIRONMENT**

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7.11.1 The Concessionaire shall comply with all Applicable Standards (including any condition which may from time to time be imposed by any Governmental Authority, including the ‘Sindh 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 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 effluent from the Project Site during the Concession Period shall not exceed the values prescribed by Applicable Standards.

7.11.2 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.

7.11.3 The Concessionaire undertakes to indemnify, defend and hold the GoS 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 7.3.11 (*Protection of Environment*).

7.12 **INTERNAL INFRASTRUCTURE LINKAGES**

7.12.1 The Concessionaire shall be responsible for internal infrastructure linkages required for the Project such as waste water and storm water drainage at the Project Site. The GoS 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.

7.13 **EMERGENCY DECOMMISSIONING**

7.13.1 In the event, during the Operations Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that warrants de-commissioning and closure to traffic 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 Decommissioned Project Area, as the case may be, to the traffic 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 GoS and the Independent Engineer without any delay, and the Concessionaire shall diligently abide by the Applicable

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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.

7.13.2 Without prejudice to the provisions of Section 7.13.1(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 GoS and the Independent Engineer of the same without any delay.

7.13.3 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 GoS. The Independent Engineer shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Project Area and made the same available for traffic/Users as soon as practicable upon the termination/ceasing of the circumstances that have resulted in the Emergency Decommissioning.

7.13.4 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 a GoS Event of Default and/or a Force Majeure Event, the Concessionaire shall be entitled to issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

7.14 **RESTORATION OF LOSS OR DAMAGE TO PROJECT**

7.14.1 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.

7.15 **ACCOUNTS AND REPORTS**

7.15.1 **APPOINTMENT OF AUDITORS**

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

7.15.2 SPECIFIC RECORDS

The Concessionaire shall maintain complete and accurate records accounting for all transactions relating to any Relief Order, Relief Costs, 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 GoS, the Independent Engineer and the Independent Auditor.

7.15.3 PERIODIC REPORTS

The Concessionaire shall in accordance with this Agreement furnish to the GoS, the Independent Engineer and the Independent Auditor, the Construction Monthly Progress Report and 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 GoS, the Independent Engineer and the Independent Auditor two (2) copies of all documents filed in compliance with the requirements of the Companies Ordinance, 1984 as amended or superseded from time to time or any other Applicable Laws.

The Concessionaire shall, as soon as available, furnish to the GoS, the Independent Engineer and the Independent Auditor, 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.

7.15.4 REPORTING OF CHANGES

The Concessionaire shall, at least fourteen (14) days prior to its becoming effective, report to the GoS, the Independent Engineer and the Independent Auditor 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 of 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 (5) percent 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.

7.15.5 LISTS OF FINANCIERS AND CREDITORS

Together with the periodic reports required by Section 7.15.3, the Concessionaire shall also furnish to the GoS, the Independent Engineer and the Independent Auditor a list of

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- (i) the Financiers; and
- (ii) 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 Financiers and 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.

7.15.6 INFORMATION REGARDING STATUTORY NOTICE/WINDING UP PROCEEDINGS

The Concessionaire shall, within seven (7) days of receipt thereof, provide to the GoS, the Independent Engineer and the Independent Auditor a copy of any notice that the Concessionaire may be served under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984 by any of the Financiers or its creditors.

The Concessionaire shall provide to the GoS, the Independent Engineer and the Independent Auditor all information in respect of any further actions taken by the Financiers or its creditors following any notice under Sections 305 and 306 (as such Sections may be amended, modified or relocated) of the Companies Ordinance, 1984.

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

In addition to the rights the GoS 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 GoS shall be entitled to assess against and recover from the Concessionaire reasonable costs established from time to time by the GoS for such non-compliance. Such reasonable costs shall be paid to the GoS within ten (10) days of notice of such non-compliance and assessment by the GoS; 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 GoS to the Concessionaire.

7.16 AFFIRMATIONS

7.16.1 The Concessionaire hereby declares that it has not obtained or induced the procurement of this Agreement and/or any Project Agreement and/or any GoS Agreement and/or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement and/or any GoS Agreement and/or the Project from the GoS and/or any Government Authority through any corrupt (including Corrupt Act) or illegal business practice.

7.16.2 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

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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 GoS Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to any GoS Agreement or the Project from the GoS or any Governmental Authority, except that which has been expressly declared pursuant hereto.

7.16.3 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 7.16.1 and 7.16.2 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 GoS, be voidable and without legal effect at the option of the GoS.

7.16.4 Notwithstanding any rights and remedies that are available to and may be exercised by the GoS in this regard, the Concessionaire agrees to indemnify the GoS for any loss (including Losses) or damage incurred by it on account of its corrupt business practices and further pay compensation to the GoS 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 GoS Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to any GoS Agreement or the Project from the GoS or any Governmental Authority.

7.17 **NO RELIEF FROM LIABILITY**

7.17.1 No review, non-objection or approval by the GoS, the Independent Engineer, the Independent Auditor 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 GoS Agreements, nor shall the GoS, the Independent Engineer, the Independent Auditor 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.

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7.17.2 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.

7.18 **WITHOUT PREJUDICE**

7.18.1 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 GoS Agreements.

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8. GOS REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS

8.1 GOS REPRESENTATIONS & WARRANTIES

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

- (a) it has taken all necessary actions under 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 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 GoS Agreement.

8.2 GENERAL UNDERTAKINGS

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

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- (a) ensure peaceful use of the Concession Assets Project Site by the Concessionaire without any let or hindrance from the GoS and/or any person or Government Authority claiming through or under them;
- (b) procure police assistance for regulation of traffic on the Project Expressway 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 GoS 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 GoS 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 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 GoS 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 GoS, a Force Majeure Event, or a GoS Event of Default. 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 GoS 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 GoS, a Force Majeure Event, or a GoS Event of Default; provided, however, that, with respect to all such Concessionaire Permits issued by the GoS or any Government Authority that is also a department or instrumentality of GoS, the GoS shall not, and the GoS shall ensure that no such Government Authority shall, terminate prior to its expiration date or revoke any such Concessionaire Permit earlier than the later of (a) thirty (30) days after delivery to the Concessionaire (or the relevant Contractor) of written notice by the GoS or such department or instrumentality of GoS of such failure and (b) the period of time, if any,

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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 GoS 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 GoS 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 GoS Agreement and such failure is the principal cause of the Concessionaire’s difficulties in performing such activities, the GoS may advise the Concessionaire of such determination, and the GoS 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 GoS Agreements. By agreeing to use its reasonable efforts and its good offices to support the Concessionaire’s efforts, the GoS has not relieved, and does not relieve in any way, the Concessionaire of its obligations or potential liability under the GoS 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 GoS Agreement is not intended to prohibit or limit in any way the GoS 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 GoS 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 GoS 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 GOS TO CHARGE AND IMPLEMENT FEES & FINES**

8.7.1 The Concessionaire expressly agrees and undertakes that the GoS either directly or through GoS shall have an exclusive right to demand and implement additional fees, revenues (other than Toll Revenues) and fines on the Project Expressway in accordance with Applicable Laws on the Users.

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8.8 **GOS REPRESENTATIVE**

- 8.8.1 Unless already appointed prior to the Effective Date, the GoS 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 GoS Agreements (the **GoS Representative**). The GoS may, by notice in writing to the Concessionaire, substitute the GoS Representative at its discretion at any time.
- 8.8.2 The GoS Representative shall oversee the day to day implementation of the Project and facilitate implementation of the Project in accordance with the GoS Agreements.
- 8.8.3 The function of the GoS Representative shall be:
 - (a) to protect the interest of GoS by ensuring through monitoring and inspecting that the progress of 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;
 - (b) oversee that the Concessionaire complies with all highway safety standards in accordance with Good Industry Practice;
 - (c) coordinate and organize services to be provided by other agencies including public utility agencies, emergency services and traffic policing, during the construction of the Project Facilities; and
 - (d) clarify and resolve with the Concessionaire Authorized Representative, the Independent Engineer, the Independent Auditor any difficulties and disputes arising pursuant to this Agreement and manage any complaints by or against third parties.

8.9 **GOS OVERRIDING POWERS**

- 8.9.1 Notwithstanding anything contained in this Agreement, the GoS 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 GoS 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 GoS; provided, however, that the exercise of such overriding powers by the GoS 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 GoS (the **GoS Overriding Power Event**). The Concessionaire hereby agrees to act in accordance with the instructions issued by the GoS pursuant to the provisions of this Section and undertakes to provide assistance and co-operation to the GoS for performance of its obligations hereunder. In the event the GoS exercises its overriding powers under this Section 8.9 (*GoS Overriding Powers*) whereby the Concessionaire incurs any costs and expenses and/or is delayed in performance of its

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obligations under this Agreement, the Concessionaire shall be entitled to issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

8.10 **SOVEREIGN IMMUNITY**

8.10.1 The GoS unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of the GoS 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 GoS Agreements or any transaction contemplated by the GoS 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);
- (c) waives any such right of immunity, sovereign or otherwise, which the GoS or its assets now has or may acquire in the future (other than the Protected Assets), in respect of proceedings under the GoS Agreements; and

8.11 **WITHOUT PREJUDICE**

8.11.1 The representations, warranties, undertakings, obligations, roles and responsibilities of the GoS set out in this Article 8 (*GoS 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 GoS Agreements.

8.12 **PROJECT MANAGEMENT / IMPLEMENTATION UNIT**

8.12.1 The Project Management / Implementation Unit shall oversee day to day implementation of the Project in accordance with the GoS Agreements.

8.13 **GOS PROJECT MANAGER / PROJECT DIRECTOR**

8.13.1 Unless already appointed prior to the Effective Date, the GoS 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 GoS Agreements (the **Project Manager / Project Director**). The GoS may, by notice in writing to the Concessionaire, substitute the Project Manager at its discretion at any time. The GoS shall ensure that at all times during the Concession Period, the Project Manager remains appointed.

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9. INDEMNITIES & LIMITATION OF LIABILITY

9.1 **GENERAL INDEMNITY**

9.1.1 **THE CONCESSIONAIRE**

The Concessionaire shall indemnify and defend the GoS, for itself and its officers, servants, agents, Government Authority and Government owned and/or controlled entities/enterprises relating to the Project (the **GoS Indemnified Persons**) against, and hold the GoS 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 GoS 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 GoS receives proceeds from insurance policies relating to the Project.

9.1.2 **THE GOS**

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

9.1.3 **JOINT NEGLIGENCE**

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

9.2 **ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT**

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

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if the event is continuing in more than one (1) Accounting Year, in the Accounting Year such event ends.

9.3 **NOTICE AND CONTEST OF CLAIMS**

9.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 9 (*Indemnities & Limitation of Liability*) (the **Indemnified Party**) it shall notify the other Party (the **Indemnifying Party**) within twenty-one (21) days of receipt of the claim or demand 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 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 NOT USED.

9.4.3 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.

9.4.4 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.

9.4.5 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

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- (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 9.4.5, (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 GoS Agreement), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages; provided, that the GoS hereby agrees that the Termination Payment 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 GoS 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 GoS Agreement or to any activity not contemplated by the same.

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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 GoS or any Government Authority but shall be the sole responsibility of the Concessionaire.

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10. FUNDING REQUIREMENTS & SHAREHOLDING MATTERS

10.1 FUNDING OF EQUITY

- 10.1.1 The GoS hereby undertakes to fund from time to time GoS Funding Amount in accordance with the terms of the Equity Funding & Utilization Agreement.
- 10.1.2 The Concessionaire hereby undertakes to procure funding by the Sponsor from time to time of the Sponsor Base Equity Amount through subscription in cash in Pakistani Rupees for Class A Shares by the Sponsors in accordance with the Equity Funding & Utilization Agreement.
- 10.1.3 All Base Funding Amounts shall be funded and utilized from time to time in accordance with the Equity Funding & Utilization Agreement.

10.2 CLASS A SHARES & CLASS B SHARES

- 10.2.1 Upon funding of the GoS Funding Amount (or any part thereof) by the GoS from time to time in accordance with the Equity Funding & Utilization Agreement (if applicable), the GoS shall be issued Class B Shares by the Concessionaire in accordance with the Applicable Laws in the name of “VIABILITY GAP FUND, GOVERNMENT OF SINDH”.
- 10.2.2 Irrespective of the mode of funding by GoS pursuant to the Equity Funding & Utilization Agreement, the GoS shall have the right (to be exercised in its sole discretion) to nominate two (2) non-voting director on the board of directors of the Concessionaire at its discretion.
- 10.2.3 Upon funding of the Sponsor Base Equity Amount (or any part thereof) by the Sponsors from time to time in accordance with the Equity Funding & Utilization Agreement, the Sponsors shall be issued Class A Shares by the Concessionaire in accordance with the Applicable Laws. The obligation to fund the Sponsor Base Equity Amount shall be independent of the shareholding of the Sponsor in the Concessionaire.
- 10.2.4 Following end of each Accounting Year and in accordance with this Agreement, the Equity Funding & Utilization Agreement, the GoS shall be entitled to dividends in respect of Class B Shares which shall constitute of the following (the **Class B Dividends**), as certified by the Independent Auditor:
 - (a) the Advertising Proceeds; and
 - (b) the Utility Proceeds.

To the extent the GoS Funding Amount is not funded by Class B Shares, the Advertising Proceeds and Utility Proceeds shall be paid directly to GoS.

- 10.2.5 The Concessionaire shall not create any classes of its shares other than Class A Shares and Class B Shares without the prior approval of the GoS.
- 10.2.6 The Concessionaire shall not offer for subscription the Class B shares to any Person other than the GoS to the extent required by the Equity Funding & Utilization Agreement.

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10.3 **CHANGE IN COMPLETE CONTROL, CHANGE IN CONTROL AND CHANGE IN SHAREHOLDING**

10.3.1 The Concessionaire shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change in Complete Control until the second 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 GoS.

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

- (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 GoS; provided, that the GoS shall provide its determination in writing within ninety (90) days of the GoS having received a written request by the Concessionaire; provided, further, that the GoS shall exercise its discretion to grant such approval under this Section 10.3.2 in accordance with, *inter alia*, the Applicable Laws.

10.3.3 Following the second 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 GoS but with prior Notification to the GoS; provided, that the Person(s) acquiring and/or subscribing to the Class A Shares resulting in the change of shareholding is:

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

10.4 **PUBLIC LISTING OF THE CONCESSIONAIRE**

10.4.1 On the best efforts basis and subject to the commercial considerations of the Concessionaire and its stakeholders, the Concessionaire shall make all necessary plans and arrangements to publicly list itself on the stock market within three (3) years of the Commercial Operations Date so that the shares of the Concessionaire are available to general public as an investment option.

10.5 **PRICE ESCALATION**

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- 10.5.1 It is hereby acknowledged and agreed between the Parties that the Total Project Cost is inclusive of price escalation of up to ten percent (10%) on each Escalable Items.
- 10.5.2 In the event at any time, the amount allocated for an Escalable Item in the Pre Estimated Project Cost (as determined by the Independent Engineer) exceeds by ten percent (10%) of the amounts allocated for such Escalable Item in the Pre Estimated Project Cost due to an increase in the cost of such Escalable Items over and above the Base Price (the **Escalation Cost**) (as determined by the Independent Engineer), the GoS shall bear and fund hundred percent (100%) of such Escalation Cost, in each case, only upon the Independent Engineer and Independent Auditor duly verifying such Escalation Cost, as further detailed in the Price Escalation Agreement.
- 10.5.3 The GoS hereby undertakes to fund hundred percent (100%) of the Escalation Cost from time to time in accordance with the Price Escalation Agreement, provided that such funding shall be done once the Total Project Cost has been utilized.
- 10.5.4 The funding of the amounts set out in this Section 10.5 (*Price Escalation*) shall be in accordance with this Agreement and the Price Escalation Agreement.

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11. CONSTRUCTION PERFORMANCE SECURITY & O&M PERFORMANCE SECURITY

11.1 NOT USED

11.2 CONSTRUCTION PERFORMANCE SECURITY

11.2.1 At any time prior to the Effective Date, following the issuance of the Letter of Intent, the Concessionaire shall provide and deliver the GoS the Construction Performance Security. The Construction Performance Security:

- (a) shall be issued and maintained without any recourse on the Concessionaire, its assets or properties;
- (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 Construction Performance Security are solely on account of the Sponsor.

11.2.2 The Construction Performance Security shall secure:

- (a) all of the Sponsor's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the GoS Agreements to which they are a party; and
- (b) all of the Concessionaire's obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the GoS 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 the any equipment, materials, items and components supplied, the performance of Project Works (including the Preliminary 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 GoS Agreements.

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

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

11.2.5 The Concessionaire shall be obligated to adjust the Construction Performance Security from time to time to reflect any amounts payable by the GoS 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

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addition, the Construction Performance Security shall be adjusted, as condition precedent to issuance of the Final Project Construction Completion Certificate, prior to the Project 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 GoS prior to the date of adjustment.

- 11.2.6 The Concessionaire shall be obligated to maintain and keep valid the Construction Performance Security until the date falling twenty-seven (27) months following Substantial Completion Date (the **Construction Performance Security Expiry Date**), as evidenced by a certificate jointly issued by the Independent Engineer and the Independent Auditor. In the event the Construction Performance Security expires prior to the Construction Performance Security Expiry Date, the Concessionaire shall extend the validity of the Construction Performance Security, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the Construction Performance Security Expiry Date. 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 11.2.6, the GoS shall have the right to encash the Construction Performance Security at any time to its full outstanding value at any time.
- 11.2.7 Upon the issuance of a certificate jointly issued by the Independent Engineer and the Independent Auditor 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 GoS within ten (10) business days of receipt by the GoS of the afore-stated certificate.

11.3 **O&M PERFORMANCE SECURITY**

- 11.3.1 The Concessionaire hereby undertakes to procure issuance and delivery to the GoS of the O&M Performance Security from time to time in accordance with this Section 11.3 (*O&M Performance Security*).
- 11.3.2 The Concessionaire shall deliver the O&M Performance Security to the GoS prior to the Construction Performance Security Expiry Date and shall replace the same thirty (30) days prior to commencement of each Operational Year falling after the expiry of Construction Performance Security Expiry Date. The O&M Performance Security provided in the first instance shall become effective simultaneously upon return of the Construction Performance Security to the Concessionaire by the GoS and thereafter, each O&M Performance Security provided prior to commencement of an Operational Year shall become automatically become effective simultaneously upon return of the O&M Performance Security for the previous Operational Year.
- 11.3.3 Not Used.
- 11.3.4 The O&M Performance Security:
 - (a) shall be issued and maintained without any recourse on the Concessionaire, its assets or properties;

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- (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.

11.3.5 The O&M Performance Security shall secure:

- (a) all of the Sponsor's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the GoS Agreements to which they are a party; and
- (b) all of the Concessionaire's obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the GoS 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 the 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 GoS Agreements.

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

11.3.7 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 GoS of a fully valid and effective O&M Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the **O&M Performance Security Expiry Date**). In the event an O&M Performance Security expires prior to the O&M Performance Security Expiry Date, the Concessionaire shall extend the validity of the O&M Performance Security, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of any O&M Performance Security in accordance with this Section 11.3.7, the GoS shall have the right to encash such O&M Performance Security at any time prior to its expiry to its full outstanding value at any time.

11.3.8 Upon the delivery of an O&M Performance Security for an Operational Year (the **New O&M Performance Security**) to the GoS by the Concessionaire in accordance with this Section 11.3 (*O&M Performance Security*) on or prior to the commencement of such Operational Year (the **New Operational Year**), the previous O&M Performance Security issued for the previous Operational Year shall be null and void upon delivery of the New O&M Performance Security and commencement of the New Operational Year and shall be returned to the Concessionaire by the GoS simultaneously with the provision of the New O&M Performance Security.

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11.3.9 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;
- (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date.

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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 GoS 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 there from the same shall be rectified by the Concessionaire at its sole cost and risk.
- 12.1.3 The GoS, the Independent Engineer and the Independent Auditor (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 GoS 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 GoS responsible or liable for the adequacy and / or the accuracy of the drawings provided by the GoS.
- 12.1.5 Notwithstanding the Concessionaire’s decision to adopt the drawings as provided by the GoS, 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 GoS and the Independent Engineer shall have the right to review and inspect all Construction Drawings. The Concessionaire shall provide all such Construction Drawings that the GoS and the Independent Engineer as may be reasonably required by the GoS 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 GoS and the Independent Engineer with sufficient information to enable the same to satisfy themselves regarding the Construction Works.
- 12.1.7 After the identification of the existing utilities encountered in the right of way of the Project, the concessionaire shall prepare the typical cross-section of road with respect to the relocation of utilities (if encountered in the existing right of way of the Project).

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:

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- (a) alignment of the Project Expressway and the Project Facilities;
- (b) plan and profile drawings of road, general drawings including road cross section(s) with pavement structure, setting out data, road furniture details, bench marks details, intersections details, embankment protection details and drainage details;
- (c) detailed structural drawings;
- (d) general arrangement drawings of major bridges, flyovers and grade separators, details of foundation, transoms, girders, deck slab, railings and kerbs, signage, land marking, joints and bearing pads including steel reinforcement details for each component; and
- (e) such further information and details as may be requested by the Independent Engineer and the GoS 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 GoS.

12.3.2 The submission of the Construction Drawings by the Concessionaire to the Independent Engineer and the GoS 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 GoS, 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 resubmit the same for the review of the Independent Engineer and the GoS, in the event the comments and the observations of the Independent Engineer and/or the GoS 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.

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12.3.6 Notwithstanding anything contained herein:

- (a) in the event, the response of the GoS 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 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 GoS, 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 GoS 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 GoS 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 GoS and the Independent Engineer prior to commencement of 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 Segment Substantial Completion Date on or prior to the Scheduled Segment Substantial Completion Date;
- (c) achieving Substantial Completion Date on or prior to the Scheduled Substantial Completion Date;
- (d) achieving Project Construction Completion on or prior to the Scheduled Project Construction Completion Date,

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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 PROJECT 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 Final Project Construction Completion Certificate, the Concessionaire shall submit to the GoS, 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 Expressway and the Project Facilities and setback lines, if any, of the buildings and structures forming part of the Project Expressway 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 Construction Drawings Prior to Final Construction Completion Date*) shall be in such form as may be requested by the GoS, including but not restricted to paper format (hard copies), digital format, micro films or such other format as may be acceptable to the GoS.

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 GoS 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 DETAILED ENGINEERING DESIGN**

12.5.1 Notwithstanding anything to the contrary, the Concessionaire shall within one hundred and twenty (120) days of the Effective Date, procure issuance of the Approved Detailed Engineering Design, which shall set out, in addition to any other matters determined by the Independent Engineer, the exact location of the Concession Assets Project Site, the relocation of existing utilities etc. and all other matters in relation to any relocations/impediments in connection with the Concession Assets Project Site.

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

12.5.3 Subject to Section 12.5.1, the Concessionaire shall, as part of the process of the Concessionaire Conditions Precedent submit its Detailed Engineering Design (in batches),

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to the Independent Engineer (with a copy to GoS) within two (2) months of the Effective Date for the approval of the Independent Engineer and GoS (the **Proposed Detailed Design**). Within thirty (30) days of the receipt of each batch of the Proposed Detailed Design, the Independent Engineer and GoS shall review the same and convey their 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 and/ or the GoS, as the case may be, within twenty (20) days of their receipt of each batch of the Proposed Detailed Design, the Concessionaire shall notify the Independent Engineer and GoS about such inactivity. In case, no comments are received from the Independent Engineer and/or GoS are received within ten (10) days following such notification, each batch of the Proposed Detailed Design, as submitted by the Concessionaire, shall be deemed to be approved by the Independent Engineer and GoS.

- 12.5.4 In the event the specific observations of the Independent Engineer and GoS 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 and GoS, as the case may be, for their review and approval within a period of fifteen (15) days after receiving the observations of the Independent Engineer and GoS on the Proposed Detailed Design. Following receipt of the observations on the revision (within the time periods contemplated herein), the Independent Engineer and GoS shall give their observations, if any, within seven (7) days of their receipt of the revised Detailed Engineering Design from the Concessionaire. In the event the Independent Engineer and/or GoS give their observations on the revised Detailed Engineering Design, the Concessionaire shall revise the Detailed Engineering Design and submit the same to the Independent Engineer and GoS within fifteen (15) days after receiving of observations on the same.

