

VOLUME IV
EQUITY FUNDING AND UTILIZATION AGREEMENT

between

(1) THE GOVERNOR OF SINDH
(THROUGH THE LOCAL GOVERNMENT & HOUSING TOWN PLANNING
DEPARTMENT, GOVERNMENT OF SINDH)

(2) [SPONSORS]¹

- and -

(3) [THE COMPANY]

relating to the
KARACHI HUB WATER CANAL PROJECT

Dated [●]

Drafting Notes:

- 1. Items highlighted in green in the draft EFU Agreement (including the appendices) will be inserted prior to signing and (where stated) extracted from the relevant document referenced in the footnotes.***
- 2. This Agreement shall be updated accordingly if the Sponsor is a single entity.***
- 3. Concept of “Project Accounts” and related provisions in the EFU Agreement will be appropriately updated if (subject to State Bank of Pakistan special permission) the Company is not permitted to establish foreign currency accounts or where the Company elects not to establish foreign currency accounts.***

¹ Details as per Bidding Form T4 or T5 (as applicable) of the Proposal

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This **EQUITY FUNDING AND UTILIZATION AGREEMENT** is made on [●], ~~2022~~2023 at Karachi, Pakistan.

BETWEEN:

- (1) **THE GOVERNOR OF SINDH** (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) having its office located at Local Government Department, Ground Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan for and on behalf of the Government of Sindh (the “**GoS**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);
- (2) **[SPONSORS]**, (hereinafter referred to as the “**Initial Sponsors**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns)²; and
- (3) **[COMPANY]**³, a company incorporated under the Laws of Pakistan whose registered office is located at [●] (the “**Company**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

RECITALS:

- A The GoS, the Karachi Water and Sewerage Board (KW&SB) and the Company entered into the Concession Agreement for the Project.
- B This Agreement is to be executed together with the Concession Agreement setting out, *inter alia*, the terms and condition of funding of costs associated with the Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

² Details as per Bidding Form T4 or T5 (as applicable) of the Proposal.

³ Insert name of company to be incorporated by the Sponsors.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless specified otherwise herein, in this Agreement (including the recitals), all capitalized terms shall have the meanings assigned to them under the Concession Agreement (~~as~~ defined below). In addition, the following terms shall have the following meanings, unless the context otherwise requires:

“Account Bank” means a banking company or financial institution incorporated under the Laws of Pakistan appointed with the written consent of the Parties;

“Agreement” means this Equity Funding and Utilization Agreement, as amended and supplemented from time to time;

“Approved Budget” means the Approved EPC Budget and the Approved Non-EPC Budget, as approved in accordance with clause 2.5.2.1;

“Approved EPC Budget” means the budget, prepared on the basis of the Base Case Financial Model, duly approved in accordance with clause 2.5.2.1, that sets out the payments to be made by the Company to the EPC Contractor for each Approved EPC Milestone, as may be amended from time to time in accordance with clause 2.5.4;

“Approved EPC Milestone” means the relevant EPC Milestone completed by the EPC Contractor in accordance with the EPC Contract in each case to the satisfaction of the Independent Engineer;

“Approved EPC Payment Amount” means the amounts to be paid to the EPC Contractor in respect of the Approved EPC Milestone after adjusting for disbursement of debt by the Financing Parties (if applicable) in terms of the Financing Documents, as verified and certified by the Independent Appointees;

“Approved First Funding Amount” means the Approved Sponsor First Funding Amount and the Approved GoS First Funding Amount;

“Approved Funding Amount” means the Approved Sponsor Funding Amount or the Approved GoS Funding Amount (as applicable), where each amount is determined by the Independent Auditor prior to issuance of each Funding Notice on the basis of: (a) the Funding Ratio; and (b) (where applicable) after adjusting for debt disbursement by the Financing Parties in terms of the Financing Documents for funding the relevant Expenditure provided that in no event shall any contribution by the GoS of the Approved GoS Funding Amount exceed (in aggregate) the GoS Equity Amount or result in the GoS holding more than [●]⁴ of the issued and paid-up share capital of the Company;

⁴ Insert maximum percentage determined on basis of Proposal, not to exceed 49%.

“Approved GoS First Funding Amount” means such amount as certified by the Independent Appointees in accordance with the Approved Budget and set out in the First Funding Notice;

“Approved GoS Funding Amount” means: (a) the Approved GoS First Funding Amount; and (b) each Approved GoS Subsequent Funding Amount, provided the sum of (a) and (b) shall in no event exceed the GoS Equity Amount or result in the GoS holding more than [●]⁵ of the issued and paid-up share capital of the Company;

“Approved GoS Subsequent Funding Amount” means such amount as certified by the Independent Appointees in accordance with the Approved Budget and set out in each Subsequent Funding Notice;

“Approved Sponsor First Funding Amount” means such amount as certified by the Independent Appointees in accordance with the Approved Budget and set out in the First Funding Notice;

“Approved Sponsor Funding Amount” means the Approved Sponsor First Funding Amount and each Approved Sponsor Subsequent Funding Amount;

“Approved Sponsor Subsequent Funding Amount” means such amount as certified by the Independent Appointees in accordance with the Approved Budget and set out in each Subsequent Funding Notice;

“Approved Non-EPC Budget” means the budget, prepared on the basis of the Base Case Financial Model, duly approved in accordance with clause 2.5.2.1, that sets out payments to be made by the Company for Non-EPC Expenditures, as may be amended from time to time in accordance with clause 2.5.4;

“Arbitration” has the meaning given to it in clause 16.4.1.1;

“Arbitrators” has the meaning given to it in clause 16.4.1.1;

“Award” has the meaning given to it in clause 16.4.4;

“Class A Equity Subscription Account (PKR)” means a deposit account denominated in Pakistani Rupees titled “Class A Equity Subscription Account (PKR)” that is to be opened and maintained by the Company at the Designated Branch of the Account Bank and notified in writing to the GoS and the Independent Auditor;

“Class A Equity Subscription Account (USD)” means a deposit account denominated in United States Dollars titled “Class A Equity Subscription Account (USD)” that is to be opened and maintained by the Company at the Designated Branch of the Account Bank in accordance with Legal Requirements and notified in writing to the GoS and the Independent Auditor;

“Class A Shares” means shares of the Company designated as ‘class A shares’ issued to the Sponsors from time to time in compliance with the Legal Requirements, provided, however,

⁵ [●] Insert maximum percentage determined on basis of Proposal, not to exceed 49%.

where the Approved Sponsor Funding Amount is Funded in USD, the Class A Shares will be registered on a repatriable basis by the State Bank of Pakistan or the authorized dealer, as applicable;

“**Class B Dividends**” means, to the extent the Electricity Reimbursement Payment (as defined in appendix 8 of the Concession Agreement) is not reduced by element ‘V’ (if applicable), the amount by which the Electricity Reimbursement Payment would have been reduced shall be considered as Class B Dividends;

“**Class B Equity Subscription Account**” means a deposit account denominated in Pakistani Rupees titled “Class B Equity Subscription Account” that is opened and maintained by the Company at the Designated Branch of the Account Bank and notified in writing to the GoS and the GoS Account Bank;

“**Class B Shares**” means shares of the Company designated as ‘class B shares’ issued to the GoS or its nominee(s) from time to time;

“**Commitment Percentage**” means, in respect of:

- (a) [insert sponsor name], [●]%; and
- (b) [insert sponsor name], [●]%;⁶

“**Concession Agreement**” means the concession agreement between the GoS, the Karachi Water and Sewerage Board and the Company dated [●] relating to the Project;

“**Cost Overrun**” mean, at any time, the amount (if any) of the Project Costs (excluding any Increased Costs) that will be payable to achieve the Project Commercial Operations Date that exceeds or is projected to exceed the Project Cost in the Initial Approved Budget, as determined from time to time by the Independent Appointees;

“**Cost Overruns Demand Notice**” has the meaning given to it in clause 2.2.3;

“**Deed of Accession**” means a deed of accession substantially in the form set out in appendix 5;

“**Designated Branch**” means the designated branch of: (a) the Account Bank that is designated by the Company in respect of the Project Accounts; and (b) the GoS Account Bank that is designated by the GoS in respect of the GoS Equity Account;

“**Dispute**” means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Agreement or the Parties’ performance or non-performance of this Agreement;

“**EFU Effective Date**” means the date of this Agreement;

⁶ Details as per Bidding Form T4 or T5 (as applicable) of the Proposal.

“EPC Advance Payment” means the one-time sum payable to the EPC Contractor by the Company as advance in accordance with the EPC Contract and the Approved EPC Budget;

“EPC Milestone” means each payment milestone (including specified conditions or milestones under the EPC Contract for release of the EPC Advance Payment) as set out in the Approved EPC Budget and the EPC Contract;

“EPC Payments” means the EPC Advance Payments and any amounts payable to the EPC Contractor by the Company in accordance with the Approved EPC Budget in respect of each Approved EPC Milestone; provided, that any amounts which are to be retained from the EPC Contractor and are to be paid after expiry of the relevant retention period in accordance with the Approved EPC Budget, shall also be construed as an EPC Payment;

“Expenditures” means the EPC Payments and the Non-EPC Expenditures;

“First Funding Notice” means the written notice to be issued by the Company to each Funding Party (with a copy issued and delivered to the other Funding Party, the GoS Account Bank, the Account Bank and the Independent Appointees) pursuant to clause 3.1, in the form and substance attached hereto:

- (a) in case of such notice being issued to the Sponsors, at part 1 of appendix 1;
- (b) in case of such notice being issued to the GoS, at part 2 of appendix 1;

“Fund”, “Funding” and its grammatical variations, means:

- (a) in case of the GoS, subscription by the GoS to the Class B Shares by crediting (in Pakistani Rupees) the Class B Equity Subscription Account, from time to time, with the Approved GoS Funding Amount; and
- (b) in case of the Sponsors:
 - (i) subscription by the Sponsors to the Class A Shares by crediting (in Pakistani Rupees) the Class A Equity Subscription Account (PKR), from time to time, with the Approved Sponsor Funding Amount to be funded in Pakistani Rupees;
 - (ii) subscription by the Sponsors to the Class A Shares by crediting (in United States Dollars) the Class A Equity Subscription Account (USD), from time to time, with the Approved Sponsor Funding Amount to be funded in United States Dollars;
 - (iii) provision of Sponsor Loan by the Sponsors by crediting (in Pakistani Rupees) the Class A Equity Subscription Account (PKR), from time to time, with the Approved Sponsor Funding Amount to be funded in Pakistani Rupees; or
 - (iv) provision of Sponsor Loan by the Sponsors by crediting (in United States Dollars) the Class A Equity Subscription Account (USD), from time to time,

with the Approved Sponsor Funding Amount to be funded in United States Dollars;

“Funding Account” means:

- (a) in case of the GoS, the Class B Equity Subscription Account; and
- (b) in case of the Sponsors, the:
 - (i) Class A Equity Subscription Account (PKR); and
 - (ii) Class A Equity Subscription Account (USD);

