

**VOLUME III
CONCESSION AGREEMENT**

between

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

(2) THE KARACHI WATER AND SEWERAGE BOARD

- and -

(3) [THE COMPANY]

relating to
KARACHI HUB WATER CANAL PROJECT -

Dated [●]

Drafting Notes:

- 1. Bidders should note that appendix 1 to the Concession Agreement will comprise Volume II of the RFP and will be inserted at signing with any necessary changes for references to the Proposal. References in this draft Concession Agreement to appendix 1 and to sections of appendix 1 should be read as references to sections of Volume II of the RFP.***
 - 2. Items highlighted in green within the draft Concession Agreement (including the appendices) will be inserted prior to signing and (where stated) extracted from the relevant document referenced in the footnotes.***
 - 3. Provisions relating to the solar plant will be deleted if the Proposal does not provide for the same.***
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THIS CONCESSION AGREEMENT is made on [●], ~~2022~~2023 at Karachi, Pakistan.

BETWEEN:

- (1) **THE GOVERNOR OF SINDH** (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) having its office located at Local Government Department, Ground Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan, for and on behalf of the Government of Sindh (the “**GoS**”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);
- (2) **KARACHI WATER AND SEWERAGE BOARD**, a statutory body constituted pursuant to section 3 of the Karachi Water and Sewerage Board Act, 1996, with its office located at 9th Mile, Karsaz, Karachi, Pakistan (“**KW&SB**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and
- (3) [**COMPANY**]¹, a company incorporated under the Laws of Pakistan whose registered office is located at [●] (the “**Company**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

RECITALS:

- A KW&SB invited proposals from prequalified parties to undertake the Project pursuant to a request for proposals issued on [●] (as amended, varied or supplemented, the “**RFP**”).
- B The Project has, pursuant to the process described in the RFP, been awarded to the Successful Bidder as set out in the letter of award issued by KW&SB on [●].
- C In accordance with the RFP, the Successful Bidder has incorporated the Company as a special purpose company to implement the Project and perform the obligations and exercise the rights of the Company, including the obligation to enter into this Agreement.
- D The Project will consist of the Mobilisation Activities during the Mobilisation Period, the C&O Activities during the C&O Period, and the O&M Activities during the Operating Period, in each case, as more particularly described in appendix 1.
- E The Company acknowledges and confirms that it has, based on the RFP, undertaken a thorough due diligence (including technical and financial viability and legal due diligence) of the Project and its requirements, and on the basis of its independent satisfaction, is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project on a “**DFBROMT**” basis, in accordance with the terms and conditions of this Agreement.
- F This Agreement sets out the terms and conditions on which the Company shall undertake the Project.

¹ Insert name of the company incorporated by the Sponsors as per the requirements of the RFP.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except when the context requires otherwise, the capitalised terms used in this Agreement (including the recitals) shall have the following meanings:

“Abandonment” means:

- (a) in relation to any period prior to the Project Commercial Operations Date, the Company’s failure to demonstrate to the Independent Engineer its ability to perform its obligations under this Agreement (taking into account its ability to accelerate the works and services under the EPC Contract) such as to demonstrate that the Project Commercial Operations Date will be achieved on or before the Long Stop Date, except where such failure to demonstrate is attributable to a Force Majeure Event or a Relief Event; ~~and/or~~
- (b) ~~during following~~ the ~~Operating Period~~ Mobilisation Date, in the opinion of the Independent Engineer, other than due to a Force Majeure Event or a Relief Event:
 - (i) a persistent failure of the Company to perform its obligations hereunder such as to suggest an intention to repudiate this Agreement; or
 - (ii) failure by the Company to resume and continue the performance of substantially all of its obligations under this Agreement within a reasonable period following the cessation of a Force Majeure Event or a Relief Event, in each case, which prevented, hindered or delayed such performance,

and **“Abandons”** shall be construed accordingly;

“Acceptable Bank” means: (a) together the Foreign Bank and the Acceptable Pakistani Bank, which is counter-guaranteeing the obligations of the Foreign Bank; ~~;~~ or (b) an Acceptable Pakistani Bank, as the case maybe;

“Acceptable Pakistani Bank” means a scheduled bank or a financial institution incorporated or organised in Pakistan having a credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody’s or equivalent rating by Fitch or Standard and Poor, approved by the GoS, such approval not to be unreasonably withheld or delayed;

“Accounting Principles” means the International Financial Reporting Standards, as may be amended from time to time, applicable in Pakistan;

“Actual Loss of Water Output” has the meaning given to it in appendix 8;

“Actual NRW” means (expressed as a percentage), for any given period, the Non-Revenue Water in such period divided by the Net Water Input in the same period;

“ADB Standards” means the principles and requirements set forth in the Asian Development Bank’s Safeguard Policy Statement, 2009;

“Adjoining Property” means any land and/or property adjoining or adjacent to any part of the Site, including all conduits, roads, footpaths, walls, fences, buildings, pipelines, cables, wires and other erections, structures and other apparatus on, under or within such land and/or property;

“Adverse Person” means:

- (a) any person whose primary residence is in or who is incorporated or organized under the laws of a country:
 - (i) which is subject to sanctions levied by the United Nations (or the Security Council thereof) pursuant to authority derived from Article 41 of Chapter 7 of the United Nations Charter (a **“Sanctioned Country”**); or
 - (ii) with which the Government of Pakistan does not have commercial or trade relations or otherwise does not maintain official diplomatic relations (an **“Unfriendly Country”**);
- (b) any national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country;
- (c) any ministry, department, authority, or statutory corporation of, or any corporation or other entity (including a trust), owned or controlled directly or indirectly by the national government, or any political subdivision, of any Sanctioned Country or Unfriendly Country; or
- (d) any person who has been blacklisted by any federal or provincial government, governmental body or non-governmental department / agency whether in Pakistan or the government or governmental body of any foreign countries and/or international organizations;

“Affected Community” means the Settlements that will be directly impacted by changes induced by Project Activities;

“Affected Party” has the meaning given to it in clause 19.5.1;

“Affiliate” means, in relation to a person, a company or entity that directly or indirectly Controls, or is Controlled by, or is under common Control with that person;

“Agreement” means this ~~Concession Agreement~~ concession agreement (including the recitals and appendices hereto), as amended and supplemented from time to time;

“Allowable NRW” has the meaning given to it in appendix 8;

“Approvals” means all such permits, licences, consents, authorisations, approvals, registrations, grants, acknowledgements or agreements required under the Laws to be obtained from any Competent Authority for the Project Activities (including the Environmental and Social Approvals) and **“Approval”** shall be construed accordingly;

“Arbitration” has the meaning given to it in clause 27.3.1.1;

“Arbitrators” has the meaning given to it in clause 27.3.1.1;

“Archaeological Delay Event” means the discovery of any Archaeological Items found or located on or under the Site that results in a delay to the design, construction, rehabilitation, testing or commissioning of the KWC;

“Archaeological Items” means articles of archaeological value, interest or antiquity, historical structures, human remains or other substances, objects or things of archaeological or historic interest;

“Availability” has the meaning given to it in appendix 8;

“Availability Payment” has the meaning given to it in appendix 8;

“Award” has the meaning given to it in clause 27.3.4;

“Back-up Bypass Output Water Metering System” has the meaning given to it in clause 14.2.17;

“Back-up HD Input Water Metering System” has the meaning given to it in clause 14.2.3;

“Back-up KIII Input Water Metering System” has the meaning given to it in clause 14.2.6;

“Back-up Metering System” means the Back-up HD Input Water Metering System, the Back-up KIII Input Water Metering System, the Back-up Water Access Point Metering System, the Back-up Bypass Output Water Metering System and the Back-up Output Metering System;

“Back-up Output Metering System” has the meaning given to it in clause 14.2.19;

“Back-up Water Access Point Metering System” has the meaning given to it in clause 14.2.9;

“Base Case Financial Model” means the financial model in Microsoft Excel electronic format submitted as part of the Proposal;

“Bid Submission Date” means ;

“Billing Period” has the meaning given to it in appendix 8;

“Biodiversity Action Plan” means the action plan and compliance protocols to be prepared by the Company in consultation with the Independent Engineer and the Sindh Forest and Wildlife Department, Government of Sindh to carry out mitigation measures to protect the commiphora-wightii tree and other conservation significant species from any adverse environmental impact that may be caused by the Project, as may be specified in the Environmental and Social Documents;

“Board Resolution” means a resolution passed by the board of directors of the Company;

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

“Bypass Input Water” has the meaning given to it in appendix 8;

“Bypass Off-Spec Mixed Water” has the meaning given to it in appendix 8;

“Bypass Water Connection Point” has the meaning given to it in appendix 8;

“**Bypass Water Output**” has the meaning given to it in appendix 8;

“**C&O Activities**” means all works, services and obligations to be performed by the Company by the Scheduled Project Commercial Operations Date (other than the Mobilisation Activities), including, design, construction, rehabilitation, procurement, installing, operations, maintenance, testing and commissioning as more fully described in appendix 1;

“**C&O Performance Security**” means the irrevocable, unconditional and on-demand bank guarantee (and any replacement thereof), in favour of GoS, in an amount equal to Pakistani Rupees one billion only (PKR 1,000,000,000/-), issued by an Acceptable Bank in the form set out in part 1 of appendix 6;

“**C&O Performance Security Expiry Date**” has the meaning given to it in clause 4.1.1;

“**C&O Period**” means the period commencing at 00:00 hours on the Commencement Date and ending at 23:59 hours on the Day immediately preceding the Project Commercial Operations Date;

“**Canal Experts**” means the minimum 2 individuals engaged by the O&M Contractor as advised in the Proposal (unless otherwise approved by KW&SB (in consultation with the Independent Engineer) pursuant to clause 16);

“**Casualty Proceeds**” has the meaning given to it in clause 19.10.1;

“**Change in Law**” means any of the following events:

- (a) the introduction, adoption, enactment or promulgation of any new Law by a Competent Authority;
- (b) the change or repeal by any Competent Authority of any Law;
- (c) a change by a Competent Authority and having the force of Law (i) in the manner in which a Law is applied or (ii) in the interpretation of any Law;
- (d) the introduction, adoption, change or repeal by any Competent Authority of any material condition in connection with the issue, renewal, or modification of any Approval; and
- (e) a change in the World Health Organisation standards for potable water to the extent that the Company is obliged to comply with them in accordance with this Agreement,

which occurs ~~after~~no earlier than ten (10) Days prior to the Bid Submission Date or thereafter and which:

- (i) results in any imposition of, or change in Taxes, duties or levies payable by one or more of the Company, the EPC Contractor, or the O&M Contractor, in relation to the Project Activities; or
- (ii) results in change in or repeal of any of the requirements applicable to the Project Activities,

it is clarified that Change in Law shall not include: (A) any change in any withholding tax, or other similar taxes, on income or dividends or other distributions distributed by the Company, the EPC Contractor or the O&M Contractor; and (B) the coming into effect of, ~~on or after~~ no earlier than ten (10) Days prior to the Bid Submission Date or thereafter, any provision of a Law, which is already gazetted in accordance with the Law;

“Change in Scope” means any alteration in the technical requirements, the scope of the Project, or the designs and drawings applicable to the Project, as instructed by the GoS Parties or proposed by the Company, in accordance with clause 6.3;

“Change in Scope Order” means an order issued by the GoS Parties certifying approval of a proposed Change in Scope and recording the terms and conditions on which the proposed Change in Scope is required to be implemented;

“Claim” means any suits, actions, legal or administrative proceedings, claims, demands, losses, damages, liabilities, fines, costs and expenses of whatsoever kind or nature (including reasonable attorney’s fees and expenses and pre- and post- judgment interest and penalties), whether arising before or after the Final Expiry Date, but excluding any indirect or consequential damages;

“Class A Shares” has the meaning given to it in the EFU Agreement;

“Class B Shares” has the meaning given to it in the EFU Agreement;

“Commencement Certificate” means the certificate duly signed and issued by the Independent Appointees to the Parties, certifying that each of the Commencement Conditions Precedent have been satisfied, waived or deferred in terms of this Agreement;

“Commencement Conditions Precedent” means the conditions precedent for commencement of C&O Activities as set out in part 2 of appendix 4;

“Commencement Date” has the meaning given to it in clause 3.4.1;

“Commencement Date Delay Notice” has the meaning given to it in clause 3.6.3;

“Commercial Parties” means the GoS and the Company, in their respective capacities as a Party to this Agreement and **“Commercial Party”** means either of them;

“Company Cure Period” has the meaning given to it in clause 21.7.2;

“Company Demand” has the meaning given to it in clause 12.2.1;

“Company Event of Default” has the meaning given to it in clause 21.5;

“Company Indemnified Parties” has the meaning given to it in clause 23.2;

“Company IPR” means all Intellectual Property Rights owned by the Company (or its relevant licensor) as at the Effective Date including all information provided as part of its Proposal;

“Company Notice of Intent to Terminate” has the meaning given to it in clause 21.7.1;

“Company Payment Account” means the account to be established and maintained by the Company, in which Service Payments payable by the GoS in terms of this Agreement are paid;

“Competent Authority” means the Government of Pakistan, the GoS, or any ministry, department or political subdivision thereof, any municipality, any court or tribunal or any other governmental entity, instrumentality, agency, authority, committee or commission, under the direct or indirect control of the Government of Pakistan or the GoS, or any department or political subdivision thereof, or any independent regulatory authority relating thereto, having jurisdiction under the Law over the Company, KW&SB, the EPC Contractor, or the O&M Contractor, in each case within Pakistan, provided that, for the purposes of this Agreement, neither the GoS nor KW&SB in their respective capacities as a party to any of the Project Agreements shall be considered a Competent Authority;

“Component BW” has the meaning given to it in appendix 8;

“Concession” has the meaning given to it in clause 2.1.1;

“Concession and License Direct Agreement” means the agreement substantially in the form set out in appendix 7;

“Concession Period” means the period commencing at 00:00 hours on the Commencement Date and ending at 23:59 hours on the Final Expiry Date; –

“Confidential Information” has the meaning given to it in clause 29.5;

“Construction Contract Year” or **“CCY”** means the twelve (12) Month period commencing at 00:00 hours on the Commencement Date and ending at 23:59 hours on the Day immediately preceding the anniversary of the Commencement Date and each subsequent twelve (12) Month period during the C&O Period ending at 23:39 hours on the Day immediately preceding each subsequent anniversary of the Commencement Date, provided that the last Construction Contract Year shall end at 23:59 hours on the Day immediately preceding the Project Commercial Operations Date;

“Construction Documents” means each of the Detailed Engineering Design and the Construction Drawings approved in accordance with clause 6.1;

“Construction Drawings” means the drawings and designs prepared by the Company pursuant to the standards and design requirements that pertain to the Project, set out in appendix 1;

“Contract Year” means a Construction Contract Year or an Operating Contract Year, as applicable;

“Contracted Availability” has the meaning given to it in appendix 8;

“Contracted Specific Net Electricity Consumption” has the meaning given to it in appendix 8;

“Contractors” means the EPC Contractor and the O&M Contractor;

“Control” means:

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

and “**Controls**” “**Controlling**” or “**Controlled**” shall be construed accordingly;

“**Cure Period**” means the Company Cure Period or the GoS Cure Period, as the case maybe;

“**Day**” means a 24-hour period beginning at 00:00 hours and ending at 23:59 hours;

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

- (a) all credit balances on any bank accounts, held by or on behalf of the Company on the Termination Date, the value of any right of the Company and/or the Financing Parties to ~~receive~~any insurance proceeds that are receivable and of any such proceeds actually received (save where such credit balances or proceeds are paid to the GoS, KW&SB and/or ~~to be not~~ applied in reinstatement), sums due and payable from the Contractors and any third parties, proceeds from the liquidation of any authorized investment, and letters of credit issued in lieu of maintaining credit balance in any account; and
- (b) amounts GoS is entitled to off-set due to deductions/adjustments in terms of this Agreement;

“**Deductions**” has the meaning given to it in appendix 8;

“**Deduction for Off-Spec Output Water**” has the meaning given to it in appendix 8;

“**Deduction for Reduced Water Availability**” has the meaning given to it in appendix 8;

“**Deemed Availability**” means the average Availability, during the immediately preceding four (4) Billing Periods, or if less than four (4) Billing Periods have occurred, such number of Billing Periods as there have been, provided that if there are none, then it shall be based on the Contracted Availability (subject to deduction for Outages determined by the Independent Appointees) and provided further that any hour in which the Availability was reduced during any such Billing Period as a result of the occurrence of a Force Majeure Event or a Relief Event shall be disregarded;

“**Deemed Commissioning Event**” has the meaning given to it in clause 8.4.1;

“**Defaulting Party**” means the GoS in the case of a GoS Event of Default or the Company in the case of a Company Event of Default;

“**Defective Metering Event**” means, in relation to any of the Metering Systems or Monitoring Systems, that:

- (a) such Metering System or Monitoring System is not in service;
- (b) any seal on a metering or monitoring device constituting part of that Metering System or Monitoring System is found to be broken; or
- (c) a metering device constituting part of that Metering System fails to register or, upon testing, in the case of a Metering System, is found to vary by more than the Metering Tolerance;

“Detailed Engineering Design” means the detailed engineering design for the Project prepared by the Company in accordance with appendix 1;

“DFBROMT” means the design, finance, build, rehabilitate, operate, maintain and transfer mode, being the public-private partnership mode pursuant to which the Project is undertaken in terms of the Sindh Public-Private Partnership Act, 2010;

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

“Disputed Obligation” means any dispute, by a GoS Party, in respect of the requirement to comply with an obligation expressed to be assumed by such GoS Party in any Relevant Agreement on the basis that such obligation is illegal, invalid, void, voidable or unenforceable under the applicable Legal Requirements;

“Distributions” means:

- (a) whether in cash or in kind, any remittance to the Shareholders or any of their Affiliates of:
 - (i) dividends or other distributions in respect of any revenue account balance or the share capital of the Company;
 - (ii) dividends or other distributions in respect of release of debt service reserve account or liability reserve account funding;
 - (iii) capitalisation of profits, bonus issue, reduction of capital, redemption or purchase of shares or any other reorganisation or amendment to the share capital of the Company;
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place at or after Financial Closing and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (v) the receipt of any other benefit that is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) the early release of any contingent funding liabilities;

“Effective Date” means the date of this Agreement;

“EFU Agreement” means the equity funding and utilisation agreement executed between the Commercial Parties and the Sponsors on or about the date hereof;

“Electricity” means the electrical energy to be delivered by the Electricity Supplier to the KWC at the Electricity Connection Point;

“Electricity Connection Point” has the meaning given to it in appendix 8;

“Electricity Price” or **“EP”** has the meaning given to it in appendix 8;

“Electricity Supplier” means as of the Effective Date, K-Electric Limited, or such other supplier of electric power to the KWC as approved by the GoS Parties;

“Electricity Supply Failure” means any disruption in the supply of Electricity from the Electricity Supplier ~~beyond three (3) consecutive hours in a Day~~, needed to start up, test, commission or operate the KWC, but only if the Company is in compliance with its obligation to maintain the Reservoir Capacity in accordance with clause 10.7 and to the extent that such disruption:

- (a) materially adversely affects the ability of the Company to start up, test, commission or operate the KWC in accordance with Good International Industry Practice;
- (b) is not the direct or indirect result of a breach by the Company (or its Contractors) of its obligations under this Agreement; and
- (c) is not the direct or indirect result of the Company failing to make any payment due to the Electricity Supplier;

“Employee Redeployment Plan” has the meaning given to it in clause 4.11.1;

“Encashed Sums” has the meaning given to it in clause 12.2.8;

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

“Environmental and Social Approvals” means any permits, certificates and other Approvals (including any conditions which attach to the foregoing) required under Environmental and Social Laws;

“Environmental and Social Documents” means:

- (a) the Environmental and Social Impact Assessment;
- (b) each no objection certificate issued by the Sindh Environmental Protection Agency, Government of Sindh, with respect to the Project;
- (c) any other document, plan or programme to be prepared under the Environmental and Social Management System and the Environmental and Social Impact Assessment; and

- (d) any documents required at any time to be prepared under the Environmental and Social Requirements as a result of any unanticipated impacts found during the execution of the Project Activities;

“Environmental and Social Impact Assessment” or **“ESIA”** means the environmental impact assessment titled “Environmental and Social Impact Assessment” in relation to the Project including all other supplements, modifications and amendments thereto, to be prepared in accordance with the requirements set out in part 1 of appendix 12 by the Company;

“Environmental and Social Laws” means all applicable Laws relating to Environmental Matters, Hazardous Substances, Social Matters, involuntary resettlement, human health or safety, or laws relating to social issues, including minimum labour standards and laws prohibiting forced labour or harmful child labour, and including the conventions of the International Labour Organisation signed and ratified by Pakistan;

“Environmental and Social Management System” or **“ESMS”** means the part of the overall management system of the Company developed in compliance with the E&S Standards, that shall include relevant policies, organisational structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, achieving, reviewing and maintaining compliance with the Environmental and Social Requirements and which shall be dedicated to the structural improvement of the environmental and social performance of the Company, established and maintained in accordance with the requirements of part 2 of appendix 12;

“Environmental and Social Requirements” means:

- (a) any Environmental and Social Law (as amended from time to time);
- (b) any Environmental and Social Approval issued by any Competent Authority or otherwise under any Environmental and Social Law;
- (c) the E&S Standards; and
- (d) the Environmental and Social Documents;

“Environmental and Social Standards” or **“E&S Standards”** means the IFC Performance Standards, the World Bank Group Environmental, Safety and Health Guidelines, the IFC Environmental, Safety and Health Guidelines, and the ADB Standards, along with any other Good International Industry Practice standards identified as relevant and specifically referenced within the Environmental and Social Documents;

“Environmental Matters” means any of the following:

- (a) any emission, release, entry or introduction into the air of any Hazardous Substance including the air within buildings and other natural or man-made structures above or below ground;
- (b) any discharge, release, entry or introduction into water of any Hazardous Substance including into any river, watercourse, lake or pond (whether natural or artificial, above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

- (c) any deposit, release, keeping or disposal in land or on land, whether or not covered by water, of any Hazardous Substance;
- (d) any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled; and
- (e) nuisance, noise, defective premises, health and safety at work, preservation or protection of the natural environment or of man or any living organisms supported by the environment;

“EPC Contract” means the contract to be entered into between the Company and the EPC Contractor for, as applicable, the design, engineering, procurement, manufacture, factory testing, transportation, construction, rehabilitation, erection, installation, completion, testing, commissioning and warranty of the KWC;

“EPC Contractor” means the contractor(s) hired by the Company as advised in the Proposal (unless otherwise approved by KW&SB (in consultation with the Independent Engineer) pursuant to clause 16);

“Equity Held USD Amounts” means amounts contributed to ~~Fund~~, ‘Fund’ (as defined in the [EFU Agreement](#)), from time to time, the Sponsor Funding Amount in USD and held in a USD account of the Company but not considered as ‘USD Equity Contribution’ (as defined in the definition of USD Equity Return);

“Equity Return” means (expressed and payable in PKR) the sum of the USD Equity Return and the PKR Equity Return, as applicable;

“Estimated Remedial Costs” has the meaning given to it in clause 21.10.2.2;

“Event of Default” means, as the context requires, a Company Event of Default or a GoS Event of Default;

“Event of Loss” means an event that causes all or a portion of the KWC to be damaged, destroyed or rendered unfit for normal operation in accordance with this Agreement;

“Final Expiry Date” means earlier of: (a) Term Expiry Date; and (b) the Termination Date;

“Financial Closing” means that: (a) Financing Documents covering hundred percent (100%) of the total capital cost of the Project (other than the amounts to be funded by Sponsors or GoS in terms of the EFU Agreement) shall have been signed and are in full force and effect; (b) all funds under the Financing Documents are fully committed; and (c) all conditions to the first drawdown of funds under the Financing Documents have been satisfied or waived by the Financing Parties;

“Financial Model” means the Base Case Financial Model, as updated prior to the Financial Closing or otherwise adjusted to the extent expressly permitted or required under this Agreement or the EFU Agreement;

“Financing Documents” means (other than any documents relating to Sponsor Loans, indebtedness constituting Sponsor Equity or any other indebtedness to Shareholders), any and all loan agreements, notes, bonds, indentures, security agreements, direct agreements, assignments and acknowledgements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, intercreditor agreements, note or bond purchase agreements, hedging agreements, participation agreements, Islamic financing documents and any other documents entered into by the Company relating to the financing of the Project, including any modifications, supplements, extensions, renewals and replacements of any such financing or Refinancing, in each case, executed in accordance with clause 16.3;

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

- (a) the Outstanding Principal Amount; and
- (b) the interest or mark-up (or any other term connoting the return paid to Financing Parties on debt financing) accruing on the Outstanding Principal Amount;

notwithstanding anything to the contrary herein, no interest, mark-up or profit, or default interest, mark-up or profit accrued shall be paid by the GoS for any interest, mark-up or profit that accrued under the Financing Documents from and after a default by the Company thereunder, unless such default results directly from a GoS Event of Default; provided that USD amounts will be converted into PKR based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Day immediately preceding the Termination Date;

“Financing Party” means any person providing hedge, debt, Islamic finance, bond or capital market financing, export credit loan or Refinancing (approved in the accordance with clause 16.3), under the Financing Documents, and their permitted successors and assigns, including any agent or trustee for such person, in each case, not objected to by the GoS, but excluding a Shareholder or its Affiliate(s) with respect to any indebtedness constituting Sponsor Equity or indebtedness to Shareholders, and “Financing Parties” shall be construed accordingly;

“Financing Termination Date” means the earlier of: (a) [●]²; as may be extended due to any delay in achievement of the Commencement Date in terms of clause 3.6.1 or permitted in accordance with clause 3.6.3; and (b) the date on which no part of the Financing Due is outstanding and all amounts due and payable by the Company to the Financing Parties are paid in accordance with the Financing Documents, as confirmed in writing by the Independent Auditor;

“First IA List” has the meaning given to it in clause 17.7.1;

“First IE List” has the meaning given to it in clause 17.1.1;

“Force Majeure Event” has the meaning given to it in clause 19.1;

² Insert the last repayment date of principal debt set out in attachment E of appendix 8.

“Foreign Bank” means a scheduled bank or financial institution incorporated or organized outside Pakistan having a credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody’s or equivalent rating by Fitch or Standard and Poor;

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

“GoS Account Funding Date” means:

~~in the period prior, with respect to the Project Commercial Operations Date;~~

- (a) **C&O Period**, within thirty (30) Days of issuance of the Partial FC Letter and thereafter, at least five (5) Days prior to the start of each ~~Quarter~~**Billing Period** in a Construction Contract Year; and
- (b) ~~in the period following the Operating Period, thirty (30) Days prior to the anticipated Project Commercial Operations Date, within thirty (30) Days of the Project Commercial Operations Date~~ **as confirmed by the Independent Engineer** and thereafter, at least five (5) Days prior to the start of each ~~Quarter~~**Billing Period** in an Operating Contract Year;

“GoS Account One” means GoS account titled “Government of Sindh Non-Food Account No.1” maintained with SBP;

“GoS Appointed IA” has the meaning given to it in clause 17.11.1;

“GoS Appointed IE” has the meaning given to it in clause 17.5.1;

“GoS Cure Period” has the meaning given to it in clause 21.7.1;

“GoS Equity Account” has the meaning given to it in the EFU Agreement;

“GoS Equity Account Standing Instructions” has the meaning given to it in the EFU Agreement;

~~**“GoS Event of Default”** has the meaning given to it in clause 21.6;~~

“GoS Indemnified Parties” has the meaning given to it in clause 23.1;

“GoS Notice of Intent to Terminate” has the meaning given to it in clause 21.7.2;

“GoS Parties” means the GoS and KW&SB, in their respective capacities as a Party to this Agreement and **“GoS Party”** means either of them;

“GoS Payment Account” means the account established, funded and maintained by the GoS in accordance with clause 12.1;

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

“GoS Payment Account Certificate” has the meaning given to it in clause 12.1.2;

“GoS Payment Account Letter of Lien” has the meaning given to it in clause 12.1.12;

“GoS Payment Account Required Balance” means an amount equal to the projected Service Payment due in any Contract Year, where the projected Output Payments will be calculated based on Net Water Output equal to Contracted Availability (subject to deductions for Outages), as stated in the GoS Payment Account Certificate;

“GoS Payment Account Standing Instructions” means the standing instructions issued to the GoS Payment Account Bank, in the form attached in appendix 9;

“GoS Protected Assets” has the meaning given to it in clause 25.4.1.2;

“GoS SBLC Amount” means an amount not exceeding three-fourth (3/4) of the GoS Payment Account Required Balance, as stated in the GoS Payment Account Certificate;

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

“GoS Service Payment SBLC” means (if applicable) an irrevocable and unconditional stand-by letter of credit issued by the GoS SBLC Issuing Bank in favour of the Company in an amount equal to the GoS SBLC Amount, in accordance with clause 12.1.9;

“GoS Termination SBLC” means an irrevocable and unconditional stand-by letter of credit issued by the GoS Termination SBLC Issuing Bank in favour of the Company in accordance with clause 12.2.2;

“GoS Termination Secured Amount” means, at any given time, an amount equal to fifty percent (50%) of the Outstanding Principal Amount, as certified by the Independent Auditor;

“GoS Termination SBLC Amount” means GoS Termination Secured Amount applicable on the GoS Termination SBLC Renewal Date, as determined from time to time, by the Independent Auditor and stated in the GoS Termination SBLC Certificate;

“GoS Termination SBLC Certificate” has the meaning given to it in clause 12.2.6;

“GoS Termination SBLC Renewal Date” has the meaning given to it in clause 12.2.6;

“GoS Termination SBLC Failure Certificate” has the meaning given to it in clause 12.2.8;

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

“GoS Termination SBLC Validity Period” has the meaning given to it in clause 12.2.8;

“Government of Pakistan” means the government of the Islamic Republic of Pakistan;

“**Grievance Redress Mechanism**” has the meaning given to it in clause 25.5.1.2;

“**Handover Certificate**” means the certificate to be issued by the Independent Appointees certifying the satisfaction of the Handover Conditions in terms of clause 21.10;

“**Handover Conditions**” means that, as at the Final Expiry Date:

- (a) where the Project Commercial Operations Date is not achieved, KWC will be in a condition of repair, cleanliness and appearance that is consistent with the standards required in this Agreement (including as set out in appendix 1);
- (b) where the Project Commercial Operations Date has been achieved, ~~KWC is in:~~ (i) the same actual condition (disrepair by reasonable ordinary wear and tear excepted) as of assets to be transferred to KW&SB meets the expected condition based on the Project Commercial Operations Date design life of such assets; (ii) KWC meets the Contracted Specific Net Electricity Consumption, Allowable NRW and the Output Water Quality Specifications; and (iii) the requirements for handover set out in appendix 5 have been met, in each case, as determined by the Independent Engineer;
- (c) the Company has completed training of the KW&SB employees (or KW&SB nominees) to ensure smooth taking over operations of the KWC to a standard satisfactory to the Independent Engineer and KW&SB; ~~and~~
- (d) the Independent Engineer has confirmed that the Company is in compliance with the requirements of the Operating and Maintenance Procedures; and

~~(d)~~(e) the Site shall be:

- (i) free and clear from obstructions, impediments placed by the Company, used consumables and waste, and Hazardous Substances;
- (ii) neat and tidy; and
- (iii) made safe and secure in accordance with Good International Industry Practice;

“**Hazardous Substances**” means any solid, liquid or gaseous material, substance, constituent, chemical, mixture, raw material, intermediate product or by-product which is defined as “hazardous waste”, “hazardous material”, “toxic substance” or “toxic pollutant” under, or is otherwise regulated by the Environmental and Social Requirements;

“**HD Input Online Quality Monitoring System**” has the meaning given to it in clause 14.2.4;

“**HD Input Water Metering System**” has the meaning given to it in clause 14.2.1;

“**HD Water Connection Point**” means the physical point where water enters the WAPDA Canal from the Hub Dam;

“**Head Regulator**” has the meaning given to it in appendix 1;

“**Hub Dam**” means the reservoir on the Hub river, located on the provincial border of Sindh and Balochistan;

“**HR Policy and Procedure**” has the meaning given to it in clause 4.9.1;

“**IFC**” means the International Finance Corporation, a member of the World Bank Group;

“**IFC Advisory Fee**” means the fee equal to [USD [●]/- (United States Dollars [●] Only)]³ paid by the Company to IFC prior to the Effective Date in accordance with the requirements of the RFP;

“**IFC Environmental, Safety and Health Guidelines**” means the IFC Environmental, Safety and Health Guidelines, dated 30 April 2007, available at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines;

“**IFC Performance Standards**” means IFC’s Performance Standards on Social & Environmental Sustainability, dated 01 January 2012, available at https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards;

“**Implementation Schedule**” means the implementation schedule set out in appendix 2, as may be revised from time to time, pursuant to this Agreement;

“**Increased Costs**” means any increased costs or expenses relating to the Project that are incurred or suffered by the Company resulting from any circumstance described in clause 20.1, and not otherwise covered by the receipt of insurance proceeds, which costs and expenses may include one or more of:

- (a) capital costs;
- (b) costs and expenses in respect of the design, engineering, procurement, manufacture, construction, rehabilitation, commissioning, testing and completion of the KWC;
- (c) financing costs;
- (d) costs of operation and maintenance;
- (e) costs of Taxes imposed on or payable by the Company; and
- (f) reduction in the revenue received by the Company;

“**Independent Appointees**” means the Independent Auditor and the Independent Engineer;

“**Independent Auditor**” means the auditor appointed for the Project in accordance with clause 17.7 and in terms of the Independent Auditor Contract meeting the Independent Auditor Criteria and includes any replacement Independent Auditor appointed in terms of this Agreement;

“**Independent Auditor Initial Term**” has the meaning given to it in clause 17.8.1;

“**Independent Auditor Authorized Representative(s)**” has the meaning given to it in clause 17.9.1;

³ Amount of the IFC Advisory Fee paid by the Company / Successful Bidder prior to the signing of this Agreement (as per the RFP) to be inserted.

