

CONCESSION AGREEMENT

Dated as of _____

At: Karachi, Pakistan

Between

Agriculture Supply & prices Department,
Government of Sindh
(As "GoS")

And

M/s. _____
(As "CONCESSIONAIRE")

TABLE OF CONTENTS

1.	Definitions & Interpretation	5
2.	Concession	32
3.	Conditions	33
4.	Acquisition and Development of Concession Assets	41
5.	Independent Engineer	44
6.	Independent Auditor	48
7.	Processing Project	52
8.	Concessionaire Covenants	54
9.	General Undertakings	55
10.	Representations and Warranties	60
11.	Indemnity	63
12.	Obligations of the Concessionaire	67
13.	Bid Security And Performance Security	73
14.	Change of Scope	76
15.	Operation and Maintenance	78
16.	Insurances	86
17.	Force Majeure	88
18.	Events of Default	95
19.	Termination	100
20.	Divestment of Rights and Interest	104
21.	Defects Liability During Termination Implementation Period	107
22.	Disclaimer	108
23.	Assignment and Charges	109
24.	Change in Law	111
25.	Additional Matters	113
26.	Dispute Resolution	115
27.	Miscellaneous	117

LIST OF SCHEDULES

A.	General Scope of the Project	122
B.	Financial Model	124
C.	Format of Construction Performance Security	125
D.	List of Corporate Documents	127
E.	List of Insurances	128
F.	Format of O&M Performance Security	129
G.	Concession Permits	131
H.	Indicative Independent Auditor Terms of Reference	132
I.	Indicative Independent Engineer Terms of Reference	133
J.	Project Completion Schedule	137
K.	Specifications of Blast Chiller	138
L.	Specifications of Cold Storage	139
M.	Specifications of Hot Water Treatment Plant	140
N.	Specifications of Processing Facility	141
O.	Specifications of Pack House	146
P.	Specifications of Vapor Heat Treatment Plant	147
Q.	Specifications of Water Treatment Plant	148
R.	Standard Operating Procedures	149
S.	Specifications of Project Land	152
T.	Total Project Cost	153
U.	Format of Vesting Certificate	154
V.	Termination Payment Schedule	156
W.	Details of Notices	159

CONCESSION AGREEMENT

This **Concession Agreement** (this “**Agreement**”) is made at Karachi on this _____ day of _____ 2016.

By and Between

THE GOVERNOR OF SINDH, acting through the **Secretary** Agriculture Supply & Prices Department , Government of Sindh, (hereinafter referred as “**GoS**”, which expression shall, where the context so permits, be deemed to mean and include its successors in interest, administrators, executors, and permitted assigns).

And

[*The SPV incorporated by the Successful Bidder*], having its offices at _____ Karachi on the other part (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).

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

WHEREAS:

- A. The GoS aims to set up a Processing Facility (defined below) in order to boost the worldwide exports of fruits, primarily mangoes, produced in Sindh and other areas of Pakistan and to reduce post-harvest losses by improving and enhancing quality of the mangoes and other fruits and vegetables and is seeking to implement the Processing Facility with the private sector participation on design, finance, procure, build, operate, transfer (DFBOT) basis (“**Project**”).
- B. The GoS with assistance of the Public Private Partnership (the “**PPP**”) Unit, Finance Department, Government of Sindh, had invited competitive bids for the Project under PPP mode by issuing, to bidders, a request for proposal of the first stage dated _____ and of the second stage (collectively the “**RFP**”).
- C. Pursuant to the terms of the RFP, _____ (the “**Sponsor**”) submitted its bid for the Project (the “**Bid**”). The Letter of Award/Acceptance was issued to the Sponsor by the GoS on _____.
- D. The Concessionaire was incorporated by the Sponsors respectively, in accordance with the provisions of Applicable Laws: (i) in order to enable the Parties to enter into this Agreement and for the Concessionaire to seek and avail the grant of the Concession for the purposes of the implementation of the Project and for the purposes of the GoS to grant the Concession; and (ii) for the purpose of implementing the Project under Public Private Partnership basis; whereby the Concessionaire undertake and perform the obligations set out in this Agreement.

- E. The Concessionaire, subject to the terms of this Agreement, acknowledges and confirms that it has, based on the RFP provided by GoS, undertaken a thorough due diligence (including the technical and financial viability and legal due diligence) of the Project and its requirements and on the basis of their independent satisfaction is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement.
- F. The Parties are now entering into this Agreement to set out the terms and conditions applicable to, inter alia, the Concession and the implementation of the Project and the relationship of the GoS and the Concessionaire and their rights and obligations.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed and declared by the Parties as under:

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

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

“Abandonment or Abandon” means the following:

For construction phase:

voluntary cessation of the construction and procurement of the Concession Assets by the Concessionaire, for reasons other than a Permitted Event.

For O&M phase:

voluntary cessation of the operation of the Concession Assets by the Concessionaire and especially not operating/running the Project as a whole, for reasons other than a Permitted Event.

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

“Act” means the Sindh Public Private Partnership Act, 2010, as amended from time to time and shall include all future enactments in replacement thereof.

“Additional Cost” means the additional capital expenses 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 GoS in terms of this Agreement and shall not form part of Total Project Cost.

“Affected Party” shall have the meaning ascribed thereto in Section 17.1.1 (Force Majeure Event).

“Affected Area” shall have the meaning ascribed thereto in Section 17.1.1 (Force Majeure Event).

“Applicable Laws” means all laws, promulgated or brought into force and effect by the GoS or the Government of Pakistan, as the case may be, including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project in accordance with this Agreement.

“Applicable Standards” means the (a) Applicable Laws, the Construction Requirements, the Safety Requirements, Environmental Standards and Good Industry Practice, and (b) the other relevant requirements as may be specifically required by the Customer for obtaining the Quality Certificates by the Customer, their relevant criterion and timelines (as applicable) set out in relation to and applicable to:

- (a) the construction of the Processing Facility;
- (b) the processing of Fruits & Vegetables;
- (c) the performance by the Concessionaire of its obligations under the this Agreement;

in each case above, as contained and set out in (as applicable) including but not limited to:

- (i) this Agreement (including all Schedules attached hereto);
- (ii) the Financing Agreements;
- (iii) Applicable Laws;
- (iv) Applicable Permits;
- (v) Environmental Standards;
- (vi) Specification of Processing Facility;
- (vii) Construction Requirements of all the elements of Processing Facility as stated in Section(vi) above;
- (viii) any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time, provided however, in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the most stringent standards, requirements, criterion and timelines (as applicable), as contained in any of the above-mentioned, shall apply (unless otherwise mutually agreed between the Parties).

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

“Associate” or “Affiliate” means, in relation to either Party and/or Sponsors, a person who controls, is controlled by, or is under the common control with such Party and/or the Sponsors (as used in this definition, the expression **“control”** means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 20% (Twenty Percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).

“Bid Security” means the [first demand irrevocable and unconditional bank guarantee, pay-order, demand draft or bankers cheque issued by a scheduled commercial bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA)], guaranteeing the payment to the GoS of an amount of one percent (1%) of the bid price, submitted by the Sponsor(s) pursuant to the RFP in connection with its Bid for the Concession rights which shall remain in valid and in effect until replaced by the Construction Performance Security or until terminated in accordance with the terms thereof and the terms of this Agreement.

“Blast Chiller” means a machine, which shall be used for cooling the heated fruits and vegetable through circulation of cool air over them, detailed specification of which is mentioned in Schedule “K” below (Specifications of Blast Chiller).

“Big Four” means four well-reputed, skilled and professional firms of certified chartered accountants based in Pakistan i.e.

1. A.F. Ferguson & Co. (a member firm of PwC Network)
2. KPMG TaseerHadi& Co.
3. EY, Pakistan
4. Deloitte, Pakistan

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

“Capacity of Processing Facility” means the name plate capacity or the capacity of each of the components of the Processing Facility as specified by the relevant supplier of that component and the same shall be verified by the Independent Engineer.

“Concession” means all of the rights granted by the GoS to the Concessionaire in terms of this Agreement for implementing the Project.

“Construction Completion Certificate” means the certificate issued by the Independent Engineer at the request of the Concessionaire in accordance with Section 4.2.8.

“Construction Completion Date” shall mean the date of issuance of Construction Completion Certificate.

“Commercial Operations Date” shall mean the date of immediately next day of the Construction Completion Date.

“Concessionaire” shall have the meaning ascribed thereto in the preamble above.

“Change in Law” means the occurrence of any of the following events after the date of this Agreement:

- (a) the enactment of any new provincial or local government law (including relating to tax), as applicable in the Province of Sindh;
- (b) the repeal, modification or re-enactment of any existing provincial or local government law (including relating to tax), as applicable in the Province of Sindh;
- (c) the commencement of any provincial, local or federal government law (including relating to tax), which has not entered into effect until the date of this Agreement;
- (d) a change in the interpretation or application of any Pakistani law (including relating to tax) as applicable in Sindh by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement.

provided that any:

- (i) coming into effect, after the Effective Date, of any provision of a statute which is already gazetted in accordance with the Applicable Laws as of the Effective Date; or
- (ii) any new law or any change in the existing law under the active consideration of or in the contemplation of the GoS as of the Effective Date, which is already gazetted in accordance with the Applicable Laws as of the Effective Date, shall not constitute a Change in Law.

“Change in Law Termination Amounts” shall have the meaning ascribed thereto in Section 24.1 (Increase in Costs).

“Change in Ownership & Control” means any transfer or any event, arrangement, Encumbrance or agreement of any nature that results in or may result in the transfer of direct and/or indirect, legal and/or beneficial interest in the ownership of any shares, or securities convertible into shares (other than, in each case, as a consequence of enforcement of security over the same), that causes or may cause the Sponsors in losing the legal and/or ownership, direct or indirect the all or any part of the total issued and paid up and/or outstanding Class A Shares of the Concessionaire.

“Change of Scope Notice” shall have the meaning ascribed thereto in Section 14.2 (Change of Scope Notice).

“Change of Scope” shall have the meaning ascribed thereto in Section 14.2.2 (Change of Scope).

“Class A Share(s)” means share capital issued to the shareholders of the Concessionaire (excluding the GoS) from time to time and shall be the main recipient of Class A Dividends in accordance with this Agreement.

“Class B Share(s)” means share capital issued to the GoS which shall not be liable for non-performance under any circumstances whatsoever and for which the Class A Dividends shall not be paid, accrued and applied and it shall have the right to Class B Dividends.

“Class A Dividends” means the dividends declared by the Concessionaire from time to time in favor of the Sponsors against the Class A Shares held by them in the Concessionaire.

“Class B Dividends” means the revenue to be generated through the advertisement by using the Concession Asset, and such fee, in case being paid to the Concessionaire, shall be paid to the GoS as dividends for Class B Shares; provided, that any amounts payable to the GoS by the Concessionaire hereunder as dividends for Class B Shares shall be adjusted for any adverse tax impact on the Concessionaire resulting from receipt of such fee.

“Cold Storage” shall mean a refrigerated room designed specifically to place Mangoes, other Fruits and/or Vegetables and the relevant Fresh Products and/or Value Added Products, the detailed specifications of the same are described in the Schedule “L” give below (Specifications of Cold Storage).

“Construction Period” means the period commencing on the Commencement Date and ending on the date of issuance of the Construction Completion Certificate.

“Commencement Certificate” means a certificate to be issued in writing by the Independent Auditor and the Independent Engineer, to the Concessionaire and copied to the GoS in accordance with this Agreement.

“Commencement Date” means the date set out in the Commencement Certificate by the Independent Auditor and/or the Independent Engineer in accordance with Section 3.3 (Commencement Certificate & Commencement Date) of this Agreement, being the date on which each of the Conditions Precedent stand satisfied, waived and/or deferred.

“Commercial Clients” shall mean all the Customers excluding Local Customers.

“Concession” shall have the meaning ascribed thereto in Section 2.1.

“Concession Assets” includes the (a) the Processing Facility and all such assets which are necessary to run the Project (b) Land Rights, and (c) civil works including foundations, building, structures, tools, equipments, spare parts, lighting facilities, electrical works, etc. on any of the Concession Assets and all rights, title, benefits, facilities and easements, whether directly and/or indirectly related thereto, relating to and forming part of the same.

“Concession Period” means, in respect of the Concession and the Concession Assets, the period of maximum 21 years starting from the Commencement Date, and ending on the earlier to occur of (a) the Termination Date; or (b) the Final Expiry Date.

“Concessionaire Event of Default” shall have the meaning ascribed thereto in Section 18.1.1 (Concessionaire Event of Default).

“Concessionaire Conditions Precedent” shall have the meaning ascribed thereto in Section 3.1.2 (Conditions Precedent).

“Concessionaire Default Termination Amount” shall have the meaning ascribed thereto in Section 19.1.5 (*Termination for Concessionaire Event of Default*).

“Concessionaire Permits” means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions or similar items which is/are issued by a Governmental Authority and which any of the Concessionaire or its Contractors is required to obtain from any Governmental Authority.

“Condition(s) Precedent” means the conditions precedent to the achievement of Commencement Date, as listed in Sections 3.1.2, 3.1.3 and 3.1.4 of Section 3.1 (Conditions Precedent).

“Conditions” means the Conditions Precedent set out in Article 3 (Conditions).

“Construction Performance Security” means first demand irrevocable and unconditional bank guarantee issued on behalf of the Concessionaire by the scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS in the form of a bank guarantee or a standby letter of credit, guaranteeing the payment to the GoS of an amount equal to five percent (5%) of the Total Project Cost for the circumstances set out in Section 13.2.1, in the form of the instrument attached herewith as Schedule “C” (Format of Construction Performance Security).

“Construction Performance Security Expiry Date” shall have the meaning ascribed thereto in Section 13.4.1.

“Construction Requirements” means the applicable standards relating to the construction of the Concession Assets.

“Concessionaire Preliminary Notice” shall have the meaning ascribed thereto in Section 19.2.1 (*Termination for GoS Event of Default*).

“Construction Works” means the works to be performed in respect of the construction of the Processing Facility in accordance with the Applicable Standards, and includes construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, forming or to form, part of the site on which the Concession Assets shall be situated provided however *“Construction Works”* does not include any of the following work:

- (a) the drilling for, or extraction of, oil or natural gas;
- (b) the extraction (whether by underground or surface working) of minerals, including tunneling or boring, or constructing underground works, for that purpose;

“Contractor(s)” means any of the Concessionaire’s direct contractors/consultants and any of their direct sub-contractors/sub-consultants involved in the design, procurement, engineering, implementation, development, construction, running, operation, maintenance, etc. of the Project (or any part thereof).

“Corporate Documents” means the constitutional documents and the corporate authorizations set out in Schedule “D” (Corporate Documents).

“Corrupt Act” means:

- (a) offering, giving or agreeing to give to the GoS, a Government Authority or to any person employed by or on behalf of the GoS and/or a Government Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract relating to this Agreement with the GoS and/or a Government Authority; or
 - (ii) for showing or not showing favor or disfavor to any person in relation to this Agreement or any other contract relating to this Agreement with the GoS and/or a Government Authority;
- (b) entering into this Agreement or any other contract relating to this Agreement with the GoS and/or a Government Authority in connection with which commission has been paid or has been agreed to be paid by the Concessionaire or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the GoS;

- (c) committing any offence:
 - (i) under any law, in respect of fraudulent acts in relation to this Agreement, from time to time dealing with bribery, corruption or extortion;
 - (ii) under any law, in respect of fraudulent acts in relation to this Agreement, creating offences in respect of fraudulent acts; or
 - (iii) in respect of fraudulent acts in relation to this Agreement;
- (d) in respect of fraudulent acts in relation to this Agreement, defrauding or attempting to defraud or conspiring to defraud the GoS or any other public body;

“Corrupt Act Termination Amount” shall have the meaning ascribed thereto in Schedule “V” (Termination Payment).

“Construction Period Insurances” means the Insurances (or takaful) procured and/or obtained by the Concessionaire pursuant to the provisions of and in accordance with Section 16.1.1 (Construction Period Insurances) and Part A – Schedule “E” (Insurances).

“Construction Encashed Sums” shall have the meaning ascribed thereto in Section 13.4.2.

“Construction Encashed Sums Deductions” shall have the meaning ascribed thereto in Section 13.4.3.

“Concessionaire’s Conditions Precedent” shall have the meaning ascribed thereto in Section 3.1 (Conditions Precedent).

“Concession Permits” shall mean the Concessionaire Permits listed in Schedule “G” attached herewith (Concession Permits).

“Customers” means any person who avails the Services of the Concessionaire in relation to the Project, including the Commercial Clients and the Local Customers.

“Cure” shall mean curing of breach or default of this Agreement by the party responsible for such breach or default.

“Cure Period” means:

- (a) in respect of a Concessionaire Event of Default:
 - (i) during any period when any Debt Due is outstanding, the period commencing on the date of receipt by the Concessionaire of the GoS Preliminary Notice and expiring on the date falling ninety (90) days thereafter;

- (ii) during any period when any Debt Due is not outstanding, the period commencing on the date of receipt by the Concessionaire of the GoS Preliminary Notice and expiring on the date falling forty-five (45) days thereafter;
- (b) in respect of a GoS Event of Default, the period commencing on the date of receipt by the GoS of the Concessionaire Preliminary Notice and expiring on the date falling forty-five (45) days thereafter.

“Defects Liability Period” shall mean a period commencing from Construction Completion Date and expiring on the date falling twenty-four (24) months following the Construction Completion Date.

“Debt Component” means the amounts that relates to the repayment and servicing of Debt Due (i.e. both Principal repayment and interest/mark-up payments) in accordance with the Financing Documents, as set out in the Financial Model.

“Debt Due” means the aggregate of the following sums expressed in Pak Rupees outstanding and payable to the Lenders pursuant to the Financing Documents:

- (a) the principal amount of the debt provided and disbursed by the Lenders under the Financing Documents for financing the Project (the **“Principal”**), which is outstanding immediately preceding the Termination Payment Date. The maximum amount of the Principal at any time must not exceed 50% of the Total Project Cost;
- (b) the interest or mark-up accruing on the Principal in accordance with the Financing Documents for financing the Project, which is outstanding immediately preceding the Trigger Date (or any other relevant date in question), but excluding penal interest or charges payable under the Financing Documents to the Lenders provided however, in the event this Agreement is terminated due to a GoS Event of Default or a Force Majeure Event, then this sub-section (b) shall also include the penal interest or charges payable under the Financing Documents to the Lenders.

“Decommissioned Concession Asset” shall have the meaning ascribed thereto in Section 15.8.1 (Emergency Decommissioning).

“Development Rights” means such additional rights, property or assets that are not part of and are not anticipated to be part of the Project as on the date of this Agreement but are granted to the Concessionaire by the GoS in accordance with Section 25.4 and the Development Rights Agreement for development of other additional/optional facilities.

“Dispute” shall have the meaning ascribed thereto in Section 26.1.1.

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set out in Section 26 (Dispute Resolution).

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

“Emergency Decommissioning” shall have the meaning ascribed thereto in Section 15.8.1 (Emergency Decommissioning).

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

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

“Encumbrance” means any encumbrance on an asset, including but not restricted to mortgage, charge, pledge, lien, hypothecation and/or any security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy (or takaful) pertaining to the Concession Assets and/or any part or portion thereof and physical encumbrances and encroachments thereon.

“Equity IRR” shall mean the internal rate of return (expressed as percentage) on the Sponsors’ Equity of the Concessionaire, as expressly set out in the Financial Model.

“Equity Component” means the amounts that relates to the return on the Equity of Class A Shares in the form of Class A Dividends in accordance with the Financial Model.

“GoS Debt Repayment Support Escrow Account” means the account to be established in terms of GoS Debt Repayment Support Agreement.

“GoS Debt Repayment Support Agreement” shall have the same meaning as ascribed thereto in Article 4.1 below.

“Escrow Accounts” means collectively the following:

- i. Sponsor’s Escrow Account
- ii. GoS Escrow Account
- iii. GoS Debt Repayment Support Escrow Account

“Event of Default” means, as the context may require:

- (a) the Concessionaire Event of Default;
- (b) the GoS Event of Default.

“Final Expiry Date” means the date falling on the last day of the Concession Period, however, the GoS and the Concessionaire may mutually agree to extend the Final Expiry Date, and as a result, the Concession Period shall also stand extended accordingly.

“Financial Close” means the execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, and commissioning of the Project and achievement of construction completion (following the resolution of any objections raised by the GoS and/or the Independent Auditor to the Financing Documents 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 evidence of commitments for such equity as is required by the Concessionaire to satisfy the requirements of the Lenders and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents and the Concessionaire having immediate access to the Financing.

“Financial Model” means the financial model in respect of the Concessionaire attached herewith as Schedule “B” (Financial Model), as updated at Financial Close.

“Financing” means the finance facilities (including Islamic and/or conventional finance facilities), loans, advances, financial accommodation and/or arrangement, subscription and/or issuance of debentures/bonds/redeemable capital, risk participation, take out financing and/or any other financial obligation availed by the Concessionaire from time to time from the Lenders for the development and construction of the Project, pursuant to the Financing Documents.

“Financing Documents” means the agreements entered into by the Concessionaire in respect of the Financing and shall include, but not be restricted to, loan agreements, documents relating to Islamic and/or conventional finance facilities, lease agreements, hire purchase agreements, notes, indentures, security agreements, or arrangements, guarantees, acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof, relating to any financing or refinancing for the Project or any portion thereof, in each case as amended, supplemented or otherwise modified from time to time.

“First IA List” shall have the meaning ascribed thereto in Section 6.1 (Selection).

“Fruits” include seed bearing structures in flowering plants, formed from the ovary after flowering for example, Mango, guava, banana, etc.

“Force Majeure Costs” means all such costs that are directly attributable to, arise from and are a direct result of, in each case, a Force Majeure Event and shall include Debt Due under the Financing Documents that are in accordance with the Financing Documents; any additional capital expenses; any additional construction costs; and any additional operating costs, provided however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon.

“Force Majeure Event” means the occurrence of any or all of the Non Political Events and/or the Political Events.

“Force Majeure Notice” shall have the meaning ascribed thereto in Section 17.2.1 (Obligation to Notify).

“Force Majeure Period” means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on (a) the date on which the Affected Party resumes or should have resumed (as determined by the Independent Engineer) such of its obligations the performance of which it was excused in terms of Section 17.8 (Excuse from Performance of Obligations); or (b) the Termination Date; as applicable.

“Fresh Products” shall have the same meaning as ascribed thereto in Section 7.1 below.

“Fresh Products Segment” means a segment of the Processing Facility that shall be used by the Concessionaire to produce the Fresh Products.

“Funding & Utilization Agreement” means the agreement to be executed between the Parties regulating in details the mechanism, the sources, the timing, etc. of the funding of Project Account and utilization of funds available in the Project Account.

“General Scope of the Project” means the general scope of the Project, as set out in Schedule “A” (General Scope of the Project).

“Good Industry Practice” means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged in respect of the Concessionaire under this Agreement and acting generally in accordance with the provisions of the Applicable Laws, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the Operation and Maintenance of the Project in accordance with the Applicable Standards. “Good Industry Practices” are not limited to optimum practices, methods, techniques, standards, skills, diligence, prudence or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods, techniques, standards, skills,

diligence, prudence or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

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

“GoS Agreements” means:

- (b) this Agreement;
- (c) the Funding & Utilization Agreement;
- (d) any Financing Documents to which the GoS is a party; and
- (e) any other agreement entered into in respect of the Project between the:
 - (i) GoS; and
 - (ii) Concessionaire and/or the Lenders in respect of the Project.

“GoS’s Conditions Precedent” shall have the meaning ascribed thereto in Section 3.1.4 (Conditions Precedent).

“GoS Default Termination Amounts” shall have the meaning ascribed thereto in Schedule “V” (Termination Payment).

“GoS Equity” means an amount equivalent to maximum 20% of the Total Project Cost to be invested by GoS in share capital of the Concessionaire, represented in PKR, subscribed to by the GoS, which shall be represented through Class B Share(s).

“GoS Escrow Account” means the account bearing account no. _____ having title “GoS Escrow Account” established with [insert bank name along with branch name] to be operated by the Escrow Account Bank;

“GoS Event of Default” shall have the meaning ascribed thereto in Section 18.2 (GoS Event of Default).