“Funding Notice” means the First Funding Notice and each Subsequent Funding Notice (as applicable);

“Funding Parties” means the GoS and the Sponsors, and **“Funding Party”** means any of them;

“Funding Period” means the period commencing from the Commencement Date and ending on the Day immediately preceding the Project Commercial Operations Date;

“Funding Ratio” means the ratio of: (a) the Approved Sponsor Funding Amount, to (b) Approved GoS Funding Amount to be Funded by the respective Funding Parties pursuant to a Funding Notice, which ratio:

- (a) shall be determined by the Company, with approval of the Independent Auditor, prior to issuance of a Funding Notice to ensure that at no time the GoS holds more than ● of the paid-up share capital of the Company; and
- (b) shall not fall below ●; ⁸

“GoS Account Bank” means a scheduled bank in Pakistan with a minimum credit rating of at least ‘AA-’ as rated by VIS or an equivalent rating by PACRA;

“GoS Account Instructions Revocation Date” has the meaning given to it in clause 6.2.2;

“GoS Equity Account” means the Pakistani Rupee denominated account of the GoS to be opened and maintained at the Designated Branch of the GoS Account Bank, details of which shall be notified in writing by the GoS (and confirmed by the GoS Account Bank) to the Company, the Sponsors and the Independent Appointees;

“GoS Equity Account Standing Instructions” means the standing instructions issued by the GoS to the GoS Account Bank in accordance with this Agreement and substantially in the form and content attached hereto at appendix 3;

⁷ Insert maximum percentage determined on basis of Proposal, not to exceed 49%

⁸ Ratio to be updated based on ratio of GoS Equity Amount against Sponsor Funding Amount, each as stated in the Proposal.

“GoS Equity Amount” means the amount not exceeding [REDACTED]⁹, to be Funded by the GoS in accordance with this Agreement and which in no circumstances results in the GoS holding more than [REDACTED]¹⁰ of the paid-up share capital of the Company;

“Initial Approved Budget” means the first Approved EPC Budget and the first Approved Non-EPC Budget prepared on the basis of the Base Case Financial Model and approved in accordance with clause 2.5.2.1, including any revision thereto permitted only for acceleration of progress of the C&O Activities pursuant to clause 2.5.4;

“Initial Project Cost” means the Project Cost as set out in the Base Case Financial Model;

“Initial Sponsor(s)” has the meaning given to it in the preamble of this Agreement;

“Lead Developer” means [REDACTED];¹¹

“Lead Investor” means [REDACTED];¹²

“New Sponsor” means any transferee to whom any Class A Shares have been transferred in accordance with clause 7.7;

“Non-EPC Expenditures” means all expenditures to meet the Projects Costs excluding the EPC Payments;

“Operating Account” has the meaning given to it in clause 2.5.5;

“Operating Costs” means all operating costs and expense incurred or to be incurred by the Company other than as set out in the Initial Approved Budget;

“Parties” means the GoS, the Sponsors and the Company, and **“Party”** means any of them;

“Performance Security Cost” has the meaning given to it in clause 2.4.1;

“Project Account Profits” has the meaning given to it in clause 5.4.1;

“Project Accounts” means the Class A Equity Subscription Account (PKR), Class A Equity Subscription Account (USD) and the Class B Equity Subscription Account;

“Project Costs” means (without double-counting), any costs or expenses relating to the Project as set out in the Financial Model stated in Pakistani Rupees, which costs and expenses may include one or more of the following:

- (a) capital costs;

⁹ Insert GoS Equity Amount as specified in Bidding Form F1.

¹⁰ Insert maximum percentage determined on basis of Proposal, not to exceed 49%

¹¹ Details as per Bidding Form T4 or T5 (as applicable) of the Proposal

¹² Details as per Bidding Form T4 or T5 (as applicable) of the Proposal

- (b) costs and expenses in respect of the design, engineering, procurement, manufacture, construction, rehabilitation, commissioning, testing and completion of the KWC;
- (c) financing costs;
- (d) costs of Taxes imposed on or payable by the Company;
- (e) fixed operating costs during the C&O Period; and
- (f) all other costs and expenses incurred in connection with the Project during the C&O Period in accordance with the Financial Model;

including any increase in costs and expenses stated in (a) to (f) above due to devaluation of the Pakistani Rupees or increase in the base rate applicable to borrowing from a Finance Party, but excluding any Operating Costs;

“Proposed Budget” has the meaning given to it in clause 2.5.1;

“Proposed EPC Budget” has the meaning given to it in clause 2.5.1.2;

“Proposed Non-EPC Budget” has the meaning given to it in clause 2.5.1.1;

“Proposed Utilization Statement” has the meaning given to it in clause 4.2.1;

“Quarter” means each three (3) Month period during the Funding Period;

“Rejected Amounts” has the meaning given to it in clause 4.2.3.2;

“Required First Funding Date” has the meaning given to it in clause 3.1.5;

“Required Funding Date” means any of the Required First Funding Date or the Required Subsequent Funding Date, as applicable;

“Required Subsequent Funding Date” has the meaning given to it in clause 3.2.4;

“Sponsor Funding Amount” means [REDACTED]¹³;

“Sponsor Loans” means Sponsor Equity advanced by any Sponsor in the form of loans to the Company, in each case:

- (a) in accordance with this Agreement;
- (b) compliant with the Subordination Terms and Legal Requirements; and

¹³ This amount will be the total equity commitment of the Sponsors (excluding Cost Overruns) set out in the Proposal. **Maximum Foreign Equity and Maximum Local Equity stated in Bidding Form 2-G.**

- (c) where the Sponsor Loan is Funded in United States Dollars, the United States Dollar amounts contributed as Sponsor Loan shall be as set out in the registration of Sponsor Loan issued by the authorized dealer or the State Bank of Pakistan;

“Sponsor Pre-Funded Equity Amount” has the meaning given to it in clause 3.3.1;

“Sponsors” means one or more Initial Sponsor(s) or any New Sponsor;

“Subordination Terms” means such subordination terms and conditions for Sponsor Loans as may be specified by the GoS and the Independent Auditor;

“Subsequent Funding Notice” means the written notice (excluding the First Funding Notice) to be issued by the Company to each Funding Party (with a copy issued and delivered to the other Funding Party, the GoS Account Bank, the Account Bank, the Independent Appointees) pursuant to clause 3.2, in the form and substance attached hereto:

- (a) in case of such notice being issued to the Sponsors, at part 1 of appendix 1;
- (b) in case of such notice being issued to the GoS, at part 2 of appendix 1;

“Transfer Criteria” means:

- (a) the transferee:
- (i) is not an Adverse Person;
 - (ii) is not a defaulter of any bank or financial institution; and
 - (iii) in the sole opinion of the GoS, complies with the relevant qualification and evaluation criteria for such outgoing Sponsor as set out at the prequalification and bidding stage of the Project; and
- (b) the transfer of shareholding is in compliance with the applicable Legal Requirements;

“Transferring Sponsor” has the meaning given to it in clause 7.4.1.2;

“Utilization”, “Utilize” and its grammatical variations, means utilization of the Approved Funding Amount by the Company in accordance with the Approved Budget, including:

- (a) in respect of Non-EPC Expenditures, in accordance with the Approved Non-EPC Budget; and
- (b) in respect of EPC Payments, in accordance with the Approved EPC Budget;

“Unutilised Amounts” has the meaning given to it in clause 4.2.1.2; and

“Utilization Statement Certificate” has the meaning given to it in clause 4.2.3.

1.2 Interpretation

1.2.1 The rules of construction and interpretation set forth in clause 1.2 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. FUNDING OBLIGATIONS

2.1 Funding Amount

2.1.1 The GoS undertakes and agrees, subject to the terms of this Agreement, to Fund the Approved GoS Funding Amount up to an amount not exceeding the GoS Equity Amount.

2.1.2 Each Sponsor undertakes and agrees, subject to the terms of this Agreement, to Fund the Sponsor Funding Amount in proportion to its Commitment Percentage by way of:

2.1.2.1 subscription to the Class A Shares; and / or

2.1.2.2 a Sponsor Loan to the Company,

provided, however, any Funding by the Sponsor under this clause 2.1.2 shall be subject to minimum shareholding requirements under clause 7.4.4 and not result in the GoS holding more than [●]¹⁴ of the issued and paid-up share capital of the Company.

2.1.3 If any Sponsor fails to Fund its respective Commitment Percentage of the Sponsor Funding Amount, in terms of this Agreement, the Lead Investor shall be liable to Fund the same within three (3) Business Days of the Required Funding Date, provided that, where the Lead Investor is required to Fund the Commitment Percentage of a Sponsor in terms of this clause 2.1.3, the Funding by the Lead Investor shall in no event result in the Lead Developer holding less than ten percent (10%) of the issued and outstanding share capital of the Company as required by clause 7.4.4.2.

2.1.4 If the Lead Investor fails to fund any amount in terms of clause 2.1.3 or the Lead Developer (at any time) holds less than ten percent (10%) of the issued and outstanding share capital of the Company, each such event shall constitute a Company Event of Default.

2.1.5 The Sponsors' obligation to fund the Sponsor Funding Amount is in addition to its other obligations under this Agreement.

2.2 Commitment to Fund Cost Overrun

2.2.1 Each Sponsor undertakes and agrees, subject to the terms of this Agreement, to fund any Cost Overrun that may from time to time arise in accordance with this clause 2.2, in proportion to its Commitment Percentage.

¹⁴ Insert maximum percentage determined on basis of Proposal, not to exceed 49%

2.2.2 Any Cost Overruns shall be funded by the Sponsors, or the Lead Investor under clause 2.2.4 (as the case may be), by way of:

2.2.2.1 subscription to the Class A Shares;

2.2.2.2 a Sponsor Loan to the Company; and/or

2.2.2.3 availing financing under the Financing Documents,

provided, however, any Funding by the Sponsor under this clause 2.2.2 shall be subject to minimum shareholding requirements under clause 7.4.4 and not result in the GoS holding more than [●]¹⁵ of the issued and paid-up share capital of the Company.

2.2.3 The Company shall immediately notify the Independent Auditor and the GoS after it becomes aware that a Cost Overrun exists or is projected to occur within the next ninety (90) Days of such determination. Following any such notification, or if at any time the Independent Auditor notifies the Company that a Cost Overrun exists or is likely to occur within the next ninety (90) Days, the Independent Auditor may, at any time or from time to time, by giving a notice in writing to the Sponsors, in the form and substance attached hereto as appendix 4, demand the Sponsors to provide funds to the Company equal to the Cost Overrun amount specified in the demand (the “**Cost Overruns Demand Notice**”) in proportion to their respective Commitment Percentage.

Each Cost Overruns Demand Notice shall specify the Cost Overrun amount incurred or likely to be incurred within the next ninety (90) Days. The Independent Auditor has the right to revise a Cost Overruns Demand Notice at any time after issuance where the Independent Auditor is of the view that the Cost Overrun amount as set out in the relevant Cost Overruns Demand Notice would be insufficient. Within seven (7) Days from the date of the Cost Overruns Demand Notice (unless otherwise agreed by the Company and the Independent Auditor), the Sponsors shall be obliged to pay the funds specified in the Cost Overruns Demand Notice to the Company by crediting (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD).