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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; provided, however, all Preliminary Works forming part of Site Commencement Works (if any) shall commence in accordance with the mutual agreement between the Parties. The Concessionaire shall immediately upon commencement of the Site Construction Works Notify the GoS, the Independent Engineer and the Independent Auditor 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. During the Construction Period, the Concessionaire shall be responsible for ensuring that the roads and lanes existing on the Project Site are available for the Users in accordance 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 either itself, or through the EPC Contractor(s) appointed in accordance with the terms of this Agreement; provided, however, the Concessionaire shall remain solely responsible and liable for performance (within Construction Time For Completion) and compliance of the Construction Requirements with the Applicable Standards irrespective of whether the Construction Works are undertaken by the Concessionaire or the EPC Contractor(s)

13.2 CONSTRUCTION PROGRAMME

- 13.2.1 Within fourteen (14) days following the Effective Date, 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 Project Construction Completion Schedule. The Proposed Construction Programme shall include, without restriction, the following:
 - (a) the Project Construction Milestones to be achieved and the respective Project Construction Milestone Dates for each of the same;

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- (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 and the Construction Monthly Progress Reports and submission of the same to the GoS, the Independent Engineer and/or the Independent Auditor (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 GoS. The GoS 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 GoS 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 GoS on the same. The Proposed Construction Programme, as approved by the GoS on the Independent Engineer’s recommendation, shall be binding on the Parties (the **Construction Programme**); provided, however, that the 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 GoS, the Independent Engineer and/or the Independent Auditor, 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 GoS.

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

13.3 **TRAFFIC FLOW & SAFETY**

13.3.1 Following commencement of the Site Construction Works, the Concessionaire shall ensure that the existing roads on the Project Site remain open to traffic and that the traffic flow is safe at all times during the Construction Period in accordance with the Applicable Standards. The Concessionaire shall ensure minimal disruption in traffic on the existing roads and lanes situated at the Project Site.

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13.3.2 The Concessionaire undertakes to perform the Site Construction Works in such manner as to ensure compliance with the obligation set out in Section 13.3.1.

13.4 **CONSTRUCTION TESTS**

13.4.1 The Concessionaire shall conduct or procure to be conducted such tests, as specified in **SCHEDULE G (List of Tests & Completion Tests)** and the AASHTO Standards (to the extent adopted by the National Highway Authority in the “*NHA General Specifications of 1998*”), in order to determine whether the Construction Works conform to the Applicable Standards (the **Construction Tests**). The Construction Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer in accordance with the AASHTO Standards (to the extent adopted by the National Highway Authority in the “*NHA General Specifications of 1998*”).

13.4.2 The Concessionaire hereby undertakes to conduct the Construction Tests under the supervision of the Independent Engineer and the GoS and in accordance with the Applicable Standards at its own cost and expense, provided however, in the event during the Construction Period the GoS determines that the Construction Works are not in accordance the Construction Requirements then the GoS shall conduct separate tests to determine the quality of the Construction Works. In the event it is determined that the Construction Works are not in accordance with the Construction Requirements (as determined by the Independent Engineer) the Concessionaire shall repair the same and the cost of such tests shall be borne by the Concessionaire provided however in the event it is determined that the Construction Works are in accordance with the Construction Requirements (as determined by the Independent Engineer), the cost of such tests shall be borne by GoS.

13.4.3 The Concessionaire hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the Defects & Deficiencies in the Construction Works and/or the Concession Assets that are identified in the Construction Tests and to ensure that as a consequence of such remedial measures the Construction Works 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 13.4.3 shall be repeated by the Concessionaire at its sole cost till such time as the Construction Works and the Concession Assets conform to the Applicable Standards as verified by 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.

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

13.4.5 Results of all Construction Tests shall be jointly recorded by the Independent Engineer, the Concessionaire and the EPC Contractor.

13.5 **CONSTRUCTION MONTHLY PROGRESS REPORTS**

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- 13.5.1 Commencing from the Effective Date and until issuance of the Final Project Construction Completion Certificate, the Concessionaire shall, no later than ten (10) days after the end of each calendar month, furnish to the GoS, the GoS Representative, the Independent Auditor 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 and/or and the GoS. 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 Each Construction Monthly Progress Report shall be updated by the Concessionaire based on any observations and comments made by the Independent Engineer and/or the GoS and shall be provided again to each of the GoS 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 GoS on the Construction Monthly Progress Report are addressed.
- 13.5.3 The Construction Monthly Progress Report shall be in the form 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 Final Project 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 (**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 GoS.
- 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.

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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 Project Construction Completion on or before the Scheduled Project Construction Completion Date then the Independent Engineer shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within seven (7) days of such notice, inform the Independent Engineer in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress and the period within which it shall achieve the Project Construction Completion by the Scheduled Project Construction Completion Date and the Substantial Completion by the Scheduled Substantial Completion Date.

13.8 **SPECIFIC MALIR CONSTRUCTION MATERIAL UTILIZATION BY THE CONCESSIONAIRE**

13.8.1 The Parties hereby acknowledge that the Total Project Cost together with the Financial Model is based on utilization of the Specific Malir Construction Material for the purposes of the Specific Malir Construction Material Utilization.

13.8.2 To the extent the Specific Malir Construction Material Utilization Decision is neither procured nor effective on or prior to the Commencement Date, the Specific Malir Construction Material Liability Amount shall be funded by the GoS. The process for funding and determination of the Specific Malir Construction Material Liability Amount, in each case, by the Independent Auditor and the Independent Engineer, shall be set out, to the extent required, in the Project Site Licensing Agreement.

13.8.3 The Concessionaire shall, following the Commencement Date, provide the Independent Engineer with a detailed plan of excavation, which shall set out, *inter alia*, the sites identified by the Concessionaire on the Designated Specific Malir Material Site (or such other site), the timelines of excavation of the Specific Construction Material from the Designated Specific Malir Material Site, the quantity of the Specific Construction Material to be evacuated, safety measures undertaken on the Designated Specific Malir Material Site, assignment of unique identification passes to the vehicles required at the Designated Specific Malir Material Site (the **Excavation Plan**);

13.8.4 The Independent Engineer shall perform material specification tests on all the sites identified in the Excavation Plan and approve or reject the Excavation Plan within ten (10) days. The Concessionaire hereby undertakes to revise the Excavation Plan, based on the comments and observations of the Independent Engineer. The Independent Engineer shall provide its observations and comments on such re-submitted Excavation Plan, if any, within seven (7) days of receipt of such revised Excavation Plan.

13.8.5 After obtaining approval of the Excavation Plan from the Independent Engineer, the Concessionaire shall provide five (5) copies to the Independent Engineer and the Project Director.

13.8.6 The Independent Engineer shall be obligated to monitor the implementation of the Excavation Plan by the Concessionaire. During such period, the Independent Engineer shall, no later than seven (7) days after the end of each calendar month, furnish to the GoS a

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monthly report stating in reasonable detail the progress of the implementation of the Excavation Plan and the condition of the sites identified in the Excavation Plan.

- 13.8.7 The Concessionaire hereby undertakes that it shall, at its sole cost and expense, comply with the Excavation Plan and the Specific Malir Construction Material Utilization Conditions. In the event of any additional conditions imposed by the Specific Judicial Forum in the Specific Malir Construction Material Utilization Decision, the Concessionaire shall be entitled to compensation from the GoS, as determined by the Independent Engineer, for any additional costs arising directly from such conditions as imposed in the Specific Malir Construction Material Utilization Decision, not exceeding the Specific Malir Construction Material Liability Amount Cap.
- 13.8.8 The Concessionaire undertakes to indemnify, defend and hold the GoS 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 13.8 (*Specific Malir Construction Material Utilization by the Concessionaire*).
- 13.8.9 In the event, the Concessionaire violates the Excavation Plan by excavating Specific Malir Construction Material more than the approved quantity from the approved sites or excavates any quantity of Specific Malir Construction Material from other than the approved sites, the Concessionaire shall be liable to the following penalties:
- (a) On occurrence of such event for the first time, an amount of two million five hundred (PKR 2.5 million) and cancellation of the respective approved site or the most recent approved site;
 - (b) On occurrence of such event for the second time, an amount of five million (PKR 5 million) and cancellation of the respective approved site or the most recent approved site;
 - (c) On occurrence of such event for the third time, a Concessionaire Event of Default.
- 13.8.10 In the event, the Specific Malir Construction Material Utilization Decision is neither procured nor effective, and the Concessionaire is in violation of any of the conditions stipulated in the Specific Malir Construction Material Judgement, the same shall be constituted as a Concessionaire Event of Default.

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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 GoS 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, in the event the Proposed Completion Tests Date is unacceptable to the Independent Engineer and/or the GoS, the Concessionaire, the GoS and the Independent Engineer shall meet within seven (7) days of the GoS 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 GoS) 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 GoS, 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 GoS Representative and such other representatives of the GoS as the GoS 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.

14.2A SEGMENT SUBSTANTIAL COMPLETION DATE

14.2A.1 The Concessionaire hereby guarantees that the Segment Substantial Completion shall be achieved in accordance with the provisions of the Applicable Standards and that the Segment Substantial Completion Date shall occur on or before the Scheduled Segment Substantial Completion Date.

14.3 SEGMENT 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)**.

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- 14.3.2 The Independent Engineer shall (in consultation with the GoS), at the request of the Concessionaire, issue a Segment Substantial Completion Certificate if the Completion Tests are successful though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Segment Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **Project Construction Segment Completion Check List**); provided, that the Independent Engineer shall not withhold the Segment Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the GoS. The Independent Engineer shall set out the date in the Segment Substantial Completion Certificate on which the Completion Tests are successfully passed (the **Segment Substantial Completion Date**) and Segment Substantial Completion is achieved.
- 14.3.3 The Parties hereto expressly agree that a Segment Substantial Completion Certificate under this Section 14.3.3 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 Expressway Segment has been completed, the Completion Tests are successfully passed and if the movement and safety of the Users is not affected, as determined by the Independent Engineer (the **Segment Substantial Completion**). Upon issuance of such Segment Substantial Completion Certificate in terms of this Section 14.3.3, the Segment Substantial Completion shall be achieved.

14.4 **SUBSTANTIAL COMPLETION CERTIFICATE**

- 14.4.1 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)**.
- 14.4.2 The Independent Engineer shall (in consultation with the GoS), at the request of the Concessionaire, issue a Substantial Completion Certificate if the Completion Tests 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 **Project Construction 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 GoS. The Independent Engineer shall set out the date in the Substantial Completion Certificate on which the Completion Tests are successfully passed (the **Substantial Completion Date**) and Substantial Completion is achieved.
- 14.4.3 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 Expressway has been completed, the Completion Tests 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.

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14.5 **PROJECT CONSTRUCTION COMPLETION CHECK LIST & FAILURE TO ACHIEVE SEGMENT SUBSTANTIAL COMPLETION AND/OR SUBSTANTIAL COMPLETION**

14.5.1 Notwithstanding that the Substantial Completion Certificate or the Segment Substantial Completion Certificate (as applicable) shall be signed by the Independent Engineer (in consultation with the GoS), the Project Construction 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 **Project Construction Completion Check List Items**).

14.5.2 The Concessionaire undertakes to complete all Project Construction Completion Check List Items by the date determined by the Independent Engineer and set out in the Segment Substantial Completion Certificates (the **Scheduled Segment Construction Completion Date**); provided, however, the Parties agree that the Scheduled Segment 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.

14.5.2A The Concessionaire undertakes to complete all Project Construction Completion Check List Items by the date determined by the Independent Engineer and set out in the the Substantial Completion Certificate (the **Scheduled Project Construction Completion Date**); provided, however, the Parties agree that the Scheduled Project 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.

14.5.3 The Concessionaire shall be liable for payment of Construction Period Damages to the GoS in the event the Concessionaire fails to achieve Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date. In the event the Concessionaire fails to achieve Segment Substantial Completion within a period of one hundred and twenty (120) days from the Scheduled Segment Substantial Completion Date, then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the GoS may, at its sole discretion and without prejudice to its other rights and remedies available under the GoS Agreements, terminate this Agreement in accordance with Article 23 (*Termination*).

14.5.4 The Concessionaire shall be liable for payment of Construction Period Damages to the GoS 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 GoS may, at its sole discretion and without prejudice to its other rights and remedies available under the GoS Agreements, terminate this Agreement in accordance with Article 23 (*Termination*).

14.6 **CONSTRUCTION PERIOD DAMAGES**

14.6.1 In the event the Concessionaire fails to achieve Segment Substantial Completion or Substantial Completion by the Scheduled Segment Substantial Completion Date or Scheduled Substantial Completion Date, then the Concessionaire shall pay to the GoS damages:

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(a) in case of Segment Substantial Completion, amounting to PKR two (2) million per day;

(b) in case of Substantial Completion, amounting to PKR three (3) million per day (the **Construction Period Damages**);

provided that such Construction Period Damages shall not exceed six hundred (PKR 600) million.

14.6.2 All Construction Period Damages becoming due and payable by the Concessionaire in terms of this Section 14.6 (*Construction Period Damages*) shall be invoiced by the GoS to the Concessionaire and shall become due and payable on the date falling thirty (30) days following the Concessionaire's receipt of such invoice (the **Construction Period Damages Payment Date**). In the event of failure by the Concessionaire to pay the Construction Period Damages to the GoS by the Construction Period Damages Payment Date, the GoS 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 14.6.2 shall be without prejudice to the rights of the GoS under the GoS Agreements (including the right of Termination in accordance with Section 14.4.3).

14.6.3 The Parties agree that the amounts of Construction Period Damages provided under this Section 14.6 (*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 FINAL PROJECT 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 Project Construction Completion (the **Final Project Construction Completion Certificate**); provided, however, the Final Project Construction Completion Certificate may be issued only upon the confirmation by the Independent Engineer (in consultation with GoS) that the Project Construction Completion Check List Items have been completed in accordance with the Applicable Standards.

14.7 PROJECT CONSTRUCTION COMPLETION DATE

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

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.

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14.8 SCHEDULED PROJECT CONSTRUCTION COMPLETION DATE

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

14.9 NOT USED

14.10 TITLE TO PROJECT SITE, CONSTRUCTION WORKS AND CONCESSION ASSETS

14.10.1 The GoS 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 create any Encumbrance with respect thereto.

14.10.2 Subject to Section 14.10.1, the Concessionaire shall retain all legal and beneficial rights and ownership on the Concession Assets (including the Construction Works) as and when the same are performed and/or completed until the Transfer Date.

14.10.3 On the Transfer Date, the Concessionaire shall transfer the ownership rights to the Concession Assets to the GoS and transfer the Class B Shares (if any) to the GoS in accordance with the terms of this Agreement.

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15. RELIEF EXTENSIONS & RELIEF COMPENSATIONS

15.1 **NOT USED**

15.2 **RELIEF EVENTS**

15.2.1 The Concessionaire shall be only entitled to initiate a request to the Independent Engineer and Independent Auditor (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 Costs by the GoS in the event of occurrence of the following event as certified by the Independent Engineer and circumstances (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 Costs that, in each case, directly result from the Material Adverse Impediment and as are determined by the Independent Engineer and Independent Auditor 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 Costs that, in each case, directly result from the Political Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
- (c) an Emergency Decommissioning directly resulting from a GoS 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 Costs 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 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 Costs 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 in the Relief Order;
- (e) the occurrence of the GoS Overriding Power Event; provided, that the Concessionaire shall be entitled to only an extension in Time for Completion for any delays and to Relief Costs that, in each case, directly result from the GoS Overriding Power Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
- (f) 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 in the Relief Order;

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- (g) 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 in the Relief Order;
- (h) a delay by the GoS in providing the Vacant Possession of the Concessions Assets Project Site in accordance with the terms of this Agreement; and
- (i) any other event set out in this Agreement in respect of which Article 15 (*Relief Extensions & Relief Compensation*) is applicable.

15.2.2 If due to the occurrence of a Relief Event the Concessionaire is entitled to initiate a Relief Request, the Concessionaire shall prepare and deliver to the Independent Engineer and the Independent Auditor (with a copy to the GoS) 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 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*). Each Relief Order Request prepared in accordance with Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.5 (*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.

15.2.3 Following submission to the Independent Engineer and the Independent Auditor of a Relief Order Request pursuant to Section 15.2.2, the Independent Engineer and the Independent Auditor shall proceed in accordance with Section 15.4 (*Relief Order Procedure*) and Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time for Completion*).

15.2.4 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 Costs, as applicable, due to occurrence of a Relief Event, until such time the same is determined by the Independent Engineer and the Independent Auditor 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.

15.3 **NOT USED**

15.4 **RELIEF ORDER PROCEDURE**

15.4.1 In case the Concessionaire submits a Relief Order Request to the Independent Engineer and the Independent Auditor (with a copy to the GoS) pursuant to Section 15.2 (*Relief Events*) then prior to the Independent Auditor and the Independent Engineer issuing a Relief Order, the Concessionaire shall prepare and submit to the Independent Auditor and the Independent

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Engineer (with a copy to the GoS), 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 Costs 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 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 the 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 15.5 (*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 GoS, the Independent Engineer and/or the Independent Auditor 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 and/or the GoS and the Concessionaire shall permit the Independent Engineer, the Independent Auditor and/or the GoS to inspect all such records and shall provide the same Representative with copies as required.

15.4.2 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 Independent Engineer and the Independent Auditor issuance of a Relief Order, unless waived in writing by the GoS. 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 Costs due to delays resulting from any act or omission of the Concessionaire and/or the Concessionaire Engaged Persons;

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- (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 initiate 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 the Agreement.

15.4.3 Following receipt by the Independent Engineer and the Independent Auditor from the Concessionaire of the Relief Order Proposal and the Relief Order Request, the Independent Engineer and the Independent Auditor 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 Costs; and
- (e) any other matters considered necessary by the Independent Engineer and the Independent Auditor for the purposes of issuance of the Relief Order.

15.4.4 Following the Independent Engineer and the Independent Auditor’s determination of matters set out in Section 15.4.3 (together with any other matters relating to their evaluation for issuance for Relief Order), the Independent Engineer and the Independent Auditor 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 from the Concessionaire of the Relief Order Proposal and the Relief Order Request. If the Independent Engineer and the Independent Auditor 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, which shall be subject to approval by the Independent Engineer and the Independent Auditor 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’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, it is agreed that the Independent Engineer and the Independent Auditor shall jointly issue a written order of Relief Order to the GoS 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 Costs, as applicable, shall be expressly set out in the Relief Order and shall be (subject to Section 15.6 below) binding on the Parties; provided, however, that such extensions in Time For

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Completion and in any Project Milestone Date for achievement of a Project Milestone and the Relief Costs 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 Costs shall be paid by the GoS to the Concessionaire within ninety (90) days of receipt of the Relief Order by the GoS.

15.4.5 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 Costs shall be payable), the Concessionaire shall be only entitled to such Relief Costs 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.

15.4.6 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 and the Independent Engineer or by the granting of an extension of Time for Completion or payment of Relief Costs.

15.5 **ADDITIONAL REQUIREMENTS FOR RELIEF ORDERS RELATING TO EXTENSION OF TIME FOR COMPLETION**

15.5.1 The Parties agree 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.

15.5.2 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.

15.5.3 In all cases where the Concessionaire submits a Relief Order Proposal and the Relief Order Request, the Concessionaire shall consult with the GoS, the GoS Representative, the Independent Engineer and the Independent Auditor 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 shall give in order to overcome or minimize such delay.

15.5.4 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 (with a copy to the GoS) 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 the Agreement and relevant to such cause. The Concessionaire is further required to submit to the Independent Engineer

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and the Independent Auditor (with a copy to the GoS), 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.

15.5.5 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 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 GoS shall have the right to waive the time periods set out as above.

15.6 **DISPUTES AND BURDEN OF PROOF**

15.6.1 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*).

15.6.2 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*).

15.7 **FULL COMPENSATION**

15.7.1 Any:

(a) extensions of Time for Completion; and/or

(b) payment of Relief Costs,

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

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16. CHANGE OF SCOPE

16.1 CHANGE OF SCOPE

16.1.1 Notwithstanding anything to the contrary contained in this Agreement, the GoS 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 an variation in the Pre Estimated Project Cost by more than fifteen percent (15%), as determined by the Independent Engineer and the Independent Auditor. All Additional Costs to be paid by the GoS 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 GoS 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 GoS 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 in respect of the Construction Period; and
- (b) at any time in the event the Change of Scope is required in respect of 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 GoS through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The GoS 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:

- (a) the impact which the Change of Scope is likely to have on the Construction Requirements in the event the Change of Scope is in respect of the Construction Period and/or the O&M Requirements in the event the Change of Scope is in respect of the Operations Period;

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- (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 Project Construction Completion consequent to the Change of Scope and any delay, if any, in the Final Expiry Date;
- (d) any extensions in the Project 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) in consultation with the Concessionaire, to the GoS. Notwithstanding anything to the contrary set out herein, in the event the Concessionaire disagrees with the determinations of the Independent Engineer, the decision of the GoS shall be final.

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

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

- (a) 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 ninety percent (90%) shall be transferred by the GoS 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.

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16.3.6 The Change of Scope Order shall be effective from the date that the GoS 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 GoS 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.

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17. TOLLING ARRANGEMENT & GOS FINANCIAL INSTRUMENT

17.1 TOLL COLLECTION OPERATIONS

17.1.1 During the period commencing from Toll Commencement Date and until the Toll Commencement End Date, the Concessionaire shall be authorized to collect, demand, levy and charge the Tolls from the Users, in accordance with **SCHEDULE P (Toll Notification Structure)**. All funds collected from Tolls shall be deposited immediately with the Escrow Agent and allocated in accordance with the terms of the Escrow Agreement.

17.2 COMMENCEMENT OF TOLL COLLECTION

17.2.1 Not Used.

17.2.2 At least thirty (30) days prior to the Toll Commencement Date, the Concessionaire shall provide a copy of a toll operations manual (the **Toll Operations Manual**) for the review and approval of Independent Engineer and the GoS. If upon review of the Toll Operations Manual, Independent Engineer and/or the GoS determines that the procedures set forth therein require amendments, the Concessionaire shall, at its sole cost and expense, incorporate such changes as are required in the Toll Operations Manual and undertake periodic review and revision of the Toll Operations Manual as instructed by GoS and the Independent Engineer.

17.2.3 On the Toll Commencement Date, the Concessionaire shall have the right and authority to commence Tolling at the Toll Plazas, based on the Toll Notification Structure set out in **SCHEDULE P (Toll Notification Structure)**.

17.2.4 The Concessionaire shall procure all the Applicable Permits, with the facilitation of the GoS, to enable the Concessionaire to commence Toll collection operations at the Toll Plazas, on the Toll Commencement Date.

17.2.5 Subject to Section 17.2.7, the Concessionaire shall commence commercial operations at the Toll Plazas on the Segment Substantial Completion Date based on the Toll Structure set out in **SCHEDULE P (Toll Notification Structure)** and continue such collection until the Toll Commencement End Date.

17.2.6 Following Substantial Completion Date, the GoS shall in order to assist the Concessionaire in terms of the Toll Revenues make payments of the Minimum Revenue Guarantee Amounts, on each MRG Payment Date, into the Escrow Account in accordance with Schedule Q (*Benchmark Toll Revenue & MRG Schedule*) and the terms of the Escrow Agreement.

17.2.7 Notwithstanding anything to the contrary, all Toll Revenues shall be deposited in the Escrow Account and shall be utilized in accordance with the Escrow Agreement.

17.3 TOLL AUDIT

17.3.1 Commencing from the Toll Commencement Date and until the Trigger Date, the Independent Engineer shall, no later than ten (10) days after the end of each calendar month, furnish to the GoS, the Independent Auditor and the Financiers (until such time Financing Due is outstanding) a monthly report (the **Toll Progress Report**) stating in reasonable detail the status of the Toll collected from the Project and shall promptly give such other relevant information as may be required by the GoS, the Independent Auditor and/or and the Financiers in respect of the Toll collected from the Project.