“Independent Auditor Contract” means the contract to be entered into between the Parties, the Sponsors and the Independent Auditor in accordance with clause 17 and includes any contract subsequently executed with any replacement Independent Auditor in terms of this Agreement;

“Independent Auditor Criteria” means the minimum criteria for selection of firms of auditors for the appointment of Independent Auditor, set out in part 1 of appendix 10;

“Independent Auditor Payment Account” means the account established and maintained by the Company pursuant to clause 17.12;

“Independent Auditor Payment Account Bank” means the financial institution in Pakistan selected by the Company, the Sponsors and the GoS where the Independent Auditor Payment Account is held;

“Independent Auditor Payment Account Standing Instructions” has the meaning given to it in clause 17.12.2;

“Independent Auditor Payments” has the meaning given to it in clause 17.11.1;

“Indicative Independent Auditor Terms of Reference” means the indicative duties, functions and the scope of work to be performed by the Independent Auditor, as set out in part 1 of appendix 10;

“Independent Engineer” means the engineer appointed for the Project in accordance with clause 17.1 and in terms of the Independent Engineer Contract meeting the Independent Engineer Criteria and includes any replacement Independent Engineer appointed in terms of this Agreement;

“Independent Engineer Initial Term” has the meaning given to it in clause 17.2.1;

“Independent Engineer Authorized Representative(s)” has the meaning given to it in clause 17.3.1;

“Independent Engineer Contract” means the contract to be entered into between the Parties, the Sponsors and the Independent Engineer in accordance with clause 17 and includes any contract subsequently executed with any replacement Independent Engineer in terms of this Agreement;

“Independent Engineer Criteria” means the minimum criteria for selection of firms of engineers for the appointment of Independent Engineer, set out in [part 2 of](#) appendix 10;

“Independent Engineer Payment Account” means the account established and maintained by the Company pursuant to clause 17.6;

“Independent Engineer Payment Account Bank” means the financial institution in Pakistan selected by the Company, Sponsors and GoS where the Independent Engineer Payment Account is held;

“Independent Engineer Payment Account Standing Instructions” has the meaning given to it in clause 17.6.2;

“Independent Engineer Payments” has the meaning given to it in clause 17.5.1;

“Indicative Independent Engineer Terms of Reference” means the indicative duties, functions and the scope of work to be performed by the Independent Engineer, as set out in part 2 of appendix 10;

“Input HD Water Connection Point” has the meaning given to it in appendix 8;

“Input KIII Water Connection Point” has the meaning given to it in appendix 8;

“Input Water Connection Point” has the meaning given to it in appendix 8;

“Insurance Policies” has the meaning given to it in clause 18.1.1;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software (including manuals, user guides and other materials or information relating to such software in whatever form), database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

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

“International Accounting Standards Board” means the independent accounting standard-setting body of the International Financial Reporting Standards Foundation (IFRS Foundation);

“Invoicing Party” has the meaning given to it in clause 13.6.1.1;

“KIII Conduit” means the water conduit running from Kheenjar lake to the Input KIII Water Connection Point;

“KIII Input Online Quality Monitoring System” has the meaning given to it in clause 14.2.7;

“KIBOR” has the meaning given to it in appendix 8;

“KWC” or **“Karachi Water Canal System”** means water canal system running from the Head Regulator located at the Input HD Water Connection Point to the Output Water Connection Point (including the Input KIII Water Connection Point), the water treatment plant, canal, the pipe, the pumping station(s), raising mains, power supply systems (including the Solar Plant, if applicable), raw sewage conveyance, sewage treatment, sludge handling and treated effluent discharge infrastructure, the by-pass system, the Metering Systems and the Monitoring Systems, the Reservoir, the Water Access Connection Points and all associated facilities and infrastructure, whether already constructed and in operation or to be constructed, rehabilitated, operated or maintained as part of the Project Activities;

“Late Payment Rate” means the three (3) Months KIBOR plus two percent (2%), compounded semi-annually, calculated for the actual number of Days for which the relevant amount remains unpaid on the basis of three hundred sixty-five (365) Days year;

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

“Legal Requirements” means all Laws and Approvals;

“License Agreement” means the agreement between KW&SB and the Company, substantially in the form set out in appendix 11;

“Lien Enforcement Certificate” has the meaning given to it in clause 12.1.13, being the same lien enforcement certificate referenced in the GoS Payment Account Standing Instructions;

“Long Stop Date” means the date that is one hundred eighty (180) Days after the Scheduled Project Commercial Operations Date;

“Maintenance Schedule” has the meaning given to it in clause 10.4.1;

“Maximum Volume” means the maximum volume of water to be delivered by the Company to each Water Access Point Consumers at the relevant Water Access Connection Point, as set out below:

- (a) for Hamdard University: 4000 m³/day;
- (b) for Hamdard Laboratories: 200 m³/day;
- (c) for Sherriar Ashraf (Gulf Mineral): 60 m³/day;
- (d) for the Public Health Engineering and Rural Department (Government of Sindh): 600 m³/day; and
- (e) for [Marble City Connection]⁴: 9100 m³/day;

“Metering Systems”~~System(s)~~ means the HD Input Water Metering System, the Primary HD Input Water Metering System, the Back-up HD Input Water Metering System, the Primary KIII Input Water Metering System, the Back-up KIII Input Water Metering System, the Primary Water Access Point Metering System, the Back-up Water Access Point Metering System, the Pumping Station Metering ~~Station~~System, the Mixed Water Metering System, the Reservoir Water Metering System, the Primary Bypass Output Water Metering System, the Back-up Bypass Output Water Metering System, the Primary Output Metering System and the Back-up Output Metering System;

⁴ Name of Consumer to be advised by KW&SB

“**Metering Tolerance**” means in relation to any component of the Metering System or the Monitoring System, plus or minus three percent (3%) from the measurement made by the standard meter used in a test of such component;

“**Mixed Water Metering System**” has the meaning given to it in clause 14.2.12;

“**Mixed Online Quality Monitoring System**” has the meaning given it in clause 14.2.13;

“**Mixed Water Monitoring Point**” has the meaning given to it in appendix 8;

“**Mobilisation Activities**” means all works, services and obligations to be performed by the Company during the Mobilisation Period as set out in appendix 1;

“**Mobilisation Certificate**” means the certificate duly signed and issued by the Independent Appointees to the Parties, certifying that each of the Mobilisation Conditions Precedent have been satisfied, waived or deferred in terms of this Agreement;

“**Mobilisation Conditions Precedent**” means the conditions precedent for commencement of the Mobilisation Activities as set out in part 1 of appendix 4;

“**Mobilisation Date**” has the meaning given to it in clause 3.1.1;

“**Mobilisation Date Delay Notice**” has the meaning given to it in clause 3.3.3;

“**Mobilisation Period**” means the period commencing at 00:00 hours on the Mobilisation Date and ending at 23:59 hours on the Day immediately preceding the Commencement Date;

“**Mobilisation Testing**” has the meaning given to it in appendix 5;

“**Mobilisation Testing Acceptance Certificate**” means the certificate issued by the Independent Engineer following completion of the Mobilisation Testing setting out, *inter alia*, Contracted Specific Net Electricity Consumption, Allowable NRW and the Output Water Quality Specifications, in each case, as applicable during the C&O Period;

“**Monitoring Systems**”“**System(s)**” means the Online Output Quality Monitoring System, the HD Input Online Quality Monitoring System, the KIII Input Online Quality Monitoring System, the Pumping Station Online Quality Monitoring System, the Mixed Online Quality Monitoring System, and the Reservoir Online Quality Monitoring System;

“**Month**” means a calendar month beginning at 00:00 on the first Day of the month and ending at 23:59 on the last Day of the month;

“**National Economic Council**” means the council established under Article 156 of the Constitution of Pakistan, 1973 (as amended from time to time);

“**Natural Force Majeure Event**” has the meaning given to it in clause 19.2;

“**Net Equity**” means (expressed and payable in PKR) the sum of the USD Net Equity and the PKR Net Equity, as applicable;

“**Net Water Input**” has the meaning given to it in appendix 8;

“**Net Water Output**” has the meaning given to it in appendix 8;

“NFME Period” means the duration of a Natural Force Majeure Event as determined by the Independent Engineer, provided that if more than one Natural Force Majeure Event is ongoing at the same time, for the purposes of determining the NFME Period, such Natural Force Majeure Events shall be considered as running concurrently;

“Non-Revenue Water” has the meaning given to it in appendix 8;

“O&M Activities” means all works, services and obligations to be performed by the Company during the Operating Period, including operations and maintenance of the KWC, as more fully described in appendix 1;

“O&M Contract” means the agreement between the Company and the O&M Contractor for the management, operation, maintenance and repair of the KWC;

“O&M Contractor” means the contractor(s) hired by the Company as advised in the Proposal (unless otherwise approved by KW&SB (in consultation with the Independent Engineer) pursuant to clause 16);

“O&M Performance Security” means the irrevocable, unconditional and on-demand bank guarantee (and any replacement thereof), in favour of GoS, in an amount equal to Pakistani Rupees five hundred million only (PKR 500,000,000/-), issued by an Acceptable Bank in the form set out in part 2 of appendix 6;

“O&M Performance Security Expiry Date” has the meaning given to it in clause 4.1.2;

“Off-Spec Input Water” has the meaning given to it in appendix 8;

“Off-Spec Mixed Water” has the meaning given to it in appendix 8;

“Off-Spec Output Water” has the meaning given to it in appendix 8;

“Online Output Quality Monitoring System” has the meaning given to it in clause 14.2.20;

“Operations Handover Certificate” means a certificate issued by the Independent Engineer certifying that Operations Handover Conditions have been satisfied;

“Operations Handover Conditions” means the conditions for handover of the KWC to the Company on the Commencement Date, as set out in appendix 1;⁵

“Operating and Maintenance Procedures” has the meaning given to it in clause 10.3.1;

“Operating Contract Year” or **“OCY”** means the twelve (12) Month period commencing at 00:00 hours on the Project Commercial Operations Date and ending at 23:59 hours on the Day immediately preceding the following anniversary of the Project Commercial Operations Date and each subsequent twelve (12) Month period during the Operating Period ending at 23:59 hours on the Day falling immediately prior to each subsequent anniversary of the Project Commercial Operations Date, provided that the last Operating Contract Year shall end at 23:59 hours on the last Day of the Concession Period;

⁵ Operations Handover Conditions to be included in appendix 1 based on the Proposal.

“**Operating Period**” means the period commencing at 00:00 hours on the Project Commercial Operations Date and ending at 23:59 hours on the Final Expiry Date;

“**Outages**” has the meaning given to it in appendix 8;

“**Output Payment**” has the meaning given to it in appendix 8;

“**Output Water Connection Point**” has the meaning given to it in appendix 8;

“**Output Water Quality Specifications**” has the meaning given to it in appendix 8;

“**Outstanding Principal Amount**” means:

- (a) prior to the Project Commercial Operations Date, all actual outstanding principal amount required to be repaid by the Company pursuant to the Financing Documents in effect as of Financial Closing, such amount not to exceed PKR [●] and USD [●];⁶ and
- (b) at any time thereafter, the actual outstanding principal amount required to be repaid by the Company pursuant to the Financing Documents in effect as of Financial Closing, such amount not exceeding the principal amount in PKR and USD stated for the relevant time period set out in attachment E of appendix 8;

in each case, to the extent such principal amount was actually applied for the purposes of financing the Project; provided that USD amounts will be converted into PKR based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Day immediately preceding the Termination Date;

“**PACRA**” means the Pakistan Credit Rating Agency Limited;

“**Pakistan**” means the Islamic Republic of Pakistan;

“**Pakistani Rupees**” or “**PKR**” means Pakistani Rupees, the lawful currency of Pakistan;

“**Partial FC Letter**” has the meaning given to it in paragraph 5.1 of part 2 of appendix 4;

“**Parties**” means the GoS, KW&SB and the Company and “**Party**” means any of them;

~~“**Payment Certificate**” means the certificate issued by the Independent Appointees in accordance with clause 13.5.1;~~

“**Payment Date**” has the meaning given to it in clause 13.3;

“**Performance Securities**” means the C&O Performance Security and the O&M Performance Security and “**Performance Security**” mean either of them;

“**PFME Period**” means the duration of a Political Force Majeure Event as determined by the Independent Engineer, provided that if more than one Political Force Majeure Event is ongoing at the same time, for the purposes of determining the PFME Period, such Political Force Majeure Events shall be considered as running concurrently;

⁶ Insert principal amount specified for the first repayment date in Bidding Form F317-G of the Proposal for PKR and USD.

“**PKR Equity Return**” means, for Sponsor Equity in PKR by a resident Sponsor, as follows:

$$\text{Max}(\sum_{i=1}^t [(PKR Equity Contribution - PKR Equity Distribution)_i \times (1 + PKR EIRR)^{(t-i)}], 0)$$

where:

t = total number of distinct twelve (12)-Month intervals in the period from the Effective Date until the Termination Date; provided that if the last interval is shorter than twelve (12)-Months, it shall be considered a twelve (12)-Month interval;

i = index denoting a specific twelve (12)-Month interval (where i=1 for the 1st twelve (12)-Month interval and i=t for the last twelve (12)-Month interval, which may be shorter than twelve (12) Months);

PKR Equity Contribution = the nominal amount paid by a Sponsor to the Company in PKR (including Equity Held USD Amounts paid by Sponsor) to fund the Sponsor Funding Amount in accordance with the EFU Agreement, provided that Equity Held USD Amounts, for the purposes of this definition, shall be converted to PKR based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, applicable on the date of contribution;

PKR Equity Distribution = the product of: (a) ~~equity percentage for ‘Local Equity Tariff Component’ of the local sponsor (identified in attachment F of appendix 8)~~ for each Operating Contract Year until the Termination Date set out in attachment F of appendix 8; and (b) the sum of amount declared on any given date from time to time until the Termination Date in PKR by the Company for payment to the Shareholders against Class A Shares by way of return on capital, whether in the form of dividends, redemption of capital, payment of principal and interest on any indebtedness to such Shareholders; and

PKR EIRR = lower of: (a) ~~[insert Equity IRR (PKR) for Local Equity as per Bidding Form E-2.2.GH]~~; or (b) seventeen percent (17%);

“**PKR Net Equity**” means, for Sponsor Equity in PKR by a resident Sponsor, as follows:

$$\text{Max}(\sum_{i=1}^t [(PKR Equity Contribution - PKR Equity Distribution)_i], 0)$$

where:

t = Total number of distinct twelve (12)-Month intervals in the period from the Effective Date until the Termination Date; provided that if the last interval is shorter than twelve (12)-Months, it shall be considered a twelve (12)-Month interval;

i = Index denoting a specific twelve (12)-Month interval (where i=1 for the 1st twelve (12)-Month interval and i=t for the last twelve (12)-Month interval, which may be shorter than twelve (12) Months);

‘PKR Equity Contribution’ has the meaning given to it in the definition of ‘PKR Equity Return’; and

‘PKR Equity Distribution’ has the meaning given to it in the definition of ‘PKR Equity Return’;

“**Planned Outage**” has the meaning given to it in appendix 8;

“**Political Force Majeure Event**” has the meaning given to it in clause 19.3;

“**Primary Bypass Output Water Metering System**” has the meaning given to it in clause 14.2.16;

“**Primary HD Input Water Metering System**” has the meaning given to it in clause 14.2.2;

“**Primary KIII Input Water Metering System**” has the meaning given to it in clause 14.2.5;

“**Primary Metering Systems**” means the Primary HD Input Water Metering System, Primary KIII Input Water Metering System, Primary Water Access Point Metering System, the Primary Bypass Output Water Metering System, and the Primary Output Metering System;

“**Primary Output Metering System**” has the meaning given to it in clause 14.2.18;

“**Primary Water Access Point Metering System**” has the meaning given to it in clause 14.2.8;

“**Project**” means:

- (a) the Project Activities;
- (b) the use by the Company, in accordance with the License Agreement, of the Site;
- (c) maintaining the Contracted Availability by the Company;
- (d) selling the Net Water Output at the Output Water Connection Point in accordance with this Agreement;
- (e) the handover of the KWC to the KW&SB in terms of this Agreement; and –
- (f) all activities incidental to any of the foregoing, in accordance with this Agreement;

“**Project Activities**” means the Mobilisation Activities, the C&O Activities and O&M Activities;

“**Project Agreements**” means:

- (a) this Agreement;
- (b) the EFU Agreement;
- (c) the License Agreement;
- (d) the EPC Contract; and
- (e) the O&M Contract;

“Project Commercial Operations Certificate” means the certificate duly signed and issued by the Independent Engineer to the Parties, certifying that the Project Commercial Operations Testing has been successfully completed;

“Project Commercial Operations Date” has the meaning given to it in clause 8.3.1;

“Project Commercial Operations Testing” ~~has means~~ the ~~meaning given tests~~ to ~~it in be~~ carried out as per appendix 5 for the achievement of commercial operations of KWC;

“Project IPR” means all Intellectual Property Rights developed by or for the Company in connection with and for the Project after the Effective Date and prior to the Final Expiry Date, but excluding any Company IPR;

“Project Implementation Unit” means the project implementation unit established by the GoS for the purpose of overseeing the day-to-day implementation of the Project in accordance with the Legal Requirements and for carrying out the functions assigned to it under clause 25.5;

“Projected Loss of Net Water Output” has the meaning given to it in appendix 8;

“Proposal” means the proposal dated ● delivered by the Successful Bidder to KW&SB on the Bid Submission Date in response to the RFP and any agreed amendments, variations or supplements thereto;

“Proposed Construction Documents” has the meaning given to it in clause 6.1.3;

“Public Private Partnership Policy Board” means the Public Private Partnership Policy Board constituted pursuant to the Sindh Public-Private Partnership Act, 2010;

“Pumping Station Metering System” has the meaning given to it in clause 14.2.10;

“Pumping Station Online Quality Monitoring System” has the meaning given to it in clause 14.2.11;

“Quarter” means each ~~calendar quarter from~~ three (3) Month period commencing at 00:00 on 1 January to 31 March, 1 April to 30 June, 1 July to 30 September, and 1 October to 31 December in each calendar year;

“RE Period” means the duration of a Relief Event as determined by the Independent Engineer, provided that if more than one Relief Event is ongoing at the same time, for the purposes of determining the RE Period, such Relief Events shall be considered as running concurrently;

“Receiving Party” has the meaning given to it in clause 13.6.1;

“Recipient” has the meaning given to it in clause 29.2.1;

~~**“Reduced Water Availability”** has the meaning given to it in appendix 8;~~

“Refinancing” means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Document;

- (b) the exercise of any right, or the grant of any waiver or consent under any Financing Document;
- (c) any restructuring of capital;
- (d) the disposition of any rights or interests in, or the creation of any rights or interests in respect of, the Financing Documents or the creation or granting of any other form of benefit or interest in the Financing Documents or any revenues, contracts or assets of the Company, whether by way of security or otherwise; or
- (e) any other arrangement put in place by the Company or another person which has a similar effect to paragraphs (a) to (d) above or which has the effect of limiting the Company's ability to carry out any of (a) to (d) above,

where such action affects the economic position of the Company, or the Shareholders including (without limitation) by changing or in any way affecting:

- (i) amounts and/or payment schedules for margins, fees or other financing costs;
- (ii) the maturity or size of the debt or repayment profile or schedule;
- (iii) the timing or amount of any Distributions or any release of any contingent equity commitments;
- (iv) any reserving requirements; and
- (v) any requirement to provide or maintain any guarantee or security;

“Refinancing Gain” has the meaning given to it in clause 16.3.7;

“Relevant Agreement” means:

- (a) this Agreement;
- (b) the Concession and License Direct Agreement;
- (c) the License Agreement; and
- (d) the EFU Agreement;

“Relief Event” means the following events or circumstances:

- (a) an act of impediment or prevention by a GoS Party or a breach by a GoS Party of any of its obligations under this Agreement or any other Relevant Agreement;
- (b) after the Project Commercial Operations Date, an Electricity Supply Failure;

(c) after the Project Commercial Operations Date, a Reservoir Filling Event;

(d) after the Project Commercial Operations Date, Off-Spec Input Water or Off-Spec Mixed Water accepted pursuant to clause 14.8.4, that was rejected by the Company and results in damage or loss to any part of the KWC; and

~~(d)~~(e) prior to the Project Commercial Operations Date, an Archaeological Delay Event, but only if and to the extent that the Company has made all reasonable efforts to reduce to a minimum and mitigate the effect of such event;

but only if and to the extent that in any such case, (i) in the opinion of the Independent Appointees, it materially and adversely impairs the ability of the Company, the Sponsors, or any Contractor to perform their respective obligations under the Project Agreements, (ii) the Company is not in breach of its obligation to meet the Contracted Availability and to maintain the Reservoir Capacity, and (iii) such event or circumstance is not the direct or indirect result of a breach by Company (or its Contractors) or the Sponsors of any of their obligations under this Agreement or any other Project Agreement, or any negligent act or omission by the Company, the Contractors or the Sponsors;

“**Remedial Plan**” has the meaning given to it in clause 21.10.2.2;

“**Remedial Report**” has the meaning given to it in clause 21.10.2.2;

“**Remedial Works**” has the meaning given to it in clause 21.10.2.2;

“**Reservoir**” means the existing potable water storage reservoir located within the Site as more particularly described in appendix 1;

“**Reservoir Capacity**” means sixty-eight thousand one hundred seventy cubic meters (68,170 m³);

“**Reservoir Online Quality Monitoring System**” has the meaning given to it in clause 14.2.15;

“**Reservoir Filling Event**” means the period (agreed with KW&SB), following any disruption in the supply of Electricity from the Electricity Supplier, which the Company utilised to refill the Reservoir upto the Reservoir Capacity, in any case, not exceeding three (3) consecutive hours in a Day;

“**Reservoir Water Metering System**” has the meaning given to it in clause 14.2.14;

“**Restoration Account**” has the meaning given to it in clause 19.10.2;

“**RFP**” has the meaning given to it in recital A;

“**Savings**” means any increase in revenues received by the Company and/or any savings or reduction of costs or expenses relating to the Project resulting from, or otherwise attributable to, any circumstance described in clause 20.1 that is realised by the Company, which cost or expenses may include one or more of:

- (a) capital costs;
- (b) financing costs;
- (c) costs of operation and maintenance; and
- (d) costs of Taxes imposed on or payable by the Company;

“**SBP**” means the State Bank of Pakistan;

“**SBP Debit Authority**” has the meaning given to it in clause 12.2.1;

“**Service Payment Certificate**” has the meaning given to it clause 13.5.1, being the same service payment certificate referenced in the GoS Payment Account Standing Instructions;

“**Scheduled Commencement Date**” means the date specified in the Implementation Schedule for the achievement of the Commencement Date (which is [●]⁷ as at the Effective Date) as such date may from time to time be amended in accordance with this Agreement;

“**Scheduled Mobilisation Date**” means the date specified in the Implementation Schedule for the achievement of the Mobilisation Date (which is [●]⁸ as at the Effective Date) as such date may from time to time be amended in accordance with this Agreement;

“**Scheduled Project Commercial Operations Date**” means the date specified in the Implementation Schedule for the achievement of the Project Commercial Operations Date (which is [●]⁹ as at the Effective Date) as such date may from time to time be amended in accordance with this Agreement;

“**Service Payments**” means following the Commencement Date, the Output Payment and following the Project Commercial Operations Date:

- (a) the Availability Payment; and
- (b) the Output Payment,

in each case payable in accordance with appendix 8 and the terms of this Agreement;

“**Settlements**” means communities situated along the KWC as identified in the Environment and Social Impact Assessment;

“**Shareholder**” means a person who is from time to time registered in the Company’s share register as a holder of Class A Shares;

“**Site**” means the location of the KWC, as more fully described in appendix 1, which is licensed to the Company pursuant to the License Agreement for undertaking the Project Activities;

“**Site Information**” has the meaning given to it in clause 5.6.1;

“**Social Matter**” means any:

- (a) matter relating to public consultation and disclosure with respect to the Project Activities;
- (b) impacts on a person, of any resettlement or land acquisition activities, undertaken in connection with the Project;
- (c) impacts to livelihood as a result of the changes induced by the Project Activities;

⁷ Insert date falling six (6) Months from the Effective Date.

⁸ Insert date falling two (2) Months from the Effective Date.

⁹ Insert date falling twenty-four (24) Months from the Effective Date.

- (d) impacts to community health and safety, infrastructure, or socioeconomics; or
- (e) impacts of the Project Activities on vulnerable groups, including those living below the poverty line, female-headed households, individuals with disabilities, and informal settlers;

“**Solar Plant**” means the solar power plant that may be established by the Company at the location and meeting the requirements, as specified in appendix 1;

“**Sponsors**” has the meaning given to it in the EFU Agreement;

“**Sponsor Equity**” means: (a) Sponsor Loans; and (b) any paid-up capital issued by the Company to a Sponsor, in each case, in cash, to ~~Fund~~ ‘Fund’ (as defined in the EFU Agreement) the Sponsor Funding Amount in accordance with the EFU Agreement;

“**Sponsor Funding Amount**” has the meaning given to it in the EFU Agreement;

“**Sponsor Loans**” has the meaning given to it in the EFU Agreement;

“**Stakeholder Engagement Plan**” has the meaning given to it in clause 4.10.3;

“**Stakeholders**” means any person or group who are directly or indirectly affected by the Project (including the Affected Communities), as well as those who may have interests in the Project and/or the ability to influence its outcome, either positively or negatively, and may include their formal and informal representatives, national or local government authorities, politicians, religious leaders, non-governmental organizations, civil society organizations and groups with special interests, the academic community, or other businesses;

“**Successful Bidder**” means ●¹⁰;

“**Summer Period**” or “**Summer**” has the meaning given to it in appendix 8;

“**Taxes**” means any tax, charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by a Competent Authority including any zakat, value added tax, sales tax, notarisation fees, stamp duty, import duty, withholding tax (whether on income, dividends, commission payments, fees, equipment, rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise tax, property tax, registration fee or licence, water tax or environmental, energy or fuel tax, including any commission, penalties or additions thereon;

“**Technical Parties**” means KW&SB and the Company, and “**Technical Party**” means either of them;

“**Term Expiry Date**” means the fifteenth (15th) anniversary of the Project Commercial Operations Date, as may be extended from time to time in accordance with this Agreement;

“**Termination Date**” means the date ~~specified for termination in the relevant~~ of issuance of Termination Notice;

¹⁰ Insert from Letter of Award.

“**Termination Notice**” means a notice of termination issued by the Company or GoS, as the case may be, pursuant to clauses 21.2, 21.3, 21.4, 21.7, or 21.8.4;

“**Termination Payment**” means, as the context requires, Value A, Value B, Value C, Value D or Value ~~D~~E;

“**Termination Payment Amount Certificate**” means the certificate to be jointly issued by the Independent Appointees pursuant to clause 21.9.2, not later than ten (10) Days from the Termination Date, setting out the relevant Termination Payment;

“**Termination Payment Date**” means the date on which the GoS has made payment of the relevant Termination Payment to the Company, such date being within the period that is ~~ninety (90)~~sixty (60) Days following the Termination Date, as may be extended pursuant to clauses 21.10.4 and 21.10.5;

“**Test Procedures**” has the meaning given to it in clause 8.1.1;

“**Traffic and Pedestrian Safety Plan**” has the meaning given to it in clause 5.5.4;

“**Treatment Plant**” has the meaning given to it in appendix 8;

“**Unavailability Notice**” has the meaning given to it in appendix 8;

“**Unavailable**” or “**Unavailability**” has the meaning given to it in appendix 8;

“**Unenforceability Event**” means circumstances where:

- (a) there is a Disputed Obligation; and
- (b) there is a final and binding determination of an arbitral tribunal or of a Pakistan court that the Disputed Obligation is illegal, invalid, void, voidable or unenforceable under the applicable Legal Requirements; and
- (c) such illegality, invalidity, voidability or unenforceability under the applicable Legal Requirements materially impairs:
 - (i) the rights of the Financing Parties under the Financing Documents; or
 - (ii) the ability of the Company to perform its obligations under the Project Agreements or the Financing Documents,

provided that the Company must have used its best efforts to mitigate such consequences (or the event itself). For the purposes of this definition, “materially” means a material impairment in the Company’s rights to receive Service Payments in terms of this Agreement; and

- (d) the Company is not otherwise adequately compensated for the material impairment described in paragraph (c) above by way of remedy or relief pursuant to this Agreement or otherwise;

“**United States Dollars**” or “**USD**” means United States Dollars, the lawful currency of United States of America;

“Unpaid Termination Payment Amount” has the meaning given to it in clause 12.2.9;

“Unpaid Termination Payment Amount Certificate” has the meaning given to it in clause 12.2.9;

“Unplanned Outage Maintenance Program” has the meaning given to it in clause 10.5.2.2;

“Unplanned Outages” has the meaning given to it in appendix 8;

“Unrecovered Termination Payment Amount” means the amount of the Termination Payment not recovered by the Company pursuant to clause 12.2.9;

“Unrecovered Termination Payment Amount Certificate” has the meaning given to it in clause 12.1.5.2, being the same unrecovered termination payment certificate referenced in the GoS Payment Account Standing Instructions;

“USD Equity Return” means, for Sponsor Equity issued on a repatriable basis, as follows:

$$(\text{Max}(\sum_{i=1}^t [(USD \text{ Equity Contribution} - USD \text{ Equity Distribution})_i \times (1 + USD \text{ EIRR})^{(t-i)}], 0) * FX$$

where:

t = total number of distinct twelve (12)-Month intervals in the period from the Effective Date until the Termination Date; provided that if the last interval is shorter than twelve (12)-Months, it shall be considered a twelve (12)-Month interval;

i = index denoting a specific twelve (12)-Month interval (where i=1 for the 1st twelve (12)-Month interval and i=t for the last twelve (12)-Month interval, which may be shorter than twelve (12) Months);

USD Equity Contribution =

~~If A is greater than seventy percent (70%), then USD Equity Contribution will be equal to seventy percent (70%) of B;~~

~~If A is less than or equal to seventy percent (70%), then USD Equity Contribution will be equal to B;~~

~~where,—~~

~~A = Sponsor Equity in the Company registered on a repatriable basis by the SBP or the authorized dealer, as applicable.~~

~~B = USD amounts contributed from time to time by a Sponsor to Fund ‘Fund’ (as defined in the EFU Agreement) the Sponsor Equity set out, as applicable, in the certificates of deposit, proceeds realization certificates or document(s) evidencing the registration of Sponsor Loan (for Funding funding the Sponsor Funding Amount in accordance with the EFU Agreement) issued by the authorized dealer or the SBP; (the “USD Contribution Amount”).~~

The USD Contribution Amount as a percentage of the total Sponsor Equity for any Operating Contract Year cannot exceed: (I) the equity percentage of the foreign sponsor (identified in attachment F of appendix 8); or (II) seventy percent (70%), whichever is lower. USD Contribution Amount over and above seventy percent (70%) of total Sponsor Equity shall be considered PKR Equity Contribution amount (Equity Held USD Amount).

USD Equity Distribution = the product of: (a) ~~percentage for ‘Foreign Equity Tariff Component’~~ equity percentage of the foreign sponsor (identified in attachment F of appendix 8) for each Operating Contract Year until the Termination Date set out in attachment F of appendix 8; and (b) the sum of amount declared on any given date from time to time (the “**Declaration Date**”) until the Termination Date in PKR by the Company for payment to the Shareholders against Class A Shares (~~registered on a repatriable basis by the SBP~~) by way of return on capital, whether in the form of dividends, redemption of capital, payment of principal and interest on any indebtedness to such Shareholders. The PKR amounts will be converted to USD based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Declaration Date;

FX = USD based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Termination Date; and

USD EIRR = lower of: (a) insert Equity IRR (USD) for Foreign Equity as per Bidding Form ~~F-2~~ G; or (b) twelve percent (12%);

“**USD Net Equity**” means, for Sponsor Equity issued on a repatriable basis, as follows:

$$(Max(\sum_{i=1}^t [(USD Equity Contribution - USD Equity Distribution)_i], 0) * FX$$

where:

t = Total number of distinct twelve (12)-Month intervals in the period from the Effective Date until the Termination Date; provided that if the last interval is shorter than twelve (12)-Months, it shall be considered a twelve (12)-Month interval;

i = Index denoting a specific twelve (12)-Month interval (where i=1 for the 1st twelve (12)-Month interval and i=t for the last twelve (12)-Month interval, which may be shorter than twelve (12) Months);

FX = USD based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Termination Date;

‘USD Equity Contribution’ has the meaning given to it in the definition of ‘USD Equity Return’; and

‘USD Equity Distribution’ has the meaning given to it in the definition of ‘USD Equity Return’;

“**Value A**” means an amount equivalent to:

- (a) the Financing Due; *plus*
- (b) the Equity Return; *less*
- (c) the Deductible Termination Amounts;

“**Value B**” means an amount equivalent to:

- (a) ~~ninety five percent (95%) of~~ the Financing Due; *less*
- (b) the Deductible Termination Amounts;

“**Value C**” means an amount equivalent to:

- (a) the Financing Due; *plus*
- (b) the Net Equity; *less*
- (c) the Deductible Termination Amounts;

“**Value D**” has the meaning given to it in clause 21.3.1;

“**Value E**” means an amount equivalent to the IFC Advisory Fee;

“**VIS**” means the VIS Credit Rating Company Limited (formerly JCR-VIS Credit Rating Company Limited);

“**Water Access Point Consumers**” means Hamdard University, Hamdard Laboratories, Sherriar Ashraf (Gulf Mineral), the Public Health Engineering and Rural Department (Government of Sindh) and [Marble City Connection]¹¹;

“**Water Access Connection Points**” means the water access points for delivery of water to the Water Access Point Consumers, located on the KWC, as specified in appendix 1;

“**Water Volume Notification**” means the notice issued by KW&SB from time to time, in accordance with clause 4.8.2.1, setting out the volume of water per Day to be delivered to each Water Access Connection Point, provided that, the volume of water stated in such notice shall not exceed the Maximum Volume applicable for each Water Access Connection Point;

“**WAPDA Canal**” means the canal owned and operated by the Pakistan Water and Power Development Authority running from the Hub Dam to the Input HD Water Connection Point;

“**Within Spec Input Water**” has the meaning given to it in appendix 8; and

“**World Bank Group Environmental, Safety and Health Guidelines**” means the technical reference documents with general and industry-specific examples of Good International Industry Practice and are referred to in the IFC Performance Standards.

