



**HYDERABAD MUNICIPAL CORPORATION
LOCAL GOVERNMENT & HOUSING TOWN PLANNING DEPARTMENT
GOVERNMENT OF SINDH**



ADDENDUM NO. I

**DESIGN, FINANCE, BUILD, REHABILITATE, OPERATE, MAINTAIN AND TRANSFER OF
RANI BAGH, HYDERABAD UNDER PUBLIC-PRIVATE PARTNERSHIP MODE**

Reference: Invitation for Bids bearing reference number LGD-PPPN/PROC-RBH/2024-25 issued by Hyderabad Municipal Corporation, Local Government & Housing Town Planning Department ('**Agency**') inviting Interested Parties to participate in the Tender Procedure and submit their Bids for the Project in accordance with the requirements of RFP, including Applicable Evaluation Documents (**SPPRA EPADS Tender No. EPADS-S-250161382**).

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the RFP.

Pursuant to the written requests from Interested Parties for clarification of the RFP, the Agency shall issue: (i) an addendum to the RFP ('**Addendum No. I to the RFP**'), and (ii) responses to Interested Parties' queries ('**Response Document No. I**'), each accessible with effect from April 15, 2025, *via* the websites of the Agency, SPPRA EPADS, and PPP Unit.

All other terms and conditions set out in the RFP, except those mentioned in Addendum No.1 to the RFP and Corrigendum No. I shall remain the same. All Interested Parties are requested to submit their Bids on or before the Bid Submission Deadline as per the Addendum No. I to the RFP.

Project Director, Rani Bagh Hyderabad Project

Local Government & Housing Town Planning Department, Government of Sindh

Address: Ground Floor, Sindh Secretariat Building No 5 Annexe Tughlaq House, Kamal Ataturk Road Karachi.

Phone: +92 21 99222193 **Fax:** +92 21 99245154 **Email:** info.p3proc@gmail.com

Website: Agency - <https://lgdsindh.gov.pk/>; **SPPRA EPADS** - <https://portalsindh.eprocure.gov.pk/#/>; **PPP Unit** - <https://www.pppunitsindh.gov.pk/>





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INF/KRY/1127/25

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مئٽرڪ جي امتحانن ۾ ڪاٺي جي ذر، 116 شاگرد ڪاٺي کيس، موبائيل فون هٿ

حيدرآباد ۽ ٻين ڪئمٽر امتحاني سينٽرن تي ڇاپا هٿي 17 شاگردن کان موبائيل فون ۽ نقل وارو مواد هٿ ڪيو. لاڙڪاڻي شڪارپور، ڇڪٽ آباد، ڪشمور، فيسٽر، شهدادڪوٽ ۽ 97 شاگرد ڪاٺي کيس ڪيا ويا. حيدرآباد (تائيندڙ وٽان) سنڌ ۾ هلندڙ مائٽرڪ جي امتحانن دوران ڪالهه هٿ ڪري / صفحو 11 ڪالمر 3

ننگر پارڪر ويجهو ناياب هرڻ جو شڪار، وائيلڊ لائيف ڪائونسل پيسا

ڳوٺ پاباسرو ۾ شڪاري هرڻ ماري پاڻ سان گڏ کڻي ويا. بلندو جي لڪائڻ تي ڳوٺاڻا بهٽا

5 ڏينهن اڳ ڳوٺ ماميجيرو ۾ ناياب هرڻ جو شڪار ڪيو ويو هو: ڳوٺاڻا

ننگر پارڪر (ن ڪا) ننگر پارڪر ۾ شڪارين گنريل هڪ هنڌي دوران شڪارين هرڻن خلاف باهه پاري ڏني آهي. ننگر پارڪر جي ڳوٺ پاباسرو جي جهنگ ۾ گنريل ڏينهن نالعلوم شڪاري بندوڇا جا ڦاٽ ڪري ناياب نسل جو هرڻ ماري پاڻ سان گڏ کڻي ويا. بلندو جي لڪائڻ تي ڳوٺاڻو موهن ميهڪهڙو واقعي واري هنڌ پهتو جتي هن هرڻ جو رت، ڪاٺي جي ٽائون جا نشان ۽ ماڻهن جي پيرن جا نشان ڏٺا. ڳوٺاڻي موهن ميهڪهڙو، پوئو سگهيو آهي.

ڏيپلي ۾ مورن ۾ بيماري، وڌيڪ 10 ناياب پکي مري ويا

ڳوٺ ارڪو ۽ ٻين ڳوٺن ۾ مورن ۾ بيماري، ڳوٺاڻن پاران نيسون موڪلڻ جو مطالبو ڏنو. ڏيپلي (ن ڪا) ڏيپلي جي پراسي وٺڻ ڳوٺن ۾ ٿر جي فطري سونهن مور پکين ۾ وڌيڪ ڪيت سيٽ مختلف بيمارين پکڙجي ويون آهن جنهن سبب سوين مور پکي مري ويا آهن. رڳو ٽي ڏينهن اندر 10 ناياب پکي مري ويا آهن. ڏيپلي بيمارين پکڙجي ويون آهن جنهن سبب سوين مور

انٿروپال ۽ معصوم ٻارن جي جنسي فراسان ڪري

وڏيو پريشاد جو اڳوڻو ڏاڏو 10 سالن قديم جي سزا ڏني. انٿروپال ۽ معصوم ٻارن جي جنسي فراسان ڪري سندن وڏو ڏاڏو پريشاد محمد بخش عرف ٽا عباسي کي عدالت 10 سال قيد ۽ 2 لک رپيا ڏنڊ جي سزا ڏني. 2023 ع ۾ انٿروپال انسٽيٽشن ٺاهي جي حد ۾ هڪ ويو سوشل ميڊيا تي پبلڊي ٿي هئي جنهن بعد خبرين ملي ڪيون، پوليس به لاڙڪاڻي ڏيڪار ڪري لڙڪاڻي ۾ پريشاد کي گرفتار ڪري ورتو هو ۽ وڏو ڏاڏو جي فراد تي کيس داخل ڪيو هو جنهن ۾ مئٽرڪ ڊيشنل سينٽر جي عياري جي خلاف فيصلو ڏيئي جوڙيل ٽن عياري مٿان ڏيڙهه ڏنڊ لڳائي کيس سزا ڏني جتي آهي.

گهٽوڪي ويجهو سولنگي ۽ چاڇو ڏرين ۾ جهيڙو 3 جڙا رتووت

گهٽوڪي (ن ڪا) گهٽوڪي ويجهو اول سترهائي ٺاهي جي حد ڳوٺ گهٽوڪي ۾ ٻن ڏرين ۽ جهيڙي جي نتيجي ۾ مڙو سولنگي نورسن سولنگي محمد بخش سولنگي سخت زخمي ٿي پيا زخمين کي پوليس تعاقب ڪيو. گهٽوڪي ويجهو جي مڙو سولنگي جي حالت ڳڻتي جوڙي آهي سڀ کيس سکر وٺڻ ڪيو ويو پوليس موجب چاڇو سولنگي بيمار جي ٻن ڏرين ۽ جهيڙي نتيجي واقعي جي اڻ سڌارڻي ٿي آهي.

ڪراچي ۾ راڳين ۽ سازندن جو جرائينگ آرڊر نه ملڻ خلاف مظاهرو

آسا مرڪز جي سڌ تي راڳين ۽ سازندن وڃائي احتجاج ڪيو. 319 ميوزڪ ليجرز کي جرائينگ آرڊر نه ملڻ خلاف مظاهرو ڪيو. ڪراچي (بيورو رپورٽ) آل سنڌ سٽيڪسٽر ايسوسيئيشن (آسا) مرڪز جي سڌ تي ناڪ تنهنجو جو نهن اس ۽ سنڌ جي راڳين سازن کي وڃائي احتجاج ڪندي چيو جڪهن جرائينگ آرڊر نه ڏنا ويا ته احتجاج جو ڳڙو وڃندي. علتن جو درجو ڪوڪاڻو وٺندو. تفصيل موجب آر بي ٽي 319 ميوزڪ ليجرز کي جرائينگ آرڊر نه ملڻ خلاف ڪراچي پريس ڪلب آڏو مڙي جيتريهن سنڌ عيلافن سومن جي اڳڀرائي ۽ احتجاجي مظاهرو ڪيو ويو. احتجاج ڪيائين ۽ سنڌ جي مختلف شهرن کان مئٽر سبورڊ جا ائسڊ ۽ سنڪار شامل هئا. آسا جيتريهن سنڌ عيلافن سومن جو ٻن سالن کان جرائينگ آرڊر نه ڏئي سگهي هئي جي خلاف وڏي ڪٽي پئي وئي. جرائينگ آرڊر نه ملڻ ڪري ميوزڪ ليجرز جي نهن ۽ ناقاضي آهي آسا راڳين سنڌ عيلافن سومن رڪنن ڀاءُ شهاب ڀٽي، عتيق بلوچ نور نسو رضو، انجنر علي راضي ٺاڙ، عتيق سان ساجد علي محمد علي محراب عباسي ۽ ٻين صوبائي حڪومت، وزير اعليٰ سنڌ اعليٰ اختيارين کان

ڪراچي جا مسئلا لساني نه انتظامي آهن، متحده اي اين پي ۾ اتفاق

اي اين پي سنڌ جي صدر شاهي سيد جي بهادر آباد ۽ اير ڪيو اير جيتريهن سان ملاقات سنڌ ۾ سسٽر سياسي سسٽر کان وڏو ٿي چڪو جيڪو نظر نٿو اچي: خالد مقبول ڪراچي جا مسئلا لساني نه پر مڪمل طور انتظامي نوعيت جا آهن: شاهي سيد

ڪراچي (بيورو رپورٽ) اير ڪيو اير پاڪستان ۽ عملي ليشنل پائي اي اين پي ڪراچي جي سسٽن تي هڪ آرڊر ٺاهي کي لساني نه پر انتظامي مسئلا قرار ڏئي چيو آهي اي اين پي سنڌ جي صدر شاهي سيد اير ڪيو اير پاڪستان جي بهادرآباد مرڪز پهتو جتي هن اير ڪيو اير جي جيتريهن پيڪٽر خالد مقبول صديقي سان ملاقات

ڪيائين خلاف هڙتال، بنوري ۾ پ ب جي

سيرويسنور (ن ڪا) پ ب پ يونين ڪائونسل شاهه محمد شاهه جي انفارميشن سيڪريٽري رفاڻر چانگ ۽ جيئي سنڌ تحريڪ جي اڳواڻ امار بخش خاصخيلي سميت 5 ڄڻ مظفر زنگور، امر لطيف چانگ، عنايت چانگ ۽ ٻين تي ميرپورسنور شهر ۾ هڙتال ڪرائڻ تي سب انسپيڪٽر / صفحو 11 ڪالمر 3

حيدرآباد ميونسپل ڪارپوريشن لوڪل گورنمينٽ اينڊ هائوسنگ ٽائون پلاننگ ڊپارٽمينٽ گورنمينٽ آف سنڌ

اضافو نمبر 1
 بيلڪ پراڻيوٽ پارتيشن صود تحت راڻي باغ، حيدرآباد جي ڊيزائن، فنانس، تعمير بحالي، هلائڻ، سنڀال ۽ منتقلي

حوالو: دعوت نامي جو حوالو نمبر LGD-PPN/PROC-RBH/2024-25 حيدرآباد ميونسپل ڪارپوريشن، لوڪل گورنمينٽ اينڊ هائوسنگ ٽائون پلاننگ ڊپارٽمينٽ (ايجنسي) پاران جاري ڪيو ويو آهي، دلچسپي رکندڙ ڌرين کي دعوت ڏني وئي آهي ته اهي تينڊر جي عمل ۾ حصو وٺن ۽ پروجيڪٽ لاءِ پنهنجون آڇون جمع ڪرائين، جنهن ۾ آر ايف پي گهرجن جي مطابق درخواستون شامل آهن ايس پي پي آر اي EPADS-250161382 تينڊر نمبر. هتي استعمال ٿيل سرمائي وارا اصطلاح ۽ ٻي صورت ۾ بيان نه ڪيا ويا آهن انهن کي RFP ۾ ڏنل معنيٰ هوندي. RFP جي وضاحت لاءِ دلچسپي رکندڙ پارٽين جي لکيل درخواستن جي مطابق، ايجنسي جاري ڪندي: RFP (i) ۾ اضافو 01 Addendum No. I to the RFP، (ii) ۽ دلچسپي رکندڙ ڌرين جي سوالن جا جواب (”جواب دستاويز نمبر 1“)، هر هڪ قابل رسائي 15 اپريل، 2025 کان ايجنسي ايس پي پي آر اي EPADS ۾ پي پي پي يونٽ جي ويب سائيٽس جي ذريعي RFP ۾ مقرر ڪيل ٻيا سڀ شرط ۽ ضابطا سواءِ انهن جي جيڪي RFP جي ضميمو نمبر 1 ۾ بيان ڪيل آهن ۽ تصحيح نمبر 1 ساڳيو ٿي رهندو سيني دلچسپي رکندڙ پارٽين کي گذارش ڪئي وئي آهي ته اهي پنهنجا واڪ جمع ڪرائڻ جي آخري تاريخ تي يا ان کان اڳ آر ايف پي ۾ ضميمو نمبر 1 جي مطابق جمع ڪرائين.

پروجيڪٽ ڊائريڪٽر، راڻي باغ حيدرآباد پروجيڪٽ لوڪل گورنمينٽ اينڊ هائوسنگ ٽائون پلاننگ ڊپارٽمينٽ، گورنمينٽ آف سنڌ اڊريس: گرائنڊ فلور سنڌ سيڪريٽريٽ بلڊنگ نمبر 05 اينڪسي فلق هائوس ڪمال انٽرڪ روڊ، ڪراچي فون نمبر: +92-21-99222193 / فيڪس: +92-21-99245154 / اي ميل: info.p3proc@gmail.com ويب سائيٽ ايجنسي: https://lgsindh.gov.pk / ايس پي پي آر اي EPADS: https://portalsindh.procure.gov.pk/ / اي پي پي يونٽ: https://www.pppunitsindh.gov.pk/

سائينگڙ ويجهو عورت سان ميسا طور اجتماعي زيادتي، 8 جڻ تي کيس داخل منگلي ٺاهي تي شهباز، الاهي بخش اڀريونو، شاه علي بلان ۽ ٻين تي کيس داخل ڪيو ويو 8 جوابدارن نشووندي زيادتي جو نشانو بڻايل وڏيو پڻ رڪارڊ ڪئي وئي. مئٽر عورت کيس داخل ڪري ڇڏيو آهي، جوابدارن جي گرفتاري لاءِ ڇاپا هٿي رهيا آهيون: پوليس سانگهڙو (ن ڪا) سانگهڙو ويجهو عورت وٺي، منگلي ٺاهي تي 8 جوابدارن خلاف سان ميسا طور اجتماعي زيادتي ڪئي کيس داخل / صفحو 11 ڪالمر 4

پروجيڪٽ ڊائريڪٽر، راڻي باغ حيدرآباد پروجيڪٽ لوڪل گورنمينٽ اينڊ هائوسنگ ٽائون پلاننگ ڊپارٽمينٽ، گورنمينٽ آف سنڌ اڊريس: گرائنڊ فلور سنڌ سيڪريٽريٽ بلڊنگ نمبر 05 اينڪسي فلق هائوس ڪمال انٽرڪ روڊ، ڪراچي فون نمبر: +92-21-99222193 / فيڪس: +92-21-99245154 / اي ميل: info.p3proc@gmail.com ويب سائيٽ ايجنسي: https://lgsindh.gov.pk / ايس پي پي آر اي EPADS: https://portalsindh.procure.gov.pk/ / اي پي پي يونٽ: https://www.pppunitsindh.gov.pk/



ADDENDUM NO. 1 TO RFP

FOR

AWARD OF CONCESSION TO

DESIGN, FINANCE, BUILD, REHABILITATE, OPERATE,
MAINTAIN AND TRANSFER

RANI BAGH, HYDERABAD

APRIL 15, 2025



HYDERABAD MUNICIPAL CORPORATION

REQUEST FOR PROPOSALS

FOR

AWARD OF CONCESSION TO

**DESIGN, FINANCE, BUILD, REHABILITATE, OPERATE,
MAINTAIN AND TRANSFER**

RANI BAGH, HYDERABAD

JANUARY 23, 2025

LETTER OF INVITATION

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in **VOLUME I (TENDER PROCEDURE)** of the RFP.*

In view of the shortage of recreational and entertainment avenues in Hyderabad, Sindh, the Agency has resolved to improve the current conditions of Rani Bagh, which is in dire need of rehabilitation and upgradation and efficient operation, management and maintenance. To such end, the Agency intends to engage a private party on a PPP basis to DFBROMT Rani Bagh. The Concessionaire shall, at its own risk and cost, undertake the Project Works in relation to Rani Bagh, in consideration of the right to collect and utilize the Applicable Charges, in each case, in the manner set out in the Concession Agreement. The Concessionaire shall undertake the Project Works strictly in accordance with the Approved Master Plan. For details on the Project background, scope of work and specifications, please refer to **VOLUME II (PROJECT SCOPE)** of the RFP.

The Agency now invites Interested Parties to participate in the Tender Procedure and to submit their Bids for the Project in accordance with the requirements of the Applicable Evaluation Documents.

Bidders are required to submit only one (1) Bid, comprising of one (1) Technical Proposal and one (1) Financial Proposal along with other supporting documents (as applicable), as identified in the RFP, through the SPPRA EPADS, which can be accessed using the link provided in Section 9 (*Data Sheet*) of the Instructions to Bidders, no later than **12:00 hours PST** by the Bid Submission Deadline. Physical submission of Bids shall not be accepted except for the purpose of submitting the original Bid Security and any other documents specified in the RFP.

The Technical Proposals will be opened on the Bid Submission Deadline at **13:00 hours PST** in the presence of the representatives of the Bidders who may wish to attend. After completion of evaluation of the Technical Proposals, Bidders who have submitted responsive Technical Proposals in terms of the Applicable Evaluation Documents shall be invited to attend the opening of the Financial Proposals. The date, time and location of the opening of Financial Proposals shall be advised in writing to all technically qualified Bidders by the Agency.

All Bidders are required to furnish, as part of their Technical Proposals, the original Bid Security, equivalent to PKR 42,000,000/- (Pakistani Rupees Forty-Two Million only). The original Bid Security shall be furnished at the submission address indicated in the Data Sheet no later than **12:00 hours PST** by the Bid Submission Deadline either through mail or physically by hand (in a sealed envelope). The scanned copy of the Bid Security shall be uploaded by Bidders together with the Technical Proposal *via* SPPRA EPADS no later than **12:00 hours PST** by the Bid Submission Deadline. The Bid Security shall be an irrevocable, unconditional and on-demand bank guarantee in the form attached as Bidding Form T17 (*Form of Bid Security*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, issued in accordance with the requirements set out in the Instructions to Bidders.

It is mandatory for the Bids to be prepared using the standard formats for Technical Proposals and Financial Proposals, as provided in the RFP. Bids that are not prepared on the prescribed formats may not be considered for evaluation by the Agency. If any information required in the prescribed forms is found missing, or written elsewhere, no credit will be given during evaluation and may lead to rejection of the Bid.

The Agency may amend the RFP by issuing an addendum or a corrigendum (as applicable) as per the requirements specified in the RFP, at any time prior to the Bid Submission Deadline.

Subject to the provisions of the Applicable Evaluation Documents, the Agency reserves the right to

cancel the Tender Procedure at any time.

The Agency reserves all rights (which are exercisable by the Agency in its sole and absolute discretion) to:

- (a) suspend, cancel, discontinue, modify, extend or reinstate the Tender Procedure;
- (b) accept or reject any Bid or disqualify any or all Bidders;
- (c) modify all or any dates stated in the RFP; or
- (d) amend the RFP, scope of Project or make clarifications thereof,

at any time without any obligation to inform any Interested Party or the Bidder of the grounds, justification, or reason for such action and without liability, in accordance with the Applicable Evaluation Documents.

Interested Parties may acquire the RFP before the Bid Submission Deadline, either: (a) physically, by submitting a written application at the address provided below, specifying their full name, address and contact details; or (b) electronically, by downloading from SPPRA EPADS and/or the website of PPP Unit, and intimating the Agency in writing through a letter or *via* email, its full name, address and contact details.

Designation: Project Director, Rani Bagh Hyderabad Project.
Address: Ground Floor, Sindh Secretariat, Building No. 5, Tughlaq House, Kamal Ataturk Road, Karachi, Pakistan.
Phone No.: +92-21-99222193.
Email: info.p3proc@gmail.com
Websites: Agency - <https://www.hmcsindh.gos.pk/>
PPP Unit - <https://www.pppunitsindh.gov.pk/>
SPPRA EPADS - <https://portalsindh.eprocure.gov.pk/>
Submission Guidelines - <https://tiny.cc/LGD>

Sincerely,

**PROJECT DIRECTOR
RANI BAGH HYDERABAD PROJECT**

IMPORTANT NOTICE

*Capitalized terms used herein and not otherwise defined shall have the meaning given to them in **VOLUME I (TENDER PROCEDURE)** of the RFP.*

The RFP, together with all volumes, attachments, forms, annexures and appendices, attached thereto, is issued by the Agency and is provided to the recipients solely for use in preparing and submitting the Bids.

Bids submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all terms of the RFP and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP.

The Agency makes no representations (express or implied) or warranties as to the accuracy or completeness of the information contained in the RFP, or in any other document or information made available to a Person in connection with the Project (including the Tender Procedure); and the same shall have no liability for the RFP or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Project. The Agency shall not be liable to reimburse or compensate any recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon the RFP or otherwise in connection with the Project.

The RFP shall neither constitute a solicitation to invest, or otherwise participate, in the Project (including the Tender Procedure), nor shall it constitute a guarantee or commitment of any manner on the part of the Agency that the Project will be awarded or will otherwise proceed. The Agency reserves the right, in its full discretion, to modify the RFP and/or the Project requirements at any time to the fullest extent permitted by applicable Laws and shall not be liable to reimburse or compensate the recipient for any costs, taxes, expenses or damages incurred by the recipient in such an event.

The Agency may amend the RFP by issuing an addendum or a corrigendum (as applicable) as per the requirements specified in the RFP, at any time prior to the Bid Submission Deadline.

Subject to the provisions of the Applicable Evaluation Documents, the Agency reserves the right to cancel the Tender Procedure at any time.

The interpretation of any aspect of the RFP will be made solely by the Agency and shall be final and binding on all the Interested Parties and the Bidders.

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VOLUME I - TENDER PROCEDURE

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PART 1
INSTRUCTIONS TO BIDDERS

GLOSSARY

In the RFP (including the Schedules), unless the context otherwise requires, the capitalized terms have the meaning ascribed to them under the Concession Agreement (as defined below). In addition, the following terms shall have the following meaning, unless the context otherwise requires:

TERM	DEFINITION
Acceptable Bank	A scheduled bank, or a financial institution incorporated or organized in Pakistan having a long-term credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody's or equivalent rating by Fitch or Standard & Poor's.
Acceptance of Notification of Award	Has the meaning given to it in Section 7.3.3 of the Instructions to Bidders.
Account One	Has the meaning given to it in the Concession Agreement.
Affiliate	With respect to a Person (being the Bidder or, where the Bidder is a Consortium, each Consortium Member), means: <ul style="list-style-type: none"> (a) any company or entity that directly or indirectly Controls or is Controlled by, or is under common Control with such Person; (b) any director, senior executive or manager either of such Person or of any company or entity referred to in paragraph (a) above; (c) any consultant, agent or representative supporting such Person in connection with the Project (including the Tender Procedure for the Project); and/or (d) any other Person with an aggregate ultimate beneficial interest in at least five percent (5%) of the share capital or ownership interest in such Person (howsoever held).
Agency	Has the meaning given to it in the Concession Agreement.
Agency Agreements	Has the meaning given to it in the Concession Agreement.
Agency Parties	Collectively, the Agency, the GoS and the TFEC, including their consultants, advisors, employees, personnel or agents. and in case of the GoS all ministries, department, attached department, autonomous body of the GoS, local government or any organization or corporation owned or controlled by the GoS.
Agency Revenue Share	Has the meaning given to it in the Concession Agreement.
Aggregate Concession Revenue	Has the meaning given to it in the Concession Agreement.
Applicable Charges	Has the meaning given to it in the Concession Agreement.
Applicable Evaluation Documents	Collectively: (a) the Sindh PPP Act; (b) the SPPRA Act; (c) the SPPRA Rules; (d) the SPPRA Guidelines; (e) any applicable order, instruction, guideline, regulations or instrument issued under the Sindh PPP Act, the SPPRA Act and/or the SPPRA Rules; and (f) the RFP.
Apostille Convention	The Convention Abolishing the Requirement of Legalisation for Foreign Public Documents concluded on 5 October 1961.
Approved Master Plan	Has the meaning given to it in the Concession Agreement.
Benchmark Revenue Amount	Has the meaning given to it in Part 2 (<i>Financial Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of

	VOLUME I (TENDER PROCEDURE) of the RFP.
Best Evaluated Bid	A Bid which is determined to be the ‘ <i>best evaluated bid</i> ’ for award of the Concession in terms of the requirements of the Applicable Evaluation Documents.
Bid	The proposal (constituting the Technical Proposal and Financial Proposal) submitted by a Bidder in response to the RFP, which is prepared and submitted in accordance with this RFP.
Bid Price	The price quoted by a Bidder in its Financial Proposal, calculated as per the formula set out in Part 2 (<i>Financial Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of VOLUME I (TENDER PROCEDURE) of the RFP.
Bid Security	Has the meaning given to it in Section 4.7.1 of the Instructions to Bidders.
Bid Submission Deadline	The last date for submission of Bids as specified in the Data Sheet, as may be extended by the Agency in accordance with the Applicable Evaluation Documents.
Bid Validity Period	The period of one hundred twenty (120) Days starting from the Bid Submission Deadline, as may be extended in accordance with the Applicable Evaluation Documents.
Bidder	The Interested Party that has submitted a Bid in response to the RFP, either as a single entity or a Consortium.
Bidding Forms	The forms provided in Part 2 (<i>Bidding Forms</i>) of VOLUME I (TENDER PROCEDURE) of the RFP, that are required to be submitted with the Technical Proposals and the Financial Proposals.
Business Day	Has the meaning given to it in the Concession Agreement.
C&O Performance Security	The irrevocable, unconditional, without recourse and on-demand standby letter of credit or bank guarantee, issued by an Acceptable Bank, guaranteeing the payment to the Agency of an amount equal to two percent (2%) of the Pre-Estimated Project Cost, in the form of the instrument attached as SCHEDULE L (FORM OF C&O PERFORMANCE SECURITY) to the Concession Agreement.
C&O Performance Security Expiry Date	Has the meaning given to it in the Concession Agreement.
C&O Period	Has the meaning given to it in the Concession Agreement.
Concession	Has the meaning given to it in the Concession Agreement.
Concession Agreement	The agreement titled “ <i>Concession Agreement</i> ” attached in VOLUME III (CONCESSION AGREEMENT) of the RFP.
Concession Assets	Has the meaning given to it in the Concession Agreement.
Concession Period	Has the meaning given to it in the Concession Agreement.
Concessionaire	The SPV to be established and incorporated under the Law of Pakistan by the Successful Bidder, for the purposes of undertaking the Project.
Consortium	A Bidder comprised of two (2) or more Consortium Members, formed to submit the Bid, in accordance with the requirements of the Applicable Evaluation Documents; provided, that the maximum number of Consortium Members including the Lead Member shall be five (5).
Consortium Agreement	The consortium agreement to be submitted by a Bidder, in case the Bidder is a Consortium, in accordance with the requirements of the RFP (including Annexure C (<i>Requirements for Consortium Agreement</i>) of the Instructions to Bidders).
Consortium Member	Each member of a Consortium, including the Lead Member.

Control	Has the meaning given to it in the Concession Agreement.
Data Sheet	The data sheet provided in Section 9 (<i>Data Sheet</i>) of the Instructions to Bidders.
Day	Has the meaning given to it in the Concession Agreement.
DFBROMT	Design, finance, build, rehabilitate, operate, maintain and transfer.
Divestment Requirements	Has the meaning given to it in the Concession Agreement.
Effective Date	Has the meaning given to it in the Concession Agreement.
Eligible Country	All countries with whom Islamic Republic of Pakistan has commercial/trade relations and those which are not Sanctioned Countries.
Eligible Project	Has the meaning given to it in Part 1 (<i>Technical Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of VOLUME I (TENDER PROCEDURE) of the RFP.
Final Completion Date	Has the meaning given to it in the Concession Agreement.
Financiers	Has the meaning given to it in the Concession Agreement.
Financial Model	The financial model submitted by the Bidder as part of its Bid in accordance with Section 4.5.3(e) of the Instructions to Bidders.
Financial Proposal	The financial proposal (including all forms, documents and information required in terms of the RFP and submitted therewith), submitted by a Bidder as part of its Bid pursuant to the RFP.
General Development Experience	Has the meaning given to it in Part 1 (<i>Technical Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of VOLUME I (TENDER PROCEDURE) of the RFP.
GoS	Has the meaning given to it in the Concession Agreement.
Independent Auditor	Has the meaning given to it in the Concession Agreement.
Independent Technical Advisor	Has the meaning given to it in the Concession Agreement.
Instructions to Bidders	The Instructions to Bidders set out in Part 1 (<i>Instructions to Bidders</i>) of VOLUME I (TENDER PROCEDURE) of the RFP.
Integrity Pact	Has the meaning given to it in Section 8.3 (<i>Integrity Pact</i>) of the Instructions to Bidders.
Interested Party	A Person, either as a single entity or a consortium formed by two (2) or more Persons, who has obtained the RFP from the Agency.
KIBOR	Has the meaning given to it in the Concession Agreement.
Law	Has the meaning given to it in the Concession Agreement.
Lead Member	Has the meaning given to it in Section 2.1.2(a) of the Instructions to Bidders.
Notification of Award	The notification of award to be issued by the Agency to the Successful Bidder as per Section 7.3.1 of the Instructions to Bidders.
O&M Costs	Has the meaning given to it in the Concession Agreement.
<u>O&M Third Party</u>	<u>A third party fulfilling the specific requirements for technical capabilities relating to the Operation and Maintenance of Rani Bagh, as specified in O&M Experience under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of VOLUME I (TENDER PROCEDURE) of the RFP. For the avoidance of doubt, the O&M</u>

	Third Party shall not be considered to be a Bidder. The O&M Third Party may be an Affiliate of the Bidder.
O&M Third Party Undertaking	The undertaking from the O&M Third Party on whose capabilities and experience the Bidder relies in order to meet the requirements under O&M Experience under Technical Capability of Part 1 (Technical Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of VOLUME I (TENDER PROCEDURE) of the RFP, which shall be provided in the form set out in Bidding Form T13 (O&M Experience) of Part 2 (Bidding Forms) of VOLUME I (TENDER PROCEDURE) of the RFP.
Operation and Maintenance	Has the meaning given to it in the Concession Agreement.
Outstanding Principal Amount	Has the meaning given to it in the Concession Agreement.
Ownership Stake	Shareholding in the SPV.
Parties	Has the meaning given to it in the Concession Agreement.
PDF	The portable document format used for submitting the Technical Proposal and Financial Proposal (and any other documents required under the RFP) electronically on the SPPRA EPADS in accordance with the Submission Guidelines.
Person	Has the meaning given to it in the Concession Agreement.
PKR	Has the meaning given to it in the Concession Agreement.
PPP	Has the meaning given to it in the Concession Agreement.
PPP Unit	The PPP Unit established under Section 6 (<i>Public-Private Partnership Unit</i>) of the Sindh PPP Act.
Pre-Bid Meeting	The meeting/conference relating to the queries raised and clarifications sought by the prospective Bidders held on the date specified in the Data Sheet.
Pre-Estimated Project Cost	Has the meaning given to it in the Concession Agreement.
Project	Has the meaning given to it in the Concession Agreement.
Project Construction Milestones	Has the meaning given to it in the Concession Agreement.
Project Site	Has the meaning given to it in the Concession Agreement.
Project Site Conditions	Has the meaning given to it in the Concession Agreement.
Project Works	Has the meaning given to it in the Concession Agreement.
Provincial Support Agreement	Has the meaning given to it in the Concession Agreement.
PST	Pakistan Standard Time.
Rani Bagh	Has the meaning given to it in the Concession Agreement.
Rani Bagh Contract Party	Has the meaning given to it in the Concession Agreement.
Rani Bagh Contracts	Has the meaning given to it in the Concession Agreement.
Rani Bagh Facilities (Outsourced)	Has the meaning given to it in the Concession Agreement.
RFP	This request for proposals document issued by the Agency in relation to the Project, containing the documents specified in Section 3.1.1 of the Instructions to Bidders, and includes any amendments and/or modifications thereto.
Sanctioned Country	A country which is subject to sanctions levied by the United Nations (or the Security Council thereof) pursuant to authority derived from Article 41 of Chapter 7 of the United Nations

	Charter.
SBP	Has the meaning given to it in the Concession Agreement.
SBP Debit Authority	Has the meaning given to it in the Concession Agreement.
Segment Substantial Completion Date	Has the meaning given to it in the Concession Agreement.
Sindh PPP Act	The Sindh Public Private Partnership Act, 2010.
SOE	Has the meaning given to it in Section 2.1.5(a).
Sovereign	Has the meaning given to it in Section 2.1.5(a).
Specific Development Experience	Has the meaning given to it in Part 1 (<i>Technical Evaluation Criteria</i>) of Annexure B (<i>Evaluation Criteria</i>) of Part 4 (<i>Annexures</i>) of VOLUME I (TENDER PROCEDURE) of the RFP.
SPPRA	The Sindh Public Procurement Regulatory Authority, established under the SPPRA Act.
SPPRA Act	The Sindh Public Procurement Act, 2009.
SPPRA EPADS	The SPPRA Sindh e-Pak Acquisition & Disposal System (Public Procurement Regulatory Authority Sindh EPADS website), which can be accessed using the link provided in Section 9 (<i>Data Sheet</i>) of the Instructions to Bidders.
SPPRA Guidelines	The step-by-step instructions, as may be amended from time to time by the SPPRA, for electronically submitting the Bid through <i>'file uploading method'</i> via the SPPRA EPADS, the link for which is provided in Section 9 (<i>Data Sheet</i>) of the Instructions to Bidders.
SPPRA Rules	The Sindh Public Procurement Rules, 2010.
SPV	The special purpose vehicle, being a company incorporated under the applicable Laws.
Submission Guidelines	The step-by-step instructions for electronically submitting the Bid through the SPPRA EPADS (file uploading e-submission method), as may be amended from time to time by the SPPRA; the link for the Submission Guidelines is provided in Section 9 (<i>Data Sheet</i>) of the Instructions to Bidders.
Substantial Completion Date	Has the meaning given to it in the Concession Agreement.
Successful Bidder	The Bidder whose Bid has been determined to be the Best Evaluated Bid.
Technical Proposal	The technical proposal (including all forms, documents and information required in terms of the RFP and submitted therewith), submitted by a Bidder as part of its Bid pursuant to the RFP.
Tender Procedure	The international competitive Tender Procedure being conducted pursuant to the Applicable Evaluation Documents, for the selection of the Successful Bidder for the award of the Concession for the Project.
Termination Payment Amount (Secured)	Has the meaning given to it in the Concession Agreement.
TFEC	The technical and financial evaluation committee formed in accordance with the applicable Laws for the purposes of the Project.
Transfer Date	Has the meaning given to it in the Concession Agreement.
Trigger Date	Has the meaning given to it in the Concession Agreement.
Windfall Revenue	Has the meaning given to it in the Concession Agreement.

1. GENERAL

1.1 INTRODUCTION

The Agency intends to engage a private party on a PPP basis to DFBROMT Rani Bagh. For details on the Project background, scope of work and specifications, please refer to **VOLUME II (PROJECT SCOPE)** of the RFP.

The Concession Agreement establishes the rights and obligations of the Agency and the Concessionaire and will be executed among the Agency and the Concessionaire in accordance with the requirements of the RFP. The Concession Period shall commence on the Effective Date and end on the Trigger Date; provided, that, the Parties shall perform such obligations and enjoy such rights till the Transfer Date, as are, in each case, expressly set out in the Concession Agreement.

The Successful Bidder/Concessionaire shall be responsible for developing and implementing the financing structure for the Project, including the financing and commercial arrangements in accordance with the requirements of the RFP.

The Concessionaire shall enter into the Rani Bagh Contracts with the Rani Bagh Contract Parties in respect of the Rani Bagh Facilities (Outsourced) in accordance with the terms of the Concession Agreement for the purpose of undertaking the C&O Works and/or the Operation and Maintenance.

Supports available to the Successful Bidder/Concessionaire from the Agency for the Project have been specified in the RFP and the Agency Agreements.

Subject to the requirements of the applicable Agency Agreements, the Agency shall issue the SBP Debit Authority in relation to the Account One, authorizing the SBP to debit the Account One to secure the Termination Payment Amount (Secured) in accordance with section 17.5 (*SBP Debit Authority*) of the Concession Agreement.

In addition, if the Successful Bidder proposes to raise financing from Financiers to fund the Project, the Concessionaire, the Agency and the GoS (or another relevant Government Authority) shall enter into the Provincial Support Agreement in order to guarantee the financial obligations of the Agency under the Concession Agreement.

The Successful Bidder/Concessionaire shall be required to comply with the shareholding requirements, including share transfer restrictions, as set out in the Concession Agreement.

The Applicable Charges to be collected by the Concessionaire from Rani Bagh shall comprise the following:

- (a) the User Charges; and
- (b) the Other Charges,

in each case, payable in accordance with the Concession Agreement. Determination of User Charges shall be done in terms of **SCHEDULE P (USER CHARGES BENCHMARKING PRINCIPLES)** of the Concession Agreement.

The Concessionaire will be responsible for handing over the Concession Assets to the Agency in accordance with the Divestment Requirements, at the end of the Concession Period, as specified in the Concession Agreement, without any further compensation to the Concessionaire at the time of such transfer. The transfer of the Concession Assets shall be subject to an inspection and correction process in order to ensure that the Concession Assets are handed over in accordance with the terms and conditions set out in the Concession Agreement.

All risks and obligations of the Agency and the Successful Bidder/Concessionaire shall be in accordance with the RFP (including the Agency Agreements) and the Bidders shall be deemed to have full and complete understanding of the risks relating to the Project and their allocation, as set out in the RFP (including the Agency Agreements).

By submitting the Bid, the Bidder acknowledges the acceptance of all tax-related obligations. For the sake of clarity, the Concessionaire/SPV shall be required to pay all the taxes, duties, levies, stamp duties, rents, and other charges payable to any local government, provincial or federal government (as applicable) and it would not be allowed to seek any support from the Agency Parties if it was unaware or ignorant of any taxes, duties, levies, stamp duties, rents, and other charges.

Before submitting the Bids, the Bidders should carefully examine all the information provided in the RFP (including the Concession Agreement).

1.2 **OVERVIEW OF THE TENDER PROCEDURE**

The Tender Procedure in relation to the Project is being conducted pursuant to the Applicable Evaluation Documents. The Agency has issued the RFP for conducting the Tender Procedure for the selection of a Successful Bidder for the award of the Concession, in accordance with the requirements of the Applicable Evaluation Documents.

In terms of the Applicable Evaluation Documents, the ‘*single stage two envelope*’ tender procedure has been adopted. A Bidder whose Bid is determined to be the Best Evaluated Bid, shall be awarded the Concession.

The Successful Bidder shall be required to incorporate the Concessionaire which shall be the concessionaire for the purposes of the Project.

1.3 **INDICATIVE SCHEDULE**

The indicative timelines in relation to the Tender Procedure for the Project (as may be amended by the Agency in its discretion) are as follows:

ACTIVITY	DATE (<i>TENTATIVE</i>)
Issuance of RFP	January 23, 2025
Pre-Bid Meeting	February 11, 2025
Bid Submission Deadline and Opening of Technical Proposals	May 8 March 24 , 2025
<u>Announcement of result of evaluation of the Technical Proposals</u>	<u>June 2, 2025</u>
Opening of Financial Proposals	June 9 May 8 , 2025
Announcement of Bid Evaluation Results	June 23 May 19 , 2025

Award of Project to Successful Bidder	<u>July 25</u> May 29 , 2025
Signing of the Concession Agreement	<u>August 26</u> June 30 , 2025

*In the event of any public holiday occurring on the above-mentioned dates, the immediately succeeding Business Day will be considered as the Day on which the respective milestone shall take place.

2. ELIGIBLE BIDDERS

2.1 GENERAL REQUIREMENTS

2.1.1 Any Person who is eligible to submit a proposal to undertake a project under the Sindh PPP Act may Bid for the Project. A Bid received from a Bidder, shall only be considered for further evaluation in accordance with the requirements of the RFP if the criteria, as set out in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, is satisfied. Any non-compliant Bid shall be rejected by the Agency/TFEC.

2.1.2 For the purposes of the RFP, a Bid may be submitted by a single entity or a Consortium. In case a Bid is submitted by a Consortium:

- (a) one (1) Consortium Member shall be nominated to act as the lead member (the **Lead Member**) who shall have the authority to represent and irrevocably bind the Consortium in all matters connected with the Tender Procedure, conduct all business for and on behalf of any and all Consortium Members during the Tender Procedure and in case the Consortium is awarded the Project, finalize the Agency Agreements. The Lead Member shall be liable in respect of the obligations of the Consortium Members in relation to the Project and, if awarded the Project, shall have management control of the Concessionaire.

This authorization shall be evidenced by submitting a power of attorney as set out in Part B (*Power of Attorney to Authorize the Lead Member*) of Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, signed by legally authorized signatories of all the Consortium Members, appointed pursuant to the power of attorney in Part A (*Power of Attorney to Authorize a Person to Sign the Documents*) of Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;

- (b) each Consortium Member shall be required to own at least ten percent (10%) Ownership Stake in the SPV. The Lead Member shall be required to own the highest proportion of the Owner Stake in the SPV relative to other Consortium Members but in no case less than forty percent (40%) Ownership Stake in the SPV;
- (c) the Bid shall contain a formal executed copy of the Consortium Agreement complying with the laws of Pakistan and the requirements indicated in Annexure C (*Requirements for Consortium Agreement*) and specifically appointing the Lead Member of the Consortium and identifying the roles of each Consortium Member. Following the Bid Submission Deadline, there shall be no change in the Consortium, by addition/withdrawal of a Consortium Member or change in percentage shareholding of any Consortium Member, except as may be permitted by the Agency/TFEC; and
- (d) in case the Successful Bidder is a Consortium, such Successful Bidder shall be required to comply with the requirements regarding Ownership Stake matters including transfer restrictions set out in the Concession Agreement.

- 2.1.3 Each Bidder shall authorize a representative who shall have the authority to represent and irrevocably bind the Bidder in all matters connected with the Tender Procedure, conduct all business for and on behalf of the Bidder during the Tender Procedure, and in case the Bidder is awarded the Project, finalize the Agency Agreements. Such authority shall be in the form of a power of attorney in favour of the authorized representative in the form attached as Part A (*Power of Attorney to Authorize a Person to Sign the Documents*) of the Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.
- 2.1.4 A Bidder (including a Consortium Member) shall not have a conflict of interest as per the requirements of the RFP. All Bidders (including any Consortium Members) found to have a conflict of interest shall be disqualified. The Agency will take appropriate actions to manage such conflicts of interest, which may include rejecting the Bid if it determines that a conflict of interest may affect the integrity of the Tender Procedure.
- 2.1.5 A Bidder (including a Consortium Member) may be considered to be in a conflict of interest with one or more Bidders, if such Bidder/Consortium Member, including its subsidiaries, participates in more than one (1) Bid, either individually or as a Consortium Member. This will result in the disqualification of all Bids in which the Bidder (including a Consortium Member) is involved. A Bidder (including a Consortium Member) shall not be considered to be in a conflict of interest with another Bidder, if such Bidders (including Consortium Members) are the subsidiaries of a common parent company or one Bidder (including a Consortium Member) is the parent company of the other Bidder (including a Consortium Member); provided, that the following conditions are satisfied:
- (a) such parent company is a sovereign state (**Sovereign**) or a sovereign state-owned enterprise (**SOE**);
 - (b) the Sovereign, SOE and the relevant subsidiaries of the Sovereign and/or SOE participating in the Tender Procedure conduct their business operations on an independent basis, are independent legal persons, have independent management and boards and are free from each other's financial obligations including independent auditing and accounting; and
 - (c) such Bidder (including a Consortium Member) has provided a legal opinion duly issued by a reputable, qualified legal counsel in its jurisdiction of incorporation confirming (a) and (b) above.
- 2.1.6 The circumstances provided above which may constitute a conflict of interest are not exhaustive, and the Agency shall be the sole determinant of when a conflict of interest shall arise.
- 2.1.7 A Bidder (or a Consortium Member) which has been declared ineligible or blacklisted by any of its employers, any Federal or Provincial governmental or non-governmental department/agency in Pakistan, or any other provincial government/governments of any foreign countries or their governmental bodies and/or international organizations (e.g. World Bank, Asian Development Bank, United Nations, International Monetary Fund etc.) at the Bid Submission Deadline, shall not be considered.
- 2.1.8 Each Bidder (including a Consortium Member) shall indemnify the Agency Parties, fully in respect of any damage, cost, penalty or expense of any kind incurred by such Person arising from a Bidder's or its representatives (including a Consortium Member's or its representatives) breach of its obligations under the RFP.

- 2.1.9 Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the Project Site Conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to Project Site, handling and storage of materials, weather data, applicable laws including but not limited to the Applicable Evaluation Documents and the Sindh Environmental Protection Act, 2014, the general and local conditions associated with implementing the Project and any other matter considered relevant by them. The costs and permission(s) (if any) for the purposes of visiting such site(s) shall be at the Bidder's own expense and liability. Bidders shall be required to seek prior written permission of the Agency for visiting such site(s). Regardless of the Bid and outcome of the Tender Procedure, the Agency shall not be liable in any manner for any costs incurred as a result of such visit(s).
- 2.1.10 A Bidder or any of its personnel or agents may enter the site(s) where the works and services in relation to the Project are to be performed and undertaken, only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Agency and its personnel and agents from and against all liability in respect thereof, and the Bidder will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 2.1.11 A Bidder is expected to examine all instructions, forms, terms and specifications in the RFP. Failure to furnish all information or documentation required by the RFP may result in the rejection of the Bid.

3. RFP DOCUMENT

3.1 CONTENTS OF THE RFP

3.1.1 The RFP comprises the documents stated below and should be read in conjunction with any addendum and/or corrigendum issued in accordance with Section 3.4 (*Amendment of RFP*) of the Instructions to Bidders.

(A) VOLUME I - TENDER PROCEDURE

- (a) Part 1 - Instructions to Bidders.
- (b) Part 2 - Bidding Forms.
- (c) Part 3 - Bidding Documentary Requirements.
- (d) Part 4 - Annexures.

(B) VOLUME II - PROJECT SCOPE

(C) VOLUME III - CONCESSION AGREEMENT

3.1.2 The Bidding Forms comprise the forms stated below and should be read in conjunction with any addendum or corrigendum to the RFP issued in accordance with Section 3.4 (*Amendment of RFP*) of the Instructions to Bidders:

(A) For the Technical Proposal:

- (a) Bidding Form T1 - Letter of Technical Proposal;
- (b) Bidding Form T2 - Form of Integrity Pact;
- (c) Bidding Form T3 - Form of Power of Attorney;
- (d) Bidding Form T4 - Form of Affidavit;
- (e) Bidding Form T5 - Basic Information Form;
- (f) Bidding Form T6 - Historical Non-Performance and Pending Litigation;
- (g) Bidding Form T7 - Net Worth of Assets Owned by the Bidder;
- (h) Bidding Form T8 - Cash and Funding Lines;
- (i) Bidding Form T9 - Average Annual Turnover or Project Financing Experience;
- (j) Bidding Form T10 - General and Specific Development Experience;
- (k) Bidding Form T11 - Team Composition;
- (l) Bidding Form T12 - Format of Curriculum Vitae (CV) for Proposed Key Staff;
- (m) Bidding Form T13 - O&M Experience;
- (n) Bidding Form T14 - Construction Methodology, Work Plan & Technology Integration;
- (o) Bidding Form T15 - O&M Plan;
- (p) Bidding Form T16 - Marketing Plan; and
- (q) Bidding Form T17 - Form of Bid Security.

(B) For the Financial Proposal:

- (a) Bidding Form F1 - Letter of Financial Proposal;
- (b) Bidding Form F2 - Financial Proposal Standard Form;
- (c) Bidding Form F3 - Financial Model Form;
- (d) Bidding Form F4 - Letter of Intent; and
- (e) Financial Model.

3.2 COMPLETENESS OF RFP

- 3.2.1 None of the Agency Parties shall be responsible for the completeness of the RFP and its addenda/corrigenda, if a Bidder has not obtained the same directly from the source(s) stated by the Agency in the Letter of Invitation.
- 3.2.2 Bidders are expected to carefully examine all instructions, forms and terms in the RFP and to furnish all information or documentation required pursuant to the RFP. Failure to comply with the requirements of Bid submission set out in the RFP will be at the Bidders' own risk and may result in the rejection of the Bid. Pursuant to Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, Bids which are not responsive to the requirements of the RFP shall be rejected.

3.3 CLARIFICATIONS OF RFP

- 3.3.1 An Interested Party requiring any clarification pertaining to the RFP shall do so in writing *via* the SPPRA EPADS and in writing, at address or through email provided in the Data Sheet or raise its enquiries during the Pre-Bid Meeting. The Agency will respond in writing to any request for clarification provided that such request is received no later than five (5) calendar Days prior to the Bid Submission Deadline. The response shall be uploaded on SPPRA EPADS and/or the websites of the Agency and the PPP Unit, including a description of the inquiry but without identifying its source. Should the Agency deem it necessary to amend the RFP as a result of a request for clarification, it shall do so following the procedure under Section 3.4 (*Amendment of RFP*) of the Instructions to Bidders. No markup of the RFP (including the Agency Agreements and/or other documents/instruments attached to the RFP) shall be accepted. Interested Parties may submit comments or seek clarifications on the RFP, which shall be considered by the Agency/TFEC.
- 3.3.2 The designated representatives of the Interested Parties are encouraged to attend the Pre-Bid Meeting at the date, time and venue indicated in Data Sheet. The Pre-Bid Meeting may be conducted virtually, and in such a case, the Agency will provide the web link to all the Interested Parties. The purpose of the Pre-Bid Meeting will be to clarify issues and to answer questions of the Interested Parties on any matter relating to the RFP. Queries to be discussed during the Pre-Bid Meeting should be submitted seven (7) calendar Days prior to the date of the Pre-Bid Meeting. In addition to the queries discussed during the Pre-Bid Meeting, Bidders may submit additional queries to the Agency within the time period as specified in Section 3.3.1 of the Instructions to Bidders and the Agency shall respond to such queries in writing as specified in Section 3.3.1 of the Instructions to Bidders. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of a Bidder. In addition to the Pre-Bid Meeting, on the written request of any Bidder, provided that the same is submitted at least fifteen (15) calendar Days prior to Bid Submission Deadline, the Agency may hold discussions on the RFP separately with such Bidder on such questions and clarifications submitted in writing to the Agency. Any proposed changes or responses to such clarifications and questions shall be provided to all Bidders.

3.4 AMENDMENT OF RFP

- 3.4.1 At any time prior to the Bid Submission Deadline, the Agency may amend the RFP by issuing an addendum/corrigendum.

- 3.4.2 Any addendum/corrigendum issued shall be part of the RFP, communicated to all the Interested Parties and published in widely circulated national and international dailies and further published on SPPRA EPADS and the respective websites of the Agency and the PPP Unit. It shall be the sole responsibility of the Interested Parties to check for any updates in this regard on the respective websites and/or dailies.
- 3.4.3 The Agency may, at its discretion, extend the Bid Submission Deadline in accordance with Section 5.2.5 of the Instructions to Bidders, if it considers that as a result of issuance of any addendum/corrigendum, additional time will be required by the Interested Parties for preparation of their Bids.

4. PREPARATION OF BIDS

4.1 COSTS FOR BIDS

Bidders shall bear all costs associated with the preparation and submission of their Bids, including (without limitation) all costs and expenses relating to preparation of responses to any clarifications sought by the Agency in accordance with Section 6.1.1 of the Instructions to Bidders. The Agency shall in no case be responsible or liable for such costs, regardless of the conduct or outcome of the Tender Procedure.

4.2 LANGUAGE OF THE BIDS

The Bid, and all correspondence and documents related to the Bid and the Tender Procedure between the Bidder and the Agency shall be written in the English language. In case any document/information furnished by the Bidder is in a language other than English, it will need to be accompanied by an English translation (duly notarized by notary public and (a) attested by Pakistan Embassy/Consulate and, once brought into Pakistan, should be attested by Ministry of Foreign Affairs, Pakistan; or (b) subject to applicable laws of the country where English translation is issued, authenticated by an apostille under the Apostille Convention) of its pertinent passages for the purposes of interpretation of the Bid. In case of any discrepancy, the English translation shall prevail.

4.3 DOCUMENTS COMPRISING THE BID

4.3.1 The Bid shall comprise a Technical Proposal, containing the documents listed in Section 4.4 (*Technical Proposal*) of the Instructions to Bidders, and a Financial Proposal, containing the documents listed in Section 4.5 (*Financial Proposal*) of the Instructions to Bidders, each submitted simultaneously through SPPRA EPADS in the manner prescribed in the Submission Guidelines.

4.3.2 Interested Parties are expected to carefully examine the RFP when preparing their Bids and use only the Bidding Forms specified in Section 3.1.2 of the Instructions to Bidders. Bidding Forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. Any material deviations/omissions/reservations from the formats provided in the RFP shall not be accepted and may form basis for the rejection of the Bid. Material deficiencies in providing the information requested may result in rejection of a Bid.

4.3.3 In case a document required to be submitted as part of the Technical Proposal is submitted with the Financial Proposal, or a document required to be submitted with the Financial Proposal is submitted with the Technical Proposal, it shall not be considered for evaluation and such document shall be considered as not submitted by the Bidder.

4.4 TECHNICAL PROPOSAL

4.4.1 The Technical Proposal shall demonstrate the Bidder's unconditional acceptance of the complete scope of works and services under the RFP. Any material omission, reservation, deviation or condition attached in the Technical Proposal may cause the Bid to be rejected by the Agency as non-responsive. Under no circumstances shall the Agency consider/accept a conditional Technical Proposal.

4.4.2 The Technical Proposal submitted by the Bidder shall include the following information:

- (a) signed and filled out ‘*Letter of Technical Proposal*’, as set out in Bidding Form T1 (*Letter of Technical Proposal*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (b) Integrity Pact, as set out in Bidding Form T2 (*Form of Integrity Pact*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, in accordance with Section 8.3 (*Integrity Pact*) of the Instructions to Bidders;
- (c) authorization in the form of a power of attorney on behalf of the Bidder, and in case of a Consortium, each Consortium Member, authorizing its representative to sign the relevant documents as per the requirements of the RFP, on its behalf, in the format attached as Part A (*Power of Attorney to Authorize a Person to Sign the Documents*) of Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (d) in case the Bidder is a Consortium, a power of attorney, to be executed by the authorized representatives of the Consortium Members, in favour of the Lead Member, to authorize it to represent and bind all Consortium Members, as set out in the form attached as Part B (*Power of Attorney to Authorize the Lead Member*) of Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (e) in case the Bidder is a Consortium, Consortium Agreement prepared and executed based on the requirements set out in Annexure C (*Requirements for Consortium Agreement*), of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (f) an affidavit from the Bidder (in case of Consortium, each Consortium Member), in the form and substance as set out in Bidding Form T4 (*Form of Affidavit*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (g) basic information form, in the form and substance as set out in Bidding Form T5 (*Basic Information Form*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (h) all the information, along with the documents evidencing compliance with the eligibility criteria for Bidders set out in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (i) following Bidding Forms, specified in Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, each prepared as per the requirements and containing the details specified therein:
 - (i) Bidding Form T6 - Historical Non-Performance and Pending Litigation;
 - (ii) Bidding Form T7 - Net Worth of Assets Owned by the Bidder;
 - (iii) Bidding Form T8 - Cash and Funding Lines;
 - (iv) Bidding Form T9 - Average Annual Turnover or Project Financing Experience;
 - (v) Bidding Form T10 - General and Specific Development Experience;
 - (vi) Bidding Form T11 - Team Composition;

- (vii) Bidding Form T12 - Format of Curriculum Vitae (CV) for Proposed Key Staff;
- (viii) Bidding Form T13 - O&M Experience;
- (ix) Bidding Form T14 - Construction Methodology, Work Plan & Technology Integration;
- (x) Bidding Form T15 - O&M Plan; and
- (xi) Bidding Form T16 - Marketing Plan;
- (j) Bid Security, as set out in Bidding Form T17 (*Form of Bid Security*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, in accordance with Section 4.7 (*Bid Security*) of the Instructions to Bidders; and
- (k) any other documents required under the RFP.

4.4.3 The Technical Proposal shall not include any direct or indirect financial information relating to the Financial Proposal. Any Bid having such financial information shall be declared non-responsive.

4.5 FINANCIAL PROPOSAL

4.5.1 In preparing the Financial Proposals, Bidders are expected to fully understand the requirements and conditions set out in the RFP, including all contractual obligations of the Agency and the Successful Bidder/SPV under the Agency Agreements (as applicable) and the scope of works and services to be performed by the SPV in relation to the Project.

4.5.2 Any material omission, reservation, deviation or condition included in the Financial Proposal to the contrary shall cause the Bid to be rejected by the Agency as non-responsive. Under no circumstances shall the Agency consider/accept a conditional Financial Proposal.

4.5.3 The Financial Proposal submitted by the Bidder shall comprise the following:

- (a) signed and filled out Letter of Financial Proposal, as set out in Bidding Form F1 (*Letter of Financial Proposal*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (b) information as required and set out in Bidding Form F2 (*Financial Proposal Standard Form*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (c) information as required and set out in Bidding Form F3 (*Financial Model Form*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (d) in the case of Bidders intending to enter into financing arrangements with financial institutions in respect of the Project, a letter of intent issued and signed by the financial institution in the format attached as Bidding Form F4 (*Letter of Intent*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;
- (e) the Financial Model:

- (i) which provides Segment Substantial Completion Dates, Substantial Completion Dates and Final Completion Date as per the Project Construction Milestones given in the Concession Agreement;
 - (ii) which is consistent with the Technical Proposal (design schedule and cost, construction schedule and cost, maintenance schedule and costs, operations cost etc.);
 - (iii) shall include profit and loss statement, balance sheet and cashflow statement;
 - (iv) shall include detailed description and workings of all applicable Federal, provincial and local taxes, duties, levies and other charges (including initial tax depreciation workings) in a separate sheet as per *inter alia* the Income Tax Ordinance, 2001 (as may be amended or substituted from time to time). These tax workings and calculations will be assessed by the Independent Auditor and if required, the Independent Auditor in consultation with the Successful Bidder shall adjust the tax workings and calculations in accordance with the Income Tax Ordinance, 2001 (as may be amended, modified, supplemented or re-enacted from time to time);
 - (v) assumes a debt-to-equity ratio that does not exceed 80:20;
 - (vi) shall assume a KIBOR rate and expected spread/margin over the KIBOR rate for computation of the debt liability. The KIBOR and spread/margin should be based on discussions with prospective Financiers and/or Bidders likely estimate of the financing cost;
 - (vii) shall assume O&M Costs; and
 - (viii) shall be provided as a '*Microsoft Excel File*' which is to be made accessible to the Agency *via* the link shared by a Bidder in its Letter of Financial Proposal. The Bidder shall also prepare a PDF of the Financial Model which is to be submitted in its Financial Proposal *via* SPPRA EPADS; provided, that in case of any discrepancies between the '*Microsoft Excel File*' and the PDF of the Financial Model, the latter shall prevail;
- (f) any other document required in the RFP.

4.6 CURRENCIES OF BID AND PAYMENT

All Bids and other supporting documents shall be typed in the English language and state all monetary amounts in Pakistani Rupees (PKR).

4.7 BID SECURITY

- 4.7.1 The Bidder shall furnish, as part of the Technical Proposal, a Bid Security equivalent to PKR 42,000,000/- (Pakistani Rupees Forty-Two Million only) (the **Bid Security**). In the case of a Consortium, the Bid Security may be issued by any Consortium Member.

- 4.7.2 The Bid Security shall be an irrevocable, unconditional and on-demand bank guarantee in the form attached as Bidding Form T17 (*Form of Bid Security*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.
- 4.7.3 The Bid Security shall be issued and maintained in PKR by an Acceptable Bank.
- 4.7.4 The Bid Security shall be valid until twenty-eight (28) Days following the Bid Validity Period, as may be extended in accordance with Section 4.8.2 of the Instructions to Bidders. If the C&O Performance Security has not been issued by the Successful Bidder twenty-one (21) Days prior to the expiry of the Bid Security, then the Successful Bidder shall extend the Bid Security until such date as notified by the Agency.
- 4.7.5 Any Bid not accompanied by a compliant Bid Security (as exclusively determined by the Agency), shall be rejected as non-responsive and the Bidder shall not be allowed to submit the Bid Security at a later stage. The Bid Security issued by a foreign bank and not counter-guaranteed/confirmed from a local Acceptable Bank shall result in the rejection of the Bid.
- 4.7.6 Bidders are required to submit with their Technical Proposal a scanned copy of the original Bid Security. Bidders are also required to submit the original Bid Security in hard copy through mail or physically by hand in a sealed envelope indicating the Bid Security as original clearly marked as '*ORIGINAL-BID SECURITY (DO NOT OPEN, EXCEPT IN PRESENCE OF TFEC)*'. This envelope shall additionally bear the address for submission thereof indicated in the Data Sheet. In case of any discrepancies between the scanned and the original versions of the Bid Security, the latter shall prevail. A Bid may be rejected if a photocopy of the original Bid Security is submitted through mail or physically by hand and such Bid shall not be further evaluated.
- 4.7.7 The Bid Security of the unsuccessful Bidders shall be returned on the earlier of: (a) the expiry of the Bid Validity Period; or (b) once the Successful Bidder furnishes the C&O Performance Security pursuant to Section 7.5 (*C&O Performance Security*) of the Instructions to Bidder.
- 4.7.8 The Bid Security of the Successful Bidder shall be returned as soon as reasonably possible once the Successful Bidder has furnished the required C&O Performance Security pursuant to Section 7.5 (*C&O Performance Security*) and has signed the Concession Agreement pursuant to Section 7.6 (*Signing of the Concession Agreement*), each of the Instructions to Bidders.
- 4.7.9 The Bid Security shall be forfeited:
- (a) if a Bidder:
 - (i) withdraws its Bid during the Bid Validity Period;
 - (ii) is found to be engaged in any corrupt, fraudulent, collusive, coercive, or obstructive practices;
 - (iii) is found to be blacklisted by any agency of the Federal or Provincial Government;
 - (iv) has made false declarations in its Bid;
 - (v) does not accept the arithmetical corrections of its Bid in accordance with Section 6.3.4 of the Instructions to Bidders; and/or
 - (vi) fails to fulfil its obligations under the RFP in terms thereof.

- (b) if the Successful Bidder or the Concessionaire, as applicable:
 - (i) fails to extend the validity of its Bid Security pursuant to Section 4.8.2 of the Instructions to Bidders;
 - (ii) fails to sign the Concession Agreement, in accordance with Section 7.6 (*Signing of the Concession Agreement*) of the Instructions to Bidders;
 - (iii) fails to furnish C&O Performance Security pursuant to Section 7.5 (*C&O Performance Security*) of the Instructions to Bidders; and/or
 - (iv) fails to comply with the requirements set out in the Notification of Award.

4.7.10 The Bid Security is required to protect the Agency Parties against the risk of Bidder's conduct which would warrant the Bid Security's forfeiture, pursuant to Section 4.7.9 of the Instructions to Bidders.

4.8 BID VALIDITY

4.8.1 Bids shall remain valid for the Bid Validity Period, as may be extended by the Agency in accordance with Section 4.8.2 of the Instructions to Bidders. A Bid valid for a shorter period shall be rejected by the Agency as non-compliant in accordance with the Applicable Evaluation Documents.

4.8.2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the Agency may request all Bidders to extend the period of validity of their Bids. Any such request by the Agency with respect to extension of the Bid Validity Period and the response by the Bidders shall be in writing. The Bid Security requested in accordance with Section 4.7 (*Bid Security*) of the Instructions to Bidders, shall also be extended accordingly for a corresponding period not exceeding the original Bid Validity Period. Extension of Bid Security may be requested upon the extension of the Bid Validity Period; provided, that the process for submitting such extended Bid Security shall be as set out in Section 4.7.6 of the Instructions to Bidders. A Bidder may refuse the request following which such Bidder's Bid will be disqualified and its Bid Security shall be returned without forfeiture. A Bidder accepting the request shall not be required or permitted to modify its Bid.

4.9 MANNER OF SIGNING OF BID

4.9.1 Each Bidder shall prepare one (1) Technical Proposal and one (1) Financial Proposal comprising the Bid as described in Section 4.3 (*Documents Comprising the Bid*) of the Instructions to Bidders, and submit PDF versions of the Technical Proposal and Financial Proposal clearly entitled as '*TECHNICAL PROPOSAL*' and '*FINANCIAL PROPOSAL*', respectively. The Bidder shall merge all documents as applicable in terms of the Technical Proposal and Financial Proposal, each uploaded separately as a PDF on SPPRA EPADS, ensuring compliance with the permitted file size and the Submission Guidelines.

4.9.2 The Bid shall be typed or written in indelible ink and shall be signed by a Person duly authorised to sign on behalf of the Bidder. This authorization shall consist of a written power of attorney, as set out in Bidding Form T3 (*Form of Power of Attorney*) of Part 2 (*Bidding Forms*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, as per the requirements set out in the Instructions to Bidders. This authorization must contain the name and position held by each Person signing the authorization and name and position of the authorized signatory.

- 4.9.3 Bids submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all instructions prescribed in the Submission Guidelines and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP. Bidders are to ensure that their Bids are submitted in compliance with the Submission Guidelines and the Agency shall not be held responsible for any non-compliance thereof. All pages of the Bid must be signed and stamped in original by the Bidder's authorized representative. All the pages must be numbered starting from the first page to the last. Any Bid not substantially adhering to these requirements may be rejected by the Agency.
- 4.9.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the authorized representative signing the Bid.
- 4.9.5 The Agency reserves the right to reject a Bid which does not meet the requirements in Section 4.9 (*Manner of Signing of Bid*) of the Instructions to Bidders.

5. SUBMISSION AND OPENING OF BIDS

5.1 SUBMISSION OF BIDS

- 5.1.1 The Bidder (or in case of a Consortium, any Consortium Member) shall register itself as a 'SUPPLIER' on SPPRA EPADS by creating a dedicated account. The Bidder (or in case of a Consortium, any Consortium Member) is responsible for ensuring its compliance with this requirement prior to the submission of its Bid. The submission of the Bid shall be in accordance with any instructions set out for 'single stage two envelope' procedure in the Submission Guidelines.
- 5.1.2 In accordance with Section 4.9.1 of the Instructions to Bidders, the Technical Proposal shall be in PDF clearly entitled 'TECHNICAL PROPOSAL' and the Financial Proposal shall also be in PDF clearly entitled 'FINANCIAL PROPOSAL'.
- 5.1.3 Any Bidder (including a Consortium Member) who submits or participates in more than one (1) Bid shall be disqualified.
- 5.1.4 Not Used.
- 5.1.5 All Bidding Forms forming part of the Technical Proposal and the Financial Proposal, as specified in the RFP are to be properly completed and signed. No alteration is to be made in the Letter of Financial Proposal, Letter of Technical Proposal or in the Bidding Forms, except in filling up the blanks as directed. If any alteration is made or if these instructions have not been fully complied with, the Bid may be rejected.
- 5.1.6 Bids shall be submitted electronically by the Bidders *via* the SPPRA EPADS, except for the original Bid Security which shall be submitted: (a) through courier/express mail; or (b) by hand on or before the Bid Submission Deadline at the address indicated in the Data Sheet.

5.2 DEADLINE FOR SUBMISSION

- 5.2.1 Bids must be uploaded to the SPPRA EPADS no later than the Bid Submission Deadline in accordance with this RFP.
- 5.2.2 The Agency shall not consider any Bid that is submitted after the Bid Submission Deadline. Bids or any document received after **12:00 hours PST** on the Bid Submission Deadline shall be declared late and be rejected. Bidders are responsible for ensuring that their Bids are timely submitted.
- 5.2.3 No arrangements shall be made by the Agency with Bidders for collection of the Bids from any delivery point. Bidders shall bear all expenses incurred in the preparation or submission of Bids. No claims for refund of any expense shall be entertained.
- 5.2.4 Where delivery of the Bid Security is by courier/express mail and the Bidder wishes to receive an acknowledgment of receipt of such Bid Security, such Bidder shall make a request for such acknowledgement in a separate letter accompanying the envelope containing the Bid Security. Delays in the mail, delays of Person(s) in transit, or delivery of the Bid Security to an incorrect location, shall not be accepted as an excuse for failure to deliver the Bid Security at the proper place and time. It shall be the Bidder's responsibility to ensure delivery of its Bid Security in a timely manner.

- 5.2.5 The Agency may, at its discretion, extend the Bid Submission Deadline by issuing an addendum in accordance with Section 3.4 (*Amendment of RFP*) of the Instructions to Bidders, in which case all rights and obligations of the Agency and the Bidders previously subject to the earlier Bid Submission Deadline shall thereafter be subject to extended Bid Submission Deadline.
- 5.2.6 Any delays in submitting the Bid on the SPPRA EPADS by a Bidder shall not be accepted as an excuse for failure to upload its Bid at the proper place and time. It shall be the Bidder's responsibility to ensure timely submission of its Bid.

5.3 MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF BIDS

- 5.3.1 Any Bidder may modify, substitute, or withdraw its Bid after submission and prior to the Bid Submission Deadline in accordance with the requirements of the SPPRA EPADS and the Submission Guidelines.
- 5.3.2 A Bidder may withdraw its Bid after the Bid Submission Deadline by submitting a written notice of withdrawal to the Agency at the address specified in the Data Sheet; provided, that, such a notice is received no later than the expiration of the Bid Validity Period.
- 5.3.3 Withdrawal of a Bid during the interval between the Bid Submission Deadline and the expiration of the Bid Validity Period (or any extension thereof pursuant to Section 4.8.2 of the Instructions to Bidders) shall result in forfeiture of the Bid Security pursuant to Section 4.7.9 of the Instructions to Bidders.
- 5.3.4 Bids requested to be withdrawn in accordance with Section 5.3.2 of the Instructions to Bidders shall be disregarded by the Agency.
- 5.3.5 After the Bid Submission Deadline, no changes to the Agency Agreements shall be permitted other than those requested by the Agency and agreed to by the Bidders and inclusion of details of the Successful Bidder (to whom the Concession is awarded) and any other information that was incomplete prior to the Bid Submission Deadline.
- 5.3.6 Bids submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all terms of the RFP (including the Agency Agreements) and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP (including the Agency Agreements).

5.4 OPENING OF BIDS

- 5.4.1 TFEC shall conduct the opening of Technical Proposals on the same Day as the Bid Submission Deadline at the time and address provided in the Data Sheet, in the presence of Bidders' designated representatives who choose to attend.
- 5.4.2 If the Technical Proposal and the Financial Proposal are submitted together in one PDF, other than as specified in the Instructions to Bidders, the entire Bid may be rejected. If any document, required to be submitted with Technical Proposal, is submitted with the Financial Proposal, or if any document required to be submitted with the Financial Proposal is submitted with the Technical Proposal, such document shall not be considered for evaluation and may also form the basis of rejection of a Bid.

- 5.4.3 The Financial Proposals shall remain secured and unopened on the SPPRA EPADS until the specified date and time of their opening, as communicated in advance by the Agency to the Bidders.
- 5.4.4 The Technical Proposals shall be opened one at a time, and the following read out and recorded:
- (a) the name of the Bidder;
 - (b) the presence and value of the Bid Security; and
 - (c) any other details as the Agency/TFEC may consider appropriate.
- 5.4.5 Only Technical Proposals which are read out and recorded during the Bid opening shall be considered for evaluation as per the requirements of the RFP. No Bid shall be rejected at the time of opening of Technical Proposals except for late Bids, in accordance with Section 5.2.2 of the Instructions to Bidders.
- 5.4.6 TFEC shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder, presence or absence and value of the Bid Security. The Bidders' representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder's signature on the attendance sheet shall not invalidate the contents and effect of the record.
- 5.4.7 At the end of the evaluation of the Technical Proposals, TFEC shall invite Bidders who have submitted responsive Technical Proposals pursuant to the requirements of the RFP and who have been determined as technically qualified for award of Concession to attend the opening of the Financial Proposals. The date, time, and location of the opening of Financial Proposals shall be advised in writing by the Agency.
- 5.4.8 The Agency shall notify in writing at any time prior to the opening of the Financial Proposals, the Bidders who have been rejected on the grounds of their Technical Proposals not being responsive to the requirements of the RFP. Such Financial Proposals shall remain unopened by the Agency.
- 5.4.9 TFEC shall conduct the opening of Financial Proposals of all Bidders who have technically qualified, in the presence of Bidders' representatives who choose to attend at the address, date and time specified by the Agency. The Bidders' representatives who are present shall be requested to sign an attendance sheet/register evidencing their attendance.
- 5.4.10 Financial Proposals of the Bidders shall be opened one at a time and the following shall be read out and recorded:
- (a) the name of the Bidder;
 - (b) the Bid Price; and
 - (c) any other details as the Agency/TFEC may consider appropriate.
- 5.4.11 Only the Financial Proposals which are read out and recorded during the opening of Financial Proposals shall be considered for evaluation. No Financial Proposal shall be rejected at the time of opening of Financial Proposals.

5.4.12 TFEC shall prepare a record of the opening of Financial Proposals that shall include, as a minimum: the name of the Bidder and the Bid Price. The Bidders' representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder's signature on the attendance sheet shall not invalidate the contents and effect of the record.

6. CLARIFICATION AND EVALUATION OF BIDS

6.1 CLARIFICATION OF BIDS

- 6.1.1 To assist in the examination, evaluation and comparison of the Technical Proposals and/or Financial Proposals, TFEC may, at its discretion, ask the Bidders for any clarification, presentation, additional information or supporting documentation in respect of any matter associated with the documentation submitted by the Bidders in their Bids. Any such request and the response shall be through the SPPRA EPADS. No change in the price in the Financial Proposals or substance of the Bid shall be sought, offered or permitted except to confirm the correction of arithmetic errors discovered by TFEC in the evaluation of the Bids, in accordance with Section 6.3.4 of the Instructions to Bidders.
- 6.1.2 If a Bidder does not provide clarifications of the information requested by the date and time set in TFEC's request for clarification, its Bid shall be rejected.

6.2 EVALUATION OF BIDS

- 6.2.1 During the evaluation of Bids, the following definitions apply:
- 6.2.1.1 '*Deviation*' is a departure from the requirements specified in the RFP;
- 6.2.1.2 '*Reservation*' is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP; and
- 6.2.1.3 '*Omission*' is the failure to submit part, or all of the information or documentation required in the RFP.

