

CONCESSION AGREEMENT

BETWEEN

Punjab Public Private Partnership Authority
Through
Water and Sanitation Agency
As the Concessing Authority

AND

[●]

As the Concessionaire

[INSERT DATE]

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This **CONCESSION AGREEMENT** (the “**Agreement**”) is entered into on this [●] day of [●], [2020] at Lahore, Punjab, Pakistan,

BY AND BETWEEN:

1. **Lahore Water and Sanitation Agency**, through its Managing Director having its office at 31-B Zahoor Ilahi Road, Block B Gulberg III, Lahore, Punjab, Pakistan (hereinafter referred to as the “**Authority**” or “**Concessioneing Authority**”), which expression shall, mean and include its successors-in-interest and permitted assigns) of First Part; and
2. [●], a company incorporated under the provisions of the Companies Act 2017, having its registered office at [●] through _____ (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless the context otherwise requires, include its successors-in-interest and permitted assigns) of Second Part.

(The Authority and the Concessionaire are hereinafter collectively referred to as the “**Parties**” and each individually as a “**Party**”).

WHEREAS:

- A. The Authority has identified the Project that is to be implemented, through Public Private Partnership, on a Build-Operate-Transfer (BOT) basis.
- B. On [Insert Date] a Request for Proposals (together with the related advertisements) (the “**RFP**”) on a single stage three envelope basis as per PPP Act was issued by the Authority to prospective bidders for, *inter alia*, inviting submission of bids for grant of the Concession for the implementation of the Project.
- C. In response to the RFP, the Authority received proposals from various bidders and the Authority after having evaluated the pre-qualification document, technical and financial proposals submitted by all bidders accepted the proposal submitted by the Successful Bidder [consisting of M/s [●],[●] and [●] (collectively the “**Consortium**”) with [●] as its Lead Member (as hereinafter defined) / [●] (*as a single/individual bidder*)] and a Letter of Award, bearing no. [●], dated [●] was issued to the Successful Bidder;
- D. In accordance with the RFP, the Successful Bidder has incorporated the Concessionaire in accordance with the Companies Act, 2017, as a special purpose vehicle for the purposes of the Project;
- E. The Authority is granting concession to the Concessionaire as per the recommendations of the bid evaluation committee based on the evaluation of the pre-qualification document, technical and financial proposal submitted by the Successful Bidder in accordance with this Agreement to execute the Project and at the end of Concession Period transfer the Project to the Authority, which will then transfer the Project to WASA in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and undertakings herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

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1. DEFINITIONS & INTERPRETATIONS

1.1. Definitions

In the Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

“Abandon” or **“Abandoned”** means the Concessionaire abandoning the Project or the Project Site by failing to execute its duties and obligations under this Agreement on any particular day;

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

“Affected Party” shall have the meaning ascribed to it in Article 10.1.

“Agreement” means this Agreement dated as of the date first written above together with Recitals and all Schedules attached hereto, by and between the Authority and the Concessionaire, as may be amended by the Parties from time to time.

“Applicable Laws” means any statute, law, regulation, development control regulations, ordinance, notification, rule, judgment, order, decree, bye-law, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency or instrumentality thereof having jurisdiction over the matter in question, as may be in force and effect during the subsistence of this Agreement, including the laws, as may be amended, re-promulgated, substituted or replaced from time to time, detailed in **Schedule 10** of this Agreement.

“Applicable Permits” means all clearances, permits, authorisations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or maintained under or pursuant to Applicable Laws, in connection with implementation of the Project during the subsistence of this Agreement.

“Appointed Date” means the date of this Agreement.

“Approved Detailed Plan” means the Detailed Plan, provided in **Schedule 4 – Annex A** of this Agreement, which was provided by the Successful Bidder as part of its Technical Proposal during the bidding stage and approved by Authority in accordance with this Agreement.

“Authority Event of Default” shall have the meaning ascribed to it in Article 11.1.2.

“Authority Proposal to Rectify” shall have the meaning ascribed to it in Article 11.2.2.(b).

“Book Value” means the amount of cost (including capital expenditure and operational costs) incurred on the Project including interest capitalized on the debt portion of the financing as per the books of the Concessionaire, in either case net of depreciation charged on the basis of

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straight line method and amortised equally over the O&M Period, duly verified and certified by the Joint Auditor in accordance with Generally Accepted Accounting Principles or any other corporate legal standard. In computing the Book Value, the Joint Auditor shall rely on the costs of the actual work done as approved by the Consultant. Provided that in the event of Termination, the Additional Cost, if any, compensated by the Authority and revenue or proceeds earned from the Project in accordance with this Agreement, shall, to the extent capitalised, be excluded in computing the Book Value.

“BOT” or **“Build-Operate-and-Transfer”** shall bear the meaning ascribed thereto under the Second Schedule of the PPP Act.

“Business Day” shall mean a day (other than a Sunday) on which banks in Pakistan are generally open for business;

“Certificate of Compliance” shall have the meaning ascribed to it in Article 3.1.3. (b).

“Change in Law” shall mean:

- (a) The adoption, promulgation, repeal, modification or reinterpretation after the date of this Agreement by any Government Agency of any Applicable Laws of Pakistan (including a final, binding and non-appealable decision of any Government Agency);
- (b) the imposition by a Government Agency of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Applicable Permit after the date of this Agreement
- (c) the imposition by a Government Agency of any additional Applicable Permit; or
- (d) the imposition of an increased rate of taxes, duties, fees, cess or charge imposed by any Government Agency under the Applicable Laws of Pakistan,

that in the case of each of section (a), (b), (c) or (d) above establishes either a material increase in the Total Project Cost or a material decrease in revenue, as a requirement for the design, operation or maintenance of the Project Installation that is materially more restrictive than the most restrictive requirements: (i) under the Laws of Pakistan as in effect as of the date of this Agreement; (ii) specified in any applications, or other documents filed in connection with such applications, for any Applicable Permits filed by the Concessionaire on or before the Project Construction Completion Date; (iii) agreed to by the Concessionaire in any of the Project Agreements. Provided that a Change in Law shall not cover any law or change to it that comes into effect on or after the date of the execution of this Agreement if it has been gazetted prior to the date of execution of this Agreement.

“Change in Ownership” 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 ordinary share (as defined in the Companies Act 2017) to any Person other than the Successful Bidder; or
- (b) the direct and/or indirect transfer of legal, and/or beneficial ownership of any shares,

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or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Successful Bidder's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding ordinary shares in the Concessionaire;

and the Successful Bidder, as a result of (a) or (b) above, no longer owns or controls more than fifty percent (50%) of the ordinary shares of the Concessionaire and/or loses the power to direct the management, policies or decisions of the Concessionaire during the Concession Period.

"Commercial Operation Date" or **"COD"** has the meaning ascribed to this term in Article 6.3.

"Competent Authority" means the concerned authority or department of duly empowered and authorized to grant necessary sanctions and approvals.

"Compliance Date" means the date on which the Parties shall fulfil the Conditions Precedent (under Article 3), evidenced by the issuance of the **"Certificate of Compliance"** by each of the respective Parties / their authorized representatives.

"Concession" shall have the meaning ascribed to it in Article 2.2.

"Concession Period" of the Agreement shall have the meaning ascribed to it in Article 2.2.

"Concessionaire" shall have the meaning ascribed to it in the Preamble of this Agreement.

"Concessionaire Event of Default" shall have the meaning ascribed to it in Article 11.1.1 of this Agreement.

"Concessionaire's Proposal to Rectify" shall have the meaning ascribed to it in Article 11.2.1. (b) of this Agreement.

"Concessions Authority" shall have the meaning ascribed to this term in the Preamble of this Agreement.

"Consortium" means the consortium consisting of (i) [●], (ii) [●], and (iii) [●] formed, to implement the Project.

"Construction Performance Security" means a first demand irrevocable and unconditional bank guarantee valid throughout the Construction Period, issued by a scheduled bank in Pakistan with a minimum credit rating of at least 'AA' acceptable to the Authority, in the form of a demand guarantee or a standby letter of credit, of an amount equal to two percent (2%) of the estimated total project cost, as set forth in the Financial Proposal of the Successful Bidder, in the form of the instrument provided in Schedule 2 – Annex A (*Form of Construction Performance Security*).

"Construction Period" shall have the meaning ascribed to it in Article 6.1 of this Agreement;

"Consultants" shall mean the consultants appointed by the Authority in accordance with the provisions of Article 9.2, including a third party consultant or/and a Quality Assurance Inspector,

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as the context requires, to monitor the Project during the Concession Period.

“Conditions Precedent” shall have the meaning ascribed to it in Article 3.

“Cure Period” shall have the meaning ascribed to it in Articles 11.2.1. (c).

“Dispute” shall have the meaning ascribed to it in Article 13.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, 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 Project, physical encumbrances and encroachments on the Project Site.

“Equipment” shall mean the water metering equipment/machines with quantity and specifications as detailed in **Schedule 4 – Annex C** and compliant with prescribed International Standards.

“Equity Documents” shall mean the documents, deeds and agreements evidencing subscription to Concessionaire’s equity capital to the extent of the equity component of the Total Project Cost.

“Financial Assistance” means the aggregate amount provided to the Concessionaire by way of loan, finance, advances, guarantees, refinancing or otherwise and other debt instruments by the Lenders for the financing of up to eighty percent (80%) of the Total Project Cost.

“Financial Closure” means the execution and delivery of the Financing Documents and Equity Documents evidencing sufficient financing for the development, design, engineering, installation, operation of the Project and evidence of commitments for such equity as is required by the Concessionaire to satisfy the requirements of the Lenders with respect to the Financial Assistance for the Project (following the resolution of any objections raised by the Authority to a term sheet or debt repayment Schedule in accordance with this Agreement that sets out a principal repayment Schedule and the other principal terms of the transaction between the Concessionaire and the Lenders) and the satisfaction or waiver of all conditions precedent for initial draw down of funds by Concessionaire under the Financing Documents and which shall in any case not be later than 180 days from the Appointed Date as applicable hereof.

“Financing Documents” means the loan agreements, for which the term sheets related thereto have not been objected to by the Authority pursuant to Article 8.3, executed by the Successful Bidder or the Concessionaire and the Lenders in respect of the Financial Assistance to be provided by the Lenders to the Concessionaire by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost as such agreements, instruments, guarantees and documents may be amended from time to time in accordance with the provisions of Article 8.3.

“Financing Rate” means the weighted average financing rate of the Concessionaire calculated as $(\% \text{ of Debt in Capital Structure}) \times (\text{Pre-Tax Cost of Debt}) + (\% \text{ of Equity in Capital Structure}) \times (\text{KIBOR} + (\bullet)\% \text{ Annually})$.

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 10.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the development, implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type and size similar to that of the Project.

“GoPb” shall mean the Government of Punjab.

“Government Agency” shall mean (a) the Government of Pakistan, the GoPb, or any subdivision of either, or any local governmental authority with jurisdiction over the Concessionaire, the Project, or any part thereof, (b) any department, authority, instrumentality, agency, or judicial body of the Government of Pakistan, the Government of Punjab, the Authority or any local governmental authority, (c) the courts and tribunals of Pakistan, or (d) any commission or independent regulatory agency having jurisdiction over the Concessionaire, the Project or any part thereof.

“International Standards” means the specifications and standards for completion of the Project given in **Schedule 4- Annex A** of this Agreement;

“Joint Auditor” shall mean the auditor appointed jointly by the Concessionaire and the Authority, in accordance with the Punjab Procurement Regulatory Authority Act, 2009, for any purpose under this Agreement including but not limited to matters relating the cost certifications, Additional Costs, Termination Payments etc.

“KIBOR” means One (1) Year Karachi Inter Bank Offer Rate which is the Average rate, Ask Side, for the relevant tenor, as published on Reuters page KIBOR or as published by the Financial Markets Association of Pakistan in case the Reuters page is unavailable.

“Lead Member” means partner who is lead the consortium [●].¹

“Lenders” means financial institutions, banks and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for financing a maximum of eighty percent (80%) of the Total Project Cost.

“Locally Assembled” means water meters assembled within Pakistan using local or foreign parts.

“Material Adverse Effect” means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of the Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Agreement, or (c) frustrates a material provision of this Agreement or any of the Project Agreements.

“Material Breach” means a breach by either Party of any of its obligations under the Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within period prescribed under this Agreement.

¹ To be deleted in case there is no consortium and the Project is awarded to a single bidder.

“Notice to Commence” shall have the meaning ascribed to it in Article 3.1.3. (c).

“Ordinary Share Capital” shall mean any of the issued and paid-up share capital of the Concessionaire with or without voting or other rights of management and control.

“O&M Performance Security” means a first demand irrevocable and unconditional guarantee, issued by a scheduled bank in Pakistan with a minimum credit rating of at least ‘AA’ acceptable to the Authority in the form of a demand guarantee or a standby letter of credit (being in an amount equal to two percent (2%) of the estimated total project cost, as indicated in the Financial Proposal of the Successful Bidder, that shall be replaced every year so as to ensure that it remains valid throughout the O&M Period, provided by the Concessionaire to the Authority in the form of the instrument attached herewith as **Schedule 2 – Annex B (Form of O&M Performance Security)**).

“O&M Period” shall mean the period between the Project Construction Completion Date and the Transfer Date during which the Concessionaire shall: (a) operate and maintain the Project Installations; and (b) collect User Charges.

“O&M Manual” shall have the meaning ascribed to it in Article 8.5. (b).

“Pak Rupee(s)” or “PKR” shall mean the official currency of Pakistan.

“Parties” means the parties to the Agreement and **“Party”** shall mean any of them, as the context may admit or requires.

“Performance Guarantee” shall mean either the Construction Performance Security, the O&M Performance Security or any other guarantee or security that the Authority requires to be provided by the Concessionaire pursuant to this Agreement.

“Person” unless specifically provided otherwise, shall mean any individual, company, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit.

“PPP Act” shall mean the Punjab Public Private Partnership Act 2019.

“PPP Board” means the Punjab Public Private Partnership Policy and Monitoring Board of the Authority set up pursuant to Section 4 of the PPP Act;

“PPP Cell” means the Punjab Public Private Partnership Cell set up pursuant to Section 7 of the PPP Act;

“Preliminary Notice to Remedy” shall have the meaning ascribed to it in Article 11.2.1. (b).

“Project” means, subject to the provisions of this Agreement, the (i) investment; (ii) procurement; (iii) testing; (iv) calibration; (v) installation; (vi) operation; (v) maintenance of the Equipment and ancillary infrastructure facilities; (vi) transfer of the Project Installations, as envisaged; and (vii) meter reading on monthly basis or mutually agreed intervals, to the Authority at the end of the Concession Period or on prior termination of this Agreement.

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“Project Agreements” means, collectively, this Agreement, the Financing Documents, and any agreement with a Sub-Contractor, in each case as amended, supplemented or otherwise modified from time to time and any other agreements or contract that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project.

“Project Construction Completion Date” means the date of the completion of the Construction Period, which shall occur no later than the expiry of a period of two (2) years from the date of execution of this Agreement by which *inter alia* the installation of the Equipment and work on the Project Installations at the Project Site are completed in accordance with the provisions of this Agreement and when the Project Construction Completion Certificate is issued by the Concessioneing Authority as per Article 6.2.

“Project Construction Completion Certificate” means the certificate issued to the Concessionaire by the Authority as described in Article 6.2.

“Project Installation” means the installation of the water metering, as per the specifications described in **Schedule 4** (*International Standards/ Detailed Design/ Equipment Specifications etc.*) including finishing and furnishing works, Equipment installed therein to be used for the purposes of the Project and including but not limited to the fixtures and equipment, other related facilities installed or affixed and all additions, modifications, alterations and extensions thereto as may be effected by the Concessionaire from time to time, as per the Approved Detailed Plan on the Project Site.

“Project Site” means the location as specified in Schedule 1 together with building, constructed or covered area thereof. The maps of the Project Site and specifications of the covered area are attached herewith as **Schedule 1**.

“Quality Assurance Inspector” means an entity appointed by the Authority as a Consultant to monitor the activities /operations of the Concessionaire pursuant to this Agreement including, but not limited to, assessing various performance metrics such as quality of the work done by the Concessionaire and the Authority and Concessionaire shall jointly be responsible for the payments to the Quality Assurance Inspector in equal proportion.

“RFP Bid Bond” The bid bond for an amount of PKR 250,000,000 (Pak Rupees Two Hundred Fifty Million Only) submitted by the Successful Bidder in response to the RFP issued by the Authority.

“Standard Operating Procedures” or **“SOPs”** shall mean the processes developed and documented by the Concessionaire to ensure services and/or products are delivered consistently during the O&M Period at the Project Site.

“Sub-Contractor(s)” means a reputed Person with whom the Concessionaire has entered into or may enter into contracts / agreements for the purpose of development and implementation of the Project.

“Successful Bidder” means [[●] / the bidder / consortium consisting of [●], [●] and [●] (with [●] as its Lead Member)] that is finally awarded the Concession and invited to enter into this Agreement.

“Termination” means termination of this Agreement, pursuant to Termination Notice or non-

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fulfilment of Conditions Precedent or otherwise in accordance with the provisions of the Agreement but shall not, unless the context otherwise requires, include expiry of the Agreement due to efflux of time in the normal course.

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” means the notice of Termination of the Agreement by either Party to the other Party, in accordance with Article 11.3 of this Agreement.

“Termination Payment” means the amount payable by the Authority to the Concessionaire upon Termination in accordance with Articles 10.7 and 11.4 of this Agreement.

“Third Party” or “Third Parties” means any Person, real or legal or entity other than the Parties of the Agreement.

“Total Project Cost” means the actual capital and operational cost of the Project upon completion of the Project as certified by the statutory auditor(s).

“Transfer Assets” shall comprise the Project Site, the Equipment, the Project Installations, all movable goods and immovable structures with all equipment and machinery, including spare parts, vehicles, furnishings, materials, all operating manuals, insurance policies, warranties of equipment and design drawings relating thereto as more fully described in **Schedule 4- Annex A and C** and the Approved Detailed Plan and as existing at the Project Site on the Transfer Date.