2.2.4 If any Sponsor fails to fund its respective Commitment Percentage of the Cost Overrun, in terms of this Agreement, the Lead Investor shall be liable to fund the same within ten (10) Days of the Cost Overruns Demand Notice, provided that, where the Lead Investor is required to fund the Cost Overruns in terms of this clause 2.2.4, the funding by the Lead Investor shall in no event result in the Lead Developer holding less than ten percent (10%) of the issued and outstanding share capital of the Company as required by clause 7.4.4.2.

2.2.5 If the Lead Investor fails to fund any amount in terms of clause 2.2.4, or the Lead Developer (at any time) holds less than ten percent (10%) of the issued and outstanding share capital of the Company, each such event shall constitute a Company Event of Default.

¹⁵ Insert maximum percentage determined on basis of Proposal, not to exceed 49%

2.2.6 The GoS shall not be required to fund any Cost Overruns.

2.2.7 The Sponsors' obligation to fund the Cost Overruns is in addition to its other obligations under this Agreement.

2.3 Equity Subscription for Mobilisation Activities

2.3.1 Each Sponsor undertakes and agrees to provide all funding required to undertake the Mobilisation Activities. Any such funding by the Sponsors shall, subject to verification and confirmation by the Independent Appointees in terms of clause 3.1.2, be treated as Sponsor Pre-Funded Equity Amount and adjusted from the Approved Sponsor First Funding Amount in accordance with clause 3.1.2. The Sponsors' obligation to fund the Mobilisation Activities is in addition to its other obligations under this Agreement.

2.3.2 In the event the Concession Agreement is terminated prior to the Scheduled Commencement Date, the GoS shall make payment for the actual cost (as certified by the Independent Appointees) incurred in respect of any Mobilisation Activities, which under no circumstances shall exceed United States Dollars Two Million Five Hundred Thousand only (USD 2,500,000/-).

2.3.3 The GoS shall make payment under clause 2.3.2 to the Company, on or prior to the date falling ninety (90) Days from the Termination Date.

2.4 Commitment to Fund Performance Security Cost

2.4.1 Each Sponsor undertakes and agrees to fund all costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Performance Securities in proportion to its Commitment Percentage ("Performance Security Cost").

2.4.2 If any Sponsor fails to fund its respective Commitment Percentage of the Performance Security Cost, in terms of this Agreement, the Lead Investor shall be liable to fund the same within ten (10) Days of the date such amount is payable.

2.4.3 If the Lead Investor fails to fund any amount in terms of clause 2.4.2, such event shall constitute a Company Event of Default.

2.4.4 The GoS shall not be required to fund any Performance Security Cost.

2.4.5 The Sponsors' obligation to fund the Performance Security Cost is in addition to its other obligations under this Agreement.

2.5 Review and Approval of Proposed Budget

2.5.1 Within ten (10) Days of the Mobilisation Date, the Company shall prepare, and submit to the Independent Auditor (with a copy (being certified by the Company to be true and correct) simultaneously provided to each of the Parties and the Independent Engineer) for its approval, a budget based on the Base Case Financial Model:

- 2.5.1.1 setting out the projected amount of the Non-EPC Expenditures to be incurred by the Company in each quarter during the Funding Period (the “**Proposed Non-EPC Budget**”); and
- 2.5.1.2 setting out the EPC Advance Payment and EPC Payments payable to the EPC Contractor upon completion of an Approved EPC Milestone during the Funding Period (the “**Proposed EPC Budget**”),

(collectively clauses 2.5.1.1 and 2.5.1.2 referred to as the “**Proposed Budget**”).
- 2.5.2 Within thirty (30) Days of receipt, the Independent Auditor and the GoS shall review the Proposed Budget, and the Independent Auditor (following consultation with the GoS and the Independent Engineer), shall either:
 - 2.5.2.1 approve the Proposed Budget comprising of the:
 - (a) Proposed Non-EPC Budget; and
 - (b) Proposed EPC Budget; or
 - 2.5.2.2 reject the Proposed Budget and convey their comments / observations (if any) to the Company, provided, that, the Independent Auditor may only refuse to approve the Proposed Budget (or any part thereof) if the same:
 - (a) causes an increase in the Initial Project Cost; and
 - (b) increases the total amounts allocated in the Base Case Financial Model for any Expenditures.
- 2.5.3 The Company shall (at its own cost and expense) re-submit the revised Proposed Budget no later than five (5) Days from receipt of the rejection, comments or observations under clause 2.5.2.2, and the approval process under this clause 2.5 shall be repeated until all comments and observations are addressed and the Proposed Budget has been approved.
- 2.5.4 The Company shall propose a revision to the Approved Budget to account for any changes to the Financial Model, any Cost Overruns or any change that may be required to accelerate the progress of the C&O Activities in which case the approval process under this clause 2.5 shall be repeated, provided that, notwithstanding any changes to the Financial Model or the Approved Budget, the GoS’ obligation to fund the Approved GoS Funding Amount shall not exceed the GoS Equity Amount.
- 2.5.5 All Operating Costs incurred by the Company prior to the Project Commercial Operations Date shall be funded by the Company through the Service Payments, the Sponsors or the Financing Parties in terms of the Financing Documents by directly crediting a separate account (other than a Project Account) established by the Company for this purpose (the “**Operating Account**”). The obligation of the Sponsors to fund the Operating Costs shall be in addition to their other obligations under this Agreement.
- 2.5.6 The GoS shall not be required to fund any Operating Costs.

3. FUNDING MECHANISM

3.1 First Funding Notice

3.1.1 The Company shall be entitled to issue the First Funding Notice to each of the Funding Parties upon satisfaction of each of the following conditions:

3.1.1.1 the Company has established the Project Accounts with the Account Bank, as confirmed and acknowledged by the Account Bank;

3.1.1.2 issuance of the Commencement Certificate and achievement of Commencement Date under the Concession Agreement;

3.1.1.3 the GoS has established the GoS Equity Account with the GoS Account Bank and has delivered the GoS Equity Account Standing Instructions to the same, as confirmed and acknowledged by the GoS Account Bank;

3.1.1.4 the GoS has credited funds in the GoS Equity Account in cash in Pakistani Rupees in an amount equal to the GoS Equity Amount, as confirmed by the GoS Account Bank; and

3.1.1.5 the Company has procured the approval of the Proposed Budget in accordance with clause 2.5.

3.1.2 The First Funding Notice shall be accompanied by a certificate of the Independent Appointees certifying the following (as set out in the First Funding Notice):

3.1.2.1 the Approved Sponsor First Funding Amount;

3.1.2.2 the Approved GoS First Funding Amount; and

3.1.2.3 the Sponsor Pre-Funded Equity Amount.

3.1.3 Additionally, issuance of the First Funding Notice to the GoS shall be subject to receipt by the GoS of the:

3.1.3.1 Independent Auditor's certificate, certifying that:

(a) the Approved Sponsor First Funding Amount stands Funded and that such Funds have been credited to (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD);

(b) that there is no subsisting Company Event of Default as confirmed in writing by the Company; and

(c) any Cost Overruns have been funded in terms of clause 2.2.

- 3.1.3.2 in respect of funding of EPC Payments only, a certificate, each, from the Independent Engineer and the Independent Auditor, verifying and certifying:
- (a) the Approved EPC Milestone; and
 - (b) the Approved EPC Payment Amount.
- 3.1.4 Upon Funding the Approved Sponsor First Funding Amount (less Sponsor Pre-Funded Equity Amount) by the Sponsors, a certificate will be obtained by the Company from the Independent Auditor certifying that the Approved Sponsor First Funding Amount (less Sponsor Pre-Funded Equity Amount) stands Funded and that such Funds have been credited to (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD).
- 3.1.5 The First Funding Notice shall set out the date (the “**Required First Funding Date**”) by which each Funding Party shall Fund the Approved First Funding Amount, which date shall be:
- 3.1.5.1 in case of a First Funding Notice issued to the Sponsors, five (5) Business Days following the date of receipt by the Sponsor of the First Funding Notice; and
 - 3.1.5.2 in case of a First Funding Notice issued to the GoS, five (5) Business Days following the date of receipt by the GoS Account Bank of the First Funding Notice.
- 3.1.6 Subject to clause 2.1 and in accordance with this Agreement, each Funding Party, undertakes and agrees to Fund the Approved First Funding Amount (pursuant to the First Funding Notice) on or prior to the Required First Funding Date.

3.2 Subsequent Funding Notice

- 3.2.1 The Company shall be entitled to issue a Subsequent Funding Notice to each of the Funding Parties upon satisfaction of the following condition:
- 3.2.1.1 all the conditions for issuance of the First Funding Notice under clause 3.1.1 have been satisfied and are subsisting.
- 3.2.2 Each Subsequent Funding Notice shall be:
- 3.2.2.1 approved and certified by the Independent Appointees; and
 - 3.2.2.2 accompanied by the certificates of the Independent Appointees certifying the following (as set out in the Funding Notice):
 - (a) the Approved GoS Subsequent Funding Amount;

- (b) the Approved Sponsor Subsequent Funding Amount; and
 - (c) the Sponsor Pre-Funded Equity Amount (if applicable).
- 3.2.3 Additionally, each Subsequent Funding Notice to the GoS shall be accompanied with the:
 - 3.2.3.1 Independent Auditor’s certificate, certifying that:
 - (a) the Approved Sponsor Funding Amount (less Sponsor Pre-Funded Equity Amount) stands Funded and that such Funds have been credited to (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD);
 - (b) that there is no subsisting Company Event of Default as confirmed in writing by the Company; and
 - (c) any Cost Overruns have been funded in terms of clause 2.2.
 - 3.2.3.2 in respect of funding of EPC Payments only, a certificate, each, from the Independent Engineer and the Independent Auditor, verifying and certifying:
 - (a) the Approved EPC Milestone; and
 - (b) the Approved EPC Payment Amount.
 - 3.2.3.3 the Utilization Statement Certificate issued by the Independent Auditor.
- 3.2.4 Each Subsequent Funding Notice shall set out the date (the “**Required Subsequent Funding Date**”) by which each Funding Party shall Fund its relevant Approved Subsequent Funding Amount, which date shall be:
 - 3.2.4.1 in case of a Subsequent Funding Notice issued to the Sponsors, five (5) Business Days following the date of receipt by the Sponsors of the Subsequent Funding Notice; and
 - 3.2.4.2 in case of a Subsequent Funding Notice issued to the GoS, five (5) Business Days following the date of receipt by the GoS Account Bank of the Subsequent Funding Notice.
- 3.2.5 Subject to clause 2.1 and in accordance with this Agreement, each Funding Party, severally, undertakes and agrees to Fund its relevant Approved Subsequent Funding Amount (pursuant to each Subsequent Funding Notice) on or prior to the Required Subsequent Funding Date.