6.3 PRELIMINARY EXAMINATION OF BIDS

- 6.3.1 Prior to the detailed evaluation of Bids pursuant to Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, each Bid shall be examined to determine whether:
- (a) the Bid is complete and does not deviate from the scope of works and services to be performed in relation to the Project;
 - (b) any computational errors have been made;
 - (c) the Bid Security has been furnished;
 - (d) the documents have been properly signed;
 - (e) valid authorization(s) is/are present; and.
 - (f) the Bid is valid till the Bid Validity Period.
- 6.3.2 Prior to conducting detailed evaluation of Bids pursuant to Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, each Bid shall be examined as follows, and a Bid may not be considered acceptable if:
- (a) it is unsigned; or

- (b) its validity is less than the Bid Validity Period.
- 6.3.3 Prior to the detailed evaluation of Bids pursuant to Section 6.4 (*Determination of Responsiveness of Bids*) of the Instructions to Bidders, each Bid shall be examined as follows, and a Bid shall not be considered acceptable if:
- (a) it is not accompanied by a Bid Security;
 - (b) it is received after the Bid Submission Deadline;
 - (c) it is submitted through any mode other than SPPRA EPADS, except the Bid Security which shall be submitted physically in the manner set out in the RFP;
 - (d) the Bidder refuses to accept arithmetic correction(s); or
 - (e) it materially deviates from the requirements of the RFP.
- 6.3.4 During the evaluation of Financial Proposals, the Agency/TFEC shall correct arithmetical errors on the following basis:
- (a) the relevant input amount and the output (i.e., total) amount in any Bidding Form, due to any error in calculation, the relevant input amount shall prevail, and the output (i.e., total) amount shall be corrected; and
 - (b) the words and figures, the amount in words shall prevail.
- 6.3.5 If the Bidder does not accept the corrected amount of the Bid, its Bid shall be rejected, and its Bid Security shall be forfeited.
- 6.4 **DETERMINATION OF RESPONSIVENESS OF BIDS**
- 6.4.1 The Agency/TFEC shall determine the responsiveness of each Bid to the RFP. The Technical Proposals that conform to all the terms and conditions of the RFP without material deviations, reservations or omissions shall be declared responsive. A material deviation, reservation or omission is one that:
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the works and services in relation to the Project as specified in the RFP; or
 - (ii) limit in any substantial way the Agency Parties' rights or the Bidder's or the Concessionaire's obligations under the RFP; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Technical Proposals.
- 6.4.2 The Agency/TFEC's determination of a Bid's responsiveness may be based on the contents of the Bid itself without recourse to extrinsic evidence.

- 6.4.3 Any minor non-conformity or irregularity in a Technical Proposal that does not constitute a material deviation, reservation or omission may be waived by the Agency or required by the Agency to be rectified, provided such waiver or rectification does not prejudice or affect unfairly the competitive position of other responsive Technical Proposals.
- 6.4.4 Provided that a Bid is substantially responsive, the Agency/TFEC may request that the Bidder submit the necessary information or documentation *via* the SPPRA EPADS, within a reasonable period of time, to rectify non-material non-conformities in the Bid related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the Financial Proposal. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 6.4.5 If a Bid is not substantially responsive to the requirements of the RFP, it shall be rejected and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 6.4.6 A responsive Financial Proposal is one which meets the requirements of the RFP without any deviation, reservation or omission. No change in the Financial Proposals shall be allowed and shall be evaluated as per the information provided by the Bidders. A non-responsive Financial Proposal may not subsequently be made responsive by correction of the deviation, reservation, or omission.
- 6.4.7 If a Financial Proposal, in the opinion of the Agency/TFEC, is seriously unbalanced or is seen to unfairly exploit the evaluation mechanism, the Agency/TFEC may require the relevant Bidder to produce detailed price analysis for any or all items of the Bid, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, taking into consideration the terms of payments, the Agency/TFEC may require the Bidder to rationalize the costs and/or terms of payments.

6.5 EVALUATION CRITERIA

- 6.5.1 Bids of only those Bidders shall be considered who meet the basic eligibility criteria set forth in Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.
- 6.5.2 In addition, and subject to the requirements set out in Section 6.3 (*Preliminary Examination of Bids*) and Section 6.4 (*Determination of Responsiveness of Bids*) each of the Instructions to Bidders, the Bidders shall be evaluated against the evaluation criteria for the Technical Proposals and the Financial Proposals set out in Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.
- 6.5.3 The Agency/TFEC shall attribute a technical score to responsive Technical Proposals.
- 6.5.4 Technical Proposals scoring less than seventy (70) points shall be rejected. The technical score shall be calculated as follows:

SR. NO.	CRITERIA	WEIGHTAGE/MARKS
A.	Financial Capability	40
B.	Technical Capability	50
C.	Plans Evaluation	10
	Total	100

For technical qualification, a Bidder must score at least seventy (70) or more marks. The

- detailed technical evaluation criteria for Technical Proposal is set out in Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.
- 6.5.5 The Bid Price shall be calculated as per the methodology set out in Part 2 (*Financial Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP. The Bid Price shall be denominated in PKR and shall not include any provision for amendment or adjustment (whether for inflation, foreign exchange movements or otherwise).
- 6.5.6 Any Bid that fails to meet the evaluation criteria for the Technical Proposals and the Financial Proposals set out in Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, shall be rejected.
- 6.5.7 The capabilities of the Bidders proposed in a Bid will be evaluated for acceptability in accordance with Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP. The Net Worth requirements applicable to the Bidders as set out in Part 1 (*Technical Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP, shall be calculated on the following parameters, based on the latest audited financial statements:
- (a) **Net Worth** shall be calculated as the relevant Bidder's (or in case of Consortium, each Consortium Member's) Total Assets plus its Revaluation Surplus (or similar entry) minus its Total Liabilities; and on a consolidated basis; provided, that the Revaluation Surplus will be capped at fifty percent (50%) of Net Worth;
 - (b) **Total Assets** shall be calculated as the total consolidated assets of such entity measured in accordance with either IFRS or any other similar accounting or public accounting standard which is permissible in the jurisdiction in which the relevant Bidder (or in case of Consortium, each Consortium Member) is incorporated;
 - (c) **Total Liabilities** shall be calculated as the total consolidated liabilities of such entity measured in accordance with either IFRS or any other similar accounting or public accounting standard which is permissible in the jurisdiction in which the relevant Bidder (or in case of Consortium, each Consortium Member) is incorporated;
 - (d) **Revaluation Surplus (or similar entry)** shall be calculated as the total consolidated figure for any upward changes in the value of the capital/fixed assets of such entity measured in accordance with either IFRS or any other similar accounting or public accounting standard which is permissible in the jurisdiction in which the relevant Bidder (or in case of Consortium, each Consortium Member) is incorporated. It is typically under the '*Equity*' line item in balance sheet;
 - (e) Calculations shall be made based:
 - (i) on the relevant Bidder's (or in case of Consortium, each relevant Consortium Member's) audited consolidated financial statements, duly certified by an independent certified public accountant or auditor, for the three (3) most recent full financial years for which audited financial statements are available as at the Bid Submission Deadline; or
 - (ii) if: (A) the relevant Bidder (or in case of Consortium, the relevant Consortium Member) is incorporated in a jurisdiction which does not require the auditing of financial statements; and/or (B) such Bidder (or in case of Consortium, the Consortium Member) has not in fact had its

financial statements audited, on such Bidder's (or in case of Consortium, each Consortium Member's) non-audited consolidated financial statements, accompanied by a written opinion issued by an independent certified public accountant or auditor certifying the relevant Bidder (or in case of Consortium, each Consortium Member's) Net Worth for the three (3) most recent full financial years for which such financial statements are available as at the Bid Submission Deadline.

Provided that the non-audited financial statements submitted by an entity, which by applicable law is required to prepare audited financial statements, shall not be accepted for the purposes of evaluation.

6.5.8 The Bidder shall provide for itself or, in case of a Consortium, for each Consortium Member (as applicable):

- (a) for Consortium Members other than to whom Section 6.5.7(e)(i) applies, audited consolidated financial statements, including a consolidated balance sheet, income statement, statement of cash flows and accompanying notes, for the three (3) most recent full financial years for which such statements are available as at the Bid Submission Deadline, duly certified by a certified public accountant or auditor; or
- (b) for Consortium Members to whom Section 6.5.7(e)(ii) applies, non-audited consolidated financial statements, including a consolidated balance sheet, income statement, statement of cash flows and accompanying notes, for the three (3) most recent full financial years for which such statements are available as at the Bid Submission Deadline, accompanied by a written opinion issued by an independent certified public accountant or auditor, certifying the relevant Consortium Member's Net Worth for the three (3) most recent full financial years for which such financial statements are available as at the Bid Submission Deadline;
- (c) a completed Bidding Form T7 (*Net Worth of Assets Owned by the Bidder*);
- (d) a completed Bidding Form T8 (*Cash and Funding Lines*); and
- (e) a completed Bidding Form T9 (*Average Annual Turnover or Project Financing Experience*).

6.5.9 After complete evaluation of the Technical Proposals, the Financial Proposals of the Bidders, who have been qualified technically, shall be evaluated as per the requirements set out in **VOLUME I (TENDER PROCEDURE)** of the RFP.

6.6 **SUCCESSFUL BIDDER**

6.6.1 A Bidder whose Bid has been determined the Best Evaluated Bid in terms of the Applicable Evaluation Documents, shall be declared the Successful Bidder.

6.6.2 In the event it is determined that two (2) or more Bidders have quoted the same best Bid Price, the Agency/TFEC may require such Bidders to re-submit the revised Financial Proposals, subject to the terms and conditions as may be specified by the Agency/TFEC.

6.7 **THE AGENCY'S RIGHT TO VERIFY DOCUMENTS**

The Agency/TFEC retains the right to verify particulars regarding any information, statements and/or documents furnished with a Bid. Any Bidder found to be misrepresenting information may be disqualified at any stage of the Tender Procedure and their Bid Security

shall be forfeited.

7. AWARD OF CONCESSION

7.1 AWARD CRITERIA

Subject to Section 7.2 (*The Agency's Right to Accept/Reject Bids*), the Agency shall award the Concession to the Bidder whose Bid has been determined to be the Best Evaluated Bid in terms of the requirements of the Applicable Evaluation Documents; provided, that such Bidder continues to be eligible in accordance with the requirements set out in the Annexure A (*Basic Eligibility Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.

7.2 THE AGENCY'S RIGHT TO ACCEPT/REJECT BIDS

7.2.1 No Bid shall be considered to have been accepted, unless such acceptance is confirmed in writing and notified to the Successful Bidder by the Agency.

7.2.2 The Agency reserves the right to annul the Tender Procedure and reject all Bids at any time prior to the issuance of the Notification of Award, without thereby incurring any liability to Bidders or providing any reason for rejection of the Bids. In case of such annulment, all Bid Securities shall be promptly returned to the Bidders. The decision of the Agency shall be final and binding and no correspondence shall be entered into with the Bidders.

7.2.3 The Agency shall not be responsible for, or pay for, any expenses or losses which may be incurred by any Bidder in the preparation of, or in connection with, its Bid.

7.2.4 Each Bidder fully waives off any and all rights to claim in respect of such expenses or losses and agrees to indemnify the Agency, its affiliates and their advisors fully in respect of any direct or indirect losses, damages, costs or expenses of any kind incurred by any of them.

7.3 NOTIFICATION OF AWARD

7.3.1 Prior to expiration of the Bid Validity Period, the Agency shall notify the Successful Bidder through the Notification of Award that its Bid has been accepted.

7.3.2 The Agency shall, at least three (3) Business Days prior to the issuance of the Notification of Award, publish on the websites of the SPPRA, the Agency and the PPP Unit, the results of the Tender Procedure in the form of a report. The report shall also be communicated to all the Bidders in accordance with the terms of the Applicable Evaluation Documents.

7.3.3 The Successful Bidder shall acknowledge and return the Notification of Award with its acceptance (**the Acceptance of Notification of Award**) within seven (7) Days of the issuance of Notification of Award, failure of which may constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security.

7.4 FORMATION OF SPV BY THE SUCCESSFUL BIDDER

7.4.1 The Successful Bidder shall incorporate a wholly owned SPV (i.e., the Concessionaire) that shall be incorporated in accordance with the Laws of Pakistan exclusively for the implementation of the Project.

7.4.2 The Successful Bidder/SPV shall be obligated to replace the Bid Security (prior to expiry of the Bid Security) with the C&O Performance Security as per the requirements set out in Section 7.5.1 of the Instructions to Bidders.

7.5 C&O PERFORMANCE SECURITY

7.5.1 The Successful Bidder/SPV shall, within twenty-eight (28) Days of issuance of the Notification of Award, furnish to the Agency a satisfactory C&O Performance Security and shall maintain the same in full force and effect until the C&O Performance Security Expiry Date, in accordance with the requirements of the Concession Agreement and the RFP.

7.5.2 Failure of the Successful Bidder to comply with the requirements of Section 7.5.1 of the Instructions to Bidders shall constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security. Prior to execution of the Concession Agreement, the C&O Performance Security may be encashed for the same reasons as the Bid Security and for such other purpose as specified in the RFP. Following execution of the Concession Agreement, the C&O Performance Security shall be encashed in terms of the Concession Agreement.

7.6 SIGNING OF THE CONCESSION AGREEMENT

The Concession Agreement shall be executed between, the Agency and the Concessionaire, within thirty (30) Days of issuance of the Notification of Award or within such extended timeline as determined by the Agency in its sole discretion. In case the Concession Agreement is not executed within the aforesaid timeline, the Bid Security or the C&O Performance Security (as applicable) shall be encashed by the Agency and the award shall be cancelled, if such failure is due to reasons attributable to the Successful Bidder.

8. OTHER CONSIDERATIONS

8.1 CONFIDENTIALITY

- 8.1.1 Subject to Section 8.1.3 of the Instructions to Bidders and Section 3.3 (*Clarifications of RFP*), no Bidder shall contact the Agency/TFEC on any matter relating to its Bid from the time of Bid Submission Deadline.
- 8.1.2 Any attempt by a Bidder to influence the Agency/TFEC in relation to the Tender Procedure may result in the rejection of its Bid and encashment of its Bid Security.
- 8.1.3 Notwithstanding Section 8.1.2 of the Instructions to Bidders, from the time of Bid opening to the time of award of the Concession, if any Bidder wishes to contact the Agency/TFEC on any matter related to the Tender Procedure (including for the matters set out in Section 3.3 (*Clarifications of RFP*), it should do so in writing.
- 8.1.4 Information relating to the examination, clarification, evaluation and recommendation for the Bidder shall not be disclosed to any Person who is not officially concerned with the Tender Procedure or is not a retained professional advisor advising the Agency Parties in relation to, or matters arising out of, or concerning the Tender Procedure. The Agency will endeavour to treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Agency may not divulge any such information, unless it is directed to do so by any statutory entity that has the power under law to require its disclosure, is required under the applicable laws in Pakistan, or it is to enforce or assert any right or privilege of the Agency, a statutory entity.
- 8.1.5 All information supplied by the Agency in connection with this RFP, shall be treated as confidential and the Bidders shall not, without the prior written consent of the Agency, at any time make use of such information for their own purposes or disclose such information to any Person (except as may be required by applicable law). Subject to the provisions of this RFP, the RFP shall remain the property of the Agency and is issued solely for the purpose of preparation and submission of the Bid in accordance herewith.
- 8.1.6 The RFP and every part of it and all other information provided by or on behalf of the Agency must be treated as private and confidential. Bidders shall not disclose the fact that they have been invited to submit a Bid or release details of the RFP other than on a strictly confidential basis to those parties whom they need to consult for the purposes of preparing the Bids.
- 8.1.7 Bidders shall not at any time release any information concerning the RFP and/or their Bid and/or any related documents and/or any discussion with the Agency in this connection for publication in the press or on radio, television, screen or any other medium without the prior written approval of the Agency.
- 8.1.8 Each Bidder undertakes to indemnify the Agency Parties and to keep the Agency Parties indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of this Section 8.1 (*Confidentiality*).
- 8.1.9 Any Bid submitted in response to the RFP is submitted upon a full understanding and agreement of terms of this Section 8.1 (*Confidentiality*) and therefore the submission of the Bid in response to the RFP would be deemed as an acceptance to the said terms.

8.2 CORRUPT AND FRAUDULENT PRACTICES

8.2.1 The Agency/TFEC will reject a Bid if it determines that a Bidder (including any of its Affiliates) has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the Tender Procedure and/or shall declare such Bidder ineligible, either indefinitely or for a stated period of time, to engage with the Agency Parties.

8.2.2 “*Corrupt and fraudulent practice*” means either one or any combination of the practices given below:

- (a) **Coercive practice** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;
- (b) **Collusive practice** means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, non-competitive levels for any wrongful gain;
- (c) **Corrupt practice** means the offering giving, receiving or soliciting directly or indirectly of anything of value to influence the acts of another party for wrongful gain;
- (d) **Fraudulent practice** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; and
- (e) **Obstructive practice** means harming or threatening to harm, directly or indirectly, Persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights.

8.3 INTEGRITY PACT

Each Bidder (and in case of a Consortium, each Consortium Member) shall sign and stamp Bidding Form T2 (*Form of Integrity Pact*) of Part 2 (*Bidding Forms*) of the RFP (the **Integrity Pact**). Failure to provide such Integrity Pact may cause the Bid to be rejected by TFEC as non-responsive.

8.4 GRIEVANCE REDRESSAL

Any Bidder being aggrieved by any act or decision of the Agency/TFEC, may after the issuance of the RFP, lodge a written complaint to the “*complaint redressal committee*” constituted by the Agency in accordance with the Applicable Evaluation Documents. The mechanism for redressal of grievances of Bidders shall be as per the Applicable Evaluation Documents.

8.5 NO LOBBYING

| 8.5.1 The Bidders (including any member of the Consortium), will not attempt to communicate, directly or indirectly, with any of the Agency Parties at any stage of the Tender Procedure (including during the evaluation process), except as expressly permitted under this RFP, directed or permitted by the Agency, or except as may be required and permitted under another procurement process, project or other assignment, in which event the Bidder will not have any discussions regarding the Project.

| 8.5.2 The Agency/TFEC reserves the right to disqualify any Bidder that, in the Agency/TFEC's opinion, has engaged in lobbying in connection with this Project.

9. DATA SHEET

The following specific data shall supplement the provisions in the Instructions to Bidders.

1.	Address for seeking clarifications on the RFP	<p>Designation: Project Director, Rani Bagh Hyderabad Project</p> <p>Address: Ground Floor, Sindh Secretariat Building No. 5 Annexe Tughlaq House, Kamal Ataturk Road Karachi.</p> <p>Phone No.: +92 21 99222193</p> <p>Requests for clarifications to be sent to the following email address: info.p3proc@gmail.com</p> <p>Subject of email to be Att. RBP - RFP (<i>[Name of Bidder]</i>).</p>
2.	Pre-Bid Meeting	<p>Date: February 11, 2025</p> <p>Time: 14:30 hours PST</p> <p>Venue: Committee Room of Finance Department, 1st Floor, A.K. Lodhi Complex, Sindh Secretariat Building No. 6, Karachi.</p> <p>Pursuant to Section 3.3.2 of the Instructions to Bidders, the pre-bid meeting may be held virtually, for which the link shall be shared with the Interested Party prior to the date of the pre-bid meeting, upon request submitted <i>via</i> email at info.p3proc@gmail.com. In the event additional pre-bid meetings are scheduled, the Agency shall notify the Interested Parties of the scheduled date, time, and venue <i>via</i> the SPPRA EPADS and/or through a notice published on the respective websites of the Agency and the PPP Unit.</p>
3.	Address for submission of Bid Security	<p>Attention: Project Director, Rani Bagh Hyderabad Project</p> <p>Address: Ground Floor, Sindh Secretariat Building No. 5 Annexe Tughlaq House, Kamal Ataturk Road Karachi.</p> <p>Telephone: +92-21-99222193</p>
4.	Address and time for opening of Bids	<p>Committee Room of the Planning & Development Board, 2nd Floor, Tughlaq House, Sindh Secretariat, Shahrah-e-Kamal Atta-Turk Road, Karachi, Pakistan.</p> <p>Time: 13:00 hours PST</p>
5.	Bid Submission Deadline	May 8March 24, 2025
6.	Link to SPPRA EPADS	https://portalsindh.eprocure.gov.pk/
7.	Link to Submission Guidelines	https://tiny.cc/LGD

PART 2
BIDDING FORMS

1. BIDDING FORMS

1.1 The Bidding Forms comprise the forms stated below, and each relevant form is required to be submitted with the Technical Proposal and the Financial Proposal, as applicable.

1.2 In case a document/Bidding Form required to be submitted as part of the Technical Proposal is submitted with Financial Proposal, or a document/Bidding Form required to be submitted with Financial Proposal is submitted with Technical Proposal, it shall not be considered for evaluation and such document/Bidding Form shall be considered as not submitted by the Bidder and may also form the basis of rejection of a Bid.

(A) For the Technical Proposal:

- (c) Bidding Form T1 - Letter of Technical Proposal;
- (d) Bidding Form T2 - Form of Integrity Pact;
- (e) Bidding Form T3 - Form of Power of Attorney;
- (f) Bidding Form T4 - Form of Affidavit;
- (g) Bidding Form T5 - Basic Information Form;
- (h) Bidding Form T6 - Historical Non-Performance and Pending Litigation;
- (i) Bidding Form T7 - Net Worth of Assets Owned by the Bidder;
- (j) Bidding Form T8 - Cash and Funding Lines;
- (k) Bidding Form T9 - Average Annual Turnover or Project Financing Experience;
- (l) Bidding Form T10 - General and Specific Development Experience;
- (m) Bidding Form T11 - Team Composition;
- (n) Bidding Form T12 - Format of Curriculum Vitae (CV) for Proposed Key Staff;
- (o) Bidding Form T13 - O&M Experience;
- (p) Bidding Form T14 - Construction Methodology, Work Plan & Technology Integration;
- (q) Bidding Form T15 - O&M Plan;
- (r) Bidding Form T16 - Marketing Plan; and
- (s) Bidding Form T17 - Form of Bid Security.

(B) For the Financial Proposal:

- (a) Bidding Form F1 - Letter of Financial Proposal;
- (b) Bidding Form F2 - Financial Proposal Standard Form;
- (c) Bidding Form F3 - Financial Model Form;
- (d) Bidding Form F4 - Letter of Intent; and
- (e) Financial Model.

A. TECHNICAL PROPOSAL BIDDING FORMS

BIDDING FORM T1 - LETTER OF TECHNICAL PROPOSAL

[Date]

To: [●]

Re: Design, finance, build, rehabilitate, operate, maintain and transfer of Rani Bagh (the **Project**).

Dear Sir:

Reference the Request for Proposals document issued on [●], by the Hyderabad Municipal Corporation (the **Agency**), (the **RFP**) in relation to the Project.

We, [*Name of the Bidder*] hereby submit our Technical Proposal in conformity with the requirements of the RFP.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.

We, agree, confirm, undertake and declare that:

- (a) We have examined and have no reservations to the RFP, including Addenda No(s) [●]/Corrigenda No(s) [●];
- (b) We, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein;
- (c) We offer to perform and undertake the works and services in respect of the Project in conformity with the RFP (including the Agency Agreements) without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the RFP, including the schedules/annexures attached to the RFP;
- (d) We, [including all Consortium Members,] as per the requirements of the RFP, respectively:
 - (i) have nationalities of Eligible Countries;
 - (ii) do not have any conflict of interest; and
 - (iii) have not been declared ineligible/blacklisted by any of our employers, by any Federal or Provincial governmental or non-governmental department/agency in Pakistan, as at the Bid Submission Deadline;
- (e) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred twenty Days (120) Days from the date fixed for the Bid Submission Deadline in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We understand that all the volumes, schedules/annexures attached to the RFP are integral part of the RFP;
- (g) We have reviewed and accepted the form of the Concession Agreement along with the schedules attached thereto (attached as **VOLUME III (CONCESSION AGREEMENT)** to the RFP), and undertake to execute the same within the time period stipulated in Notification

- of Award;
- (h) We acknowledge that the Agency Parties will be relying on the information provided in our Bid and the documents accompanying it to determine the Successful Bidder. We certify that all information provided in our Bid is true and correct and that nothing has been omitted which renders such information misleading;
 - (i) We certify that in the last three (3) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by any arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been expelled from any project or contract by any public authority, nor have had any contract terminated by any public authority for breach by us or, if we are a Consortium, by any of our Consortium Members;
 - (j) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Concession Agreement (attached as **VOLUME III (CONCESSION AGREEMENT)** to the RFP) is executed;
 - (k) We are not participating, as a Bidder in more than one Bid in this Tender Procedure in accordance with the requirements of the RFP;
 - (l) We understand that the Agency may cancel the Tender Procedure at any time and that the Agency is not bound either to accept any Bid that it may receive, without incurring any liability to the Bidders;
 - (m) We agree to permit the Agency, and any Persons, representatives or auditors appointed and authorized by the Agency to inspect and audit our accounts, records and other documents relating to our Bid;
 - (n) All the information submitted along with our Bid, including the enclosed forms and documents, is accurate in all respects;
 - (o) We accept the right of the Agency to: (i) request additional information reasonably required to assess the Bid; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP;
 - (p) All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Agency by us or on our behalf, in connection with or arising out of the Bid are true, complete and accurate in all respects;
 - (q) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and/or our blacklisting by the Agency;
 - (r) We, [including all Consortium Members,] have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Bid and the Project;
 - (s) We undertake, if our Bid is accepted, to furnish the C&O Performance Security as per the requirements of the RFP;
 - (t) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other Person or Persons making a Bid for the Project;

- (u) We understand that the RFP has been issued by the Agency for the Project; and we undertake and confirm that if our Bid is accepted, we and the SPV (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the Concession Agreement (including other Agency Agreements) (attached as **VOLUME III (CONCESSION AGREEMENT)** to the RFP) and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP.

Name

In the capacity of

Signed

..... (Seal)

Duly authorized to sign the Bid for and on behalf of: (*Insert Name of the Bidder/ names of all Consortium Members*)

Date

WITNESSES

WITNESS NO. 1:

WITNESS NO. 2:

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

CNIC/Passport No.: _____

CNIC/Passport No.: _____

BIDDING FORM T2 - FORM OF INTEGRITY PACT

Dated _____

[*name of Bidder*] (the **Bidder**) hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Hyderabad Municipal Corporation, any administrative subdivision or agency thereof or any other entity owned or controlled by the Government of Sindh (collectively to be hereinafter referred to as the **GoS**) through any corrupt business practice.

Without limiting the generality of the foregoing, [*name of Bidder*] represents and warrants that it has fully declared the brokerage, commission, fees etc., paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS, except that which has been expressly declared pursuant hereto.

[*name of Bidder*] certifies that it has made and will make full disclosure of all agreements and arrangements with all Persons in respect of or related to the transaction with the GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[*name of Bidder*] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoS under any law, contract or other instrument, be voidable at the option of GoS.

Notwithstanding any rights and remedies exercised by GoS in this regard, [*name of Bidder*] agrees to indemnify GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoS in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [*name of Bidder*] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS.

Name of Employer: Hyderabad Municipal Corporation

Signature:
[Seal]

Name of Bidder: _____

Signature:
[Seal]

BIDDING FORM T3 - FORM OF POWER OF ATTORNEY

A. POWER OF ATTORNEY TO AUTHORIZE A PERSON TO SIGN THE DOCUMENTS

NOTES FOR EXECUTION OF POWER OF ATTORNEY

- *To be executed by each Bidder and in case the Bidder is a Consortium, by each Consortium Member, authorizing the relevant attorney to sign the required documents on its behalf. Such attorney may be the same person authorized to submit documents on behalf of the Bidder (or Consortium Member) or may be a separate person.*
 - *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
 - *This Power of Attorney shall be on stamp paper and notarized with the Notary Public.*
 - *The Power of Attorney executed and issued overseas will have to be:*
 - (a) *attested by the Pakistani Embassy/ Consulate in the country where the Power of Attorney is executed. In case an individual in Pakistan is being appointed as an attorney pursuant to the Power of Attorney, the Power of Attorney, once brought into Pakistan, will also be required to be attested by Ministry of Foreign Affairs, Pakistan; or*
- 9.1.1.1 *subject to applicable laws of the country where Power of Attorney is executed, authenticated by an apostille under the Apostille Convention.*
- *The Power of Attorney should comply with the requirements set out in Part 3 (Bidding Documentary Requirements) of **VOLUME I (TENDER PROCEDURE)** of the RFP.*

KNOW ALL BY THESE PRESENTS, WE, _____ *(name of the entity and address of the registered office)* do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms. (Name), son/daughter/wife of _____ holding [CNIC/Passport] Number _____ and presently residing at _____, who is presently employed with us and holding the position of _____, as our true and lawful attorney (the **Attorney**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to the requirements of the request for proposals document issued on [●] (the **RFP**) by Hyderabad Municipal Corporation (the **Agency**) in relation to design, finance, build, rehabilitate, operate, maintain and transfer of Rani Bagh (the **Project**), including (without limitation) to signing and submission of all documents and providing information/responses to the Agency, representing us in all matters before the Agency, and generally dealing with the Agency in all matters in connection with our Bid for the Project.

We hereby ratify all prior and/or future acts, deeds and things lawfully done or caused to be done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) pursuant to this Power of Attorney and we hereby agree that all prior and/or future acts, deeds and things done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) shall, and shall always be deemed to have been done by us.

IN WITNESS WHEREOF we, _____, have executed this Power of Attorney on this _____ Day of _____, 20____.

For & On Behalf of:

_____ (*name of the entity*)
By Its Duly Authorized Signatory

.....
(Signature)
(Name, Title and Address)

WITNESSES:

WITNESS NO. 1:

WITNESS NO. 2:

.....
NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

.....
NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

SIGNATURE OF ATTORNEY
[NOTARISED]

.....
(Signature)
(Name, Title and Address of the Attorney)

B. POWER OF ATTORNEY TO AUTHORIZE THE LEAD MEMBER

NOTES FOR EXECUTION OF POWER OF ATTORNEY

- *This Power of Attorney for the appointment and authorization of Lead Member, is to be executed by the authorized representative of each Consortium Member (appointed pursuant to the power of attorney in Form A (Power of Attorney to Authorize a Person to Sign the Documents)).*
- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *This Power of Attorney shall be on stamp paper and notarised with the Notary Public.*
- *The Power of Attorney executed and issued overseas will have to be:*
 - (a) *attested by the Pakistani Embassy/ Consulate in the country where the Power of Attorney is executed. In case an individual in Pakistan is being appointed as an attorney pursuant to the Power of Attorney, the Power of Attorney, once brought into Pakistan, will also be required to be attested by Ministry of Foreign Affairs, Pakistan; or*
 - (b) *subject to applicable laws of the country where Power of Attorney is executed, authenticated by an apostille under the Apostille Convention.*
- *The Power of Attorney should comply with the requirements set out in Part 3 (Bidding Documentary Requirements) of **VOLUME I (TENDER PROCEDURE)** of the RFP.*

WHEREAS, the Hyderabad Municipal Corporation (the **Agency**) has invited bids for the design, finance, build, rehabilitate, operate, maintain and transfer of Rani Bagh (the **Project**) pursuant to the request for proposals document issued on [●] by the Agency (as amended from time to time) (the **RFP**);

WHEREAS, _____, _____, _____, _____ and _____ (each hereinafter referred to individually as a **Consortium Member** and collectively as **Consortium Members**) have formed a consortium (the **Consortium**) in accordance with the requirements of the RFP and have entered into a Consortium Agreement as per the requirements of the RFP;

AND WHEREAS, the Consortium Members issue this Power of Attorney for the appointment and authorization of the '**Lead Member**' with all necessary powers and authority to represent and irrevocably bind all the Consortium Members in all matters connected with the Tender Procedure and during execution of the relevant agreements in relation to the Project, in case the Consortium is awarded the Project.

KNOW ALL BY THESE PRESENTS

WE, _____, having our registered office at _____, M/s. _____, having our registered office at _____, and M/s. _____, having our registered office at _____, do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s _____, having its registered office at _____, being one of the Consortium Members, as the Lead Member and true and lawful attorney of the Consortium (the **Attorney**) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Tender Procedure being conducted by the Agency pursuant to the RFP and to do on our behalf and on behalf of the Consortium, all or

any of such acts, deeds or things as are necessary or required or incidental to the Project, including but not limited to signing and submission of our Bid, all applications and other documents and writings, participate in conferences/meetings, respond to queries, submit information/documents, sign and execute contracts and undertakings including the Acceptance of Notification of Award, as applicable (if awarded the Project) and generally to represent the Consortium in all its dealings with the Agency (and the GoS), and/or any other governmental agencies or any Person, in all matters in connection with or relating to or arising out of the Consortium's Bid and its acceptance by the Agency.

We hereby ratify all prior and future acts, deeds and things lawfully undertaken by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) pursuant to this Power of Attorney and we hereby agree that all prior and/ or future acts, deeds and things done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) shall, and shall always be deemed to have been done by us.

IN WITNESS WHEREOF we the above named have executed this power of attorney on this _____ Day of _____ 20____.

For: _____
(Signature)
(Name, Title and Address)

For : _____
(Signature)
(Name, Title and Address)

For : _____
(Signature)
(Name, Title and Address)

WITNESSES:

WITNESS NO. 1:

WITNESS NO. 2:

.....

.....

NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

(Executants)

(To be executed by all the Consortium Members in favour of Lead Member)

BIDDING FORM T4 - FORM OF AFFIDAVIT

AFFIDAVIT
(this **Affidavit**)

Date: _____

HYDERABAD MUNICIPAL CORPORATION

[●]

Reference the request for proposals document issued on [●], by Hyderabad Municipal Corporation (the **RFP**), in relation to the design, finance, build, rehabilitate operate, maintain and transfer of Rani Bagh.

We, [*insert name of Bidder/ Consortium Member*] hereby represent and warrant that, as of the date of this Affidavit [*name of Bidder/ Consortium Member*] (as applicable):

- (a) are not in bankruptcy or liquidation proceedings;
- (b) are not blacklisted by any governmental or non-governmental department/agency;
- (c) have not been convicted of, fraud, corruption, collusion or money laundering;
- (d) are not aware of any conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect our capability to comply with the obligations under the Concession Agreement;
- (e) [are legally and financially autonomous and operate under commercial law]¹;
- (f) there is no pending litigation which represents more than fifty percent (50%) of our net worth;
- (g) are not under any non-performance of a contract within last three (3) years of the Bid Submission Deadline; and
- (h) [have not failed to sign a contract with any procuring authority following award]².

We have also attached proof of our registration from the relevant statutory authority.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.

Deponent

¹Only relevant for the government owned legal enterprise or institution.

²If applicable.

Verified on oath at _____ on this ____ Day of _____, 20__ that the contents of the above Affidavit are true and correct to the best of my knowledge and belief.

Deponent

Yours sincerely,

Name and Title of Signatory: _____
Name of Bidder/Consortium Member: _____
Address of Bidder/Consortium Member: _____

WITNESS NO. 1:

.....
NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

WITNESS NO. 2:

.....
NAME:
CNIC/PASSPORT NUMBER:
ADDRESS:

BIDDING FORM T5 - BASIC INFORMATION FORM

To be submitted by all Bidders. In case of a Consortium, each Consortium Member must fill in this form.

Basic Information Form (Company Profile)

1.	Name of Entity: (In case of Consortium, legal name of each Consortium Member)	
2.	Nature of Business: (Whether the entity is a corporation, partnership, trust <i>etc.</i>)	
3.	Head office address:	
4.	Telephone: Fax Number: E-mail address:	
5.	Place of Incorporation/Registration: Year of Incorporation/Registration:	
6.	Bidder's authorized representative: Telephone: Fax numbers: E-mail address:	
7.	Nationality of owners:	
	Name:	Country:

BIDDING FORM T6 - HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION

NON-PERFORMING CONTRACTS			
<input type="checkbox"/> Contract non-performance did not occur within the last three (3) years prior to the Bid Submission Deadline based on all information on fully settled disputes or litigation (Affidavit to be provided)			
<input type="checkbox"/> Contract non-performance during the stipulated period.			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, PKR)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

PENDING LITIGATION			
<input type="checkbox"/> No pending litigation (A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder/Consortium Member have been exhausted) (Affidavit to be provided)			
<input type="checkbox"/> Pending litigation (All pending litigation shall in total not represent more than fifty percent (50%) of the Bidder's/Consortium Member's net worth and shall be treated as resolved against the Bidder/Consortium Member)			
Year	Outcome as Percent of Total Assets	Details	Total Contract Amount (PKR)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

BIDDING FORM T7 - NET WORTH OF ASSETS OWNED BY THE BIDDER

[This form will be used for evaluation of criteria A - 1]

Each Bidder or member of a Consortium must fill in this form.

FINANCIAL DATA FOR PREVIOUS 3 YEARS			
Information from Balance Sheet			
	Year 1	Year 2	Year 3
Total Assets			
Total Liabilities			
Current Assets			
Current Liabilities			
Net Worth			

- Copies of audited financial statements which shall be signed and stamped by the auditor of the Bidder/respective Consortium Members (balance sheets including all related notes, and income statements) for the last three (3) years, as indicated above, complying with the following conditions:
 - (a) all such documents reflect the financial situation of the Bidder/every Consortium Member, and not sister or parent companies;
 - (b) historic financial statements must be audited by a certified accountant, and in case of a Bidder, by a firm/company which meets ICAP's satisfactory QCR requirements;
 - (c) historic financial statements must be complete, including all notes to the financial statements;
 - (d) historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted);
 - (e) national tax number certificate (or equivalent) must be attached;
 - (f) tax return filed must be provided; and
 - (g) foreign Bidders/Consortium Members should submit national tax number certificate (or equivalent) of their country duly attested by consulate of their country or apostilled under the Apostille Convention.

BIDDING FORM T8 - CASH AND FUNDING LINES

[This form will be used for evaluation of criteria A - 2]

Each Bidder or member of a Consortium must fill in this form.

FINANCIAL DATA FOR PREVIOUS THREE (3) YEARS			
Information from Balance Sheet			
	Year 1	Year 2	Year 3
Cash and Bank Balances			
Short Term Investments			
Funding Lines			
Total			

- Proof of funding lines such as term sheets, commitment letters etc. with financial institutions (if applicable) must be attached. The Bidders must provide such proof by way of confirmation of the respective financial institution(s) which has provided such funding lines.

**BIDDING FORM T9 - AVERAGE ANNUAL TURNOVER OR PROJECT FINANCING
EXPERIENCE**

[This form will be used for evaluation of criteria A - 3]

A. AVERAGE ANNUAL TURNOVER

Each Bidder or member of a Consortium must fill in this form (if applicable).

AVERAGE ANNUAL TURNOVER FOR THE PREVIOUS THREE (3) YEARS

	Year 1	Year 2	Year 3	Average Annual Turnover of the previous three (3) years
Total				

- Proof of average annual turnover must be attached by the Bidder, or in case of a Consortium, by each Consortium Members.

B. PROJECT FINANCING EXPERIENCE

Note: Using the format below, provide information on each Eligible Project for which the Bidder, or in case of a Consortium, the Lead Member, provided equity investment and raised debt financing.

Eligible Project	
City/Country	
Percentage of ownership in the Eligible Project	
Duration of ownership in the Eligible Project	
Dates and duration of the Eligible Project	
Total cost of the Eligible Project in PKR	
Amount of equity invested in PKR	
Amount of debt financing raised in PKR	
Contact information for references Name: Address: Telephone: Email: Website:	
Name(s) of associated companies, consortium members, joint venture members or shareholders in a special purpose vehicle acting as concessionaire, if any	
Contractual arrangement [<i>Please describe under what basis, i.e. equity shareholding, project financing agreements, etc.</i>]	
Description of Eligible Project [<i>The description should include a section on the scope of the Eligible Project</i>]	
Actual services provided [<i>Describe role - actual services provided by the Bidder/Consortium Member within the Eligible Project</i>]	

Date	
Name of Bidder	
Name and surname of signatory	
Capacity of the signatory	
Signature	

Note: Documentary proof (i.e., financial close achievement notice/certificate) to be attached.

BIDDING FORM T10 - GENERAL AND SPECIFIC DEVELOPMENT EXPERIENCE

[This form will be used for evaluation of criteria B - 1]

Note: Using the format below, provide information on each General Development Experience and Specific Development Experience on which a Bidder has relied on.

Project in the General Development Experience/Specific Development Experience Category	
City/Country	
Dates and duration of the Project	
Total cost of the Project in PKR	
Contact information for references Name: Address: Telephone: Email: Website:	
Name(s) of associated companies, consortium members, joint venture members or shareholders in a special purpose vehicle acting as concessionaire, if any	
Contractual arrangement [<i>Please describe under what basis, i.e. equity shareholding, construction contract, etc.</i>]	
Description of the Project [<i>The description should include a section on the scope of the project</i>]	
Actual services provided [<i>Describe role - actual services provided by the Bidder/Consortium Member within the project</i>]	
Area of the Project [<i>In case of the Specific Development Experience category, the total area of the project</i>]	

Date	
Name of Bidder	
Name and surname of signatory	
Capacity of the signatory	
Signature	

Note: Documentary proof (i.e., completion certificate from the relevant public or private owner/grantor/concessionaire/special purpose vehicle of the projects) to be attached. In case the project has been developed by a Bidder or in case of a Consortium, by a Consortium Member, itself as a private project, such Bidder or Consortium Member can provide the requisite completion certificate.

BIDDING FORM T11 - TEAM COMPOSITION

[This form will be used for evaluation of criteria B - 2]

Bidders and each Consortium Member should provide the names of suitably qualified personnel to meet the specified requirements stated in the technical evaluation criteria.

SR. NO.	NAME	PROPOSED KEY POSITION
1.		
2.		
3.		
4.		
5.		
6.		
7.		

BIDDING FORM T12 - FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF

[This form will be used for evaluation of criteria B - 2]

1. PROPOSED POSITION: _____
2. NAME OF FIRM: _____
3. NAME OF STAFF: _____
4. PROFESSION: _____
5. DATE OF BIRTH: _____
6. YEARS WITH FIRM: _____
7. NATIONALITY: _____
8. MEMBERSHIP IN PROFESSIONAL SOCIETY: _____
(Membership of and registration with Pakistan Engineering Council (PEC) or with an equivalent international body/ authority acceptable to the Agency is mandatory)
9. DETAILED TASKS ASSIGNED ON THE PROJECT: _____
10. KEY QUALIFICATION:
(Give an outline of staff member's experience and training most pertinent to assigned tasks. Describe degree of responsibility held by staff members or relevant previous assignments and give dates and locations. Use up to one page.)
11. EDUCATION:
(Summarize college/ university and other specialized education of staff member, giving names of institutions, dates attended and degrees/ diplomas obtained.)
12. EMPLOYMENT RECORD:
(Starting with present position, list in reverse order every employment held.)
13. LANGUAGES:
(Indicate proficiency in speaking, reading and writing of each language: excellent, good, fair or poor.)
14. CERTIFICATION:

I, the undersigned, certify to the best of my knowledge and belief that:

- (a) This CV correctly describes my qualifications and experience;
- (b) I am not a current employee of the executing or the implementing agency/the Agency;
- (c) I was not part of the team who wrote the terms of reference for this consulting services assignment; and
- (d) I certify that I have been informed by the firm that it is including my CV in the bid for the Rani Bagh Hyderabad Project. I confirm that I will be available to carry out

the assignment for which my CV has been submitted in accordance with the implementation arrangements and schedule set out in the Proposal.

If the CV is signed by the firm's authorized representative, insert:

I, as the authorized representative of the firm submitting this Proposal for the Rani Bagh Hyderabad Project certify that I have obtained the consent of the named expert to submit his/her CV, and that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the Proposal, and confirm his/her compliance with paragraphs (a) to (d) above.

Signature of staff member

Date: _____
Day/Month/Year

Signature of authorized representative of firm

Date: _____
Day/Month/Year

BIDDING FORM T13 - O&M EXPERIENCE

[This form will be used for evaluation of criteria B - 3]

A. O&M EXPERIENCE

Note: Using the format below, provide information on each operation and maintenance project on which a Bidder has relied on.

Project in the O&M Category	
City/Country	
Dates and duration of the Project	
Contact information for references Name: Address: Telephone: Email: Website:	
Name(s) of associated companies, consortium members, joint venture members or shareholders in a special purpose vehicle acting as concessionaire, if any	
Contractual arrangement <i>[Please describe under what basis, i.e. operations and maintenance contract etc.]</i>	
Description of the Project <i>[The description should include a section on the scope of the project]</i>	
Actual services provided <i>[Describe role - actual services provided by the Bidder/Consortium Member/<u>O&M Third Party</u> within the project]</i>	
Area of the Project <i>[The total area of the project]</i>	

Date	
Name of Bidder	
Name and surname of signatory	
Capacity of the signatory	
Signature	

Note: Documentary proof (i.e., certificate confirming experience from the relevant public or private owner/grantor/concessionaire/special purpose vehicle of the projects) to be attached. In case the project has been ~~operated/developed~~ by a Bidder or in case of a Consortium, by a Consortium Member or by an O&M Third Party, itself as a private project, such Bidder, ~~or~~ Consortium Member or O&M Third Party can provide the requisite certificate confirming experience.

B. O&M THIRD PARTY UNDERTAKING

[TO BE EXECUTED ON STAMP PAPER OF PKR 100/-]

FROM:

[O&M Third Party] (the O&M Third Party)

TO:

1. HYDERABAD MUNICIPAL CORPORATION (the Agency);

2. [●] (the Concessionaire),

together, the Parties and each a Party.

Dated: [●]

Ref: [●]

RE: RANI BAGH HYDERABAD PROJECT - O&M THIRD PARTY UNDERTAKING

Dear Sir(s)/Madam(s):

In this undertaking (this **Undertaking**) we, the O&M Third Party, refer to the concession agreement to be executed between the Agency and the Concessionaire (the **Agreement**). Specifically, but not limited to, reference is made to O&M Experience under Technical Capability of Part 1 (*Technical Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP. Terms defined in the Agreement shall have the same meaning in this Undertaking unless given a different meaning herein.

We hereby undertake the following for and in favour of the Agency:

1. RELIANCE ON O&M EXPERIENCE AND COMMITMENT TO ACT AS O&M CONTRACTOR/RANI BAGH CONTRACT PARTY

1.1 The O&M Third Party consents to reliance by the Bidder on the O&M Experience of the O&M Third Party under Technical Capability of Part 1 (*Technical Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP and permits the Bidder to submit the relevant documentary evidence in this regard on its behalf.

1.2 If the Bidder for whom the O&M Third Party has provided this Undertaking is declared the Successful Bidder in terms of the RFP and the Agency enters into the Concession Agreement with the Concessionaire incorporated by such Bidder, the O&M Third Party undertakes to enter into the O&M Contract or Rani Bagh Contract (as applicable) (the **Relevant Contract**) with the Concessionaire to perform the Operation and Maintenance or Rani Bagh Services

(Outsourced) (as applicable) in relation to [REDACTED] strictly in accordance with the terms of the Agency Agreements.

2. LIMITED WARRANTIES AND REPRESENTATIONS

2.1 The O&M Third Party represents and warrants to the Agency that on the Effective Date and the Commencement Date each of the following is true and correct in all material respects:

2.1.1 it has full power, authority and right and has taken all actions necessary to enter into the Relevant Contract and to assume and perform its rights and obligations as set out in the Relevant Contract;

2.1.2 there is no proceeding, action, claim or investigation, pending or threatened against the O&M Third Party the outcome of which may have a material adverse effect on its financial condition or its ability to perform its obligations under the Relevant Contract; and

2.1.3 there are no fines, penalties or other sanctions imposed on the O&M Third Party which may have a material adverse effect on its financial condition or its ability to perform its obligations under the Relevant Contract.

3. ADDITIONAL UNDERTAKINGS

3.1 The O&M Third Party is aware of, understands, has complied with, and will comply with, all anti-corruption Laws and their implementing guidelines.

3.2 The O&M Third Party confirms that all funds (whether in the form of financing or equity) that are or will be used by the O&M Third Party for the fulfilment of its obligations under the Relevant Contract are not and will not be acquired through or in connection with a crime. The O&M Third Party shall be obliged to provide any and all information confirming its compliance with money laundering Laws and their implementing regulations.

3.3 The O&M Third Party confirms that it has received all the information about the Concession that was prepared by the Agency for the purposes of the Agreement and which was made available to the O&M Third Party, namely the documents and information provided in the RFP and those contained in the schedules to the Agreement. The O&M Third Party confirms that it has made its own preliminary assessment of the Concession.

4. INDEMNITIES UNDERTAKING

4.1 The O&M Third Party shall bear explicit liability for the undertakings as well as the representations and warranties set out in Sections 1 (*Reliance on O&M Experience and Commitment to Act as O&M Contractor/Rani Bagh Contract Party*), 2 (*Limited Warranties and Representations*) and 3 (*Additional Undertakings*) hereof towards the Agency.

5. GOVERNING LAW

This Undertaking and any contractual and non-contractual matters deriving therefrom shall be governed by the Laws of Pakistan.

[REDACTED]
[REDACTED]

6. DISPUTE RESOLUTION

Any dispute or difference arising out of or in connection with this Undertaking, shall regardless of the nature thereof, be referred to dispute resolution for which purpose the provisions of article 30 (*Dispute Resolution*) of the Agreement, which provisions are incorporated herein by reference and shall apply *mutatis mutandis* to this Undertaking.

Regards,

**FOR AND ON BEHALF OF
O&M THIRD PARTY**

[Date]

Signature _____
Signed by _____
acting as _____

ACKNOWLEDGED AND ACCEPTED BY THE AGENCY

AGENCY
Signature

.....

Name
(block capitals)

.....

Title

.....

In the presence of:

Witness signature

.....

Witness name
(block capitals)

.....

Witness signature

.....

Witness name
(block capitals)

.....

**BIDDING FORM T14 - CONSTRUCTION METHODOLOGY, WORK PLAN & TECHNOLOGY
INTEGRATION**

[This form will be used for evaluation of criteria C - 1 and C - 2]

This form must respond to the entire scope of work for the Project described in **VOLUME II (PROJECT SCOPE)** of the RFP.

The Bidder must outline the proposed construction methodology and work plan to implement the Project on a DFBRMT basis. The construction methodology and work plan should articulate what added value the Bidder will provide in achieving the stated objectives for the Project and how compliance with requirements set out in the RFP (including **VOLUME II (PROJECT SCOPE)**) of the RFP will be achieved.

The Bidder must explain its understanding of the objectives and requirements of the Project, highlight the issues of importance, and explain the technical approach it would adopt to address such issues. The construction methodology and work plan should explain the methodologies and technologies which are to be adopted and demonstrate the compatibility of those with the proposed approach, making it clear that only proven and reliable methodologies and technologies will be used for the implementation of the Project. The approach should also indicate how risks will be managed and what contribution will be made regarding value engineering and management.

The construction methodology and work plan should comprehensively address the environmental, social, health and safety aspects during the C&O Period, including (but not limited to) environmental impact mitigation measures, social safeguards, occupational health and safety protocols, and compliance with relevant regulations and standards.

The Bidder must attach its approach paper as Bidding Form T14 (*Construction Methodology, Work Plan & Technology Integration*). The approach paper should not be longer than twenty-five (25) pages.

BIDDING FORM T15 - O&M PLAN

[This form will be used for evaluation of criteria C - 3]

Bidder shall submit an operations and maintenance plan for the Project. The operations and maintenance plan shall be evaluated keeping in mind various aspects including (without limitation):

- (a) General Overview;
- (b) Organizational Structure;
- (c) Maintenance Procedures;
- (d) Operational Guidelines;
- (e) Safety and Emergency Procedures;
- (f) Environmental Management;
- (g) Community Engagement;
- (h) Budget and Financial Management;
- (i) Performance Metrics;
- (j) Continuous Improvement; and
- (k) Sustainability Practices.

The Bidders shall be required to demonstrate their vision for Operation and Maintenance of Rani Bagh and how they plan to undertake the Operation and Maintenance.

Marks would be awarded on the basis of value addition provided in the plan and the rationale behind the plan, together with demonstration of the implementation team's past record on delivering on such concepts.

Bidder may be required to present the same to the Agency (in the form of a presentation) upon request.

The operations and maintenance plan should be attached as Bidding Form T15 (*O&M Plan*) and should not exceed twenty-five (25) pages.

BIDDING FORM T16 - MARKETING PLAN

[This form will be used for evaluation of criteria C - 4]

Each Bidder shall submit a comprehensive marketing plan methodology that outlines its proposed approach to achieve the Project's marketing objectives. The plan must demonstrate a clear understanding of the target market, competitive landscape, and required marketing strategies. The methodology should articulate the added value the Bidder will provide, including its approach to market research, audience targeting, channel selection, campaign execution, and performance measurement. Each Bidder must explain its understanding of modern marketing techniques and technologies, highlighting how proven methodologies will be implemented to ensure project success while effectively managing risks and optimizing resources. The marketing plan should be attached as Bidding Form T16 (*Marketing Plan*) and should not exceed twenty-five (25) pages.

BIDDING FORM T17 - FORM OF BID SECURITY

BANK GUARANTEE

Guarantee No. _____
(the **Bank Guarantee**)
Executed on: _____
Expiry date: _____

Name of Guarantor (Bank) with address: _____
Name of Bidder/Lead Member with address: _____
Guaranteed Amount (express in words and figures): _____

Date of Bid [●]

The above premised, we (the **Guarantor Bank**) hereby undertake irrevocably and unconditionally on demand to pay to Hyderabad Municipal Corporation (the **Agency**), without any notice, reference or recourse to the Bidder or to any other entity or without any recourse or reference to any document, agreement, instrument or deed, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

[●] [●]/- ([●][●])
(the **Guaranteed Amount**)

at sight and immediately upon the receipt of the Agency's first written demand (the **Demand**) at the Guarantor Bank's offices located at [●] or through SWIFT instructions transmitted by the Agency's bank, on behalf of the Agency, to the Guarantor Bank, or through fax sent by the Agency at the Guarantor Bank's fax number i.e., [●], such Demand stating:

- (a) that the Bidder is in breach of its obligations towards the Agency; and
- (b) the total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Agency; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Agency's bank, on behalf of the Agency; or (iii) in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of the Agency.

We, the Guarantor Bank, shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the bank account, as notified in the Demand, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

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

Such demand must be received by us on or before the [●] (the **Expiry Date**), when this Bank Guarantee shall expire and shall be returned to us.

Upon expiry, this Bank Guarantee shall be returned to the Bidder without undue delay. Multiple Demands may be made by the Agency under this Bank Guarantee, but our aggregate liability will be restricted up to the Guaranteed Amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Agency, the Bidder or any other entity of any document, agreement, instrument or deed shall not in any way impair or affect our liabilities hereunder and maybe undertaken without notice to us and without the necessity for any additional endorsement, consent or guarantee by us.

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

All references to any contract, agreement, deed or other instruments or documents are by way of reference only and shall not affect our obligations to make payment under the terms of this Bank Guarantee.

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws and regulations, it has the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

Name:

Designation:

B. FINANCIAL PROPOSAL BIDDING FORMS

BIDDING FORM F1 - LETTER OF FINANCIAL PROPOSAL

[Date]

To: [●]

Re: Design, finance, build, rehabilitate, operate, maintain and transfer of Rani Bagh (the **Project**).

Dear Sir:

Reference the Request for Proposals document issued on [●], by the Hyderabad Municipal Corporation (the **Agency**), (the **RFP**) in relation to the Project.

We, [*Name of the Bidder*] hereby submit our Financial Proposal in conformity with the requirements of the RFP.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the RFP.

We, agree, confirm, undertake and declare that:

- (a) We have examined and have no reservations to the RFP, including Addenda No(s).....;
- (b) We, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein;
- (c) We offer to perform and undertake the works and services in respect of the Project in conformity with the RFP, including the Agency Agreements, without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the RFP including the schedules/annexures attached to the RFP;
- (d) As security for due performance of the undertakings and obligations of this Bid, we submit unconditionally herewith a Bid Security equivalent to [●] drawn in your favour or made payable to you and valid for a period twenty-eight (28) Days beyond the period of validity of Bid. We confirm that the Bid Security has been issued and maintained in accordance with the requirements of the RFP;
- (e) We, including all Consortium Members, as per the requirements of the RFP, respectively:
 - (i) have nationalities of Eligible Countries;
 - (ii) do not have any conflict of interest; and
 - (iii) have not been declared ineligible/blacklisted by any of our employers, by any Federal or Provincial governmental or non-governmental department/agency in Pakistan, as at the Bid Submission Deadline;
- (f) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred twenty Days (120) Days from the date fixed for the Bid Submission Deadline in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (g) We have submitted our Financial Model in PDF on SPPRA EPADS and our Financial Model

in “Microsoft Excel File” format is available at this link: *[insert weblink to Financial Model]*. We confirm that the weblink shall remain unrestricted and accessible to the Agency for viewing and downloading the Financial Model during the opening of the Financial Proposal on the date and time set by the Agency. We agree that in case of any discrepancies between the ‘Microsoft Excel File’ and the PDF of the Financial Model, the latter shall prevail⁴;

- (h) We understand that all the volumes, schedules/annexures attached to the RFP are integral part of the RFP;
- (i) We have reviewed and accepted the form of the Concession Agreement along with the Schedules attached thereto (attached as **VOLUME III (CONCESSION AGREEMENT)** to the RFP) and undertake to execute the same within the time period stipulated in Notification of Award;
- (j) We acknowledge that the Agency Parties will be relying on the information provided in our Bid and the documents accompanying them to determine the Successful Bidder. We certify that all information provided in our Bid is true and correct and that nothing has been omitted which renders such information misleading;
- (k) We certify that in the last three (3) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by any arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been expelled from any project or contract by any public authority, nor have had any contract terminated by any public authority for breach by us or, if we are a Consortium, by any of our Consortium Members;
- (l) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Concession Agreement (attached as **VOLUME III (CONCESSION AGREEMENT)** to the RFP) is executed;
- (m) We are not participating, as a Bidder in more than one Bid in this Tender Procedure in accordance with the requirements of the RFP;
- (n) We understand that the Agency may cancel the Tender Procedure at any time and that the Agency is not bound either to accept any Bid that it may receive, without incurring any liability to the Bidders;
- (o) We agree to permit the Agency and any Persons, representatives or auditors appointed and authorized by the Agency to inspect and audit our accounts, records and other documents relating to our Bid;
- (p) All the information submitted along with our Bid, including the enclosed forms and documents, is accurate in all respects;
- (q) We accept the right of the Agency to: (i) request additional information reasonably required to assess the Bid; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP;
- (r) All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Agency by us or on our behalf, in connection with or arising out of the

⁴ Bidders shall create an unrestricted weblink using a cloud-based storage service (e.g., Google Drive, One Drive, iCloud, Mega, pCloud, Sync, Icedrive, Koofr, MediaFire, etc.), as available, to store and provide the Agency with online access to the Financial Model.

- Bid are true, complete and accurate in all respects;
- (s) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and/or our blacklisting by the Agency;
 - (t) We, [including all Consortium Members,] have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Bid and the Project;
 - (u) We undertake, if our Bid is accepted, to furnish the C&O Performance Security as per the requirements of the RFP;
 - (v) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other Person or Persons making a Bid for the Project;
 - (w) We understand that the RFP has been issued by the Agency for the Project; and we undertake and confirm that if our Bid is accepted, we and the SPV (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the Concession Agreement (including other Agency Agreements) (attached as **VOLUME III (CONCESSION AGREEMENT)**) to the RFP and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP.

Name

In the capacity of

Signed
 (Seal)

Duly authorized to sign the Bid for and on behalf of: *(Insert Name of the Bidder/ names of all Consortium Members)*

Date

WITNESSES

WITNESS NO. 1:

WITNESS NO. 2:

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

CNIC/Passport No.: _____

CNIC/Passport No.: _____

BIDDING FORM F2 - FINANCIAL PROPOSAL STANDARD FORM

Financial Proposal standard form shall be used for the preparation of the Financial Proposal.

Bidder who quotes the highest Bid Price based on the formulae relating to (a) present value of the Agency Revenue Share, and (b) Outstanding Principal Amount, set out in Part 2 (*Financial Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP shall be deemed to have submitted the Best Evaluated Bid.

AGENCY REVENUE SHARE

OPERATIONAL YEAR	BENCHMARK REVENUE AMOUNT (PKR) (A)	AGENCY REVENUE SHARE (In Percentage) (B)	AGENCY REVENUE SHARE (PKR) (C) = A * B
OPERATIONAL YEAR 1		X%	
OPERATIONAL YEAR 2			
OPERATIONAL YEAR 3			
OPERATIONAL YEAR 4			
OPERATIONAL YEAR 5			
OPERATIONAL YEAR 6			
OPERATIONAL YEAR 7			
OPERATIONAL YEAR 8			
OPERATIONAL YEAR 9			
OPERATIONAL YEAR 10			
OPERATIONAL YEAR 11			
OPERATIONAL YEAR 12			
OPERATIONAL YEAR 13			
OPERATIONAL YEAR 14			
OPERATIONAL YEAR 15			
TOTAL			

NOTE:

If the actual Aggregate Concession Revenue realized by the Concessionaire in any Operational Year are less than the Benchmark Revenue Amount quoted in column (A) above (for that Operational

Year), then the Concessionaire will still be required to share the Agency Revenue Share quoted in column (C) above.

In case the actual Aggregate Concession Revenue realized by the Concessionaire in any Operational Year are higher than the Benchmark Revenue Amount, then the Windfall Revenue shall be shared between the Concessionaire and the Agency on a 50:50 basis.

The quoted Agency Revenue Share shall not be less than ten percent (10%) of the Benchmark Revenue Amount.

The quoted Agency Revenue Share shall not be less than PKR 5,000,000,000/- (Pakistani Rupees Five Billion only) in nominal terms and PKR 1,000,000,000/- (Pakistani Rupees One Billion only) in present value terms.

Bidders may project the Aggregate Concession Revenue during the C&O Period in their Bids. However, any such projected Aggregate Concession Revenue quoted by the Bidder in their Bid shall not be evaluated for the purposes of calculation of the Bid Price.

OUTSTANDING PRINCIPAL AMOUNT

Outstanding Principal Amount:

PKR [●]/- (Pakistani Rupees [●] only)

BID PRICE

The Bid Price shall be calculated by the Agency for each Bidder based on the formulae relating to (a) Agency Revenue Share, and (b) Outstanding Principal Amount, set out in Part 2 (*Financial Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP.

BIDDING FORM F3 - FINANCIAL MODEL FORM

The Bidder should provide the following components of the Financial Proposal:

Year	1	2	...	15
Revenue - (a)				
Agency Revenue Share (in PKR) - (b)				
Debt Servicing Costs				
Operation and Maintenance Costs				

1. PROJECT COST BREAKUP

Item	Total
EPC Cost	In PKR
[Details]	
Non-EPC Cost	In PKR
[Details]	
Interest During Construction (IDC) (if applicable)	In PKR
Total Project Cost	In PKR

2. FUNDING/CAPITAL STRUCTURE

Total Project Cost	Year 1	Year 2
Sponsor Equity	In PKR	
Commercial Debt/Outstanding Principal Amount	In PKR	

NOTE:

Bidders shall provide a breakdown of all expected costs for the Project (EPC and non-EPC) including (without limitation) construction, design/engineering costs, insurance cost, taxes, and consultancy charges (e.g. for the Independent Technical Advisor and Independent Auditor).

BIDDING FORM F4 - LETTER OF INTENT

BORROWER/CUSTOMER	
PROJECT SPONSORS	
SHAREHOLDERS	
TRANSACTION/PROJECT	
PROJECT COST	
FACILITY AMOUNT	
CURRENCY OF THE FACILITY	
PRICING ON FACILITY (FIXED OR FLOATING, INCLUDING FLOATING BASE RATE AND MARGIN)	
TENOR	
FACILITY EFFECTIVE DATE	
AVAILABILITY PERIOD	
REPAYMENT OF FACILITY (PERIOD AND FREQUENCY OF REPAYMENT)	
SECURITY/COLLATERAL	
VALIDITY	

Signatory for and on behalf of
[insert name of the financial institution]

Name:
Designation:

Signatory for and on behalf of
[insert name of the relevant Bidder]

Name:
Designation:

 This format of the letter of intent is indicative only. Bidders may provide the letter of intent on standard formats of the relevant financial institutions.

PART 3
BIDDING DOCUMENTARY REQUIREMENTS

BIDDING DOCUMENTARY REQUIREMENTS

No.	DOCUMENT	REQUIREMENTS ⁶	
		LOCAL ENTITY	FOREIGN ENTITY
1.	LETTER OF TECHNICAL PROPOSAL AND LETTER OF FINANCIAL PROPOSAL	To be dated, signed by the authorized representative and duly stamped with the company's stamp and witnessed.	To be dated, signed by the authorized representative and to be duly stamped with the company's stamp and witnessed.
2.	FORM OF BID SECURITY	To be issued by Acceptable Bank; and dated, signed by an authorized representative of the relevant bank and duly stamped (PKR 500/-).	Note: Where the Bid Security is issued by a foreign bank outside Pakistan, such Bid Security shall be counter-guaranteed/confirmed by an Acceptable Bank. Counter-guarantee to be dated, signed by an authorized representative of the relevant bank and duly stamped (PKR 500/-).
3.	POWER OF ATTORNEY	To be dated; witnessed; notarized by notary public; duly stamped (PKR 200/-); signed by an authorized representative; and in the language as required under the Instructions to Bidders.	To be dated, witnessed, signed by an authorized representative, and adequately adhesive stamped with a stamp duty of PKR 200/-. The power of attorney executed and issued overseas will have to be notarized by notary public and; (i) attested by the Pakistani Embassy/Consulate in the country where the Power of Attorney is executed. In case a person in Pakistan is being appointed as an attorney pursuant to the Power of Attorney, the Power of Attorney, once brought into Pakistan, will also be required to be attested by Ministry of Foreign Affairs, Pakistan; or

⁶ Under the Laws of Pakistan (Qanun-e-Shahdat Order, 1984), the minimum witnessing requirement mandates the presence of either two (2) males, or one (1) male and two (2) females to witness, for all instances of witnessing in financial matters.

			(ii) subject to applicable laws of the country where Power of Attorney is executed, authenticated by an apostille under the Apostille Convention.
4.	INTEGRITY PACT	To be dated and signed by the authorized representative of the Bidder.	To be dated and signed by the authorized representative of the Bidder.
5.	AFFIDAVIT	To be dated; signed by the authorized signatory, notarized by notary public and verified by Oath Commissioner, witnessed, duly stamped (PKR 100/-), and in the format as required under the RFP.	<p>To be in the English language and in compliance with the requirements under the RFP, adequately adhesive stamped with a stamp duty of PKR 100/-, dated, signed by the authorized signatory, and witnessed.</p> <p>For an affidavit executed and issued overseas, the same will have to be notarized by notary public and:</p> <p>(i) attested by the Pakistani Embassy/Consulate in the country where the affidavit is executed; or</p> <p>(ii) subject to applicable laws of the country where affidavit is executed, authenticated by an apostille under the Apostille Convention.</p>

PART 4
ANNEXURES

ANNEXURE A - BASIC ELIGIBILITY CRITERIA

A Technical Proposal received from the Bidder, shall only be considered if all the following information/components have been provided and the requirements herein are satisfied:

In case any document/information furnished is in a language other than English, it will need to be accompanied by an English translation (duly notarized by notary public and either (a) attested by Pakistan Embassy/ Consulate and, once brought into Pakistan, should be attested by Ministry of Foreign Affairs, Pakistan, or (b) subject to applicable laws of the country where English translation is issued, authenticated by an apostille under the Apostille Convention). In case of any discrepancy, the English translation shall prevail.

BASIC ELIGIBILITY CRITERIA FOR BIDDERS

A Bid received from a Bidder, shall only be considered if all the following components of the basic eligibility criteria are satisfied:

ELIGIBILITY CRITERIA FOR BIDDERS

➤ REGISTRATION WITH TAX AUTHORITIES

The Bidder (including each Consortium Member) must possess a valid registration certificate from the income tax authority (i.e., the NTN certificate) and relevant sales tax authority, if applicable. Valid NTN certificate(s) and tax returns filed for last three (3) years are to be attached and relevant sales tax certificate, if applicable.

Foreign entities participating in the Tender Procedure should submit a tax certificate of their country and tax returns filed for last three (3) years (if applicable).

➤ AFFIDAVIT FOR GOVERNMENT OWNED LEGAL ENTITIES

In case a Bidder (including a Consortium Member) is a government owned legal enterprise or institution, such entity must establish that it is legally and financially autonomous and operating under commercial law.

A Bidder (or a Consortium Member) that is a government owned legal enterprise or institution shall submit an affidavit confirming that they are legally and financially autonomous and operating under commercial law.

*Relevant Form: **BIDDING FORM T4 (FORM OF AFFIDAVIT)***

➤ NO CONFLICT OF INTEREST

The Bidder, and any Consortium Member, shall not have any Conflict of Interest.

Conflict of Interest means:

- where the Bidder and any Consortium Member, provides, or could provide, or could be perceived as providing biased professional advice to the Agency to obtain an undue benefit for himself or those affiliated with him;
- receiving or giving any remuneration directly or indirectly in connection with the Project except as provided in the RFP;

- any engagement in consulting or other procurement activities of a Bidder, and any Consortium Member, that conflicts with his role or relationship with the Agency under the Project; or
- where an official of the Agency engaged in the procurement process has a financial or economic interest in the outcome of the process of procurement, in a direct or an indirect manner.

The Bidders (or in case of a Consortium, each Consortium Member) shall submit an affidavit for non-conflict.

*Relevant Form: **BIDDING FORM T4 (FORM OF AFFIDAVIT)***

➤ **NON-BLACKLISTING**

The Bidder, and any Consortium Member, shall not be Blacklisted.

Blacklisting means barring a Bidder, or any Consortium Member, from participating in any future procurement proceedings by the Agency or any governmental entity.

Bidders (or in case of a Consortium, each Consortium Member) shall submit an affidavit for non-blacklisting.

*Relevant Form: **BIDDING FORM T4 (FORM OF AFFIDAVIT)***

➤ **HISTORY OF NON- PERFORMING CONTRACTS AND LITIGATION**

Any non-performance of a contract by the Bidder (or in case of Consortium, each Consortium Member) should not have occurred in the last three (3) years prior to the Bid Submission Deadline based on all information on fully settled disputes or litigation. All pending litigation against the Bidder or any Consortium Member shall in total not represent more than fifty percent (50%) of the respective net worth, nor shall there be any litigation that prevents or materially impedes the Bidder or any Consortium Member from its obligations in respect of the Project and the terms of the Concession Agreement.

The Bidders (or in case of a Consortium, each Consortium Member) shall provide details of the litigation or the Bidder (or in case of Consortium, each Consortium Member) shall submit an affidavit in case of no litigation on PKR 100/- (Pakistani Rupees One Hundred only) stamp paper attested by notary public.

*Relevant Forms: **BIDDING FORM T6 (HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION) AND BIDDING FORM T4 (FORM OF AFFIDAVIT)***

➤ **FAILURE TO SIGN CONTRACTS**

The Bidder (or in case of a Consortium, each Consortium Member) shall not have failed to sign a contract in the last three (3) years.

The Bidder (or in case of a Consortium, each Consortium Member) shall provide details of such failure to sign contracts or the Bidder (or in case of a Consortium, each Consortium Member) shall submit an affidavit in case if not applicable on PKR 100/- (Pakistani Rupees One Hundred only) stamp paper attested by notary public.

Relevant Form: BIDDING FORM T6 (HISTORICAL NON-PERFORMANCE AND PENDING LITIGATION) AND BIDDING FORM T4 (FORM OF AFFIDAVIT)

➤ **FINANCIAL SITUATION/HISTORICAL FINANCIAL PERFORMANCE**

• ***Net Worth***

Current net worth of the Bidder shall be PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) (excluding any surplus on revaluation) as presented in the most recent financial statements / wealth statement.

In case of a Consortium, the Lead Member of the Consortium shall have a minimum net worth of PKR 2,000,000,000/- (Pakistani Rupees Two Billion only). The aggregate net worth of the Consortium shall be PKR 3,000,000,000/- (Pakistani Rupees Three Billion only).

(The Bidder/each Consortium Member shall submit audited financial statements for the last three (3) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder/each Consortium Member).

• ***Liquid Investments***

The Bidder must have a minimum cash, short term or liquid investments and funding lines of which at least seventy percent (70%) of the aggregate number should be demonstrated through cash and short-term investments amounting to PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only).

(The Bidder/each Consortium Member shall submit audited financial statements for the last three (3) years to demonstrate their capability for this criteria).

• ***Average Annual Turnover or Project Finance Experience***

The Bidder shall have an average annual turnover of PKR 2,000,000,000/- (Pakistani Rupees Two Billion only) for the last three (3) years.

In case of a Consortium, the Lead Member shall have an average annual turnover of PKR 1,500,000,000/- (Pakistani Rupees One Billion and Five Hundred Million only) and of the entire Consortium in aggregate must be PKR 2,000,000,000/- (Pakistani Rupees Two Billion only) for the last three (3) years.

(The Bidder/each Consortium Member shall submit audited financial statements for the last three (3) years to demonstrate their capability for this criteria).

OR

The Bidder, or in the case of a Consortium, the Lead Member, must have funded an Eligible Project through a combination of debt and equity.

In terms of debt financing for an Eligible Project, the Bidder or Lead Member (as applicable) must possess the experience of completing project financing for an Eligible Project within the last ten (10) years prior to the Bid Submission Deadline. Such project financing must have been raised from lenders (either local and/or

international financial institutions) and must include a full suite of typical project finance-associated lender requirements.

For an Eligible Project to be recognized as evidence of meeting the basic eligibility criteria stated above:

- (a) the Eligible Project should have a government entity as a counterparty; and
- (b) the Bidder or Lead Member (as applicable) must have equity ownership in the Eligible Project of at least twenty percent (20%) for a period commencing on financial close and lasting at least until commercial operations date.

*Relevant Forms: **BIDDING FORM T7 (NET WORTH OF ASSETS OWNED BY THE BIDDER), BIDDING FORM T8 (CASH AND FUNDING LINES) AND BIDDING FORM T9 (AVERAGE ANNUAL TURNOVER OR PROJECT FINANCING EXPERIENCE)***

➤ **REGISTRATION WITH PAKISTAN ENGINEERING COUNCIL (PEC)**

Registration with Pakistan Engineering Council and registration in PCATP as a Professional Architect is mandatory. [Regarding registration in PCATP, an individual having obtained a valid certificate from PCATP shall be accepted; provided, such individual is employed by the Bidder's organization at the time of the Bid Submission Deadline.](#) -In case of a Consortium, the PEC registration of civil engineering firm/Consortium Member shall be required. The construction firm of the Consortium must be registered with PEC with following codes:

- The Bidder (in case of a Consortium, any Consortium Member) must possess valid PEC registration certificate in category C-B having specialization codes of CE-01, CE-02, CE-10, BC01, ME-02, ~~ME-03~~ and EE-06 or by engaging the sub-contractor for not more than two (2) specialization codes.

(Valid PCATP certificate and PEC registration certificates are required to be attached).

(Foreign entities if participating in the Tender Procedure should strictly follow the rules stipulated in PEC bye laws for participation).