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17.3.2 In case the Financiers or the GoS is not satisfied with the report of the Independent Engineer, the GoS and/or the Financiers may appoint an external auditor on which the grieving party and the Concessionaire may agree (the **External Auditor**) to survey and collect the data (including Toll and traffic count) from the Project, the cost of which shall be incurred by the inquiring party. The Concessionaire shall provide reasonable assistance and access to the Toll Plaza and the ITS equipment to conduct such external audit. In the event it is determined by the External Auditor that there is a discrepancy in the records of the Concessionaire and/or the Independent Auditor in the Toll collected from the Project, the decision of the External Auditor shall be final and binding on the Concessionaire. To the extent any amounts are payable to the GoS as a result of determination by the External Auditor, the Concessionaire irrevocably undertakes to pay the same to the GoS, within thirty (30) days of the External Auditor's decision and, in any case, within five (5) days of the GoS's first written demand.

17.4 **TOLL REVENUE SHARING**

17.4.1 Following the Segment Substantial Completion Date, the actual Toll Revenues shall be deposited in an Escrow Account as per the Escrow Agreement. Proceeds from such Toll Revenues shall be utilized for the purposes of construction of the Project Expressway and shall be set-off from the funding requirements as per the debt to equity ratio and shareholding ratios in accordance with the Escrow Agreement.

17.4.2 Following Substantial Completion Date, in the event the actual Toll Revenues during an Operational Year are greater than 120% of the Benchmark Toll Revenues for such Operational Year (as set out in the Financial Model and determined by the Independent Auditor) (the **Excess Toll Revenues**), such Excess Toll Revenues shall be shared between the GoS and the Concessionaire on a 75:25 basis, where 75% of the Excess Toll Revenues shall be payable to the GoS and 25% of the Excess Toll Revenues shall be retained by the Concessionaire, in accordance with the Escrow Agreement. The GoS's share of the Excess Toll Revenues (the **GoS Windfall**) and the Concessionaire's share of the Excess Toll Revenues (the **Concessionaire Windfall**) shall be utilized by the GoS and the Concessionaire respectively in their sole and absolute discretion.

17.4.3 In the event, following the Substantial Completion Date, the actual Toll Revenues fall below the Benchmark Toll Revenues (the **Excess Delta**), the Excess Delta shall be funded by the GoS using the Minimum Revenue Guarantee Amounts in accordance with Schedule Q (*Benchmark Toll Revenue & MRG Schedule*) and the Escrow Agreement.

17.5 **ISSUANCE OF TOLL NOTIFICATION**

17.5.1 The GoS shall issue a notification (the **Toll Notification**) substantially, in the form set out in **SCHEDULE R (Form of Toll Notification)** and in accordance with **SCHEDULE P (Toll Notification Structure)** and the Applicable Laws in order to implement the Toll Notification Structure. Each Toll Notification issued in respect of such year, shall set-out (in writing) the Toll applicable during such year of the Concession Period. The GoS shall be allowed to revise the Toll Notification based on the actual traffic data (the **Revised Toll Notification**) at such times as contemplated by **SCHEDULE P (Toll Notification Structure)**. In addition, the GoS may reduce the Tolls at any time (with the authorization of the Independent Auditor) provided that the Benchmark Toll Revenues and other mutually agreed parameters are, in

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each case, not adversely affected (as determined by the Independent Auditor) by the Revised Toll Notification provided further, in case the GoS reduces the Toll so as to adversely impact the Benchmark Toll Revenues and other mutually agreed parameters, the same shall entitle the Concessionaire to a Relief Request and in such case the provisions of Article 15 (*Relief Extension and Relief Compensations*) shall apply.

17.5.2 The GoS shall ensure that the Toll Notification is issued throughout the Concession Period in accordance with this Agreement. In the event the GoS fails to issue the Toll Notification in accordance with the Toll Notification Structure (the **Toll Notification Event**) and provided that the Toll Notification Event does not directly result from breach by the Concessionaire of its relevant obligations under this Agreement and provided further that the Benchmark Toll Revenues and other mutually agreed parameters are, in each case, adversely affected (as determined by the Independent Auditor) due to the Toll Notification Event, then such Toll Notification Event and all matters relating to the same shall constitute a Relief Event (the **Toll Notification Relief Event**) and 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 Compensation*) shall apply.

17.6 **NOT USED**

17.7 **NOT USED**

17.8 **GOS FINANCIAL INSTRUMENT AND RELATED MATTERS**

17.8.1 **Issuance of GoS Financial Instrument**

- (a) The GoS hereby agrees and undertakes to provide the GoS Financial Instrument (to be issued by the GoS Financial Instrument Issuing Bank) for an amount calculated in accordance with Section 17.8.3 and hereby agrees to maintain the same in accordance with the terms of this Agreement.
- (b) The GoS hereby agrees and undertakes that the GoS Financial Instrument shall be issued on its behalf. The GoS Financial Instrument, issued on behalf of the GoS, shall be fully secured by GoS as a principal debtor and not as surety without any recourse to the Concessionaire, its assets or properties. All costs, expenses, fees and other charges of any nature associated with the issuance and maintenance of the GoS Financial Instrument shall be borne solely by the GoS.
- (c) The GoS Financial Instrument shall be issued in the form and substance acceptable to the Concessionaire and the GoS Financial Instrument Issuing Bank.
- (d) The GoS Financial Instrument shall be unconditional, irrevocable, encashable in accordance with the terms thereof and shall be payable on first written demand without any prior notice, reference or recourse to the GoS or any other entity. The GoS hereby agrees to the terms of encashment of the GoS Financial Instrument issued on its behalf, as set out in Section 17.8 and in the GoS Financial Instrument.

17.8.2 **ENCASHMENT**

- (a) Without prejudice to or in any way limiting any other provisions of this Agreement, the GoS Financial Instrument may be encashed in accordance with this Agreement in the following circumstances:

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- (i) pursuant to Section 17.8.4(a);
- (ii) pursuant to Section 17.8.4(c);
- (iii) pursuant to Section 17.9.1(b); and
- (iv) pursuant to the Escrow Agreement, due to non-payment and/or non-funding of the Minimum Revenue Guarantee Amounts.

17.8.3 GoS FINANCIAL INSTRUMENT AMOUNT

- (a) The Parties agree that the First GoS Financial Instrument and each Extended GoS Financial Instrument shall be issued in the following amounts and manner:
 - (i) the GoS shall issue the First GoS Financial Instrument in the form and manner set out in Section 17.8.1 above for an amount equal to 50% of the Principal as set out in the Base Case Financial Model updated on the basis of Financing Term Sheet (the **First GoS Financial Instrument Amount**) as a Condition Precedent to the Commencement Date in accordance with Section 3.1.4(g) above;
 - (ii) at least one hundred and twenty (120) days prior to the expiry of the GoS Financial Instrument (including any days till the expiry date of the GoS Financial Instrument following its extension), the Concessionaire shall procure issuance by the Independent Auditor of a certificate (the **GoS Financial Instrument Extension Certificate**) setting out an amount equal to 50% of the outstanding Principal as on GoS Financial Instrument Extension Certificate issuance date as set out in the Base Case Financial Model updated as on Financial Close (the **GoS Financial Instrument Extension Amount**).
 - (iii) Ninety (90) days prior to expiry of the GoS Financial Instrument and subject to receipt by the GoS of the GoS Financial Instrument Extension Amount Certificate, the GoS shall extend the validity of the GoS Financial Instrument for a period of two (2) years from the date of its expiry (the **GoS Financial Instrument Extension Period**) and shall adjust the value of the GoS Financial Instrument such that the value of the GoS Financial Instrument equals the GoS Financial Instrument Extension Amount, as set out in the GoS Financial Instrument Extension Certificate (the **Extended GoS Financial Instrument**).

17.8.4 FAILURE TO EXTEND GOS FINANCIAL INSTRUMENT

- (a) The GoS shall be obliged to maintain and keep valid the First GoS Financial Instrument until the date mutually agreed between the Parties following the Substantial Completion Date (the **First GoS Financial Instrument Expiry Date**). In the event the First GoS Financial Instrument expires prior to the First GoS Financial Instrument Expiry Date, the GoS shall extend the validity of the First GoS Financial Instrument, at least ninety (90) days prior to its expiry, so as to keep it valid and enforceable until the First GoS Financial Instrument Expiry Date. In the event of failure by the GoS to extend the validity of the First GoS Financial Instrument in accordance with this Section 17.8.4(a), as certified by the Independent Auditor in its certificate (the **First GoS Financial Instrument Extension Failure Certificate**), the Concessionaire shall have the right, upon issuance of the first written demand (together with the First GoS Financial Instrument Extension Failure Certificate) to encash the First GoS Financial Instrument to its full outstanding value. All proceeds from encashment of the First GoS Financial Instrument pursuant to this

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Section 17.8.4(a) shall be credited to the Escrow Account and shall be utilized as payment(s) by the GoS of the Minimum Revenue Guarantee Amounts in accordance with Schedule Q (*Benchmark Toll Revenue & MRG Schedule*) and the Escrow Agreement.

- (b) Without prejudice to the issuance, effectiveness, encashment, expiry or any other terms relating to the First GoS Financial Instrument established by the GoS, the GoS hereby undertakes to extend the validity of the First GoS Financial Instrument and each Extended GoS Financial Instrument in accordance with Section 17.8.3 above.
- (c) In the event of failure by the GoS to keep valid or extend the validity of the Extended GoS Financial Instrument in accordance with this Section 17.8.4(b), as certified by the Independent Auditor in its certificate (the **Extended GoS Financial Instrument Extension Failure Certificate**), the Concessionaire shall have the right, upon issuance of the first written demand (together with the Extended GoS Financial Instrument Extension Failure Certificate), to encash the Extended GoS Financial Instrument to its full outstanding value. All proceeds from encashment of the Extended Financial Instrument pursuant to this Section 17.8.4(c) shall be credited to the Escrow Account and shall be utilized as payment(s) by the GoS of the Minimum Revenue Guarantee Amounts in accordance with Schedule Q (*Benchmark Toll Revenue & MRG Schedule*) and the Escrow Agreement.
- (d) The GoS hereby undertakes to establish, maintain and keep valid the First GoS Financial Instrument and each Extended GoS Financial Instrument in such a manner so that at all times, until the Debt Repayment Date, the GoS Financial Instrument is valid and effective.
- (e) Upon the Extended GoS Financial Instrument becoming effective, all references in this Agreement to the GoS Financial Instrument shall mean to refer and shall be construed to refer to the Extended GoS Financial Instrument.

17.9 PAYMENT OF TERMINATION PAYMENT BY DEBIT OF ESCROW ACCOUNT AND ENCASHMENT OF GOS FINANCIAL INSTRUMENT

17.9.1 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) (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 Escrow Agent shall, in accordance with the standing instructions set out in the Escrow Agreement, debit the Escrow 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 Revenue Account;
- (b) in the event the funds standing to credit of the Escrow Account are insufficient to fund the Unpaid Termination Payment Amount in full (the **Payable Termination Payment Amount Shortfall**), as certified and set out by the Independent Auditor and the Independent Engineer in the Unpaid Termination Payment Amount Certificate, the Concessionaire shall be entitled to encash the GoS Financial Instrument in an amount equal to the Payable Termination Payment Amount Shortfall; and

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- (c) in the event the Payable Termination Payment Amount Shortfall is not paid in full despite encashment of the GoS Financial Instrument in accordance with Section 17.9.1(b), the GoS 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 Revenue Account.

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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 Expressway, 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 the amendment, reconstruction and remedying of such Defects & Deficiencies shall be at the cost, risk and expense of the GoS in the event the same is caused by a Permitted Events (except 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 GoS 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 (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; and / or
- (c) the Concession Assets (or any part thereof) fails to comply with the Applicable Standards, then the Independent Engineer and/or the GoS (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**

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Time Period) in which the Concessionaire shall remedy and rectify the Remedy Events in accordance with the Applicable Standards.

18.2.2 In the event of failure by the Concessionaire to remedy the Remedy Events within the Remedy Time Period, the GoS 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 GoS (as certified by the Independent Auditor and the Independent Engineer) on account of such remedying and rectification of the Remedy Events within thirty (30) days of receipt of the GoS' claim thereof set out in an invoice approved by the Independent Engineer and the Independent Auditor (the **GoS Remedy Invoice**). In the event of failure by the Concessionaire to pay the amounts set out in the GoS Remedy Invoice (the **GoS Remedy Amount**) within the time period set out herein, the GoS shall be entitled to receive such GoS 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 GoS through encashment of the O&M Performance Security are less than the GoS Remedy Amount, the Concessionaire shall be obligated to pay the GoS the shortfall within three (3) days of the GoS's written demand.

18.3 **SUSPENSION**

18.3.1 The:

- (a) GoS may by Notice in writing to the Concessionaire (with a copy to the Independent Engineer and the Independent Auditor) require the Concessionaire to suspend forthwith the whole or any part of the Project Works if, in the reasonable opinion of the GoS:(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 GoS and the Independent Auditor), require the Concessionaire to suspend forthwith the whole or any part of the Project Works which in the reasonable opinion of the Independent Engineer is being carried on/conducted in a manner that is not in conformity with the Applicable Standards and/or is not in accordance with Good Industry Practice,

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

18.3.2 The Concessionaire shall, pursuant to the 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 specified by the GoS 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 GoS) require the Independent Engineer to inspect such remedial measures forthwith and the Independent Engineer shall,

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following such inspection, make a report to the GoS recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the GoS 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 GoS, 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.

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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 either itself, or through the O&M Contractor appointed in accordance with the terms of this Agreement; provided, however, the Concessionaire shall remain solely responsible and liable for performance (within O&M Time For Completion) and compliance of the Operations and Maintenance with the Applicable Standards irrespective of whether the Operation and Maintenance is undertaken by the Concessionaire or the O&M Contractor.

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 flow of traffic during normal operating conditions;
 - (b) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Expressway and by providing a rapid and effective response and maintaining liaison with emergency services of the GoS;
 - (c) carrying out routine maintenance and the periodic preventive maintenance of the Concession Assets;

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- (d) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
- (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 GoS, 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;
- (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 **NOT USED**

19.4 **MATERIAL BREACH OF O&M REQUIREMENTS**

19.4.1 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 GoS (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;

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- (c) the riding quality of the Project Expressway or any part thereof has material 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.

19.5 GOS' RIGHTS WITH REGARD TO MATERIAL BREACH OF O&M REQUIREMENTS

19.5.1 Upon the occurrence of a Material Breach of O&M Requirements, the GoS 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).

19.6 PRIORITY OF TRAFFIC FLOW

19.6.1 The Concessionaire shall ensure that the Project Expressway remains open to traffic and that the traffic flow is safe at all times during Operations Period in accordance with the Applicable Standards.

19.6.2 The Concessionaire undertakes to conduct the Operation and Maintenance in such manner as to ensure compliance with the obligation set out in Section 19.6.1.

19.7 O&M MANUAL

19.7.1 Ninety (90) days prior to the anticipated date for commencement of the Operations Period (as determined by the Independent Engineer), the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall jointly prepare and submit to GoS, an 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.

19.7.2 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 GoS; provided, however, such approval shall be granted by GoS 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 GoS on the same. The

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operations, repair, maintenance and safety manual, as approved by the GoS, shall be binding on the Parties (the **O&M Manual**).

19.7.3 Four (4) copies of the O&M Manual shall be provided by the Concessionaire to each of GoS and the Independent Engineer.

19.7.4 The O&M Manual shall be revised and updated on third (3rd) anniversary of its initial preparation and subsequently every three (3) years 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.

19.8 **O&M PROGRAMME**

19.8.1 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, as the case may be, the Concessionaire, the Concessionaire Project Engineer and the Independent Engineer shall jointly prepare and provide to the GoS, a proposed annual program, to be prepared in compliance with the Applicable Standards and Good Industry Practices, of Operation and Maintenance during the upcoming Operational Year (including preventive, urgent and other scheduled maintenance of Concession Assets) (the **Proposed O&M Programme**). The Proposed O&M Programme shall include, without restriction, the following:

- (a) the Project O&M Milestones to be achieved during the upcoming Operational Year and the respective Project O&M Milestone Dates for each of the same;
- (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 O&M Documents and submission of the same to the GoS, the Independent Engineer and/or the Independent Auditor (as applicable) for the review and approval (as applicable);

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- 19.8.2 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 GoS; provided, however, such approval shall be granted by GoS 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 GoS on the same. The Proposed O&M Programme prepared in respect of an Operational Year, as approved by the GoS on the Independent Engineer's recommendation, shall be binding on the Parties for such Operational Year (the **O&M Programme**).
- 19.8.3 The Concessionaire shall, whenever required by the GoS, the Independent Engineer and/or the Independent Auditor, 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.
- 19.8.4 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.

19.9 **SAFETY, VEHICLE BREAKDOWN AND ACCIDENTS**

- 19.9.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant Applicable Standards including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay, in each case, in accordance with the Applicable Standards.

19.10 **NOT USED**

19.11 **MAJOR MAINTENANCE**

19.12 **TIMING OF MAJOR MAINTENANCE AND MAJOR MAINTENANCE COSTS**

- (a) The Parties acknowledge that based on the requirements of the Applicable Standards, the Concession Assets should not require the first (1st) Major Maintenance before the date falling ten (10) years following the Substantial Completion Date, and thereafter the Second Major Maintenance should not be required before the date falling ten (10) years following the First Major Maintenance Commencement Date. The Parties acknowledge and agree that the costs of each of the Major Maintenances (the **Major Maintenance Costs**) are expressly set out in the Financial Model and shall be adjusted for inflation in accordance with the Financial Model.

19.13 **MAJOR MAINTENANCE PROGRAMME, MAJOR MAINTENANCE CONTRACT(S) AND APPROVALS**

- (a) Six (6) months prior to the First Major Maintenance Commencement Date and the Second Major Maintenance Commencement Date, in each case, the Concessionaire

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shall submit to the Independent Engineer (with a copy to the GoS) a proposed program for Major Maintenance during the upcoming Major Maintenance Period (the **Proposed Major Maintenance Programme**). The Proposed Major Maintenance Programme shall include, without restriction, the following:

- (i) the Major Maintenance Milestones to be achieved during the upcoming Major Maintenance Period and the respective completion dates for each of the same;
 - (ii) the manner and methodology for implementation of the Major Maintenance;
 - (iii) the arrangements and procedures for conducting safety related measures in relation to the Concession Assets during the upcoming Major Maintenance Period; and
 - (iv) the timelines for implementation of the Major Maintenance.
- (b) The Concessionaire shall, along with the Proposed Major Maintenance Programme, submit to the Independent Engineer (together with a copy to the GoS) one or more proposed contracts in respect of the implementation of the upcoming Major Maintenance (the **Proposed Major Maintenance Contract(s)**). The Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s) shall be subject to the prior approval of the Independent Engineer in respect of payment terms, Major Maintenance Milestones, scope of the Major Maintenance and technical matters to ensure conformity with the terms of the Concession Agreement. The Independent Engineer and/or the GoS (through the Independent Engineer) shall, within thirty (30) days of its receipt of the Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s), provide its comments or observations on the same, if any, to the Independent Engineer. The Independent Engineer shall within forty-five (45) days of the delivery of the Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s), grant its approval or disapproval of the same. In the event no objections to the Proposed Major Maintenance Programme and the Proposed Major Maintenance Contract(s) are received from GoS within forty-five (45) days of the delivery of the same by the Concessionaire, the same shall be deemed not to have been objected to by the GoS and the Independent Engineer may approve or disapprove at its own discretion. The Concessionaire shall implement the Major Maintenance in accordance with the actual or deemed approved Proposed Major Maintenance Programme (the **Approved Major Maintenance Programme**) and the actual or deemed approved Proposed Major Maintenance Contract(s) (the **Approved Major Maintenance Contract(s)**) as approved by the Independent Engineer.
- (c) The Concessionaire shall execute the Approved Major Maintenance Contract(s) prior to the Major Maintenance Costs Funding Date and deliver certified (as being true and correct) copies of the Approved Major Maintenance Programme and the Approved Major Maintenance Contract(s), to the GoS, the Independent Engineer and the Independent Auditor within seven (7) days of execution of the same.

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19.14 **MAJOR MAINTENANCE PAYMENT ACCOUNT**

- (a) The Concessionaire shall establish and maintain the Major Maintenance Payment Account from the Commencement Date and until the Trigger Date.
- (b) The Concessionaire shall issue irrevocable standing instructions to the Major Maintenance Payment Account Bank (in form and substance agreed between the Parties) (the **Major Maintenance Payment Account Standing Instructions**) containing, *inter alia*, instructions to the Major Maintenance Payment Account Bank to debit the Major Maintenance Payment Account on each Major Maintenance Milestone Date (upon receipt of a Major Maintenance Milestone Certificate relating to such Major Maintenance Milestone Date) in an amount equal to the Major Maintenance Milestone Payment and credit the same to the Escrow Account.
- (c) The Major Maintenance Payment Account Standing Instructions issued by the Concessionaire shall be irrevocable and shall remain effective, in each case, until the Trigger Date, and no withdrawal from the Major Maintenance Payment Account may be made by the GoS, except as provided in this Agreement.
- (d) The Major Maintenance Payment Account Standing Instructions (or any part thereof) issued by the Concessionaire may be revoked pursuant a written revocation Notice duly executed and confirmed by the authorized representatives of GoS and the Concessionaire.

The Major Maintenance Payment Account shall be strictly operated and maintained in accordance with the Major Maintenance Payment Account Standing Instructions. Further, the Concessionaire hereby undertakes and covenants with the Concessionaire that it shall not until the Trigger Date create, incur, permit, assume or suffer to exist any Encumbrance whatsoever upon or with respect to the Major Maintenance Payment Account. Further, the Concessionaire hereby undertakes and covenants with the Concessionaire that it shall not until the Trigger Date transfer or dispose of all or any of its rights and benefits under or in respect of the Major Maintenance Payment Account.

19.15 **FUNDING AND PAYMENT**

- (a) The Concessionaire shall fund the Major Maintenance Payment Account in respect of the First Major Maintenance and the Second Major Maintenance, in each case, in accordance with the Financial Model; provided, that the Concessionaire shall not be in breach of its obligations in this Section 19.15(a) to the extent it has given evidence to the Independent Auditor, the Independent Engineer and the GoS that:
 - (i) in case of the First Major Maintenance, either: (A) the Major Maintenance Costs required for the First Major Maintenance (as set out in the Financial Model) are standing to the credit of the Major Maintenance Payment Account prior to the First Major Maintenance Commencement Date; or (B) the funds standing to the credit of the Major Maintenance Payment Account prior to the First Major Commencement Date are sufficient to fund the costs of the First Major Maintenance;

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- (ii) in case of the Second Major Maintenance, either: (A) the Major Maintenance Costs required for the Second Major Maintenance (as set out in the Financial Model) are standing to the credit of the Major Maintenance Payment Account prior to the Second Major Maintenance Commencement Date; or (B) the funds standing to the credit of the Major Maintenance Payment Account prior to the Second Major Maintenance Commencement Date are sufficient to fund the costs of the Second Major Maintenance.
- (b) Subject to Section 19.15(a) above, the Concessionaire shall fund the Major Maintenance Payment Costs on each Major Maintenance Costs Funding Date, which Major Maintenance Costs shall be funded by the Concessionaire based on a certificate of the Independent Auditor and the Independent Engineer to be issued six (6) months prior to the Major Maintenance Commencement Date. For the avoidance of doubt, the determination by the Independent Auditor and the Independent Engineer of the Major Maintenance Costs shall take into account the projected inflation (in accordance with the Financial Model) during the Major Maintenance Period.

19.16 **O&M DOCUMENTS**

19.16.1 The Concessionaire shall prepare the O&M Documents in accordance with the Applicable Standards and shall complete and deliver the same to the GoS, the Independent Engineer and the Independent Auditor (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.

19.16.2 The GoS, the Independent Engineer and the Independent Auditor (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 GoS, the Independent Engineer and the Independent Auditor 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 GoS, the Independent Engineer and the Independent Auditor with sufficient information to enable the same to satisfy themselves regarding the Operation and Maintenance.

19.16.3 For each part of the Operation and Maintenance, if the GoS, the Independent Engineer and the Independent Auditor (as applicable) wish to modify any O&M Documents, the GoS, the Independent Engineer and the Independent Auditor (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.

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

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

19.17 **NOT USED**

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19.18 **NOT USED**

19.19 **MODIFICATIONS TO THE PROJECT**

19.19.1 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 GoS 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 GoS's approval of the same, which approval shall be provided or declined by the Independent Engineer and/or the GoS 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.

19.20 **BARRIERS AND DIVERSIONS**

19.20.1 The GoS shall procure that during the Operations Period, no barriers are erected or placed by any Government GoS 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).