“GoS Indemnified Persons” shall have the meaning ascribed thereto in Section 11.1.1 (General Indemnity).

“GoS Legal Counsel” means Ahmed & Qazi, Advocates & Legal Consultants, having its offices at 402, 403, 404 & 417, Clifton Centre, Clifton, Karachi.

“GoS Overriding Power Event” shall have the meaning ascribed thereto in Section 15.9.1 (GoS Overriding Powers).

“GoS Remedy Invoice” shall have the meaning ascribed thereto in Section 15.3.1.

“GoS Remedy Amount” shall have the meaning ascribed thereto in Section 15.3.1.

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

“Handover List” shall have the meaning ascribed thereto in Section 21.1.1 (Liability for defects during Termination Implementation Period).

“Hot Water Treatment Plant” or “HWT Plant” means a treatment plant installed to terminate pest/insects from the Mangoes by immersing them into hot water of certain degrees for a certain period of time, detailed specifications of which are given in the Schedule “M” below (Specifications of Hot Water Treatment Plant).

“Indemnified Party” shall have the meaning ascribed thereto in Section 11.2.1 (Notice and Contest of Claims).

“Independent Auditor” means the auditor appointed in respect of the Project in accordance with Section 6 (Independent Auditor) and in terms of the Independent Auditor Contract.

“Independent Engineer” means the engineer appointed in respect of the Project in accordance with Article 5 (Independent Engineer) and in terms of the Independent Engineer Contract.

“Independent Auditor Appointment Term” shall have the meaning ascribed thereto in Section 6.2.1 (Term of Appointment of the Independent Auditor).

“Independent Engineer Appointment Term” shall have the meaning ascribed thereto in Section 5.2.1 (Term of Appointment of the Independent Engineer).

“Independent Auditor Contract” means the contract to be entered into between the GoS, the Concessionaire and the Independent Auditor in accordance with Section 6 (Independent Auditor).

“Independent Engineer Contract” means the contract to be entered into between the GoS, the Concessionaire and the Independent Engineer in accordance with Article 5 (Independent Engineer).

“Independent Auditor Payments” shall have the meaning ascribed thereto in Section 6.5.1 (Independent Auditor Remuneration).

“Independent Engineer Payments” shall have the meaning ascribed thereto in Section 5.5.1 (Independent Engineer Remuneration).

“Indicative Independent Auditor Terms of Reference” means the duties, functions and the scope of work to be performed by the Independent Auditor, as indicatively attached herewith as Schedule “H” (Indicative Independent Auditor Terms of Reference) provided however, upon execution of the Independent Auditor Contract, the scope of work of the Independent Auditor set out therein shall be deemed to replace Schedule “H” (Indicative Independent Auditor Terms of Reference).

“Indicative Independent Engineer Terms of Reference” means the duties, functions and the scope of work to be performed by the Independent Engineer, as indicatively attached herewith as Schedule “I” (Indicative Independent Engineer Terms of Reference) provided however, upon execution of the Independent Engineer Contract, the scope of work of the Independent Engineer set out therein shall be deemed to replace Schedule “I” (Indicative Engineer Terms of Reference).

“Infrastructure Cost” means the cost for developing, building, constructing or establishing the civil works of relevant Concession Assets (including any fittings & fixtures and furniture) as mentioned in the Financial Model.

“Interest During Construction or IDC” means the mark-up, interest, profit, etc. charged by the Lenders in respect of the Financing during the Construction Period.

“Insurances” means all insurances (or takaful), reinsurance, agreements of insurance and reinsurance and/or arrangement for insurance and/or reinsurance in relation to the Project, the Concession Assets, the Construction Works and/or any part or portion thereof procured or to be procured by the Concessionaire, including but not restricted to the Construction Period Insurances and O&M Period Insurances.

[“Insurance Cost” means the sum of Construction Period Insurance Costs and O&M Period Insurance Costs.]

“Land Rights” means the rights acquired by the Concessionaire in respect of the Project Land for the purposes of this Agreement.

“Construction Period Insurance Cost” means the aggregate of premia amounts to be paid by the Concessionaire to acquire the Insurances taken out by the Concessionaire pursuant to the terms of this Agreement under Section 16 to avail the Construction Period Insurances.

“O&M Period Insurances” means the aggregate of premia amounts to be paid by the Concessionaire to acquire the Insurances taken out by the Concessionaire pursuant to the terms of this Agreement under Section 16 to avail the O&M Period Insurances.

“Land Rights Holder” means the person(s) from whom the Concessionaire shall acquire the Land Rights under the Land Rights Agreement.

“Land Rights Agreement” means one or more agreements to be entered into between the Concessionaire and the Land Rights Holder for the acquisition of Land Rights by the Concessionaire from the Land Rights Holder.

“Lenders” means the all financial institutions (including Islamic and/or conventional), banks, funds, trusts or trustees of the holders of debentures or other securities their successors and permitted assigns, that extend finance facilities and/or financial accommodation from time to time to the Concessionaire pursuant to the Financing Documents.

“Local Customers” shall mean local farmers/growers from Hyderabad, Tando Jam, Tando Allahyar and Mirpurkhas.

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

“Main Body” means this Agreement excluding the Schedules.

“Maintenance Requirements” means maintenance requirements for the maintenance of the Project, as prescribed by the Applicable Standards.

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

- (a) the business, Processing Facility, property, assets, present or future condition (financial or otherwise) or prospects of the Concessionaire or any Project Party in respect of the Project;
- (b) the ability or probability (financial or otherwise) of the Concessionaire or any Project Party to perform and observe its obligations under the Project Agreements;
- (c) the legality, validity or enforceability of, or the rights or remedies of, the GoS under this Agreement; and/or
- (d) the Concessionaire’s ability to plan, finance, procure, own, operate and transfer the Project in accordance with the terms of the Project Agreements.

“Mangoes” means a juicy stone fruit belonging to the genus mangifera, consisting of numerous tropical fruiting trees, cultivated mostly for edible fruit more particularly the mango fruit known in Pakistan as sindhri, chaunsa, etc.

“Material Breach” means breach by either Party of any of its obligations under this Agreement or related agreement which has/is likely to have a Material Adverse Effect on the Project and which such breaching Party shall have failed to cure by the date falling forty-five (45) days following the date of receipt of a notice issued by the non breaching Party to the breaching Party to cure such breach.

“New IA List” shall have the meaning ascribed thereto in Section 6.2.3.

“New IE List” shall have the meaning ascribed thereto in Section 5.2.3.

“Non Political Event” shall bear the meaning ascribed thereto in Section 17.1.1.2.

“Non Political Event Termination Amounts” shall have the meaning ascribed thereto in Schedule “V” (Termination Payment).

“Notice to Remedy” shall have the meaning ascribed thereto in Section 15.3.1.

“Operation and Maintenance” means the operation and maintenance of the Concession Assets in accordance with the Applicable Standards and subject to the terms of this Agreement, during the Concession Period, including but not limited to functions of maintenance and performance of other services incidental thereto, as set out in this Agreement.

“O&M Performance Security” means first demand irrevocable and unconditional bank guarantee issued on behalf of the Concessionaire by the scheduled bank in Pakistan (with a minimum credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS in the form of a bank guarantee or a standby letter of credit, guaranteeing the payment to the GoS of an amount equal to three percent (3%) of the Operation and Maintenance Component for each Operational Year to which it pertains, for the circumstances set out in Section 13.2.1, in the form of the instrument attached herewith as Schedule “F” (Format of O&M Performance Security).

“Operation and Maintenance Component” means the amounts that relates to:

- (a) Operation and Maintenance expenses of Processing Facility, charges, fixed costs, administrative expenses, taxes, as set out in the Financial Model for each Operational Year; and
- (b) O&M Period Insurance Cost.

“O&M Period Insurances” means the Insurances (or takaful) procured and/or obtained by the Concessionaire pursuant to the provisions of and in accordance with Section 16.2 (O&M Period Insurances) and Part B – Schedule “E” (Insurances).

“O&M Period” means the period commencing on the Commercial Operations Date and ending on the Trigger Date.

“O&M Performance Security Expiry Date” shall have the meaning ascribed thereto in Section 13.7.1.

“O&M Encashed Sums” shall have the meaning ascribed thereto in Section 13.7.2.

“O&M Encashed Sums Deductions” shall have the meaning ascribed thereto in Section 13.7.3.

“Operational Year” means a period of one (1) year commencing on the Commercial Operations Date and each anniversary thereof and ending as of the end of the day preceding the next anniversary of the Commercial Operations Date.

“Processing Facility” means collectively the following, however the detailed specifications of the Processing Facility are described in the Schedule “N” attached herewith (Specifications of Processing Facility):

- i. Pack House (for washing, grading, sorting and packing) including the VHT Plant and the HWT Plant;
- ii. Blast Chiller;
- iii. Cold Storage;
- iv. Ripening Chamber;
- v. Pulp Plant;
- vi. Administration office;
- vii. Water Treatment Plant;
- viii. Electricity distribution equipments.
- ix. Any other ancillary equipments, tools or machineries or other things that are required to effectively develop and operate the Project including laboratory for quality control and microbiology.

“Project Documents” means all such invoices, purchase receipts, custom receipts, reports, records, surveys, plans, analysis, calculations, manuals, operating procedures, guides & manuals, updated ‘as built’ drawings, Processing Facility Plan and documentation of any nature prepared, updated and submitted by the Concessionaire in connection with the Processing Facility to the GoS, the Independent Engineer and/or the Independent Auditor pursuant to the Applicable Standards and pursuant to any requests made in accordance with the Applicable Standards by the GoS, the Independent Engineer and or the Independent Auditor from time to time.

“Project Procurement Cost” means the cost for procuring the following:

- i. the Project Land; and
- ii. the Processing Facility.

“Pack House” means components of the Processing Facility, where the Fruits/Mangoes/Vegetables shall be washed, graded, sorted and packed through Hot Water Treatment Plant and/or Vapor Heat Treatment Plant (as the case may be), the detailed specifications of Pack House are mentioned in Schedule “O” below (Specifications of Pack House).

“Project Land” means the land measuring eighteen (18) acres to be acquired by the Concessionaire, where the Processing Facility shall be developed/installed and the Project shall be developed and implemented in terms of this Agreement.

“Preliminary Works” means the preliminary works related to the construction of infrastructure of the Project relating to the Processing Facility and that shall be carried out in accordance with the Applicable Standards.

“Project Completion Schedule” means the Schedule “J” attached herewith containing the Project Milestones.

“Project Milestones” means the milestones as mentioned in the Project Completion Schedule by which the Concessionaire is expected to complete the portions of Construction Works.

“Permitted Events” means:

- (a) Force Majeure Events;
- (b) GoS Events of Default;
- (c) Change in Law causing a delay in the performance of the Concessionaire’s obligations under this Agreement; and
- (d) Emergency Decommissioning, to the extent the same does not result from reasons attributable to the Concessionaire.

“Person” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Authority or any other legal entity.

“Political Event” shall bear the meaning ascribed thereto in Section 17.1.1.1.

“Political Event Termination Amounts” shall have the meaning ascribed thereto in Schedule “V” (Termination Payment).

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

- (a) the ownership and possession of the Concession Assets;
- (b) the detailed plan, engineering, financing, construction, procurement, permitting, testing and commissioning of, in each case, the Concession Assets;

- (c) the procurement and contracting for goods, equipment and services for the Concession Assets;
- (d) acquisition and preparation of land;
- (e) procurement, construction, insuring, Operation and Maintenance of Processing Facility;
- (f) provision of Services by the Concessionaire to the Customers;
- (g) procurement and installation of equipment, furniture and fixtures;
- (h) imparting training to growers;
- (i) the construction, insuring, operation, maintenance and repair of the Concession Assets;
- (j) the making available the Concession Assets, on a continuous basis, for due performance of Concessionaire's obligations under this Agreement;
- (k) payments by the Parties of amounts due and payable under this Agreement;
- (l) the recruitment, employment and training of staff for the Concession Assets;
- (m) the recruitment, employment and training of various engineers and auditors for the Processing Facility;
- (n) all activities incidental or related to any of the above.

"Project Account" means the bank account to be maintained by the Concessionaire with a bank acceptable to the GoS in accordance with Section 12.5 (Project Account).

"Project Agreements" means:

- (a) this Agreement;
- (b) the Financing Documents;
- (c) all agreements, contracts and documents entered into between the Concessionaire and the Contractors;
- (d) the Insurances;
- (e) any other material contract entered into or to be entered into by the Concessionaire at any time after the Signing Date in connection with the Project and designated as a **"Project Agreement"** with the consent of the GoS.

"Project Manager" means the project manager of the GoS, appointed for the purposes of this Agreement.

"Project Party" means the Concessionaire, the Sponsors and/or any Contractor, as the case may be.

"PKR" or "Pak Rupees" means the lawful currency of the Islamic Republic of Pakistan.

"Pulp Plant" shall mean a portion of Processing Facility that shall be utilized by the Concessionaire for making pulps of Mangoes, Fruits and/of Vegetables, the detailed specifications of Pulp Plant are detailed in Schedule "N" attached herewith.

“Quality Certificates” includes certificates relating to Global GAP Certification, ISO 9000, HACCP, etc. whichever is applicable, as may be obtained by the Customer from the relevant authority in respect of the Value Added Products and/or Fresh Products.

“Ripening Chamber” means a chamber equipped with humidity, temperature controllers and air circulation systems, the Fruit/Vegetables/Mangoes are ripened through the use of ethylene gas generators.

“Safety Requirements” means the arrangements and procedures for conducting safety related measures in respect of the Concession Assets including those safety related measures as mentioned in the operations manuals, safety manuals, Applicable Standards, etc. issued by the manufacturer or supplier of different machines & equipments in relation to the Project.

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

“Scheduled Construction Completion Date” shall mean the date falling 12 months from the Commencement Date, being the date by which the Concessionaire is expected to acquire the Construction Completion Certificate as such date may be extended from time to time in accordance with this Agreement.

“Sponsors’ Equity” means an amount equivalent to at least 30% of the Total Project Cost to be invested by the Sponsors in share capital of the Concessionaire, represented in PKR, subscribed to by the Sponsors, which shall be represented through Class A Shares.

“Sponsor(s)” means the following shareholder(s) (or their successor-in-interest, transferees of Class A Shares or permitted assigns) of the Concessionaire that are required, together with their Associates (if any), to hold (directly and/or indirectly) one hundred percent (100%) of the total Equity of Class A Shares of the Concessionaire:

(a) _____.

“Sponsor’s Escrow Account” means the account bearing account no. _____ having title “Sponsor’s Escrow Account” established with [*insert bank name along with branch name*] to be operated by the Escrow Account Bank;

“Suspension” shall have the meaning ascribed thereto in Section 17.8.1.

“Services” means any services including the services of providing storage facility, processing facility, grading facility, packing facility, by the Concessionaire for the Customers of the Value Added Products and/or Fresh Products through the use of Project and/or Concession Asset(s).

“Taxes” means all the applicable taxes, levies, duties, etc. in accordance with the Applicable Laws.

“Termination” means the termination of this Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof.

“Termination Date” means the date of issuance of the Termination Notice and this will be the date on which the actual Termination occurs following the Cure Period.

“Trigger Date” means and includes, the Final Expiry Date and/or the Termination Date, as the case may be.

“Termination Dividend Amount” means the aggregate return on Equity for Class A Shares for each of the three (3) Accounting Years of the Concessionaire falling immediately after the Termination Date as mentioned in the Financial Model.

“Termination Equity” means an amount equal to the total amount (face value) of Equity of Class A Shares, for avoidance of doubt this total amount shall be the aggregate of principal amount of equity in the form of Class A Shares investment in the Project.

“Termination Implementation Period” means the period commencing on the date of issuance of the Termination Notice and expiring on the Termination Payment Date.

“Termination Notice” means a notice to be issued in writing by a Party notifying the other party of the termination of this Agreement in accordance with the applicable provisions of this Agreement including upon occurrence of following events:

- (a) Termination due to Concessionaire Event of Default;
- (b) Termination due to Corrupt Act;
- (c) Termination due to GoS Event of Default;
- (d) Termination due to a Political Event and Non-Political Event;
- (e) Termination due to Change in Law;
- (f) In respect of expiry of the Concession Period.

“Termination Payment” means:

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

- (e) in respect of Termination due to a Non Political Event, the Non Political Event Termination Amount;
- (f) in respect of Termination due to a Change in Law, the Change in Law Termination Amount;
- (g) in respect of expiry of the Concession Period on the Final Expiry Date.

“Termination Payment Date” means the date falling 45 forty five days following the issuance of a Termination Notice.

“Termination Payment Schedule” means the schedule containing the details of Termination Payments, attached herewith as Schedule “V”.

“Total Project Cost” means the sum of EPC Costs and Non EPC Costs, as certified by the Independent Auditor provided that the same shall not include (unless otherwise agreed with the GoS) the Additional Cost, detailed breakdown of the Total Project Cost is outlined in the annexure “U” attached herewith.

“Transfer Date” means the Termination Payment Date subject to the GoS making payment of the relevant Termination Payment on or prior to such date.

“EPC Costs” means the sum of Infrastructure Cost and Project Procurement Cost.

“Non EPC Costs” means all the soft costs that will incur during the course of construction including but not limited to the following:

- (a) Interest During Construction
- (b) Taxes
- (c) Construction Period Insurance Cost
- (d) Project management cost
- (e) Detailed design cost
- (f) Advisory fee (technical , legal and financial)
- (g) Loan arrangement, advisory, commitment and trustee fee
- (h) SECP related fees
- (i) Pre-operating cost
- (j) Administrative assets etc.
- (k) Independent Auditor & Independent Engineer fees
- (l) Marketing & promotional expenses
- (m) Working capital investment

“Value Added Products” shall have the same meaning as ascribed thereto in Section 7.2 below.

“Value Added Segment” means a segment of the Processing Facility that shall be used by the Concessionaire to produce the Value Added Products.

“Vapor Heat Treatment” or “VHT Plant” means treatment plant where treatment on Fruits/Vegetables/Mangoes is performed through saturated water vapours, detailed specifications of the same are mentioned in Schedule “P” below.

“Vegetables” include in everyday usage, any part of a plant that is consumed by humans as food as part of a savory meal.

“Vesting Certificate” shall have the meaning ascribed thereto in Section 20.4.1 (Vesting Certificate).

“Water Treatment Plant” shall mean the water treatment plant, the detailed specifications of which are mentioned in Schedule “Q” below.

1.2 **Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires:

references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

references to laws of Pakistan or Pakistan law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;

references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;

references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;

references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;

any reference to any period of time shall mean a reference to that according to Pakistan Standard Time;

any reference to day shall mean a reference to a calendar day;

references to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in Pakistan are generally open for business;

any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

the words importing singular shall include plural and vice versa;

references to any gender shall include the other and the neutral gender;

“indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

references to the **“winding-up”**, **“dissolution”**, **“insolvency”**, or **“reorganization”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-section shall not operate so as to increase liabilities or obligations of the GoS hereunder or pursuant hereto in any manner whatsoever;

any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized

representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

references to Recitals, Articles, Sections, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

the damages (including the Construction Period Damages) payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and

time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

1.3 **Costs for Documents**

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

1.4 **Measurements and Arithmetic Conventions**

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

1.5 **Priority of Agreements, Articles, Sections and Schedules**

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

- (a) this Agreement
- (b) the GoS Agreements (other than this Agreement);
- (c) the Project Agreements;

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

- (a) between two or more Articles and/or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and/or Section;
- (b) between the Article and/or Section of this Agreement and the Schedules, the Article and/or Section shall prevail unless the issue in question/matter is specifically provided for in the Schedule and only referred to in the Article and/or Section, as the case may be;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail.

2. CONCESSION

2.1 Grant of Concession

2.1.1 In consideration of the Concessionaire's obligations contained in this Agreement and relying on the Concessionaire's representations, warranties and covenants contained herein, the GoS, subject to the terms of this Agreement, hereby grants to and authorizes the Concessionaire, for the duration of the Concession Period, to investigate, study, design, plan, engineer, procure, finance, construct, develop, operate, maintain and implement the Project on a design, finance, procure, build, operate, transfer and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (hereinafter the "**Concession**").

2.1.2 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Agreement and the GoS Agreements.

2.2 Concession Period

The Concession hereby granted, unless earlier terminated in accordance with this Agreement, shall be for the Concession Period.

2.3 Extension of Concession Period

Notwithstanding anything to contrary stated in this Agreement, the Concessionaire may request an extension of the Concession Period at any time at least two (2) years prior to the expiration of the Concession Period; provided that at the time of the request the Concessionaire is materially in compliance with its obligations under this Agreement and is not otherwise facing a default therein and provided that grant of such extension is allowed under the laws prevailing at that time. The GoS shall always have the right to accept or reject such a request for extension at its sole and absolute discretion.

3. **CONDITIONS**

3.1 **Conditions Precedent**

3.1.1 Save and except as expressly provided herein, the respective obligations of the Parties shall be subject to the satisfaction in full of the conditions precedent specified in Sections 3.1.2, 3.1.3 and 3.1.4 (the “**Conditions Precedent**”) on or prior to the Scheduled Commencement Date.

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

- (a) the Concessionaire has procured the Project Land;
- (b) the Concessionaire has provided copies of its Corporate Documents to the GoS (with copies delivered to the Independent Engineer and Independent Auditor), duly certified as true copies by the company secretary or director of the Concessionaire or by SECP;
- (c) the Concessionaire has provided to the GoS copies (with copies delivered to the Independent Engineer and Independent Auditor) of its Board Resolution that duly authorizes:
 - (i) the Concessionaire to enter into this Agreement and to undertake the obligations, liabilities, as set out in this Agreement, and the transactions as contemplated by this Agreement;
 - (ii) has specified person or persons to:
 - (aa) execute this Agreement on behalf of the Concessionaire; and
 - (bb) undertake all other acts specifically relating/ancillary to this Agreement, as contemplated by this Agreement;
- (d) the Concessionaire has submitted detailed design of the Project to the GoS (with copies delivered to the Independent Engineer and Independent Auditor);
- (e) the Concessionaire has ensured that the Escrow Account Bank has received the Sponsors’ Equity into the Sponsor’s Escrow Account;
- (f) the Concessionaire has achieved the Financial Close.
- (g) the Concessionaire has provided the Construction Performance Security to the GoS which remains effective and valid till the end of Defects Liability Period;

- (h) each of the Concession Permits relating to the Concessionaire have been procured by the Concessionaire and the same are effective and valid and have not been cancelled and/or rescinded and the Concessionaire has provided copies of the same to the GoS (with a copy to the Independent Engineer and Independent Auditor);
- (i) the Concessionaire has provided evidence to the GoS (with a copy to the Independent Engineer) that the Project Account relating to the Concessionaire has been established with a reputable bank approved by the GoS;
- (j) the Concessionaire has submitted copies of documents evidencing satisfaction of each of the Concessionaire Conditions Precedent to the Independent Engineer and Independent Auditor;
- (k) the Concessionaire has provided to the GoS and the Independent Auditor:
 - (i) a certified true copy of the duly executed term sheet/offer letter in respect of the finance facilities/funding(if any) availedby the Concessionaire;
 - (ii) drafts of the Financing Documents duly executed and initialled by the Concessionaire and the Lenders; and
 - (iii) a notice issued by the Lenders, or an agent of the same, confirming the achievement of the Financial Close;
- (l) the GoS has received the following legal opinions:
 - (i) a legal opinion from the legal counsel of the Concessionaire confirming that the Concessionaire has been duly organized and is validly existing under the laws of Pakistan and has the requisite power and authority to enter into this Agreement and to undertake the transactions as contemplated by this Agreement and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire;
 - (ii) a legal opinion from the legal counsel of the Concessionaire's Sponsors confirming that the Concessionaire's Sponsors are validly existing under the applicable laws and that the Concessionaire's Sponsors have the requisite authority and power to enter into the Project Agreements to which the Concessionaire's Sponsors are a party and to assume the obligations as contained therein and the enforceability of the same against the Concessionaire's Sponsors.