“Transfer Date” means the date immediately following the date of the expiry of the Concession Period of the Term under this Agreement or any earlier termination thereof in accordance with the provisions of this Agreement.

“Users” means the people or entities utilizing the Equipment that form part of the Project.

“User Charges” means all charges, costs, fees, tariff, rentals and other amounts by whatever name called, payable by the Authority to the Concessionaire under Article 7.1 in consideration of entering into and providing services under this Agreement. The User Charges are payable as specified in Schedule 7.

“Variation” means any change to the Project, which is instructed or approved as a variation by the Authority in accordance with Article 5.

“Vesting Certificate” shall have the meaning ascribed to it in Article 12.1 (f).

“WASA” shall mean the Water and Sanitation Agency established under the Lahore Development Authority Act, 1975.

1.2. Interpretation

In the Agreement, unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as is from time to time

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modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in Pakistan, in particular Punjab;
- (c) the words importing singular shall include plural and vice versa;
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of the Agreement;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) references to "development" and/or "establishment " include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- (i) the Schedules to the Agreement form an integral part of the Agreement and will be in full force and effect as though they were expressly set out in the body of the Agreement;
- (j) references to recitals, Articles, sub-articles, Schedules, Annex in the Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub- articles, Schedules and Annex of or to this Agreement.

1.3. Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

2. THE CONCESSION AND THE DELEGATION OF FUNCTIONS

2.1. [NOT USED]

2.2. Grant of Rights to Concessionaire

Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practice, the Concessioning Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and authority to plan, construct, develop, design, engineer, monitor, procure, install, finance, equip, operate, maintain and manage the Project at the Project Site (the “**Concession**”) and provide services for a period of twelve (12) years (or until early termination by a Termination Notice in accordance with this Agreement), commencing from the date of execution of this Agreement and ending on the Transfer Date or the Termination Date (the “**Concession Period**”) and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement and implement the Project subject to and in accordance with the terms and conditions set forth herein.

2.3. Scope of Concession

Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted by the Authority shall oblige or entitle (as the case may be) the Concessionaire, during the Concession Period to:

- a. access the relevant locations on the Project Site for the purpose of the Project and to the extent conferred by the provisions of this Agreement (it being clarified that no proprietary interest or right whatsoever is being transferred to the Concessionaire in the Project Site other than the right to access the Project Site to perform its obligations under this Agreement);
- b. plan, design, develop, furnish, finish, procure, finance, install locally assembled water meters at the Project Site conforming to approved specifications (installation including but not limited to dismantling plain cement concrete (PCC)/road metalling/green belt/pavements, excavation, cutting of existing pipe, extension to suitable location to install meter by laying of High Density Polyethylene Pipe (HDPE) pipe PE 100 of 25mm o/d or any suitable size, along with all the necessary accessories / specials (HDPE), valves required to install and operational the water meter, backfilling with suitable material and restoration in original etc. complete in all respects as per site requirements), collect and provide meter readings to WASA and operate, maintain and manage the Project Installations as per the terms and conditions of this Agreement including specifications and standards, Applicable Laws, Applicable Permits, Good Industry Practice (including good environment practice) and transfer the same in perfect working condition meeting the specified parameters but not limited to accuracy to the Authority on the expiry or prior termination of the Concession Period;
- c. Concessionaire shall be responsible to ensure the accuracy of water meters throughout the concession period to be verified at random by third party validator / WASA;

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- d. comply with the minimum standards and indicators for the performance of the obligations under this Agreement and if the Concessionaire wishes to provide better performance without variation to these standards it may do so by providing innovative and cost-effective solutions to meet these standards;
- e. perform and fulfill all of the Concessionaire's obligations in accordance with this Agreement including specifications and standards, Applicable Laws, Applicable Permits, Good Industry Practice;
- f. on and from the Commercial Operation Date of the batch of meters installed in a month and until the Transfer Date, get reimbursement of the User Charges by the Concessioneing Authority for the meters of which the meter reading through AMR on monthly basis in four (4) batches on weekly basis is provided to the Authority, in accordance with the terms of this Agreement;
- g. provide services to the Authority in accordance with the provisions of this Agreement including specifications and standards, Applicable Laws, Applicable Permits, Good Industry Practice;
- h. construct, install, maintain, replace and operate the Equipment and ancillary infrastructure at the Project Site as per the specifications and standards set out in Schedule 4;
- i. maintain complete record of the information generated by the Equipment;
- j. bear and pay all costs, expenses, fees, taxes, levies and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- k. subject to this Agreement and other relevant provisions under Applicable Laws, enter into agreements with such legal entities, as it may deem necessary and appropriate, for performing its obligations under this Agreement;
- l. the Concessionaire may not create any Encumbrance on the Equipment, Project Installations or any part thereof;
- m. arrange pre-shipment inspection at manufacturer's site of work by a firm of international repute regarding their correctness and genuineness in respect of the approved meters specifications (with a certificate so issued to be provided at the time of delivery to site of work failing which material will not be accepted); and
- n. provide the Authority with the access of remote monitoring through automatic meter reading device; and
- o. exercise such other rights and obligations as the Authority may determine as being necessary or desirable for the purpose incidental and necessary for implementing the Project.

2.4. "Concession Period" or "Term" of Agreement

- (a) This Agreement shall be valid and binding on the Parties commencing from the date of execution of this Agreement for a period of twelve (12) years thereafter and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions of this Agreement. Provided that in the event of early termination, the period of the Agreement shall be

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limited to the period commencing from the Appointed Date and ending with the Termination Date.

- (b) Upon expiry of the Concession Period as per this Article, hundred percent (100%) of the Ordinary Share Capital of the Concessionaire along with Transfer Assets in working conditions conforming to the specified parameters, as certified by the Quality Assurance Inspector, shall be transferred to the Authority in accordance with the provisions of Article 12 (*Transfer of Shares*).

2.5. Acceptance by Concessionaire

In consideration of the rights, privileges and benefits conferred upon by the Concessions Authority pursuant to this Agreement and other good and valuable consideration expressed herein, the Concessionaire hereby accepts and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

3. CONDITIONS PRECEDENT

3.1. Conditions Precedent

Save and except as may otherwise be expressly provided herein, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of all the conditions precedent ("Conditions Precedent") as set out in Article 3.1.1 and Article 3.1.2 hereinbelow on or before the expiry of a period of sixty (60) days from the date of execution of this Agreement.

3.1.1. Conditions Precedent for the Authority

The Authority shall have:

- (a) allowed the Concessionaire to access the relevant locations on the Project Site;
- (b) upon receipt of the Construction Performance Security, returned the RFP Bid Bond to the Successful Bidder;
- (c) if required, appointed Consultants in accordance with the terms of this Agreement;
- (d) given comments / observations and ordered Variations (if any) to the Approved Detailed Plan for construction, development and installation of Equipment submitted by the Concessionaire under Article 3.1.2 (c), within a time period of (●) days from the date of its receipt. Failure to do so will be considered deemed approval of the Detailed Plan by the Authority; and
- (e) given comments / observations (if any) to an amendment of the Approved Detailed Plan within (●) days from the date of its receipt.

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3.1.2. Conditions Precedent for the Concessionaire

The Concessionaire shall have complied with the following:

- (a) Provided the Authority with the Construction Performance Security in accordance with Article 8.2;
- (b) Prepared an Approved Detailed Plan for the Project including the complete design, plan, drawings and all other details required for construction, installation of Equipment and carrying out the Project and achieving the Project Construction Completion Date in accordance with this Agreement and the Applicable Laws. The Approved Detailed Plan shall include construction, finishing details, installation plan and lay outs of the Equipment at the Project Site in accordance with the plan provided in Schedule 4;
- (c) Submitted the Approved Detailed Design to the Authority and/or its appointed Consultant, if any, for their review within a period of (15) days from the date of the execution of this Agreement. If the Authority or its Consultant provides any comments on the Approved Detailed Plan the Concessionaire shall revise the Approved Detailed Plan and resubmit for review;
- (d) Provided the Authority with copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- (e) Delivered to the Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into the Agreement and the enforceability of the provisions thereof;
- (f) Provided to the Authority evidence of import/procurement of Equipment including commercial invoice, packing list, bill of lading, letter of credit and the certificate referred to in Article 2.3(l);
- (g) Sought and received the approval of all term sheets in respect of the Financial Assistance to be obtained from the Lender(s);
- (h) Executed the Financing Agreements and delivered to the Authority, three (3) true copies thereof, duly attested by a Director of the Concessionaire;
- (i) Achieved Financial Closure pursuant to the Financing Agreements within (180) days of the execution of this Agreement and delivered to the Authority, documents evidencing the same including 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model;
- (j) Delivered the Authority with copies of all insurance / takaful policies (if any) obtained in accordance with Article 8.6.;

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- (k) Executed the Integrity Pact in the form provided in Schedule 6 (*Integrity Pact*);
- (l) Provided the Authority with copies (certified as true copies by Director of the Concessionaire) of the constitutional documents of the Concessionaire including the Memorandum and Articles of the Association of the Concessionaire as well as all forms filed with the Securities Exchange Commission of Pakistan; and
- (m) Obtained all Government Agency clearances and Applicable Permits under the Applicable Laws for the purposes of the Project.

3.1.3. Obligations to Satisfy Conditions Precedent

- (a) Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within sixty (60) days of the Appointed Date.
- (b) Upon satisfaction in full of all Conditions Precedents for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).
- (c) The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the “**Compliance Date**”, whereupon the remaining obligations of the Parties under this Agreement shall commence and whereon the Authority shall issue the “**Notice to Commence**” to the Concessionaire.
- (d) Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

3.1.4. Non-fulfilment of Conditions Precedent

- (a) In the event that (i) any of the Conditions Precedents relating to the Concessionaire set forth in Article 3.1.2 have not been fulfilled by or before sixty (60) days of the Appointed Date, (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, and (iii) unless, the Authority has not waived them fully or partially, the Authority shall have the right to terminate this Agreement forthwith by notice to the Concessionaire and, in case the Authority exercises such right of termination, no Party shall subsequently have any rights or obligations under the Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- (b) In the event the Authority has terminated the Agreement under Article 3.1.4(a) due to non-fulfilment of Conditions Precedent by the Concessionaire, the Authority shall not be liable in any manner whatsoever to the Concessionaire or its Sub-Contractors, agents and employees and the Authority shall encash the Construction Performance Security or the RFP Bid Bond (as the case may be) of the Concessionaire.
- (c) In case of early termination of the Agreement, the Concessionaire shall not have any right whatsoever to access the Project Site or any part thereof.

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- (d) In the event that the Concessionaire has fulfilled its Conditions Precedent and the Authority has not procured fulfilment of any or all of the Conditions Precedent set forth in Article 3.1 within the period specified in respect thereof, then the Concessionaire has the option to terminate the Agreement, in which case the Authority shall be liable to return the Concessionaire the Construction Performance Security but the Authority shall have no other liability to the Concessionaire whatsoever.
- (e) Instead of terminating the Agreement as provided in this Article 3.1.4, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

4. THE PROJECT SITE

4.1. The Licence for the Project

- (a) The Concessions Authority shall procure the access to the relevant locations at the Project Site for the Concessionaire in accordance with the provisions of this Agreement.
- (b) It is expressly agreed that the license granted hereunder to access the relevant locations at the Project Site shall terminate automatically and forthwith, without the need for any action to be taken by the Concessions Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever.
- (c) Notwithstanding anything contained herein, the Concessionaire acknowledges that its only right to the Project Site is a licence to access the same for the purposes contemplated by this Agreement and the Concessionaire has no ownership or leasehold rights with respect to the Project Site or any part thereof.

4.2. Right and Use of the Project Site

- (a) The Concessionaire shall have access to all the relevant locations on the Project Site (s) and to make at its costs, charges and expenses such investigations and development activities (including but not limited to construction, installation of equipment and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project. However, it is being clarified here that in the event of Termination of the Agreement due to non-fulfilment of Conditions Precedent, the Authority shall have no liability to make any payment for the activities undertaken by the Concessionaire on the Project Site.
- (b) The Concessionaire shall not mortgage, transfer, assign, license or otherwise create an Encumbrance on the Project Installations or any part thereof, including the Equipment, during the Concession Period. During the Concession Period, the Concessionaire shall protect the Project Installations from any and all seizures, damage, or Encumbrances, and shall not place or create nor permit any Sub-Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Project

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Installations, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

- (c) The Concessionaire may undertake the installation of meter, equipment at the designated areas of the Project Site either by itself or through a Sub-Contractor possessing the requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the International Standards and all other obligations set forth in this Agreement in this regard.
- (d) Subject to the terms of this Agreement, the Concessionaire shall have the right to develop or set up as the context admits or requires, and operate and maintain the Project by itself or through its Sub-Contractors but all risks and responsibilities of performance of obligations under this Agreement shall be solely of the Concessionaire.
- (e) The Concessionaire shall not without the prior written approval of the Authority conduct any activity on the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (f) During the Concession Period, the Concessionaire shall provide the Quality Assurance Inspector and/or the Authority any documentation as required by the Quality Assurance Inspector and/or the Authority with regard to the Project being undertaken by the Concessionaire.
- (g) The Project Installations shall always be accessible to the Authority, the Quality Assurance Inspector, any experts/Consultants appointed by the Authority and their employees and agents for inspection, viewing and as exercise of their rights and performance of their obligations under this Agreement.
- (h) The Concessionaire shall ensure that any hazardous or contaminated material used or intended to be used in carrying out in the Project or in the maintenance of the Project Installations are kept under control and safe keeping in accordance with Applicable Law and Good Industry Practice, and shall ensure all such materials are properly and clearly labelled.

5. VARIATION

5.1. Right to Vary

- (a) The Authority may request a Variation to the Approved Detailed Plan, by issuing a notice ("**Variation Notice**") to the Concessionaire directly or through the Consultant, setting out in detail the changes required to be made in the Approved Detailed Plan if it is necessary due to an unforeseeable event that is beyond the control of the Authority and if it does not materially or fundamentally change/alter/vary the scope of Concession as provided in Article 2.3 of this Agreement. This Variation Notice can only be issued if it has been approved by the PPP Monitoring & Policy Board.

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- (b) Variations may be initiated by the Authority at any time prior to issuing the Project Installation/ Construction Completion Certificate.
- (c) The Concessionaire shall, within two (2) weeks of receipt of the Variation Notice, provide to the Consultant (if applicable) such information as is necessary and reasonable together with preliminary documentation and details including calculations where necessary, in support of the following:
 - (i) The impact (if any) of the said variation to the Approved Detailed Plan is likely to have on the Project;
 - (ii) The options for implementing the proposed variations and the effect, if any, of each such option would have based on the costs and time thereof;
 - (iii) The estimate of the additional cost and expenses, including for the additional works, which shall be incurred by the Concessionaire for implementing the said variation to the Approved Detailed Plan; and
 - (iv) The assessment of the time (in number of days) which is required to make such variation to the Approved Detailed Plan, and the time implication on the Construction phase of the Project.
- (d) The Consultant (if applicable) shall review the aforesaid information and documents submitted by the Concessionaire, and consult with the Concessionaire, and based on the preferred option:
 - (i) Settle the rates, approve the quantities, and certify the Additional Cost which shall be payable by the Authority to the Concessionaire;
 - (ii) If the Project is delayed as a consequence of the Variation to the Approved Detailed Plan, certify the further Additional Costs which shall be payable by the Authority to the Concessionaire to compensate the Concessionaire for any estimated loss, cost or expense incurred as a consequence of the delay;
 - (iii) Forward to the Authority for its consideration a statement incorporating the certified Additional Cost, and the time within which the Variation to the Approved Detailed Plan shall be carried out by the Concessionaire; and
 - (iv) Forward to the Concessionaire a copy of the statement for the Concessionaire's records.
- (e) The Authority may, within a period of thirty (30) days from the date of such statement, issue a written confirmation that the Variation to the Approved Detailed Plan is to be carried out by the Concessionaire, whereupon the Concessionaire shall proceed with the implementation of such changes to the Approved Detailed Plan, and the Authority shall make payment of the certified Additional Cost as certified by the Consultant.
- (f) If the Concessionaire does not receive the written confirmation of the Authority within a period of thirty (30) days from the date of the statement, the Variation Notice issued

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by the Authority under this Article shall be deemed to be void, and the Authority shall reimburse the Concessionaire, the cost and expenses as certified by the Consultant as having been incurred by the Concessionaire in preparing and submitting the drawings, documents, estimates and other information in compliance with the Variation Notice.

- (g) A Variation Notice may only be issued by the Authority if the estimate of the cumulative Additional Costs and expenses to be incurred by the Concessionaire for the implementation of the said Variation to the Approved Detailed Plan (after taking into consideration all other Variation Notices, if any, already issued) does not exceed ten percent (10%) of the Total Project Cost.
- (h) It is important to clarify that any Additional Cost that becomes payable under this Article as a result of Variation will be paid directly by the Authority to the Concessionaire and shall not form part of the Total Project Cost.

5.2. Value Engineering

- (a) The Concessionaire may, at any time, submit to the Authority a written proposal which (in the Concessionaire's opinion) will, if adopted: (i) accelerate the completion of the Project Installations; (ii) reduce the cost of maintaining or operating the Project Installations; (iii) improve the efficiency or value of the completed Project Installations; and/or (iv) otherwise be of benefit to the Authority.
- (b) The proposal shall be prepared at the cost of the Concessionaire and shall include the items and information listed in Article 5.1(c).

5.3. Variation Procedure

- (a) The Authority shall, as soon as practicable after receiving such proposal (under Article 5.2 (*Value Engineering*)), respond with approval, disapproval or comments. The Concessionaire shall not delay any work whilst awaiting a response.
- (b) Upon approving a Variation, the Concessionaire shall make revisions in Approved Detailed Plan and get it approved from the Consultant.