19.21 **O&M MONTHLY STATUS REPORT**

19.21.1 During the 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 GoS 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 and/or and the GoS. In particular, the O&M Monthly Status Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the Concessionaire 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.

19.21.2 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 GoS 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 GoS on the O&M Monthly Status Report are addressed.

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

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19.22 **O&M INSPECTION REPORT**

- 19.22.1 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.
- 19.22.2 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.
- 19.22.3 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 GoS.
- 19.22.4 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.
- 19.22.5 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.

19.23 **O&M TESTS**

- 19.23.1 The Concessionaire shall conduct or procure to be conducted such tests, as specified in **SCHEDULE G (List of Tests & Completion Tests)** and the AASHTO Standards (to the extent adopted by the National Highway Authority in the “*NHA General Specifications of 1998*”) 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 GoS. In the event the timing and frequency of any O&M Tests is specified by the GoS 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 GoS.
- 19.23.2 The Concessionaire hereby undertakes to conduct the O&M Tests under the supervision of the Independent Engineer (in consultation with the GoS) and in accordance with the Applicable Standards at its own cost and expense.
- 19.23.3 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 19.19.3 shall be repeated by the Concessionaire at its sole cost till such time as the Operation

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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.

19.23.4 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.

19.23.5 Results of all O&M Tests shall be jointly recorded by the Independent Engineer and the Concessionaire.

19.24 **REMEDIAL MEASURES**

19.24.1 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 19.19 (*O&M Tests*) and furnish a report in respect thereof to the Independent Engineer and the GoS 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.

19.24.2 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 19.20 (*Remedial Measures*) shall be repeated until the Concession Assets conform to the Applicable Standards.

19.24.3 The provisions of this Section 19.20 shall not in any manner limit the obligations of the Concessionaire relating to remedying of Defects & Deficiencies set out elsewhere in this Agreement.

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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*) OF SCHEDULE I (*Insurances*)**, that are necessary and required to be procured by the Concessionaire in accordance with the Financing Documents and 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*) OF SCHEDULE I (*Insurances*)**, that are necessary and required to be procured by the Concessionaire in accordance with the Financing Documents and 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 GoS 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 GoS.

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 notwithstanding the expiry of the Financing Documents.

20.4 EVIDENCE OF INSURANCES

20.4.1 The Concessionaire shall, from time to time, provide to the GoS 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 GoS 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 GoS Agreements. The Concessionaire shall be named as the loss payee on any such Insurance procured by the GoS pursuant to this Section 20.4.3.

20.4.4 The Concessionaire shall provide the GoS with copies of any underwriters' reports or other reports received by the Concessionaire from any insurance company; provided, that the GoS

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shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement or any other GoS Agreement or as may be required by any Government Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

20.5 **APPLICATION OF INSURANCE PROCEEDS**

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

20.5.2 The Concessionaire may, with the prior approval of the GoS, designate the Financiers as the loss payees under the Insurance and/or assign the Insurance in their favor as security for the Financing availed by the Concessionaire from the Financiers pursuant to the Financing Documents.

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

20.6 **VALIDITY OF INSURANCES**

20.6.1 The Concessionaire hereby undertakes to promptly pay the insurance premium in respect of the Insurances and to keep the policies in force and valid during the entire Concession Period. The Concessionaire shall provide to the GoS, 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 GoS 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 GoS 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 GoS therefor shall be reimbursed by the Concessionaire to the GoS within seven (7) days from the receipt of a claim by the Concessionaire in respect thereof from the GoS.

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

20.7 **MAINTENANCE OF “OCCURRENCE” FORM POLICIES**

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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 GoS.

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 GoS, 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 GoS, 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 GoS, 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 endeavouring to give thirty (30) days written notice to the GoS except in the case of non-payment, in which case it shall be ten (10) days with prior written notice to the GoS. All other terms and conditions of the policy shall remain unchanged.

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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 GoS, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 and that shall have existed for thirty (30) consecutive days or more; 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, but not limited to:
 - (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 GoS, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 and that shall have existed for less than thirty (30) consecutive days; or
 - (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

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- (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; and
 - (v) normal wear and tear or random flaws in materials and equipment,
 - (vi) 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 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.

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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 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 Project Milestone Dates for the Project Milestones (affected by the Force Majeure Event) to be performed (together with the timelines for performance by the Concessionaire of its relevant obligations to be performed) shall be extended by the Force Majeure Period (as determined by the Independent Engineer and the Independent Auditor in accordance with Article 15 (*Relief Orders*)) and in such case, the provisions of Article 15 (*Relief Orders*) shall apply;
 - (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 Force Majeure Costs shall be allocated as follows:

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- (a) upon occurrence of a Non-Political Event, all Force Majeure Costs shall be on the account of the Concessionaire and the GoS shall not be liable or responsible for the same in any manner;
- (b) upon occurrence of a Political Event, the GoS 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 Not Used

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 GoS determines that the Force Majeure Costs relating the same are unacceptable then the GoS may in its discretion Terminate this Agreement by issuing a Termination Notice to the Concessionaire,

in each case above, without being liable in any manner whatsoever, save as provided in this Section 21.5 (*Termination Notice for Force Majeure*) and Section 21.6 (*Termination Payment for Force Majeure Event*), and upon issue of such Termination Notice, 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 PAYMENT FOR FORCE MAJEURE EVENT

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

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

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21.7 **FORCE MAJEURE DISPUTE RESOLUTION**

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

21.8 **EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

21.8.1 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 of 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) notice to that effect and shall promptly resume performance of its obligations hereunder.

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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 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 GoS Agreement which Material Breach has not been cured within forty-five (45) days from the date of written notice thereof by the GoS, or within such time period as provided in the relevant GoS 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 Segment Substantial Completion by the date falling two hundred and forty (240) days following the Scheduled Segment Substantial Completion Date;
- (d) the Concessionaire fails to achieve Substantial Completion by the date falling ninety (120) days following the Scheduled Substantial Completion Date;
- (e) 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 GoS hereunder or under the GoS Agreements;
- (f) the Concessionaire creates any Encumbrance on the Concession Assets in favor of any Person save and except as otherwise expressly permitted in terms of this Agreement;
- (g) 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
- (h) 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 GoS), 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;

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- (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 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:
 - (i) confirms to the GoS that such proceedings relate to the recovery of a claim against the Concessionaire that is disputed bona fide by the Concessionaire as payable, and
 - (ii) furnishes a certificate by the Independent Auditor 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 is revoked or otherwise ceases to remain accurate;

- (i) an Abandonment by the Concessionaire, without the prior written consent of the GoS, 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;
- (j) the Concessionaire is in Material Breach of O&M Requirements;
- (k) any other events or circumstances expressly set out in this Agreement as a Concessionaire Event of Default;
- (l) the Bid Security, Construction Performance Security, or 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;
- (m) a breach by the Concessionaire of its obligation to take out and maintain the required insurances in accordance with Article 20 (*Insurances*);

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- (n) a Change in Control, Change in Complete Control and/or Change in Shareholding has occurred in breach of this Agreement;
- (o) the Concessionaire or the Sponsor repudiate any of the GoS Agreements or otherwise evidence an intention not to be bound by the same;
- (p) 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;
- (q) the Concessionaire has delayed any payment that has fallen due and payable under this Agreement and any of the GoS Agreements and if such delay exceeds sixty (60) days, save where such payment is duly Disputed by the Concessionaire in accordance with this Agreement;
- (r) any assets or shares of the Concessionaire are expropriated, confiscated, compulsorily acquired or nationalised by any Government Authority or entity due to an act or omission of the Concessionaire or its shareholders, causing a Material Adverse Effect;
- (s) the exercise by the Financiers of their remedies under the Financing Documents with respect to either the assets comprising the Concession Assets or any Class A Shares pledged to the Financiers under the Financing Documents such that the Concessionaire or its management are removed by the Financiers from control of the Project or of the Concessionaire, and/or (ii) the failure by the Financiers (or the agent of the same) to comply with the Concession Direct Agreement;
- (t) a material breach by the EPC Contractors, the O&M Contractors or any other subcontractor or any of the parties to the GoS Agreements or any of their respective contracts with the Concessionaire having a Material Adverse Effect;
- (u) the Concessionaire fails to achieve Project Construction Completion and/or fails to complete the First Major Maintenance and the Second Major Maintenance, in each case, 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.

22.2 **GOS EVENT OF DEFAULT**

22.2.1 The following events shall constitute events of default by the GoS (the **GoS 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 GoS of any GoS 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 GoS Agreement, respectively;

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- (b) any statement, representation or warranty made by the GoS in any GoS 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 Concession Assets 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 GoS under the GoS Agreements; and/or
 - (ii) making:
 - (A) it unlawful for the Concessionaire, the Financiers or the Sponsors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any GoS 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 GoS 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 GoS 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 GoS under any GoS Agreement; or
 - (ii) unlawful for the Concessionaire to make or receive or the Financiers 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

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- (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*);
- (h) the GoS has delayed any payment that has fallen due and payable under this Agreement and/or any of the GoS Agreements and if such delay exceeds ninety (90) days, save where such payment is duly Disputed by the GoS in accordance with this Agreement and /or GoS Agreements.

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23. TERMINATION

23.1 TERMINATION FOR CONCESSIONAIRE EVENT OF DEFAULT

23.1.1 Without prejudice to any other right or remedy which the GoS may have in respect thereof under this Agreement, upon the occurrence and continuation of a Concessionaire Event of Default, the GoS shall be entitled to Terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided, that before issuing the Termination Notice, the GoS shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the **GoS 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 GoS 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 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 GoS 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 Concessionaire that must be approved by the GoS and/or the Government Authority hereunder, the applicable Cure Period shall be extended from the date the Concessionaire notifies the GoS of the same until the date that the GoS, and/or the Government Authority, as the case may be, accords the required approval;
- (d) during any period when any Financing Due is outstanding, the rights of the Parties and the Financiers during the pendency of the Cure Period shall be as set out in the Financing Documents.

23.1.4 Upon issuance of a Termination Notice by the GoS (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, the right of the Concessionaire to charge Tolls shall stand terminated, (unless otherwise required by the Financiers and set-out in the Concession Direct Agreement) with immediate effect and no Toll Revenues shall accrue and/or be payable to

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the Concessionaire from the date of occurrence 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 GoS shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Concessionaire Default Termination Amount.

23.2 **TERMINATION FOR GOS 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 GoS Event of Default, the Concessionaire shall by a notice in writing inform the GoS of its intention to issue the Termination Notice (the **Concessionaire Preliminary Notice**).

23.2.2 In the event the underlying GoS Event of Default is not cured by the GoS 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 a GoS Event of Default, the GoS shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the GoS 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 GoS shall be entitled to act in accordance with the following provisions of this Section 23.3; provided, that at all times the GoS 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 GoS 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 GoS may give written notice to the Concessionaire of its intention to issue a Termination Notice; provided, however, the GoS shall not be entitled to issue a Termination Notice in the event the Concessionaire, within forty-five (45) days of its receipt the GoS'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 GoS of the performance of any part of the Project deliverables previously performed by such employee by another person;
- (c) Not Used;
- (d) Not Used;

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- (e) 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 GoS may give notice to the Concessionaire of its intention to issue a Termination Notice; provided, however, that the GoS shall not be entitled to issue a Termination Notice in the event the Concessionaire, within thirty (30) days of its receipt the GoS'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 GoS under this Section 23.3 shall specify:

- (a) the nature of the Corrupt Act;
- (b) the identity of the party or parties who the GoS 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 (e), as applicable.

23.3.4 Without prejudice to its other rights or remedies under this Section, the GoS 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 GoS 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 GoS shall pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Corrupt Act Termination Amount.

23.4 **RIGHTS OF THE GOS 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 Payment on or prior to the Transfer Date or in case of expiry of this Agreement on the Final Expiry Date, the GoS shall, on the Transfer Date, have the power and authority to:

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

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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 GoS on or prior to the Termination Payment Date in accordance with a demand being made by the Concessionaire in writing, subject to the same being duly certified by the Independent Engineer and Independent Auditor.

23.5.2 To the extent:

- (a) the Termination Equity and/or Termination Dividend Amount is payable by the GoS to the Concessionaire upon Termination of this Agreement; and
- (b) the GoS fails to make payment of such due and payable Termination Equity and/or Termination Dividend Amount (the **Unpaid Termination Equity Amount**) by the date falling fifty (50) days following the Termination Payment Date,

then, the GoS shall (in addition to the payment of the due and payable Unpaid Termination Equity Amount) make payment to the Concessionaire of late payment interest on the Unpaid Termination Equity Amount at the rate of Delayed Payment Rate, such interest commencing to accrue on the date falling fifty (50) days following the Termination Payment Date and ending on the actual date on which the GoS makes payment of the Unpaid Termination Equity Amount. The stipulation regarding additional amounts payable in respect of delayed Unpaid Termination Equity Amount contained in this Section 23.5.2 shall not be construed nor be deemed to authorize any delay in payment of any amount due to the Concessionaire nor be construed or deemed to be a waiver of the underlying breach of payment obligations, in each case, in the afore-stated circumstances.

23.6 **MODE OF PAYMENT**

23.6.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Payment, and all other payments that are or may be payable by the GoS under any of the provisions of this Agreement shall, so long as the Financing Due is outstanding, be made only by way of credit directly to a bank account designated therefor by the Financiers and advised to the GoS and the Concessionaire in writing and in the event the Financing Due is not outstanding, to a bank account notified by the Concessionaire.

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

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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 GoS 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**):

- (a) Notify to the GoS forthwith the location and particulars of all Concession Assets;
- (b) deliver forthwith the actual or constructive possession of the Concession Assets, free and clear of all Encumbrances;
- (c) 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;
- (d) deliver and transfer all relevant records, reports, intellectual property and other Licences pertaining to the Concession Assets and its design, engineering, construction, Operation and Maintenance, including all programs and manuals pertaining thereto, and complete ‘*as built*’ Construction Drawings, other Construction Drawings and the O&M Documents as on the Transfer Date;
- (e) transfer and/or deliver to the GoS, all Concessionaire Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the GoS 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 GoS or its nominee; and
- (g) train all staff notified by the GoS for Operations and Maintenance in accordance with the O&M Manual;
- (h) 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 GoS or to its nominee.

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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 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 a GoS 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 GoS Event of Default or Political Event, the GoS 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 a GoS Event of Default in which case, the GoS 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 GoS.

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 GoS, its appointed concessionaire or agent may reasonably require for operation of the Project until the Transfer Date.

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24.4 **VESTING CERTIFICATE**

24.4.1 Subject to:

- (a) in case of Termination of this Agreement, the GoS 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 and the Independent Engineer shall jointly, without unreasonable delay, thereupon issue a certificate (the **Vesting Certificate**) substantially in the form 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 GoS pursuant hereto.

24.5 **TRANSFER CONSIDERATION**

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

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 GoS, 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 GoS. In the event of Termination due to a Force Majeure Event and/or a GoS Event of Default, the GoS shall bear and pay all the above-mentioned costs.

24.6.2 The GoS 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 GoS or its nominated agency on the Transfer Date. The GoS shall at its own cost obtain or effect all clearances, permits, authorizations, consents and approvals under or pursuant to 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.

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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 GoS Event of Default or a Political Event that has resulted in Termination.

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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, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the GoS or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Except as expressly provided in this Agreement, the GoS 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 GoS 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 GoS shall not be liable for the same in any manner whatsoever to the Concessionaire, the Sponsors 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 sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) above, such Party shall immediately notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the GoS to give any notice pursuant to this sub-section 26.1.4 of Section 26.1 (*Disclaimer*) shall not prejudice the disclaimer of the GoS contained in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) and shall not in any manner shift to the GoS 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 GoS shall not be liable in any manner for such risks or the consequences thereof.

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27. ASSIGNMENT AND CHARGES

27.1 RESTRICTION ON ASSIGNMENT AND CHARGES

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

27.1.2 Subject to the provisions of Section 27.2 (*Permitted Assignment and Charges*), the Concessionaire shall not:

- (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;

in each case above, except with prior consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason.

27.2 PERMITTED ASSIGNMENT AND CHARGES

27.2.1 The restriction set forth in sub-section 27.1.2 of Section 27.1 (*Restriction on Assignment and Charges*) shall not apply to:

- (a) liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) assignment of rights, interest and obligations of the Concessionaire under this Agreement, the GoS Agreements, and/or the Project Agreements, Encumbrances, pledges/hypothecation of goods/assets, and any and all other bank accounts of the Concessionaire, a mortgage/charge in relation to the Construction Works and the Concession Assets (excluding the Project Site), a charge on the present and future movable, immovable and intellectual property of the Concessionaire, in each case, arising or created as security only for indebtedness to the Financiers under the Financing Documents in accordance with the Financing Term Sheet or the Financing Amendment Term Sheets, as the case may be.

27.3 FINANCING TERM SHEET & FINANCING AMENDMENT TERM SHEETS

27.3.1 Prior to Financial Close, the Concessionaire shall deliver to the GoS and the Independent Auditor a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for debt repayment that is not greater than the aggregate of the Financing Component set out in the Financial Model using the assumptions of the Financial Model, together with the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae that shall be included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Financiers upon the winding up for

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early termination of the Financing under the Financing Documents, and shall also identify the equity commitments, individually and in total, of the Sponsors and other key investors and shareholders (the **Specific Term Sheet Parameters**). The GoS and the Independent Auditor shall evaluate the Specific Term Sheet Parameters to ensure that the principal financial terms are not greater than the aggregate of the Financing Component set out in the Financial Model using the assumptions of the Financial Model, and to evaluate the impact on the GoS's obligations upon any Termination of this Agreement. If GoS and/or the Independent Auditor has any objections to the terms specified in such term sheet or schedule, it shall inform the Concessionaire thereof within thirty (30) days of its receipt thereof; otherwise, the GoS and the Independent Auditor shall be deemed not to have objected to those terms (the **Financing Term Sheet**) and the Concessionaire shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by GoS and/or the Independent Auditor. The Concessionaire shall provide the GoS, the Independent Engineer and the Independent Auditor with a copy of the Financing Documents no later than fifteen (15) Business Days of its execution (provided that, to the extent that the commercial terms of these executed Financing Documents do not materially deviate from the Financing Term Sheet, the GoS and the Independent Auditor shall have no further right to raise any objection in respect of these Financing Documents).

27.3.2 Following Financial Close, the Concessionaire shall deliver to the GoS and the Independent Auditor, copies of all amendments to the executed Financing Documents within ten (10) Business Days after the execution of each such document. The Concessionaire shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the GoS and the Independent Auditor, no less than thirty (30) Business Days prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other key financial terms or material modifications related thereto.

27.3.3 The GoS and the Independent Auditor shall notify the Concessionaire of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule as soon as reasonably possible, and in any case within thirty (30) days of receipt of the term sheet or schedule. In case no objection has been received by the Concessionaire on or before the expiry of the thirty (30) days after receipt of the term sheet or schedule related to the proposed modification, the GoS and the Independent Auditor shall be deemed not to object to those amendments or terms (the **Financing Amendment Term Sheets**). At the request of the GoS and the Independent Auditor, prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Concessionaire shall deliver to GoS and the Independent Auditor, in a form satisfactory to GoS, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the GoS hereunder or under any GoS Agreement or affect in any way the right of the GoS to acquire the Concession Assets free and clear of all Encumbrances upon the GoS's payment of the applicable Termination Payment.

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27.3.4 Notwithstanding anything to the contrary, the Concessionaire shall not make any addition, replacement or amendments to any of the Financing Documents without the prior written consent of the GoS if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the GoS, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the GoS.

27.4 **FINANCIAL CLOSING**

27.4.1 Upon achievement of Financial Close, the Concessionaire shall procure issuance by Financiers (or an agent of the same) of a Notice issued to the GoS (with a copy to the Independent Auditor and the Independent Engineer) certifying the achievement of Financial Close (the **Financial Close Achievement Notice**).

27.5 **ASSIGNMENT BY THE GOS**

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

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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 other financial burden, the aggregate financial effect of which exceeds of PKR 5,000,000/- (Pakistani Rupees Five Million) in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the Concessionaire may so Notify the GoS 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 GoS (as certified by the Independent Engineer and the Independent Auditor) require the GoS to pay the Additional Costs (as determined and certified by the Independent Engineer and the Independent Auditor), and within thirty (30) days of receipt of such Notice, along with particulars thereof, the GoS 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, as determined by the Independent Engineer. 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 GoS to pay the Additional Costs (as determined by the Independent Engineer and the Independent Auditor) within thirty (30) days of receipt of a Notice (as certified by the Independent Engineer and the Independent Auditor) 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 GoS 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 GoS 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

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exceeds PKR 5,000,000 (Pakistani Rupees Five Million) in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the GoS 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 GoS, 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 GoS 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 GoS; provided, that if the Concessionaire shall Dispute such claim of the GoS, 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.

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29. ADDITIONAL MATTERS

29.1 ADVERTISING & ADVERTISING REVENUES

29.1.1 The GoS shall have a right to propose from time to time a plan for various advertising activities to be implemented on the Concession Assets (the **GoS Advertising Plan**). The GoS shall submit the GoS Advertising Plan to the Independent Engineer and the Independent Auditor for each of their approval.

29.1.2 Upon approval of the GoS Advertising Plan by the Independent Engineer and the Independent Auditor, the GoS shall be fully responsible for the implementation of the GoS Advertising Plan.

29.1.3 Not Used.

29.1.4 The GoS through its Class B Shares or otherwise (as directed by the GoS) exclusively reserves the right to the revenues relating to and/or generated through the approved GoS Advertising Plan from the implementation of the approved GoS Advertising Plan, as determined by the Independent Auditor) (the **Advertising Proceeds**). In case the Advertising Proceeds are paid to the Concessionaire, the same shall be paid to the GoS as dividends for Class B Shares or otherwise GoS.

29.2 COMMERCIAL RIGHTS & ADDITIONAL FACILITIES

29.2.1 At any time prior to the expiration of the Concession Period, the GoS shall have the exclusive right to establish Additional Facilities along the Project Site or on Ancillary Facilities either through the Concessionaire (with mutual Agreement) or any other party at its sole and absolute discretion. Nothing contained in this Agreement shall prevent the GoS from granting Development Rights to any person who is not affiliated with the Concessionaire or its shareholders, provided further in case the development of any Additional Facilities and/or Ancillary Facilities shall not hinder with any construction activities of the Concessionaire

29.2.2 Subject to Section 29.2.1, nothing contained in this Agreement shall obligate the GoS in any way to grant or deny such Development Rights and its decision regarding such rights shall be carried out at its complete discretion. For the avoidance of doubt, Development Rights are not a part of the Concession Assets.

29.2.3 For the purposes of implementation by the GoS of its Development Rights the Concessionaire shall enter into all such agreements as may be reasonably required by the GoS to give full effect to the grant of Development Rights and to enable the GoS to use the Development Rights granted by the GoS and are solely for the benefit of GoS and/or its designated (as notified to the Concessionaire) nominee.

29.2.4 The GoS shall make use of all Development Rights granted to it in such a manner so as not to impair the general integrity of the Concession Assets and with full regard for the safety of all Users and shall implement the Development Rights so as to avoid danger to any such Persons.

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29.3 **TRANSACTION ADVISORS & TRANSACTION ADVISORY FEES**

- 29.3.1 The Parties each acknowledge that the Transaction Advisors have been retained as consultants for assisting GoS in developing an effective framework for the development of the Project and selection of the Concessionaire through a fair and transparent competitive bidding process.
- 29.3.2 The Concessionaire hereby undertakes to pay to the Transaction Advisor (the **Transaction Advisory Fees**) an amount equal to 0.15 percent of the construction cost / EPC cost as set out in the Base Case Financial Model within fifteen (15) days of the Effective Date;
- 29.3.3 The Concessionaire shall be responsible for payment of all taxes applicable under the Applicable Laws on the Transaction Advisory Fees.

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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, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer and/or the Independent Auditor as the case may be, either Party may request for their departmental heads to meet to resolve such Dispute. Failing such resolution, the Dispute shall be referred to be dealt with in accordance with Act, for amicable settlement. In the event the Parties are unable to resolve the matters through conciliation either Party may refer the Dispute to arbitration in accordance with the provisions of Section 30.3 (*Arbitration*).