¹¹ Name of Consumer to be advised by KW&SB

1.2 Interpretation

The following rules of construction and interpretation apply to this Agreement:

- 1.2.1 periods of time refer to the Gregorian calendar and reference to a time of Day shall be construed as a reference to the time of Day in Pakistan;
- 1.2.2 a “person” includes any individual, company, corporation, firm, partnership, joint venture, association (whether a body corporate or an unincorporated association of persons) or any government institution, department or establishment, and a person shall be construed as including a reference to its successors, permitted assigns and permitted transferees in accordance with their respective interests;
- 1.2.3 words importing the singular number include the plural and vice versa, and words importing a gender include the other gender;
- 1.2.4 the descriptive headings in this Agreement, including the cover page and table of contents, are for convenience of reference only and not for purposes of construction or interpretation of its provisions;
- 1.2.5 unless specifically provided otherwise, the words “herein” and “hereunder”, and words of similar import, refer to the entirety of this Agreement and not only to the clause in which such use occurs;
- 1.2.6 a reference to a “clause”, “appendix” or “attachment” is a reference to a clause of this Agreement, an appendix to this Agreement, or an attachment to an appendix;
- 1.2.7 this Agreement is to be read and construed as a whole; anything mentioned in any of the documents comprising this Agreement shall be of like effect as if stated or mentioned in all of them. In the event of a conflict between the clauses and the appendices, the Independent Appointees shall endeavour, in the first instance, to resolve the conflict by reading this Agreement as a whole and the provision that is more specific to the subject matter shall govern. If, notwithstanding the Independent Appointees’ good faith efforts to resolve the conflict as provided in the preceding sentence, the conflict continues to persist, the provision in the clauses shall govern;
- 1.2.8 where an obligation of a Party to make payment under this Agreement, as a result of the calculation of time, falls on a Day other than a Business Day, such time for performance shall be extended to the next Business Day;
- 1.2.9 “certified” shall mean in the context of the Company, duly certified by the company secretary and in the context of the GoS Parties, duly certified by an authorised person;
- 1.2.10 “including” or “includes” shall be deemed to be qualified by a reference to “without limitation”;
- 1.2.11 reference to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;

- 1.2.12 the “face amount” of a letter of credit or guarantee, shall be construed as a reference to the remaining amount available for drawing under that letter of credit or guarantee;
- 1.2.13 neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the GoS Parties or the Independent Appointees, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Company of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement;
- 1.2.14 the rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement; and
- 1.2.15 the Parties acknowledge that liquidated damages for specific defaults prescribed under this Agreement are representative of the actual losses, liabilities, damages, costs, charges, or expenses that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement and are not in the nature of a penalty.

2. CONCESSION AND TERM

2.1 Grant of Concession

2.1.1 In consideration of the Company’s obligations contained in this Agreement and relying on the Company’s representations, warranties and covenants contained herein, KW&SB, subject to the terms of this Agreement, grants to the Company the right and authorizes it to:

2.1.1.1 carry out the Mobilisation Activities during the Mobilisation Period, the C&O Activities during the C&O Period, and the Operating Activities during the Operating Period, on a **DFBROMT** basis;

2.1.1.2 exercise and enjoy the rights, powers, benefits, privileges, authorizations, and entitlements as set forth in this Agreement,

(collectively referred to as the “**Concession**”).

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

2.2 Concession

Unless otherwise stated, this Agreement shall become effective on the Effective Date. The Concession is granted to the Company and shall be effective in accordance with the terms of this Agreement.

2.3 Extension of Concession Period

The Concession Period may be extended for an additional period, if:

- 2.3.1 not less than eighteen (18) Months prior to the Term Expiry Date, the GoS Parties (acting jointly) provide a notice to the Company, or the Company provides a notice to the GoS Parties, requesting that the Parties enter into good faith negotiations to extend the Concession Period;
- 2.3.2 subject to the Parties having agreed to enter into good faith negotiations pursuant to clause 2.3.1, not later than twelve (12) Months prior to the Term Expiry Date, the Parties agree to the terms of such extension;
- 2.3.3 not later than six (6) months prior to the Term Expiry Date, the Parties enter into a binding agreement in writing, confirming the agreed terms of the extension (including any adjustments to the Service Payments); and
- 2.3.4 any requisite approval for the extension of the Concession Period (including any adjustments to the Service Payments) is obtained from the Competent Authorities in accordance with the Legal Requirements.

3. MOBILISATION AND COMMENCEMENT

3.1 Mobilisation Date

- 3.1.1 The rights and obligations of the Parties to undertake the Mobilisation Activities shall be conditional upon the issuance of the Mobilisation Certificate by the Independent Appointees, certifying in writing the satisfaction, deferral or irrevocable waiver by the relevant Party as provided in part 1 of appendix 4 of all the Mobilisation Conditions Precedent (the date of such certification being the “**Mobilisation Date**”). The Mobilisation Certificate shall be issued within five (5) Business Days of the occurrence of such satisfaction, deferral, or waiver.
- 3.1.2 Each Party shall cause the Mobilisation Date to occur on or before the Scheduled Mobilisation Date.

3.2 Reports Prior to Mobilisation Date

On a regular (at least ~~weekly~~fortnightly) basis from the appointment of the Independent Appointees ~~to~~until the Mobilisation Date, the Company shall advise the Independent Appointees as to the status of the satisfaction of the Mobilisation Conditions Precedent for which the Company is responsible, provided that:

- 3.2.1 no review or approval by the Independent Appointees of any Mobilisation Conditions Precedent shall relieve the Company from any liability that it would otherwise have had in respect of such Mobilisation Conditions Precedent or failure to comply with the applicable Legal Requirements or this Agreement with respect thereto; and
- 3.2.2 neither the GoS Parties, the Independent Appointees, nor any of their representatives or any of their advisors shall be liable to the Company or any other person by reason of their review or approval of any Mobilisation Conditions Precedent.

3.3 Delay in Achieving the Mobilisation Date

- 3.3.1 If, the achievement of the Mobilisation Date has been delayed due to:

3.3.1.1 any delay or failure on the part of a GoS Party in the performance of its obligations under this Agreement, which is not otherwise attributable to the Sponsors, the Company or any of its Contractors;

3.3.1.2 any delay or failure on the part of KW&SB in the execution of, or the performance of its obligations under the License Agreement; or

3.3.1.3 the occurrence of a Political Force Majeure Event,

the Independent Appointees shall confer with the Parties with a view to equitably adjusting the Scheduled Mobilisation Date and the Implementation Schedule, taking into account:

3.3.1.4 the effect which the Company demonstrates is solely attributable to the GoS Parties' delay or failure and which would not have occurred but for such delay or failure;

3.3.1.5 the effect which the Company demonstrates is solely attributable to the occurrence of a Political Force Majeure Event and which would not have occurred but for such delay or failure; and

3.3.1.6 the ability of the Parties to reschedule their obligations to avoid or minimise the overall resulting delays and ensure that any such adjustment to the Scheduled Mobilisation Date and the Implementation Schedule is limited to that necessary and is a consequence of the delay or failure. –

3.3.2 The remedies set out in this clause 3.3 shall be the Company's sole and exclusive remedies with respect to any delay in achieving the Mobilisation Date by the Scheduled Mobilisation Date due to any matter referred to in clause 3.3.1, provided that if the Company fails to achieve the Mobilisation Date by the Scheduled Mobilisation Date (as adjusted under clause 3.3.1), then, unless the Scheduled Mobilisation Date is extended in accordance with clause 3.3.3, either Commercial Party may exercise its right to terminate this Agreement pursuant to clause 21.2.

3.3.3 If, for reasons other than those specified under clause 3.3.1, the Company is unable to achieve the Mobilisation Date by the Scheduled Mobilisation Date then, subject to clause 3.3.4, the Scheduled Mobilisation Date shall be extended for a period not exceeding sixty (60) Days. No later than twenty (20) Days prior to the Scheduled Mobilisation Date, the Company shall provide written notice to the Independent Appointees of its expected inability to achieve the Mobilisation Date by the Scheduled Mobilisation Date (the "**Mobilisation Date Delay Notice**"). –

3.3.4 The extension of the Scheduled Mobilisation Date pursuant to clause 3.3.3 shall be subject to each of the following conditions being fulfilled (as determined by the Independent Appointees) on or before the Scheduled Mobilisation Date as applicable prior to any such extension being granted:

~~3.3.4.1 the Financing Documents have been signed and are in full force and effect subject only to the satisfaction of conditions precedent to the first drawdown of funds thereunder;–~~

~~3.3.4.2~~3.3.4.1 the Company shall have:

- (A) provided the Mobilisation Date Delay Notice; and
- (B) executed the EPC Contract; and

~~3.3.4.3~~3.3.4.2 the EPC Contractor shall have commenced work under the EPC Contract such that the Company will meet the Implementation Schedule.

- 3.3.5 The Company acknowledges that any adjustment to the Scheduled Mobilisation Date pursuant to clause 3.3.3 shall not entitle the Company to any adjustment to the Implementation Schedule or any Service Payments.
- 3.3.6 Within ten (10) Days after the Mobilisation Date, the Company shall deliver to the Independent Appointees and the GoS Parties, one (1) physical copy, each, of all Project Agreements, ~~Financing Documents~~ and all other documents related or incidental thereto, and a closing book ~~on CD-ROM~~ in electronic format containing conformed copies thereof.–

3.4 Commencement Date

- 3.4.1 The rights and obligations of the Parties to undertake the C&O Activities shall be conditional upon the issuance of the Commencement Certificate by the Independent Appointees certifying in writing the satisfaction, deferral, or irrevocable waiver by the relevant Party as provided in part 2 of appendix 4 of all the Commencement Conditions Precedent (the date of such certification being the “**Commencement Date**”). The Commencement Certificate shall be issued within five (5) Business Days of the occurrence of such satisfaction, deferral or waiver.
- 3.4.2 Each Party shall use its best endeavours to cause the Commencement Date to occur on or before the Scheduled Commencement Date.

3.5 Reports Prior to Commencement Date

On a regular (at least ~~weekly~~fortnightly) basis from the Mobilisation Date, the Company shall advise the Independent Appointees as to the status of the satisfaction of the Commencement Conditions Precedent for which the Company is responsible, provided that:

- 3.5.1 no review or approval by the Independent Appointees of any Commencement Conditions Precedent shall relieve the Company from any liability that it would otherwise have had in respect of such Commencement Conditions Precedent or failure to comply with the applicable Legal Requirements or this Agreement with respect thereto; and
- 3.5.2 neither the GoS Parties, the Independent Appointees nor any of their representatives or any of their advisors shall be liable to the Company or any other person by reason of their review or approval of any Commencement Conditions Precedent.

3.6 Delay in Achieving the Commencement Date

- 3.6.1 If, the achievement of the Commencement Date has been delayed due to:

3.6.1.1 any delay or failure on the part of a GoS Party in the performance of its obligations under this Agreement, which is not otherwise attributable to the Sponsors, the Company or any of its Contractors; or

3.6.1.2 the occurrence of a Force Majeure Event,

the Independent Appointees shall confer with the Parties with a view to equitably adjusting the Scheduled Commencement Date and the Implementation Schedule, taking into account:

3.6.1.3 the effect which the Company demonstrates is solely attributable to the GoS Parties' delay or failure and which would not have occurred but for such delay or failure;

3.6.1.4 the effect which the Company demonstrates is solely attributable to the occurrence of a Force Majeure Event and which would not have occurred but for such delay or failure; and

3.6.1.5 the ability of the Parties to reschedule their obligations to avoid or minimise the overall resulting delays and ensure that any such adjustment to the Scheduled Commencement Date and the Implementation Schedule is limited to that necessary and is a consequence of the delay or failure. –

3.6.2 The remedies set out in this clause 3.6 shall be the Company's sole and exclusive remedies with respect to any delay in achieving the Commencement Date by the Scheduled Commencement Date due to any matter referred to in clause 3.6.1, provided that if the Company fails to achieve the Commencement Date by the Scheduled Commencement Date (as adjusted under clause 3.6.1), then, unless the Scheduled Commencement Date is extended in accordance with clause 3.6.3, either Commercial Party may exercise its right to terminate this Agreement pursuant to clause 21.3.

3.6.3 If, for reasons other than those specified under clause 3.6.1, the Company is unable to achieve the Commencement Date by the Scheduled Commencement Date then, subject to clause 3.6.4, the Scheduled Commencement Date shall be extended for a period not exceeding sixty (60) Days. No later than twenty (20) Days prior to the Scheduled Commencement Date, the Company shall provide written notice to the Independent Appointees of its expected inability to achieve the Commencement Date by the Scheduled Commencement Date (the "**Commencement Date Delay Notice**"). –

3.6.4 The extension of the Scheduled Commencement Date pursuant to clause 3.6.3 shall be subject to each of the following conditions being fulfilled on or before the Scheduled Commencement Date as applicable prior to any such extension being granted:

3.6.4.1 the Company shall have provided the Commencement Date Delay Notice;

3.6.4.2 submission of the Operating and Maintenance Procedures in accordance with clause 10.3;

3.6.4.3 submission of the Maintenance Schedule in accordance with clause 10.4;

3.6.4.4 submission of the construction manual and the operations and maintenance manuals; and

3.6.4.5 completion by the Company of all Mobilisation Activities as required under appendix 1 (other than procurement of Mobilisation Testing Acceptance Certificate).

3.6.5 The Company acknowledges that any adjustment to the Scheduled Commencement Date pursuant to clause 3.6.3 shall not entitle the Company to any adjustment to the Implementation Schedule or any Service Payments.

4. PROJECT IMPLEMENTATION

4.1 Company's Obligations

4.1.1 The Company shall deliver the C&O Performance Security to the GoS on or before the Effective Date and shall maintain the same in full force and effect until the expiry of a period of six (6) Months from the Project Commercial Operations Date (the "**C&O Performance Security Expiry Date**"). The Company shall notify the GoS of the impending expiry of the C&O Performance Security not more than three (3) and not less than two (2) Months prior to the date when it is due to expire. If the C&O Performance Security is not extended at least one (1) Month prior to the C&O Performance Security Expiry Date, the Parties acknowledge and agree that the GoS may encash the full amount of the C&O Performance Security, provided that, on submission of extended C&O Performance Security by the Company, as confirmed by the Independent Auditor to the GoS, in compliance with this clause, and subject to receipt of relevant approvals, applicable Legal Requirements and permitted deductions, the GoS shall return the relevant encashed amount of the C&O Performance Security to the Company. The C&O Performance Security shall be returned to the Company on the C&O Performance Security Expiry Date provided that no claim for payment is outstanding on such date, in which case it will be returned on satisfaction of such claim. The Parties have agreed that the amount of the C&O Performance Security is reasonable and in accordance with the Legal Requirements.

4.1.2 The Company shall deliver the O&M Performance Security to the GoS on or before the Scheduled Project Commercial Operations Date and shall maintain the same in full force and effect until the later of: (a) expiry of a period of six (6) Months from the Final Expiry Date; and (b) the date determined in accordance with clause 21.10.3 (the "**O&M Performance Security Expiry Date**"). The Company shall notify GoS of the impending expiry of the O&M Performance Security not more than three (3) and not less than two (2) Months prior to the date it is due to expire. If the O&M Performance Security is not extended at least one (1) Month prior to the O&M Performance Security Expiry Date, the Parties acknowledge and agree that GoS may encash the full amount of the O&M Performance Security, provided that, on submission of extended O&M Performance Security by the Company, as confirmed by the Independent Auditor to the GoS, in compliance with this clause, and subject to receipt of relevant approvals, applicable Legal Requirements and permitted deductions, the GoS shall return the relevant encashed amount of the O&M Performance Security to the Company. The O&M Performance Security shall be returned to the Company on the O&M Performance Security Expiry Date provided that no claim for payment is outstanding on such date, in which case it will be returned on satisfaction of such claim. The Parties have agreed that the amount of the O&M Performance Security is reasonable and in accordance with the Legal Requirements.

- 4.1.3 The Performance Securities:
- 4.1.3.1 shall be issued and maintained without any recourse on the Company, its assets or properties and all costs, expenses, fees and other charges of any nature associated with the issuance, maintenance and encashment of the Performance Securities shall be borne by the Sponsors;
 - 4.1.3.2 shall not be secured by the property or assets comprising of KWC or the Site; and
 - 4.1.3.3 shall be encashed on demand in accordance with the terms of this Agreement.
- 4.1.4 The Company undertakes that no Encumbrance of any nature shall be created on the Site, or any immovable assets and immovable properties comprising of the KWC, unless the same have been constructed, procured, or rehabilitated by the Company.
- 4.1.5 The Company shall cause and be responsible for:
- 4.1.5.1 the due and proper application for all Approvals and all renewals thereof required to be obtained in the name of the Company in connection with the transactions contemplated by this Agreement, other Project Agreements and the Financing Documents, the diligent effort to obtain, the receipt of, and the maintenance of, all such Approvals until the Final Expiry Date;
 - 4.1.5.2 preparation of, and compliance with the requirements of, the Environmental and Social Impact Assessment;
 - 4.1.5.3 development, implementation, operation and maintenance of the Environmental and Social Management System;
 - 4.1.5.4 the procurement and use of any temporary land identified by the Environmental and Social Impact Assessment as required by the Company for the Project Activities, in compliance with the Environmental and Social Requirements, including the IFC Performance Standards' requirements relating to temporary land acquisition, and any mitigation measures set out in the Environmental and Social Impact Assessment and subsequent Environmental and Social Management System;
 - 4.1.5.5 the due and proper application for, the diligent effort to obtain, and the receipt of, any visas, work permits, employment permits, dependents' permits, licences and other permits required for all individuals involved in the Project on behalf of or pursuant to contracts with the Company;
 - 4.1.5.6 executing all Project Agreements and Financing Documents to which it or a Sponsor is a party, in a timely manner;
 - 4.1.5.7 co-operating with KW&SB in the identification of the applications to be made by KW&SB referred to in clause 4.2.3 and supporting such applications, including providing reasonable assistance in the preparation thereof, so as to expedite the consideration thereof by the appropriate Competent Authority, provided that such applications are in compliance with

all applicable Legal Requirements and the terms and conditions of each Project Agreement in connection with which such application is made;

- 4.1.5.8 delivering to the Independent Appointees and the GoS Parties, each of the documents required to be delivered in accordance with parts 1 and 2 of appendix 4 not later than the time for delivery thereof set out therein;
- 4.1.5.9 achieving the Mobilisation Date on or before the Scheduled Mobilisation Date;
- 4.1.5.10 achieving the Commencement Date on or before the Scheduled Commencement Date; and
- 4.1.5.11 achieving the Project Commercial Operations Date on or before the Scheduled Project Commercial Operations Date.

4.2 KW&SB Obligations

KW&SB shall cause and be responsible for:

- 4.2.1 making available, or causing to be made available, to the Company, the Site in accordance with clause 5;
- 4.2.2 making available, or causing to be made available, to the Company, during the Concession Period (except for during Planned Outages or Unplanned Outages), water from the Head Regulator and ~~K-III~~KIII Conduit;
- 4.2.3 the due and proper application for, the diligent effort to obtain, and the receipt of, all Approvals and all renewals thereof that are required to be obtained in the name of KW&SB in connection with the transactions contemplated by this Agreement;
- 4.2.4 executing the Relevant Agreements to which it is a party in a timely manner; and
- 4.2.5 delivering to the Independent Appointees and the Company, each of the documents required to be delivered in accordance with parts 1 and 2 of appendix 4 not later than the time for delivery thereof set out therein.

4.3 GoS' Obligations

The GoS shall cause and be responsible for:

- 4.3.1 as reasonably requested by the Company, discussing the Project with and providing publicly available and/or non-confidential information about GoS Parties to financial institutions interested in providing financing for the Project, provided that the GoS Parties shall not be required to make any representations, warranties or undertakings or otherwise incur any liability in connection with any such discussion or in connection with the Financing Documents; and
- 4.3.2 executing the Relevant Agreements in a timely manner.

4.4 Sub-contractors

- 4.4.1 The appointment of the EPC Contractor or the O&M Contractor or any other contractor or supplier shall not relieve the Company of any of its obligations under this Agreement.
- 4.4.2 All references in this Agreement to any act, default, omission, breach or negligence of the Company shall be construed to include any such act, default, omission, breach or negligence of the Contractors or any other contractor or supplier of the Company or those of the Contractors.
- 4.4.3 The Company shall ensure that the EPC Contract and O&M Contract contain provisions required in terms of the appendix 12 and which further provide for such contracts to be, at the option of the GoS, novated or assigned to the GoS or its nominee without any further consent or approval from the Company or the Contractor, or entitle the GoS or its nominee to step into such contract, in substitution of the Company, if this Agreement is terminated prior to the Term Expiry Date, provided that the step-in rights of the GoS shall be subject to any substitution rights of the Financing Parties under the Concession and License Direct Agreement.
- 4.4.4 The Company shall at all times comply and shall procure that any third-party contractors and subcontractors comply, with the Environmental and Social Requirements, in relation to the performance of the Project Activities.
- 4.4.5 In case any Canal Expert is replaced or resigns, a new individual (being one of the Canal Experts) will be required to hired by the O&M Contractor within the thirty (30) days from the date of replacement / resignation of the outgoing Canal Expert, provided that the new individual to be appointed as the Canal Expert meets the relevant criteria specified in the RFP (and such other requirements as may be specified by Independent Appointees and KW&SB).

4.5 GoS and KW&SB Representatives

Each of the GoS Parties shall be entitled from time to time to appoint one or more representatives to support it or represent it in connection with the implementation of the Project. Each GoS Party shall notify the Company from time to time of its appointed representatives and their roles and responsibilities. Unless and to the extent specified by a GoS Party in writing to the contrary, no such representative shall have authority to act on a GoS Party's behalf for the purpose of giving any instruction or notice under this Agreement or otherwise taking any action binding on a GoS Party for any purpose in connection with this Agreement.

4.6 KW&SB Site Facilities

The Company shall ensure that office(s) and related facilities are provided at the Site for the use of KW&SB and its representative, in accordance with the requirements set out in appendix 1.

4.7 Biodiversity Action Plan

If a Biodiversity Action Plan has been prepared as a Commencement Conditions Precedent, the Company shall ensure compliance with the Biodiversity Action Plan throughout the Concession Period.

4.8 Water Access Connection Points

4.8.1 The Company shall:

4.8.1.1 maintain, throughout the Concession Period, the Water Access Connection Points for delivery of water to the Water Access Point Consumers; and

4.8.1.2 ensure that the volume of water made available at each of the Water Access Connection Points in any Day is equal to the volume stated in the Water Volume Notification.

4.8.2 KW&SB shall:

4.8.2.1 notify the Company in writing at least twenty (20) Days prior to the Commencement Date, the volume of water to be made available at each of the Water Access Connection Points in any Day of the Concession Period. KW&SB may from time to time revise the volume of water stated in such notification, provided that such revision shall come into effect seven (7) Days after the revised notification is received by the Company;

4.8.2.2 be responsible for the delivery of water to the relevant Stakeholders; and

4.8.2.3 coordinate with the Water Access Connection Point Consumers for filtration of water supplied under clause 4.8.2.1.

4.9 Human Resource Policies and Resources

4.9.1 The Company shall (and shall procure that each Contractor shall) develop and maintain written human resource policy and procedures in accordance with the Legal Requirements, including the E&S Standards (the “**HR Policy and Procedure**”). The HR Policy and Procedure shall be prepared and submitted to the Independent Engineer within two (2) Months following the Mobilisation Date.

4.9.2 The HR Policy and Procedures shall clearly describe, in relation to the Company, the working conditions, terms of employment, management of workers’ relationship, grievance redress mechanism, and the roles and responsibilities of the Company and its employees.

4.9.3 The HR Policy and Procedures developed in terms of clause 4.9.1 shall be made available to the respective employees of the Company and each of the Contractors.

4.10 Stakeholder Engagement Plan

4.10.1 KW&SB shall engage with the Settlements in order to:

4.10.1.1 share information regarding the Project;

4.10.1.2 confirm the water needs of the Settlements and their willingness and/or ability to pay for the water delivered from the KWC;

4.10.1.3 assess the infrastructure needs of the Settlements and available water storage facilities at community and household levels; and

- 4.10.1.4 address any concerns over the portability of the water from KWC to the Settlements.
- 4.10.2 KW&SB, if required, shall also liaise with the Competent Authorities to ensure that the Settlements are delivered water from the KWC in accordance with the requirements of each Settlement.
- 4.10.3 KW&SB shall develop and implement in coordination with the Company a stakeholder engagement plan (the “**Stakeholder Engagement Plan**”) in compliance with the Legal Requirements and the E&S Standards and accounting for all consultations and engagements conducted pursuant to clauses 4.10.1 and 4.10.2. The Stakeholder Engagement Plan shall include the Grievance Redress Mechanism developed in accordance with clause 25.5.1.2.

4.11 Employee Redeployment Plan

- 4.11.1 KW&SB shall develop an employee redeployment plan prior to the Mobilisation Date in compliance with the Legal Requirements, including the E&S Standards, to manage the redeployment of its employees (the “**Employee Redeployment Plan**”).
- 4.11.2 The Employee Redeployment Plan shall include:
 - 4.11.2.1 details of the number of staff to be redeployed within ~~the GoSKW&SB~~ and the conditions for their redeployment;
 - 4.11.2.2 documentation of the selection process for alternative projects;
 - 4.11.2.3 timely consultation measures amongst KW&SB, its employees and their representatives to communicate the details of the redeployment and the alternative measures available to the employees in lieu of such redeployment; and
 - 4.11.2.4 documentation of compliance with all Legal Requirements in terms of notice of dismissal, severance payments, payment of outstanding back pays and social security, pension benefits and contributions and other relevant considerations.

4.12 Temporary Land

- 4.12.1 The Company shall procure and use any temporary land identified by the Environmental and Social Impact Assessment as required by the Company for the Project Activities.
- 4.12.2 The procurement or use of any land in terms of clause 4.12.1 shall be subject to an Environmental and Social Impact Assessment conducted for such land and compliance with the Environmental and Social Requirements, including IFC Performance Standard 5.

4.13 Settlement Water Access

- 4.13.1 KW&SB will ensure that Settlements have continued access to water from the KWC through planning, construction, and operation.

4.13.2 KW&SB will be responsible for determining Settlement water requirements, with an assessment to be conducted every five (5) years (from the Commencement Date) to confirm whether supply levels are sufficient to meet Settlement needs.

5. SITE

5.1 Access

If the Company (or its Contractors) require access to the Site prior to execution of the License Agreement, for the purposes of conducting preliminary activities such as investigations of the geotechnical or hydrological conditions of the Site, KW&SB will support the Company in granting such access. If agreed, such access will be granted to the Company (or its Contractors) on the terms and conditions to be agreed and recorded in writing between the Company and KW&SB. If and when such access is granted, the indemnities set out in clause 23 shall become fully effective in respect of the access to and activity on the Site.

5.2 License Agreement

With effect from the Mobilisation Date, KW&SB shall procure that the Site is made available to the Company upon and subject to the terms of the License Agreement.

5.3 Access for GoS Parties and their Designees

The Company shall permit, and shall procure that its Contractors permit the GoS Parties, the Independent Appointees, and the GoS or KW&SB representatives and designees to enter upon the Site at any time:

- 5.3.1 to monitor, sample, or otherwise investigate the nature and volume of discharges or other emissions from the KWC;
- 5.3.2 to ensure that any interconnection to any utility system is not adversely affecting or will not adversely affect such system;
- 5.3.3 in response to a fire, explosion or any other like event at the Site, to preserve the safety or health of persons, materials or equipment at the KWC, or elsewhere on the Site;
- 5.3.4 to permit the GoS Parties, as may be required, to exercise their rights and comply with their obligations under this Agreement and the other Relevant Agreements;
- 5.3.5 to permit KW&SB to comply with any applicable Legal Requirements; or
- 5.3.6 in connection with an Archaeological Delay Event, for the purposes of liaising with any Competent Authority in connection with the removal of Archaeological Items from the Site.

5.4 Exercise of Access Rights

In exercising the right of access under clause 5.3, each GoS Party shall cause its representatives and designees to comply with all applicable Legal Requirements and the reasonable directions of the Company. Each GoS Party shall exercise its access rights for the purposes specified in clause 5.3 in a manner that does not interfere with, or increase the cost of, the Company's

activities on the Site and shall adhere to the reasonable safety rules and procedures of the Company that are consistent with Good International Industry Practices.

5.5 Access Routes and Transportation

- 5.5.1 The Company shall be responsible for the selection and usage of all transportation means, transportation routes, roads, bridges, highways and routes to and from the Site in respect of performance of its obligations under this Agreement, and the GoS Parties shall not be responsible for any claims attributable to Company in respect of the same.
- 5.5.2 The Company shall be responsible for obtaining and maintaining all necessary Approvals required for usage of routes and transportation means as contemplated in clause 5.5.1.
- 5.5.3 The Company shall at all times ensure that the access roads are adequate and suitable for the Project Activities and should be maintained in accordance with the Legal Requirements and in consultation with the Competent Authorities, each at the cost of the Company.
- 5.5.4 The Company shall develop and implement a plan, as part of the Environmental and Social Management System, to ensure the safe movement of traffic during the Project Activities, and to allow the Settlements safe access for crossing of KWC, as outlined in part 2 of appendix 12 (the “**Traffic and Pedestrian Safety Plan**”).

5.6 Site Risks

- 5.6.1 KW&SB has made available to the Company the information in KW&SB’s possession in connection with the Site and the KWC as set out in appendix 1 (the “**Site Information**”).
- 5.6.2 The Company shall be deemed to have obtained all necessary information as to the risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- 5.6.3 The Company shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the Site Information and to have satisfied itself as to all the relevant matters including:
 - 5.6.3.1 the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
 - 5.6.3.2 the suitability of the Site for undertaking the Project Activities;
 - 5.6.3.3 the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
 - 5.6.3.4 the nature of design, construction work and operations and maintenance services necessary for the performance of its obligations under this Agreement;
 - 5.6.3.5 the Legal Requirements for undertaking the Project;

- 5.6.3.6 the risk of injury or damage to the Adjoining Property and to the occupiers thereof or any other risk;
- 5.6.3.7 the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Competent Authority; and
- 5.6.3.8 all other matters that may affect the performance of its obligations under this Agreement.

The Company acknowledges and agrees that except as otherwise provided in this Agreement, if any error or discrepancy is subsequently discovered in the data, including the Site Information, made available by KW&SB or any other person on its behalf, then, such error or discrepancy shall not entitle the Company to any change in the Implementation Schedule, and/or compensation for Increased Costs or any other costs it may incur. Further, any misinterpretation of the data, studies and reports provided by KW&SB or any other person on its behalf shall not relieve the Company from the performance of its obligations under this Agreement.

5.7 Disclaimer

- 5.7.1 The Company acknowledges that it has, after a complete and careful examination, made an independent evaluation of the RFP, the scope of the Project, this Agreement, the Site, the Site Information, existing structures, local conditions and all information provided by KW&SB (or any other person on its behalf) 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. The GoS Parties make no representations whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by either GoS Party and the Company confirms that it shall have no claim whatsoever against either GoS Party in this regard.
- 5.7.2 The Company acknowledges and hereby accepts the risk of any inadequacy, mistake or error in or relating to any of the matters specified in clause 5.7.1 and hereby acknowledges and agrees that the GoS Parties shall not be liable for the same in any manner whatsoever to the Company or any person claiming through or under any of them.
- 5.7.3 Any mistake or error in or relating to any of the matters specified in clause 5.7.1 shall not vitiate this Agreement or render it voidable.
- 5.7.4 In the event that either Technical Party becomes aware of any mistake or error relating to any of the matters specified in clause 5.7.1, that Technical Party shall immediately notify the other Technical Party, specifying the mistake or error; provided, however, that a failure on part of KW&SB to give any notice pursuant to this clause 5.7.4 shall not prejudice the disclaimer contained in clause 5.7.1 and shall not in any manner reallocate to the GoS Parties any risks, obligations or liabilities assumed by the Company pursuant to this Agreement.

- 5.7.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Company and the GoS Parties shall not be liable in any manner for such risks or the consequences thereof.

5.8 Site Security

- 5.8.1 From the Commencement Date, the Company shall be responsible for making all necessary arrangements to secure the Site, and all persons, and moveable and immoveable properties present at or forming part of the Site.
- 5.8.2 The KW&SB shall provide reasonable security outside the Site premises during the C&O Period, as and when requested by the Company, provided that the Company makes a written request fifteen (15) Days prior to when the support from KW&SB is required and furnish reasonable details in the request as to the nature, time, and location where such security is to be provided.
- 5.8.3 The Company shall ensure that employment of direct or contracted workers to provide security for the Site will be undertaken following an assessment of risks posed by its security arrangements to those within and outside the Site.
- 5.8.4 All security arrangements shall be guided by the principles of proportionality and Good International Industry Practice, including the requirements set out under IFC Performance Standard 4.

6. CONSTRUCTION AND REHABILITATION

6.1 Construction Documents

- 6.1.1 The Company shall be responsible for preparing the Construction Documents in a manner consistent with the requirements of appendix 1 and other provisions of this Agreement, Good International Industry Practices, the Environmental and Social Requirements and in accordance with any other relevant Legal Requirements.
- 6.1.2 The Construction Documents shall be prepared in English language.
- 6.1.3 Within ~~five (5)~~ ~~seven (7)~~ **(7)** Months of the Effective Date, the Company shall prepare, and submit to the Independent Engineer (with a copy to the GoS Parties) for its approval, the proposed Detailed Engineering Design and the proposed Construction Drawings (the “**Proposed Construction Documents**”). Within thirty (30) Days of receipt thereof, the Independent Engineer shall review the Proposed Construction Documents, and (following consultation with the GoS Parties), either approve the Proposed Construction Documents or reject the Proposed Construction Documents and convey comments/observations (if any) relating to the same, to the Company, provided, that the Independent Engineer may only refuse to approve the Proposed Construction Documents if the same fail to comply with the requirements of clause 6.1.1.
- 6.1.4 The Company shall (at its own cost and expense) re-submit the revised Proposed Construction Documents no later than five (5) Days from receipt of the rejection and/or comments/observations under clause 6.1.3, and the approval process under this clause 6.1 shall be repeated until all comments/observations are addressed and the Proposed Construction Documents have been approved.