3.3 Adjustment of the Sponsor Pre-Funded Equity Amount

- 3.3.1 Prior to Funding by the Sponsors, the Approved Sponsor First Funding Amount shall be adjusted to account for funds already pre-funded by the Sponsors as Sponsor Equity in the Company prior to the Required First Funding Date in accordance with the Approved Budget including in respect of Mobilisation Activities (if any) (the “**Sponsor Pre-Funded Equity Amount**”), as determined and certified by the Independent Appointees.
- 3.3.2 To the extent the Sponsor Pre-Funded Equity Amount is not fully adjusted from the Approved Sponsor First Funding Amount, it shall be adjusted from the succeeding Approved Sponsor Subsequent Funding Amounts (in accordance with clause 3.2) till the Sponsor Pre-Funded Equity Amount has been fully adjusted.

4. UTILIZATION

4.1 Utilization

- 4.1.1 The Company undertakes and agrees that Utilization shall solely be for the purposes of meeting the relevant Expenditures in accordance with the Approved Budget.

4.2 Preparation, Review and Certification of Utilization Statement

- 4.2.1 Prior to issuance of each Subsequent Funding Notice under clause 3.2, the Company shall prepare a statement in respect of the preceding Approved Funding Amount:

4.2.1.1 confirming that all Approved Funding Amounts have been Utilized; and

4.2.1.2 disclose with reasonable justification any Approved Funding Amounts that have not been Utilized (“**Unutilised Amounts**”),

(the “**Proposed Utilization Statement**”).

- 4.2.2 The Company shall submit the Proposed Utilization Statement to the Independent Auditor (with a copy (being certified by the Company to be true and correct) simultaneously provided to each of the Parties) for its review and certification.

- 4.2.3 Within five (5) Days of receipt, the Independent Auditor shall review the Proposed Utilization Statement in respect of the preceding Approved Funding Amount and shall either:

4.2.3.1 approve the Proposed Utilization Statement and certify, *inter alia*, that:

(a) preceding Approved Funding Amount has been Utilized by the Company for Expenditures in accordance with the Approved Budget; and

(b) reasonable justification has been provided for any Unutilized Amounts,

(the “**Utilization Statement Certificate**”); or

4.2.3.2 reject the Proposed Utilization Statement, provided that, the Independent Auditor may only refuse to approve the Proposed Utilization Statement (or any part thereof) if:

- (a) the preceding Approved Funding Amount has not been Utilized by the Company for Expenditures in accordance with the Approved Budget; or
- (b) reasonable justification has not been provided for any Unutilized Amounts (the “**Rejected Amounts**”).

4.2.4 The Company shall (at its own cost and expense) re-submit the revised Proposed Utilization Statement no later than five (5) Days from receipt of the rejection, and the approval process under this clause 4.2 shall be repeated until the Proposed Utilization Statement is in form and substance acceptable to the Independent Auditor and Utilization Statement Certificate has been issued.

4.2.5 The Company shall provide the Independent Auditor with all relevant information required by the Independent Auditor for its review and certification under this clause 4.2.

4.2.6 The Approved Funding Amount set out in any Subsequent Funding Notice shall not be reduced by the Unutilized Amounts and such Unutilized Amounts shall remain available in the designated Company account to meet relevant Expenditures. Any Rejected Amounts shall be reduced from the Approved GoS Funding Amount set out in any Subsequent Funding Notice and any resulting shortfall shall be considered as a Cost Overrun to be funded by the Sponsors in accordance with clause 2.2.

5. PROJECT ACCOUNTS AND ACCOUNT BANK

5.1 Project Accounts Establishment and Opening

5.1.1 It is a condition precedent to the issuance of each Funding Notice that the Company open and maintain each of the Project Accounts at the Designated Branch within five (5) Days of the EFU Effective Date.

5.2 Class A Equity Subscription Account

5.2.1 All contributions of: (a) the Sponsor Funding Amount in respect of Class A Shares and Sponsor Loans (to be Utilized in accordance with the Approved Budget); and (b) Cost Overruns (as specified in the Cost Overruns Demand Notice) shall, in the first instance, be deposited in (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD).

5.3 Class B Equity Subscription Account

5.3.1 All subscriptions by the GoS to the Class B Shares shall be deposited in the Class B Equity Subscription Account from the GoS Equity Account in accordance with the GoS Equity Account Standing Instructions, to be Utilized in accordance with the Approved Budget.

5.4 Profit

- 5.4.1 The Project Accounts shall each bear profit / mark-up in the currency in which the account is denominated at such rate as may from time to time be agreed between the Company and the Account Bank, such profit / mark-up to be credited to such account at such time or times as may be agreed from time to time between the Company and the Account Bank (the “**Project Account Profits**”). All Project Account Profits shall be utilized for the purposes of the Project.

5.5 No Overdraft

- 5.5.1 The Company shall not be entitled to request that any withdrawal be made from the Project Accounts if such withdrawal would cause such Project Account to become overdrawn. To the extent that any withdrawal would, if made in full, cause any Project Account to become overdrawn, such withdrawal shall be made up to such an amount which would not result in that Project Account becoming overdrawn.

5.6 No Other Accounts

- 5.6.1 The Company hereby agrees and undertakes that other than the Project Accounts, the Company shall not open or maintain any bank, deposit, savings or other account or sub-account except:
- 5.6.1.1 the Operating Account;
 - 5.6.1.2 as otherwise permitted by the GoS; and
 - 5.6.1.3 as may be permitted by the Financing Documents.

5.7 Bank Charges

- 5.7.1 The Company shall pay to the Account Bank such transaction charges and fees (if any) as the Company may from time to time agree with the Account Bank.

5.8 No other Credits or Withdrawal

- 5.8.1 No payments to, or withdrawals from, any Project Account shall be made except as expressly permitted by this Agreement.

5.9 Account Bank

- 5.9.1 The Funding Parties agree to appoint the Account Bank to act as the account bank for the purposes of this Agreement.
- 5.9.2 The Account Bank is not a trustee or fiduciary of the Parties in connection with this Agreement. Neither is the Account Bank an agent or trustee for the Company or any of the other Parties. The nature of the Account Bank’s role shall be mechanical and

administrative and to strictly act in accordance with, in respect of the Project Accounts, the Project Accounts Standing Instructions.

- 5.9.3 The Account Bank shall be entitled to (without any further obligation on the Account Bank to make any verifications, certifications or inspections) rely on the Company's confirmations and statements contained in the Funding Notice for purposes of satisfying itself that the relevant conditions precedent have been fulfilled. Further, the Account Bank's responsibility and liability in respect of maintenance and operation of the Project Accounts in accordance with this Agreement shall be limited to the Account Bank acting strictly in accordance with the Project Accounts' Standing Instructions.
- 5.9.4 Any Party may, without liability to disclose or account, engage in any kind of financial, trust or commercial business with the Account Bank and its associates and affiliates.

6. GOS EQUITY ACCOUNT AND GOS EQUITY ACCOUNT STANDING INSTRUCTIONS

6.1 The GoS Equity Account

6.1.1 The GoS hereby agrees and undertakes to the other Parties to:

6.1.1.1 establish and maintain the GoS Equity Account with the GoS Account Bank and credit the same with funds in an amount up to the GoS Equity Amount; and

6.1.1.2 issue the GoS Equity Account Standing Instructions to the GoS Account Bank,

in each case of clauses 6.1.1.1 and 6.1.1.2 above, in accordance with the Concession Agreement and this Agreement.

6.1.2 Until the GoS Account Instructions Revocation Date, all amounts credited to the GoS Equity Account shall be utilized for the purposes of Funding by the GoS of the Approved GoS Funding Amount from time to time following issuance of a Funding Notice and for any withdrawals permitted under clause 6.2.6.

6.2 GoS Equity Account Standing Instructions

6.2.1 The GoS Equity Account shall be operated and maintained through the GoS Equity Account Standing Instructions.

6.2.2 The GoS Equity Account Standing Instructions shall remain effective, in each case, until the date which is the earlier of (the "**GoS Account Instructions Revocation Date**"):

6.2.2.1 the date on which GoS has satisfied its obligation to the Fund the Approved GoS Funding Amounts in accordance with this Agreement, as certified by the Independent Auditor;

- 6.2.2.2 the date on which the GoS Equity Account Standing Instructions are revoked pursuant to a notice issued by the GoS to the GoS Account Bank instructing revocation of the GoS Equity Account Standing Instructions (or any part thereof) provided that such notice shall be only effective if the same is also duly signed by the authorized representatives of the Parties; or
- 6.2.2.3 the Termination Payment Date.
- 6.2.3 The GoS Equity Account Standing Instructions may be amended at any time pursuant to a notice issued by the GoS to the GoS Account Bank instructing amendment of the GoS Equity Account Standing Instructions (or any part thereof) and the same shall be confirmed and acknowledged by the GoS Account Bank, provided that such notice shall be only effective if the same is also duly signed by the authorized representatives of the Parties.
- 6.2.4 The GoS shall procure that the GoS Account Bank acts on the GoS Equity Account Standing Instructions from time to time in accordance with the terms thereof.
- 6.2.5 The GoS shall procure that, through the GoS Equity Account Standing Instructions, the GoS Account Bank (in respect of each Funding Notice issued by the Company to the GoS) debits from time to time the Approved GoS Funding Amount (from the GoS Equity Account) and credits the same to the Class B Equity Subscription Account, in each case, in accordance with clause 3.1 and clause 3.2.
- 6.2.6 Until the GoS Account Instructions Revocation Date, no withdrawal from the GoS Equity Account may be made by the GoS, except for:
 - 6.2.6.1 funding the Approved GoS First Funding Amount pursuant to a First Funding Notice issued to the GoS in accordance with clause 3.1;
 - 6.2.6.2 funding the Approved GoS Subsequent Funding Amount pursuant to a Subsequent Funding Notice issued to the GoS from time to time in accordance with clause 3.2;
 - 6.2.6.3 withdrawal of any profit/mark-up accrued on the GoS Equity Account; and
 - 6.2.6.4 funding any Termination Payments payable to Company under the Concession Agreement.
- 6.2.7 Subject to clauses 6.2.2 and 6.3, the GoS hereby undertakes that the GoS Equity Account shall be maintained with the GoS Account Bank until such time that the GoS has fully Funded the GoS Equity Amount in accordance with the terms of this Agreement.
- 6.3 GoS Account Bank**
 - 6.3.1 The GoS hereby agrees to appoint the GoS account bank to act as the GoS Account Bank for the purposes of this Agreement.