30.3 ARBITRATION

30.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Section 30.2 (*Conciliation*), shall be finally decided by reference to arbitration by a board of arbitrators (the **Board of Arbitrators**) appointed in accordance with Section 30.3.3. Such arbitration shall be held in accordance with the provisions of the Arbitration Act.

30.3.2 The venue of such arbitration shall be Karachi.

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 GoS agree and undertake to carry out such Award without delay.

30.3.5 The Concessionaire and the GoS agree that an Award may be enforced against the Concessionaire and/or the GoS, as the case may be, and their respective assets wherever situated.

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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.

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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 Sindh 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 GoS as specified in the West Pakistan Highways Ordinance, 1959 as amended by the West Pakistan Highways (Sindh 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 GoS 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 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.

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31.5 **NOTICES**

31.5.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in **SCHEDULE 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, management and Financing of the Concession Assets, and all information and documents obtained in accordance with the terms of the GoS Agreements, and shall not, without the consent of the other Party, save as required by 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 GoS 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 GoS.

31.6.2 The provisions of Paragraph (a) hereabove shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement or any other GoS 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 whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties 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.

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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 GoS.

31.9 **LANGUAGE**

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

31.10 **EXCLUSION OF IMPLIED WARRANTIES**

31.10.1 This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement (except the GoS 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.

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LIST OF SCHEDULES

- SCHEDULE A – SCOPE OF THE PROJECT
- SCHEDULE B – DESIGN REQUIREMENTS
- SCHEDULE C – LIST OF CONSTRUCTION DRAWINGS
- SCHEDULE D – PROJECT FACILITIES
- SCHEDULE E – PROJECT CONSTRUCTION COMPLETION SCHEDULE
- SCHEDULE F – PROJECT SITE
- SCHEDULE G – LIST OF TESTS & COMPLETION TESTS
- SCHEDULE H – O&M REQUIREMENTS
- SCHEDULE I – INSURANCES (PART I– CONSTRUCTION PERIOD INSURANCES)
- SCHEDULE I – INSURANCES (PART II– OPERATION PERIOD INSURANCES)
- SCHEDULE J – SPECIFIED CONCESSIONAIRE PERMITS
- SCHEDULE K – CORPORATE DOCUMENTS
- SCHEDULE L – FORM OF CONSTRUCTION PERFORMANCE SECURITY
- SCHEDULE M – FORM OF O&M PERFORMANCE SECURITY
- SCHEDULE N – PART I– INDICATIVE INDEPENDENT AUDITOR TERMS OF REFERENCE
- SCHEDULE N – PART II– INDICATIVE INDEPENDENT ENGINEER TERMS OF REFERENCE
- SCHEDULE O – FORM OF VESTING CERTIFICATE
- SCHEDULE P – TOLL NOTIFICATION STRUCTURE
- SCHEDULE Q – BENCHMARK TOLL REVENUE & MRG SCHEDULE
- SCHEDULE R – TOLL NOTIFICATION
- SCHEDULE S– NOTICES
- SCHEDULE T – TERMINATION PAYMENTS
- SCHEDULE U – FINANCIAL MODEL

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SCHEDULE A – SCOPE OF THE PROJECT

1.0 PROJECT ALIGNMENT

Project Expressway shall be an Access-Controlled facility, it shall start before Jam Sadiq Bridge on Korangi Road which is on Right Bank of Malir River and travelling along the Malir River up to the existing Link Road between N5 and M9 (2.4 km short of M9) and it shall take left turn from this point to meet M-9 (Kathor), the end point of the Project, as shown in the Location Plan. The tentative measured length of the expressway is 39.40 km. The exiting portion of Link Road between N5 & M9 shall need modification to meet the requirements of Expressway according to given cross sections. Similarly, the existing Trumpet Interchange on M9 shall also be modified to meet the design requirements of the Expressway.

It is pertinent to mention that there are factors which may influence the selection of Expressway Alignment, therefore, every possible effort should be made by the concessionaire to explore the most suitable and cost-effective alignment by conducting desk studies and reconnaissance survey of the corridor in consultation with Independent Engineer (IE) and GoS. Some of the major factors which may influence the selection of alignment are indicated below:

- Malir River Hydrology
- Availability of Land
- Geometric Standards of Expressway

2.0 REQUIRED CONFIGURATION OF INTERCHANGES

The Project Expressway being an access-controlled facility, therefore following entry and exit points at Interchanges are envisaged at this stage, which shall be followed by all bidders:

1. **At Project Start Point, Interchange Before Jam Sadiq Bridge on Korangi Road provides following conflict free movements: (The Interchange design must have provision for Future Bridge at Korangi Road over Malir River)**

Entry to Malir Expressway

- Straight two directional movements connecting Malir Expressway with Creek Avenue Road (DHA)
- Left turn for North bound traffic coming from KPT Interchange and moving towards M9
- Right Turn for North bound traffic coming from Korangi Crossing traveling towards M9

Exit from Malir Expressway/ Korangi Road

- Right turn for traffic coming from FTC/KPT Interchange/Korangi Road moving towards Creek Avenue Road (DHA)
- Left turn for south bound traffic coming from M9 and traveling towards Korangi Crossing

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2. Jam Sadiq Interchange to provide only following conflict free movements:

(At this location Malir Expressway shall be grade separated through the existing bridge crossing Malir River connecting Sunset Boulevard/Korangi Road with Korangi Industrial Area)

Entry to Malir Expressway

- Left turn for North bound traffic coming from Shaheed-e-Millat Expressway and moving towards M9
- Left turn traffic for North Bound expressway which is coming from Sunset Boulevard/Korangi road from KPT Flyover Bridge should have grade separated conflict free entry from traffic going towards Jam Sadiq Bridge.

Exit from Malir Expressway

- Right turn for south bound traffic coming from M9 and moving towards KPT Interchange
- Left turn for south bound traffic coming from M9 and traveling towards Korangi Industrial Area

III. EBM Causeway:

- At this location EBM Causeway shall remain at grade and Expressway shall flyover this road

IV. Korangi-Shah Faisal Interchange to provide only following conflict free movements:

(At this location Malir Expressway shall be great seperatedthrough an existing bridge across the Malir River connecting Shah Faisal Colony to Korangi)

Entry to Malir Expressway

- Left turn for north bound traffic coming from Shah Faisal Colony to move towards M9
- Right turn for north bound traffic coming from Korangi Industrial Area to move towards M9

Exit from Malir Expressway

- Left turn for south bound traffic coming from M9 and moving towards Korangi Industrial Area
- Right turn for south bound traffic coming from M9 and moving towards Shah Faisal Colony

V. Quaidabad (N5) Interchange

(At this location Malir Expressway shall be great separated through the existing bridge of National Highway N5 on Malir River)

Entry to Malir Expressway

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- Left turn for north bound traffic coming from Airport to move towards M9
- Left turn for south bound traffic coming from Thatta to move towards KPT Interchange.
- Right turn for traffic coming from Airport to move towards KPT Interchange via Malir Expressway
- Right turn for traffic coming from Thatta to move towards M9 via Malir Expressway

Exit from Malir Expressway

- Left turn for traffic coming from KPT Interchange (North Bound traffic) to move towards Airport
- Right turn north bound traffic coming from KPT Interchange and moving to Thatta
- Left turn for south bound traffic coming from M9 and moving to Thatta
- Right turn for south bound traffic coming from M9 and moving to Airport

VI. Interchange near km 25+000 (Exact Location to be decided)

- It shall be At-Grade for two left turning movements and trumpet interchange for two right turning movements

VII. Interchange near km 33+000 (Exact Location to be decided)

- It shall be At-Grade for two left turning movements and trumpet interchange for two right turning movements

VIII. Remodelling/Extension of existing Trumpet Interchange at Link Road – M9 Junction for dual carriage expressway and transition lanes with M-9.

Note: All the entry and exit lanes shall be designed for smooth transition as per standard design requirements assuring no disturbance to existing traffic movements.

3.0 UNDERPASSES

Following underpasses are envisaged at this stage:

- (a) Road linking Sindhi Chemical Market in Korangi to Shah Faisal Town Block-5 near km 7+000
- (b) Korangi – Malir Link Road near km 13+000
- (c) Main Railway Line of PR, near future Colony near km 14+500
- (d) 5 Nos at appropriate locations

For all above Underpasses, 50m approach roads on City Side shall also be developed to provide proper access to Underpasses.

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4.0 TYPICAL CROSS-SECTIONS

Typical Cross -Sections of embankment, bridges, slip roads and entry exit ramps are provided in given Figures.

5. PROJECT COMPONENTS

Project Components *include detailed design, construction, operation and maintenance* of following listed items:

Not limited to as specified below, overall components of design, and construction of the project are as follows:

- a) Project Expressway shall be an access-controlled facility
- b) Prior to fixing the alignment, carry out map/ satellite imagery study supplemented with area reconnaissance and study number of options for the Expressway, the Concessionaire shall present to Independent Engineer (IE) and Authority, all options with merits and demerits after ground assessment and salient features of each option. These options should be based on findings and recommendations of Hydraulic Study, High Flood Level and its extents on both sides of Malir River
- c) Detailed designing of the Expressway should be based on the given Design Criteria and provided typical X-Sections. The Concessionaire shall be responsible for all aspects of Design in conformity with applicable standards, safety and in accordance with the Concession Agreement, including the Design requirements as set out in relevant Article and Schedule of the Concession Agreement.
- d) Carryout the Hydrological studies of Malir River and based on this study placement of alignment, height of embankment, protection and erosion control of the embankment slopes shall be decided for the final design.
- e) Should take into consideration river flow patterns during peak flood for 50 years return period. A Report prepared by WAPDA under Title “Feasibility Report Karachi Flood Control Plan” prepared in 1983 and updated in 1990 shall be made available to Concessionaire for reference only
- f) Carry out design and construction of Rigid and Flexible Pavement
- g) Design and construction of Embankment height and slopes, retaining/ protection works, erosion protection work, and drainage works in view of findings and recommendations of Hydraulic Reports mentioned above
- h) Design and construction of Road safety elements like Road Side Safety Barriers, Road furniture which includes:
 - Pavement markings, lines, arrows and studs
 - Guardrails at High Embankment locations
 - Traffic direction Signs
 - Information Signs
 - Warning Signs

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- Gantries
 - Vision and Sound Barriers
- i) Carry out Design and construction of Bridge Structures for flyovers and interchanges
 - j) Carryout detailed design and construction of interchanges, Intersections, underpasses, and cross-drainage structures
 - k) Carry out detailed design and construction of electrification of Road, Interchange, Flyover, Bridges and Toll Plaza, Toll Building and Control Building
 - l) Carry-out EIA Report and to seek approval from EPA as per their rules and regulations. (Land acquisition and clearance of encroachment shall be the responsibility of the Authority)
 - m) Carry-out Detailed Design and construction of Toll gates / Toll Plaza, and its control building. The size of Plot of Control Building for each Toll Plaza should not be less than 100 sq.m. out of which 70% should be covered area
 - n) Carry-out Detailed Design and construction of Main Control and Administration Building having 1,000 sq.m area out of which 70% shall be covered area. Location of this building shall be selected in consultation with Independent Engineer (IE) and Authority
 - o) Carry-out Detailed Design and construction of Weigh Bridges and its office,
 - p) Prepare Construction Drawings and reports based on approved Detailed Design of all components of project expressway
 - q) Give detailed plan of implementation strategy
 - r) Prepare Land Acquisition Plans
 - s) Prepare Properties Demolition Plans (Demolition of encroachments/properties shall be executed by EPC contractor under the GoS Authority)
 - t) Prepare Plans Showing Relocation of Existing Utilities with in ROW/Construction limits. These Plans shall be submitted to Authority for their coordination and relocation
 - u) Supply and installation of Right of Way Markers

6.0 DETAILED DESIGN OF PROJECT

- a) Carryout map / satellite photographs study and review of all material / documents / studies / alignment plans / typical cross-sections / drawings provided, supplemented with area reconnaissance and detailed topographic survey, study options for alignment in view of Hydraulic Studies, and present all options with merits and demerits after ground assessment of salient features of each alignment
- b) Carry out soil & material investigation to determine the “Subsoil Condition”, other required soil tests and analysis for the authenticity of any available report as the Independent Engineer / GOS Authority shall not be liable to any discrepancy
- c) Carry out hydrological studies for each structure by determining catchment areas for each structure

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- d) Carry out geotechnical investigations for bridges and other structures
- e) Detailed designing of the Project based on conceptual location plans and typical cross-sections. However, the Concessionaire shall be responsible for all aspects of design in conformity with Applicable Standards and in accordance with the Concession Agreement, including the design requirements as set out in the Concession Agreement
- f) Detailed Geometric design of road component, at grade, interchanges, intersections, flyovers, slip roads, ramps, weigh bridges, toll plaza including their approaches, underpasses, cattle creeps, culverts, slope protection works as per the design criteria given in the AASHTO standards. Also carry out flexible asphalt pavement design, design of retaining/ protection works, design of erosion protection works, river training works and drainage works
- g) Carry out detailed Structure Design of all the interchanges, flyovers, underpasses, culverts, weigh bridges, toll plazas and their allied buildings
- h) Carryout detailed Structure Design of other Bridges/structures and Culverts in accordance with provisions of ‘AASHTO LRFD Bridge Design Specifications’
- i) Design of other minor structures and intersections (at-grade).
- j) Prepare Construction Drawings of all roadworks, structure works, and drainage & protection works
- k) Preparation of land acquisition and utility/ infrastructures relocation folders
- l) Carry out Environment Impact Assessment - EIA study and submit report to seek approval from the Sindh Environmental Protection Agency as per their rules and regulations
- m) Toll plaza, toll control building, weigh bridges, offices and residence for operation and maintenance staff including construction drawings
- n) Give detailed plan of implementation strategy

A summary of the design criteria is provided hereunder, however, to promote innovation, Bidders are encouraged to develop Proposals that differ or vary from the reference design and that comply with the requirements of the Concession Agreement. The general performance requirements for the Project Expressway are given hereafter.

7.0 **DESIGN STANDARDS AND LOADING CRITERIA**

Design life

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Design Life (Years)	
Bridges	80
Culverts	80
Flexible Pavement	10
First Overlay	10
Second Overlay	10
Rigid Pavement	40
Hydrology Study (return flood period)	50

Expressway Geometric Design Standards & Criteria

A Policy on Geometric Design of Highways and Streets 2011 edition by AASHTO shall be followed.

Criteria	Expressway	Interchange
Design speed	100 km/h	40 km/h
Maximum super elevation	4.00%	4.00%
Gradient (Max)	3.00%	4.00%
Gradient (Min)	0.20%	0.20%
<u>Transverse Slope</u> Carriageway Shoulder	2% outer cross slope 4% outer cross slope	2% outer cross slope 4% outer cross slope
Expressway Carriageway Width	10.95m (7.30m, Reduce One Lane from each carriageway from Jam Sadiq Interchange to Korangi Road Interchange & Creek Avenue Connection)	7m (Ramp/Loop/Slip Roads)
Outer Shoulder Width	3.0m	0.5m (Ramp/Loop/Slip Roads)
Inner Shoulder Width	1.20m	0.5m (Ramps/Loop/Slip Roads)
<u>Bridge</u> Carriageway Width Outer Shoulder Inner Shoulder	-	10.95m 1.20m 1.20m
Shoulder Surfacing	Asphaltic Wearing Course	Asphaltic Wearing Course
Embankment height	Min. 0.30 meter above the High flood level	Min. 0.30 meter above the High flood level
Embankment side slope	2H:1V	2H:1V

Structure Design Standards and Criteria

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Structure Design Standards:

- AASHTO LRFD

Loading Criteria:

- West Pakistan Code of Practice for Highway Bridges 1967

Seismic Design:

- AASHTO analysis and design with latest Seismic zoning map for Pakistan as per revised current GoP Seismic parameters.

Standards for Material Testing

- ASTM -American Society for Testing and Materials
- AASHTO-American Association of State Highway and Transportation

8.0 EMBANKMENT DESIGN

The embankment design, its height, slopes and protection work, including apron on river side, shall be designed keeping in view of the outcome of Hydrology Study Report which shall be carried out for not less than 50 years Flood Return Period.

Due consideration shall be given to Road Side Barriers at high embankment locations as per design standards.

In areas of high-water table, filter cut-off layer shall be provided to protect the pavement structure. This should include day-lighting of the pavement layers to outer side of the embankment. Surface drainage should also be designed properly.

9.0 PAVEMENT DESIGN

The Pavement designs shall be carried out as per AASHTO Guide (latest edition) with load factors from NTRC Report and confirm the design with the mechanistic design methodology. The pavement design shall be based on 100 million ESALS per Lane traffic volume and its projection. Traffic growth factors shall be established through the study of available traffic data.

Since the project expressway shall be a new facility, and no traffic is currently plying on its alignment, volume of traffic and in turn the required pavement structure is the prime concern. As such, for bid comparison, all the bidders should quantify and price the flexible pavement based on a Pavement Design of 100 Million ESALS Load per Lane for a Design life of 10 years. Two Overlays are envisaged for this concession, first on the eleventh (11th) anniversary of COD and Second Overlay ten (10) years after the First Overlay. Design lives of both the overlays shall be 10 years.

For the outer lane of Expressway, the Concessionaire shall carry out Rigid as well as Flexible Pavement, using the ESALS provided above and for 40 years design life of Rigid pavement and 10 years design life of Flexible pavement. The Concessionaire shall also provide the Costs of both type of pavements, with the two types of maintenance costs during the

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concession period. This shall be helpful for a cost-effective strategy to be adopted by the Authority, by comparing Rigid Pavement and Flexible Pavement.

Other design criteria not specified herein shall be approved by the Independent Engineer (IE) before being adopted for the design.

10.0 PROTECTION WORKS:

Protection work and guide bank shall be designed for high flood discharge for a return period of not less than 50 years and flow pattern determined by design calculations and hydraulic study. Detail Drawings of the same shall form part of Design report and construction Package. As mentioned above, on both banks of Malir River, Sewerage and Storm Water outlets are discharging in Malir River. Concessionaire should keep in view this drainage/discharge pattern and during the design, due diligence shall be given to the required protection works near each cross-drainage structure and underpasses.

11.0 ENVIRONMENTAL IMPACT ASSESSMENT (EIA) STUDY

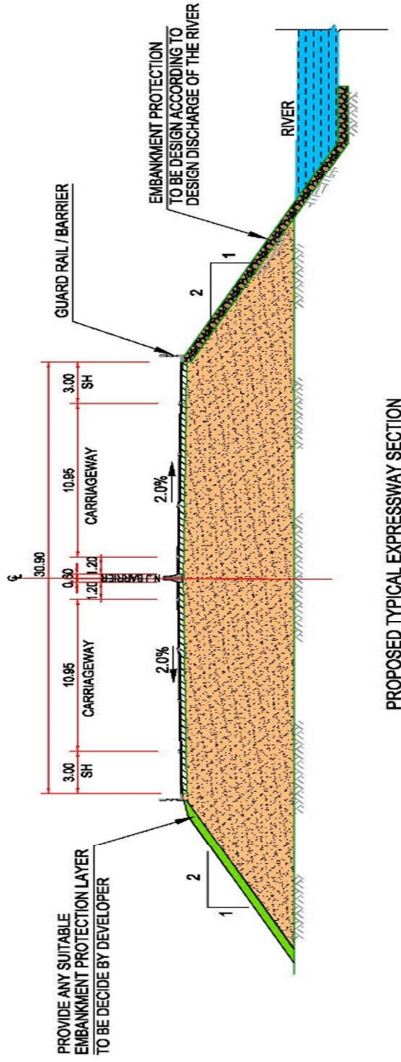
EIA should include but not limited to the following:

- a. Review of legislation and legal framework
- b. Project features and analysis of various alternatives
- c. Identification of project's various impacts e.g. ecological, socio-economic etc.
- d. Impacts from the surrounding ongoing and proposed development, during planning, construction and on completion
- e. Impact identification, analysis and mitigation measures
- f. Preparation of detailed Environmental management and mitigation plan during construction phase and on completion.
- g. Any other requirements of the statutory authorities as required for the approval of the study.
- h. Assisting Client in obtaining all NOCs from EPA.
- j. Quantification and costing of environmental management mitigation measures.

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FIGURE-01



PROPOSED TYPICAL EXPRESSWAY SECTION

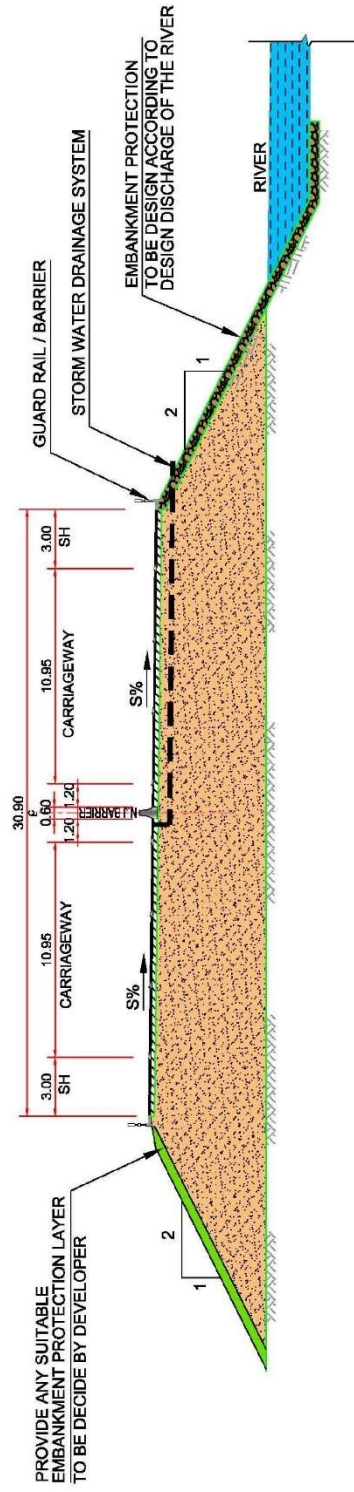
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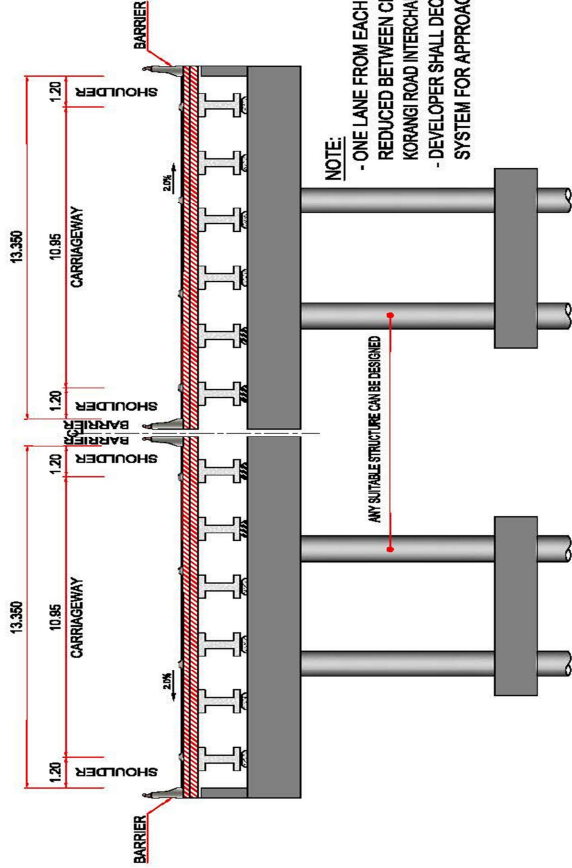
FIGURE-02



PROPOSED TYPICAL EXPRESSWAY
SUPER-ELEVATED SECTION

NOTE:
- DESIGN SHOULD COVER COMPLETE DRAINAGE SYSTEM OF MALIR EXPRESSWAY AND SPECIAL CARE SHOULD BE TAKEN AT SUPER-ELEVATED SECTIONS BY PROVIDING ADEQUATE STORM WATER DRAINAGE SYSTEM TO AVOID EXCESSIVE SURFACE FLOW.