- 6.1.5 If any errors, omission, ambiguities, inconsistencies, inadequacies, or other defects are found in the Construction Documents, such Construction Documents and any resultant error in the construction and rehabilitation of KWC shall be corrected at the Company's cost, notwithstanding any consent or approval under this clause 6.1.
- 6.1.6 Unless the Independent Engineer (after consulting the GoS Parties) permits, the Company shall not commence any construction or rehabilitation activities for the KWC until the Proposed Construction Documents have been approved in terms of this clause 6.1.

6.2 Construction and Rehabilitation of KWC

- 6.2.1 The Company shall undertake the C&O Activities in accordance with the parameters set out in appendix 1 and appendix 5 such that the KWC is:
 - 6.2.1.1 free from all defects in design, materials, and workmanship;
 - 6.2.1.2 safe, reliable and fit for purpose; and
 - 6.2.1.3 capable of supplying water up to the Contracted Availability.
- 6.2.2 All obligations of the Company to be undertaken during the C&O Period shall be consistent with the Construction Documents, Good International Industry Practices, Environmental and Social Requirements, and in accordance with any relevant Approvals, the Legal Requirements and the Accounting Principles.
- 6.2.3 The Company shall rectify any defects and/or deficiencies in the KWC, including any defects and/or deficiencies identified by the Independent Engineer or KW&SB and shall bear all costs of remedying such defects and deficiencies and retesting the relevant part of the KWC and shall not be entitled to any extension of time or additional costs for remedying such defects or deficiencies or for retesting the relevant part of the KWC.
- 6.2.4 The Company shall ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Company shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, and cess payable in accordance with the Legal Requirements (including labour welfare legislations). The Company shall ensure that its Contractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Company shall indemnify and hold harmless the GoS Parties from and against all claims, liabilities, expenses, costs and losses suffered or incurred by each of the GoS Parties due to the Company's or any Contractor's failure to comply with any Legal Requirements (including labour welfare legislations).
- 6.2.5 The Independent Appointees and KW&SB (and its representatives) shall have the right, at all times, to attend and be present at the Site and to observe the progress of the C&O Activities.

6.3 Change in Scope

- 6.3.1 Any Party, following the Effective Date, may propose a Change in Scope, provided that, no Party shall propose a Change in Scope which would, if implemented:
- 6.3.1.1 materially and adversely affect the health and safety of any person;
 - 6.3.1.2 infringe any Legal Requirement;
 - 6.3.1.3 be a departure from Good International Industry Practices;
 - 6.3.1.4 cause any Approval to be revoked or become unobtainable;
 - 6.3.1.5 require a new Approval which will not be obtainable by the Company despite it using all reasonable endeavours; or
 - 6.3.1.6 materially affect the Project Activities in a manner that cannot be compensated for under this Agreement.
- 6.3.2 Within fifteen (15) Days of receipt of a request for Change in Scope from the GoS Parties, the Company shall submit a proposal to the GoS Parties and the Independent Appointees setting out in sufficient detail the implications of the proposed Change in Scope, including any implications on the Implementation Schedule and the Scheduled Project Commercial Operations Date, any additional costs, including any increase in the Financing Due, incurred in undertaking the Change in Scope, or any Savings resulting from the Change in Scope.
- 6.3.3 Based on their review of the proposal submitted by the Company, the GoS Parties may, at their sole discretion: (a) accept the proposal and the corresponding adjustment to the Implementation Schedule and/or the additional costs or reduction in the costs for undertaking the Change in Scope; (b) provide comments on the proposal seeking amendments and/or justification for the implications put forth by the Company; or (c) reject the proposal submitted by the Company and withdraw the proposed Change in Scope, within fifteen (15) days from the date of receipt of the Company's proposal under clause 6.3.2.
- 6.3.4 To the extent the GoS Parties or the Independent Appointees seek amendments and/or justification in the proposal submitted by the Company, the Company shall incorporate or address, in writing, such comments and submit a revised proposal.
- 6.3.5 On approval of the proposal or the revised proposal, as the case may be, by the GoS Parties, the GoS Parties shall issue a Change in Scope Order and the Company shall proceed with the Change in Scope in accordance with the Change in Scope Order.
- 6.3.6 If the Parties are unable to agree on the implications of a Change in Scope proposed by the GoS Parties, which in the GoS Parties' view is necessary or desirable for the Project, as determined by the Independent Appointees, the GoS Parties shall have the right to require the Company to carry out the proposed Change in Scope at the cost determined by the Independent Appointees. Any Dispute on the terms of the Change in Scope (including the method of payment and funding or application of Savings or reductions) will be resolved in accordance with clause 27.

- 6.3.7 On implementation of a Change in Scope Order, the Company shall be entitled to the agreed adjustment to the Implementation Schedule and the Scheduled Project Commercial Operations Date, payment of additional amounts, and/or any adjustment to the permissible Financing Due, if any, set out in the Change in Scope Order. The economic benefit of any reduction or Savings in the cost arising from a Change in Scope shall be shared by the Commercial Parties in the ratio and manner agreed by the Commercial Parties.
- 6.3.8 The method of payment for and funding of any additional costs that become payable by the GoS or the application of reduction or Savings in the costs, in relation to a Change in Scope Order, shall be agreed by the Commercial Parties and included in the Change in Scope Order.
- 6.3.9 If, after the Effective Date, the Company wishes to effect any Change in Scope, the Company shall obtain the prior written approval of the GoS Parties, such approval not to be unreasonably withheld or delayed. On approval by the GoS Parties, the GoS Parties shall issue a Change in Scope Order and the Company shall proceed with the Change in Scope in accordance with the Change in Scope Order. Any such change will be effected at the Company's own risk and cost.
- 6.3.10 Notwithstanding anything to the contrary in this clause 6.3, the Company shall be bound to implement any Change in Scope that is necessitated by a Change in Law and any consequent adjustment to the Implementation Schedule, and Increased Costs or Savings shall be determined in accordance with clause 20.
- 6.3.11 No Change in Scope shall invalidate this Agreement.

6.4 Drawings, Test Results, Documentation

- 6.4.1 The Company shall obtain and maintain at the Site in an orderly manner and in accordance with the Operating and Maintenance Procedures and Good International Industry Practices, complete and up to date copies of all:
- 6.4.1.1 operation and maintenance manuals and other technical documentation (including electronic files) for all items of equipment incorporated into the KWC as identified in appendix 1;
- 6.4.1.2 test results (including electronic files) for tests performed on the KWC in accordance with:
- (A) this Agreement;
 - (B) the EPC Contract; and
 - (C) the O&M Contract,
- 6.4.1.3 as-built drawings (including electronic files) for the KWC, including for the civil and architectural works; and
- 6.4.1.4 detailed technical documents (including electronic files) related to the design, engineering, construction, rehabilitation, operation and maintenance of the KWC.

7. IMPLEMENTATION SCHEDULE AND DELAYS

7.1 Compliance with Implementation Schedule

The Company shall achieve the timely implementation of the Project in accordance with the Implementation Schedule. The Company shall promptly inform the Independent Appointees and each of the GoS Parties of any actual or anticipated material deviations from the dates stipulated in the Implementation Schedule. Without prejudice to the Parties' rights and obligations under clauses 7.2, 7.3 or 7.4, as the case may be, the Company shall provide the Independent Appointees and each GoS Party with a remedial programme setting out the actions to be taken by the Company to mitigate the adverse effect of any such deviation on its ability to undertake the Project in accordance with the Implementation Schedule.

7.2 Adjustment of Implementation Schedule

7.2.1 If a Relief Event causes a delay that has, or is reasonably likely to have, the effect of delaying the achievement of the Commencement Date by the Scheduled Commencement Date or the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date (as applicable), then, subject to clause 7.2.2, the Scheduled Commencement Date or the Scheduled Project Commercial Operations Date (as applicable) and the Implementation Schedule shall be adjusted equitably by the Independent Engineer to take into account the ability of the Company to re-schedule its activities to minimise the delay and the effect of such Relief Event on the ability of the Company to achieve the relevant milestone by the respective scheduled date, provided that such scheduled date shall not be extended to the extent that such delay would have nevertheless been experienced had such Relief Event not occurred.

7.2.2 The Company must notify the Independent Appointees and the GoS Parties in writing promptly (and in any event within fourteen (14) Days) after becoming aware of the occurrence of a Relief Event, and together with such notice or as soon as possible (and in any event within fourteen (14) Days) following such notice), the Company shall provide full details of the Relief Event and its consequences including sufficient details to confirm the existence of a Relief Event and its impact on the Scheduled Commencement Date or the Scheduled Project Commercial Operations Date (as applicable) and the Implementation Schedule. As soon as practicable (and in any event within fourteen (14) Days after receiving the Company's detailed information and justification), the Independent Appointees shall confirm whether (and to what extent) they agree to adjust the Scheduled Commencement Date or the Scheduled Project Commercial Operations Date (as applicable) and the Implementation Schedule.

7.2.3 If the Company does not deliver the notices as required by clause 7.2.2 in accordance with the terms thereof, the Company shall not be entitled to invoke the benefits of clause 7.2.1 or deemed commissioning under clause 8.4 in respect of the relevant Relief Event.

7.2.4 If a Force Majeure Event causes a delay that has, or is reasonably likely to have, the effect of delaying:

7.2.4.1 the achievement of the Commencement Date, then the provisions of clause 3.6 shall apply; or

7.2.4.2 the achievement of the Project Commercial Operations Date, then the provisions of clause 19.7 shall apply.

7.3 Company Liquidated Damages for Delay

7.3.1 The Company acknowledges that the GoS Parties will each suffer actual damages if, for any reason not otherwise excused under this Agreement, the Company fails to achieve the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date. In that event, and without prejudice to the GoS Parties' rights under clause 21, the Company shall pay liquidated damages to the GoS for each Day (or any part thereof) of delay at a rate of Pakistani Rupees five million only (PKR 5,000,000/-) per Day, ~~for each Day of delay~~, commencing from the Scheduled Project Commercial Operations Date until the earlier of:

7.3.1.1 the Project Commercial Operations Date; and

7.3.1.2 the Long Stop Date.

7.3.2 Any liquidated damages payable pursuant to this clause 7.3 shall be paid by the Company within fifteen (15) Days of the date of the Company's receipt of an invoice from GoS setting out the amount of liquidated damages which are then due and payable by the Company. If the Company fails to pay such liquidated damages when due, the GoS shall be entitled to claim such amounts under the C&O Performance Security, plus interest at the Late Payment Rate, accruing from the due date of such payment until the GoS is actually paid such amounts. To the extent that the Company's liability for liquidated damages under clause 7.3.1 exceeds the then current balance of the C&O Performance Security, the GoS shall be entitled to take steps to recover such amounts (plus any applicable interest) as a debt due from the Company to GoS (including by way of set-off against any amounts due to the Company from GoS or KW&SB) under any Relevant Agreement.

7.3.3 In addition, if the Company fails to achieve the Scheduled Project Commercial Operations Date by the Long Stop Date, the GoS shall be entitled to encash the C&O Performance Security up to the face amount.

7.3.4 The Parties agree that:

7.3.4.1 the delay liquidated damages payable pursuant to this clause 7.3 represent the actual losses, liabilities, damages, costs, charges or expenses that the GoS Parties will suffer as a result of the failure of the Company to achieve the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date;

7.3.4.2 there is, in any event, a commercial justification and legitimate interest in imposing such liquidated damages as a payment for the failure of the Company to achieve the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date which would not be satisfied by a right to recover damages on an unliquidated basis for such default; and

7.3.4.3 the payment or deduction of delay liquidated damages payable pursuant to this clause 7.3 shall not relieve the Company from its obligations to complete the

C&O Activities, or from any of its other duties, obligations, or responsibilities under this Agreement. The Company shall use and continue to use its best endeavours to avoid or reduce further delay in completing the C&O Activities.

7.4 Company Liquidated Damages for Abandonment

7.4.1 If Abandonment occurs, in addition to any rights or remedies that the GoS may have pursuant to clause 21, the Company shall pay to the GoS as liquidated damages the following amount:

7.4.1.1 in case of Abandonment prior to the Project Commercial Operations Date, an amount equal to the face amount of the C&O Performance Security as at the date Abandonment occurs, after any amounts paid or payable under clause 7.3 have been paid; and

7.4.1.2 in case of Abandonment on or following to the Project Commercial Operations Date, an amount equal to the face amount of the O&M Performance Security as at the date Abandonment occurs.

7.4.2 Any liquidated damages payable pursuant to this clause 7.4 shall be paid by the Company within fifteen (15) Days of the date of the Company's receipt of an invoice from the GoS setting out the amount of liquidated damages which are then due and payable by the Company. If the Company fails to pay such liquidated damages when due, the GoS shall be entitled to claim such amounts under the Performance Securities or to take steps to recover such amounts as a debt due from the Company to the GoS, plus interest at the Late Payment Rate, accruing from the due date of such payment until the GoS is actually paid such amounts. To the extent that the Company's liability for liquidated damages under clause 7.4.1 exceeds the face amount of the Performance Securities, at the date of issue of a demand thereunder, the GoS shall be entitled to take steps to recover such amounts (plus any applicable interest) as a debt due from the Company to GoS (including by way of set-off against any amounts due to the Company from GoS or KW&SB) under any Relevant Agreement.

7.4.3 The Parties agree that:

7.4.3.1 the liquidated damages payable pursuant to this clause 7.4 represent the actual losses, liabilities, damages, costs, charges or expenses that the GoS Parties will suffer as a result of Abandonment by the Company; and

7.4.3.2 there is in any event a commercial justification and legitimate interest in imposing such liquidated damages as a payment for Abandonment by the Company which would not be satisfied by a right to recover damages on an unliquidated basis for such default.

7.5 General Damages

7.5.1 If either of clauses 7.3.1 or 7.4.1 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle GoS from claiming liquidated damages under such clause(s), the GoS is entitled to claim against the Company for general damages at law for the Company's failure to achieve the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date or for Abandonment, subject to the

limitation that such damages must not exceed the amounts set out in clause 7.3.1 for any Day of delay or clause 7.4.1 for Abandonment, as the case may be.

8. MOBILISATION, START-UP AND COMMERCIAL OPERATION

8.1 Test Procedures

8.1.1 The Company shall be responsible for the development and implementation of detailed testing procedures for each test during the mobilisation, construction, rehabilitation, inspection, start-up and commissioning, including performance testing, reliability testing and capacity demonstration, of the KWC, in accordance with appendix 5 (the “**Test Procedures**”) and shall notify the Independent Appointees and each GoS Party in advance of all such testing and carry out all Test Procedures in accordance with appendix 5.

8.1.2 The Independent Appointees and designees of each GoS Party shall be entitled to be present at any such testing as provided in appendix 5.

8.2 Issuance of Mobilisation Testing Acceptance Certificate

8.2.1 The Company shall carry out the Mobilisation Testing in accordance with the procedure set out in appendix 5. The Mobilisation Testing Acceptance Certificate shall be issued by the Independent Engineer in accordance with the procedure set out in appendix 5.

8.2.2 During any testing conducted pursuant to this clause 8.2, upon at least three (3) Days’ prior notice by the Company, KW&SB shall arrange for such quantity of water to be delivered at each Input Water Connection Point to allow the Company to be able to conduct such tests (as determined by the Independent Engineer). If, despite compliance with the foregoing, KW&SB fails to deliver water as foresaid, in accordance with the Test Procedures and appendices 1 and 5, and such failure causes a delay in achieving the Commencement Date by the Scheduled Commencement Date, the provisions of clause 7.2.1 shall apply mutatis mutandis.

8.3 Project Commercial Operations Testing

8.3.1 The commercial operations date for the KWC (the “**Project Commercial Operations Date**”) shall occur on the Day following the date on which the Independent Engineer issues to the Company the Project Commercial Operations Certificate, in accordance with the procedure set out in appendix 5.

8.3.2 During any testing conducted pursuant to this clause 8.3, upon at least three (3) Days’ prior notice by the Company, KW&SB shall arrange for such quantity of water to be delivered at each Input Water Connection Point to allow the Company to be able to conduct such tests (as determined by the Independent Engineer). If, despite compliance with the foregoing, KW&SB fails to deliver water as foresaid, in accordance with the Test Procedures and appendices 1 and 5, and such failure causes a delay in achieving the Project Commercial Operation Date by the Scheduled Project Commercial Operation Date, the provisions of clause 7.2.1 and clause 8.4 shall apply mutatis mutandis.

8.4 Deemed Project Commercial Operations Date

8.4.1 If, due to a Relief Event or a Political Force Majeure Event (each a “**Deemed Commissioning Event**”), the Company is unable to conduct or conclude Project Commercial Operations Testing for the KWC on the date selected therefor in accordance with appendix 5, then provided that the Company shall have made all reasonable efforts, as determined by the Independent Engineer, to prevent and/or mitigate the effect of such Deemed Commissioning Event, on and from the date on which the Company would have been able to achieve the Project Commercial Operations Date but for such event until the date the Project Commercial Operations Date is actually achieved:

8.4.1.1 subject to clause 8.4.2, the Project Commercial Operations Date shall be deemed to have been achieved; and

8.4.1.2 the KWC shall be deemed to be providing water equivalent to Contracted Availability (subject to deduction for Outages determined by the Independent Appointees) and GoS shall compensate the Company for the consideration set out in appendix 8 for such deemed Contracted Availability.

8.4.2 If the Project Commercial Operations Date shall have been deemed to be achieved pursuant to clause 8.4.1, and thereafter:

8.4.2.1 when the Test Procedures are conducted in accordance with appendix 5, the KWC does not attain the minimum criteria required under appendix 5 for the achievement of the Project Commercial Operations Date, then:

(a) the KWC shall cease to be deemed commissioned and (if the Scheduled Project Commercial Operations Date has passed) the Company shall be in breach of its obligation to achieve the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date and, if the Long Stop Date has passed, clause 21.5.1 shall also apply;

(b) the GoS shall have no further obligation to make payments under clause 8.4.1.2;

(c) the Company shall be obliged to repay the GoS the Availability Payments paid by GoS under clause 8.4.1.2 together with commission accrued thereon at the Late Payment Rate, and the GoS shall have the right to deduct such amounts from future payments to be made pursuant to appendix 8 in the immediately following Billing Period(s) until the full amount shall have been deducted, or recover such amounts from the C&O Performance Security or the O&M Performance Security; and

(d) the GoS shall have the right to pursue any other remedy available to it under this Agreement or under the Law.

8.4.3 The Parties shall undertake all reasonable measures to ensure that any Project Commercial Operations Testing that is delayed due to any of the circumstances

described in clause 8.4.1 shall be undertaken as soon as possible after the circumstances that resulted in such delay are no longer in effect.

- 8.4.4 The Company shall not be entitled to the benefit of clause 8.4.1 where, and to the extent that a Deemed Commissioning Event, results (in whole or in part) from a delay or default by the Company or the Sponsors or is concurrent with a delay or default by the Company or the Sponsors of an obligation of the Company or the Sponsor under any Project Agreement.

9. ELECTRICITY AND OTHER UTILITIES

9.1 Utilities

- 9.1.1 The Company shall be responsible for:

9.1.1.1 procuring, at its risk and cost, all electricity and other utilities and any fuel required for: (a) the Project Activities; and (b) the reinstatement of the Site in accordance with the Handover Conditions following the Final Expiry Date in accordance with clause 21.10; and

9.1.1.2 coordinating with the relevant utility provider to relocate any utility infrastructure under or over the Site, and the cost of such relocation shall be borne by the Company.

- 9.1.2 Electricity required for the operation and maintenance of the KWC shall either be procured from the Electricity Supplier or generated by the Solar Plant. Electricity shall not be procured or generated from any other source.

- 9.1.3 During the Concession Period, the Company shall be responsible for securing all supplies of telecommunication and all waste disposal services required for the Project, either from its own resources or from the applicable authorities at published tariffs and in accordance with the standard terms and conditions of supply and pay for such supplies in accordance with such terms and conditions.

- 9.1.4 KW&SB will use its best endeavours to assist the Company in the relocation of existing utilities required for the Project, at the risk and cost of the Company.

9.2 Actual Electricity Consumption

- 9.2.1 The Company shall provide access to the Independent Engineer and KW&SB from time to time to inspect the electricity meters installed to measure the supply of Electricity to the KWC and to read or attend any reading of such meters. The Company shall supply details of all readings of such meters within two (2) Business Days after such readings are carried out.

- 9.2.2 The Company shall procure that the Independent Engineer and KW&SB are notified of and invited to attend any reading of the electricity meters.

- 9.2.3 The Company shall take all reasonable commercial measures to ensure that the Electricity supplied to the KWC is accurately measured and shall, if so required by the Independent Engineer or KW&SB, exercise any rights in order to achieve the foregoing.

9.3 Electricity Price

The Company shall notify the Independent Appointees and each GoS Party as soon as possible (and in any event within seven (7) Days) after it becomes aware of any change in the Electricity Price and shall provide the Independent Appointees and each GoS Party with full details of the change and the dates when it became or will become effective.

10. OPERATION AND MAINTENANCE

10.1 O&M Obligations

The Company shall:

- 10.1.1 ensure that the KWC is, at all times, capable of transmitting the Contracted Availability to the Output Water Connection Point;
- 10.1.2 carry out all O&M Activities in a manner consistent with this Agreement, Good International Industry Practices, Environmental and Social Requirements, and in accordance with any relevant Approvals, applicable Legal Requirements, Accounting Principles, and the Operating and Maintenance Procedures;
- 10.1.3 employ in and at the KWC all safety devices and safety practices required by applicable Legal Requirements, the requirements of appendix 1, all Insurance Policies, and Good International Industry Practices;
- 10.1.4 undertake the Project Activities in accordance with the parameters set out in appendix 1 and appendix 5 such that the KWC is:
 - 10.1.4.1 free from all defects in design, materials, and workmanship;
 - 10.1.4.2 safe, reliable and fit for purpose; and
 - 10.1.4.3 capable of supplying water up to its Contracted Availability;
- 10.1.5 operate and maintain the KWC so as to prevent the release or leaching of any Hazardous Substances affecting the Site or surrounding environs (including the soil, subsoil, surface water, or groundwater);
- 10.1.6 as soon as reasonably practicable, inform the GoS Parties of any instances of fire, explosion or any other like event at the Site;
- 10.1.7 to the extent consistent with Good International Industry Practice, keep accurate and up to date records of any accidents or other occurrences at the Site that result in injury to persons or damage to property for a minimum period of ten (10) years from the occurrence of such event, and shall provide to the Independent Engineer and KW&SB reasonable access to such records, subject to requirements of confidentiality;
- 10.1.8 ensure that its personnel are on duty at the KWC at all times (twenty-four (24) hours a Day and seven (7) Days a week) during the Concession Period;
- 10.1.9 promptly provide KW&SB with accurate Unavailability Notice(s), by 11:00 am on the Day prior to Planned Outages or Unplanned Outages, and issue superseding

Unavailability Notice(s) as soon as it is known that a previously issued Unavailability Notice(s) must be updated;

10.1.10 if and when requested by KW&SB in exceptional circumstances, use its best endeavours to deliver water in excess of the Contracted Availability; and

10.1.11 ensure that the debt-to-equity ratio of the Company (as determined on the basis of Accounting Principles and confirmed by the Independent Auditor) shall not exceed 80:20.

10.2 Co-ordination

The Company shall:

10.2.1 promptly inform the Independent Appointees and each GoS Party of any material issues with the KWC;

10.2.2 where required by the Independent Appointees and KW&SB, promptly and in any event within ten (10) ~~days~~Days after being so requested, submit a remediation programme setting out the actions to be taken by the Company to mitigate the adverse effect of any material issues notified in accordance with clause 10.2.1 and abide by such remediation programme once instructed by the Independent Appointees and KW&SB, provided that the submission of any remediation programme and instructions issued by the Independent Appointees and KW&SB shall in no way relieve the Company of any liability that would have otherwise accrued;

10.2.3 maintain operating communications between the KWC and KW&SB in accordance with the Operating and Maintenance Procedures; and

10.2.4 keep a daily operations log for the KWC, which shall include information known to it on the KWC, and any outages or de-ratings, and circuit breaker trip operations requiring a manual reset, and any significant events related to the foregoing. The Independent Engineer and KW&SB shall have the right to review logs not in their possession at all reasonable times and upon reasonable notice to the Company.

10.3 Operating and Maintenance Procedures

10.3.1 The Company shall, at its own costs and expense, develop written operating and maintenance procedures for the KWC in accordance with this clause 10.3 (the “**Operating and Maintenance Procedures**”).

10.3.2 The Operating and Maintenance Procedures shall:

10.3.2.1 be based on the design parameters of the KWC and other requirements specified in appendix 1;

10.3.2.2 incorporate Operating and Maintenance Procedures specified or recommended by the KWC equipment suppliers and manufacturers in their operators’ manuals;

- 10.3.2.3 provide a comprehensive procedure for sampling and testing of water at specified locations along the KWC by third-party laboratories (as approved by the GoS in consultation with the Independent Engineer);
 - 10.3.2.4 provide for coordination with KW&SB for release of water from the KIII Conduit;
 - 10.3.2.5 be consistent with Good International Industry Practice; and
 - 10.3.2.6 provide comprehensive procedures for all operational interfaces between (i) KW&SB, the Pakistan Water and Power Development Authority, and (ii) the Company, including in relation to the delivery of Electricity prior and subsequent to the Project Commercial Operations Date.
- 10.3.3 The Company shall submit a draft of the Operating and Maintenance Procedures to the Independent Engineer and KW&SB no later than sixty (60) Days prior to the Scheduled Commencement Date and no later than ninety (90) Days prior to the Scheduled Project Commercial Operations Date.
- 10.3.4 Within sixty (60) Days after its receipt thereof, the Independent Engineer and KW&SB shall have the right to provide comments on the draft Operating and Maintenance Procedures.
- 10.3.5 If, within such sixty (60) Day period, the Independent Engineer and KW&SB do not provide any comments, the draft proposed by the Company shall become the Operating and Maintenance Procedures.
- 10.3.6 If the Independent Engineer or KW&SB provide comments on the draft Operating and Maintenance Procedures within such sixty (60) Day period, the Company shall, within thirty (30) Days of its receipt of such comments, either incorporate the requested changes to the draft Operating and Maintenance Procedures or request a meeting with the Independent Engineer or KW&SB to discuss any outstanding requested changes. Any Dispute over the requested changes still not resolved within ten (10) Days following any such meeting shall be referred for resolution pursuant to clause 27.
- 10.3.7 The Company acknowledges and agrees that no review or approval by the Independent Engineer or KW&SB of the Operating and Maintenance Procedures shall relieve the Company from any liability it would otherwise have under this Agreement, and that neither the Independent Engineer nor the GoS Parties nor any of their representatives shall be liable to the Company or any other person by reason of their review or approval of the Operating and Maintenance Procedures.

10.4 Scheduled Maintenance

- 10.4.1 The Company shall undertake all scheduled KWC maintenance in accordance with this Agreement, Good International Industry Practice, Environmental and Social Requirements, and in accordance with any relevant Approvals, applicable Legal Requirements, Accounting Principles, Operating and Maintenance Procedures, and the maintenance appendices (each, a “**Maintenance Schedule**”) developed pursuant to this clause 10.4.

10.4.2 The Company shall submit to the Independent Engineer and KW&SB the proposed Maintenance Schedule for the KWC at least forty-five (45) Days prior to:

10.4.2.1 the Scheduled Commencement Date, in respect of the first Contract Year; and

10.4.2.2 the commencement of each subsequent Contract Year, in respect of such Contract Year,

in each case, setting out:

(a) its Planned Outages; and

(b) a forecast of the Net Water Output that could be delivered to the Output Water Connection Point on each Day in the forthcoming Contract Year.

10.4.3 The Company shall:

10.4.3.1 plan its Maintenance Schedule so as to minimise interruptions of the supply of Net Water Output; and

10.4.3.2 not undertake scheduled KWC maintenance resulting in an outage of the KWC during the Summer Period.

10.4.4 Within thirty (30) Days of receipt of the proposed Maintenance Schedule, the Independent Engineer and KW&SB shall notify the Company whether the proposed Maintenance Schedule is acceptable.

10.4.5 If Independent Engineer and KW&SB do not, within such thirty (30) Day period, accept the proposed Maintenance Schedule in whole or in part, the Independent Engineer and KW&SB shall advise the Company of a period or periods when the maintenance can be rescheduled, provided that the Independent Engineer and KW&SB shall seek to make such rescheduled period or periods as close as reasonably practicable to the Maintenance Schedule proposed by the Company and, provided further, that the rescheduled period or periods shall be of equal duration to the period or periods proposed by the Company. In the event that the Independent Engineer and KW&SB fail to provide such advice within the time period stipulated in this clause 10.4, KW&SB shall be deemed to have accepted the proposed Maintenance Schedule.

10.4.6 With respect to each Planned Outage, the Company shall (in addition to the requirement to issue an Unavailability Notice pursuant to clause 10.1.9):

10.4.6.1 confirm ninety (90) Days; and

10.4.6.2 reconfirm thirty (30) Days,

prior to the planned date for such outage.

10.4.7 KW&SB may, upon sixty (60) Days prior written notice, request the Company to re-schedule a Planned Outage and the Company shall use its best efforts to accommodate such requested rescheduling. The Company shall notify KW&SB within fifteen (15)

Days of its receipt of a request for rescheduling of a Planned Outage whether the Company is able to comply with such request.

- 10.4.8 If the Company is unable to comply with the request for rescheduling of a Planned Outage, it shall provide KW&SB with the reasons therefor and provide alternative periods in which the Planned Outage may be rescheduled. In such event, KW&SB shall advise the Company whether it would prefer that the Planned Outage occur on the initial date or on a rescheduled date.
- 10.4.9 The Company shall, within thirty (30) Days of the end of each Planned Outage, provide to KW&SB a report detailing the activities carried out during the Planned Outage and the results for any tests carried out during such Planned Outage.

10.5 Maintenance during Unplanned Outages

- 10.5.1 The Company, during any Unplanned Outage, shall undertake KWC maintenance in a manner consistent with this Agreement, Good International Industry Practices, Environmental and Social Requirements, and in accordance with any relevant Approvals, applicable Legal Requirements, Accounting Principles, and Operating and Maintenance Procedures.
- 10.5.2 The Company shall (in addition to the requirement to issue an Unavailability Notice pursuant to clause 10.1.9), promptly inform the Independent Engineer and KW&SB of the need for any Unplanned Outage as soon as it becomes aware thereof, detailing the reason for the Unplanned Outage and each component of the KWC that is affected, and submit to the Independent Engineer (with a copy to KW&SB) a program detailing:
- 10.5.2.1 the start date and duration of the Unplanned Outage; and
- 10.5.2.2 the activities, and tests (if any) to be carried out during the Unplanned Outage (the **“Unplanned Outage Maintenance Program”**).
- 10.5.3 The Independent Engineer, keeping in consideration the scheduled start date for the Unplanned Outage, as soon as reasonably practicable:
- 10.5.3.1 shall notify the Company whether the Unplanned Outage Maintenance Program is acceptable; or
- 10.5.3.2 may prescribe changes to the Unplanned Outage Maintenance Program.
- 10.5.4 If the Independent Engineer prescribes any changes to the Unplanned Outage Maintenance Program under clause 10.5.3.2, the Company shall be obligated to carry out the KWC maintenance during the Unplanned Outage in accordance with the changes prescribed.
- 10.5.5 In preparation of the Unplanned Outage Maintenance Program and the execution of the maintenance works during the Unplanned Outage, the Company shall endeavour to reduce the duration of the Unplanned Outage and the costs associated with the maintenance works, to the extent possible, without adversely impacting the integrity of the maintenance works.

10.5.6 The Company shall, within thirty (30) Days of the end of each Unplanned Outage, provide to KW&SB a report detailing the activities carried out during the Unplanned Outage and the results for any tests carried out during such Unplanned Outage.

10.6 Test Procedures – Post Project Commercial Operations Date

The Company and KW&SB shall develop and implement the Test Procedures for testing the KWC after the Project Commercial Operations Date in accordance with the requirements of appendix 5.

10.7 Reservoir

The Company ~~undertakes to provide~~ shall at all times ensure that the water ~~from~~in the Reservoir ~~that meets the Output Reservoir Capacity, provided that the Independent Engineer has confirmed KW&SB has supplied the necessary Net Water Quality Specifications for up~~Input and sufficient time has been given to the Company to three (3) hours in any day to be used as back up in the event of non-supply of water from the Head Regulator or K III ~~refill the Reservoir following an Electricity Supply Failure.~~

11. SALE AND PURCHASE

11.1 Contracted Availability and Output

11.1.1 During the C&O Period, in consideration of the Company undertaking the operation and maintenance activities and delivering the Net Water Output to KW&SB, the GoS shall make payments in accordance with appendix 8.

11.1.2 During the Operating Period, in consideration of the Company:

11.1.2.1 maintaining the Contracted Availability;

11.1.2.2 delivering the Net Water Output to KW&SB; and

11.1.2.3 performing the O&M Activities,

the GoS shall make payments in accordance with appendix 8.

11.2 Risk of Loss

The risk of loss on any Net Water Output shall pass from the Company to KW&SB, at the Output Water Connection Point.