6. THE PROJECT COMPLETION AND COMMERCIAL OPERATION DATE

6.1. Project Completion

- (a) The Concessionaire shall set up and complete installation work of the Project within two (2) years of the execution of this Agreement (**the "Installation/Construction Period"**) in conformity with the Approved Detailed Plan and International Standards.
- (b) The Concessionaire shall install brand new water meters, equipment at the Project Site in compliance with standards and specifications.
- (c) During the Installation/ Construction Period, the Concessionaire shall furnish to the Authority and the Quality Assurance Inspector monthly progress reports of actual

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progress of the construction works and shall give all such other relevant information as may be required by the Authority and/or the Consultant.

- (d) The Quality Assurance Inspector shall inspect the installation/construction works of the Project Installation during the Installation/Construction Period and make out an Inspection Report of such inspection (the “**Inspection Report**”). It shall send a copy of the Inspection Report to the Authority and the Concessionaire. The Concessionaire shall take necessary action to remedy the defects and deficiencies, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. If the Quality Assurance Inspector, after appropriate inspections and tests, reasonably considers that materials which are not in accordance with the International Standards are being used for carrying out the Construction of the Project Installations, it may notify the Concessionaire, setting out the basis of such consideration and changes which the Concessionaire should undertake to comply with the International Standards. Such inspection or submission of Inspection Report by the Quality Assurance Inspector shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- (e) In the event that the Project Construction Completion Date is not achieved within two (2) years of the execution of this Agreement for any reason other than a Force Majeure Event or reasons attributable to the Authority, the Concessionaire shall pay to the Authority damages for delay beyond the date on which the Project Construction Completion Date was due to occur to the extent of one percent (1%) of the amount of the Construction Performance Security per day for every day of delay or part thereof until the Project Installations are completed. The Authority and the Concessionaire agree the aforesaid damages are a reasonable compensation for the loss suffered by the Authority and are not a penalty. Provided that nothing contained in this paragraph shall be deemed or construed to authorize any delay by the Concessionaire in establishing and setting up the Project Installations within the Construction Period.
- (f) In the event that the Project Installation is not completed within the **90** days period following the end of the Construction Period, the Authority shall be entitled to encash the Construction Performance Security and to terminate the Agreement on account of a Concessionaire Event of Default. Provided that, the Authority may, in its sole discretion, extend the time for completing the Project on such terms and conditions as it deems fit.

6.2. Project Construction Completion Certificate

Upon completion of the Project Installations and achievement of the Project Construction Completion Date, the Concessionaire may seek the issuance of “**Project Construction Completion Certificate**” upon written intimation to the Authority of such completion. The Authority itself or through the Quality Assurance Inspector or any other Consultant(s) appointed pursuant to this Agreement, shall conduct the necessary tests/inspections to ensure that the Project Installations are completed in accordance with the International Standards and Good Industry Practice and carry out detailed inspections of the Project Installations relating to the requirements set out in this Agreement and the Approved Detailed Plan and verify the relevant documentation. The date and time of each of the inspection and test shall be determined by the Quality Assurance Inspector in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the inspection and tests. Upon completion of each inspection/test, the Quality Assurance

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Inspector shall provide to the Concessionaire and the Authority copies of all inspection/test data including detailed results. For the avoidance of doubt, it is expressly agreed that the Quality Assurance Inspector may require the Concessionaire to carry out or cause to be carried out additional inspection/tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards. If the inspection/tests are successful as determined by the relevant Quality Assurance Inspector and all parts of the Project Installations have been completed and can be legally, safely and reliably opened for commercial operations (in the opinion of the Quality Assurance Inspector), the Quality Assurance Inspector and the Authority shall jointly issue the Project Construction Completion Certificate to the Concessionaire in the form prescribed in Schedule 8- Annex B. Project Construction Completion Certificate shall not be valid, unless it is signed by the Quality Assurance Inspector appointed by the Authority for conducting inspection/tests. The cost of conducting inspection/tests by the Quality Assurance Inspector shall be exclusively borne by the Concessionaire.

6.3. Commercial Operation Date (COD)

The commercial operation date of the Project shall be the first Business Day following the date on which Construction Period is completed (the "COD" or the "Commercial Operation Date"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to collect the User Charges in accordance with this Agreement.

7. CONSIDERATION, USER CHARGES, REIMBURSEMENT MECHANISM

7.1. User Charges

In consideration of making available the services and the Equipment installed at the Project Site, the Concessionaire shall be paid a User Charge against per Equipment, i.e. water meter installed by the Concessionaire.

7.1.1. Reimbursement of Charges

- (a) After the installation of water meters in thirty (30) days at the Project Sites the Concessionaire shall invoice the Authority the meter upfront charge for the installed water meters as per the agreed Specifications.
- (b) On and from the installation of water meter in thirty (30) days at the Project Sites the Concessionaire shall invoice the Authority the meter user charge for the installed water meters as per the Key Performance Indicators (KPI) and the concession period will be 10 years for that batch.
- (c) Concessionaire shall maintain all record of the water consumed through the water meters.
- (d) The Concessionaire shall raise an invoice every thirty (30) days for the use of the Equipment and submit it to the Authority. The invoice shall note the User Charges, Equipment specification and the period of billing. The Authority or its appointed Consultant shall verify through inspection on sample basis the accuracy of the water meters readings provided by the Concessionaire.. In case of discrepancy between the invoice and the Inspection Report, the Authority shall inform the Concessionaire within fifteen (15) days of the receipt of invoice. The Parties shall use their best efforts to amicably resolve the matter.

7.1.2. General Terms

Following terms shall be applicable to all invoices payable under this Article:

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- (a) The Authority shall ensure that payments for all the invoices raised shall be reimbursed to the Concessionaire within a period of sixty (60) days of receipt of invoice. In case of discrepancy between the invoice of the Concessionaire and the record of the Authority, the Authority shall settle the invoice to the extent of undisputed amount of the invoice in the said period.
- (b) In case the Authority fails to make any payment within sixty (60) days of receipt of invoice, the Authority shall pay to the Concessionaire interest on the undisputed amount of such delayed payment at the rate of (KIBOR+ 1%) per annum for the period of delay until the payment has been made in full.
- (c) In event of failure of the Concessionaire to maintain/achieve the specifications, standards and Good Industry Practice as outlined in Schedule 4 Annex A and B, the Authority shall be entitled to deduct such payment amounts, as shall be determined in accordance with Schedule 7.
- (d) All taxes, charges, duties, cess, fees related to the Project or any services thereof shall be payable by the Concessionaire.
- (e) In consideration of entering into this Agreement, the Concessionaire shall only be paid the User Charges per water meter installed. The Authority shall not be liable to pay any other amount to the Concessionaire.
- (f) The Authority shall have the right to withhold and set-off against any amount it is liable to pay to the Concessionaire pursuant to this Agreement, the amount of any payment due to be paid to the Authority by the Concessionaire pursuant to this Agreement.
- (g) In case the concessionaire is failed to provide meter reading to the Authority then the concessionaire is liable to pay penalty at (KIBOR+ 1 %)on the revenue loss to Authority as determined by joint auditor.

8. OBLIGATIONS OF CONCESSIONAIRE

In addition to and not in derogation or substitution of any of its other obligations under the Agreement, the Concessionaire shall have the following obligations, following satisfaction of the Conditions Precedent:

8.1. Project Development

The Concessionaire shall:

- (a) Establish the Project Installations in accordance with this Agreement; and
- (b) Maintain an equity-to-debt ratio of 20:80 during the period between the Compliance Date and the Project Construction Completion Date.

8.2. Performance Guarantee

- (a) For due and punctual performance of its obligations under this Agreement, relating to

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the Project, the Concessionaire shall deliver to the Authority and maintain the Construction Performance Security and the O&M Performance Security in the manner prescribed in this Agreement (collectively the “**Performance Guarantees**”). The Performance Guarantees shall be prepared and submitted as per the formats given in **Schedule 2** of this Agreement.

- (b) Each Performance Guarantee shall be from a Scheduled nationalised bank or a financial institution approved by the Authority, payable at Lahore, Punjab, Pakistan. Each Performance Guarantee shall be valid for a period of twelve (12) months. The Construction Period Performance Security shall be renewed at least thirty (30) days prior to the expiry of the security so as to ensure that the Construction Period Performance Security remains valid throughout the Construction Period and the O&M Performance Security shall be renewed every year during the O&M Period portion of the Concession Period, at least thirty (30) days prior to the date of expiry of the security. All charges, fees, costs and expenses related to the Performance Guarantee shall be borne and paid by the Concessionaire.
- (c) Upon the occurrence of a Concessionaire Event of Default during the Concession Period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the relevant Performance Guarantee as damages. Upon such encashment and appropriation from the Performance Guarantee, the Concessionaire shall, within thirty (30) days replenish the Performance Guarantee, in case of partial appropriation, to its original level before such encashment or appropriation and in case of appropriation of entire Performance Guarantee to provide a Performance Guarantee and the Concessionaire shall, within the time so granted replenish or furnish to the Authority a fresh Performance Guarantee as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.
- (d) If this Agreement is terminated due to any event other than a Concessionaire Event of Default, the relevant Performance Guarantee shall, subject to the Authority’s right to receive or recover amounts, if any, due from the Concessionaire under the Agreement, be duly discharged and released to the Concessionaire.

8.3. Financing Arrangement, Payment of Taxes, etc.

- (a) Prior to Financial Closure, the Concessionaire shall deliver to the Authority 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 a debt obligation that is not more than eighty percent (80%) of Total Project Cost including the maximum principal amounts and interest rate or rates (or mark-up or any other term connoting the return paid to the Lender on debt) and any Schedules or formulae that will be included in the Financing Documents for the computation of fees and charges payable to the Lender upon the winding up for early termination of the loans under the Financing Documents, and shall also identify the equity commitment of the Successful Bidder. The Authority will evaluate the principal repayment schedule and other principal financial terms and the equity commitments in the Project, to ensure that the other principal financial terms are consistent with the principal repayment schedule, and to evaluate the impact on the Authority’s obligations upon any termination of this Agreement. If the Authority has any objections to the terms

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specified in such term sheet or schedule, it shall inform the Concessionaire thereof within fifteen (15) days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms 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 non-objection by the Authority. The Concessionaire shall provide the Authority with a copy of the Financing Documents as executed no later than fifteen (15) days after the date of such execution.

- (b) Following Financial Closure, the Concessionaire shall deliver to the Authority, copies of all amendments to the executed Financing Documents within ten (10) 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 Authority, no less than thirty (30) days prior to execution of such amendment or modification to the Financing Documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. The Authority 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 fifteen (15) days of receipt of the term sheet or schedule. At the request of the Authority, prior to the execution of such amendments or modifications to the Financing Documents or new loan documents, the Concessionaire shall deliver to the Authority, in a form satisfactory to the Authority, 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 Authority hereunder or affect, in any way, the right of the Authority to acquire the Project Installations and Equipment free and clear of all Encumbrances at the end of the Concession Period or in the event of early termination.
- (c) The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority which shall be granted in accordance with the PPP Act.
- (d) The Concessionaire shall at its own cost, expense and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement and achieve Financial Closure within a period of (180) days from the date of execution of this Agreement.
- (e) The Concessionaire shall pay all duties, taxes, levies, etc. such import duties, etc. towards all or any of the Equipment, material, furnishings, etc. to be installed on the Project Site.
- (f) The Concessionaire shall pay at its own cost all applicable, existing and future taxes / charges / fees / levies in respect of the Project / Project Site, as levied.

8.4. Project Implementation

- (a) The Concessionaire shall complete the Project Installations in accordance with the standards and specifications as stipulated in **Schedule 4** and as per the RFP, within the Construction Period or such extended date as may be approved by the Authority as per PPP Act, 2019 pursuant to the terms of this Agreement.
- (b) The Concessionaire shall obtain all necessary approvals, permissions and sanctions for setting up of Project, installation of Equipment and other allied infrastructure and facilities in accordance with International Standards and Applicable Laws.
- (c) The Concessionaire may undertake construction works and services by itself or through Sub-Contractor(s) possessing requisite technical, financial and managerial expertise / capability; but in any case the Concessionaire shall and will remain solely responsible for its overall liabilities and obligations under the contract, overall supervision, monitoring and control of the activities of all the Sub-Contractors, their employees and agents engaged under respective **“Project Agreements”** as may be necessary.
- (d) For this purpose, Concessionaire shall undertake all necessary activities such as designing, planning, developing, financing, installation, establishing, marketing, operating and maintaining the Project and the Project Site, in accordance with the provisions of the Agreement and as per Good Industry Practice.
- (e) The Concessionaire shall procure and install new, specified and necessary Equipment, plant, machinery, apparatus, services and its supporting infrastructure towards the Project. It shall keep all the necessary Project equipment adequately insured and shall pay regular and timely premium, at its own cost.
- (f) In terms of the provisions of the Agreement, the Concessionaire shall make timely payment to the Authority, wherever required and applicable.
- (g) The Concessionaire shall implement and make operational the Project Installations and Equipment within the Construction Period.
- (h) The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within fifteen (15) days of the receipt of such drafts. Within seven (7) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.
- (i) The Concessionaire shall ensure that all the Project Agreements, to be entered into with the Third Parties, are co-terminus with the Concession Period of this Agreement and in case of Termination of this Agreement (either by efflux of time or pre-mature), the Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, arising out of from such Project Agreements, in case they continue to accrue, shall henceforth be accrued / appropriated to the Authority. It is being clarified here that the similar provision shall be mandatorily incorporated in all

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the Project Agreements and the signed copy of the Project Agreements shall be submitted to the Authority for perusal.

- (j) The Concessionaire shall procure and provide all machinery, plant and Equipment necessary to complete the works. All Concessionaire's Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the Project.
- (k) The Concessionaire shall maintain an adequate inventory of consumable and spare parts, and undertake periodic and preventive maintenance as required for the relevant Equipment. The Concessionaire shall ensure continuous workflow as required under the Project. Breakdown of machinery or Equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.
- (l) The Concessionaire shall replace the broken machinery and Equipment immediately after its occurrence and shall bear the entire cost.
- (m) The Concessionaire shall ensure complete compliance with Applicable Laws regarding environmental regulatory authorities and other environmental aspects.
- (n) The Concessionaire shall be prohibited to undertake activities which are mentioned in **Schedule 9 (Prohibited Activities)**.

8.5. Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the Project Installations in accordance with **Annex B of Schedule 4**, Good Industry Practice and Applicable Laws during the O&M Period. The Concessionaire shall throughout the continuance of this Agreement, have full control and management of Project.
- (b) Prior to the Project Construction Completion Date, the Concessionaire would submit to the Authority, an Operations and Maintenance Manual for the Project ("**O&M Manual**") setting out in detail the Standard Operating Procedures, periodicity and other details of the operation and maintenance activities to be carried out for the Project. The Concessionaire shall get the Operation and Maintenance Manual approved by the Authority and any amendments thereof.
- (c) The Concessionaire may undertake operations and maintenance of the Project Installations by itself or through a Sub-Contractor possessing requisite technical, financial and managerial expertise / capability, provided that the Concessionaire shall be solely responsible for the operation and maintenance of the Project in accordance with the provisions of the Agreement and it shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner.
- (d) The Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the Good Industry Practices, Applicable Laws and as mentioned in section 2.3 (c). The Concessionaire shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the test results. The Concessionaire shall be responsible to replace the defective water

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meter free of cost, if required, during the Concession Period.

- (e) The Concessionaire shall be entitled at its own costs, expenses and consequences to perform the following:
 - (i) Institution and supervision of operating policies, principles, systems and procedures for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
 - (ii) Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
 - (iii) To issue its receipts and invoice in its own name.
- (f) The Concessionaire shall arrange for, provide, deploy and remove, as applicable, all Project personnel, at its own cost and expense. Provided that there is no conflict of interest or not prevented under any Applicable Law, the Concessionaire may hire existing staff of the Authority, according to its recruitment and compensation policy. The Authority shall use its reasonable efforts to facilitate such hiring, if required and allowed.
- (g) The Concessionaire will take professional indemnity insurance in respect of the negligence of its staff members, employees, executives, authorities in the operation and management of the Project. The Concessionaire shall throughout the term of the Agreement maintain the professional indemnity insurance, error or omission insurance and from time to time regularly bear and pay the insurance premium in this regard. The Concessionaire shall also maintain any other insurance that may be necessary and/or required by law to protect the Concessionaire, its employees and their assets against loss, damage, destruction, business interruption or loss of profit (including insurance against all Force Majeure Events that are insurable).
- (h) The Concessionaire shall bear and pay all expenses, taxes, due and payable in respect of operation and management of the Project, including sales tax, VAT, income tax, duties, fees where applicable, service tax, luxury tax and the like and will ensure that these are paid in time and no defaults are made in respect of the same. Further the Concessionaire shall ensure that all returns in this regard are filed before the due date as per Applicable Laws.
- (i) The Concessionaire shall not in the operation of the Project do any act or omission which shall be unlawful in nature and throughout the term abide by all the law, rules, orders, regulations and other requirements as applicable for the operation and management of the Project from time to time.
- (j) The Concessionaire shall keep and maintain all such books, records and reports as are required to be maintained under Applicable Laws and shall submit or cause to be submitted to appropriate authorities, all information and reports as are legally required.
- (k) The Concessionaire shall submit to the Authority a copy of its audited annual report every year during the Concession Period.