FIGURE-03



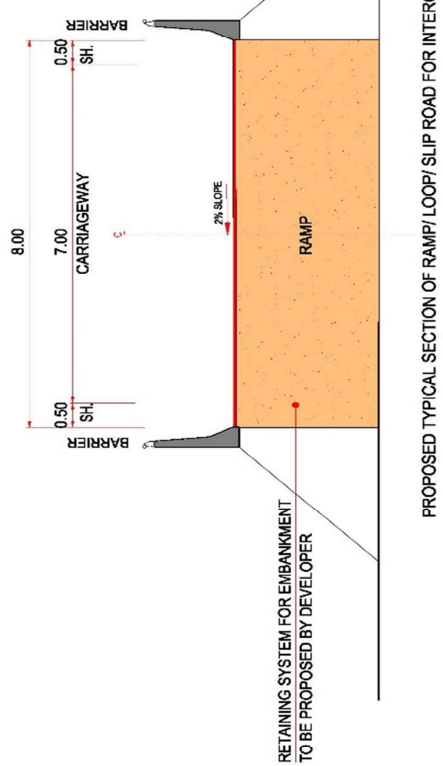
NOTE:
 - ONE LANE FROM EACH CARRIAGEWAY WILL BE REDUCED BETWEEN CREEK AVENUE ROAD, KORANGI ROAD INTERCHANGE TO JAN SADIQ INTERCHANGE.
 - DEVELOPER SHALL DECIDE THE EMBANKMENT/RETAINING SYSTEM FOR APPROACHES.

PROPOSED TYPICAL SECTION OF BRIDGE

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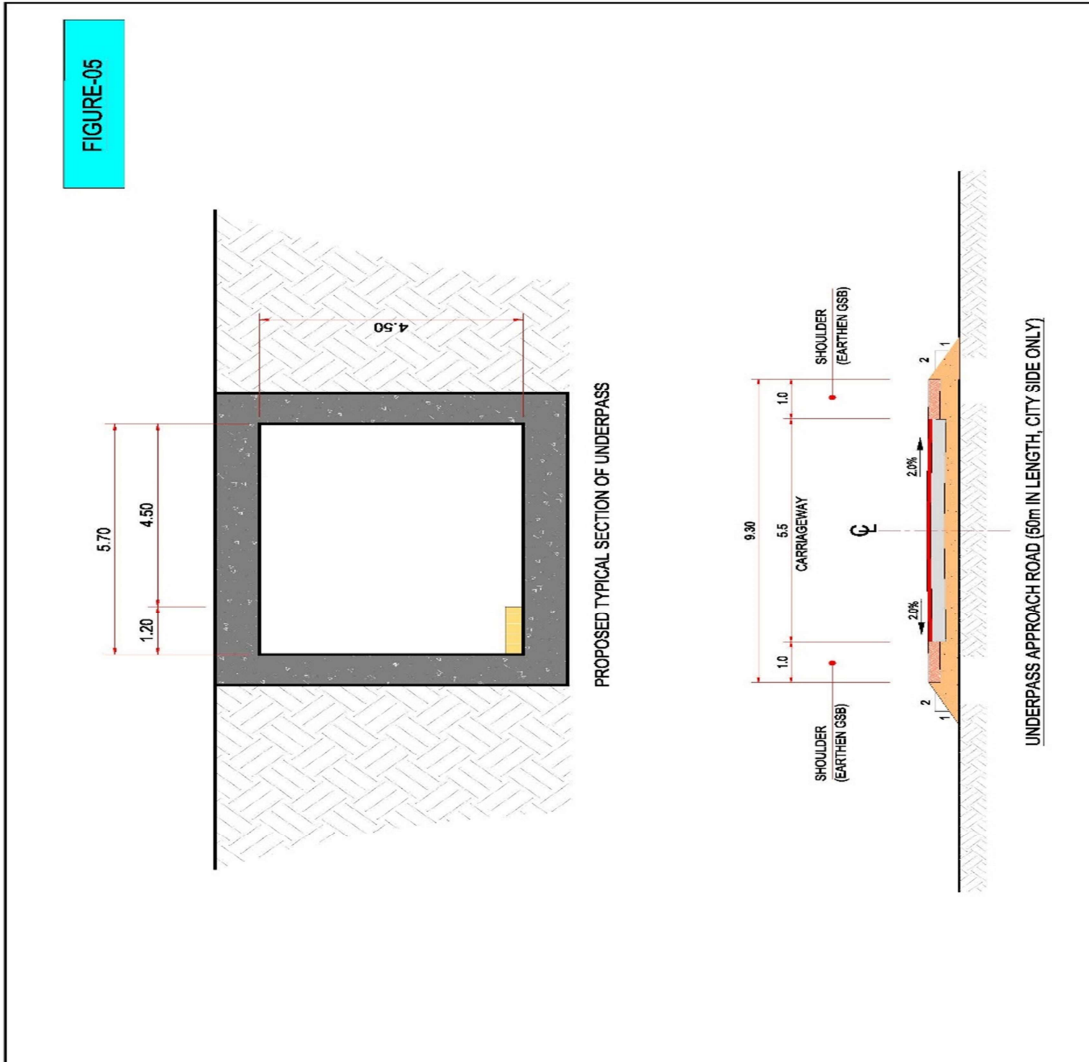
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FIGURE-04



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12.0 ELECTRICAL WORKS

The Expressway, being the Urban Facility, shall be provided with Road Lighting. Concessionaire shall provide its design and specifications with the list of approved vendors to obtain approval from Independent Engineer (IE) before any installation. Similarly, Design, Specifications and installation of Lighting of Interchanges, Intersections, Flyovers, Toll Plazas, Toll Buildings, Control Buildings and Weigh Bridges shall also be provided by the Concessionaire for approval of Independent Engineer (IE) before construction.

The bidder shall also select and identify the sources of power supply along the approved alignment of Expressway.

13.0 TOLLING SYSTEM & ELECTRONIC TOLL & TICKETING SYSTEM-ETMS

Project Expressway shall be provided with toll plazas/gates, at all entry and exit locations. Their exact locations shall be decided in consultation with Independent Engineer (IE).

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All Vehicles Entering Toll Gate shall be issued a Machine-Readable Toll Ticket. At the Exit Toll Gates, the Vehicle shall show the Ticket, and shall be charged the applicable toll for the distance it travelled.

There are two main Toll Plazas along expressway, one at Start Point after Jam Sadiq Bridge and other at End Point before M-9. For Toll Plaza, the 6-Lane Dual Carriage Expressway shall dissipate into 16 Lanes Toll Gates where middle four lanes shall be interchangeable for both ways traffic directions.

Between two Main Toll Plazas, there shall be 3 Lanes Toll Gates at every entry and exit of each interchange.

Rigid Pavement of appropriate length and width shall be used at Toll Gates.

COMPONENTS OF ETTMS

Following are the components of ETTMS comprising both hardware and software:

- (a) Electronically Operated Toll Gate's Barrier
- (b) Information Signs (Electrical) for "Stop" and "Go"
- (c) Vehicle Scanning, Type Identification and Number Plate Recording System
- (d) Machine Readable Toll Ticket Generation System
- (e) System of Video Filming, and achieving with time and date of all vehicles entering and exiting the toll gates, round the clock
- (f) Reporting System of Toll Ticket Generation to Control Center
- (g) Data Base and Data Back-up Center for this system
- (h) Telecommunication System
- (i) Proper Illumination/Lighting
- (j) Stand-by power generation system for un-interrupted ETTMS Operation
- (k) Classified Traffic Count/Reporting System with Toll Collection on Daily, Weekly and Monthly Basis on appropriate format

Concessionaire shall be responsible for procuring, installing, commissioning, testing, operating and maintaining all the components of ETTMS including its hardware, software and procurement of licenses, if required.

14.0 WEIGH BRIDGES AND CONTROL BUILDINGS

Weigh Bridges:

Weigh Bridges at following places shall be used: (Total 5 No.)

- 1 No. at North Bound of Main Toll Plaza after Jam Sadiq Bridge
- 1 No. at North Bound of Shah Faisal Colony Interchange
- 2 No. at Both Bounds of Quaidabad Interchange
- 1 No. at South Bound of Main Toll Plaza before M-9.

U-turn facility shall be designed for return of overweight vehicles and should be considered in land acquisition folder.

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Toll Gates:

Toll Gates shall be designed, construct, equipped and operate as per following:

- Extra land shall be acquired to accommodate the additional lanes. Proper transition shall be designed for approaches and exit of toll gates. Rigid Pavement of appropriate length and width shall be designed as per design standards.

Control Buildings:

- Concessionaire shall design and construct one Toll Building at each Toll Gate Location of 100 sq.m area out of which 70% shall be covered area
- Concessionaire shall design and construct one Toll Building at each Toll Gate Location at start and end point of Expressway of 200 sq.m area out of which 70% shall be covered area
- Concessionaire shall design and construct one `Main Control and Administration Building having 1,000 sq.m area out of which 70% shall be covered area. Location of this building shall be selected in consultation with Independent Engineer (IE) and Authority

15.0 LAND ACQUISITION REQUIREMENTS

After final selection of alignment, survey, and design the concessionaire shall prepare the land acquisition folders. Details of property falling within required ROW, and additional area which may be required for interchanges shall be indicated. Details of land to be acquired for road construction shall also be updated. The Concessionaire shall prepare area estimation for ROW and additional land where required. ROW permanent markers shall also be set up by the Concessionaire. The Concessionaire shall also prepare area estimates for acquiring any additional land and removal of structures and utilities and prepare cost estimates for removal, if so required.

16.0 OPERATION & MEINTENANCE

The Concessionaire is required to carry out the Operation and Maintenance in respect of all components of the Project.

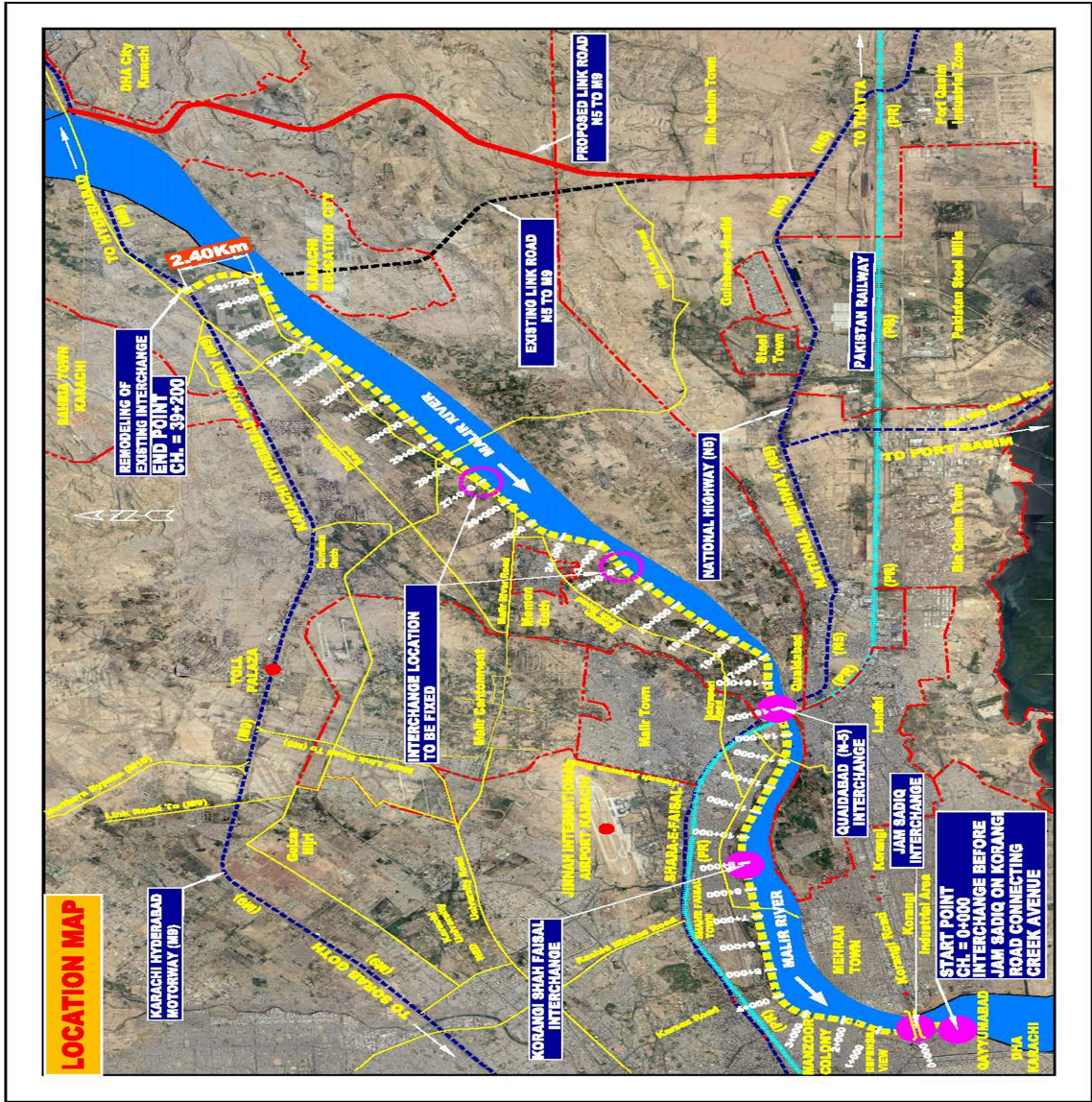
17.0 DESIGN REPORT

Concessionaire shall prepare a Design Report consisting of the final alignment, Design of Pavement and design of Structures (bridges, culverts, underpasses, retaining walls, protections works, embankment design, intersections and interchanges); containing all relevant tables, calculations, computer analysis (with proper explanation of the computer programs and analysis used in the calculations), interpretation of the computer results, conclusions, references and assumptions etc., all compiled and complete with sketches relevant to the preparation of construction drawings properly cross referenced between the drawings and the calculation sheets.

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PROJECT LOCATION PLAN



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SCHEDULE B – DESIGN REQUIREMENTS

1.1 DETAILED DESIGN OF PROJECT

- a) Carryout map/ satellite photographs study and review of all material/documents/studies/alignment plans/typical cross-sections/drawings provided, supplemented with area reconnaissance and detailed topographic survey, study options for alignment in view of Hydraulic Studies, and present all options with merits and demerits after ground assessment & salient features of each alignment
- b) Carry out soil & material investigation to determine the “Subsoil Condition”, other required soil tests and analysis for the authenticity of any available report as the Independent Engineer / GOS Authority shall not be liable to any discrepancy
- c) Carry out hydrological studies for each structure by determining catchment areas for each structure
- d) Carry out geotechnical investigations for bridges and other structures
- e) Detailed designing of the Project based on conceptual location plans and typical cross-sections. However, the Concessionaire shall be responsible for all aspects of design in conformity with Applicable Standards and in accordance with the Concession Agreement, including the design requirements as set out in the Concession Agreement
- f) Detailed Geometric design of road component, at grade, interchanges, intersections, flyovers, slip roads, ramps, super-elevation, drainage weigh bridges, toll plaza including their approaches, underpasses, cattle creeps, culverts, slope protection works shall be in compliance with the design criteria given in the AASHTO standards. Also carry out flexible asphalt pavement design, design of retaining/ protection works, design of erosion protection works, river training works and drainage works
- g) Carry out detailed Structure Design of all the interchanges, flyovers, underpasses, culverts, weigh bridges, toll plazas and their allied buildings
- h) Carryout detailed Structure Design of other Bridges/structures and Culverts in accordance with provisions of ‘AASHTO LRFD Bridge Design Specifications’
- i) Design of other minor structures and intersections (at-grade).
- j) Prepare Construction Drawings of all road works, structure works, and drainage & protection works
- k) Preparation of land acquisition and utility/ infrastructures relocation folders
- l) Carry out Environment Impact Assessment - EIA study and submit report to seek approval from the Sindh Environmental Protection Agency (SEPA) as per their rules and regulations
- m) Toll plaza, toll control building, weigh bridges, offices and residence for operation and maintenance staff including construction drawings
- n) Give detailed plan of implementation strategy

A summary of the design criteria is provided hereunder, however, to promote innovation, Bidders are encouraged to develop Proposals that differ or vary from the reference design and that comply with the requirements of the Concession Agreement. The general performance requirements for the Project Expressway are given hereafter.

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Design life

Design Life (Years)	
Bridges	80
Culverts	80
Flexible Pavement	10
First Overlay	10
Second Overlay	10
Rigid Pavement	40
Hydrology Study (return flood period)	50

Expressway Geometric Design Standards & Criteria

A Policy on Geometric Design of Highways and Streets 2011 edition by AASHTO shall be followed.

Criteria	Expressway	Interchange
Design speed	100 km/h	40 km/h
Maximum super elevation	4.00%	4.00%
Gradient (Max)	3.00%	4.00%
Gradient (Min)	0.20%	0.20%
Transverse Slope		
Carriageway	2% outer cross slope	2% outer cross slope
Shoulder	4% outer cross slope	4% outer cross slope
Expressway Carriageway Width	10.95m (7.30m, Reduce One Lane from each carriageway from Jam Sadiq Interchange to Korangi Road Interchange & Creek Avenue Connection)	7m (Ramp/Loop/Slip Roads)
Outer Shoulder Width	3.0m	0.5m (Ramp/Loop/Slip Roads)
Inner Shoulder Width	1.20m	0.5m (Ramps)
Bridge		
Carriageway Width	-	10.95m
Outer Shoulder		1.20m
Inner Shoulder		1.20m
Shoulder Surfacing	Asphaltic Wearing Course	Asphaltic Wearing Course
Embankment height	Min. 0.30 meter above the High flood level	Min. 0.30 meter above the High flood level
Embankment side slope	2H:1V	2H:1V

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Structure Design Standards and Criteria

Structure Design Standards:

- AASHTO LRFD

Loading Criteria:

- West Pakistan Code of Practice for Highway Bridges 1967

Seismic Design:

- AASHTO analysis and design with latest Seismic zoning map for Pakistan as per revised current GoP Seismic parameters.

Standards for Material Testing

- ASTM -American Society for Testing and Materials
- AASHTO-American Association of State Highway and Transportation

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SCHEDULE C – LIST OF CONSTRUCTION DRAWINGS

All the drawings should comply the standard drawing scale, text style, text height and readability & details.

The Concessioner shall provide all the detail drawings which shall be required or used as Standard Practice in Construction Projects not limited to following:

1. **GENERAL DRAWINGS**
 - List of Drawings
 - Location Map
 - Road Layout Plan
 - General Notes, Abbreviation, Legend
 - List of Traverse & Bench Mark
 - Contours and Detail Terrain Model with Levels
 - Typical X-sections
 - Setting out Data
 - Geometric Design Criteria & Super-elevation Details
 - Traffic Signs, Pavement Marking Details
 - Guard Rail and other Protection Details
 - Misc. Details

2. **PLAN & PROFILE DRAWINGS**
3. **INTERCHANGES DRAWINGS**
4. **CROSS SECTIONS (AT INTERVALS WITH COORDINATION OF INDEPENDENT ENGINEER)**
5. **STRUCTURE DRAWINGS (INTERCHANGES, BRIDGES, UNDERPASS ETC.)**
 - General Notes
 - General Arrangement
 - Testing Drawings like (Pile, Soil Investigation Points etc.)
 - Details of Deck Slab, kerb railing etc.
 - Concrete and Reinforcement Details
 - Misc. Details

6. **DETAILED STORM WATER DRAINAGE DRAWINGS**
7. **ROAD LIGHTING ELECTRICAL DRAWINGS**
8. **ARCHITECTURAL, STRUCTURAL & MEP DRAWINGS OF BUILDINGS, OFFICES, TOLL PLAZAS ETC.**
9. **DRAWINGS OF ALL THE COMPONENTS MENTIONED IN ANNEXURE-A SCOPE OF PROJECT**

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SCHEDULE D – PROJECT FACILITIES

A) FACILITIES

1. The Concessionaire shall provide furnished, equip and maintain site office for the Independent Engineer, the Project Manager and their staff. Office provided shall be maintained by the Concessionaire at all times during the duration of the Concession/Construction Period including extension period if any.

2. The Concessionaire shall provide following facilities for the Independent Engineer, the Project Manager and their staff:

- a. Provide, furnish, equip and maintain site office
The office shall be constructed, furnished, equipped and maintained by the Concessionaire, at all times during the duration of the Concession Period including extension period if any. The IE office shall be of such size which can accommodate not less twenty staff members.
- b. Provide, furnish equip and maintain accommodation
The accommodation shall be rented, furnished, equipped and maintained by the Concessionaire, at all times during the duration of the Construction Period including extension period if any. The accommodation space shall be of such size which can accommodate twelve staff members.
- c. Survey Equipment
The two sets of survey equipment (total stations and digital levels (four nos) with accessories) shall be provided and maintained by the Concessionaire along with survey helpers and all consumable, at all times during the duration of the Construction Period including extension period if any.
- d. Vehicles
The vehicles shall be provided with driver, fuel, maintenance, insurance, registration etc., by the Concessionaire at all times during the duration of the Construction Period including extension period if any.
The required numbers of vehicles are listed below
For the Project Manager, GOS Two vehicles (one 4x4 & one 1300 cc)
For the Independent Engineer Twelve Vehicles
(four 4x4 DC, two 1300 cc & six 1000 cc)

B) TEMPORARY SUPPLY

Any supply which may interrupt in result of execution should be provided by alternate temporary supply until connected as before. All such arrangement shall be done by concessionaire to avoid any disturbance to public or site staff.

C) LABORATORY FACILITIES WITH TESTING EQUIPMENT

The Concessionaire shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running maintenance cost for the tests to be conducted.

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The Concessionaire shall also furnish the laboratory with two vehicles and drivers to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipment's, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the same period.

All tests shall be executed according to AASHTO and ASTM and all required equipment (except such equipment as is mutually agreed between the Independent Engineer and the Concessionaire) for facilitation of the tests should be furnished in the lab with two sets of latest editions of prescribes standards (one to be placed in the laboratory and other for the Independent Engineer).

D) TEMPORARY ROAD, TRAFFIC MANAGEMENT, CONTROL & GENERAL PROTECTION

Layout plans showing the detailed proposals of temporary diversions to be carried out by the Concessionaire shall be submitted to the Independent Engineer / GoS and to concerned district police, authorities and civil agencies for their written approval 10 days before the implantation date.

Diversion must be constructed in advance of any interference with in the existing carriageway and shall be maintained in accordance to traffic load in condition satisfactory to engineer.

E) LOCATION OF UTILITY SERVICES

Location and identification of all services, in consultation with relevant utility service provider(s), whether above ground or below the ground shall be Concessionaire and its Contractor(s) responsibility following transfer of that utility with conformity to its concern authorities and provision of the Project Site to the Concessionaire, free from any Encumbrances, however, the removal, relocation, reinstatement or diversion of obstructing utilities shall be the responsibility of the GoS in accordance with this Agreement.