ANNEXURE B - EVALUATION CRITERIA

PART 1 - TECHNICAL EVALUATION CRITERIA

The Technical Proposal shall be evaluated on the basis of the criteria given below:

A) Financial Capability	Maximum Marks - 40
A - 1) Net worth	Maximum Marks - 20
<p>The Bidder must have a tangible net worth of not less than PKR 3,000,000,000/- (Pakistani Rupees Three Billion only). Tangible net worth shall not include any surplus on revaluation of property, plant and equipment.</p> <p>In case of a Consortium, only such Consortium Members that are proposed to be shareholders of the SPV as per the Consortium Agreement shall be considered for this criterion. The Consortium must collectively have a tangible net worth of not less than PKR 3,000,000,000/- (Pakistani Rupees Three Billion only). The Lead Member must have a minimum net worth of PKR 2,000,000,000/- (Pakistani Rupees Two Billion only).</p> <p>Net worth of at least PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) will be awarded fifteen (15) marks.</p> <p>One (1) mark for each increment of PKR 200,000,000/- (Pakistani Rupees Two Hundred Million only) above the minimum will be awarded till the maximum of twenty (20) marks is reached.</p> <p><i>(Note: Current exchange rate of PKR two hundred and seventy-eight (278) per US Dollar or selling rate of other currencies prevailing seven (7) Business Days prior to the Bid Submission Deadline will be used to convert foreign currency to PKR)</i></p>	
A - 2) Cash and funding lines	Maximum Marks - 10
<p>The Bidder must have a minimum cash, short term or liquid investments and funding lines of which at least seventy percent (70%) of the aggregate number should be demonstrated through cash and short-term investments.</p> <p>In case of a Consortium, only such Consortium Members that are proposed to be shareholders of the SPV as per the Consortium Agreement shall be considered for this criterion. The Consortium must collectively have cash and short-term or liquid investments and funding lines of at least PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only).</p>	

<p>The Lead Member must have cash, short term or liquid investments and funding lines of at least PKR 300,000,000/- (Pakistani Rupees Three Hundred Million only). Cash, short term or liquid investments and funding lines of not less than PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only) will be awarded eight (8) marks.</p> <p>For each increment of PKR 50,000,000/- (Pakistani Rupees Fifty Million only) an additional one (1) mark will be awarded till the maximum of ten (10) marks is reached.</p>	
<p>A - 3)</p> <p>Average Annual Turnover</p> <p>The Bidder must have a minimum average annual turnover of PKR 2,000,000,000/- (Pakistani Rupees Two Billion only) for the last three (3) years.</p> <p>In case of a Consortium, the average annual turnover of (a) the Lead Member must be PKR 1,500,000,000/- (Pakistani Rupees One Billion and Five Hundred Million only), and (b) the entire Consortium in aggregate must be PKR 2,000,000,000/- (Pakistani Rupees Two Billion only), in each case, for the last three (3) years.</p> <p>Average annual turnover of not less than PKR 2,000,000,000/- (Pakistani Rupees Two Billion only) will be awarded eight (8) marks.</p> <p>For each increment of PKR 200,000,000/- (Pakistani Rupees Two Hundred Million only) above PKR 2,000,000,000/- (Pakistani Rupees Two Billion only), an additional one (1) mark will be awarded till the maximum of ten (10) marks is reached.</p> <p>OR</p> <p>Project Financing Experience</p> <p>The Bidder, or in the case of a Consortium, the Lead Member, must have funded Eligible Project(s) through a combination of debt and equity.</p> <p>In terms of debt financing for Eligible Project(s), the Bidder or Lead Member (as applicable) must possess the experience of completing project financing for Eligible Project(s) within the last ten (10) years prior to the Bid Submission Deadline. Such project financing must have been raised from lenders (either local and/or international financial institutions) and must include a full suite of typical project finance-associated lender requirements.</p>	<p>Maximum Marks - 10</p>

<p>For Eligible Project(s) to be recognized as evidence of meeting the technical criteria stated above:</p> <p>(a) the Eligible Project(s) should have a government entity as a counterparty;</p> <p>(b) the Bidder or Lead Member (as applicable) must have equity ownership in each Eligible Project of at least twenty percent (20%) for a period commencing on financial close and lasting at least until commercial operations date; and</p> <p>(c) the relevant milestone(s) in relation to the Eligible Project required under the heading ‘<i>Relevant Experience</i>’ below must have been achieved within a period of ten (10) years prior to the Bid Submission Deadline.</p> <p><u>RELEVANT EXPERIENCE</u></p> <p>The Bidder, or in the case of a Consortium, the Lead Member, must have successfully financed:</p> <p>(a) at least one (1) real estate or infrastructure project with a minimum project cost of PKR 4,000,000,000/- (Pakistani Rupees Four Billion only); or</p> <p>(b) two (2) real estate or infrastructure projects with a cumulative minimum project cost of PKR 4,000,000,000/- (Pakistani Rupees Four Billion only),</p> <p>(each of the above, the Eligible Project(s)).</p> <p><u>SCORING</u></p> <p>A single Eligible Project with a project cost of at least PKR 4,000,000,000/- (Pakistani Rupees Four Billion only) or two (2) Eligible Projects with a cumulative project cost of at least PKR 4,000,000,000/- (Pakistani Rupees Four Billion only) will achieve a score of eight (8) marks.</p> <p>An incremental one (1) mark shall be awarded for each additional Eligible Project of at least PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only) or two (2) projects with a minimum cumulative project cost of PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only), until the maximum of ten (10) marks is reached.</p>	
<p>B) Technical Capability</p>	<p>Maximum Marks - 50</p>
<p>B - 1) General and Specific Development Experience</p> <p>The Bidders shall be eligible for scoring for the following general and specific development experience:</p> <p>Category 1 (General Development Experience)</p>	<p>Maximum Marks - 30</p>

The Bidder, or in the case of a Consortium, any Consortium Member, shall have:

- (a) development experience in real estate projects each with a minimum value of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only); or
- (b) Engineering, Procurement, and Construction (EPC) contracting experience of infrastructure projects, each with a minimum value of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only), including any of the following:
 - (i) roads;
 - (ii) bridges;
 - (iii) sewerage systems;
 - (iv) hotels;
 - (v) shopping malls; or
 - (vi) buildings.

Five (5) marks will be awarded for each project meeting either of the above criteria, up to a maximum of fifteen (15) marks. To obtain a maximum of fifteen (15) marks, projects under (a) and/or (b) from this Category 1 (*General Development Experience*) can be relied upon by a Bidder.

Category 2 (Specific Development Experience)

The Bidder, or in the case of a Consortium, any Consortium Member, shall have development experience of a zoo (with at least five (5) different species of mammals and reptiles each), recreational park (with a covered area of at least five (5) acres), theme park (with a covered area of at least one (1) acre), or amusement park (with a covered area of at least two (2) acres) during the last fifteen (15) years prior to the Bid Submission Deadline with a minimum aggregate project value of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only); provided, that a Bidder, or in the case of a Consortium, any Consortium Member, may rely on a maximum of three (3) projects to meet the minimum aggregate project value of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only).

~~Ten–Fifteen (15)~~ marks will be awarded ~~for the first completed project meeting the above criteria~~ if the aggregate project value of the aforesaid project(s) is equal to or more than PKR 3,000,000,000/- (Pakistani Rupees Three Billion only), and while seven point five (7.5) marks will be awarded if the aggregate project value of the aforesaid project(s) is less than PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) and equal to or more than PKR 500,000,000/- (Pakistani Rupees Five Hundred Million only) marks for each additional project meeting the above criteria, up to a maximum of fifteen (15) marks.

<p><i>(Note: Historical exchange rate prevailing on completion of assignment/project will be used to convert foreign currency to PKR)</i></p>	
<p>B - 2) Team Composition</p> <p>Project Manager/Team Leader - 1 Mark</p> <p>Bachelor's degree in Project Management, Public Administration, Environmental Science, or a related field; a Master's degree is preferred. Familiarity with local governance structures is beneficial. Five (5) to ten (10) years managing large-scale public projects, ideally in parks and/or recreational facilities.</p> <p>Marketing/Business Development Head - 0.50 Marks</p> <p>Master's or Bachelor's degree in Marketing, Communications, Public Relations, or a related field, with at least five (5) to ten (10) years of experience in marketing or communications, ideally within the tourism, recreation, or wildlife sectors.</p> <p>Zoo Manager/Zoologist - 2 Marks</p> <p>Bachelor's degree in Zoology, Wildlife Biology, Animal Science, or a related field; a Master's degree or certifications in zoo management are preferred, with at least five (5) to ten (10) years experience of managing zoo operations or wildlife sanctuaries, with a focus on native species and conservation in the region.</p> <p>Theme Park Expert - 2 Marks</p> <p>Must hold a Bachelor's degree in Architecture, Entertainment Management, Theme Park Design, or a related field; a Master's degree or relevant certifications are preferred. Familiarity with local entertainment regulations and industry best practices is beneficial. Five (5) to ten (10) years of experience in designing, operating, or managing theme parks, ideally focusing on large-scale public attractions, visitor safety, and immersive guest experiences.</p> <p>Cinema Specialist - 2 Marks</p> <p>Must hold a Bachelor's degree in Film Studies, Cinematic Arts, Entertainment Technology, or a related field; a Master's degree or relevant certifications are preferred. Familiarity with local film regulations, licensing requirements, and modern projection technologies is beneficial. Five (5) to ten (10) years of experience in cinema operations, including film programming, equipment management, and audience engagement, ideally serving large-scale public or commercial venues.</p>	<p>Maximum Marks - 10</p>

<p>Amphitheatre Expert - 2 Marks</p> <p>Must hold a Bachelor’s degree in Architecture, Theatre Design, Civil Engineering, or a related field; a Master’s degree or relevant certifications are preferred. Familiarity with local cultural or performance regulations, as well as stage and acoustic design principles, is beneficial. Five (5) to ten (10) years of experience in designing, managing, or operating amphitheatre facilities, ideally with a focus on large-scale events, stage setup, and sound equipment installation.</p> <p>Maintenance and Operations Manager - 0.5 Marks</p> <p>Must hold a Bachelor’s degree in Mechanical, Electrical or Civil Engineering, Facility Management, or a related field; relevant certifications (such as Certified Facility Manager) are a plus. Familiarity with local building codes, safety standards, and sustainable maintenance practices is beneficial. Five (5) to ten (10) years of experience in facility maintenance and operations management, preferably in parks or similar recreational environments, with a focus on preventive maintenance, cost efficiency, and asset longevity.</p> <p>CVs in the manner and form provided in Bidding Form T12 (<i>Format of Curriculum Vitae (CV) for Proposed Key Staff</i>) would be provided for these experts, who should either be employees of the Bidder/any Consortium Member or be associated with them through binding contracts.</p> <p><u>(Note: An individual may meet the requirement set out for multiple roles as part of the team composition of the Bidder. However, such individual may only submit his/her CV for a maximum of two (2) roles.)</u></p>	
<p>B - 3) O&M Experience</p> <p>Each Bidder shall <u>either demonstrate direct experience—or propose a third party that has experience</u> in providing operations and maintenance services during the last fifteen (15) years prior to the Bid Submission Deadline for a zoo (with a facility of at least five (5) different species of mammals and reptiles each), recreational park (with a covered area of at least five (5) acres), theme park (with a covered area of at least one (1) acre), amusement park (with a covered area of at least two (2) acres) or facility management of a facility with a built-up area of at least two-hundred thousand (200,000) square feet.</p> <p>Five (5) marks will be awarded for each project with a minimum of three (3) years of operations and maintenance experience. Each additional year of experience beyond three (3) years will be awarded one (1) mark, up to a maximum of ten (10) marks.</p>	<p>Maximum Marks - 10</p>

<p><u><i>(Note: Where a Bidder proposes a third party that meets this criterion, such Bidder shall procure the O&M Third Party Undertaking from the third party in the form and substance set out in Bidding Form T13 (O&M Experience) of Part 2 (Bidding Forms) of VOLUME I (TENDER PROCEDURE) of the RFP. In addition, the third party may not provide its commitment to more than one (1) Bidder.)</i></u></p>	
<p>C) Plans Evaluation</p>	<p>Maximum Marks - 10</p>
<p>C - 1) Construction Methodology and Work Plan</p> <p>The Bidder shall provide a detailed construction methodology demonstrating their approach to project execution, including phasing, sequencing, and implementation strategies. The Bidder shall also submit a comprehensive work plan outlining the schedule of activities, resource allocation, and quality control measures to ensure timely and efficient project delivery while maintaining the highest construction standards.</p>	<p>Maximum Marks - 4</p>
<p>C - 2 Technology Integration</p> <p>The Bidder will be required to provide a technology integration plan demonstrating how technological solutions and systems will be incorporated into the Project's operations.</p>	<p>Maximum Marks - 1</p>
<p>C - 3) O&M Plan</p> <p>The Bidder shall submit a comprehensive operations and maintenance plan detailing their strategic approach to managing and maintaining the Project facilities. The plan shall encompass key operational aspects including organizational structure, maintenance protocols, safety procedures, environmental management, and performance monitoring systems, demonstrating the Bidder's capability to ensure sustainable and efficient facility operations. The Bidder shall also outline their vision for continuous improvement and community engagement.</p>	<p>Maximum Marks - 4</p>
<p>C - 4 Marketing Plan</p> <p>The Bidder shall submit a detailed marketing plan outlining their strategic approach to market positioning, audience engagement, and revenue optimization for the Project. The plan shall demonstrate comprehensive market understanding and utilize proven marketing methodologies, including digital and traditional channels, to achieve the Project's commercial objectives.</p>	<p>Maximum Marks - 1</p>

PART 2 - FINANCIAL EVALUATION CRITERIA

The Bidding Form F2 (Financial Proposal Standard Form) shall be used for the preparation of the Financial Proposal.

The Successful Bidder shall be determined based on the following Bid Price formula:

$$\text{Bid Price} = \text{Weighted Score}_{rev} + \text{Weighted Score}_{debt}$$

Calculation of Weighted Score_{rev}

Weighted Score_{rev} shall be calculated as follows:

- For each Bidder, the present value of the Agency Revenue Share shall be calculated for fifteen (15) years using the following formula:

$$PV_{rev} = \sum_{t=1}^{15} \frac{R_t}{(1+r)^t}$$

- The Agency shall determine the highest present value of the Agency Revenue Share. The present value of the Agency Revenue Share shall be normalized using the following formula:

$$Score_{rev} = \frac{PV_{rev}}{PV_{rev_{max}}} \times 100$$

- Sixty-five (65%) weightage will then be applied to the Score_{rev}:

$$\text{Weighted Score}_{rev} = \text{Score}_{rev} \times 0.65$$

Calculation of Weighted Score_{debt}

Weighted Score_{debt} shall be calculated as follows:

- The Agency shall identify the lowest Outstanding Principal Amount among Bidders as Debt_{min}
- The Outstanding Principal Amount shall be normalized using the following formula:

$$\text{Score}_{debt} = \text{Min. Marks} + \left(\frac{\text{Highest Debt Quoted} - \text{Relevant Debt Quoted}}{\text{Highest Debt Quoted} - \text{Lowest Debt Quoted}} \right) \\ * \text{Max. Marks}$$

- Thirty-five percent (35%) weightage will then be applied to the Score_{debt}:

$$\text{Weighted Score}_{debt} = \text{Score}_{debt} \times 0.35$$

Calculation of Bid Price

For each Bidder, the Agency shall combine the weighted scores to arrive at the Bid Price in accordance with the following formula:

$$\text{Bid Price} = \text{Weighted Score}_{rev} + \text{Weighted Score}_{debt}$$

Where:

Agency Revenue Share means the revenue share of the Agency in the Benchmark Revenue Amount set out in Bidding Form F2 (*Financial Proposal Standard Form*), calculated based on the principles set out in this Part 2 (*Financial Evaluation Criteria*) of Annexure B (*Evaluation Criteria*) of Part 4 (*Annexures*) of **VOLUME I (TENDER PROCEDURE)** of the RFP;

Benchmark Revenue Amount means the forecast revenue set out in Bidding Form F2 (*Financial Proposal Standard Form*);

Bid Price has the meaning given above;

Debt means the Outstanding Principal Amount assumed by a Bidder;

Debt_{min} means the lowest Outstanding Principal Amount quoted by a Bidder;

Min.Marks shall mean the lowest possible marks awarded to a Bidder in relation to the Weighted Score_{debt} which shall be zero (0);

Max.Marks shall mean the highest possible marks awarded to a Bidder in relation to the Weighted Score_{debt} which shall be one hundred (100);

Outstanding Principal Amount means all actual outstanding principal amount in PKR assumed by a Bidder and set out in Bidding Form F2 (*Financial Proposal Standard Form*);

PV_{rev} has the meaning given above. The PV_{rev} of any Bidder must be above PKR 1,000,000,000/- (Pakistani Rupees One Billion only). Further, Bidders are required to assume a fixed percentage (which shall be at least ten percent (10%)) of the Benchmark Revenue Amount, for each year, as the Agency Revenue Share, for purposes of calculation of PV_{rev};

PV_{rev max} means the highest PV_{rev} quoted by a Bidder;

r means discount rate of fifteen percent (15%);

R_t means the Agency Revenue Share in year *t*;

t means year. A total fifteen (15) years shall be assumed by Bidders for purposes of calculation of PV_{rev};

Score_{rev} has the meaning given above;

Score_{debt} has the meaning given above;

Weighted Score_{rev} has the meaning given above; and

Weighted Score_{debt} has the meaning given above.

Illustration

Step 1: Inputs

Assume the following present value of Agency Revenue Share over fifteen (15) years for each Bidder:

- Bidder A: $PV_{rev} = 1,200,000$
- Bidder B: $PV_{rev} = 1,000,000$
- Bidder C: $PV_{rev} = 1,500,000$

Step 2: Calculate PV_rev_max

The maximum present value among all bidders is:

$$PV_{rev_{max}} = 1,500,000 \text{ (Bidder C)}$$

Step 3: Calculate Score_rev for each Bidder

Using the normalization formula:

- Bidder A:

$$Score_{rev} = \frac{1,200,000}{1,500,000} \times 100 = 80$$

- Bidder B:

$$Score_{rev} = \frac{1,000,000}{1,500,000} \times 100 = 66.67$$

- Bidder C:

$$Score_{rev} = \frac{1,500,000}{1,500,000} \times 100 = 100$$

Step 4: Calculate Weighted Score_rev

Applying the sixty-five percent (65%) weightage:

- Bidder A:

$$WeightedScore_{rev} = 80 \times 0.65 = 52$$

- Bidder B:

$$WeightedScore_{rev} = 66.67 \times 0.65 = 43.34$$

- Bidder C:

$$WeightedScore_{rev} = 100 \times 0.65 = 65$$

Step 5: Calculate Outstanding Principal Amount for Each Bidder

Assume the following Outstanding Principal Amounts:

- Bidder A: $Debt = 300,000$
- Bidder B: $Debt = 200,000$
- Bidder C: $Debt = 400,000$

Step 6: Identify Parameters for $Score_{debt}$

- Highest Debt Quoted: 400,000
- Lowest Debt Quoted: 200,000
- Min.Marks: 0
- Max.Marks: 100

Step 7: Calculate $Score_{debt}$ for each Bidder

Using the normalization formula:

- Bidder A:

$$Score_{debt} = 0 + \left(\frac{400000 - 300000}{400000 - 200000} \right) * 100 = 50$$

- Bidder B:

$$Score_{debt} = 0 + \left(\frac{400000 - 200000}{400000 - 200000} \right) * 100 = 100$$

- Bidder C:

$$Score_{debt} = 0 + \left(\frac{400000 - 400000}{400000 - 200000} \right) * 100 = 0$$

Step 8: Calculate Weighted $Score_{debt}$

Applying the thirty-five percent (35%) weightage:

- Bidder A:

$$WeightedScore_{debt} = 50 \times 0.35 = 17.5$$

- Bidder B:

$$WeightedScore_{debt} = 100 \times 0.35 = 35$$

- Bidder C:

$$WeightedScore_{debt} = 0 \times 0.35 = 0$$

Step 9: Calculate Bid Price for Each Bidder

Combine the weighted scores:

- **Bidder A:** $Bid\ Price = 52 + 17.5 = 69.5$
- **Bidder B:** $BidPrice = 43.34 + 12.25 = 78.34$
- **Bidder C:** $BidPrice = 65 + 0 = 65$

Summary of Results

Bidder	Bid Price
Bidder A	69.5
Bidder B	78.34
Bidder C	65

Conclusion

In this example, Bidder B has the highest Bid Price of 78.34.

ANNEXURE C - REQUIREMENTS FOR CONSORTIUM AGREEMENT

The legally binding and enforceable Consortium Agreement between each Consortium Member shall include, at a minimum, the following representations, undertakings, terms, conditions and requirements:

- (a) specify the designated Lead Member, nominated by the Consortium, as its representative and the role of each Consortium Member;
- (b) each Consortium Member shall authorise the Lead Member to sign and submit the Bid on its behalf and participate in the Tender Procedure;
- (c) the proportion of the Ownership Stake in the SPV to be held by each Consortium Member in the SPV;
- (d) the Lead Member shall undertake, and all Consortium Members shall confirm, that the Lead Member shall maintain a minimum of forty percent (40%) Ownership Stake in SPV. No change in the Consortium, by addition/withdrawal of a Consortium Member or change in percentage shareholding of any consortium member, except as may be permitted under the RFP and the Concession Agreement (post award to the Successful Bidder);
- (e) the other Consortium Members should hold at least ten percent (10%) Ownership Stake in the SPV and there cannot be more than five (5) Consortium Members in a Consortium;
- (f) confirmation that the terms of the Consortium Agreement shall not be changed, amended or modified in any manner during the Tender Procedure without prior consent of the Agency, provided that no such change shall impact the minimum requirements set out in the RFP;
- (g) specify that the Consortium Members are jointly and severally liable in respect of their obligations in relation to the Project; and
- (h) the Lead Member shall have management control over the Concessionaire in accordance with the provisions of the RFP and the Concession Agreement.

VOLUME II - PROJECT SCOPE

PROJECT SCOPE

Please refer to:

1. **SCHEDULE A (*SCOPE OF THE PROJECT*)** of the Concession Agreement for details of the scope of the Project;
2. **SCHEDULE B (*DESIGN REQUIREMENTS*)** of the Concession Agreement for details of the Design Requirements;
3. **SCHEDULE C (*APPROVED MASTER PLAN*)** of the Concession Agreement for illustration of the Approved Master Plan of Rani Bagh;
4. **SCHEDULE D (*RANI BAGH FACILITIES*)** of the Concession Agreement for details of the Rani Bagh Facilities;
5. **SCHEDULE F (*PROJECT SITE*)** of the Concession Agreement for illustration of the Project Site;
6. **SCHEDULE G (*LIST OF TESTS & COMPLETION TESTS*)** of the Concession Agreement for details of the Completion Tests; and
7. **SCHEDULE H (*O&M REQUIREMENTS*)** of the Concession Agreement for details of the O&M Requirements.

VOLUME III - CONCESSION AGREEMENT

CONCESSION AGREEMENT

BETWEEN

HYDERABAD MUNICIPAL CORPORATION
(AS THE **AGENCY**)

AND

[•]
(AS THE **CONCESSIONAIRE**)

IN RESPECT OF

**THE CONCESSION TO DESIGN, FINANCE, BUILD, REHABILITATE, OPERATE,
MAINTAIN AND TRANSFER**

RANI BAGH, HYDERABAD

DATED [•]

AT [•], PAKISTAN

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (this **Agreement**) is entered into on this [●] Day of [●], [●] at [●], Pakistan by and between:

HYDERABAD MUNICIPAL CORPORATION, having its office located at [●], for and on behalf of **THE GOVERNMENT OF SINDH** (the **Agency**, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns) **OF THE FIRST PART**;

AND

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

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

RECITALS

WHEREAS:

- A. the Agency desires to have the private sector invest and participate in the development of Rani Bagh on a PPP basis;
- B. the Agency, on January 23, 2025, issued a request for proposals (together with the related advertisements) (the **RFP**) to prospective bidders to, *inter alia*, invite submission of the Bids for grant of the Concession for the implementation of the Project on a DFBROMT basis and subsequently, upon conclusion of the Tender Procedure pursuant to the RFP, the Sponsor(s) was/were selected by the Agency for such purposes. The Notification of Award was issued to the Sponsor(s) by the Agency on [REDACTED];
- C. in accordance with the requirements of the RFP and the terms of the Bid submitted by the Sponsor(s), the Sponsor(s) incorporated the Concessionaire as a special purpose vehicle to implement the Project and the Agency has agreed to grant, to the Concessionaire, the right and obligation to implement the Project on the terms and conditions contained in this Agreement;
- D. the Concessionaire acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including the technical and financial viability and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project on a DFBROMT basis in accordance with the terms and conditions of this Agreement;
- E. the Parties are now entering into this Agreement to set out the terms and conditions applicable to, *inter alia*, the Concession and the implementation of the Project and the relationship of Agency and the Concessionaire and their rights and obligations.

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

[REDACTED] Insert the date of the Notification of Award.

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

Except when the context requires otherwise, the capitalized terms used in this Agreement (including the Recitals and the Schedules) shall have the following meanings:

Abandonment or **Abandoned** means the voluntary cessation of the implementation of the Project (including (without limitation) the C&O Works and/or the Operation and Maintenance) by the Concessionaire in accordance with the terms of this Agreement and/or the withdrawal of all, or substantially all, personnel by the Concessionaire from the Project Site, in each case, for reasons other than a Relief Event;

Acceptable Bank means a scheduled bank, or a financial institution incorporated or organized in Pakistan having a long-term credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody's or equivalent rating by Fitch or Standard & Poor's, approved by the Agency, such approval not to be unreasonably withheld, conditioned or delayed;

Account One means the Government of Sindh's account titled "*Government of Sindh Non-Food Account No.1*" maintained with SBP;

Account One Debit Demand has the meaning given to it in Section 17.5.1;

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

Actual Revenue has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

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

Adverse Person means:

- (a) any Person whose primary residence is in or who is incorporated or organized under the laws of a country:
 - (i) which is subject to sanctions levied by the United Nations (or the Security Council thereof) pursuant to authority derived from Article 41 of Chapter 7 of the United Nations Charter (a **Sanctioned Country**); or
 - (ii) with which the Government of Pakistan does not have commercial or trade relations or otherwise does not maintain official diplomatic relations (an **Unfriendly Country**);
- (b) any national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country;

- (c) any ministry, department, authority, or statutory corporation of, or any corporation or other entity (including a trust), owned or controlled directly or indirectly by the national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country;
- (d) any Person who has been blacklisted by any federal or provincial government, governmental body or non-governmental department/agency whether in Pakistan or the government or governmental body of any foreign countries and/or international organizations; or
- (e) a Person involved in a dispute with a Government Authority as a defendant, counterparty or otherwise adverse to the Government Authority and a decision, judgement, award or order has been handed down by a court and that person has not complied with or is in breach of such decision, judgement, award or order;

Advertising Proceeds has the meaning given to it in Section 29.1.2;

Affected Party has the meaning given to it in Section 21.1.1;

Agency has the meaning given to it in the Preamble;

Agency Agreements means:

- (a) this Agreement;
- (b) the Project Site License Agreement;
- (c) the Escrow Agreement;
- (d) the Provincial Support Agreement;
- (e) the Concession Direct Agreement; and
- (f) any other agreement entered into in respect of the Project between:
 - (i) the Agency; and
 - (ii) the Concessionaire and/or the Financiers and/or the Sponsor(s) in respect of the Project and designated as an ‘Agency Agreement’ with the written consent of the Agency;

Agency Conditions Precedent has the meaning given to it in Section 3.1.4;

Agency Designated Account means the account(s) to be established and maintained by the Agency, in which any Agency Payment Amount is paid, which account(s) shall be Notified by the Agency to the Concessionaire from time to time;

Agency Event of Default has the meaning given to it in Section 22.2.1;

Agency Indemnified Persons has the meaning given to it in Section 9.1.1;

Agency Payment Amount means any amount payable by the Concessionaire to the Agency under the Agency Agreements;

Agency Preliminary Notice has the meaning given to it in Section 23.1.1;

Agency Remedy Amount has the meaning given to it in Section 18.2.3;

Agency Remedy Invoice has the meaning given to it in Section 18.2.3;

Agency Representative has the meaning given to it in Section 8.8.1;

Agency Revenue Share has the meaning given to it in Section 17.3.1;

Agency Revenue Share Payment Date has the meaning given to it in **SCHEDULE W (BENCHMARK REVENUE AMOUNT & REVENUE SHARING)**²;

Agency Windfall Share has the meaning given to it in Section 17.4.1(b)(ii);

Aggregate Concession Revenue means, for any period (or part thereof) the sum of:

- (a) the aggregate cash receipts of the Concessionaire representing the Applicable Charges;
- (b) any insurance proceeds received by the Concessionaire to the extent that such proceeds are in respect of lost revenue or profit;
- (c) any and all other amounts received by the Concessionaire in accordance with the provisions of this Agreement, such as commissions, earnings, income, receipts and charges received from the Project and commission, interest, penalties and fines assessed for late payments of Applicable Charges; and any other revenue, receipts or amounts received by the Concessionaire and for any reason not deposited in the Escrow Account, to the extent such amounts are considered revenue in terms of the International Financial Reporting Standards;

but shall exclude any interest, penalty or fine collected by the Concessionaire pursuant to Section 17.1.4;

Agreement has the meaning given to it in the Preamble, and includes, the Recitals, the Main Body and the Schedules;

Applicable Charges means the User Charges and the Other Charges;

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

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

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

² The Agency Revenue Share Payment Date shall be quarterly.

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

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

Approved Master Plan means the master plan of Rani Bagh approved by the Competent Authorities in accordance with the Laws and attached herewith as **SCHEDULE C (APPROVED MASTER PLAN)**;

Arbitration has the meaning given to it in Section 30.4.1(a);

Arbitration Act means the Arbitration Act, 1940, as amended or substituted from time to time;

Arbitrators has the meaning given to it in Section 30.4.1(a);

Archeological Event has the meaning given to it in Section 4.9.2;

Associate or **Affiliate** means, in relation to a Person, another Person that directly or indirectly Controls, is Controlled by, or is under common Control with that Person;

Award has the meaning given to it in Section 30.4.4;

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

Benchmark Revenue Amount means, in respect of a Calculation Period, the revenue set out in **SCHEDULE W (BENCHMARK REVENUE AMOUNT & REVENUE SHARING)**;

Bid has the meaning given to it in the RFP;

Bid Submission Deadline means the date on which the Bid is submitted in accordance with the terms of the RFP;

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

Business Day means a Day that is not declared a public holiday in Pakistan, during which banks are generally open for business in Pakistan;

C&O Inspection Report has the meaning given to it in Section 13.6.2;

C&O Monthly Progress Report has the meaning given to it in Section 13.5.1;

C&O Performance Security means an irrevocable, unconditional, without recourse and on-demand standby letter of credit or bank guarantee, issued by an Acceptable Bank, guaranteeing the payment to the Agency of an amount equal to two percent (2%) of the Pre-Estimated Project Cost, in the form of the instrument attached herewith as **SCHEDULE L (FORM OF C&O PERFORMANCE SECURITY)**;

C&O Performance Security Expiry Date has the meaning given to it in Section 11.2.6;

C&O Period means the period commencing on the Commencement Date and ending on the Final Completion Date;

C&O Period Damages has the meaning given to it in Section 14.7.1;

C&O Period Damages Payment Date has the meaning given to it in Section 14.7.2;

C&O Period Insurances means the Insurances procured and/or obtained by the Concessionaire pursuant to the provisions of and in accordance with Section 20.1 (*C&O Period Insurances*) and **PART I (C&O PERIOD INSURANCES)** of **SCHEDULE I (INSURANCES)**;

C&O Programme has the meaning given to it in Section 13.2.2;

C&O Requirements means the relevant standards, requirements and criterion that are set out in relation to and are applicable to the C&O Works, as set out in:

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the Approved Master Plan;
- (d) the Design Requirements;
- (e) **SCHEDULE G (LIST OF TESTS & COMPLETION TESTS)**;
- (f) the C&O Programme; and
- (g) any other standards, requirements and criterion, mutually agreed between the Parties from time to time,

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

C&O Tests has the meaning given to it in Section 13.4.1;

C&O Time For Completion means the time permitted under this Agreement for performance and completion of C&O Works and all other obligations to be performed by the Concessionaire for the issuance of the Final Completion Certificate, as set out in and contemplated by the Applicable Standards and the C&O Programme, including the:

- (a) completion of engineering and design works and services on or prior to the date set out in the Final Completion Schedule;
- (b) performance and completion of each Project Construction Milestone on or prior to its Project Construction Milestone Date;
- (c) achievement of Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date;
- (d) achievement of Substantial Completion on or prior to the Scheduled Substantial Completion Date; and
- (e) achievement of Final Completion on or prior to the Scheduled Final Completion Date;

C&O Works means the Construction Works and/or the Operations and Maintenance, each during the C&O Period (as applicable);

Calculation Period means the period set out in **SCHEDULE W (BENCHMARK REVENUE AMOUNT & REVENUE SHARING)**;

Capital Cost Increase has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

Capital Cost Saving has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

Capital Expenditure has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

Change in Law means the occurrence of any of the following events on or after the Final Disclosure Date:

- (a) the introduction, adoption, enactment or promulgation of any new Law by a Government Authority;
- (b) the change or repeal by a Government Authority of any Law;
- (c) a change by a Government Authority and having the force of Law (i) in the manner in which a Law is applied; or (ii) in the interpretation of any Law;
- (d) the introduction, adoption, change or repeal by any Government Authority of any material condition in connection with the issue, renewal or modification of any Approval;
- (e) any change in the rate of a tax or introduction of a new tax;

provided, that:

- (i) coming into effect, on or after the Final Disclosure Date, of any provision of a statute which is already gazetted in accordance with the Law prior to the Final Disclosure Date and the date of effectiveness whereof has already been notified;
- (ii) any new Law or any change in the existing Law which is already gazetted in accordance with the Law prior to the Final Disclosure Date and the date of effectiveness whereof has already been notified; or
- (iii) any change in any withholding tax, or other similar taxes, on income or dividends or other distributions distributed by the Concessionaire, the EPC Contractor, the O&M Contractor or a Rani Bagh Contract Party,

shall not constitute a '*Change in Law*';

Change of Scope has the meaning given to it in Section 16.1.1;

Change of Scope Notice has the meaning given to it in Section 16.2.2;

Change of Scope Order has the meaning given to it in Section 16.3.3;

COD means the date on which the Operations Period shall commence, such date being the Day immediately succeeding the Substantial Completion Date;

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

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

Completion Check List has the meaning given to it in Section 14.5.2;

Completion Check List Items has the meaning given to it in Section 14.6.1;

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

Completion Tests Date Notice has the meaning given to it in Section 14.1.1;

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

Concession Assets means the Rani Bagh Facilities and the Permanent Concession Assets;

Concession Assets (Effective Date) means the existing assets at Rani Bagh as of the Effective Date;

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

Concession Period means the period commencing on the Effective Date and ending on the Trigger Date; provided, that the Parties shall perform such obligations and enjoy such rights till the Transfer Date, as are, in each case, expressly set out in this Agreement;

Concessionaire has the meaning given to it in the Preamble;

Concessionaire Advertising Plan has the meaning given to it in Section 29.1.1;

Concessionaire Authorized Representative has the meaning given to it in Section 7.4.1(a);

Concessionaire Conditions Precedent has the meaning given to it in Section 3.1.2;

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

Concessionaire Event of Default has the meaning given to it in Section 22.1.1;

Concessionaire Indemnified Persons has the meaning given to it in Section 9.1.2 (*The Agency*);

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

Concessionaire Preliminary Notice has the meaning given to it in Section 23.2.1;

Concessionaire Project Engineer has the meaning given to it in Section 7.4.1(c);

Concessionaire Revenue Account means the bank account established and maintained by the Concessionaire and Notified to the Agency for receiving the the Aggregate Concession Revenue from the Escrow Account in accordance with the Escrow Agreement;

Concessionaire Windfall Share has the meaning given to it in Section 17.4.1(b)(i);

Conditions Precedent has the meaning given to it in Section 3.1.1;

³ The Concession Direct Agreement will be developed in light of standard project finance/banking industry practices and direct agreements for precedent PPP transactions. Without limitation, the process for declaration of default and termination of the Concession Direct Agreement and the mechanism for calculation of the Financing Due, in each case, as set out in this Agreement, will be subject to the terms of the Concession Direct Agreement.

Constitution means the Constitution of Pakistan, 1973;

Construction Documents means each of the Detailed Engineering Design and the Construction Drawings approved in accordance with Section 12.1 (*Construction Documents*);

Construction Drawings means the drawings and designs prepared by the Concessionaire pursuant to the Design Requirements;

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

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

Contracting Standards has the meaning given to it in Section 7.6.1;

Control means:

- (a) ownership or control (whether directly or otherwise) of more than fifty percent (50%) of the share capital, voting capital, or the like, of the controlled Person;
- (b) ownership of Equity share capital, voting capital, or the like, by contract or otherwise, conferring control of or power to (i) control the composition of, or power to appoint more than fifty percent (50%) of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled Person; or (ii) appoint the key managers of such Person; or
- (c) power to influence (whether directly or indirectly) any decision of the board of the controlled Person through contract, agency or otherwise;

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

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

Corrupt Act means:

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

Cost Overruns mean, at any time, the amount (if any) of the Total Project Cost (excluding any Relief Event Compensation Amount and Additional Cost unless otherwise agreed with the Agency) that will be payable to achieve the COD that exceeds or is projected to exceed the Pre-Estimated Project Cost in the Base Case Financial Model;

CPI means the consumer price index as published by Pakistan Bureau of Statistics being the rate published for the last working Day of the last quarter of a calendar year;

Cure Period means:

- (a) in respect of a Concessionaire Event of Default:
 - (i) during any period when any Financing Due is outstanding, the period commencing on the date of receipt by the Concessionaire of the Agency Preliminary Notice and expiring on the date falling ninety (90) Days thereafter, or such other time period as may be agreed in the Concession Direct Agreement;

- (ii) during any period when any Financing Due is not outstanding, the period commencing on the date of receipt by the Concessionaire of the Agency Preliminary Notice and expiring on the date falling forty-five (45) Days thereafter;
- (b) in respect of an Agency Event of Default, the period commencing on the date of receipt by the Agency of the Concessionaire Preliminary Notice and expiring on the date falling sixty (60) Days thereafter;

Day means the period beginning at 00:00 hours and ending at 23:59 hours;

Decommissioned Project Area has the meaning given to it in Section 7.20.1;

Deductible Termination Amounts means, to the extent it is a positive amount, the aggregate, up to the date immediately preceding the Termination Date, of:

- (a) all credit balances on any bank accounts, held by or on behalf of the Concessionaire on the Termination Date (provided, that in the event the Financing Due is outstanding, to the extent the Financiers including any agent or trustee for such person, in each case, not objected to by the Agency, have valid security interests over such bank accounts and can recover such credit balances), insurance proceeds actually received (save where such credit balances or insurance proceeds are paid to the Agency and/or to be applied in reinstatement), proceeds from the liquidation of any authorized investment, and letters of credit issued in lieu of maintaining credit balance in any account; and
- (b) amounts the Agency is entitled to off-set due to deductions/adjustments in terms of this Agreement;

Defects & Deficiencies means:

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

Defects Liability Period has the meaning given to it in Section 25.1.1;

Delayed Payment Rate means the six (6) months KIBOR plus two percent (2%), compounded semi-annually, calculated for the actual number of Days which the relevant amount remains unpaid on the basis of 365-Day year;

Design Requirements means the design requirements of the Rani Bagh Facilities, as set out in **SCHEDULE B (DESIGN REQUIREMENTS)**;

Designated Accounting Firms means:

- (a) KPMG Taseer Hadi & Co. (a member firm of the KPMG network);
- (b) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network); and

(c) EY Ford Rhodes (a member firm of Ernst & Young Global Limited),

and/or any other additional or successor chartered accountancy firm categorized as one of the big four accounting firms;

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

DFBROMT means design, finance, build, rehabilitate, operate, maintain and transfer;

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;

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

Distributions means:

(a) whether in cash or in kind, any remittance to the shareholders or any of their Affiliates of:

(i) dividends or other distributions in respect of any revenue account balance or the share capital of the Concessionaire;

(ii) dividends or other distributions in respect of release of debt service reserve account or liability reserve account funding;

(iii) capitalisation of profits, bonus issue, reduction of capital, redemption or purchase of shares or any other reorganisation or amendment to the share capital of the Concessionaire;

(iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place at or after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or

(v) the receipt of any other benefit that is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any contingent funding liabilities;

Divestment Requirements has the meaning given to it in Section 24.1.1;

Due and Payable Charges has the meaning given to it in Section 17.1.3;

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

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

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

Electronic Ticketing System or **ETS** means a digital platform that facilitates the sale, issuance, and validation of tickets for entry in Rani Bagh and the Rani Bagh Facilities, using electronic methods such as online ticketing, mobile apps, QR codes, barcodes, or RFID technology, as described in **SCHEDULE A (SCOPE OF THE PROJECT)**;

Emergency Decommissioning has the meaning given to it in Section 7.20.1;

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

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

Environmental Management & Monitoring Plan has the meaning given to it in **SCHEDULE A (SCOPE OF THE PROJECT)**;

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

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

EPC Contractor(s) means the relevant Sponsor and/or the contractors engaged by the Concessionaire under the EPC Contract(s), that shall meet the Rani Bagh Contract Party Criteria (if applicable);

Equity means the share capital of the Concessionaire, represented in PKR, subscribed to by any of the Concessionaire's shareholders for meeting part of the Equity of the Total Project Cost;

Escrow Account means the escrow account established and maintained by the Concessionaire with the Escrow Agent in accordance with the Escrow Agreement;

Escrow Account Certificate has the meaning given to it in the Escrow Agreement;

Escrow Agent means the scheduled bank or financial institution selected by the parties to the Escrow Agreement to manage the Escrow Account; provided, that till the Financing Termination Date, such scheduled bank or financial institution shall be one of the Financiers (or a scheduled bank or financial institution designated by the Financiers) (if applicable);

Escrow Agreement means the agreement entered or to be entered into between the Parties, the Financiers (if required by the Financiers) and the Escrow Agent;

Exit Implementation Period means:

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

Final Disclosure Date means thirty (30) Days prior to the Bid Submission Deadline;

Final Expiry Date means the date falling fifteen (15) years from the Substantial Completion Date; provided, however, the Agency and the Concessionaire may agree to extend the Final Expiry Date (and, as a result, the Concession and the Concession Period) with mutual written consent in accordance with and subject to the Laws;

Final Completion has the meaning given to it in Section 14.8.1;

Final Completion Certificate has the meaning given to it in Section 14.7.4;

Final Completion Date has the meaning given to it in Section 14.8.1;

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

- (a) the Scheduled Commencement Date;
- (b) the Scheduled Final Completion Date;
- (c) the Scheduled Segment Substantial Completion Dates;
- (d) the Scheduled Substantial Completion Date; and
- (e) the Project Construction Milestones;

Financial Close means the execution and delivery of the Financing Documents that (together with Equity commitments) evidence sufficient financing for the construction, testing and commissioning of the Project and achievement of Final Completion (following the resolution of any objections raised by the Agency and/or the Independent Auditor to the Financing Term Sheet) and evidence of commitments for such Equity as is required by the Concessionaire to satisfy the requirements of the Financiers and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents and the Concessionaire having immediate access to the Financing;

Financial Close Achievement Notice has the meaning given to it in Section 27.4 (*Financial Close*);

Financial Model means the Base Case Financial Model, as revised by the Independent Auditor from time to time in accordance with the terms of the Agency Agreements;

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

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

Financing Amendment Term Sheets has the meaning given to it in Section 27.3.3;

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

Financing Documents means the loan/financing agreements or instruments relating to or contemplated by the Financing Term Sheets that have not been objected to or deemed not to have been objected to by the Agency and/or the Independent Auditor pursuant to Section 27.3 (*Financing Term Sheet & the Financing Amendment Term Sheets*) as may be amended from time to time in accordance with the provisions of Section 27.3 (*Financing Term Sheet & the Financing Amendment Term Sheets*);

Financing Due means the aggregate of the following sums outstanding and payable to the Financiers up to the date immediately preceding the Termination Date:

- (a) the Outstanding Principal Amount;
- (b) the interest, mark-up or profit (or any other term connoting the return paid to Financiers on debt financing) accruing on the Outstanding Principal Amount; and
- (c) only in the event of Termination due to PFME or an Agency Event of Default (i) penal interest; or (ii) charges payable under the Financing Documents to the Financiers;

Financing Repayment Date means the earlier of (a) the date falling on eighth (8th) anniversary of the Substantial Completion Date; and (b) the date on which the financing availed pursuant to the Financing Term Sheet is scheduled to be fully repaid which shall in any event not be later than eight (8) years commencing from Scheduled Substantial Completion Date;

Financing Term Sheet has the meaning given to it in Section 27.3.1;

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

First IA List has the meaning given to it in Section 6.1.1;

First TA List has the meaning given to it in Section 5.1.1;

Fitch means the Fitch Ratings, Ltd, a recognized credit rating agency for the banking and insurance sector;

Force Majeure Event has the meaning given to it in Section 21.1.1;

Force Majeure Notice has the meaning given to it in Section 21.2.1;

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

Good International Industry Practice or **GIIP** means those practices, skills, diligence, prudence, foresight, methods, equipment, specifications and standards of safety and performance (as may change from time to time) employed by experienced professional international contractors or operators in activities or undertakings of the same or similar circumstances and conditions as the Project activities, which in the exercise of reasonable judgement in light of the facts known at the time the judgement was made, are considered good, safe and prudent practices commensurate with standards of safety, performance, dependability, efficiency and economy;

GoS means the Government of Sindh;

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

Handover List has the meaning given to it in Section 25.1.1;

Indemnified Party has the meaning given to it in Section 9.3 (*Notice and Contest of Claims*);

Indemnifying Party has the meaning given to it in Section 9.3 (*Notice and Contest of Claims*);

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

Independent Auditor Appointment Date has the meaning given to it in Section 6.1.3;

Independent Auditor Appointment Term has the meaning given to it in Section 6.2.1;

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

Independent Auditor Payments has the meaning given to it in Section 6.5.1;

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

Independent Auditor Payment Account Bank means a scheduled bank, or a financial institution mutually agreed between the Parties for the purposes of establishing and maintaining the Independent Auditor Payment Account;

Independent Auditor Payment Account Standing Instructions has the meaning given to it in Section 6.6.2;

Independent Technical Advisor means the consulting entity appointed in respect of the Project in accordance with Article 5 (*Independent Technical Advisor*) and the Independent Technical Advisor Contract meeting the Independent Technical Advisor Criteria and includes any replacement Independent Technical Advisor appointed in terms of this Agreement;

Independent Technical Advisor Appointment Date has the meaning given to it in Section 5.1.3;

Independent Technical Advisor Appointment Term has the meaning given to it in Section 5.2.1;

Independent Technical Advisor Contract means the contract to be entered into between the Agency, the Concessionaire, the Independent Technical Advisor and any other Person agreed by the Parties, in accordance with Article 5 (*Independent Technical Advisor*) and includes any contract subsequently executed with any replacement Independent Technical Advisor in terms of this Agreement;

Independent Technical Advisor Criteria means the minimum criteria for appointment of the Independent Technical Advisor, set out in **SCHEDULE N - PART II (*INDICATIVE INDEPENDENT TECHNICAL ADVISOR TERMS OF REFERENCE*)**;

Independent Technical Advisor Payments has the meaning given to it in Section 5.5.1;

Independent Technical Advisor Payment Account means the account to be established and maintained by the Concessionaire and Notified to the Agency, in accordance with this Agreement and the Independent Technical Advisor Contract;

Independent Technical Advisor Payment Account Bank means a scheduled bank, or a financial institution mutually agreed between the Parties for the purposes of establishing and maintaining the Independent Technical Advisor Payment Account;

Independent Technical Advisor Payment Account Standing Instructions has the meaning given to it in Section 5.6.2;

Independent Experts means the Independent Auditor and the Independent Technical Advisor;

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

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

Insurances means all insurances, reinsurance, agreements of insurance and reinsurance and/or arrangement for insurance and/or reinsurance in relation to the Project, the Rani Bagh Facilities, the C&O Works and/or any part or portion thereof procured or to be procured by the Concessionaire, including but not restricted to the C&O Period Insurances and the Operations Period Insurances;

International Financial Reporting Standards means any International Financial Reporting Standards promulgated by the International Accounting Standards Board (which includes standards and interpretations approved by the International Accounting Standards Board and International Accounting Principles issued under previous constitutions), together with its pronouncements thereon from time to time;

International Accounting Standards Board means the independent accounting standard-setting body of the International Financial Reporting Standards Foundation;

KIBOR means the six (6) month Karachi Inter-Bank Offer Rate, being the average rate, Offer, for the six (6) months tenor, as published on State Bank of Pakistan page on that date or as published by the Financial Markets Association of Pakistan in case the State Bank of Pakistan page is unavailable;

Lapse of Consent means any Concessionaire Permit:

- (a) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the Laws for the renewal or replacement of such Concessionaire Permit or, where a time period is not prescribed by the Laws, within sixty (60) Days of such Concessionaire Permit ceasing to be in full force and effect; or
- (b) (other than a Concessionaire Permit to be obtained as a Condition Precedent) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the Laws or where a time period is not prescribed by the Laws, within sixty (60) Days of proper application being made for such Concessionaire Permit; or
- (c) being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Concessionaire's (or a Contractor's) ability to perform its obligations under any document included within Agency Agreements and/or the Project Agreements,

in each of the above instances despite such party's compliance with the applicable procedural and substantive requirements as applied in a '*non-discriminatory*' (as explained in Section 8.3.2) manner;

Law means all federal, provincial and local laws of Pakistan, and all orders, rules, regulations, executive orders, statutory regulatory orders, decrees, judicial decisions, notifications, or other similar directives issued by any Government Authority pursuant thereto, as any of them may be amended, substituted, replaced or re-promulgated from time to time;

Lead Member means ;

License has the meaning given to it in Section 4.1.1;

 To be updated based on the composition of the Successful Bidder.

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

Main Body means this Agreement *excluding* the Schedules;

Maintenance Management System has the meaning given to it in **SCHEDULE H (O&M REQUIREMENTS)**;

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

Marketing Plan has the meaning given to it in Section 29.2.1;

Material Adverse Effect means, in the opinion of the Independent Experts, there has occurred or could reasonably be expected to occur an effect, event, matter or circumstance or a change in the circumstances which materially and adversely impairs:

- (a) the business, operations, property, assets, present or future condition (financial or otherwise) or prospects of the Concessionaire, the Sponsor(s) or a Contractor) in respect of the Project;
- (b) the ability or probability (financial or otherwise) of the Concessionaire, the Sponsor(s) or a Contractor to perform and observe its respective obligations under the Agency Agreements and/or the Project Agreements;
- (c) the legality, validity or enforceability of, or the rights, obligations or remedies of the Agency under the Agency Agreements; and/or
- (d) the Concessionaire's ability to implement, design, finance, construct, operate and maintain the Project in accordance with the terms of the Agency Agreements and the Project Agreements;

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

Maximum Liability Amount has the meaning given to it in the Sponsor Undertaking;

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

Moody's means the group of companies under Moody's Corporation, a recognized credit rating agency for the banking and insurance sector;

New IA List has the meaning given to it in Section 6.2.3;

New O&M Performance Security has the meaning given to it in Section 11.3.8;

New Sponsor means any transferee to whom any Shares have been transferred in accordance with Section 10.5 (*Procedure for Transfer*);

New TA List has the meaning given to it in Section 5.2.3;

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

Notice of Remedy has the meaning given to it in Section 18.2.1(c);

Notification of Award means the notification of award issued by the Agency to the Successful Bidder in accordance with the RFP;

NPFME has the meaning given to it in Section 21.1.1(b);

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

O&M Contractor means the Person of good repute with whom the Concessionaire has entered into or may enter into the O&M Contract for provision of the Operation and Maintenance, that shall meet the Rani Bagh Contract Party Criteria (if applicable);

O&M Costs means the operations and maintenance expenses, as set out in the Financial Model;

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

O&M Inspection Report has the meaning given to it in Section 19.19.2;

O&M Manual has the meaning given to it in Section 19.7.2;

O&M Monthly Status Report has the meaning given to it in Section 19.18.1;

O&M Performance Security means an irrevocable, unconditional, without recourse and on-demand standby letter of credit or bank guarantee, issued by an Acceptable Bank, being in an amount equal to ten percent (10%) of the O&M Costs for the Operational Year, furnished from time to time by the Concessionaire to the Agency in accordance with Section 11.3 (*O&M Performance Security*), in case of a bank guarantee, the same shall be in form and substance as attached hereto as **SCHEDULE M (FORM OF O&M PERFORMANCE SECURITY)**;

O&M Performance Security Expiry Date has the meaning given to it in Section 11.3.7;

O&M Programme has the meaning given to it in Section 19.8.2;

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

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the **SCHEDULE H (O&M REQUIREMENTS)**;
- (d) the O&M Manual;
- (e) the Safety Requirements;
- (f) the Applicable Standards being the requirements applicable in respect of matters relating to the Concession Assets;
- (g) the O&M Programme prepared in accordance with Section 19.8 (*O&M Programme*); and
- (h) any other standards, requirements and criterion, mutually agreed between the Parties from time to time,

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

O&M Tests has the meaning given to it in Section 19.20.1;

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

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

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

Operations Period means the period commencing on the COD and ending on the Trigger Date; provided, that the Parties shall continue to perform such obligations and enjoy such rights till the Transfer Date, as are, in each case, expressly set out in this Agreement;

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

Other Charges means the Advertising Proceeds and the Utility Proceeds;

Outstanding Principal Amount means:

- (a) prior to the Final Completion Date, all actual outstanding principal amount in PKR required to be repaid by the Concessionaire pursuant to the Financing Documents in effect as of Financial Close, such amount not to exceed PKR 3,300,000,000/- (Pakistani Rupees Three Billion and Three Hundred Million only); and
- (b) at any time on or after the Final Completion Date, the actual outstanding principal amount in PKR required to be repaid by the Concessionaire pursuant to the Financing Documents in effect as of Financial Close, such amount not exceeding the principal amount stated for the relevant time period set out in the Financing Documents approved in terms of Section 27.3 (*Financing Term Sheet & Financing Amendment Term Sheets*);

in each case, to the extent such principal amount was actually applied for the purposes of financing the Project;

Parties has the meaning given to it in the Preamble;

Permanent Concession Assets means the Project Site, excluding the Rani Bagh Facilities;

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

PFME has the meaning given to it in Section 21.1.1(a);

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

Potential Revenue has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

PPP means public-private partnership;

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

Preliminary Marketing Plan means the preliminary marketing plan submitted by the Sponsor(s) as part of the Bid;

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

Preservation Costs has the meaning given to it in Section 18.3.4;

Principal has the meaning given to it in the definition of '*Financing Due*';

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

- (a) handing over the Vacant Possession of the Project Site by the Agency to the Concessionaire;
- (b) the design, engineering, financing, construction, rehabilitation, procurement (including procurement and contracting of goods, equipment and services for the Rani Bagh Facilities), permitting, testing and commissioning of, in each case, the Rani Bagh Facilities;
- (c) the insuring and Operation and Maintenance of the Concession Assets;
- (d) the making available, on a continuous basis, of the Concession Assets for the Users;
- (e) payments by the Parties of amounts due and payable under this Agreement;
- (f) the recruitment, employment and training of staff for the Operations and Maintenance of the Project Site and Concession Assets during the Concession Period;
- (g) marketing of the Project in accordance with the Marketing Plan;
- (h) the transfer of the Project Site to the Agency on the Transfer Date; and
- (i) all activities incidental or related to any of the above;

Project Agreements means:

- (a) this Agreement;
- (b) the Financing Documents;
- (c) the O&M Contract;
- (d) the EPC Contract;
- (e) the Rani Bagh Contracts; and
- (f) any other material contract entered into or to be entered into by the Concessionaire at any time after the Effective Date in connection with the Project and designated as a '*Project Agreement*' with the consent of the Agency;

Project Construction Milestones means the progressive milestones relating to the performance of C&O Works and other obligations to be performed by the Concessionaire until the Final Completion Date and the dates for achievement of each such milestone, as set out in:

- (a) this Agreement; and
- (b) the C&O Programme;

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

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

Project Manager/Project Director has the meaning given to it in Section 8.13 (*Agency Project Manager/Project Director*);

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

Project Milestone means:

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

Project Milestone Date means:

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

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

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

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

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

Project Requirements means the Design Requirements, the C&O Requirements and the O&M Requirements (as applicable);

Project Site means the immovable property on which the Project is to be implemented in accordance with the terms of this Agreement, as illustrated in **SCHEDULE F (PROJECT SITE)**;

Project Site Conditions has the meaning given to it in Section 4.4.1;

Project Site License Agreement means the agreement of License (in the form agreed between the Parties) to be entered into between the Agency and the Concessionaire, pursuant to which the Agency shall License the Project Site to the Concessionaire;

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

- (a) the C&O Works and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire until the Final Completion Date; and
- (b) the Operations and Maintenance and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Concessionaire during the Operations Period;

Proposed C&O Programme has the meaning given to it in Section 13.2.1;

Proposed Completion Tests Date has the meaning given to it in Section 14.1.1;

Proposed Construction Documents has the meaning given to it in Section 12.1.3;

Proposed O&M Programme has the meaning given to it in Section 19.8.1;

Proposed TA has the meaning given to it in **SCHEDULE N - PART II (INDICATIVE INDEPENDENT TECHNICAL ADVISOR TERMS OF REFERENCE)**;

Protected Assets has the meaning given to it in Section 8.10.1(b);

Provincial Support Agreement⁵ means the agreement entered into between the Concessionaire, the Agency and the GoS (or another relevant Government Authority) in order to guarantee the financial obligations of the Agency under this Agreement;

Public Private Partnership Policy Board means the Public Private Partnership Policy Board constituted pursuant to the Sindh Public-Private Partnership Act, 2010, as amended or substituted from time to time;

Rani Bagh means the walled zoological garden by the name of 'Rani Bagh' located in Hyderabad, Sindh, Pakistan;

Rani Bagh Contract Party means any party to any of the Rani Bagh Contracts other than the Agency that shall meet the Rani Bagh Contract Party Criteria and **Rani Bagh Contract Parties** shall be construed accordingly;

Rani Bagh Contract Party Criteria means the criteria set out in **SCHEDULE R (RANI BAGH CONTRACT PARTY CRITERIA)**;

⁵ The Provincial Support Agreement shall only be entered into in the event the Successful Bidder proposes to raise Financing from Financiers to fund the Project.

Rani Bagh Contracts means the contracts in respect of the Rani Bagh Facilities (Outsourced) to be entered into between the Concessionaire and the Rani Bagh Contract Parties in accordance with Section 7.6 (*Rani Bagh Contracts*);

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

Rani Bagh Facilities (Outsourced) means the specific facilities forming part of the Project Facilities in relation to which the Concessionaire enters into the Rani Bagh Contracts with the Rani Bagh Contract Parties for provision of the Rani Bagh Services (Outsourced);

Rani Bagh Services (Outsourced) means the construction and/or Operation and Maintenance of the Rani Bagh Facilities (Outsourced);

Recurrent Cost has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Recurrent Cost Increase has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Recurrent Cost Saving has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Relief Event has the meaning given to it in Section 15.2.1;

Relief Event Compensation Amount has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Relief Event Compensation Amount Formulae has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Relief Event Duration has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

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

Relief Order Proposal has the meaning given to it in Section 15.4.1;

Relief Order Request has the meaning given to it in Section 15.2.1;

Remedy Events has the meaning given to it in Section 18.2.1;

Remedy Time Period has the meaning given to it in Section 18.2.1(c);

Revenue Gain has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

Revenue Loss has the meaning given to it in **SCHEDULE J (*RELIEF EVENT COMPENSATION AMOUNT FORMULAE*)**;

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

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

SBP means the State Bank of Pakistan;

SBP Debit Authority has the meaning given to it in Section 17.5.1;

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

Scheduled Final Completion Date has the meaning given to it in Section 14.6.3;

Scheduled Segment Construction Completion Date(s) has the meaning given to it in Section 14.6.2;

Scheduled Segment Substantial Completion Date means the dates set out in **SCHEDULE E (FINAL COMPLETION SCHEDULE)**, as such dates as may be extended from time to time in accordance with the terms of this Agreement;

Scheduled Substantial Completion Date(s) means the date occurring twenty-four (24) months after the Commencement Date, as such date may be extended from time to time in accordance with the terms of this Agreement;

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

Segment Substantial Completion has the meaning given to it in Section 14.4.3;

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

Segment Substantial Completion Date has the meaning given to it in Section 14.4.2;

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

Segment Substantial Completion Criteria has the meaning given to it in **SCHEDULE A (SCOPE OF THE PROJECT)**;

Segments means such segments of the Project as set out in **SCHEDULE A (SCOPE OF THE PROJECT)**;

Shares means share capital held by the shareholders of the Concessionaire, from time to time, in accordance with this Agreement, which share capital shall be in the nature of ordinary shares;

Shares Invested Equity means the aggregate of funds invested (as Equity) by the Sponsor for funding of the Sponsor Base Equity Amount;

Specific Initial Period has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

Specific O&M Period has the meaning given to it in **SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE)**;

Specific Term Sheet Parameters has the meaning given to it in Section 27.3.1;

Specific Requirements means:

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

Sponsor(s) means ●⁶;

Sponsor Base Equity Account means the bank account established and maintained by the Concessionaire and Notified to the Agency for funding of the Shares Invested Equity;

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

Sponsor Undertaking has the meaning given to it in Section 10.1.1;

Standard & Poor's means Standard & Poor's, Inc, a recognized credit rating agency for the banking sector;

Substantial Completion has the meaning given to it in Section 14.5.3;

Substantial Completion Certificate means the certificate issued by the Independent Technical Advisor in accordance with Section 14.5 (*Substantial Completion Certificate*);

Substantial Completion Date has the meaning given to it in Section 14.5.2;

Substantial Completion Criteria has the meaning given to it in **SCHEDULE A (SCOPE OF THE PROJECT)**;

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

Successful Bidder has the meaning given to it in the RFP;

Suspension has the meaning given to it in Section 18.3.1;

Tender Procedure has the meaning given to it in the RFP;

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

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

⁶ To be updated based on the composition of the Successful Bidder.

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

Termination Payment means:

- (a) in respect of Termination due to a Concessionaire Event of Default, the Termination Payment Sum (Concessionaire Default);
- (b) in respect of Termination due to an Agency Event of Default, the Termination Payment Sum (Agency Default);
- (c) in respect of Termination due to a PFME, the Termination Payment Sum (PFME);
- (d) in respect of Termination due to a NPFME, the Termination Payment Sum (NPFME);
- (e) in respect of Termination due to a Corrupt Act, the Termination Payment Sum (Corrupt Act);

Termination Payment Account means the bank account established and maintained by the Concessionaire and Notified to the Agency for receiving the Termination Payment in accordance with the terms of this Agreement;

Termination Payment Amount (Coverage) means, at any given time, an amount equal to seventy-five percent (75%) of the Outstanding Principal Amount, as certified by the Independent Auditor;

Termination Payment Amount (Dividend) means the aggregate return on Equity for Shares for each of the three (3) Accounting Years falling immediately after the Termination Date, the same being an amount equal to the aggregate of Termination Payment Amount (Equity) IRR applied to the Equity for each of the three (3) Accounting Years falling after the Termination Date, as illustrated in **SCHEDULE U (ILLUSTRATIONS)**;

Termination Payment Amount (Equity) means, as of the Termination Date, the aggregate of the Shares Invested Equity reduced on a straight-line basis from the Substantial Completion Date through the term of this Agreement, as illustrated in **SCHEDULE U (ILLUSTRATIONS)**;

Termination Payment Amount (Equity) IRR means the post-tax internal rate of return, the same being seventeen percent (17%), on the Equity;

Termination Payment Amount (Secured) has the meaning given to it in Section 17.5.1;

Termination Payment Amount (Residual 1 Financing Due) has the meaning given to it in Section 17.6.1(c);

Termination Payment Amount (Residual 2 Financing Due) has the meaning given to it in Section 17.6.1(d);

Termination Payment Amount (Residual Other Amount) has the meaning given to it in Section 17.6.1(f);

Termination Payment Amount (Unpaid Financing Due) has the meaning given to it in Section 17.6.1(b);

Termination Payment Amount (Unpaid Other Amount) has the meaning given to it in Section 17.6.1(e);

Termination Payment Amount (Unpaid Total) has the meaning given to it in Section 17.6.1;

Termination Payment Amount (Unpaid Amounts) Certificate has the meaning given to it in Section 17.6.1;

Termination Payment Amount (Unpaid Equity Compensation) has the meaning given to it in Section 23.5.3(b);

Termination Payment Certificate has the meaning given to it in Section 23.5.1;

Termination Payment Date means the date on which the Agency has made payment of the relevant Termination Payment to the Concessionaire, such date not exceeding sixty (60) Days following the Termination Date;

Termination Payment Sum (Agency Default) has the meaning given to it in **SCHEDULE T (TERMINATION PAYMENTS)**;

Termination Payment Sum (Concessionaire Default) has the meaning given to it in **SCHEDULE T (TERMINATION PAYMENTS)**;

Termination Payment Sum (Corrupt Act) has the meaning given to it in **SCHEDULE T (TERMINATION PAYMENTS)**;

Termination Payment Sum (NPFME) has the meaning given to it in **SCHEDULE T (TERMINATION PAYMENTS)**;

Termination Payment Sum (PFME) has the meaning given to it in **SCHEDULE T (TERMINATION PAYMENTS)**;

Third Party or **Third Parties** means any party that is not the Agency or the Concessionaire and not an Affiliate thereof or any other Government Authority;

Time For Completion means (as applicable):

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

Total Project Cost means the actual capital cost of the Project upon completion of the Project, as certified by the Independent Experts; provided, that the same shall not include the Additional Cost and Relief Event Compensation Amount unless otherwise agreed with the Agency;

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 Agency, complies with the relevant qualification and evaluation criteria for such outgoing Sponsor as set out at the bidding stage of the Project; and
- (b) the transfer of shareholding is in compliance with the applicable Laws;

Transferring Sponsor has the meaning given to it in Section 10.2.1(b);

Transfer Date means:

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

Trigger Date means and includes, the Final Expiry Date and/or the Termination Date (as applicable);

User means a user of Rani Bagh;

User Charges means the fees and/or charges to be charged by the Concessionaire to a User to be set by the Concessionaire based on the User Charges Benchmarking Principles set out in **SCHEDULE P (USER CHARGES BENCHMARKING PRINCIPLES)**;

User Charges Benchmarking Principles has the meaning given to it in **SCHEDULE P (USER CHARGES BENCHMARKING PRINCIPLES)**;

Utilities Affected Assets has the meaning given to it in Section 4.12.2;

Utility Proceeds has the meaning given to it Section 4.12.3;

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

Vesting Certificate has the meaning given to it in Section 24.4.1;

Windfall Revenue has the meaning given to it in Section 17.4.1;

Windfall Revenue Event has the meaning given to it in Section 17.4.1(a); and

WPI means the wholesale price index as published by Pakistan Bureau of Statistics being the rate published for the last working Day of the last quarter of a calendar year.

1.2 **INTERPRETATION**

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to Laws of Pakistan or Pakistan law or regulation having the force of Law shall include the Laws, acts, ordinances, rules, regulations, bylaws or notifications which have the force of law in the territory of Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) the words **include** and **including** are to be construed without limitation and shall be deemed to be followed by **without limitation** or **but not limited to** whether or not they are followed by such phrases;
- (e) references to **construction** or **building** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **construct** or **build** shall be construed accordingly;
- (f) references to **development** include, unless the context otherwise requires, construction, rehabilitation, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and **develop** shall be construed accordingly;
- (g) any reference to any period of time means a reference to that according to Pakistan Standard Time;
- (h) any reference to Day means a reference to a calendar Day as per the Gregorian Calendar;
- (i) any reference to month means a reference to a calendar month as per the Gregorian calendar;
- (j) references to any date, period or Project Milestone means and include such date, period or Project Milestone as may be extended pursuant to Relief Order;
- (k) any reference to any period commencing **from** a specified Day or date and **till** or **until** a specified Day or date shall include both such Days or dates; provided, that if the last Day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) **indebtedness** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (o) references to the **winding-up, dissolution, insolvency, or reorganization** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
 - (p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, License or document of any description shall be construed as reference to that agreement, deed, instrument, License or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided, that this sub-section shall not operate so as to increase liabilities or obligations of the Agency hereunder or pursuant hereto in any manner whatsoever;
 - (q) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party, the Independent Technical Advisor or the Independent Auditor shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, the Independent Technical Advisor or the Independent Auditor, as the case may be, in this behalf and not otherwise;
 - (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (s) references to Recitals, Articles, Sections, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (t) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 **COSTS FOR DOCUMENTS**

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

1.4 **MEASUREMENTS AND ARITHMETIC CONVENTIONS**

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

1.5 **PRIORITY OF AGREEMENTS, ARTICLES, SECTIONS AND SCHEDULES**

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

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

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

- (a) between two or more Articles and/or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and/or Section;
- (b) between the Article and/or Section of this Agreement and the Schedules, the Article and/or Section shall prevail unless the issue in question/matter is specifically provided for in the Schedule and only referred to in the Article and/or Section, as the case may be;
- (c) between any two (2) Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the C&O Programme and the C&O Requirements, the latter shall prevail;
- (e) between the written description on the O&M Documents and the O&M Requirements, the latter shall prevail;
- (f) between the dimension scaled from the O&M Documents and its specific written dimension, the latter shall prevail; and
- (g) between any value written in numerals and that in words, the latter shall prevail.

2. CONCESSION

2.1 GRANT OF CONCESSION

2.1.1 In furtherance of the Agency's objectives and in consideration of the Concessionaire's obligations contained in this Agreement and relying on the Concessionaire's representations, warranties and covenants contained herein, the Agency, subject to the terms of this Agreement, hereby authorizes the Concessionaire, for the duration of the Concession Period, to investigate, study, design, engineer, procure, finance, construct, develop, rehabilitate, operate, maintain and implement the Project on a DFBROMT basis, and to exercise and enjoy the rights, powers, benefits, privileges, the Aggregate Concession Revenue collection, authorizations and entitlements as set out in this Agreement.

2.1.2 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of the Agency Agreements.

2.2 CONCESSION PERIOD

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

2.3 EXTENSION OF CONCESSION PERIOD

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

3. CONDITIONS

3.1 CONDITIONS PRECEDENT

3.1.1 Save and except as expressly provided herein, the respective obligations of the Parties shall be subject to the satisfaction, waiver and/or deferral, in accordance with the terms herein, of the conditions precedent specified in Sections 3.1.2 and 3.1.4 (the **Conditions Precedent**) on or prior to the Scheduled Commencement Date.

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

- (a) the Concessionaire has provided the C&O Performance Security to the Agency that remains effective and valid till the C&O Performance Security Expiry Date;
- (b) the Concessionaire has entered into the Independent Technical Advisor Contract for the appointment of the Independent Technical Advisor with the other counterparties to such contract, within one (1) month of the Effective Date;
- (c) the Concessionaire has established the Independent Technical Advisor Payment Account, within one (1) month of the Effective Date;
- (d) the Concessionaire has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the other counterparties to such contract, within one (1) month of the Effective Date;
- (e) the Concessionaire has established the Independent Auditor Payment Account, within one (1) month of the Effective Date;
- (f) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor certified true copies of the executed EPC Contract;
- (g) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor certified true copies of the executed O&M Contract;

(h) [the relevant Contractor of the Concessionaire possesses 'Pakistan Engineering Council' \(PEC\) registration certificate in category C-B or above having specialization code of ME-03;](#)

(h)(i) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor certified true copies of the executed Rani Bagh Contracts;

(h)(j) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor documents evidencing that the Concessionaire has entered into the Escrow Agreement with the other counterparties to the Escrow Agreement, established the Escrow Account and issued the standing instructions in relation to the Escrow Account in terms of the Escrow Agreement;

(h)(k) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor documents evidencing that the Concessionaire has established the Sponsor Base Equity Account;

- ~~(k)~~(l) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor documents evidencing that the Concessionaire has established all bank accounts other than the Escrow Account and the Sponsor Base Equity Account in accordance with the Financing Documents and/or the Escrow Agreement;
- ~~(j)~~(m) the Concessionaire has procured approval for the Marketing Plan in accordance with Section 29.2 (*Marketing Plan*);
- ~~(n)~~(n) the Concessionaire has conducted the environmental and social impact assessment in relation to the Project as per the Laws and submitted to the Agency and the Independent Experts copies of the EIA Approval from the Sindh Environmental Protection Agency;
- ~~(n)~~(o) the Concessionaire has provided copies of its Corporate Documents to the Agency (with copies delivered to the Independent Technical Advisor and the Independent Auditor), duly certified as true copies by the company secretary or director of the Concessionaire;
- ~~(o)~~(p) the Concessionaire has provided to the Agency copies (with copies delivered to the Independent Technical Advisor and Independent Auditor) of its Board Resolution that duly authorizes:
- (i) the Concessionaire to enter into this Agreement and to undertake the obligations, liabilities, as set out in this Agreement, and the transactions as contemplated by this Agreement;
 - (ii) a specified Person or Persons to:
 - (aa) execute this Agreement on behalf of the Concessionaire; and
 - (bb) undertake all other acts specifically relating to this Agreement, as contemplated by this Agreement;
- ~~(p)~~(q) each of the applicable Concessionaire Permits have been procured by the Concessionaire and the same are effective and valid and have not been cancelled and/or rescinded and the Concessionaire has provided copies of the same to the Agency (with copies delivered to the Independent Technical Advisor and the Independent Auditor);
- ~~(q)~~(r) the Concessionaire has provided to the Agency, the Independent Auditor and the Independent Technical Advisor:
- (i) a certified true copy of the duly executed Financing Term Sheet that is not objected to or deemed not to be objected to by the Agency and the Independent Auditor in accordance with Section 27.3 (*Financing Term Sheet* & *Financing Amendment Term Sheets*);
 - (ii) certified true copies of the executed Financing Documents;
 - (iii) the Financial Close Achievement Notice, as issued by the Financiers (or an agent of the same);

~~(s)~~(s) the Agency has received the following legal opinions:

- (i) a legal opinion from the legal counsel of the Concessionaire confirming that the Concessionaire has been duly organized and is validly existing under the Laws and has the requisite power and authority to enter into the Agency Agreements to which the Concessionaire is a party and to undertake the transactions as contemplated by the Agency Agreements and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire;
- (ii) a legal opinion from the legal counsel of the Sponsor(s) confirming that such Sponsor(s) is/are validly existing under the Laws and that such Sponsor(s) has/have the requisite authority and power to enter into the Agency Agreements and the Project Agreements to which such Sponsor(s) is/are a party and to assume the obligations as contained therein and the enforceability of the same against the Sponsor(s);

~~(s)~~(t) the Concessionaire has entered into the Project Site License Agreement with the Agency for License of the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*);

~~(t)~~(u) the Concessionaire has entered into the Provincial Support Agreement with the other counterparties to the Provincial Support Agreement (if applicable); and

~~(u)~~(v) the Concessionaire has submitted copies of documents evidencing satisfaction of each of the Concessionaire Conditions Precedent to the Independent Technical Advisor and the Independent Auditor.

3.1.3 Not Used.

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

- (a) the Agency has Licensed such part of the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*) and the Project Site License Agreement;
- (b) the Agency has entered into the Independent Technical Advisor Contract for the appointment of the Independent Technical Advisor with the other counterparties to such contract, within one (1) month of the Effective Date;
- (c) the Agency has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the other counterparties to such contract, within one (1) month of the Effective Date;
- (d) the Agency has entered into the Escrow Agreement with the other counterparties to the Escrow Agreement;
- (e) the Agency has entered into the Provincial Support Agreement with the other counterparties to the Provincial Support Agreement (if applicable);
- (f) the Agency has issued the SBP Debit Authority in accordance with Section 17.5.1; and

- (g) the Agency has submitted copies of documents evidencing satisfaction of each of the Agency Conditions Precedent to the Independent Technical Advisor and the Independent Auditor.