- (m) the Concessionaire has prepared an Environmental Impact Assessment (EIA) report in accordance with the Applicable Laws and has submitted a copy of the same to the GoS (with a copy to the Independent Engineer);
- (n) the Concessionaire has entered into the Land Rights Agreement(s) and has obtained the possession of the Project Land by paying of any amounts including sale consideration, expenses, taxes, etc. out of the funds raised through the Sponsors' Equity.
- (o) the Concessionaire has obtained the approval of proposed building plan in respect of the construction over the Project Land from Sindh Building Control Authority (SBCA) and/or other relevant authority in this regard.

3.1.3 The GoS and the Concessionaire shall satisfy the following Conditions Precedent to the satisfaction of each other and the Independent Engineer and the Independent Auditor within 30 (thirty) days of the Effective Date (the "**Combined Conditions Precedent**"):

- (a) the Parties have entered into the Independent Engineer Contract for the appointment of the Independent Engineer;
- (b) the Parties have entered into the Independent Auditor Contract for the appointment of the Independent Auditor;

3.1.4 The GoS shall satisfy the following Conditions Precedent to the entire satisfaction of the Concessionaire prior to the Scheduled Commencement Date (the "**GoS's Conditions Precedent**"):

- (a) a legal opinion from the GoS Legal Counsel confirming that GoS has the requisite power and authority to enter into this Agreement and to undertake the transactions as contemplated by this Agreement and to assume the obligations as contained herein and the enforceability of the same against GoS;
- (b) the GoS has entered into the GoS Agreements;
- (c) the GoS has submitted copies of documents evidencing satisfaction of each of the GoS Conditions Precedent to the Independent Engineer and to Independent Auditor.
- (d) the Escrow Account Bank has received the GoS Equity into the GoS Escrow Account.

3.2 **Waiver and/or Deferral of Conditions and Extension of Scheduled Commencement Date**

3.2.1 Notwithstanding anything contained herein:

- (a) TheGoS may (at its discretion) waive and/or defer any of the Concessionaire Conditions Precedent set forth in Section 3.1.2 of Section 3 (*Conditions Precedent*). For the avoidance of doubt, the GoS may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit;
- (b) the Concessionaire may (at its discretion) waive and/or defer any of the GoS Conditions Precedent set forth in Section 3.1.4 of Section 3 (*Conditions Precedent*). For the avoidance of doubt, the Concessionaire may, at their sole discretion, grant any waiver and/or deferral hereunder with such conditions as they may deem fit;
- (c) the Parties may with mutual consent waive and/or defer any of the Combined Conditions Precedent set forth in Section 3.1.3 of Section 3 (*Conditions Precedent*). For the avoidance of doubt, the Parties may, with mutual consent, grant any waiver and/or deferral hereunder with such conditions as they may deem fit.

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

3.2.3 Any deferral and/or waiver of a Condition Precedent in terms of this Section 3.2 shall be notified in writing to the Independent Engineer and the Independent Auditor by the Party granting such deferral and/or waiver of such condition in accordance with this Agreement.

3.3 **Commencement Certificate & Commencement Date**

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

3.3.2 The Parties agree that:

- (a) within thirty (30) days of the GoS's receipt from the Concessionaire of evidence of satisfaction of a Concessionaire Condition Precedent, the GoS shall (through the Project Manager) notify the Independent Engineer in writing (with a copy to the Concessionaire) whether it has any objections on the satisfaction of such Concessionaire Condition Precedent. In the event the GoS (through the Project Manager) does not raise any objection in writing on the satisfaction of a Concessionaire Condition Precedent within the thirty (30) day period set out herein, such Concessionaire Condition Precedent shall be deemed to be not objected to

by the GoS. In the event the GoS raises any objections on the satisfaction of a Concessionaire Condition Precedent and notifies the same to the Concessionaire in writing (with a copy to the Independent Engineer and to the Independent Auditor) within the thirty (30) day period set out herein, the Concessionaire shall address such objections and re-submit to the GoS (together with a copy to the Independent Engineer and to the Independent Auditor) evidence of satisfaction of such Concessionaire Condition Precedent and the process in this Section 3.3.2(a) shall be repeated until such time that the GoS has not objected to or is deemed to have not objected to the satisfaction of such Concessionaire Condition Precedent. The provisions of this Section 3.3.2(a) shall apply to the Concessionaire Condition Precedent for which evidence of satisfaction is submitted by the Concessionaire to the GoS (together with a copy to the Independent Engineer and to the Independent Auditor) from time to time;

- (b) within thirty (30) days of the Concessionaire's receipt from the GoS of evidence of satisfaction of a GoS Condition Precedent, the Concessionaire shall notify the Independent Engineer and to the Independent Auditor in writing (with a copy to the GoS) whether it has any objections on the satisfaction of such GoS Condition Precedent. In the event the Concessionaire does not raise any objection in writing on the satisfaction of a GoS Condition Precedent within the thirty (30) day period set out herein, such GoS Condition Precedent shall be deemed to be not objected to by the Concessionaire. In the event the Concessionaire raise any objections on the satisfaction of a GoS Condition Precedent and notifies the same to the GoS in writing (with a copy to the Independent Engineer) within the thirty (30) day period set out herein, the GoS shall address such objections and re-submit to the Concessionaire (together with a copy to the Independent Engineer) evidence of satisfaction of such GoS Condition Precedent and the process in this Section 3.3.2(b) shall be repeated until such time that the Concessionaire has not objected to or is deemed to have not objected to the satisfaction of such GoS Condition Precedent. The provisions of this Section 3.3.2(b) shall apply to each GoS Condition Precedent for which evidence of satisfaction is submitted by the GoS to the Concessionaire (together with a copy to the Independent Engineer and to the and Independent Auditor) from time to time;
- (c) the Concessionaire shall submit the evidence for satisfaction of the Combined Conditions Precedent to the Independent Engineer and to the Independent Auditor.

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

- (a) Concessionaire Conditions Precedent stand satisfied (and/or waived or deferred by the GoS in accordance with Section 3.2;
- (b) Concessionaire Conditions Precedent are not objected to or deemed to not have been objected to by the GoS (acting through the Project Manager) in accordance with Section

3.3.2(a) and if any Concessionaire Condition Precedent is objected to by the GoS in accordance with Section 3.3.2(a), the Concessionaire has addressed such objections and re-submitted evidence of satisfaction of such Concessionaire Condition Precedent to the GoS (with a copy to the Independent Engineer and to the Independent Auditor) in accordance with Section 3.3.2(a);

- (c) GoS Conditions Precedent stand satisfied (and/or waived or deferred by the Concessionaire in accordance with Section 3.2;
- (d) GoS Conditions Precedent are not objected to or deemed to not have been objected to by the Concessionaire in accordance with Section 3.3.2(b) and if any GoS Condition Precedent is objected to by the Concessionaire in accordance with Section 3.3.2(b), the GoS has addressed such objections and re-submitted evidence of satisfaction of such GoS Condition Precedent to the Concessionaire (with a copy to the Independent Engineer and to the Independent Auditor) in accordance with Section 3.3.2(b); and
- (e) Combined Conditions Precedent stand satisfied (and/or waived or deferred by the Parties in accordance with Section 3.2 and the evidence of the same have been delivered to the Independent Engineer and to the Independent Auditor in accordance with Section 3.3.2(c).

3.3.4 The Independent Engineer shall set out in the Commencement Certificate the date on which the Commencement Date is achieved.

3.3.5 Notwithstanding anything to the contrary set out herein, in the event the Lenders raise any objections on the satisfaction of any:

- (a) Concessionaire Condition Precedent that has been formerly not objected to or deemed to be not objected to by the GoS and the same is notified in writing by the GoS to the Concessionaire (together with a copy to the Independent Engineer and the Independent Auditor), the Concessionaire shall address such objections to the satisfaction of the Lenders and shall re-submit to the GoS (together with a copy to the Independent Engineer and to the Independent Auditor) evidence of satisfaction of such Concessionaire Condition Precedent to the satisfaction of the Lenders;
- (b) Combined Condition Precedent, the Parties shall address such objections to the satisfaction of the Lenders and shall re-submit to the Independent Engineer and to the Independent Auditor evidence of satisfaction of such Combined Condition Precedent to the satisfaction of the Lenders.

3.4 **Termination Prior to Commencement Date**

3.4.1 In the event:

- (a) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling ninety (90) days from the Scheduled Commencement Date, (including the extended time, if any) due to reasons attributable to the Concessionaire; and/or
- (b) of occurrence of a Concessionaire Event of Default prior to the Commencement Date;

the GoS shall have the right (to be exercised in its sole and absolute discretion) to terminate this Agreement by issuance of a written Termination Notice to the Concessionaire. In such case, GoS shall (within fourteen (14) days of the receipt of the Termination Notice by the Concessionaire) forfeit the Bid Security or the Construction Performance Security (as in effect at such time). Further, in case the GoS opts so, the Class A Shares (if issued) of the Concessionaire shall be transferred by the Sponsor to the GoS (or its nominee) against the face value of same. Except for (a) said transfer of Class A Shares, (b) any other rights of Parties set out in the Funding & Utilization Agreement and (c) the forfeiture of the Bid Security or the Construction Performance Security (as in effect at such time) in terms of this Section 3.4.1, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such termination of this Agreement.

3.4.2 In the event:

- (a) the Conditions Precedents are not satisfied, waived and/or deferred on or prior to the date falling ninety (90) days from the Scheduled Commencement Date, (including the extended time, if any) due to reasons attributable to the GoS; and/or
- (b) of occurrence of a GoS Event of Default prior to Commencement Date;

the Concessionaire shall have the right (to be exercised in its sole discretion) to terminate this Agreement by issuance of a written Termination Notice to the GoS. In such case, the GoS shall (within fourteen (14) days of its receipt of the Termination Notice):

- (a) return the Bid Security or the Construction Performance Security (as in effect at such time) to the Concessionaire without any encashments, demands or claims;

In case the GoS opts so, the Class A Shares (if issued) of the Concessionaire shall be transferred by the Sponsor to the GoS (or its nominee) against the face value of same.

Except for (a) said transfer of Class A Shares (if issued), (b) any rights set out in the Funding & Utilization Agreement and (c) the return of the Bid Security or the Construction Performance

Security (as the case may be) in terms of this Section 3.4.2, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for termination of this Agreement.

3.4.3 It is clarified that the provisions of this Section 3.4 shall apply to any termination of this Agreement occurring on or prior to the Commencement Date.

4. ACQUISITION AND DEVELOPMENT OF THE PROJECT

4.1 Financial Close

The Concessionaire shall avail the Financing from the Lenders before the Commencement Date, however, in order to procure Financing, the Concessionaire may create encumbrances on the Project Land and the Processing Facility.

However, the GoS shall provide a support, apart from other supports which may GoS may provide in its sole opinion and exclusive discretion, in the form of debt repayment support i.e. the GoS shall repay upto the 70% of the Principal portion of the Debt Component on each due date, in case all or any portion of the same could not be repaid through Concessionaire's own sources. Further, to confirm its this support, GoS shall enter into an agreement with the Lenders and the Concessionaire (the "GoS Debt Repayment Support Agreement").

Notwithstanding anything contained in this Agreement, the Concessionaire shall get the terms & conditions of the Financing including the terms of relevant Financing Documents, term sheets, etc. pre-approved from the GoS and the Independent Auditor.

4.2 Land Rights

4.2.1 The Concessionaire shall enter into the Land Rights Agreement pursuant to which the Concessionaire shall acquire the Land Rights in respect of the Project Land for the specific and sole purpose of implementing the Project.

4.2.2 The Concessionaire shall acquire the Project Land by utilizing the funds raised through the Sponsors' Equity.

4.2.3 The Land Rights Agreement(s) shall remain effective and the Land Rights shall be available to the Concessionaire during the Concession Period for the purposes of the Project.

4.2.4 The Concessionaire shall not part with or create any Encumbrance, save and except as otherwise expressly set forth in this Agreement, on the whole or any part of the Concession Assets provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for Operation and Maintenance of all or any part of the Project/Concession Assets.

4.2.5 Notwithstanding anything to the contrary set out herein, the GoS hereby undertakes not to grant any Person access to the Concession Assets for the purposes of carrying out any construction, building or laying of any structures or utilities such as wires, pipes or for any other purpose which may, in the opinion of the Concessionaire and confirmed by the Independent Engineer, adversely affect:

- (a) the performance by the Concessionaire of its respective obligations under this Agreement; and/or
- (b) the Concession Assets.

4.2.6 The Concessionaire shall implement the Project including but not limited to the procurement of the Processing Facility and the development of Concession Assets as per the Applicable Standards.

4.2.7 The Concessionaire shall procure the Concession Assets by following the prudent and Good Industry Practice and within the Project Procurement Cost.

4.2.8 Upon construction of the Project including the development/installation of Processing Facility and any other required construction (as the case may be), but in any case not later than the Scheduled Construction Completion Date, the Concessionaire as per the Applicable Standards and upto the satisfaction of Independent Engineer (such satisfaction may be derived through the results of tests as may be applied by the Independent Engineer at the cost & expense of the Concessionaire), the Concessionaire shall obtain a certificate (the “**Construction Completion Certificate**”) from the Independent Engineer and provide a copy of the same to GoS immediately.

4.3 Cashflow Waterfall Mechanism

The Concessionaire shall meet the following from cashflows and revenues to be generated by operation of the Project:

- (a) the Operation and Maintenance Component;
- (b) Taxes;
- (c) the mark-up portion of the Debt Component;
- (d) the principal portion of the Debt Component;
- (e) the Equity Component;

4.4 Use of Concession Assets

4.4.1 The Concessionaire shall not, without prior written consent or approval of the GoS, use the Concession Assets for any purpose other than:

- (a) for the purposes of the Project and purposes incidental thereto;
- (b) as permitted under this Agreement (including for the purposes set out in Article 25 (*Additional Matters*)); or
- (c) as may otherwise be approved by the GoS.

4.5 **Special/Temporary Right of Way**

4.5.1 The Concessionaire shall bear all costs and charges for any special or temporary right of way that is not included in the scope of the Project and description of the Concession Assets, and is required by the Concessionaire in connection with access to the same.

4.6 **Access to the GoS and IA/IE**

4.6.1 The GoS, the Independent Auditor and the Independent Engineer and their employees and agents shall have the right of access over the Concession Assets for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

4.7 **Appointment of Escrow Account Bank**

The Concessionaire and GoS shall collectively appoint the Escrow Account Bank.

4.8 **Escrow Arrangement**

The Escrow Account Bank shall operate the Escrow Accounts in accordance with the terms of the Funding & Utilization Agreement and/or the GoS Debt Repayment Support Agreement (as the case may be).

4.9 **Concessionaire's Accounts**

The GoS hereby authorize the Concessionaire to maintain any bank accounts including those that may be mentioned in the Funding & Utilization Agreement, the Financing Documents and the GoS Debt Repayment Support Agreement.

5. **INDEPENDENT ENGINEER**

5.1 **Selection**

5.1.1 Within seven (7) days from the Effective Date, the Concessionaire shall provide the GoS with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer in respect of the Project (the "**First IE List**").

5.1.2 Within seven (7) days of receipt by the GoS of the First IE List, the GoS shall select a reputed firm of engineers from First IE List and shall notify the same to the Concessionaire.

5.1.3 Within two (2) days of notification of the GoS, the Concessionaire shall appoint such notified firm of engineers as the Independent Engineer in respect of the Project.

5.1.4 In the event the firms of engineers identified by the Concessionaire in the First IE List is not acceptable to the GoS, the GoS shall, within seven (7) days of receipt of First IE List, notify the Concessionaire that the First IE List is not acceptable to the GoS. Thereafter, within five (5) days of notification of the GoS, the Concessionaire shall provide the GoS with another list of three (3) reputable firms of engineers for appointment as the Independent Engineer in respect of the Project (the "**Second IE List**").

5.1.5 Within seven (7) days of receipt by the GoS of the Second IE List, the GoS shall select a reputed firm of engineers from Second IE List and shall notify the same to the Concessionaire.

5.1.6 Within two (2) days of notification of the GoS, the Concessionaire shall appoint such notified firm of engineers out of the firms listed in the Second IE List, as the Independent Engineer in respect of the Project.

5.1.7 In the event the firms of engineers identified by the Concessionaire in the Second IE List is also not acceptable to the GoS, the Concessionaire and the GoS shall appoint such firm as the Independent Engineer in respect of the Project as may be acceptable to the GoS and such appointment shall be in accordance with the Independent Engineer Terms of Reference (unless mutually agreed between the Parties).

5.1.8 The Independent Engineer shall provide the services as set out in the Independent Engineer Contract and as requested by the Parties with mutual consent from time to time.

5.2 **Term of Appointment of the Independent Engineer**

5.2.1 The appointment of the Independent Engineer shall be for an initial term of two (2) years from the date of the effectiveness of the Independent Engineer Contract (the "**Independent Engineer Appointment Term**") provided however:

- (a) the Independent Engineer Appointment Term shall be extended prior to expiry of the same so as to ensure that at all times during the Concession Period an Independent Engineer is retained/appointed in respect of the Project, for the purposes set out in this Agreement; or
- (b) the Parties shall be entitled to appoint a new Independent Engineer prior to the expiry of the Independent Engineer Appointment Term (such appointment to be effective upon expiry of the Independent Engineer Appointment Term) so as to ensure that at all times during the Concession Period an Independent Engineer is retained/appointed in respect of the Project for the purposes set out in this Agreement. In the event of the appointment of a new Independent Engineer upon expiry of the Independent Engineer Appointment Term, the provisions of Section 5.2.3 shall apply.

5.2.2 The appointment of the Independent Engineer may be terminated:

- (a) by either Party if, the Independent Engineer is adjudged insolvent and/or bankrupt and/or the winding up proceedings are filed against the Independent Engineer and/or the Independent Engineer files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Engineer in a court of law;
- (b) by the Parties with the mutual consent of the Parties upon issuance of at least fifteen(15) days prior Notice.

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

- (a) select a reputable firm of engineer from the New IE List and shall cause the Concessionaire to appoint such firm as the Independent Engineer in respect of the Project; or

(b) reject the appointment of any of the firms provided in the New IE List, in which case, the Parties shall appoint such firm of engineers as the new Independent Engineer as is approved by the Lenders.

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

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

5.2.6 The Parties shall ensure that all provisions of this Agreement pertaining to the Independent Engineer are duly incorporated in the Independent Engineer Contract.

5.3 **Independent Engineer Authorized Signatories**

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

5.4 **Decision of Independent Engineer & Dispute Resolution**

5.4.1 Subject to Section 5.4.2, any advice, instruction, decision, direction and/or award of the Independent Engineer shall be binding on the Parties unless mutually agreed otherwise by the Parties.

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

5.5 **Independent Engineer Remuneration**

5.5.1 The Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract (the "**Independent Engineer Payments**"), notwithstanding that the Independent Engineer shall be appointed by and shall fulfil its obligations in accordance with the terms of the Independent Engineer Contract provided however, any works or services to be performed at the request of the GoS by the

Independent Engineer beyond its scope of work set out in the Independent Engineer Contract shall be on account of the GoS and the same shall not form part of the Independent Engineer Payments (unless otherwise mutually agreed between the Parties).

5.5.2 The Concessionaire undertakes to affect the Independent Engineer Payments in a diligent and timely manner.

6. **INDEPENDENT AUDITOR**

6.1 **Selection**

6.1.1 Within seven (7) days from the Effective Date, the Concessionaire shall provide the GoS with a list of four reputable firms of chartered accountants for appointment of the Independent Auditor in respect of the Project (the "**First IA List**").

6.1.2 Within seven (7) days of receipt by the GoS of the First IA List, the GoS shall select a reputed firm of chartered accountants from the First IA List and shall notify the same to the Concessionaire.

6.1.3 Within two (2) days of said notification of the GoS, the Concessionaire shall appoint such notified chartered accountants firm as the Independent Auditor in respect of the Project.

6.1.4 In the event the chartered accountant firms identified by the Concessionaire in the First IA List is not acceptable to the GoS, the GoS shall, within seven (7) days of receipt of First IA List, notify the Concessionaire that the First IA List is not acceptable to the GoS. Thereafter, within five (5) days of notification of the GoS, the Concessionaire shall provide the GoS with another list of four (4) reputable chartered accountant firms for appointment as the Independent Auditor in respect of the Project (the "**Second IA List**").

6.1.5 Within seven (7) days of receipt by the GoS of the Second IA List, the GoS shall select a reputed chartered accountant firm from Second IE List and shall notify the same to the Concessionaire.

6.1.6 Within two (2) days of notification of the GoS, the Concessionaire shall appoint such notified chartered accountant firm, out of the firms listed in the Second IA List, as the Independent Auditor in respect of the Project.

6.1.7 In the event the firms of chartered accountants identified by the Concessionaire in the Second IA List is also not acceptable to the GoS, the Concessionaire and the GoS shall appoint such firm of chartered accountants from Big Four accounting firms as the Independent Auditor in respect of the Project as may be acceptable to the GoS and such appointment shall be in accordance with the Independent Auditor Terms of Reference (unless mutually agreed between the Parties).

6.1.8 The Independent Auditor shall provide the services as set out in the Independent Auditor Contract and as requested by the Parties with mutual consent from time to time.

6.2 **Term of Appointment of the Independent Auditor**

6.2.1 The appointment of the Independent Auditor shall be for an initial term of two (2) years from the date of the effectiveness of the Independent Auditor Contract (the "**Independent Auditor Appointment Term**") provided however:

- (a) the Independent Auditor Appointment Term shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed in respect of the Project, for the purposes set out in this Agreement; or
- (b) the Parties shall be entitled to appoint a new Independent Auditor prior to the expiry of the Independent Auditor Appointment Term (such appointment to be effective upon expiry of the Independent Auditor Appointment Term) so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed in respect of the Project for the purposes set out in this Agreement. In the event of the appointment of a new Independent Auditor upon expiry of the Independent Auditor Appointment Term, the provisions of Section 6.2.3 shall apply.

6.2.2 The appointment of the Independent Auditor may be terminated:

- (a) by either Party if, the Independent Auditor is adjudged insolvent and/or bankrupt and/or the winding up proceedings are filed against the Independent Auditor and/or the Independent Auditor files winding up proceedings in a court of law and/or any action for malpractice and/or misadministration is filed against the Independent Auditor in a court of law;
- (b) by the Parties with the mutual consent of the Parties upon issuance of at fifteen (15) days notice.

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

- (a) select a reputable firm of chartered accountants from the New IA List and shall cause the Concessionaire to appoint such firm as the Independent Auditor in respect of the Project; or

- (b) reject the appointment of any of the firms provided in the New IA List, in which case, the Parties shall appoint (with the approval of the Lenders) one of the Big Four accounting firms as the new Independent Auditor in respect of the Project as may be acceptable to the GoS and such appointment shall be in accordance with the Independent Auditor Terms of Reference (unless mutually agreed between the Parties).

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

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

6.2.6 The Parties shall ensure that all provisions of this Agreement pertaining to the Independent Auditor are duly incorporated in the Independent Auditor Contract.

6.3 **Independent Auditor Authorized Signatories**

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

6.4 **Decision of Independent Auditor & Dispute Resolution**

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

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

6.5 **Independent Auditor Remuneration**

6.5.1 The Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Contract (the "**Independent Auditor Payments**"), notwithstanding that the Independent Auditor shall be appointed by and

shall fulfil its obligations in accordance with the terms of the Independent Auditor Contract provided however, any works or services to be performed at the request of the GoS by the Independent Auditor beyond its scope of work set out in the Independent Auditor Contract shall be on account of the GoS and the same shall not form part of the Independent Auditor Payments (unless otherwise mutually agreed between the Parties).

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

7. **PROCESSING PROJECT**

7.1 Concessionaire shall set up the Processing Facility on the Project Land, the Fresh Products Segment of which shall be used to process the Mangoes and/or other Fruits and/or Vegetables for consumption as fresh fruits and/or Vegetables (the “**Fresh Products**”) respectively.