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- (l) The Concessionaire shall furnish to the Authority such information as required by the Authority with respect to operation and maintenance of the Project Installations.
- (m) Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reason whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Authority indemnified in this regard.
- (n) The Concessionaire will ensure that the highest service standards and Good Industry Practice of similar standing will be adopted and followed in the said Project throughout the Concession Period.
- (o) In the event the Concessionaire has failed to operate and maintain the Project in accordance with Good Industry Practice and as per the provisions of this Agreement, a notice to that effect will be issued by the Authority to the Concessionaire. The Concessionaire shall take all steps to address the concerns raised by the Authority in the said notice within reasonable period. If the Concessionaire does not remedy any such Material Breach in the period specified in the notice, it shall be constituted as a Concessionaire Event of Default in terms of the provisions of Article 11.1.1.
- (p) In the event that the Concessionaire closes the Project Installations for any reason other than Force Majeure or reasons attributable to the Authority, and such closure of the Project Installation or any part thereof continues for a period that extends beyond one (1) week, the Concessionaire shall pay to the Authority damages for non-performance to the extent of 1% of the O&M Performance Security per day for every day of delay or part thereof until the Project is opened and operational again. Provided that nothing contained in this paragraph shall be deemed or construed to authorize any delay by the Concessionaire in the operation and maintenance of the Project Installation during the O&M Period or any closure of the Project Installation.
- (q) The Concessionaire may subcontract operation and maintenance of parts of the Project Installations, provided however, that it shall be obligatory upon the Concessionaire to provide copies of all such Project Agreements entered into from time to time with Third Parties to the Authority, with incorporated clauses, in all Project Agreements with such respective Third Parties, that: (i) the period of the Project Agreement shall be co-terminus with the Term of this Agreement and (ii) in case of Termination of this Agreement (by efflux of time or pre-mature termination), the Authority shall have the option to continue with such Project Agreements in its own discretion, such that all proceeds / rentals, arising out from such Project Agreements of the Project Installations, in case they continue to accrue, shall henceforth be accrued / appropriated to the Authority.
- (r) The Concessionaire shall invite a representative of the Authority, as nominated by the Authority, every year to the annual general meeting of the Concessionaire.
- (s) The Concessionaire shall submit the as-built documentations for the complete Project

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Installations before the Transfer Date.

- (t) In case of non-compliance the concessionaire shall rectify the defect within two (2) weeks, in case if the required results are not achieved through rectification then he shall replace the meter.

8.6. Insurance

8.6.1. General

The Concessionaire agrees to secure at its own expense and to keep in force at all times during the Concession Period hereof, takaful or insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of obligations under this Agreement by the Concessionaire, its agents, representatives or employees. Takaful or insurance requirements do not limit in any way the indemnity covenants contained in this Agreement or scope of liability of Concessionaire under this Agreement. Takaful or insurance must be maintained without any lapse in coverage during the entire Term of this Agreement. Takaful or insurance cancelled without the Authority's consent or failure by Concessionaire to provide evidence of renewal within forty-eight (48) hours after written notice by the Authority is a Material Breach and shall be deemed an immediate Event of Default on behalf of the Concessionaire under this Agreement.

8.6.2. Takaful or Insurance During the Concession Period

- (a) During the Concession Period, the Concessionaire shall at its own cost and expense, procure and maintain at all times takaful or insurance from takaful or insurance companies with a minimum rating of 'AA+' ranking, issued by IFSR / PACRA / JCR /VIS/equivalent or by an agency working on behalf of the Federal / Provincial Government, as necessary including but not limited to the following:
 - (i) A contractor's all risks policy for the full value of the works to include cover for all goods, equipment, materials, plants and other items necessary for the works including when they are in transit to the Project Site;
 - (ii) Cover for any damage to the Project, in part or whole, caused by the Concessionaire's vehicles, tools, equipment or personnel;
 - (iii) Workmen's compensation insurance;
 - (iv) Professional indemnity and/or error and omission insurance coverage, including coverage for complete cost of design works;
 - (v) Comprehensive Third-Party liability including injury or death to personnel or representatives of Persons or Users for each incident for at least PKR 1 million per incident (the number of the incidents to be unlimited);
 - (vi) Any other cover that may be necessary including against such Force Majeure Events that are insurable in accordance with Good Industry Practice.

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- (b) Upon the occurrence of any loss under the policy of takaful or insurance, the Concessionaire shall itself utilize the proceeds received from takaful or insurance to make good the loss. In the event of the proceeds received under the policy of takaful or insurance be insufficient to cover the necessary repair and or restoration works, or the cost of replacement, as the case may be, the Concessionaire shall make good the deficiency thereof.

8.6.3. Evidence of Takaful / Insurance

The Concessionaire shall, upon receipt of the duly executed policies of takaful or insurance, provide to the Authority with copies of all such policies at least fifteen (15) days prior to the Compliance Date.

8.6.4. Validity of Takaful or Insurance

The Concessionaire shall promptly pay all insurance premiums and ensure that the takaful or insurance policies are in force and valid throughout the Concession Period. Each takaful or insurance policy shall provide that the same shall not be cancelled or terminated unless ten (10) days clear notice of cancellation is provided to the Authority in writing. If at any time the Concessionaire fails to obtain or maintain in full force and effect any of the insurance required under this Agreement, the Authority may at its option obtain and maintain such insurance and all sums incurred by the Authority thereof shall be reimbursed by the Concessionaire to the Authority within seven (7) days from the receipt of claim in respect thereof made by the Authority or otherwise settle with the Concessionaire.

8.6.5. Application of Takaful or Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all takaful or insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Installation or any part thereof which may have been damaged or destroyed. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Installations after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

8.6.6. Waivers

- (a) All takaful/insurance covers taken under this Article 8.6 shall include a waiver of any right of subrogation of the insurers therein against, *inter alia*, the Concessionaire and its Sub-Contractors, employees, successors, permitted assigns, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- (b) All the insurance policies shall include the Authority as a beneficiary along with the Concessionaire.

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8.7. Regulatory Clearances and Compliance

At all times, the Concessionaire shall obtain the requisite regulatory and Applicable Permits from the appropriate Government Agency and shall also ensure that the processes employed in the establishment, installation, operation and maintenance thereof, for the Project is in compliance to the Applicable Laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

8.8. General Obligations

The Concessionaire shall:

- (a) 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;
- (b) at all times, to afford access to the Project Site to the authorized representatives of the Authority, the Lenders, other persons duly authorized by any Government Agency having jurisdiction over the Project, to inspect the Project and to investigate any matter within their authority and upon reasonable notice;
- (c) perform and fulfil its obligations under the Financing Documents;
- (d) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under the Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Authority against any claims, damages, expenses or losses in this regard and that in no case and for no purpose shall the Authority be treated as employer in this regard;
- (e) observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits from time to time;
- (f) ensure that the Project Installations and Equipment remains free from all Encumbrances and take all steps necessary to remove any encumbrances, that may have come into existence;
- (g) pay all taxes, duties, levies and outgoings, including utility charges relating to the Project;
- (h) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
- (i) to provide continuity of services as prescribed under this Agreement;
- (j) to provide equal quality of services in relation to all areas of the Project Site and without any bias;

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- (k) transfer the Project to the Authority in fully operational and functional condition upon termination of this Agreement, in accordance with the provisions thereof;
- (l) Ensure that the quality of the Equipment conform to the standards laid down by the Competent Authorities; and
- (m) Tackle with any issue arising out of any illegality that may have occurred during the O&M Period and indemnifying the Authority against the same.

8.9. No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under the Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under the Agreement is affected by or on account of any of the following:

- (a) Force Majeure Events, subject to Article 10;
- (b) The Authority's Event of Default;
- (c) Compliance with the directions of any Government Agency, other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder; and
- (d) Closure of the Project Installations, or part thereof, with the approval of the Authority.

8.10. Quarterly Progress Report

The Concessionaire shall prepare and submit report in each quarter on the progress of the Project (the "**Quarterly Progress Report**") to the Authority. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred and shall include report on the construction and establishment of the Project. Reports shall be submitted quarterly thereafter, each within seven (7) days of the last day of the period to which it relates. Each report shall include an executive summary of activities completed and under progress.

9. OBLIGATIONS OF THE AUTHORITY

9.1. Project Site:

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authority shall have the following obligations:

- (i) To facilitate the Concessionaire in getting all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek under this Agreement in connection with development of the Project and the performance of its obligations hereunder;
- (ii) The Authority shall hand over any existing Equipment/machinery to the Concessionaire as set out in Annex C of Schedule 4, however, the maintenance of such Equipment/Machinery shall be responsibility of the Concessionaire;

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- (iii) Upon written request from the Concessionaire, provide reasonable facilitation to the Concessionaire for the purpose of discharging its obligations under the Agreement by the Concessionaire;
- (iv) The Authority, through itself, or its nominee may undertake the overall monitoring of the Project Installations during O&M Period during Concession Period; and

9.2. Consultants

- (i) The Authority may appoint: (a) person(s) for review of the establishment of the Project during Installation/Construction Period; and (b) person(s) specialising in Project operations and maintenance for review of the operation and maintenance of the Project Installations (collectively, the “**Consultants**”). The Authority may also appoint third-party Consultants in accordance with the Punjab Public Procurement Regulatory Authority Act, 2009 (PPRA) and Rules 2014.
- (ii) The Authority shall also appoint a Quality Assurance Inspector to oversee Concessionaire’s works (including construction and operation & maintenance) including, but not limited to, assessing various performance metrics such as quality of the work done. To ensure smooth and efficient monitoring of the Project in accordance with the provisions of this Agreement, the Authority and Concessionaire shall jointly be responsible for the payments to the Quality Assurance Inspector in equal proportion.
- (iii) The roles and functions of the Quality Assurance Inspector and the Consultants (if appointed) shall be as mentioned in **Schedule 8 Annex A**.
- (iv) The Consultants shall submit regular periodic reports (at least once every quarter) to the Authority.
- (v) In case of appointment of Consultants in compliance with PPRA, the remuneration, cost and expenses of the Consultants shall be paid jointly by the Authority and the Concessionaire in equal proportion.
- (vi) If any Party disputes any advice, instruction, decision, direction or award of the Consultant, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with Article 13 (*Dispute Resolution*).

9.3. Appointment of Joint Auditor

- (a) A Joint Auditor shall be appointed by the Authority, from time to time, as required under this Agreement.
- (b) The remuneration, cost and expenses of the Joint Auditor shall be paid by the Authority, however fifty (50%) of such remuneration, cost and expenses of the Joint Auditor shall be paid to the Authority by the Concessionaire.

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- (c) If the Concessionaire has reason to believe that a Joint Auditor is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Joint Auditor. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Joint Auditor for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with Article 13 (*Dispute Resolution*). In the event that the appointment of the Joint Auditor is terminated hereunder, the Authority shall appoint forthwith another Joint Auditor.
- (d) If either Party disputes any advice, instruction, decision, direction or award of the Joint Auditor, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with Article 13 (*Dispute Resolution*).

9.4. Additional Cost Due to Change in Law

- (a) Where a Change in Law results in an increase in capital expenditure, the Authority shall reimburse the Concessionaire for any Additional Cost in excess of ten percent (10%) of the Total Project Cost. For the avoidance of doubt, the Concessionaire shall be solely liable for any Additional Cost equal to or below ten percent (10%) of the Total Project Cost.
- (b) Where such an Additional Cost is liable to be paid by the Authority to the Concessionaire in terms of Article 9.4(a) hereinabove, then it shall be paid directly by the Authority to the Concessionaire and shall not form part of the Total Project Cost.

9.5. Reduction in Costs Due to Change in Law

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 in any Accounting Year (as determined by the Joint Auditor), the Authority 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 Authority, 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 Authority 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 Authority; provided, that if the Concessionaire shall Dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 9.5 (*Reduction in Costs Due to Change in Law*) shall be restricted to such Change in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

10. FORCE MAJEURE

10.1. Force Majeure Event

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party (the “**Affected Party**”) and that on or after the date of Financial Closure materially and adversely affects the performance by such 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 Project Installations 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) A Non-Political Event shall mean one or more of the following acts or events which makes it impossible or impractical for the Affected Party to perform any of its obligations for a continuous period of not less than two (2) weeks from the date of its occurrence:
 - (i) Act of God, earthquake, unusual flood, inundation, landslide;
 - (ii) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
 - (iii) Fire caused by reasons not attributable to the Concessionaire or the Authority or any of the employees of the Concessionaire or the Authority;
 - (iv) Acts of terrorism, country-wide strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Sub-Contractor; or
 - (v) Any failure or delay of a Sub-Contractor caused by any of the aforementioned Non-Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Sub-Contractor.

- (b) A Political Event shall mean any event, including the following:
 - (i) Action of a Public Entity (i.e. an authority, agency or company effectively set up by and/or controlled by the Federal Government of Pakistan or any of the provincial governments, including the GoPb) of expropriation, nationalization or compulsory acquisition or takeover the Project Site, Project Installations or any part thereof from the Authority, thereby terminating the Concessionaire’s acquired rights of operation and maintenance as per this Agreement (other than in accordance with termination rights under this Agreement);

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- (ii) Early termination of this Agreement by the Authority for reasons of national emergency, national security or public interest; or
 - (iii) Any event or circumstances of a nature analogous to any of the foregoing.
- (c) An Indirect Political Event shall mean any of the following which makes it impossible for the Concessionaire to perform any of its obligations for a continuous period of not less than two (2) weeks from the date of its occurrence:
- (i) Ionizing radiation, serious epidemics, contamination by radioactivity from nuclear fuel, any nuclear waste, or radioactive toxic explosion;
 - (ii) Strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Authority;
 - (iii) War, hostilities (whether war be declared or not), acts of terrorism, rebellion, riots or ethnic violence, civil commotion, unrest, disruption or civil war; or
 - (iv) Invasion, act of foreign enemy, weapon conflict or military actions.

10.2. Force Majeure Period

The period commencing from the date of occurrence of a Force Majeure Event and ending on the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations.

10.3. Force Majeure Notice

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;
 - ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - iii. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - iv. any other information relevant to the Affected Party's claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

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- (c) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Sub-Clause (a), and such other information as the other Party may reasonably request the Affected Party to provide.

10.4. Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under the Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given as required by the preceding Article;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project as a result of the Force Majeure Event and to restore the Project Installation, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

10.5. Consequences of Force Majeure Event

In the case of Force Majeure Event, the Concession Period shall be extended by the period during which the Force Majeure Event continued, with the maximum extension of Concession Period being limited to one (1) year. In case, the Force Majeure Event takes place before the Project Construction Completion Date, the Construction Period shall also be extended by the period of the Force Majeure Event, with the maximum extension of Concession Period being limited to sixty (60) days. Extensions will be subject to approval of Board as per PPP Act, 2019.

10.6. Liability for other losses, damages etc.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense,

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claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

10.7. Termination for Continuing Force Majeure Event

Upon Termination of this Agreement due to a Force Majeure Event continuing for a period beyond one (1) year, Termination Payment shall be made to the Concessionaire by the Authority in accordance with the following:

- a) No Termination Payment shall be made due to Force Majeure Event before the Project Construction Completion Date.
- b) After Project Completion Date as approved by the Joint Auditor and the Consultant:
 - i) If Termination is due to a Force Majeure Event which is a Non-Political Event, Termination Payment shall be made by the Authority to the Concessionaire in the amount equal to Fifty Percent (50%) of the Book Value less any insurance proceeds recovered by the concessionaire.
 - ii) If Termination is due to a Force Majeure Event which is a Political Event, the Authority shall pay to the Concessionaire the Termination Payment, within six (6) months of Termination Notice, as a sum equal to the Book Value plus compensation at KIBOR + Three Percent (3%) per annum for the total equity investment plus extra one (1) year return on total equity investment at KIBOR + Three Percent (3%) per annum to be applied on Book Value, as approved by the Joint Auditor and the Consultant.
 - iii) If Termination is due to a Force Majeure Event which is an Indirect Political Event, the Authority shall pay to the Concessionaire a Termination Payment, within six (6) months of the Termination Notice, equal to one hundred percent (100%) of the Book Value, as on the date of Termination Notice, minus the amount recovered by the Concessionaire through the proceeds of any insurance obtained by it.

Provided that, the Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Authority from the Concessionaire as on the Termination Date and the Authority shall have an option to pay this Termination Payment within a maximum period of four (4) years in eight (8) bi-annual instalments subject to imposition of additional interest at KIBOR + three percent (3%) on account of delay in payment of due amount.

11. EVENTS OF DEFAULT AND TERMINATION

11.1. Events of Default

Events of Default shall mean either Concessionaire Event of Default or the Authority Event of Default or both as the context may admit or requires.

11.1.1. Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of Force Majeure in accordance with Article 10 or a breach of the Authority under this Agreement:

- (a) The Concessionaire has failed to fulfil one or more of the Conditions Precedent in accordance with the terms of this Agreement;
- (b) The Concessionaire has failed to complete the Project Installations within the Construction Period;
- (c) The Concessionaire has failed to operate and maintain the Project Installations during the O&M Period;
- (d) The Concessionaire has persistently failed, in the opinion of the Authority or the Consultant, to install, maintain, provide meter reading and operate the Equipment or Project Installations in accordance with the standards and specifications;
- (e) The Concessionaire has failed to pay any remuneration, cost or expense invoiced to the Concessionaire in relation to the Consultant or any other payments due to the Authority and more than four (4) weeks have lapsed since such payment became due;
- (f) The Concessionaire has failed to comply with the Applicable Laws / Applicable Permits and such failure has resulted in a Material Breach of the Agreement;
- (g) The Concessionaire has failed to implement the Project in accordance with the provisions of the Agreement and such failure, in the reasonable estimation of the Authority, is likely to delay the Project Completion Date;
- (h) The Concessionaire's failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- (i) The Concessionaire is in Material Breach of any of its obligations under the Agreement and the same has not been remedied for more than one hundred and twenty (120) days;
- (j) Any representation made or warranty as given by the Concessionaire under the Agreement is found to be false or misleading;
- (k) Change in Ownership of the Concessionaire without prior approval of the Authority;
- (l) A resolution has been passed by the Concessionaire for voluntary winding up of the Concessionaire;
- (m) A default has occurred under any of the Financing Documents and any of the Lender(s) to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (n) The Concessionaire has Abandoned the Project for a consecutive period of ninety (90) consecutive days;
- (o) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (p) The Concessionaire has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Effect on the Project and such

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attachment has continued for a period exceeding one hundred and twenty (120) days; and/or

- (q) The Concessionaire has created Encumbrance(s) and in violation of the provisions herein in this regard.
- (r) The concessionaire failed to provide the meter reading through AMR of more than twenty (20%) of installed meters for consecutive ninety (90) days or 180 days in any year of the concession period.