11.3 Effect of Relief Event

Subject to clause 11.4, if a Relief Event:

11.3.1 affects the ability of the Company to meet the Contracted Availability, the GoS shall, for the RE Period, continue to pay:

11.3.1.1 during the Operating Period, the Availability Payments in respect of the Deemed Availability (without applying the Deduction for Reduced Water Availability); and

- 11.3.1.2 during the Concession Period, the Output Payments in respect of the Net Water Output; or
- 11.3.2 does not affect the ability of the Company to meet the Contracted Availability, but affects the ability of the Company to deliver Net Water Output, the GoS shall, for the RE Period, continue to pay:
 - 11.3.2.1 during the Operating Period, the Availability Payments; and
 - 11.3.2.2 during the Concession Period, the Output Payments in respect of the Net Water Output.

11.4 Notice of Relief Event

- 11.4.1 If a Relief Event occurs after the Commencement Date, the Company must notify the Independent Appointees and the GoS Parties in writing promptly (and in any event within fourteen (14) Days) after becoming aware of the occurrence of a Relief Event. Together with such notice or as soon as possible (and in any event within fourteen (14) Days) following such notice, the Company shall provide full details of the Relief Event and its consequences including sufficient details to confirm the existence of a Relief Event and its impact on the ability of the Company to meet the Contracted Availability or deliver Net Water Output.
- 11.4.2 As soon as practicable (and in any event within fourteen (14) Days after receiving the Company's detailed information and justification) pursuant to clause 11.4.1, the Independent Appointees shall confirm whether or not (and if so, to what extent) they agree that a Relief Event has occurred and the extent of its impact on the ability of the Company to meet the Contracted Availability or deliver Net Water Output.
- 11.4.3 Any Dispute as to whether or not a Relief Event has occurred, or the extent of its impact, may be referred by any Party for resolution pursuant to clause 27.
- 11.4.4 If the Company does not deliver a notice as required by clause 11.4.1 in accordance with the terms thereof, the Company shall not be entitled to invoke the benefits of clause 11.3 in respect of the relevant Relief Event.

12. PAYMENT ACCOUNTS AND SBP DEBIT AUTHORITY

12.1 Establishment and GoS Funding of Payments Accounts

- 12.1.1 The GoS shall establish and maintain the GoS Payment Account until the Final Expiry Date in accordance with and subject to, the terms of this Agreement.
- 12.1.2 The Independent Appointees shall determine the GoS Payment Account Required Balance within thirty-five (35) Days prior to each GoS Account Funding Date and notify the Commercial Parties thereof (the "**GoS Payment Account Certificate**").
- 12.1.3 Subject to clause 12.1.9, on each GoS Account Funding Date that falls prior to the Final Expiry Date, the GoS shall procure that the balance standing to the credit of the GoS Payment Account is equal to the GoS Payment Account Required Balance.

12.1.4 The GoS Payment Account shall be operated in accordance with the GoS Payment Account Standing Instructions.

12.1.5 Upon establishing the GoS Payment Account, the GoS shall issue the GoS Payment Account Standing Instructions containing instructions to the GoS Payment Account Bank to debit the GoS Payment Account-;

12.1.5.1 on each Payment Date ~~for an amount equal to~~ with the amount set out in the Service Payment Certificate as payable on such Payment Date-;

12.1.5.2 ~~subject to clause 21.9.2, after the Termination Payment Date with the amount of the applicable unrecovered Termination Payment, as set out in the certificate duly issued by the Independent Appointees (the “Unrecovered Termination Payment Amount Certificate”), not otherwise recovered by the Company; and~~

~~12.1.4.1~~12.1.5.3 upon receipt of the Lien Enforcement Certificate, with the amount of the Financing Due component of the applicable Termination Payments (other than Value D and Value E) less any Deductible Termination Amounts, as specified in the Lien Enforcement Certificate, not otherwise recovered by the Company pursuant to clause 12.1.5.2.

~~12.1.5~~12.1.6 Subject to clause 12.1.7, the GoS Payment Account Standing Instructions issued by the GoS shall remain effective, in each case, until the Final Expiry Date.

~~12.1.6~~12.1.7 Prior to the Final Expiry Date, the GoS Payment Account Standing Instructions issued by the GoS may be revoked pursuant to a written revocation notice duly executed and confirmed by:

~~12.1.6.1~~12.1.7.1 the authorized representatives of the Commercial Parties;

~~12.1.6.2~~12.1.7.2 the GoS, if this Agreement is terminated under clause 21 and the Termination Payments have been made; or

~~12.1.6.3~~12.1.7.3 the GoS, if the GoS exercises its option to establish the GoS Service Payment Account SBLC in terms of clauses 12.1.9, 12.1.10 and 12.1.11.

~~12.1.7~~12.1.8 The GoS Payment Account Standing Instructions may be amended at any time pursuant to a notice issued by the GoS to the GoS Payment Account Bank instructing amendment of the GoS Payment Account Standing Instructions (or any part thereof) and the same shall be confirmed and acknowledged by the GoS Payment Account Bank, provided, that such notice shall only be effective if the same is also duly signed by the authorized representatives of the Commercial Parties.

~~12.1.8~~12.1.9 At any time, the GoS shall have the option of replacing the amount in the GoS Payment Account with a GoS Service Payment SBLC provided that at all times:

~~12.1.8.1~~12.1.9.1 the balance standing to the credit of the GoS Payment Account shall not fall below an amount equal to one-quarter (1/4) of the GoS Payment Account Required Balance; and

~~12.1.8.~~~~212.1.9.2~~the sum of the balance standing to the credit of the GoS Payment Account and the face amount of the GoS Service Payment SBLC is equal to the GoS Payment Account Required Balance.

~~12.1.9~~~~12.1.10~~ The provisions applicable to withdrawals of funds from the GoS Payment Account shall apply *mutatis mutandis* to encashment of the GoS Service Payment SBLC.

~~12.1.10~~~~12.1.11~~ Without prejudice to the requirements stated in clauses 12.1.9 and 12.1.10, the Commercial Parties may agree to additional terms relating to the GoS Service Payments SBLC.

12.1.12 The GoS agrees to create a lien and right of set-off over the GoS Payment Account in favour of the Financing Parties (including any agent / trustee of the same) in terms of a letter of lien substantially in form set out in appendix 13, to secure payment of the Financing Due component of the applicable unrecovered Termination Payments (other than Value D and Value E) less any Deductible Termination Amounts (the “GoS Payment Account Letter of Lien”). The GoS Payment Account Letter of Lien shall be issued by the GoS simultaneously with the GoS Payment Account Standing Instructions.

12.1.13 The GoS Payment Account Letter of Lien shall only be enforceable by the Financing Parties upon written confirmation by the Independent Appointees (the “Lien Enforcement Certificate”) issued to the agent of the Financing Parties and the GoS stating that the Financing Due component of the applicable unrecovered Termination Payments (other than Value D and Value E) less any Deductible Termination Amounts, as specified in the Unrecovered Termination Payment Amount Certificate has not been paid to the Company in accordance with 12.1.5.2.

12.2 SBP Debit Authority

12.2.1 The GoS shall issue to the SBP (with a copy to the Company), in terms of paragraph 6.1 of part 2 of appendix 4, a debit authority (the “**SBP Debit Authority**”) authorising the SBP to debit the GoS Account One with an amount equal to the lower of: (a) the Unpaid Termination Payment Amount (as stated in the Unpaid Termination Payment Amount Certificate); and (b) the GoS Termination Secured Amount, on demand from the Company, provided the demand is made in writing, duly signed by an authorised representative of the Company and a copy of the Unpaid Termination Payment Amount Certificate or the certificate of the Independent Auditor certifying the GoS Termination Secured Amount (as applicable), is attached thereto (the “**Company Demand**”). The SBP Debit Authority shall, subject to this clause 12.2.1, remain irrevocable, valid and effective until the earlier of the Financing Termination Date and the date when payments are made to the Company from GoS Account One in terms of this clause 12.2. The GoS shall ensure that there are sufficient funds available in the GoS Account One to satisfy the Company Demand.

12.2.2 At any time, the GoS shall have the option of replacing the SBP Debit Authority with the GoS Termination SBLC. The GoS Termination SBLC should be maintained until the earlier of the Financing Termination Date and the date when payment is made to the Company following a demand, in accordance with and subject to, the terms of this Agreement.

- 12.2.3 The GoS Termination SBLC shall be fully secured by the GoS as a principal debtor and not as surety, without any recourse to the Company, its assets or properties. All costs, expenses, fees and other charges of any nature associated with the issuance and maintenance of the GoS Termination SBLC shall be borne by the GoS.
- 12.2.4 The GoS Termination SBLC shall be unconditional and irrevocable and shall be payable on first written demand without any prior notice, reference or recourse to the GoS or any other entity.
- 12.2.5 The GoS Termination SBLC shall only be encashed in the following circumstances:
- 12.2.5.1 pursuant to clause 12.2.8; and
- 12.2.5.2 pursuant to clause 12.2.9.2.
- 12.2.6 Where the GoS elects to establish the GoS Termination SBLC (in place of the SBP Debit Authority), at least five (5) Days prior to the start of each Contract Year (the **“GoS Termination SBLC Renewal Date”**), the Independent Auditor shall issue a certificate to the GoS (with a copy to the Company) setting out the GoS Termination SBLC Amount (the **“GoS Termination SBLC Certificate”**).
- 12.2.7 On each GoS Termination SBLC Renewal Date, the GoS shall adjust the face amount of the GoS Termination SBLC such that it equals the GoS Termination SBLC Amount as set out in the applicable GoS Termination SBLC Certificate.
- 12.2.8 Each GoS Termination SBLC shall be valid for at least twelve (12) Months from issuance thereof (the **“GoS Termination SBLC Validity Period”**). Within thirty (30) Days prior to expiry of a GoS Termination SBLC, the GoS shall extend the validity of the GoS Termination SBLC, so as to keep it valid for the GoS Termination SBLC Validity Period. In the event of failure by the GoS to extend the validity of a GoS Termination SBLC in accordance with this clause 12.2.8, as certified by the Independent Auditor in its certificate (the **“GoS Termination SBLC Failure Certificate”**), the Company shall have the right, upon issuance of its first written demand (together with the GoS Termination SBLC Failure Certificate) to encash the GoS Termination SBLC to its full outstanding value (the **“Encashed Sums”**). The Company shall, within three (3) Days, return the Encashed Sums to the GoS on the GoS re-establishing the GoS Termination SBLC for the GoS Termination SBLC Validity Period, with a face amount equal to the GoS Termination SBLC Amount. Any failure to return the Encashed Sums to the GoS as aforesaid, shall constitute a Company Event of Default.
- 12.2.9 In the event of termination of this Agreement pursuant to clause 21 and to the extent Financing Due (or part thereof) is due and payable and remains outstanding (the **“Unpaid Termination Payment Amount”**) on the Termination Payment Date as certified in writing by the Independent Auditor (the **“Unpaid Termination Payment Amount Certificate”**), the Company shall be entitled to:
- 12.2.9.1 issue the Company Demand in accordance with clause 12.2.1; or
- 12.2.9.2 where the GoS Termination SBLC is established, encash the GoS Termination SBLC for an amount that is the lower of: (a) the Unpaid

Termination Payment Amount; and (b) the face amount of the GoS Termination SBLC.

12.2.10 Commencing from the date of issuance of the SBP Debit Authority and until the Financing Termination Date, the GoS shall share with the Company on a semi-annual basis, a statement setting out the limits allowed by National Economic Council and any guarantees issued on the GoS Account One.

13. INVOICING AND PAYMENT

13.1 Invoices Issued by the Company

Within ~~ten (10)~~five (5) Business Days of the end of each Billing Period, the Company shall issue to the Independent Appointees and the GoS itemised invoices together with all supporting data necessary to verify and calculate the Service Payments (including any applicable Deductions) payable in any given Billing Period, in accordance with appendix 8. The Independent Appointees and the GoS may request for any additional information reasonably necessary to verify and calculate such amounts.

13.2 Invoices Issued by GoS

Save as otherwise provided in this Agreement, GoS shall issue an itemised invoice to the Company in relation to any amounts due and payable by the Company under this Agreement within thirty (30) Days of the end of a Billing Period in which any such amounts accrue. Such invoices shall be accompanied by supporting documents.

13.3 Payment Date

Save as otherwise provided in this Agreement, each invoice issued pursuant to this Agreement shall be due and payable ~~within thirty (30)~~five (5) Business Days after the date on which it is received by the receiving Party (each such date, a **“Payment Date”**), provided that, in the case of Service Payments due to the Company, the Company has complied with the requirements of GoS Payment Account Standing Instructions or GoS Service Payment SBLC, as applicable.

13.4 Method of Payment

13.4.1 All amounts payable by the GoS against invoices for the Service Payments, as set out in the Service Payment Certificates, shall be ~~paid by GoS, on or before the Payment Date, by debiting the GoS Payment Account and crediting the Company Payment Account~~payable in terms of accordance with the GoS Payment Account Standing Instructions or in terms of the GoS Service Payment SBLC, as applicable.

13.4.2 All amounts payable by the Company against invoices issued by GoS pursuant to clause 13.2 shall be paid by the Company on or before the Payment Date, by wire transfer of immediately available funds to such account or accounts specified by the GoS for such purpose.

13.5 Service Payment Certificate

- 13.5.1 On submission by the Company of its invoices for Service Payments (including supporting data) in terms of clause 13.1, the Independent Appointees shall review and verify the same and issue a certificate to the Commercial Parties setting out the amount of Service Payment that is payable by the GoS to the Company (the “Service Payment Certificate”), ~~no later than five (5) Business Days~~ prior to the Payment Date.
- 13.5.2 Notwithstanding anything to the contrary in this Agreement, the Independent Appointees shall have no obligation to issue a Service Payment Certificate if:
- 13.5.2.1 any of the Performance Securities is not valid and in effect;
 - 13.5.2.2 the insurances to be obtained by the Company in accordance with clause 18 are not valid and in effect;
 - 13.5.2.3 the required Approvals are not in full force and effect, unless the withdrawal or cancellation of any Approval is not attributable to the Company’s failure to comply with the Legal Requirements; and
 - 13.5.2.4 if there is a subsisting Company Event of Default.

13.6 Disputed Payments

- 13.6.1 If a Commercial Party receiving an invoice or a Service Payment Certificate (the “**Receiving Party**”) Disputes any portion or amount of such invoice or Service Payment Certificate, then the Receiving Party shall:
- 13.6.1.1 inform the other Commercial Party (the “**Invoicing Party**”) and the Independent Appointees of the reason for the Dispute, specifying the amount(s) disputed; and
 - 13.6.1.2 pay to the Invoicing Party the undisputed amounts contained in such invoice or Service Payment Certificate on or before the relevant Payment Date, provided that in the case of invoices relating to Service Payments, the Independent Appointees shall issue the Service Payment Certificate setting out such amount that is not disputed.

Each Commercial Party agrees that the invoices rendered by the other Commercial Party may only be disputed on bona fide grounds.

- 13.6.2 No previously undisputed invoice, Service Payment Certificate, or payment may be disputed by:
- 13.6.2.1 the Company, more than sixty (60) Days after the applicable Payment Date; or
 - 13.6.2.2 the GoS, more than three hundred and sixty-five (365) Days after the applicable Payment Date.
- 13.6.3 The Commercial Parties shall use their reasonable endeavours to resolve the payment Dispute by amicable negotiation, provided that if the Commercial Parties are unable to

resolve the Dispute within ten (10) Days of the Payment Date, then either Commercial Party may refer the Dispute for resolution pursuant to clause 27.

13.6.4 If it is agreed or determined that a Commercial Party has:

13.6.4.1 underpaid an invoice, such Commercial Party shall pay to the other Commercial Party the full amount of the underpayment, together with the commission thereon at the Late Payment Rate accrued from, but excluding, the relevant Payment Date to, and including, the Day on which such underpayment is paid; or

13.6.4.2 overpaid an invoice, the Commercial Party who has received the overpayment shall be obliged to repay the other Commercial Party the full amount of such overpayment, together with commission thereon at the Late Payment Rate accrued from, but excluding, the Day the amount of such overpayment was originally paid to, and including, the Day on which the amount of such overpayment is fully repaid. If agreed or determined that GoS has overpaid an invoice, GoS shall have the right to deduct the amount of such overpayment from future payments in the immediately following Billing Period(s) until the full amount of the overpayment shall have been deducted.

13.7 Late Payments

Any amount under any invoice that is not paid in accordance with this clause 13 on or before the Payment Date therefor shall bear commission at the Late Payment Rate accrued from, but excluding, the relevant Payment Date, and including the Day on which such payment is made. The GoS shall not be liable to pay any amount under this clause 13.7 if payment of any invoice is delayed due to the Company's failure to submit a demand for payment in accordance with the GoS Payment Account Standing Instructions or in terms of the GoS Service Payment SBLC, as applicable.

13.8 Set-Off

The GoS shall be entitled to set off against any sum payable by the GoS to the Company under this Agreement or any other Relevant Agreement, any debt or other moneys due and owing (other than any amounts (including any liquidated damages) that are the subject of an on-going Dispute) from the Company to GoS under or in accordance with this Agreement or any other Relevant Agreement.

13.9 Taxes and Royalties

13.9.1 The Service Payments are inclusive of all Taxes.

13.9.2 The GoS may deduct from the Service Payments and any other amounts due to the Company, any income tax or withholding tax that is required to be deducted at source in accordance with the Legal Requirements.

13.9.3 The Company shall be responsible for the payment of all applicable Taxes and complying with all procedural requirements related to the payment of Taxes pursuant

to this Agreement and shall be solely responsible for any proceedings initiated by any Competent Authority in respect of any non-payment or short payment of Taxes.

- 13.9.4 The Company shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Company or any Contractor and furnish proof of payment of such royalties to the GoS along with the invoices for the Service Payments, as the case may be.
- 13.9.5 Upon a request from the Company, the GoS will provide all relevant certificates and information it has on record to enable the Company to obtain any Tax exemptions available in relation to the Project. It is clarified that the GoS shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Company.
- 13.9.6 The Company shall indemnify the GoS Parties from and against any cost or liability that may arise due to the Company's failure to pay all applicable Taxes, in connection with the Project.
- 13.9.7 Any Taxes payable in relation to the Site shall be borne by KW&SB.

14. METERING SYSTEMS AND MONITORING SYSTEMS

14.1 Electricity Metering Systems

- 14.1.1 The Metering Systems and associated equipment to measure the delivery of electrical energy to the KWC that exists as of the Effective Date shall continue to be operated and maintained by the Electricity Supplier.
- 14.1.2 The Company shall, at its own expense, procure, install, test, commission, complete, own, operate and maintain, at the Electricity Connection Point, Back Up Metering Systems and associated equipment in accordance with the Legal Requirements to measure the delivery of electrical energy to the KWC.

14.2 Water Output Metering and Monitoring Systems

The Company shall, at its own expense:

- 14.2.1 procure, install, operate and maintain at the HD Water Connection Point, one or more electronic metering systems and associated equipment to measure the volume of water entering the WAPDA Canal from the Hub Dam in accordance with appendix 1 (the **"HD Input Water Metering System"**);
- 14.2.2 procure and install immediately upstream of the Input HD Water Connection Point, one or more electronic metering systems and associated equipment to measure the volume of water entering the KWC from the WAPDA Canal in accordance with appendix 1 (the **"Primary HD Input Water Metering System"**);
- 14.2.3 procure, install, own, operate and maintain immediately downstream of the Input HD Water Connection Point, one or more electronic back-up metering systems and associated equipment to measure the volume of water entering the KWC from the WAPDA Canal in accordance with appendix 1 (the **"Back-up HD Input Water Metering System"**);

- 14.2.4 procure, install, own, operate and maintain at Input HD Water Connection Point, one or more electronic metering systems and associated equipment to measure the quality of water entering the KWC from the WAPDA Canal in accordance with appendix 1 (the “**HD Input Online Quality Monitoring System**”);
- 14.2.5 procure and install immediately upstream of Input KIII Water Connection Point, one or more electronic metering systems and associated equipment to measure the volume of water entering KWC from the KIII Conduit in accordance with appendix 1 (the “**Primary KIII Input Water Metering System**”);
- 14.2.6 procure, install, own, operate and maintain immediately downstream of Input KIII Water Connection Point, one or more electronic Back-Up Metering Systems and associated equipment to measure the volume of water entering KWC from the KIII Conduit in accordance with appendix 1 (the “**Back-up KIII Input Water Metering System**”);
- 14.2.7 procure, install, own, operate and maintain at Input KIII Water Connection Point, one or more electronic metering systems and associated equipment to measure the quality of water entering the KWC from the KIII Conduit in accordance with appendix 1 (the “**KIII Input Online Quality Monitoring System**”);
- 14.2.8 procure and install immediately downstream of each Water Access Point, an electronic metering system and associated equipment to measure the volume of water supplied to each Water Access Point in accordance with appendix 1 (each, the “**Primary Water Access Point Metering System**”);
- 14.2.9 procure, install, own, operate and maintain immediately upstream of each Water Access Point, one or more electronic Back-Up Metering Systems and associated equipment to measure the volume of water supplied to each Water Access Point in accordance with appendix 1 (each, the “**Back-up Water Access Point Metering System**”);
- 14.2.10 procure, install, own, operate and maintain immediately upstream of the Pumping Station, one or more electronic metering systems and associated equipment to measure the volume of water reaching the Pumping Station (before mixing with water from the KIII Conduit) in accordance with appendix 1 (the “**Pumping Station Metering System**”);
- 14.2.11 procure, install, own, operate and maintain immediately upstream of the Pumping Station, one or more electronic metering systems and associated equipment to measure the quality of water reaching the Pumping Station (before mixing with water from the KIII Conduit) in accordance with appendix 1 (the “**Pumping Station Online Quality Monitoring System**”);
- 14.2.12 procure, install, own, operate and maintain at the Mixed Water Monitoring Point, one or more electronic metering systems and associated equipment to measure the volume of mixed water from the Hub Dam and the KIII Conduit entering the KWC in accordance with appendix 1 (the “**Mixed Water Metering System**”);
- 14.2.13 procure, install, own, operate and maintain at the Mixed Water Monitoring Point, one or more electronic metering systems and associated equipment to measure the quality

of mixed water from the Hub Dam and the KIII Conduit entering the KWC in accordance with appendix 1 (the “**Mixed Online Quality Monitoring System**”);

- 14.2.14 procure, install, own, operate and maintain immediately upstream of the Reservoir, one or more electronic metering systems and associated equipment to measure the volume of water reaching the Reservoir in accordance with appendix 1 (the “**Reservoir Water Metering System**”);
- 14.2.15 procure, install, own, operate and maintain immediately upstream of the Reservoir, one or more electronic monitoring systems and associated equipment to measure the quality of water reaching the Reservoir in accordance with appendix 1 (the “**Reservoir Online Quality Monitoring System**”);
- 14.2.16 procure and install downstream of the last Bypass Water Connection Point, one or more electronic metering systems and associated equipment to measure the Bypass Water Output in accordance with appendix 1 (the “**Primary Bypass Output Water Metering System**”);
- 14.2.17 procure, install, own, operate and maintain upstream of the last Bypass Water Connection Point, one or more electronic back-up metering systems and associated equipment to measure the Bypass Water Output in accordance with appendix 1 (the “**Back-up Bypass Output Water Metering System**”);
- 14.2.18 procure and install immediately downstream of the Output Water Connection Point, one or more electronic metering systems and associated equipment to measure Net Water Output in accordance with appendix 1 (the “**Primary Output Metering System**”);
- 14.2.19 procure, install, own, operate and maintain immediately upstream of the Output Water Connection Point, one or more electronic back-up metering systems and associated equipment to measure Net Water Output in accordance with appendix 1 (the “**Back-up Output Metering System**”); and
- 14.2.20 procure, install, own, operate and maintain at the Output Water Connection Point, one or more electronic monitoring systems and associated equipment to measure the quality of Net Water Output in accordance with appendix 1 (the “**Online Output Quality Monitoring System**”).

14.3 General

- 14.3.1 Each of the Metering Systems and the Monitoring Systems shall be jointly sealed by the Technical Parties (in the presence of the Independent Engineer).
- 14.3.2 The Company shall ensure that the procurement, installation, operation, and maintenance of the Back-up Metering Systems shall not interfere with the operations and maintenance of the Primary Metering Systems and the Online Output Quality Monitoring System, and physical testing and analysis of water samples required to be conducted in terms of the Operating and Maintenance Procedures.
- 14.3.3 Upon installation, the Company shall transfer each of the Primary Metering Systems (together with any related warranties or guarantees) at no cost to KW&SB, and

following such transfer, KW&SB shall be responsible for the ownership, operation and maintenance of the same.

14.4 Reading of Meters

- 14.4.1 The Independent Engineer shall read each of the Primary Metering Systems at 23:59 hours on the last Day of each Month for the purpose of determining the Net Water Output managed by the Company up to the Output Water Connection Point since the last meter reading. The Company shall be entitled to have a representative present during any such reading.
- 14.4.2 The Independent Engineer shall make all records derived from the Metering Systems, Monitoring Systems, and the physical testing facilities, available to the Parties upon reasonable request for inspection and verification.
- 14.4.3 The metered data derived from the Primary Metering Systems and the Online Output Quality Monitoring System shall be telemetered to the distribution control system within the KWC, and, subject to clause 14.5.1, shall be used as the binding measurement of the Net Water Output delivered at the Output Water Connection Point.
- 14.4.4 The Company shall maintain and calibrate the Metering Systems and Monitoring Systems in accordance with the requirements of appendix 1.

14.5 Defective Metering Events and Corrections

- 14.5.1 If there is a Defective Metering Event in relation to any of the Primary Metering Systems, then subject to clause 14.5.2, the binding measurements referred to in clause 14.5.3 shall be provided by the readings of the respective Back-up Metering Systems.
- 14.5.2 If there is a Defective Metering Event in relation to both the Primary HD Input Water Metering System and the Back-up HD Input Water Metering System, the Primary KIII Input Water Metering System and the Back-up KIII Input Water Metering System, the Primary Water Access Point Metering System and the Back-up Water Access Point Metering System, the Primary Bypass Output Water Metering System and the Back-up Bypass Output Water Metering System, or the Primary Output Metering System and the Back-up Output Metering System, then any error in the readings from the relevant Primary Metering System shall be corrected in accordance with the following:
 - 14.5.2.1 if the Independent Engineer is able to determine the amount of the error, if any, then all measurements made by the relevant Primary Metering System shall be corrected by such amount; or
 - 14.5.2.2 if the Independent Engineer is unable to determine the amount of the error, if any, then the percentage error for which the relevant Primary Metering System is to be corrected, for the period determined in accordance with clause 14.5.3, shall be determined if:
 - (a) the percentage of error is ascertainable, by calibration, tests, or mathematical calculation; or
 - (b) the percentage of error is not ascertainable, on the basis of the readings taken under similar conditions during the period before the last test.

14.5.3 If a correction is to be made pursuant to clause 14.5.2.2, then such correction shall be made to the readings given by the relevant Metering System from the period commencing on:

14.5.3.1 the Day of the Defective Metering Event, if such Day can be established by the Independent Engineer; or

14.5.3.2 if the Day of the Defective Metering Event cannot be established by the Independent Engineer, the Day which is halfway between the Day of the immediately preceding test of such metering device and the Day the Defective Metering Event was discovered.

14.5.4 If, as a result of any corrections pursuant to clause 14.5.2:

14.5.4.1 it is determined that the GoS is required to pay any additional amounts to the Company, then the Company shall include such additional amounts in the next invoice to be delivered by the Company in accordance with clause 13.1; or

14.5.4.2 it is determined that GoS has overpaid the Company, the Company shall be obliged to repay such overpaid amount, and the GoS shall have the right to deduct the amount of such overpayment from future payments in the immediately following Billing Period(s) until the full amount of the overpayment shall have been deducted.

14.6 Repair, Replacement and Recalibration

14.6.1 If a Defective Metering Event occurs, or a Metering System is otherwise found to be functioning improperly in accordance with the design and equipment parameters, the Independent Engineer shall instruct the Technical Party owning such Metering System to promptly recalibrate, repair or replace such system at the relevant Technical Party's expense.

14.6.2 A Technical Party wishing to recalibrate, repair or replace a Metering System shall notify the other Technical Party and the Independent Engineer so that any recalibration, repair or replacement of a Metering System may be witnessed by the Technical Party not owning such Metering System (and the Independent Engineer) and, upon completion of any such recalibration, repair or replacement, such Metering System shall be jointly sealed by the Technical Parties (in the presence of the Independent Engineer).

14.7 Testing and Access

14.7.1 Either Technical Party shall be entitled to request at any time a test of any component of a Metering System. The Technical Party calling for such test shall be responsible for all costs associated with such test unless such test discloses that the accuracy of the tested component is outside the Metering Tolerance, in which case, the Technical Party that owns such component shall bear all such costs and shall repair, replace or recalibrate such component as necessary.

- 14.7.2 Each Technical Party or its representatives or designees shall be entitled to be present at, and to receive reasonable advance notice of, any test, inspection, maintenance and replacement of any part of any Metering System owned by the other Technical Party.
- 14.7.3 The Independent Engineer and KW&SB and its designees shall have the right to enter upon the Site or enter the KWC at such times as may reasonably be required to enjoy its rights or perform its obligations pursuant to this clause 14 and for the purposes of maintaining any equipment on the Site owned or operated by it. –When so doing, KW&SB and the Independent Engineer shall (and shall ensure that any of its designees shall) act in accordance with Good International Industry Practices and the Company’s reasonable safety regulations and procedures.

14.8 Water Quality

- 14.8.1 The Company shall perform water quality tests on a continuous basis by means of:
- 14.8.1.1 the Monitoring Systems; and
 - 14.8.1.2 physical testing and analysis of water samples by an authorised third party approved by the GoS Parties in writing at least once a ~~day~~Day;
- each in accordance with appendix 1 and the Operating and Maintenance Procedures.
- 14.8.2 For the purposes of calculating the Deduction for Off-Spec Output Water and determination of Bypass Input Water, Bypass Off-Spec Mixed Water, Off-Spec Mixed Water, Off-Spec Input Water, Off-Spec Output Water, and Within Spec Input Water, the results obtained through physical testing and analysis of water samples by an authorised third party approved by the GoS Parties in writing in accordance with the Operating and Maintenance Procedures, shall apply. All payments to be made to such third party shall be borne by the Company.
- 14.8.3 The Company warrants that no Bypass Input Water or Bypass Off-Spec Mixed Water shall be delivered to KW&SB at the Output Water Connection Point. Determination of whether water constitutes Bypass Input Water or Bypass Off-Spec Mixed Water shall be made in accordance with appendix 1.
- 14.8.4 If water delivered or proposed to be delivered to the Output Water Connection Point does not conform to the Output Water Quality Specifications, the Independent Engineer shall give notice to the Company, as soon as practicable upon becoming aware of such failure, confirming whether, such water is to be accepted or rejected. If the Independent Engineer rejects any water that does not conform to the Output Water Quality Specifications, the provisions of clause 14.8.5 shall apply. If the Independent Engineer accepts any water that does not conform to the Output Water Quality Specifications, the provisions of appendix 8 shall apply to determine the extent to which the Company is compensated for such supply.
- 14.8.5 The Company shall ensure that all Bypass Input Water, Bypass Off-Spec Mixed Water and water rejected in terms of clause 14.8.4 is discharged to the Bypass Water Connection Point.

15. RECORDS, REPORTING AND AUDIT

15.1 Monitoring Rights

15.1.1 The Independent Appointees and the GoS Parties and their duly appointed representatives shall have the right to:

15.1.1.1 monitor the Project; and

15.1.1.2 review and make copies of all materials required to be obtained and retained by the Company pursuant to clause 6.4 and all materials pertinent to the exercise of audit rights pursuant to clause 15.2.

15.1.2 The purpose of such monitoring and review shall be to determine:

15.1.2.1 in the case of C&O Activities, whether the KWC is (or is being) designed, engineered, manufactured, supplied, procured, transported, erected, constructed, rehabilitated, installed, tested and commissioned in accordance with the design and equipment parameters set out in appendix 1, and to observe the progress of the Mobilisation Activities and the C&O Activities; and

15.1.2.2 in the case of O&M Activities, to determine whether the KWC is being operated and maintained in accordance with the terms of this Agreement.

15.1.3 The Company shall permit the Independent Engineer and KW&SB and their duly appointed representatives to conduct such monitoring and review at any time and, following the Project Commercial Operations Date, during normal operating hours, in each case, upon reasonable notice to the Company.

15.1.4 Such monitoring and review shall be conducted in the presence of and, in the case of inquiries addressed to the Company's employees and contractors, through suitably qualified, appropriate representative(s) of the Company designated by the Company for this purpose.

15.1.5 The Company agrees to designate such a representative or representatives and to make such representative(s) available for all such monitoring and review. In the case of monitoring of equipment or supplies, the Independent Engineer and KW&SB shall have the right to conduct such monitoring with the prior approval of the Company, which shall not be unreasonably withheld or delayed, in the presence of a representative of the Company, at any and all locations inside or outside Pakistan at which such equipment and supplies are designed, manufactured, assembled or tested.

15.1.6 The Company shall ensure that the EPC Contract and the O&M Contract provide for such rights and shall require the EPC Contractor and the O&M Contractor to require that their contracts with subcontractors and suppliers provide for such rights.

15.1.7 The foregoing provisions shall be without prejudice to the Independent Engineer's and KW&SB's inspection, monitoring and review rights with respect to the KWC (or any part thereof) in connection with testing pursuant to appendix 5 or as otherwise provided in this Agreement.

15.1.8 The Company shall provide to the Independent Appointees and the GoS Parties, promptly, and in any event within seven (7) Days of becoming aware, a report describing the occurrence of any act or condition materially affecting the Project or the Company's ability to perform any of its obligations under this Agreement and any other Project Agreements to which the Company is a party.

15.1.9 The Company hereby agrees that:

15.1.9.1 any monitoring or review by any of the Independent Appointees or the GoS Parties (or their representatives) pursuant to this clause 15.1 is solely for information, and by conducting any such monitoring or review, neither the Independent Appointees nor the GoS Parties (or their representatives) make (or shall be construed to make) any endorsement of the design, or representation or warranty of the safety, durability, or reliability of the KWC or any part thereof; and

15.1.9.2 it shall in no way represent to any third party that, as a result of any monitoring or review by Independent Appointees and the GoS Parties (or their representatives) pursuant to clause 15.1, the Independent Appointees and the GoS Parties (or their representatives) are in any way responsible for the engineering, design or construction soundness of the KWC.