7.2 The Value Added Segment of the Processing Facility shall be used to process the Mangoes and/or other Fruits and/or Vegetables to produce the following products (the “**Value Added Products**”) being processed through the Processing Facility:

- i. Pulp of Mango and Fruits like guava and apple
- ii. Puree of Mango and Fruits like guava and apple
- iii. Any other Fruit/Vegetable and Value Added Product with the mutual consent of GoS and Concessionaire.

7.3 The Concessionaire shall provide the Services to the Customers in relation to any one or more components of the Processing Facility as per the requirements of the Customers.

7.4 The Concessionaire shall ensure the processing of Fruits/Vegetables and production of Value Added Products for compliance of Applicable Standards and the same shall be monitored by the Independent Engineer.

7.5 The Concessionaire shall ensure that the Value Added Products and Fresh Products conform to the physical/non-physical descriptions/specifications stated on the value added products such as ingredients (organic/non organic), nutrition facts, weight, manufacturing and expiry date, packaging, bar code.

7.6 The Concessionaire shall keep proper, accurate records (including quality control records) in relation to processing, packaging, handling, cool store and delivery of the Value Added Products and Fresh Products and shall furnish the said record for the inspection (at reasonable working hours) of Independent Engineer and/or the Independent Auditor as and when the same is requested by the Independent Engineer and the Independent Auditor.

7.7 In consideration of providing its Services, the Concessionaire may charge the fee from the Customers up to the levels mentioned in the table below:

Fresh Fruits Processing Charges	
Product	Rates
Mango HWT	18 Rs. / KG
Mango VHT	67 Rs. / KG
Banana	2 Rs. / KG
Value Added Processing Charges (e.g. Pulps / Purees)	

Product	Rates
Mango	25 Rs. / KG
Guava	25 Rs. / KG
Cold Storage Rental Charges	
Product	Rates
CS Store	2 Rs. / KG / Month with Stock turnover of 2 times/month

The Concessionaire and the GoS shall have the right to get the above mentioned fees proportionately increased or decreased subject to the proportionate increase or decrease in inflation/CPI and that too with prior written approval of the Independent Auditor. Further, after obtaining the said prior written approval of the Independent Auditor, the Concessionaire or the GoS (as the case may be) shall give 30 days' prior written notice to the Concessionaire or the GoS (as the case may be) before implementing the increased or decreased fees. In case, the Concessionaire or the GoS (as the case may be) does not object in writing (with reasons) on the fees to be implemented, within the said period of 30 days then the revised fees shall be deemed to be approved and implemented by the Concessionaire accordingly. However, in case the Concessionaire or the GoS (as the case may be) raise any objection in writing (with reasons) then the matter shall be referred to the Independent Auditor, whose decision shall be implemented accordingly.

- 7.8 Concessionaire shall at all times keep itself abreast of all relevant regulations pertaining to fruit and vegetable processing/value addition business, in particular it must be familiar with prevalent regulations Department of Plant Protection, FBR, Customs etc.
- 7.9 The Concessionaire shall dedicate the following percentage of Capacity of Processing Facility to the Local Customers throughout the Concession Period even if the Local Customers actually utilize the said Capacity of Processing Facility or not:

Percentage	Time Period
15%	During Mango Season and during the period when any portion of the Debt Due is outstanding
30%	During Mango Season during the period when the Debt Due is completely paid off

8. **CONCESSIONAIRE COVENANTS**

Concessionaire hereby covenants as follows:

- 8.1 The Concessionaire shall carry out the construction and development of the Processing Facility as per the terms of this Agreement and in accordance with the Applicable Laws, Good Industry Practice and Applicable Standards.
- 8.2 The Concessionaire shall avail/obtain the utility connections (electricity, water, gas, etc.) by legal means from the relevant utility companies/utilities providers.
- 8.3 After the completion of construction of the Processing Facility, the Concessionaire shall (in accordance with the Applicable Laws) get the construction inspected by a surveyor of the Sindh Building Control Authority (SBCA) and obtain the relevant completion plan approved from SBCA and/or other relevant authority in this regard.
- 8.4 The Concessionaire shall obtain necessary approvals from the Sindh Environmental Protection Agency for the Project, pursuant to the Applicable Laws.
- 8.5 The Concessionaire shall adhere to the food safety laws as updated from time to time, regulating the processing, handling, storage, or transportation of the Fruits, Vegetables, Fresh Products and their Value Added Products.
- 8.6 The Concessionaire shall ensure that the Fresh Products and the Value Added Products should be able to meet quality standards as required by the relevant Customers, provided that the Project Facilities has generally the capabilities of meeting such required quality standards.
- 8.7 The Concessionaire shall process the Fruits and Vegetables as per the Applicable Standards.
- 8.8 The Concessionaire shall identify the potential hazards that can be introduced in the Value Added Products and Fresh Products and inform the same to the Customers.
- 8.9 The Concessionaire shall undertake the activity of providing training, in accordance with the terms of Schedule 'R', to the growers in respect of Fruits/Vegetables to enlighten them with the best agricultural process and practices as per Applicable Standards.
- 8.10 [The Concessionaire shall carry out and adopt effective marketing strategies in order to promote, foster, develop, boost and advance the Project for the Customers right from the Effective Date, in accordance with the terms of Schedule 'R'.]
- 8.11 The Concessionaire shall comply with the standard operating procedures as mentioned in Schedule "R".

9. GENERAL UNDERTAKINGS

9.1 Concessionaire's Undertakings

9.1.1 The Concessionaire shall:

- (a) investigate, study, finance, design, construct, procure, operate and maintain the Concession Assets in accordance with the Applicable Standards;
- (b) Subject to Permitted Events:
 - (i) obtain all Applicable Permits (including any renewals of the same) in conformity with the Applicable Laws and be in compliance thereof; and
 - (ii) be in compliance with the Applicable Laws at all times during the Concession Period;
- (c) procure the Project Land;
- (d) procure, construct, install, operate, maintain, run and make available for providing Services to the Customers, the Processing Facility at the Project Land;
- (e) carry and conduct all the necessary works for the Project including without limitation, installing all utilities connections e.g., water, gas and electricity at the Project Land;
- (f) maintain the maximum debt to equity ratio of 50:50 at all times during the Concession Period;
- (g) obtain requisite approval(s), permit(s), license(s) for Processing Facility and all the other equipment (s) that shall be procured for the implementation of the Project;
- (h) procure Processing Facility for the purposes of implementation of the Project;
- (i) all the equipments procured for the Processing Facility shall be duly registered with the DPP/HACCP/relevant ISO standard;
- (j) to procure electricity distribution material for the Project, the detailed specifications of which are more particularly described in the specifications of Processing Facility;
- (k) comply with all the Applicable Laws and Applicable Standards;
- (l) appoint the security personnel for the security of Processing Facility;

- (m) appoint qualified and competent staff for the proper working of the Processing Facility;
- (n) employ the requisite labour for running the Project;
- (o) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and equipments, used in or incorporated into the Project;
- (p) provide all necessary reasonable assistance to the Independent Engineer and the Independent Auditor as the same may reasonably require for the performance of their duties and services in accordance with the Independent Engineer Contract and the Independent Auditor Contract, respectively;
- (q) appoint, supervise, monitor and control as necessary, the activities of the Contractors under their respective and relevant Project Agreements;
- (r) make all efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire in connection with the performance of its obligations under this Agreement;
- (s) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (t) be responsible for compliance with the relevant Applicable Standards notwithstanding the appointment by it of the Contractors to implement and/or operate and maintain the Concession Assets;
- (u) be responsible for compliance with the relevant building, maintenance and construction codes for the refurbishment/rehabilitation, maintenance, and operation of Project;
- (v) except as provided in this Agreement, make payments to the relevant Government Agency, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (w) afford access of the Concession Assets to the authorized representatives of the GoS, the Independent Engineer, Independent Auditor and any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Concession Assets and to investigate any matter within their authority and upon reasonable notice, and the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions;

- (x) not engage in any business or activity other than the business or related to, and conducted for, the purpose of the Project and/or other than as provided in this Agreement;
- (y) except as otherwise provided in this Agreement, obtain at its costs and charges special or temporary rights of way required by the Concessionaire in connection with access to the Concession Assets. The Concessionaire shall also obtain at its cost such other facilities, the provision of which is not the responsibility of the GoS under this Agreement, as may be required by the Concessionaire for the purposes of the Project and the performance of their obligations under this Agreement;
- (z) maintain their corporate existence and their rights to carry on operations of their business;
- (aa) provide all necessary assistance to the Project Manager, as the Project Manager may reasonably require for the performance of their duties and services;
- (bb) provide and keep available to GoSat all times during the O&M Period, a valid O&M Performance Security;
- (cc) The Concessionaire hereby undertakes to comply and keep complied with the terms and conditions of the Applicable Standards in respect of Concession Assets in accordance with the Applicable Standards at all times during the Concession Period.
- (dd) The Concessionaire hereby undertakes and agrees to indemnify and hold harmless the GoS against any and all claims (excluding those attributable to the negligence or the breach by the GoS of its obligations under this Agreement) arising in relation to any of the transactions contemplated under this Agreement.
- (ee) The Concessionaire shall develop a database/information system for recording of transactions which will be verified by the Independent Engineer and Independent Auditor for necessary monitoring purpose.

9.2 **Undertakings of GoS**

9.2.1 The GoS hereby undertakes to the Concessionaire that the GoS shall:

- (a) upon the written request from the Concessionaire, and subject to the compliance by the Concessionaire with Applicable Laws:
 - (i) provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Agency for implementation and operation of the Project;

- (ii) provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, gas and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (b) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (c) upon request from the Concessionaire, grant or cause to be granted all Applicable Permits which are necessary for the implementation of the Project at the appropriate stages of the Project and which are in its authority to grant or cause to be granted subject to the Concessionaire complying with the eligibility criteria for the grant of such Applicable Permits;
- (d) provide reasonable assistance to the Concessionaire at all times during the tenure of this Agreement to obtain Applicable Permits for the implementation of the Project from time to time;
- (e) subject to the terms of this Agreement, not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the construction, Operation and Maintenance of the Concession Assets and the implementation of the Project by the Concessionaire and the control and use by the Concessionaire of the Concession Assets and any facilities developed in the course of implementation of the Project. The GoS confirms and accepts the Applicable Standards and all specifications and standards relating to the Project set out in this Agreement;
- (f) execute the GoS Agreements with the Concessionaire and shall duly provide the funding contemplated to be provided by the GoS in this Agreement and the GoS Agreements and guarantees duly and timely making of payments to the Concessionaire as required during the Concession Period in accordance with the terms thereof. The GoS hereby acknowledges that the GoS shall also discuss in good faith with the Concessionaire modifications, if any, to the GoS Agreements as requested by the Concessionaire in order to satisfy the Lenders;
- (g) provide reasonable cooperation to the Concessionaire as necessary to enable the Concessionaire to achieve timely Financial Close. Such cooperation shall include, without limitation, the obligation of the GoS to discuss the terms & conditions of Financial Close in good faith;
- (h) recommend, endorse, promote, assist and provide all assistance and recommendations to the relevant Government Agency in support of the Concessionaire's applications for appropriate Applicable Permits, as long as necessary for the implementation of the Project; and

- (i) perform its obligations set out herein and in the GoS Agreements in accordance with this Agreement and the GoS Agreements respectively.

9.2.2 The GoS hereby undertakes and agrees to indemnify and hold harmless the Concessionaire against any and all claims directly arising out of the negligence of GoS in relation to any of the transactions contemplated under this Agreement.

9.2.3 The GoS hereby undertakes to the Concessionaire that the GoS shall upon written request from the Concessionaire and subject to the provisions of Section 12.3 (*Employment of Foreign Nationals*), provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire and/or their Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or their Contractors of their obligations under this Agreement and the Project Agreements.

9.2.4 The GoS, in addition to and without prejudice to its obligations specified in the other provisions of this Agreement, shall, without qualification (except as may be set out in this Section 9.2), observe and comply with its obligations set out in this Section 9.2 (*Undertakings of GoS*).

10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the Concessionaire

10.1.1 The Concessionaire represents and warrants to the GoS that:

- (a) it is duly organized and validly existing under the laws of Pakistan, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement and neither the Concessionaire nor the Sponsors have committed a breach in respect of their payment obligations in relation to a financial indebtedness;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate the Concessionaire's performance (in a manner which may negatively affect the Concessionaire in any way) required by any of the terms of its Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which they are 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 its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Agency which may result in any Material Adverse Effect on its ability to perform its obligations under this

Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its material obligations under this Agreement;

- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) it shall at no time undertake or permit any Change in Ownership & Control except in accordance with the provisions of this Agreement and that the Sponsors, together with their Associates (if any), hold its issued and paid up Equity of Class A Shares as on the date of this Agreement;
- (k) the Concessionaire, the Sponsors along with their Associates (if any) have the financial standing and resources to fund the required Sponsors' Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the GoS or to any Government Agency in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (m) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the GoS in connection therewith;
- (n) all material representations (breach of which may cause a Material Adverse Effect) provided by the Sponsors in their Bid submitted in response to the RFP, is to the best of their knowledge and belief, true and accurate in all material respects; and
- (o) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity (if any) in any jurisdiction.

10.2 **Representations and Warranties of the GoS**

10.2.1 The GoS represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all

actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

- (b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) GoS has complied with all requirements of the Applicable Laws in its conduct of the bidding process for the award of the Project and the Concession to the Concessionaire and has undertaken all acts and deeds necessary for award of the Concession and the Project to the Concessionaire;
- (e) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (f) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement; and
- (g) it is subject to civil and commercial law with respect to the GoS Agreements and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction.

10.3 **Disclosure**

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

11. **INDEMNITY**

11.1 **General Indemnity**

11.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the GoS and its officers, servants, agents, Government Agency and Government owned and/or controlled entities/enterprises relating to the Project, (the “**GoS Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire and/or their Contractors of any of their obligations under this Agreement or from any negligence of the Concessionaire under tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent, wilful or fraudulent act or omission, or breach or default of this Agreement on the part of the GoS Indemnified Persons.

11.1.2 The GoS shall indemnify, defend, save and hold harmless the Concessionaire and its officers, servants, agents, Contractors, Lenders and its Affiliates against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of any of its obligations under this Agreement or any related agreement or out of negligence of the GoS under tort or out of any ground whatsoever, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent, wilful or fraudulent act or omission, or breach of this Agreement on the part of the Concessionaire.

11.2 **Notice and contest of claims**

11.2.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 11 (*Indemnity*) (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within twenty-one (21) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

11.3 **Defence of claims**

11.3.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 11 (*Indemnities*),

the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

11.3.2 If the Indemnifying Party has exercised its rights under section 11.2 (*Notice and Contest of Claims*), the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

11.3.3 If the Indemnifying Party exercises its rights under section 11.2 (*Notice and Contest of Claims*), the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sections 11.3.3, (b), (c) or (d) shall be applicable, then the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

11.4 **No Consequential Claims**

11.4.1 Notwithstanding anything to the contrary contained in this Article 11 (*Indemnity*), the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

11.5 **Survival on Termination**

11.5.1 The provisions of this Article 11 (*Indemnity*) shall survive Termination for a maximum period of five (5) years following Termination and the provisions of this Article 11 (*Indemnity*) shall apply solely in respect of claims that arose immediately on or prior to the Termination Date.

12. OBLIGATIONS OF THE CONCESSIONAIRE

12.1 Obligations relating to Project Agreements

12.1.1 Unless stated otherwise in this Agreement, it is expressly agreed between the Parties that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

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

12.1.3 The Concessionaire may procure that each of the Project Agreements contains provisions that entitle the GoS to step into such agreement, in its sole discretion, in substitution of the Concessionaire on the Trigger Date (the "**Covenant**"). For the avoidance of doubt and subject to the Concessionaire (in its sole and absolute discretion) procuring that inclusion of the Covenant in the Project Agreements. Further, it is expressly agreed that in the event the GoS does not exercise such rights of substitution within a period not exceeding thirty (30) days from the Trigger Date, the Project Agreements shall be deemed to cease to be in force and effect on the Trigger Date without any liability whatsoever on the GoS and the Covenant shall expressly provide for such eventuality.

12.1.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees, that the GoS shall have the right to approve and/or disprove the appointment and/or replacement of the Contractor(s), if any, in the event:

- (a) any such appointment and/or replacement, in the sole opinion of the GoS, has any implications on national security; and/or
- (b) such Contractor(s) is from the country of origin that is prescribed by the Applicable Laws and/or is black listed by any Government Agency;

and the decision of the GoS in this regard shall be final and binding on the Concessionaire. The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the liability of the Concessionaire for the performance of its obligation pursuant to this Agreement shall neither be rescinded, waived, reduced, cancelled, terminated and/or in any manner adversely impacted as a direct and/or indirect consequence of the approval or otherwise of the GoS pursuant to this Section 12.1.4.

12.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees, that the Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters) shall have the right to approve and/or disprove the appointment and/or replacement of the Contractor(s), if any, in the event (in the reasonable opinion of the Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters)):

- (a) such Contractor(s) is technically and financially or otherwise incapable (to the extent of its scope of work) of performing the Construction Works or any other works assigned to it.

12.2 **Obligations relating to Change in Ownership & Control**

12.2.1 The Concessionaire shall not undertake or permit any Change in Ownership & Control unless such Change in Ownership & Control:

- (a) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Agency with appropriate jurisdiction; or
- (b) is affected after the complete and satisfactory repayment of Debt Due;
- (c) is affected with the prior written approval of the GoS, provided that the GoS shall provide its determination in writing within ninety (90) days of the GoS having received a written request by the Concessionaire.

12.3 **Employment of Foreign Nationals**

12.3.1 The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or the Contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall be the sole responsibility of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or the relevant Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

12.3.2 The Concessionaire shall use reasonable efforts to promote local contractors and to employ and engage, to the extent practicable local employees and contractors.

12.4 **Employment of Trained Personnel**

12.4.1 The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions. However, the Concessionaire shall ensure the employment of following key individuals at all times:

- Key Lead Person (CEO / President / Managing Director / General Manager etc.)
- Chief Financial Officer
- Chief Operating Officer (COO)
- Company Secretary
- Internal Auditor
- Plant Manager
- General Manager Marketing
- Food Technologist

12.5 **Project Account**

12.5.1 The Concessionaire shall throughout the Concession Period, maintains the Project Account strictly in conformity with the arrangement and structure agreed with the GoS and the Lenders, as laid down in the Financing Documents.

12.5.2 During the term of the Financing, the Concessionaire may create an Encumbrance over the Project Account as security for payment obligation to the Lenders.

12.6 **General Obligations of the Concessionaire prior to commencement of Construction Works**

12.6.1 The Concessionaire is required to commence Construction Works and procurement of Concession Assets only on or after the Commencement Date or the date of Financial Close, whichever is later.

12.6.2 The Concessionaire shall immediately upon commencement of the Construction Works notify the GoS of the same.

12.6.3 [The Concessionaire may commence Preliminary Works before the Commencement Date or the date of Financial Close by utilizing Sponsors' Equity, subject to the terms and conditions of Funding & Utilization Agreement.]

12.6.4 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; provided however, the Concessionaire shall remain solely liable for compliance with the Construction Requirements irrespective of whether the Construction Works are undertaken by its Contractor or by the Concessionaire.

12.6.5 The Independent Engineer, may, by written notice, require the Concessionaire to alter/modify the whole or any part of the Construction Works which in the reasonable opinion of the Independent Engineer is being carried on/conducted in a manner that is not in conformity with the Construction Requirements and/or is not in accordance with Good Industry Practices.

12.7 **Specific obligations of the Concessionaire prior to the commencement of Construction Works**

12.7.1 Prior to the commencement of the Construction Works, the Concessionaire shall:

- (a) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/Independent Auditor/the GoS and to be responsible for all necessary exchange of information required pursuant to this Agreement;

- (b) construct, not later than three (3) months from the Commencement Date, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer at the Project Land;
- (c) submit to the GoS and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the engineering, procurement, and construction time schedule for completion of the Project in accordance with the Project Completion Schedule;
- (d) appoint its representative duly authorized to deal with the GoS in respect of all matters under or arising out of or relating to this Agreement (the “**Authorized Representative**”);
- (e) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction for the performance of the Construction Works under and in accordance with this Agreement, the Applicable Laws and Applicable Standards; and
- (f) appoint at its sole cost and expense one or more established consulting engineering firm to design and supervise the Construction Works and in particular to ensure that the Construction Works is in accordance with the Construction Requirements and Good Industry Practice (the “**Project Engineer**”).

12.8 Obligations during Construction Period

12.8.1 Monthly Progress Reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Independent Engineer, the Project Manager and the Secretary, Agriculture Supply & Prices Department, Government of Sindh and PPP Unit of Finance Department, monthly reports on the progress of the Construction Works and shall promptly give such other relevant information as may be reasonably required by the Independent Engineer.

12.8.2 Construction Inspection Report

During the Construction Period, the Independent Engineer shall at all times look after the construction of Construction Works and shall point out any defects and discrepancy then and there at the time of construction.

12.8.3. During the Construction Period, the Independent Engineer shall at least once in a month prepare a report on the Project stating in reasonable detail the defects or deficiencies with the details that Concessionaire has already rectified or not rectified (as the case may be) such defects & deficiencies, if any, with particular reference to the General Scope of the Project (the “**Construction Inspection Report**”).

12.8.4 The Independent Engineer shall within 15 days of commencement of a quarter provide a copy of the Construction Inspection Report to the Concessionaire and the GoS.

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

12.9 **Delays During Construction**

12.9.1 In the event the Concessionaire fails to achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project cannot achieve Project Completion on or before the Scheduled Project Completion Date then the Independent Engineer shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within 7 days of such notice inform the Independent Engineer in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress and the period within which it shall achieve the Project Completion by the Scheduled Project Completion Date.

12.9.2

The Concessionaire shall be liable for payment of Construction Period Damages to the GoS in the event the Concessionaire fails to complete the Construction Works on or prior to the Scheduled Construction Completion Date solely due to the Concessionaire's failure to comply with its obligations in terms of this Agreement and not as a consequence of Permitted Event and/or as consequence of an event for which the Concessionaire is excused from performance of its obligations under this Agreement and/or for which an extension of time has been granted to the Concessionaire then the Concessionaire shall pay to the GoS damages in a sum calculated at the rate of one point zero per cent (1.0%) of the amount of Construction Performance Security for each full day of delay in achieving Construction Completion Date beyond the Scheduled Construction Completion Date till such time as the Construction Completion Date is achieved (the "**Construction Period Damages**"). All Construction Period Damages becoming due and payable by the Concessionaire in terms of this Section 12.9.2 shall be invoiced by the GoS to the Concessionaire and shall become due and payable on the date falling thirty (30) days following the Concessionaire's receipt of such invoice (the "**Construction Period Damages Payment Date**"). In the event of failure by the Concessionaire to pay the Construction Period Damages to the GoS by the Construction Period Damages Payment Date, the GoS shall have the right to encash the Construction Performance Security in an amount equal to the Construction Period Damages provided however failure by the Concessionaire to pay the Construction Period Damages by the Construction Period Damages Payment Date (to the extent the same may be recovered by the GoS through encashment of the Construction Performance Security) shall not be a breach of Concessionaire of this Agreement. Notwithstanding anything contained herein, the recovery of Construction Period Damages under this Section 12.9.2 shall be without prejudice to the rights of the GoS under this Agreement, including the right of Termination in accordance with Article 19 of this Agreement. Thus, in the event the Concessionaire fails to achieve the Construction Completion Date within a period of ninety (90) days from the Scheduled Construction Completion Date solely due to the Concessionaire's failure to comply with its obligations in terms of this Agreement and not as a consequence of Permitted Event and/or as consequence of an event for which the Concessionaire is excused from performance of its obligations under this Agreement and/or for which an extension of time has been granted to the Concessionaire, then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the GoS may, at its sole discretion, terminate this Agreement in accordance with Article 19 (Termination) and also draw on the Construction Performance Security.

13 **BID SECURITY AND PERFORMANCE SECURITY**

13.1 **Bid Security**

13.1.1 Pursuant to the requirements of the RFP, the Sponsors have submitted a duly valid and effective Bid Security to the GoS.

13.1.2 The Bid Security shall be encashable by the GoS in accordance with Section 3.4.1. The Bid Security shall however automatically terminate concurrently with the delivery by the Concessionaire to the GoS of the Construction Performance Security.