3.2 **NOT USED**

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

3.3.1 The:

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

3.3.2 Not Used.

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

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

3.4 **COMMENCEMENT CERTIFICATE & COMMENCEMENT DATE**

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

3.4.2 The Parties agree that:

- (a) within thirty (30) Days of the Agency's receipt from the Concessionaire, through the Independent Technical Advisor and the Independent Auditor, evidence of satisfaction of a Concessionaire Condition Precedent, the Agency shall notify the Independent Technical Advisor and the Independent Auditor in writing (with a copy to the Concessionaire) whether it has any objections on the satisfaction of such Concessionaire Condition Precedent. In the event the Agency does not raise any objection in writing on the satisfaction of a Concessionaire Condition Precedent within the thirty (30) Day period set out herein, such Concessionaire Condition Precedent shall be deemed to be not objected to by the Agency. In the event the Agency raises any objections on the satisfaction of a Concessionaire Condition Precedent and notifies the same to the Independent Technical Advisor and the Independent Auditor (with a copy to the Concessionaire) within the thirty (30) Day period set out herein, the Concessionaire shall address such objections and re-submit to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency) evidence of satisfaction of such Concessionaire

Condition Precedent and the process in this Section 3.4.2(a) shall be repeated until such time that the Agency has not objected to or is deemed to have not objected to the satisfaction of such Concessionaire Condition Precedent. The provisions of this Section 3.4.2(a) shall apply to each Concessionaire Condition Precedent for which evidence of satisfaction is submitted by the Concessionaire to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency) from time to time;

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

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

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

evidence of satisfaction of such Agency Condition Precedent to the Independent Technical Advisor and the Independent Auditor (with a copy to the Concessionaire) in accordance with Section 3.4.2(b).

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

3.5 **TERMINATION PRIOR TO COMMENCEMENT DATE**

3.5.1 In the event:

- (a) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling thirty (30) Days following the Scheduled Commencement Date, (including the extended time, if any) due to reasons attributable to the Concessionaire; and/or
- (b) of occurrence of a Concessionaire Event of Default prior to the Commencement Date;

then the Agency shall have the right (to be exercised in its sole and absolute discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Concessionaire. In such case, the Agency shall be entitled to encash the C&O Performance Security to its full value and, in each case, the entire Sponsor Base Equity Amount funded by the Sponsor(s) shall stand cancelled. Except for the encashment of the C&O Performance Security, in terms of this Section 3.5.1, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement.

3.5.2 In the event:

- (a) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling thirty (30) Days following the Scheduled Commencement Date, (including the extended time, if any) due to reasons attributable to the Agency and/or a Force Majeure Event; and/or
- (b) of occurrence of an Agency Event of Default prior to the Commencement Date,

the Concessionaire shall have the right (to be exercised in its sole discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Agency. In such case, the Agency shall (within fifteen (15) Days of its receipt of the Termination Notice) return the C&O Performance Security, as applicable, to the Concessionaire without any encashment, demands or claims; provided, further in case the Concessionaire has incurred any cost for obtaining EIA Approval and/or undertaken other works in respect of the Project and such works have been approved by the Independent Technical Advisor, the Agency shall make payment for the actual cost incurred which under no circumstances shall exceed the amount of the C&O Performance Security. Except as may be contemplated in this Agreement, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such Termination of this Agreement.

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

4. PROJECT SITE

4.1 LICENSE

- 4.1.1 Pursuant to the Project Site License Agreement, the Agency agrees to license the Project Site for the Concession Period to the Concessionaire for the purposes set out herein (the **License**) and in accordance with the Project Site License Agreement. The Agency further agrees that, pursuant to this Agreement and the Project Site License Agreement, it shall grant the Concessionaire the right to sub-license the Project Site pursuant to the Rani Bagh Contracts, for the purposes of the Rani Bagh Facilities (Outsourced), in furtherance of the objectives of this Agreement; provided, that the grant of such sub-license shall not be on terms contradictory to the Agency Agreements. The Project Site License Agreement shall be duly executed by the Parties and, to the extent required by the Law, registered by the Concessionaire with the relevant Government Authority and all costs, fees, expenses, duties, charges and taxes (including charges relating to the registration of the Project Site License Agreement) relating to the same shall be borne by the Concessionaire.
- 4.1.2 The Concessionaire shall be responsible for payment of all charges in accordance with the Project Site License Agreement that relate to the License of the Project Site.
- 4.1.3 The License shall commence on the physical handing over of the Vacant Possession of the Project Site to the Concessionaire by the Agency and upon commencement shall be co-terminus on the Transfer Date without the need for any action to be taken by the Parties to terminate the License. Any extension of the Concession Period shall also extend the License and the Concessionaire and the Agency shall enter into such addendums, extensions or modifications of the Project Site License Agreement as are necessary to give effect to such extension.
- 4.1.4 The Agency shall grant such permission or exemptions as may be required under the Laws relating to and regulating land, as applicable in the Province of Sindh, Pakistan, so as to ensure that the Concessionaire can enjoy Vacant Possession and hold the area of land comprising the Project Site, except where failure to enjoy Vacant Possession has resulted from a breach by the Concessionaire of the Applicable Standards.
- 4.1.5 Notwithstanding anything to the contrary contained herein, the Agency shall be solely responsible to pay any taxes, levies or fees pertaining to the ownership of the Project Site.

4.2 TITLE OF PROJECT SITE & DELIVERY OF VACANT POSSESSION

- 4.2.1 The Agency represents and warrants that it has the power and authority to grant the License in respect of the Project Site to the Concessionaire.
- 4.2.2 The Agency shall at its own cost and expense, deliver to the Concessionaire, the Vacant Possession of the Project Site (including all Easementary Rights) as an Agency Conditions Precedent.
- 4.2.3 The Parties agree and acknowledge that this Section 4.2.3 shall come into effect as of the Effective Date. In the event the Concessionaire is adversely affected and/or delayed in the performance of its obligations and/or there is any adverse financial impact on the Concessionaire, in each case, resulting from any delay and/or failure of the Agency to deliver Vacant Possession of the Project Site to the Concessionaire in accordance with the Project Site License Agreement, such delay and/or failure of the Agency (without prejudice to the rights of the Concessionaire under Section 3.5.2) shall entitle the Concessionaire to issuance

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

4.3 **USE OF PROJECT SITE**

4.3.1 The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the Agency shall enter into the Project Site License Agreement with the Concessionaire that shall grant the License (including the right to sub-license) of the Project Site to Concessionaire for the sole purpose of implementation of the Project and for enjoying the rights and benefits of the Concession granted hereunder and that the Concessionaire shall use the Project Site only for the purposes of implementing the Project thereupon and for purposes incidental or necessary thereto subject to the terms and conditions of the Applicable Standards. The Concessionaire shall, in carrying out its obligations under this Agreement, utilize all existing land area at the Project Site.

4.3.2 The Concessionaire hereby undertakes that it shall not without prior written consent of the Agency use the Project Site for any purpose other than:

- (a) for the purposes of the Project;
- (b) as permitted under this Agreement (including for the purposes set out in Article 29 (*Additional Matters*)); or
- (c) as may otherwise be approved by the Agency in writing.

4.4 **CONCESSIONAIRE'S RESPONSIBILITY**

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

- (a) carried out an investigation of all Project Site Conditions and of any extraneous material in or under the Project Site including its surface, sub-soil and ground water to enable the Concession Assets to be designed and constructed and for its obligations to be performed with due regard for the Project Site Conditions and the seismic activity (if any) in the region of the Project Site;
- (b) for the purpose of such investigation in section (a), inspected and examined the Project Site and surroundings;
- (c) satisfied itself as to the nature of the Project Site Conditions, the surface, sub-soil and ground water of the Project Site, the form and nature of the Project Site, the load-bearing and other relevant properties of the Project Site, the risk of damage to property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, its obligations and material necessary for the implementation of the Project;
- (d) satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and any accommodation it may require for the purposes of fulfilling any of its obligations included in this Agreement, such as any additional land or buildings located outside the Project Site;

- (e) satisfied itself as to the possibility of interference by Persons with rights-of-way across, access to or use of the Project Site with particular regard to the owners and users of any land adjacent to the Project Site; and
- (f) satisfied itself as to the precautions, times and methods of working necessary to prevent or minimize nuisance or interference being caused to any third parties.

provided, that the Agency shall grant, to the Concessionaire, a temporary right of access to the Project Site within fourteen (14) Days of the Effective Date.

4.4.2 For the avoidance of doubt, the Concessionaire accepts full responsibility for all matters in Section 4.4.1 and the Concessionaire shall:

- (a) not be entitled to make any claim against the Agency whether in contract, tort or otherwise on any ground relating to the matters in Section 4.4.1; and
- (b) indemnify the Agency against all direct Losses sustained by the Agency and/or any third party in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials being any natural or artificial substance, whether in solid, gaseous or liquid form capable of causing harm to any human or any other living organism supported by the environment (including air, water, land, surface land and sub-surface land) or capable of damaging the environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable environment law) at the Project Site.

4.5 **NO SALE OR CREATION OF ENCUMBRANCE**

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

4.6 **PROTECTION OF SITE**

Following the delivery and handing over to the Concessionaire of the Vacant Possession of the Project Site by the Agency and until the Transfer Date, the Concessionaire shall be fully responsible for and shall protect the Project Site from, in each case, any and all occupations, encroachments and Encumbrances.

4.7 **SPECIAL/TEMPORARY RIGHT OF WAY**

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

4.8 **PROJECT SITE ACCESS**

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

4.8.2 The Agency shall ensure that the public roads connected to the Project Site and the access roads for the same are kept in good condition and are suitable for continuous use, to avoid any hinderance for the use of the Project Site and to enable Users to continuously access the Project Site.

4.9 **GEOLOGICAL AND ARCHAEOLOGICAL FINDS**

4.9.1 It is expressly agreed between the Parties that mining, geological or archaeological rights do not form part of the License to be granted to the Concessionaire in terms of the Project Site License Agreement and the Concessionaire hereby acknowledges and agrees that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that all such rights, interest and property on or under the Project Site shall vest in and belong to the Agency or the relevant concerned Government Authority.

4.9.2 The Concessionaire shall procure all no-objection certificates and consents from the Culture Department, Government of Sindh that may be required by the Concessionaire under the Laws, in respect of any potential geological and archeological finds on the Project Site, prior to commencement of the Project Works. Furthermore, the Concessionaire shall take all reasonable precautions to prevent its employees, workmen, agents, representatives and/ or any other persons appointed by the Concessionaire from having access to the Project Site, including the Contractors, from removing or damaging such interest or property (as set out in Section 4.9.1) and shall inform the Agency forthwith of the discovery thereof and comply with such instructions as the Agency and/or the concerned Government Authority may issue in relation to the protection and/or removal of such property. In the event any expenses are incurred by the Concessionaire in fulfilling its obligations as set out in this Section 4.9.2 as a result of the geological and/or archaeological finds being on the Project Site (the **Archeological Event**), then the same shall entitle the Concessionaire to issuance of a Relief Order Request and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Further, in the event the Concessionaire is delayed in performance of its obligations under this Agreement due to the occurrence of an Archeological Event, the Concessionaire shall be granted extensions in the timeline in which it has to perform its obligations under this Agreement (provided that such extensions are duly certified by the Independent Technical Advisor) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Notwithstanding anything contained herein, the Agency shall procure the issuance of the instructions required from the concerned Government Authority and referred to in this Section 4.9.2.

4.10 **EXISTING UTILITIES**

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the right of way or utilities on, under or above the Project

Site are enabled by the Concessionaire to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent right of way or utility, and the Agency shall, upon written request from the Concessionaire (as certified by the Independent Technical Advisor), initiate and undertake, at the Agency's cost, legal proceedings necessary for such arrangement. The Concessionaire shall be responsible for identifying the existing utilities by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities. In the event of any breach by the Concessionaire of its obligations under this Section 4.10 (*Existing Utilities*), the Concessionaire shall be responsible for rectification of the same at its own cost, risk and expense.

4.11 **NOT USED**

4.12 **NEW UTILITIES**

4.12.1 The Concessionaire may, in its absolute discretion or upon a request from the Agency, allow utility companies access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities. In the event the Concessionaire allows utility companies to use the Project Site upon the request of the Agency, the Agency may specify such conditions as it deems fit and for this purpose the Concessionaire and the Agency may enter into such agreements with the utility company as may be required for this purpose; provided, that nothing contained in this Section 4.12.1 shall waive and/or relieve or be deemed to waive and/or relieve the obligations of the Agency contained in the Agency Agreements and any damage caused to the Concession Assets by such access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities shall be restored forthwith.

4.12.2 The affected part of the Concession Assets (or any part thereof) (the **Utilities Affected Assets**) shall be restored in accordance with the Applicable Standards and Good International Industry Practice by the Concessionaire and the costs relating to the same shall be borne by the Agency and/or the utility companies in accordance with the terms mutually agreed between the Agency and the utility companies; provided, however, any such terms (including any amendments of the same) shall be subject to the prior approval of the Agency (which approval shall not be unreasonably delayed, conditioned or withheld).

4.12.3 The Concessionaire shall have the right to charge fees from the utility company or any other entity for allowing the passage of the telephone lines, water pipes, electric cables or other public utilities over or under the Project Site, which fees shall form part of the Aggregate Concession Revenue (the **Utility Proceeds**). The Utility Proceeds shall form part of the Aggregate Concession Revenue and shall be deposited in and utilized from the Escrow Account in terms of the Escrow Agreement. The Utility Proceeds shall be deposited in the Escrow Account immediately upon being paid to or being received by the Concessionaire.

4.13 **FELLING OF TREES**

4.13.1 The Agency undertakes to fell (at the cost of the Concessionaire) such trees at the Project Site, as are identified and determined by the Independent Technical Advisor and the Agency shall be responsible for procuring any approvals and/or permits required for compliance with this Section 4.13 (*Felling of Trees*).

4.13.2 The trees removed pursuant to this Section 4.13 (*Felling of Trees*) shall be deemed to be owned by the Agency and shall be disposed in such manner and subject to such conditions as the Agency may in its sole discretion deem appropriate.

4.13.3 The Concessionaire hereby undertakes that it shall (as condition precedent to achievement of Substantial Completion), at its sole cost and expense, plant and maintain the greater of such number of trees as required under the Concessionaire Permits. Furthermore, the Concessionaire undertakes to maintain in accordance with the Applicable Standards and Concessionaire Permits, all the trees planted by it pursuant to this Section 4.13 (*Felling of Trees*) till the Transfer Date.

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

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

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

5. INDEPENDENT TECHNICAL ADVISOR

5.1 SELECTION

- 5.1.1 Within five (5) Days from the Effective Date, the Concessionaire shall provide the Agency with a list of three (3) reputable consulting entities (including consortium of consulting entities) for appointment of the Independent Technical Advisor that meet the Independent Technical Advisor Criteria (the **First TA List**).
- 5.1.2 Within ten (10) Days of receipt by the Agency of the First TA List, the Agency shall (subject to one (1) of the firms in the First TA List being acceptable to the Agency) select a reputable consulting entity from the First TA List and the Agency and the Concessionaire shall appoint such firm as the Independent Technical Advisor in terms of the Independent Technical Advisor Contract within ten (10) Days of receipt of such selection notice from the Agency. The Independent Technical Advisor Contract shall be executed within one (1) month from the Effective Date.
- 5.1.3 In the event the proposed Independent Technical Advisor is a consortium then: (a) a lead consortium member shall serve as the lead Independent Technical Advisor and shall be fully responsible for the overall management, coordination and implementation of the services under the Independent Technical Advisor Contract; and (b) the consortium members shall be jointly and severally liable for the services under the Independent Technical Advisor Contract.
- 5.1.4 In the event the consulting entities identified by the Concessionaire in the First TA List are not acceptable to the Agency, the Concessionaire and the Agency shall appoint (in terms of the Independent Technical Advisor Contract to be executed within one (1) month from the Effective Date) such consulting entity as the Independent Technical Advisor as is mutually acceptable to the Agency and the Concessionaire and meets the Independent Technical Advisor Criteria within one (1) month of the Effective Date and such appointment shall be made in terms of the Independent Technical Advisor Contract (the **Independent Technical Advisor Appointment Date**).
- 5.1.5 Failure by the Concessionaire to execute the Independent Technical Advisor Contract by the Independent Technical Advisor Appointment Date shall constitute a Material Breach of this Agreement.
- 5.1.6 The Independent Technical Advisor shall provide the services set out in the Independent Technical Advisor Contract and as requested by the Parties with mutual consent from time to time. Unless mutually agreed otherwise between the Parties, the Independent Technical Advisor Contract shall be in accordance with the Indicative Independent Technical Advisor Terms of Reference.

5.2 TERM OF APPOINTMENT OF THE INDEPENDENT TECHNICAL ADVISOR

- 5.2.1 The appointment of the Independent Technical Advisor shall be for an initial term of three (3) years from the date of the effectiveness of the Independent Technical Advisor Contract (the **Independent Technical Advisor Appointment Term**); provided, however, that:
- (a) the Independent Technical Advisor Appointment Term shall be extended prior to expiry of the same with mutual consent of the Parties so as to ensure that at all times during the Concession Period an Independent Technical Advisor is retained/appointed, for the purposes set out in this Agreement; or

- (b) the Parties shall be entitled to appoint a new Independent Technical Advisor prior to the expiry of the Independent Technical Advisor Appointment Term (such appointment to be effective upon expiry of the Independent Technical Advisor Appointment Term) so as to ensure that at all times during the Concession Period an Independent Technical Advisor is retained/appointed for the purposes set out in this Agreement. In the event of the appointment of a new Independent Technical Advisor upon expiry of the Independent Technical Advisor Appointment Term, the provisions of Section 5.2.3 shall apply.

5.2.2 The appointment of the Independent Technical Advisor may be terminated:

- (a) by either Party if, the Independent Technical Advisor is adjudged insolvent and/or bankrupt and/or the winding up proceedings are filed against the Independent Technical Advisor and/or the Independent Technical Advisor files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Technical Advisor in a court of law;
- (b) by the Parties with the mutual consent of the Parties.

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

- (a) select a consulting entity from the New TA List and shall cause the Concessionaire to appoint such consulting entity as the Independent Technical Advisor; or
- (b) reject the appointment of any of the consulting entities provided in the New TA List, in which case, the Parties shall appoint such consulting entity as the new Independent Technical Advisor as is mutually agreed by the Parties.

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

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

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

5.3 **INDEPENDENT TECHNICAL ADVISOR AUTHORIZED SIGNATORIES**

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

5.4 **DECISION OF INDEPENDENT TECHNICAL ADVISOR & DISPUTE RESOLUTION**

5.4.1 Subject to Section 5.4.2, any advice, instruction, decision, direction and/or award of the Independent Technical Advisor shall be binding on the Parties unless mutually agreed otherwise by the Parties.

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

5.5 **INDEPENDENT TECHNICAL ADVISOR REMUNERATION**

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

5.5.2 The Concessionaire undertakes to affect the Independent Technical Advisor Payments in a diligent and timely manner and in accordance with the Independent Technical Advisor Contract.

5.6 **INDEPENDENT TECHNICAL ADVISOR PAYMENT ACCOUNT**

5.6.1 The Concessionaire shall establish and maintain the Independent Technical Advisor Payment Account from the date of its establishment in terms of Section 3.1.2(c) and until the Trigger Date.

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

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

6. INDEPENDENT AUDITOR

6.1 SELECTION

- 6.1.1 Within five (5) Days from the Effective Date, the Concessionaire shall provide the Agency with a list of four (4) reputable firms of chartered accountants for appointment of the Independent Auditor (the **First IA List**).
- 6.1.2 Within ten (10) Days of receipt by the Agency of the First IA List, the Agency shall (subject to one of the firms in the First IA List being acceptable to the Agency) select a reputed firm of auditors from the First IA List and the Agency and the Concessionaire shall appoint such firm as the Independent Auditor in terms of the Independent Auditor Contract within ten (10) Days of receipt of such selection notice from the Agency. The Independent Auditor Contract shall be executed within one (1) month from the Effective Date.
- 6.1.3 In the event the firms of auditors identified by the Concessionaire in the First IA List is not acceptable to the Agency, the Concessionaire and the Agency shall appoint (in terms of the Independent Auditor Contract to be executed within one (1) month from the Effective Date) such firm as the Independent Auditor as is mutually acceptable to the Agency and the Concessionaire within one (1) month of the Effective Date and such appointment shall be made in terms of the Independent Auditor Contract (the **Independent Auditor Appointment Date**).
- 6.1.4 Failure by the Concessionaire to execute the Independent Auditor Contract by the Independent Auditor Appointment Date shall constitute a Material Breach of this Agreement.
- 6.1.5 The Independent Auditor shall provide the services set out in the Independent Auditor Contract and as requested by the Parties with mutual consent from time to time. Unless mutually agreed otherwise between the Parties, the Independent Auditor Contract shall be in accordance with the Indicative Independent Auditor Terms of Reference.

6.2 TERM OF APPOINTMENT OF THE INDEPENDENT AUDITOR

- 6.2.1 The appointment of the Independent Auditor shall be for an initial term of three (3) years from the date of the effectiveness of the Independent Auditor Contract (the **Independent Auditor Appointment Term**); provided, however, that:
- (a) the Independent Auditor Appointment Term shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed for the purposes set out in this Agreement; or
 - (b) the Parties shall be entitled to appoint a new Independent Auditor prior to the expiry of the Independent Auditor Appointment Term (such appointment to be effective upon expiry of the Independent Auditor Appointment Term) so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed for the purposes set out in this Agreement. In the event of the appointment of a new Independent Auditor upon expiry of the Independent Auditor Appointment Term, the provisions of Section 6.2.3 shall apply.
- 6.2.2 The appointment of the Independent Auditor may be terminated:

- (a) by either Party if the Independent Auditor is adjudged insolvent and/or bankrupt and/or winding up proceedings are filed against the Independent Auditor and/or the Independent Auditor files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Auditor in a court of law;
- (b) by the Parties with the mutual consent of the Parties.

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

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

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

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

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

6.3 **INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

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

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

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

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

6.5 **INDEPENDENT AUDITOR REMUNERATION**

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

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

6.6 **INDEPENDENT AUDITOR PAYMENT ACCOUNT**

6.6.1 The Concessionaire shall establish and maintain the Independent Auditor Payment Account from the date of its establishment in terms of Section 3.1.2(e) and until the Trigger Date. Subject to rights of Financiers in terms of the Financing Term Sheet, the Agency may create a lien over the funds standing to the credit of the Independent Auditor Payment Account.

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

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

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

7.1 CONCESSIONAIRE REPRESENTATIONS & WARRANTIES

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

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

the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

- (j) the Sponsor(s) own(s) one hundred percent (100%) of the Shares as of the Effective Date and no Encumbrances exist on such Shares;
- (k) the Concessionaire has the ability to achieve Financial Close;
- (l) the debt-to-equity ratio of the Concessionaire shall not exceed 80:20;
- (m) no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the Agency or to any Government Authority in relation to the Concessionaire Permits contains any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty misleading;
- (n) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Agency in connection therewith and neither the Concessionaire nor the Sponsor(s) (together with their Affiliates) have engaged in any Corrupt Act in respect of the foregoing;
- (o) each of the Concessionaire and the Sponsor(s) have complied with requirements of the Laws and the RFP (to the extent the same are applicable to the Concessionaire and the bidders) in the preparation, finalization, delivery and submission of its Bid for the award of the Project and the Concession to the Concessionaire and have undertaken all acts and deeds (to the extent the same are applicable to the Concessionaire and the bidders) necessary for award of the Concession and the Project to the Concessionaire in terms of the RFP and the Laws;
- (p) all representations, breach of which may cause a Material Adverse Effect, provided by the Concessionaire and/or Sponsor(s) in its Bid submitted in response to the RFP, is true and accurate in all respects;
- (q) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity (if any) in any jurisdiction; and
- (r) the Concessionaire has furnished a valid and effective C&O Performance Security to the Agency prior to the Effective Date and the C&O Performance Security is valid and subsisting.

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

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

7.2 **CONCESSIONAIRE'S GENERAL UNDERTAKINGS**

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

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

- (l) be responsible for strict compliance with the relevant Applicable Standards notwithstanding the appointment and/or engagement by it of the Concessionaire Engaged Persons to implement the Project (or any part thereof) and performance of Project Works (or any part thereof);
- (m) keep and maintain the Project Site free from all Encumbrances and take all steps necessary to remove Encumbrances, if any;
- (n) except as provided in this Agreement, make payments to the relevant Government Authority, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (o) afford access of the Project Site to the authorized representatives of the Agency, the Independent Technical Advisor, Independent Auditor and any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Works and the Concession Assets and, upon reasonable notice, to investigate any matter within their authority, and provide to such Persons assistance reasonably required to carry out their respective duties and functions;
- (p) not engage in any business or activity other than the business related to, and conducted for, the purpose of the Project and/or other than as provided in this Agreement;
- (q) market the Project in accordance with the Marketing Plan;
- (r) maintain its corporate existence and its rights to carry on operations of its business;
- (s) provide all necessary assistance to the Agency Representative, as the Agency Representative may reasonably require for the performance of its duties and services;
- (t) make all payments to the Agency of the amounts due and payable by the Concessionaire including (without limitation) the Agency Revenue Share and the Agency Windfall Share in accordance with the terms of this Agreement and the Agency Agreements;
- (u) ensure that no damage is caused to any property belonging to Agency and/or other third parties in the execution of the Project Works;
- (v) coordinate and manage all the Project Works and be responsible for the coordination and general management of the Project Works;
- (w) provide to the Agency, the Independent Auditor and the Independent Technical Advisor all such information relating to the Project Works and the execution and completion of the same as is reasonably requested by the Agency, the Independent Auditor and the Independent Technical Advisor from time to time;
- (x) Notify the Agency, the Independent Technical Advisor and/or the Independent Auditor (as applicable) without undue delay upon becoming aware of any changes in the information provided and/or to be provided to the same by the Concessionaire pursuant to the Applicable Standards;

- (y) provide all necessary assistance to the Independent Technical Advisor and the Independent Auditor as the same may reasonably require for the performance of their duties and services in accordance with the Independent Technical Advisor Contract and the Independent Auditor Contract, respectively, and for the performance of its roles and obligations contemplated under this Agreement and the Agency Agreements;
- (z) ensure that the Project Agreements entered into by the Concessionaire shall not be inconsistent with the terms and conditions of the Agency Agreements;
- (aa) undertake, do and perform from time to time, all such acts, deeds and things as may be necessary or required before commencement of Project Works (or any part thereof) for the performance of the Project Works under and in accordance with the Applicable Standards;
- (bb) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Technical Advisor at the Project Site commencing from the Commencement Date and until the Transfer Date;
- (cc) ensure the safety of the Concession Assets and the Users in accordance with the Safety Requirements;
- (dd) maintain the Project Site and the Concession Assets in good condition;
- (ee) comply with the Design Requirements;
- (ff) comply with all the conditions set out in the EIA Approval in accordance with the Laws;
- (gg) prepare the Environmental Management & Monitoring Plan in accordance with the requirements set out under **SCHEDULE A (SCOPE OF THE PROJECT)**;
- (hh) develop and implement the Maintenance Management System in accordance with the requirements set out under **SCHEDULE H (O&M REQUIREMENTS)**; and
- (ii) supervise the works during the relocation of existing utilities, and all utility stakeholders, in relation to the agreed alignments (for excavation, laying, back-filling, erection of utility poles etc.) by seeking assistance from the design consultant with respect to the survey points without damaging the existing utilities for the relocation of utilities if encountered.

7.3 **CONCESSIONAIRE ENGAGED PERSONS**

- 7.3.1 The Concessionaire shall, commencing from the Effective Date, have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to implement and supervise the Project, to deal with the Independent Technical Advisor/Independent Auditor/the Agency and to be responsible for all necessary exchange of information required pursuant to the Applicable Standards.
- 7.3.2 The Concessionaire shall ensure that the Concessionaire Engaged Persons are experienced and qualified for the purposes of Project implementation and performance of the Project Works and are at all times properly trained for their respective functions. The Concessionaire shall be responsible for maintaining harmony and good industrial relations among the Concessionaire Engaged Persons.

- 7.3.3 The Concessionaire shall be fully and solely responsible for:
- (a) observance by all the Concessionaire Engaged Persons of all the provisions and requirements of the Applicable Standards;
 - (b) the acts, omissions, failure to perform, breaches or defaults of the Concessionaire Engaged Persons of the Applicable Standards as fully as if they were the acts, omissions, failures, breaches or defaults of the Concessionaire of the Applicable Standards under this Agreement and the Agency Agreement.
- 7.3.4 The Concessionaire shall be responsible for strict compliance with the Applicable Standards notwithstanding the appointment and/or engagement by it of the Concessionaire Engaged Persons to implement the Project (or any part thereof) and performance of Project Works (or any part thereof) and any engagement by the Concessionaire of any of the Concessionaire Engaged Persons shall not release or discharge the Concessionaire of any of its liabilities, responsibilities or obligations under the Applicable Standards and the Concessionaire shall not be entitled to any relief or compensation (including any extension of Time For Completion and/or monetary compensations) under this Agreement or otherwise for any acts, omissions, failures, breaches or defaults of the Concessionaire Engaged Persons. Notwithstanding anything to the contrary, the Agency shall not be liable or responsible in any manner whatsoever under any Laws, in contract, tort or otherwise in respect of the Concessionaire Engaged Persons.
- 7.3.5 Employment of any foreign Concessionaire Engaged Persons shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall be the sole responsibility of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement or otherwise, refusal of or inability to obtain any such permits and approvals by the Concessionaire or the relevant Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under the Applicable Standards. The Concessionaire shall use reasonable efforts to promote local contractors and to employ and engage, to the extent practicable local employees and contractors.
- 7.3.6 The Concessionaire undertakes that it shall itself and any of its Concessionaire Engaged Persons shall be available to attend any meetings with the Agency, the Independent Technical Advisor and/or the Independent Auditor at all reasonable times, as required and Notified by the Agency, the Independent Technical Advisor and/or the Independent Auditor (as applicable) to the Concessionaire. All costs for attending such meetings by (including those relating to preparation and attendance in such meetings by the Concessionaire Engaged Persons) shall be on the Concessionaire's account.
- 7.4 **CONCESSIONAIRE AUTHORIZED REPRESENTATIVE & CONCESSIONAIRE PROJECT ENGINEER**
- 7.4.1 Within thirty (30) Days following the Effective Date, the Concessionaire shall:
- (a) appoint, with the prior Notification to the Agency, the Independent Technical Advisor and the Independent Auditor, in accordance with Section 5 (*Independent Technical Advisor*) and Section 6 (*Independent Auditor*) and all Laws, its representative duly authorized to deal with the Agency in respect of all matters under or arising out of or relating to this Agreement (the **Concessionaire Authorized Representative**);

- (b) appoint, in accordance with the Laws with prior Notification to the Agency and the Independent Technical Advisor, at its sole cost and expense, one or more established consulting engineering firm(s) to design the C&O Works;
- (c) appoint, in accordance with the Laws, with prior Notification to the Agency and the Independent Technical Advisor, at its sole cost and expense, one or more established consulting engineering firm and/or individual(s) to: (i) supervise the C&O Works; (ii) co-ordinate with the Independent Technical Advisor and Agency with respect to technical matters relating to the Project; and (iii) ensure that the C&O Works are performed in accordance with the Applicable Standards (the **Concessionaire Project Engineer**).

7.4.2 The Concessionaire shall:

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

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

7.5 **THE EPC CONTRACTOR & THE O&M CONTRACTOR**

7.5.1 The Concessionaire hereby undertakes that it shall:

- (a) ensure that the EPC Contract and the O&M Contract are entered into on an arm's length basis and on commercially viable terms;
- (b) ensure that the assets created and/or constructed forming part of the Permanent Concession Assets pursuant to the EPC Contract and the O&M Contract vest in the Agency on the Transfer Date;
- (c) ensure that the EPC Contractor or the O&M Contractor perform their respective obligations in the same manner that the Concessionaire is required to perform its obligations under this Agreement; and

- (d) deliver copies of each of the EPC Contract(s) and the O&M Contract(s) to the Agency within seven (7) Days of execution of each of the EPC Contract(s) and the O&M Contract(s), respectively.
- 7.5.2 The Agency shall not be liable for losses (including any Losses) of any nature resulting from the EPC Contract and the O&M Contract entered into by the Concessionaire as a result of the expiry of the Concession Period or Termination of this Agreement.
- 7.5.3 Not Used.
- 7.5.4 Any appointment or substitution and/or replacement of the EPC Contractor or the O&M Contractor of the Project shall be subject to the approval of the Agency. In consideration of providing its approval, the Agency may consider if the substitute EPC Contractor or the O&M Contractor is, at least, technically, financially and otherwise capable in terms of the Rani Bagh Contract Party Criteria (if applicable). Further, in granting its approval, the Agency shall consider the determinations of the Independent Auditor and Independent Technical Advisor, as provided in terms of Section 7.5.5; provided, however, in the event the Agency fails to grant its approval to the Concessionaire for the appointment or substitution and/or replacement of the EPC Contractor or the O&M Contractor within fifteen (15) Days of written request by the Concessionaire, the approval of the Agency for the appointment or substitution and/or replacement of the EPC Contractor or the O&M Contractor shall be deemed accorded, and the Independent Technical Advisor's approval, in accordance with Sections 7.5.5 and 7.5.6, shall be deemed as the final approval.
- 7.5.5 The Independent Technical Advisor (in respect of technical matters) and the Independent Auditor (in respect of financial matters) shall have the right to approve and/or disapprove any appointment or substitution of the EPC Contractor and/or the O&M Contractor in the event (in the reasonable opinion of the Independent Technical Advisor (in respect of technical matters) and the Independent Auditor (in respect of financial matters)):
 - (a) such EPC Contractor is technically and financially incapable (to the extent of its scope of work) of performing the C&O Works (or any part thereof); or
 - (b) such O&M Contractor is technically and financially incapable (to the extent of its scope of work) to perform the Operations and Maintenance (or any part thereof);provided, in their determination of the afore-stated, the Independent Technical Advisor and the Independent Auditor shall ensure, at the very minimum, that the substitute EPC Contractor and/or the O&M Contractor is/are, at least, technically, financially and otherwise capable in terms of the Rani Bagh Contract Party Criteria (if applicable).
- 7.5.6 The execution of the EPC Contract(s) and/or the O&M Contract(s), or any amendment thereof shall be subject to the prior approval of the Independent Technical Advisor in respect of payment terms, payment milestones, scope of the relevant Project Works and technical matters to ensure conformity with the terms of this Agreement. The Concessionaire shall deliver to the Independent Technical Advisor copies of the proposed EPC Contract(s) and O&M Contract(s) (with a copy to the Agency), or any amendment thereof. The Agency shall, within fifteen (15) Days of its receipt of the proposed EPC Contract(s) and/or the O&M Contract(s), provide its comments or observation on the same, if any, to the Independent Technical Advisor. The Independent Technical Advisor shall within twenty-eight (28) Days of the delivery of the proposed EPC Contract(s) and O&M Contract(s) and/or any amendments thereof by the Concessionaire, grant its approval or disapproval of the same, in consultation with Agency, and/or after removing any

objection by Agency. In the event no approval or objections to the proposed EPC Contract(s) and/or the O&M Contract(s) is granted by the Independent Technical Advisor within twenty-eight (28) Days of the delivery of the same by the Concessionaire, it shall be deemed not to have been objected to by the Independent Technical Advisor.

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

7.6 **THE RANI BAGH CONTRACTS**

Without prejudice to anything contained in this Agreement, the Parties agree that the following provisions concern any subcontracting of the Rani Bagh Services (Outsourced) to the Rani Bagh Contract Parties through the Rani Bagh Contracts:

7.6.1 the Concessionaire shall comply with the terms of this Agreement when concluding any Rani Bagh Contract and the Concessionaire may accordingly subcontract only such Rani Bagh Services (Outsourced) as permitted in accordance with the Laws and this Agreement. In granting, and in determining whether or not to conclude, any Rani Bagh Contract to any Person, and in determining whether to amend, waive, terminate or extend any such agreements, the Concessionaire shall comply with and apply the following contracting standards (the **Contracting Standards**):

- (a) all the Rani Bagh Contracts shall be entered into on an arm's-length basis (meaning, in the ordinary course of business and upon fair and reasonable terms no less favourable to the Concessionaire it would obtain in a comparable transaction with a Person which is not an Affiliate), shall contain market-based terms and conditions and shall be determined by competitive procedures;
- (b) the procurement, negotiation, execution and performance of all Rani Bagh Contracts shall not involve any dishonest or fraudulent conduct, including, but not limited to, any bribes, kick-backs, unlawful payments or similar actions by any of the parties thereto or their employees, representatives, agents or similar Persons;
- (c) subject to appropriate confidentiality provisions to ensure the commercially reasonable protection of proprietary or commercially sensitive information, the procurement, negotiation, execution and performance of all Rani Bagh Contracts shall be transparent. The Concessionaire shall use commercially reasonable efforts to harmonize the contract terms offered to similarly situated Rani Bagh Contract Parties;
- (d) the Concessionaire shall use commercially reasonable efforts to treat all similarly situated Rani Bagh Contract Parties in a consistent and even-handed manner. Similarly situated parties may only be treated differently by the Concessionaire for good cause or where objectively justifiable circumstances exist;

7.7 any Rani Bagh Contract or amendment thereto shall include (a) a copy of the Contracting Standards; (b) a representation from the Rani Bagh Contract Party(ies) that it or they (as applicable) is/are in compliance with the Contracting Standards on the date such Rani Bagh Contract is executed; (c) a provision allowing for the immediate termination of the Rani Bagh Contract or amendment by the Concessionaire, with no liability to any party thereto, if such representation is not true and correct as at the date made; (d) a provision allowing for complete assignment of the Rani Bagh Contract by the Concessionaire to the Agency or

- to any Third Party communicated by the Agency in writing, in the event of Termination or occurrence of the Trigger Date; and (e) a provision disallowing the Rani Bagh Contract Party from assigning the Rani Bagh Contract to any Third Party without prior written consent of the Concessionaire;
- 7.8 subject at all times to Section 7.6 (*The Rani Bagh Contracts*) and subject to compliance with the Laws, the Concessionaire may grant a sub-license of any part of the Rani Bagh to Third Parties to give effect to the conclusion of such Rani Bagh Contract, to the extent such Third Parties meet the Rani Bagh Contract Party Criteria;
- 7.9 the Concessionaire may conclude Rani Bagh Contracts with respect to Rani Bagh Services (Outsourced) permitted to be outsourced according to RFP and this Agreement, to any Third Party;
- 7.10 all Rani Bagh Contracts entered into by the Concessionaire with any Third Party for or in connection with the performance of any of the Rani Bagh Services (Outsourced) shall be subject to the following requirement: the Concessionaire shall ensure that none of the Rani Bagh Contracts violate in any manner the provisions of this Agreement, notably in terms of quality, deadlines and reporting obligations. If there is any inconsistency between a provision of this Agreement and a provision of any Rani Bagh Contract, this Agreement shall prevail;
- 7.11 the Concessionaire shall provide copies of the executed Rani Bagh Contracts to the Agency, the Independent Auditor and the Independent Technical Advisor, within ten (10) Days of execution of the Rani Bagh Contracts. The Agency (in consultation with the Independent Auditor and the Independent Technical Advisor) shall have the right to identify any non-compliance by the Concessionaire with the Contracting Standards in execution of any Rani Bagh Contract. Upon identification of such non-compliance, the Concessionaire shall be under an obligation to rectify the non-compliance within a reasonable period of time specified by the Agency;
- 7.12 the conclusion of any such Rani Bagh Contract does not relieve the Concessionaire from compliance with the provisions of this Agreement. The Concessionaire must ensure that (a) the provisions of this Agreement are in all other respects strictly complied with in relation to the conclusion of any Rani Bagh Contract and the terms thereof; and (b) it has the right to terminate, or require that the relevant Rani Bagh Contract Party terminates, the relevant agreement if there has been a breach of the provisions of this Agreement or otherwise takes, or procure that the Rani Bagh Contract Party takes, all necessary steps to remedy such a breach and the Concessionaire shall be liable, to the Agency for the Rani Bagh Contract Party with respect to the scope covered under such Rani Bagh Contract.
- 7.13 **CONCESSIONAIRE PERMITS**
- 7.13.1 The Concessionaire shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Concessionaire Permits in the prescribed form and with the prescribed fee (in each case, in accordance with the Laws) to the appropriate Government Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the Laws applied in a “*non-discriminatory*” manner.
- 7.13.2 The Concessionaire shall make or cause to be made, at least monthly prior to the Final Completion Date, and at least quarterly thereafter, reports listing: (a) its schedule for submitting Concessionaire Permits application forms or renewal application forms; (b) the status of any Concessionaire Permit applications then outstanding; (c) notifications of the

granting or denial of any Concessionaire Permit or Concessionaire Permit renewal; and (d) notifications of any violations of any Concessionaire Permit. Each report shall be submitted to the Agency, the Independent Technical Advisor and the Independent Auditor and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Concessionaire Permit or Concessionaire Permit application that may materially affect the Concessionaire's performance under any Agency Agreement. In the event of any Lapse of Consent, the Concessionaire shall submit a report pursuant to this Section 7.13.2 within three (3) Days after becoming aware thereof.

7.14 **PRELIMINARY WORKS**

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

7.15 **NOT USED**

7.16 **ACCESS ROUTE & TRANSPORTATION**

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

7.17 **TAXES AND SUBSIDIES**

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

7.17.2 The Concessionaire may raise any objections in terms of any charges levied on it by any Government Authority; provided, that such objections shall be filed and pursued at the Concessionaire's cost and the Concessionaire shall be entitled to any benefit accruing as a result of the Concessionaire's successful objection.

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

7.18 **PROTECTION OF THE ENVIRONMENT**

7.18.1 The Concessionaire shall comply with all Applicable Standards (including any condition which may from time to time be imposed by any Government Authority, including the '*Sindh Environmental Protection Agency*' as regards collection, treatment and disposal, or discharge of effluents or waste) pertaining to protection of the environment in its arrangements, execution of Project Works, procurement, construction and operations on Project Site. The Concessionaire shall take all necessary steps to protect the environment (both on and off the Project Site) and shall not cause damage and nuisance to people and property resulting from pollution, noise and other results of its operations. The

Concessionaire shall ensure that air emissions, surface discharges and effluent from the Project Site during the Concession Period shall not exceed the values prescribed by Applicable Standards.

- 7.18.2 The Concessionaire shall provide properly designed storage areas for its hazardous materials that are impermeable to leakage into the surrounding soil for storage of hazardous wastes. Such storage shall also be covered and protected from inundation and overflow by rainfall into the surrounding soil. Any hazardous materials generated during completion of the Project Works by the Concessionaire (including any of its Concessionaire Engaged Persons) shall be properly disposed off by the Concessionaire on completion of the Works. The Concessionaire shall be responsible for keeping safe and disposing any hazardous materials and any dangerous substances on the Project Site generated from time to time during performance and completion of the Project Works or brought on to the Project Site by the Concessionaire.
- 7.18.3 The Concessionaire undertakes to indemnify, defend and hold the Agency harmless from any and all liabilities, claims, damages, costs, penalties, fines, expenses, fees (including reasonable attorney's fees) and charges of any nature associated with any non-compliance by the Concessionaire of its obligations contained in Section 7.18 (*Protection of the Environment*).

7.19 **INTERNAL INFRASTRUCTURE LINKAGES**

The Concessionaire shall be responsible for internal infrastructure linkages required for the Project such as wastewater and storm water drainage at the Project Site. The Agency shall use reasonable efforts to facilitate for the provision with respective Government Authorities at no cost to itself and it shall be the Concessionaire's responsibility to fulfil any monetary or other compliances, as may be required by such Government Authorities.

7.20 **EMERGENCY DECOMMISSIONING**

- 7.20.1 In the event, during the Operations Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that warrants de-commissioning and closure to the Users of the whole or any part of the Concession Assets (the **Decommissioned Project Area**), the Concessionaire shall be entitled to de-commission and close the whole or any part of the Decommissioned Project Area, as the case may be, to the Users for so long as such Emergency and the consequences thereof warrant (the **Emergency Decommissioning**); provided, however, that such Emergency Decommissioning and the particulars thereof shall be notified by the Concessionaire to the Agency and the Independent Technical Advisor without any delay, and the Concessionaire shall diligently abide by the Applicable Standards (including the Safety Requirements) in dealing with such Emergency Decommissioning and act in accordance with the directions that the Independent Technical Advisor may issue for dealing with such Emergency Decommissioning; provided, however:
- (a) that the Independent Technical Advisor shall, within seven (7) Days from the date of the Emergency Decommissioning, certify whether such Emergency Decommissioning was warranted; and
 - (b) that the Concessionaire shall re-commission the Decommissioned Project Area, without any delay, whenever the Independent Technical Advisor either: (i) notifies the Concessionaire to re-commission the same; or (ii) certifies that such Emergency Decommissioning was not warranted.

- 7.20.2 Without prejudice to the provisions of Section 7.20.1(b), the Concessionaire hereby undertakes to re-commission the Decommissioned Project Area efficiently and in a time sensitive manner and as quickly as practicable after the circumstances leading to the Emergency Decommissioning have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Decommissioned Project Area and shall notify the Agency and the Independent Technical Advisor of the same without any delay.
- 7.20.3 The Emergency Decommissioning of the Decommissioned Project Area and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected Users by means of public announcements/notice by the Agency. The Independent Technical Advisor shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Project Area and made the same available for Users as soon as practicable upon the termination/ceasing of the circumstances that have resulted in the Emergency Decommissioning.
- 7.20.4 All expenses, charges, fees, overheads and costs of any nature and all delays, in each case, resulting from and relating to the Emergency Decommissioning shall be borne by and shall be on account of the Concessionaire; provided, however, in the event the Emergency Decommissioning results from an Agency Event of Default and/or a Force Majeure Event, the Concessionaire shall be entitled to issuance of a Relief Order Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

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

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

7.22 **ACCOUNTS AND REPORTS**

7.22.1 **APPOINTMENT OF AUDITORS**

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

7.22.2 **SPECIFIC RECORDS**

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

7.22.3 **PERIODIC REPORTS**

The Concessionaire shall in accordance with this Agreement furnish to the Agency, the Independent Technical Advisor and the Independent Auditor, the C&O Monthly Progress Report and the O&M Monthly Status Report.

The Concessionaire shall, as soon as available but in any event within sixty (60) Days of filing, furnish to the Agency, the Independent Technical Advisor and the Independent Auditor two (2) copies of all documents filed in compliance with the requirements of the Companies Act, 2017 or any other Laws.

The Concessionaire shall, as soon as available, furnish to the Agency, the Independent Technical Advisor and the Independent Auditor, a report on any factors materially and adversely affecting, or that might materially and adversely affect, the Project or the Concessionaire's business and operations.

7.22.4 REPORTING OF CHANGES

The Concessionaire shall, at least fourteen (14) Days prior to it becoming effective, report to the Agency, the Independent Technical Advisor and the Independent Auditor any contemplated: (a) material change in its memorandum and articles of association; (b) change in its fiscal year; (c) change in the constitution of its board of directors; (d) change in its chief executive officer; and (e) without prejudice to the provisions of Sections 10.2 (*Transfer Restrictions*), 10.3 (*Other Transfer Restrictions*) and 10.5 (*Procedure for Transfer*), registration of a transfer of Shares to any Person who thereby becomes a registered holder of greater than five percent (5%) of the issued Shares, or of a transfer of Shares to or from a Person or entity who, immediately prior to such transfer, held greater than five percent (5%) of the issued Shares; provided, however, that, reporting as aforesaid shall not relieve the Concessionaire from its obligations or liabilities towards any other Government Authority having jurisdiction over any such matter.

7.22.5 LISTS OF FINANCIERS AND CREDITORS

Together with the periodic reports required by Section 7.22.3 (*Periodic Reports*), the Concessionaire shall also furnish to the Agency, the Independent Technical Advisor and the Independent Auditor a list of:

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

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

7.22.6 INFORMATION REGARDING STATUTORY NOTICE/WINDING UP PROCEEDINGS

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

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

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

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

7.23 AFFIRMATIONS

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

7.23.2 Without limiting the generality of the foregoing, the Concessionaire represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Concessionaire for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of any Agency Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to any Agency Agreement or the Project from the Agency or any Government Authority, except that which has been expressly declared pursuant hereto.

7.23.3 The Concessionaire accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Concessionaire agrees in the event that any of the representations and warranties made by it in Section 7.23.1 and 7.23.2 are proved to be materially incorrect, that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Agency, be voidable and without legal effect at the option of the Agency.

7.23.4 Notwithstanding any rights and remedies that are available to and may be exercised by the Agency in this regard, the Concessionaire agrees to indemnify the Agency for any Loss or damage incurred by it on account of its corrupt business practices and further pay compensation to the Agency in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by the Concessionaire

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

7.24 **NO RELIEF FROM LIABILITY**

7.24.1 No review, non-objection or approval by the Agency, the Independent Technical Advisor, the Independent Auditor or any Government Authority of any Concession Asset or Project Works (including any agreement, document, instrument, drawing, specifications or design proposed by the Concessionaire) shall relieve the Concessionaire from any liability that it would otherwise have had for its negligence in the performance and completion of the Project Works and the Concession Assets (including preparation of an agreement, document, instrument, drawing, specification or design) or failure to comply with the Laws with respect thereto, or to satisfy the Concessionaire's obligations under the Agency Agreements, nor shall the Agency, the Independent Technical Advisor, the Independent Auditor or any Government Authority be liable to the Concessionaire or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.

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

7.25 **WITHOUT PREJUDICE**

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

8. AGENCY REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS

8.1 AGENCY REPRESENTATIONS & WARRANTIES

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

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

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

8.2 GENERAL UNDERTAKINGS

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

- (a) ensure peaceful use of the Project Site by the Concessionaire without any let or hindrance from the Agency and/or any person or Government Authority claiming through or under them;

- (b) provide reasonable assistance to the Concessionaire in procuring police assistance for removal of trespassers, removal of encroachments and security on and/or in respect of the Project;
- (c) upon written request of the Concessionaire, provide police support at and/or near the Project Site as required by the Concessionaire; and
- (d) support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of the Agency Agreements.

8.3 **SUPPORT FOR CONCESSIONAIRE PERMITS & CONDITIONS FOR CONCESSIONAIRE PERMITS**

8.3.1 Subject to the Concessionaire's timely submission of reports required by Section 7.13.2, upon request of the Concessionaire, the Agency shall support and use reasonable efforts to expedite consideration of the applications for the Concessionaire Permits or reissuance(s) thereof filed pursuant to Section 7.13 (*Concessionaire Permits*), and the timely issuance thereof or reissuance of a Concessionaire subject to a Lapse of Consent by any Government Authority. Any request for support under this Section 8.3.1 shall be made by the Concessionaire and shall be accompanied with copies of the application for the Concessionaire Permit, any notice that the issuance or reissuance of the Concessionaire Permit was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Concessionaire Permit to date.

8.3.2 The Agency or any Government Authority may attach such "*non discriminatory*" terms and conditions (as explained in Section 8.6 (*Non-Discriminatory*)) to the issuance or renewal of any of the Concessionaire Permits as are in accordance with the Laws and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Agency or a Relief Event. The Concessionaire and its Contractors shall abide by all such terms and conditions (subject to this Section 8.3.2 and provisions in this Agreement relating to Change in Law and Lapse of Consent). If the Concessionaire (including where it is acting through its Contractors) fails to abide by any term or condition of any Concessionaire Permit, then the Agency or any Government Authority may exercise any power pursuant to the Laws (provided such power is exercised in a "*non-discriminatory*" manner) in respect of such failure and (subject to this Section 8.3.2 and provisions in this Agreement relating to Change in Law and Lapse of Consent) such exercise shall not of itself constitute a breach of this Agreement by the Agency or a Relief Event; provided, however, that, with respect to all such Concessionaire Permits issued by the Agency or any Government Authority that is also a department or instrumentality of Agency, the Agency shall not, and the Agency shall ensure that no such Government Authority shall, terminate prior to its expiration date or revoke any such Concessionaire Permit until the later of (a) thirty (30) Days after delivery to the Concessionaire (or the relevant Contractor) of written notice by the Agency or such department or instrumentality of Agency of such failure and (b) the period of time, if any, that must expire under the Laws or the relevant Concessionaire Permit prior to early termination or revocation of any such Concessionaire Permit; provided, further, that nothing in this Section 8.3.2 shall limit the Agency or any Government Authority from taking any action in relation to a breach of, or non-compliance with, a Concessionaire Permit (other than termination or revocation) which it is entitled to take under the Laws (provided such action is taken in a "*non-discriminatory*" manner).

8.4 **SUPPORT FOR OBLIGATIONS**

Upon reasonable request by the Concessionaire, the Agency shall use its reasonable efforts and its good offices to support the Concessionaire's performance of its obligations under

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

8.5 **PROCEDURE**

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

8.6 **NON-DISCRIMINATORY**

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

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

The Concessionaire expressly agrees and undertakes that the Agency either directly or through Concessionaire shall have an exclusive right to demand and implement additional fees, revenues (other than Aggregate Concession Revenue) and fines on the Project in accordance with Laws on the Users.

8.8 **AGENCY REPRESENTATIVE**

8.8.1 Unless already appointed prior to the Effective Date, the Agency shall, within seven (7) Days following the Effective Date, appoint its representative duly authorized to deal on its behalf to facilitate on all matters under or arising out of or relating to the Agency Agreements (the **Agency Representative**). The Agency may, by notice in writing to the Concessionaire, substitute the Agency Representative at its discretion at any time.

8.8.2 The Agency Representative shall oversee the Day-to-Day implementation of the Project and facilitate implementation of the Project in accordance with the Agency Agreements.

8.8.3 The function of the Agency Representative shall be:

- (a) to protect the interest of Agency by ensuring through monitoring and inspecting that the progress of C&O Works and Operation and Maintenance, the supervision

of which shall be carried out by the Independent Technical Advisor, is being implemented in accordance with this Agreement, according to the Laws, Project Requirements, Good International Industry Practices and international standards;

- (b) oversee that the Concessionaire complies with all safety standards in accordance with Good International Industry Practice;
- (c) coordinate and organize services to be provided by other agencies including public utility agencies, emergency services and policing, during the construction of the Rani Bagh Facilities; and
- (d) clarify and resolve with the Concessionaire Authorized Representative, the Independent Technical Advisor, the Independent Auditor any difficulties and disputes arising pursuant to this Agreement and manage any complaints by or against third parties.

8.9 **NOT USED**

8.10 **SOVEREIGN IMMUNITY**

8.10.1 The Agency unconditionally and irrevocably:

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

8.11 **WITHOUT PREJUDICE**

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

8.12 **PROJECT MANAGEMENT/IMPLEMENTATION UNIT**

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

8.13 **AGENCY PROJECT MANAGER/PROJECT DIRECTOR**

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

9. INDEMNITIES & LIMITATION OF LIABILITIES

9.1 GENERAL INDEMNITY

9.1.1 THE CONCESSIONAIRE

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

9.1.2 THE AGENCY

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

9.1.3 JOINT NEGLIGENCE

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

9.2 ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT

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

9.3 **NOTICE AND CONTEST OF CLAIMS**

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

9.4 **DEFENSE OF CLAIMS**

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

9.4.2 Not Used.

9.4.3 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 9.4.1, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

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

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

- (a) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

- (d) the Indemnified Party shall have reasonably concluded and specifically Notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement.

Provided that if Sections 9.4.5 (b), (c) or (d) shall be applicable, then the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

9.5 **NO CONSEQUENTIAL CLAIMS**

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

9.6 **SURVIVAL ON TERMINATION**

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

9.7 **LIMITATION OF LIABILITY & INDEMNIFICATION FOR FINES AND PENALTIES**

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

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

10. FUNDING REQUIREMENTS & SHAREHOLDING MATTERS

10.1 FUNDING OF EQUITY AND COST OVERRUNS

- 10.1.1 The Concessionaire hereby undertakes to procure funding by the Sponsor(s) from time to time of the Sponsor Base Equity Amount through subscription in cash in Pakistani Rupees for Shares by the Sponsor(s) in accordance with this Agreement and the Financing Documents (if applicable). The Concessionaire shall procure that the Sponsor(s) as well as each New Sponsor executes a shareholder commitment undertaking in favour of the Agency as set out in **SCHEDULE X (SPONSOR UNDERTAKING)** (the **Sponsor Undertaking**).
- 10.1.2 All Sponsor Base Equity Amounts shall be funded and utilized from time to time for the purposes of the Project in accordance with this Agreement and the Financing Documents (if applicable). Funding and utilization of the Sponsor Base Equity Amounts shall be subject to budgeting by the Concessionaire (such budget to be approved by the Independent Auditor) and certification by the Independent Experts in the manner contemplated in **SCHEDULE N - PART I (INDICATIVE INDEPENDENT AUDITOR TERMS OF REFERENCE)** and **SCHEDULE N - PART II (INDICATIVE INDEPENDENT TECHNICAL ADVISOR TERMS OF REFERENCE)** and the Independent Technical Advisor Contract and the Independent Auditor Contract.
- 10.1.3 The Parties agree that the Maximum Liability Amount set out in the Sponsor Undertaking represents an aggregate cap on the liability of the Shareholders as set out above subject to the terms and conditions of the Sponsor Undertaking. The Parties also agree that, in the event there are multiple entities evidencing the financial and economic standing as required pursuant to the RFP, the Maximum Liability Amount of any Shareholder shall correspond to the percentage of Equity investment to be made by each Shareholder in the Concessionaire in terms of the Bid and the Financial Model; provided, that the liability of the Lead Member shall extend to the total Maximum Liability Amount applicable to the entire Consortium. This shall be without prejudice to any liabilities of the Shareholders under the Financing Documents (including the obligation to fund any Cost Overruns).
- 10.1.4 The Concessionaire shall not create any classes of shares in the Concessionaire other than the Shares without approval of the Agency.
- 10.1.5 The Concessionaire shall not offer for subscription Shares to any Person other than the Sponsor(s), save as otherwise provided in this Agreement.

10.2 TRANSFER RESTRICTIONS

- 10.2.1 Subject to Sections 10.3 (*Other Transfer Restrictions*) and 10.2.2:
- (a) up to (and including) the second (2nd) anniversary of the COD, no Sponsor shall transfer its shareholding in the Concessionaire unless such transfer is required by operation of Laws and, subject to the Law, the Transfer Criteria is complied with;
 - (b) following the second (2nd) anniversary of the COD and subject to compliance with the Transfer Criteria, any Sponsor may transfer its shareholding in the Concessionaire (the **Transferring Sponsor**) without the consent of the Agency, but with prior notice to the Agency; provided, that such transfer does not result in the Sponsor(s) (in aggregate) holding less than fifty-one percent (51%) of shareholding in the Concessionaire; and

- (c) following the second (2nd) anniversary of the COD, if any proposed transfer of shareholding by a Transferring Sponsor results in the Sponsor(s) holding (in aggregate) less than fifty-one percent (51%) shareholding in the Concessionaire, then the Transferring Sponsors shall be required to:
 - (i) comply with the Transfer Criteria; and
 - (ii) seek prior approval of the Agency.
- 10.2.2 Where the Transferring Sponsor is the Lead Member, in addition to complying with the Transfer Criteria, the following conditions shall also apply:
- (a) prior to any transfer by the Lead Member, the Lead Member confirms to the Agency in writing, that the proposed transferee shall at minimum acquire forty percent (40%) of the Shares; and
 - (b) in the sole opinion of the Agency, the proposed transferee referred to in Section 10.2.2(a), at minimum meets the qualification criteria on the basis of which a Lead Member can be qualified for the Project at the bidding stage.
- 10.2.3 For the purpose of Sections 10.2 (*Transfer Restrictions*), 10.3 (*Other Transfer Restrictions*) and 10.5 (*Procedure for Transfer*), 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 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)'s legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Shares of the Concessionaire; or (c) the Sponsor(s)'s losing the power to direct the management, policies and decisions, in each case, of the Concessionaire.
- 10.2.4 Prior to the Trigger Date, the Lead Member shall hold at least forty percent (40%) of the issued and outstanding share capital of the Concessionaire in the form of the Shares. Failure to comply with this Section 10.2.4 shall constitute a Concessionaire Event of Default.
- 10.3 **OTHER TRANSFER RESTRICTIONS**
- 10.3.1 In addition to the restrictions set out in Section 10.2 (*Transfer Restrictions*), any proposed transfer of the Shares shall be subject to the following restrictions:
- (a) the proposed transfer of Shares must comply with the Law;
 - (b) the proposed transfer of Shares must be in accordance with the terms of this Agreement;
 - (c) the Agency (through Independent Experts) 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;
 - (d) no default is continuing or will or would result from the transferee becoming a party to this Agreement; and

- (e) the Concessionaire and the Sponsor(s) have delivered certificates to the Independent Experts certifying that each of the relevant foregoing conditions has been satisfied.

10.3.2 The Concessionaire shall, refuse to recognize any purported transfer of Shares in violation of this Section 10.3 (*Other Transfer Restrictions*), or record or register any such transfer of Ordinary Shares. Any transfer made in breach of this Section 10.3.2 shall be null and void.

10.3.3 Subject to Section 10.5 (*Procedure for Transfer*), notwithstanding any transfer of Shares pursuant to this Section 10.3 (*Other Transfer Restrictions*) or otherwise, each remaining Sponsor(s) shall remain fully liable for all its obligations under this Agreement.

10.4 **UNDERTAKINGS**

10.4.1 No later than ninety (90) Days after the execution of this Agreement, the restrictions imposed under Sections 10.2 (*Transfer Restrictions*) and 10.3 (*Other Transfer Restrictions*) shall be recorded in the constitutional documents (so as to effectively constitute restrictions thereunder) of the Concessionaire and noted on all share certificates (if any) in respect of Shares issued by the Concessionaire to the Sponsor(s).

10.5 **PROCEDURE FOR TRANSFER**

10.5.1 On the date of any transfer of any Shares, the Concessionaire and the Transferring Sponsor shall procure that the New Sponsor shall duly execute and deliver the Sponsor Undertaking, which shall be 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:

- (a) (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 Concessionaire;
- (b) (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 Sponsor Undertaking;
- (c) a legal opinion (in form and substance and from a counsel satisfactory to the Concessionaire) 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 (i) to (iv) below (as applicable) confirming (as to the New Sponsor) that:
 - (i) the New Sponsor has the capacity to execute the Sponsor Undertaking (and any other documentation required to be signed by the New Sponsor in connection with such transfer);
 - (ii) the New Sponsor's signatory (or signatories), if any, have been duly authorized;
 - (iii) (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;

- (iv) 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
 - (v) 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);
- (d) (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
- (e) (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 statutory auditors (or such other firm of independent accountants of recognized international standing approved by the Concessionaire).

10.5.2 Subject to the satisfaction of the conditions in Sections 10.2 (*Transfer Restrictions*) and 10.5 (*Procedure for Transfer*), the Concessionaire, the Sponsor(s) and the New Sponsor shall execute the Sponsor Undertaking and deliver the documents referred to in Section 10.5.1.

10.5.3 Upon any transfer permitted by this Section 10.5 (*Procedure for Transfer*), the Transferring Sponsor shall be released from its obligations under this Agreement to the extent such obligations are assumed by a New Sponsor.

10.6 **PUBLIC LISTING OF THE CONCESSIONAIRE**

On a best-efforts basis and subject to: (a) the consent of the Financiers; (b) the commercial considerations of the Concessionaire and its stakeholders; and (c) the Laws, the Concessionaire shall make all necessary plans and arrangements to publicly list itself on the stock market within five (5) years of the COD so that the shares of the Concessionaire are available to general public as an investment option.

11. C&O PERFORMANCE SECURITY & O&M PERFORMANCE SECURITY

11.1 NOT USED

11.2 C&O PERFORMANCE SECURITY

11.2.1 Prior to the Effective Date, the Concessionaire has provided and delivered to the Agency the C&O Performance Security. The C&O Performance Security:

- (a) has been issued and maintained without any recourse on the Concessionaire, its assets or properties;
- (b) has not been secured through any Concession Assets and no Encumbrance of any nature has been created on the assets and properties of the Concessionaire in respect of the same.

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

11.2.2 The C&O Performance Security shall secure:

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

11.2.3 The C&O Performance Security shall come into force and shall become effective upon issuance and delivery of the same to the Agency.

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

11.2.5 The Concessionaire shall be obligated to adjust the C&O Performance Security from time to time to reflect any amounts payable by the Agency pursuant to Article 16 (*Change of Scope*), such increase being an amount equal to two percent (2%) of the amounts payable to the Concessionaire from time to time in accordance with Article 16 (*Change of Scope*). In addition, the C&O Performance Security shall be adjusted, as condition precedent to issuance of the Final Completion Certificate, prior to the Final Completion Date so that it is equal in value to two percent (2%) of the Total Project Cost less the aggregate of any encashments made by the Agency prior to the date of adjustment.

11.2.6 The Concessionaire shall be obligated to maintain and keep valid the C&O Performance Security until the date falling twenty-four (24) months following Substantial Completion

Date (the **C&O Performance Security Expiry Date**), as evidenced by a certificate jointly issued by the Independent Technical Advisor and the Independent Auditor. In the event the C&O Performance Security expires prior to the C&O Performance Security Expiry Date, the Concessionaire shall extend the validity of the C&O Performance Security, at least fifteen (15) Business Days prior to its expiry, so as to keep it valid and enforceable until the C&O Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of the C&O Performance Security in accordance with this Section 11.2.6, the Agency shall have the right to encash the C&O Performance Security at any time to its full outstanding value.

11.2.7 Upon the issuance of a certificate jointly issued by the Independent Technical Advisor and the Independent Auditor evidencing the occurrence of C&O Performance Security Expiry Date, the C&O Performance Security shall be null and void and shall be returned to the Concessionaire by the Agency within ten (10) Business Days of receipt by the Agency of the afore-stated certificate.

11.3 **O&M PERFORMANCE SECURITY**

11.3.1 The Concessionaire hereby undertakes to procure issuance and delivery to the Agency of the O&M Performance Security from time to time in accordance with this Section 11.3 (*O&M Performance Security*).

11.3.2 The Concessionaire shall deliver the O&M Performance Security to the Agency at least ninety (90) Days prior to the C&O Performance Security Expiry Date. Following the C&O Performance Security Expiry Date, and until the Trigger Date, the Concessionaire shall replace the O&M Performance Security thirty (30) Days prior to commencement of each Operational Year. Each O&M Performance Security shall become effective simultaneously upon issuance.

11.3.3 Not Used.

11.3.4 The O&M Performance Security:

- (a) shall be issued and maintained without any recourse on the Concessionaire, its assets or properties;
- (b) shall not be secured through any Concession Assets and no Encumbrance of any nature shall be created on the assets and properties of the Concessionaire in respect of the same.

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

11.3.5 The O&M Performance Security shall secure:

- (a) all of the Sponsor(s)'s obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Agency Agreements to which it is a party; and
- (b) all of the Concessionaire's obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Agency Agreements, including the integrity and quality of the Concessionaire's and its Contractors' workmanship, the timely and continuous performance of the

Project Works during the Operations Period, the quality and quantity of any equipment, materials, items and components supplied, the performance of Project Works during the Operations Period by the Concessionaire and compliance of the same with the Applicable Standards and all other works and services to be provided by the Concessionaire under the Agency Agreements.

- 11.3.6 The O&M Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Agency's first written demand without any prior notice, reference or recourse to the Concessionaire, the Sponsor(s) or any other entity.
- 11.3.7 The O&M Performance Security provided by the Concessionaire in respect of an Operational Year shall remain in force and effect until the date that falls on the expiry of such Operational Year subject to receipt by the Agency of a fully valid and effective O&M Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the **O&M Performance Security Expiry Date**). In the event an O&M Performance Security is to expire prior to the O&M Performance Security Expiry Date, the Concessionaire shall extend the validity of the O&M Performance Security, at least fifteen (15) Business Days prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Security Expiry Date. In the event of failure by the Concessionaire to keep valid or extend the validity of any O&M Performance Security in accordance with this Section 11.3.7, the Agency shall have the right to encash such O&M Performance Security at any time prior to its expiry to its full outstanding value.
- 11.3.8 Upon the delivery and commencement of an O&M Performance Security for an Operational Year (the **New O&M Performance Security**) to the Agency by the Concessionaire in accordance with this Section 11.3 (*O&M Performance Security*) on or prior to the commencement of such Operational Year, the previous O&M Performance Security issued for the previous Operational Year shall be null and void and shall be returned to the Concessionaire by the Agency simultaneously with the provision of the New O&M Performance Security.
- 11.3.9 Notwithstanding anything to the contrary, the Concessionaire hereby undertakes and agrees that the O&M Performance Security shall remain valid:
- (a) in case of Termination, at least for one (1) year after the Termination Notice has been issued;
 - (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date.

12. DESIGN

12.1 CONSTRUCTION DOCUMENTS

- 12.1.1 The Concessionaire shall be responsible for preparing the Construction Documents in a manner consistent with the Design Requirements and other provisions of this Agreement, Good International Industry Practices, the Environmental Standards and in accordance with any other relevant Law.
- 12.1.2 The Construction Documents shall be prepared in English language.
- 12.1.3 Within five (5) Months of the Effective Date, the Concessionaire shall prepare, and submit to the Independent Technical Advisor (with a copy to the Agency) for its approval, the proposed Detailed Engineering Design and the proposed Construction Drawings, in batches for each Segment (the **Proposed Construction Documents**). Within thirty (30) Days of receipt thereof, the Independent Technical Advisor shall review the Proposed Construction Documents, and (following consultation with the Agency), either approve the Proposed Construction Documents or reject the Proposed Construction Documents and convey comments/observations (if any) relating to the same, to the Concessionaire; provided, that the Independent Technical Advisor may only refuse to approve the Proposed Construction Documents if the same fail to comply with the requirements of Section 12.1.1.
- 12.1.4 In the event no comments in relation to the Proposed Construction Documents are provided by the Agency in accordance with Section 12.1.3 within the thirty (30) Day review period, it shall be deemed that (a) the Agency has no comments in relation to the Proposed Construction Documents, and (b) consultation by the Independent Technical Advisor with the Agency has already been undertaken.
- 12.1.5 The Concessionaire shall (at its own cost and expense) re-submit the revised Proposed Construction Documents no later than five (5) Days from receipt of the rejection and/or comments/observations under Section 12.1.3, and the approval process under this Section 12.1 (*Construction Documents*) shall be repeated until all comments/observations are addressed and the Proposed Construction Documents have been approved.
- 12.1.6 If any errors, omission, ambiguities, inconsistencies, inadequacies, or other defects are found in the Construction Documents, such Construction Documents and any resultant error in the construction and rehabilitation of the Rani Bagh Facilities shall be corrected at the Concessionaire's cost, notwithstanding any consent or approval under this Section 12.1 (*Construction Documents*).
- 12.1.7 Unless the Independent Technical Advisor (after consulting the Agency) permits, the Concessionaire shall not commence any construction activities for the Rani Bagh Facilities until the Proposed Construction Documents have been approved in terms of this Section 12.1 (*Construction Documents*).

13. C&O WORKS

13.1 C&O WORKS

- 13.1.1 The Concessionaire shall commence the C&O Works in accordance with the Applicable Standards and shall perform and complete the same in accordance with the C&O Time For Completion; provided, however, all Preliminary Works forming part of C&O Works (if any) shall commence in accordance with the mutual agreement between the Parties. The Concessionaire shall immediately upon commencement of the C&O Works Notify the Agency, the Independent Technical Advisor and the Independent Auditor of the same.
- 13.1.2 The Concessionaire shall perform the C&O Works in accordance with the Applicable Standards and shall ensure that the same complies with the Applicable Standards.
- 13.1.3 Without limiting the provisions of Section 13.1.2, the Concessionaire shall be in particular responsible for the performance and compliance, in each case, of the C&O Works with the C&O Requirements.
- 13.1.4 The Concessionaire shall perform the C&O Works within the C&O Time For Completion and hereby undertakes to perform and complete each Project Construction Milestone on or prior to its Project Construction Milestone Date.
- 13.1.5 The Concessionaire shall perform the C&O Works either itself, or through the EPC Contractor(s) and O&M Contractor(s) appointed in accordance with the terms of this Agreement; provided, however, the Concessionaire shall remain solely responsible and liable for performance (within C&O Time For Completion) and compliance of the C&O Requirements with the Applicable Standards irrespective of whether the C&O Works are undertaken by the Concessionaire or the EPC Contractor(s).

13.2 C&O PROGRAMME

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

- (f) all major events and activities in the preparation of the C&O Monthly Progress Reports and submission of the same to the Agency, the Independent Technical Advisor and/or the Independent Auditor (as applicable) for review and approval (as applicable).
- 13.2.2 Within fourteen (14) Days of the receipt of the Proposed C&O Programme by the Independent Technical Advisor, the Independent Technical Advisor shall finalize its comments on the same and shall ensure the incorporation of its comments and submit the same to the Agency. The Agency shall prior to granting its approval in respect of the Proposed C&O Programme, within fifteen (15) Days of the Independent Technical Advisor's request for the same, revert to the Independent Technical Advisor in respect of any observations and comments that it may have, if any; provided, however, that the approval of the Proposed C&O Programme shall be granted by Agency within fifteen (15) Days of the Independent Technical Advisor's request for such approval if the Proposed C&O Programme is recommended by the Independent Technical Advisor for approval after addressing any comments and observations of the Agency on the same. However, in the event the Agency fails to grant its approval of the Proposed C&O Programme within fifteen (15) Days following the receipt of such request by the Agency from the Independent Technical Advisor, the approval of the Agency for the Proposed C&O Programme shall be deemed accorded. The Proposed C&O Programme, as approved by the Agency on the Independent Technical Advisor's recommendation, shall be binding on the Parties (the **C&O Programme**); provided, however, that the C&O Programme may be amended from time to time by the mutual agreement between the Parties and the Independent Technical Advisor.
- 13.2.3 The Concessionaire shall, whenever required by the Agency, the Independent Technical Advisor and/or the Independent Auditor, provide in writing, a general description of the arrangements and methods which the Concessionaire proposes to adopt for the execution of the C&O Works. Any alteration to such arrangements and methods shall be made by the Concessionaire with prior written consent of the Independent Technical Advisor and the Agency.
- 13.2.4 Any reports (including the C&O Monthly Progress Reports) submitted by the Concessionaire and covering the execution of the C&O Works shall emphasize any delays in the C&O Time For Completion.
- 13.3 **TRAFFIC FLOW & SAFETY**
- 13.3.1 Following commencement of the C&O Works, the Concessionaire shall ensure that the existing roads around the Project Site remain open to traffic and that the traffic flow is safe at all times during the C&O Period in accordance with the Applicable Standards. The Concessionaire shall ensure minimal disruption in traffic on the existing roads and lanes situated around the Project Site.
- 13.3.2 The Concessionaire undertakes to perform the C&O Works in such manner as to ensure compliance with the obligation set out in Section 13.3.1.
- 13.4 **C&O TESTS**
- 13.4.1 The Concessionaire shall conduct or procure to be conducted such tests, as specified in **SCHEDULE G (LIST OF TESTS & COMPLETION TESTS)** in order to determine whether the C&O Works conform to the Applicable Standards (the **C&O Tests**). The C&O Tests shall be conducted at such time and frequency and in such manner as may be specified by

the Independent Technical Advisor.

- 13.4.2 The Concessionaire hereby undertakes to conduct the C&O Tests under the supervision of the Independent Technical Advisor and the Agency and in accordance with the Applicable Standards at its own cost and expense, provided however, in the event during the C&O Period the Agency determines that the C&O Works are not in accordance the C&O Requirements then the Agency shall conduct separate tests to determine the quality of the C&O Works. In the event it is determined that the C&O Works are not in accordance with the C&O Requirements (as determined by the Independent Technical Advisor) the Concessionaire shall repair and/or rectify the same and the cost of such tests shall be borne by the Concessionaire; provided however in the event it is determined that the C&O Works are in accordance with the C&O Requirements (as determined by the Independent Technical Advisor), the cost of such tests shall be borne by Agency.
- 13.4.3 The Concessionaire hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the Defects & Deficiencies in the C&O Works and/or the Concession Assets that are identified in the C&O Tests and to ensure that as a consequence of such remedial measures the C&O Works and the Concession Assets conform to the Applicable Standards. The Concessionaire further undertakes that the remedial measures required to be undertaken by the Concessionaire pursuant to this Section 13.4.3 shall be repeated by the Concessionaire at its sole cost till such time as the C&O Works and the Concession Assets conform to the Applicable Standards as verified by the Independent Technical Advisor. In the afore-stated circumstances, the Independent Technical Advisor may require the Concessionaire to conduct additional tests to determine whether the Defects & Deficiencies are rectified and in such case the costs of such additional tests shall be borne by the Concessionaire.
- 13.4.4 The Concessionaire shall maintain proper record of the C&O Tests and the remedial measures taken to cure the Defects & Deficiencies, if any, indicated by the C&O Test results.
- 13.4.5 Results of all C&O Tests shall be jointly recorded by the Independent Technical Advisor, the Concessionaire and the EPC Contractor.