11.1.2. The Authority Event of Default

Any of the following events shall constitute an Event of Default by the Authority ("**The Authority Event of Default**") unless such event has occurred as a result of a breach of Concessionaire under this Agreement:

- (a) Failure of the Authority to procure and provide access to the Project Site within twenty-eight (28) days of execution of the Agreement; or
- (b) any Material Breach or default by the Authority of or under this Agreement that is not remedied within forty five (45) days after notice from the Concessionaire to the Authority stating that a Material Breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the Material Breach in reasonable detail, and demanding remedy thereof.

11.2. Termination Due to Event of Default

11.2.1. Termination for Concessionaire Event of Default

- (a) Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority shall be entitled to terminate the Agreement in the manner as set out under the following Sub-Clause (b) and (c).
- (b) If the Authority decides to terminate the Agreement pursuant to the preceding Sub-clause (a), it shall in the first instance issue a "**Preliminary Notice to Remedy**" to the Concessionaire and within thirty (30) days of receipt of the Preliminary Notice to Remedy, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of thirty (30) days, the Authority shall be entitled to terminate the Agreement by issuing the Termination Notice.
- (c) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of thirty (30) days ("**Cure Period**") to remedy / cure the underlying Event of Default. If, however the Concessionaire fails to remedy / cure the underlying Event of Default within such further period allowed, the Authority shall be entitled to terminate the Agreement by issuing the Termination Notice.

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11.2.2. Termination for the Authority Event of Default

- (a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the Authority Event of Default, the Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.
- (b) If the Concessionaire decides to terminate the Agreement pursuant to preceding the above Sub-clause (a), it shall in the first instance issue Preliminary Notice to Remedy to the Authority. Within forty five (45) days of receipt of Preliminary Notice to Remedy, to the Authority shall forward to the Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**The Authority's Proposal to Rectify**"). In case of non-submission of the Authority's Proposal to Rectify within the said period of forty-five (45) days, Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.
- (c) If the Authority's Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, the Authority shall have further period of forty-five (45) days to remedy / cure the underlying Event of Default. If, however, the Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.

11.3. Termination Notice

If a Party having become entitled to do so decides to terminate the Agreement pursuant to this Article 11 (*Events of Default and Termination*), it shall issue Termination Notice setting out:

- (a) in sufficient detail the underlying Event of Default;
- (b) the Termination Date which shall be a date of the Termination Notice;
- (c) the estimated Termination Payment including the details of computation thereof; and
- (d) any other relevant information.

11.3.1. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (a) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Installations;
- (b) The Project Installations shall be transferred to the Authority by the Concessionaire on the Termination Date, free from all Encumbrances, as per the provisions of Article 12 (*Transfer of Shares*) of this Agreement.

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- (c) The Termination Payment, if any, payable by either Party is paid to the other Party on the Termination Date or within such time period as stipulated in this Agreement.

11.3.2. Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

11.3.3. Step-in Rights

- (a) In the event the Concessionaire fails to carry out the operations of the Project in accordance with the terms of this Concession Agreement due to Concessionaire's Default for a continuous period of fourteen (14) days, the Authority may by written notice require the Concessionaire to rectify the failure. If the Concessionaire despite having received such notice still fails to carry its operation and maintenance obligations for a further period of thirty (30) days, the Authority may at its own volition and upon written notice thereof to the Concessionaire, temporarily take-over from the Concessionaire those functions which are necessary for the uninterrupted operation of the Project or any part thereof ("Step-In Right"). While exercising its Step-in Right, the Authority shall be entitled to use equipment, systems and human resource of the Concessionaire employed for the Project Installations, at the risk and cost of the Concessionaire.
- (b) The Concessionaire shall within ten (10) days from the temporary take-over under the aforementioned clause, make a request in writing to express its readiness to resume those functions taken over by the Authority. The Authority shall immediately return to the Concessionaire those functions it has taken over upon the receipt of such request, and in any event within fourteen (14) days from the temporary take over. A failure by the Concessionaire to make the request herein or the failure to resume control of the operations of the Project upon the cessation of the temporary take over by the Authority shall constitute a breach by the Concessionaire of its obligations with regard to the operations of the Project.

11.4. Termination Payments

- (a) Upon Termination of the Agreement on account of a Concessionaire Event of Default, the Authority shall: (i) settle any outstanding payments; (ii) not be obligated to make any further payments to the Concessionaire except for Termination Payments in the amount equal to fifty percent (50%) of the Book Value; (iii) be entitled to encash and retain the Performance Guarantee; (iv) make arrangements at the risk and cost of the Concessionaire to fulfil obligations of Concessionaire under this Agreement.
- (b) Upon termination of the Agreement on account of an Authority Event of Default, the Authority shall be liable to pay the compensation to the Concessionaire as follows:

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- i. No Termination Payment shall be payable to the Concessionaire, for Termination before the issuance of Certificate of Compliance to the Concessionaire.
 - ii. In case of the occurrence of the Authority's Event of Default, prior to the Project Construction Completion Date but after issuance of Certificate of Compliance to the Concessionaire, the Authority shall pay to the Concessionaire:
 - a) the Book Value plus compensation at KIBOR + Three Percent (3%) per annum for the total equity investment plus extra one (1) year return on total equity investment for the relevant applicable period from the date of Financial Closure; and
 - b) any other unavoidable demobilization cost applicable and payable by the Concessionaire due to pre-mature termination of the Concession Agreement, especially related to loan agreement, as mutually agreed between the Parties.
 - iii. In case of the occurrence of the Authority's Event of Default following the Project Completion Date the Authority shall pay to the Concessionaire the Book Value plus compensation at KIBOR + Three Percent (3%) per annum for the total equity investment plus extra one (1) year return on total equity investment for the relevant applicable period from the date of Financial Closure; and
- (a) All payments due to the Concessionaire as calculated under this Article 11.4 shall be made within forty-five (45) days of receiving the Termination Notice.

11.5. Rights of the Authority on Termination

Upon termination of the Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:

- (b) Enter upon and take possession and control of the Project Installation forthwith; and
- (c) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Installation.

Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project. The transfer of the Project Installations by the Concessionaire to the Authority shall be free from any such obligation.

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11.6. Accrued Rights of Parties

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

12. TRANSFER OF SHARES

12.1. Mode of Transfer of Shares

On the Transfer Date, the Successful Bidder shall transfer one hundred percent (100%) of the Ordinary Share Capital of the Concessionaire to the Authority, free of any Encumbrance. One (1) week prior to the Transfer Date, the Concessionaire shall comply with the following:

- (a) The Authority, shall have the right to conduct a due diligence of the contracts and agreements containing the rights and obligations of the Concessionaire. Following the issuance of the Vesting Certificate, the Authority shall not be bound to assume the rights and obligations of contracts of the Concessionaire, that in the sole opinion of the Authority are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are deemed unreasonably onerous by the Authority, no Third Party, including the counter-party of such contract shall have any right, license, title, interest, benefit, claim or demand against or over any Transfer Asset and such Transfer Asset shall be free from all Encumbrances and the Concessionaire shall have good title to the Transfer Assets.
- (b) Furthermore, notwithstanding anything contained in this Agreement no liability (accrued or contingent) of Concessionaire or relating to the Project Installations arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to the Authority or its nominees. The Authority or its nominees shall not be liable for liabilities in relation to the Project Installations arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to the Authority or its nominee or any Encumbrance existing on any of the Transfer Assets, the quantum of such liability and / or amount corresponding to such Encumbrance, shall be compensated by the Concessionaire to the Authority.
- (c) The Concessionaire shall deliver the inventory of the Project Installations including, without limitation, any equipment, materials, fixtures and all relevant records pertaining to the Project Installations including the records relating to design, operation and maintenance of the Project Installations, programmes, manuals, Approved Detailed Plan (inclusive of any Variations) and all other relevant documents to the Authority.
- (d) The Concessionaire shall ensure that the Project Installations has been renewed and

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cured of all the shortcomings, defects and deficiencies as may be required or instructed by the Consultant or the Authority.

- (e) Without prejudice to the foregoing, the Concessionaire agrees to indemnify and keep indemnified the Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Authority as a result of any actions or omissions of the Concessionaire prior to the transfer of the Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
- (f) **Vesting Certificate:** The Transfer Date is deemed to have occurred on the date when all the requirements under this Article have been fulfilled by the Concessionaire and the requirements of the Successful Bidder pursuant to any undertakings in this Agreement have been fulfilled. The Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 3 (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Successful Bidder of all of its rights, title and interest in the Project and divestment by the Successful Bidder of all its rights, title and interest in the Concessionaire, and their vesting in the Authority pursuant hereto. It is expressly agreed that the issue of Vesting Certificate shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee.

13. DISPUTE RESOLUTION

13.1. Amicable Resolution and Mediation.

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to the Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably.
- (b) In the event of no consensus being achieved, pursuant to Section 13.1(a), any Dispute between the Parties, the Dispute shall be referred for mediation by an independent and impartial person appointed by the PPP Board in accordance with the Act, for amicable settlement. In the event the Parties are unable to resolve the matters through conciliation either Party may refer the Dispute to arbitration in accordance with the provisions of Section 13.2 (*Arbitration*).

13.2. Arbitration

13.2.1. Procedure

Subject to the provisions of Article 13.1 (Amicable Resolution and Mediation), any dispute, which is not resolved amicably and through mediation, shall be finally decided by reference to arbitration under the Arbitration Act, 1940. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within fifteen (15) days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further

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steps in accordance with the Arbitration Act, 1940.

13.2.2. Seat of Arbitration and Governing Law

The seat of arbitration shall be Lahore, Punjab, Pakistan only. The governing law of this Agreement and the arbitration shall be the laws of Pakistan.

13.2.3. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language used in the hearings.

13.2.4. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act, 1940.

13.2.5. Performance during Arbitration

Pending the submission of and / or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

14. FINANCING AND LENDERS RIGHTS.

- (a) The Authority hereby agrees that it shall enter into a direct agreement, substantially in the form of Schedule 5 (*Lenders Direct Agreement*) as per customary practices in such transactions, with the Lenders and the Concessionaire thereby shall grant the Lenders certain rights in the event of "Termination for Concessionaire Event of Default" as set out in this Agreement. The Authority further confirms to the Concessionaire that it can represent to the Lenders that the Authority has agreed to be bound by the terms and conditions specified therein.
- (b) At any time after the Lenders have issued a Notice of Financial Default (as defined in the Direct Agreement) of the Concessionaire, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project on its own or through a Third Party. Upon receipt of such notice, the Authority may, at its discretion, undertake the operation of the Project during such "Suspension" period. The aforesaid Suspension shall be revoked upon the Lender's confirmation that it has enforced its security over one hundred (100%) percent of the Ordinary Share Capital, and in the event such enforcement is not completed within one hundred and eighty (180) days from the date of such Suspension, the Authority may terminate this Agreement forthwith by issuing a Termination Notice in accordance with the provisions of this Agreement; provided that upon written request from the Lenders' representative and the Successful Bidder, the Authority may extend the aforesaid period of one hundred and eighty (180) days by a period not exceeding ninety (90) days.

15. REPRESENTATIONS AND WARRANTIES

15.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised, validly existing and in good standing under the laws of Pakistan;
- (b) it has full power and authority to execute, deliver and perform its obligations under the Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) the information furnished in the bid / proposal and as updated on or before the date of the Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of the Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, 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;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws 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 Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from the Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of the Agreement all rights and interests of the Concessionaire in and to the Project Installations shall pass to and vest in the Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or the Authority;

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- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (l) without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

15.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) The Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (b) This Agreement constitutes the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- (c) Upon the Concessionaire performing the covenants herein, the Authority shall not at any time during the Concession Period hereof, interfere with peaceful exercise of the rights, in accordance with this Agreement.

15.3. Obligation to Notify Change

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

16. MISCELLANEOUS

16.1. Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with the prior consent of the Authority.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Installations or any part thereof, including the Equipment, except as envisaged under this Agreement.
- (c) Sub-clauses (a) and (b) hereinabove of this Article, shall not apply to assignment of the Concessionaire's rights and benefits under this Agreement to, or in favour of, the Lenders as security for the Financial Assistance provided by them.

Notwithstanding anything contained in Article 16.1. (c), the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to the Transfer of Shares as described under Article 12.

16.2. Governing Law

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of Pakistan.

16.3. Waiver

- (a) Failure by the Authority to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by the Authority to the Concessionaire shall be treated or deemed as a waiver of any terms, conditions or provisions of this Agreement unless it is provided in writing.
- (b) Waiver provided in writing by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) 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;
 - (ii) Shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - (iii) Shall not affect the validity or enforceability of this Agreement in any manner.

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16.4. Survival

Termination of this Agreement:

- (a) shall not relieve the Concessionaire or the Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof; and
- (b) except as otherwise provided in any provision of the 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.

16.5. Amendments

The Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

16.6. Notices

Unless otherwise stated, notices to be given under the Agreement including but not limited to a notice of waiver of any term, breach of any term of the Agreement and termination of this Agreement, shall be in writing and shall be given by recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

- (a) If to the Authority:
Phone:
E-mail:
- (b) If to the Concessionaire:
The Managing Director,
[●]
Address: [●]
Phone: [●]
E-mail: [●]

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, by recognised international courier or by mail (registered, return receipt requested) at that address; and
- (b) In the case of any communication made by facsimile, when transmitted properly

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addressed to such facsimile number.

16.7. Severability

If for any reason whatsoever any provision of the 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. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under the Agreement or otherwise.

16.8. No Partnership

Nothing contained in the Agreement shall be construed or interpreted as constituting a partnership between the Parties. None of the Parties shall have any authority to bind the other Parties in any manner whatsoever.

16.9. Language

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

16.10. Exclusion of Implied Warranties etc.

The Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

16.11. Counterparts

The Agreement may be executed in two (2) counterparts, each of which when executed and delivered shall constitute an original of the Agreement but shall together constitute one and the same Agreement.

16.12. General Liability and Indemnity

- (a) The Concessionaire shall indemnify, defend and hold the Authority harmless against any and all proceedings, actions and Third Party claims arising out of a breach by Concessionaire and its Sub-Contractors, agents, employees, etc. of any of its obligations under the Agreement except to the extent that any such claim has arisen due to breach by the Authority of any of its obligations under this Agreement.
- (b) The Authority shall, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, Third Party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Authority, its officers, servants and agents of

DRAFT CONCESSION AGREEMENT

any obligations of the Authority under the Agreement except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations or representations under this Agreement.

IN WITNESS WHEREOF each of the Parties has caused this Agreement to be executed and delivered on its behalf by its authorized representative as of the date first above written:

[Signature pages to follow]

DRAFT CONCESSION AGREEMENT

Schedule 1

[insert Project Site locations]

DRAFT CONCESSION AGREEMENT

Schedule 2

Form of Performance Guarantees

Annex A: Form of Construction Performance Security

To:

Water and Sanitation Agency, Lahore

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

Dated:

[Insert Name of Bank], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “Concession Agreement” dated [●], 201[●] (hereinafter referred to as the “**Agreement**”) for the [design, engineering, construction, financing, commissioning, operations and maintenance] of the [Insert Details] Project under the public private partnership mode:

- (a) **[Insert Authority Details]**, having its offices at [●] (hereinafter referred to as the “**Authority**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

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

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Authority, without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to the Agreement or any other 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:

PKR [●]/- (Pakistani Rupees [●])

(hereinafter referred to as the “**Guaranteed Amount**”)

DRAFT CONCESSION AGREEMENT

at sight and immediately, however not later than within [ten (10)] business days from the date of the Guarantor Bank's receipt of the Authority's first written demand (hereinafter referred to as the "**Demand**") at the Guarantor Bank's offices located at *[Insert Address of the Guarantor Bank at which Demand will be made]* [or through SWIFT instructions transmitted by the Authority's bank (i.e. [●]), on behalf the Authority], such Demand stating:

- (a) the total amounts demanded; and
- (b) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (hereinafter referred to as the "**Bank Account**").

A Demand shall only be honoured by the Guarantor Bank if: (i) in the case of a written Demand it is made by and bears the signature of an authorised officer or representative of the Authority; [or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Authority's bank (i.e. [●]), on behalf of the Authority.]

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee at sight and immediately on the date of its receipt of the Authority's Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account in immediately available and freely transferable funds in the currency of this 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 Guarantee and the Guarantor Bank's obligations hereunder shall expire on [Insert date and time] (the **Guarantee Expiry Hard Date**) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, in the event that the Authority issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

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

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

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

This Guarantee for its validity period shall not be affected in any manner by any change in the Guarantor Bank's constitution or of the Concessionaire's constitution or of their successors and assignees and this

DRAFT CONCESSION AGREEMENT

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 are by way of reference only and shall not affect the Guarantor Bank’s obligations to make payment under the terms of this Guarantee.

The Authority shall not assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee without the prior written consent of the Guarantor Bank and the Concessionaire.

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

The Guarantor Bank hereby declares and confirms that under its constitution, applicable laws and regulations, it has the necessary power and authority (including all necessary authorizations, approvals and consents) to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan and under the laws of the jurisdiction where this Guarantee is issued. For the avoidance of doubt, in the event of any inconsistency between the laws of Pakistan and the laws of the jurisdiction where this Guarantee was issued, it is agreed that the laws of Pakistan shall prevail.

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

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

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

[This Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758.]²

Executed & Issued

For & On Behalf of the Guarantor Bank

.....

Name:

² May be included and updated on a case to case basis.

DRAFT CONCESSION AGREEMENT

Designation:

Dated:

Witnesses

Witness I

Witness II

.....

Name:

CNIC No.:

.....