13.2 **Construction Performance Security**

13.2.1 In consideration of the Concession and for the due and punctual performance of its obligations during the Construction Period, the Concessionaire shall deliver the Construction Performance Security to the GoS before the expiry of the Bid Security. The Construction Performance Security shall become effective simultaneously upon return of the Bid Security to the Concessionaire by the GoS. Failure of the Concessionaire to provide a valid Construction Performance Security in accordance with this Section 13.2.1 shall entitle the GoS to forthwith terminate this Agreement and confiscate and encash the Bid Security.

13.3 **Appropriation/Encashment of Construction Performance Security**

13.3.1 The Construction Performance Security shall be encashable by the GoS in the following circumstances:

- (a) the Concessionaire is unable to achieve the Construction Completion Date by the Scheduled Construction Completion Date;
- (b) in case the Concessionaire does not furnish the O&M Performance Security by the time the same is required in terms of this Agreement.

13.4 **Release of Construction Performance Security**

13.4.1 The Construction Performance Security shall remain in force and effect until the date that falls on the expiry of the Defects Liability Period (the "**Construction Performance Security Expiry Date**"). The Construction Performance Security shall be returned to the Concessionaire on the earlier of:

- (a) expiry of the Defects Liability Period;
- (b) submission of O&M Performance Security upon the expiry of Defects Liability Period;

(c) Final Expiry Date of this Agreement.

13.4.2 In the event the Construction Performance Security is due to expire prior to the Construction Performance Security Expiry Date, the Concessionaire shall, fifteen (15) days prior to its expiry, extend the validity of the Construction Performance Security such that it remains valid until the Construction Performance Security Expiry Date provided however, in the event such extension is due to reasons attributable to the Permitted Events, all costs relating to the same shall be borne by the GoS. In the event of failure by the Concessionaire to extend the validity of the Construction Performance Security in accordance with this Section 13.4.2, the GoS shall have the right to encash the Construction Performance Security, ten days prior to its then expiry, up to its outstanding value (the “**Construction Encashed Sums**”).

13.4.3 All Construction Encashed Sums (less Construction Encashed Sums Deductions) shall be returned to the Concessionaire concurrently upon the Concessionaire’s submission of a new Construction Performance Security (the same being an amount equal to the Construction Encashed Sums less the Construction Encashed Sums Deductions) to the GoS that expires on the Construction Performance Security Expiry Date. Until such time that the Concessionaire has provided a new Construction Performance Security to the GoS in accordance with this Section 13.4.3, the GoS shall have the right to appropriate the Construction Encashed Sums (the “**Construction Encashed Sums Deductions**”). In the event the Concessionaire does not provide the GoS the new Construction Performance Security in accordance with this Section 13.4.3, the GoS shall, upon expiry of the Defects Liability Period or early Termination of this Agreement (whichever is earlier) pay the Concessionaire an amount equal to the Construction Encashed Sums less the Construction Encashed Sums Deductions.

13.5 **O&M Performance Security**

13.5.1 In consideration of the Concession and for the due and punctual performance of its obligations during the O&M Period falling after the expiry of the Defects Liability Period, the Concessionaire shall deliver the O&M Performance Security to the GoS before the expiry of the Construction Performance Security and shall replace the same thirty (30) days prior to commencement of each Operational Year falling after expiry of the Defects Liability Period. The O&M Performance Security provided in the first instance shall become effective simultaneously upon return of the Construction Performance Security to the Concessionaire by the GoS and thereafter, each O&M Performance Security provided prior to commencement of an Operational Year shall become effective simultaneously upon return of the O&M Performance Security for the previous Operational Year.

13.6 **Appropriation/Encashment of O&M Performance Security**

13.6.1 The O&M Performance Security shall be encashable by the GoS in case of Termination of this Agreement due to the Concessionaire Event of Default.

13.7 **Release of O&M Performance Security**

13.7.1 Each O&M Performance Security provided by the Concessionaire in respect of an OperationalYear shall remain in force and effect until the date that falls on the expiry of such OperationalYear (the **“O&M Performance Security Expiry Date”**). A O&M Performance Security furnished in respect of an OperationalYear shall be returned to the Concessionaire on the earlier of:

- (a) expiry of the OperationalYear;
- (b) Final Expiry Date of this Agreement.

13.7.2 In the event the O&M Performance Security furnished in respect of an OperationalYear is due to expire prior to its O&M Performance Security Expiry Date, the Concessionaire shall, fifteen (15) days prior to its expiry, extend the validity of such O&M Performance Security such that it remains valid until the O&M Performance Security Expiry Date provided however, in the event such extension is due to reasons attributable to the Permitted Events, all costs relating to the same shall be borne by the GoS. In the event of failure by the Concessionaire to extend the validity of the O&M Performance Security in accordance with this Section 13.7.2, the GoS shall have the right to encash the O&M Performance Security, ten days prior to its expiry, up to its outstanding value (the **“O&M Encashed Sums”**).

13.7.3 All O&M Encashed Sums (less O&M Encashed Sums Deductions) shall be returned to the Concessionaire concurrently upon the Concessionaire’s submission of a new O&M Performance Security (the same being in an amount equal to the O&M Encashed Sums less the O&M Encashed Sums Deductions) to the GoS that expires on the O&M Performance Security Expiry Date. Until such time that the Concessionaire has provided a new O&M Performance Security to the GoS in accordance with this Section 13.7.3, the GoS shall have the right to appropriate the O&M Encashed Sums (the **“O&M Encashed Sums Deductions”**). In the event the Concessionaire does not provide the GoS the new O&M Performance Security in accordance with this Section 13.7.3, the GoS shall, upon expiry of the relevant OperationalYear or early Termination of this Agreement (whichever is earlier) pay the Concessionaire an amount equal to the O&M Encashed Sums less the O&M Encashed Sums Deductions.

14 **CHANGE OF SCOPE**

14.1 **Change of Scope**

14.1.1 Notwithstanding anything to the contrary contained in this Agreement, the GoS may require a change/amendment in the General Scope of the Project (the “**Change of Scope**”), provided that the accrued and cumulative change at any given time does not result in an increase in the Total Project Cost by more than fifteen percent (15%), as determined by the Independent Engineer and the Independent Auditor. All Additional Costs to be paid by the GoS in respect of the Change of Scope and any extensions in the timelines for the performance by the Concessionaire of its obligations resulting from a Change of Scope shall be in accordance with this Article 14.

14.2 **Change of Scope Notice**

14.2.1 The GoS may request for the Change of Scope by issuing a Change of Scope Notice in accordance with the provisions of this Section 14.2 (*Change of Scope Notice*).

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

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

14.2.3 In the event at any time during the Construction Period and/or the O&M Period, the Concessionaire determines that a Change of Scope is necessary for providing safer and improved services to the Customers, the Concessionaire shall issue a request in writing to the GoS through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The GoS shall within forty-five (45) days from the date of receipt of such notice, either accept such request for Change of Scope, on an “as is” basis or with modifications, and issue the requisite Change of Scope Notice in accordance with the provisions of this Section 14.2 (*Change of Scope Notice*) or communicate its reasons for not accepting the same to the Concessionaire.

14.3 **Change of Scope Order**

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

- (a) the impact which the Change of Scope is likely to have on the Construction Works or on the O&M in the event the Change of Scope is in respect of the Construction Period or in the O&M Period respectively;
- (b) the budgeted estimate of the Additional Cost to be incurred by the Concessionaire for implementing the Change of Scope;
- (c) the estimated additional time (number of days) that the Concessionaire would require to achieve Construction Completion consequent to the Change of Scope and any delay, if any, in the Final Expiry Date;
- (d) any extensions in the timelines and relaxation of the obligations/ duties of the Concessionaire under this Agreement resulting from the Change of Scope.

14.3.2 The Independent Engineer shall after reviewing the information, documentation and the budgeted estimate of the Additional Cost submitted by the Concessionaire under this Section 14.3 (*Change of Scope Order*), settle the rates, approve the designs and forward the budgeted estimates of the Additional Cost, as duly certified by the (Independent Engineer and the Independent Auditor) in consultation with the Concessionaire, to the GoS. Notwithstanding anything to the contrary set out herein, in the event the Concessionaire disagrees with the determinations of the Independent Engineer, the Concessionaire shall not be obligated to implement the Change of Scope.

14.3.3 The GoS may, within a period of fifteen (15) days from the date of receipt of such statement, issue an order in writing to the Concessionaire, through the Independent Engineer instructing the Concessionaire to affect the Change of Scope (the "**Change of Scope Order**") provided however (subject to Section 14.3.5); the final Additional Cost shall be computed by taking into account the actual work executed by the Concessionaire, as measured and certified by the Independent Engineer, at the rates agreed in the Change of Scope Order.

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

14.3.5 The Change of Scope Order shall be effective from the date that the GoS notifies the mode of reimbursement of the Additional Cost to the Concessionaire.

14.3.6 The GoS shall be liable to pay the Additional Cost only upon receiving a certificate from the Independent Engineer confirming that the Concessionaire has completed the works in accordance with the Change of Scope Order.

15 **OPERATION AND MAINTENANCE**

15.1 **Operation and Maintenance**

15.1.1 The Concessionaire undertakes to comply with the Operation and Maintenance of the Concession Assets as per the Applicable Standards.

15.2 **Operation and Maintenance Obligations of the Concessionaire**

15.2.1 The Concessionaire undertakes to perform the Operation and Maintenance of the Concession Assets during the O&M Period in accordance with the provisions of this Article 15 (*Operation and Maintenance*) and to modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Concession Assets in accordance with the Applicable Standards.

15.2.2 The Concessionaire hereby agrees that the Operation and Maintenance obligations of the Concessionaire hereunder shall include, without restriction, the performance of the following obligations in accordance with the Applicable Standards:

- (a) ensuring that during the O&M Period, the Concession Assets are in a condition to permit safe and smooth use of Concession Assets during normal operating conditions in accordance with the Applicable Standards;
- (b) minimizing disruption of Services to be provided by the Concessionaire, in the event of accidents or other incidents affecting the safety and use of the Processing Facility and by providing a rapid and effective response and maintaining liaison with relevant emergency services;
- (c) carrying out periodic and/or preventive repair and maintenance of the Concession Assets;
- (d) preventing, if required, with the assistance of concerned law enforcement agencies, any unauthorized use of the Concession Assets;
- (e) preventing, if required, with the assistance of the concerned law enforcement agencies, any encroachments on the Concession Assets;
- (f) protection of the environment (to the extent of the Concessionaire's activities) and provision of equipment and materials therefore;
- (g) Operation and Maintenance of all communication, control and administrative systems necessary for the efficient operation of the Concession Assets;

- (h) maintaining a public relations unit to interface with and attend to suggestions from the Customers, the GoS, the government agencies, media and other agencies;
- (i) regular training of staff/workers on effective and efficient use Concession Assets; and
- (j) complying with Safety Requirements.

15.2.3 The Concessionaire shall promptly remove from the Project Land, 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 Concession Assets, as the case may be, in a clean, tidy and orderly condition, in each case, in conformity with the Applicable Standards.

15.2.4 The Concessionaire shall Operate and Maintain the Concession Assets in accordance with this Agreement and Applicable Standards.

15.3 **GoS's Right to Take Remedial Measures & Reimbursement by Concessionaire**

15.3.1 In the event the Concessionaire has failed to Operate and Maintain the Concession Assets in accordance with the Applicable Standards and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer (the "**Notice to Remedy**"), then the GoS may, without prejudice to any of its other rights and remedies under this Agreement shall be entitled to cause the repair and maintenance of such Concession Assets with the prior approval of the Independent Engineer at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the GoS (as certified by the Independent Auditor and the Independent Engineer) on account of such repair and maintenance within forty five (45) days of receipt of the GoS's claim thereof set out in an invoice approved by the Independent Engineer and the Independent Auditor (the "**GoS Remedy Invoice**"). In the event of failure by the Concessionaire to pay the amounts set out in the GoS Remedy Invoice (the "**GoS Remedy Amount**") within the time period set out herein, the GoS shall be entitled to receive such GoS Remedy Amount through encashment of the O&M Performance Security. In the event the funds received by the GoS through encashment of the O&M Performance Security are less than the GoS Remedy Amount, the Concessionaire shall be obligated to pay the GoS the shortfall within 5 days of the GoS's written demand.

15.4 **Material Breach of Applicable Standards**

15.4.1 The Concessionaire shall be deemed to be in material breach of the (the “**Material Breach of Applicable Standards**”) if the Independent Engineer, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (a) there has been a material failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the Applicable Standards;
- (b) the quality of the Concession Asset(s) or any part thereof has materially deteriorated to a level which is below the acceptance level prescribed by the Applicable Standards;
- (c) there has been a serious or persistent let up in adhering to Safety Requirements and thereby the Concession Assets or any part thereof is not safe for operations;
- (d) there has been “**Persistent Breach of Applicable Standards**”.

The term “*Persistent Breach of Assured Services Levels*” means:

- (i) any reoccurring and persistent breach of the Applicable Standards that remains unremedied despite the issuance of Notice of Remedy by the Independent Engineer;
- (ii) repeated occurrences of a breach that has been remedied pursuant to a Notice of Remedy, notwithstanding that the earlier occurrences of breach may have been remedied pursuant to the Notice of Remedy or otherwise.

in each case subsection (d) (i) and (ii) above, that results in a Material Adverse Effect;

provided however, the Concessionaire shall not be deemed to be in material breach (including a persistent breach) of the Applicable Standards in the aforesaid circumstances in the event such breach is caused by the Permitted Events and/or due to reasons not attributable to the Concessionaire and/or due to an event or events for which the Concessionaire is excused from performance of its obligations under this Agreement.

- 15.5 **GoS's Rights with regard to Material Breach of Applicable Standards**
- 15.5.1 Upon the occurrence of a Material Breach of Applicable Standards, GoS shall without prejudice to and notwithstanding any other consequences provided therefor shall have the right and be entitled to treat the same as Concessionaire Event of Default.
- 15.6 **Priority of Services**
- 15.6.1 The Concessionaire shall perform Operation and Maintenance in accordance with the terms of this Agreement and the Concessionaire shall ensure that the Project/Concession Assets remains available to the Customers and the same are safe at all times during O&M Period in accordance with the Safety Requirements.
- 15.6.2 The Concessionaire undertakes to conduct the Operation and Maintenance in such manner as to ensure compliance with the obligation set out in Section 15.
- 15.7 **Safety, Concession Assets Breakdown and Accidents**
- 15.7.1 The Concessionaire shall ensure safe conditions for the Customers, workers and employees working on the Project/Concession Assets, and in the event of unsafe conditions breakdowns and accidents, it shall follow the relevant operating procedures including contacting the public emergency services, utilizing internal emergency services and removal of debris, hazardous materials, etc. without delay.
- 15.8 **Emergency Decommissioning**
- 15.8.1 In the event, during the O&M Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that warrants de-commissioning and closure of Project and/or Service(s) to the Customers of the whole or any part of the Concession Assets (the "**Decommissioned Concession Asset**"), the Concessionaire shall be entitled to de-commission and close the whole or any part of Decommissioned Concession Asset, as the case may be, to the Customers for so long as such Emergency and the consequences thereof warrant (the "**Emergency Decommissioning**"); provided however such Emergency Decommissioning and the particulars thereof shall be notified by the Concessionaire to the GoS and the Independent Engineer without any delay, and the Concessionaire shall diligently abide by the Applicable Standards and the Safety Requirements in dealing with such Emergency Decommissioning and act in accordance with the directions that the Independent Engineer may issue for dealing with such Emergency Decommissioning.

- 15.8.2 The Concessionaire hereby undertakes to re-commission the Decommissioned Concession Asset efficiently and in a time sensitive manner and as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Decommissioned Concession Asset and shall notify the GoS and the Independent Engineer of the same without any delay.
- 15.8.3 The decommissioning or closure of the Decommissioned Concession Asset and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected persons/Customers by means of public announcements/notice by the GoS and the expenses of the same shall be borne by the GoS (as duly certified by the Independent Engineer).
- 15.8.4 The Independent Engineer shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Concession Asset and the same have not been deteriorated in any manner whatsoever and made the Concession Assets available for Customers as soon as practicable upon the termination/ceasing of the circumstances that have resulted in such decommissioning.
- 15.9 **Overriding Powers of GoS**
- 15.9.1 Notwithstanding anything contained in this Agreement, the GoS shall have the right upon the occurrence of a national emergency, civil commotion and/or as a consequence of a Force Majeure Event, to take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by the GoS or as directed by the Government Agency, and exercise such control over the Concession Assets and/or give such directions to the Concessionaire as may be deemed necessary by the GoS; provided however, that the exercise of such overriding powers by the GoS shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which causes the exercise of such overriding power by the GoS (the “**GoS Overriding Power Event**”).
- 15.9.2 The consequences of the actions set out in Section 15.9.1 shall be dealt in accordance with the provisions relating to Political Events in this Agreement.

- 15.9.3 The Concessionaire hereby unconditionally and irrevocably agrees to act in accordance with the instructions issued by the GoS pursuant to the provisions of this Section 15.10 and undertakes to provide assistance and co-operation to the GoS, on a best effort basis, for performance of its obligations hereunder.
- 15.10 **Restoration of loss or damage to Project**
- 15.10.1 Save and except as otherwise expressly provided in this Agreement, in the event that the Concession Assets or any part thereof suffers any loss or damage during the Concession Period as a result of breach by the Concessionaire of its obligations under this Agreement, the Concessionaire shall, at its cost and expense and through the proceeds of Insurances, rectify and remedy such loss or damage forthwith so that the Concession Assets conforms to the provisions of this Agreement.
- 15.11 **Modifications to the Project**
- 15.11.1 The Concessionaire shall not carry out any material modifications to the Concession Assets, save and except where such modifications are necessary for the Concession Assets to operate in conformity with the Applicable Standards and Applicable Law; provided that the Concessionaire shall notify the Independent Engineer and the GoS of the proposed modifications along with particulars thereof at least thirty (30) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within fifteen (15) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Standards, Applicable Laws and the provisions of this Agreement.
- 15.12 **Monthly Status Reports**
- 15.12.1 During O&M Period, the Concessionaire shall, no later than seven (7) days after the close of each month, furnish to the GoS and the Independent Engineer a monthly report stating in reasonable detail the condition of the Concession Assets including its compliance or otherwise with the Applicable Standards, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 15.13 **Inspection**
- 15.13.1 The Independent Engineer shall inspect the Concession Assets at least twice a month. It shall make a report of such inspection ("**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Applicable Standards, and send a copy thereof to the GoS and the Concessionaire within five (5) days of such inspection.

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

15.14 **O&M Tests**

15.14.1 For determining that the Operations and Maintenance undertaken during the O&M Period conform to the Applicable Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests (the "**O&M Tests**"). The Concessionaire shall, with due diligence, carry out or cause to be carried out all such O&M Tests (at the cost and expense of the Concessionaire) in accordance with the instructions of the Independent Engineer and shall furnish the results of such tests forthwith to the Independent Engineer.

15.15 **Remedial Measures**

- 15.15.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the O&M Tests results referred to in Section 15.14(*O&M Tests*) and furnish a report in respect thereof to the Independent Engineer and the GoS within seven (7) days of receiving the O&M Inspection Report or the O&M Tests results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than seven (7) days, the Concessionaire shall obtain a written confirmation from the Independent Engineer conforming the expected time required for repair and remedying the defects and shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 15.15.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the O&M Tests, at its own cost, to determine that such remedial measures have brought the relevant Concession Assets into compliance with the Applicable Standards and the procedure set forth in this Section 15.15 (*Remedial Measures*) shall be repeated until the Concession Assets conform to the Applicable Standards.
- 15.15.3 In the event the Concessionaire fails to repair or rectify the defects or deficiencies as described in the preceding section 15.15.2 within the time prescribed therein, solely due to the Concessionaire's failure to comply with its obligations in terms of this Agreement then the Concessionaire shall pay to the GoS damages in a sum calculated at the rate of one point zero per cent (1.0%) of the amount of O&M Performance Security for each full day of delay in such repairing or rectifying beyond the prescribed time for such repair or rectification till such time as the repair or rectification is achieved and the same is certified by the Independent Engineer (the "**O&M Period Damages**"). All Construction Period Damages becoming due and payable by the Concessionaire in terms of this Section 15.15.3 shall be invoiced by the GoS to the Concessionaire and shall become due and payable on the date falling thirty (30) days following the Concessionaire's receipt of such invoice (the "**O&M Period Damages Payment Date**"). In the event of failure by the Concessionaire to pay the O&M Period Damages to the GoS by the O&M Period Damages Payment Date, the GoS shall have the right to encash the O&M Performance Security in an amount equal to the O&M Period Damages provided however failure by the Concessionaire to pay the O&M Period Damages by the O&M Period Damages Payment Date (to the extent the same may be recovered by the GoS through encashment of the O&M Performance Security) shall not be a breach of Concessionaire of this Agreement. Notwithstanding anything contained herein, the recovery of O&M Period Damages under this Section 15.15.3 shall be without prejudice to the rights of the GoS under this Agreement, including the right of Termination in accordance with Article 19 of this Agreement. Thus, in the event the Concessionaire fails to rectify or repair the defects or deficiencies in the Operation and Maintenance within a period of ninety (90) days from the prescribed time period mentioned above, solely due to the Concessionaire's failure to comply with its obligations in terms of this Agreement, then such failure of the Concessionaire shall constitute a Concessionaire Event of Default, and the GoS may, at its sole discretion, terminate this Agreement in accordance with Article 19 (Termination) and also draw on the O&M Performance Security.

16 **INSURANCES**

16.1 **Construction Period Insurances**

16.1.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Construction Period such Insurances as are necessary and required to be procured by the Concessionaire in accordance with this Agreement and the Financing Documents, the Applicable Laws including but not limited to the Construction Period Insurances as mentioned in the Schedule "E" attached herewith.

16.2 **O&M Period Insurances**

16.2.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the O&M Period, such Insurances as are necessary and required to be procured by the Concessionaire in accordance with this Agreement and the Financing Documents, Applicable Laws including but not limited to the O&M Period Insurances as mentioned in the Schedule "E" attached herewith.

16.3 **Insurance Companies**

16.3.1 The Concessionaire agrees that it shall procure the Insurances from such insurance (or takaful) companies that are reasonably acceptable to the GoS (primarily from the top ten insurance/takaful companies) and further agrees that the Concessionaire shall only procure Insurances through foreign insurance companies if the relevant Insurances are not being offered by local companies at comparable rates, subject always to the prior consent of the GoS.

16.3.2 Further, the Insurances to be maintained in terms of this Agreement and in accordance with the terms set out herein will be maintained throughout until the Trigger Date notwithstanding the expiry of the Financing Documents.

16.4 **Evidence of Insurances**

16.4.1 The Concessionaire shall, from time to time, provide to the GoS copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

16.5 **Application of Insurance Proceeds**

16.5.1 Subject to the provisions of the Financing Documents, all moneys received under the Insurance shall be promptly applied by the Concessionaire towards repair, renovation, restoration and/or substitution of the Concession Assets or any part thereof which may have been damaged or destroyed.

16.5.2 The Concessionaire may designate the Lenders as the loss payees under the Insurance subsequent to amounts utilised as per the provision of Sections 16.5.1 and 16.5.3 and/or assign the Insurance in their favor as security for the finance facilities availed by the Concessionaire from the Lenders pursuant to the Financing Documents.

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

16.6 **Validity of Insurances**

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

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

16.6.3 Notwithstanding anything contained herein, in the event the Concessionaire fails to comply with its obligations to procure the Insurances in accordance with the Sections 16.1 (*Construction Period Insurances*) and/or 16.2 (*O&M Period Insurances*), then the GoS may, without prejudice to its other rights and remedies for breach, at its option, obtain and maintain such Insurance and all sums incurred by the GoS therefor shall be reimbursed by the Concessionaire to the GoS within seven (7) days from the receipt of a claim by the Concessionaire in respect thereof from the GoS.