13.5 **C&O MONTHLY PROGRESS REPORTS**

- 13.5.1 Commencing from the Commencement Date and until issuance of the Final Completion Certificate, the Concessionaire shall, no later than ten (10) Days after the end of each calendar month, furnish to the Agency, the Agency Representative, the Independent Auditor and the Independent Technical Advisor a monthly report (the **C&O Monthly Progress Report**) stating in reasonable detail the status and condition of the C&O Works and the Concession Assets including its compliance or otherwise with the Applicable Standards and shall promptly give such other relevant information as may be required by the Independent Technical Advisor, the Independent Auditor and/or and the Agency. In particular, the C&O Monthly Progress Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the C&O Works and/or the Concession Assets that require rectification and any delays in the C&O Time For Completion. The C&O Monthly Progress Report shall also expressly highlight all Defects & Deficiencies in the C&O Works and/or the Concession Assets identified by the Independent Technical Advisor in its C&O Inspection Report and shall set out all actions taken, and arrangements made by the Concessionaire for remedying the same.
- 13.5.2 Each C&O Monthly Progress Report shall be updated by the Concessionaire based on any observations and comments made by the Independent Technical Advisor and/or the Agency and shall be provided again to each of the Agency and the Independent Technical

Advisor until such time that it is approved by the Independent Technical Advisor; provided, that the Independent Technical Advisor shall not accord its approval of the C&O Monthly Progress Report until it is satisfied that all reasonable comments and observations of the Agency on the C&O Monthly Progress Report are addressed.

- 13.5.3 The C&O Monthly Progress Report shall be in the form approved by the Independent Technical Advisor from time to time

13.6 **C&O INSPECTION REPORT**

- 13.6.1 Commencing from the appointment of the Independent Technical Advisor and until the issuance of the Final Completion Certificate, the Concessionaire shall procure that the Independent Technical Advisor inspects the C&O Works and the Concession Assets at least once a month and shall make all arrangements for the same.

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

- 13.6.3 The Independent Technical Advisor shall, within ten (10) Days of commencement of a month, provide a copy of the C&O Inspection Report to the Concessionaire and the Agency.

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

- 13.6.5 The inspection or submission of the C&O Inspection Report by the Independent Technical Advisor shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.7 **DELAYS DURING CONSTRUCTION**

In the event the Concessionaire fails to achieve any Project Construction Milestone or the Independent Technical Advisor shall have reasonably determined that the rate of progress of C&O Works is such that the Project cannot achieve Final Completion on or before the Scheduled Final Completion Date then the Independent Technical Advisor shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within seven (7) Days of such notice, inform the Independent Technical Advisor in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress and the period within which it shall achieve the Final Completion by the Scheduled Final Completion Date and the Substantial Completion by the Scheduled Substantial Completion Date.

14. COMPLETION

14.1 COMPLETION TESTS

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

14.2 SCHEDULED SUBSTANTIAL COMPLETION DATE

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

14.3 SEGMENT SUBSTANTIAL COMPLETION DATE

The Concessionaire hereby guarantees that the Segment Substantial Completion for each Segment shall be achieved in accordance with the provisions of the Applicable Standards and that the Segment Substantial Completion Date for each Segment shall occur on or before the Scheduled Segment Substantial Completion Date for such relevant Segment.

14.4 SEGMENT SUBSTANTIAL COMPLETION CERTIFICATE

- 14.4.1 The Completion Tests shall be conducted in accordance with the provisions of Section 14.1 (*Completion Tests*) and **SCHEDULE G (LIST OF TESTS & COMPLETION TESTS)**.
- 14.4.2 The Independent Technical Advisor shall, at the request of the Concessionaire, issue a Segment Substantial Completion Certificate(s) for particular Segment(s) if the Completion Tests applicable to the Segment Substantial Completion for the relevant Segment are

successful though certain works or things forming part thereof are outstanding and not yet complete. In such an event, each Segment Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Technical Advisor and the Concessionaire; provided, that the Independent Technical Advisor shall not withhold the Segment Substantial Completion Certificate(s) for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Agency (as established by the Independent Technical Advisor). The Independent Technical Advisor shall set out the date in each Segment Substantial Completion Certificate on which the Completion Tests applicable to the Segment Substantial Completion are successfully passed (the **Segment Substantial Completion Date**) and Segment Substantial Completion is achieved.

14.4.3 The Parties hereto expressly agree that a Segment Substantial Completion Certificate under this Section 14.4 (*Segment Substantial Completion Certificate*) shall, upon request of the Concessionaire to this effect, be issued by the Independent Technical Advisor, if the Segment Substantial Completion Criteria has been met, the Completion Tests applicable to the Segment Substantial Completion are successfully passed, the O&M Manual has been approved in terms of Section 19.7 (*O&M Manual*) and if the movement and safety of the Users is not affected, as determined by the Independent Technical Advisor (the **Segment Substantial Completion**). Upon issuance of such Segment Substantial Completion Certificate in terms of this Section 14.4.3, the Segment Substantial Completion shall be achieved.

14.5 **SUBSTANTIAL COMPLETION CERTIFICATE**

14.5.1 The Completion Tests shall be conducted in accordance with the provisions of Section 14.1 (*Completion Tests*) and **SCHEDULE G (LIST OF TESTS & COMPLETION TESTS)**.

14.5.2 The Independent Technical Advisor shall, at the request of the Concessionaire, issue a Substantial Completion Certificate if the Completion Tests applicable to the Substantial Completion are successful though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Technical Advisor and the Concessionaire (the **Completion Check List**); provided, that the Independent Technical Advisor shall not withhold the Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Agency (as determined by the Independent Technical Advisor). The Independent Technical Advisor shall set out the date in the Substantial Completion Certificate on which the Completion Tests applicable to the Substantial Completion are successfully passed (the **Substantial Completion Date**) and Substantial Completion is achieved.

14.5.3 The Parties hereto expressly agree that a Substantial Completion Certificate under this Section 14.5 (*Substantial Completion Certificate*) shall, upon request of the Concessionaire to this effect, be issued by the Independent Technical Advisor, if the Substantial Completion Criteria has been met, the Completion Tests applicable to the Substantial Completion are successfully passed and if the movement and safety of the Users is not affected, as determined by the Independent Technical Advisor (the **Substantial Completion**). Upon issuance of such Substantial Completion Certificate in terms of this Section 14.5.3, the Substantial Completion shall be achieved.

14.6 **COMPLETION CHECK LIST & FAILURE TO ACHIEVE SEGMENT SUBSTANTIAL COMPLETION AND/OR SUBSTANTIAL COMPLETION**

14.6.1 Notwithstanding that the Substantial Completion Certificate or Segment Substantial Completion Certificate shall be signed by the Independent Technical Advisor, the Completion Check List shall be jointly signed by the Independent Technical Advisor and the Concessionaire as a confirmation of the outstanding works, actions and things required to be completed by the Concessionaire in line with the relevant Project Requirements (the **Completion Check List Items**).

14.6.2 The Concessionaire undertakes to complete all Completion Check List Items by the date(s) determined by the Independent Technical Advisor and set out in the Segment Substantial Completion Certificate(s) for each relevant Segment (the **Scheduled Segment Construction Completion Date(s)**); provided, however, the Parties agree that the Scheduled Construction Completion Date shall not be determined by the Independent Technical Advisor to fall on any date that falls ninety (90) Days following the last Segment Substantial Completion Date.

14.6.3 The Concessionaire undertakes to complete all Completion Check List Items by the date determined by the Independent Technical Advisor and set out in the Substantial Completion Certificate (the **Scheduled Final Completion Date**); provided, however, the Parties agree that the Scheduled Final Completion Date shall not be determined by the Independent Technical Advisor to fall on any date that falls ninety (90) Days following the Substantial Completion Date.

14.6.4 The Concessionaire shall be liable for payment of C&O Period Damages to the Agency in the event the Concessionaire fails to achieve Segment Substantial Completion for any one or more Segments on or prior to the relevant Scheduled Segment Substantial Completion Dates. In the event the Concessionaire fails to achieve Segment Substantial Completion for any one or more Segments within a period of one hundred and twenty (120) Days from the relevant Scheduled Segment Substantial Completion Date for such Segment(s), then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the Agency may, at its sole discretion and without prejudice to its other rights and remedies available under the Agency Agreements, Terminate this Agreement in accordance with Article 23 (*Termination*).

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

14.7 **C&O PERIOD DAMAGES**

14.7.1 In the event the Concessionaire fails to achieve Segment Substantial Completion for any one or more Segment(s) by the relevant Scheduled Segment Substantial Completion Date for such Segment(s) or Substantial Completion by the Scheduled Substantial Completion Date, then, in each case, the Concessionaire shall pay to the Agency damages:

- (a) in case of delay in achieving Segment Substantial Completion, an amount equal to Segment Substantial Completion Delay Amount per Day of delay in achievement of Segment Substantial Completion;
 - (b) in case of delay in achieving Substantial Completion, an amount equal to Substantial Completion Delay Amount per Day of delay in achievement of Substantial Completion,
- ((a) and (b) together referred to as the **C&O Period Damages**);

provided that such C&O Period Damages shall not exceed, in aggregate, the amount of the Construction Performance Security.

14.7.2 All C&O Period Damages becoming due and payable by the Concessionaire in terms of this Section 14.7 (*C&O Period Damages*) shall be invoiced by the Agency to the Concessionaire and shall become due and payable on the date falling thirty (30) Days following the Concessionaire's receipt of such invoice (the **C&O Period Damages Payment Date**). In the event of failure by the Concessionaire to pay the C&O Period Damages to the Agency by the C&O Period Damages Payment Date, the Agency shall have the right to encash the C&O Performance Security in an amount equal to the C&O Period Damages. Notwithstanding anything contained herein, the recovery of C&O Period Damages under this Section 14.7.2 shall be without prejudice to the rights of the Agency under the Agency Agreements.

14.7.3 The Parties agree that it is entirely possible to predetermine the actual loss that may be suffered by the Agency and the amounts of C&O Period Damages provided under this Section 14.7 (*C&O Period Damages*) are not by way of a fine or penalty and constitute the actual loss suffered by the Agency.

14.7.4 **FINAL COMPLETION CERTIFICATE**

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

14.8 **FINAL COMPLETION DATE**

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

14.8.2 For avoidance of doubt, the Parties hereby agree that in the event the Substantial Completion Certificate is issued prior to the Scheduled Substantial Completion Date, the Concession Period shall remain the same.

14.9 **SCHEDULED FINAL COMPLETION DATE**

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

14.10 **NOT USED**

14.11 **TITLE TO PROJECT SITE, C&O WORKS AND CONCESSION ASSETS**

14.11.1 The Agency shall retain all rights and title to the Project Site throughout the Concession Period. Subject to the terms of this Agreement, the Concessionaire has, and shall have, no title to, ownership interest in or lien over, the Project Site nor shall it create any Encumbrance with respect thereto (except as otherwise expressly permitted in terms of this Agreement).

14.11.2 Subject to Section 14.11.1, the Concessionaire shall retain all legal and beneficial rights and ownership of the Concession Assets (including the C&O Works) as and when the same are performed and/or completed until the Transfer Date.

14.11.3 On the Transfer Date and subject to:

- (a) payment of the Termination Payment in accordance with Section 23.5 (*Termination Payments*);
- (b) resolution of Disputes (if any);
- (c) consent of the Financiers, during the period the Financing Due is outstanding; and
- (d) settlement of outstanding payments and accounts of the Concessionaire with regards to any due and payable payments under this Agreement, as verified by the Independent Technical Advisor and Independent Auditor,

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

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

15. RELIEF EXTENSIONS & RELIEF COMPENSATIONS

15.1 **NOT USED**

15.2 **RELIEF EVENTS**

15.2.1 The Concessionaire shall be only entitled to initiate a request to the Independent Technical Advisor and Independent Auditor (the **Relief Order Request**) for issuance of a Relief Order, jointly, relating to, as applicable, an extension of the Time For Completion and/or payment of Relief Event Compensation Amount by the Agency in the event of occurrence of the following event and circumstances as certified by the Independent Technical Advisor (the **Relief Events**):

- (a) a PFME; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and/or to Relief Event Compensation Amount that, in each case, directly result from the PFME and as are determined by the Independent Technical Advisor and Independent Auditor in the Relief Order;
- (b) an Emergency Decommissioning directly resulting from an Agency Event of Default or a PFME; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and/or to Relief Event Compensation Amount that, in each case, directly result from Emergency Decommissioning caused by a PFME and as are determined by the Independent Technical Advisor and Independent Auditor in the Relief Order;
- (c) the occurrence of the Archeological Event; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays and/or to Relief Event Compensation Amount that, in each case, directly result from the Archeological Event and as are determined by the Independent Technical Advisor and Independent Auditor in the Relief Order;
- (d) an NPFME; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays that directly result from the NPFME and as are determined by the Independent Technical Advisor and Independent Auditor in the Relief Order;
- (e) an Emergency Decommissioning directly resulting from an NPFME; provided, that the Concessionaire shall be entitled to only an extension in Time For Completion for any delays that directly result from Emergency Decommissioning caused by a NPFME and as are determined by the Independent Technical Advisor and Independent Auditor in the Relief Order; and
- (f) a delay caused as a result of Suspension, provided that such Suspension is caused due to a Relief Event; the Concessionaire shall be entitled to an extension in Time For Completion for any delays and/or to Relief Event Compensation Amount that directly result from such delay due to Suspension, as determined by the Independent Technical Advisor and the Independent Auditor in the Relief Order,

provided, that each event enumerated above shall only be categorized as a Relief Event if and to the extent that in any such case: (i) in the opinion of the Independent Experts, it materially and adversely impairs the ability of the Concessionaire, the Sponsor(s), or any Contractor to perform their respective obligations under the Agency Agreements and/or the Project Agreements; and (ii) such event or circumstance is not the direct or indirect result of a breach by the Concessionaire (or its Contractors) or the Sponsor(s) of any of their

obligations under the Agency Agreements and/or the Project Agreement, or any negligent act or omission by the Concessionaire, the Contractors or the Sponsor(s).

- 15.2.2 If due to the occurrence of a Relief Event the Concessionaire is entitled to initiate a Relief Order Request, the Concessionaire shall prepare and deliver to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency) a Relief Order Request, together with the Relief Order Proposal that is prepared in accordance with and is subject to Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time For Completion*). Each Relief Order Request prepared in accordance with Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time For Completion*) shall specifically set out in detail the events and circumstances constituting the Relief Event, together with all supporting satisfactory documentary evidence relating thereto.
- 15.2.3 Following submission to the Independent Technical Advisor and the Independent Auditor of a Relief Order Request pursuant to Section 15.2.2, the Independent Technical Advisor and the Independent Auditor shall proceed in accordance with Section 15.4 (*Relief Order Procedure*) and Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time For Completion*).
- 15.2.4 Notwithstanding anything to the contrary, the Parties agree that the Concessionaire shall not be entitled to any extensions of Time For Completion and/or Relief Event Compensation Amount, as applicable, due to occurrence of a Relief Event, until such time the same is determined by the Independent Technical Advisor and the Independent Auditor and set out in the Relief Order issued by the same in accordance with this Agreement; provided, further, that the Independent Technical Advisor certifies that the Concessionaire has no space for parallel or alternate sequencing of works available for carrying out its obligations within the prescribed timelines and until the Concessionaire has proved to have made all its efforts to avoid such Relief Event according to Good International Industry Practices.

15.3 **NOT USED**

15.4 **RELIEF ORDER PROCEDURE**

- 15.4.1 In case the Concessionaire submits a Relief Order Request to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency) pursuant to Section 15.2 (*Relief Events*) then prior to the Independent Auditor and the Independent Technical Advisor issuing a Relief Order, the Concessionaire shall prepare and submit to the Independent Auditor and the Independent Technical Advisor (with a copy to the Agency), as soon as practicable, a detailed proposal (the **Relief Order Proposal**) containing:
- (a) a description of the proposed work to be performed and a detailed programme for its execution;
 - (b) the Concessionaire's proposal for any necessary modifications to the C&O Programme and/or the O&M Programme, as applicable;
 - (c) the Concessionaire's proposal for any Relief Event Compensation Amount and any adjustments to Time For Completion and/or any Project Milestone Date, accompanied by detailed pricing and documentary evidence;
 - (d) a statement whether and the extent to which, in Concessionaire's opinion, the proposed proposals contained in the Relief Order Proposal would, notwithstanding

the exercise of all due skill and care, result in defective Project Works or prevent the Concessionaire from performing its obligations under the Agreement, including defects liability,

provided, however, each Relief Order Request and Relief Order Proposal submitted by the Concessionaire that proposes an extension to Time For Completion or any Project Milestone Date for a Project Milestone shall be additionally subject to the provisions and requirements of Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time For Completion*);

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

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

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

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

15.4.3 Following receipt by the Independent Technical Advisor and the Independent Auditor from the Concessionaire of the Relief Order Proposal and the Relief Order Request, the Independent Technical Advisor and the Independent Auditor shall review the Concessionaire's proposals contained in the Relief Order Proposal and the Relief Order Request, for the purpose of determining:

- (a) the occurrence and subsistence of the Relief Event and the Concessionaire's entitlement to issuance of the Relief Order Request;

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

15.4.4 Following the Independent Technical Advisor and the Independent Auditor's determination of matters set out in Section 15.4.3 (together with any other matters relating to their evaluation for issuance for Relief Order), the Independent Technical Advisor and the Independent Auditor shall either amend, approve or disapprove in writing the Concessionaire's submitted proposals contained in the Relief Order Proposal and the Relief Order Request within twenty-one (21) Days following receipt by the Independent Technical Advisor and the Independent Auditor from the Concessionaire of the Relief Order Proposal and the Relief Order Request. If the Independent Technical Advisor and the Independent Auditor amend, modify or reject the Relief Order Proposal and the Relief Order Request, in each case, submitted by the Concessionaire, the Concessionaire shall submit a revised Relief Order Proposal and Relief Order Request taking into account the amendments, modifications and comments on the same made by the Independent Technical Advisor and the Independent Auditor, which shall be subject to approval by the Independent Technical Advisor and the Independent Auditor within twenty-one (21) Days of submission of the revised Relief Order Proposal and the Relief Order Request. In the event of the Independent Technical Advisor and the Independent Auditor's approval of the Relief Order Proposal and the Relief Order Request or, if applicable, a revision of the same approved by the Independent Technical Advisor and the Independent Auditor, it is agreed that the Independent Technical Advisor and the Independent Auditor shall jointly issue a written order of Relief Order to the Agency and the Concessionaire simultaneously. All extensions in Time For Completion and in any Project Milestone Date for achievement of a Project Milestone and all Relief Event Compensation Amount, as applicable, shall be expressly set out in the Relief Order and shall be (subject to Section 15.6 (*Disputes and Burden of Proof*)) binding on the Parties; provided, however, that such extensions in Time For Completion and in any Project Milestone Date for achievement of a Project Milestone and the Relief Event Compensation Amount set in the Relief Order shall not be in excess of the Concessionaire's request under the Relief Order Proposal and the Relief Order Request.

15.4.5 The Relief Event Compensation Amount shall be paid by the Agency by means of one or more of the following methods (in its discretion):

- (a) a decrease of the Agency Revenue Share;
- (b) by way of an adjustment of the Applicable Charges;
- (c) through the payment of a lump-sum amount or staggered payments;
- (d) an extension of the term of (i) the Concession Period; (ii) the C&O Period; and/or (iii) any duties and obligations of the Concessionaire under this Agreement; and/or
- (e) any other form agreed by the Parties,

provided, that in the event the quantum of the Relief Event Compensation Amount is such that (a) payment of fixed O&M Costs set out in the then current Financial Model, (b) payment of any required taxes, and/or (c) funding of payments under the Financing Documents, is impacted, then payment for such costs (or any of them) (as applicable) shall be made by the Agency in accordance with Section 15.4.5(c) above. Any remaining components of the Relief Event Compensation Amount may be paid by the Agency through any of the modes stated in this Section 15.4.5 above.

15.4.6 Subject to the terms of this Agreement, the Project Works shall not be delayed pending the issuance of a Relief Order by the Independent Auditor and the Independent Technical Advisor or by the granting of an extension of Time For Completion or payment of Relief Event Compensation Amount.

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

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

15.5.2 Any Relief Order Proposal and/or, if applicable, the Relief Order Request submitted by the Concessionaire shall be subject to the Concessionaire otherwise being ready to progress with the aspect of the Project Works for which an extension is being sought. In the event the Concessionaire is in any event delayed in the performance of its obligations due to reasons other than the Relief Event, the Concessionaire shall not be granted any extension of Time For Completion to the extent of its delay.

15.5.3 In all cases where the Concessionaire submits a Relief Order Proposal and the Relief Order Request, the Concessionaire shall consult with the Agency, the Agency Representative, the Independent Technical Advisor and the Independent Auditor in order to determine steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Concessionaire shall thereafter comply with all reasonable instructions that the Independent Technical Advisor and the Independent Auditor shall give in order to overcome or minimize such delay.

15.5.4 If the Concessionaire intends to initiate a Relief Order Request for issuance of a Relief Order for an extension of Time For Completion, the Concessionaire shall give Notice to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency) of such intention as soon as possible and in any event within seven (7) Days of the Day the Concessionaire should reasonably have become aware of the start of the Relief Event giving rise to the delay, together with any other notice required by this Agreement and relevant to such cause. The Concessionaire is further required to submit to the Independent Technical Advisor and the Independent Auditor (with a copy to the Agency), as part of the Relief Order Proposal relating to the Relief Order Request that pertains to an extension of Time For Completion, an acceleration strategy and schedule to demonstrate how such delay can be eliminated and/or mitigated.

15.5.5 Within twenty-eight (28) Days of the first Day of a delay that has resulted from the Relief Event in initiation of the Relief Order Request by the Concessionaire for issuance of a Relief Order by the Independent Technical Advisor and the Independent Auditor for an extension of Time For Completion, the Concessionaire shall submit full supporting details of its request, including, without limitation, a critical path analysis of the alleged delay reflecting the considerations set forth in this Section. If the Concessionaire cannot submit all relevant

details within such period because the cause of delay has continued for a period exceeding seven (7) Days, the Concessionaire shall submit interim details at intervals of not more than twenty-eight (28) Days (from the first Day of such delay) and full and final supporting details of its request within sixty (60) Days of the last Day of delay. In the appropriate circumstances, the Agency shall have the right to waive the time periods set out as above.

15.6 **DISPUTES AND BURDEN OF PROOF**

15.6.1 Any Dispute between the Parties in reference to the issuance of a Relief Order and/or any matters relating to the same shall be resolved pursuant to Article 30 (*Dispute Resolution*).

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

15.6.3 If as result of initiating a Dispute, the Dispute is resolved in favour of the Agency, the Concessionaire shall refund such amount to the Agency, that will leave the Concessionaire in a no better and no worse financial position to the financial position where it would have been, if the compensation had not been implemented in terms of the Relief Order but in terms of the resolution of the Dispute.

15.7 **FULL COMPENSATION**

15.7.1 Any:

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

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

16. CHANGE OF SCOPE

16.1 CHANGE OF SCOPE

16.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Agency may require a change/amendment in the Scope of the Project (the **Change of Scope**); provided, that such change shall be subject to mutual agreement between the Parties and provided further that the accrued and cumulative change at any given time does not result in a variation in the Pre-Estimated Project Cost by more than fifteen percent (15%) (or such other limit as prescribed by the Law), as determined by the Independent Technical Advisor and the Independent Auditor. All Additional Costs to be paid by the Agency in respect of the Change of Scope and any extensions in the timelines for the performance by the Concessionaire of its obligations resulting from a Change of Scope shall be in accordance with Section 16.2 (*Change of Scope Notice*) and Section 16.3 (*Change of Scope Order*).

16.2 CHANGE OF SCOPE NOTICE

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

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

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

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

16.3 CHANGE OF SCOPE ORDER

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

- (a) the impact which the Change of Scope is likely to have on the C&O Requirements in the event the Change of Scope applicable during the C&O Period and/or the O&M Requirements in the event the Change of Scope applicable during the Operations Period;
- (b) the budgeted estimate of the Additional Cost to be incurred by the Concessionaire for implementing the Change of Scope;

- (c) the estimated additional time (number of Days) that the Concessionaire would require to achieve Substantial Completion and/or Final Completion consequent to the Change of Scope and any delay, if any, in the Final Expiry Date;
 - (d) any extensions in the Final Completion Schedule resulting from the Change of Scope; and
 - (e) any extensions in the timelines for performance by the Concessionaire of its obligations under this Agreement resulting from the Change of Scope.
- 16.3.2 The Independent Technical Advisor shall after review of the information, documentation and the budgeted estimate of the Additional Cost submitted by the Concessionaire pursuant to Section 16.3.1, settle the rates, approve the designs and forward the budgeted estimates of the Additional Cost, as duly certified by the (Independent Technical Advisor and the Independent Auditor) in consultation with the Concessionaire, to the Agency.
- 16.3.3 The Agency may, within a period of fifteen (15) Days from the date of receipt of such statement, issue an order in writing to the Concessionaire, through the Independent Technical Advisor instructing the Concessionaire to affect the Change of Scope (the **Change of Scope Order**).
- 16.3.4 In the event, the Agency for any reason whatsoever decides not to issue a Change of Scope Order in accordance with Section 16.3.1, then the Agency shall reimburse the Concessionaire for the cost/expenses actually incurred by the Concessionaire in the preparation and submission of the drawings, documents, estimates and other information in compliance with the Change of Scope Notice; provided, such costs and expenses are duly certified by the Independent Auditor and the Independent Technical Advisor.
- 16.3.5 The mode for payment of the Additional Costs to the Concessionaire shall be as follows and shall be complied by the Agency within forty-five (45) Days of the issuance of a Change of Scope Order and until such time that the following conditions are complied by the Agency, the Concessionaire shall not be obligated to commence and/or perform the works forming part of the Change of Scope Order:
- (a) ten percent (10%) of the Additional Cost shall be paid in advance upon issuance of the Change of Scope Order (or as agreed between the Parties in accordance with Laws);
 - (b) the remaining ninety percent (90%) shall be transferred by the Agency to the Escrow Account and the same shall be utilized progressively upon certification by the Independent Technical Advisor of the performance of works.
- 16.3.6 The Change of Scope Order shall be effective from the date that the Agency notifies the mode of reimbursement of the Additional Cost to the Concessionaire pursuant to sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*).
- 16.3.7 Save for the advance payment under Section 16.3.5(a), the Agency shall progressively pay the Additional Cost in accordance with sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*) or any other modality as mutually agreed between the Parties, only upon receiving a certificate from the Independent Technical Advisor confirming that the Concessionaire has completed the relevant milestone(s) of the works in accordance with the Change of Scope Order.

17. REVENUE COLLECTION, REVENUE UTILIZATION, REVENUE SHARING & SBP DEBIT AUTHORITY

17.1 REVENUE COLLECTION

- 17.1.1 With effect from the Commencement Date, the Concessionaire shall be entitled, subject to the terms and conditions set out in this Agreement, to bill, collect, receive, deposit and retain or caused to be billed, collected, received, deposited and retained from the Users all Applicable Charges during the Concession Period through the Electronic Ticketing System, unless any Applicable Charge is not capable of being collected through the Electronic Ticketing System, in which case it shall be collected through such transparent and auditable means as deemed fit by the Concessionaire, subject to the consent of the Independent Auditor. All Applicable Charges shall be billed and collected in Pakistani Rupees and in accordance with the provisions (including in respect of place and method of collection) of all applicable Laws and this Agreement. The Aggregate Concession Revenue (a) from the Concession Assets (Effective Date) shall be deposited in the Agency Designated Account during the C&O Period, (b) in relation to a Segment shall be deposited in the Escrow Account with effect from the Segment Substantial Completion Date for such Segment, and (c) in relation to the Rani Bagh Facilities shall be deposited in the Escrow Account during the Operations Period. For the avoidance of doubt, the Aggregate Concession Revenue collected by the Concessionaire under (a) above shall be for and on behalf of the Agency.
- 17.1.2 Subject to Sections 17.1.3 and 17.1.4, the Concessionaire shall be wholly and exclusively responsible for the billing, collection, receipt, deposit and retention of all Applicable Charges during the Concession Period and shall assume all risks associated therewith. In order to enforce the timely payment of all Applicable Charges, the Concessionaire shall, in accordance with any relevant Law, be entitled to apply and assess fines and penalties, and otherwise pursue its remedies, against relevant Person failing to make payment within thirty (30) Days of the presentation of an invoice. Any and all penalties, fines, commissions, earnings, or similar remedies or compensation assessed by the Concessionaire in accordance with this Section 17.1.2 shall be deposited in the Escrow Account.
- 17.1.3 If (a) the Concessionaire shall fail to bill any Affiliate or any other Person for any Applicable Charge or any fee, charge or other consideration due and payable by such Affiliate or other Person to the Concessionaire or shall fail to collect from any Affiliate or any other Person any Applicable Charge or any fee, charge or other consideration due and payable by such Affiliate or other Person to the Concessionaire after, in each case, having used commercially reasonable efforts to make such collection, or (b) the Concessionaire shall otherwise fail to receive, deposit or retain any Applicable Charge or any fee, charge or other consideration due and payable by such Affiliate or other Person to the Concessionaire during the Concession Period (each of (a) and (b), the **Due and Payable Charges**), said failure shall constitute a breach of this Agreement. Upon written notification of such breach, the Concessionaire shall be entitled to a cure period of thirty (30) Days to remedy such breach and to have the relevant amount deposited in the Concession Revenue Account. If after the said period of thirty (30) Days, the breach remains unremedied, the Agency shall have the right to draw the relevant amount from the C&O Performance Security or the O&M Performance Security (as applicable) to the extent of the Agency Payment Amount together with any late payment charges in accordance with Section 31.1 (*Delayed Payments*).
- 17.1.4 The Concessionaire shall be entitled to cure any breach referred to in Section 17.1.3 by (a) depositing the relevant Due and Payable Charges amount in the Escrow Account, or (b) agreeing to have the relevant Agency Revenue Share calculated in such manner under Section 17.3 (*Revenue Sharing*) that assumes that the Due and Payable Charges have already been paid to the Concessionaire (without actually depositing the amount of the Due and

Payable Charges in the Escrow Account). In such case, when and if the obligor in respect of such amount shall eventually deposit such amount in the Escrow Account, such amount and any interest, penalty or fine charged with respect thereto shall not constitute Aggregate Concession Revenue for purposes of this Agreement, to the extent such amount and any interest, penalty or fine charged with respect thereto had already been deposited by the Concessionaire in the Escrow Account in accordance with this Section 17.1.4.

- 17.1.5 In the event that a failure to bill any Person, or a failure to collect or receive from any such Person, or a failure to deposit or retain from any such Person in accordance with this Agreement, any Applicable Charge or any fee, charge or other consideration duly owed by such Person remains unremedied for ninety (90) Days or more after the delivery of the notice of such breach by the Agency to the Concessionaire referred to in Section 17.1.3, the Agency shall have the right to Terminate this Agreement by issuing a Termination Notice to the Concessionaire.

17.2 **REVENUE UTILIZATION**

Subject to the terms of the Financing Documents and the Escrow Agreement, the Concessionaire shall be entitled to utilize the Aggregate Concession Revenue for (without limitation) payment of (a) the O&M Costs, (b) taxes, (c) amounts under the Financing Documents, (d) Distributions to shareholders, (e) the Agency Revenue Share, (f) the Agency Windfall Share, and (g) such other amounts as stated in the Agency Agreements.

17.3 **REVENUE SHARING**

- 17.3.1 During each Calculation Period¹, the Escrow Agent shall release from the Escrow Account to the Agency Designated Account on each Agency Revenue Share Payment Date, such amount as set out in the Escrow Account Certificate based on **SCHEDULE W (BENCHMARK REVENUE AMOUNT & REVENUE SHARING)** (the **Agency Revenue Share**), in accordance with the Escrow Agreement.

17.4 **EXCESS REVENUE SHARING**

- 17.4.1 In the event the Aggregate Concession Revenue, in aggregate, exceed the Benchmark Revenue Amount (the **Windfall Revenue**) at any time during the Calculation Period:
- (a) the Independent Auditor shall issue a written notification to the Parties and the Escrow Agent certifying the occurrence of such an event (the **Windfall Revenue Event**); and
 - (b) following the occurrence of the Windfall Revenue Event, the Escrow Agent shall:
 - (i) retain fifty percent (50%) of the Windfall Revenue (the **Concessionaire Windfall Share**) (as specified in the Escrow Account Certificate) in the Escrow Account and within two (2) Days of the receipt of the Escrow Account Certificate, release the Concessionaire Windfall Share to the Concessionaire Revenue Account; and
 - (ii) within two (2) Days of the receipt of the Escrow Account Certificate, release fifty percent (50%) of the Windfall Revenue (the **Agency Windfall Share**) (as specified in the Escrow Account Certificate) from the Escrow Account to the Agency Designated Account.

¹ The first Calculation Period will commence on the first Segment Substantial Completion Date.

17.5 **SBP DEBIT AUTHORITY**

- 17.5.1 The Agency shall procure issuance to the SBP (with a copy to the Concessionaire), as an Agency Condition Precedent, a debit authority (the **SBP Debit Authority**) authorizing the SBP to debit the Account One with an amount equal to the lower of (a) the Termination Payment Amount (Unpaid Financing Due) (as stated in the Termination Payment Amount (Unpaid Financing Due) Certificate), (b) the Termination Payment Amount (Coverage), and (c) Termination Payment Amount (Residual 1 Financing Due) (the **Termination Payment Amount (Secured)**), on demand from the Concessionaire; provided, that the demand is made in writing, duly signed by an authorized representative of the Concessionaire and a copy of the Termination Payment Amount (Unpaid Financing Due) Certificate or the certificate of the Independent Auditor certifying the Termination Payment Amount (Coverage) (as applicable), is attached thereto (the **Account One Debit Demand**). The SBP Debit Authority shall, subject to this Section 17.5.1, remain irrevocable, valid and effective until the earlier of the Financing Termination Date and the date when payments are made to the Concessionaire from Account One in terms of this Section 17.5.1. The Agency shall cause to be ensured that there are sufficient funds available in the Account One to satisfy the Account One Debit Demand.
- 17.5.2 Commencing from the date of issuance of the SBP Debit Authority and until the Financing Termination Date, the Agency shall share with the Concessionaire on a semi-annual basis, a statement setting out the limits allowed by National Economic Council and any guarantees issued on the Account One.

17.6 **PAYMENT OF TERMINATION PAYMENT**

- 17.6.1 In the event of Termination of this Agreement and to the extent the Termination Payment (or any part thereof) remains due, payable and outstanding on the Termination Payment Date (the **Termination Payment Amount (Unpaid Total)**), the Concessionaire shall cause the Independent Experts to issue a certificate (the **Termination Payment Amount (Unpaid Amounts) Certificate**) certifying:
- (a) the Termination Payment Amount (Unpaid Total);
 - (b) the unpaid Financing Due (or part thereof) (the **Termination Payment Amount (Unpaid Financing Due)**);
 - (c) the residual amount of Termination Payment Amount (Unpaid Financing Due) (if any) that will remain unpaid after recovery from the Escrow Account in terms of Section 17.6.2(a) (the **Termination Payment Amount (Residual 1 Financing Due)**);
 - (d) the residual amount of Termination Payment Amount (Unpaid Financing Due) (if any) that will remain unpaid after recovery from the Account One in terms of Section 17.5.1 (the **Termination Payment Amount (Residual 2 Financing Due)**);
 - (e) the unpaid Termination Payments (or part thereof) other than the Financing Due (the **Termination Payment Amount (Unpaid Other Amount)**);
 - (f) the residual amount of Termination Payment Amount (Unpaid Other Amount) (if any) that will remain unpaid after recovery from the Escrow Account in terms of

Section 17.6.2(a) (the **Termination Payment Amount (Residual Other Amount)**).

17.6.2 Upon issuance of the Termination Payment Amount (Unpaid Amounts) Certificate, the Termination Payment Amount (Unpaid Total) shall be paid to the Concessionaire on the Termination Payment Date⁸ in the following manner:

- (a) the Escrow Agent shall, in accordance with the standing instructions set out in the Escrow Agreement, debit the Escrow Account and credit funds to the Termination Payment Account on the date of its receipt of the Termination Payment Amount (Unpaid Amounts) Certificate first for payment of the Termination Payment Amount (Unpaid Financing Due) and next for payment of the Termination Payment Amount (Unpaid Other Amount);
- (b) in the event the funds standing to credit of the Escrow Account are insufficient to fund the Termination Payment Amount (Unpaid Financing Due) in full, the Concessionaire shall be entitled to cause the Account One to be debited by issuing the Account One Debit Demand in accordance with Section 17.5.1) in an amount equal to the Termination Payment Amount (Residual 1 Financing Due); and
- (c) in the event the Termination Payment Amount (Residual 1 Financing Due) and/or the Termination Payment Amount (Unpaid Other Amount) is not paid in full despite payment in terms of Sections 17.6.2(a) and 17.6.2(b) above, the Agency shall pay the Termination Payment Amount (Residual 2 Financing Due) and/or the Termination Payment Amount (Residual Other Amount) to the Concessionaire by crediting the same to the Termination Payment Account.

⁸ This date will be subject to the terms of the Concession Direct Agreement.

18. DEFECTS & DEFICIENCIES, NOTICE OF REMEDY, SUSPENSION

18.1 REMEDYING DEFECTS & DEFICIENCIES

18.1.1 The Concessionaire warrants that the:

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

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

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

18.2 NOTICE REMEDY

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

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

18.2.2 In the event of failure by the Concessionaire to remedy the Remedy Events within the Remedy Time Period, the Agency shall, without prejudice to any of its other rights and

remedies under this Agreement, be entitled to, with the prior approval of the Independent Technical Advisor and at the risk and cost of the Concessionaire, cause the remedying and rectification of the Remedy Events.

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

18.3 **SUSPENSION**

18.3.1 The:

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

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

18.3.2 The Concessionaire shall, pursuant to any notice issued under Section 18.3.1, Suspend the Project Works or any part thereof for such time and in such manner as may be specified by the Agency and/or the Independent Technical Advisor and thereupon carry out remedial measures to secure the safety of Suspended works and the Users and for compliance of the Suspended Project Works with the Applicable Standards and Good International Industry Practices.

18.3.3 The Concessionaire may by Notice (with a copy to the Agency) require the Independent Technical Advisor to inspect such remedial measures forthwith and the Independent Technical Advisor shall, following such inspection, make a report to the Agency recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Technical Advisor, the Agency shall either revoke such Suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Agency, and the procedure set forth in this Section 18.3 (*Suspension*) shall be repeated till such time as the Suspension hereunder is revoked.

- 18.3.4 All reasonable costs incurred for maintaining and protecting the Project Works (or part thereof) during the period of Suspension (the **Preservation Costs**) shall be borne by the Concessionaire; provided, that if the Suspension has occurred as a result of a Relief Event, the provisions of Article 21 (*Force Majeure*) and Article 15 (*Relief Extensions & Relief Compensations*) (as applicable) shall apply.
- 18.3.5 All delays caused as a result of the Suspension shall be on account of the Concessionaire; provided, however, in the event the Suspension is caused due to a Relief Event, any extensions of the Time For Completion shall be subject to the provisions of Article 15 (*Relief Extensions & Relief Compensations*) and Article 21 (*Force Majeure*) (as applicable).

19. OPERATION AND MAINTENANCE

19.1 OPERATION AND MAINTENANCE

- 19.1.1 The Concessionaire shall perform the Operation and Maintenance in accordance with the Applicable Standards and shall ensure that the same complies with the Applicable Standards. During the Operations Period, the Concessionaire shall be responsible for Operating and Maintaining the Concession Assets on a twenty-four (24) hours per Day, three-sixty-five (365) Days per year basis according to the Applicable Standards so as to ensure that the same comply with the Applicable Standards.
- 19.1.2 Without limiting the provisions of Section 19.1.1, the Concessionaire shall in particular be responsible for the performance and compliance, in each case, of the Operation and Maintenance in accordance with the O&M Requirements.
- 19.1.3 The Concessionaire shall perform the Operation and Maintenance within the O&M Time For Completion and hereby undertakes to perform and complete each Project O&M Milestone on or prior to its Project O&M Milestone Date.
- 19.1.4 The Concessionaire shall perform the Operation and Maintenance either itself, or through the O&M Contractor and/or Rani Bagh Contract Parties appointed in accordance with the terms of this Agreement; provided, however, the Concessionaire shall remain solely responsible and liable for performance (within O&M Time For Completion) and compliance of the Operations and Maintenance with the Applicable Standards irrespective of whether the Operation and Maintenance is undertaken by the Concessionaire or the O&M Contractor and/or Rani Bagh Contract Parties.

19.2 OPERATION AND MAINTENANCE OBLIGATIONS OF THE CONCESSIONAIRE

- 19.2.1 The Concessionaire undertakes to perform the Operation and Maintenance of the Concession Assets during the Operations Period in accordance with the provisions of Section 19.1 (*Operation and Maintenance*) and undertakes to modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Concession Assets in accordance with the Applicable Standards.
- 19.2.2 The Concessionaire hereby agrees that the Operation and Maintenance obligations of the Concessionaire hereunder shall include, without limitation, the performance of the following obligations in accordance with the Applicable Standards and Good International Industry Practices and within the O&M Time For Completion:
- (a) ensuring that during the Operations Period, the Concession Assets are in a condition to permit safe, smooth and uninterrupted movement of Users during normal operating conditions;
 - (b) carrying out routine maintenance and the periodic preventive maintenance of the Concession Assets;
 - (c) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Concession Assets;
 - (d) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;

- (e) protecting the environment (to the extent of the Concessionaire's activities) and providing equipment and materials therefor;
- (f) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Concession Assets;
- (g) maintaining a public relations unit to interface with and attend to suggestions from the Users, the Agency, the Government Authorities, media and other agencies;
- (h) conduct quarterly customer feedback surveys (e.g., annual satisfaction rate, specific complaints resolved);
- (i) complying with Safety Requirements;
- (j) promptly removing from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keeping the Project Site in a clean, tidy and orderly condition, in each case, in conformity with the Applicable Standards; and
- (k) performing all other activities and obligations relating to Operation and Maintenance so as to comply with the Applicable Standards and also so as to result in the Concession Assets complying with the Applicable Standards.

19.3 **KPIs AND DAMAGES**

19.3.1 In the event the Concessionaire fails to comply with any of the key performance indicators set out in **SCHEDULE Q (KPIs AND DAMAGES)**, the Concessionaire shall be liable to pay the damages set out in **SCHEDULE Q (KPIs AND DAMAGES)**. All such damages shall be certified by the Independent Technical Advisor from time to time as part of the O&M Inspection Report. Upon being certified by the Independent Technical Advisor, such damages shall be recovered by the Agency through exercise of its right of set-off under the Escrow Agreement, which set-off shall occur based on a standing instructions mechanism detailed in the Escrow Agreement. In addition, the Agency shall have the right to encash the O&M Performance Security in an amount equal to the applicable damages. Notwithstanding anything contained herein, the recovery of the aforesaid damages under this Section 19.3.1 shall be without prejudice to the rights of the Agency under the Agency Agreements.

19.3.2 The Parties agree that the amount of damages provided under this Section 19.3 (*KPIs and Damages*) are in lieu of actual damages and are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

19.4 **NOT USED**

19.5 **NOT USED**

19.6 **NOT USED**

19.7 **O&M MANUAL**

19.7.1 No later than twenty (20) Days prior to each Scheduled Segment Substantial Completion Date, the Concessionaire, the Concessionaire Project Engineer and the Independent

Technical Advisor shall jointly prepare and submit to Agency, an operations, repair, maintenance and safety manual (together with arrangements and procedures for conducting safety related measures) in respect of the Concession Assets that shall comply with the Applicable Standards and Good International Industry Practices and shall set out, *inter alia*, the regular preventive maintenance and operating procedures for the Concession Assets, as to be performed pursuant to the Applicable Standards and Good International Industry Practices. Such operations, repair, maintenance and safety manual shall include provisions for operation and maintenance of the Concession Assets and shall, *inter alia*, provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Concession Assets, including replacement thereof, such that their overall condition conforms to the Applicable Standards. The operations, repair, maintenance and safety manual shall also set out certain Project O&M Milestones and their respective Project O&M Milestone Dates.

- 19.7.2 The operations, repair, maintenance and safety manual jointly prepared by the Concessionaire, the Concessionaire Project Engineer and the Independent Technical Advisor shall be subject to approval of the Agency; provided, however, such approval shall be granted by Agency within fifteen (15) Days of the Concessionaire's request for such approval if the operations, repair, maintenance and safety manual is recommended by the Independent Technical Advisor for approval after addressing any comments and observations of the Agency on the same. However, in the event the Agency fails to grant its approval to the Concessionaire of the operations, repair, maintenance and safety manual within fifteen (15) Days following receipt of such request by the Agency from the Concessionaire, the approval of the Agency of such manual shall be deemed accorded. The operations, repair, maintenance and safety manual, as approved by the Agency, shall be binding on the Parties (the **O&M Manual**).
- 19.7.3 Four (4) copies of the O&M Manual shall be provided by the Concessionaire to each of Agency and the Independent Technical Advisor.
- 19.7.4 The O&M Manual shall be revised and updated on third (3rd) anniversary of its initial preparation and subsequently every three (3) years thereafter, in each case, with mutual consent of the Parties and in consultation with the Independent Technical Advisor; provided, however, the Parties may revise, update and/or amend the O&M Manual with mutual consent at any time.

19.8 **O&M PROGRAMME**

- 19.8.1 Ninety (90) Days prior to commencement of the Operations Period and thereafter thirty (30) Days prior to the commencement of each Operational Year during the Operations Period, as the case may be, the Concessionaire, the Concessionaire Project Engineer and the Independent Technical Advisor shall jointly prepare and provide to the Agency, a proposed annual program, to be prepared in compliance with the Applicable Standards and Good International Industry Practices, of Operation and Maintenance during the upcoming Operational Year (including preventive, urgent and other scheduled maintenance of Concession Assets) (the **Proposed O&M Programme**). The Proposed O&M Programme shall include, without restriction, the following:
- (a) the Project O&M Milestones to be achieved during the upcoming Operational Year and the respective Project O&M Milestone Dates for each of the same;
 - (b) routine maintenance and preventive maintenance schedule;

- (c) arrangements and procedures for carrying out urgent repairs in respect of the Concession Assets;
- (d) criteria to be adopted for determining and ascertaining the Maintenance Requirements of the Concession Assets;
- (e) the timelines, intervals and procedures for conducting the inspection of all elements of the Concession Assets;
- (f) the timelines and intervals at which the Concessionaire shall conduct periodic maintenance in respect of the Concession Assets;
- (g) arrangements and procedures for conducting safety related measures in relation to the Concession Assets;
- (h) timelines and intervals for maintenance works and the scope thereof; and
- (i) all major events and activities in the preparation of O&M Documents and submission of the same to the Agency, the Independent Technical Advisor and/or the Independent Auditor (as applicable) for the review and approval (as applicable);

19.8.2 The Proposed O&M Programme jointly prepared by the Concessionaire, the Concessionaire Project Engineer and the Independent Technical Advisor shall be subject to approval of the Agency; provided, however, such approval shall be granted by Agency within twenty-one (21) Days of the Concessionaire's request for such approval if the Proposed O&M Programme is recommended by the Independent Technical Advisor for approval after addressing any comments and observations of the Agency on the same. However, in the event the Agency fails to grant its approval to the Concessionaire of the Proposed O&M Programme within twenty-one (21) Days following the receipt of such request by the Agency from the Concessionaire, the approval of the Agency of the Proposed O&M Programme shall be deemed accorded. The Proposed O&M Programme prepared in respect of an Operational Year, as approved by the Agency on the Independent Technical Advisor's recommendation, shall be binding on the Parties for such Operational Year (the **O&M Programme**).

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

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

19.9 **NOT USED**

19.10 **NOT USED**

19.11 **NOT USED**

19.12 **NOT USED**

19.13 **O&M DOCUMENTS**

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

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

19.13.3 For each part of the Operation and Maintenance, if the Agency, the Independent Technical Advisor and the Independent Auditor (as applicable) wish to modify any O&M Documents, the Agency, the Independent Technical Advisor and the Independent Auditor (as applicable) shall immediately submit their proposal for modification to the Concessionaire. Subject to Section 19.13.5, performance of such modification shall be subject to mutual agreement between the Parties.

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

19.13.5 The Agency, the Independent Technical Advisor and the Independent Auditor (as applicable) may use the O&M Documents for such purposes as it may require for the purposes of the Project.

19.14 **NOT USED**

19.15 **NOT USED**

19.16 **MODIFICATIONS TO THE PROJECT**

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

19.17 **BARRIERS AND DIVERSIONS**

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

19.18 **O&M MONTHLY STATUS REPORT**

19.18.1 During the Operations Period, the Concessionaire shall, no later than seven (7) Days after the end of each calendar month of the Operations Period, furnish to the Agency and the Independent Technical Advisor a monthly report (the **O&M Monthly Status Report**) stating in reasonable detail the condition of the Concession Assets including its compliance or otherwise with the Applicable Standards and shall promptly give such other relevant information as may be required by the Independent Technical Advisor, the Independent Auditor and/or the Agency. In particular, the O&M Monthly Status Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the Concession Assets and/or the Operation and Maintenance that require rectification and any delays in the performance of its obligations by the Concessionaire set out in the O&M Programme. The O&M Monthly Status Report shall also expressly highlight all Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets identified by the Independent Technical Advisor in its O&M Inspection Report and shall set out all actions taken, and arrangements made by the Concessionaire for remedying the same.

19.18.2 Each O&M Monthly Status Report shall be updated by the Concessionaire based on any observations and comments made by the Independent Technical Advisor and shall be provided again to each of the Agency and the Independent Technical Advisor until such time that it is approved by the Independent Technical Advisor; provided, that the Independent Technical Advisor shall not accord its approval of the O&M Monthly Status Report until it is satisfied that all reasonable comments and observations of the Agency on the O&M Monthly Status Report are addressed.

19.18.3 The O&M Monthly Status Report shall be in the form approved by the Independent Technical Advisor from time to time.

19.19 **O&M INSPECTION REPORT**

19.19.1 During the Operations Period, the Concessionaire shall enable the Independent Technical Advisor to inspect the Operation and Maintenance and the Concession Assets at least once a month and the Concessionaire shall make all arrangements for the same.

19.19.2 The Independent Technical Advisor shall make a report of such inspection (the **O&M Inspection Report**) stating in reasonable detail the Defects & Deficiencies, if any, in the Operation and Maintenance and/or the Concession Assets with particular reference to the Applicable Standards.

19.19.3 The Independent Technical Advisor shall, within seven (7) Days of commencement of a month, provide a copy of the O&M Inspection Report to the Concessionaire and the Agency.

19.19.4 The Concessionaire hereby undertakes that, within fifteen (15) Days from receipt of the O&M Inspection Report, it shall rectify and remedy the Defects & Deficiencies, if any, stated in the O&M Inspection Report, at its own cost and expense.

19.19.5 The inspection or submission of the O&M Inspection Report by the Independent Technical Advisor shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

19.20 **O&M TESTS**

19.20.1 The Concessionaire shall conduct or procure to be conducted such tests, in order to determine whether the Operation and Maintenance and/or the Concession Assets conform to the Applicable Standards (the **O&M Tests**). The O&M Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Technical Advisor and the Agency. In the event the timing and frequency of any O&M Tests is specified by the Agency and it is determined that the Operation and Maintenance is not in accordance with the O&M Requirements (as determined by the Independent Technical Advisor), the cost of such O&M Tests shall be borne by the Concessionaire; provided, however, in the event it is determined that the Operation and Maintenance are in accordance with the O&M Requirements (as determined by the Independent Technical Advisor), the cost of such O&M Tests shall be borne by the Agency.

19.20.2 Subject to Section 19.20.1, the Concessionaire hereby undertakes to conduct the O&M Tests under the supervision of the Independent Technical Advisor (in consultation with the Agency) and in accordance with the Applicable Standards at its own cost and expense.

19.20.3 The Concessionaire hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets that are identified in the O&M Tests and to ensure that as a consequence of such remedial measures the Operation and Maintenance and the Concession Assets conform to the Applicable Standards. The Concessionaire further undertakes that the remedial measures required to be undertaken by the Concessionaire pursuant to this Section 19.20.3 shall be repeated by the Concessionaire at its sole cost till such time as the Operation and Maintenance and the Concession Assets conform to the Applicable Standards to the satisfaction of the Independent Technical Advisor. In the aforesaid circumstances, the Independent Technical Advisor may require the Concessionaire to conduct additional tests to determine whether the Defects & Deficiencies are rectified and in such case the costs of such additional tests shall be borne by the Concessionaire.

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

19.20.5 Results of all O&M Tests shall be jointly recorded by the Independent Technical Advisor and the Concessionaire.

19.21 **REMEDIAL MEASURES**

19.21.1 The Concessionaire shall repair or rectify the Defects & Deficiencies, if any, set forth in the O&M Inspection Report or in the O&M Tests results referred to in Section 19.20 (*O&M Tests*) and furnish a report in respect thereof to the Independent Technical Advisor and the Agency within seven (7) Days of receiving the O&M Inspection Report or the O&M Tests results, as the case may be; provided, that where the remedying of such Defects & Deficiencies is likely to take more than seven (7) Days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

- 19.21.2 The Independent Technical Advisor shall require the Concessionaire to carry out or cause to be carried out the O&M Tests, at its own cost, to determine that such remedial measures have brought the relevant Concession Assets into compliance with the Applicable Standards, and the procedure set forth in this Section 19.21 (*Remedial Measures*) shall be repeated until the Concession Assets conform to the Applicable Standards.
- 19.21.3 The provisions of this Section 19.21 (*Remedial Measures*) shall not in any manner limit the obligations of the Concessionaire relating to remedying of Defects & Deficiencies set out elsewhere in this Agreement.

20. INSURANCES

20.1 C&O PERIOD INSURANCES

The Concessionaire shall, at its sole cost and expense, procure and maintain during the C&O Period all such Insurances, as described in **PART I (C&O PERIOD INSURANCES)** of **SCHEDULE I (INSURANCES)**, that are necessary and required to be procured by the Concessionaire in accordance with the Financing Documents (as contemplated in the Financing Term Sheet) and the Laws.

20.2 OPERATIONS PERIOD INSURANCES

The Concessionaire shall, at its sole cost and expense, procure and maintain during the Operations Period all such Insurances, as described in **PART II (OPERATIONS PERIOD INSURANCES)** of **SCHEDULE I (INSURANCES)**, that are necessary and required to be procured by the Concessionaire in accordance with the Financing Documents (as contemplated in the Financing Term Sheet) and the Laws.

20.3 INSURANCE COMPANIES

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

20.3.2 Further, the Insurances to be maintained in terms of this Agreement and in accordance with the terms set out herein shall be maintained throughout until the Trigger Date notwithstanding the expiry of the Financing Documents (as contemplated in the Financing Term Sheet).

20.4 EVIDENCE OF INSURANCES

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

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

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

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

Agreement or as may be required by any Government Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

20.5 **APPLICATION OF INSURANCE PROCEEDS**

20.5.1 Subject to the terms of the Financing Term Sheet, all moneys received under the Insurance shall be promptly applied by the Concessionaire towards repair, renovation, restoration and/or substitution of the Rani Bagh Facilities or any part thereof which may have been damaged or destroyed; provided, that all costs relating to such repair, renovation, restoration and/or substitution shall be duly certified by the Independent Technical Advisor and the Independent Auditor.

20.5.2 The Concessionaire may designate the Financiers as the loss payees under the Insurance and/or assign the Insurance in their favor as security for the Financing availed by the Concessionaire from the Financiers pursuant to the Financing Documents (as contemplated in the Financing Term Sheet).

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

20.6 **VALIDITY OF INSURANCES**

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

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

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

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

20.7 **MAINTENANCE OF "OCCURRENCE" FORM POLICIES**

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

20.8 **POLICY ENDORSEMENTS**

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

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

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

21. FORCE MAJEURE

21.1 FORCE MAJEURE EVENT

21.1.1 A **Force Majeure Event** means any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Commencement Date materially and adversely affects the performance by such affected Party (the **Affected Party**) of its obligations under or pursuant to this Agreement; provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Concession Assets from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limiting the generality of the foregoing, **Force Majeure Events** hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) the following events that occur inside or directly involve Pakistan (each a **PFME**):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any Lapse of Consent of which report to Agency, the Independent Technical Advisor and the Independent Auditor shall have been given under Section 7.13.2 and that shall have existed for thirty (30) consecutive Days or more; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide and that (or its effects) shall have existed for thirty (30) consecutive Days or more;
- (b) the following events (each an **NPFME**), including (without limitation):
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, which has, in each case, affected the work or operations for more than fifteen (15) consecutive Days; or
 - (ii) any Lapse of Consent of which report to Agency, the Independent Technical Advisor and the Independent Auditor shall have been given under Section 7.13.2 and that shall have existed for less than thirty (30) consecutive Days; or
 - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide and that shall have existed for thirty (30) consecutive Days or more; or
 - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation; or
 - (v) epidemic or plague.

- (c) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
 - (ii) a delay in the performance of any Contractor;
 - (iii) a breakdown in machinery and/or equipment;
 - (iv) normal wear and tear or random flaws in materials and equipment; and
 - (v) a delay caused by rains and monsoons;

provided, that each of the events described in clauses (c)(i), (ii), (iii), (iv) or (v) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is in itself a Force Majeure Event whether experienced directly by the Concessionaire or by one of its Contractors.

21.2 **OBLIGATION TO NOTIFY**

- 21.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) Days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, Notify the Independent Technical Advisor, the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).
- 21.2.2 The Affected Party shall provide all relevant details in respect of the Force Majeure Event in the Force Majeure Notice, including but not restricted to the following:
- (a) the nature and extent of the Force Majeure Event;
 - (b) the estimated Force Majeure Period;
 - (c) the nature of and the extent to which, performance of any of the Affected Party's obligations under this Agreement are affected by the Force Majeure Event;
 - (d) the measures which the Affected Party has taken or proposes to undertake to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations that are affected by the Force Majeure Event; and
 - (e) any other relevant information concerning the Force Majeure Event, and/or the rights and obligations of the Parties under this Agreement.
- 21.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within five (5) Days from the date of receipt of the same, convene a meeting, along with the Independent Technical Advisor for the purpose of conducting discussions, in good faith, and where necessary the Parties shall agree to conduct inspections and/or surveys of the Project in order to:
- (a) assess the impact of the underlying Force Majeure Event;
 - (b) to determine the likely duration of Force Majeure Period; and

- (c) to formulate damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

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

21.3 **CONSEQUENCE OF FORCE MAJEURE EVENT**

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

- (a) there shall be no Termination of this Agreement except in accordance with the provisions of Section 21.5 (*Termination Notice for Force Majeure Event*), Section 21.6 (*Termination Payment for Force Majeure Event*) and Article 23 (*Termination*);
- (b) in the event of occurrence of a Force Majeure Event:
 - (i) subject to Section 21.8 (*Excuse From Performance of Obligations*), the Concessionaire shall have the right to apply for a Relief Order Request with respect to the extension of the Project Milestone Dates for the Project Milestones (affected by the Force Majeure Event), in accordance with the provisions of Article 15 (*Relief Extensions & Relief Compensations*);
 - (ii) all costs, fees, expenses and charges arising from and relating to the Force Majeure Event shall be allocated in accordance with Section 21.4 (*Allocation of Costs Arising out of Force Majeure*).

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

21.4 **ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE**

21.4.1 Upon occurrence of a Force Majeure Event, the Relief Event Compensation Amount shall be allocated as follows:

- (a) upon occurrence of an NPFME, all losses, damage, costs and expenses whatsoever as a result of the NPFME shall be on the account of the Concessionaire and the Agency shall not be liable or responsible for the same in any manner;
- (b) upon occurrence of a PFME, the Agency shall fund and bear the Relief Event Compensation Amount (as set out in a Relief Order) and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

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

21.5 **TERMINATION NOTICE FOR FORCE MAJEURE EVENT**

21.5.1 If:

- (a) a Force Majeure Event subsists for a continuous period of one hundred and twenty (120) Days, either Party may in its discretion Terminate this Agreement by issuing a Termination Notice to the other Party; or
- (b) in case of a PFME, the Agency determines that the Relief Event Compensation Amount relating the same are unacceptable then the Agency may in its discretion Terminate this Agreement by issuing a Termination Notice to the Concessionaire,

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

21.6 **TERMINATION PAYMENT FOR FORCE MAJEURE EVENT**

21.6.1 If Termination is on account of an NPFME, the Agency shall make a Termination Payment to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Termination Payment Sum (NPFME).

21.6.2 If Termination is on account of a PFME, the Agency shall make a Termination Payment to the Concessionaire on or prior to the Termination Payment Date in an amount equal to the Termination Payment Sum (PFME).

21.7 **FORCE MAJEURE DISPUTE RESOLUTION**

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

21.8 **EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

21.8.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations (except payment obligations) to the extent it is unable to perform on account of such Force Majeure Event; provided, that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event and/or of the effects of the same;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party (with a copy to the Independent Technical Advisor and the Independent Auditor) notice to that effect and shall promptly resume performance of its obligations hereunder.

22. EVENTS OF DEFAULT

22.1 CONCESSIONAIRE EVENT OF DEFAULT

22.1.1 Any of the following events shall constitute an event of default by the Concessionaire (the **Concessionaire Event of Default**) unless such event has occurred as a consequence of Relief Events:

- (a) any Material Breach by the Concessionaire or the Sponsor(s) of any Agency Agreement which Material Breach has not been cured within sixty (60) Days from the date of written notice thereof by the Agency, or within such time period as provided in the relevant Agency Agreement, respectively;
- (b) the Concessionaire fails to commence the C&O Works within thirty (30) Days from the Commencement Date;
- (c) the Concessionaire fails to achieve Segment Substantial Completion for any Segment by the date falling one hundred and twenty (120) Days following the Scheduled Segment Substantial Completion Date;
- (d) the Concessionaire fails to achieve Substantial Completion by the date falling one hundred and twenty (120) Days following the Scheduled Substantial Completion Date;
- (e) any statement, representation or warranty made by the Concessionaire in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Concessionaire's ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the rights and/or obligations of the Agency hereunder or under the Agency Agreements;
- (f) the Concessionaire creates any Encumbrance on the Concession Assets in favor of any Person save and except as otherwise expressly permitted in terms of this Agreement;
- (g) the transfer of the rights and/or obligations of the Concessionaire under this Agreement, save and except as permitted in terms of this Agreement; and/or
- (h) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement; and further, provided, that such amalgamation has been agreed to by the Agency), the occurrence of any of the following events:
 - (i) the passing of a resolution for the dissolution or winding up of the Concessionaire;
 - (ii) the voluntary filing by the Concessionaire of a petition of bankruptcy, moratorium, winding up, or other similar relief;
 - (iii) the appointment of a provisional liquidator in a proceeding for the winding up of the Concessionaire after notice to the Concessionaire and due hearing, which appointment has not been set aside or stayed within ninety

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

then, in such case, the Concessionaire Event of Default set forth in this Section 22.1.1(h)(v) shall not constitute a Concessionaire Event of Default until such time that the said certificate by the Independent Auditor is revoked or otherwise ceases to remain accurate;
- (i) an Abandonment by the Concessionaire, without the prior written consent of the Agency, for a period of thirty (30) consecutive Days or for an aggregate period of sixty (60) Days during any Accounting Year; provided, however, that the Concessionaire shall not be deemed to have Abandoned the Concession Assets so long as it is using all reasonable efforts (as determined by the Independent Technical Advisor) to regain control of the Concession Assets and reinstate its construction and/or Operation and Maintenance, as applicable;
- (j) the Concessionaire is in Material Breach of O&M Requirements;
- (k) any other events or circumstances expressly set out in this Agreement as a Concessionaire Event of Default;
- (l) the C&O Performance Security or the O&M Performance Security in each case, is not issued, renewed, replaced or provided (as the case may be) in accordance with this Agreement or becomes inoperative or ceases to remain valid or in force in breach of the relevant provisions of this Agreement;
- (m) a breach by the Concessionaire of its obligation to take out and maintain the required insurances in accordance with Article 20 (*Insurances*);
- (n) any change in shareholding of the Concessionaire in breach of this Agreement including (without limitation) Sections 10.2 (*Transfer Restrictions*), 10.3 (*Other Transfer Restrictions*) and/or 10.5 (*Procedure for Transfer*) of this Agreement;
- (o) the Concessionaire or the Sponsor(s) repudiate/terminate any of the Agency Agreements or otherwise evidence an intention not to be bound by the same;

- (p) termination of the Project Site License Agreement as a result of a material breach by the Concessionaire that is not remedied in accordance with the terms of the Project Site License Agreement;
- (q) the Concessionaire has delayed any payment that has fallen due and payable under this Agreement and any of the Agency Agreements and if such delay exceeds sixty (60) Days, save where such payment is duly Disputed by the Concessionaire in accordance with this Agreement;
- (r) any assets or shares of the Concessionaire are expropriated, confiscated, compulsorily acquired or nationalised by any Government Authority or entity due to an act or omission of the Concessionaire or its shareholders, causing a Material Adverse Effect;
- (s) an event of default (howsoever described) has occurred under the Financing Documents;
- (t) a material breach by the EPC Contractor, the O&M Contractor, the Rani Bagh Contract Party or any other subcontractor or any of the parties to the Agency Agreements or any of their respective contracts with the Concessionaire having a Material Adverse Effect;
- (u) the Concessionaire fails to achieve Final Completion, in accordance with the Applicable Standards and/or the timelines set out in the Applicable Standards (in each case, as certified by the Independent Technical Advisor), which failure continues for a period of thirty (30) Days; and
- (v) occurrence of the event entitling exercise by the Agency of its right to terminate this Agreement in accordance with Section 3.5.1.

22.2 **AGENCY EVENT OF DEFAULT**

22.2.1 The following events shall constitute events of default by the Agency (the **Agency Event of Default**) unless such event has occurred as a consequence of a Concessionaire Event of Default or a Force Majeure Event:

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

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

which in the case of (i), (ii) or (iii) above, has a continuing effect for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the affected party from the effect of such Change in Law (other than a Change in Law for which compensation is provided in accordance with this Agreement);
- (g) a Change in Law for which no relief is provided under Article 28 (*Change in Law*);
- (h) the Agency has delayed any payment that has fallen due and payable under this Agreement and/or any of the Agency Agreements and if such delay exceeds ninety (90) Days, save where such payment is duly Disputed by the Agency in accordance with this Agreement and/or Agency Agreements;

- (i) where the Agency has established the SBP Debit Authority, a failure of the Agency to keep valid and maintain the SBP Debit Authority in accordance with the terms of this Agreement; and
- (j) occurrence of the event entitling exercise by the Concessionaire of its right to terminate this Agreement in accordance with Section 3.5.2.

23. TERMINATION

23.1 TERMINATION FOR CONCESSIONAIRE EVENT OF DEFAULT

23.1.1 Without prejudice to any other right or remedy which the Agency may have in respect thereof under this Agreement, upon the occurrence and continuation of a Concessionaire Event of Default, the Agency shall be entitled to Terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided, that before issuing the Termination Notice, the Agency shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the **Agency Preliminary Notice**).

23.1.2 In the event the underlying Concessionaire Event of Default is not cured within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Agency shall be entitled to:

- (a) Terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period; and
- (b) encash the C&O Performance Security or the O&M Performance Security, as applicable and in effect as such time, on or following the issuance of the Termination Notice.

23.1.3 The following shall apply in respect of Cure Period relating to a Concessionaire Event of Default:

- (a) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages (as expressly set out in this Agreement), if any, caused by its underlying breach or default giving rise to the Agency Preliminary Notice;
- (b) the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
- (c) during any period when any Financing Due is outstanding, the rights of the Parties and the Financiers during the pendency of the Cure Period shall be as set out in the Financing Documents.

23.1.4 Upon issuance of a Termination Notice by the Agency (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the Operations Period, the right of the Concessionaire to collect the Aggregate Concession Revenue shall stand terminated, (unless otherwise required by the Financiers and set out in the Concession Direct Agreement) with immediate effect and the Aggregate Concession Revenue shall no longer accrue and/or be payable to the Concessionaire from the date of occurrence of the Concessionaire's receipt of the Termination Notice (unless otherwise required by the Financiers and set out in the Concession Direct Agreement).

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

23.2 TERMINATION FOR AGENCY EVENT OF DEFAULT

23.2.1 Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence and continuation of any of the

Agency Event of Defaults, the Concessionaire shall by a notice in writing inform the Agency of its intention to issue the Termination Notice (the **Concessionaire Preliminary Notice**).

- 23.2.2 In the event the underlying Agency Event of Default is not cured by the Agency within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Concessionaire shall be entitled to terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period.
- 23.2.3 In the event of Termination due to an Agency Event of Default, the Agency shall have the obligation to pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Termination Payment Sum (Agency Default).

23.3 **TERMINATION FOR CORRUPT ACTS**

- 23.3.1 The Concessionaire warrants that in entering into this Agreement it has not committed any Corrupt Act.
- 23.3.2 If any Corrupt Act is committed, then the Agency shall be entitled to act in accordance with the following provisions of this Section 23.3 (*Termination for Corrupt Acts*); provided, that at all times the Agency shall bear the burden of proof for establishing that a Corrupt Act has been committed:
- (a) if the Corrupt Act is committed by the Concessionaire or any Associate of the Concessionaire, as the case may be, then in any such case, the Agency may issue a notice to the Concessionaire of its intent to issue a Termination Notice;
 - (b) if the Corrupt Act is committed by an employee of the Concessionaire, then in such case, the Agency may give written notice to the Concessionaire of its intention to issue a Termination Notice; provided, however, the Agency shall not be entitled to issue a Termination Notice in the event the Concessionaire, within forty-five (45) Days of its receipt the Agency's notice stating its intention to issue a Termination Notice, terminates such employee's involvement in the Project and (if necessary) provides evidence to the Agency of the performance of any part of the Project deliverables previously performed by such employee by another Person;
 - (c) if the Corrupt Act is committed by any other person not specified in sub-section (b) above but involved in the Project as a subcontractor or supplier to any Contractor or to the Concessionaire, then the Agency may give notice to the Concessionaire of its intention to issue a Termination Notice; provided, however, that the Agency shall not be entitled to issue a Termination Notice in the event the Concessionaire, within thirty (30) Days of its receipt the Agency's notice stating its intention to issue a Termination Notice, procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant contract and procures the performance of the relevant part of the Project Works by another Person.
- 23.3.3 Any notice of intention to issue a Termination Notice by the Agency under this Section 23.3 (*Termination for Corrupt Acts*) shall specify:
- (a) the nature of the Corrupt Act;
 - (b) the identity of the party or parties who the Agency believes has committed the Corrupt Act; and

- (c) the date on which the Termination Notice shall be issued, which date shall be subject to the timelines provided in Section 23.3.2(b) and (c), as applicable.
- 23.3.4 Without prejudice to its other rights or remedies under this Section, the Agency shall be entitled to recover from the Concessionaire, the greater of:
- (a) the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and
 - (b) any direct losses (including Losses) sustained by the Agency in consequence of any breach of this Section by the Concessionaire.
- 23.3.5 Nothing contained in this Section shall prevent the Concessionaire from paying any proper commission or bonus to its employees within the agreed terms of their employment.
- 23.3.6 In the event of Termination due to a Corrupt Act in accordance with this Section 23.3 (*Termination for Corrupt Acts*), the Agency shall have the obligation to pay to the Concessionaire on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Termination Payment Sum (Corrupt Act).
- 23.4 **RIGHTS OF THE AGENCY ON TERMINATION AND/OR FINAL EXPIRY DATE**
- 23.4.1 In case of Termination of this Agreement for any reason whatsoever and subject to receipt by the Concessionaire of the Termination Payment on or prior to the Transfer Date or in case of expiry of this Agreement on the Final Expiry Date, the Agency shall, on the Transfer Date, have the power and authority to:
- (a) take possession and control of Concession Assets;
 - (b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Concession Assets or dealing with or any part thereof except in the case where the Concessionaire and any person claiming through or under the Concessionaire enters the Concession Assets or deals with or any part thereof as a User.
- 23.5 **TERMINATION PAYMENTS**
- 23.5.1 The Termination Payment shall be payable to the Concessionaire by the Agency on or prior to the Termination Payment Date in accordance with a demand being made by the Concessionaire in writing, subject to the same being duly certified by the Independent Technical Advisor and Independent Auditor. The Independent Technical Advisor and Independent Auditor shall certify the Termination Payment within fifteen (15) Days of the Termination Date by issuance of a termination payment certificate (the **Termination Payment Certificate**). If the Termination Payment becomes subject to any tax (corporate tax, minimum tax or alternate corporate tax), the Agency shall pay to the Concessionaire such additional compensation (as determined by the Independent Auditor) such that the net amount received by the Concessionaire after deduction of any tax shall be equal to the total Termination Payment that would have been received had no such tax been paid or incurred.
- 23.5.2 The recipients of the Termination Payment shall be shareholders of the Concessionaire, provided however, for the purposes of calculating the Termination Payment, the term Equity shall exclude all amounts comprising injections to the Equity effected after Final Completion Date; provided, that such amounts shall constitute Equity to the extent the

same are part of the Pre-Estimated Project Cost and determined by the Independent Auditor to be part of the Total Project Cost.

23.5.3 To the extent:

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

then, the Agency shall (in addition to the payment of the due and payable Termination Payment Amount (Unpaid Equity Compensation)) make payment to the Concessionaire of late payment interest on the Termination Payment Amount (Unpaid Equity Compensation) at the rate of Delayed Payment Rate, such interest commencing to accrue on the date falling fifty (50) Days following the Termination Payment Date and ending on the actual date on which the Agency makes payment of the Termination Payment Amount (Unpaid Equity Compensation). The stipulation regarding additional amounts payable in respect of delayed Termination Payment Amount (Unpaid Equity Compensation) contained in this Section 23.5.3 shall not be construed nor be deemed to authorize any delay in payment of any amount due to the Concessionaire nor be construed or deemed to be a waiver of the underlying breach of payment obligations, in each case, in the afore-stated circumstances.

23.6 MODE OF PAYMENT

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

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

23.7 UTILIZATION OF AGGREGATE CONCESSION REVENUE DURING EXIT IMPLEMENTATION PERIOD

The Aggregate Concession Revenue generated by the Concessionaire between the Termination Date and the Transfer Date shall be utilized by the Concessionaire solely for (a) undertaking works in terms of Article 24 (*Divestment of Rights and Interest*), (b) payment of the Agency Payment Amounts, (c) funding O&M Costs set out in the then current Financial Model and to apply any insurance proceeds in accordance with this Agreement, (d) paying any required taxes, and (e) making payments under the Financing Documents, in each case, subject to certification by the Independent Experts. Any payments made to the Financiers

under the Financing Documents between the Termination Date and the Transfer Date, as certified by the Independent Experts, shall be adjusted from the calculation of the Financing Due made by the Independent Expert in the Termination Payment Certificate. Any surplus funds standing to the credit of the bank accounts of the Concessionaire as of the Transfer Date, as certified by the Independent Experts, shall be set-off from the Termination Payment paid by the Agency.