Name

CNIC No.:

DRAFT CONCESSION AGREEMENT

Annex B: Form of O&M Performance Security

To:

Water and Sanitation Agency, Lahore

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

Dated:

[Insert Name of Bank], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “Concession Agreement” dated [●], 201[●] (hereinafter referred to as the “**Agreement**”) for the design, engineering, construction, financing, commissioning, operations and maintenance of the [Insert Details] Project under the public private partnership mode:

- (a) **[Insert Authority Details]**, having its offices at [●] (hereinafter referred to as the “**Authority**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

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

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Authority, without any notice, reference or recourse to the Concessionaire or to any other entity or without any recourse or reference to the Agreement or any other 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:

PKR [●]/- (Pakistani Rupees [●])

(hereinafter referred to as the “**Guaranteed Amount**”)

at sight and immediately, however not later than within [ten (10)] business days from the date of the Guarantor Bank’s receipt of the Authority’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [Insert Address of the Guarantor Bank at which Demand will be made] [or through SWIFT instructions transmitted by the Authority’s bank (i.e. [●]), on behalf the Authority], such Demand stating:

DRAFT CONCESSION AGREEMENT

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

A Demand shall only be honoured by the Guarantor Bank if: (i) in the case of a written Demand it is made by and bears the signature of an authorised officer or representative of the Authority; [or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Authority’s bank (i.e. [●]), on behalf of the Authority.]³

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee at sight and immediately on the date of its receipt of the Authority’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account in immediately available and freely transferable funds in the currency of this 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 Guarantee and the Guarantor Bank’s obligations hereunder shall expire on [Insert date and time] (the **Guarantee Expiry Hard Date**) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, in the event that the Authority issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

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

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

- (d) in any way impairing or affecting the Guarantor Bank’s liabilities hereunder;
- (e) notice to the Guarantor Bank; and
- (f) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

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

³ Where required the option for SWIFT instructions may be inserted.

DRAFT CONCESSION AGREEMENT

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

The Authority shall not assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee without the prior written consent of the Guarantor Bank and the Concessionaire.

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

The Guarantor Bank hereby declares and confirms that under its constitution, applicable laws and regulations, it has the necessary power and authority (including all necessary authorizations, approvals and consents) to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan and under the laws of the jurisdiction where this Guarantee is issued. For the avoidance of doubt, in the event of any inconsistency between the laws of Pakistan and the laws of the jurisdiction where this Guarantee was issued, it is agreed that the laws of Pakistan shall prevail.

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

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

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

[This Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758.]⁴

Executed & Issued

For & On Behalf of the Guarantor Bank

.....

Name:

Designation:

Dated:

⁴ May be included and updated on a case to case basis.

DRAFT CONCESSION AGREEMENT

Witnesses

Witness I

Witness II

.....

Name:

CNIC No.:

.....

Name

CNIC No.:

DRAFT CONCESSION AGREEMENT

Schedule 3

Form of Vesting Certificate

1. [*insert details*] being the Concessioneing Authority, refer to the agreement entitled "Concession Agreement" dated [●] (as amended from time to time) (the "**Concession Agreement**") relating to, *inter alia*, the designing, construction, development, operation and maintenance (through Public Private Partnership on a design, build, finance, operate and transfer basis) of the [●] (the "**Project**");
2. The Concessioneing Authority hereby acknowledges the compliance and the fulfillment by the Concessionaire of the divestment requirements set forth in the Concession Agreement and, on such basis, hereby issue this Vesting Certificate (the "**Certificate**").
3. Upon issuance of this Certificate, the Concessioneing Authority shall be deemed to have acquired, all title and interest of the Concessionaire in or about the Project Installations and Equipment (*as defined in the Concession Agreement*) and the same shall be deemed to have vested unto the Concessioneing Authority, free from any encumbrances, charges and liens whatsoever.

Signed this day of, at Lahore.

For and on behalf of

[Insert Details]

Signature

Name

DRAFT CONCESSION AGREEMENT

Designation

Signed in the presence of the following witnesses:

Signature

Signature

Name

Name

NIC No.

NIC No.

For and on behalf of

[●]

Signature

DRAFT CONCESSION AGREEMENT

Name

Designation

Signed in the presence of the following witnesses:

Signature

Signature

Name

Name

NIC No.

NIC No.

Schedule 4

Annex A: International Standards, Technical Specifications and Approved Detailed Plan

Water Meter Specifications:

A) Mechanical Water Meters

- I. **Technology:** Multi Jet Dry Type /Volumetric Rotary Piston/Notating disc with remote Automatic Meter Reading (AMR) capability through GSM/GPRS/Radio Frequency (RF) or any other mode of communication compatible to WASA system.
- II. **Certifications:**
ISO:4064 (International Organization Standardization Compliant) or OIML: R49(2013) (International Organization of Legal Metrology) or MID/2004/22/EEC
- III. **General Features:**
 - Shall have possibility for both visual and automatic meter reading outputs;
 - Tamper proof
 - Provided with non-return wall
 - Un-affected by grit and particulates
 - Provided with wire and lead seal
 - Not affected by magnetic field
- iv. **Detailed metrological specifications**
 - **Size:** 15 mm, 20 mm and 25mm
 - **Accuracy:** Class II
 - **Material:** Brass/Non-ferrous metal
 - **Protection Class:** IP-68
 - **Ambient Temperature:** +5° to 55° C
 - **Liquid Temperature:** Up to 50° C
 - **Pressure:** 16 Bar
 - **Flow rate:** Q3/Q1 = 160
 - **Maximum flow rate:** m³/h: Q₃

15mm	20mm	25mm
2.5	4.0	6.3

- **Installation:** Any direction.

Or

B. Static Water Meters

- I. **Technology:** Static Smart Water Meters (ultrasonic technology, electromagnetic, fluidic oscillation with remote Automatic Meter Reading (AMR) capability through

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GSM/GPRS/Radio Frequency (RF) or any other mode of communication compatible to WASA system.

II. **Certifications:**

ISO:4064 (International Organization Standardization Compliant) or OIML: R49(2013) (International Organization of Legal Metrology) or MID/2004/22/EEC

III. **General Features:**

- Shall have possibility for both visual and automatic meter reading outputs;
- No moving parts
- Both visual (LCD) with remote Automated Meter Reading outputs.
- As per class 2 of OIML/ ISO specifications (Current)
- Tamper proof
- Provided with non-return valve
- Un-affected by grit and particulates
- No reverse flow measurement
- Provided with wire and lead seal

iv. **Detailed metrological specifications**

- **Size:** 15 mm, 20 mm and 25mm
- **Accuracy:** Class II
- **Material:** Brass/Non-ferrous metal
- **Protection Class:** IP-68
- **Ambient Temperature:** +5° to 55° C
- **Liquid Temperature:** up to 50° C
- **Maximum Working Pressure:** 16 Bar
- **Flow rate:** Q3/Q1 = 160
- **Maximum flow rate:** m³/h: Q₃

15mm	20mm	25mm
2.5	4.0	6.3

- **Battery Life:** Minimum 10-years
 - **Installation:** Any direction.
-

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Annex B: O&M Performance Standards

Technical Specifications / Key Performance Indicators (Operation and Maintenance)

1. BROAD PARAMETERS FOR OPERATION AND MAINTENANCE

- 1.1. During the Concession Period, the Concessionaire shall operate and maintain the Project Installations in accordance with this Agreement either by itself, or through an O&M Sub-Contractor and if required, modify, repair or otherwise make improvements to the Project Installations to comply with the provisions of this Agreement and Applicable Laws, and conform to Schedule 4, including the Approved Detail Plan, and Good Industry Practice including the following:
 - (a) minimising incidents affecting the safety and use of the Project Installations by providing a rapid and effective response and maintaining liaison with emergency services of the State;
 - (b) carrying out periodic preventive maintenance of the Project Installations;
 - (c) undertaking routine maintenance
 - (d) undertaking all maintenance in accordance with a maintenance schedule for the Project Installation;
 - (e) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Installations;
 - (f) protection of the environment and provision of equipment and materials for such purpose;
 - (g) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Installations;
 - (h) maintaining a public relations unit to interface with and attend to suggestions from internal stakeholders as well as external stakeholders such as a Government Agency, media and other Persons;
 - (i) complying with the safety manual;
 - (j) operation and maintenance of the Project Installations diligently and efficiently and in accordance with Good Industry Practice;
 - (k) maintaining punctuality and reliability in operating the Project Installations; and
 - (l) maintaining a high standard of cleanliness and hygiene on the Project Sites.
- 1.2. The Concessionaire shall remove promptly 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 keep the Project Installations and the Project Site in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- 1.3. Broad operational and maintenance parameters are the measures that monitor the performance of 'key result areas' of business activities, which are absolutely critical to the success and growth

DRAFT CONCESSION AGREEMENT

of the Project. The development and use of such parameter should form the basis for the analysis of an organization's current performance, its future requirements and the improving strategies required for its on-going success. Some general principles regarding the O&M parameters should be taken under consideration during their application:

- O&M parameters should not be an end in themselves, but be considered as an aid to management;
- They may have reference to some international standard but essentially conforming to local context and conditions;
- Concessionaire should be able to provide basis and platform to devise Key Performance Indicators (KPIs) at detailed design and implementation stage of the Project, which should be approved by Quality Assurance Inspector;
- They should be balanced and with built-in sufficient coordination of mutually related and dependable activities and operations;
- After being proposed O&M parameters may be reviewed and updated as per the requirements of the Project and advancement in research.

This section provides few guidelines for O&M parameters, but as this is only feasibility and conceptual design stage the perfectness of these parameters at this stage can be debated at later stage when the functions, detailed design, operations, mode of investment, administrative frame work and other conditions becomes clearer. However, for the purpose of this stage the O&M parameters have been broadly divided into four categories as follows:

- a) Qualitative
- b) Administrative
- c) Operational
- d) Financial

1.4. Qualitative Parameters

As the name shows the qualitative indicators shall indicate the improvement or deterioration of quality in the performance of the Project Installations.

Environment

- Liquid Waste should be treated (if required) to achieve the prescribed standards of PEPA and other international organizations;
- An efficient Solid Waste Management System (SWMS) should be devised to collect, segregate and dispose of all sorts of generated solid waste, as per international standards and practice;
- Emissions of HOV and LOV should be kept below limits and within permitted level of environmental agencies.

Hygienic Parameters

- Daily sweeping and mopping of the relevant working areas of the Project Site as per the devised SOPs to be submitted by the vendor to the management consultant and hygiene standards;

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- Provisions of sufficient hand wash materials as per standard hygiene practices;
- Removal of all kinds solid waste and ensuring transportation to the overall solid waste collection and segregations units on daily basis;
- Daily cleaning of all service areas;
- Daily washing and ironing of uniforms of all service personnel;
- Provision of gloves and other equipment in useable condition to all service personnel;
- Proper and timely cleaning of overhead and underground water tanks as per the devised SOPs and international practices; and

Stakeholders Involvement

- Annual survey of users of building and services may be conducted, to know the level of satisfaction of users of the Project Installations and their suggestions regarding improvement;
- Mechanism should be devised to seek the mitigation measures of issues raised by stakeholders, within resources of building administration/management, without compromising the balance of main functions and activities in respect of the Project Installations.

Quality of Service

- Punctuality of staff should be ensured;
- Appropriate measures should be taken for the security of the Project Installations;
- All facilities and service areas in the building should be handicap friendly, conforming to the international standards; and
- Regular inspection of hygiene and quality of food stuff should be conducted for all areas maintaining cooking facilities. The inspection and quality control should conform to the devised SOPs and international standards of food quality etc.

Greater Uniformity

- In any business to stay sustainable in the longer run uniformity of the quality and efficiency offered during the commencement period is required to be maintained throughout the functional and operational life of the project.

1.5. Financial Parameters

- Timely payment of all dues;
- Mechanism for collection of receivables should be efficient;
- Timely debit (bank loan) retirement must be ensured;
- Healthy cash flow to be maintained at all times;
- Timely insurance renewals should be ensured;
- Compliance with the provisions of Applicable Laws, including but not limited to the timely payments of direct and indirect taxes should be ensured; and

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- Payments to the Concessioneing Authority in accordance with Agreement should be made on timely basis.

1.6. Operational Parameters

Operation and maintenance (“**O&M**”) refer to all activities needed to run the Project Installations. Operation includes the planning and control of the Project Installations and delivery of services to the Users. It also covers the management of client and public relations, legal, personnel, commercial, and accounting functions.

All electrical and electro mechanical equipment should be ready and in functional condition, with proper and timely maintenance & inspection, as per relevant maintenance standards and specific Operations and Maintenance Manuals of such equipment. Standards regarding health and safety of personnel and equipment must also be considered while operating and maintaining electrical and electromechanical equipment and appliances.

- Supply chain of maintenance parts and operational equipment should always be intact and functioning;
- Efficient mechanism should be devised to generate alerts regarding up-gradation and replacement time of all the electrical, electro-mechanical and mechanical machines and equipment;
- Operation beyond the specified capacity of any machine or vehicles should be avoided;
- Daily washing and regular inspection and maintenance of all HOV, LOV and service vehicles;
- External Water Supply and Sanitation

1.7. Maintenance Parameters

There are following two types of maintenance which Concessionaire should take into account:

- Preventive
- Reactive

1.7.1. Preventive Maintenance:

Preventive maintenance including inspection, cleaning, lubrication, consists of the systematic routine actions needed to keep the utilities in good condition. It sometimes also includes minor repairs and replacement as dictated by the routine examination. Visual inspection of external service lines should be carried out from time to time, so that any possible seepage may be noted and replaced of damaged pipelines shall be made possible.

1.7.2. Reactive Maintenance:

Reactive maintenance normally occurs as a result of reported pipe breaks and the malfunctioning or breakdown of Equipment. Any reported damage or malfunction shall be repaired accordingly..

1.8. Administrative Parameters

- Signing and timely renewal of MOUs/agreements with all stakeholders including financial institutions, security agencies, JV partners and associates, legal consultants, inspection and maintenance agencies and national and international certification agencies etc.

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- Proper and timely record maintenance
- Devising SOPs for all administrative and management functions of all activities of the Project/complex as per international standards;
- Emergency numbers should be displayed at all prominent locations at the Project Site;
- Timely watering of plants and shrubs, to maintain proper health of each element of soft landscape;
- Daily cleaning, weekly washing and regular maintenance of all element of hard landscape;
- Preparation and maintenance of efficient Management Information System (MIS) for the building functions/ activities;
- Whitewashing and repainting of such areas on a tri-annual basis;
- Cleaning and maintenance of all interior and exterior building architectural elements;
- Cleaning and maintenance of electrical parts, including street lights and other elimination systems;
- Establishment and maintenance of emergency/first aid unit to deal with minor accident etc. The unit should be equipped with necessary functional equipment and qualified/trained human resource;
- Ensuring removal of all sorts of encroachment by any user of the building against the prescribed and allocated areas of each user;
- Regular cleaning, inspection and maintenance of driveways, parking spaces, shades, ticketing booths, staircases, ramps, signboards, furniture, office equipment,
- Proper channelization through markings for vehicles movement and parking should be made and maintained on regular basis;
- Electric short circuiting/breakdowns, water and gas leaks should be reported and promptly attended;
- SOPs should be made for utilization of all resources and monitored accordingly;
- Efficient use of machines and manpower should be ensured and improved through technically accepted SOPs for the same;
- Care must be practiced for wastage/losses of fuel and other energy resources;
- Efficient mechanism should be devised to inform all stakeholders regarding maintenance, shutdown and replacement schedules of all machines (rides, lifts, generators, pumps, fire-fighting equipment etc.) and equipment;
- Handing over of all sorts of machines, equipment and building to Concessioning Authority in perfect functional and maintained condition, at the end of concession period, as per the mutually agreed terms and conditions;
- Inventory and remaining functional life of each machine and equipment should be clearly indicated, at the handing over.

1.9. Fire Protection Parameters

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- Sufficient (as per prescribed standards) water in tanks at all times;
- Hydrants and all system (sprinkle system) should be checked regularly and maintained (monthly/as prescription by the manufacturer);
- Fire Fighting Drills should be conducted after every six months;
- Circuit breakers should be checked regularly;
- Electrical faults should be attended promptly;
- Gas system must be checked for leakages and all such complaints must be attended efficiently;
- Fire/emergency exits should be checked and maintained for their functionality on monthly basis;
- Fuel leakages in all sort of vehicles should be attended efficiently to provide efficient and timely mitigation;
- All category users of building should be provided training to cope with emergency situation and use of emergency/fire exits.

2. MAINTENANCE MANUAL AND MAINTENANCE PROGRAM

2.1 No later than within ninety (90) days after the Financial Close, the Concessionaire shall, in consultation with the Quality Assurance Inspector, develop a comprehensive repair, operation and maintenance manual (the “**O&M Manual**”) for the regular and preventive maintenance of the Project Installations in conformity with this Annex B of Schedule 4, the O&M requirements, Safety Requirements and Good Industry Practice, and shall provide five (5) copies thereof to the Concessions Authority and two (2) copies to the Quality Assurance Inspector. The Maintenance Manual shall be revised and updated once every two (2) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

2.2 Without prejudice to the provision of above clause, the Maintenance Manual shall, in particular, include provisions for maintenance of the Project Installations and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Installations, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

2.3 Maintenance Programme

2.3.1 On or before the Project Construction Completion Date and no later than forty-five (45) days prior to the beginning of each Accounting Year during the O&M Period, as the case may be, the Concessionaire shall provide to the Concessions Authority and the Quality Assurance Inspector, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the O&M requirements, O&M Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;

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- (b) arrangements and procedures for carrying out urgent repairs;
 - (c) criteria to be adopted for deciding maintenance needs;
 - (d) intervals and procedures for carrying out inspection of all elements of the Project Installations;
 - (e) intervals at which the Concessionaire shall carry out periodic maintenance;
 - (f) arrangements and procedures for carrying out safety related measures; and
 - (g) intervals for major maintenance works and the scope thereof.
- 2.3.2 Within fifteen (15) days of receipt of the Maintenance Programme, the Quality Assurance Inspector shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the O&M requirements, O&M Manual and Safety Requirements.
- 2.3.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 2.3.1 and 2.3.2 shall apply mutatis mutandis to such modifications.

3. SAFETY REQUIREMENTS

3.1. Safety Requirements means:

- a) Safety Requirements aim at reduction of injuries, loss of life and damage to property resulting from accidents on the Project Sits, irrespective of the person(s) at fault. Users of the Project Installations include staff of the Concessionaire and its Sub-Contractors working on the Project.
- b) Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- c) Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in this Schedule.