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

17 **FORCE MAJEURE**

17.1 **Force Majeure Event**

17.1.1 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 and that on or after the Commencement Date materially and adversely affects the performance by such affected Party (the “**Affected Party**”) of its obligations under or pursuant to this Agreement and/or in the part or whole of the area on which the operations of the Project are being undertaken (the “**Affected Area**”); 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 in the Affected Area through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Concession Assets from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limiting the generality of the foregoing, “**Force Majeure Events**” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

17.1.1.1 the following political events that occur inside or directly involve Pakistan (each a “**Political Event**”):

(i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage or blockade of road due to political or religious motivations in the Affected Area; or

(ii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide including the Affected Area;

(iii) GoS Overriding Power Event.

17.1.1.2 the following events beyond the reasonable control of the Affected Party in the Affected Area (each a “**Non Political Event**”), including, but not limited to:

(i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or

(ii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated; or

- (iii) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Political Event, in which case such event or circumstance shall constitute a Political Event); or
- (iv) epidemic or plague.

17.1.1.3 Force Majeure Events shall expressly not include the following conditions, events or circumstances:

- (i) late delivery or interruption in the delivery of any machinery, equipment materials, spare parts or consumables relating to the Processing Facility;
- (ii) a delay in the performance of any Contractor;
- (iii) a breakdown in machinery and/or equipment; and
- (iv) normal wear and tear or random flaws in materials and equipment,

provided that each of the events described in Sections 17.1.1.3 (i), (ii), (iii) or (iv) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is in itself a Force Majeure Event whether experienced directly by the Concessionaire or by one of its Contractors.

17.2 **Obligation to Notify**

17.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within fifteen (15) days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, notify the Independent Engineer, the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event in the Affected Area by the issuance of a notice in writing (the “**Force Majeure Notice**”).

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

- (a) the Affected Area;
- (b) the nature and extent of the Force Majeure Event and the quantum of Force Majeure Costs as per the estimations of the Affected Party;
- (c) the estimated Force Majeure Period;

- (d) the nature of and the extent to which, performance of any of the Affected Party's obligations under this Agreement are affected by the Force Majeure Event;
- (e) the measures which the Affected Party has taken or proposes to undertake to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations that are affected by the Force Majeure Event; and
- (f) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

17.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within ten (10) days from the date of receipt of the same, convene a meeting, along with the Independent Engineer and the Independent Auditor for the purpose of conducting discussions, in good faith, and where necessary the Independent Engineer and the Independent Auditor shall conduct within ten (10) days from such discussion for inspections and/or surveys of the Project in order to:

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

17.2.4 Within thirty (30) days of the receipt of the Force Majeure Notice, the Independent Auditor and the Independent Engineer shall determine the following:

- (a) That the event occurred be treated as the Force Majeure Event;
- (b) The impact of the underlying Force Majeure Event and the quantum of the Force Majeure Costs;
- (c) The likely duration of Force Majeure Period; and
- (d) Suggest damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

Further, the Independent Auditor shall immediately inform the Force Majeure Costs, which it had determined (as above), in writing to the Parties.

17.2.5 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports in respect of the matters set out Section 17.2.2 and such other information, details and/or documents that the other Party may reasonably require.

17.3 **Consequence of Force Majeure Event**

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

- (a) there shall be no Termination of this Agreement except in accordance with the provisions specifically provided for in this regard including Section 17.5 (*Termination Notice for Force Majeure Event*), Section 17.6 (*Termination Payment for Force Majeure Event*) and Section 19 (*Termination*);
- (b) in the event the Force Majeure Event occurs:
 - (aa) at any time prior to the Construction Completion Date then the Scheduled Construction Completion Date (together with the timelines for performance by the Concessionaire of its obligations under this Agreement) and the Concession Period, in each case, shall be extended by the Force Majeure Period;
 - (bb) at any time after the occurrence of the Construction Completion Date, the Concessionaire shall be given extensions in the performance of its obligations set out in this Agreement and the Concession Period shall be extended, in each case, to the extent of the Force Majeure Period; and
 - (cc) the costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the 17.4 (*Allocation of Costs Arising out of Force Majeure*).

17.4 **Allocation of Costs Arising Out of Force Majeure**

17.4.1 Upon occurrence of a Force Majeure Event, the costs incurred and attributable to such event and relating to the Project (including any adverse financial impact on the Concessionaire resulting from the Force Majeure Event), as determined by the Independent Auditor and Independent Engineer under the section 17.2.4 (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non Political Event, the Concessionaire shall fund and bear the Force Majeure Costs;
- (b) upon occurrence of a Political Event, the GoS shall fund and bear the Force Majeure Costs.

The Concessionaire or the GoS (as the case may be) shall pay the Force Majeure Costs within 30 days from the receipt of written letter (under section 17.2.4 above) from the Independent Auditor determining/informing the Force Majeure Costs.

Notwithstanding anything contained in this Agreement, no Force Majeure Costs, reliefs, extensions of time shall be given by the GoS if a delay/disruption in the Project due to Force Majeure Event was nevertheless going to happen or was foreseeable or was controllable by the Concessionaire.

17.4.2 Save and except as expressly provided in Section 17.4 (*Allocation of Costs Arising out of Force Majeure*) and, if applicable, Section 17.5 (*Termination Notice For Force Majeure Event*) and Section 17.6 (*Termination Payment For Force Majeure Event*), neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.5 **Termination Notice for Force Majeure Event**

17.5.1 If a Force Majeure Event subsists for a continuous period of one hundred and twenty (120) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this 17.5 (*Termination Notice for Force Majeure*) and Section 17.6 (*Termination Payment for Force Majeure Event*), and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days' time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

17.6 **Termination Payment for Force Majeure Event**

17.6.1 If Termination is on account of a Non Political Event, the Concessionaire shall be entitled to the Termination Payment as mentioned in the relevant column of the Termination Payment Schedule, on or prior to the Termination Payment Date (the "**Non Political Event Termination Amounts**").

17.6.2 If Termination is on account of a Political Event, the GoS shall make a Termination Payment to the Sponsors as mentioned in the relevant column of the Termination Payment Schedule, on or prior to the Termination Payment Date (the "**Political Event Termination Amounts**").

17.7 **Force Majeure Dispute Resolution**

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

17.8 **Excuse from Performance of Obligations**

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

- (a) the Suspension (the "**Suspension**") of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event and/or of the effects of the same;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party (with a copy to the Independent Engineer) notice to that effect and shall promptly resume performance of its obligations hereunder.

18 **EVENTS OF DEFAULT**

18.1 **Concessionaire Event of Default**

18.1.1 Any of the following events shall constitute an event of default by the Concessionaire (the “**Concessionaire Event of Default**”) unless such event has occurred as a consequence of or due to a Permitted Events:

- (a) the Concessionaire fails to commence the Construction Works within forty-five (45) days from, the Commencement Date or Financial Close, whichever is later;
- (b) the Concessionaire fails to achieve Construction Completion Date by the Scheduled Construction Completion Date;
- (c) the Concessionaire fails to achieve Commercial Operations Date;
- (d) any statement, representation or warranty made by the Concessionaire in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Concessionaire’s ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the rights and/or obligations of the GoS hereunder;
- (e) the Concessionaire creates any Encumbrance on the Concession Assets in favor of any Person save and except as otherwise expressly permitted in terms of this Agreement;
- (f) the transfer, pursuant to law, of the rights and/or obligations of the Concessionaire under this Agreement save and except:
 - (i) as permitted in terms of this Agreement and/or the Financing Documents; and/or
 - (ii) where such transfer, in the sole opinion of the GoS, does not affect the ability of the Concessionaire to perform its obligations set out herein and the Concessionaire has the financial and technical capability to perform its material obligations under this Agreement;
- (g) Except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:

- (i) in the opinion of the Independent Engineer, the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement;
 - (ii) in the opinion of the Independent Auditor, the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Commencement Date;
- (h) any of the following events:
- (i) any proceeding being validly instituted under the Applicable Laws for the dissolution of the Concessionaire or attachment of the Concession Assets in accordance with Applicable Laws that has a Material Adverse Affect and that is not stayed or suspended in ninety (90) business days, provided that, if, within seven (7) business days of the Concessionaire becoming aware of such proceedings being filed, the Concessionaire:
 - (aa) confirms to the GoS that such proceedings relate to the recovery of a claim against the Concessionaire that is disputed *bona fide* by the Concessionaire as payable, and
 - (bb) furnishes a certificate by the Independent Auditor to the effect that the Concessionaire is and will remain solvent despite the payment of the claim subject to the said insolvency proceedings;

then, in such case, the same shall not constitute a Concessionaire Event of Default until such time that the said certificate by the Independent Auditor is revoked or otherwise ceases to remain accurate;
 - (ii) the passing of a resolution for the dissolution or winding up of the Concessionaire;
 - (iii) the voluntary filing by the Concessionaire of a winding up petition;
 - (iv) the appointment of a provisional liquidator in a proceeding for the winding up of the Concessionaire after notice to the Concessionaire and due hearing, which appointment has not been set aside or stayed within ninety (90) business days of such appointment; or
 - (v) the making by a court with jurisdiction over the Concessionaire of an order for dissolution or winding up the Concessionaire which order is not stayed or reversed by a court of competent jurisdiction within ninety (90) business days;

- (i) a default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and issued a final demand for payment of the amounts outstanding under the Financing Documents or any of them as applicable, in accordance with the terms of the Financing Documents;
- (j) the Concessionaire has delayed any final payment that has fallen due and payable under this Agreement and if such delay exceeds sixty (60) days, save where such payment is duly disputed by the Concessionaire in accordance with this Agreement;
- (k) the Concessionaire is otherwise in Material Breach of this Agreement or in Material Breach of Applicable Standards and, in each case, has failed to cure such breach within fifteen (15) days of receipt of written notice from the GoS in respect of the same;
- (l) an Abandonment (during the Construction Period) by the Concessionaire without the prior consent of the GoS for a period of thirty (30) consecutive days or for an aggregate period of sixty (60) days during the Construction Period;
- (m) an Abandonment (during the O&M Period) by the Concessionaire without the prior consent of the GoS for a period of sixty (60) consecutive days during any Operational Year;
- (n) Construction Performance Security and/or O&M Performance Security (as the case may be) is not furnished, renewed, replaced or provided to the GoS by the Concessionaire;
- (o) Concessionaire fails to take out and maintain the required Insurances;
- (a) any other events or circumstances expressly set out in this Agreement as a Concessionaire Event of Default.

18.2

GoS Event of Default

The following events shall constitute events of default by the GoS (the "GoS Event of Default"), unless any such GoS Event of Default has occurred and/or results from a Concessionaire Event of Default or Force Majeure Event:

- (a) the GoS is in breach of any of its obligations under any GoS Agreement and such breach has not been cured within forty-five (45) days from the date of written notice thereof by the Concessionaire provided further that such breach, in the opinion of Independent Engineer and/or the Independent Auditor (as the case may be) also substantially frustrates or renders it impossible for the Concessionaire to perform its relevant obligations under this Agreement;

- (b) the GoS and/or any Governmental Agency acts in a manner that has a Material Adverse Effect on the performance of its obligations by the Concessionaire and the GoS has failed to cure the same within forty-five (45) days of notice thereof by the Concessionaire;
- (c) the payments due and payable to the Concessionaire in terms of this Agreement and remains unpaid by the GoS for a period of ninety (90) days from the date on which the same was payable in terms of this Agreement; provided however this sub-section (c) is only applicable to such payments in respect of which there is no bona fide dispute and/or conflict between the Parties;
- (d) any statement, representation or warranty made by the GoS in any GoS Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Concessionaire's ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the GoS's rights and/or obligations under the GoS Agreements;
- (e) a default has occurred under any of the Financing Documents due to non performance and/or breach by the GoS of its obligations under the GoS Agreements and any of the Lenders has recalled its financial assistance to the Concessionaire and has issued a final demand for payment of the amounts outstanding under the Financing Documents or any of them, as applicable, in accordance with the terms of the Financing Documents;
- (f) any change in any Applicable Laws:
 - (i) making unenforceable, invalid, or void any material undertaking of the GoS under the GoS Agreements; and/or
 - (ii) making:
 - (dd) it unlawful for the Concessionaire, the Lenders or the Sponsors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any GoS Agreement (other than a Change in Law for which compensation is provided in accordance with this Agreement); or
 - (ee) any payment, the performance of any material obligation or the enjoyment or enforcement of any material right unenforceable under any GoS Agreement, invalid or void as a result of any such change in Applicable Laws;
- (g) the expropriation, compulsory acquisition, or nationalization by the GoS or any Government Agency of (i) any shares in the Concessionaire, or (ii) of any Concession Assets or rights of the Concessionaire or of the Contractors; or

- (h) any change in, or any change in the interpretation of, any of the Applicable Laws (including the Constitution of Pakistan and any other Applicable Laws that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making:
 - (i) unlawful, unenforceable, invalid, or void any material undertaking of the GoS under any GoS Agreement; or
 - (ii) unlawful for the Concessionaire to make or receive or the Lenders or the Sponsors to receive any payment (including interest or return), for the Concessionaire to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project; or
 - (iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the Applicable Laws;

which in the case of (i), (ii) or (iii) above, has a continuing effect for more than ninety (90) days without an arrangement being provided to exempt the affected party from the effect of such Change in Law (other than a Change in Law for which compensation is provided in accordance with this Agreement);

- (i) a Change in Law for which no relief is provided under Article 24 (*Change in Law*).

19 **TERMINATION**

19.1 **Termination for Concessionaire Event of Default**

19.1.1 Without prejudice to any other right or remedy which the GoS may have in respect thereof under this Agreement, upon the occurrence and continuation of a Concessionaire Event of Default, the GoS shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the GoS shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the “**GoS Preliminary Notice**”).

19.1.2 In the event the underlying Concessionaire Event of Default is not cured within the Cure Period and the same is subsisting at the expiry of the Cure Period, the GoS shall be entitled to:

- (a) terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period; and
- (b) encash the Construction Performance Security or the O&M Performance Security, as applicable and in effect as such time, on or following the issuance of the Termination Notice.

19.1.3 The following shall apply in respect of Cure Period relating to a Concessionaire Event of Default:

- (a) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages (as expressly set out in this Agreement), if any, caused by its underlying breach or default giving rise to the GoS Preliminary Notice;
- (b) the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
- (c) if the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by the GoS and/or the Government Agency hereunder, the applicable Cure Period shall be extended from the date the Concessionaire notifies the GoS of the same until the date that the GoS, the and/or Government Agency, as the case may be, accords the required approval;
- (d) notwithstanding anything to the contrary stated above, during any period when any Debt Due is outstanding, the rights of the Parties and the Lenders during the pendency of the Cure Period shall be as set out in the Financing Documents.

19.1.4 Upon issuance of a Termination Notice by the GoS (following expiry of the Cure Period) on account of occurrence and continuation of a Concessionaire Event of Default during the O&M Period, the

GoS shall effect payment of the undisputed, accrued and unpaid payments up to the date of the Concessionaire's receipt of the Termination Notice.

19.1.5 In the event of Termination due to a Concessionaire Event of Default, GoS shall have the right (if agreed to by the Lenders) to pay the Concessionaire Default Termination Amount by way of transfer of Concession Assets (of equivalent value) in favour of the Lenders or their nominee or through the sale proceeds of the Concession Assets. In that case GoS shall pay to the Lenders on or prior to the Termination Payment Date, by way of Termination Payment, an amount upto seventy percent (70%) of the Principal portion of the Debt Due in accordance with the Financing Documents and the remaining amount of Debt Due shall be paid by the Concessionaire. The Concessionaire and/or Sponsor shall be entitled to the Termination Payment (the "**Concessionaire Default Termination Amount**") as mentioned in the Termination Payment Schedule.

19.2 **Termination for GoS Event of Default**

19.2.1 Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence and continuation of any of the GoS Event of Default, the Concessionaire shall by a notice in writing inform the GoS of its intention to issue the Termination Notice (the "**Concessionaire Preliminary Notice**").

19.2.2 In the event the underlying GoS Event of Default is not cured by the GoS within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Concessionaire shall be entitled to terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period.

19.2.3 In the event of Termination due to a GoS Event of Default, the GoS shall pay to the Sponsor the Termination Payment as mentioned in the Termination Payment Schedule, on or prior to the Termination Payment Date (the "**GoS Default Termination Amounts**").

19.3 **Termination for Corrupt Acts**

19.3.1 The Concessionaire warrants that in entering into this Agreement it has not committed any Corrupt Act.

19.3.2 If any Corrupt Act is committed, then the GoS shall be entitled to act in accordance with the following provisions of this Section 19.3, provided that at all times the GoS shall bear the burden of proof for establishing that a Corrupt Act has been committed:

- (a) if the Corrupt Act is committed by the Concessionaire or any Associate of the Concessionaire, as the case may be, then in any such case, the GoS may issue a notice to the Concessionaire of its intent to issue a Termination Notice however, the GoS shall not be entitled to issue a Termination Notice in the event the Concessionaire, within forty-five (45) days of its receipt the GoS's notice stating its intention to issue a Termination Notice,

terminates such person's involvement in the Project who has committed the Corrupt Act and (if necessary) procures the performance of the relevant deliverables by another person;

- (b) if the Corrupt Act is committed by an employee of the Concessionaire, then in such case, the GoS may give written notice to the Concessionaire of its intention to issue a Termination Notice provided however, the GoS shall not be entitled to issue a Termination Notice in the event the Concessionaire, within forty-five (45) days of its receipt the GoS's notice stating its intention to issue a Termination Notice, terminates such employee's involvement in the Project and (if necessary) procures the performance of the relevant deliverables by another person;
- (c) if the Corrupt Act is committed by any other person not specified in sub-section (b) above but involved in the Project as a subcontractor or supplier to any Contractor or to the Concessionaire, then the GoS may give notice to the Concessionaire of its intention to issue a Termination Notice provided however, the GoS shall not be entitled to issue a Termination Notice in the event the Concessionaire, within thirty (30) days of its receipt the GoS's notice stating its intention to issue a Termination Notice, procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant contract and procures the performance of the relevant part of the construction or O&M of the Project by another person.

19.3.3 Any notice of intention to issue a Termination Notice by the GoS under this Section 19.3 shall specify:

- (a) the nature of the Corrupt Act;
- (b) the identity of the party or parties who the GoS believes has committed the Corrupt Act; and
- (c) the date on which the Termination Notice will be issued, which date shall be subject to the timelines provided in Section 19.3.2 (a) to (c), as applicable.

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

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

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

19.3.6 In the event of Termination due to a Corrupt Act, GoS shall have the same rights and obligations in respect of the Termination Payment and divestment of Divestment Assets as in case of Termination due to the Concessionaire Event of Default (the “**Corrupt Act Termination Amount**”).

19.4 **Rights of the GoS on Termination**

19.4.1 Upon Termination of this Agreement for any reason whatsoever and subject to receipt by the Concessionaire of the Termination Amounts on or prior to the Transfer Date (including, in case of Termination due to a Concessionaire Event of Default or Corrupt Acts, making payment or entering into arrangements acceptable to the Lenders for payment of any Concessionaire Default Termination Amount or Corrupt Act Termination Amount, as applicable, prior to the Transfer Date), the GoS shall, on the Transfer Date, have the power and authority to proceed in accordance with the Article 20 and follow the procedure mentioned therein for the divestment of rights and interests in respect of the Divestment Assets.

19.5 **Termination Payments**

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

19.6 **Mode of Payment**

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

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

DIVESTMENT OF RIGHTS AND INTEREST

Notwithstanding anything contained in this Agreement, for the purposes of divestment of rights and interests in respect of the relevant Concession Assets the term Divestment Assets shall be used instead of the Concession Assets.

Divestment Assets shall mean all the Concession Assets and/or the entire Class A Shares i.e. the GoS may in its sole discretion whether include the Class A Shares in the Divestment Assets or not.

20.1 Requirements for Divestment

20.1.1 Subject to the GoS fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date, the Concessionaire shall comply with and conform to the following requirements on the Transfer Date (the “**Divestment Requirements**”):

- (a) notify to the GoS forthwith the location and particulars of all Divestment Assets;
- (b) deliver forthwith the actual or constructive possession of the Divestment Assets, free and clear of all Encumbrances;
- (c) unless this Agreement is Terminated due to a Force Majeure Event, cure all Divestment Assets of all defects and deficiencies in accordance with the Handover List provided that in the event of Termination during the Construction Period, all Divestment Assets shall be handed over on ‘*as is where is*’ basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, books, know-how, reports, intellectual property and other licenses, spare parts, tools, equipments and other assets (including warranties in respect of the assets/materials being transferred) pertaining to the Divestment Assets and its design, engineering, construction, Operation and Maintenance, including all programs and manuals, revenues and contractual rights, pertaining thereto as on the Transfer Date;
- (e) transfer and/or deliver to the GoS, all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the GoS may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Divestment Assets, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, absolutely unto the GoS or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the

Concessionaire in the Divestment Assets, free from all Encumbrances, absolutely unto the GoS or to its nominee.

20.1.2 In case of liabilities attached to the Divestment Assets, the GoS will only undertake those liabilities which are:

- (a) Incurred in respect of the transactions executed on arms length basis;
- (b) Recorded in the audited accounts and audited financial statements of the Concessionaire;
- (c) Directly associated with the Divestment Assets.

20.2 **Inspection and Cure**

20.2.1 In case of Termination during the O&M Period, not earlier than thirty (30) days prior to Termination but not later than fifteen (15) days prior to the Transfer Date, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Applicable Standards, and if required, cause appropriate tests to be carried out. In the event of Termination for Concessionaire Event of Default, the Concessionaire shall bear the cost for this purpose. In the event of Termination for GoS Event of Default, the GoS shall bear the cost for this purpose. Defaults, if any, in the Applicable Standards shall be cured by the Concessionaire at its cost unless the same is due to GoS Events of Default in which case, the GoS shall bear all such costs. The provisions of this Section 20.2.1 shall not apply in the event of Termination of this Agreement due to a Force Majeure Event.

20.2.2 Until the Trigger Date all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Divestment Assets and on and from the Trigger Date, all risks in relation to the same shall be deemed to have been transferred to and lie with the GoS.

20.3 **Cooperation and Assistance for Transfer of the Concession Assets**

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

20.3.2 The Parties shall provide to each other, two (2) months prior to each Termination Payment Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the GoS, its concessionaire or agent may reasonably require for operation of the Project until the Transfer Date.

20.4 **Vesting Certificate**

20.4.1 Subject to the GoS fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date (including, in case of Termination due to a Concessionaire Event of Default or Corrupt Acts, making payment or entering into arrangements acceptable to the Lenders for payment of any Concessionaire Default Termination Amount or Corrupt Act Termination Amount, as applicable, prior to the Transfer Date), the divestment of all rights, title and interest in the Divestment Assets shall be deemed to be completed on the Transfer Date, and the GoS shall, without unreasonable delay, thereupon issue a certificate (the “**Vesting Certificate**”) substantially in the form set forth in Schedule “U” (*Form of Vesting Certificate*), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Divestment Assets, and their vesting in the GoS pursuant hereto.

20.5 **Divestment Costs**

20.5.1 Subject to Section 20.5.2, the Concessionaire shall bear and pay, in case of Termination due to a Concessionaire Event of Default, all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Divestment Assets in favor of the GoS upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the GoS. In the event of Termination due to a Permitted Event, the GoS shall bear and pay all the above mentioned costs.

20.5.2 The GoS shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Divestment Assets to the GoS or its nominated agency. The GoS shall at its own cost obtain or effect all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws and take such other actions as may be necessary for such transfer. The GoS hereby undertakes to indemnify the Concessionaire against any liability that may be sought to be or is imposed on the Concessionaire by any Government Agency (including the income tax authorities), in relation to the transfer of the Divestment Assets.