15.2 Books and Records and Audit Rights

15.2.1 The Company shall comply with the Accounting Principles and maintain proper books, data and records in accordance with the Law and this Agreement.

15.2.2 The Independent Appointees and the GoS Parties (and their duly appointed representatives) may at reasonable times, and at their expense, audit the Company's books, data and records in relation to testing, metering, invoicing, payments, Claims, claims for Increased Costs, termination payments, reimbursements and any other charges to GoS, in all such cases for the purpose of determining whether the Company's charges to GoS have been computed in accordance with this Agreement.

15.2.3 The Independent Appointees and the GoS Parties shall have the right, upon reasonable prior notice to the Company, to examine and/or make copies of the books, data and records referred to in clause 15.2.2 during normal office hours during the period such books, data and records are required to be maintained pursuant to clause 15.2.4.

15.2.4 All books, data and records referred to in this clause 15.2 shall be maintained by the Company until the Final Expiry Date. The Company shall provide a notice to KW&SB thirty (30) Days prior to the Final Expiry Date for handing over custody of such books, data and records to KW&SB, and KW&SB shall be entitled to take custody of the same within twenty (20) Days of the date of receipt of the notice provided by the Company hereunder.

15.2.5 The Company shall provide to the Independent Appointees and the GoS Parties, such information concerning the operational and financial performance of the Project and the Company, as the Independent Appointees and the GoS Parties may reasonably require.

15.2.6 The Company hereby agrees that:

15.2.6.1 any receipt, review or audit by any of the Independent Appointees or the GoS Parties (or their representatives) of any books, data, records or other documentation or information pursuant to this clause 15.2 is solely for information purposes and by such receipt, review or audit, neither the Independent Appointees nor the GoS Parties (or their representatives) make (or shall be construed to make) any endorsement as to the accuracy and completeness of any books, data or records; and

15.2.6.2 it shall in no way represent to any third party that, as a result of any receipt, review or audit by the Independent Appointees and the GoS Parties (or their representatives) of any books, data or records pursuant to this clause 15.2, the Independent Appointees and the GoS Parties (or their representatives) are in any way responsible for accuracy and completeness of any such books, data or records.

15.2.7 The Company shall provide to the Independent Appointees and the GoS Parties an updated financial model within three (3) Business Days after any update to the financial model is made following a reasonable request by any of the Independent Appointees or the GoS Parties.

16. COVENANTS

16.1 Licences, Permits and Consents

The Company shall, as soon as reasonably practicable and in any event within seven (7) ~~days~~Days of request, deliver to the Independent Appointees and KW&SB copies of all Approvals that have been issued to the Company and not previously delivered to the Independent Appointees and KW&SB.

16.2 Other Business

The Company shall not:

16.2.1 engage in any business activity other than as reasonably required to perform its obligations and enjoy its rights under this Agreement;

16.2.2 use the water from the KWC for any purpose other than the Project;

16.2.3 enter into any agreement of merger, consolidation or amalgamation with any entity; or

16.2.4 substantially amend or alter its memorandum of association and/or articles of association without the prior written approval of the Independent Appointees and the GoS.

16.3 Project Agreements, Financing Documents and Refinancing

16.3.1 Drafts of the EPC Contract and O&M Contract to be entered into by the Company shall be provided to the Independent Engineer (with a copy to the GoS) for review at least thirty (30) Days prior to the Scheduled Mobilisation Date. The GoS shall, within ten (10) Business Days of its receipt of the proposed EPC Contract and the O&M Contract,

provide its comments or observation on the same, if any, to the Independent Engineer. The Independent Engineer shall within fifteen (15) ~~days~~Days of the delivery of the proposed EPC Contract and O&M Contract, provide its comments on the same, in consultation with the GoS after addressing any objection by the GoS. Prior to execution of the EPC Contract or the O&M Contract, the Company shall address any comments made by the Independent Engineer. In the event the Independent Engineer fails to provide its comments on the proposed EPC Contract or O&M Contract within fifteen (15) ~~days~~Days of the delivery of the same by the Company, the EPC Contract or O&M Contract (as the case maybe) shall be deemed to have been approved by the Independent Engineer. Promptly following the execution and delivery of the EPC Contract and the O&M Contract, the Company shall deliver copies to the Independent Engineer and the GoS Parties.

16.3.2 The Company shall ensure that the Financing Documents conform to the debt financing term sheet of the Financing Parties submitted as part of the Proposal, unless otherwise approved in writing by the Independent Auditor and the GoS. Promptly following the execution and delivery of the Financing Documents, the Company shall deliver copies thereof to the Independent Appointees and the GoS Parties.

16.3.3 The Company may not enter into:

16.3.3.1 any material amendments, modifications or supplements to, or waivers under any of the Project Agreements; or

16.3.3.2 any material amendments, modifications or supplements to, or waivers under any of the Financing Documents; or

16.3.3.3 any material new contracts after the Commencement Date, including any new construction contract for construction activities on the Site,

without first giving the Independent Appointees and the GoS thirty (30) Days' notice (or sixty (60) Days' notice where clause 16.3.5 applies) of such matter and obtaining the prior written approval of the Independent Engineer and the GoS), which approvals shall not be unreasonably withheld or delayed and which shall be deemed to have been granted if the Independent Engineer and the GoS do not object to such matter within thirty (30) Days of receiving notice thereof, provided that:

(i) no approval shall be deemed to have been granted by the Independent Appointees or the GoS if: (a) the Company shall have failed to provide such information as the Independent Appointees or the GoS may reasonably request to evaluate the matter proposed; or (b) the GoS Parties or the Independent Appointees consider that the substitute EPC Contractor or the O&M Contractor does not meet (at minimum) the relevant criteria provided for in the RFP relating to the relevant Contractor; and

(ii) in relation to any proposed Refinancing, the GoS or the Independent Appointees may withhold approval at their absolute discretion if such changes adversely affect the GoS' rights or obligations under any Relevant Agreement (including giving rise to any increase in the GoS' financial obligations (whether actual or contingent) at any point in time

under any Relevant Agreement) or the Company's or any Sponsor's ability to perform its obligations under any Project Agreement.

16.3.4 Promptly following the execution and delivery of any items referred to in clauses 16.3.3.1 to 16.3.3.3 (inclusive), the Company shall deliver a copy of all relevant documents to the Independent Appointees and the GoS Parties.

16.3.5 Not later than sixty (60) Days prior to the execution by the Company of any amendments, modifications or supplements to, or consent to any change of any provision of, or waiver under:

16.3.5.1 the EPC Contract or the O&M Contract that would result in:

- (a) a change of the EPC Contractor or the O&M Contractor;
- (b) a material change to the scope of work of the EPC Contractor or the O&M Contractor;
- (c) a material change to the performance standards to which the EPC Contractor or the O&M Contractor is subject; or
- (d) a change, in the case of the EPC Contract only, to:
 - (i) the critical path schedule under the EPC Contract, to the extent such change could affect the ability of the Company to meet the Implementation Schedule; or
 - (ii) a major piece of equipment as to either its manufacturer or country of origin; or

16.3.5.2 the Financing Documents that would result in a Refinancing,

the Company shall deliver to the Independent Appointees and the GoS Parties a notice executed by a duly authorised officer, setting out the terms of any of the foregoing in reasonable detail including calculations for consideration by the Independent Auditor for determination of any Refinancing Gains.

16.3.6 The Company acknowledges and agrees that no review or approval (actual or deemed) by the Independent Appointees or the GoS Parties of any amendments, modifications, supplements, waivers or new contracts pursuant to clause 16.3.3 shall in any way relieve the Company from any liability it would otherwise have under this Agreement, and that neither the Independent Appointees nor the GoS Parties (or any of their representatives) shall be liable to the Company, the relevant Contractor or the Financing Parties by reason of their review or approval of the amendments, modifications, supplements, waivers or new contracts.

16.3.7 The Company acknowledges and agrees that sixty percent (60%) of any economic benefit arising out of a Refinancing shall be shared with the GoS (the "**Refinancing Gain**"). The Refinancing Gain shall be determined by the Independent Auditor based on the calculations provided by the Company in respect of the proposed Refinancing and such other information and calculations as may be reasonably required by the Independent Auditor from the Company. The GoS shall select the mechanism for

applying the Refinancing Gain (in the aforesaid ratio), through (one or a combination of the following):

16.3.7.1 upfront or staggered payments to the GoS;

16.3.7.2 reduction in Service Payments; or

16.3.7.3 any other mechanism agreeable to the Commercial Parties, which in each case, shall take effect from the date when the Refinancing Gain is realised.

16.3.8 The Company shall not introduce any form of balloon loan or balloon structure, in each case whether or not such balloon loan or balloon structure is supported by letters of credit or letters of guarantee of any form.

16.3.9 The Company shall pay, on behalf of the GoS, all reasonable costs and fees of external advisers appointed by the GoS for the purposes of considering any approval or review of any documents (including amendments, modifications or supplements to, or waivers pursuant to, any Financing Document or Project Agreement) as contemplated in this clause 16.3.

16.4 Compliance with Applicable Legal Requirements

Each Party agrees that all applicable Legal Requirements shall govern their performance of this Agreement, and each shall respectively comply in all material respects with the applicable Legal Requirements and shall keep in full force and effect all Approvals required to be in their respective names for the performance of their respective obligations under this Agreement and the other Project Agreements to which it is a party. Without limiting the generality of the foregoing, the Company specifically acknowledges that the applicable Legal Requirements may from time to time prohibit the import of goods or services manufactured, supplied, or performed from or by any Adverse Person and undertakes not to import any such goods or services. The Company, in addition to the foregoing, agrees to fully comply with the Asian Development Bank's Anticorruption Policy, 1998, as amended from time to time.

16.5 Site Related Undertakings

The Company agrees and undertakes that:

16.5.1 it shall take all necessary measures to confine the Project Activities, its personnel and equipment to the Site and not encroach on any Adjoining Property;

16.5.2 it shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Company or its Contractors or employees; and

16.5.3 it shall use all reasonable endeavours not to do or permit to be done anything which might:

(A) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;

(B) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or

(C) cause any contamination or damage to any Adjoining Property.

17. INDEPENDENT APPOINTEES

17.1 Selection of Independent Engineer

17.1.1 Within ten (10) Days from the Effective Date, the Company shall provide the GoS Parties with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer (the “**First IE List**”). In the event the proposed Independent Engineer is a consortium of engineers then: (a) a lead consortium member shall serve as the lead Independent Engineer and shall be fully responsible for the overall management, coordination and implementation of the services under the Independent Engineer Contract; and (b) the consortium members shall be jointly and severally liable for the services under the Independent Engineer Contract.

17.1.2 Within seven (7) Days of receipt by the GoS Parties of the First IE List, the GoS Parties shall (subject to one (1) of the firms in the First IE List being acceptable to the GoS) select a firm of engineers from First IE List and the Parties shall finalise and execute the Independent Engineer Contract.

17.1.3 If the firms of engineers identified in the First IE List are not acceptable to the GoS Parties, the Parties shall select as the Independent Engineer a firm acceptable to them and the Parties shall finalise and execute the Independent Engineer Contract.

17.1.4 The Independent Engineer Contract shall be executed within thirty (30) Days from the Effective Date.

17.1.5 The Independent Engineer shall provide the services set out in the Independent Engineer Contract, which shall be in accordance with the Indicative Independent Engineer Terms of Reference, provided, however, upon execution of the Independent Engineer Contract, the terms and conditions including scope of work under the Independent Engineer Contract shall supersede.

17.2 Term of Appointment of the Independent Engineer

17.2.1 The appointment of the Independent Engineer shall initially be for a term not less than the C&O Period (the “**Independent Engineer Initial Term**”).

17.2.2 The Company shall ensure that until the Final Expiry Date, an Independent Engineer is retained for the purposes of carrying out the functions of the Independent Engineer under this Agreement.

17.2.3 Prior to the expiry of the Independent Engineer Initial Term, the Company, the Sponsors and the GoS shall have the option to extend the Independent Engineer Contract (on terms and conditions agreeable to the Company, the Sponsors, the GoS and the Independent Engineer) or appoint a new independent engineer (such appointment to be effective upon expiry of the Independent Engineer Initial Term). In the event a new Independent Engineer is to be appointed, the Parties shall follow the process set out in clause 17.1, *mutatis mutandis*, for appointment of a new independent engineer so as to ensure that at all times until the Final Expiry Date an Independent Engineer is retained.

17.2.4 The Parties shall have the right to terminate the Independent Engineer Contract in accordance with its terms, provided, however, that prior to such termination and subject to clause 17.5, the Commercial Parties shall endeavour to select and appoint a replacement Independent Engineer and execute (with KW&SB), the Independent Engineer Contract.

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

17.3 Independent Engineer Authorized Signatories

17.3.1. The Parties shall require the Independent Engineer to designate and notify, suitably qualified and appropriate representatives, authorized to represent the Independent Engineer in all matters relating to this Agreement and sign for and on behalf of the Independent Engineer any communication or document required to be signed by the Independent Engineer (the “**Independent Engineer Authorized Representative(s)**”). Any document shall be valid and effective only if it is signed by such Independent Engineer Authorized Representative. The Independent Engineer, may by prior notice in writing to the Parties, substitute the Independent Engineer Authorized Representative.

17.4 Decision of Independent Engineer & Dispute Resolution

17.4.1 Subject to clause 17.4.2, any advice, instruction, certification, approval or determination of the Independent Engineer shall be binding on the Parties.

17.4.2 In the event the GoS, KW&SB, the Sponsors or the Company disagree with any decision of the Independent Engineer, then it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with clause 27.

17.4.3 The Company shall be responsible for procuring from the Independent Engineer any approval, consent, determination, certificate or other document or decision required or contemplated under any Relevant Agreement within the necessary timelines stated herein and any delay in the procurement of the same shall not give raise to any claim for extension in the Scheduled Mobilisation Date, Scheduled Commencement Date or Scheduled Project Commercial Operations Date, adjustment in the Implementation Schedule or any additional payments (including Increased Costs).

17.5 Independent Engineer Remuneration

17.5.1. Subject to funding in accordance with clause 17.5.2, the Company (and, until the Commencement Date, the Sponsors) shall be solely responsible for the payment of fees and expenses due to the Independent Engineer under the Independent Engineer Contract (the “**Independent Engineer Payments**”). In the event the Independent Engineer terminates the Independent Engineer Contract due to the Independent Engineer Payments not being paid, the GoS (without prejudice to its rights under clause 21) shall be entitled to appoint a third party to carry out the functions of the Independent Engineer (the “**GoS Appointed IE**”) and all fees and expenses relating to the same shall be payable on demand of the GoS by the Sponsors or the Company (as the case maybe). The GoS shall be entitled to encash the Performance Securities (to the extent

demanded) or deduct such amounts from payments due by the GoS to the Company, in case the Sponsors or the Company fail to provide the necessary funds demanded by GoS to pay the GoS Appointed IE. Where a GoS Appointed IE is appointed by the GoS, all references to Independent Engineer herein shall be considered as a reference to the GoS Appointed IE.

17.5.2. The Independent Engineer Payments shall be funded by the:

17.5.2.1 Sponsors from the date of signing of the Independent Engineer Contract until the Commencement Date; and

17.5.2.2 Company from the Commencement Date until the Final Expiry Date.

17.6 Independent Engineer Payment Account

17.6.1 The Company shall establish and maintain the Independent Engineer Payment Account from the date of signing of the Independent Engineer Contract until the Final Expiry Date.

17.6.2 The Company shall issue standing instructions (that may be suspended, amended or revoked only with the consent of the Parties) to the Independent Engineer Payment Account Bank (the “**Independent Engineer Payment Account Standing Instructions**”) for making payments to the Independent Engineer in accordance with the Independent Engineer Contract.

17.7 Selection of Independent Auditor

17.7.1 Within ten (10) Days from the Effective Date, the Company shall provide the GoS with a list of three (3) reputable firms of auditors for appointment of the Independent Auditor (the “**First IA List**”). In the event the proposed Independent Auditor is a consortium of auditors then: (a) a lead consortium member shall serve as the lead Independent Auditor and shall be fully responsible for the overall management, coordination and implementation of the services under the Independent Auditor Contract; and (b) the consortium members shall be jointly and severally liable for the services under the Independent Auditor Contract.

17.7.2 Within seven (7) Days of receipt by the GoS of the First IA List, the GoS shall (subject to one (1) of the firms in the First IA List being acceptable to the GoS) select a firm of auditors from First IA List and the Parties shall finalise and execute the Independent Auditor Contract.

17.7.3 If the firms of auditors identified in the First IA List are not acceptable to the GoS, the Commercial Parties shall select as the Independent Auditor a firm acceptable to them and the Parties shall finalise and execute the Independent Auditor Contract.

17.7.4 The Independent Auditor Contract shall be executed within thirty (30) Days from the Effective Date.

17.7.5 The Independent Auditor shall provide the services set out in the Independent Auditor Contract which shall be in accordance with the Indicative Independent Auditor Terms of Reference, provided, however, upon execution of the Independent Auditor Contract,

the terms and conditions including scope of work under the Independent Auditor Contract shall supersede.

17.8 Term of Appointment of the Independent Auditor

- 17.8.1 The appointment of the Independent Auditor shall initially be for a term not less than the C&O Period (the “**Independent Auditor Initial Term**”).
- 17.8.2 The Company shall ensure that until the Final Expiry Date, an Independent Auditor is retained, for the purposes of carrying out the functions of the Independent Auditor under this Agreement.
- 17.8.3 Prior to the expiry of the Independent Auditor Initial Term, the Company, the Sponsors and GoS shall have the option to extend the Independent Auditor Contract (on terms and conditions agreeable to the Company, the Sponsors, GoS and the Independent Auditor) or appoint a new independent auditor (such appointment to be effective upon expiry of the Independent Auditor Initial Term). In the event a new Independent Auditor is to be appointed, the Commercial Parties shall follow process set out in clause 17.7, *mutatis mutandis*, for appointment of a new independent auditor so as to ensure that at all times until the Final Expiry Date, an Independent Auditor is retained.
- 17.8.4 The Commercial Parties shall have the right to terminate the Independent Auditor Contract in accordance with its terms provided, however, that prior to such termination and subject to clause 17.11, the Commercial Parties shall endeavour to select and appoint a replacement Independent Auditor and execute (with KW&SB), the Independent Auditor Contract.
- 17.8.5 The Company shall ensure that all provisions of this Agreement pertaining to the Independent Auditor and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Auditor Contract.

17.9 Independent Auditor Authorized Signatories

- 17.9.1 The Parties shall require the Independent Auditor to designate and notify, suitably qualified and appropriate representatives, authorized to represent the Independent Auditor in all matters relating to this Agreement and sign for and on behalf of the Independent Auditor any communication or document required to be signed by the Independent Auditor (the “**Independent Auditor Authorized Representative(s)**”). Any document shall be valid and effective only if is signed by such Independent Auditor Authorized Representative. The Independent Auditor may, by prior notice in writing to the Parties, substitute the Independent Auditor Authorized Representative.

17.10 Decision of Independent Auditor & Dispute Resolution

- 17.10.1 Subject to clause 17.10.2, any advice, instruction, certification, approval or determination of the Independent Auditor shall be binding on the Parties.
- 17.10.2 In the event the GoS, KW&SB, the Sponsors or the Company disagree with any decision of the Independent Auditor, then it will be deemed as a Dispute under this Agreement and shall be resolved in accordance with clause 27.

17.10.3 The Company shall be responsible for procuring from the Independent Auditor any approval, consent, determination, certificate or other document or decision required or contemplated under any Relevant Agreement within the necessary timelines stated herein and any delay in the procurement of the same shall not give rise to any claim for extension in the Scheduled Mobilisation Date, Scheduled Commencement Date or Scheduled Project Commercial Operations Date, adjustment in the Implementation Schedule or any additional payments (including Increased Costs).

17.11 Independent Auditor Remuneration

17.11.1 Subject to funding in accordance with clause 17.11.2, the Company (and, until the Commencement Date, the Sponsors) shall be solely responsible for the payment of fees and expenses due to the Independent Auditor under the Independent Auditor Contract (the “**Independent Auditor Payments**”). In the event the Independent Auditor terminates the Independent Auditor Contract due to the Independent Auditor Payments not being paid, the GoS (without prejudice to its rights under clause 21) shall be entitled to appoint a third party to carry out the functions of the Independent Auditor (the “**GoS Appointed IA**”) and all fees and expenses relating to the same shall be payable on demand of the GoS by the Sponsors or the Company (as the case maybe). The GoS shall be entitled to encash the Performance Securities (to the extent demanded) or deduct such amounts from payments due by the GoS to the Company, in case the Sponsors or the Company fail to provide the necessary funds demanded by GoS to pay the GoS Appointed IA. Where a GoS Appointed IA is appointed by the GoS, all references to Independent Auditor herein shall be considered as a reference to the GoS Appointed IA.

17.11.2 The Independent Auditor Payments shall be funded by the:

17.11.2.1 Sponsors from the date of signing of the Independent Auditor Contract until the Commencement Date; and

17.11.2.2 Company from Commencement Date until the Final Expiry Date.

17.12 Independent Auditor Payment Account

17.12.1 The Company shall establish and maintain the Independent Auditor Payment Account from the date of signing of the Independent Auditor Contract until the Final Expiry Date.

17.12.2 The Company shall issue standing instructions (that may be suspended, amended and/or revoked only with the consent of the Commercial Parties) to the Independent Auditor Payment Account Bank (the “**Independent Auditor Payment Account Standing Instructions**”) for making payments to the Independent Auditor in accordance with the Independent Auditor Contract.

18. INSURANCE

18.1 Insurance Policies

18.1.1 The Company, at its sole cost and expense, shall obtain and maintain in effect such Insurance Policies and coverage as is required by the Legal Requirements, the

Financing Documents, Good International Industry Practices, appendix 3 and this clause 18 (the “**Insurance Policies**”), provided that such coverage may be changed from time to time with the prior written consent of the GoS Parties (in consultation with the Independent Appointees), which consent shall not be unreasonably withheld or delayed. Nothing under this clause 18.1 shall prevent the Company, at its sole cost and expense, from procuring insurance cover in addition to those required under this clause 18.1.

18.1.2 Subject to clause 18.4 and compliance with the Legal Requirements, any Insurance Policies or cover placed by the Company shall:

18.1.2.1 be placed through a competitive process; and

18.1.2.2 subject to compliance with other applicable Laws, include reinsurance to the extent of ninety-five percent (95%) of one hundred percent (100%) of sum insured with reputable underwriters having not less than Standard & Poor’s A-/AM Best A- or equivalent rating.

18.2 Policy Endorsements

18.2.1 The Company shall cause the insurers to provide the following endorsement items in the Company’s ‘Third-Party Liability’ Insurance Policy (as provided in appendix 3) and, if applicable, umbrella or excess liability Insurance Policies, relating to the ownership, construction, rehabilitation, operation and maintenance of the KWC:

18.2.1.1 the GoS Parties and the Independent Appointees shall each receive at least thirty (30) Days prior notice of any cancellation of the Insurance Policies except in the event of non-payment of premium, in which case the prior notice of cancellation period shall be ten (10) Days and any such notice shall be delivered by facsimile and confirmed in writing delivered by first class mail or, if sent from an office outside Pakistan, by international courier;

18.2.1.2 the insurance shall be primary with respect to the interest of each GoS Party and any other insurance maintained by it is excess and not contributory with such Insurance Policies; and

18.2.1.3 a cross-liability clause shall be made a part of the policy to provide that in the event of claims being made by reason of:

(a) personal or bodily injuries suffered by any employee of one insured thereunder for which another insured thereunder is or may be liable;
or

(b) damage to property belonging to any insured thereunder for which another insured thereunder is or may be liable,

then the policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured thereunder, except with respect to the limits of insurance.

18.2.2 The Company shall cause its insurers to waive all rights of subrogation against the GoS Parties (and their employees and contractors) and the Company (and its employees and Contractors) in respect of a claim arising under its Insurance Policies.

18.2.3 The Company shall be responsible for all deductibles under all policies.

18.3 Evidence of Cover

18.3.1 Not later than thirty (30) Days after the date any of the Insurance Policies and coverage required to be in effect in accordance with this clause 18 are issued, or renewed in accordance with their terms, the Company shall cause its insurers or agents to provide the GoS Parties and the Independent Appointees with such Insurance Policies, and where the Insurance Policies are being renewed, provide Insurance Policies evidencing the same terms and conditions as the expiring policies and coverage.

18.3.2 The Company shall provide the GoS Parties and the Independent Appointees with copies of receipts or statements from the Company's insurers evidencing payment by the Company of the premiums in respect of such Insurance Policies, reinsurance policies and cover.

18.4 Compliance with Insurance Obligations

18.4.1 With regard to clauses 18.1 to 18.3, to the extent that the Company is in compliance with insurance obligations under the Financing Documents which provide wider coverage, terms more favourable to the Company and include the policy endorsements set out in clause 18.2, the Company shall be deemed to be in compliance with its obligations under clauses 18.1 to 18.3.

18.4.2 Failure by the Company to obtain the insurance coverage or Insurance Policies required by clauses 18.1 or 18.3, respectively, shall not relieve the Company of its obligations under this clause 18 or in any way relieve or limit the Company's obligations and liabilities under any other provision of this Agreement.

18.4.3 If the Company fails to procure or maintain any insurance required pursuant to this clause 18, then the GoS Parties shall have the right to procure such insurance at the Company's expense, provided that the GoS Parties shall provide a twenty (20) Days prior notice to the Company of their intention to exercise such right, unless such intention arises from the Company's non-payment of premiums for existing insurance, in which case the GoS Parties shall provide at least five (5) Days' prior notice of such intention.

18.4.4 If the Company fails to reimburse the GoS Parties for such premiums within seven (7) Days of being notified to so do, the GoS Parties shall be entitled to payment of such amount(s) under the Performance Securities or by deducting such amount(s) from any payments due to the GoS Parties by the Company.

18.5 Application of Proceeds

Subject to clause 19.10, the Company shall apply any and all insurance proceeds received in connection with the damage to or loss of the KWC, toward the repair, reconstruction or replacement of the KWC, in accordance with the provisions of this Agreement.

19. FORCE MAJEURE

19.1 Force Majeure Event

A “**Force Majeure Event**” means any circumstance, event or condition (or combination thereof) beyond the reasonable control, directly or indirectly, of the Affected Party but only to the extent that:

- 19.1.1 such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party;
- 19.1.2 such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- 19.1.3 such circumstance, event or condition was not foreseeable, or if foreseeable, could not have been prevented or avoided or overcome by the Affected Party having taken all reasonable precautions and due care;
- 19.1.4 the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- 19.1.5 such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement or any other Project Agreement (as the case may be);
- 19.1.6 such circumstance, event or condition is without fault or negligence of the Affected Party; and
- 19.1.7 the Affected Party has given the other Party notice in accordance with clause 19.5.1, and shall consist of “Natural Force Majeure Events” and “Political Force Majeure Events”.

19.2 Natural Force Majeure Event

A “**Natural Force Majeure Event**” means a Force Majeure Event which is not a Political Force Majeure Event, including:

- 19.2.1 lightning, fire, earthquake, unusual flood, storm, cyclone, tornado, tsunami, typhoon or other natural disaster or act of God;
- 19.2.2 pandemic, epidemic or plague;
- 19.2.3 accident, explosion or chemical contamination;
- 19.2.4 strikes, works to rule or go-slows (other than solely by employees of the Affected Party or its Affiliates);
- 19.2.5 the discovery of hydrocarbons on, under or within the Site; and
- 19.2.6 the discovery of unexploded bombs or munitions on or within the Site.

19.3 Political Force Majeure Event

A “Political Force Majeure Event” means:

- 19.3.1 acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case occurring within Pakistan or directly involving Pakistan;
- 19.3.2 acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature, in each case, occurring within Pakistan;
- 19.3.3 any boycott, sanction, embargo penalty or other restriction imposed directly on Pakistan by the government of [insert main equipment and materials countries of origin] during the period up to and including the latest of the Project Commercial Operations Date or the expiry of the relevant warranty period stipulated in the EPC Contract;
- 19.3.4 any action or failure to act by a Competent Authority, including any action or failure that results in any Approval:
 - 19.3.4.1 ceasing to remain in full force and effect; or
 - 19.3.4.2 not being issued or renewed in a timely manner upon due application having been made,provided that the proper exercise of any rights of a Competent Authority in response to a Company default under or breach of the terms of any Approval, or any breach of any Legal Requirements by the Company, shall not constitute a Political Force Majeure Event; and
- 19.3.5 a Change in Law.

19.4 Certain Events Not Force Majeure Events

Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this clause 19 shall not excuse:

- 19.4.1 failure to make a payment of money in accordance with the Party’s obligations under this Agreement;
- 19.4.2 any failure by the Company or its Contractors to obtain or maintain any Approval due to negligence or default by the Company or such Contractor;
- 19.4.3 any failure to research, consider, plan for or take into account reasonably foreseeable ground and weather conditions at the Site;
- 19.4.4 any failure by a Contractor which results in the failure or inability of the Company to perform its obligations under this Agreement where the cause of such failure by the Contractor would not otherwise constitute a Force Majeure Event pursuant to this Agreement;
- 19.4.5 late performance by the Company or any Contractor, caused by the failure of the Company or such Contractor for any reason, including failure to engage qualified sub-

contractors and suppliers, failure to hire an adequate number of personnel or labour, or any failure of sub-contractors hired by the Company to perform their respective obligations;

- 19.4.6 late delivery of equipment, machinery, plant or materials caused by default, negligent acts or omissions on part of the Company or any Contractor;
- 19.4.7 inability to obtain or maintain adequate funding for the Project;
- 19.4.8 mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by any Party due to the manner in which the equipment, machinery or plant has been operated or maintained;
- 19.4.9 delays resulting from reasonably foreseeable unfavourable weather (including monsoon) or sea conditions or other similar reasonably foreseeable adverse conditions;
- 19.4.10 delay or non-performance of any Project Activities as a result of SARS-CoV-2, except where the Company is restricted from undertaking Project Activities at the Site due to measures imposed by a Competent Authority; in which case such delay or non-performance shall be treated as a Natural Force Majeure Event provided the Company has complied with the requirements of this clause 19 (as applicable to a Natural Force Majeure Event); and
- 19.4.11 submission of documents and/or drawings for approval by the GoS Parties or the Independent Appointees at a time which does not leave sufficient time for review thereof by the GoS Parties or the Independent Appointees within the time periods provided therefor in this Agreement.

19.5 Obligations

- 19.5.1 If a Party (the “**Affected Party**”) desires to invoke a Force Majeure Event as a cause for delay or failure in performance of any of its obligations under this Agreement (other than payment of money), it shall:
 - 19.5.1.1 as soon as reasonably practicable (and in any event no later than ten (10) Days) after the Affected Party first had knowledge of the occurrence of a Force Majeure Event, as a condition precedent to its entitlement under this clause 19, give notice to the other Parties and the Independent Appointees of the circumstance, event or condition which it alleges constitutes the Force Majeure Event and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of clauses 3.3.1, 3.6.1, 8.4.1, 19 or 20 of this Agreement in respect of the relevant Force Majeure Event;
 - 19.5.1.2 within ten (10) Days of the date of a notice issued pursuant to clause 19.5.1.1, provide a written report identifying the Force Majeure Event and the Affected Party’s understanding of its effects, including particulars of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and a statement of the actions to be taken in order to comply with its obligations under this

clause 19. If the Affected Party does not deliver such report in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of clauses 3.3.1, 3.6.1, 8.4.1, 20 or 21 of this Agreement in respect of the relevant Force Majeure Event; and

19.5.1.3 from time to time, at reasonable intervals, and upon any reasonable request from any other Party, provide updates as to the matters set out in clause 19.5.1.2.

19.5.2 The Affected Party shall:

19.5.2.1 make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Force Majeure Event, including recourse to alternate sources of services, equipment and materials, provided that, if there occurs a Force Majeure Event, the effects of which cannot be mitigated by the Company, and results in the KWC not delivering (wholly or partially) Net Water Output, the GoS Parties shall have the right to take such actions as are necessary to resume delivery of Net Water Output to ensure water is provided to end-consumers;

19.5.2.2 as soon as reasonably possible, and in accordance with Good International Industry Practice, ensure the resumption of normal performance of this Agreement after the cessation of any Force Majeure Event or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this clause 19; and

19.5.2.3 within three (3) Days following the cessation of any Force Majeure Event, submit to the other Parties reasonable proof of the nature of such delay and its effect upon the performance of its obligations under this Agreement.

19.5.3 With respect to the Company only, if a Force Majeure Event occurs that affects the Company, such event may only be invoked with respect to the part of the Project affected by such event and not with respect to any other part of the Project not so affected, provided that, with respect to the operation of any part of the Project not so affected, such part of the Project is capable of independent or partial operation in accordance with Good International Industry Practice.

19.6 Effects of a Force Majeure Event Generally

The Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event, provided that no relief shall be granted to the Affected Party pursuant to this clause 19 to the extent that such failure or delay:

19.6.1 would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred; or

19.6.2 was caused by the failure of the Affected Party to comply with its obligations under clause 19.5.1.

19.7 Effects of a Force Majeure Event during C&O Period

If, during the C&O Period, a Force Majeure Event occurs which results in material damage to or loss of the KWC (while in the custody, care and control of the Company) or a delay in achieving the Project Commercial Operations Date, in addition to any remedies the Company may have under clause 8.4 or clause 20:

- 19.7.1 the Parties and the Independent Appointees shall consult with one another as soon as practicable after the giving of a notice as provided in clause 19.5.1.1 concerning the effect of such Force Majeure Event upon the Implementation Schedule, and the Implementation Schedule shall be adjusted equitably taking into account the effect which the Affected Party reasonably demonstrates is properly attributable to such Force Majeure Event and the ability of such Party to re-schedule its activities to minimise the overall delays to the Implementation Schedule resulting from such event;
- 19.7.2 if the Parties and the Independent Appointees are unable to agree upon the equitable adjustment to the Implementation Schedule within a period of sixty (60) Days from the date the notice referred to in clause 19.7.1 is received, the Dispute shall be referred for resolution pursuant to clause 27 for the determination of the adjustment to the Implementation Schedule; and
- 19.7.3 the GoS shall, during the C&O Period, continue to make Output Payments in respect of Net Water Output.