24. DIVESTMENT OF RIGHTS AND INTEREST

24.1 REQUIREMENTS FOR DIVESTMENT

24.1.1 In case of (as applicable):

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

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

- (i) Notify to the Agency forthwith the location and particulars of all Permanent Concession Assets;
- (ii) deliver forthwith the actual or constructive possession of the Permanent Concession Assets, free and clear of all Encumbrances;
- (iii) unless this Agreement is Terminated due to a Relief Event (excluding NPFME), cure all Permanent Concession Assets of all Defects & Deficiencies in accordance with the Handover List; provided, that in the event of Termination during the C&O Period, all Permanent Concession Assets shall be handed over on ‘*as is where is*’ basis after bringing them to a safe condition; and
- (iv) comply with all other requirements as may be prescribed or required under Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Permanent Concession Assets, free from all Encumbrances, absolutely unto the Agency or to its nominee.

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

24.2 INSPECTION AND CURE

24.2.1 In case of:

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

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

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

24.3 **COOPERATION AND ASSISTANCE FOR TRANSFER OF THE PERMANENT CONCESSION ASSETS**

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

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

- (a) in case of Termination of this Agreement, two (2) months prior to the Termination Payment Date in the event of Termination and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be; or
- (b) in case of expiry of this Agreement on the Final Expiry Date, six (6) months prior to the Final Expiry Date,

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

24.4 **VESTING CERTIFICATE**

24.4.1 Subject to:

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

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

24.5 **TRANSFER CONSIDERATION**

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

24.6 **DIVESTMENT COSTS**

- 24.6.1 Subject to Section 24.6.2, the Concessionaire shall bear and pay, in case of Termination due to a Concessionaire Event of Default and/or due to Corrupt Act and/or due to a NPFME or in case of expiry of this Agreement on the Final Expiry Date, all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Permanent Concession Assets in favor of the Agency, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Agency. In the event of Termination due to a Force Majeure Event and/or an Agency Event of Default, the Agency shall bear and pay all the above-mentioned costs.
- 24.6.2 The Agency shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Permanent Concession Assets to the Agency or its nominated agency on the Transfer Date. The Agency shall at its own cost obtain or effect all clearances, permits, authorizations, consents and approvals under or pursuant to the Laws and take such other actions as may be necessary for such transfer.
- 24.6.3 In the event of any Dispute relating to matters covered by and under this Article 24 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

25. DEFECTS LIABILITY DURING EXIT IMPLEMENTATION PERIOD

25.1 LIABILITY FOR DEFECTS DURING EXIT IMPLEMENTATION PERIOD

25.1.1 Without prejudice to any obligation of the Concessionaire in this Agreement and subject to Section 24.1.1(iii), the Concessionaire shall be responsible for all Defects & Deficiencies in the Permanent Concession Assets during the Exit Implementation Period in accordance with this Section 25.1.1 and it shall have the obligation to repair or rectify all Defects & Deficiencies observed by the Independent Technical Advisor in the Permanent Concession Assets during the aforesaid period, as set out in a list jointly prepared by the Independent Technical Advisor and the Concessionaire (the **Handover List**) within:

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

the aforesaid period in each case of part (a) and (b) above shall be referred to as the defects liability period (**Defects Liability Period**).

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

26. **DISCLAIMER**

26.1 **DISCLAIMER**

- 26.1.1 Subject to the terms of this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination and due diligence, made an independent evaluation of the Concession, the RFP, the Scope of the Project, the Project Requirements, the Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, User volumes and all information provided by the Agency or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder and on the basis of such examination and determinations is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement. Except as expressly provided in this Agreement, the Agency makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Agency in this regard.
- 26.1.2 Subject to the terms of this Agreement, the Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Section 26.1.1 and hereby acknowledges and agrees that the Agency shall not be liable for the same in any manner whatsoever to the Concessionaire, the Sponsor(s) and their Affiliates or any person claiming through or under any of them.
- 26.1.3 Any mistake or error in or relating to any of the matters set forth in Section 26.1.1 shall not vitiate this Agreement or render it voidable.
- 26.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) above, such Party shall immediately notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the Agency to give any notice pursuant to this sub-section 26.1.4 of Section 26.1 (*Disclaimer*) shall not prejudice the disclaimer of the Agency contained in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) and shall not in any manner shift to the Agency any risks assumed by the Concessionaire pursuant to this Agreement.
- 26.1.5 Except as otherwise provided in this Agreement, all risks relating to the Rani Bagh Facilities shall be borne by the Concessionaire and the Agency shall not be liable in any manner for such risks or the consequences thereof.

27. ASSIGNMENT AND CHARGES

27.1 RESTRICTION ON ASSIGNMENT AND CHARGES

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

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

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

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

27.2 PERMITTED ASSIGNMENT AND CHARGES

27.2.1 The restriction set forth in Section 27.1.2 shall not apply to:

- (a) liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) assignment of rights, interest and obligations of the Concessionaire under this Agreement, the Agency Agreements, and/or the Project Agreements, Encumbrances, pledges/hypothecation of goods/assets, and any and all other bank accounts of the Concessionaire, a mortgage/charge in relation to the C&O Works and the Concession Assets (excluding the Project Site), a charge on the present and future movable, immovable and intellectual property of the Concessionaire, in each case, arising or created as security only for indebtedness to the Financiers under the Financing Documents in accordance with the Financing Term Sheet or the Financing Amendment Term Sheets (as applicable);
- (c) pledge of Shares, as security only for indebtedness to the Financiers under the Financing Documents in accordance with the Financing Term Sheet or the Financing Amendment Term Sheets, as the case may be. Furthermore, any enforcement of such share pledge shall be subject to the share transfer restrictions under Sections 10.2 (*Transfer Restrictions*), 10.3 (*Other Transfer Restrictions*) and 10.5 (*Procedure for Transfer*).

27.3 FINANCING TERM SHEET & FINANCING AMENDMENT TERM SHEETS

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

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

- 27.3.2 Following Financial Close, the Concessionaire shall deliver to the Agency and the Independent Auditor, copies of all amendments to the executed Financing Documents within ten (10) Business Days after the execution of each such document. The Concessionaire shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the Agency and the Independent Auditor, no less than thirty (30) Business Days prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other key financial terms or material modifications related thereto.
- 27.3.3 The Agency and the Independent Auditor shall notify the Concessionaire of any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule as soon as reasonably possible, and in any case within thirty (30) Days of receipt of the term sheet or schedule. In case no objection has been received by the Concessionaire on or before the expiry of the thirty (30) Days after receipt of the term sheet or schedule related to the proposed modification, the Agency and the Independent Auditor shall be deemed not to object to those amendments or terms (the **Financing Amendment Term Sheets**). At the request of the Agency and the Independent Auditor, prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Concessionaire shall deliver to Agency and the Independent Auditor, in a form satisfactory to Agency, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the Agency hereunder or under any Agency Agreement or affect in any way the right of the Agency to acquire the Concession Assets free and clear of all Encumbrances upon the Agency's payment of the applicable Termination Payment.
- 27.3.4 Notwithstanding anything to the contrary, the Concessionaire shall not make any addition, replacement or amendments to any of the Financing Documents without the prior written consent of the Agency if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Agency, and in

the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Agency.

27.4 **FINANCIAL CLOSE**

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

27.5 **ASSIGNMENT BY THE AGENCY**

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

28. CHANGE IN LAW

28.1 INCREASE IN COSTS

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

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

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

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

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

28.1.4 If Termination is on account of a Change in Law, the Agency shall pay a Termination Payment Sum (Agency Default) to the Concessionaire.

28.2 REDUCTION IN COSTS

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds PKR 5,000,000/- (Pakistani Rupees Five Million only) in any Accounting Year (as

determined by the Independent Auditor and the Independent Technical Advisor), the Agency may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Agency, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) Days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement; provided, that if no agreement is reached within sixty (60) Days of the aforesaid notice, the Agency may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within fifteen (15) Days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Agency; provided, that if the Concessionaire shall Dispute such claim of the Agency, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 28.2 (*Reduction in Costs*) shall be restricted to such Change in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

28.3 **RESTRICTION ON CASH COMPENSATION**

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

29. ADDITIONAL MATTERS

29.1 ADVERTISING & ADVERTISING REVENUES

- 29.1.1 The Concessionaire shall have a right to implement, from time to time, a plan for various advertising activities to be implemented on the Concession Assets (the **Concessionaire Advertising Plan**) and the Concessionaire shall be fully responsible for the implementation of the Concessionaire Advertising Plan; provided, however, the Concessionaire shall not engage in such advertising activities that may illustrate any political statements, inclinations, and/or support in any manner whatsoever.
- 29.1.2 The Concessionaire exclusively reserves the right to the proceeds relating to and/or generated from the implementation of the Concessionaire Advertising Plan (the **Advertising Proceeds**).
- 29.1.3 The Concessionaire shall ensure that the implementation of the Concessionaire Advertising Plan shall be carried out in such a manner so as not to hinder or impair the Operations and Maintenance of the Project, general integrity of the Concession Assets and with full regard for the safety of all Users.

29.2 MARKETING PLAN

- 29.2.1 Within twenty-five (25) Days of the Effective Date, the Concessionaire shall submit to the Independent Technical Advisor and the Agency a detailed plan for marketing of the Project in line with the Preliminary Marketing Plan (the **Marketing Plan**).
- 29.2.2 The Marketing Plan prepared by the Concessionaire shall be subject to approval of the Agency; provided, however, such approval shall be granted by the Agency within twenty-one (21) Days of the Concessionaire's request for such approval, if the Marketing Plan is recommended by the Independent Technical Advisor for approval after addressing any comments and observations of the Agency and the Independent Technical Advisor on the same; provided, that in the event the Agency fails to grant its approval to the Concessionaire on the Marketing Plan within twenty-one (21) Days following the receipt of such request by the Agency from the Concessionaire, the approval of the Agency on the Marketing Plan shall be deemed accorded.
- 29.2.3 The Concessionaire shall re-submit the Marketing Plan for review of the Independent Technical Advisor (in consultation with the Agency) after addressing any observations raised under Section 29.2.2 and the process in Section 29.2.2 shall be repeated until such time that the Agency has not objected to the Marketing Plan. The Marketing Plan, as approved by the Agency on the Independent Technical Advisor's recommendation, shall be binding on the Parties.
- 29.2.4 The Concessionaire shall market the Project in accordance with the Marketing Plan approved in terms of this Section 29.2 (*Marketing Plan*).

30. DISPUTE RESOLUTION

30.1 GOVERNING LAW

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.

30.2 NEGOTIATION

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.

30.3 PUBLIC PRIVATE PARTNERSHIP POLICY BOARD

If any Dispute is not finally resolved between the Parties pursuant to Section 30.2 (*Negotiation*) 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 Section 30.3 (*Public Private Partnership Policy Board*) within sixty (60) Days from the date on which the matter has been referred by the Public Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with Section 30.4 (*Arbitration*).

30.4 ARBITRATION

30.4.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to Section 30.3 (*Public Private Partnership Policy Board*):

- (a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act by appointment of three (3) arbitrators, of which, one (1) shall be appointed by the Agency, one (1) shall be appointed by the Concessionaire, and one shall be appointed jointly by the two (2) arbitrators appointed by the Agency and the Concessionaire (the **Arbitrators**). Any arbitration proceedings commenced pursuant to this Section 30.4.1 shall be referred to as the **Arbitration**;
- (b) not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and
- (c) 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.

- 30.4.2 The place of Arbitration shall be Karachi, Pakistan.
- 30.4.3 The language of Arbitration shall be English.
- 30.4.4 Any decision or award resulting from the Arbitration (the **Award**) shall be final and binding upon the Parties.
- 30.4.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Government Authority.
- 30.4.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective 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.
- 30.4.7 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.

30.5 **EXCLUSIVE JURISDICTION**

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with Section 30.3 (*Public Private Partnership Policy Board*) or Section 30.4 (*Award*) and then only to enforce or execute an Award.

30.6 **OBLIGATIONS CONTINUING**

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.

31. MISCELLANEOUS

31.1 DELAYED PAYMENTS

Unless stated to the contrary in this Agreement, any amount under any Agency Agreement that is not paid by the Concessionaire to the Agency on or before the payment date therefor shall bear commission at the Delayed Payment Rate accrued from, but excluding, the relevant payment date, and including the Day on which such payment is made.

31.2 GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and interpreted in accordance with and governed by the Laws and all Disputes or matters arising out of or relating to this Agreement shall be dealt with in accordance with the provisions of Article 30 (*Dispute Resolution*) of this Agreement.

31.3 WAIVER

31.3.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

31.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

31.4 AMENDMENTS

This Agreement and the Schedules together constitute a complete and an exclusive statement of the terms of this Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

31.5 NOTICES

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in **SCHEDULE S (NOTICES)** or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

31.6 **SURVIVAL**

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

31.7 **CONFIDENTIALITY**

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

31.7.2 The provisions of Section 31.7.1 hereinabove shall not apply to:

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

31.8 **SEVERABILITY**

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

31.9 **NO PARTNERSHIP**

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

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

31.10 **LANGUAGE**

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

31.11 **EXCLUSION OF IMPLIED WARRANTIES**

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

31.12 **COUNTERPARTS**

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

31.13 **SET-OFF**

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

31.14 **INDEPENDENCE**

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

31.15 **ENTIRE AGREEMENT**

The Parties hereto acknowledge, confirm and undertake that this Agreement (and the Agency Agreements, as applicable), as at the date hereof, constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project.

LIST OF SCHEDULES

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SCHEDULE A - SCOPE OF THE PROJECT

1. SCOPE OF THE PROJECT

The Scope of the Project includes (without limitation) DFBROMT of the Project. The main features of the Scope of the Project for the Concessionaire are outlined in the subsequent sections.

2. GENERAL

- 2.1 Rani Bagh was established as a botanical garden in 1861 in honour of Queen Victoria by the then Agro-horticulture Society, on a total area of approximately fifty-five (55) acres. Later, animals and birds were also moved in, and a zoo was founded, which eventually became one of the biggest attractions for the people of Hyderabad. It was divided into different parts and each facility was well built and well planned.
- 2.2 Rani Bagh is the largest recreational facility of Hyderabad, featuring 'Eid Gal', the 'Abbas Bhai Park', a zoo, mechanical rides i.e. fun land, an open-air theatre, lawns, an artificial lake for boating purposes and a parking area, which is in dire need of rehabilitation and upgradation and efficient operation, management and maintenance.
- 2.3 The number of visitors rises to thousands on special occasions like independence day, Eid and more. This signifies that Rani Bagh is a convenient convergence point for the recreation of the people of Hyderabad and other people living in the adjoining districts. Rani Bagh is located in the city center, which is easily accessible from Hyderabad Bypass (M9) via the newly developed Qasimabad Bypass and it is surrounded by three (3) main roads, namely, Wadhu Wah Road, Thandi Sarak and National Highway 5 (N5), which are depicted in the image below.



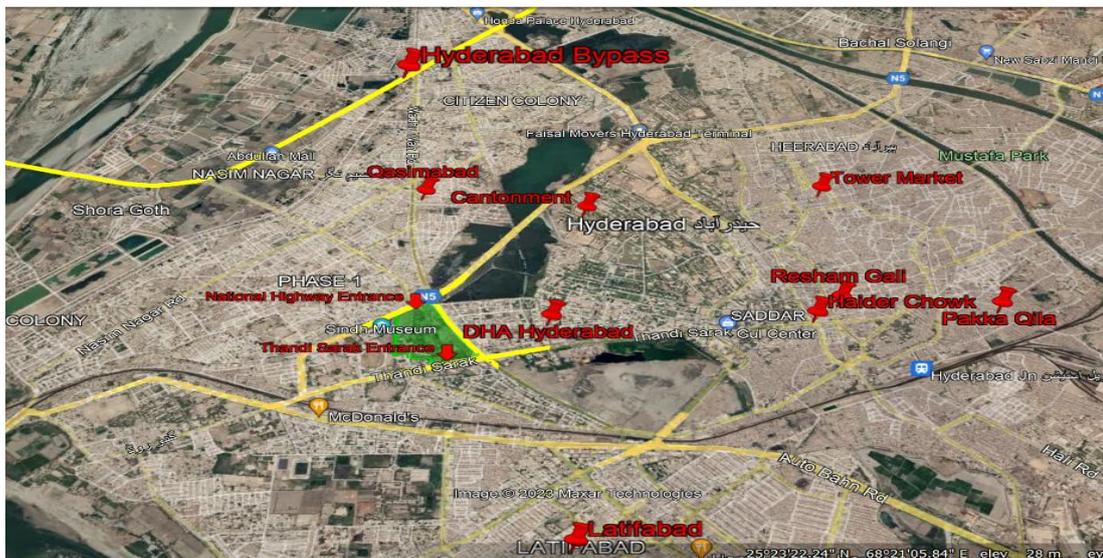
- 2.4 The Agency intends to explore avenues for private investment to establish a modern state of the art public park with a better green space having recreational facility and amusement for children and youth, and soothing and pleasing entertainment environment for all other segments of the society. The overall objectives of the Project are to:

- (a) provide a state of art urban green space and recreational facility for the population of Hyderabad and Sindh, which is to be developed and Operated and Maintained as per the Applicable Standards;
- (b) provide relief from urban intensity for residents and bring people together across social and economic divides;
- (c) provide infrastructure that allows intrinsic environmental, aesthetic, and recreational benefits to the citizens; and
- (d) produce positive economic benefits and employment opportunities for the society.

3. GEOGRAPHICAL LOCATION

3.1 Rani Bagh is located in one of the most popular neighborhoods of Hyderabad, Qasimabad. Hyderabad is the second most urbanized district in Sindh, after Karachi, with eighty percent (80%) of its residents living in urban areas. As depicted in the images below, the neighbouring areas around Hyderabad include:

- (a) Qasimabad;
- (b) Latifabad;
- (c) Resham Gali;
- (d) Pakka Qilla;
- (e) Tower Market/ Shahi Qilla;
- (f) GOR Colony;
- (g) Cantonment Area; and
- (h) Defence Housing Authority, D.H.A.



- 3.2 The roads along Rani Bagh are Wadhu Wah Road towards East which meets Hyderabad Bypass (M9), Thandi Sarak towards South side of Rani Bagh, and National Highway 5 (N5) towards the North. The area in the vicinity includes Hyderabad Sports Club, a cricket ground and Sindh Museum towards west side of Rani Bagh. Across the Wadhu Wah Road is the Defence Housing Society. Across Thandi Sark is the GOR Colony. The Sindhi Museum Society and Industrial Colony are located across National Highway 5 (N5).

4. **PROJECT COMPONENTS**

The Rani Bagh Facilities that are either to be transformed, rehabilitated or constructed as new additions to Rani Bagh are (without limitation) as follows:

TRANSFORMED		REHABILITATED		NEW ADDITIONS	
1.	<i>'Abbas Bhai Park'</i>	1.	National Highway 5 (N5) Parking	1.	Carnival Pavillion
2.	<i>'Eid Gab'</i>	2.	Boating Lake	2.	Wadhu Wah Road Parking
3.	Family Park	3.	Amphitheatre	3.	Indoor Theme Park
4.	Fun Land- Outdoor Amusement Park	4.	Park Square	4.	Multiplex Building
5.	Food Court	5.	Promenade	5.	Dancing Fountains
6.	Playground Area and Family Park (including, wellness platform)	6.	Jogging and Cycling Track	6.	Zoo Animals, Zoo Train and Horse Riding
7.	Thandi Sarak Parking	7.	Zoo	7.	Cafeteria and Restrooms
				8.	Sculpture Park

NOTE:

Transformed means the reshaping and/or replacement of the Concession Assets (Effective Date);

Rehabilitated means the complete repair and renovation of the Concession Assets (Effective Date); and

New Addition means the establishment of new Rani Bagh Facilities,

in each case, in the manner set out in this **SCHEDULE A (SCOPE OF THE PROJECT)**, **SCHEDULE B (DESIGN REQUIREMENTS)**, **SCHEDULE C (APPROVED MASTER PLAN)** and **SCHEDULE D (RANI BAGH FACILITIES)**.

5. **DETAILED DESIGN OF THE PROJECT**

The Concessionaire shall undertake the most suitable Detailed Engineering Design that complies with the Approved Master Plan set out in **SCHEDULE C (APPROVED MASTER PLAN)** of this Agreement, meets the Design Requirements set out in **SCHEDULE B (DESIGN REQUIREMENTS)** of this Agreement and adheres to the Applicable Standards.

6. SEGMENTS AND CONCESSION ASSETS

- 6.1 The Rani Bagh Facilities are to be developed in well-planned Segments, each designed to cater to a variety of recreational and social needs. The Concessionaire shall have discretion to sequence the Segments in the manner that it deems fit. The Proposed C&O Programme should define the Segments and outline the sequence in which the Rani Bagh Facilities shall be constructed, whether sequentially or simultaneously. This phased approach ensures steady progress while allowing Users to begin enjoying Rani Bagh's amenities as each Segment is completed.
- 6.2 Further, the Proposed C&O Programme should include a comprehensive footfall management plan to address and tackle the impact of Construction Works whilst Users enjoy the completed Segments of the Project. This plan should aim to minimize the impact of the Construction Works while ensuring a seamless and predictable experience for Users.
- 6.3 The criteria for Substantial Completion of the Concession Assets (the **Substantial Completion Criteria**) shall be as follows:
- (a) **Completion of Core Facilities and Infrastructure**
 - (i) all Rani Bagh Facilities have been completed to such extent that are ready for safe use by the Users;
 - (ii) the core infrastructure (roads, walkways, landscaping, parking, and utilities) required for public access to Rani Bagh is fully operational;
 - (b) **Operational Readiness**

all Rani Bagh Facilities are operationally ready;
 - (c) **Safety and Compliance**

all Rani Bagh Facilities must meet local regulatory standards, including safety codes, health regulations, and environmental Laws. This includes (without limitation) fire safety, electrical safety, structural integrity, and environmental impact assessments;
 - (d) **Required Permits and Approvals**

all Concessionaire Permits and other applicable permits and approvals for the operation of the Rani Bagh Facilities must be obtained from the relevant Government Authorities;
 - (e) **Defects or Incomplete Works**

there may be certain minor works or defects that are not critical to the operation of Rani Bagh but need to be completed. These should be identified in the Completion Check List which will be completed in the manner set out in Article 14 (*Completion*) of this Agreement. However, Rani Bagh can still be considered Substantially Complete for the purpose of operation and public use;
 - (f) **Operational Testing and Commissioning**

all Rani Bagh Facilities must have passed their Completion Tests, meaning they have been successfully tested and are capable of operating without major issues;

- (g) **Public Access**
- Rani Bagh, as a whole or in parts (depending on the phase), must be capable of being open to the public and capable of providing the services for which it was designed;
- (h) **Handover Documentation**
- The Concessionaire must provide all required handover documents, such as:
- (i) final ‘*as built*’ drawings;
 - (ii) operation manuals for each Rani Bagh Facility;
 - (iii) maintenance schedules;
 - (iv) warranty details for major equipment and structures.
- 6.4 The Substantial Completion Criteria shall apply *mutatis mutandis* to substantial completion of each Segment (the **Segment Substantial Completion Criteria**).
- 6.5 The Concessionaire shall ensure achievement of Segment Substantial Completion on or prior to the Scheduled Segment Substantial Completion Date.
- 6.6 The Concessionaire shall ensure achievement of Substantial Completion on or prior to the Segment Substantial Completion Date.
- 7. ADDITIONAL OBLIGATIONS**
- 7.1 The Concessionaire shall:
- (a) have inspected and satisfied itself of the Project Site Conditions in accordance with Section 4.4.1 of this Agreement and in relation thereto, including (without limitation), carry out the activities pursuant to Section 9 (*Other Activities to be conducted by the Concessionaire*) of this **SCHEDULE A (SCOPE OF THE PROJECT)**;
 - (b) submit the Proposed C&O Programme for performance of the C&O Works;
 - (c) complete the C&O Works within the C&O Time For Completion;
 - (d) conduct or procure to be conducted such tests, as specified in **SCHEDULE G (LIST OF TESTS & COMPLETION TESTS)** in order to determine whether the C&O Works conform to the Applicable Standards;
 - (e) ensure that construction material will be used from sources with appropriate tests and certification;
 - (f) ensure that the Project Site is clean from any debris, construction material and machinery;
 - (g) follow international and local safety standards and best practices procedure during C&O Period, including (without limitation) provision of first-aid service with trained medical staff; and

- (h) submit updated '*as built*' drawings upon completion of the Construction Works in respect of each completed Segment.

8. ALLIED FACILITIES

8.1 The Concessionaire shall be responsible for providing the following allied facilities, for which the Design Requirements and/or other related details are set out in **SCHEDULE B (DESIGN REQUIREMENTS)** and **SCHEDULE D (RANI BAGH FACILITIES)** of this Agreement:

- (a) *Eid Gab* and ablution area;
- (b) open spaces, landscapes and green areas, pathways;
- (c) jogging and cycling track;
- (d) boundary wall and watch towers;
- (e) entrance gates;
- (f) parking areas; and
- (g) emergency support (including first aid).

9. OTHER ACTIVITIES TO BE CONDUCTED BY THE CONCESSIONAIRE

9.1 TOPOGRAPHICAL SURVEY

Topographical surveys, as previously done, comprising level, contour and salient physical features of the Project Site will be provided to the Concessionaire. The Concessionaire shall carry out the confirmatory topographical survey at its own cost and risk.

9.2 GEO TECHNICAL INVESTIGATIONS

The Concessionaire shall conduct geo-technical/sub-soil investigations, including soil classification, safe bearing capacity, subgrade CBR and level of ground water table at its own cost and risk.

9.3 ENVIRONMENTAL MANAGEMENT AND MONITORING PLAN

9.3.1 Based on the environmental study of the Project, i.e., the Environmental and Social Impact Assessment (ESIA) conducted by the Concessionaire in accordance with the Laws and the Environmental Standards, the Concessionaire shall prepare a comprehensive environmental management and monitoring plan (the **Environmental Management & Monitoring Plan**).

9.3.2 The Environmental Management & Monitoring Plan shall be conceived, prepared, documented and implemented by the Concessionaire to ensure that:

- (a) the execution of the Project does not have any detrimental effect on the environment;
- (b) all components of the Environmental Standards are duly present in the

Environmental Management & Monitoring Plan;

- (c) any foreseeable adverse impacts are effectively mitigated through appropriate measures adopted at every stage of the Project Works; and
 - (d) protection and preservation of the natural environment and the ecosystem along the corridor are the prime considerations.
- 9.3.3 The Environmental Management & Monitoring Plan shall also cover all Project Works along the Project Site during the Concession Period, and provide for protection and preservation of the environment at the Project Site and effective mitigation of any adverse effects of the Project Works, including (without limitation) control of:
- (a) dust pollution;
 - (b) vehicular emissions;
 - (c) noise from construction machinery and vehicular traffic;
 - (d) loss of vegetation through effective replantation at a larger scale;
 - (e) water resources pollution;
 - (f) any type of hazardous substances; and
 - (g) solid waste management including proper collection and safe/environment-friendly transportation to the designated disposal sites.
- 9.3.4 The Concessionaire shall develop details of the scope and update the Environmental Management & Monitoring Plan at various stages of the Project. Components and structure of the Environmental Management & Monitoring Plan shall include (without limitation) the following main components:
- (a) integration of the Environmental Management & Monitoring Plan with Project Works;
 - (b) mitigation of potentially adverse impacts;
 - (c) environmental cost estimates;
 - (d) institutional capacity building and training components along with their cost estimates for implementation of the proposed Environmental Management & Monitoring Plan; and
 - (e) effective monitoring during implementation of Project Works.

10. PLANNING AND DESIGN OF INFRASTRUCTURE

The Concessionaire shall ensure the Rani Bagh Facilities and each Segment(s) comply with the Design Requirements, Applicable Standards and the Laws.

11. BUILDINGS AND ALLIED FACILITIES

- 11.1 The Concessionaire shall undertake construction of buildings and allied facilities at Rani

Bagh as set out in this **SCHEDULE A (SCOPE OF THE PROJECT)**, **SCHEDULE B (DESIGN REQUIREMENTS)** and **SCHEDULE D (RANI BAGH FACILITIES)** based on the Approved Master Plan and the Design Requirements. The Concessionaire will also provide for:

- (a) the infrastructure, common facilities, green areas and buildings, which are to be constructed as per the Sindh Building Control Authority Bylaws;
 - (b) construction of infrastructure shall include (without limitation) three (3) entry gates and parking alongside entrances, boundary wall, emergency exits and watch towers, compound wall with controlled access, entrance plaza/security office, security/surveillance and communication system, roads and water network, storm water drainage, water supply (including rising main, storage and distribution network), sewerage system (including wastewater collection, tertiary treatment facility and distribution network), electrification network including installation of solar power generation system, open green spaces, telecommunication, and street lighting; and
 - (c) development of other facilities including but not limited to green areas and landscapes, ablution area, commercial and common facilities.
- 11.2 The process of dewatering at any phase of the Project completely falls under the Construction Works. The Concessionaire shall use sulphate resistant cement in any part of the Project as may be recommended by the Independent Technical Advisor, due to the presence of salt content in soil.

12. ELECTRONIC TICKETING SYSTEM

- 12.1 The Concessionaire shall implement an Electronic Ticketing System at Rani Bagh. The ETS should enhance visitor experience, optimize park operations, and provide secure and efficient methods for both ticket sales and access control. The system shall enable ticket sales through multiple channels, including (a) online sales *via* a user-friendly website and/or mobile application; (b) on-site sales through self-service kiosks or point-of-sale (POS) terminals at the park entrance(s) and/or designated ticketing counters; and (c) third-party integrations, if applicable (e.g., with event ticketing platforms, or local retail partners).
- 12.2 The ETS shall generate electronic tickets in the form of (a) QR codes, barcodes, or digital passes for entry validation; and (b) support for RFID or NFC-based ticketing (optional) for seamless, contactless entry.
- 12.3 The ETS shall support secure payment gateways for (a) credit/debit card payments; (b) mobile wallet payments; and (c) alternative digital payment methods (if applicable).
- 12.4 The ETS shall integrate with access control mechanisms to validate tickets at entry points of Rani Bagh, including gates, turnstiles, or attractions.
- 12.5 The ETS should be able to verify tickets in real-time, ensuring security and preventing unauthorized entry.
- 12.6 The ETS shall provide real-time reporting capabilities, including (without limitation):
- (a) ticket sales and revenue generation;
 - (b) visitor traffic and demographics; and

- (c) transaction logs and audit trails,

The Concessionaire shall ensure that the Independent Experts have real-time reporting access to the ETS at all times during the Concession Period; provided, that such access may also be provided by the Concessionaire to the Agency upon written request.

- 12.7 The ETS should generate daily, weekly, and monthly reports for Rani Bagh management to monitor performance. The system should have functionality to:
 - (a) allow ticket refunds or exchanges (if applicable under Rani Bagh policies);
 - (b) handle lost ticket recovery *via* email or app verification;
 - (c) provide customer service access through phone, email, or in-app support.
- 12.8 The ETS shall integrate with other operational systems at Rani Bagh, including:
 - (a) visitor management systems;
 - (b) customer relationship management (CRM);
 - (c) financial/accounting systems for seamless revenue tracking.
- 12.9 The system should be designed for a user-friendly experience for both park visitors and park staff, ensuring easy navigation for ticket purchases, access control, and reporting. The Concessionaire shall ensure ongoing maintenance of the ETS, including:
 - (a) regular software updates;
 - (b) technical support for system bugs or failures;
 - (c) 24/7 support during peak visitor times (if applicable).
- 12.10 The ETS must be scalable to accommodate future growth, including increased visitor traffic or the addition of new attractions.

13. LOCATION OF UTILITY SERVICES

Location and identification of all services, in consultation with relevant utility service provider(s) or company, whether above ground or below the ground shall be Concessionaire's and its Contractor's (as applicable) responsibility following transfer of the Project Site by the Agency to the Concessionaire.

14. PROJECT SITE CLEARANCE AND CRUBBING

- 14.1 The Project Site shall be cleared of rubbish and debris of all kinds, loose rocks, small trees (not exceeding thirty (30) centimetre in girth, measured at one meter above ground level), shrubs, stumps, grass, brush wood, undergrowth and any other vegetation, and superficial earth etc. as per approved design and as directed by the Independent Technical Advisor. The clearance of the Project Site shall be done twenty (20) meters around the periphery of the proposed Concession Assets.
- 14.2 All materials arising from clearance of the Project Site shall be disposed off by the Concessionaire at its own cost and expense. All serviceable materials shall be temporarily

stacked in separate lots at the Project Site, at places as directed by the Independent Technical Advisor. The clearance of the Project Site shall cover all the activities required for clearing the Project Site and its surroundings, including providing labour, materials, tools, equipment and incidentals necessary to complete such clearance work. The clearance work will also include handling, salvaging, piling or stacking or collecting and disposing off cleared materials.

14.3 The existing natural drain flowing through the Project Site shall be diverted parallel to the roads/Project Site boundary wall with a proper hydraulic and structural design. The proposed drain should have safe discharge carrying capacity for peak monsoon flow. All the material used for draining diversion must conform to international standard specifications.

14.4 The Concessionaire shall, after clearing the Project Site, as mentioned above, level out the Project Site, and the Concessionaire shall subsequently prepare a grading plan as per the Detailed Engineering Design.

15. OPERATION AND MAINTENANCE

15.1 The Concessionaire is required to carry out the Operation and Maintenance in respect of the Project in conformity with the O&M Requirements and the O&M Manual, and in accordance with this Agreement. The O&M Requirements are set out in **SCHEDULE H (O&M REQUIREMENTS)** of this Agreement.

15.2 The Concessionaire shall be responsible to keep the Concession Assets fully operational as per the O&M Requirements, especially focusing on the following activities and systems:

- (a) provision of utilities inside the Project Site;
- (b) solid waste management including effective collection and proper disposal to a designated site outside the Project Site;
- (c) provision of security and surveillance;
- (d) safety and parking management; and
- (e) disaster/emergency services management including first-aid service with trained medical staff.

15.3 Dedicated on-call project management and maintenance teams will be required to be provided by the Concessionaire round-the-clock services, upholding the quality of the Project and ensuring reliable support to the Project Site at all times.

15.4 The Concessionaire shall be required to ensure effective maintenance management of the entire Project infrastructure, building works and allied facilities.

15.5 The Concessionaire is responsible for occurrence of any Emergency at Rani Bagh for which firefighting systems should be available at all crucial points of Rani Bagh.

16. FINANCING

The Concessionaire is responsible for developing and implementing the financing structure for the Concession including the financing and commercial arrangements for the design, construction, Operations and Maintenance in accordance with this Agreement. The Concessionaire shall not undertake or permit and hereby undertakes to procure that the

Sponsors do not undertake or permit any change in shareholding of the Concessionaire contrary to Sections 10.2 (*Transfer Restrictions*), 10.3 (*Other Transfer Restrictions*) and 10.5 (*Procedure for Transfer*) of this Agreement.

17. HAND-OVER OF THE STRUCTURE

The Concessionaire is responsible for handing over the structures to the Agency in a good working condition at the end of the Concession Period as specified in this Agreement without any further compensation to the Concessionaire at the time of such transfer. These structures are subject to an inspection and correction process in order to ensure that they are handed over in accordance with established terms and conditions.

SCHEDULE B - DESIGN REQUIREMENTS

In carrying out the Construction Works, the Concessionaire shall comply with the Design Requirements stipulated below. The Concessionaire shall ensure that the Detailed Engineering Design complies with the *Sindh Building Control Authority Bylaws* and the *National Reference Manual on Planning and Infrastructure-Pakistan*.

Along with the Design Requirements of the Rani Bagh Facilities, the following activities are also included in the Concessionaire's scope of work under the Project.

1. DETAILED DESIGN OF THE PROJECT

- 1.1 The Concessionaire shall carry out map/satellite images, study and review of all material/documents provided, supplemented with area reconnaissance and detailed topographic survey, study options for the proposed Rani Bagh Facilities and propose technically and economically optimized designs for the same.
- 1.2 The Concessionaire shall undertake the most suitable layout/design of the Rani Bagh Facilities in accordance with the Approved Master Plan.
- 1.3 The Concessionaire will be responsible for ensuring that all aspects of design are in conformity with the Applicable Standards and in accordance with this Agreement, including the Design Requirements as set out in this Agreement.
- 1.4 The Concessionaire shall prepare construction drawings of (without limitation) the Rani Bagh Facilities.
- 1.5 The Concessionaire shall carry out an environmental impact assessment in accordance with the applicable Law, and submit the relevant report to obtain the EIA Approval from the Sindh Environmental Protection Agency as per the applicable Law.
- 1.6 The Concessionaire shall provide a detailed plan relating to implementation strategy in respect of the above.

2. CIVIL DESIGN REQUIREMENTS

2.1 APPLICABLE CODES AND STANDARDS

- 2.1.1 The following international standards and codes shall be considered by the Concessionaire for the design of the buildings and civil works, Rani Bagh Facilities and allied facilities. Other standards may be implemented if they are considered to meet standards equivalent to the international codes of practice listed below.
- 2.1.2 The following list is not to be considered as exhaustive and the Concessionaire shall conduct its own due diligence in researching and implementing the most appropriate applicable international standards.

⁹ This SCHEDULE B (*DESIGN REQUIREMENTS*) outlines the essential facilities and equipment with their minimum standards to ensure the functionality, safety, and durability of the Rani Bagh Facilities and allied facilities. The specifications listed here represent the baseline standards, with actual facilities potentially offering additional amenities.

CODE	SUBJECT MATTER
BS 8110	Structural use of concrete
ASCE 7-98	Minimum Design Loads for Buildings and Other Structures
BS 648	Schedule of Weights of Building Materials
BS 8005	Sewerage
Part 1	Guide to new sewerage construction
Part 5	Guide to rehabilitation of sewers
BS EN 752	Drain and sewer systems outside buildings
ACI 318	Building Code Requirements for Structural Concrete
ACI 350	Requirements for Environmental Engineering Concrete Structures
BS 5950	Structural use of Steelwork in Building
BS 8004	Code of Practice for Foundations
BS 8006	Code of Practice for Strengthened/Reinforced Soils and Other Fills
BS 6031	Code of Practice for Earthworks
BS 5588	Fire precautions in the design, construction, and use of buildings
BS 7974	Application of fire safety engineering principles to the design of buildings
BS EN ISO 12944	Paints and varnishes. Corrosion protection of steel structures by protective paint systems

2.1.3 Apart from the above standards, the Concessionaire or EPC Contractor may consider implementing other higher relevant American and British codes.

3. GENERAL INFRASTRUCTURE AND SERVICES

3.1 BUILDING WORKS - OPEN SPACES, LANDSCAPING AND PATHWAYS

3.1.1 All building and open space designs should follow the Approved Master Plan.

3.1.2 Landscaping, which should comply with the minimum plantation density according to the Approved Master Plan.

3.1.3 Pathways will be paved with non-slip and water-resistant concrete tiles and solar-powered LED lights.

3.2 BOUNDARY WALL, WATCH TOWERS AND EMERGENCY EXITS

3.2.1 Material: reinforced concrete with a minimum height of two point four (2.4) meters.

3.2.2 Design: standard thickness with top barbed wire security, as per the Sindh Building Control Authority Bylaws.

3.2.3 Security personnel shall be designated at the watch towers.

3.2.4 Emergency exits should be integrated in the boundary wall of Rani Bagh, which will form part of all pedestrian entry points into Rani Bagh as per the Approved Master Plan.

3.3 GATES

3.3.1 Material: galvanized steel gates with electronic control systems for main entrances.

3.3.2 Width: each gate should be at least six (6) metres wide to accommodate large vehicles.

3.4 **PARKING**

3.4.1 Capacity: parking for six hundred and fifty (650) vehicles, designed as per ‘*National Building Code*’ (NBC) standards with natural shading i.e. coverage by trees.

3.4.2 Entrance Gates: electronic gates with remote control systems.

3.4.3 Parking Area: designed with green belts, each parking space shaded by trees.

3.5 **FIRE FIGHTING WORKS**

3.5.1 Firefighting systems for buildings and parks, compliant with the latest codes and standards of the ‘*National Fire Protection Association*’ (NFPA) and the ‘*Building Code of Pakistan*’.

3.5.2 Minimum requirements in respect of the firefighting system at Rani Bagh should comprise of the following:

- (a) Fire Hydrants: installed at thirty (30) metre intervals.
- (b) Sprinkler Systems: automatic water sprinkler systems installed in all indoor facilities.
- (c) Extinguishers: ABC-rated fire extinguishers placed at all indoor facilities including (without limitation) event halls, cinemas, and VIP lounges.

4. **WATER SUPPLY NETWORK**

4.1 The water resources management involves the exploration/development of water, its collection, filtration, necessary treatment, proper storage, and distribution to the consumers. The water resources of Rani Bagh consist of *WASA Supply, tube wells, rising mains, storage UGT* and distribution network. The water will be made available from above sources. The main components include the following:

- (a) water demands;
- (b) minimum design pressure at each junction shall be between twenty (20) to twenty-five (25) PSI;
- (c) HDPE (high density polyethylene) pipes (PE-100) shall be used for external water supply;
- (d) PPRC (poly propylene random copolymer) pipes shall be used for internal water supply in the buildings;
- (e) storage tanks capacity should be two hundred thousand (200,000) gallons;
- (f) water resources include *WASA supply* and ground water to be pumped by *tube wells*;
- (g) tube wells;
- (h) water storage facilities including under ground;

- (i) water distribution network; and
- (j) system appurtenances.

4.2 **WATER DEMAND**

4.2.1 The demand for water supply mainly depends upon the socio-economic conditions of the population. The distribution of population in different parts of the Project is as regards its density, type of dwelling, climate, sewerage and drinking facilities and mode of supply required are some of the important factors for the assessment of water demand.

4.2.2 In order to determine the total water demand, requirements have been considered under the following many headings: ultimate water demands of visitors, landscape irrigation and built areas have been calculated on the basis of per capita demand and standard figures for water consumption are adopted for various facilities.

DESCRIPTION	GALLONS PER SFT		DEMAND	
	AREA (SFT)	CONSUMPTION	GPD	MGD
Landscaping Irrigation	2,000,000	50/1000	100,000	0.10
Buildings (Multiplex Building, Indoor Theme Park Building, Food Court, 'Eid Gah' etc.)	140,000	200/1000	28,000	0.03
Visitor Demand in Fun Land Area	100,000	100/1000	10,000	0.01
Seasonal Demand Increment at 10%	-	-	13,800	0.01
Water Loss at 5%	-	-	7,590	0.01
Fire Demand at 10%	-	-	15,939	0.02
Total Water Demand	-	-	175,329	0.18
Underground Tank Required at 2 day Storage Capacity	-	-	200,000	0.20

4.3 **UN-ACCOUNTED FOR WATER**

This includes water losses through leakages in the transmission and distribution connections etc. These losses in fact depend upon the types of materials used for pipe, fittings, plumbing and workmanship employed. In case of Rani Bagh, it is expected that better pipe material shall be used, maintenance shall be provided and also in the new system leakages are very low thus only five (5) percent water loss is assumed.

4.4 **WATER QUALITY**

4.4.1 The proposed water supply source to be used should be of acceptable quality in accordance with 'World Health Organization' (WHO)/international standards. The WHO guidelines for potable water quality are:

Sr. No.	PARAMETER	DESIRABLE LEVELS	PERMISSIBLE LEVELS
1.	PH	7.0-8.5	6.5-9.2
2.	Odor	Unobjectionable	Unobjectionable
3.	Color	5 units	50 units
4.	Taste	Unobjectionable	Unobjectionable

5.	Turbidity ppm silica or N.T.U.	5 units	25 units
6.	Total dissolved solids	500	1500
7.	Calcium	75	200
8.	Magnesium	50	150
9.	Total Hardness mg/l as CaCO ₃	100	500
10.	Sulphate	200	400
11.	Chloride	200	600
12.	Iron total	0.1	1

4.4.2 The hydraulic design of various components of the water supply system is based on the following considerations:

(a) **CAPACITY**

The capacity of the transmission mains is based on the maximum day demand of the areas to be served.

(b) **VELOCITY**

Velocity is an important factor in design. Low velocities are not preferred for hygienic reasons, while too high velocities cause exceptional head losses. Therefore, following standard design velocities shall be used.

LOSS OF HEAD

The loss of head in the pipelines is calculated by using Hazen & William Formula as under:

$$V = K C R^{0.63} S^{0.54}$$

Where,

V = Velocity of Flow (feet/sec)

R = Hydraulic Radius (feet)

S = Hydraulic Gradient (i.e. unit head loss in the pipe)

C = Hazen William Friction coefficient

K = 1.318

5. **APPURTENANCES**

5.1 This will include gate valves, air valves, washouts, fire hydrants and concrete thrust blocks etc. at appropriate locations on the transmission and distribution mains. These will be placed in adequately sized concrete/brick masonry chambers equipped with manhole covers. Details are as follows:

(a) **PUMPING HEADS**

The pumping heads of tube well shall be as required by the configuration of transmission lines, topography of the area, depth of water table and expected drawdown, etc.

(b) SLUICE VALVES AND NON-RETURN VALVES

Valves shall be located at main controls points for balancing and regulations. Non-return valve to be provided in rising main with length exceeding five thousand (5,000) feet.

(c) AIR VALVES & WASHOUT

Air vales at summits and washout at lowest points shall be provided. For long rising mains in flat areas provide air valve at five thousand (5000) feet to escape trapped air.

(d) FIRE HYDRANTS

Fire hydrants shall be provided near all buildings and facilities in Rani Bagh.

(e) LAYOUTS OF DISTRIBUTION NETWORK

In general, four different types of pipe networks are used for laying of water distribution network. These are *Grid, Ring, Radial* and *Dead-End Systems*. For a particular place any one of them either singly or in combinations, can be used.

(f) MANHOLE PROVISION

Manhole shall normally be provided at the junction of two plots, at all changes in diameter and gradient or alignment and at all sewer junctions. The maximum spacing between manholes shall otherwise be as given in the table below.

MANHOLE SPACING FOR SPECIFIC PIPE DIAMETER

Sr. No.	PIPE DIAMETER (INCH)	MAXIMUM SPACING (FEET)
1.	9	150
2.	12	200
3.	15 - 24	250
4.	27 - 39	300
5.	42 - 60	400
6.	Above 60	500

6. STORM WATER DRAINAGE

6.1 A number of methods are in use to estimate the runoff. Rational and hydrographic methods are more common. All the main cross drainage structures on the main ravines will be based on twenty-five (25) - hundred (100) years return period discharge data.

6.2 RATIONAL METHOD

The capacity of storm water drainage is calculated according to *Rational Method*, which relates the flow to the rain fall intensity, the tributary area, and a coefficient that represents the combine effects of ponding, percolation, and evaporation. The discharge shall be calculated from following formula:

$$Q = CIA$$

Where,

I = Intensity of rainfall (inches/hr)

A = Drainage Area (feet)

C = Run off coefficient

RUN OFF CO-EFFICIENT FOR VARIOUS SURFACES

TYPES OF SURFACES	RUN OFF CO-EFFICIENT
Watertight roof surfaces	0.70 - 0.95
Asphaltic cement streets	0.85 - 0.90
Portland cement streets	0.80 - 0.95
Brick paved driveways/walkways with tightly cemented joints	0.75 - 0.80
Brick paved driveways and walkways with uncemented joints	0.70 - 0.80
Inferior block pavement with uncemented joints	0.40 - 0.50
Gravel driveways and walks	0.15 - 0.30
LAWNS, SANDY SOIL	
2 percent slope	0.05 - 0.10
2 - 7 percent slope	0.10 - 0.15
> 7 percent slope	0.15 - 0.20
LAWNS, HEAVY SOIL	
2 percent slope	0.13 - 0.17
2 - 7 percent slope	0.18 - 0.22
> 7 percent slope	0.25 - 0.35
BUSINESS	
Downtown area	0.70 - 0.95
Neighborhood area	0.50 - 0.70
RESIDENTIAL (URBAN)	
Single family area	0.30 - 0.50
Multi-units detached	0.40 - 0.60
Multi-units attached	0.60 - 0.75
Residential (Suburban)	0.25 - 0.40
Apartment Areas	0.50 - 0.70
INDUSTRIAL	
Light	0.50 - 0.80
Heavy	0.60 - 0.90
Parks, Cemeteries	0.10 - 0.25
Playgrounds	0.20 - 0.35
Railroads yards	0.20 - 0.40
Unimproved areas	0.10 - 0.30

It is recommend using three (3) in/hour as maximum rainfall intensity for calculation of discharge. However, to ensure safety and sustainability of system, for Rani Bagh, use value of rainfall intensity as four (4) in/hour. *Intensity Duration Curves* will be used where required.

Internal network of drains shall be proposed along with peripheral drainage facilities around Rani Bagh. The proposed stormwater drainage network will consist of pipe drain

and open channels.

The minimum and maximum velocities for storm sewers shall adhere to the guidelines specified in the table below and pipes to be used will include HDPE pipes, RCC pipes and RCC open channels.

MINIMUM AND MAXIMUM VELOCITIES IN OPEN AND CLOSED CHANNELS

SR. NO.	TYPE	MIN VELOCITY (FEET/ SEC)	MAX VELOCITY (FEET/ SEC)
1.	Open Channel	10	23
2.	Pipe Drain	2.5	10

The minimum size of drains shall be as follows:

MINIMUM SIZE OF DRAINS

SR. NO.	TYPE	SIZE/ DIAMETER
1.	Pipe Drain	12" Ø
2.	Open Channel	2' X 2'

7. SEWERAGE SYSTEM

7.1 GENERAL

This section refers to the design of main components of the sewerage system and its disposal. The main components of the sewage system are specified in the following paragraphs.

7.2 DESIGN OBJECTIVE

The goal of the design is to develop a sewerage system that requires minimal maintenance for efficient operation. The design parameters of the sewerage system are discussed in the succeeding paragraphs.

7.3 LIFESPAN OF SEWERAGE SYSTEM

The components of the sewerage system shall be designed with the following service life considerations:

- (a) civil works, including sewers: thirty (30) to fifty (50) years;
- (b) machinery: fifteen (15) years.

7.4 HYDRAULIC CRITERIA

7.4.1 SEWAGE FLOW ESTIMATION

Sewage flow is estimated to be eighty (80%) percent of the water consumption of buildings in Rani Bagh. The sewage system design should ensure sewers flow full under design flow

conditions. The design of the main septic tank should be such that there is at least twenty-four (24) hours max flow storage.

7.4.2 INFILTRATION

Infiltration is considered as ten (10%) percent of the average daily sewage flow for design purposes.

7.5 PEAK FLOW CALCULATIONS

Peak factor vary substantially depending on local water use, customs, climatic conditions, the day of the week, the hour of the day, etc. The peak factor is determined through the Harmon's Formula:

$$\text{Peak Factor} = 1 + 14 / (4 + \sqrt{P})$$

where,

P is in thousand for flows up to 4 cusec, P.F of '4' is used

Design Flow = Peak flow + Infiltration
(Design flow is used in calculation of pipe sizes)

7.6 FORMULA FOR SEWER DESIGN

The design of sewage collection system shall be based on sewers flowing full under design flow conditions. Manning's formula is used for the design of gravity sewers, which is reproduced as follows:

$$V = 1.48 / n R^{2/3} S^{1/2}$$

Where,

V = Velocity of flow in ft/sec.

R = Mean Hydraulic radius (feet)

S = Hydraulic gradient of sewer

N = Roughness coefficient 0.013 (for RCC Pipes)

7.7 VELOCITY REQUIREMENTS

According to *WASA* criteria, gravity sewer should be designed for a minimum velocity of two (2) feet/sec and for a maximum velocity of ten (10) feet/sec, when running full. A minimum sewer gradient will maintain a velocity of 2.0 feet/sec to prevent solid deposition. Generally, velocity of two point five (2.5) feet/sec is used for design purposes.

7.8 MINIMUM GRADIENT

The minimum gradient of sewer is adopted to attain the minimum two (2) feet/sec velocity requirement in order to avoid the depositing of solids. The minimum recommended slopes/gradients to lay the sewer are mentioned in the table below. The sewer shall be laid with uniform slopes between the manholes.

SEWER GRADIENTS

SIZE OF SEWER (INCHES)	MINIMUM ADOPTED SLOPE
9	0.0045
12	0.0031
15	0.0023
18	0.0018
21	0.0014
24	0.0012
27	0.0010
30	0.0009
36	0.0007
42	0.00057
48	0.00048
54	0.00041
60	0.00036

7.9 MANHOLE DETAILS

- 7.9.1 Manhole shall normally be provided at the junction of two (2) plots, at all changes in diameter and gradient or alignment and at all sewer junctions. The maximum spacing between manholes shall otherwise be as provided for in the following table.

MANHOLE SPACING

SR. NO.	PIPE DIAMETER (INCH)	MAXIMUM SPACING (FEET)
1.	9	150
2.	12	200
3.	15 - 24	250
4.	27 - 39	300
5.	42 - 60	400
6.	Above 60	500

7.9.2 MANHOLE SIZE

For sewer up to twenty-four (24) inches diameter, internal diameter of manhole should be four (4) feet. For sewers from twenty-seven (27) inches to forty-eight (48) inches diameter, internal diameter of manhole should be five (5) feet.

7.9.3 MANHOLE STEPS/LADDER RUNGS

Mild steel iron steps shall be used in the manhole.

7.9.4 MANHOLE COVERS

Concrete manhole covers (RCC) should be provided with steel frames.

7.9.5 SLOPE OF PIPE CHANNEL WITHIN MANHOLES

Manhole levels are the invert levels at its center and all distances and gradients shall be

calculated between centers of manholes. Wherever the diameter or gradient changes, the pipe channel shall be laid at a uniform gradient between the inverts of the incoming and outgoing pipes.

8. **ELECTRICAL AND GAS WORKS**

8.1 **ELECTRIFICATION**

- 8.1.1 A modern amusement park needs electricity to attract visitors because it is so versatile. Compared to other facilities in the city that have power problems, continual flow of electricity offers an entire environmental and enhancement opportunity for a huge footfall. To enhance the appeal and charm of Rani Bagh, high-quality and uninterrupted power supply are required for the entire Project Site.
- 8.1.2 At a minimum, all electrical installations shall comply with the standards and codes of the 'National Electric Power Regulatory Authority' (NEPRA), 'Pakistan Electric Power Company' (PEPCO) guidelines, 'International Electrotechnical Commission' (IEC) standards, 'Institute of Electrical and Electronics Engineers Standards Association' (IEEE) standards and the regulations of the Sindh Energy Department. Additionally, the lighting system shall be designed to meet the required illumination levels as per 'Illuminating Engineering Society of North America' (IESNA) standards or 'Pakistan Engineering Council' (PEC) standards for public and recreational areas of Rani Bagh.
- 8.1.3 Ultimate demand for electricity during peak hours is estimated as two thousand, two hundred and eighty-six (2,286) KWh. The electrification network shall be based on the estimated demand. The existing internal electricity network of Rani Bagh consists of electrical poles and aerial wires network fed by the 'Hyderabad Electric Supply Company' (HESCO) transmission lines.
- 8.1.4 As there is the lack of space in urbanized areas and therefore, a lack thereof impedes the stable supply of power through the overhead distribution system. Tree branches falling on overhead distribution lines, short circuiting conductors from heavy winds and gales, rains, accidents due to bare conductors, failure of supporting structures, etc. cause electricity's flow to be interrupted. To cater to these interruptions, it is proposed that an *Underground Cabling System (X-Press Feeder)* is designed to deliver reliable and high-capacity power through cables installed underground at the Project Site.
- 8.1.5 An underground cable system is an excellent option for low voltage distribution networks in urban areas, such as eleven (11) KV distribution networks, because it minimizes the frequency of breakdowns on the lines and ensures a continual flow of electricity without interruption. Underground cabling can provide a more reliable and secure transmission of power/electricity, as the cables are protected from the above-mentioned elements and other potential hazards. The installation process typically involves digging trenches or using directional boring equipment to create a path for the cables. The cables are then laid in the trench or bored hole and covered with soil or other materials to protect them. In some cases, underground cables may be encased in protective conduit to further safeguard them from damage. Underground cabling is expensive, time consuming to install and repair can also be more challenging; however, despite these challenges, underground cabling remains a popular choice for many due to its reliability, safety and durability.
- 8.1.6 Due to the large amount of electricity load required for rides as well as load shedding issues prevalent in the country, Rani Bagh is currently unable to meet electricity supply requirements, as there are only two (2) feeders along the National Highway 5 (N5) on the residential side rather than on Rani Bagh's side and one (1) feeder line within Rani Bagh

along the Wadhu Wah Road, Hyderabad.

8.1.7 Hence, the Concessionaire may consider an underground pathway from “132 KV Grid Station, Nasim Nagar Road, Alamdar Chowk, Qasimabad” to “Rani Bagh Hyderabad, Entrance Gate from Wadhu Wah Road” for the purposes of installing the *Underground Cabling System (X-Press Feeder)*. The proposed underground pathway is approximately two point sixty-eight (2.68) kilometre starting from the substations and ending mostly along the side of Wadhu Wah Road.

8.1.8 Power will be fed from the grid station to Rani Bagh with HT 11 kV 3CX300 sq.mm XLPE cable, which is designed to operate at a high voltage of 11 kV, so that it is suitable for high voltage utility applications. The XLPE insulation used in this cable has excellent electrical properties, including high dielectric strength and low dielectric loss, which makes it suitable for long-distance power transmission and distribution. XLPE cables are known for their durability and reliability, which means that they require very little maintenance over their lifespan but generally more expensive than other types of cables.

8.2 **ELECTRICAL LOAD REQUIREMENT**

8.2.1 The electrical load is divided in two types of loads:

- (a) Normal Loads; and
- (b) HVAC Loads.

8.2.2 Normal loads are the loads which are fed by alternate power source such as generator. This type of loads consists of:

- (a) Power Load;
- (b) Lighting Load;
- (c) Lifts; and
- (d) Water Supply Pumps.

8.2.3 HVAC loads consists of:

- (a) Air Handling Units;
- (b) Outdoor Units; and
- (c) Indoor Units.

8.2.4 Lighting levels have been calculated as per requirement and lights are proposed accordingly. The illumination levels are as follows:

General areas	200 Lux
Rooms	300 Lux
Offices	500 Lux
Corridors	200 Lux
Restrooms and Washrooms	100 Lux

8.2.5 The load requirement of the Rani Bagh is calculated as under:

CRITICAL AREAS LOAD		
1.	Multiplex Building	600
2.	Theme Park	100
3.	Food Court	100
FUN LAND BUILDING LOAD		
1.	Pirate Boat	18
2.	Frisbee Ride	120
3.	Tea Time	8
4.	Dodgem cars	10
5.	Pony Ride	2
6.	Apollo Ride	5
7.	Wonder Wheel	36
8.	Bounce and Spin	80
9.	Drop Tower	35
10.	Tornado	15
11.	Flying Horse	10
12.	Tagada	5
13.	Discovery Ride	220
14.	Free Fall Train	300
15.	Octopus Ride	20
16.	Top spin Ride	160
17.	XD Motion Ride	5
18.	Indoor Video Hall	5
19.	Food Express Point	10
20.	Birds Safari Point	2
21.	Other Areas Load including Zoo and 'Eid Gab'	150
22.	Lighting Load of Park	200
23.	Tube Well Load	70
TOTAL LOAD (KW)		2,286
Ultimate Demand (KW)		2,286
Ultimate Demand (KVA)		2,690
Recommended Capacity of Transformer (KVA)		4x650
Recommended Capacity of Generator (KVA)		4x650

NOTE:

All above load requirements may vary; the actual load requirement will depend upon the actual model of each equipment model, per person carrying capacity, number of carts, etc.

8.3 **UNDERGROUND CABLING**

Overall, underground cabling of electricity feeder installation and underground cables to light up or to facilitate different components of Rani Bagh provides a reliable and safe way to distribute power to utilities while minimizing the impact on the environment and maintaining the aesthetic of the surrounding area.

8.4 **EXCAVATION OF TRENCHES**

8.4.1 The excavation shall be one (1) metre deep. The width of the trench shall be the maximum outer diameter of the cable plus twenty-three (23) centimetres. The bed surface shall be

leveled and free from any pointed or sharp-edged materials.

8.4.2 At all locations where cables are to be jointed, the trench depth shall be increased by forty-six (46) centimetres. Additionally, the width and length shall be increased by thirty (30) centimetres and ninety (90) centimetres, respectively, on both sides of the trench to provide space for workmen to perform the jointing.

8.4.3 Prior to, and after, but before back filling, laying the cable in the trench, the Independent Technical Advisor shall inspect the same.

8.5 **LAYING OF CABLES**

Burnt bricks should be laid dry flat to obtain width equivalent of length of brick on bed of the trench, over which a seven-point five (7.5) centimetre layer of sand, free from any edged material (pebbles, stones or other inorganic materials) should be spread and then the cable should be laid. Another seven point five (7.5) centimetre similar layer of sand should be spread on top of the cable and then covered with bricks. The bricks will be laid flat as before. The remaining portion of the trench will then be filled in with earth and well rammed.

8.6 **SOLAR SYSTEM**

8.6.1 The solar PV system consists of an arrangement of several components, including solar panel/module, inverter, batteries (if needed), mounting structure, cables, lightning arrestors, and other electrical accessories to set up a working system. In providing alternate energy in the form of solar power to a building, the following three (3) types of solar system should be considered:

- (a) On-Grid System: includes *DISCOs* power but does not include battery;
- (b) Off-Grid System: includes battery but does not include *DISCOs* power;
- (c) Hybrid System: includes both *DISCOs* power and battery.

All above systems are being used at present; however, the selection of system depends upon the requirement in terms of the Project Site and the facilities therein.

Replacing the load requirement of Rani Bagh around fifty percent (50%), a solar system of 1,000 Kwh *On-Grid* solar system along with net-metering may be installed.

8.6.2 **TECHNICAL SPECIFICATIONS**

All equipment of PV system should be new and free from defects. No refurbished material or equipment shall be used for constructing the solar system. Each PV module, inverter and transformer, etc. shall have a unique serial number and shall be clearly and indelibly displayed inside and outside the inverter cabinet. The PV modules should clearly show the flash test and electronic data base with all flash data results on the back side and they should be fully traceable regarding the manufacturing facility and the main components (glass, EVA, aluminum frame, etc.).

The primary equipment suppliers (including PV modules, inverters, cables, transformers and mounting structures) must be certified to ISO 9001, ISO 14001 and ISO 18001 standards. Additionally, certificates for IEC 61215 or IEC 61646 or IEC 61208, and IEC 61730, along with complete certification reports must be provided.

All components shall be capable of withstanding all climatic and electrical induced loads during the operational design life as specified in the relevant IEC standards.

The system equipment warranty shall include, as minimum, ten (10) to fifteen (15) years of defects warranty. The manufacturer shall provide a linear warranty for the output power of the module, indicating the expected annual degradation for the first twenty-five (25) years.

The system equipment should not contain irregularities, visual spots or blemishes affecting the module performance or system reliability. The detailed specifications of each component of PV system are given in following sub-sections.

8.6.3 PV MODULES

The PV modules are one of the crucial components of a PV system and thus its quality and selection is of paramount importance. This section includes the following requirements:

- (a) AEDB's regulations for PV modules;
- (b) Requisite standards compliance;
- (c) Performance and efficiency requirements;
- (d) Guarantees and warranties required; and
- (e) Pre-shipment and post-shipment inspection and testing.

The modules tier-1 should be protected by high transmission tempered glass covered with anodized aluminum alloy frames. Serially connected cells should be terminated to IP65 junction boxes at bottom with multi-strand copper cables. Positive and negative terminals should be terminated with MC4 connectors and Y connectors for making module interconnections. The minimum technical specifications of the PV Modules are provided in the table below.

SR. NO.	PARAMETERS	MINIMUM TECHNICAL SPECIFICATIONS
1.	Module Make and Manufacturer	Tier-1 Brand, A+ Rating module
2.	Wattage and Size	535W and above
3.	PV Module Type	Mono Crystalline Half Cut Cells Preferably Bi-Facial
4.	Cell Quality	M-10 Large Cells A+ Grade
5.	Cell Quantity	72 Cells (144 Half Cells)
6.	Diodes	2 or More Bypass Diodes
7.	Bus Bars	Minimum 10 Tin Bus Bars
8.	Doping	P-Type
9.	Frame	Anodized Aluminum Frame to Withstand 5400 Pa Impulse Load
10.	Junction Box	IP-67 or above
11.	Cable	4 mm. sq. (IEC) Length of 1000 mm Minimum
12.	Fuse Rating	20A or above
13.	Power Tolerance	+/- 3%
14.	Front Glass	3.2 mm thick prism type Tempered glass / Semi Tempered or higher

15.	Connectors	MC-4 Connectors IP-68
16.	Module Efficiency	19% or above
17.	Operating Temperature	-40 Degree C ~ 85 Degree C
18.	Certifications	IEC 61215, IEC 61730, IEC61701 ED2 or equivalent
19.	Product Warranty	10 years product replacement warranty 10 years for 90% of warranted min. power 25 years for 80% of warranted min. power

8.6.4 INVERTERS

The inverter unit design should allow for fully rated operation at the expected environmental conditions at the Project Site. The inverters shall use a control algorithm to maximize energy output *via* tracking of the maximum power point of the PV array. The inverters nominal efficiency should be no less than ninety-seven point five percent (97.5%) (European efficiency). The maximum inverter operating voltage should be one thousand five hundred (1500) VDC. Inverter protective characteristics shall include the following:

- (a) Overload;
- (b) Short circuit;
- (c) High DC bus voltage;
- (d) High/low AC voltage;
- (e) Loss/restoration of AC voltage;
- (f) High/low grid frequency;
- (g) Insulation resistance monitoring;
- (h) Internal faults;
- (i) High internal temperature; and
- (j) Automatic thermal protective control system.

The minimum technical specifications of the inverters are provided in the table below.

SR. NO.	PARAMETERS	MINIMUM TECHNICAL SPECIFICATIONS
1.	Module Make and Manufacturer	Huawei, So-far, Gro-watt, Good We, Fronius, SMA, SolarEdge, Hope-wind, SAJ, INVT, Chint, Sun Grow, Solis, ATESS or any other renowned brand with 100MW of Global Sales
2.	Wattage and Size	20kVA to 110kVA
3.	Type	Grid Synchronous Pure Sine Wave
4.	Minimum Startup Voltage	200V DC
5.	Minimum Voc for String	600V DC

6.	Maximum Input Voltage	1500V DC
7.	Output Voltage	220/380~240/415VAC String Inverter With 5% Tolerance 3W + N + PE
8.	Min. MPPT Per Inverter	2
9.	Min. input current per MPPT	22 A
10.	Night Consumption/ Standby	10W or less
11.	Grid Frequency Range	45Hz ~ 55Hz
12.	THDi	<3%
13.	Active Adjustable Power Range	0% To 100%
14.	Adjustable power factor	0.8 Lagging to 0.8 Leading (Adjustable)
15.	Operation temperature range	-25 ~ +60 °C (-13 °F ~ 140 °F)
16.	Efficiency	95% or above
17.	Relative humidity	0 % RH ~ 100% RH
18.	Max. operating altitude	4,000 m (13,123 ft.) (Derating above 2000 m)
19.	Communication	RS485; WLAN/Ethernet via Smart Dongle-WLAN-FE (Optional) 4G / 3G / 2G via Smart Dongle-4G (Optional)
20.	Features & Protections	Input-side disconnection device
		Anti-islanding protection
		AC over-current protection
		AC short-circuit protection
		AC over-voltage protection
		DC reverse-polarity protection
		DC surge protection
		AC surge protection
		Residual current monitoring unit
		Arc fault protection
Ripple receiver control		
Integrated PID recovery 4		
21.	Degree of protection	IP65
22.	Safety	EN/IEC 62109-1, EN/IEC 62109-2
23.	Grid connection standards	G98, G99, EN 50549, CEI 0-21, CEI 0-16, VDE-AR-N-4105, VDE-AR-N-4110, AS 4777.2, C10/11, ABNT, VFR 2019, RD 1699, RD 661, PO 12.3, TOR D4, IEC61727, IEC62116, DEWA
24.	Warranty	Minimum 5 Years Optional Extendable

8.6.5 COMBINER BOXES/DC JUNCTIONS

The combiner boxes shall be made by insulation waterproof material according to the PV system design (min. IP 54), including the following:

- (a) input terminals for the parallel connection of the strings or arrays without diodes, string fuses for positive and negative pole, output terminals and cable conduits;
- (b) the sting fuses in the positive and negative string terminals should be designed according to the PV modules manufacture guidelines regarding maximum current and reverse current;

- (c) overvoltage and lightning protection between positive, negative pole to the PE (Potential Earth) and positive to negative pole;
- (d) DC-disconnecting device to disconnect the main DC cable between combiner box and inverter;
- (e) ozone-resistant and UV-resistant housing; and
- (f) connection terminals for the monitoring and control system.

8.6.6 AC DISTRIBUTION BOARDS

The AC power output of the inverter shall be fed to the AC distribution board. The 415 V AC output of the isolation panel is fed to the grid. AC energy is then synchronized with the grid and power is exported to the grid.

8.6.7 PROTECTIONS SYSTEM

LIGHTNING PROTECTION

Lightning protection should be provided as per IEC 62305 standard. The protection against induced high voltages should be provided by the use of metal oxide varistors (MOVs) and suitable earthing such that induced transients find an alternate route to earth.

A lightning protection system should be provided for each inverter and array of photovoltaic modules. Each lightning protection system should be bonded to the main earthing system according to IEC 62305 (1-4), IEC 61173 and IEC 60099. Protective equipment and its installation should comply with IEC 60255.

SURGE PROTECTION

Internal surge protection should consist of three MOV type surge-arrestors connected from positive and negative terminals to earth (*via* Y arrangement). Surge protection should be provided on the DC side and the AC side of the solar system.

The DC surge protection devices (SPDs) should be installed in the DC distribution box adjacent to the solar grid inverter. The AC SPDs should be installed in the AC main distribution board adjacent to the solar grid inverter. The SPDs earthing terminal should be connected to earth through the above-mentioned dedicated earthing system. The SPDs shall be of type 2 as per IEC 60364-5-53.

EARTHING PROTECTION

Each array structure of the PV yard should be grounded/earthed properly as per ISO: 3043-1987. In addition, the lightning arrester/masts should also be earthed inside the array field. Earth resistance shall be tested in presence of the Independent Technical Advisor, as and when required, after earthing by calibrated earth tester. The Protective Circuit Unit (PCU), Alternating Current Distribution Board (ACDB) and Direct Current Distribution Board (DCDB) should also be earthed properly.

Earth resistance shall not be more than five (5) ohms. The Concessionaire shall ensure that all the earthing points are bonded together to make them at the same potential.

A minimum of two (2) separate dedicated and interconnected earth electrodes must be used

for the earthing of the solar PV system support structure.

The earth electrodes should have a precast concrete enclosure with a removable lid for inspection and maintenance. The entire earthing system should comprise of noncorrosive components.

CABLES AND HARDWARE

The following requirements in respect of cables and hardwares shall apply:

- (a) The choice of installation method and cable routing shall be according to the type of conductor or cable to be used;
- (b) The cable routings (DC and AC) on the rooftops of any buildings shall be encased in appropriate electrical conduits and not loose cables.
- (c) The conduits shall be thermoplastic (PE, PVC).
- (d) The supplier must submit the following technical data:
 - (i) drawings with the routings for the various types of cables; and
 - (ii) conduits to be used.
- (e) No cables shall be loose.
- (f) Cables of appropriate size to be used in the system shall have the following characteristics and cable manufacturers should be reputed national/international brands:
 - (i) The cables shall meet the IEC 60227/IS 694, IEC 60502/IS1554 standards;
 - (ii) The temp. range should be -10°C to $+80^{\circ}\text{C}$;
 - (iii) The voltage rating should be 660/1500V; and
 - (iv) The cables should have excellent resistance to heat, cold, water, oil, abrasion, UV radiation and the same should be flexible;

Apart from the above, the DC cables should:

- (a) operate continuously at the maximum defined voltage at a temperature of 120°C ;
and
- (b) be UV protected as per EN 50618 standard,

and, the AC cables should:

- (a) operate continuously at the maximum voltage set at a temperature of 90°C ;
- (b) be UV protected as per EN 50618 standard;
- (c) operate to a maximum temperature of 250°C under fault conditions; and

- (d) resist without damage by withstanding the maximum fault current of the system for the time corresponding to the duration of a short circuit.

The Concessionaire may opt to install optical fibers, which should:

- (a) either be single or multimode fibers;
- (b) UV protected;
- (c) operate at a maximum temperature of 50°C; and
- (d) include a protective sheath.

The minimum technical specifications of the cables and wires are given in the table below.

MINIMUM TECHNICAL SPECIFICATIONS OF CABLES

SR. NO.	PARAMETERS	MINIMUM TECHNICAL SPECIFICATIONS
1.	PV to Inverter	DC Cable 4mmsq Tinned Copper with Multi Strands, Flexible and Double XLPE Coated with UV Resistant and Fire Retardants Properties 1500V Insulation. 4mm ² XLPE/XLPE/Tn-Cu. Two Color Red and Black with Cable Manufacturing year and name
2.	Grid to Inverter	4 Core Armored cable with gauge as per inverter rating. 99.9% pure copper (Stranded) with voltage drop less than 3%, U.V. resistive

9. CIVIL WORKS AND MODULES MOUNTING STRUCTURE

- 9.1 The Concessionaire shall ensure that the supplier complies with all applicable legislations, such as the licensing of civil works, capacity and permits to perform the Contractor’s activity, safety, health and environment. The mounting system should be designed according to the *Euro Code* and DIN 1055 and IBC-2009 standards or comparable local standards. Depending on the terrain, the suitable type of foundation has to be chosen, preferably the ramming design for the PV system.
- 9.2 All structural components should be painted, coated, or otherwise protected against corrosion and UV light to ensure the supporting structures along with a minimum twenty-five (25) years design life. Particular attention should be paid to the prevention of corrosion at the connections between different metals. All materials should be selected to avoid corrosion and degradation. The use of ferrous metals, contact of dissimilar metals and the use of any wood or plastic components are strongly discouraged. Aluminum, stainless steel and galvanized steel components are preferred.
- 9.3 The mounting structures shall be only fixed. The Concessionaire should take the following into consideration in respect of its design and drawings of the mounting structures:
 - (a) The fixing/mounting structure must be compatible with the proposed PV modules;
 - (b) The fixing/mounting structure should have twenty-five (25) years warranty against defects;
 - (c) The mounting structure must be designed to withstand the permanent load of the modules, cables and other components attached to it, as well as mechanical loads

due to local environmental conditions such as wind, snow or earthquakes (if applicable). Detailed structural design report should be submitted for approval to the Independent Technical Advisor. The Concessionaire shall conduct maintenance of the mounting structures and fixing systems as and when required;

- (d) The mounting structure and the fixing elements shall avoid bimetallic corrosion between different metals;
- (e) The mounting structures shall be installed allowing a certain distance between each other to minimize shading between modules installed in adjacent structures, if applicable;
- (f) The mounting structures, fixing systems, nuts and bolts must withstand high levels of corrosion using stainless steel or hot-dip galvanized steel. Galvanization should be sufficient to provide corrosion protection for at least forty (40) years, and galvanization of at least ninety-nine (99) micron is mandatory. No screw holes will be drilled at the relevant site in GI structure components; it should be ensured that no screw holes be made after galvanization;
- (g) If concrete, the cement mix shall be submitted for evaluation to the Independent Technical Advisor;
- (h) The design criteria for wind loads should be 150 km/h. The nuts and bolts or ballast to be used should be appropriately justified based on calculations;
- (i) The mounting structures should include cable runs appropriate for the number of and size of cables to be used;
- (j) The mounting structures should be connected to the ground of the PV system through an adequate electrical system; and
- (k) The mounting structures should not be confined under pressure or any mechanical process to avoid damaging the PV modules.