20.5.3 In the event of any dispute relating to matters covered by and under this Article 20 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

21 **DEFECTS LIABILITY DURING TERMINATION IMPLEMENTATION PERIOD**

21.1 **Liability for defects during Termination Implementation Period**

21.1.1 The Concessionaire shall be responsible for all defects and deficiencies in the Concession Assets during the Termination Implementation Period in accordance with this Section 21.1.1 and it shall have the obligation to repair or rectify all defects and deficiencies observed by the Independent Engineer in the Concession Assets during the aforesaid period, as set out in a list jointly prepared by the Independent Engineer and the Concessionaire within 10 days of the issuance of a Termination Notice (the "**Handover List**") provided however, the Concessionaire shall neither be responsible for any defects and deficiencies nor shall be in any manner obligated to repair or rectify the same to the extent such defects and deficiencies result from a Permitted Event. All costs for remedying of such defects and deficiencies in accordance with the Handover List shall be borne by the:

- (a) Concessionaire in the event this Agreement is terminated due to a Concessionaire Event of Default;
- (b) GoS in the event this Agreement is terminated due to a Permitted Event.

Notwithstanding anything to the contrary set out herein, the provisions of this Article 21 (*Defects Liability during Termination Implementation Period*) shall not apply to any termination of this Agreement resulting from a Force Majeure Event.

22 **DISCLAIMER**

22.1 **Disclaimer**

22.1.1 Subject to the terms of this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, General Scope of the Project, Concession Assets, existing structures, local conditions, peak season, low season and all information provided by the GoS or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Except as expressly provided in this Agreement, the GoS makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the GoS in this regard.

22.1.2 Subject to the terms of Agreement, the Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in this Section 22 and hereby acknowledges and agrees that the GoS shall not be liable for the same in any manner whatsoever to the Concessionaire, the Sponsors and their Associates or any person claiming through or under any of them.

22.1.3 Any mistake or error in or relating to any of the matters set forth in Section 22.1.1 shall not vitiate this Agreement or render it voidable.

22.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Section 22.1.1 above, such Party shall immediately notify the other Party, specifying the mistake or error; provided however, it is expressly agreed between the Parties that any such failure on part of the GoS to give any notice pursuant to this Section 22.1.4 shall not prejudice the disclaimer of the GoS contained in Section 22.1.1 and shall not in any manner shift to the GoS any risks assumed by the Concessionaire pursuant to this Agreement.

22.1.5 Except as otherwise provided in this Agreement, all risks relating to the Concession Assets shall be borne by the Concessionaire and the GoS shall not be liable in any manner for such risks or the consequences thereof.

23 **ASSIGNMENT AND CHARGES**

23.1 **Restriction on Assignment and Charges**

23.1.1 Subject to Section 23.2 (*Permitted Assignment and Charges*) and the Financing Documents, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason.

23.1.2 Subject to the provisions of Section 23.2 (*Permitted Assignment and Charges*), the Concessionaire shall not:

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

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

23.2 **Permitted Assignment and Charges**

23.2.1 The restriction set forth in Section 23.1 (*Restriction on Assignment and Charges*) shall not apply to:

- (a) liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) any transfer or disposal of the Concession Assets (or any part thereof) in the ordinary course of business;
- (c) Encumbrances over the Concession Assets and/or the Project Account, in each case, arising or created in the ordinary course of business and/or as security only for indebtedness in respect of the Financing and/or;
- (d) liens or encumbrances required by any Applicable Law.

23.3 **Assignment by the GoS**

23.3.1 Notwithstanding anything to the contrary contained in this Agreement or any other GoS Agreement, the GoS shall not assign and/or transfer any of its rights and benefits and/or

obligations under this Agreement or any GoS Agreement to an assignee or any Person without the prior written consent of the Concessionaire.

23.4 **Creation of Security Interest by Sponsors**

23.4.1 Any Sponsor, to secure its obligations to any other Person, may create a security interest over any shares owned by such Sponsor with prior consent from the GoS, which security interest may be enforceable against the Sponsor, notwithstanding anything to the contrary contained herein.

24 **CHANGE IN LAW**

24.1 **Increase in Costs**

24.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds of PKR 2,500,000/- (Pak Rupees Two Million Five Hundred Thousand Only) in any Accounting Year (as determined by the Independent Auditor and the Independent Engineer), the Concessionaire may so notify the GoS and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement provided that if no agreement is reached within sixty (60) days of the aforesaid notice, the Concessionaire may by notice require the GoS to pay the Additional Costs, and within fifteen (15) days of receipt of such notice, along with particulars thereof, the GoS shall pay the amount specified therein.

24.1.2 In the event as a result of a Change in Law the Concessionaire is delayed in performance of any of its obligations under this Agreement, then the Concessionaire shall be entitled to and shall be granted an extension in the timelines for performance of its obligations under this Agreement, as determined by the Independent Engineer. Further, the Concessionaire shall be excused from performance of its obligations to the extent it is unable to perform on account of such Change in Law.

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

(a) of failure by the GoS to pay the Additional Costs within forty five (45) days of receipt of a notice issued by the Concessionaire in accordance with Section 24.1.1; and/or

(b) the Change in Law (together with its effects) subsists for a period of sixty days or more;

the Concessionaire shall have the right to immediately terminate this Agreement by issuance of a Termination Notice.

24.1.4 If Termination is on account of a Change in Law, the GoS shall make a Termination Payment to the Sponsors as mentioned in the Termination Payment Schedule (the "**Change in Law Termination Amounts**").

24.2 **Reduction in costs**

24.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds PKR 2,500,000/- (Pak Two Million Five Hundred Thousand Only) in any Accounting Year, the GoS may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the GoS, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within sixty (60) days of the aforesaid notice, the GoS may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within fifteen (15) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the GoS; provided that if the Concessionaire shall dispute such claim of the GoS, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 24.2 (*Reduction in Costs*) shall be restricted to such Change in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

24.3 **Restriction on Cash Compensation**

24.3.1 The Parties acknowledge and agree that the demand for cash compensation under this Article 24 (*Change in Law*) shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than one (1) year from the close of such Accounting Year.

25 **ADDITIONAL MATTERS**

25.1 **Advertising & Advertising Revenues**

25.1.1 The GoS shall have a right to undertake from time to time various advertising activities on the Concession Assets (the “**Advertising Activities**”). In the event, as determined by the Independent Engineer, the Advertising Activities will cause any impediments to the Customers in the use of Concession Assets and/or has an adverse affect on the safety of the Customers, such Advertising Activities shall be rejected and the GoS shall have the right to undertake any new advertising activities.

25.1.2 The GoS exclusively reserves the right to the revenues that may be generated as a result of Advertising Activities.

25.2 **Class B Dividends**

The GoS shall exclusively be entitled to the Class B Dividends.

25.3 **GoS Equity Agreement, Class B Shares**

25.3.1 The GoS hereby undertakes to fund the GoS Equity for Class B Shares for the Project in accordance with the Financial Model. The GoS shall be issued Class B Shares from time to time upon its funding of the GoS Equity for Class B Shares in accordance with the Financial Model. The Parties agree to enter into the Funding & Utilization Agreement for the purposes of funding of GoS Equity by the GoS in accordance with the Financial Model.

25.4 **Commercial Rights & Optional Facilities**

25.4.1 At the request of the Concessionaire at any time prior to the expiration of the Concession Period, the GoS may (in its sole discretion) grant or cause to be granted to the Concessionaire such Development Rights that may be within its jurisdiction for the establishment of optional facilities. The GoS shall consider any request for the grant of Development Rights in good faith and shall consult with the Concessionaire on such Development Rights. Nothing contained in this Agreement shall prevent the GoS from granting Development Rights to any person who is not affiliated with the Concessionaire or its shareholders provided however no Development Rights shall be granted to any other person except the Concessionaire or the shareholders until 2 years following Commercial Operations Date. Notwithstanding anything contained herein the Concessionaire shall have first right of refusal to avail the Development Rights and/or shall have the option to match the highest offer available to the GoS for the Development Rights.

25.4.2 Subject to Section 25.4.1, nothing contained in this Agreement shall obligate the GoS in any way to grant or deny such Development Rights and its decision regarding such rights will be carried out at

its complete discretion. For the avoidance of doubt, Development Rights are not a part of the Concession Assets.

25.4.3 The terms and conditions governing the utilization of Development Rights shall be specified in a separate agreement to be entered into between the Parties (the "**Development Rights Agreement**"). In addition, each Party shall enter into all such agreements as may be reasonably required to give full effect to the grant of Development Rights and to enable the Concessionaire to use the Development Rights granted by the GoS. The Parties agree to make amendments to this Agreement to the extent required to give effect to the implementation of the Development Rights Agreement (including all agreements relating thereto) and/or for the implementation of the Development Rights.

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

25.5 **Sovereign Immunity**

25.5.1 The GoS unconditionally and irrevocably:

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

26 **DISPUTE RESOLUTION**

26.1 **Dispute resolution**

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in 26.2 (*Conciliation*).

26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

26.2 **Conciliation**

26.2.1 In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer and/or the Independent Auditor, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer and/or the Independent Auditor as the case may be, either Party may require such Dispute to be referred to the Secretary of the GoS and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than fifteen (15) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the fifteen (15) day period or the Dispute is not amicably settled within thirty (30) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within ninety (90) days of the notice in writing referred to in 26 (*Dispute Resolution*) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Section 26.3 (*Arbitration*).

26.3 **Arbitration**

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in 26.2 (*Conciliation*), shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Section 26.3.3 Such arbitration shall be held in accordance with the provisions of the Arbitration Act.

26.3.2 The venue of such arbitration shall be Karachi, and the language of arbitration proceedings shall be English.

26.3.3 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two (2) arbitrators so selected, and in the event the two (2)

arbitrators are unable to agree on the third arbitrator, then the same will be appointed in accordance with the Arbitration Act.

26.3.4 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 26 (*Dispute Resolution*) shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the GoS agree and undertake to carry out such Award without delay.

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

26.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

27 **MISCELLANEOUS**

27.1 **Governing Law and Jurisdiction**

27.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of Pakistan and the Courts of appropriate jurisdiction at Karachi shall have the exclusive jurisdiction over all matters arising out of or relating to this Agreement.

27.2 **Waiver**

27.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

27.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

27.3 **Survival**

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

27.4 **Amendments**

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

27.5 **Notices**

27.5.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in Schedule "W" (*Details for Notices*) or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

27.6 **Severability**

27.6.1 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

27.7 **No Partnership**

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

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

27.8 **Language**

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

27.9 **Exclusion of Implied Warranties**

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

27.10 **Counterparts**

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

Signature Page

In witness where of the Parties have caused this Agreement to be duly executed by their duly authorised officers as of the date first above written.

**FOR AND ON BEHALF OF
GOVERNOR OF SINDH
THROUGH AGRICULTURE SUPPLE & PRICES DEPARTMENT**

Signature: _____

Name: _____

Designation: _____

in the presence of following witnesses:

1. Name: _____

Address: _____

NIC No.: _____

2. Name: _____

Address: _____

NIC No.: _____

**FOR AND ON BEHALF OF
_____ (the Concessionaire)**

Signature: _____

Name: _____

Designation: _____

in the presence of following witnesses:

1. Name: _____

Address: _____

NIC No.: _____

2. Name: _____

Address: _____

NIC No.: _____

SCHEDULE "A"

General Scope of the Project

Government of Sindh generally desires to achieve following objectives from the Project:

- a) Introduce technology driven common facility for mango (and other area fruits / vegetables during mango off-season) comprising of a pack-house, treatment / processing facility (Hot Water Treatment and Vapor Heat Treatment), blast chiller , cold storage, ripening chamber and pulping facilities to growers, processors and exporters as per international standards.
- b) Reduce the post-harvest losses of horticulture produce during harvest and activities thereafter to an acceptable level along with improved quality and shelf life of the products.
- c) Improve and delivering better quality of mangoes to local as well as global markets;
- d) Entry into high value markets by maintaining quality and adhering to international best practices;
- e) Bridge the gap between growers and exporters/bulk buyers;
- f) Explore options of alternate mode of financing for mango growers;
- g) Promote use of pheromone traps and other agricultural practices to control fruit fly;
- h) Encourage greater private sector investment in processing and handling of horticulture crops.
- i) Improve financial returns for farmers / growers in Sindh.

Equipment and facilities to be installed in the project

- i. Pack House:
 - Reception area
 - Washing area / facility
 - Grading area / facility
 - Packing area
- ii. Fruit Treatment:
 - Hot water Treatment
 - Vapor Heat Treatment
- iii. Ripening and Storage:
 - Ripening Chambers

Blast Chillers
Cold Store

- iv. Ancillary Facilities:
Laboratory for Quality Control and Microbiology
Farmers/growers training cell
- v. Value Addition:
Pulping and puree making

SCHEDULE "B"

Financial Model

SCHEDULE "C"

Format of Construction Performance Security

To,

The Government of Sindh, [insert the address],

BG No: [●]

Date of Issue:[●]

Rs. [●]

Expiry Date: [●]

GUARANTEE

At the request of our customer [insert the particular of Concessionaire], (hereinafter refer to as the "Customer") we, [insert the particulars of bank/financial institution], a commercial licensed bank incorporated under the laws of Pakistan and having our head office at [●], in consideration of your having entered into the Concession Agreement dated [●] with the Customer hereby undertake as follows:

1. That upon your declaration that the Customer has failed to fulfil its obligations towards you in respect of the constructions under the Concession Agreement (which declaration shall be binding on us for making payment under this Guarantee), we shall forthwith pay you such amounts(s) as you may demand through Encashment Notice (as defined below).
2. That the amount that we are liable to pay under this Guarantee shall be limited to a maximum amount of Rs. [●] [amount in words].
3. That we shall be liable to pay you amount that you may demand under this Guarantee without recourse to the Customer and notwithstanding any objection or protest by the Customer.
4. That any payment made, or to be made, by us under this Guarantee shall be free and clear of any deductions, withholdings, fees, charges, or set offs.
5. That in case you make any change in the terms of the obligations of the Customer towards you, or in case you allow him/her/it any time or show any forbearance, indulgence or concessions, such acts shall not exonerate, release, or discharge us from our liability under this Guarantee.
6. That any demand that you make under this Guarantee shall have to be through an Encashment Notice. Encashment Notice for the purpose of this Guarantee shall mean a written demand notice to us for payment under this Guarantee.

7. That this Guarantee shall remain valid up to [●], being the Expiry Date of Guarantee and any demand under the Guarantee shall have to be made by delivering to us an Encashment Notice during bank business hours on or before that date. Thereafter, this Guarantee shall become invalid and our liability under this Guarantee shall stand completely discharged and extinguished, regardless of whether you, or anyone else, continue to keep in your possession this Guarantee document in original.

IN WITNESS WHEREOF this Guarantee has been executed by the Bank's authorised officer(s) on this [●] day of [●], [●].

**FOR AND ON BEHALF OF
[●] BANK LIMITED**

Signature: _____

Name: _____

Designation: _____

CNIC No.: _____

Signed in the presence of the following witnesses:

1. Signature: _____

Name: _____

CNIC No.: _____

2. Signature: _____

Name: _____

CNIC No.: _____

SCHEDULE "D"

List of Corporate Documents

S. No	Documents
1	Memorandum and Articles of Association
2	Certificate of Incorporation
3	Registration with Income Tax and Sales Tax Department

SCHEDULE "E"

List of Insurances

The essential insurances required (but not limited to) are as follows:

A. Construction Period Insurances

As mutually agreed between the Parties prior to the Commencement Date

B. O&M Period Insurance

As mutually agreed between the Parties prior to the Commencement Date

SCHEDULE "F"

O&M Performance Security

To,

The Government of Sindh, [insert the address],

BG No: [●]

Date of Issue:[●]

Rs. [●]

Expiry Date: [●]

GUARANTEE

At the request of our customer [insert the particular of Concessionaire], (hereinafter refer to as the "Customer") we, [insert the particulars of bank/financial institution], a commercial licensed bank incorporated under the laws of Pakistan and having our head office at [●], in consideration of your having entered into the Concession Agreement dated [●] with the Customer hereby undertake as follows:

1. That upon your declaration that the Customer has failed to fulfil its obligations towards you in respect of the Operations and Maintenance under the Concession Agreement (which declaration shall be binding on us for making payment under this Guarantee), we shall forthwith pay you such amounts(s) as you may demand through Encashment Notice (as defined below).
2. That the amount that we are liable to pay under this Guarantee shall be limited to a maximum amount of Rs. [●] [amount in words].
3. That we shall be liable to pay you amount that you may demand under this Guarantee without recourse to the Customer and notwithstanding any objection or protest by the Customer.
4. That any payment made, or to be made, by us under this Guarantee shall be free and clear of any deductions, withholdings, fees, charges, or set offs.
5. That in case you make any change in the terms of the obligations of the Customer towards you, or in case you allow him/her/it any time or show any forbearance, indulgence or concessions, such acts shall not exonerate, release, or discharge us from our liability under this Guarantee.
6. That any demand that you make under this Guarantee shall have to be through an Encashment Notice. Encashment Notice for the purpose of this Guarantee shall mean a written demand notice to us for payment under this Guarantee.

7. That this Guarantee shall remain valid up to [●], being the Expiry Date of Guarantee and any demand under the Guarantee shall have to be made by delivering to us an Encashment Notice during bank business hours on or before that date. Thereafter, this Guarantee shall become invalid and our liability under this Guarantee shall stand completely discharged and extinguished, regardless of whether you, or anyone else, continue to keep in your possession this Guarantee document in original.

IN WITNESS WHEREOF this Guarantee has been executed by the Bank's authorised officer(s) on this [●] day of [●], [●].

**FOR AND ON BEHALF OF
[●] BANK LIMITED**

Signature: _____

Name: _____

Designation: _____

CNIC No.: _____

Signed in the presence of the following witnesses:

1. Signature: _____

Name: _____

CNIC No.: _____

2. Signature: _____

Name: _____

CNIC No.: _____

SCHEDULE "G"

Concession Permits

1. Registration of Processing Facility with the DPP/HACCP/relevant ISO standards
2. Approval of construction of the Project from Sindh Building Control Authority

SCHEDULE "H"

Indicative Independent Auditor Terms of Reference

- i. Reviewing and certifying the Financial Model and revising the same from time to time as may be required under the Concession Agreement and providing opinion in this regard.
- ii. Transferring the GoS's Equity from any non-checking account into the Project Account as may be authorized under the Funding & Utilization Agreement.
- iii. Verifying the record of invoices, expenses and earnings of the Concessionaire.
- iv. Confirming about the inflows and outflows in respect of the Project Account and/or any other account relating to the project and reporting any deviations from the terms of Concession Agreement in respect of usage of funds in the said accounts.
- v. Issuing the Commencement Certificate upon the Financial Close as mentioned in the Concession Agreement.
- vi. Reviewing the financing documents and pointing out any discrepancies in the same.
- v. Providing opinions and decisions on any financial disputes between the parties to the Concession Agreement.
- vi. Conducting audit of the accounts and other financial aspects of the Project and providing reports that may be concluded against the same.
- vii. Providing opinion over the expenses incurred by the Concessionaire in respect of the Project.
- viii. Calculating the amounts in respect of expenses as defined in Section no. 4.3 of the Concession Agreement and verifying the payments against the said expenses accordingly.
- ix. Assisting the parties in determining the type of default that may occur under the Concession Agreement.
- x. Undertaking all the tasks which are associated with the Independent Auditor in terms of the Concession Agreement.

SCHEDULE "I"

Indicative Independent Engineer Terms of Reference

GENERAL

- i. During execution phase, the Independent Engineer (IE) of the Project shall, in principle be responsible for review of contracts, designs, drawings, construction, progress monitoring, and affirmation of all certification done by the Concessionaire.
- ii. During project operation, the IE shall monitor the working and efficiency of the production and off sites areas, in order to ensure that Key Performance Indicators (KPI's) are met.
- iii. The IE shall supervise that the requirement of the Concession Agreement and its various appendices, other than mentioned for Independent Auditor-IA of the Project, are met by the Concessionaire and in case of any discrepancy / deviations, and shall inform Authority and the Concessionaire. The responsibility of the Independent Engineer during various phases of design review, construction and Operation and Maintenance shall be but not limited to the following.

CONTRACTS AWARD AND DESIGN REVIEW PHASE

- i. Review and approve the adequacy of topographical surveys, geo-technical and sub-soil investigations, hydrological and water testing investigation.
- ii. Assist the Concessionaire in preparation of contracts for civil design and construction/ procurement of processing plants/ procurement of utilities and off sites equipment and materials/ mechanical, electrical and instrumentation installation/ and all other works in the Project.
- iii. Review and approve the design and layout of the Project, so as to ensure the optimal integration of its component units, with respect to:
 - (a) Adequacy, completeness, optimality and capability of design of all units to perform as required in anticipated operating conditions and to meet the technical requirements specified in this Agreement.
 - (b) Identification of project design features or any major equipment component that does not appear to meet design, performance requirements or fails to adhere to good engineer practice.
 - (b) Provide an opinion on the quality of the design with respect to their effect on the anticipated service life of the facility, the degree of maintenance needed to meet performance requirements and long term availability over the term of the Concession.
- iv. Review and approve the implementation schedule of engineering, design, procurement, construction, installation and start up of the Project submitted by the Concessionaire and determine that adequate provisions have been made for all key tasks, including but not limited to the following:
 - (a) Technical staffing;

(b) Packaging materials sourcing

(c) Readiness of construction and installation facilities, including accommodation/ equipment, tools and materials/ etc.