- 6.3.2 The GoS Account Bank is not a trustee or fiduciary of the Parties in connection with this Agreement. Neither is the GoS Account Bank an agent or trustee for the Company or any of the other Parties. The nature of the GoS Account Bank's role shall be mechanical and administrative and to strictly act in accordance with, in respect of the GoS Equity Account and the GoS Equity Account Standing Instructions.
- 6.3.3 The GoS Account Bank shall be entitled to (without any further obligation on the GoS Account Bank to make any verifications, certifications or inspections) rely on the Company's confirmations and statements contained in the Funding Notice for purposes of satisfying itself that the relevant conditions precedent have been fulfilled. Further, the GoS Account Bank's responsibility and liability in respect of maintenance and operation of the GoS Equity Account in accordance with this Agreement shall be limited to the GoS Account Bank acting strictly in accordance with the GoS Equity Account Standing Instructions.
- 6.3.4 Any Party may, without liability to disclose or account, engage in any kind of financial, trust or commercial business with the GoS Account Bank and its associates and affiliates.

7. CLASS A AND CLASS B SHARES AND RELATED MATTERS

7.1 Class A Shares & Class B Shares

- 7.1.1 Upon Funding of the Approved GoS Funding Amount by the GoS from time to time in accordance with this Agreement, the Class B Shares shall be issued by the Company in accordance with the Laws in the name of GoS or its nominee(s) and the GoS shall be entitled to Class B Dividends in respect of such Class B Shares.
- 7.1.2 Upon Funding by the Sponsors of their respective proportion of the Sponsor Funding Amounts, from time to time, in accordance with this Agreement, the Company shall issue Class A Shares in accordance with the Laws.
- 7.1.3 The Company shall not (and each of the Sponsors agrees to procure that the Company shall not) create any classes of shares in the Company other than Class A Shares and Class B Shares without approval of the GoS.
- 7.1.4 The Company shall not (and each of the Sponsors agrees to procure that the Company shall not) offer for subscription Class B Shares to any person other than the GoS or its nominee(s), save as otherwise provided in this Agreement.
- 7.1.5 The Company shall not (and each of the Sponsors agrees to procure that the Company shall not) offer for subscription Class A Shares to any person other than the Sponsors, save as otherwise provided in this Agreement.

7.2 GoS Board Observers

- 7.2.1 Upon Funding of the Approved GoS First Funding Amounts by the GoS, and subject to compliance with any Legal Requirements, the GoS shall be entitled to nominate two (2) board observers on the board of directors of the Company.

7.3 Transfer of Shareholding by GoS

- 7.3.1 The GoS acknowledges and confirms that it shall not transfer its Class B Shares during the Concession Period except transfer to any affiliated department or body owned or controlled by the Government of Sindh, subject to the applicable Legal Requirements.

7.4 Transfer Restrictions

- 7.4.1 Subject to clauses 7.5 and 7.4.2:

7.4.1.1 up to (and including) the second (2nd) anniversary of the Project Commercial Operations Date, no Sponsor shall transfer its shareholding in the Company unless such transfer is required by operation of Laws and, subject to the Legal Requirements, the Transfer Criteria is complied with;

7.4.1.2 following the second (2nd) anniversary of the Project Commercial Operations Date and subject to compliance with the Transfer Criteria, any Sponsor may transfer its shareholding in the Company (the “**Transferring Sponsor**”) without the consent of the GoS, but with prior notice to the GoS, provided that such transfer does not result in the Sponsors (in aggregate) holding less than fifty-one percent (51%) of shareholding in the Company; and

7.4.1.3 following the second (2nd) anniversary of the Project Commercial Operations Date, if any proposed transfer of shareholding by a Transferring Sponsor results in the Sponsors holding (in aggregate) less than fifty-one percent (51%) shareholding in the Company, then the Transferring Sponsors shall be required to:

- (a) comply with the Transfer Criteria; and
- (b) seek prior approval of GoS.

- 7.4.2 Where the Transferring Sponsor is the Lead Investor or the Lead Developer, in addition to complying with the Transfer Criteria, the following conditions shall also apply:

7.4.2.1 prior to any transfer (as applicable):

- (a) by Lead Investor, the Lead Investor confirms to the GoS in writing, that the proposed transferee shall at minimum acquire twenty-six percent (26%) of the Class A Shares; and
- (b) by the Lead Developer, the Lead Developer confirms to the GoS in writing, that the proposed transferee shall at minimum acquire ten percent (10%) of the Class A Shares; and

7.4.2.2 in the sole opinion of the GoS, the proposed transferee referred to in clause 7.4.2.1, at minimum meets the qualification criteria on the basis of which a

Lead Developer or the Lead Investor (as applicable) can be qualified for the Project at the prequalification stage.

7.4.3 For the purpose of clauses 7.4, 7.5 and 7.7, the term “transfer” shall mean 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; (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 Company; or (c) the Sponsor’s losing the power to direct the management, policies and decisions, in each case, of the Company.

7.4.4 Prior to the Final Expiry Date:

7.4.4.1 the Lead Investor shall hold at least twenty-six percent (26%) of the issued and outstanding share capital of the Company; and

7.4.4.2 the Lead Developer shall hold at least ten percent (10%) of the issued and outstanding share capital of the Company;

failure to comply with this clause 7.4.4 shall constitute a Company Event of Default.

7.5 Other Transfer Restrictions

7.5.1 In addition to the restrictions set out in clause 7.4, any proposed transfer of Class A Shares, shall be subject to the following restrictions:

7.5.1.1 the proposed transfer of Class A Shares, as applicable, must comply with the Legal Requirements;

7.5.1.2 the proposed transfer of Class A Shares must be in accordance with the terms of this Agreement;

7.5.1.3 the GoS (through Independent Appointees) has confirmed that it has completed its “know your customer” review to its satisfaction (acting reasonably and without unreasonable delay) and that the proposed transferee is acceptable to it (in its sole discretion) on reputational or similar grounds, taking into account without limitation, such transferee’s environmental and social track record, links to terrorism, political affiliations and conflicts of interest;

7.5.1.4 no default is continuing or will or would result from the transferee becoming a party to this Agreement; and

7.5.1.5 the Company and the Sponsor have delivered certificates to the Independent Appointees certifying, as applicable, that each of the relevant foregoing conditions has been satisfied.

7.5.2 Each Sponsor shall cause the Company to, and the Company shall, refuse to recognize any purported transfer of Class A Shares in violation of this clause 7.5, or record or register any such transfer of Class A Shares. Any transfer made in breach of this clause 7.5 shall be null and void.

7.5.3 Subject to clause 7.7, notwithstanding any transfer of Class A Shares pursuant to this clause 7.5 or otherwise, each remaining Sponsor shall remain fully liable for all its obligations under this Agreement.

7.6 Undertakings

7.6.1 No later than ninety (90) days after the execution of this Agreement, the restrictions imposed under clauses 7.4 and 7.5 shall be recorded in the Constitutional Documents (so as to effectively constitute restrictions thereunder) of the Company and noted on all share certificates (if any) in respect of Class A Shares issued by the Company to the Sponsors.

7.7 Procedure for Transfer

7.7.1 On the date of any transfer of any Class A Shares, the Transferring Sponsor shall procure that the New Sponsor shall become a party to this Agreement, and be bound as if it were a Sponsor, by entering into a Deed of Accession which must be duly executed and delivered by the New Sponsor together with copies, certified by (in the case of a New Sponsor that is not an individual) a duly authorized officer of such New Sponsor or (in the case of a New Sponsor that is an individual) such New Sponsor, of:

7.7.1.1 (in the case of a New Sponsor that is not an individual) the New Sponsor's constitutional documents or (in the case of a New Sponsor that is an individual) his/her passport and other personal identification as required by the Company;

7.7.1.2 (in the case of a New Sponsor that is not an individual) a board resolution or other appropriate authorization authorizing the New Sponsor's execution of the Deed of Accession;

7.7.1.3 a legal opinion (in form and substance and from a counsel satisfactory to the Company) in respect of the laws of the jurisdiction of (in the case of a New Sponsor that is not an individual) incorporation or (in the case of a New Sponsor that is an individual) domicile of the New Sponsor as to (a) to (d) below (as applicable) confirming (as to the New Sponsor) that:

(a) the New Sponsor has the capacity to enter into the Deed of Accession (and any other documentation required to be signed by the New Sponsor in connection with such transfer);

(b) the New Sponsor's signatory (or signatories), if any, have been duly authorized;

- (c) (in the case of a New Sponsor that is not an individual) such documentation required to be entered into by the New Sponsor has been duly executed in accordance with the New Sponsor's constitutional documents;
- (d) such documentation required to be entered into by the New Sponsor has been duly executed in accordance with all applicable laws in its jurisdiction of (in the case of a New Sponsor that is not an individual) incorporation or (in the case of a New Sponsor that is an individual) domicile; and
- (e) the obligations of the New Sponsor created pursuant to the documentation entered into by it are legally valid and binding on, and enforceable against, the New Sponsor (subject to any customary legal reservations or qualifications);

7.7.1.4 (in the case of a New Sponsor that is not an individual) the latest accounts of the New Sponsor, audited (if audited accounts have been prepared) or unaudited (if audited accounts have not been prepared) prepared in accordance with generally accepted accounting principles in the jurisdiction of its incorporation; and

7.7.1.5 (in the case of a New Sponsor that is an individual) a net worth statement for such New Sponsor for the most recent tax year in the jurisdiction of his/her domicile prepared in accordance with generally accepted accounting principles in the jurisdiction of his/her domicile audited by the Auditor (or such other firm of independent accountants of recognized international standing approved by the Company).

7.7.2 Subject to the satisfaction of the conditions in clause 7.4 and clause 7.7, the Company, the Sponsors and the New Sponsor shall enter into a Deed of Accession and deliver the documents referred to in clause 7.7.1.1.

7.7.3 Upon any transfer permitted by this clause 7.7, the Transferring Sponsor shall be released from its obligations under this Agreement to the extent such obligations are assumed by a New Sponsor.

7.8 Public Listing of the Company

7.8.1 The Company may make necessary plans and arrangements to publicly list itself on the stock market so that the shares of the Company are available to general public as an investment option, with the prior written approval of the GoS and the Independent Auditor.

7.9 Manner of Payments

7.9.1 On each date on which any sum is to be Funded by a Funding Party under this Agreement, such Funding Party shall pay that sum before 5:30 p.m. Pakistan Standard Time on that date by payment in Pakistani Rupees or United States Dollars (as may be applicable) in immediately available funds by crediting the relevant Funding Account.

7.10 Taxes

7.10.1 All sums payable by each Funding Party under this Agreement shall be paid:

7.10.1.1 free of any restriction or condition;

7.10.1.2 free and clear of and (except to the extent required by Law) without any deduction or withholding on account of any Tax; and

7.10.1.3 without deduction or withholding (except to the extent required by Law) on account of any other amount, whether by way of set-off or otherwise.