3.2. Obligations of the Concessionaire

The Concessionaire shall abide by the following in so far as they relate to safety of the Users:

- (a) Applicable Laws;
- (b) a manual for safety and safety certification prepared by Concessionaire and approved by Quality Assurance Inspector ("**Safety Manual**");
- (c) Provisions of this Agreement; and
- (d) Relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3.5. Safety measures during Operation Period

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3.5.1 The Concessionaire shall develop, implement and administer a surveillance and safety program for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.5.2 The Concessionaire shall establish a Project Safety Management Unit (the “PSMU”) to be functional on and after the Project Completion Date and designate one of its officers to be in-charge of the PSMU. Such officer shall have specialist knowledge and training in the safety of the Project Installations by having attended a course conducted by a reputed organization on the subject.

3.6. Safety Guideline

3.6.1 Safe movement

In the operation and maintenance of the Project Installations, particular care shall be taken to ensure safety of Users in use of the Equipment.

3.6.2 System integrity

In the design of power supply, signaling, circuits and Equipment, particular care shall be taken to minimize the likely incidence of failure or Emergency.

3.6.3 Restoration of service

The Project shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or Equipment, to the extent possible.

3.6.4 Safety management

A safety statement shall be prepared by the Concessionaire once in every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Quality Assurance Inspector within fifteen (15) days of the close of every yearly quarter.

3.7 Safety Equipment

The following equipment shall be provided at the Project Site:

- (a) Fire extinguishers and fire alarms at the appropriate locations on the platforms;
- (b) Five stretchers and ten standards first aid boxes; and
- (c) Such other equipment as may be required in conformity with Good Industry Practice.

3.8 Emergency

A set of emergency procedures shall be formulated to deal with different potential emergency situations and the Concessionaire’s staff shall be trained to respond appropriately during an emergency through periodic simulated exercises as laid down in an emergency management manual to be prepared by the Concessionaire prior to the Project Construction Completion Date,

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which should be presented to Quality Assurance Inspector for approval prior to implementation (the “**Emergency Management Manual**”).

3.9 Fire Safeties

To prevent fire, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

3.10 User safety and information system:

The Concessionaire shall establish User call points located at convenient locations to allow Users to contact the PSMU telephonically in emergencies.

4. SAFETY, BREAKDOWNS AND ACCIDENTS

4.1 The Concessionaire shall ensure safe conditions for the Users of the Facility Installations, and in the event of unsafe conditions, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

4.2 The Concessionaire's responsibility for rescue operations at the Project Installations shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth functioning of the Project Installations.

5. DE-COMMISSIONING DUE TO EMERGENCY

5.1 If, in the reasonable opinion of the Concessionaire, there exists an emergency which warrants de-commissioning and closure of the whole or any part of the Project Installations, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project Installations to Users and for so long as such emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Concessions Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Concessions Authority may give for dealing with such Emergency.

5.2 The Concessionaire shall re-commission the Project Installations or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Installation and shall notify the Concessions Authority of the same without any delay.

5.3 Any de-commissioning or closure of any part of the Project Installations and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

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6. SECTION CLOSURE

- 6.1 The Concessionaire shall not close any section of the Project Installations for undertaking maintenance or repair works except with the prior written approval of the Quality Assurance Inspector. Such approval shall be sought by the Concessionaire through a written request to be made to the Quality Assurance Inspector, and a copy thereof furnished to the Concessions Authority, at least seven (7) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within three (3) days of receiving such request, the Quality Assurance Inspector shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.
- 6.2 Upon receiving the permission pursuant to Clause 6.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall be liable for damages in accordance with the Agreement.

7. DAMAGES FOR BREACH OF MAINTENANCE OBLIGATIONS

- 7.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Agreement within the period specified therein, it shall be deemed to be in breach of this Agreement and the Concessions Authority shall be entitled to take over the Project Installations in order to cure the defect or deficiency and shall have the right to recover its cost in accordance with the Agreement.

8. AUTHORITY'S RIGHT TO TAKE REMEDIAL MEASURES

- 8.1 In the event the Concessionaire does not maintain and/or repair the Project Installations or any part thereof in conformity with the Agreement, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within fifteen (15) days of receipt of the O&M Inspection Report or a notice in this behalf from the Concessions Authority or the Quality Assurance Inspector, as the case may be, the Concessions Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to twenty per cent (20%) of such cost shall be paid by the Concessionaire to the Concessions Authority as damages. For the avoidance of doubt, the right of the Concessions Authority under this Clause 8.1 shall be without prejudice to its rights and remedies provided under Clause 7.

9. OVERRIDING POWERS OF THE CONCESSIONING AUTHORITY

- 9.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the O&M requirements, and such breach is causing or likely to cause material hardship or danger to the users, the Concessions Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 9.2 In the event of a national emergency, civil commotion or any other act, Concessions Authority may take over the performance of any or all the obligations of the Concessionaire to the extent

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deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Concessing Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Concessing Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 10 of this Agreement. It is also agreed that the Concessionaire shall comply with such instructions as the Concessing Authority may issue in pursuance of the provisions of this Clause 9, and shall provide assistance and cooperation to the Concessing Authority, on a best effort basis, for performance of its obligations hereunder.

10. RESTORATION OF LOSS OR DAMAGE TO THE PROJECT

Save and except as otherwise expressly provided in this Agreement, in the event that the Project Installations or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project Installations conforms to the provisions of this Agreement.

11. EXCUSE FROM PERFORMANCE OF OBLIGATIONS

The Concessionaire shall not be considered in breach of its obligations under this Agreement, if any part of the Project Installations is not available to Users on account of any of the following and for the duration thereof:

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safe use of the Project Installations except when unsafe conditions occurred because of a failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Concessing Authority or the directions of any Government Agency the effect of which is to close all or any part of the Project Installations.

12. BARRIERS AND DIVERSIONS

Concessing Authority shall ensure that during the O&M Period, no barriers are erected or placed by any Government Agency around the Project Installations except for reasons of emergency, national security, or law and order.

13. MONITORING OF OPERATION AND MAINTENANCE

(i) Monthly status reports

During the O&M Period, the Concessionaire shall, no later than seven (7) days after the close of each month, furnish to the Concessing Authority and the Quality Assurance Inspector a monthly report stating in reasonable detail the condition of the Project Installations including its compliance or otherwise with the Agreement, O&M Manual, Maintenance Programme and Safety

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Manual, and shall promptly give such other relevant information as may be required by the Quality Assurance Inspector. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

(ii) Inspection

Quality Assurance Inspector shall inspect the Project Installations at least once per calendar month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Agreement, Maintenance Manual, the Maintenance Programme and Safety Manual, and send a copy thereof to the Concessions Authority and the Concessionaire within seven (7) days of such inspection.

(iii) Tests

For determining that the Project conforms to the O&M requirements, the Quality Assurance Inspector shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Quality Assurance Inspector and furnish the results of such tests forthwith to the Quality Assurance Inspector.

(iv) Remedial Measures

- (a) The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 13(iii), and furnish a report in respect thereof to the Quality Assurance Inspector and the Concessions Authority within fifteen (15) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than fifteen (15) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- (b) The Quality Assurance Inspector shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Installations into compliance with the Agreement and the procedure set forth in this Clause 13(iv), shall be repeated until the Project Installations conforms to the requirements under the Agreement. In the event that any remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessions Authority shall be entitled to recover damages from the Concessionaire under and in accordance with the provisions of Clause 7.

(v) Reports of Emergencies and Accidents

The Concessionaire shall, prior to the close of each day, send to the Concessions Authority and the Quality Assurance Inspector, by facsimile or e-mail, a report stating any emergency, accident and unusual occurrences that occurred on the Project Installations relating to the safety and security of the Users when using the Equipment. A weekly and monthly summary of such reports

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shall also be sent within three (3) days of the closing of each week and month, as the case may be. For the purposes of this accidents and unusual occurrences on the Project Site shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- (d) disabling of any equipment during operation;
- (e) communication failure affecting the operation of Project;
- (f) smoke or fire;
- (g) flooding of the Project Site; and
- (h) such other relevant information as may be required by the Concessioneing Authority or the Quality Assurance Inspector.

14. O&M MANAGER

- (a) The Concessionaire shall appoint at its own cost and expense the O&M Manager who may be a firm or a team of in-house professionals.
 - (b) The O&M Manager shall design a cost effective management procedure to ensure that the Project Installation is operated and maintained effectively, in accordance with this Agreement and the Applicable Laws.
 - (c) The O&M Manager shall monitor the performance of the O&M Contractor, if any with the O&M Contract or otherwise ensure compliance with O&M requirements as stipulated in this Schedule and the Agreement.
 - (d) The appointment of the O&M Manager shall not in any way absolve the liability of the Concessionaire of its obligations with respect to the operation and maintenance of the Project Installations in accordance with this Agreement.
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Annex C: Equipment Description and Specifications along with detailed list of existing Equipment

[please insert]

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Schedule 5

FORM OF LENDER'S DIRECT AGREEMENT

THIS DIRECT AGREEMENT (the "Agreement") is entered into on this the [●] day of [●], 2019 at [●],

BY AND AMONGST:

1. **Lahore Water and Sanitation Agency**, through its Managing Director having its office at 31-B Zahoor Ilahi Road, Block B Gulberg III, Lahore, Punjab, Pakistan (hereinafter referred to as the "Concessions Authority" or "WASA", which expression shall, mean and include its successors-in-interest and permitted assigns);
2. [●], a company incorporated under the provisions of the Companies Act 2017, having its registered office at [●] through _____ (hereinafter referred to as the "Concessionaire", which expression shall include its successors and permitted assigns);
3. [●], the bidder consortium consisting of [●], [●] and [●] having its registered office at [●], through its Lead Member, [●] (hereinafter referred to as the "Successful Bidder", which expression shall include its successors and permitted assigns); and
4. [●], a banking company having its registered office at [●] (hereinafter referred to as "the Lender", which expression shall include its successors and permitted assigns).

WHEREAS:

- A. The Concessions Authority is developing the Project on BOT mode through a public-private partnership as regulated by the Punjab Public Private Partnership Act, 2019 and has issued the Letter of Award to the Successful Bidder;
- B. Through the Concession Agreement dated [●] entered into between the Concessions Authority and the Concessionaire (hereinafter referred to as the "Concession Agreement") the Concessionaire, a special purpose vehicle incorporated by the Successful Bidder to undertake the Project to plan, construct, develop, design, engineer, monitor, procure, finance, equip, operate, maintain and manage the Project Installations at the Project Sites;
- C. With a view to facilitate the financing of the Project by the Concessionaire, the Successful Bidder, the Concessions Authority and the Concessionaire have agreed to enter into this Direct Agreement with the Lender to provide step-in rights in case of a Concessionaire's Event of Default pursuant to the Concession Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the following words and expressions shall, unless repugnant to the

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context or meaning thereof, have the meaning hereafter respectively assigned to them.

“Agreement” means this agreement and its **Schedules** and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“Financial Assistance” means the financial assistance set forth in Schedule A hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

“Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in **Schedule 1** hereto.

“Residual Concession Period” means the period which shall be the remainder of the Concession Period computed from the date of suspension of the Concession in terms of Article 2.3.

“Selectee” means a Person proposed by the Lender pursuant to this Agreement and approved by the Concessioneing Authority to undertake the Successful Bidder’s obligations pursuant to the Concession Agreement for the Residual Concession Period, in accordance with the provisions of this Agreement.

“Security” shall mean the shares constituting one hundred percent (100%) of the total issued and paid up capital of the Concessionaire issued to the Successful Bidder and pledged in favor of the Lender through the Share Pledge Agreement, entered into between the Lender, the Successful Bidder and the Concessionaire, dated as of [●].

“Suspension Period” means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice to Remedy and ending on the date on which all formalities connected with substitution of the Successful Bidder by the Selectee including any handing over of Project Site, in accordance with this Agreement are completed and the substitution has become effective.

- 1.2 Capitalized terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. APPOINTMENT OF SUB-CONTRACTORS

2.1 Lenders Right to Step-in

The Concessioneing Authority and the Successful Bidder hereby irrevocably agree that upon occurrence of a Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law and Financing Documents, and without being required to exercise or exhaust such rights or remedies, have the right to enforce the Security for the Residual Concession Period in accordance with the provisions of this Agreement and the Concession Agreement.

2.2 Preliminary Notice of Termination

The Concessioneing Authority shall as soon as possible but in any case not later than thirty

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(30) days of its knowledge of the occurrence of the Concessionaire Event of Default issue a Preliminary Notice to Remedy to the Concessionaire in terms of Article 11.2.1(b) of the Concession Agreement, with a copy thereof simultaneously couriered to the Lender.

2.3 Suspension of Concession and Takeover of the Project Installations

The Concessionaire irrevocably agrees that if the Cure Period specified in Article 11.2.1(c) of the Concession Agreement lapses without the Concessionaire Event of Default having been cured, the Concession Agreement shall, effective from the expiry of such Cure Period, stand suspended without any further notice or other act of the Concessions Authority being required, and that the Lender shall have the right to enter upon and takeover the Concessionaire through the enforcement of its Security and to take all such steps as are necessary for the continued operation and maintenance of the Project Installations. The Successful Bidder hereby irrevocably consents to the takeover of the Concessionaire by the Lender forthwith upon suspension becoming effective.

In case of any unlawful suspension or suspension which is not permitted under the terms of this Agreement or the Concession Agreement by the Concessionaire, then: (a) in case such suspension occurs prior to the issuance of the Certificate of Compliance, will cause the Concessionaire to lose its right to any outstanding payments/ Termination Payments under the Concession Agreement; and (b) in case following the issuance of the Completion Certificate, it will cause the Concessionaire to be liable for damages which shall be the actual genuine estimate of costs suffered by the Concessions Authority on account of such suspension and the same may be adjusted from any amounts payable by the Concessions Authority to the Concessionaire.

2.4 Substitution Notice

The Concessions Authority and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Concessionaire's Event of Default specified in Article 11.2.1(c) of the Concession Agreement, the Lender may, within thirty (30) days of the expiry of the Cure Period specified therein notify the Concessions Authority and the Successful Bidder about the intention of the Lender to enforce its Security and ensure fulfillment by the Concessionaire of its obligations pursuant to the Concession Agreement for the Residual Concession Period (the "**Takeover Notice**").

2.5 Criteria for selection of the Sub-Contractor or Selectee

Following issuance of the Takeover Notice, the Lender shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of a Sub-Contractor or Selectee:

- (a) the Sub-Contractor or Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire or Successful Bidder in respect of the Concession, under the Concession Agreement;
- (b) the Sub-Contractor or Selectee shall have the capability and shall

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unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to the Concessing Authority under and in accordance with the Concession Agreement, and also payment of amounts due to the Lender(s) under the Financing Documents upon terms and conditions as agreed to between the Selectee and the Lenders.

2.6 Approval of the Concessing Authority

The Sub-Contractor or Selectee shall be subject to the approval of Concessing Authority.

3. MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution

3.1.1 Sub-Contractor

The following procedure shall be followed for selection of the Selectee pursuant to this Agreement:

- (a) The Lender shall be entitled, within a period of sixty (60) days from the date of delivery of the Takeover Notice pursuant to the preceding Article 2.4 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from eligible Persons, for sub-contracting of all obligations of the Concessionaire pursuant to the Concession Agreement and propose to the Concessing Authority for its approval of the Sub-Contractor (the "**Sub-Contractor Proposal**"). The Sub-Contractor Proposal of the Lender shall contain the particulars and information in respect of the Sub-Contractor, particulars of the amounts due to the Lenders under the Financing Documents, the terms of the sub-contract and such data and information as would be necessary and relevant for the Concessing Authority to decide as to the acceptability of the Sub-Contractor. The Lender shall provide to the Concessing Authority such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as the Concessing Authority may reasonably require.
- (b) The Sub-Contractor Proposal shall be accompanied by an unconditional undertaking of the Lender substantially in the form of the Successful Bidder's Undertaking to the effect that it shall upon acceptance by the Concessing Authority of the Sub-Contractor Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Successful Bidder's Undertaking as if the Lender had been the Successful Bidder pursuant to the Successful Bidder's Undertaking and the Sub-Contractor had been the Concessionaire under the Concession Agreement, and the Sub-Contractor shall assume, take over, discharge and pay the Concessionaire's obligations under the Financing Documents on the terms and conditions agreed to by the Sub-Contractor with the Lender. The Sub-Contractor shall also undertake to enter into such documents and writings with the Concessing Authority and the Lender(s) as may be necessary or required to give effect to the substitution of the Concessionaire by the Sub-Contractor.

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- (c) The Concessioneing Authority shall convey to the Lender its acceptance or otherwise of the Sub-Contractor within fifteen (15) days of: (a) the date of receipt of the Sub-Contractor Proposal by the Concessioneing Authority; or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender to the Concessioneing Authority, whichever is later.
- (d) At any time prior to the acceptance of the Sub-Contractor by the Concessioneing Authority pursuant to this Agreement, the Concessioneing Authority may require the Lender to satisfy it as to the eligibility of the Sub-Contractor and the decision of the Concessioneing Authority as to acceptance or rejection of any Sub-Contractor (which shall be reasonable), shall be final, conclusive and binding on the Lender, the Sub-Contractor, the Concessioneaire and the Successful Bidder. In the event that the Concessioneing Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Sub-Contractor Proposal/the Sub-Contractor within a period of fifteen (15) days prescribed in the preceding sub-Article (c), the Concessioneing Authority shall be deemed to have accepted the Sub-Contractor Proposal/the Sub-Contractor.
- (e) The rejection of the Sub-Contractor if made by Concessioneing Authority shall be reasoned and be made after hearing the Lender. Following the rejection of the Sub-Contractor Proposal, the Lender shall have the right to submit a fresh Proposal, proposing another Sub-Contractor, within fifteen (15) days of receipt of communication regarding rejection of the Sub-Contractor previously proposed. The provisions of preceding sub-Article (c) and (d) shall apply mutatis mutandis to such fresh Proposal.
- (f) If the Concessioneing Authority accepts the Sub-Contractor Proposal, the Concessioneing Authority shall take all necessary steps to substitute the Concessioneaire by the Sub-Contractor by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Successful Bidder by the Lender and the substitution of the Concessioneaire by the Sub-Contractor for the Residual Concession Period.
- (g) The substitution of the Concessioneaire by the Sub-Contractor shall be deemed to be complete upon the Sub-Contractor executing all necessary documents and writings with or in favour of Concessioneing Authority and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Sub-Contractor has been accepted by the Lender(s) and Concessioneing Authority and upon the delivery by Concessioneing Authority of the Project Site/Project Installation(s) to the Sub-Contractor. Upon the substitution becoming effective pursuant to this sub-Article all the rights of the Successful Bidder under the Concession Agreement and the Successful Bidder's Undertaking shall cease to exist. Provided nothing contained in this sub-Article shall prejudice any pending/subsisting claims of the Successful Bidder against the Concessioneing Authority or any claim of the Concessioneing Authority against the Concessioneaire and the Sub-Contractor shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of ninety (90) days to cure any breach/default subsisting on the date of substitution and required or agreed to be cured.