9.4 The minimum technical specifications of the modules mounting structure are provided in the table below.

MINIMUM TECHNICAL SPECIFICATIONS OF MOUNTING STRUCTURE

SR. NO.	PARAMETERS	MINIMUM TECHNICAL SPECIFICATIONS
1.	Wind Holding	Mounting system able to allow air circulation for cooling in high temperature and withstand wind speed of 150 Km/hour at 3 sec gust.
2.	Mounting Structure Specifications	SWG 14,1x2 Landscape Hot dip galvanized structure minimum 14 Gauge thickness or better with minimum 80-micron coating. GI Nuts and Bolt S.S 304 Grade or better.
3.	Certification	Vender will provide certificate from structural engineer for all installation (structure life guarantee of 25 years)

10. ACCEPTANCE AND COMMISSIONING

The acceptance of the electrical works is intended to ensure the quality and proper performance of all works performed for which it was designed throughout its useful life. The works should be in accordance with the draft implementation, regulations, standards and mandatory detailed engineering report and technical documentation submitted. The commissioning of the electrical works is described in the commissioning of the PV system.

11. OPERATION AND MAINTENANCE OF THE PV SYSTEM

The operation and maintenance period pertaining to the PV system shall start after the acceptance of the construction of the PV system and after the punch list items, if any, have been completed and approved by the Independent Technical Advisor (in consultation with the Agency).

11.1 OPERATION

The general principles of operating the PV system shall be based on, but not limited to, the following requirements:

- (a) the PV system should remain operational in full compliance with technical, environmental and safety requirements and in accordance with national regulations and legislation;
- (b) the operation of all equipment shall be performed in accordance with the supplied O&M Manual, service manuals and manufacturer supplied recommendations; and
- (c) the PV system should be capable of operating in automatic production mode under normal operating conditions.

11.2 PLACEMENT OF SOLAR PANELS IN RANI BAGH

11.2.1 A 1 MW solar power system is proposed for Rani Bagh. Notably, the implementation of solar power is expected to result in significant annual savings by reducing electricity consumption costs.

11.2.2 INSTALLATION GUIDELINES

The optimal installation height of solar panels can vary based on a variety of factors, including the location of the installation, the orientation of the panels, and the specific requirements of a project. The following are some general guidelines for installation height based on the area of the installation:

- (a) **Rooftop installations:** In facilities such as the indoor theme park building and multiplex, the height of the solar panels should be carefully selected to ensure they are not shaded by nearby structures, trees or parapet walls. The panels must be installed at an angle that optimizes their sunlight exposure. For roof-mounted systems, the mounting structure height typically ranges from one (1) foot to three (3) feet above the roof surface, depending on the roof's pitch. For elevated installations, the structure height can vary between eight (8) feet and twelve (12) feet to ensure optimal performance;
- (b) **Elevated solar panel installation:** For this method, the Concessionaire should consider the following:

- (i) **Building facades:** Install solar panels on the east-facing and south-facing elevations of the buildings on the Project Site. This will require mounting brackets to be affixed to the building façade and will require careful consideration of structural loads and wind speed;
 - (ii) **Retaining walls:** Install solar panels on the retaining walls along the perimeter of the Project Site. This will require a custom mounting system to be designed and installed, as the walls may not be structurally designed to support additional weight;
 - (iii) **Orientation and tilt:** The solar panels should be oriented to face east or south to maximize exposure to the sun. The tilt angle should be optimized based on the latitude of the Project Site to ensure maximum energy generation;
- (c) **Ground-mounted installations:** especially in ‘*Eid Gab*’, the height of the solar panels should be such that they are not shaded by nearby trees or structures. The panels should be installed at an angle that maximizes their exposure to sunlight. For ground-mounted systems, the mounting structure height of the panels can vary based on the terrain, however, a typical height range is between twelve (12) feet to fourteen (14) feet above ground;
- (d) **Solar panel installation on animal enclosures** can be a cost-effective and sustainable way to reduce energy costs and promote environmental stewardship. With careful planning and analysis, solar panel installation can provide a long-term solution to energy needs for animal enclosures while promoting environmental sustainability; and
- (e) The Concessionaire should also consider solarization of **tube wells** for the Project. This would require installation of solar panels and running the pumps through such solar power systems.

11.3 MAINTENANCE

- 11.3.1 To ensure the normal and correct operation throughout the life cycle of the PV installation, preventive and corrective maintenance tasks should be performed. The recommended timeframe for maintenance of the PV installations is at night or as deemed necessary.
- 11.3.2 The preventive maintenance to be performed should consist of routine inspections and maintenance of the equipment with procedures and frequencies determined by the type of equipment, manufacturer's indications, environmental conditions, and the specified Project requirements. This is intended to reduce the likelihood of unplanned downtime of the PV system and the corresponding undesirable production failures.
- 11.3.3 The preventive maintenance activities include:
- (a) inverter maintenance operation;
 - (b) verification of the fixing/mounting structures;
 - (c) cleaning of the PV modules; and
 - (d) verification and maintenance of other electrical equipment (cables, AC and DC

boxes, connections, low voltage switchgears, etc.).

11.4 **GAS NETWORK**

11.4.1 Gas piping for kitchen and theme park facilities should comply with Pakistan Gas Code.

11.4.2 Gas Meters: Each food shop should have a dedicated gas meter, installed as per ‘*Oil and Gas Regulatory Authority*’ (OGRA) standards.

11.5 **SAFETY STANDARDS**

11.5.1 **RIDE SAFETY**

Ensure all rides meet international safety standards, such as, but not limited to, ISO-17842-1-2023 and EN-13814. This includes rigorous structural and mechanical testing.

11.5.2 **EMERGENCY SYSTEMS**

Incorporate emergency stop systems, alarms, and evacuation procedures for each ride at Rani Bagh. Clearly visible and accessible emergency exits are required as well.

11.5.3 **ROUTINE INSPECTIONS**

Design facilities to facilitate regular safety inspections and maintenance, with easy access to critical components.

11.6 **SECURITY MEASURES**

11.6.1 **SURVEILLANCE SYSTEMS**

Telecommunication works consisted of voice and data. For voice, Telephone Distribution Box (TDB) should be provided, which is further connected to PABX located in the command and control room. Cat VI twisted pair copper cable should be used for wiring of voice and data points. For CCTV, an IP based system is proposed. The POE switches should be placed in the utility room. The 64 channel Network Video Recorder (NVR) should be placed in the command and control room. The type of cameras to be installed should be Wi-Fi cameras, dome cameras, PTZ cameras, bullet cameras and thermal cameras, as and where required.

11.6.2 **EMERGENCY RESPONSE**

Designate areas for first aid and emergency services and ensure coordination with local emergency response teams.

11.7 **PERFORMANCE CRITERIA**

The lifespan of the above civil works shall have a design life of twenty-five (25) years, unless expressly stated otherwise.

12. **MINIMUM TECHNICAL SPECIFICATION FOR KEY FACILITIES**

The Project design should incorporate and have the following minimum technical specification requirement for each equipment and facility as stipulated below. Further design

requirements and specifications for these facilities and other facilities at Rani Bagh are stipulated under **SCHEDULE D (RANI BAGH FACILITIES)** of this Agreement.

12.1.1 ONLINE TICKETING SYSTEM AT ENTRANCES AND FACILITIES

User Interface: Intuitive and user-friendly design for both desktop and mobile platforms along with multi-language support.

Functionality: Secure online payment processing (credit/debit cards, digital wallets). Option for Users to select dates, times, and types of tickets (single entry, group discounts, season passes). Capability for real-time inventory management to reflect ticket availability. User account creation and management (view history, manage bookings).

Network: Reliable Wi-Fi connection throughout Rani Bagh should be provided for booking tickets on the spot.

12.1.2 MULTIPLEX

CINEMA

The cinema is to include two (2) cinema halls with three (3) types of seats as stipulated in the table below.

	DETAILS	NO. OF UNITS	MINIMUM SPECIFICATION
CINEMA EQUIPMENT	Collapsible seats	150	Should be comfortable and foldable.
	Single Recliner*	53	Ergonomically Designed ISO 21015, High-Quality Recliners
	Double Recliners*	39	Premium Seating Fire-Retardant, Leather, ISO 8191 Compliant
	Projectors	4	ANSI Lumen rating of 12000 or higher for HD projection (4K Laser)
	Cinema Screens	4	Wide Aspect Ratio, High-Gain Projection Screens
	Sound systems	4	1,000 Watts System Surround Sound Full Theater Coverage

NOTE:

Seat type composition is at the discretion of the Concessionaire but must have a minimum seating capacity of two hundred and eighty (280) seats.

PANORAMIC ELEVATORS

The multiplex building should include a minimum of at least three (3) panoramic elevators and the Concessionaire shall be responsible for installation, operation, and maintenance of these in accordance with safety and quality standards specified under the Laws and the Applicable Standards.

The panoramic elevators should include the minimum specification specified in the table below and should be tested for operational safety at regular intervals during the Concession Period.

TECHNICAL SPECIFICATIONS FOR PANORAMIC ELEVATORS		
SR. NO.	DESCRIPTION	SPECIFICATION
1.	Origin	Imported Brand
2.	Quantity	3 Units
3.	Elevator Type	Panoramic Passenger Lift
4.	Traveling approximate Height	10.5 m
5.	Capacity	500 Kg (5-6 persons)
6.	No. of stops	4
7.	Speed	1 m/s
8.	Control type	Imported microprocessor controller with all standard features such as micro push full selective collective system, Display on main PCB, self-diagnostic system, phase protection and all safeties and features as per standard with VVVF system.
9.	Door operation	Fully automatic, 2-pannel, side opening doors with glass finish.
10.	Power Supply	380-440 Volts 50-60 Hz AC
11.	Cabin	Cabin to be in 16-gauge hair line stainless steel (non-magnet) with False ceiling and Vinyl tile flooring, glass walls, glass on back wall and glass door, SS Handrail, Kick Plate. It should also include blower for ventilation, emergency brake system with electrical and mechanical locking, overload detection device, full height infra- red safety sensor, Car operating panel with micro push button and car position indicator etc. with a suitable size to meet the requirements of no of passengers and hoist way size.
12.	Interphone	3-Way Inter phone for emergency contact
13.	Lighting / Fan	Fan and Diffuser type light with on off switches
14.	ARD	Prevision of Automatic rescue device, fully tested in the failure of electricity.

ALLIED FACILITIES INSIDE THE MULTIPLEX BUILDING

The multiplex building should consist of four (4) event halls, each having capacity of five hundred (500) persons, which will be used for corporate, cultural and educational events only. Additionally, the multiplex building shall include residential rooms, indoor lounge and restaurant facility, gym and administrative offices, kitchens, staff rooms, warehouses and restrooms and allied facilities.

INDOOR DECOR, FURNITURE, AND FIXTURES INSIDE THE MULTIPLEX BUILDING

Indoor furniture must be ergonomic and environment friendly with minimum life of five (5) years. The Concessionaire must provide the list of all the furniture and items necessary at the time of signing of this Agreement.

12.1.3 'FUN LAND' - INDOOR THEME PARK AND OUTDOOR AMUSEMENT PARK EQUIPMENT

An indoor theme park is to be established as a new addition and the outdoor amusement park is to be transformed and each such facility has to be Operated and Maintained at the existing 'Fun Land' at Rani Bagh. Amusement park rides in the 'Fun Land' should follow the international and national quality standards for installation, design and Operation and Maintenance.

The Concessionaire is to comply with PS-ISO 17842-2015, ISO-17842-2023, EN 13814 and ASTM F2291-24 standards and other applicable standards. All rides at the indoor theme park and outdoor amusement park should be procured from reputable vendor(s) and must be in new condition. Prior to obtaining such rides, the Concessionaire must provide a list of vendors and brands for the Independent Technical Advisor's approval. The Concessionaire may obtain rides from local and/or international suppliers subject to the minimum requirements set out below.

The minimum requirements in respect of rides at the indoor theme park and outdoor amusement park are as follows:

INDOOR THEME PARK EQUIPMENT	DETAILS	NO. OF UNITS	ORIGIN
	Electronic games	36	Imported/Local
	Coin operated rides	8	Imported/Local
	Electronic rides	4	Imported/Local
	Motion ride	1	Imported/Local
	Trampoline and jumping rope/ rope course	1	Imported/Local

OUTDOOR AMUSEMENT PARK EQUIPMENT	DETAILS	NO. OF UNITS	MINIMUM CAPACITY	AXIS OF ROTATION	ORIGIN
	Apollo Ride	1	24	Vertical	Imported/Local
	Flying Horses	1	20	Vertical	Imported/Local
	Free Fall Train	1	16	No Rotation	Imported/Local
	Frisbee Ride	1	32	Horizontal & Vertical	Imported/Local
	Tornado	1	12	Horizontal	Imported/Local
	Bounce Ride	1	16	Vertical	Imported/Local
	Bumper/ Dodgem Cars	7	14 (2 per car)	Free Rotation	Imported/Local
	Discovery	1	24	Vertical	Imported/Local
	Drop Tower	1	12	No Rotation	Imported/Local
	Joint/ Wonder Wheel	1	40	Vertical	Imported/Local
	Octopus	1	20	Vertical & tilted	Imported/Local

	Pirate Ship	1	40	Pendulum	Imported/Local
	Pony Ride	4	4	No rotation	Imported/Local
	Tagada	1	24	Horizontal	Imported/Local
	Teacup	1	16	Horizontal	Imported/Local
	Top Spin	1	24	Horizontal & Vertical	Imported/Local

12.1.4 BOATING LAKE AND DANCING FOUNTAINS

The boating lake (including the jogging and cycle track surrounding the boating lake) at Rani Bagh is to be rehabilitated by the Concessionaire and dancing fountains are to be installed by the Concessionaire with the following minimum requirements:

- (a) Pedalos & Rowing Boats: minimum six (6) units each; and
- (b) Dancing Fountains System: minimum four (4) units, incorporating synchronized lighting.

12.1.5 PLAYGROUND AREA, WELLNESS PLATFORM AND FAMILY PARK

The playground and wellness platform (as applicable) forming part of the family park area at Rani Bagh should have (as a minimum) the following elements:

- (a) spring riders: four (4) units, constructed from steel and HDPE;
- (b) jungle gym & slides: two (2) units;
- (c) merry-go-round: two (2) units, with a diameter of six (6) feet;
- (d) swings: three (3) units, each designed for a minimum of fifty (50) kg load capacity;
- (e) monkey-go-round: one (1) unit, with a diameter of six (6) feet; and
- (f) wellness platform: the wellness platform is to include open-air gym equipment.

12.1.6 ZOO

The zoo should include a walk-through aviary, an aquarium, a dinosaur park with mechanical sculptures, woodland pockets, horse riding, animal enclosures and a zoo-themed train. The detailed design should include route map for the zoo train, a popular attraction, that would travel through the aviary and dinosaur park, affording up-close views of birds and prehistoric creatures. Animal enclosures should be made of natural materials, with barriers to ensure safety while still allowing for proximity to the animals. Any glass structures installed at the zoo should be thermally insulated.

The minimum specifications in respect of the zoo are as follows:

ZOO ANIMALS	DETAILS	NO. OF UNIT	CHOICES (MINIMUM REQUIRED)	RECOMMENDED SPECIFICATIONS
	Mammals (Carnivores)	7	1 Lion 1 Leopard or Cheetah	Size: Minimum of 500 square meters per carnivore enclosure,

		1 Hyena or Panther	<p>with 2-meter-wide perimeter buffer zones.</p> <p>Height: Enclosure walls or fences must be at least 4.5 meters high with a 45-degree overhang to prevent escape.</p> <p>Materials: Reinforced concrete walls up to 1.5 meters, topped with tempered steel mesh for visibility and security.</p> <p>Safety Barriers: Double barriers, with a minimum of 1.5 meters between the outer visitor fencing and the enclosure for safety.</p> <p>Environmental Control: Climate control systems (heating and cooling) to maintain temperature between 18°C and 26°C, depending on species requirements.</p> <p>Enrichment: Each enclosure should feature natural climbing structures, pools, and shaded areas to simulate natural habitats.</p> <p>Drainage: High-capacity drainage system, designed to handle a minimum of 50 liters per minute, compliant with Pakistan environmental safety standards.</p>

	Mammals (Non-carnivores)	35	1 Elephant 4 Zebra 4 Deer 2 Antelope 1 Rhino	<p>Size: 300–400 m² for large herbivores (e.g., elephants, giraffes) and 150–200 m² for smaller species.</p> <p>Watering System: Automated water dispensers with UV purification systems, ensuring continuous clean water supply, compliant with WHO water quality guidelines.</p> <p>Feeding Stations: Mechanized feeding systems for larger species to mimic natural grazing behavior.</p> <p>Material: Enclosures must be designed using weather-resistant, anti-corrosion materials (ISO 9223), particularly in areas exposed to frequent moisture.</p>
	Reptiles	10	2 Crocodile 1 Alligator 2 Python 1 Cobra	<p>Size: 30 m² per reptile.</p> <p>Temperature Control: Thermostatic regulation between 26°C to 35°C, humidity control at 80%.</p> <p>Glass: Thermally insulated (EN 1279-5), 12mm thick.</p>
	Birds	14	4 Parrots 2 Flamingo 1 Peacock 2 Owls 2 Vultures 1 Crane	<p>Walk-in Aviary Size: Min 150 m², 6m height, with natural flora.</p> <p>Flight Space: Free flight zone, walk-in with controlled entry for visitors.</p>

				Lighting & Ventilation: UVB lighting, 10 air changes/hour.
	Horses	5	Thoroughbred	Access Control: Double-door entry system for visitor safety. Stable Area: Min 20 m ² per horse.

NOTE:

Walk-in Bird Aviary: The aviary will be a visitor-friendly, immersive experience with regulated entrance points to ensure bird safety and minimal damage to their natural habitat. The double-door design prevents unexpected escape while allowing visitors to freely move inside and engage with the surroundings.

Species Selection: The species listed are the basic requirements; more species may be added depending on visitor interest, environmental compatibility, and zoo capacity.

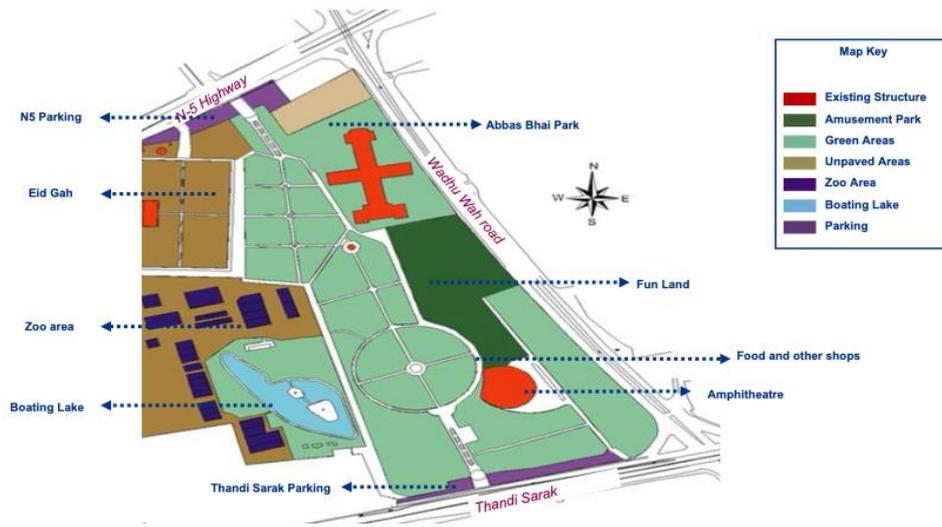
These technological and design elements should ensure that the cages fulfill international standards, giving visitors with a safe and entertaining experience while maintaining the animals' best living conditions.

SCHEDULE C - APPROVED MASTER PLAN

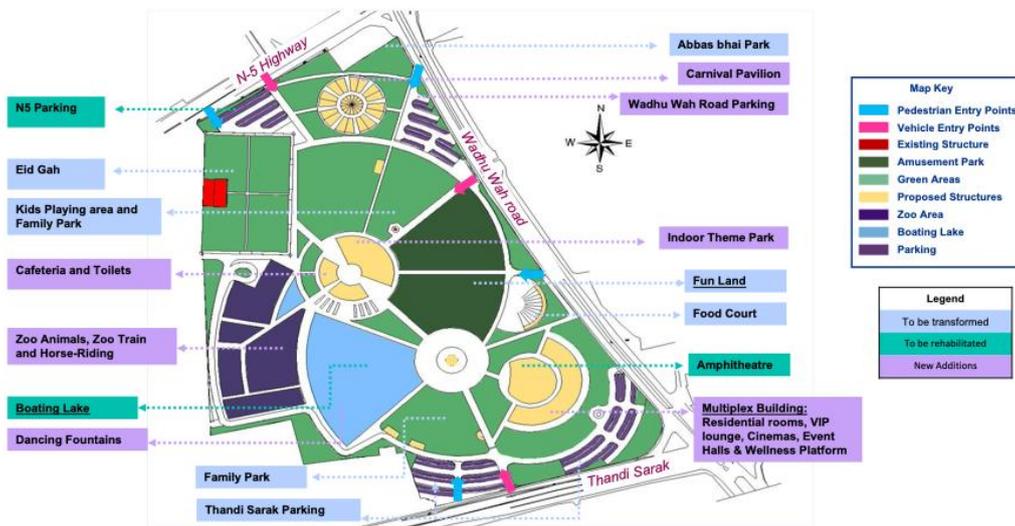
APPROVED MASTER PLAN OF RANI BAGH



EXISTING MAP OF RANI BAGH



REVISED MAP OF RANI BAGH



SCHEDULE D - RANI BAGH FACILITIES

1. **PROMENADE**

The promenade forming part of Rani Bagh is to be rehabilitated by the Concessionaire. The promenade is eighty (80') wide and three hundred (300') long, which culminates into a park square. The promenade has pavement pattern which derived from the circulation pattern of different areas. This results into an abstract pattern of lines resulting in triangular form raised to form planters and few developed into water splash pads. The promenade is elevated at some places to provide the pedestrian with a new perspective and experience, above the typical ground plane so that one views its surroundings.

2. **PARK SQUARE**

The park square forming part of Rani Bagh is to be rehabilitated by the Concessionaire. The park square has an area of 42086.65 square feet with both hard and soft landscape elements such as tree beds with sitting spaces, decks, water body and grassy lawns. The shape of the sitting spaces relates to the shape of planters in the promenade so that the same design theme is followed in the park square.

3. **MULTIPLEX**

3.1 The multiplex building is a new addition to Rani Bagh, which is to be designed and constructed by the Concessionaire. The total built-up area of the proposed multiplex is 100,000 square feet, including 35,000 square feet for the open-air amphitheater and 65,000 square feet for main building with a basement, four (4) floors and a rooftop garden.

3.2 The multiplex building will be constructed based on the Approved Master Plan and should include the following facilities:

- (a) four (4) event halls, each having capacity of five hundred (500) persons, which will be used for corporate, culture and educational events only, and each of which is proposed to be built as per the following plan:
 - (i) one (1) event hall is to be built in the basement of the multiplex building;
 - (ii) two (2) event halls are to be built on the ground floor of the multiplex building; and
 - (iii) one (1) event hall is to be built on the first floor of the multiplex building.
- (b) two (2) cinema halls, each having capacity of one hundred and fifty (150) persons, which are proposed to be built on the first floor of the multiplex building and categorized as follows:
 - (i) *Silver Cinema* with one hundred and fifty (150) seating capacity;
 - (ii) *Gold Cinema* with fifty-three (53) seating capacity; and
 - (iii) *Platinum Cinema* with thirty-nine (39) couple seating capacity.
- (c) an indoor VIP lounge facing the amphitheatre for the purposes of enjoying performances at the open-air amphitheatre and a restaurant, which are proposed to be built on the second floor of the multiplex building;

- (d) thirty-nine (39) residential rooms, along with reception and waiting lounge and a staircase to the garden rooftop, which are proposed to be built on the third floor of the multiplex building;
- (e) gym, which is proposed to be built in the basement of the multiplex building;
- (f) administrative offices, staff rooms, warehouses, reception area/lobby, porch and allied facilities, which are proposed to be built in the basement of the multiplex building; and
- (g) staff rooms and warehouses, reception, waiting area/lobby, porch, kitchen and allied facilities, which are proposed to be built on the ground, first and second (excluding kitchen) floors of the multiplex building.

4. 'FUN LAND' - INDOOR THEME PARK AND OUTDOOR AMUSEMENT PARK

4.1 Currently, 'Fun Land' is an outdoor amusement facility adjacent to the building that has mechanical rides along the winding pathways and landscaped area to make it experiential for the visitors of Rani Bagh. The total area of 'Fun Land' is 162,061.48 square feet. The building and the 'Fun Land' are connected through landscape elements like waterbodies, bridges, ramps and steps and multi-level plantation.

4.2 The existing 'Fun Land' is to be transformed into an indoor theme park and an outdoor amusement park. The indoor and outdoor parks are to include the rides and games as provided for in **SCHEDULE B (DESIGN REQUIREMENTS)** of this Agreement and should be installed in compliance with the applicable safety standards. The part of the indoor theme park building which will face towards the road should have a glass façade and brightly colored louvres.

5. AMPHITHEATRE

The Concessionaire is responsible for rehabilitating the existing amphitheatre, which is located close to the multiplex building. The current space of the amphitheatre is 32107.07 square feet.

6. FOOD KIOSKS AND SEATING AREAS

The Concessionaire shall include food kiosks at different locations in the form of carts. The Concessionaire is to include in its design various sitting spaces at various locations in Rani Bagh along with spaces for inclusion of photo booths as a point of attraction for the Users.

7. SCULPTURE PARK

7.1 The sculpture park is in the centre of Rani Bagh and covers an area of 70685.83 square feet. The Concessionaire shall include abstract art sculptures as elements of surprise along pathways at the sculpture park.

7.2 Apart from the sculptures, the Concessionaire is to integrate multi-level platforms in the form of ramps and steps for Users to walk on and appreciate nature and views at different elevations. Alongside this, the Concessionaire is to include gazebos and seating areas at various nooks and corners for Users to relish nature and the surrounding environment.

8. FOOD COURT

The food court is to be designed and constructed by the Concessionaire, which is to be constructed near '*Fun Land*' and should have decks at multi-levels. The lower-level deck should be divided into two sitting space areas and food shops/kiosks. Whereas, the upper deck should have more food shops leased out to different franchises with a variety of sitting spaces like benches, pergolas, outdoor formal and informal sofas, and chairs. Multi-level plantation is suggested. The Concessionaire should also consider landscape elements such as water bodies and fountains as part of its design for the food court. The total area of the food court is 51747.27 square feet.

9. ZOO, ZOO TRAIN AND HORSE RIDING

9.1 The zoo, which covers 215708.64 square feet, will include an aquarium, animal enclosures, walk-through bird aviary, dinosaur park with mechanical sculptures, horse riding, forest pockets and a zoo train. The design of the zoo should be such that Users will enter the zoo through a pathway with the aquarium enclosure on both sides of this pathway. Moving along the way Users will encounter different animal enclosures and the bird aviary. Food carts with animal theme are also found along the way for zoo Users so that they can enjoy snacks while relishing the zoo. The zoo should include benches and tree beds as sitting spaces at various parts of the zoo.

9.2 The zoo themed train is intended to be a distinctive attraction for the Users, which will start from the entrance of the zoo and will pass through the bird aviary ensuring that Users have a visual of the birds and then the zoo train should go through the dinosaur park. The dinosaur park can be experienced through both train and walkways. Users will be charged for access to the zoo and use of the zoo themed train. The zoo should comprise of mechanical dinosaur sculptures installed at various places in the forest pockets.

9.3 The walk-through aviary is proposed in Approved Master Plan, where the birds are given free run of a large space into which Users are admitted through doors. The walk-through aviary enclosure should be made of galvanized steel tension cables structure with mesh net to keep the birds inside. Users are to be charged for horse riding at the zoo.

10. BOATING LAKE AND DANCING FOUNTAINS

The boating lake covering an area of 171177.27 square feet should offer a fantastic range of boats to choose from including (without limitation) pedalos and classic rowing boats. The boating lake should be rehabilitated in such a way as to be surrounded by shady trees and vegetation. The Concessionaire will also be responsible for rehabilitating the jogging and cycling track surrounding the boating lake. This boating lake should offer dancing fountains show during the evening (at a specific time), which will be ticket free and every User of Rani Bagh can enjoy it.

11. PLAYGROUND AREA, WELLNESS PLATFORM AND FAMILY PARK

11.1 Playground equipment should include the following:

- (a) slides: a playground would not be complete without at least one (1) tube or slide. A spiral tube slide or roller slide can take the classic slide experience to a whole new level;
- (b) swings: children love to swing at any age. The swing set should be accessible to all children with specialized swing seats, or make things exciting with multi-user

accelerator swings;

- (c) see-saw: children enjoy and learn about balancing and levels;
 - (d) merry-go-round: this ride encourages social interaction between children as they play and help each other to move the ride;
 - (e) crawl tubes: to be constructed at different angles and lengths (straight or inclined), which lets children explore where the tunnels lead;
 - (f) transfer points and steps: moving through tubes, across bridges and up or down ramps is all the more interesting when there are steps and risers to climb along the way; and
 - (g) wellness platform: the wellness platform is to include open-air gym equipment.
- 11.2 This area is to include space(s) for constructing veranda(s) where Users can barbeque, etc. The playground area covers an area of 69829.79 square feet.

12. FAMILY PARK

- 12.1 The family park located near Thandi Sarak parking and covering an area of 114218.16 square feet is to include three (3) level plantations as follows:

- (a) ground cover or grasses;
 - (b) shrubs or plants at three (3) inches in height; and
 - (c) shady trees.
- 12.2 Benches will also be placed strategically under the shady trees to provide natural shade. In the center of the family park, there should be a contoured area with ornamental plants and shrubs. Additionally, the family park is to include space for constructing veranda(s) where Users can barbeque, etc.

13. 'EID GAH'

'Eid Gah' covering an area of 194722.09 square feet is required to be transformed and should be improved with better plantation and maintenance of the damaged structures such as the minarets and few walls. Flower and souvenir shops may be allotted a place next to the indoor prayer area, which will encourage buyers to get something from here as a piece of souvenir. The jogging and cycling track should also pass through the courtyard of 'Eid Gah'. Moreover, Imam's residence and ablution area is brought close to the mosque for the convenience of the Users.

14. 'ABBAS BHAI PARK'

'Abbas Bhai Park' is one of the main components of Rani Bagh, but it is in a non-functional condition. This area of Rani Bagh has inadequate plantation and very little cleanliness. The fountains there are also dysfunctional. The area forming part of 'Abbas Bhai Park' is to be transformed and replaced with the Carnival Pavilion.

15. **CARNIVAL PAVILION**

The carnival pavilion covering an area of 97536.75 square feet is to be constructed in ‘*Abbas Bhai Park*’ and close to the ‘*Eid Gab*’ to provide a platform for stalls during festivities. The stalls will be placed under the shade of *Tensile Fabric Structure*, which is a stretched fabric material in a three-dimensional form used to provide a roof, shading, or decorative component by tensioning it to cables. It is constructed using a specialized fabrics under tension to support self-weight and take care of the live load providing a very cost-effective solution and covering large distances without intermediate supports.

16. **JOGGING AND CYCLING TRACK**

Rani Bagh should offer a rehabilitated walking/jogging track for the surrounding communities to use Rani Bagh on a daily basis. The jogging track and cycle track should surround all of Rani Bagh as per the Approved Master Plan. The jogging track is 57791.13 square feet and the bicycling track is 60376.81 square feet. Users will be charged for rental cycles and/or scooters.

17. **FOREST POCKETS**

Rani Bagh should offer forest pockets at different places for Users who seeks to escape from urban life into nature.

18. **TRAM TRAIN**

The tram train is a trackless train which will be used to transport Users at different areas of Rani Bagh. It will have its station on the promenade so that the Users can avail the transportation to reach different areas as soon as they enter Rani Bagh. It should be linked to attractions such as the zoo, ‘*Fun Land*’, multiplex building, ‘*Eid Gab*’ and the carnival pavilion. The tram train will be the only vehicle allowed in the internal areas of Rani Bagh. Service roads on the other hand will be along the periphery without disturbing the pedestrian traffic of Rani Bagh. Users will be charged for the tram train.

19. **PARKING AND ENTRANCE GATES**

19.1 A well-designed parking facility with a capacity to cater around six hundred and fifty (650) vehicles should be provided (during peak hours), which will be divided into three parking areas.

- (a) Parking 1 - one entrance is given from Thandi Sarak with a parking facility which will cater the Users of the multiplex, zoo and family park predominantly.
- (b) Parking 2 - another entrance from Wadhu Wah Road, which has parking facility for the Users of the ‘*Fun Land*’, and children play area/family park.
- (c) Parking 3 - last entrance from National Highway 5 (N5) has a parking facility mainly for the Users of ‘*Eid Gab*’ and carnival pavilion.

19.2 All parking area is designed with green belts where each car will have a natural shade of tree. Parking will also be used to earn Revenue by having parking ticket on entry.

20. CAFETERIA AND RESTROOMS

The cafeteria is a new addition, which is to be constructed as per the Approved Master Plan. Restrooms are to be constructed adjacent to the cafeteria with easy access to the Users. Both facilities should comply with universal design standards, including ramps, wide doorways and accessible stalls for individuals with disabilities. The restrooms should also include a designated space for changing tables to accommodate caregivers. The two facilities should have separate ventilation systems to prevent cross-contamination of odors and maintain air quality. The two facilities should be designed (without limitation) in a way to include sustainable design elements such as water-saving fixtures, sufficient seating and counters, and incorporate landscaping, natural materials and architectural features that blend the two facilities into Rani Bagh's overall design.

SCHEDULE E - FINAL COMPLETION SCHEDULE

ANTICIPATED START OF DESIGN	Within ten (10) Days of Effective Date
ANTICIPATED END OF DESIGN	The date falling five (5) months after the Effective Date
SCHEDULED COMMENCEMENT DATE	The date falling one hundred and eighty (180) Days after the Effective Date
ANTICIPATED START OF CONSTRUCTION	Commencement Date
SCHEDULED SEGMENT SUBSTANTIAL COMPLETION DATE	As set out in the C&O Programme
SCHEDULED SUBSTANTIAL COMPLETION DATE	Twenty-four (24) months after the Commencement Date
SCHEDULED FINAL COMPLETION DATE	As determined by Independent Technical Advisor on Substantial Completion but in any event not exceeding ninety (90) Days following Substantial Completion Date
ANTICIPATED EXPIRY OF CONCESSION AGREEMENT & HANDOVER OF CONCESSION ASSETS	Fifteen (15) years from the Substantial Completion Date

SCHEDULE F - PROJECT SITE



SCHEDULE G - LIST OF TESTS & COMPLETION TESTS

1. The Concessionaire shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running and maintenance cost for the tests to be conducted. The Concessionaire shall also furnish the laboratory with a vehicle with driver to be approved by the Independent Technical Advisor for the sole use of the laboratory to transport testing equipment, testing samples and laboratory technicians, for carrying out inspection and testing on the Project Site throughout the Concession Period.
2. All tests shall be executed as per the designated standard and all required equipment for facilitation of the tests should be furnished in the lab with two (2) sets of latest editions of prescribed standards (one to be placed in the laboratory and other in the Independent Technical Advisor office).

3. **THE COMPLETION TESTS**

Completion Tests shall mean the final inspection and tests of the Concession Assets by the Independent Technical Advisor to ensure that the same conform to the Project Requirements. Tentative details of the Completion Tests¹⁰ in relation to key Rani Bagh Facilities are as follows:

3.1 **GENERAL COMPLETION TESTING REQUIREMENTS**

Each Rani Bagh Facility must undergo a series of tests conducted by the Independent Technical Advisor. The relevant Rani Bagh Facility will be deemed operational upon the satisfactory completion of these tests. The tests must adhere to the Applicable Standards. The testing shall include (without limitation) safety, structural integrity, operational functionality, and environmental compliance.

3.2 **COMPLETION TESTS FOR INDIVIDUAL FACILITIES**

3.2.1 **CINEMA**

Sound and Lighting Systems Test:

- (a) **Test:** Verify proper functionality of all audiovisual systems (e.g., surround sound, projectors, lighting). Test for clarity, volume, and range of sound systems and visual quality of the projection.
- (b) **Method:** Run a variety of content through the system (e.g., trailers, test patterns) and check for consistency, quality, and adherence to industry standards.
- (c) **Criteria:** All systems must meet sound and visual quality standards as specified in the Detailed Engineering Design documents.

Safety Systems Test:

- (a) **Test:** Verify fire alarm systems, emergency exits, and fire suppression systems in the cinemas.

¹⁰ Details of the Completion Tests are subject to change based on the recommendations of the Independent Technical Advisor.

- (b) **Method:** Conduct mock evacuation drills and fire alarm testing. Ensure clear exit pathways and accessible emergency exits.
- (c) **Criteria:** Compliance with local fire safety standards.

Seating and Structural Integrity Test:

- (a) **Test:** Inspect the installation of seats, handrails, and structural elements.
- (b) **Method:** Perform weight load tests on seating, and check the structural integrity of balconies, seating areas, and supporting beams.
- (c) **Criteria:** All elements must comply with local building codes and safety regulations.

3.2.2 FAMILY PARKS AND PLAYGROUND AREA

Playground Equipment Safety Test:

- (a) **Test:** Inspect all play structures (swings, slides, climbing frames) for stability, proper installation, and safety.
- (b) **Method:** Perform mechanical tests on each structure (e.g., pull tests, load-bearing tests). Check all fastenings and anchoring systems.
- (c) **Criteria:** No sharp edges, loose bolts, or unstable structures. All equipment must comply with ASTM F1487 or local safety standards for playgrounds.

Surface Integrity Test:

- (a) **Test:** Inspect and test the safety surfaces around play equipment (e.g., rubber mats, sand).
- (b) **Method:** Measure the shock absorption levels of the surface material using a Clegg Impact Tester or similar equipment.
- (c) **Criteria:** Shock absorption must meet ASTM standards for children's play areas.

Landscape and Irrigation System Test:

- (a) **Test:** Check irrigation system functionality, ensuring water flow and pressure.
- (b) **Method:** Perform flow rate tests at various irrigation zones. Check for uniformity in watering.
- (c) **Criteria:** The system must be operational, and no water leakage or wastage should occur.

3.2.3 FOOD COURT

HVAC System Test:

- (a) **Test:** Inspect the heating, ventilation, and air conditioning (HVAC) systems for proper functionality.

- (b) **Method:** Check airflow, temperature control, and air quality in dining and kitchen areas.
- (c) **Criteria:** HVAC must maintain appropriate temperatures, humidity, and air quality, as per local regulations.

Plumbing and Wastewater Test:

- (a) **Test:** Inspect plumbing systems and ensure proper water flow and drainage.
- (b) **Method:** Run water through all plumbing fixtures, check for leaks, proper water pressure, and operational drains.
- (c) **Criteria:** No leaks, clogs, or water pressure issues.

Fire Safety Test:

- (a) **Test:** Test fire suppression systems and emergency exits.
- (b) **Method:** Verify functionality of sprinklers, fire alarms, extinguishers, and emergency lighting.
- (c) **Criteria:** Systems must comply with local fire safety codes.

3.2.4 ZOO

Enclosure Safety Test:

- (a) **Test:** Verify the structural integrity and security of animal enclosures.
- (b) **Method:** Inspect fences, gates, locks, and barriers. Perform load tests on fences and test all locks and latches.
- (c) **Criteria:** All enclosures must be secure, with no potential for escape or access by unauthorized individuals.

Animal Welfare Systems Test:

- (a) **Test:** Check the functioning of environmental control systems (e.g., temperature, humidity) within animal enclosures.
- (b) **Method:** Verify temperature, humidity, and ventilation systems to ensure they meet the specific needs of the animals housed.
- (c) **Criteria:** Systems must maintain required environmental conditions for animal health.

Water Quality Test:

- (a) **Test:** Verify the cleanliness and quality of water features in enclosures.
- (b) **Method:** Test water for cleanliness, pH levels, and toxins.
- (c) **Criteria:** Water quality must meet environmental and health standards.

3.2.5 MULTIPLEX BUILDING

Sound and Lighting Test:

- (a) **Test:** Inspect and verify the functionality of audio-visual systems.
- (b) **Method:** Test lighting levels, acoustics, and projector systems.
- (c) **Criteria:** Systems must meet quality and regulatory standards for entertainment venues.

HVAC and Airflow Test:

- (a) **Test:** Test air conditioning and ventilation systems to ensure they meet required operational standards.
- (b) **Method:** Check airflow and temperature controls for lobby areas and theaters.
- (c) **Criteria:** Air quality and temperature must meet local standards.

Emergency Systems Test:

- (a) **Test:** Verify emergency systems, including fire alarms, emergency exits, and evacuation plans.
- (b) **Method:** Perform evacuation drills and test all emergency exit doors.
- (c) **Criteria:** Emergency exits must be fully operational and accessible.

3.2.6 CARNIVAL PAVILION

Structural Integrity Test:

- (a) **Test:** Inspect the structural elements of the pavilion, including the roof, columns, beams, and floor.
- (b) **Method:** Perform load tests on the structure, ensuring it can support the weight of equipment, people, and seasonal elements (e.g., carnival rides, booths).
- (c) **Criteria:** The structure must comply with local building codes and support the expected operational loads.

Mechanical Systems Test (if applicable):

- (a) **Test:** Verify functionality of mechanical systems such as moving parts, retractable elements, or rigging systems.
- (b) **Method:** Test the operation of all moving components to ensure smooth functioning, including safety interlocks.
- (c) **Criteria:** All mechanical systems must function properly without malfunctions.

Safety and Access Control Test:

- (a) **Test:** Ensure that safety barriers, gates, and emergency exits are properly installed and functional.
- (b) **Method:** Test emergency exits, barriers, and access control points (ticketing or gate management).
- (c) **Criteria:** All access points must be secure, with emergency exits unobstructed and accessible at all times.

Fire Safety and Lighting Test:

- (a) **Test:** Check the fire safety equipment (fire extinguishers, sprinklers, emergency lighting) and ensure all lighting systems are functional.
- (b) **Method:** Perform functional checks of fire alarms, fire suppression systems, and emergency lighting.
- (c) **Criteria:** The facility must meet fire safety standards and provide sufficient lighting throughout the pavilion.

3.2.7 PARKING AREAS

Surface and Structural Integrity Test:

- (a) **Test:** Inspect the parking lot's paving, curbs, lighting, and structural elements (if underground or multi-story).
- (b) **Method:** Perform load tests on the paved surfaces (especially for multi-story parking) and verify proper drainage.
- (c) **Criteria:** The parking lot should have a smooth, even surface without cracks or improper drainage. Multi-story parking must support the load of vehicles.

Lighting and Visibility Test:

- (a) **Test:** Ensure the entire parking lot is adequately lit for security and safety.
- (b) **Method:** Test lighting for proper coverage and luminescence across all parking spaces and pathways.
- (c) **Criteria:** Minimum light levels as per local code for outdoor parking areas must be met.

Signage and Wayfinding Test:

- (a) **Test:** Verify that signage for parking spaces, exits, and pedestrian pathways are clearly visible.
- (b) **Method:** Ensure all directional signage is installed and properly placed at key locations.

- (c) **Criteria:** Clear, visible, and functional signage to guide vehicle and pedestrian movement.

Traffic Flow and Safety Test:

- (a) **Test:** Verify the traffic flow patterns, barriers, and entrance/exit points.
- (b) **Method:** Simulate vehicle movements and traffic through the parking lot, checking for congestion, bottlenecks, and safe access.
- (c) **Criteria:** The parking facility must provide safe, efficient traffic flow and comply with local traffic regulations.

3.2.8 'FUN LAND' - INDOOR THEME PARK

Attraction Safety and Operational Test:

- (a) **Test:** Inspect all rides and attractions within the indoor theme park for mechanical integrity and functionality.
- (b) **Method:** Perform operational tests on each ride, ensuring it functions as per design specifications.
- (c) **Criteria:** Rides must meet safety standards, including proper restraint mechanisms, smooth operation, and no significant mechanical issues.

HVAC and Ventilation Test:

- (a) **Test:** Check the HVAC system to ensure the indoor air quality and temperature are within acceptable levels for comfort.
- (b) **Method:** Measure air temperature, humidity, and air circulation in various parts of the park.
- (c) **Criteria:** The HVAC system must ensure proper ventilation, cooling, and heating for all visitor areas.

Fire Safety and Emergency Systems Test:

- (a) **Test:** Verify the installation and operation of fire safety systems, including sprinklers, alarms, and emergency exits.
- (b) **Method:** Conduct fire drills, test sprinklers, and verify emergency exits are clearly marked and functional.
- (c) **Criteria:** The facility must meet all local fire safety and emergency exit regulations.

Lighting and Visibility Test:

- (a) **Test:** Ensure that all indoor attractions and pathways are adequately lit.
- (b) **Method:** Test illumination levels in dark ride areas, pathways, and queuing areas.

- (c) **Criteria:** Adequate lighting for safety, visibility, and ambiance, according to local standards.

3.2.9 'FUN LAND' - OUTDOOR AMUSEMENT PARK

Ride Safety Test:

- (a) **Test:** Verify that all mechanical rides and attractions are properly installed and function as designed.
- (b) **Method:** Perform static load tests, dynamic operational tests, and safety restraint checks. Run each ride through full operational cycles with test loads.
- (c) **Criteria:** All rides must operate smoothly without unexpected failure, excessive vibrations, or safety concerns.

Performance Test:

- (a) **Test:** Verify the safety of all outdoor amusement rides with operational checks.
- (b) **Method:** Conduct dynamic load tests, simulate ride operations under load, and verify safety restraints.
- (c) **Criteria:** All rides must be safe and operate within specified limits.

Mechanical Systems Test:

- (a) **Test:** Inspect mechanical systems for all attractions and verify operational efficiency.
- (b) **Method:** Conduct comprehensive checks of mechanical and electrical systems in rides.
- (c) **Criteria:** All mechanical systems must meet the manufacturer's specifications and be fully operational.

Emergency Stop Test:

- (a) **Test:** Test the emergency stop mechanisms for all rides.
- (b) **Method:** Simulate emergency conditions (e.g., power failure) and ensure the rides can safely come to a stop.
- (c) **Criteria:** Rides must halt immediately and safely when the emergency stop is triggered.

Emergency Response Test:

- (a) **Test:** Simulate an emergency situation (e.g., power failure or medical emergency) to test the readiness of staff and emergency systems.
- (b) **Method:** Run emergency drills for staff and test emergency evacuation plans.
- (c) **Criteria:** Emergency response must be prompt and efficient.

Access Control Test:

- (a) **Test:** Verify the proper functioning of ticketing and access control systems at ride entry points.
- (b) **Method:** Test ticket scanners, turnstiles, and barcode/QR code readers for operational efficiency.
- (c) **Criteria:** Access must be granted only with valid tickets and all systems must be secure.

3.2.10 DANCING FOUNTAINS

Water Pump and Flow Test:

- (a) **Test:** Check the operation of pumps and water flow systems to ensure smooth water flow during performances.
- (b) **Method:** Test water pressure, pump performance, and nozzle functionality.
- (c) **Criteria:** Water flow must be smooth and consistent, with no disruptions.

Lighting and Synchronization Test:

- (a) **Test:** Test all lighting and synchronization systems for the fountain display.
- (b) **Method:** Ensure that lighting changes are synchronized with water movement.
- (c) **Criteria:** Lighting must be synchronized with water jets, creating visually appealing effects without delays.

Electrical and Control Systems Test:

- (a) **Test:** Inspect the electrical systems that power the pumps, lights, and controls.
- (b) **Method:** Perform operational checks on the control panel and electrical connections.
- (c) **Criteria:** All electrical systems must be safe and functional, with backup power systems in place.

3.2.11 CAFETERIA

Kitchen Equipment Testing:

- (a) **Test:** Inspect all kitchen appliances and food preparation equipment.
- (b) **Method:** Test ovens, grills, refrigerators, and other equipment to ensure they are functioning properly.
- (c) **Criteria:** All kitchen equipment must meet health and safety standards for food preparation.

Fire Suppression and Safety Test:

- (a) **Test:** Verify the functionality of fire suppression and safety equipment.
- (b) **Method:** Test fire alarms, extinguishers, sprinklers, and ventilation.
- (c) **Criteria:** Fire safety systems must be fully operational and comply with local regulations.

Plumbing and Drainage Test:

- (a) **Test:** Check water supply and waste systems for proper function.
- (b) **Method:** Run water through all fixtures, check drainage, and ensure no leaks.
- (c) **Criteria:** Water systems must function without leaks, with proper water pressure.

3.2.12 JOGGING AND CYCLING TRACK

Surface Integrity and Smoothness Test:

- (a) **Test:** Inspect the track's surface for smoothness, evenness, and quality of materials used (e.g., asphalt, rubber).
- (b) **Method:** Measure the smoothness of the track with a surface profile gauge and check for any uneven spots or damages.
- (c) **Criteria:** The surface must be smooth and free of cracks or trip hazards.

Lighting and Safety Test:

- (a) **Test:** Verify lighting along the track to ensure visibility during early morning or late evening use.
- (b) **Method:** Check illumination levels along the track.
- (c) **Criteria:** Minimum light levels must be met to ensure visibility for pedestrians and cyclists.

Signage and Markings Test:

- (a) **Test:** Verify the visibility of track lane markings, directional signs, and safety notices.
- (b) **Method:** Inspect the placement and visibility of signs and lane markers.
- (c) **Criteria:** Clear and visible directional signage must be present, and lane markings should be distinct.

3.2.13 AMPHITHEATER

Acoustics and Sound System Test:

- (a) **Test:** Test the acoustics and sound system to ensure the proper distribution of sound across the seating area.
- (b) **Method:** Perform audio tests using test signals and check for even sound distribution.
- (c) **Criteria:** Audio quality must meet performance standards for live events.

Seating and Structural Integrity Test:

- (a) **Test:** Inspect seating areas, stage, and structural elements (e.g., risers, balconies).
- (b) **Method:** Perform load-bearing tests on seating and check stage equipment.
- (c) **Criteria:** All seating must be secure, stable, and compliant with local building codes.

Safety Systems Test:

- (a) **Test:** Ensure that emergency exits, fire alarms, and lighting systems are functioning properly.
- (b) **Method:** Test fire alarms, emergency exits, and emergency lighting in seating areas.
- (c) **Criteria:** All safety features must be fully operational and comply with local regulations.

3.2.14 BOATING LAKE

Water Quality Test:

- (a) **Test:** Inspect the water quality of the lake, checking for pollutants, pH levels, and clarity.
- (b) **Method:** Test water samples for harmful chemicals, bacteria, and clarity.
- (c) **Criteria:** Water must meet local environmental standards for recreational use.

Boats and Equipment Test:

- (a) **Test:** Check the functionality and safety of boats and associated equipment (life jackets, oars).
- (b) **Method:** Perform tests on boats to check stability, safety, and operational readiness.
- (c) **Criteria:** All boats must be safe, functional, and meet applicable maritime safety standards.

Safety and Emergency Systems Test:

- (a) **Test:** Ensure the presence of lifeguards, emergency access points, and water rescue equipment.
- (b) **Method:** Perform drills and verify equipment readiness.

- (c) **Criteria:** Water safety systems must comply with local regulations and be fully operational.

SCHEDULE H - O&M REQUIREMENTS

1. **OPERATIONS ROLE**

- 1.1 Following completion of a Segment, the Concessionaire shall be responsible to keep it fully operational as per the O&M Requirements, especially focusing on the following activities and systems:
- (a) operation of all equipment, processes and facilities in an uninterrupted manner;
 - (b) response to all equipment failures, malfunctions, trips and faults in a manner that protects and preserves the health and wellbeing of inhabitants, Users, protects and preserves the Project and all facilities therein;
 - (c) provision of utilities inside the Project Site;
 - (d) solid waste management including effective collection and proper disposal to a designated place outside of the Project Site;
 - (e) provision of security and surveillance of the Project Site on a twenty-four (24) hour basis, seven (7) days a week;
 - (f) safety and parking management;
 - (g) disaster/emergency services management;
 - (h) safety inspections;
 - (i) supervision of subcontractors, if any;
 - (j) updating the '*as built*' drawings, the O&M Manual and the O&M Documents; and
 - (k) provision of Operation and Maintenance materials and equipment.
- 1.2 Dedicated on-call project management and maintenance teams will be required to provide round-the-clock services, upholding the quality of the Project and ensuring reliable support at all times.

2. **MAINTENANCE ROLE**

- 2.1 The Concessionaire shall conduct maintenance of the Rani Bagh Facilities in a manner that guarantees that at the end of the Concession, all Concession Assets shall be handed over to the Agency in working condition, considering normal wear and tear. The Concessionaire will be responsible for execution of all maintenance activities according to established professional maintenance requirements and according to each item's manufacturers recommended service manual.
- 2.2 The Concessionaire is responsible for maintaining the Project facilities, structures, pavement markings, drainage infrastructure, electrical systems, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, and emergency maintenance.
- 2.3 The Concessionaire shall develop and implement a maintenance management system (the **Maintenance Management System**) that includes but is not limited to all facilities,

entrances, all mechanical and non-mechanical equipment, processes, buildings, structures and grounds within and adjacent to all assets, new, existing or refurbished at Rani Bagh. The general Maintenance Management System shall include, or be capable of including, all of the following:

(a) EQUIPMENT RECORD CARDS (ERC)

Each ERC shall include:

- (i) type of equipment;
- (ii) equipment tag number;
- (iii) manufacturers name;
- (iv) manufacturers phone number;
- (v) local representative's phone number;
- (vi) spare parts list with manufacture's identification number;
- (vii) recommended maintenance with frequency; and
- (viii) specific conditional monitoring with frequency,

(b) CONDITIONAL MAINTENANCE

- (i) Identify (major equipment) failure modes that are preceded by a measurable condition (vibration, heat, sound etc.);
- (ii) Identify normal parameters for pre failure conditions;
- (iii) Describe conditional response and urgency; and
- (iv) Incorporate condition monitoring and response in Maintenance Management System,

(c) SCHEDULED MAINTENANCE

Incorporate manufacture's recommended maintenance tasks and frequencies as well as documentation of execution of these tasks into Maintenance Management System.

(d) O&M MONTHLY STATUS REPORT

The Concessionaire shall furnish the O&M Monthly Status Report to the Agency and the Independent Technical Advisor in accordance with section 19.8 (*O&M Monthly Status Report*) of this Agreement. Additionally, the O&M Monthly Status Report should state the following content:

- (i) summary of main Operation and Maintenance activities for the respective period and scheduling of such activities for the next period including renovation or replacement, if any;

- (ii) Operation and Maintenance record for all rides (outdoor and indoor), cinema, and multiplex equipment;
- (iii) number of Users, number of events and number of shows for each month ending; and
- (iv) number of animals available in the zoo under each category for each quarter ending.

3. OPERATION AND MAINTENANCE CRITERIA

3.1 OPERATION REQUIREMENTS

- 3.1.1 During the Operations Period of the Concession, the Concessionaire shall be responsible for the efficient operations, the recovery and removal of broken-down rides, the removal of debris and spillage from the Project Site and the provision of other basic services to Users.
- 3.1.2 The Concessionaire will be required to liaise closely with the emergencies services to ensure that performance and safety standards are always met.
- 3.1.3 The Concessionaire will be required to prepare the Marketing Plan in accordance with the terms of this Agreement.

3.2 PROVISION OF BASIC LEVEL OF SERVICES

- 3.2.1 In addition to the above specific operational requirements, the following basic levels of services shall be always maintained throughout the Operations Period:
 - (a) all parts of the Project shall always remain open for use by Users, except as may be agreed from time to time with the Agency and in accordance with this Agreement;
 - (b) all restroom facilities shall be continually staffed, and the restrooms shall be maintained in a clean condition throughout the operational hours of Rani Bagh; and
 - (c) all parts of Rani Bagh shall be kept clean, tidy and free from litter.

3.3 MAINTENANCE REQUIREMENTS

- 3.3.1 The maintenance services to be provided by the Concessionaire during the Operations Period shall cover the following:
 - (a) maintenance of including pest control of gardens, parks, playgrounds, pavement, tree and other open spaces including planting, pruning, grass mowing, replacement of dead plants and application of fertilizers/manures;
 - (b) maintenance of dancing fountains, water treatment plant, sewage treatment plant and carrying out periodic tests as may be required;
 - (c) maintenance of Project facilities including (without limitation) the fire-fighting systems, lifts, lighting, power back-up systems, solar power generation system,

theme park and amusement park rides and equipment, cinema equipment, zoo area, boating lake, security system, etc;

- (d) regular inspection of building exteriors, cleaning, paint touch-up, and repair/restoration of plaster works/cracks of the same as required;
- (e) arresting of all leakages and seepages with effective and corrective waterproofing in terraces, restrooms, balconies, etc;
- (f) regular cleaning of all common areas, staircases, corridors, footpaths, roads, storm water drainage channels, water bodies etc. Common areas, roads, parks, walking area, restrooms, food court sitting area, footpaths and all other open areas shall be cleaned daily;
- (g) maintenance of the water supply/distribution system within the Project Site. This shall include ensuring that all water supply pumps, pressure vessels, hydro pneumatic systems and control panels are maintained as specified in the manuals furnished by the manufacturers, ensuring that all water valves operate smoothly and that there are no leakages in the system, cleaning on regular basis storage reservoirs/tanks to ensure that there are no deposits/sediments or algae growth, ensuring proper maintenance of chlorination equipment and correct chlorination dosage, maintenance of filtration equipment including backwashing as specified in relevant standards;
- (h) ensure protection of natural flora and fauna by periodic water quality check including boating lake water;
- (i) maintenance of all internal roads and paved/parking areas within the Project Site, including repair of potholes/cracks, replacement of damaged/missing paving blocks, etc;
- (j) maintenance of power distribution system and electrical installations in buildings and ensure correction of all problems; and
- (k) take necessary steps to have statutory inspections carried out at all specified intervals and ensure that all required licenses/permits for the operation of lifts, water treatment plant, sewage treatment plant, firefighting system etc. are valid at all times.

3.3.2 In carrying out the above activities, the Concessionaire will be subject to the following general obligations:

- (a) the Concessionaire shall maintain an office at the Project Site for managing the maintenance activities, receiving and responding to complaints related to maintenance;
- (b) the Concessionaire shall ensure the deployment/availability of adequate number of trained personnel to respond to complaints and carry out the activities listed above;
- (c) the Concessionaire shall maintain complete records of all maintenance activities as well as a log for complaints received and action taken. The guarantees, warranty cards or certificates of all items/processes shall be well documented and filed for future reference. The Concessionaire shall hand over all these records to the Agency

at the time of handing over the responsibility for maintenance as per the provisions of this Agreement.

- (d) the Concessionaire shall ensure the smooth hand-over of the responsibility for maintenance to the Agency in accordance with the provisions of this Agreement, including the transfer of relevant contracts, warranties, personnel, etc.

3.4 **O&M REQUIREMENTS**¹¹

Specific O&M Requirements applicable to the Rani Bagh Facilities are as follows:

3.4.1 CINEMA

Facility Cleaning:

- (a) Daily cleaning of cinema halls, lobbies, restrooms, and seating areas.
- (b) Regular cleaning of walls, carpets, and floors to maintain cleanliness.
- (c) Periodic deep cleaning of projection rooms and technical areas.

Equipment Maintenance:

- (a) Regular inspection and maintenance of projectors, sound systems, and lighting to ensure optimal performance.
- (b) Maintenance of HVAC systems to ensure proper air circulation, temperature, and humidity control.
- (c) Scheduled repairs and recalibrations of audio-visual equipment.

Customer Services:

- (a) Maintaining ticketing systems (manual and electronic), concessions, and customer assistance.
- (b) Ensuring availability of disabled access facilities such as ramps and seating.

Safety and security:

- (a) Regular inspection of emergency exits, fire alarms, fire extinguishers, and emergency lighting to ensure proper operation.
- (b) Regular fire drills and emergency evacuation training for cinema staff.

3.4.2 FAMILY PARKS & PLAYGROUND AREAS

Daily Maintenance:

- (a) Inspection and cleaning of all play structures (swings, slides, climbing frames), seating areas, and pathways.

¹¹ Details of the O&M Requirements are subject to change based on the recommendations of the Independent Technical Advisor.

- (b) Ensuring cleanliness and safety of play surfaces (sand, rubber mats, grass, etc.) and maintaining soft fall zones around play equipment.

Equipment Maintenance:

- (a) Regular checks on play equipment to ensure that all parts (e.g., bolts, chains, seats) are secure and in good condition.
- (b) Immediate removal of damaged or unsafe equipment from service for repair or replacement.

Landscape Maintenance:

- (a) Daily care of trees, shrubs, and plants, including watering, pruning, and weed control.
- (b) Regular mowing of lawns and clearing of fallen leaves and debris.

Safety and Compliance:

- (a) Ensuring all play areas meet safety standards for children's play equipment and that the shock-absorption of play surfaces is regularly tested.
- (b) Provide clear signage with rules and regulations for park use and supervision of children.

3.4.3 FOOD COURT

Sanitation and Cleaning:

- (a) Daily cleaning of all dining areas, kitchen spaces, counters, restrooms, and floors.
- (b) Regular deep cleaning of cooking equipment (e.g., grills, fryers, ovens) and kitchen ventilation systems.

Health and Safety Compliance:

- (a) Maintain food storage and preparation areas in compliance with food safety regulations.
- (b) Regular checks of temperature-controlled units (refrigerators, freezers) to ensure food is stored at safe temperatures.

Waste Management:

- (a) Regular removal of trash and food waste.
- (b) Ensure proper disposal and recycling of waste in compliance with environmental regulations.

Staff Training:

Ensure all food handlers are trained in food safety practices, including personal hygiene, cross-contamination, and safe food storage.

3.4.4 ZOO**Animal Welfare:**

- (a) Daily feeding and proper care for all animals according to their specific dietary needs.
- (b) Regular veterinary check-ups to ensure animal health and well-being.
- (c) Ensure adequate shelter and enrichment activities for animals to simulate natural habitats.

Enclosure Maintenance:

- (a) Daily inspection and maintenance of animal enclosures to ensure they are secure and safe.
- (b) Regular cleaning of cages, fences, and barriers to maintain hygiene and safety.

Visitor Experience:

- (a) Ensure that signage and visitor information are up-to-date and easily accessible.
- (b) Regular cleaning of visitor pathways and seating areas around animal exhibits.

Safety and Emergency Protocols:

Ensure emergency procedures for handling animal escapes, staff injuries, or public safety incidents are clearly outlined and practiced regularly.

3.4.5 MULTIPLEX BUILDING**HVAC & Lighting Systems:**

- (a) Ensure the HVAC system is maintained for optimal temperature and air quality in all cinema halls and common areas.
- (b) Regular inspection and replacement of lighting in all areas, including auditoriums, lobbies, and restrooms.

Facility Cleanliness:

- (a) Daily cleaning of common areas, restrooms, and any seating areas.
- (b) Monthly deep cleaning of carpets, upholstery, and cinema screens.

Security & Safety:

- (a) Regular inspection of fire exits, fire alarms, sprinklers, and emergency systems.

- (b) Ensure that staff training on emergency procedures and safety protocols is up to date.

3.4.6 CARNIVAL PAVILION

Structural Integrity:

- (a) Inspect and maintain the building's structural elements, including roofs, walls, and columns.
- (b) Ensure safety of walkways, stage areas, and seating sections.

Event Support:

- (a) Provide regular maintenance of lighting, audio systems, and staging equipment.
- (b) Ensure cleanliness before and after events, including waste removal and general area tidiness.

Visitor Services:

Ensure the availability of public amenities, including restrooms, first aid, and customer service desks.

3.4.7 PARKING AREAS

Surface Maintenance:

- (a) Regular sweeping and cleaning of the parking areas.
- (b) Ensure all pavement markings are clear and visible.

Lighting & Signage:

- (a) Ensure all lighting in the parking areas is operational, especially during evening hours.
- (b) Maintain clear and visible signage for parking directions, access points, and safety warnings.

Safety Protocols:

Ensure that there are clearly marked emergency exits, fire extinguishers, and first aid kits in the parking areas.

3.4.8 'FUN LAND' - INDOOR THEME PARK AND OUTDOOR AMUSEMENT PARK

Routine Inspections:

- (a) Daily inspection and cleaning of all rides and amusement equipment to ensure proper functioning and safety.

- (b) Ensure all safety restraints, emergency stops, and operational systems are fully functional.

Ride Maintenance:

- (a) Preventive maintenance of mechanical, electrical, and hydraulic systems on all rides.
- (b) Conduct repairs and replacements as needed based on usage and wear-and-tear.
- (c) Annual overhauling of critical systems to ensure ride safety and smooth operation.

Rides and Attractions:

- (a) Regular inspection, maintenance, and repair of all rides and attractions.
- (b) Perform daily checks of safety features, including harnesses, safety barriers, and control systems.

General Park Maintenance:

- (a) Ensure landscaping, paths, benches, and public spaces are well-maintained.
- (b) Ensure waste bins are available and emptied regularly to maintain cleanliness.

Visitor Services:

- (a) Ensure efficient ticketing, maintain queue management systems, and customer service systems and crowd control during peak times.
- (b) Provide clear park maps, facility guides, and information kiosks for visitor assistance.

Safety Procedures:

- (a) Regular drills and tests of emergency evacuation plans and ride safety protocols.
- (b) Ensuring that staff are trained in first aid, emergency response, and safe operation of rides.

3.4.9 DANCING FOUNTAINS

Water Systems Maintenance:

- (a) Regular cleaning and maintenance of the water pumps, nozzles, and water features.
- (b) Maintain the lighting system associated with the fountains for synchronized shows.

Cleaning:

Regular cleaning of the surrounding area to ensure no buildup of algae, debris, or contaminants in the water.

3.4.10 CAFETERIA

Food Service and Hygiene:

- (a) Ensure all food safety regulations are adhered to, including temperature checks, food handling practices, and waste disposal.
- (b) Daily cleaning of food prep areas, floors, tables, and seating.

Equipment Maintenance:

Ensure that all kitchen and foodservice equipment (e.g., ovens, refrigerators, fryers) is well-maintained and regularly inspected.

Stocking and Ordering:

Maintain adequate inventory management systems for food items, supplies, and utensils.

3.4.11 JOGGING AND CYCLING TRACK

Surface Maintenance:

- (a) Regular inspection of the track to ensure it is free from debris, potholes, or other obstacles.
- (b) Ensure smooth surfaces for safe running and cycling.

Lighting:

Ensure proper lighting along the track for evening use.

3.4.12 AMPHITHEATRE

Facility Upkeep:

- (a) Maintain the seating areas, stages, and performance spaces.
- (b) Ensure audio-visual systems, lighting, and sound equipment are functioning properly.

Event Preparation:

Regular cleaning and setup before and after events, including seating arrangements, staging, and decor.

Safety:

Ensure safety barriers, fire exits, and emergency lighting are fully operational.

3.4.13 BOATING LAKE

Water Quality:

- (a) Maintain proper water treatment and filtration systems to ensure clean, safe water.

- (b) Perform daily water quality checks, including pH levels, chlorine levels, and debris removal.

Boat Maintenance:

- (a) Regular checks of boats, paddles, life jackets, and oars to ensure they are safe and in good working condition.
- (b) Perform maintenance on the boat docking stations and maintain safety standards for visitors.

SCHEDULE I - INSURANCES - PART I - C&O PERIOD INSURANCES¹²

1. **MARINE CARGO**

Cover : Physical loss or damage to all materials, equipment, machinery, spares and other items for incorporation in the Construction Works on an “*all risks*” basis whilst in transit by sea, air, or land from country of origin anywhere in the world to the Project Site;

Cover is to be on the basis of Institute Cargo Clauses (A) plus war, plus strike, riot and civil commotion and should include a minimum of sixty (60) Days of storage on Project Site.

Sum Insured : The value of largest shipment or the highest value in temporary storage (as part of the journey to the Project Site) plus insurance and freight (CIF) whichever is greater.

At any time, the shipment value shall not exceed PKR 100.

Deductibles : Not to exceed PKR 100 for each loss.

Period of Insurance : From commencement of first shipment to the unloading of final shipment at the Project Site.

Insured Parties : Agency, EPC Contractor and all other contractors and sub-contractors of any tier involved in the supply of goods, materials or equipment for incorporation into the Project Works.

Extensions and Conditions : Cover to include:

- (i) Institute Cargo clauses “A”;
- (ii) Institute Cargo clauses (Air Cargo);
- (iii) Institute Strikes & War clauses (Cargo);
- (iv) Institute Strikes & War clauses (Air Cargo);
- (v) Institute Replacement clause;
- (vi) Institute Classification clause;
- (vii) 50/50 clause;
- (viii) 200% accumulation clause.

¹² All amounts under this **SCHEDULE I (INSURANCES)** shall be finalized by the Concessionaire under the Financing Documents with the consent of the Independent Auditor, based on precedent PPP projects and IPP/project financing deals.

2. **CONSTRUCTION “ALL RISKS”**

- Cover*** : Physical loss or damage to the assets installed or rehabilitated as part of the Construction Works, including all equipment, materials, Rani Bagh Facilities, machinery, spares, temporary structures and all other property of whatsoever nature or description to be incorporated in, used or rehabilitated in connection with the Project including testing and commissioning.
- Sum Insured*** : The full reinstatement or replacement value of the assets installed or rehabilitated as part of Construction Works, including any “*free issue*” items.
- Deductibles*** : Not to exceed for each and every occurrence:
- (i) PKR █ in respect of testing and commissioning, extended maintenance and defects coverage;
 - (ii) PKR █ in respect of storm, tempest, flood, tsunami;
 - (iii) PKR █ in respect of all other losses.
- Period of Insurance*** : From the earlier of the notice to proceed as defined in the EPC Contract, the Commencement Date or from the commencement of the construction activity at the Project Site, until the COD plus cover for minimum twelve (12) months extended maintenance.
- Insured Parties*** : The Agency, the Concessionaire, the EPC Contractor and all other contractors and sub-contractors of any tier, including consultants for their activities on or about the Project Site only.
- Extensions and Conditions*** : To include:
- (i) Offsite storage;
 - (ii) Inland transit of locally procured materials wholly within Pakistan;
 - (iii) Strike, riot and civil commotion (unless covered under the Terrorism and Sabotage insurance);
 - (iv) Insurers to waive all rights of subrogation against the Agency and against all other insured parties as provided above;
 - (v) LEG 2/96 faulty design/defects coverage;
 - (vi) Escalation provision;
 - (vii) Inadvertent errors and omissions;

- (viii) Claims will be paid in the currency in which the cost is incurred;
- (ix) 50/50 clause;
- (x) Removal of debris;
- (xi) Expediting expenses;
- (xii) Public authority requirements; and
- (xiii) Professional fees,

and subject to sub-limits based on prevailing insurance market norms.

3. **THIRD PARTY LIABILITY**

Cover : Legal liability of the Insured Parties as provided below for death or bodily injury to third parties or loss or damage to third party property arising out of or in connection with the Construction Works.

Limit of Indemnity : No less than PKR [REDACTED] for each occurrence but in the aggregate in respect of sudden and accidental pollution risks.

Deductibles : Not to exceed PKR [REDACTED] for each and every occurrence.

Period of Insurance : As per the Construction All Risks insurance.

Insured Parties : The Agency, the EPC Contractor and all other contractors and sub-contractors of any tier and their respective directors, officers and employees, and including consultants for their activities on or about the Project Site only.

Geographical Limits : Pakistan and including business trips worldwide in connection with the Project.

Extensions and Conditions : To include:

- (i) Cross liability;
- (ii) Worldwide jurisdiction subject to North American conditions; and
- (iii) Sudden, unintended and unexpected seepage, pollution and contamination.

4. **TERRORISM AND SABOTAGE**

- Cover*** : Physical loss or damage and consequent loss of gross profit following delay to the anticipated COD caused by an act of terrorism and/or sabotage to the Project.
- Sum Insured*** : A sum which is sufficient to cover the largest foreseeable loss scenario for full reinstatement value of such lost or damaged property.
- Indemnity Period*** : Twelve (12) months from the anticipated COD or as otherwise approved by the Administrative Agent in consultation with the Insurance Consultant.
- Deductibles*** : Not to exceed PKR [] in respect of physical loss or damage for each and every occurrence.
- Period of Insurance*** : As per the Construction All Risks insurance.
- Insured Parties*** : The Agency, the EPC Contractor and all other contractors and sub-contractors of any tier.
- Geographical Limits*** : Pakistan.

5. **MARINE DELAY IN START-UP (“MDSU”) INSURANCE**

- Cover*** : Loss of revenue following delay in start of commercial operations of the Project, as a direct result of physical loss or damage covered under the Marine Cargo Insurance above.
- Sum Insured*** : Estimated gross revenue or an amount at least equal to the estimated amount due to Financiers under the Financing Documents and fixed expenses incurred during the Indemnity Period.
- Indemnity Period*** : Not less than twelve (12) months from the anticipated COD.
- Period of Cover*** : As per Marine Cargo insurance above.
- Insured*** : The borrower and the lenders each for their respective rights and interests.
- Deductibles*** : No more than forty-five (45) Days.
- General*** : To include delay due to damage to the carrying vessel or conveyance.

6. **DELAY IN START UP (“DSU”) INSURANCE**

- Cover*** : Loss of revenue following delay in start of commercial operations of the Project as a direct result of physical loss or damage covered under Construction All Risk Insurance above.

- Sum Insured*** : Estimated gross revenue or an amount at least equal to the estimated amount due to Financiers under the Financing Documents and fixed expenses during the Indemnity Period.
- Indemnity Period*** : Not less than twelve (12) months from the anticipated COD.
- Period of Cover*** : As per the Construction All Risks insurance.
- Insured*** : The borrower and the lenders each for their respective rights and interests.
- Deductible*** : No more than sixty (60) Days.
- General*** : To include:
- (i) Denial of access; and
 - (ii) Customers' and suppliers' extensions (in respect of FLEXA perils.

7. **MISCELLANEOUS**

Other insurance as is customary, desirable or necessary to comply with Laws, such as workers' compensation and employers' liability insurance in relation to all workmen employed in the construction of the Project, and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in connection with the Project.

SCHEDULE I - INSURANCES - PART II - OPERATIONS PERIOD INSURANCES

1. PROPERTY DAMAGE “ALL RISKS”

- Cover** : To cover physical loss or damage to all assets comprising the Project including but not limited to, buildings and their contents, machinery, spares, fixtures, fittings and all other personal property, against “*all risks*” of physical loss or damage and machinery breakdown.
- Sum Insured** : An amount sufficient to reinstate the Rani Bagh Facilities.
- Deductibles** : Not to exceed for each and every occurrence:
- PKR [redacted] in respect of storm, tempest, flood, tsunami; and
 - PKR [redacted] for all other losses.
- Period of Insurance** : From the COD and renewable annually till the Final Expiry Date.
- Insured Parties** : The Agency, the O&M Contractor, the Rani Bagh Contract Parties and all other contractors and sub-contractors of any tier and including consultants for their activities on or about the Project Site only.
- Extensions and Conditions** : To include:
- (i) Offsite storage;
 - (ii) Inland transit of locally procured materials wholly within Pakistan;
 - (iii) Strike, riot and civil commotion (unless covered under the Terrorism and Sabotage insurance);
 - (iv) Insurers to waive all rights of subrogation against the Agency and, in respect of their Project Site activities only against all other Insured Parties as provided above;
 - (v) Escalation provision;
 - (vi) Inadvertent errors and omissions;
 - (vii) Claims will be paid in the currency in which the cost is incurred;
 - (viii) Removal of debris;
 - (ix) Expediting expenses;

(x) Public authority requirements; and

(xi) Professional fees,

and subject to sub-limits based on prevailing insurance market norms.