7.10.2 If any Funding Party (or any other person) is required by Law to make any deduction or withholding on account of any Tax or other amount as is referred to in clause 7.10 from any sum paid or payable by any Funding Party under this Agreement:

7.10.2.1 such Funding Party shall notify the Company of any such requirement or any change in any such requirement as soon as it becomes aware of it;

7.10.2.2 such Funding Party shall pay any such Tax or other amount before the date on which penalties attach thereto;

7.10.2.3 the sum payable by the Funding Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Company receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction withholding or payment been required or made; and

7.10.2.4 within three (3) Days after paying any sum from which it is required by law to make any deduction or withholding, and within three (3) Days after the due date of payment of any Tax or other amount which it is required by clause 7.10.2.2 above to pay, such Funding Party shall deliver to the Company evidence satisfactory to the Company of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

7.11 Non-Business Day

- 7.11.1 Any payment hereunder which would otherwise fall due on a day which is not a Business Day shall instead fall due on the immediately preceding Business Day.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations & Warranties by the GoS

- 8.1.1 The GoS hereby represents and warrants to the Sponsors and the Company that:
- 8.1.1.1 it has the power and the authority to execute, deliver and perform this Agreement and has complied in all material respects with all legal requirements in connection thereto;
 - 8.1.1.2 it is legally authorized and all necessary actions have been taken to authorize it to execute and deliver this Agreement and perform the transactions contemplated to be performed by the GoS herein; and
 - 8.1.1.3 all authorizations, approvals, consents, licences and permissions from any Competent Authority (including any regulatory authority) which are necessary to have been obtained at the time these warranties are given or repeated, as the case may be, to authorize it to execute and deliver, and perform in accordance with the respective terms its obligations under this Agreement are in existence (with all applicable conditions thereunder having been complied with) and have not expired on the date on which this warranty is given or repeated, as the case may be, have been duly obtained at such time and are in full force and effect.

8.2 Representations & Warranties by the Sponsors and the Company

- 8.2.1 Each Sponsor(s) and the Company hereby severally represent and warrant to the GoS that:
- 8.2.1.1 in case of the Company, it is a company duly incorporated and validly existing under the laws of Pakistan;
 - 8.2.1.2 in case of the Sponsors, it is a company, firm or any corporate body, duly incorporated or registered in the country of origin and validly existing under the laws of its country of origin;
 - 8.2.1.3 in case of the Company, its constitutive documents (such as certificate of incorporation, memorandum and articles of association or equivalent thereof) authorize, and all necessary corporate or other action has been taken to authorize, it to own its assets, carry on its businesses, and execute and

deliver this Agreement and perform the transactions contemplated to be performed by it therein in accordance with its terms;

- 8.2.1.4 in case of the Sponsors, its constitutive documents (such as certificate of incorporation, memorandum and articles of association or equivalent thereof) authorize, and all necessary corporate or other action has been taken to authorize, it to own its assets, carry on its businesses, and execute and deliver this Agreement and perform the transactions contemplated to be performed by it therein in accordance with its terms;
- 8.2.1.5 it has the power and the authority to carry on its business and to own its properties and assets and to execute, deliver and perform this Agreement and has complied in all material respects with all legal requirements relative to its business;
- 8.2.1.6 it has the capacity to sue or be sued in its own name;
- 8.2.1.7 all authorizations, approvals, consents, licences and permissions from any Competent Authority (including any regulatory authority) which are necessary to have been obtained at the time these warranties are given or repeated, as the case may be, to authorize it to execute and deliver, and perform in accordance with their respective terms its obligations under this Agreement are in existence (with all applicable conditions thereunder having been complied with) and have not expired on the date on which this warranty is given or repeated, as the case may be, have been duly obtained at such time and are in full force and effect;
- 8.2.1.8 neither the execution and delivery of this Agreement nor the performance of its obligations hereunder, nor the consummation of any of the transactions contemplated therein did or will:
 - (a) contravene or constitute a default under any provision contained in any agreement, instrument, law, ordinance, decree, judgment, order, rule, regulations, licence, permit or consent by which it or any of its assets is bound or affected; or
 - (b) cause any limitation on it or the powers of its directors, whether imposed by or contained in its constitutive documents or in any agreement, instrument, law ordinance, decree, judgment, order, rule, regulation, licence, permit, consent or otherwise, to be exceeded;
- 8.2.1.9 there has not occurred any contravention of, or default under, any agreement or instrument by which it or any of its assets is bound or affected;
- 8.2.1.10 no litigation, arbitration or administrative proceeding or claim before or of any court, tribunal, arbitrator or other relevant authority is presently in progress or pending or has been threatened in writing; and

8.2.1.11 it has taken no action and, to the best of its knowledge and belief after making reasonable enquiry, it is not aware of any action or legal process having been taken or commenced for (as applicable) its winding-up, dissolution, administration, liquidation, rehabilitation, insolvency, reorganisation or suspension of payments or for the appointment of a receiver, liquidator, trustee in bankruptcy or similar official in respect of it or of any or all of its assets or revenues, or the commencement of any analogous process under any Laws.

8.3 Survival and Repetition of Warranties

8.3.1 The warranties contained in clause 8.1 and clause 8.2 are given and made on and as of the EFU Effective Date and shall survive the execution of this Agreement and shall be repeated as of and on:

8.3.1.1 in case of the Sponsors:

- (a) on each day that each of the Funding Notice is issued by the Company;
- (b) the date on which (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD) is Funded by the Sponsor(s) and / or Lead Investor in accordance with this Agreement;
- (c) on each day that the Cost Overruns Demand Notice is issued by the Independent Auditor; and
- (d) the date on which the Cost Overrun is funded by the Sponsor(s) and/or Lead Investor in accordance with this Agreement.

8.3.1.2 in case of the GoS:

- (a) the date of establishment of the GoS Equity Account and upon funding of the same in accordance with this Agreement;
- (b) the date on which funds standing to the credit of the GoS Equity Account are debited in an amount equal to the Approved First Funding Amount pursuant to the First Funding Notice; and
- (c) each date on which funds standing to the credit of the GoS Equity Account are debited in amount equal to the Approved GoS Funding Amount pursuant to Funding Notices issued from time to time.

9. COVENANTS

9.1 Positive Covenants

9.1.1 Each Party hereby severally undertakes and covenants with and for the benefit of the other Parties that until complete satisfaction of its obligations under this Agreement it shall:

9.1.1.1 obtain and / or maintain in full force and effect all authorizations, approvals, consents, licences and exemptions necessary and applicable to itself in connection with this Agreement as and when such authorizations, approvals, consents, licences and exemptions as are required to be obtained in accordance with relevant Law;

9.1.1.2 perform all of its respective obligations under this Agreement;

9.1.1.3 in case of the Company, procure from the Independent Appointees any approval, consent, determination, certificate or other document or decision required or contemplated under this Agreement within the necessary timelines stated herein; and

9.1.1.4 in case of the Company and the Sponsors, take all actions necessary or desirable to preserve its existence and its corporate rights.

9.2 Miscellaneous

9.2.1 Each Party undertakes and covenants with the other Parties to duly perform its obligations under this Agreement and agrees that such obligations shall be specifically enforceable at the instance of the other Parties.

9.2.2 The Company and the Sponsors, each undertakes that the Company shall fulfill and comply with all corporate actions and requirements of the Laws prior to the Company's issuance of the First Funding Notice and the Subsequent Funding Notice to each Funding Party so as to enable each Funding Party to Fund its relevant Approved Funding Amount in accordance with the Company's constitutive documents and the Laws and within the timelines contemplated under this Agreement.

9.2.3 Each Party undertakes to take all actions necessary, including passing requisite shareholders' and board resolutions and making all filings, registrations, notifications and applications required by Laws, to ensure the payment of funds to the Company for purposes of Funding the relevant Approved Funding Amounts by the Funding Parties. Failure to obtain any required approvals or permissions shall not release the Company or any Funding Party from, or otherwise constitute a defence to, the performance by any of them of their respective obligations under this Agreement.

9.2.4 Each of the Sponsors, undertakes to take all actions necessary, including passing requisite shareholders' and board resolutions and making all filings, registrations, notifications and applications required by Laws, to ensure the payment of any Cost Overruns. Failure to obtain any required approvals or permissions shall not release the Sponsors from, or otherwise constitute a defence to, the performance by it of its obligations under this Agreement.

9.2.5 Each Party undertakes to take all actions necessary and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

10. OBLIGATIONS CONTINUING

10.1 Obligations Continuing

10.1.1 Unless expressly stated otherwise in this Agreement, the respective obligations of the Company and each Funding Party under this Agreement are and shall remain in full force and effect until its termination in accordance with clause 12.

11. TERMINATION

11.1 Termination

11.1.1 This Agreement shall stand terminated on the Final Expiry Date.

12. NOTICE

12.1 Communications

12.1.1 Any written communication or notice pursuant to the terms and conditions of this Agreement shall be in writing and either:

12.1.1.1 delivered personally;

12.1.1.2 sent by certified mail, return receipt requested;

12.1.1.3 sent by a recognized overnight mail or courier service with delivery receipt required; or

12.1.1.4 sent by facsimile transfer or email (emails shall be confirmed by a letter).

12.1.2 All notices to be sent to a Party shall be sent to the address and number set out for such Party in appendix 2 or where the recipient notifies the sender of another address or number, the last address or number so notified to it in writing, provided however that, a notification for change of address or number shall be effective fourteen (14) calendar days after the date of receipt of notification of change.

12.2 Effectiveness of Communications

12.2.1 A Notice or communication shall be deemed to have been made or delivered:

12.2.1.1 in the case of any communication made by letter, when delivered by hand, by recognised courier or by mail (registered return receipt requested) at the address set out in appendix 2;

12.2.1.2 in the case of any communication made by facsimile, when transmitted properly addressed to the facsimile number set out in appendix 2 and the sender has received a sent receipt; and

12.2.1.3 in the case of any communication made by email, when transmitted properly addressed to the email address set out in appendix 2, and the sender has received a sent receipt.

12.3 Language

12.3.1 All communications and documents shall be in English.

13. SUCCESSORS AND ASSIGNS

13.1 Successors, Assigns and Legal Heirs

13.1.1 This Agreement binds and benefits the respective successors and assigns (solely as permitted pursuant to clause 13.3) of the Parties.

13.2 Restriction on Assignment

13.2.1 Subject to clause 13.3, neither Party may assign, transfer, delegate or dispose of its rights or obligations under this Agreement without the prior written consent of the other Parties.

13.3 Permitted Assignment

13.3.1 The restriction set forth in clause 13.2 shall not apply to:

13.3.1.1 liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

13.3.1.2 a charge on the Project Accounts arising or created in the ordinary course of business of the Project and / or as security only for indebtedness to the Financing Party under the Financing Documents;

13.3.1.3 assignment of rights, interest and obligations of the Company and / or the Sponsors, in each case, in favour of the Financing Party (or any representative or security trustee of the same), in accordance with the Financing Documents; and

- 13.3.1.4 pledge of Class A Shares, as security only for indebtedness to the Financing Party in terms of the Financing Documents (provided, however, any enforcement of such share pledge shall be subject to the share transfer restrictions under clause 7 and shall require prior approval of the GoS for share transfer thereunder which shall not be unreasonably withheld or delayed by the GoS).