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- (h) The decision of the Lender and Concessioneing Authority in the selection of the Sub-Contractor shall be final and binding on the Successful Bidder and the Concessionaire and shall be deemed to have been made with the concurrence of the Successful Bidder and the Concessionaire. The Successful Bidder and the Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.1.2 Selectee

The following procedure shall be followed for selection of the Selectee pursuant to this Agreement:

- (a) The Lender shall be entitled, within a period of one hundred twenty (120) days from the date of delivery of the Takeover Notice pursuant to the preceding Article 2.4 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the purchase of one hundred percent (100%) of Ordinary Share Capital by the Selectee and propose to the Concessioneing Authority for its approval of the Selectee (the “**Proposal**”). The Proposal of the Lender shall contain the particulars and information in respect of the Selectee, particulars of the amounts due to the Lenders under the Financing Documents, the terms of share purchase and such data and information as would be necessary and relevant for the Concessioneing Authority to decide as to the acceptability of the Selectee. The Lender shall provide to the Concessioneing Authority such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as the Concessioneing Authority may reasonably require.
- (b) The Proposal shall be accompanied by an unconditional undertaking of the Selectee substantially in the form of the Successful Bidder’s Undertaking to the effect that it shall upon acceptance by the Concessioneing Authority of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement, and to assume, take over, discharge and pay the Concessionaire’s obligations under the Financing Documents on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with the Concessioneing Authority and the Lender(s) as may be necessary or required to give effect to the substitution of the Successful Bidder by the Selectee.
- (c) The Concessioneing Authority shall convey to the Lender its acceptance or otherwise of the Selectee within thirty (30) days of: (a) the date of receipt of the Proposal by the Concessioneing Authority; or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender to the Concessioneing Authority, whichever is later.
- (d) At any time prior to the acceptance of the Selectee by the Concessioneing Authority pursuant to this Agreement, the Concessioneing Authority may require the Lender to satisfy it as to the eligibility of the Selectee and the decision of the Concessioneing Authority as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender, the Selectee and the Successful Bidder. In

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the event that the Concessions Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/the Selectee within a period of thirty (30) days prescribed in the preceding sub-Article (c), the Concessions Authority shall be deemed to have accepted the Proposal/the Selectee.

- (e) The rejection of the Selectee if made by Concessions Authority shall be reasoned and be made after hearing the Lender. Following the rejection of the Proposal, the Lender shall have the right to submit a fresh Proposal, proposing another Selectee, within thirty (30) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-Article (c) and (d) shall apply mutatis mutandis to such fresh Proposal.
- (f) If the Concessions Authority accepts the Proposal, the Concessions Authority shall take all necessary steps to substitute the Successful Bidder by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Successful Bidder by the Selectee for the Residual Concession Period.
- (g) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of Concessions Authority and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and Concessions Authority and upon the delivery by Concessions Authority of the Project Site/Project Installations to the Selectee. Upon the substitution becoming effective pursuant to this sub-Article all the rights of the Successful Bidder under the Concession Agreement and the Successful Bidder's Undertaking shall cease to exist. Provided nothing contained in this sub-Article shall prejudice any pending/subsisting claims of the Successful Bidder against the Concessions Authority or any claim of the Concessions Authority against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of ninety (90) days to cure any breach/default subsisting on the date of substitution and required or agreed to be cured.
- (h) The decision of the Lender and Concessions Authority in the selection of the Selectee shall be final and binding on the Successful Bidder and shall be deemed to have been made with the concurrence of the Successful Bidder. The Successful Bidder hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.2 Termination and Termination Payment

- (a) Where the Lender communicates in writing that: (i) the Lender does not intend to seek substitution of the Successful Bidder; or (ii) that the Lender has not been able to find a suitable Selectee or Sub-Contractor; or (iii) that the Concessions Authority has declined to accept the Selectee or Sub-Contractor proposed by the Lender, the Concessions Authority shall proceed to terminate the Concession and to make Termination Payment in accordance with the provisions of the Concession Agreement.

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- (b) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by Concessioneing Authority and it is expressly agreed that Concessioneing Authority has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.

4. MODE OF TERMINATION PAYMENTS

4.1 Mode of Payment

Concessioneing Authority and Concessionaire hereby irrevocably agree, and confirm that so long as the liabilities of the Concessionaire under the Financing Documents are outstanding the Termination Payment due and payable by Concessioneing Authority to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender(s) and advised to the Concessioneing Authority and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire to the extent of the amounts outstanding, due and payable under the Financing Documents. Any payment so made shall to the extent of such payment constitute a valid discharge by the Concessioneing Authority of its obligations with regard to the Termination Payment due to the Concessionaire under the Concession Agreement.

5. GENERAL

5.1 General

- (a) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (b) Notices under this Agreement shall be sent to the addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- (c) This Agreement shall not be affected by re-organisation of any Lender, the Successful Bidder or the Concessioneing Authority and the successor-in-interest of the Lender or Concessioneing Authority shall have the benefit of this Agreement.
- (d) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided in accordance with Article 13 (*Dispute Resolution*) of the Concession Agreement. Such arbitration shall be held in accordance with and shall be subject to the provisions of the Arbitration Act, 1940. The venue of such arbitration shall be Lahore, Pakistan and the Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "**Award**") without delay.
- (e) This Agreement and rights and obligations of the Parties hereunder shall remain

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in full force and effect pending the Award in any arbitration proceeding hereunder.

- (f) The courts of competent jurisdiction in Lahore alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- (g) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (h) It shall not be necessary for the Lender to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (i) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- (j) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.
- (k) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of the Concession Agreement shall prevail in the event of any inconsistency with this Agreement.

[Signature pages to follow]

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Schedule 6

Integrity Pact

[On the Stamp Paper in accordance with the Stamp Act, 1899]

[Insert Name of the Concessionaire] (the “**Concessionaire**”) hereby declares its intention not to obtain or induce the procurement of any contract, right, interest, privilege or other obligation or benefit through any corrupt business practice from the Government of Pakistan, the Government of Punjab, any local government, any administrative subdivision or agency of any of the foregoing or any other entity owned or controlled by any of the foregoing.

Without limiting the generality of the foregoing, the Concessionaire represents, warrants and covenants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone or any authority 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 the Concessionaire’s affiliates, agents, associates, brokers, consultants, directors, promoters, shareholders, sponsors or subsidiaries, any commission, gratification, bribe, finder’s fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or including the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from any Government Agency, except that which has been expressly declared pursuant by the Concessionaire beforehand.

The Concessionaire certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to any transaction with any Government Agency and has not taken any action or will not take any action to circumvent the above declaration, representation, or warranty or covenant.

The Concessionaire 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, warranty and covenant. The Concessionaire agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to any Government Agency under any law, contract or other instrument, be voidable at the option of the relevant Government Agency and/or the Government of Punjab and/or the Water and Sanitation Agency.

Notwithstanding any rights and remedies exercised by any Government Agency in this regard, the Concessionaire agrees to indemnify the relevant Government Agency, the Government of Punjab and the Water and Sanitation Agency for any loss or damage incurred by it on account of the Concessionaire’s corrupt business practices and further to pay compensation to the relevant Government Agency, the Government of Punjab and the Water and Sanitation Agency in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder’s fee or kickback given by the Concessionaire as aforesaid for the purpose of obtaining or the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from any Government Agency.

For and on behalf of the Concessionaire:

Signature of Authorized Signatory: _____

Name and Title of Signatory: _____

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Name of Firm: _____

Address: _____

Witness 1:

Signature: _____

Name: _____

Address: _____

CNIC/Passport No.: _____

Witness 2:

Signature: _____

Name: _____

Address: _____

CNIC/Passport No.: _____

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Schedule 7

User Charges

[please insert]

Schedule 8

Annex A: Role and functions of Consultants

QUALITY ASSURANCE INSPECTOR – TERMS OF REFERENCE

1. Role of the Quality Assurance Inspector

The Quality Assurance Inspector is to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Quality Assurance Inspector is to:

- a. independently review, monitor and where required by the Agreement, to approve activities associated with the Design, Construction, Operation & Maintenance of the Project to ensure compliance by the Concessionaire with the Annex A to Schedule 4 and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*);
- b. report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and tests;
- c. assist the Parties in arriving at an amicable settlement of disputes, should the need arise; and
- d. review matters related to safety and during operations management measures adopted by the Concessionaire for the Project.

2. Scope of Services

The services to be provided by the Quality Assurance Inspector are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Implementation Period - Design and Planning

- (a) The Quality Assurance Inspector shall review the design and drawings submitted by the Concessionaire to ensure conformity with the Technical Specifications, get them amended/improved where necessary and recommend them to Concessioneing Authority for approval.
- (b) Review of the following submitted by the Concessionaire:
 - (i) Quality Assurance Plan;
 - (ii) Approved Detailed Plan; and
 - (iii) O&M Plan – Implementation Period.

2.2 Implementation Period – Construction

The Quality Assurance Inspector would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Technical Specifications and provisions of Agreement. For this purpose the Quality Assurance Inspector shall undertake, inter alia, the following activities and where appropriate make suitable suggestions:

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- (a) monitor the progress in implementation of the Project based on the Approved Detailed Plan submitted by the Concessionaire;
- (b) review and approve the material testing and mix designs results and recommend special tests, where required, for materials and/or completed works, require removal/substitution of unsuitable materials and/or works and report deficiencies in respect of the same to Concessioning Authority;
- (c) review and monitor the quality assurance and quality control procedures followed by the Concessionaire;
- (d) review the manpower and equipment deployed by the Concessionaire;
- (e) monitor the construction works for conformity with the Technical Specifications and O&M requirements;
- (f) verify the 'As Built' drawings for each component of the works prepared by the Concessionaire and require removal of deficiencies found therein;
- (g) conduct tests to ensure the compliance with the Technical Specifications, O&M requirements and handback requirements;
- (h) review the safety and operation management measures implemented;
- (i) review and ascertain the cost variation arising as a result of Change in Law and/ or Variation and determine the Additional Cost;
- (j) require, monitor and review the results of Tests to be carried out by the Concessionaire in accordance with Annex A to Schedule 4 and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*);
- (k) require suspension of whole or any part of the construction works if in its reasonable opinion the same does not conform to Annex A to Schedule 4 (*Technical Specifications – Construction*) and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*);
- (l) sign off on the Project Construction Completion Certificate in accordance with the applicable provisions of the Agreement; and
- (m) review and assist in finalization of the O&M Manual and first annual O&M Plan prepared by the Concessionaire.

2.3 Operations Period

- (a) During this period the Quality Assurance Inspector would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Concessionaire so as to ensure compliance with the O&M requirements. The specific activities to be undertaken would include the following:
 - (i) review the O&M Plans submitted by the Concessionaire from time to time and assist the Concessionaire in finalizing the same;
 - (ii) monitor Operation and Maintenance activities (including maintenance of equipment, standards of service, operations management, safety and environmental issues) and the overall quality of O&M activities so as to ensure compliance by the Concessionaire with the O&M requirements, O&M Plan and

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O&M Manual;

- (iii) Periodically review the O&M Manual for adequacy;
 - (iv) inspect the Project Installations frequently and as and when exigencies require to ascertain conformity with Annex A to Schedule 4 (*Technical Specifications – Construction*) and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*);
 - (v) review and ascertain the cost variation arising as a result of Change in Law and/ or Variation and determine the Additional Cost;
 - (vi) undertake a quarterly review of the various records and registers to be maintained by the Concessionaire (including the records relating to complaints and accidents) and suggest suitable remedial measures/procedures, where necessary.
- (b) In the event of an emergency, the Quality Assurance Inspector shall assist the Concessionaire in dealing with the same and if necessary require or permit, as the case may be, the Concessionaire to take such appropriate steps or measures including decommissioning of any Project facilities where necessary.

2.4 Handback of Project Installations to Concessioneing Authority

At the time of handing back the Project Installation to Concessioneing Authority at the end of Concession Period, the Quality Assurance Inspector shall:

- (a) monitor and certify compliance with the handback requirements and
- (b) issue a certificate of compliance with handback requirements to the Concessionaire.

2.5 Breach of Obligations

If during the course or upon review/inspection undertaken by the Quality Assurance Inspector or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Quality Assurance Inspector shall, under intimation to the other Party, require the defaulting Party to remedy such breach/default within such time and in such manner as the Quality Assurance Inspector may deem fit and in each case the same shall be recorded.

2.6 Meetings, Records and Reporting

- (a) The Quality Assurance Inspector would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the Construction Period and once every two months during the O&M Period and also to participate in emergency or extraordinary meetings of the Parties held to deal with any emergency, Force Majeure Event or other exigencies.
- (b) The Quality Assurance Inspector shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
 - (i) Manpower deployed and other organizational arrangements of the Quality Assurance Inspector;

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- (ii) Reviews of documents submitted to it by the Concessionaire to meet Annex A to Schedule 4 and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*), such as manuals, Drawings, As Built drawings, Schedules, plans and reports;
 - (iii) Inspections undertaken and notices/instructions issued to the Concessionaire or Concessioning Authority;
 - (iv) Review of compliance Annex A to Schedule 4 and Annex B to Schedule 4 (*Technical Specifications – Operation and Maintenance*);
 - (v) Tests;
 - (vi) Variation and Change in Law;
 - (vii) Emergency (including accidents);
 - (viii) Force Majeure Events;
 - (ix) Breaches and defaults by the Parties; and
 - (x) Handback requirements
- (c) The Quality Assurance Inspector would be required to submit the following reports to the Parties during the Concession Period:
- (i) Construction Period
 - Monthly Progress Report (including details of slippages and remedial measures);
 - Report on tests and report on notices issued;
 - Inspection Report;
 - Project Construction Completion Certificate;
 - Any supplemental or special report that may be considered necessary by the Quality Assurance Inspector (including Emergency, Force Majeure, and breach of obligations).
 - (ii) O&M Period
 - Monthly O&M Report (including Lane Availability, details of slippages and remedial measures);
 - Report on Tests and report on notices issued;
 - Inspection Report;
 - Any supplemental or special report that may be considered necessary by the Quality Assurance Inspector (including emergency, Force Majeure, and breach of obligations);
 - Annual Review of O&M Manual.
 - (iii) Report on Handback requirements.

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- (iv) Any other report as may be reasonably required by Concessioneing Authority or as may be necessary to give effect to the provisions of the Agreement.

2.7 Remuneration:

The remuneration, cost and expenses of the Quality Assurance Inspector shall be borne by the Parties equally. The Concessionaire shall within seven (7) days of receipt of demand from Concessioneing Authority pay/reimburse to Concessioneing Authority without recourse to the Quality Assurance Inspector from time to time its share of the remuneration.

2.8 Replacement of the Quality Assurance Inspector:

The Concessioneing Authority may in its discretion replace the Quality Assurance Inspector for the time being in any of the following circumstances:

- (i) If the Concessioneing Authority or the Concessionaire has reason to believe that the Quality Assurance Inspector has not discharged its duties in a fair, appropriate and diligent manner;
- (ii) If, in accordance with the terms of its appointment, the Quality Assurance Inspector resigns or notifies its intention not to continue as the Quality Assurance Inspector; or
- (iii) Any other circumstance which in the opinion of the Parties warrants the replacement of the Quality Assurance Inspector.

Annex B: Project Construction Completion Certificate

Project Construction Completion Certificate

Name of the Project:

Comments of the Issuer:

Contractor:

Date of Notice of Award:

Date of Completion:

It is hereby certified that M/s ----- has completed certain requirements of the Concession Agreement pursuant to which this Project Compliance Certificate is being issued under Article 6.2 of the Concession Agreement.

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Concessionaire, [insert name]

**The Punjab Public Private Partnership
Authority**

Quality Assurance Inspector

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Schedule 9

Prohibited Activities

The Concessionaire shall not undertake following activities on the Project Site:

- Any activities resulting in pollution to the surrounding areas;
- Any activities creating breach of urban design guidelines;
- Any activities of a hazardous nature;
- Activities resulting in air and noise pollution;
- Any activities mentioned as prohibited in the Concession Agreement; and
- Any other activity in contravention of the Applicable Laws or the Applicable Permits.

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Schedule 10

Applicable Laws

The Concessionaire shall obtain, maintain and comply with the Applicable Permits, as required under the Applicable Laws.

An indicative and non-exhaustive list of Applicable Laws is provided hereunder:

- i. The Constitution of the Islamic Republic of Pakistan, 1973
- ii. Punjab Public Private Partnership Act 2019
- iii. Punjab Public Private Partnership Rules, 2014
- iv. Punjab Procurement Regulatory Authority Act, 2009
- v. Punjab Procurement Rules, 2014
- vi. Punjab Environmental Protection Act, 1997
- vii. Review of IEE and EIA Regulations, 2000
- viii. Environmental Impact Assessment Regulations, 2000
- ix. Companies Act, 2017
- x. Any relevant land, water or electricity laws
- xi. Lahore Development Authority Act, 1975
- xii. Pakistan Engineering Council Byelaws, 1976

This List is indicative and non-exhaustive and it is the duty of the Concessionaire to obtain all the Applicable Permits as required under the Applicable Laws.