2. **THIRD PARTY LIABILITY**

Cover : Legal liability of the Insured Parties, as provided below, for death or bodily injury to third parties or loss or damage to third party property arising out of or in connection with the ownership, operation, use or maintenance of the Project, including supply of products.

Limit of Indemnity : No less than PKR █ for each occurrence but in the aggregate in respect of sudden and accidental pollution risks.

Deductibles : Not to exceed PKR █ for each and every occurrence.

Period of Insurance : As per the Property Damage All Risks insurance.

Insured Parties : The Agency, the O&M Contractor and all other contractors and sub-contractors of any tier and their respective directors, officers and employees, and including consultants for their activities on or about the Project Site only.

Geographical Limits : Pakistan and including business trips worldwide in connection with the Project.

Extensions and Conditions : To include:

- (i) Cross liability;
- (ii) Worldwide jurisdiction subject to North American conditions; and
- (iii) Sudden, unintended and unexpected seepage, pollution and contamination.

3. **TERRORISM AND SABOTAGE**

Cover : Physical loss following interruption in the Operation and Maintenance by an act of terrorism and/or sabotage to the Project.

Sum Insured : A sum which is sufficient to cover the largest foreseeable loss scenario for full reinstatement value of such lost or damaged property.

Indemnity Period : Twelve (12) months from the anticipated COD.

Deductibles : Not to exceed PKR █ in respect of physical loss or damage for each and every occurrence.

Period of Insurance : As per the Property Damage All Risks insurance.

Insured Parties : The Agency, the O&M Contractor, the Rani Bagh Contract Parties and all other contractors and sub-contractors of any tier.

Geographical Limits : Pakistan.

4. **BUSINESS INTERRUPTION INSURANCE**

Cover : Loss of revenue as a direct consequence of loss of or damage to the Project insured under Property All Risks Insurance.

Sum Insured : Gross revenue or (if applicable) an amount equal to the estimated amount due to Financiers under the Financing Documents due and fixed expenses incurred during the Indemnity Period.

Indemnity Period : Not less than twelve (12) months.

Period of Cover : As per Property All Risks Insurance above.

Insured : The Agency, the O&M Contractor and all other contractors and sub-contractors of any tier and including consultants for their activities on or about the Project Site only.

Deductibles : No more than thirty (30) Days for each and every loss.

General : To include denial of access.

5. **MISCELLANEOUS**

Other insurances which:

- (i) are customary or necessary to comply with Laws, such as contractual insuring responsibility, workers' compensation and employers' liability insurances in relation to all workmen employed in the Project or in connection with its operation; and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in Pakistan in connection with the Project; and
- (ii) are required by applicable Laws of Pakistan.

SCHEDULE J - RELIEF EVENT COMPENSATION AMOUNT FORMULAE¹³

(The capitalized terms used but not defined in this SCHEDULE J (RELIEF EVENT COMPENSATION AMOUNT FORMULAE) shall have the meanings given to them in Section 1.1 (Definitions) of this Agreement)

Relief Event Compensation Formula

The formula for calculation of the Relief Event Compensation Amount shall be as follows:

$$\begin{aligned} \text{Relief Event Compensation Amount} &= (\text{Capital Cost Increase} + \text{Recurrent Cost Increase} + \text{Revenue Loss}) \\ &- (\text{Capital Cost Saving} + \text{Recurrent Cost Saving} + \text{Revenue Gain}) \end{aligned}$$

WHERE:

Capital Cost Increase means, in relation to a Relief Event, the amount (if any) by which the Capital Expenditure that is demonstrably incurred and/or to be incurred by the Concessionaire in carrying out its obligations under this Agreement as a direct consequence of such Relief Event, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure exceeds the Capital Expenditure which would have been demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement without such Relief Event; provided, that in arriving at the Capital Cost Increase, factors such as inflation in terms of CPI or WPI (as applicable), depreciation etc. shall be taken into account in accordance with the Good International Industry Practice. In this definition, the term **Capital Expenditure** means capital expenditure as interpreted in accordance with the International Financial Reporting Standards;

Capital Cost Saving means, in relation to a Relief Event, the amount (if any) by which Capital Expenditure that is demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement as a direct consequence of such Relief Event, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure, is less than the Capital Expenditure which would have been demonstrably incurred by the Concessionaire in carrying out its obligations under this Agreement without such Relief Event. In this definition, the term **Capital Expenditure** has the meaning given above;

Recurrent Cost Increase means, in relation to a Relief Event, the amount (if any) by which the Recurrent Costs demonstrably incurred and/or to be incurred by the Concessionaire in performing its obligations under this Agreement as a direct consequence of such Relief Event, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under the Agreement) to minimize such Recurrent Costs insofar as they are attributable to such Relief Event exceeds the Recurrent Costs which would demonstrably have been incurred by the Concessionaire in performing its obligations under this Agreement without such Relief Event; provided, that in arriving at the Capital Cost Increase, factors such as inflation in terms of CPI or WPI (as applicable), depreciation etc. shall be taken into account in accordance with the Good International Industry Practice. In this definition, the term **Recurrent Cost** means any expenditure (whether recurrent or not) which is not a Capital Expenditure;

Recurrent Cost Saving means, in relation to a Relief Event, the amount (if any) by which the Recurrent Costs demonstrably incurred and/or to be incurred by the Concessionaire in performing its obligations under this Agreement as a direct consequence of such Relief Event, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under the Agreement) to minimize such Recurrent Costs insofar as the Recurrent Costs are attributable to such Relief Event, is less than the Recurrent Costs which would demonstrably have been incurred by the

¹³ The Agency reserves the right to firm up this Schedule at any time prior to execution of this Agreement.

Concessionaire in performing its obligations under this Agreement without such Relief Event. In this definition, the term **Recurrent Cost** has the meaning given above;

Revenue Gain means a net increase in the Aggregate Concession Revenue received and/or receivable by the Concessionaire as a direct consequence of a Relief Event which would not have been received but for the Relief Event;

Revenue Loss means, the loss incurred by the Concessionaire during the Relief Event Duration directly as a result of the Relief Event, to be calculated in terms of the Relief Event Compensation Amount Formulae, computed as the difference between (a) Potential Revenue that could have been generated by the Concessionaire during the Relief Event Duration but was not so generated directly as a result of the Relief Event; and (b) the Actual Revenue generated by the Concessionaire during the Relief Event Duration; provided, that the Revenue Loss calculation shall be capped at the sum of (i) the Benchmark Revenue Amount (less the Agency Revenue Share); and (ii) the Concessionaire Windfall Share. In this definition, the term:

- (a) **Actual Revenue** means, in respect of a Relief Event, the Aggregate Concession Revenue collected or ought to have been collected by the Concessionaire during the Relief Event Duration;
- (b) **Potential Revenue** means the revenue that could have been generated by the Concessionaire during the Relief Event Duration but was not so generated directly as a result of the Relief Event. Potential Revenue shall be calculated as follows:
 - (i) if the Relief Event occurs (A) prior to COD and delays achievement of COD; (B) before or after COD and subsists for up to two (2) Operational Years after COD (the **Specific Initial Period**); or (C) before or after COD and subsists beyond the Specific Initial Period, the Benchmark Revenue Amount, in each case, during the Relief Event Duration occurring during the Specific Initial Period; and
 - (ii) if the Relief Event occurs after two (2) Operational Years of COD (the **Specific O&M Period**) or has occurred prior to Specific O&M Period but continues during such Specific O&M Period, then:

Expected Revenue x Expected Footfall or Usage x Relief Event Duration during the Specific O&M Period

Where:

- (A) **Expected Revenue** = the forecast or standard revenue per unit of activity (e.g., ticket price for entry, average spend in the food court etc.) per User, taking into account historical escalation of Applicable Charges etc.;
- (B) **Expected Footfall or Usage** = the expected number of Users or usage metrics (e.g., number of tickets sold, visitors to the zoo, number of rides in the theme park, etc.) during the Relief Event Duration under normal circumstances extrapolated based on historical footfall, growth and usage trends and also accounting for unique events such as public holidays, economic events, Force Majeure Events etc. during the period between COD and the date of occurrence of the Relief Event; and
- (C) **Relief Event Duration (in Days)** = The number of Days the Relief Event impacts Rani Bagh or specific Rani Bagh Facilities.

SCHEDULE K - CORPORATE DOCUMENTS

1. The certified copies of the memorandum and articles of association of the Concessionaire.
2. Board Resolution duly passed by the board of directors of the Concessionaire resolving that the Concessionaire may undertake the Project and stating the name of the authorized signatory of the Concessionaire who shall sign this Agreement, the Agency Agreements, the Financing Documents, and the Project Agreements (to which the Concessionaire is a party) and all other necessary documents in favor of the Agency for and on behalf of the Concessionaire.
3. Certificate of incorporation.
4. Latest filings with Security and Exchange Commission of Pakistan.

SCHEDULE L - FORM OF C&O PERFORMANCE SECURITY

To,
[●]

GUARANTEE NO. [●] (the **Bank Guarantee**)

DATED: [●]

[*INSERT NAME OF BANK*], being the Bank Guarantee issuing bank (**Guarantor Bank**) understands that the following parties shall enter into an agreement titled the “*CONCESSION AGREEMENT*” (the **Agreement**) for the design, finance, build, rehabilitate, operate, maintain and transfer of the Rani Bagh under the public private partnership mode (the **Project**):

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

Further, the Guarantor Bank understands that pursuant to the terms of the request for proposals issued in respect of the Project by the Agency (the **RFP**) read with the Agreement, the Concessionaire is required to provide the Agency with a Bank Guarantee (referred to in the RFP and the Agreement as the C&O Performance Security) in an amount equal to Pakistani Rupees [●] (PKR [●]/-).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on-demand to pay to the Agency (without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the RFP and the Agreement) any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

Pakistani Rupees [●] (PKR [●]/-)
(hereinafter referred to as the **Guaranteed Amount**)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank’s receipt of the Agency’s first written demand (the **Demand**) at the Guarantor Bank’s office located at [*INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE*], or through SWIFT instructions transmitted by the Agency’s bank, on behalf of the Agency, to the Guarantor Bank, or through fax sent by the Agency at the Guarantor Bank’s fax number i.e., [●] such Demand stating:

- (a) the Bank Guarantee number;
- (b) the total amounts demanded; and
- (c) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (the **Beneficiary Account**).

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Agency; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT

instructions by the Agency's bank, on behalf of the Agency; or (iii) in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of the Agency.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Beneficiary Account, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

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

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

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

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the Agency and the Concessionaire of the revised Guaranteed Amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the Agency and the Concessionaire of the revised date.

The Guarantor Bank hereby agrees that any part of the RFP or the Agreement may be amended, renewed, extended, modified, compromised, released or discharged without:

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

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

All references to any contract, agreement, document or other instruments (including the RFP and the Agreement), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Bank Guarantee.

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority and all necessary authorizations, approvals and consents thereunder, to:

- (a) enter into, execute, and deliver this Bank Guarantee; and
- (b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

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

.....
NAME:
DESIGNATION:
DATED:

SCHEDULE M - FORM OF O&M PERFORMANCE SECURITY

To,
[●]

GUARANTEE NO. [●] (the **Bank Guarantee**)

DATED: [●]

[INSERT NAME OF BANK], being the Bank Guarantee issuing bank (the **Guarantor Bank**) understands that the following parties have entered into an agreement titled the “*CONCESSION AGREEMENT*” dated [●] (the **Agreement**) for the design, finance, build, rehabilitate, operate and maintain and transfer the Rani Bagh under the public private partnership mode (the **Project**):

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

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Concessionaire is required to provide the Agency with a Bank Guarantee (referred to in the Agreement as the O&M Performance Security) in an amount equal to Pakistani Rupees [●] (PKR [●]/-).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on demand to pay to the Agency (without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the Agreement) whether executed or not), any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

Pakistani Rupees [●] (PKR [●]/-)
(the **Guaranteed Amount**)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank's receipt of the Agency's first written demand (the **Demand**) at the Guarantor Bank's office located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], or through SWIFT instructions transmitted by the Agency's bank, on behalf of the Agency, to the Guarantor Bank, or through fax sent by the Agency at the Guarantor Bank's fax number i.e., [●], such Demand stating:

- (a) the Bank Guarantee number;
- (b) the total amounts demanded; and
- (c) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (the **Beneficiary Account**).

A Demand shall only be honoured by the Guarantor Bank if it is made by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Agency; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Agency's bank, on behalf of the

Agency; or (iii) in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of the Agency.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Beneficiary Account, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

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

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

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

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the Agency and the Concessionaire of the revised Guaranteed Amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the Agency and the Concessionaire of the revised date.

The Guarantor Bank hereby agrees that any part of the Agreement may be amended, renewed, extended, modified, compromised, released or discharged without:

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

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

All references to any contract, agreement, document or other instruments (including this Agreement), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Bank Guarantee.

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority and all necessary authorizations, approvals and consents thereunder, to:

- (a) enter into, execute and deliver this Bank Guarantee; and
- (b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

The issuance of this Bank Guarantee is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Bank Guarantee is issued.

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

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

.....
NAME:
DESIGNATION:
DATED:

SCHEDULE N - PART I - INDICATIVE INDEPENDENT AUDITOR TERMS OF REFERENCE

The Independent Auditor shall have the following indicative roles and duties in relation to the Project:

1. to work in close coordination with the Independent Technical Advisor and exchange information as required for the performance of their respective tasks;
2. to review the Financial Model of the Project with a view to understand the dynamics and structure of the Project from a financial perspective;
3. to give presentations to various government tiers on the Financial Model when required. Also, be present in all meetings of the Agency at almost all levels during various approvals, needs and issues, etc;
4. monitor, the estimation of all costs incurred on the Project and compliance of financial provisions by the Concessionaire under this Agreement;
5. in consultation with the Independent Technical Advisor, establish the need for increase in costs and the reasons therefore, as provided for in this Agreement, with respect to the design, construction, testing and commissioning of the Concession Assets;
6. establish the Total Project Cost of the Project based on the mechanism outlined in the terms of this Agreement;
7. on intimation from the Concessionaire, Financiers or the Agency establish the occurrence of a Material Adverse Effect on the Project and recommend, based on the terms of this Agreement, a mechanism to overcome the same;
8. upon the issuance of the Final Completion Certificate, the Independent Auditor along with the Independent Technical Advisor shall undertake to verify the Total Project Cost as determined by the Concessionaire and submitted by the Concessionaire, based on the calculations and the measurements, work done, costs incurred, invoices and amounts paid by the Concessionaire. The Total Project Cost consisting of the actual capital cost of the Project upon its completion and all authorized variations thereto, so determined and certified shall be presented to the Agency, the Concessionaire and the Financiers;
9. the Independent Auditor shall not be involved in day-to-day supervision. The work of the Independent Auditor is therefore:
 - (a) monitoring;
 - (b) certification;
 - (c) issuing monthly progress reports;
 - (d) cost certification;
 - (e) expert adjudicator on financial matters relating to force majeure, terminations, project delays or other Project issues as and when they arise of the Project's issues, funding mechanisms, project risks and intimate the party concerned of their responsibility as laid down in this Agreement and Financing Documents;

10. The Independent Auditor shall be required to follow a system of periodic reports in such frequency and formats as determined by the Concessionaire and the Agency;

SCOPE OF WORK OF THE INDEPENDENT AUDITOR IN DIFFERENT PHASES OF THE PROJECT:

1. **PHASE I: PRE-CONSTRUCTION ACTIVITIES OF INDEPENDENT AUDITOR**

The Independent Auditor will review all relevant aspects of the Project and will, in particular, address the following issues:

- 1.1 assist the Agency in reviewing the Financial Model and give recommendations on the Financial Model along with running sensitivities on it;
- 1.2 the Independent Auditor shall also give presentations to Agency on the Financial Model and other financial matters related to the Project as and when required;
- 1.3 issue certificates as per the requirements of the Agency Agreements and/or the Project Agreements;
- 1.4 monitor and assist in the Financial Close of the Project;
- 1.5 assisting the Project stakeholders throughout the Conditions Precedent completion process; and
- 1.6 the Independent Auditor shall perform all such other obligations as set out in the Project Agreements.

2. **PHASE II: ROLE OF INDEPENDENT AUDITOR DURING C&O PERIOD**

During construction, the Independent Auditor will carry out the following tasks:

- 2.1 monitor financial progress against anticipated program included in the Financial Model;
- 2.2 review proposed changes in the Financial Model/budget and their consequences on the Pre-Estimated Project Cost and Total Project Cost;
- 2.3 monitor the overall cost of the Project as construction proceeds and identify cost change implications;
- 2.4 endorsement of Total Project Cost in accordance with this Agreement;
- 2.5 in collaboration with the Independent Technical Advisor, issue certificates related to C&O Performance Security as and when required as per this Agreement;
- 2.6 evaluate and endorse calculations prepared by the Concessionaire in relation to amounts to be paid to the Concessionaire upon occurrence of certain events (including Change of Scope, Relief Events, Force Majeure Events, Agency Events of Default and Concessionaire Events of Default and other events set out in the Agency Agreements and/or the Project Agreements);
- 2.7 in collaboration with the Independent Technical Advisor, issue certifications to facilitate disbursement of funding from stakeholders with respect to construction and other expenditures in accordance with the Financial Model;

- 2.8 in respect of the occurrence of a Force Majeure Event in accordance with the provisions of the Agency Agreements and/or the Project Agreements, the Independent Auditor shall consult with the Concessionaire, Agency and Financiers in order to determine the amount of resultant compensations, if any, in accordance with the provisions of the Project Agreements and/or the Agency Agreements and issue necessary certifications in this respect;
- 2.9 in respect of the occurrence of a termination event in accordance with the provisions of the Project Agreements and/or the Agency Agreements, the Independent Auditor shall consult with the Concessionaire, Agency and Financiers in order to determine the amount of resultant compensations, if any, in accordance with the provisions of the Project Agreements and/or the Agency Agreements and issue necessary certifications in this respect;
- 2.10 the Independent Auditor shall perform all such other obligations as set out in the Project Agreements and/or the Agency Agreements.

3. **PHASE III: ROLE OF INDEPENDENT AUDITOR DURING OPERATIONS PERIOD**

The Independent Auditor shall also be responsible to perform the following obligations and duties:

- 3.1 in collaboration with the Independent Technical Advisor, issue certificates related to O&M Performance Security as and when required as per this Agreement;
- 3.2 actualize the Financial Model on periodic basis, as per the Project Agreements and/or the Agency Agreements, based on the prevailing KIBOR, CPI, WPI or any other index as stated in the Project Agreements and/or the Agency Agreements;
- 3.3 in case of Force Majeure Event, Relief Event, Event of Default, termination or any other event (including Change of Scope) whereby the Project stakeholders require input from the Independent Auditor in accordance with the Project Agreements and/or the Agency Agreements, assist the stakeholders in issuing relevant certificates as and when required;
- 3.4 assist the Agency, the Concessionaire and Financiers on financial matters that arise from time to time;
- 3.5 the Independent Auditor shall perform all such other obligations as set out in the Project Agreements and/or the Agency Agreements.

SCHEDULE N - PART II - INDICATIVE INDEPENDENT TECHNICAL ADVISOR TERMS OF REFERENCE

1. **GENERAL**

- 1.1 The Independent Technical Advisor of the Project shall, in principle be responsible for review/approving/certifying of designs, drawings, all the activities associated with the Construction Works to ensure compliance with the C&O Requirements, progress monitoring, and affirmation of all certifications done by the Concessionaire.
- 1.2 The Independent Technical Advisor shall supervise that the requirement of this Agreement and its various appendices, other than those mentioned for Independent Auditor of the Project, are met by the Concessionaire and in case of any discrepancy/deviations and shall inform Agency and the Concessionaire. The responsibility of the Independent Technical Advisor during various phases of design review, construction and Operation and Maintenance shall be but not limited to the following.
- 1.3 the Independent Technical Advisor shall generally perform all such obligations as set out in the Project Agreements and/or the Agency Agreements.

2. **DESIGN REVIEW PHASE**

- 2.1 Review and approve the adequacy of topographical surveys, geo-technical and sub-soil investigations, hydrological investigation for the Project, project buildings and other structures.
- 2.2 Review and approve the condition survey of existing utilities and their relocation design and Construction drawings prepared and submitted by the Concessionaire to the Independent Technical Advisor for the construction of various components of the parks and other deliverables with regard to:
- (a) adequacy, completeness, optimality, and capability of design to perform as required in anticipated operating conditions and to meet the technical requirements specified in this Agreement;
 - (b) identification of project design features or any major equipment component that does not appear to meet design, performance requirements or fails to adhere to good engineer practice; and
 - (c) provide an opinion on the quality of the design with respect to their effect on the anticipated service life of the facility, the degree of maintenance needed to meet performance requirements and long-term availability over the term of the Concession.
- 2.3 Review and approve the implementation schedule of engineering, design, procurement, and construction of the Project submitted by the Concessionaire and determine that adequate provisions have been made for the following:
- (a) design;
 - (b) raw material sourcing;
 - (c) raw material processing equipment;

- (d) utilities;
 - (e) other equipment procurement;
 - (f) construction; and
 - (g) testing.
- 2.4 Review and comment on the consistency of all Construction Documents.
- 2.5 Review the available permits or permit applications.
- 2.6 Review the Environmental Management & Monitoring Plan for the Project during the C&O Period.
- 2.7 Review and comment on the utilities arrangement for the Project, including, but not limited to the water supply and electricity supply.
- 2.8 Review and approve the adequacy and reasonableness of the Project co-ordination and monitoring systems.
- 2.9 Review quality assurance and quality control provisions during the design phase, the C&O Period and Operations Period:
- (a) Independent Technical Advisor is required to prove due diligence and utmost expertise in ensuring that quality control provisions are maintained at all times during the C&O Period and the Operations Period;
 - (b) Independent Technical Advisor will be responsible to report to the Agency/Financiers in case the quality standards and quality control provisions are not maintained on the Project Site.
- 2.10 Reviewing the safety measures proposed for the construction of the facilities and their compliance with the safety regulations.
3. **ROLE OF INDEPENDENT TECHNICAL ADVISOR DURING C&O PERIOD**
- 3.1 The duties of the Independent Technical Advisor are to supervise the works in detail and to approve the materials, formworks, and workmanship of the works on a fulltime basis. As stated in this Agreement, the Independent Technical Advisor shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations.
- 3.2 The Independent Technical Advisor shall review and approve works program prepared and submitted by the Concessionaire. Payments will be made upon Independent Technical Advisor's certification, with final approval of Independent Auditor.
- 3.3 The Independent Technical Advisor shall supervise/approve each and every activity including material testing, mix designs, day to day testing, and review the material testing results and mix designs and to order special tests of materials and/or completed works, and/or order removal and substitution of substandard material and/or work as required.
- 3.4 In collaboration with the Independent Auditor, issue certifications to facilitate disbursement of funding from stakeholders with respect to construction and other expenditures in accordance with the Financial Model;

- 3.5 The Independent Technical Advisor shall review and approve work methodology of each item of work.
- 3.6 The Independent Technical Advisor shall review quality assurance and quality control during C&O Period.
- 3.7 The Independent Technical Advisor shall ensure that the C&O Works is accomplished in accordance with the Applicable Standards and best engineering practice.
- 3.8 The Independent Technical Advisor shall identify construction delays, if any and recommend to the Agency/Financiers the remedial measures to expedite the progress.
- 3.9 Review and approve shop drawings for each component of the Project Works prepared and submitted to Independent Technical Advisor by the Concessionaire.
- 3.10 Review the safety measures provided for the park users and Project workers.
- 3.11 Determine any extension of the Final Completion Schedule, to which the Concessionaire is entitled and shall notify Agency/Financiers, accordingly.
- 3.12 Review compliance by the Concessionaire of its obligations under this Agreement.
- 3.13 Issue Segment Substantial Completion Certificate in accordance with Section 14.4 (*Segment Substantial Completion Certificate*).
- 3.14 Issue Substantial Completion Certificate in accordance with Section 14.5 (*Substantial Completion Certificate*).
- 3.15 For performance testing, the Independent Technical Advisor will:
 - (a) review test procedures developed by the Concessionaire or the O&M Contractor (as applicable) and confirm compliance with applicable test codes and standards and with testing criteria specified this Agreement and its Schedules;
 - (b) review the quality control reports, material testing results and mix design and to order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required;
 - (c) monitor successful completion of the Completion Check List Items. Make one final visit to Project Site to verify that Completion Check List Items have been completed and thereafter sign and submit the Final Completion Certificate.

4. **ROLE OF INDEPENDENT TECHNICAL ADVISOR DURING OPERATIONS PERIOD**

- 4.1 Review and approve work plan and schedules of various Operation and Maintenance activities.
- 4.2 Review and approve the O&M Manual(s) prepared by the Concessionaire for their completeness and compatibility with those of similar facilities.
- 4.3 Review and approved the performance of Operation and Maintenance activities including equipment, service, operation and safety.

- 4.4 Recommend necessary actions to the Agency/Financeris to undertake maintenance obligations of the Concessionaire at risk and cost of the Concessionaire in the event of its failure to carry out the Operation and Maintenance.
- 4.5 Review and inspect the Project and its assets at all reasonable times and upon reasonable notice to the Concessionaire during the Operations Period and issue a C&O Inspection Report and O&M Inspection Report of such inspections to the Agency and the Concessionaire.
- 4.6 Review the accident record, prepared and submitted by Concessionaire, on the Project and suggest remedial measures at reasonable intervals.

5. **THE OTHER FUNCTIONS OF THE INDEPENDENT TECHNICAL ADVISOR SHALL BE THE FOLLOWING**

- 5.1 Perform functions, including issue of directions to the Concessionaire, in respect of the Emergency Decommissioning of the Concession Assets as provided in this Agreement.
- 5.2 Verify and ascertain evidence of insurance cover as required pursuant to this Agreement.
- 5.3 Perform functions in respect of Change of Scope as provided in this Agreement.
- 5.4 Inspect the Concession Assets including the Project at the time of handing over thereof by the Concessionaire to the Financiers/Agency and perform functions in respect to such handing over as provided in this Agreement.

6. **INDEPENDENT TECHNICAL ADVISOR CRITERIA**

- 6.1 The criteria for appointment of the Independent Technical Advisor (the **Independent Technical Advisor Criteria**) that shall be met by a consulting entity (or consortium of consulting entities) (the **Proposed TA**) shall be as follows:
 - (a) the Proposed TA must have at least ten (10) years of experience of providing consulting services in relation to large-scale infrastructure projects with at least one (1):
 - (i) multi-use recreational development project such as recreational facilities, theme parks, zoos and/or public parks;
 - (ii) PPP project;
 - (iii) operations and maintenance oversight assignment in the long term; and
 - (iv) assignment related to management of diverse facilities such as recreational facilities, multiplexes, amusement parks and/or food courts;
 - (b) the Proposed TA must provide project references to demonstrate expertise and experience in relation to the projects stated above;
 - (c) the Proposed TA must have demonstrated expertise and experience in PPP projects, including an understanding of both public and private sector needs. The Proposed TA should have experience working with both government authorities and private sector operators to ensure that technical aspects are aligned with contractual obligations and financial viability;

- (d) the Proposed TA must include expertise in the following areas:
 - (i) Civil and Structural Engineering (e.g., amusement rides, multiplex building, outdoor infrastructure etc.);
 - (ii) Mechanical and Electrical Engineering (e.g., rides, water fountains, electrical systems for lights and entertainment etc.);
 - (iii) Environmental Engineering (e.g., sustainable designs, green building certifications, environmental impact assessments etc.);
 - (iv) Urban Planning and Landscape Architecture (e.g., park layouts, visitor circulation, landscape designs etc.);
 - (v) Project Management (to oversee timelines, budgets, and risk management etc.);
 - (vi) Health and Safety (especially for amusement rides, public safety in crowded spaces etc.); and
 - (vii) Quality Assurance/Quality Control (ensuring compliance with technical specifications etc.);
- (e) the Proposed TA should have specific teams with technical expertise in each of these areas, and each team member should have a demonstrated track record in relevant areas of work;
- (f) the Proposed TA must have the technical resources (both human and material) to carry out the oversight functions of the Project effectively, including:
 - (i) sufficient staff for monitoring construction and operational activities;
 - (ii) access to advanced technical tools and software systems (e.g., project management software, BIM tools, safety audit tools etc.); and
 - (iii) adequate local presence and/or ability to mobilize resources to the Project Site;
- (g) the Proposed TA shall be required to demonstrate the following:
 - (i) adequacy of methodology and a proposed work plan that responds to the Indicative Independent Technical Advisor Terms of Reference;
 - (ii) appropriate qualifications and competence of the key professional staff;
 - (iii) key professional staff having a minimum experience of at least ten (10) years while each other key professional staff having a minimum experience of five (5) years, each in relation to the tasks and assignments proposed to be performed by them in terms of the Indicative Independent Technical Advisor Terms of Reference and in respect of (a) and (d) above;
 - (iv) scope of work adequately covering the Indicative Independent Technical Advisor Terms of Reference; and
 - (v) a level of effort table clearly indicating the name of staff with designations, name of firms and number of days allocated for the Proposed TA's

engagement as the Independent Technical Advisor, assigned tasks to each key professional staff, and location and area of expertise.

SCHEDULE O - FORM OF VESTING CERTIFICATE

[Insert name of the Independent Technical Advisor] being the Independent Technical Advisor and [Insert name of the Independent Auditor] being the Independent Auditor, refer to the agreement titled “CONCESSION AGREEMENT” dated [Insert date of signing of the Concession Agreement] (as amended from time to time) (the **Concession Agreement**) relating to, *inter alia*, the design, finance, build, rehabilitate, operate, maintain and transfer Rani Bagh (the **Project**).

The Independent Technical Advisor and the Independent Auditor hereby acknowledge the Concessionaire’s compliance with the ‘*Divestment Requirements*’ set forth in article 24 (*Divestment of Rights and Interest*) of the Concession Agreement and, on such basis, hereby issue this vesting certificate (the **Certificate**). Upon issuance of this Certificate, the Agency shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Concession Assets (as defined in the Concession Agreement) and the same shall be deemed to have vested unto the Agency, free from any encumbrances, charges and liens whatsoever, other than such encumbrances which the Agency was responsible to prevent under the terms of the Concession Agreement.

Signed this [●] day of [●], at [●].

FOR AND ON BEHALF OF
[●]

NAME:
DESIGNATION:

Signed in the presence of the following witnesses:

WITNESS ONE

WITNESS TWO

SIGNATURE
NAME:
CNIC NO:

SIGNATURE
NAME:
CNIC NO:

FOR AND ON BEHALF OF
[●]

NAME:
DESIGNATION:

Signed in the presence of the following witnesses:

WITNESS ONE

WITNESS TWO

SIGNATURE

NAME:

CNIC NO:

SIGNATURE

NAME:

CNIC NO:

SCHEDULE P - USER CHARGES BENCHMARKING PRINCIPLES

The Concessionaire shall be entitled to determine, set and adjust the User Charges from time to time in its discretion (in consultation with the Independent Experts), but subject to the following principles:

- (a) the User Charges shall be benchmarked against charges for similar facilities at public parks in Pakistan;
- (b) the User Charges shall be determined, set and adjusted in a manner that does not violate the fundamental rights guaranteed under the Constitution, including under article 9 and article 26 thereof;
- (c) the User Charges shall not be set at an exorbitant level, as defined by the superior courts of Pakistan; and
- (d) in determining, setting and/or adjusting the User Charges, the Concessionaire shall strictly comply with the judgements of the superior courts of Pakistan with regard to charging of fees and charges from users of public parks, and the Law,

(collectively, the **User Charges Benchmarking Principles**).

SCHEDULE Q - KPIS AND DAMAGES

1. GENERAL KEY PERFORMANCE INDICATORS (KPIS)

- 1.1 **Facility Availability:** Rani Bagh Facilities (cinema, rides, zoo, etc.) must remain operational and open to the public during designated operating hours, with acceptable downtime due to maintenance or repairs.
- 1.2 **Health and Safety Compliance:** Full adherence to health, safety, and environmental regulations for all aspects of operation.
- 1.3 **Response Time to Complaints/Incidents:** A specific timeframe (e.g., twenty-four (24) hours) within which the Concessionaire must address customer complaints, incidents, or service failures.

2. SPECIFIC KPIS AND PENALTIES FOR EACH FACILITY

2.1 CINEMA

- (a) **KPI 1 - Operational Hours:** Cinema must remain open during operational hours with a minimum of ninety percent (99%) uptime per month.

Damages: For every one percent (1%) decrease in availability, a penalty of zero point five percent (0.5%) of the monthly Aggregate Concession Revenue will apply.

- (b) **KPI 2 - Equipment Performance:** Ensure audio-visual equipment, projectors, sound systems, and lighting are functioning without interruptions.

Damages: A penalty of zero point five percent (0.5%) of Aggregate Concession Revenue for every instance of equipment failure lasting over two (2) hours.

- (c) **KPI 3 - Cleanliness:** Cinema halls, lobbies, and restrooms must be cleaned daily with no significant cleanliness issues.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified cleanliness complaint.

- (d) **KPI 4 - Customer Satisfaction:** Achieve a minimum eighty-five percent (85%) satisfaction rate from visitor surveys.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue if the satisfaction rate falls below eighty-five percent (85%).

2.2 FAMILY PARKS & PLAYGROUND AREAS

- (a) **KPI 1 - Safety Inspections:** Ensure daily safety inspections for playground equipment, and fifty percent (50%) of equipment must pass compliance checks for shock absorption and safety.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every equipment safety failure.

- (b) **KPI 2 - Cleanliness:** Maintain cleanliness of play areas, including waste management and surface care.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified complaint related to cleanliness.

- (c) **KPI 3 - Maintenance Response:** Minor repair requests for playground equipment should be resolved within forty-eight (48) hours.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each delay beyond forty-eight (48) hours.

2.3 **FOOD COURT**

- (a) **KPI 1 - Cleanliness:** Ensure the cleanliness of dining areas, kitchens, and restrooms, with daily inspections.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified cleanliness complaint.

- (b) **KPI 2 - Food Safety Compliance:** Adherence to food safety standards, including temperature control, sanitation, and hygiene.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every violation of food safety standards identified by inspectors.

- (c) **KPI 3 - Service Quality:** Achieve an eighty-five percent (85%) customer satisfaction rating or higher for food quality, service, and ambiance.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every one percent (1%) drop below the eighty-five percent (85%) satisfaction rate.

2.4 **ZOO**

- (a) **KPI 1 - Animal Welfare:** Ensure proper feeding, healthcare, and enrichment activities for all animals.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every incident of poor animal welfare (e.g., malnourishment, injury).

- (b) **KPI 2 - Enclosure Condition:** Ensure all animal enclosures are secure, clean, and free of hazards.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every unsafe or damaged enclosure.

2.5 **MULTIPLEX BUILDING**

- (a) **KPI 1 - Facility Cleanliness:** Daily cleaning of all public spaces (lobby, seating, restrooms, common areas).

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified cleanliness complaint.

- (b) **KPI 2 - HVAC and Lighting Systems:** Ensure HVAC systems and lighting in all areas function effectively and efficiently.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for HVAC or lighting failure exceeding two (2) hours.

- (c) **KPI 3 - Safety and Emergency Systems:** Ensure all fire alarms, emergency exits, and emergency lighting are operational.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for failure to maintain safety systems.

2.6 CARNIVAL PAVILION

- (a) **KPI 1 - Event Readiness:** Ensure the pavilion is ready for all scheduled events, with appropriate staging and seating.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every event setup failure or delay.

- (b) **KPI 2 - Cleanliness:** Pavilion areas, including seating, restrooms, and stages, must be cleaned before and after each event.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified cleanliness issue during or post-event.

2.7 PARKING AREAS

- (a) **KPI 1 - Parking Availability:** Ensure that ninety percent (90%) of parking spaces are available during peak hours.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each one percent (1%) decrease in parking availability.

- (b) **KPI 2 - Maintenance and Cleanliness:** Ensure that the parking lot is cleaned daily and all access points are operational.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every verified cleanliness complaint or unsafe access issue.

- (c) **KPI 3 - Lighting:** Ensure proper lighting for security and visibility at all times.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for failure to maintain parking lot lighting.

2.8 'FUN LAND' - INDOOR THEME PARK AND OUTDOOR AMUSEMENT PARK

- (a) **KPI 1 - Ride & Attraction Availability:** Ensure ninety-five percent (95%) uptime for all attractions, with routine maintenance.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each one percent (1%) downtime in ride/attraction availability.

- (b) **KPI 2 - Maintenance:** All rides should undergo regular preventive maintenance and all breakdowns should be resolved within four (4) hours.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue per incident of ride failure that takes more than four (4) hours to resolve.

- (c) **KPI 3 - Cleanliness:** Ensure cleanliness of paths, seating, ride areas, and restrooms.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each verified cleanliness complaint.

- (d) **KPI 4 - Safety and Security:** All safety features (barriers, first aid, emergency exits) must function properly.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for every incident of unsafe conditions.

2.9 DANCING FOUNTAINS

- (a) **KPI 1 - Functionality:** Ensure the water pumps and lighting systems are working without interruption.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for outage or failure lasting more than two (2) hours.

- (b) **KPI 2 - Maintenance:** Regular cleaning and maintenance of the water systems to avoid contamination.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for failure to maintain water clarity and cleanliness.

2.10 CAFETERIA

- (a) **KPI 2 - Cleanliness and Hygiene:** Maintain the cleanliness of food prep areas, dining sections, and restrooms.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each verified cleanliness complaint.

- (b) **KPI 3 - Health and Safety Compliance:** Maintain food safety standards and ensure all staff have necessary certifications.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for food safety violations.

2.11 JOGGING AND CYCLING TRACK

- (a) **KPI 1 - Surface Condition:** Ensure the jogging and cycling track is smooth, free from debris, and well-lit.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each verified complaint of unsafe or unmaintained track surfaces.

- (b) **KPI 2 - Lighting:** Ensure adequate lighting during evening hours for visibility and safety.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each failure to provide sufficient lighting.

2.12 **AMPHITHEATRE**

- (a) **KPI 1 - Facility Condition:** Ensure that seating, stage, and lighting systems are maintained to the highest standards.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for any damaged equipment or unsafe structures.

- (b) **KPI 2 - Event Readiness:** Ensure the amphitheater is ready for events, with proper equipment setup.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for failure to set up equipment or run events smoothly.

2.13 **BOATING LAKE**

- (a) **KPI 1 - Water Quality:** Ensure the water is clean, safe, and properly treated for visitor safety.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for water quality failure or contamination.

- (b) **KPI 2 - Boat Maintenance:** Ensure all boats are safe, clean, and in operational condition.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for each unsafe boat or maintenance failure.

- (c) **KPI 3 - Safety Procedures:** Ensure safety staff are trained and safety equipment (life jackets) are readily available.

Damages: zero point five percent (0.5%) of monthly Aggregate Concession Revenue for failure to ensure proper safety standards.

NOTE:

The total damages payable by the Concessionaire in an Operational Year shall be capped at one hundred percent (100%) of the aggregate amount of the O&M Performance Security for the applicable Operational Year.

The key performance indicators stated above are non-exhaustive. Additional key performance indicators may be proposed by the Independent Technical Advisor in the O&M Manual for the Rani Bagh Facilities stated above and for other facilities not enumerated above.

SCHEDULE R - RANI BAGH CONTRACT PARTY CRITERIA

In the event the Concessionaire wishes to engage Third Parties for construction and/or Operation and Maintenance of the Rani Bagh Facilities, such Third Parties shall meet the following criteria (the **Rani Bagh Contract Party Criteria**) ~~in addition to any criteria applicable to EPC Contractor(s) under the RFP:~~

GENERAL REQUIREMENTS FOR THIRD-PARTY CONTRACTORS

1. **Experience and Expertise:**

Rani Bagh Contract Parties must demonstrate relevant experience and expertise in the specific Rani Bagh Facility or service they are being contracted to manage.

Minimum Experience: At least three (3) to five (5) years of experience in managing or maintaining similar facilities or operations.

Specialized Knowledge: Rani Bagh Contract Parties should have expertise in specialized areas like safety protocols, maintenance practices, sustainable operations, and customer service.

2. **Licensing and Certifications:**

Rani Bagh Contract Parties must hold all required licenses and certifications to operate legally in the specific field (e.g., food handling, safety inspections, animal care, etc.).

Safety Certifications: Evidence of certifications related to health, safety, fire protection, and environmental management.

Industry Standards: Rani Bagh Contract Parties must comply with industry-specific standards (e.g., Laws and standards for workplace safety, quality management and food safety).

3. **Insurance and Liability:**

Rani Bagh Contract Party must provide proof of adequate insurance coverage for all aspects of their operations, including public liability, workers' compensation, property damage, and accident insurance.

Liability Limits: Insurance must cover a minimum amount, and the Rani Bagh Contract Party must indemnify the Concessionaire and the Agency for any third-party claims arising from its operations.

4. **Financial Stability:**

Rani Bagh Contract Parties must demonstrate financial stability through providing audited financial statements to ensure their ability to fulfill their obligations.

5. **Compliance with Laws and Regulations:**

Rani Bagh Contract Parties must comply with all applicable local, provincial and federal Laws, regulations, and standards related to the operation of the specific Rani Bagh Facilities.

6. **Subcontracting:**

The Concessionaire must ensure that no further subcontracting takes place from the Rani Bagh Contract Party without the written approval of the Independent Technical Advisor (in consultation with the Agency). Any subcontractors must meet the same qualifications and standards as the Rani Bagh Contract Party; provided, that this requirement shall not apply to facilities such as tea stalls, kiosks, food carts etc. developed and operated by Third Parties under the control and supervision of a Rani Bagh Third Party.

SPECIFIC REQUIREMENTS FOR EACH RANI BAGH FACILITY AND RELEVANT CONTRACTORS

1. **CINEMA CONTRACTOR**

Experience: Must have at least three (3) years of experience managing cinema operations, including audio-visual equipment, projection systems, and customer services.

Technical Expertise: Must be familiar with the operation and maintenance of digital projectors, sound systems, special effects, and screen cleaning.

Health & Safety Compliance: Must demonstrate knowledge of fire safety and emergency evacuation protocols specific to cinemas.

Customer Service: Should have a track record of delivering exceptional customer service, including queue management and handling customer complaints.

2. **FAMILY PARKS & PLAYGROUND AREAS CONTRACTOR**

Experience: At least three (3) to five (5) years of experience in managing children's parks and playgrounds, with a focus on play equipment maintenance and landscape management.

Safety Compliance: Rani Bagh Contract Parties must be proficient in international safety standards for playground equipment (e.g., EN 1176, ASTM F1487), and able to demonstrate knowledge of fall zones and safe surfacing materials.

Maintenance: Proven ability to carry out routine inspections, repairs, and upgrades of play equipment and park structures.

Environmental Sustainability: Knowledge of sustainable landscaping practices, water management, and use of non-toxic materials for children's play areas.

3. **'FUN LAND' - INDOOR THEME PARK AND OUTDOOR AMUSEMENT PARK CONTRACTOR**

Experience: Minimum of three (3) to five (5) years in managing and maintaining amusement rides, including mechanical, electrical, and hydraulic systems.

Safety and Compliance: Must be familiar with amusement ride operations and safety standards, including periodic inspections, certifications, and preventive maintenance.

Customer Service: Proven record in managing visitor experience, queue management, and guest services.

Certifications: Must provide evidence of certification for ride inspections (e.g., ASTM F2291, ISO 17842 for amusement rides).

Maintenance Expertise: Must demonstrate expertise in ride mechanics, safety system testing, and troubleshooting complex mechanical systems.

Operational Compliance: Adherence to local and international safety regulations, and expertise in handling large visitor volumes.

4. **FOOD COURT CONTRACTOR**

Experience: At least three (3) years in managing food and beverage services in high-traffic areas such as theme parks, malls, or entertainment complexes.

Health & Safety: Must have expertise in food safety, sanitation practices, and maintaining compliance with food handling regulations.

Operational Efficiency: Ability to maintain inventory management, staff scheduling, and quality control in the food court.

Customer Service: Track record of delivering high-quality customer service in food establishments, ensuring quick and efficient service during peak times.

5. **ZOO CONTRACTOR**

Experience: Must have minimum five (5) years of experience in managing and maintaining animal care facilities and zoological operations.

Animal Welfare Expertise: Demonstrated expertise in animal husbandry, enrichment, and health management, including working with a variety of species.

Safety and Security: Proficiency in ensuring animal enclosure security, biosecurity, and staff training related to animal handling.

Compliance: Must comply with animal welfare regulations and zoo accreditation standards.

6. **MULTIPLEX BUILDING CONTRACTOR**

Experience: At least three (3) to five (5) years of experience in the operation and maintenance of multiplex buildings, with a focus on facility management and tenant management.

Facility Maintenance: Proven experience in maintaining HVAC systems, lighting, fire protection systems, and restrooms in high-traffic public spaces.

Safety Compliance: Must demonstrate knowledge of fire safety, evacuation plans, and accessibility standards for public buildings.

Operational Efficiency: Ability to ensure smooth coordination of the cinema operations, facility maintenance, and public areas.

7. **CARNIVAL PAVILION CONTRACTOR**

Experience: Must have at least three (3) years of experience in managing event spaces and themed venues.

Event Management: Experience in organizing large-scale public events, ensuring logistical coordination, customer service, and facility readiness.

Health and Safety Compliance: Must adhere to event safety standards, including crowd control, fire safety, and emergency evacuation procedures.

Maintenance and Facility Upkeep: Ability to maintain pavilions, stages, seating areas, and backstage facilities in pristine condition.

8. **PARKING AREA CONTRACTOR**

Experience: At least three (3) years of experience in managing parking facilities in high-traffic public spaces.

Operations: Demonstrated ability to ensure efficient traffic management, parking lot layout design, security, and customer support.

Maintenance: Must be able to carry out routine maintenance of paving, lighting, signage, and ticketing systems.

Security and Safety: Expertise in safety systems, including CCTV, lighting, emergency services, and patrolling.

9. **DANCING FOUNTAINS CONTRACTOR**

Experience: At least three (3) years of experience in maintaining and operating dancing fountains and water feature systems.

Technical Expertise: Must have experience with water treatment, lighting, and synchronization systems.

Maintenance: Demonstrated ability to conduct routine maintenance on water pumps, filtration systems, and lighting systems.

Safety: Knowledge of water safety standards, including slip prevention and electrical safety.

10. **CAFETERIA CONTRACTOR**

Experience: At least three (3) years in cafeteria operations or food services with high customer footfall.

Menu Planning: Experience in diverse menu offerings, including local and international cuisines, with a focus on quality and value for money.

Hygiene and Safety: Must demonstrate a commitment to food safety standards and sanitation practices.

Customer Service: Ability to train staff to deliver exceptional service and handle customer complaints efficiently.

11. **JOGGING AND CYCLING TRACK CONTRACTOR**

Experience: At least three (3) years in maintaining outdoor sports or recreational tracks.

Maintenance: Expertise in asphalt, rubber, or synthetic surface maintenance for smooth and durable track surfaces.

Safety Compliance: Ability to assess and mitigate surface hazards, ensuring a safe environment for joggers and cyclists.

Lighting and Amenities: Provide proper track lighting and regular maintenance of associated rest areas and benches.

12. **AMPHITHEATRE CONTRACTOR**

Experience: At least three (3) to five (5) years of experience managing public performance venues such as amphitheaters or theaters.

Event Coordination: Proven ability to manage seating arrangements, stage preparation, and audio-visual systems for performances.

Safety: Knowledge of emergency evacuation plans, crowd management, and facility maintenance.

Maintenance: Regular inspection and repair of seating, lighting, audio equipment, and stage facilities.

13. **BOATING LAKE CONTRACTOR**

Experience: At least five (5) years in managing water-based recreation facilities, including boating lakes, marinas, or waterparks.

Water Safety: Expertise in water quality management, safety procedures, and ensuring proper lifeguard coverage.

Equipment Maintenance: Ability to maintain boating equipment, including boats, life jackets, and docking stations.

Environmental Considerations: Knowledge of environmentally friendly water treatment and sustainable boating practices.

14. **ADDITIONAL REQUIREMENTS FOR ALL CONTRACTORS**

Performance Reviews: Rani Bagh Contract Parties will be subject to quarterly performance reviews to assess compliance with the agreed-upon service standards.

Training: All Rani Bagh Contract Parties must provide ongoing training programs for staff, ensuring the highest quality of service and compliance with safety standards.

Reporting: Rani Bagh Contract Parties must provide regular reports on maintenance, operations, and customer satisfaction, with a clear incident report mechanism.

NOTE:

The Rani Bagh Contract Criteria above are non-exhaustive. Additional criteria may be proposed by the Independent Technical Advisor in the O&M Manual for the Rani Bagh Facilities stated above and for other facilities not enumerated above.

SCHEDULE S - NOTICES¹⁴

1. AGENCY

ATTENTION: [REDACTED]

ADDRESS: [REDACTED]

PHONE: [REDACTED]

2. CONCESSIONAIRE

ATTENTION: [REDACTED]

ADDRESS: [REDACTED]

PHONE: [REDACTED]

¹⁴ Details to be added upon finalization of this Agreement for execution.

SCHEDULE T - TERMINATION PAYMENTS

SR. NO.	TERMINATION PAYMENT AMOUNT	COMPENSATION PAYABLE BY AGENCY
1.	Termination Payment Sum (NPFME)	(a) Termination Payment Amount (Equity); and (b) Ninety five percent (95%) of Financing Due; less the Deductible Termination Amounts.
2.	PFME Termination Amount <u>Sum</u> <u>(PFME)</u>	(a) Termination Payment Amount (Equity); (b) Termination Payment Amount (Dividend); and (c) Financing Due; less the Deductible Termination Amounts.
3.	Termination Payment Sum (Concessionaire Default)	(a) Ninety five percent (95%) of Financing Due; less (b) the Deductible Termination Amounts.
4.	Termination Payment Sum (Agency Default)	(a) Termination Payment Amount (Equity); (b) Termination Payment Amount (Dividend); and (c) Financing Due; less the Deductible Termination Amounts.
5.	Termination Amount Sum (Corrupt Act)	(a) Ninety five percent (95%) of Financing Due; less (b) the Deductible Termination Amounts.
7.	Termination Payment Sum (Concessionaire Default) (prior to Financial Close)	(a) Nil/zero.
8.	Termination Payment Sum (Concessionaire Default) (non-satisfaction of Conditions Precedent)	(a) Nil/zero.
9.	Termination Payment Sum (Agency Default) (non-satisfaction of Conditions Precedent)	As set out in Section 3.5.2.

SCHEDULE U - ILLUSTRATIONS¹⁵

TERMINATION PAYMENT AMOUNT (EQUITY)

Assuming that the Termination Date falls on the fifth (5th) anniversary of the Commencement Date;

- Shares Equity Invested of PKR 5 billion will reduce by five (5) equal installments using straight line basis;
- Termination Payment Amount (Equity) = PKR 5 billion (A) - (PKR 200 million (B) x 5 (C)

$$= \text{PKR 4 billion}$$

Where A is the Shares Invested Equity;

Where B is the amount of installment of each year; and

Where C is the year of termination from the Commencement Date.

Assuming that the Termination Date falls prior to the Commencement Date;

- Share Equity Invested of PKR 100 million will not be reduced;
- Termination Equity = PKR 100 million (A)

Where A is the Shares Invested Equity;

TERMINATION PAYMENT AMOUNT (DIVIDEND)

Assuming that the Termination Date falls on the fifth (5th) anniversary of the Commencement Date;

- Termination Payment Amount (Dividend) = PKR 4 billion (D) x 17% (E) x 3 (F)

$$= \text{PKR 2,040,000,000/-}$$

Where D is the Termination Payment Amount (Equity);

Where E is the [Termination Payment Amount \(Equity\) IRR](#)~~Termination Equity IRR~~; and

Where F is the number of years aggregate return for the equity on Shares.

TERMINATION PAYMENT AMOUNT (DIVIDEND) PRIOR TO COMMENCEMENT DATE

Assuming that the Termination Date falls prior to the Commencement Date;

- Termination Payment Amount (Dividend) Prior to Commencement Date =

¹⁵ The numbers provided in this SCHEDULE U (*ILLUSTRATIONS*) are indicative only. All Termination Payments will be determined in the manner and be subject to such ceilings (if any), as set out in this Agreement.

$$\begin{aligned} & \text{PKR 2 billion (D) x 17\% (E) x 1 (F)} \\ & = \text{PKR 340,000,000/-} \end{aligned}$$

Where D is the Termination Payment Amount (Equity);

Where E is the [Termination Payment Amount \(Equity\) IRR](#)~~Termination Equity IRR~~; and

Where F is the number of years aggregate return for the equity on Shares.

SCHEDULE V - FINANCIAL MODEL¹⁶

¹⁶ To be added prior to signing of this Agreement.

SCHEDULE W - BENCHMARK REVENUES & REVENUE SHARING¹⁷

¹⁷ To be added prior to signing of this Agreement based on the Bid of the Successful Bidder.

SCHEDULE X - SPONSOR UNDERTAKING

FROM:

[*Sponsor*] (the **Sponsor**)

TO:

1. **HYDERABAD MUNICIPAL CORPORATION** (the **Agency**);
2. [●] (the **Concessionaire**),

together, the **Parties** and each a **Party**.

Dated: [●]

Ref: [●]

RE: RANI BAGH HYDERABAD PROJECT - ACCESSION TO THE AGREEMENT

Dear Sir(s)/Madam(s):

In this undertaking (this **Undertaking**) we, the Sponsor(s) of the Concessionaire, refer to the concession agreement dated [●] between the Agency and the Concessionaire (the **Agreement**). Specifically, but not limited to, reference is made to section 10.1.1 of the Agreement. Terms defined in the Agreement shall have the same meaning in this Undertaking unless given a different meaning herein.

Furthermore, we are hereby agreeing to accede to the Agreement in respect of the obligations and responsibilities under section 10.1 of the Agreement and as set out in Section 2 (*Shareholder Undertakings*) of this Undertaking as well as in relation to the representations and warranties set out in Section 3 (*Limited Warranties and Representations*), the undertakings set out in Section 4 (*Additional Undertakings*) and indemnities set out in Section 5 (*Limited Indemnities Undertaking*) of this Undertaking for the additional benefit for and in favour of the Agency.

1. ACCESSION

- 1.1 The Sponsor(s) agree(s) to become a party to the Agreement and to be bound by the terms and conditions of the Agreement as the acceding party (the **Acceding Party**). The Acceding Party confirms to procure for all the relevant obligations and responsibilities as set out herein. The Sponsor(s) also undertake(s) to ensure that each subsequent Shareholder accedes to this Undertaking concurrently with its acquisition of shares in the Concessionaire.
- 1.2 The Acceding Party enters into the Agreement exclusively in relation to the obligations and undertakings encompassed in section 10.1 of the Agreement (the **Shareholder Undertakings**) and set out in Section ~~222~~ (*Shareholder Undertakings*) in this Undertaking as well as in relation to the representations and warranties set out in Section 3 (*Limited Warranties and Representations*), the undertakings set out in Section 4 (*Additional Undertakings*) and indemnities set out in Section 5 (*Limited Indemnities Undertaking*) of this Undertaking.
- 1.3 The Agency and the Concessionaire hereby explicitly accept and confirm the accession of the Acceding Party to the Agreement.

2. SHAREHOLDER UNDERTAKINGS

Pursuant to section 10.1 of the Agreement, the Acceding Party shall implement the following undertakings:

2.1 EQUITY INVESTMENT UNDERTAKING

2.1.1 The Acceding Party undertakes the following pursuant to section 10.1 of the Agreement:

- (a) the Sponsor(s) shall fulfil its/their obligation to pay to the Concessionaire that part of the Sponsor Base Equity Amount through subscription in cash in Pakistani Rupees for Shares by the Sponsor(s) in accordance with the Agreement and the Financing Documents;
- (b) that the Sponsor(s) and any future Shareholder shall decide on the split between the Concessionaire's Shares and Sponsor(s) loans at their own discretion.

2.1.2 The payment of the Sponsor Base Equity Amount shall be evidenced as follows:

- (a) in respect of the amount expressed as Shares, by submission to the Agency (with a copy to the Independent Auditor) of a certified copy of all the legal documents that are submitted to the Government Authority pursuant to the Laws in the event of a limited liability share capital increase;
- (b) in respect of the amount expressed as Sponsor loan, by submission to the Agency of the Concessionaire's accounting books together with a certificate from the Independent Auditor.

2.2 SHARE CAPITAL UNDERTAKING AND OTHER MATTERS

2.2.1 The Acceding Party acknowledges, agrees to and undertakes to strictly comply with the transfer restrictions, other transfer restrictions, undertakings and procedure of transfer, in each case, in relation to the Shares, as set out in article 10 (*Funding Requirements & Shareholding Matters*) of the Agreement.

2.2.2 The Acceding Party undertakes to do all things and take all actions that are required to be done or taken by the Acceding Party under the Laws of Pakistan to enable the Concessionaire to comply with its obligations under the Agency Agreements.

2.3 LEAD MEMBER LIABILITY

2.3.1 Notwithstanding anything to the contrary contained herein, the Lead Member's liability shall extend to the total Maximum Liability Amount applicable to the entire Consortium.

3. LIMITED WARRANTIES AND REPRESENTATIONS

3.1 The Acceding Party represents and warrants to the Agency that on the Effective Date and the Commencement Date or on the day of its access as Shareholder each of the following is true and correct in all material respects:

3.1.1 it has full power, authority and right and has taken all actions necessary to enter into the Agreement and to assume and perform its rights and obligations as set out in the Agreement;

- 3.1.2 there is no proceeding, action, claim or investigation, pending or threatened against the Acceding Party the outcome of which may constitute a Concessionaire Event of Default or have a material adverse effect on its financial condition or its ability to perform its obligations under the Agreement; and
- 3.1.3 there are no fines, penalties or other sanctions imposed on the Acceding Party which may have a material adverse effect on its financial condition or its ability to perform its obligations under the Agreement.

4. **ADDITIONAL UNDERTAKINGS**

- 4.1 The Acceding Party is aware of, understands, has complied with, and will comply with, all anti-corruption Laws and their implementing guidelines.
- 4.2 The Acceding Party confirms that all funds (whether in the form of financing or equity) that are or will be used by the Acceding Party for the fulfilment of its obligations under the Agreement are not and will not be acquired through or in connection with a crime. The Acceding Party shall be obliged to provide any and all information confirming its compliance with money laundering Laws and their implementing regulations.
- 4.3 The Acceding Party confirms that it has received all the information about the Concession that was prepared by the Agency for the purposes of the Agreement and which was made available to the Acceding Party, namely the documents and information provided in the RFP and those contained in the schedules to the Agreement. The Acceding Party confirms that it has made its own preliminary assessment of the Concession.

5. **LIMITED INDEMNITIES UNDERTAKING**

- 5.1 Subject to the Maximum Liability Amount set out in Section 5.2 below, the Sponsor(s) shall bear explicit liability for the undertakings set out in Section 2 (*Shareholder Undertakings*) hereof, for the representations and warranties as well as the undertakings set out in Sections 3 (~~*Limited Warranties Limited Warranties Limited Warranties and Representations*~~) and 4 (*Additional Undertakings*) hereof, jointly and severally with the other Shareholders as well as with the Concessionaire, towards the Agency under the Agreement.
- 5.2 By signing this Undertaking, the Agency acknowledges and agrees that the total maximum liability of the Sponsor(s) and any subsequent Shareholder (where this provision under no circumstances should be understood and interpreted as limiting in any way the Concessionaire's liability) shall be **[insert amount]**¹⁸ (as updated from time to time in accordance with the Financial Model) (the **Maximum Liability Amount**) inasmuch as such liability arises for the Sponsor(s) or any subsequent Shareholder as the Acceding Party under this Undertaking and/or as a matter of Law; provided, the Maximum Liability Amount shall apply to the aggregate of the claims by the Agency against the Sponsor(s) and any subsequent Shareholder(s). This shall be without prejudice to any liabilities of the Shareholders under the Financing Documents (including the obligation to fund any Cost Overruns).

6. **GOVERNING LAW**

This Undertaking and any contractual and non-contractual matters deriving therefrom shall be governed by the Laws of Pakistan.

¹⁸ This amount will be updated based on the Equity investment requirements set out in the Financial Model (as updated from time to time).

7. **DISPUTE RESOLUTION**

Any dispute or difference arising out of or in connection with this Undertaking, shall regardless of the nature thereof, be referred to dispute resolution pursuant to the provisions of article 30 (*Dispute Resolution*) of the Agreement, which provisions are incorporated herein by reference and shall apply *mutatis mutandis* to this Undertaking.

Regards,

**FOR AND ON BEHALF OF
SPONSOR(S)**

[Date]

Signature _____
Signed by _____
acting as _____

ACKNOWLEDGED AND ACCEPTED BY THE AGENCY

AGENCY

Signature

Name
(block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

SIGNATURE PAGES

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

AS THE AGENCY

For and on behalf of
HYDERABAD CORPORATION
through its authorised signatory

MUNICIPAL



SIGNATURE

Name:
Designation:

Name:
Designation:

in the presence of
WITNESSES:

SIGNATURE

1. Name:
Address:
CNIC/Passport No.:

2. Name:
Address:
CNIC/Passport No.:

AS THE CONCESSIONAIRE

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



SIGNATURE

Name:
Designation:

.....

in the presence of
WITNESSES:

SIGNATURE

1. Name:
Address:
CNIC/Passport No.:
2. Name:
Address:
CNIC/Passport No.:

.....

.....



HYDERABAD MUNICIPAL CORPORATION

**RESPONSES TO REQUESTS FOR CLARIFICATIONS/QUERIES SUBMITTED BY
PROSPECTIVE BIDDERS IN RELATION TO THE REQUEST FOR PROPOSALS**

FOR

AWARD OF CONCESSION TO

**DESIGN, FINANCE, BUILD, REHABILITATE, OPERATE,
MAINTAIN AND TRANSFER**

RANI BAGH, HYDERABAD

APRIL 15, 2025

IMPORTANT NOTICE/DISCLAIMER

This **RESPONSES TO REQUEST FOR CLARIFICATIONS/QUERIES SUBMITTED BY PROSPECTIVE BIDDERS IN RELATION TO THE REQUEST FOR PROPOSALS** (this **Response Document No. 1**) is further to the 'REQUEST FOR PROPOSALS' issued on January 23, 2025 (the **RFP**) and addresses the various queries received from prospective Bidders (the **Prospective Bidders' Queries**) in respect of the Tender Procedure relating to the Rani Bagh Hyderabad Project (the **Project**). This Response Document No. 1 is being circulated by the Hyderabad Municipal Corporation (the **Agency**), solely for use in preparing and submitting a Bid for participation in the Tender Procedure conducted for the purposes of selection of the Successful Bidder to undertake the Project. Upon signing of the Concession Agreement, the Concession Agreement will be the final and binding document and any responses set out in this Response Document No. 1 will not have any effect or be used for interpretation.

Unless expressly specified otherwise, all capitalized terms used in this Response Document No. 1 shall bear the meanings ascribed thereto in the RFP.

This Response Document No. 1 is neither an agreement nor to be construed as an addendum/corrigendum to the RFP; its sole purpose is to provide Interested Parties with information that may be useful to them in making their Bids pursuant to the RFP. The RFP and this Response Document No. 1 includes statements, which reflect various assumptions and assessments arrived at by the Agency in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Response Document No. 1 may not be appropriate for all Interested Parties, and it is not possible for the Agency Parties to consider the investment objectives, financial situation and particular needs of each Interested Party, that relies on, reads or uses this Response Document No. 1. To the extent any changes to the RFP are required, such changes will be made through an addendum/corrigendum (as applicable) to the RFP, which will be issued prior to the Bid Submission Date.

No Agency Party makes any representation (expressed or implied) as to the accuracy or completeness of the information contained herein, or in any other document made available to any Interested Party in connection with the Tender Procedure and the same shall have no liability for this Response Document No. 1 or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Project. No Agency Party will be liable in any manner whatsoever to reimburse or compensate the recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon this Response Document No. 1 or otherwise in connection with the Project.

The assumptions, assessments, statements and information contained in the RFP, may not be complete, accurate, adequate or correct for the purposes of Bids. The Agency Parties have no liability for any statements, opinions or information provided in the RFP. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the RFP. The Bidders are required to undertake their independent assessment and to seek independent professional advice on any or all aspects of the RFP. No decision should be based solely on the basis of the information provided by the RFP and this Response Document No. 1.

The Agency Parties expressly disavow any obligation or duty (whether in contract, tort or otherwise) to any Bidder. No Bidder is entitled to rely on the Agency Parties' involvement in the preparation of this Response Document No. 1 or in the Tender Procedure as a basis for preparing the Bids.

The Agency reserves its right, in its full discretion, to modify the RFP, the requirements of the Project and/or the information contained in this Response Document No. 1 at any time as per the applicable Law and shall not be liable to reimburse or compensate any prospective Bidder for any costs, taxes, expenses or damages incurred by the prospective Bidders in such event.

RESPONSES TO REQUESTS FOR CLARIFICATIONS/QUERIES SUBMITTED BY PROSPECTIVE BIDDERS IN RELATION TO THE RFP

Unless expressly specified otherwise, all capitalized terms used in this Response Document No. 1 shall bear the meanings ascribed thereto in the RFP.

SR. NO.	PROVISION AND PAGE NUMBER OF RFP	COMMENTS/QUERIES	RESPONSES
1.	Relevant Experience under Financial Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 88	Relevant Experience criteria requiring financing of large real estate or infrastructure projects having value of PKR 4 billion seems not well aligned with the expertise of a typical zoo developer. A zoo developer is usually specialized in animal enclosures, conservation projects, and operational management, rather than large-scale real estate or infrastructure financing. Therefor we request you to modify the criteria to focus on zoo-related expertise rather than general infrastructure financing.	This suggestion is not accepted. There will be no change in this regard.
2.	Registration with Pakistan Engineering Council (PEC) under Annexure A (<i>Basic Eligibility Criteria</i>) Page 85	Could you please clarify whether a firm holding a PEC certificate in category C-A also qualifies, given that C-A is a higher-value category than C-B? Additionally, if a firm is registered under a specialized PEC code, such as ME-03, we understand this registration apply to all subcategories within ME-03. Please clarify.	Yes, a Bidder can qualify if it possesses a valid PEC registration in category C-B or above, including C-A. Second, please see response to query at Sr. No. 18 of this Response Document No. 1.
3.	Category 1 (<i>General Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 88	If a project has been used under the Relevant Experience category, can the same project also be used under different Category 1 (General Development Experience)? Kindly confirm whether repetition is allowed in this case.	Yes, this is acceptable. A Bidder can rely upon a single project that meets both the requirements set out under Relevant Experience under Financial Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) i.e. an Eligible Project and Category 1 (<i>General Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>).

4.	Average Annual Turnover or Project Finance Experience under Financial Situation/Historical Financial Performance of Annexure A (<i>Basic Eligibility Criteria</i>) Page 84	As per the stated requirements, the Concessionaire is required to provide recent financial statements. We would like to seek clarification on whether, in the case where the company is currently undergoing the audit process for the year 2024 and the audited financial statements are not yet finalized, the Concessionaire may submit the audited financial statements for 2023, 2022, and 2021 as the most recent available records for the past three years.	Please see Average Annual Turnover or Project Finance Experience under Financial Situation/Historical Financial Performance of Annexure A (<i>Basic Eligibility Criteria</i>) of the Addendum No. 1 to the RFP. There will be no change in this regard.
5.	Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 89	We would like to request a reconsideration of the minimum project value requirement. The current threshold of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) is quite high and may limit the participation of experienced and qualified bidders. We have experienced that there are few developers who have developed the zoo of such magnitude and size of PKR 3 billion so we kindly suggest amending this requirement to a more reduced value to encourage broader competition while ensuring the necessary expertise and capability for project execution.	Please see the updated criteria set out under Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) of the Addendum No. 1 to the RFP.
6.	Net worth under Financial Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 86	We would like to request a reconsideration of the tangible net worth requirement. The current threshold of PKR 3,000,000,000/- (Pakistani Rupees Three Billion only) is quite high and may restrict the participation of capable bidders and to gain full marks the developer must have the net worth of PKR 4 billion which is on very higher side. We kindly request that this requirement be revised to a lower value to encourage broader participation while maintaining financial stability and project feasibility.	This suggestion is not accepted. There will be no change in this regard.
7.	General and Specific Development Experience under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 88	To meet this criterion, can we combine multiple projects cumulatively to satisfy the requirement of PKR 3 billion? And please clarify is reputation allowed in this project.	Please see the updated criteria set out under Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) of the Addendum No. 1 to the RFP.

8.	General	<p>The tender submission last date is 24th March, 2025, In order to prepare a comprehensive bid along with all required documents, it will require maximum 45 days.</p> <p>Therefore, we would like to request your good office to kindly extend the bid submission date for Forty Five days. In the interest of competitive bid.</p>	<p>The Bid Submission Deadline has been extended till May 8, 2025. Please refer to the ‘<i>Corrigendum No. P</i>’ available on SPPRA EPADS.</p>
9.	General	<p>The last date for submission of tender documents is fixed on 24th March, 2025, it is stated that we are negotiating with some highly experience / technical company to form Joint Venture for healthy competition.</p> <p>In order to prepare comprehensive tender documents along with all required documents, it will require minimum 45 days extension of time.</p> <p>Therefore, it is requested to please extend the submission date in order to healthy competition as mentioned above.</p>	<p>The Bid Submission Deadline has been extended till May 8, 2025. Please refer to the ‘<i>Corrigendum No. P</i>’ available on SPPRA EPADS.</p>
10.	General	<p>However, given the limited local expertise available for such a project, we are actively working to finalize the most suitable consortium. Our objective is to collaborate with a firm that possesses extensive experience and the requisite capabilities to successfully undertake the Rani Bagh Project.</p> <p>However, due to the time constraints associated with consolidating the bid documents, particularly given the limited working hours during Ramadan, we are facing challenges in finalizing our submission within the current timeline.</p> <p>We acknowledge that the deadline for proposal submission is March 24, 2025. However, considering the upcoming Eid holidays, we respectfully request the Procuring Authority to extend the submission deadline to April 24, 2025. This extension would allow our consortium to efficiently compile the bid documents and ensure the submission of a well-prepared and competitive proposal.</p>	<p>The Bid Submission Deadline has been extended till May 8, 2025. Please refer to the ‘<i>Corrigendum No. P</i>’ available on SPPRA EPADS.</p>

11.	Average Annual Turnover or Project Finance Experience under Financial Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 87	The current criteria conflate project financing experience with annual turnover, which are distinct. While turnover is relevant to EPC contractors, project finance experience is a higher threshold for lead developers. The twenty percent (20%) equity threshold for project finance experience is insufficient; we propose a minimum of fifty one percent (51%) to demonstrate adequate commitment. We also request a critical evaluation to distinguish between project finance and structured finance transactions, and if the latter is considered, funding/ cash availability on the Sponsor balance sheet should be concomitant to the requirements for it to meaningfully add value to the evaluation.	This suggestion is not accepted. There will be no change in this regard.
12.	Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 89	We seek clarification on whether each listed category constitutes a separate project. If a developer meets the criteria for a specific facility, it should not be linked to the PKR 3 billion project cost requirement, as individual categories do not reach this value. We further suggest evaluating specific and general experience requirements on an either/or basis, as specific requirements are less demanding.	Firstly, a Bidder or in case of a Consortium, any Consortium Member shall meet this requirement in case it has experience in <i>either</i> developing a zoo, a recreational park, a theme park or an amusement park in accordance with the requirements set out in Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>). Secondly, please see the updated criteria set out under Category 2 (<i>Specific Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) of the Addendum No. 1 to the RFP. In respect of the third request, there will be no change.
13.	Team Composition under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 89	The RFP requests CVs of multiple team members; however, some experts may not be available in Pakistan, and individuals may fulfil multiple categories. Given the potential subjectivity, we suggest reducing the weight assigned to CVs and reallocating these marks to more objective criteria, such as financial criteria.	An individual may meet the requirement set out for multiple roles as part of the team composition of the Bidder/Consortium; however, such individual may only submit his/her CV for a maximum of two (2) roles. For example, an individual may meet the requirements for a zoo manager as well as a theme park expert but not more than that.

			Please see the updated portion of Team Composition under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) of the Addendum No.1 to the RFP.
14.	O&M Experience under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 91	Demonstrating O&M experience should not require mandatory shareholding in the consortium. An in-principle commitment from an eligible O&M contractor should suffice. Additionally, eligible projects criteria under the O&M category should be evaluated cumulatively (e.g., a zoo operator with multiple species should be scored accordingly).	Bidders may propose Third Parties that meet this criterion, without the need for such Third Parties to have Ownership Stake in the SPV. However, a commitment from such Third Parties must be provided together with the Bid in the form and substance set out in Bidding Form T13 (<i>O&M Experience</i>) of Part 2 (<i>Bidding Forms</i>) of VOLUME I (TENDER PROCEDURE) of Addendum No. 1 to the RFP. In addition, a third party may not provide its commitment to more than one (1) Bidder. Please see the updated portion of O&M Experience under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>), Bidding Form T13 (<i>O&M Experience</i>) of Part 2 (<i>Bidding Forms</i>) and other relevant sections of VOLUME I (TENDER PROCEDURE) of the Addendum No. 1 to the RFP, which have been highlighted in track changes for ease of reference.
15.	Category 1 (<i>General Development Experience</i>) under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 88	We recommend including infrastructure project experience in addition to real estate experience under general experience.	This is already captured under Category 1 (<i>General Development Experience</i>).
16.	General	To accommodate the complexities and allow sufficient time to address these points, we request a two-month extension to the bid submission timeline, currently set for 24th March 2025.	The Bid Submission Deadline has been extended till May 8, 2025. Please refer to the ' <i>Corrigendum No. P</i> available on SPPRA EPADS.
17.	General and Specific Development Experience	To enhance competition and cost efficiency, we propose reducing the project experience requirement from PKR 3 billion	Please see the updated criteria set out under Category 2 (<i>Specific Development Experience</i>) under

	under Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) Page 88	to between PKR 2.0–2.5 billion. This allows more qualified firms to bid, leading to better pricing and execution. Due to inflation, material cost variations, and evolving market dynamics, project values fluctuate. Many firms may have relevant experience but with slightly lower project values due to past market conditions. Given this, the original threshold may be unnecessarily restrictive.	Technical Capability of Part 1 (<i>Technical Evaluation Criteria</i>), Annexure B (<i>Evaluation Criteria</i>) of the Addendum No.1 to the RFP.
18.	Registration with Pakistan Engineering Council (PEC) under Annexure A (<i>Basic Eligibility Criteria</i>) Page 85	We understand that the ME-03 category, which covers HVAC-related works, may not be a critical or standalone component of the project, as the project's mechanical requirements are minimal and can be covered under other specialization codes. Therefore, we request you to exclude the specialization code ME-03 requirement.	This is accepted. ME-03 requirement excluded and added as a Condition Precedent to be fulfilled by the Concessionaire. Please see the updated portion of Registration with Pakistan Engineering Council (PEC) under Annexure A (<i>Basic Eligibility Criteria</i>) of the Addendum No. 1 to the RFP and section 3.1.2 of the Concession Agreement.
19.	Registration with Pakistan Engineering Council (PEC) under Annexure A (<i>Basic Eligibility Criteria</i>) Page 85	Clarification is needed on the PCATP certification requirement—can this criterion be met by providing an individual personnel license, or is it necessary to engage an architectural firm for compliance?	This is acceptable. A certification obtained from PCATP by an individual is also acceptable and this criterion will be met in such case; provided, such individual is employed by the Bidder's organization at the time of the Bid Submission Deadline. Please see the updated criteria set out under Registration with Pakistan Engineering Council (PEC) under Annexure A (<i>Basic Eligibility Criteria</i>) of the Addendum No. 1 to the RFP.

THE END