14. INDEMNITY

14.1 Indemnity

- 14.1.1 Each of the Sponsors shall, within four (4) Business Days of demand, on a joint and several basis, indemnify and pay to GoS, or reimburse GoS for any amount paid or payable by it on account of any costs, losses, liabilities and expenses (including legal fees and other advisors' and consultants' fees (including registration fees)) incurred by the GoS in connection with or arising out of any default attributable to that Sponsor including as a result of the failure by the Sponsors (or any of them) to pay any amount payable by the Sponsors hereunder on its due date.

15. PARTIAL INVALIDITY, SEVERABILITY AND AMENDMENT

15.1 Partial Invalidity

- 15.1.1 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Agreement.

15.2 Amendment

- 15.2.1 This Agreement may only be amended in writing by written agreement of the Parties.

16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

- 16.1.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the Laws.

16.2 Negotiation

- 16.2.1 The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Agreement.
- 16.2.2 In the event any Party disagrees with any decision of an Independent Appointee, it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with clause 16.

16.3 Public Private Partnership Policy Board

- 16.3.1 If any Dispute is not finally resolved between the Parties pursuant to clause 16.2 within thirty (30) Days from the date on which a Party receives notice from any of the other Parties that a Dispute exists, then the Parties shall endeavour to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 16.3 within sixty (60) Days from the date on which the matter has been referred to the Public Private Partnership Policy Board, then such Dispute shall be settled exclusively and finally in accordance with clause 16.4.

16.4 Arbitration

- 16.4.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 16.3:
- 16.4.1.1 to the submission of such Dispute to binding arbitration governed by the Arbitration Act, 1940 by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed by each disputing Party, and one (1) arbitrator appointed jointly by the arbitrators so selected by the disputing Parties (the “**Arbitrators**”). Any arbitration proceedings commenced pursuant to this clause 16.4.1 shall be referred to as Arbitration (“**Arbitration**”);
 - 16.4.1.2 not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and
 - 16.4.1.3 to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.
- 16.4.2 The place of arbitration shall be Karachi, Pakistan.
- 16.4.3 The language of Arbitration shall be English.

- 16.4.4 Any decision or award resulting from the Arbitration (“**Award**”) shall be final and binding upon the Parties.
- 16.4.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.
- 16.4.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective disputing Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.
- 16.4.7 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

16.5 Exclusive Jurisdiction

- 16.5.1 No Party shall have the right to, nor shall they, commence or maintain any legal proceedings concerning a Dispute, until the Dispute has been resolved in accordance with clause 16.3 or clause 16.4 and then only to enforce or execute an Award.

16.6 Obligations Continuing

- 16.6.1 Unless otherwise agreed in writing, the existence of a Dispute shall not relieve any Party from the performance of its obligations under this Agreement not the subject of the Dispute.

16.7 Decision of Independent Appointees

- 16.7.1 In the event the GoS, the Sponsors or the Company disagree with any decision of the Independent Appointees, then it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with this clause 16.

17. COUNTERPARTS

- 17.1 This Agreement shall be executed in three (3) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

APPENDIX 1: PART I – FORM OF FUNDING NOTICE FOR SPONSOR

[ON THE LETTERHEAD OF THE COMPANY]

DATE:.....
FUNDING NOTICE NUMBER:.....

To,
[Sponsors]
.....
.....

CC:
.....

Re: Funding Notice Issued To Sponsor

Dear Sirs,

1. Please refer to the agreement titled “EQUITY FUNDING & UTILIZATION AGREEMENT” dated (the “**Agreement**”) entered into between the Governor of Sindh (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) (the “**GoS**”); [insert details] (the “**Sponsors**”) and [insert details] (the “**Company**”). Unless expressly stated otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Agreement.
2. Pursuant to the terms of the Agreement, the Company hereby issues this Funding Notice to the Sponsor in accordance with the Approved Budget. The aggregate amounts to be Funded by each Funding Party, as approved and certified by the Independent Appointees, are set out below in paragraph 3 below.
3. The amounts to be Funded by each Funding Party are set out below:

(a) **PART OF APPROVED FUNDING AMOUNT TO BE FUNDED BY THE SPONSOR**

- | | | |
|------|---|--------------|
| (i) | [Approved Sponsor First Funding Amount: | USD/PKR [●] |
| | [or] | |
| | Approved Sponsor Subsequent Funding Amount: | USD/PKR [●] |
| | A. EPC Payments | USD/PKR [●] |
| | B. Non-EPC Expenditure | USD/PKR [●] |
| (ii) | [Approved GoS First Funding Amount: | PKR [●] [or] |
| | Approved GoS Subsequent Funding Amount: | PKR [●] |

(b) **REQUIRED FUNDING DATE:** [●]

4. We, the Company, hereby confirm:
- (a) all conditions to issuance of a Funding Notice as set out in clause [3.1.1 / 3.2.1]¹⁶ of the Agreement stand satisfied;
 - (b) the issuance of this Funding Notice to the Sponsor shall not result in any breach by the Company of the relevant Laws or the constitutive documents;
 - (c) this Funding Notice has been issued to the Sponsor in compliance with the terms of the Agreement;
 - (d) that a certificate issued by each of the Independent Appointees has been obtained and appended hereto certifying that the [Approved Sponsor First Funding Amount] [*or*] [the Approved Sponsor Subsequent Funding Amount] (as set out in paragraph 3(a)(i) above) is in accordance with the Approved Budget;
 - (e) that a certificate issued by each of the Independent Appointees has been obtained and appended hereto certifying that the [Approved GoS First Funding Amount] [*or*] [the Approved GoS Subsequent Funding Amount] (as set out in paragraph 3(a)(ii) above) is in accordance with the Approved Budget; and
 - (f) any Cost Overruns have been funded in terms of the Cost Overrun Demand Notice.
5. We the Company, hereby further confirm, represent and warrant that a copy of this Funding Notice is simultaneously being issued to the GoS, the Account Bank and the Independent Appointees.
6. The provisions hereof shall *mutatis mutandis* form part of the Agreement, notwithstanding anything to the contrary.

Yours Sincerely,

Signed for and on behalf of

[•]

¹⁶ Delete as applicable depending on First Funding Notice / Subsequent Funding Notice prior to Commencement Date / Subsequent Funding Notice after Commencement Date.

(As the Company)

.....
Name:
Designation:

WITNESSES:

1.....
Name:
Address:
CNIC Number:

2.....
Name:
Address:
CNIC Number

APPENDIX 1: PART –II - FORM OF FUNDING NOTICE FOR GOS

[ON THE LETTERHEAD OF THE COMPANY]

DATE:.....
FUNDING NOTICE NUMBER:.....

To,
[GoS]
.....
.....

CC:
.....

Funding Notice Issued to the GoS

Dear Sirs

1. Please refer to the agreement titled “EQUITY FUNDING & UTILIZATION AGREEMENT” dated (the “**Agreement**”) entered into between the Governor of Sindh (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) (the “**GoS**”); [insert details] (the “**Sponsor**”) and [insert details] (the **Company**). Unless expressly stated otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Agreement.
2. Pursuant to the terms of the Agreement, the Company hereby issues this Funding Notice to the GoS in accordance with the Approved Budget. The aggregate amounts to be Funded by each Funding Party as approved and certified by the Independent Appointees, are set out below in paragraph 3 below.
3. The amounts to be Funded by each Funding Party are set out below:

(a) **PART OF APPROVED FUNDING AMOUNT TO BE FUNDED BY THE GOS**

- | | | |
|------|--|--------------|
| (i) | [Approved GoS First Funding Amount: | PKR [●] [or] |
| | Approved GoS Subsequent Funding Amount: | PKR [●]] |
| A. | EPC Payments | PKR [●] |
| B. | Non-EPC Expenditure | PKR [●] |
| (ii) | [Approved Sponsor First Funding Amount: | USD/PKR [●] |
| | [or] | |
| | Approved Sponsor Subsequent Funding Amount: | USD/PKR |
| | [●]] | |

(b) **REQUIRED FUNDING DATE:**

[•]

4. We, the Company, hereby confirm:

- (a) all conditions to issuance of a Funding Notice as set out in clause [3.1.1 / 3.2.1]¹⁷ of the Agreement stand satisfied;
- (b) the issuance of this Funding Notice to the GoS shall not result in any breach by the Company of the relevant Laws or the constitutive documents;
- (c) this Funding Notice has been issued to the GoS in compliance with the terms of the Agreement;
- (d) that a certificate issued by each of the Independent Appointees has been obtained and appended hereto certifying that the [Approved GoS First Funding Amount] [or] [the Approved GoS Subsequent Funding Amount] (as set out in paragraph 3(a)(i) above) is in accordance with the Approved Budget;
- (e) that a certificate of the Independent Auditor has been obtained and annexed hereto that certifies that the [Approved Sponsor First Funding Amount] [or] [Approved Sponsor Subsequent Funding Amount] (as set out in paragraph 3(a)(ii) above) stands Funded and that funds representing the same stand credited to (as may be applicable) the Class A Equity Subscription Account (PKR) and Class A Equity Subscription Account (USD);
- (f) any Cost Overruns have been funded in terms of the Cost Overrun Demand Notice; and
- (g) there is no subsisting Company Event of Default.

5. We the Company, hereby further confirm, represent and warrant that a copy of this Funding Notice is simultaneously being issued to the Sponsors, the Account Bank, the GoS Account Bank and the Independent Appointees.

6. The provisions hereof shall *mutatis mutandis* form part of the Agreement, notwithstanding anything to the contrary.

Yours Sincerely,

Signed for and on behalf of

[•]

¹⁷ Delete as applicable depending on First Funding Notice / Subsequent Funding Notice.

(As the Company)

.....
Name:
Designation:





WITNESSES:

1.....
Name:
Address:
CNIC Number:





2.
Name:
Address:
CNIC Number

APPENDIX 2: NOTICES





GoS:

Address:	
Attention:	
Fax:	
Email	

Sponsors:

Address:	
Attention:	
Fax:	
Email	

Company:

Address:	
Attention:	
Fax:	
Email	

APPENDIX 3: FORM OF GOS EQUITY ACCOUNT STANDING INSTRUCTIONS

[ON THE LETTERHEAD OF THE GOS]

DATE: [●]

REFERENCE: [●]

To,

[GoS Account Bank]

.....

.....

CC:

.....

RE: STANDING INSTRUCTIONS IN RESPECT OF GOS EQUITY ACCOUNT (as defined below)

Dear Sir/Madam,

1. GOS EQUITY ACCOUNT & ISSUANCE OF STANDING INSTRUCTIONS NOTICE

1.1 We, [●] (through [●]) (the “**Account Holder**”) refer you, [INSERT BANK NAME] (a banking company established under the laws of Pakistan having its registered office located at [●]) (the “**Account Bank**”) to the following bank account established and maintained in the name of the Account Holder at the Account Bank’s branch located at [●]:

(a) Account Number [●], Account Title [●] (the “**GoS Equity Account**”);

AND, We, the Account Holder, hereby issue this notice (the “**Standing Instructions Notice**”) containing the Standing Instructions (*as defined below*) for the maintenance and operation of the GoS Equity Account and for matters relating to the same.