19.8 Effects of a Force Majeure Event After Project Commercial Operations Date

19.8.1 On and from the Project Commercial Operations Date:

19.8.1.1 if a Natural Force Majeure Event affects the ability of:

- (a) the Company to meet the Contracted Availability; or
- (b) KW&SB to perform its obligations under this Agreement,

GoS shall, during the NFME Period, continue to make:

- (i) Availability Payments based on the extent the KWC is capable of delivering Net Water Output as determined by the Independent Engineer (regardless of whether KW&SB is able to take delivery of Net Water Output at the Output Water Connection Point and without applying the Deduction for Reduced Water Availability); and
- (ii) Output Payments, in respect of Net Water Output;

19.8.1.2 if a Political Force Majeure Event affects the ability of the Company to meet the Contracted Availability, the GoS shall, during the PFME Period, continue to make:

- (a) Availability Payments in respect of Deemed Availability (without applying the Deduction for Reduced Water Availability); and

(b) Output Payments in respect of Net Water Output;

19.8.1.3 If a Political Force Majeure Event does not affect the ability of the Company to meet the Contracted Availability, but affects the ability of the Company to deliver Net Water Output to KW&SB, the GoS shall, during the PFME Period, continue to make:

(a) Availability Payments; and

(b) Output Payments in respect of Net Water Output; and

19.8.1.4 if a Political Force Majeure Event affects the performance of KW&SB's obligations under this Agreement, GoS shall, during the PFME Period, continue to make:

(a) Availability Payments; and

(b) Output Payments in respect of the Net Water Output.

19.8.2 If the Company has incurred or suffered any Increased Cost as a result of a Political Force Majeure Event, the provisions of clause 20 shall apply.

19.9 Extension of Term

19.9.1 Without prejudice to the foregoing, if on or after the Project Commercial Operations Date:

19.9.1.1 there occurs a Natural Force Majeure Event affecting the Company, the Concession Period shall be extended by the period equivalent to the period during which the Contracted Availability (subject to deduction for Outages determined by the Independent Appointees) cannot be met (such extension to be reduced proportionately to the extent the KWC is partially Available and/or to the extent the Company receives insurance proceeds in respect of loss of revenue, compensating it for such Unavailability); and

19.9.1.2 there occurs a Political Force Majeure Event, the Concession Period may, at the GoS Parties' option, be extended by a period equivalent to any period of relief for a Political Force Majeure Event during which GoS has continued to pay the Availability Payments, provided that during any such extension period, GoS shall be obliged to pay only Component BW of the Availability Payment (determined pursuant to appendix 8) in respect of Contracted Availability, respectively.

19.9.2 Any extension period under clause 19.9.1.2 shall run successively with any extension granted under clause 19.9.1.1.

19.10 Reinstatement of the KWC

19.10.1 If a Force Majeure Event causes an Event of Loss, the Company shall rebuild, repair and/or restore the KWC, using all insurance proceeds or other amounts actually received on account of the Event of Loss, except proceeds from delay in start-up or business interruption insurance (collectively, "**Casualty Proceeds**"), together with any

other amounts that are available to the Company for such rebuilding, repair and/or restoration, in accordance with this clause 19.10.

19.10.2 All Casualty Proceeds received by the Company shall be deposited by the Company into a restoration account segregated from all other funds of the Company (the “**Restoration Account**”) to be applied as provided in clause 19.10.5. The Company:

19.10.2.1 shall diligently pursue all of its rights to compensation against any person with respect to such Event of Loss;

19.10.2.2 may, in the reasonable judgement of the Company, compromise or settle any claim against any person with respect to such Event of Loss; and

19.10.2.3 shall hold all amounts of Casualty Proceeds (including financial instruments) received by the Company in respect of any Event of Loss (after deducting all reasonable expenses incurred by the Company in litigating, arbitrating, compromising or settling any claims) in the Restoration Account.

19.10.3 As soon as reasonably practicable but no later than the date of receipt by the Company of any Casualty Proceeds, the Company shall make a good faith determination as to whether:

19.10.3.1 the KWC or such portion thereof that has been affected by the Event of Loss can be rebuilt, repaired, or restored to permit operations of the KWC or such portion thereof on a commercially feasible basis; and

19.10.3.2 the Casualty Proceeds, together with any other amounts that are available to the Company for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration of the KWC or such portion thereof.

19.10.4 The determination of the Company under clause 19.10.3 shall be evidenced by a certificate of a responsible officer of the Company to be delivered to the Independent Appointees and the GoS Parties which, in the event the Company determines that the KWC or such portion thereof can be rebuilt, repaired and/or restored to permit operation thereof on a commercially feasible basis, shall also set out a reasonable good faith estimate by the Company of the total cost of such rebuilding, repair and/or restoration.

19.10.5 If the Parties agree or the Independent Appointees determine under clause 19.10.3 that:

19.10.5.1 the KWC cannot be rebuilt, repaired and/or restored to permit operations on a commercially feasible basis or that the Casualty Proceeds, together with any other amounts that are available to the Company for such rebuilding, repair and/or restoration, are not sufficient to permit such rebuilding, repair and/or restoration, then any Commercial Party may elect to terminate this Agreement in accordance with clause 21.8.3 and all of the Casualty Proceeds shall be distributed in the following order of priority:

(a) first, to the payment of costs and expenses actually incurred and duly evidenced by the Company in the performance of its obligations

under clause 19.10.7 and not already compensated for by way of payments otherwise received by the Company;

- (b) second, to the payment of any amount due to the GoS Parties under the Project Agreements; and
- (c) third, to the Company or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;

19.10.5.2 only a portion of the KWC can be rebuilt, repaired and/or restored to permit operations on a commercially feasible basis and that the Casualty Proceeds, together with any other amounts that are available to the Company for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration, then GoS may elect to terminate this Agreement in accordance with clause 21.8.3 and all of the Casualty Proceeds shall be distributed in the following order of priority:

- (a) first, to the payment of costs and expenses actually incurred and duly evidenced by the Company in the performance of its obligations under clause 19.10.7 and not already compensated for by way of payments otherwise received by the Company;
- (b) second, to the payment of any amount due to the GoS Parties under the Project Agreements; and
- (c) third, to the Company or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;

or, if the GoS is not entitled to or does not elect to terminate this Agreement:

- (A) the amount equal to the estimate of the total cost of such rebuilding, repair and/or restoration agreed by the Parties or determined by the Independent Appointees shall be deposited in the Restoration Account to be applied towards the costs of rebuilding, repairing and/or restoring such portion of the KWC; and
- (B) the amount, if any, by which all of the Casualty Proceeds exceed the estimate of the total cost shall be distributed in the following order of priority:
 - (i) first, to the payment of any amount due to the GoS Parties under the Project Agreements; and
 - (ii) second, to the Company or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds; or

- 19.10.5.3 the KWC (if applicable) can be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis and the Casualty Proceeds, together with any other amounts that are available to the Company for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration, then all of the Casualty Proceeds, together with such other amounts as are available to the Company for such rebuilding, repair and/or restoration, shall be deposited in the Restoration Account to be applied toward the costs of rebuilding, repairing and/or restoring the KWC.
- 19.10.6 It is agreed that the Company shall not be required to deposit any Availability Payments payable by GoS under this Agreement, including in relation to:
- 19.10.6.1 Availability Payments under clause 8.4;
- 19.10.6.2 Contracted Availability under clause 19.8.1.1; and
- 19.10.6.3 Deemed Availability under clause 19.8.1.2,
- into the Restoration Account or otherwise apply such Availability Payments to the rebuilding, repairing and/or restoring of the KWC or any part thereof pursuant to this clause 19.10.6 in an Event of Loss.
- 19.10.7 Upon the occurrence of an Event of Loss, the Company shall immediately take all necessary action, consistent with applicable Legal Requirements, to secure and make safe the KWC and the Site.
- 19.10.8 If the Company is required to restore the KWC, the Company shall promptly commence any restoration work and shall diligently pursue the same to completion, subject to a reasonable allowance for the time needed to adjust any insurance claims. Before the Company shall commence any such restoration, and at all times during the course of such restoration, the Company shall pay the GoS Parties all amounts due to the GoS Parties under the Project Agreements. In addition, at all times, the Company shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of the Company to be performed under this Agreement and the other Project Agreements notwithstanding any Event of Loss.
- 19.10.9 If, at any time during restoration pursuant to clause 19.10.8, the Independent Engineer believes that the Company is not diligently pursuing the restoration activities, the Independent Engineer will specify a reasonable restoration timetable and if the Company subsequently fails to adhere to such timetable, the Company shall not be entitled to receive Availability Payments with respect to Deemed Availability pursuant to clause 19.8 until such time as restoration is complete and the Company has resumed normal performance of this Agreement in accordance with clause 19.5.2.2.
- 19.10.10 For the avoidance of doubt, in the event that only a part of the KWC is rebuilt, repaired and/or restored to allow operation on a commercially feasible basis as referred to in clause 19.10.5.2, the GoS shall continue to make Availability Payments under clause 19.8.1.2 in respect of the portion of the KWC that was unable to be rebuilt, repaired and/or restored, subject to clause 21.8.2.2.

20. INCREASED COSTS OR SAVINGS

20.1 Claim for Increased Costs or Savings

20.1.1 If:

20.1.1.1 any Party believes that:

- (a) a Political Force Majeure Event (other than a Change in Law) has occurred; or
- (b) a Change in Law has occurred;

that has resulted in Increased Costs or Savings; or

20.1.1.2 the Company believes that:

- (a) a failure to achieve the Commencement Date by the Scheduled Commencement Date (under the circumstances described in, and prior to any adjustment pursuant to, clause 3.6.1); or
- (b) a Relief Event;

has resulted in an Increased Cost,

then such Party shall promptly (and in any event within ten (10) Days after the affected Party first had knowledge of the relevant event or circumstance) and as a condition precedent to its entitlement to recover Increased Costs or Savings under this clause 20, issue a notice to the Independent Appointees, specifying:

20.1.1.3 the details of such Increased Costs or Savings;

20.1.1.4 details of the event or occurrence which gave or gives rise to such Increased Costs or Savings, providing reasonable evidence of the economic impact thereof which resulted in such Increased Costs or Savings; and

20.1.1.5 any other details required by this clause 20.1.

Such notification obligations shall be in addition to any notice or other requirements under clause 7 or clause 19 and shall be a condition precedent to a Party's entitlement to recover Increased Costs or Savings under this clause 20.

20.1.2 The Party that has made a claim for Increased Costs or Savings under clause 20.1.1 may thereafter, from time to time, deliver to the Independent Appointees additional notices identifying further Increased Costs or Savings that have resulted or are reasonably expected to result from the same circumstances, provided that any such additional notice shall be given not later than sixty (60) Days after the Party giving such notice, knew of, or should have known of, such additional Increased Costs or Savings.

20.1.3 The Company shall, acting in accordance with Good International Industry Practice, use all reasonable efforts to minimise any Increased Costs and maximise any Savings.

20.1.4 If the Parties are unable to agree with the Independent Appointees on contents of the notice(s) delivered pursuant to clause 20.1.1 or 20.1.2 within sixty (60) Days of receipt thereof, then the Dispute shall be referred for resolution pursuant to clause 27.

20.1.5 To the extent that a claim for Increased Costs or Savings under clauses 20.1.1 or 20.1.2 has been allowed by the Independent Appointees, or otherwise allowed under clause 27:

20.1.5.1 with respect to an Increased Cost, if the Increased Cost occurs:

- (a) prior to the Project Commercial Operations Date, the Company shall, to the extent available and permissible under the terms of the Financing Documents, draw on any funds under the Financing Documents, to fund such Increased Costs and/or request for injection of additional equity by the Shareholders; or
- (b) during the Operating Period, the Company shall use its best efforts to raise additional capital to fund such Increased Costs; and

20.1.5.2 the GoS shall (in consultation with the Independent Appointees) propose to the Company:

- (a) a mechanism to adjust (upward or downwards) either or both of the Availability Payments or Output Payments, as appropriate;
- (b) a mechanism to compensate the Company or the GoS (as applicable) through the payment of a lump-sum amount or staggered payments; and/or
- (c) an extension to the Concession Period,

which takes account of all relevant circumstances and is structured so as to put the Company into a neutral financial position which results in it deriving neither gain nor loss as a consequence of the relevant event giving rise to the claim under this clause 20.

20.1.6 Notwithstanding the foregoing, any:

20.1.6.1 Political Force Majeure Event; or

20.1.6.2 Relief Event;

that results in Increased Costs shall be funded:

- (a) by the Company drawing on any funds available under the Financing Documents or injection of additional equity by the Shareholders;
- (b) thereafter, by means of a lump-sum payment by the GoS under clause 20.1.5.2(b); and

- (c) in the event that the Company draws on any funds under the Financing Documents pursuant to clause 20.1.5.1(a), the GoS shall propose a mechanism to adjust (at the GoS' discretion) the Availability or Output Payments, as appropriate, as referred to in clause 20.1.5.2(a) to put the Company into a neutral financial position which results in it deriving neither gain nor loss as a consequence of the relevant event giving rise to the claim under this clause 20.

20.1.7 The Parties shall use reasonable endeavours to agree upon the appropriate adjustment or reimbursement mechanism within thirty (30) Days of the Company's receipt of the GoS' proposal under clause 20.1.5.2(b), failing which, the Dispute shall be referred for resolution pursuant to clause 27.2.

20.2 Claims in Aggregate

No Party shall be entitled to assert any claim for Increased Costs or Savings under this clause 20 until:

20.2.1 in the case of any claim for Increased Costs or Savings, asserted prior to the Project Commercial Operations Date, the earlier of: (a) the date thirty (30) Days after the end of the Construction Contract Year in which the relevant event or circumstance entitling the Party to claim Increased Costs or Savings occurred; and (b) the date on which the aggregate of all accrued and outstanding claims of such Party under this clause 20 exceeds the equivalent of Pakistani Rupees one hundred fifty million only (PKR 150,000,000/-); or

20.2.2 in the case of any claim for Increased Costs or Savings, asserted after the Project Commercial Operations Date, the earlier of: (a) the date thirty (30) Days after the end of the Operating Contract Year in which the relevant event or circumstance entitling the Party to claim Increased Costs or Savings occurred; and (b) the date on which the aggregate of all accrued and outstanding claims of such Party under this clause 20 exceeds the equivalent of Pakistani Rupees one hundred fifty million only (PKR 150,000,000/-),

at which time all accrued and outstanding claims of such Party may be asserted, provided that once such claims have been asserted, no future claims may be asserted until such time as all future claims again exceed such threshold, or the next annual deadline is reached.

21. TERMINATION

21.1 Expiry of the Term

Unless terminated earlier in accordance with this clause 21, this Agreement shall expire on the Term Expiry Date.

21.2 Termination due to Non-occurrence of the Mobilisation Date

21.2.1 If the Mobilisation Date is not achieved by the Scheduled Mobilisation Date (as may be extended pursuant to clause 3.3.3) then, provided that the Parties have first used their reasonable endeavours to adjust the Scheduled Mobilisation Date in accordance

with clause 3.3.1, any Commercial Party may terminate this Agreement by issuing a ~~notice of termination~~Termination Notice to the other Parties, whereupon this Agreement shall terminate on the ~~date of termination specified therein;~~Termination Date or such later date as the Commercial Parties may agree in writing and, thereafter no Party shall have any liability to the other, provided that if such failure is due to: (a) reasons solely attributable to the Company, the Parties acknowledge and agree that GoS may draw upon and retain the full amount of the C&O Performance Security as payment of liquidated damages for such termination; or (b) reasons attributable to any of the GoS Parties, the GoS shall refund to the Company an amount in Pakistani Rupees equal to Value E on the Termination Payment Date converted into PKR based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Day immediately preceding the Termination Date.

21.2.2 The Parties agree that:

21.2.1.1 the full amount of the C&O Performance Security are the actual losses that the GoS Parties will suffer in the event this Agreement is terminated for reasons solely attributable to the Company as set out in this clause 21.2; and

21.2.1.2 there is in any event a commercial justification and legitimate interest in imposing such liquidated damages as a payment for the termination of this Agreement for reasons set out in this clause 21.2 which would not be satisfied by a right to recover damages on an unliquidated basis for such default.

21.3 Termination due to Non-occurrence of the Commencement Date

21.3.1 If the Commencement Date is not achieved by the Scheduled Commencement Date (as may be extended pursuant to clause 3.6.3) then, provided that the Parties have first used their reasonable endeavours to adjust the Scheduled Commencement Date in accordance with clause 3.6.1, either Commercial Party may terminate this Agreement by issuing a ~~notice of termination~~Termination Notice to the other Parties, whereupon this Agreement shall terminate on the ~~date of termination specified therein;~~Termination Date or such later date as the Commercial Parties may agree in writing and, thereafter no Party shall have any liability to the other except for any amounts payable by the GoS in terms of clause 2.3.2 of the EFU Agreement (the “**Value D**”) and provided that if such failure is due to reasons solely attributable to the Company, the Parties acknowledge and agree that the GoS may draw upon and retain the full amount of the C&O Performance Security as payment of liquidated damages for such termination. On payment by the GoS of Value D to the Company, all the Company’s right, title and interest in the Project shall stand transferred to the GoS (or its nominee).

21.3.2 The Parties agree that:

21.3.2.1 the full amount of the C&O Performance Security are the actual losses that the GoS Parties will suffer in the event that this Agreement is terminated for reasons solely attributable to the Company as set out in this clause 21.3; and

21.3.2.2 there is in any event a commercial justification and legitimate interest in imposing such liquidated damages as a payment for the termination of this Agreement for reasons set out in this clause 21.3 which would not be

satisfied by a right to recover damages on an unliquidated basis for such default.

21.4 Termination for Convenience

21.4.1 The GoS may at its absolute discretion and at any time, terminate this Agreement for convenience by giving at least two (2) Months' ~~notice~~ Termination Notice to the Company, whereupon this Agreement shall terminate on the date of termination specified therein.

21.4.2 If the GoS exercises its right to terminate this Agreement for convenience pursuant to clause 21.4.1, ~~prior to~~ during the ~~Commencement Date~~ Mobilisation Period, the Company shall sell, and the GoS shall purchase (on behalf of KW&SB), the Company's right, title and interest in the Project for Value D.

21.4.3 If the GoS exercises its right to terminate this Agreement for convenience pursuant to clause 21.4.1, after the Commencement Date, the Company shall sell, and the GoS shall purchase (on behalf of KW&SB), the Company's right, title and interest in the Project for Value A.

~~21.4.3~~ 21.4.4 If the GoS exercises its right to terminate this Agreement for convenience pursuant to clause 21.4.1, prior to the Mobilisation Date, the GoS shall refund to the Company an amount in Pakistani Rupees equal to Value E on the Termination Payment Date converted into PKR based on TT&OD selling rate for USD expressed in PKR, as published by the National Bank of Pakistan, prevailing on the Day immediately preceding the Termination Date.

21.5 Company Event of Default

Except where the relevant event occurs as a consequence of a Relief Event or a GoS Event of Default, each of the following events shall constitute a “**Company Event of Default**”:

21.5.1 a failure by the Company to achieve the Project Commercial Operations Date on or before the Long Stop Date;

21.5.2 a failure by the Company to ensure that the Net Water Output meets the Output Water Quality Specifications, and such failure continues for ten (10) consecutive Days or for thirty (30) Days in a Billing Period;

21.5.3 in the C&O Period, the Actual NRW exceeds thirty-five percent (35%) during any four (4) consecutive Days period;

21.5.4 in the Operating Period, the Actual NRW exceeds fifteen percent (15%) during any four (4) consecutive Days period;

21.5.5 during the C&O Period, the Actual Loss of Water Output exceeds the Projected Losses of Net Water Output by six million eight hundred nineteen thousand one hundred thirty-five (6,819,135) m³ in any Billing Period or by one million seven hundred four thousand seven hundred eight three point seven five (1,704,783.75) m³ for five (5) consecutive Days;

- 21.5.6 during the Operating Period, the Actual Loss of Water Output exceeds the Projected Losses of Net Water Output by six million eight hundred nineteen thousand one hundred thirty-five (6,819,135) m³ in any Billing Period or by two million two hundred seventy-three thousand forty-five (2,273,045) m³ for five (5) consecutive Days;
- 21.5.7 in any Billing Period falling in the C&O Period, Deductions in such Billing Period exceed the Service Payment due in such period (before applying Deductions);
- 21.5.8 in any Billing Period falling in the Operating Period, Deductions in such Billing Period exceed the Availability Payment due in such period (before applying Deductions);
- 21.5.9 a failure by the Company to obtain and maintain any Approvals required under the Legal Requirements or by a Competent Authority in order for it to perform its obligations pursuant to this Agreement where the Company has failed to use all reasonable endeavours to obtain or renew such Approvals;
- 21.5.10 a failure by the Company to pay any undisputed liquidated damages within the time periods specified therefor under clauses 7.3 or 7.4, as applicable, or a failure by the Company to pay any other amount due under this Agreement within sixty (60) Days after such amount has become due and payable;
- 21.5.11 Abandonment;
- 21.5.12 a material breach by the Company of its obligations under this Agreement, which is not remedied within sixty (60) Days after notice from a GoS Party to the Company stating that a breach has occurred, identifying the breach and demanding remedy thereof provided that, notwithstanding the exercise of reasonable efforts by the Company, if such breach cannot be cured within the sixty (60) Days following the notice from the GoS Party, the Company shall be afforded a further period of sixty (60) Days within which to cure such breach, provided always that the Company shall throughout such further sixty (60) Days period, exercise reasonable continuous efforts to cure the breach;
- 21.5.13 a material breach by the Company of the License Agreement;
- 21.5.14 a material breach by any Sponsor under the EFU Agreement;
- 21.5.15 termination of the Independent Engineer Contract by the Independent Engineer due to non-payment by the Company or the Sponsors, as applicable;
- 21.5.16 termination of the Independent Auditor Contract by the Independent Auditor due to non-payment by the Company or the Sponsors, as applicable;
- 21.5.17 the voluntary filing by the Company of a petition of bankruptcy, moratorium, winding up, or other similar relief and/or the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to the Company;
- 21.5.18 the appointment of a liquidator, custodian or similar person in respect of the Company in a proceeding referred to in clause 21.5.17, which appointment has not been stayed or set aside within sixty (60) Days of such appointment;

- 21.5.19 the making by a Competent Authority of an order for the winding up or otherwise confirming the bankruptcy or insolvency of the Company, which order has not been set aside or stayed within sixty (60) Days of such making;
- 21.5.20 a failure of the Company to return the Encashed Sums to the GoS in accordance with clause 12.2.8;
- 21.5.21 a failure of the Company to comply with its obligation to obtain and maintain the required insurances in accordance with clause 18;
- 21.5.22 a failure of the Company to establish, keep valid and maintain either of the Performance Securities in accordance with the terms of this Agreement;
- 21.5.23 a failure of the Company to increase the face amount of the O&M Performance Security by the Estimated Remedial Cost or extend the validity thereof, in each case, in accordance with the clause 21.10.3;
- 21.5.24 an event of default (howsoever described) has occurred under the Financing Documents;
- 21.5.25 any conditions to disbursement of debt by the Financing Parties under the Financing Documents have not been satisfied (unless waived in terms thereof);
- 21.5.26 termination of the Agreement in terms of clause 25.2.2; and
- 21.5.27 any event constituting a Company Event of Default under a Relevant Agreement.

21.6 GoS Event of Default

Except where the relevant event occurs as a consequence of a failure or delay on the part of the Company or a Company Event of Default, each of the following events shall constitute a “**GoS Event of Default**”:

- 21.6.1 a failure by the GoS to pay any undisputed Service Payments within thirty (30) Days from the due date therefor;
- 21.6.2 a failure by the GoS to make any undisputed payment under this Agreement, other than a Service Payment, within ninety (90) Days from the due date therefor;
- 21.6.3 the termination of the License Agreement due to a breach or default by KW&SB;
- 21.6.4 the termination of the EFU Agreement due to a breach or default by GoS;
- 21.6.5 the expropriation, nationalisation or compulsory acquisition of any material asset of the Company or any shares or other interest in the Company by any Competent Authority;
- 21.6.6 a material breach by a GoS Party of its obligations under this Agreement which is not remedied within sixty (60) Days after notice from the Company to the GoS Parties stating that a breach has occurred, identifying the breach and demanding remedy thereof provided that, notwithstanding the exercise of reasonable efforts by the relevant GoS Party, if such breach cannot be cured within sixty (60) Days following the notice from the Company, the GoS Party shall be afforded a further period of sixty (60) Days within which to cure such breach, provided always that the GoS Party shall throughout

such further sixty (60) Days period, exercise reasonable continuous efforts to cure the breach;

- 21.6.7 a failure of the GoS to keep valid and maintain the GoS Payment Account in accordance with the terms of this Agreement;
- 21.6.8 a failure of the GoS to keep valid and maintain the GoS Service Payment SBLC (if applicable) in accordance with the terms of this Agreement;
- 21.6.9 prior the Financing Termination Date, the SBP Debit Authority is no longer valid and effective *unless* replaced with the GoS Termination SBLC in accordance with the terms of this Agreement;
- 21.6.10 where the GoS has established the GoS Termination SBLC, a failure of the GoS to keep valid and maintain the GoS Termination SBLC in accordance with the terms of this Agreement; and
- 21.6.11 the occurrence of an Unenforceability Event.

21.7 Termination due to an Event of Default

- 21.7.1 Upon the occurrence of a GoS Event of Default, the Company may give notice (the “**Company Notice of Intent to Terminate**”) to the GoS specifying in reasonable detail the relevant GoS Event of Default giving rise to such notice and the date upon which the Company proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of the Company Notice of Intent to Terminate or such longer period as specified in this Agreement (the “**GoS Cure Period**”).
- 21.7.2 Upon the occurrence of a Company Event of Default, the GoS may give notice (the “**GoS Notice of Intent to Terminate**”) to the Company specifying in reasonable detail the relevant Company Event of Default giving rise to such notice and the date upon which the GoS proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of the GoS Notice of Intent to Terminate or such longer period as specified in this Agreement (the “**Company Cure Period**”), provided that upon the occurrence of any of the Company Events of Default under clauses 21.5.17, 21.5.18, or 21.5.19, the GoS may terminate this Agreement immediately.
- 21.7.3 During the Cure Period, the Commercial Parties shall consult as to what steps shall be taken, and the Defaulting Party shall use its reasonable efforts, to mitigate the consequences of, and cure, the relevant Event of Default.
- 21.7.4 If, upon the expiry of the Cure Period, the relevant Event of Default has not been cured, unless the Commercial Parties have otherwise agreed, the GoS or the Company (as the case maybe) may issue a ~~notice of termination~~ Termination Notice to the Defaulting Party whereupon this Agreement shall terminate on the ~~date specified therein~~ Termination Date or such later date as the Commercial Parties may agree in writing.
- 21.7.5 If this Agreement is terminated by the GoS due to a Company Event of Default:
 - 21.7.5.1 the GoS shall have the right to encash the Performance Securities to their full outstanding value; and

- 21.7.5.2 the GoS shall ~~have the right, but not the obligation, to~~ purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value D where termination occurs ~~prior~~ during the ~~Commencement Date~~ Mobilisation Period and for Value B where termination occurs after the Commencement Date, ~~and if the GoS exercises such right, it shall do so by giving notice to the Company.~~
- 21.7.6 If this Agreement is terminated by the Company due to a GoS Event of Default, the Company shall require the GoS to purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value D where termination occurs prior to the Commencement Date and for Value A where termination occurs after the Commencement Date, and it shall do so by giving notice to the GoS, and the GoS shall be obliged to purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for such Value.
- 21.7.7 In the event that the circumstances giving rise to a Company Event of Default pursuant to clause 21.5.12 constitute a delay which directly impacts the Implementation Schedule and would, following the passage of time if not remedied, give rise to a Company Event of Default pursuant to clause 21.5.1, the GoS undertakes and agrees that it shall not terminate this Agreement with respect to such circumstances other than pursuant to clause 21.5.1 thereof.

21.8 Termination for a Prolonged Force Majeure Event

- 21.8.1 Subject to clause 21.8.4, the Company shall have the right to terminate this Agreement if a Political Force Majeure Event prevents KW&SB from performing any of its obligations under this Agreement for a continuous period of one hundred twenty (120) Days, provided that, if the GoS elects in such event to continue paying the Availability Payments in respect of Deemed Availability beyond such one hundred twenty (120) Day period, the Company shall not have the right to terminate this Agreement pursuant to this clause 21.8.1.
- 21.8.2 Subject to clause 21.8.4, the GoS shall have the right to terminate this Agreement if:
- 21.8.2.1 a Political Force Majeure Event prevents KW&SB from performing any of its obligations under this Agreement for a continuous period of one hundred twenty (120) Days;
- 21.8.2.2 a Political Force Majeure Event prevents the Company from performing any of its obligations under this Agreement for a continuous period of one hundred twenty (120) Days;
- 21.8.2.3 one or more Political Force Majeure Events or a combination thereof, results in the GoS incurring Increased Costs; or
- 21.8.2.4 a Natural Force Majeure Event prevents KW&SB or the Company from performing any of its obligations under this Agreement for a continuous period of one hundred twenty (120) Days.
- 21.8.3 Subject to clause 21.8.4, either Commercial Party shall have the right to terminate this Agreement if it is agreed, or determined that the KWC cannot be rebuilt, repaired

and/or restored pursuant to clause 19.10.5.1, and the GoS shall have the right to terminate this Agreement if it is agreed, or determined that the KWC can only be partially rebuilt, repaired and/or restored pursuant to clause 19.10.5.2, in either case following an Event of Loss caused by a Force Majeure Event.

21.8.4 If a Commercial Party wishes to exercise its right to terminate this Agreement pursuant to clauses 21.8.1, 21.8.2 or 21.8.3, it shall issue a ~~notice of termination~~Termination Notice to the other Parties ~~specifying the date on which the Party giving such notice proposes to terminate, whereupon~~ this Agreement, ~~which date shall not be less than sixty (60) Days from the date of such notice. Upon the occurrence of such date, provided that the event giving rise to such notice of termination is continuing, unless terminate on the Termination Date or such later date as~~ the Commercial Parties ~~otherwise may~~ agree in writing, ~~this Agreement shall terminate.~~

21.8.5 If this Agreement is terminated after the Commencement Date by:

21.8.5.1 the Company pursuant to clause 21.8.1, the Company shall have the right to require the GoS to purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A, and it shall do so by giving notice to the GoS, and the GoS shall be obliged to purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for such Value;

21.8.5.2 the GoS pursuant to clause 21.8.2.1, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A;

21.8.5.3 the GoS pursuant to clause 21.8.2.2, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A;

21.8.5.4 the GoS pursuant to clause 21.8.2.3, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A;

21.8.5.5 the GoS pursuant to clause 21.8.2.4 with respect to a prolonged Natural Force Majeure Event affecting the Company, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value C;

21.8.5.6 the GoS pursuant to clause 21.8.2.4 with respect to a prolonged Natural Force Majeure Event affecting KW&SB, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value C;

21.8.5.7 either Commercial Party pursuant to clause 21.8.3 with respect to an Event of Loss caused by a Political Force Majeure Event that prevents the Company from rebuilding, repairing and / or restoring the KWC (in whole) pursuant to clause 19.10.5.1, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A;

21.8.5.8 the GoS pursuant to clause 21.8.3 with respect to an Event of Loss caused by a Political Force Majeure Event that prevents the Company from rebuilding, repairing and / or restoring the KWC (in part) pursuant to clause 19.10.5.2, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value A;

21.8.5.9 either Commercial Party pursuant to clause 21.8.3 with respect to an Event of Loss caused by a Natural Force Majeure Event that prevents the Company from rebuilding, repairing and / or restoring the KWC (in whole) pursuant to clause 19.10.5.1, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value C; or

21.8.5.10 the GoS pursuant to clause 21.8.3 with respect to an Event of Loss caused by a Natural Force Majeure Event that prevents the Company from rebuilding, repairing and / or restoring the KWC (in part) pursuant to clause 19.10.5.2, the GoS shall purchase (on behalf of KW&SB) the Company's right, title and interest in the Project for Value C.

21.9 Payments on Termination

All amounts payable pursuant to this clause 21 shall be paid in Pakistani Rupees in immediately available funds as follows: _

21.9.1 with respect to any amounts payable by the Company, immediately on the date of termination of this Agreement, by way of credit directly to a bank account designated therefor, in writing, by the GoS; ~~and~~

21.9.2 subject to clause 21.10.5, with respect to Termination Payments, as set out in the Termination Payment Amount Certificate, payable by the GoS, by the Termination Payment Date, by way of credit directly to a bank account in Pakistan designated therefor by the Company and advised to the GoS in writing: ~~and~~

21.9.3 with respect to the Termination Payments to the extent not recovered by the Company in terms of clause 21.9.2,

21.9.3.1 firstly, in terms of clause 12.2.9,

21.9.3.2 secondly, in terms of clause 12.1.5.2, clause 12.1.5.3 or clause 12.1.10 (as applicable).

The obligations of the GoS under this clause 21.9 shall survive termination of this Agreement until such time as all amounts due and owing by the GoS hereunder have been paid.

21.10 Transfer of the Project

21.10.1 Within ~~one (1) year~~ eighteen (18) months prior to the Term Expiry Date or within one (1) Month following the Termination Date (as applicable), the Independent Appointees shall carry out such tests and inspections as set out in appendix 5 to determine if the KWC satisfies the Handover Conditions.