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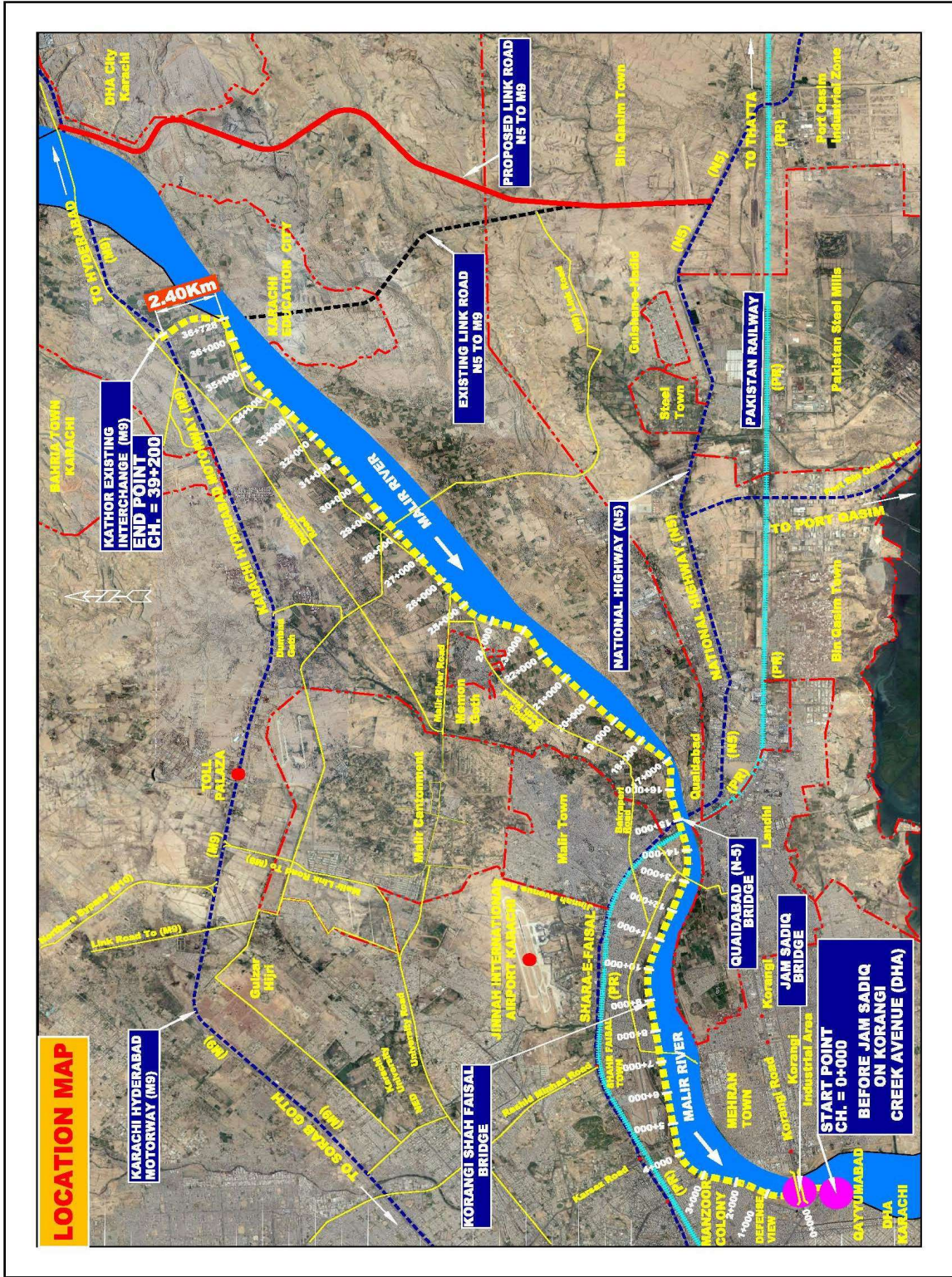
SCHEDULE E – PROJECT CONSTRUCTION COMPLETION SCHEDULE

STAGE TWO	
Issuance of the Stage Two RFP (the Issuance Date)	January 04, 2019
Pre-Bid Meeting (Technical & Procurement) (the First Pre-Bid Meeting)	Issuance Date + 10 days
Pre-Bid Meeting (Financial and Legal) (the Second Pre-Bid Meeting)	First Pre-Bid Meeting + 4 days
Submission and opening of stage two technical proposals and submission of stage two financial proposals only (the Stage Two Proposal Deadline Date)	Second Pre-Bid Meeting + 46 days
Evaluation of stage two technical proposals and opening of stage two financial proposal (the Evaluation of Technical Proposals)	Stage Two Proposal Deadline Date + 21 days
Evaluation of stage two financial proposal (the Evaluation of Financial Proposals)	Evaluation of Technical Proposals + 14 days
Announcing the Preferred Bidder (the Announcement)	Evaluation of Financial Proposals + 10 days
Concession Agreement signing (the Signing Date)	Announcement + 15 days
Financial Close	Within 180 Days of Signing Date
Concession Period	
Anticipated start of design, planning and surveys	10 days from Signing Date
Anticipated end of design, planning and surveys	120 days from Signing Date
Anticipated start of construction (the Commencement Date)	180 Days from Signing Date
Anticipated end of segment I construction (the Segment Substantial Completion Date)	18 months from the Commencement Date
Anticipated end of construction (the Substantial Completion Date)	30 months from the Commencement Date
Anticipated expiry of Concession Agreement and handover of facilities	25 years from the Substantial Completion Date

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SCHEDULE F – PROJECT SITE



The Project Site is located on Right Bank of Malir River, it measures from M-9 (Kathor) traversing link road of N-5 & M-9, Bridge Quaidabad, Bridge Shah Faisal, Bridge Jam Sadiq to Korangi Road with a connection with Creek Avenue Defense, as shown in the Location Plan. The tentative length of the expressway is 39.40 km.

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After the Effective Date, the Concessionaire shall, as soon as practicable, provide to the Independent Engineer a written proposal regarding the area and parameters of the Concession Assets Project Site (with a copy to the GoS). The Parties shall thereafter, in consultation with the Independent Engineer, determine the precise parameters and area of the Concession Assets Project Site within one (1) month of the proposal being provided by the Concessionaire to the Independent Engineer, which finalized area and parameters shall be made part of this **SCHEDULE F (*Project Site*)**.

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SCHEDULE G – LIST OF TESTS & COMPLETION TESTS

The Concessionaire shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants/helper, furniture and its running and maintenance cost for the tests to be conducted. The Concessionaire shall also provide for the laboratory two vehicles with drivers to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipment, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the same period.

All tests shall be executed as per the designated standard and all required equipment for facilitation of the tests should be furnished in the lab with two sets of latest editions of prescribed standards (one to be placed in the laboratory and other in the Independent Engineer office).

The Concessionaire should submit the list of tests to be carried out and their sample forms in the proposed methodology.

THE TESTS

A) LABORATORY TESTS

The Laboratory shall be equipped to perform the following tests:

SR. NO.	TESTS	AASHTO DESIGNATION
1	Dry preparation of soil samples	T-87
2	Soil Classification	M-145
3	Determination of Moisture Content	T-265
4	Atterberg Limits	T-89 & 90
5	Moisture density relationship (Modified Method)	T-180
6	C.B.R Test and swelling test	T-193
7	Relative Density Test	ASTM D4253, D4254
8	Sieve Analysis of Soils, aggregate and Mineral Filler	T-88, T-27 & T-37
9	Los Angeles Abrasion test of aggregates	T-96
10	Sand Equivalent	T-176
11	Soundness of aggregates	T-104
12	Asphalt Coating	T-195
13	Coating and stripping of Bitumen Aggregate	T-182
14	Specific Gravity & Absorption of Coarse Aggregate	T-85
15	Specific Gravity and Absorption of Fine Aggregate	T-84
16	Penetration of bitumen material	T-49
17	Amount of Passing No. 200 sieve	T-11
18	Quantitative Extraction of Bitumen from Mixtures	T-164
19	Gradation analysis of bitumen extracted aggregates	T-30
20	Specific gravity of compacted bitumen mixture	T-166

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SR. NO.	TESTS	AASHTO DESIGNATION
21	Marshall test and loss in stability	T-245
22	Maximum specific gravity of bitumen paving mixture	T-209
23	Air voids in compacted paving bitumen mix	T-269
24	Specific gravity of bitumen material	T-228
25	Softening point of bitumen (Ring and Ball method)	T-53
26	Sampling aggregates	T-2
27	Fineness Modulus	T-27
28	Organic impurities	T-21
29	Mortar Strength	T-71
30	Friable particles	T-112
31	Potential reactivity of carbonate rocks for concrete aggregates (Rock-Cylinder method)	ASTM C-586
32	Unit weight of aggregates	T-19
33	Air content of freshly mixed concrete by volumetric method	T-196
34	Making and curing of concrete test specimens	T-126
35	Curing concrete compressive test specimens	T-23
36	Compressive strength of cylinder concrete specimens	T-22
37	Setting time and consistency of cement	T-131
38	Normal consistency of hydraulic cement	T-129

B) FIELD TESTS:

The following tests shall be carried out for field control/spot checking purposes as the Works proceeds: -

SR. NO.	TEST	AASHTO DESIGNATION
1	In-place density by Sand Cone Method	T-191
2	Sampling fresh concrete	T-141
3	Slump of Portland cement concrete	T-119
4	Sampling bituminous materials	T-40
5	Determining the temp. of bituminous paving mixtures	-
6	Determining Degree of Pavement Compaction by coring	T-230
7	Bulk specific gravity	T-166
8	Density of soil and soil aggregate by Nuclear methods	T-238
9	Moisture content of soil and soil aggregate by Nuclear method	T-239

THE COMPLETION TESTS

Completion Tests shall mean the final inspection and tests of the Concession Assets by the Independent Engineer to ensure that the same conforms to the Project Requirements.

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The roughness of the pavement, over any one-kilometer length, shall not exceed a value of 5,000 millimeters per kilometer, as measured using 'Bump Integrator' technique, or an equivalent alternative standard established through alternative testing methods. Roughness criteria as per Highway Design and Maintenance Standards Model (HDM 1995) are as follows:

Smooth Paved Road	2,000	mm/km
Reasonably Smooth Paved Road	4,000	mm/km
Medium Rough Paved Road	6,000	mm/km
Rough Paved Road	8,000	mm/km
Very Rough Paved Road	10,000	mm/km

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SCHEDULE H – O&M REQUIREMENTS

1. OPERATION AND MAINTENANCE

- The Concessionaire is required to carry out Operations & Maintenance – O&M in respect of the Project in conformity with AASHTO standards and in accordance with the Concession Agreement. The O&M Requirements are set out, *inter alia*, in Article 19 (*Operations and Maintenance*) and this **SCHEDULE H (O&M Requirements)** of this Agreement.
- The general scope of Operations & Maintenance includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with AASHTO standards and with all performance measures set out in the Concession Agreement.
- The Project should be constructed and operated in a manner that it does not require Maintenance during the Defects Liability Period.
- The Project should not require a Major Maintenance before ten years of Substantial Completion Date and afterwards, should not require another major maintenance before ten years of first Major Maintenance. However, if the First Major Maintenance is required prior to ten (10) years following Substantial Completion Date and/or Second Major Maintenance is required prior to twenty (20) years following Substantial Completion Date, then the cost for such Major Maintenance shall be borne by the Concessionaire.

2. OPERATIONS ROLE

- The Concessionaire shall ensure the smooth flow of vehicles and minimization of traffic delays and closures
- The Concessionaire shall ensure the safety of commuters and shall provide emergency support to commuters
- Safety vehicle, tow trucks, ambulances, patrolling vehicles shall be used by Concessionaire to ensure smooth operations of works
- The Concessionaire shall ensure the administration, monitoring of conditions, traffic control, assessment of the need for load restriction, posting of warnings to vehicles, and signage
- The Concessionaire shall ensure the Quality Management on a self-auditing basis, in conformity with AASHTO testing procedures
- Following Operation methodology should be followed by the Concessionaire:
 - Patrolling on three-hour intervals, on 24/7/365 basis

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- Emergency & Rescue response system
- Provision of emergency medical services/ambulance/clinic
- Maintaining traffic sign maintenance data
- Maintaining Cat eyes
- Maintaining Road marking
- Maintaining/Cleaning Culverts
- Maintaining road
- Maintaining weigh bridges
- Maintaining Toll Plazas
- Maintaining weight violations data
- Maintaining death/injuries data
- Preparing periodic report with peak hour flows and peak day flows and other statistics
- Maintaining operational crew & equipment for emergency maintenance
- Preparing and implementing education programs and campaigns on:
 - Road safety and customer safety
 - Customer response & comments
 - Customer awareness
 - Operational staff awareness
 - Incentives for fragment road users
 - Maintaining firefighting systems

3. MAINTENANCE ROLE

Concessionaire is responsible for maintaining the Concession Assets, including the Project Facilities, the Project Expressway and the relating road pavement, structures, pavement markings, bridge expansion joints, drainage infrastructure, electrical systems, slope protection layer, road side barrier, new jersey barrier, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, traffic maintenance and emergency maintenance mentioned as under.

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- a) Annual/Routine Maintenance (From year 3 of Operations phase)
- Isolated holes, Pot holes, fold pavements, skin patch, widening roads in asphaltic layer should immediately be repaired
 - Any damages to side barrier due to any accident or other causes should immediately be reported periodically
 - Road Marking Maintenance
 - Cat's Eyes Maintenance
 - Traffic Sign Maintenance
 - Minor maintenance due to damage caused by Road accidents
- b) Periodic/Major Maintenance
- Over-lays (two overlays, first after 10 years of Substantial Completion and second on 10th year of first overlay)
 - Potholes Maintenance
 - Guard Rail Maintenance
 - Shoulder Maintenance
 - New Road Markings, where required. International Road Roughness Test at selected sections identified by the Independent Engineer should be carried out at every five years of operation and any portion of pavement found failed should be maintained as per AASHTO standards with approval from Independent Engineer. All the formalities shall be checked for their stability and smooth operation.

4. OPERATION AND MAINTENANCE CRITERIA

4.1 Operation Requirements - General Criteria

During the Operations Phase of the Concession, the Concessionaire shall be responsible for the efficient operation of the Project Expressway, the recovery and removal of broken-down vehicles, the removal of debris and spillage from the concession area, the provision of other basic services to users of the facility and all toll collection activities. In this regards the Concessionaire shall formulate detailed SOPs.

The Concessionaire shall be required to liaise closely with the police and the emergencies services to ensure that performance and safety standards are met at all times.

In this section, a series of minimum performance standards are set out that must be met always by the Concessionaire. The Concessionaire shall be required to operate an Operations Manual, to be approved by the GoS, setting out procedures whereby these standards – or higher performance standards as may be agreed upon – are to be met.

4.2 Restriction on Vehicular Access

- Use of Project Expressway shall not be limited to any types of vehicles. Limitation on permissible gross vehicle weight, maximum axle load, and vehicle width, height and length shall be governed as per the NHA Standards (the **Permissible Load**).

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- The Concessionaire shall have the option to allow the vehicles exceeding the Permissible Load by up to fifteen (15%) percent subject to charging fines. In such case, the Concessionaire shall send a request to allow such vehicles exceeding the Permissible Load to the GoS via the Independent Engineer for approval.
- The GoS shall, at its sole discretion, decide whether such vehicles exceeding the Permissible Load are allowed to use the Project Expressway. Provided however, it is clarified that the Concessionaire shall not be allowed to permit vehicles weighing more than fifteen (15) percent of the Permissible Load.
- The rate of any fines to be imposed on such vehicles exceeding the Permissible Load shall be proposed by the Independent Engineer in accordance with the NHA Standards and the same shall be notified by the GoS. Such notification shall be displayed publicly by the Concessionaire at appropriate locations.
- The fines collected by the Concessionaire shall be used for any additional Operation & Maintenance expenditure incurred due to allowing vehicles exceeding Permissible Load. It is hereby agreed that any notification to allow vehicles exceeding Permissible Load shall be made on the request of the Concessionaire and that the GoS shall not provide any funding for the increased Operation & Maintenance expenditures because of allowing vehicles exceeding the Permissible Load. The increased Operation & Maintenance expenditures, if any, shall be borne by the Concessionaire.
- Vehicles exceeding the Permissible Load shall not be allowed to use the Project Expressway. The Concessionaire shall ensure that adequate facilities are built to allow such vehicles which exceed the Permissible Load to take a U-turn without hindering normal traffic flow.
- The Concessionaire shall be responsible to provide the necessary width and length of road and safety features, as approved by the Independent Engineer, when constructing such facilities to regulate the flow of vehicles exceeding the Permissible Load.

4.3 Identification of Incidents and initiation of Action

In normal circumstances, any emergency telephones if provided shall be in working order always.

The Project Control Centre shall be staffed by at least two personnel always. The principal function of these personnel shall be to receive information and to initiate appropriate actions to overcome reported incidents. Such actions shall include mobilization of vehicle recovery and emergency services.

The response time between receipt of information and initiation of appropriate action shall normally be no longer than ten (10) minutes.

4.4 Recovery of Stranded Vehicles

Throughout the duration of the Operations Phase of the Concession the CONCESSIONAIRE shall provide, at cost a vehicle recovery services to remove stranded vehicle from the Concession Area.

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This recovery service shall operate in such a manner as to provide, as a minimum, that all stranded vehicles shall, within one hour of being reported, be located and removed from the project road to the local repair facility.

The vehicles deployed, and the methods used for removal of stranded vehicles shall conform to internationally recognized standards. In addition, all staff employed in such activities shall be fully trained in all aspects of vehicle removal and road safety and shall be equipped and dressed as per latest safety rules in practice.

4.5 Removal of Debris and Spillage

At all times throughout the duration of Operation Phase of the Concession, the Concessionaire shall provide and maintain a mobile rapid response maintenance team to attend at the scene of any reported incident.

The primary function of this rapid response team shall include, but not be limited to:

- The removal of debris and spillage from the carriageway;
- The rendering safe of any identified safety hazards; and
- The introduction and monitoring of any emergency traffic management system that is required in connection with emergency situations with necessary coordination with traffic police.

The vehicle deployed, and the methods and equipment used for carrying out these emergency activities shall conform to internationally recognized standards. In addition, all staff employed in such activities shall be fully trained in all aspects of traffic safety, emergency procedures and remedial maintenance and shall wear appropriate reflective clothing.

Provision of Basic Levels of Services

In addition to the above specific operational requirements, the following basic levels of services shall be maintained always throughout the Operations Phase if:

- All parts of the project road shall remain open for use by traffic at all time, except as may be agreed from time to time by the GoS:
- All road lighting of the project road, intersections and within toll plazas, shall be illuminated throughout the hours of darkness, except as provided for under the maintenance schedule in Table 2.3 of Schedule H (*O&M Requirements*).
- All toilet facilities shall be continually staffed, and the toilets shall be maintained in a clean condition throughout the operational hours of the Service (and Rest) Areas (if such areas are provided).
- All parts of the Concession Areas shall be kept clean, tidy and free from litter.

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4.6 Traffic Management and Road Safety

When undertaking any maintenance or other activity, on or adjacent to the project road, adequate precautions shall be taken to project the safety of both the public and Concessionaire’s employee and representative. These precautions shall include, but not be limited to, the provision of adequate advance signing, the provision of appropriate traffic management system on the approaches to and adjacent to the works area, and when appropriate the provision of adequate illumination of all signing and traffic management system.

The layout of all such signing and of the traffic management systems themselves shall be in accordance with the requirement of international standards.

4.7 Toll Collection

The toll collection system employed on the Project road shall, in accordance with the requirements of electronic toll and ticketing system laid out in this Agreement be capable of providing the following information and levels of services:

- A receipt must be issued at the point where payment is made, indicating the date and place of issue, together with the vehicle type and the charge levied.
- Sufficient toll collection booths shall be operational at any one time to ensure that the maximum delay experienced by drivers on the approach to the booths is limited to no more than 2 minutes at any location;
- All toll collection staff shall be fully trained in the use of the toll collection equipment, shall be appropriately dressed in such a manner that they are easily identifiable as employees of the toll operator, and shall be respectful and courteous at times towards members of the public;
- Accurate account shall be kept of daily toll revenue at each of the toll collection points: and
- Wherever possible, data regarding the toll collection shall be recorded and relayed from the Control Center to a deputized office of the Project Manager on real time basis.

Wherever possible, either continuously or periodically, data regarding the entry and exit points of all traffic using the facility, by time of day and by vehicle type shall be collected (or retrieved from the toll collection equipment)

- Concessionaire shall install equipment, which minimize the pilferage and leakage of toll revenues.

In order to minimize fraud and to provide an independent check on the use of the facility, traffic counts shall be undertaken, at least at monthly intervals, (or on behalf of) the Concessionaire and Concessionaire’s own expense, to establish the level of traffic on project road, by time of day and vehicle type. In addition, at least every six-month variations in daily traffic patterns shall be monitored over a period of one week.

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5. MAINTENANCE WORKS AND REQUIREMENTS

5.1 General

- 5.1.1 It is an implicit requirement of the Concession that the Concessionaire shall maintain the facility in good order throughout the Concession Period. It is also a requirement that Concessionaire shall transfer the facility to the GoS, at the end of the Concession Period in an acceptable and well-maintained condition as per Article 24.
- 5.1.2 The Concessionaire shall be required to prepare SOPs and undertake a maintenance program with the objective of ensuring that the project road can be operated efficiently throughout the Concession Period and satisfies the condition Criteria at transfer.
- 5.1.3 Maintenance of the facility can be broadly divided into two specific areas day-to-day corrective action to remedy faults due to vehicle damage, vandalism and reported malfunctions; and planned maintenance based on regular inspection, assessment of condition against specified performance thresholds.
- 5.1.4 For both types of maintenance activity, a comprehensive database shall be established by the Concessionaire, detailing in date order, all reported faults (whether through planned maintenance inspections or reports from members of the public, police or other government bodies) and the corrective action taken. All such records shall remain available for inspection by the GoS for period of the Concession Period.
- 5.1.5 The road shall be re-evaluated every 9 - 10 years and a structural overlay shall be provided to enhance the life of pavement for next ten years. The same procedure shall be repeated for the overlays to enhance the design life of carriageway to next 20 years.

5.2 Road Pavement

- 5.2.1 The need for periodic maintenance of the road pavement shall be determined using annual condition and usage surveys. The function of these surveys shall be to record, in both absolute and relative terms, the road pavement's performance, ride ability and structural integrity. Bump Integrator or latest technology available shall be used for condition survey.
- 5.2.2 On an annual basis, condition surveys shall be undertaken of the whole road pavement within the Concession Area. These surveys shall be divided into one-kilometer sections and shall record:
 - the location, type and magnitude of all cracking in the road pavement (block cracking, alligator cracking, longitudinal and transverse cracking and edge cracking)
 - the extent of all potholes and patching. both within the pavement and at the pavement edge;
 - the structural strength of the road pavement and its sub layers as indicated by the extent of any depressions. or rutting in the inner and outer wheel tracks of the nearside lane;
 - the extent of any bleeding, stripping or spreading of the road surface;
 - the riding quality (roughness) of the pavement.

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5.2.3 Based on the findings of these surveys, a planned maintenance program shall be developed for the following year, the objective of such a program being to take remedial action at the earliest possible time to both reduce the overall need for maintenance and the consequent disruption to traffic.

5.2.4 In determining this maintenance program, it shall be a mandatory requirement that the condition of the road pavement conforms to the following minimum performance standards throughout the period of the Concession:

Extent of Cracking and Joint Sealing

5.2.5 Within any kilometer section of road, the extent of pavement cracking shall not exceed the limit set out in table 2.1 in all cases cracking should be non-spalling.

Table 2.1: Road Pavement, Maximum Acceptable Extent of Cracking

Type of Cracking	Maximum Acceptable levels
Centre Line Cracking	0.1 meters per sq. meter for less than 25 percent of the section length
Wheel Track Cracking	
Block Cracking	

Extent of Potholes

5.2.6 Within any one-kilometer length of road there shall be no more than five existing or patched potholes with a size greater than 500mm x 500mm x 25mm

Extent of Rutting

5.2.7 The depth of rutting at any particular location shall not exceed 13 (Thirteen) millimeters and, additionally, over a one-kilometer length of carriageway no more than 250 meters shall be rutted up to depth of 13 (Thirteen) millimeters as per AASHTO Guide for Design of Pavement Structures, Appendix-K. These criteria shall apply to the mean depth of rutting computed from measurements taken every 20 feet (6 meters) along the length of the road.

Riding Quality

5.2.8 The roughness or the pavement, over anyone kilometer length, shall not exceed a value of 5,000 millimeters per kilometer, as measured using the 'Bump Integrator' technique, or an equivalent alternative standard established through use of alternative testing methods. Roughness criteria as per Highway Design and Maintenance Standard Model (HOM 1995) is as following:

- Smooth Paved Road 2,000 mm/Km
- Reasonably Smooth Paved Road 4,000 mm/Km
- Medium Rough Paved Road 6,000 mm/Km
- Rough Paved Road 8,000 mm/Km
- Very Rough Paved Road 10,000 mm/Km

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- 5.2.9 In 'addition to ensuring that the road pavement meets the above stated minimum performance criteria, the RBOe shall also be required to conduct a 'rolling routine maintenance program to ensure that the road pavement and shoulders are adequately protected from rapid deterioration through the day-to-day actions of raffle and water penetration. This program shall include, but not be limited to:
- making good all potholes and edge failures within seven days of their being identified or reported:
 - sealing all pavement cracks at the earliest possible opportunity following the annual inspection; and
 - repairing any existing joint or crack-filling sealant that has ceased to be effective.