2. DEFINITIONS

2.1 In this Standing Instructions Notice, the following capitalized words shall bear the meaning ascribed to the same as below:

(a) **Account Bank** shall bear the meaning ascribed thereto in Paragraph 1;

(b) **Account Holder** shall bear the meaning ascribed thereto in Paragraph 1;

(c) **Approved GoS Funding Amount** means (as may be applicable) the Approved GoS First Funding Amount and the Approved GoS Subsequent Funding Amount;

- (d) **Approved GoS First Funding Amount** means the amount set out in Pakistani Rupees as “*Approved GoS First Funding Amount*” in clause 3(a)(i) of the Funding Notice (GoS), as certified by the Funding Notice (GoS) Certificates;
- (e) **Approved GoS Subsequent Funding Amount** means the amount set out in Pakistani Rupees as “*Approved GoS Subsequent Funding Amount*” in clause 3(a)(i) of the Funding Notice (GoS), as certified by the Funding Notice (GoS) Certificates;
- (f) **Class B Equity Subscription Account** means the [●] account of the Company denominated in Pakistani Rupees and established and maintained at the Account Bank and bearing account number [●] and titled [●];
- (g) **Company** means [●], a company incorporated under the laws of Pakistan, having its registered office located at [●];
- (h) **Concession Agreement** means the concession agreement dated [●] between [*insert parties*] in respect of the Project;
- (i) **Financial Close Date** means the date on which the definitive agreements entered into between the Company and its Financing Parties in respect of financing of the Project become effective and the Company has immediate access to the financing provided thereunder, as notified by the Account Holder and the Company jointly to the Account Bank in writing;
- (j) **Financing Party(ies)** means the financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, their successors, and assigns, that extend finance facilities and / or financial accommodation to the Company in respect of its Project, as jointly notified in writing by the Account Holder and the Company to the Account Bank on the Financial Close Date;
- (k) **Funding Notice (GoS) Certificates** means each of the following certificates:
 - (i) the written certificates issued by the Independent Appointees that certifies the matters set out in clause 4(d) of the Funding Notice (GoS); and
 - (ii) the written certificate issued by the Independent Auditor that certifies the matters set out in clause 4(e) of the Funding Notice (GoS);
- (l) **Funding Notice (GoS)** means the written notice, in the form attached hereto as **Annexure A**¹⁸, issued by the Company to the GoS from time to time (with a copy delivered to the Account Bank) that has appended thereto the Funding Notice (GoS) Certificates;

¹⁸ The Form under Schedule A of this EFU Agreement will be attached.

- (m) **GoS Equity Account** shall bear the meaning ascribed thereto in Paragraph 1;
- (n) **Independent Auditor** means *[insert details]*;
- (o) **Independent Engineer** means *[insert details]*;
- (p) **Project** means the designing, building, constructing, testing, commissioning, operating, maintaining, financing, and transferring by the Company of the Karachi Water Canal to be undertaken in public-private partnership mode by the Company in terms of the Concession Agreement;
- (q) **Revocation Notice** shall bear the meaning ascribed thereto in Paragraph 5.1;
- (r) **Sponsor** means *[insert details]*;
- (s) **Standing Instructions** means the legally binding, enforceable and irrevocable (subject to Paragraph 5.1 and Paragraph 5.2 below) standing instructions contained in this Standing Instructions Notice for the operation and maintenance of the GoS Equity Account;
- (t) **Standing Instructions Notice** shall bear the meaning ascribed thereto in Paragraph 1;
- (u) **Termination Payment** means the termination payment payable by GoS to the Company under the Concession Agreement from debiting funds from the GoS Equity Account; and
- (v) **Termination Payment Certificate** means the written certificate issued by the Independent Auditor certifying the Termination Payment.

3. INTERPRETATION

3.1 In this Standing Instructions Notice:

- (a) Words in this Standing Instructions Notice importing the singular shall include the plural or vice versa.
- (b) Save where the contrary is indicated, any reference in this Standing Instructions Notice to:
 - (i) a Paragraph or an Annexure shall be construed as a reference to a paragraph or an annexure of this Standing Instructions Notice;
 - (ii) any instrument, memorandum, agreement, contract or document shall be construed as a reference to that instrument, memorandum, agreement, contract or document (together with any recitals or sections thereto) all as amended, varied, restated, novated or supplemented from time to time;

- (iii) any person shall be construed so as to include their respective administrators, successors in interest and permitted assigns from time to time;
 - (iv) a statute, enactment or order shall be construed as a reference to such statute, enactment or order as the same may have been, or may from time to time be, amended or re-enacted and all subsidiary legislation and other instrument made under or deriving validity therefrom;
 - (v) the singular shall include the plural and vice versa, where appropriate;
 - (vi) the words '*including*' and '*includes*' and any grammatical variants of those words, will be read as if followed by the words '*without limitation*;'
 - (vii) a reference to a person shall be construed to include a juridical person;
 - (viii) a time of day shall be construed as a reference to Pakistan Standard Time; and
 - (ix) headings in this Standing Instructions Notice are for ease of reference only and shall be ignored in construing this Standing Instructions Notice.
- (c) The Annexures appended to this Standing Instructions Notice shall form an integral part of this Standing Instructions Notice.

4. THE INSTRUCTIONS IN RESPECT OF MATTERS RELATING TO THE FUNDING NOTICE (GoS)

- 4.1 The Account Holder issues the following instructions to the Account Bank and hereby instructs the Account Bank to act as follows:
- (a) **THAT**, upon receipt of the Funding Notice (GoS) by the Account Bank from time to time (together with the Funding Notice (GoS) Certificates), the Account Bank shall, within one (1) Business Day of receipt of the Funding Notice (GoS) from time to time (together with the Funding Notice (GoS) Certificates), debit the GoS Equity Account in an amount equal to the Approved GoS Funding Amount and credit the same to the Class B Equity Subscription Account; and
 - (b) **THAT**, upon receipt of the Termination Payment Certificate by the Account Bank, the Account Bank shall, within one (1) Business Day of receipt of the Termination Payment Certificate, debit the GoS Equity Account in an amount equal to the Termination Payment and credit the same to the Company account designated in the Termination Payment Certificate.

5. REVOCAION AND AMENDMENT OF STANDING INSTRUCTIONS

5.1 The Standing Instructions shall remain effective, in each case, until such date which is the earlier of:

- (a) the date on which a written certificate, duly issued by the Independent Auditor, is received by the Account Bank from the Independent Auditor certifying that the Account Holder has fully complied with and has satisfied its funding obligations in respect of its commitments for the Project;
- (b) the date on which the Standing Instructions are revoked pursuant a written revocation notice (the “**Revocation Notice**”) duly executed and confirmed by the authorized representatives of each of the Account Holder, the Sponsors and the Company and subsequently duly issued by the Account Holder to the Account Bank instructing revocation of the Standing Instructions;
- (c) the date on which the Independent Auditor issues a notice to the Account Bank confirming the Termination Payment Date has occurred under the Concession Agreement.

5.2 The Standing Instructions Notice may be amended pursuant a written notice duly executed and confirmed by the authorized representatives of the Account Holder, the Sponsors and the Company and subsequently duly issued by the Account Holder to the Account Bank instructing amendment to this Standing Instructions Notice.

6. SEVERABILITY

6.1 If for any reason whatsoever any provision of this Standing Instruction Notice 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 Account Bank and the Account Holder will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

7. GOVERNING LAW & DISPUTE RESOLUTION

7.1 These Standing Instructions Notice shall be governed by and construed in accordance with the laws of Pakistan and the courts of law at Karachi, Pakistan with competent jurisdiction shall entertain all disputes arising hereunder.

APPENDIX 4: FORM OF COST OVERRUNS DEMAND NOTICE

To,
[THE SPONSORS]

CC: [INSERT THE NAME OF THE COMPANY]

COST OVERRUNS DEMAND NOTICE UNDER THE EQUITY FUNDING AND UTILIZATION AGREEMENT DATED [●]

Dear Sir,

1. We, [the Independent Auditor], refer to the Equity Funding and Utilization Agreement dated [●] (the “**Agreement**”). This is the Cost Overruns Demand Notice referred to in the Agreement. Capitalized terms used in this Cost Overruns Demand Notice which are not otherwise defined shall bear the meaning ascribed thereto in the Agreement.
2. Pursuant to the Agreement, we demand, in terms of clause 2.2 (*Commitment to fund Cost Overrun*) of the Agreement, that you immediately, and in any case within seven (07) days from the date of this Cost Overruns Demand Notice, pay to the Company the Cost Overruns in the manner and amount specified in paragraph 3 below.
3. We confirm that:
 - (a) the total Cost Overruns amount incurred or likely to be incurred within the next ninety (90) days is:

USD/PKR [*insert in figures*]/- (United States Dollars/Pakistani Rupees [*insert in words*] only).
 - (b) payment of the amount specified in paragraph (a) above must be made to the [Class A Equity Subscription Account (USD)/ Class A Equity Subscription Account (PKR)] .
 - (c) payment of the amount specified in paragraph (a) is to be made within seven (07) days from the date of this Cost Overruns Demand Notice.

Yours faithfully,

INDEPENDENT AUDITOR

APPENDIX 5: FORM OF DEED OF ACCESSION

This Deed dated [●] is supplemental to the Equity Funding and Utilization Agreement (the “**EFU Agreement**”) between the Sponsors, the Company, and the GoS.

1 Definitions

Words and expressions defined in the EFU Agreement have the same meaning when used in this Deed.

2 Accession of New Sponsor

[●] (the “**New Sponsor**”) agrees for the benefit of each person named in the Schedule to this Deed that with effect on and from the date hereof it will be bound as a Sponsor as if it had originally been a party to the EFU Agreement in that capacity.

3 Representations and Warranties

The New Sponsor makes the representations and warranties set out in clause 7.7 of the EFU Agreement to the Parties on the date of this Deed.

4 Address Details

The address, fax number (and department or officer, if any, for whose attention the communication is to be made) for notices of the New Sponsors for the purposes of clause 13 of the EFU Agreement is:

Address: [●]

Fax Number: [●]

Attention: [●]

5 Governing Law and Service of Process

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by laws of Pakistan.

[To be executed as a deed by the New Sponsor, the Sponsor and the Company].

SCHEDULE

[List of parties to the EFU Agreement, including those who have executed earlier Deeds of Accession.]

SIGNATURE PAGES

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised representatives as of the date first written above.

GOVERNOR OF SINDH, THROUGH THE SECRETARY, LOCAL GOVERNMENT & HOUSING TOWN PLANNING DEPARTMENT, GOVERNMENT OF SINDH

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE SPONSOR

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE COMPANY

Signature

.....

Name (block capitals)

.....

Title

.....

In the presence of:

Witness signature

.....

Witness name
(block capitals)

.....

Witness signature

.....

Witness name
(block capitals)

.....