- v. Review and comment on the consistency of all project documents
- vi. Review the available permits or permit applications
- vii. Review the environmental management plan for the Project during the Construction Period (and the Operations Period, if required)
- viii. Review and comment on the utilities arrangement for the Project, including, but not limited to the water supply and electricity supply
- ix. Review and approve the adequacy and reasonableness of the Project co-ordination and monitoring system
- x. Review quality assurance and quality control provisions during the design, and construction and O&M phase
- xi. The Independent Engineer shall review and approve works program prepared and submitted by the Concessionaire. Payments will be made upon Independent Engineer's certification, with final approval of Independent Auditor
- xii. Independent Engineer is required to prove due diligence and utmost expertise in ensuring that quality control provisions are complied with at all times during the Construction Period and the Operations Period
- xiii. Independent Engineer will be responsible to report to the Authority/Lenders in case the quality standards and quality control provisions are not maintained on the Project Site
- xiv. Audit the safety of the Project Site during Construction Period and the Operations Period
- xv. Review the "As Built" drawings for each component of the Project Works prepared and submitted to Independent Engineer by the Concessionaire

ROLE OF INDEPENDENT ENGINEER DURING CONSTRUCTION, INSTALLATION AND START UP PHASE

- i. The scope of responsibility of the Independent Engineer is to monitor the works and to confirm that the respective contracts are adhered to with regard to the materials and workmanship. As stated in the Concession Agreement, the Independent Engineer shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations
- ii. The Independent Engineer shall review quality assurance and quality control during construction period.
- iii. The Independent Engineer shall ensure that the Construction, installation and start up works is accomplished in accordance with the Applicable Standards
- iv. The Independent Engineer shall identify delays, if any, in construction, installation and start up and recommend to the Authority/Lender the remedial measures to expedite the progress
- v. Review the safety measures provided for the Project personnel, for both the Concessionaire staff as well as any on the Project Site.
- vi. Determine any extension of the Project Completion Schedule, to which the Concessionaire is entitled and shall notify Authority/Lenders, accordingly
- vii. Review compliance by the Concessionaire of its obligations under the Concession Agreement

- viii. For performance testing, the Independent Engineer will
- ix. Review test procedures developed by the Concessionaire appointed various O&M Contractors and confirm compliance with applicable test codes and standards and with testing criteria specified in Concession Agreement and its Schedules
- x. Review the quality control reports, material testing results and design and to order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required
- xi. Review test reports prepared by Concessionaire or Concessionaire's testing consultant
- xii. Monitor successful completion of each Project Completion Check List Items.
- xiii. Make one final visit to Project Site to verify that Project Completion Check
- xiv. List Items have been completed and thereafter sign and submit the Final Project Construction Completion Certificate

ROLE OF INDEPENDENT ENGINEER DURING OPERATIONS PERIOD

- i. Review and monitor work plan and schedules of various operation and maintenance activities
- ii. Review and monitor the O&M Manual(s) prepared by the Concessionaire for their completeness and compatibility with those of similar facilities
- iii. Review and monitor the performance of Operation and Maintenance activities including equipment, service, operation and safety. Specifically, the performance capacity utilization of all processing units, including HWT/ VHT/ Grading/ Pulping, will be monitored, and the product quality and market acceptability of all products verified. Performance will be monitored of utilities and off sites equipment. For the entire facility, the physical condition of all items, covering mechanical/ structural/ electrical/ electronic aspects, will be monitored, and tasks to be undertaken will be brought to the notice of the Concessionaire.
- iv. Ensure compliance with prevailing applicable quality management and safety standards, including HACCP/ ISO, and others as may be deemed necessary by the Concessionaire.
- v. Recommend necessary actions to the Authority/Lenders to undertake maintenance obligations of the Concessionaire at risk and cost of the Concessionaire in the event of his failure to carry out the Operations and Maintenance
- vi. Undertake audit at appropriate intervals of the technical capability of the management, and suggest remedial measures where required, such as staff training/ changes, acquisition of external knowhow/ etc.
- vii. Review and inspect the Project at all reasonable times and upon reasonable notice to the Concessionaire during the Operations Period and issue an Inspection Report and O&M Inspection Report of such inspections to the Lenders

THE OTHER FUNCTIONS OF THE INDEPENDENT ENGINEER SHALL BE THE FOLLOWING

- i. Perform functions, including issue of directions to the Concessionaire, in respect of the Emergency De-commissioning of the Concession Assets as provided in this Agreement.
- ii. Verify and ascertain evidence of insurance cover as provide in this Agreement
- iii. Perform functions in respect of Change of Scope as provided in this Agreement

- iv. Inspect the Concession Assets at the time of handing over thereof by the Concessionaire to the Lenders/
Authority and perform functions in respect to such handing over as provided in this Agreement

SCHEDULE "J"

Project Completion Schedule

Project Milestones	Expected Date of achievement
Effective Date	
Scheduled Commencement Date	
Scheduled Construction Completion Date	
Expiry Date	

SCHEDULE "K"

Specifications of Blast Chiller

Required Temperature+12°C
Product Entering Temperature+25°C
Outside Design Temperature+48°C
Approximate Capacity / cycle05 Metric Tons approx.
Temperature Pull down time 3 - 4 hours max.
Product Fresh Mangoes

SCHEDULE "L"

Specifications of Cold Storage

- a cool store for purees packed in aseptic bags held in 220 litre drums, 1,000 tons product holding capacity, stackable in 3 layers;
- a cold store for apples & fresh mango at 4 o C & 12 o C respectively, minimum 1,000 tons capacity, with racking for placing of cartons;
 - i) Freon should be used as the refrigerant, of acceptable grade, in accordance with current standards for ozone layer protection.
 - ii) PU insulation should be provided, for panels and flooring, and thickness should be stated in each case. Fittings for installation should be included.
 - iii) Sliding doors of international standards should be provided, with all fittings, and motorized roller shutter doors for the loading area.
 - iv) Product incoming temperature for the purees cool store should be taken as 20 to 25 o C, and temperature range to be maintained should be + 4 to + 8 o C.
 - v) Product incoming temperature for the fruit cold store should be taken as 20 to 25 o C, and temperature range to be maintained should be + 4 to + 12 o C.
 - vi) Complete accessories should be provided for the cool & cold rooms, in keeping with international standards.
 - vii) For the refrigeration units, all necessary refrigerant/ piping/ wiring/ control panels, etc, should be provided

SCHEDULE "M"

Specifications of Hot Water Treatment Plant

- i) Capacity should be a minimum 5 tons/ hour of mango, maintained at 48 o C +/- 10 o C, for 60 minutes, with variable/ adjustable speed.
- ii) Design of plant and materials of construction should comply with standards of Department of Plant Protection, Government of Pakistan.
- iii) The complete line should include:
 - feeding system with SS 304 elevator;
 - sorting conveyer in SS 304;
 - washing tank with all accessories, including steam heating/ electrical heating for regulation of temperature/temperature control, display and recording;
 - all pumps as required, filtration unit, foam dryer, fungicide dip tank, drying unit;
 - collection table;
 - water preheating system;
 - all other required items as needed to complete the plant.

The Hot Water Treatment Plant shall be procured by the Concessionaire from the local sources/industry and the same shall be acceptable to DPP/HACCP/relevant ISO standard.

SCHEDULE "N"

Specifications of Processing Facility

- i. **Pack House** (for washing, grading, sorting and packing) specifications given in Schedule "O"
- ii. **VHT Plant** specifications given in Schedule "P"
- iii. **HWT Plant** specifications given in Schedule "M";
- iv. **Blast Chillers** specifications given in Schedule "K";
- v. **Cold Storages** specifications given in Schedule "L";
- vi. **Ripening Chamber**

a) **Supplier's Qualifications**

- i) Should have provided equipment and services for a minimum of 3 installations of a similar capacity range currently in operation.
- ii) Should be a company, based in Pakistan/ Europe/ Japan/ China/ Gulf countries/ Iran or equivalent, registered with the concerned governmental organization and tax authorities in its own country, and a member of the chamber of commerce as applicable.
- iii) Should have arrangements for supply of all key equipment items and components such as ethylene generators/ compressor/ axial fan/ instrumentation from within the European Union/USA/Japan/China/UK or equivalent.
- iv) Should possess a well equipped fabrication facility and qualified staff for installation and backup.
- v) Should not have been engaged in litigation with a government department in Pakistan.
- vi) Should be ISO certified.

b) **Equipment Specifications**

- i) The installation should include a blast chiller to cool 5 tons/ h of mangoes from 25 o C to 12 o C.
- ii) 2 nos. ripening chambers, 10 tons capacity of product each, product maintained at 20 o C.C. Ambient temperature will be 48 o C.
- iii) PU complying with Europe standards should be used for sandwich panel and floor insulation.
- iv) Insulated sliding doors meeting international standards should be provided where required.
- v) Forced air circulation system with high speed blower fitted with Siemens motor/ all required instrumentation/ electronic accessories of international standards should be included.
- vi) Air cooled condensing units with EU origin or equivalent compressors/compressors/ all instrumentation/ accessories/ electronic control and protective devices should be included as required.

- vii) Humidification unit of international standards should be included.
- viii) Ethylene gas monitor and data logging devices of EU/ US/ Japan origin should be included.
- ix) All materials integral to the equipment as needed for installation and fitting should be included.

vii. **Pulp Plant;**

a) Supplier's Qualifications

- i) Should have provided equipment and services for a minimum of 3 plants of similar capacity range currently in operation.
- ii) Should be a company, based in Europe or equivalent, registered with the concerned governmental organization and tax authorities in its own country, and a member of the chamber of commerce as applicable.
- iii) All equipment items and key components should be from within the European Union/UK or equivalent.
- iv) Should possess a well equipped fabrication facility and qualified staff for installation and backup.
- v) Should not have been engaged in litigation in Pakistan.
- vi) Should be ISO certified.

b) Equipment Specifications

- i) Capacity should be based on a minimum fruit input of 10 tons/ hour of mango, to produce 6 tons/hour aseptically packed mango pulp/ puree, with matching capacities for guava/ apple processing.
- ii) The offered line should be complete, beginning with the feed to the main unit, and terminating with the packing of the product in aseptic bags in drums. It should include all necessary items such as CIP, safety and security units, and standard accessories such as laboratory for quality control and microbiology. Design and technology should be acceptable in the international market for mango puree.
- iii) Detailed description of technology on which the various sections including washing/ sorting, extraction, refining, cooking, aseptic sections are based should be given.
- iv) All components and equipment items in the offered line should be in stainless steel 304, and the equipment in the aseptic section in contact with the product should be in SS 316. Where plastic materials are required, such as conveyers etc, food grade should be ensured.
- v) PLC control should be included for the complete line, with touch screen control panel, while for the individual equipment the supplier should specify the control systems included.

- vi) The offered line should be complete, beginning with the feed to the main unit, and terminating with the packing of the product in aseptic bags in drums. It should include all necessary items such as CIP, safety and security units, and standard accessories such as laboratory for quality control and microbiology.
 - vii) Structure/ frame/ tanks/ and all parts susceptible to corrosion should be in stainless steel, with grade to be specified in the offer.
 - viii) Graphic display for control and record keeping, inclusive of all necessary computers and instrumentation.
 - ix) All other items needed for a complete production unit, within the standard scope of supply for such projects.
- viii. Administration office
- ix. Water Treatment Plant water treatment plant, 20 m³/ h, to be specified after selection of site and availability of water analysis
- x. Electricity distribution equipments including transformer/ switchgear/ PF improvement plant/ panels/ cables & cable trays/ factory, to serve the load which will be specified for each plant after the signing of contracts;
- xiv. Utilities Equipment:
- a) Standby generator, 2 nos., 500 kW each, based on fuel oil;
 - b) cooling tower, with packing/ fans, piping and 2 nos. pumps, to cool from 42 o C to 32 o C, capacity 50 m³/ h, with SS 304 pump impeller, Siemens motor;
 - c) boiler, 2 nos., capacity 3 tons/ h each, 8 bar pressure, dual firing gas/ fuel oil, with resin columns, and complete with piping and instrumentation with safety provisions.
- xv. Quality Control Laboratory
- a) Supplier's Qualifications
 - i) Should have provided equipment and services for a minimum of 3 installations of similar capacity range currently in operation of a similar capacity range currently in operation.
 - ii) Should be a company, based in Pakistan/ Europe/ Japan/ China/ Gulf countries/ Iran or equivalent, registered with the concerned governmental organization and tax authorities in its own country, and a member of the chamber of commerce as applicable.
 - iii) A local establishment in Pakistan for provision of back up services is required.
 - iv) Should have arrangements for supply of all key equipment items, instruments and components from within the European Union/ USA/ Japan/ UK or equivalent.
 - v) Should not have been engaged in litigation with a government department in Pakistan.

vi) Should be ISO certified.

b) Equipment/Instrumentation Specifications

The following is a complete list of items required for fully equipped laboratories for quality control and microbiology:

01 DIGITAL BENCH REFRACTOMETER SCALE 0-50% DIV. 0,1% Brix
01 PORTABLE OPTICAL REFRACTOMETER SCALE 0-80%, resolution 0,5% Brix
01 PORTABLE OPTICAL REFRACTOMETER SCALE 0-32%, resolution 0,2% Brix
01 DIGITAL PORTABLE REFRACTOMETER SCALE 0 - 52 % resolution 0,2% Brix
01 BENCH TOP PH-METER EQUIPPED WITH TEMPERATURE MEASURING PROBE,
ELECTRODE AND CALIBRATION SOLUTIONS 4.01 AND 7.00
01 PORTABLE PH-METER EQUIPPED WITH TEMPERATURE MEASURING PROBE,
ELECTRODE AND CALIBRATION SOLUTIONS 4.01 AND 7.00
01 BOSTWICK CONSISTOMETER L=23cm div. 0,5 cm
01 BINOCULAR MICROSCOPE FOR MOULDS COUNTING (HOWARD METHOD)
02 HOWARD KIT COMPLETE
01 AUTOMATIC TITRATOR (acidity and salt NaCl determination)
01 HOTPLATE MAGNETIC STRIRRRER
02 GLASS PELLET BURETTES Yellow/white GLASS
01 WATER STILL UNIT cap.4 liters/hour
01 DIGITAL THERMOMETER COMPLETE OF IMMERSION PROBE
01 ANALYTICAL ELECTRONIC BALANCE WEIGHING RANGE 0- 220 g. READABILITY 0,1
mg.
01 TECHNICAL ELECTRONIC BALANCE WEIGHING RANGE 0-3000g.DIV.0,1gr.
02 BOTTLE TOP DISPENSER 0-10 ML
01 DRY OVEN TEMP. RANGE BETWEEN+5°C TEMP.ROOM and +220°C CAP. 30 lt
01 VACUUM OVEN cap. 40 Lts. COMPLETE WITH VACUUM PUMP
01 GLASS DESSICATOR diam.200 mm complete
01 LABORATORY MIXER
01 UV-VIS SPECTROPHOTOMETER single-beam 200 - 1000 nm COMPLETE WITH:
04 SELECTABLE VOLUME PIPETTE
02 QUARTZ CUVETTES 10 mm p.o.
01 SET OF ENZYMATIC KIT (D+L LACTIC ACID, SUGARS, citric and isocitric acid)
01 COLORIMETER for fruit puree and concentrate
Complete set of calibration & diagnostic tiles , glass sample cups , Sample cup opaque cover
01 SET OF REAGENTS
01 SET OF GLASSWARE, PLASTIC AND PINCERS
01 DIGITAL VISCOMETER complete with stand and accessories
01 THERMOWELDER
01 REFRIGERATION SAMPLE WATER BATH
01 LABORATORY REFRIGERATOR

i. Microbiology Laboratory

LAMINAR VERTICAL AIR FLOW CABINET COMPLETE WITH UV-LAMP
LABORATORY BENCH AUTOCLAVE cap. 23 lts with DIGITAL CONTROL COMPLETE WITH
STAINLESS-STEEL BASKET AND BUILT-IN PRINTER
BACTERIOLOGICAL INCUBATOR cap. 50 lts
BACTERIOLOGICAL INCUBATOR cap. 200 lts
REFRIGERATED INCUBATOR cap. 120 lts
THERMOSTATIC WATER BATH cap. 12 lts
STIRRER for TEST TUBE
MICROBIOLOGICAL BINOCULAR MICROSCOPE
COLONY COUNTER
ANAEROBIC JAR 2,5lts.
TECHNICAL BALANCE WEIGHING RANGE 0-4000 gr. Div. 0,01 gr
PIPET FILLER BATTERY OPERATED
SET OF CONSUMABLE, DISPONSABLE COLTURE MEDIA

ii. Laboratory Furniture: these items may be procured separately from individual suppliers.

LABORATORY dim. Approx. 12x6 mt
(2 rooms : Quality control lab.6x6 mt ; microbiology lab dim. 6x4 mt)
15 mt/L WALL BENCH cm 180x80x90(h) LAMINATE TOP COMPLETE WITH CUPBOARD
AND UTILITIES
02 SINK UNIT cm 120x80x90(h) COMPLETE WITH UTILITIES
01 CENTRAL BENCH cm 180x155x90(h) LAMINATE TOP COMPLETE WITH CUPBOARD,
UTILITIES AND SINK UNIT
02 GLASSWARE CUPBOARD
01 DESK with drawer and armchair
04 LABORATORY STOOL
01 EMERGENCY SHOWER with EYES CLEANER

SCHEDULE "O"

Specifications of Pack House

- i) Capacity should be based on a minimum 5 tons/ hour of mango, with the capability of also grading apple.
- ii) Design of plant and materials of construction should comply with standards of European Union/European Commission/UK.
- iii) Materials of construction of the equipment should comprise SS 304/ Aluminum/ food grade plastic belts/ anti-static belts as required for the specific application.
- iv) The complete line should be offered, beginning with the receiving water tank for fresh fruit, and concluding with the conveyers for packed boxes.
- v) The sizer should be 2 lane, sorting 16 fruit sizes, with capability for sorting fruit depending on but not limited to weight/ colour/ shape coefficient/ diameter. Device should be provided for measuring internal brix. PC's should be included, with printers/ remote control software. Optional waxer/ dryer for apples should be quoted.

SCHEDULE "P"

Specifications of Vapor Heat Treatment Plant

- i) Capacity should be based on a minimum batch of 3 tons of mango, based on an agreed size/ shape/ individual weight.
- ii) The ambient temperature allowable should be in the range + 10 o C to + 55 o C, and humidity range should be 55% to 95% RH.
- iii) Design and technology should be acceptable to the Department of Plant Protection, Government of Pakistan, and to the department responsible of the Government of Japan.
- iv) Should have programmable start up method, automatic set up method.
- v) The offered line should be complete, beginning with the feed to the main unit, and terminating with the unloading from the main unit. Should include all necessary items such as air conditioning, control unit, safety and security units, and standard accessories such as containers/ palettes/ standard thermometers and temperature sensors/ pulp sensors/ carriage/ others.
- vi) Frame/ doors/ conveyers/ dampers/ heater/ humidifier tank/ and all parts susceptible to corrosion should be in stainless steel, with grade to be specified in the offer.
- vii) Complete control unit to be included, with state of the art hardware and software.
- viii) Fruit protection/ safety/ security capability to be included.
- ix) Graphic display for control and record keeping, inclusive of all necessary computers and instrumentation.
- x) All other items needed for a complete production unit, within the standard scope of supply for such projects.

SCHEDULE "Q"

Specifications of Water Treatment Plant

- (a) A locally manufactured Water Treatment Plant having the capacity of 20 m³/h. The water treated through the Water Treatment Plant would be used for the following purposes:
 - i. washing of fruits and vegetables;
 - ii. administration use;
 - iii. laboratory;
 - iv. cleaning;
 - v. residential areas.
- (b) A Cooling Tower in order to re-use the cool water.
- (c) locally procured 2 boilers, each having a capacity of 3 tons/h, with piping, pipe racks and fittings, instruments, inlet water purification resin columns.
- (d) air compressor, 30 NL/min.
- (e) hopper for fruit waste, 20 tons.
- (f) fruit input belt conveyer to processing hall.
- (g) tanks/ vessels.
- (h) fire extinguishers.
- (i) exhaust fans.

SCHEDULE "R"

Standard Operating Procedures

A. Procedure for booking of processing facility:

1. The operator shall ask all the growers in the group of "Local Customers" (as defined in the agreement) to register with the facility for their intention to use the same in coming future.
2. The usual process of booking as per automated system duly established by the concessionaire shall be:
 - a. To have automatically allocated log in number for the customer order.
 - b. This automatically allocated log in numbers should be written on the printed paper of order as well and duly acknowledged by the ordering entity.
3. The processing facility shall be done in the sequence of order number on first come first serve basis.
4. In case of order for specified dates, the login system shall allocate the number of first come first serve on the respective date of order.

B. Building Awareness About the Project:

Concessionaire would be responsible for developing and executing plan for creating awareness about the project, its objectives and how different stakeholders could benefit from its creation. At the minimum the concessionaire would be required to perform the following tasks:

TASKS	FREQUENCY
Seminar: Organize a seminar at a convenient location in which stakeholders including growers, exporters, processors etc. are invited and are informed about: <ol style="list-style-type: none">a. Project facility and its capabilitiesb. How different stakeholders can benefit from the facilityc. Trends in the international horticulture export marketd. Technical advice on fruit supply chain management	Once a year around three months prior to commencement of the mango season
Newspaper Advertisement (Regional Sindhi Newspapers): Publish advertisements in two	Fortnightly during one month prior to start of mango season (both selected newspapers)

leading regional newspapers with the objective of attracting business	Weakly during mango season in Sindh (alternating between the two selected newspapers) Once a quarter during Sindh's mango off season
Newspaper Advertisement (National Newspapers): Publish advertisements in leading national newspapers (one English and one Urdu) with the objective of attracting business	Once during one month prior to start of mango season (both English and Urdu) Fortnightly during mango season in Sindh (alternating between the English and Urdu newspapers) Once a quarter during mango off season
Notice Board on Project Premises: Install a clearly visible billboard on company facility clearly mentioning that the project is a common facility	Throughout the life of the project

C. Training of Farmers:

Well trained farmers would produce better quality products which in turn would be critical for bringing about the desired improvement in the sector. Concessionaire of the project would be required to impart training to area growers and would be required to carry out below mentioned activities:

TASKS	FREQUENCY
Workshops: Organize workshops to impart technical training growers. Among other things training must be given on following subjects: a. Orchard management b. Nutritional management of mango plant c. Harvesting practices d. Post harvest fruit handling e. International trade f. Packaging g. Cool Chain	Twice a year
Booklet:	1,000 copies / year

Publish and distribute training manual (in Sindhi and Urdu) covering all important subjects including the ones covered in the training workshops	
Farm Visits: Concessionaire must ensure that a team of technical experts including at-least two Ph.D in horticulture (whether hired or outsourced) visits at-least 10 farms (by the team) every month to provide on-field technical advice to mango growers.	10 farms / month

D. Maintenance of Record of Operations:

Concessionaire must devise methodology to ensure that every fruit processing order received and fulfilled is properly recorded. The concessionaire would be required to maintain this log for receiving and processing of order for each of the project's facility. This record maintenance must be carried out in such a manner that it can clearly show that required capacity of HWT plant was earmarked for area growers as defined above.

SCHEDULE "S"

Specifications of Project Land

- i. The site for the project shall be on or within 100 meters of main Hyderabad-Mirpurkhas road with easy access, preferably near TandoAllahyar
- ii. It has access to primary utilities
- iii. Minimum area of 18 acres
- iv. Free possession and undisputed ownership
- v. Fit for large scale industrial construction

SCHEDULE "T"

Total Project Cost

SCHEDULE "U"

Format of Vesting Certificate

The Agriculture Supply and Prices Department, Government of Sindh, having its offices at [●], Sindh Secretariat, Karachi acting through Secretary to Government of Sindh, Agriculture Supply and Prices Department ("GoS") refers to the Concession Agreement dated [●] ("Concession Agreement") entered into between the GoS and _____, a private limited company incorporated under the laws of Pakistan, having its registered office at [●] (hereinafter referred to as the "Concessionaire", which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns) to undertake the obligations as mentioned in the Concession Agreement, through Public Private Partnership on a Design, Finance, Built, Operate and Transfer ("DFBOT") basis the Mango Processing Project ("Project");

The GoS acknowledges the compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Article [●] of the Concession Agreement on the basis that upon issue of this Vesting Certificate, the GoS shall be deemed to have acquired all title and interest of the Concessionaire in respect of the Divestment Assets, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed at this [●] day of [●], [●] at Karachi.

**FOR AND ON BEHALF OF
GOVERNOR OF SINDH
AGRICULTURE SUPPLY AND PRICES DEPARTMENT, GOVERNMENT OF SINDH**

Signature: _____

Name: _____

Designation: _____

CNIC No.: _____

FOR AND ON BEHALF OF

Signature: _____

Name: _____

Designation: _____

CNIC No.: _____

Signed in the presence of the following witnesses:

1. Signature: _____
Name: _____
CNIC No.: _____

2. Signature: _____
Name: _____
CNIC No.: _____

SCHEDULE "V"

Termination Payment Schedule

Termination Payment Event	Termination Amounts Payable
Due to Non Political Event	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p> <p>No Termination Equity and Termination Dividend Amount will be given to the Sponsor.</p> <p>GoS will pay the entire Debt Due (if any).</p>
Due to Political Event	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p> <p>The Sponsor shall be entitled to Termination Payment equal to:</p> <ul style="list-style-type: none">(a) the Termination Equity; plus(b) the Termination Dividend Amount <p>GoS will pay the entire Debt Due (if any).</p>
Due to Corrupt Act	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p>

	<p>No Termination Equity and Termination Dividend Amount will be given to the Sponsor.</p> <p>GoS will pay the entire Debt Due (if any).</p>
Due to Concessionaire Event of Default	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p> <p>No Termination Equity and Termination Dividend Amount will be given to the Sponsor.</p> <p>GoS will pay the entire Debt Due (if any).</p>
Due to GoS Default Event of Default	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p> <p>The Sponsor shall be entitled to Termination Payment equal to:</p> <p>(a) the Termination Equity; plus (b) the Termination Dividend Amount</p> <p>GoS will pay the entire Debt Due (if any).</p>
Due to Change in Law	<p>Divestment Assets will be transferred to the GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p> <p>The Concessionaire shall be entitled to the proceeds from Insurances.</p>

	<p>The Sponsor shall be entitled to Termination Payment equal to:</p> <p>(a) the Termination Equity; plus (b) the Termination Dividend Amount</p> <p>GoS will pay the entire Debt Due (if any).</p>
<p>Due to expiry of Concession Period on the Final Expiry Date</p>	<p>GoS shall not make any Termination Payment, Termination Dividend and/or Termination Equity to the Concessionaire and/or to the Sponsors. The Sponsors shall transfer all the Divestment Assets in favour of GoS (or its nominee) against the sale consideration of Re. 1/- (Rupee One Only).</p>

SCHEDULE "W"

Details for Notices

**FOR AND ON BEHALF OF
AGRICULTURE SUPPLY AND PRICES DEPARTMENT**

Attention:

Designation:

Address:

Telephone:

Facsimile:

Email Address:

FOR AND ON BEHALF OF

Attention:

Designation:

Address:

Telephone:

Facsimile:

Email Address