5.3 Structure

- 5.3.1 All structures shall be fully inspected at two yearly intervals as part of a planned monitoring procedure, and any identified defects shall be remedied within a period of six months from the date of inspection.
- 5.3.2 In addition, any structure that has been the subject of collision or other damage shall be inspected as soon as is practical. and in any event within a period of 24 hours of the incident taking place.
- 5.3.3 If such an inspection shows that the structure's structural integrity has been compromised, appropriate action shall be taken immediately to ensure the safety of road users. Remedial repairs should then be undertaken, as soon as is practical, to restore the structure to a safe operational condition.
- 5.3.4 Minor damage that does not in any way compromise the structural integrity of the structure shall be carried out within three months as part of a rolling maintenance program.

5.4 Earthworks

- 5.4.1 All earthworks shall be inspected for signs of deterioration, at three- monthly intervals, and more frequently during the monsoon season, as part of a 'rolling planned maintenance program and appropriate remedial action shall be taken to make good any identified defects.
- 5.4.2 In addition, daily inspections of any susceptible areas of earthworks (including rip-rap embankment linings) shall be made during periods when unusually high-water levels are identified adjacent to the Concession Area, and appropriate action shall be taken to both safeguard the structural integrity of the facility and to remedy any defects that occur.

5.5 Drainage

- 5.5.1 The drainage system shall be inspected and routinely maintained at six-monthly intervals. The timing of these inspections shall be such as to ensure that the system is fully functional at times of heaviest rainfall and there is no water ponding which may cause damage to the road pavement.
- 5.5.2 The six-monthly inspection and routine maintenance shall be designed to ensure that the system is free of silt and other debris, all covers, and manholes are in place and secured, and

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are fully functional. Catch basins and culvert inlets and outlets should also be cleaned regularly to remove accumulated debris.

5.5.3 In addition, at two-yearly intervals the drainage system shall be fully inspected to ascertain its structural integrity, and appropriate remedial action shall be taken as necessary

5.6 Road lighting

5.6.1 Routine maintenance activities shall be undertaken at the intervals specified Table 2.3

Table 2.3: Road Lighting, Maintenance Schedule

Interval	Maintenance Activity
Every 14 days	Remedy any defect leading to non-illumination of the lamp fitting
Every 12 months	Clean all lanterns and examine the water tightness, mechanical, structural and electrical integrity of the necessary remedial repair.
Every 36 months	Lamp change if not providing desired level of service.
Every 5 years or earlier if necessary	Repaint all lamp column in accordance with United Kingdom Department of Transport Standard BD 1/83 or similar.

2.6.2 All faults that are not rectified at the time of inspection shall be rectified as follows:

- Where the identified fault represents a structural or electrical safety hazard, steps shall be taken to affect a permanent or temporary repair within 24 hours and all temporary repairs shall be permanently rectified with in period of 14 days.
- Where lighting failures constitute a road, safety hazard the failure shall be rectified as soon as possible and at least within 14 days of the inspection; and
- Isolate lamp failures that do not constitute a road safety hazard, and any other defects that do not compromise safety, shall be rectified within six months as part of rolling 6-monthly maintenance program.

5.7 Road Signs

5.7.1 Routine maintenance of road signs shall be of two types. The first relates to the visibility and safety of the sign installation and the second relates to the overall condition of the sign.

5.7.2 Routine maintenance activities shall be undertaken at the intervals specified in Table 2.4.

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5.7.3 The maintenance activities set out in Table 2.4 shall include the inspection of all signs at the intervals specified, for the purpose of identifying and rectifying the particular category of fault. All faults that are not rectified at the time of inspection shall be rectified as follows:

- Where the identified fault represents a safety hazard, steps shall be taken to affect a permanent or temporary repair within 24 hours and all temporary repairs shall be permanently rectified within a period of 28 days.
- Where the identified fault does not represent a safety hazard, remedial action shall be undertaken as soon as is practical.
- Any road sign that is damaged beyond repair shall be replaced at the earliest opportunity and in any event within 7 days of the damage occurring.

5.7.4 In addition to the routine maintenance regime set out in Table 2.4 bulk changes of all lamps shall be carried at intervals appropriate to the type of lamp used.

Table 2.4: Road Sign, Maintenance Schedule

Interval	Maintenance Activity
Daily	Visual Inspection for damage or vandalism and the effecting of all emergency repair work identified through inspection or reported by the public, police or other body.
Every 28 days	Remedy any defect resulting in non-illumination of lamps.
At least every 6 months but more regularly if needed	Clean the surface material of all signs and luminaries and take appropriate action to ensure that unobstructed visibility is maintained in accordance with the design criteria.
Every 2 years	Maintain all electrical installation and remedy any identified faults in accordance with United Kingdom IEE Wiring Regulation (15 th Edition) or similarly approved standard.
Every 2 years	Check the structural integrity of all signs including the security of all brackets, bolts and other fittings the condition of all rivets welded joints frames posts and gantries and carry out all necessary remedial works.
	Check the appearance and condition of the sign in terms of legibility luminance color and retro-reflective properties and carry out all necessary remedial works.

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5.8 Road Markings

- 5.8.1 All road markings shall be subjected to routine inspection at least once every year. These inspections shall be aimed at determining the extent of degradation of the markings due to:
 - a. Normal wear and tear or damage
 - b. Spread due to movement of the road surface or plasticity of the material
 - c. Loss of color
 - d. Reduction in retro-reflective properties.
- 5.8.2 Apart from subjective inspections of retro-reflective properties, all inspections shall be carried out in daylight conditions:
- 5.8.3 In all cases where the level of degradation exceeds the limits set out in Table 2.5 corrective maintenance shall be undertaken within a period of six months.

5.9 Vehicular Safety Barriers

- 5.9.1 Maintenance of safety barriers shall be of two types. The first relates to identifying and rectifying collision damage, and the second relates to maintaining the overall condition of the safety barrier.

Table 2.5: Road Markings, Maintenance Performance Thresholds

Type of Degradation	Threshold for Corrective Maintenance
Wear (erosion)	70% or less of the Thermoplastic material remaining on the road surface
Spread	10% or greater increase in the dimension of the markings, when compared with specified dimensions
Color (luminance factor)	luminance factor 45% or less
Retro-reflectivity	Nominal 100mcd/m2/1lux

- 5.9.2 All vehicular safety barriers shall be visually examined daily to identify damage. All such damage that is identified shall be made safe at the earliest opportunity, and in any event within a period of 24 hours. In addition, permanent repairs to all damaged sections of safety barrier shall be affected within a period of seven days.
- 5.9.3 All safety barriers shall be inspected at six-monthly intervals to determine their condition in terms of structural integrity and horizontal and vertical alignment. Any identified defects that relate directly to user safety shall be rectified as soon as is practical, and in any event made temporarily safe within a period of 24 hours and fully rectified within the following seven days.
- 5.9.4 Other identified defects that do not affect user safety shall be rectified as part of a 'rolling' six-monthly maintenance program,

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5.10 Toll Collection and Traffic Management Equipment

5.10.1 The Maintenance Program shall specify procedures for regularly checking the condition of toll collection and traffic management equipment and the planned refurbishment or replacement of equipment to minimize losses of revenue due to equipment failure and to ensure levels of service are maintained

5.10.2 The maintenance program shall also take account of the technology life of the electrical and electronic equipment, which may be expected to be obsolete within 10 to 15 years and shall include provision for system upgrading to ensure that the system comply with international or other acceptable standards then prevailing.

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SCHEDULE I – INSURANCES

PART I – CONSTRUCTION PERIOD INSURANCES

As mutually agreed between the Parties prior to the Commencement Date.

PART II – OPERATIONS PERIOD INSURANCES

As mutually agreed between the Parties prior to the Commencement Date.

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SCHEDULE J – SPECIFIED CONCESSIONAIRE PERMITS

1. Works & Services Department, Government of Sindh.
2. PPP Policy Board, Government of Sindh.
3. Environmental Protection Agency, Govt. of Sindh.
4. Water & Power Development Authority, Government of Pakistan.
5. National Transmission & Despatch Company Limited.
6. Karachi Water & Sewerage Board. (KWSB)
7. K-Electric, the Karachi Electric Supply Company.
8. Sui Southern Gas Company Limited.
9. Pakistan Telecommunication Authority.
10. Oil & Gas Development Corporation.
11. Mosques, Imam Barghas, Places of Religious Affairs, Government of Sindh.
12. Culture Department, Government of Sindh.
13. Karachi Metropolitan Corporation (KMC)
14. Sindh Building Control Authority (SBCA)
15. Sindh Mass Transit Cell (SMTC) / Sindh Mass Transit Authority (SMTA)
16. National Highway Authority (NHA)

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SCHEDULE K – CORPORATE DOCUMENTS

10. The certified copies of the memorandum and articles of association of the Concessionaire;
11. Board Resolution duly passed by the board of directors of the Concessionaire resolving that the Concessionaire may undertake the Project and stating the name of the authorized signatory of the Concessionaire who shall sign this Agreement, the GoS Agreements, the Financing Documents, and the Project Agreements (to which the Concessionaire is a party) and all other necessary documents in favor of the GoS for and on behalf of the Concessionaire;
12. Certificate of incorporation; and
13. Latest filings with Security Exchange Commissions Pakistan.

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SCHEDULE L – FORM OF CONSTRUCTION PERFORMANCE SECURITY

To:
PROJECT MANAGER,
MALIR EXPRESSWAY PROJECT
GOVERNMENT OF SINDH

GUARANTEE NO. (hereinafter referred to as the “**Guarantee**”)

Dated:

[INSERT NAME OF BANK], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “**CONCESSION AGREEMENT**” dated [●], 2019 (hereinafter referred to as the “**Agreement**”) for the design, engineering, construction, financing, commissioning, operations and maintenance of the Blue Line BRT Infrastructure Project in Karachi under the public private partnership mode:

- (a) **THE GOVERNOR OF SINDH** (THROUGH LOCAL GOVERNMENT DEPARTMENT, GOVERNMENT OF SINDH), having its offices at Sindh Secretariat, Karachi, Pakistan (hereinafter referred to as the “**GoS**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Concessionaire is required to provide the GoS with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the GoS, without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately, however not later than within ten (10) business days from the date of the Guarantor Bank’s receipt of the GoS’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], such Demand stating:

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

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the GoS.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee immediately (however not later than ten (10) business days) of its receipt of the GoS’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account.

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

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

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

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

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

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

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

The GoS shall not assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee without the prior written consent of the Guarantor Bank and the Concessionaire.

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

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

.....
NAME:
DESIGNATION:
DATED:

WITNESSES

WITNESS I

WITNESS II

.....
NAME:
CNIC No.:

.....
NAME
CNIC No.:

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CONCESSIONAIRE INITIALS

SCHEDULE M – FORM OF O&M PERFORMANCE SECURITY

TO
PROJECT MANAGER,
MALIR EXPRESSWAY PROJECT,
GOVERNMENT OF SINDH

GUARANTEE NO. (hereinafter referred to as the “**Guarantee**”)

Dated:

[INSERT NAME OF BANK], being the Guarantor issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “**CONCESSION AGREEMENT**” dated [●], 2019 (hereinafter referred to as the “**Agreement**”) for the design, engineering, construction, financing, commissioning, operations and maintenance of the Blue Line BRT Infrastructure Project in Karachi under the public private partnership mode:

- (a) **THE GOVERNOR OF SINDH** (THROUGH LOCAL GOVERNMENT DEPARTMENT, GOVERNMENT OF SINDH), having its offices at Sindh Secretariat, Karachi, Pakistan (hereinafter referred to as the “**GoS**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●], Pakistan (hereinafter referred to as the “**Concessionaire**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Concessionaire is required to provide the GoS with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the GoS, without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately, however not later than within ten (10) business days from the date of the Guarantor Bank’s receipt of the GoS’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], such Demand stating:

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

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the GoS.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee immediately (however not later than ten (10) business days) of its receipt of the GoS’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account.

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

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

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

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

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

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

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

The GoS shall not assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee without the prior written consent of the Guarantor Bank and the Concessionaire.

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

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

.....
NAME:
DESIGNATION:
DATED:

WITNESSES

WITNESS I

WITNESS II

.....
NAME:
CNIC No.:

.....
NAME
CNIC No.:

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**SCHEDULE N – PART I - INDICATIVE INDEPENDENT AUDITOR TERMS OF
REFERENCE**

[To be mutually agreed by the Parties]

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SCHEDULE N – PART II - INDICATIVE INDEPENDENT ENGINEER TERMS OF REFERENCE

1. GENERAL

The Independent Engineer of the Project shall, in principle be responsible for review / approving / certifying of designs, drawings, all the activities associated with the construction works to ensure compliance with the technical requirements, progress monitoring, and affirmation of all certification done by the Concessionaire.

The Independent Engineer shall supervise that the requirement of this Agreement and its various appendices, other than mentioned for Independent Auditor of the Project, are met by the Concessionaire and in case of any discrepancy / deviations and shall inform GoS and the Concessionaire. The responsibility of the Independent Engineer during various phases of design review, construction and operation and maintenance shall be but not limited to the following.

2. DESIGN REVIEW PHASE

- (a) Review and approve the adequacy of topographical surveys, geo-technical and sub-soil investigations, hydrological investigation for the Project Expressway, project buildings and other structures.
- (b) Review and approve the condition survey of existing utilities & their relocation design and Construction Drawings prepared and submitted by the Concessionaire to the Independent Engineer for the construction of various components of the road, bridges / structures, river training works, erosion protection works, guide banks, spurs, estimates, reports and other deliverables with regard to:
 - i. Adequacy, completeness, optimality and capability of design to perform as required in anticipated operating conditions and to meet the technical requirements specified in this Agreement.
 - ii. Identification of project design features or any major equipment component that does not appear to meet design, performance requirements or fails to adhere to good engineer practice.
 - iii. Provide an opinion on the quality of the design with respect to their effect on the anticipated service life of the facility, the degree of maintenance needed to meet performance requirements and long-term availability over the term of the Concession.
- (c) Review and approve reports prepared and submitted by the Concessionaire, with respect to the traffic, traffic management etc.
- (d) Review and approve the implementation schedule of engineering, design, procurement and construction of the Project submitted by the Concessionaire and determine that adequate provisions have been made for the following:
 - i. Design
 - ii. Raw material sourcing

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- iii. Raw material processing equipment
 - iv. Utilities
 - v. Other Equipment procurement
 - vi. Construction
 - vii. Testing
- (e) Review and approve the Operation and Maintenance during the Operations Period.
 - (f) Review and comment on the consistency of all project documents.
 - (g) Review the available permits or permit applications.
 - (h) Review the environmental management plan for the Project Expressway during the Construction Period (and the Operations Period, if required).
 - (i) Review and comment on the utilities arrangement for the Project, including, but not limited to the water supply and electricity supply.
 - (j) Review and approve the adequacy and reasonableness of the Project co-ordination and monitoring systems.
 - (k) Review quality assurance and quality control provisions during the design, and construction and O&M phase:
 - (i) Independent Engineer is required to prove due diligence and utmost expertise in ensuring that quality control provisions are maintained at all times during the Construction Period and the Operations Period.
 - (ii) Independent Engineer shall be responsible to report to the GoS/Lenders in case the quality standards and quality control provisions are not maintained on the Project Site
 - (l) Audit the safety of the Project Expressway during Construction Period and the Operations Period.
 - (m) Reviewing the safety measures proposed for the construction of the facilities and their compliance with the safety regulations.
 - (n) Review, Audit, Comment and approve the working methodology submitted by the Concessionaire regarding the construction of project infrastructure in densely populated areas to avoid disturbance to traffic and public.

3. ROLE OF INDEPENDENT ENGINEER DURING CONSTRUCTION PHASE

- (a) The duties of the Independent Engineer are to supervise the works in detail and to approve the materials, formworks, and workmanship of the works on a fulltime basis. As stated in the Concession Agreement, the Independent Engineer shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations.

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- (b) The Independent Engineer shall review and approve works program prepared and submitted by the Concessionaire. Payments shall be made upon Independent Engineer's certification, with final approval of Independent Auditor.
- (c) The Independent Engineer shall supervise/approve each and every activity including material testing, mix designs, JMFs, day to day testing such as FDT etc. and review the material testing results and mix designs and to order special tests of materials and / or completed works, and / or order removal and substitution of substandard material and / or work as required.
- (d) The Independent Engineer shall review and approve work methodology of each item of work.
- (e) The Independent Engineer shall review quality assurance and quality control during construction period.
- (f) The Independent Engineer shall ensure that the Construction Works is accomplished in accordance with the Applicable Standards and best engineering practice.
- (g) The Independent Engineer shall identify construction delays, if any and recommend to the GoS/Lenders the remedial measures to expedite the progress.
- (h) Review and approve shop drawings for each component of the Project Works prepared and submitted to Independent Engineer by the Concessionaire.
- (i) Review the "Construction Drawings" and "As Built" drawings for each component of the Project Works prepared and submitted to Independent Engineer by the Concessionaire.
- (j) Review the safety measures provided for the traffic and Project workers.
- (k) Determine any extension of the Project Completion Schedule, to which the Concessionaire is entitled and shall notify GoS/Lenders, accordingly.
- (l) Review compliance by the Concessionaire of its obligations under the Concession Agreement.
- (m) Issue Substantial Completion Certificate after checking the results and workability of the Project assets after the prescribed tests.
- (n) Issue Substantial Completion Certificate duly appended with a list of outstanding items (Project Completion Check List).
- (o) For performance testing, the Independent Engineer shall:
 - (i) Review test procedures developed by the Concessionaire appointed O&M Contractor and confirm compliance with applicable test codes and standards and with testing criteria specified in Concession Agreement and its Schedules.
 - (ii) Review the quality control reports, material testing results and mix design and to order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required.

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- (iii) Review test reports prepared by Concessionaire or Concessionaire's testing consultant.
- (iv) Monitor successful completion of each Project Completion Check List Items. Make one final visit to Project Site to verify that Project Completion Check List Items have been completed and thereafter sign and submit the Final Project Construction Completion Certificate.
- (p) Review & approve the Land and Utility folder (i/c. its relocation criteria, typical X-Sections.

4. ROLE OF INDEPENDENT ENGINEER DURING OPERATIONS PERIOD

- (a) Review and approve work plan and schedules of various operation and maintenance activities
- (b) Review and approve the O&M Manual(s) prepared by the Concessionaire for their completeness and compatibility with those of similar facilities
- (c) Review and approved the performance of Operation and Maintenance activities including equipment, service, traffic, operation and safety
- (d) Recommend necessary actions to the GoS / Lenders to undertake maintenance obligations of the Concessionaire at risk and cost of the Concessionaire in the event of his failure to carry out the Operations and Maintenance
- (e) Undertake audit of the traffic using the Project Expressway at reasonable times
- (f) Review and inspect the Project Expressway and its assets at all reasonable times and upon reasonable notice to the Concessionaire during the Operations and Maintenance Period and issue a Construction Inspection Report and O&M Inspection Report of such inspections to the Lenders
- (g) Review the accident record, prepared and submitted by Concessionaire, on the Project Expressway and suggest remedial measures at reasonable intervals

5. THE OTHER FUNCTIONS OF THE INDEPENDENT ENGINEER SHALL BE THE FOLLOWING.

- (a) Perform functions, including issue of directions to the Concessionaire, in respect of the Emergency De-commissioning of the Concession Assets as provided in this Agreement.
- (b) Verify and ascertain evidence of insurance cover as provide in this Agreement.
- (c) Perform functions in respect of Change of Scope as provided in this Agreement
- (d) Inspect the Concession Assets including the Project Expressway at the time of handing over thereof by the Concessionaire to the Lenders/GoS and perform functions in respect to such handing over as provided in this Agreement

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SCHEDULE O – FORM OF VESTING CERTIFICATE

- a. [insert details] being the Independent Engineer, and [insert details] being the Independent Auditor, refer to the agreement entitled “Concession Agreement” dated [●], 2019 (as amended from time to time) (the “**Concession Agreement**”) relating to, *inter alia*, the designing, construction, development, operation and maintenance (through Public Private Partnership on a design, build, finance, operate and transfer basis) the [●] (the “**Project**”);

- b. The Independent Engineer and the Independent Auditor hereby acknowledge the compliance the fulfillment by the Concessionaire of the Divestment Requirements set forth in Article 24 of the Concession Agreement and, on such basis, hereby issue this Vesting Certificate (the “**Certificate**”). Upon issuance of this Certificate, the GoS shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Concession Assets (*as defined in the Concession Agreement*) and the same shall be deemed to have vested unto the GOS, free from any encumbrances, charges and liens whatsoever, other than such encumbrances which the GoS was responsible to prevent under the terms of this Agreement.

Signed this day of, at Karachi.

FOR AND ON BEHALF OF
[INSERT DETAILS]

Signature

Name

Designation

Signed in the presence of the following witnesses:

Signature

Signature

Name

Name

NIC No.

NIC No.

.....
GOS INITIALS

.....
CONCESSIONAIRE INITIALS

FOR AND ON BEHALF OF

[•]

Signature

Name

Designation

Signed in the presence of the following witnesses:

Signature

Name

NIC No.

Signature

Name

NIC No.

.....
GOS INITIALS

.....
CONCESSIONAIRE INITIALS

SCHEDULE P – TOLL NOTIFICATION STRUCTURE

[To be informed by the GoS]

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SCHEDULE Q – BENCHMARK TOLL REVENUE & MRG SCHEDULE

Operational Years	Benchmark Revenue (PKR)	MRG %	MRG Amount PKR
1	2,326,157,939	100%	2,326,157,939
2	2,815,987,850	100%	2,815,987,850
3	2,954,856,580	95%	2,807,113,751
4	3,606,646,259	80%	2,885,317,007
5	3,767,799,994	75%	2,825,849,995
6	4,560,358,247	50%	2,280,179,123
7	4,759,723,434	50%	2,379,861,717
8	5,745,931,033	50%	2,872,965,516
9	5,998,166,236	50%	2,999,083,118
10	7,247,503,826	50%	3,623,751,913
11	7,566,714,255	0%	-
12	8,882,854,217	0%	-
13	9,275,644,115	0%	-
14	10,899,088,018	0%	-
15	11,382,472,600	0%	-
16	13,258,305,043	0%	-
17	13,722,478,907	0%	-
18	15,938,311,989	0%	-
19	16,496,281,024	0%	-
20	19,155,239,920	0%	-
21	19,825,959,794	0%	-
22	23,031,030,366	0%	-
23	23,836,851,937	0%	-
24	27,668,258,614	0%	-
25	28,636,829,688	0%	-

Vehicle Type	Toll Rate Operational Year 1 (PKR)
Car/ Jeep/ Taxi/ Pickup	90
Wagon/ Hiace	145
Coach/ Coaster/ Mini Bus	205
Large Bus	290
2 Axle Truck	395
3 Axle Truck	395
4 or More Axle Truck/ Articulated Truck	495

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TOLL RATE GROWTH

The toll rate has been assumed to be growing at fifteen percent (15%) every alternate year for the first (1st) ten (10) years of operations and twelve percent (12%) every alternate year thereafter till the end of the Concession Period i.e. year twenty fifth (25th).

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SCHEDULE R – FORM OF TOLL NOTIFICATION

The Toll Notification shall be issued by the GoS in accordance with the Applicable Laws.

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SCHEDULE S – NOTICES

1. GOS:

Attention: Project Director, Malir Expressway Project

Address: Ground Floor, Tughlaq House, Shakra-e-Attaturk Road, Karachi, Pakistan

Phone: 021-99212314

2. CONCESSIONAIRE:

Attention: [•]

Address: [•]

Phone: [•]

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SCHEDULE T – TERMINATION PAYMENT

SR. NO.	TERMINATION PAYMENT AMOUNT	COMPENSATION PAYABLE BY GOS
1.	Non-Political Event Termination Amount	(a) the Termination Equity; plus (b) the Financing Due
2.	Political Event Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount, plus (c) the Financing Due
3.	Concessionaire Default Termination Amount	(a) the Financing Due
4.	GoS Default Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount, plus (c) the Financing Due
5.	Corrupt Act Termination Amount	(a) the Financing Due
6.	Change in Law Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount, plus (c) the Financing Due

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SCHEDULE U – FINANCIAL MODEL

[To be inserted]

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SIGNATURE PAGE

For and on behalf of
LOCAL GOVERNMENT DEPARTMENT,
GOVERNMENT OF SINDH
through its authorised signatory



SIGNATURE

Name:
Designation:

Name:
Designation:

in the presence of
WITNESSES:

SIGNATURE

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

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:

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