21.10.2 If, in the opinion of the Independent Appointees:

21.10.2.1 the KWC meets the Handover Conditions, making allowances for any Force Majeure Event or a GoS Event of Default that may have affected the KWC and for which the Company shall not be responsible, then the Independent Appointees shall issue a Handover Certificate, together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in the Handover Certificate; or

21.10.2.2 the KWC does not meet the Handover Conditions, making allowances for any Force Majeure Event or a GoS Event of Default that may have affected the KWC and for which the Company shall not be responsible, then as soon as reasonably practicable, and in any event within six (6) Months prior to the Term Expiry Date or within two (2) Months following the Termination Date (as applicable), the Independent Appointees shall issue a report (the “**Remedial Report**”) providing to the Parties: (a) a list of the works and services required to be undertaken by the Company to meet the Handover Conditions (the “**Remedial Works**”); (b) a remediation plan, including the time period, for completing the Remedial Works (the “**Remedial Plan**”); and (c) an estimate of the costs of carrying out the Remedial Works (the “**Estimated Remedial Costs**”).

21.10.3 Immediately upon the issuance of a Remedial Report, the Company shall increase the face amount of the O&M Performance Security by the Estimated Remedial Costs and extend the validity thereof to the date falling six (6) Months following the estimated date stated in the Remedial Report for completion of the Remedial Works.

21.10.4 The Company shall complete all Remedial Works in accordance with the Remedial Plan at its own costs and expense. Upon completion of the Remedial Works in accordance with the Remedial Plan, as determined by the Independent Appointees, the Independent Appointees shall issue a Handover Certificate, together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in the Handover Certificate. Where the Remedial Plan has been prepared following issuance of a Termination Notice, the Termination Payment Date shall be extended (by such period as determined by the Independent Appointees) to account for the timelines stated in the Remedial Plan.

21.10.5 Any Termination Payment due to the Company shall be made by the GoS subject to the issuance of the Handover Certificate.

21.10.6 If the Company fails to comply with the Remedial Plan, unless the Parties agree otherwise, the GoS shall have the option to:

21.10.6.1 encash the O&M Performance Security to the extent of the Estimated Remedial Costs; or

21.10.6.2 deduct the Estimated Remedial Costs from any payments due to the Company from the GoS in terms of this Agreement,

following which (and subject to full recovery of the Estimated Remedial Costs by the GoS), the Handover Certificate shall be deemed as issued.

21.10.7 Upon issuance or deemed issuance (in terms of clause 21.10.6) of the Handover Certificate and ~~(if applicable)~~ payment by the GoS of the Termination Payments under clause 21.9.2, or immediately following the Term Expiry Date, the Company shall transfer to KW&SB, free and clear of all liens and Encumbrances, at no cost to the GoS (other than payment of the Termination Payments, if applicable), all of the Company’s right, title and interest in the Project, including insofar as they are a part of or used in the Project, all of the Company’s right, title and interest in:

- 21.10.7.1 all raw materials, consumables and spare parts;
- 21.10.7.2 all tangible personal property;
- 21.10.7.3 all intangible personal property, including any Intellectual Property Rights;
- 21.10.7.4 all buildings and fixtures;
- 21.10.7.5 computerised and non-computerised records, reports, data, files, and information;
- 21.10.7.6 all drawings, test results, and documents relating to the Project;
- 21.10.7.7 all warranties of equipment, materials and work;
- 21.10.7.8 all contract rights and Insurance Policies;
- 21.10.7.9 all work in progress under contracts with vendors, suppliers, contractors and subcontractors; and
- 21.10.7.10 all rights with respect to any insurance proceeds payable to or for the account of the Company, but unpaid at the date of termination of the Agreement, in respect of the Company's right, title and interest in the Project.

21.10.8 Following the Termination Date and until the issuance of the Handover Certificate, except for the termination of this Agreement pursuant to Company Events of Default under clauses 21.5.11, 21.5.17, 21.5.18, or 21.5.19, the Company shall continue to perform the relevant Project Activities in accordance with the requirements of this Agreement and in consideration thereof, shall be entitled to receive the Output Payments in accordance with appendix 8.

21.11 Other Remedies

- 21.11.1 Except as otherwise expressly provided in this Agreement, upon termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder, save those obligations or liabilities that arose on or before the date, or as a result of termination, shall survive until satisfied in full.
- 21.11.2 This clause 21 sets out the sole and exclusive grounds upon which this Agreement may be terminated, provided that upon the breach by any Party of any covenant or warranty hereunder, the Party damaged by any such default or breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with clause 27 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy), or to seek specific performance by the other Party of such breaching Party's obligations under this Agreement and the other Project Agreements (as the case may be).

21.12 Survival

The provisions of clauses 12, 13, 14.5.4, 21, 22, 26, 27, and 29 shall survive the termination of this Agreement.

22. REINSTATEMENT

The Company shall reinstate the Site if and to the extent that it is required in accordance with the Remedial Report.

23. INDEMNITIES

23.1 Indemnification by the Company

The Company shall indemnify, defend and hold harmless the GoS Parties (and their Affiliates and contractors and respective shareholders, directors, officers, employees, agents or representatives (collectively the “**GoS Indemnified Parties**”)), from and against all Claims made against or suffered by any of the GoS Indemnified Parties in relation to:

- 23.1.1 any loss of or damage to property or death or injury to persons (except for workers’ compensation claims), resulting from any negligent act or omission of the Company or any of the Company Indemnified Parties, or that arising out of or in any manner connected with the performance of this Agreement, except to the extent that such loss, damage, injury or death is attributable to the negligence or misconduct of the GoS Indemnified Parties, or breach of this Agreement by the GoS Indemnified Parties, or the failure of the GoS Indemnified Parties, as applicable, to take reasonable steps in mitigation of the foregoing;
- 23.1.2 the violation of any Environmental and Social Requirements by any of the Company Indemnified Parties occurring at the Site or in any way related to the KWC, except to the extent that such Claim results from or arises out of:
 - 23.1.2.1 the condition of the affected Site existing prior to the effective date of the License Agreement; or
 - 23.1.2.2 any discharge, release or leaching of any Hazardous Substance on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the Site and the air above the same) caused by a person other than the Company or any of the Company Indemnified Parties;
- 23.1.3 any use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release, or threatened release of any Hazardous Substance on, in, over, under or otherwise affecting the Site and their respective neighbouring properties (including the soil, subsoil, surface water or ground water on or beneath the Site and the surrounding environs and the air above the same):
 - 23.1.3.1 caused by the Company or any of the Company Indemnified Parties;
 - 23.1.3.2 originating from the Site after the Effective Date or, if earlier, the date of issue of the limited notice to proceed under the EPC Contract (if any); or

23.1.3.3 in any way related to the KWC;

23.1.4 the violation of any Legal Requirements arising out of the Company's performance of the Project Activities, including the design, construction, testing, commissioning, operation or maintenance of the KWC;

23.1.5 the performance or non-performance by the Company or the Contractors of their obligations under any of the Project Agreements; and

23.1.6 the presence of the Company Indemnified Parties on the Site.

23.2 Indemnification by GoS

The GoS shall indemnify, defend and hold harmless the Company (and its Affiliates and Contractors and its or their respective shareholders, directors, officers, employees, agents or representatives (collectively the "**Company Indemnified Parties**"), from and against all Claims made against or suffered by the Company or any of the Company Indemnified Parties in relation to any loss of or damage to property or death or injury to persons (except for workers' compensation claims), resulting from any negligent act or omission of the GoS Parties or otherwise that arises out of or is in any manner connected with the performance of this Agreement, except to the extent such loss, damage, injury or death is attributable to the negligence or misconduct of the Company or any Company Indemnified Parties, or breach of this Agreement by the Company, or the failure of the Company or any of the Company Indemnified Parties, as applicable, to take reasonable steps in mitigation of the foregoing.

23.3 Liability

No Party shall be liable to the other in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages, except as expressly provided herein.

23.4 Mitigation

The Parties shall make all reasonable endeavours to mitigate any loss, cost or expense they may suffer as a result of any breach of the other Party's material obligations under this Agreement.

23.5 Joint Negligence

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

24. ASSIGNMENT

24.1 Assignment with Consent

Save as expressly provided otherwise in this Agreement, no Party shall be entitled to assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Parties.

24.2 Assignment to Financing Parties

~~24.1.1~~24.2.1 The Company shall have the right, in accordance with the Legal Requirements and the Concession and License Direct Agreement, to assign its rights under this Agreement to any Financing Parties or to any third-party security agent or trustee nominated by the Financing Parties. Upon the Company's request, the GoS Parties shall provide such co-operation to the Financing Parties as may be requested by the Financing Parties, including providing acknowledgements and notices to the Financing Parties dealing with matters such as the respective rights and obligations of the Financing Parties and the Company under the Financing Documents, provided that:

~~24.1.1.1~~24.2.1.1 such co-operation and the terms of such acknowledgements and notices shall not (except as expressly provided in this Agreement) be interpreted as diminishing the GoS Parties' rights and entitlements under this Agreement; and

~~24.1.1.2~~24.2.1.2 by providing such co-operation, the GoS Parties shall not assume (and shall not be deemed to be assuming) any obligations under the Financing Documents (other than under any Concession and License Direct Agreement).

~~24.1.2~~24.2.2 The GoS Parties agree to enter into the Concession and License Direct Agreement with the Financing Parties in respect of this Agreement as the Company, or the Financing Parties, may reasonably request in connection with the financing of the Project, provided that, in so doing, the GoS Parties shall not assume (and shall not be deemed to be assuming) any obligations under the Financing Documents (other than as expressly set out in the Concession and License Direct Agreement).

25. REPRESENTATIONS AND WARRANTIES

25.1 Company Representations and Warranties

The Company represents and warrants to each of the GoS Parties as follows:

~~25.2.1~~25.1.1 it is duly incorporated and is validly existing and in good standing under the Legal Requirements;

~~25.2.2~~25.1.2 it has the power and authority to enter into and perform its obligations under this Agreement;

~~25.2.3~~25.1.3 it has the financial standing and capability to undertake and implement the Project in accordance with the terms of this Agreement;

~~25.2.4~~25.1.4 the Sponsors have the financial standing and resources to comply with their obligations under the EFU Agreement;

~~25.2.5~~25.1.5 neither the Company nor the Sponsors have committed a breach in respect of their payment obligations in relation to a financial indebtedness;

~~25.2.6~~25.1.6 this Agreement has been duly authorised, executed and delivered by it and constitutes the legal, valid and binding obligation of it;

~~25.2.7~~25.1.7 there is no pending or threatened litigation or claim which would materially impair its ability to perform its obligations under this Agreement;

~~25.2.8~~25.1.8 the performance of its obligations under this Agreement will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which it is a party or by which it is bound, nor will such performance conflict with any charter, by-law or similar provision applicable to it. There are no conflicts or violations of Legal Requirements which would materially affect its right or ability to comply with the terms of this Agreement;

~~25.2.9~~25.1.9 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 Competent Authority which may result in any material impairment of its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would result in material impairment of its ability to perform its obligations under this Agreement;

~~25.2.10~~25.1.10 it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may materially impair its ability to perform its obligations under this Agreement;

~~25.2.11~~25.1.11 no representation or warranty made by the Company and contained herein or in any other document furnished by it to the GoS or to any Competent Authority in relation to the Approvals contains any untrue or misleading statement of material fact or omits or will omit to state a material fact rendering such representation or warranty misleading;

~~25.2.12~~25.1.12 it has not engaged in any fraudulent, collusive, coercive, or obstructive practices or other integrity violations (and is in full compliance with Asian Development Bank's Anticorruption Policy, 1998, as amended from time to time) and 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, in each case for securing the Concession or entering into this Agreement or any other Project Agreement, or for influencing or attempting to influence any officer or employee of the GoS, KW&SB or any other Competent Authority in connection therewith; and

~~25.2.13~~25.1.13 the Company has undertaken all acts and deeds necessary and complied with all Legal Requirements and the RFP for the award of the Concession to the Company and the performance of its obligations under this Agreement.

25.2 Breach of Representations and Warranties

~~25.3.1~~25.2.1 In the event that any occurrence or circumstance renders any of its representations or warranties incorrect, the Company shall immediately notify the GoS Parties and the Independent Appointees of the same and take reasonable steps to ensure compliance with its representations or warranties. Such notification shall not have the effect of remedying any incorrect representation or warranty made by the Company nor shall it adversely affect or waive any right, remedy or obligation of the Parties under this Agreement.

~~25.3.2~~25.2.2 In the event any statement, representation or warranty made by the Company in this Agreement is rendered incorrect, in any material respect, due to any occurrence or circumstance, when made or reaffirmed, and such incorrect statement, representation or warranty has materially impaired the Company's ability to perform its obligations under this Agreement, then such incorrect statement, representation or warranty shall give rise to a Company Event of Default pursuant to clause 21.5.

~~25.3.3~~25.2.3 The representations and warranties under clause 25.1 shall be deemed repeated on the Mobilisation Date, the Commencement Date and each Payment Date.

25.3 GoS Parties' Representations and Warranties

Each GoS Party, severally, represents and warrants to the Company as follows:

~~25.4.1~~25.3.1 it has the power and authority to enter into and perform its obligations under this Agreement;

~~25.4.2~~25.3.2 this Agreement has been duly authorised, executed and delivered by it and constitutes its legal, valid and binding obligation;

~~25.4.3~~25.3.3 there is no pending or threatened litigation or claim which would materially impair its ability to perform its obligations under this Agreement; and

~~25.4.4~~25.3.4 the performance of its obligations under this Agreement will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which it is a party or by which it is bound, nor will such performance conflict with any decree, charter, by-law or similar provision applicable to the GoS Party. There are no conflicts or violations of Legal Requirements that would materially affect its right or ability to comply with the terms of this Agreement.

25.4 Immunity

~~25.5.1~~25.4.1 Each GoS Party unconditionally and irrevocably:

~~25.5.1.1~~25.4.1.1 agrees that the execution, delivery and performance by it of this Agreement constitutes private and commercial acts and not public or governmental acts;

~~25.5.1.2~~25.4.1.2 agrees that should any proceedings be brought against it or its assets (other than any of its assets which are significant in respect of national security of Pakistan (the "**GoS Protected Assets**")) in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise, from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the GoS Protected Assets); and

~~25.5.1.3~~25.4.1.3 waives any such right of immunity, sovereign or otherwise, which the GoS or its assets (other than the GoS Protected Assets) now has or may acquire in the future, in respect of proceedings under this Agreement.

~~25.5.2~~25.4.2 The Company expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or any matters arising hereunder including any obligation, liability, or responsibility hereunder.

25.5 Project Implementation Unit

~~25.6.1~~25.5.1 The Project Implementation Unit shall:

- 25.5.1.1 oversee day to day implementation of the Project on behalf of the GoS Parties in accordance with the Legal Requirements;
- 25.5.1.2 together with KW&SB and the Company, develop and establish a grievance redress mechanism in accordance with the Legal Requirements and the E&S Standards (and accounting for all consultations and engagements conducted pursuant to clauses 4.10.1 and 4.10.2) to record, address, and manage grievances related to the Project Activities, including a focus on:
 - (A) the Settlements;
 - (B) KW&SB employees; and
 - (C) other Stakeholders (the “**Grievance Redress Mechanism**”); and
- 25.5.1.3 forward any matter, which cannot be resolved in accordance with the Grievance Redress Mechanism, to the Public Private Partnership Policy Board for resolution.

~~25.6.2~~25.5.2 The Company shall provide all necessary cooperation and coordination:

~~25.6.2.1~~25.5.2.1 to the Project Implementation Unit to allow it to carry out its functions; and

~~25.6.2.2~~25.5.2.2 to KW&SB and the Project Implementation Unit to ensure Stakeholder grievances (whether addressed to the Company or otherwise) are adequately and timely resolved.

26. GOVERNING LAW

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

27. DISPUTE RESOLUTION

27.1 Negotiation

The Parties agree to attempt to resolve any Dispute promptly, amicably, and in good faith. Each Party shall designate a representative who shall be entitled to enter into discussions to resolve by amicable agreement any Dispute in connection with this Agreement.

27.2 Public Private Partnership Policy Board

If any Dispute is not finally resolved between the Parties pursuant to the clause 27.1 within thirty (30) Days from the date on which a Party receives notice from any of the other Parties

that a Dispute exists, then the Parties shall endeavour to settle the Dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Public Private Partnership Policy Board. If any Dispute is not resolved between the Parties pursuant to this clause 27.2 within sixty (60) Days from the date on which the matter has been referred by the Public Private Partnership Policy Board to an independent and impartial person so appointed, then such Dispute shall be settled exclusively and finally in accordance with clause 27.3.

27.3 Arbitration

27.3.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 27.2:

27.3.1.1 to the submission of such Dispute to binding arbitration governed by the Arbitration Act 1940, by appointment of three (3) arbitrators, of which, one (1) shall be appointed jointly by the GoS Parties, one (1) shall be appointed by the Company, and one shall be appointed jointly by the two (2) arbitrators appointed by the GoS Parties and the Company (the “**Arbitrators**”). Any arbitration proceedings commenced pursuant to this clause 27.3.1 shall be referred to as Arbitration (“**Arbitration**”);

27.3.1.2 not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and

27.3.1.3 to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or court of competent jurisdiction.

27.3.2 The place of Arbitration shall be Karachi, Pakistan.

27.3.3 The language of Arbitration shall be English.

27.3.4 Any decision or award resulting from the Arbitration (“**Award**”) shall be final and binding upon the Parties.

27.3.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

27.3.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective Parties, unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

27.3.7 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

27.4 Exclusive Jurisdiction

No Party shall have the right to, nor shall they, commence or maintain any legal proceedings in or outside of Pakistan, concerning a Dispute, until the Dispute has been resolved in accordance with clauses 27.2 or 27.3 and then only to enforce or execute an Award.

27.5 Obligations Continuing

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

28. INTELLECTUAL PROPERTY RIGHTS

28.1 Company IPR

28.1.1 The Company (or its relevant licensor) shall retain exclusive ownership of the Company IPR and nothing in this Agreement (other than the licence granted under clause 28.1.2) shall operate to transfer to KW&SB or vest in KW&SB any licence to use or rights in the Company IPR.

28.1.2 The Company hereby grants to KW&SB a perpetual, irrevocable, royalty-free, and non-exclusive licence (with the free right to sub-licence and/or assign to any third party) to use, reproduce and maintain the Company IPR to the extent and for the duration necessary to enable KW&SB to exercise its rights and perform its obligations under this Agreement.

28.1.3 The Company shall ensure that KW&SB is provided with copies of such items of Company IPR as KW&SB may from time-to-time reasonably request.

28.2 Project IPR

28.2.1 The Company shall use its best endeavours to procure that any licence or other arrangement with a third party or a Contractor relating to the Project IPR permits the Company to:

28.2.1.1 grant the licence set out in clause 28.2.2; and

28.2.1.2 make the transfer required by clause 28.2.3.3.

If the Company, despite the use of its best endeavours, is unable to secure the rights described above, the Company shall notify KW&SB and shall (at its cost) take such other measures as are required to put KW&SB in the position it would have been in if such rights had been procured or as close thereto as is reasonably possible in the circumstances. The Company shall pay any costs resulting from the performance of this clause 28.2.1, save for any on-going fees payable for the maintenance in force of the Project IPR following the Final Expiry Date to the extent such fees are unaffected, directly or indirectly, by its transfer to KW&SB or its nominee, which fees shall, to that extent, be paid by KW&SB.

28.2.2 The Company hereby grants to KW&SB a royalty-free and non-exclusive licence (with the free right to sub-licence and/or assign to any third party) to use, reproduce and

maintain the Project IPR to the extent and for the duration necessary to enable KW&SB to exercise its rights and perform its obligations under this Agreement.

28.2.3 On:

28.2.3.1 the Final Expiry Date where KW&SB has elected under the Handover Conditions that the Company should not fully reinstate in terms thereof; or

28.2.3.2 early termination of this Agreement for any reason where the GoS is obliged or has elected to purchase the Company's right, title and interest in the Project in accordance with clause 21.8 and has paid the purchase price in accordance with clause 21.9.2,

the Company shall deliver to KW&SB or its nominee copies of all Project IPR, in each case in the form utilised by the Company in the operation of the Project and either:

28.2.3.3 transfer by way of future assignment to KW&SB all Project IPR and execute a transfer or any other documents necessary to transfer absolutely such Intellectual Property Rights to KW&SB and otherwise to perfect KW&SB's title thereto; or

28.2.3.4 to the extent that Project IPR is capable of use by the Company in any project other than in respect of the Project, grant KW&SB a royalty free, non-exclusive, sub-licensable, irrevocable, perpetual and freely assignable licence to use the Project IPR for any purpose in connection with the Project or the KWC, any such licence to be effective from the Final Expiry Date.

28.3 Breaches of Intellectual Property Rights

28.3.1 The Company shall defend, indemnify and hold the GoS Indemnified Parties harmless against all Claims, costs, charges and expenses arising from or incurred by reason of any actual infringement or alleged infringement of the Company IPR or Project IPR licenced to KW&SB under ~~clause~~clauses 28.1 or 28.2 because of the use by or on behalf of KW&SB of the rights granted under ~~clause~~clauses 28.1 or 28.2 provided that such infringement has arisen out of the use of the Company IPR or Project IPR otherwise than in accordance with the terms of this Agreement.

28.3.2 Without in any way limiting the foregoing provisions of this clause 28.3, in circumstances where the Company is liable to indemnify the GoS Indemnified Parties in accordance with clause 28.3.3~~1~~, the Company shall at KW&SB's request but at the Company's own expense, complete one or more of the following without delay:

28.3.2.1 procure for KW&SB the right to continue to use the Intellectual Property Rights in question; or

28.3.2.2 modify or replace the subject-matter of the activities permitted by this Agreement (at no cost to KW&SB) so that it becomes non-infringing without loss of functionality or compatibility or affecting its use.

29. CONFIDENTIALITY

29.1 Confidentiality Obligation

During the term of this Agreement and after termination or expiry of this Agreement for any reason whatsoever, a Party shall:

- 29.1.1 keep the Confidential Information confidential;
- 29.1.2 not disclose the Confidential Information to any other person who is not a Party other than:
 - 29.1.2.1 with the prior written consent of the other Parties; or
 - 29.1.2.2 in accordance with clause 29.2; and
- 29.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.

29.2 Disclosure

During the term of this Agreement and after termination or expiry of this Agreement for any reason, a Party may disclose the Confidential Information:

- 29.2.1 in the case of GoS Parties, to any of its ministers, civil servants, directors, officers and employees, and in the case of the Company, to its direct shareholders, directors, officers or employees (each a “**Recipient**”) to the extent necessary to achieve the purposes of this Agreement, provided that:
 - 29.2.1.1 the disclosing Party shall procure that each Recipient is made aware of and complies with the disclosing Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
 - 29.2.1.2 in no circumstances shall disclosure to the public be permitted pursuant to this clause 29.2.1;
- 29.2.2 if, and only to the extent, required to disclose such information by judicial, regulatory or administrative process or otherwise in accordance with any law or the rules of any recognised stock exchange applicable to the disclosing Party;
- 29.2.3 with the consent of the other Parties (not to be unreasonably withheld), in the interests of attracting debt or equity financing for the Project, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;
- 29.2.4 to its Contractors, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed;
- 29.2.5 to its legal, financial and/or technical advisors or pursuant to the Financing Documents, provided that prior to making such disclosure, the disclosing Party obtains an

appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed; or

29.2.6 in a legal action or proceeding brought by the disclosing Party in pursuit of its rights or in exercise of its remedies; or

29.2.7 to its insurers, provided that prior to making such disclosure, the disclosing Party obtains an appropriate confidentiality undertaking from the person to whom the Confidential Information is to be disclosed.

29.3 Exceptions

The obligations contained in clauses 29.1 and 29.2 shall not apply to any Confidential Information which:

29.3.1 is at the Effective Date in, or at any time after the Effective Date comes into, the public domain other than through breach of this Agreement by the disclosing Party or any Recipient;

29.3.2 can be shown by the disclosing Party to the reasonable satisfaction of the other Parties to have been known to the disclosing Party independently; or

29.3.3 on, before or after the Effective Date, has come lawfully into the possession of the disclosing Party from a third party.

29.4 Press Releases

This prohibition shall not forbid a Party, with the prior written consent of the other Parties, from issuing press releases containing Confidential Information in relation to the progress of the Project.

29.5 Definition

For the purposes of this clause 29, “**Confidential Information**” means this Agreement and all information concerning the Project and the other Parties (or their Affiliates), whether:

29.5.1 in writing, verbally or by any other means; or

29.5.2 acquired directly or indirectly before or after the Effective Date.

30. NOTICES

30.1 Addresses for Service

A notice and all other forms of written communication shall be personally delivered, sent by registered post, sent by facsimile transfer or sent by email to the relevant address below. Notice or communication by email shall only be valid if receipt is confirmed by the recipient acknowledging receipt of the email.

30.1.1 **GoS**

Address:	<input type="checkbox"/>
Attention:	<input type="checkbox"/>
Fax:	<input type="checkbox"/>
Email	<input type="checkbox"/>

30.1.2 KW&SB

Address:	<input type="checkbox"/>
Attention:	<input type="checkbox"/>
Fax:	<input type="checkbox"/>
Email	<input type="checkbox"/>

30.1.3 Company

Address:	<input type="checkbox"/>
Attention:	<input type="checkbox"/>
Fax:	<input type="checkbox"/>
Email	<input type="checkbox"/>

30.2 Deemed Service

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

- 30.2.1 in the case of any communication made by letter, when delivered by hand, by recognised courier or by mail (registered return receipt requested) at the address set out in clause 30.1.1, clause 30.1.2 or clause 30.1.3 (as applicable);
- 30.2.2 in the case of any communication made by facsimile, when transmitted properly addressed to the facsimile number set out in clause 30.1.1, clause 30.1.2 or clause 30.1.3 (as applicable) and the sender has received a sent receipt; and
- 30.2.3 in the case of any communication made by email, when transmitted properly addressed to the email address set out in clause 30.1.1, clause 30.1.2 or clause 30.1.3 (as applicable), and the sender has received a sent receipt.

30.3 Changes to Addresses for Service

If a Party changes its notice details set out in clause 30.1, it shall provide the other Parties with prompt notice of any such changes prior to effecting the same.

31. MISCELLANEOUS

31.1 Amendments

This Agreement may be amended only with the prior written consent of all the Parties.

31.2 No Implied Waiver

The failure of any Party to insist upon strict performance of any provisions of this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such right for the future.

31.3 Invalidity

The invalidity or unenforceability of any provisions of this Agreement shall be determined in accordance with clause 27.3. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view towards effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected by such determination.

31.4 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

31.5 Relationship of the Parties

31.5.1 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between the Parties. Each Party shall be liable individually and severally for its own obligations under this Agreement.

31.5.2 Unless stated otherwise herein, the obligations of the GoS in this Agreement are limited to payments due to the Company. The GoS' obligations in this Agreement shall, in no event, extend to the performance obligations of KW&SB.

31.5.3 KW&SB shall not be responsible for any payments due to the Company pursuant to this Agreement by the GoS.

31.5.4 Obligations of the GoS and KW&SB under this Agreement and the ~~Project~~Relevant Agreements to which they are a party, shall be several and not joint.

31.6 Expenses

Without prejudice to the terms of this Agreement, each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, execution, delivery, performance of, and compliance with this Agreement.

31.7 Language

This Agreement is being executed in the English language.

31.8 Entire Agreement

This Agreement and its appendices constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all previous understandings, representations, or agreements between the Parties, whether written or oral.

31.9 No Waiver

The granting of any consent, approval or review by the Independent Appointees or a GoS Party to any of the designs, works, plans or time programmes or the manner of implementation of the Project shall not relieve or reduce the Company's responsibility in performing its obligations as stipulated in the Agreement, or its responsibility to achieve the level of performance provided for in the Agreement.

31.10 Counterparts

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by all the Parties constitute one and the same instrument; and thereafter, each counterpart shall be deemed to be an original instrument as against any Party who has signed it.

APPENDIX 1: TECHNICAL SPECIFICATIONS

[The appendix 1 to the Concession Agreement will comprise Volume II of the RFP and will be inserted at signing with any necessary changes for references to the Proposal.]

APPENDIX 2: IMPLEMENTATION SCHEDULE

1. MOBILISATION AND COMMENCEMENT

Milestones	Date
Effective Date (date of signing of Concession Agreement)	T
Scheduled Mobilisation Date	T + 2 months
Finalization of ESIA, including all required studies	T + 3 months
Installation of Metering Systems and Monitoring Systems	T + 3 months
Finalization of ESIA, including all required studies	T + 6 months
Mobilisation Testing	T + 4 months
Project handover to the Company	T + 4 months
Start of Site preparation	T + 2 months
Proposed Construction Documents submission by the Company	T + 5 months
Proposed Construction Documents approval by the Independent Engineer	T + 6 months
Scheduled Commencement Date	T + 6 months

2. PROJECT COMPLETION

Milestones	Date
Proposed Construction Documents submission by the Company	T + 7 months
Proposed Construction Documents approval by the Independent Engineer	T + 8 months
Project completion of:	
- KWC rehabilitation;	T + 12 months
- new pipeline and associated works;	T + 16 months
- pump stations;	T + 18 months
- rising mains;	T + 20 months
- Treatment Plant and Reservoir rehabilitation;	T + 19 months
- Solar Plant; and	T + 20 months
- SCADA, metering, and communications.	T + 21 months

3. COMMISSIONING

Milestones	Date
Commissioning of canal rehabilitation and connecting pipelines	
- Start of Performance Tests	T + 22 months

- Start of Reliability Test Runs	T + 23 months
Pumping station 1	
- Start of Start-up Tests	T + 18 months
- Start of Performance Tests	T + 22 months
- Start of Reliability Test Runs	T + 23 months
Pumping station 2 (if any)	
- Start of Start-up Tests	T + 18 months
- Start of Performance Tests	T + 22 months
- Start of Reliability Test Runs	T + 23 months
Commissioning of the Solar Plant	
- Scheduled PV Provisional Acceptance Date	T + 22 months
Commissioning of the water treatment plant including Reservoir	
- Start of Start-up Test	T + 19 months
- Start of Performance Test	T + 22 months
- Start of Reliability Run	T + 23 months
Scheduled Project Commercial Operations Date	T + 24 months

APPENDIX 3: MINIMUM INSURANCE REQUIREMENTS

INSURANCE FOR CONSTRUCTION ACTIVITIES

1. Marine Cargo

- Cover** : Physical loss or damage to all materials, equipment, machinery, spares and other items for incorporation in the C&O Activities on an “all risks” basis whilst in transit by sea, air, or land from the country of origin anywhere in the world to the Site;
- Cover is to be on the basis of Institute Cargo Clauses (A) plus war, strike, riot and civil commotion and should include a minimum of sixty (60) Days of storage on the Site.
- Sum Insured** : The value of largest shipment or the highest value in temporary storage (as part of the journey to the Site) plus insurance and freight (CIF) whichever is greater.
- At any time, the shipment value shall not exceed United States Dollars ten million only (USD 10,000,000/-).
- Deductibles** : Not to exceed United States Dollars fifteen thousand only (USD 15,000/-) for each loss.
- Period of Insurance** : From commencement of first shipment to the unloading of final shipment at the Site.
- Insured Parties** : KW&SB, EPC Contractor and all other contractors and sub-contractors of any tier involved in the supply of goods, materials or equipment for incorporation into the Project Activities.
- Extensions and Conditions** : Cover to include:
- (i) Institute Cargo Clauses “A”;
 - (ii) Institute Cargo Clauses (Air Cargo);
 - (iii) Institute Strikes & War clauses (Cargo);
 - (iv) Institute Strikes & War clauses (Air Cargo);
 - (v) Institute Replacement clause;
 - (vi) Institute Classification clause;
 - (vii) 50/50 clause; and
 - (viii) 200% accumulation clause.

2. Construction “All Risks”

- Cover** : Physical loss or damage to the assets installed or rehabilitated as part of the Mobilisation Activities or the C&O Activities, including all equipment, materials, plant, machinery, spares, temporary structures and all other property of whatsoever nature or description (but excluding the construction plant and equipment belonging to or the responsibility of the contractors) to be incorporated in, used or rehabilitated in connection with

- the Project, including testing and commissioning.
- Sum Insured*** : The full reinstatement or replacement value of the assets installed or rehabilitated as part of the Mobilisation Activities or C&O Activities, including any “free issue” items.
- Deductibles*** : Not to exceed for each and every occurrence:
- (i) United States Dollars twenty thousand only (USD 20,000/-) in respect of testing and commissioning, extended maintenance and defects coverage;
 - (ii) United States Dollars thirty thousand only (USD 30,000/-) in respect of storm, tempest, flood, tsunami; and
 - (iii) United States Dollars fifteen thousand only (USD 15,000/-) in respect of all other losses.
- Period of Insurance*** : From the earlier of the notice to proceed as defined in the EPC Contract, the Commencement Date or from the commencement of the construction activity at Site, until the Project Commercial Operations Date, plus cover for minimum twelve (12) Months extended maintenance.
- Insured Parties*** : The GoS Parties, the Company, the EPC Contractor and all other contractors and sub-contractors of any tier, including consultants for their activities on or about the Site only.
- Extensions and Conditions*** : To include:
- (i) Offsite storage;
 - (ii) Inland transit of locally procured materials wholly within Pakistan;
 - (iii) Strike, riot and civil commotion (unless covered under the Terrorism and Sabotage insurance);
 - (iv) Insurers to waive all rights of subrogation against the Karachi Water and Sewerage Board (KW&SB) and against all other Insured Parties as provided above;
 - (v) LEG 2/96 faulty design / defects coverage;
 - (vi) Escalation provision;
 - (vii) Inadvertent errors and omissions;
 - (viii) Claims will be paid in the currency in which the cost is incurred;
 - (ix) 50/50 clause;
 - (x) Removal of debris;
 - (xi) Expediting expenses;
 - (xii) Public authority requirements; and
 - (xiii) Professional fees,

and subject to sub-limits based on prevailing insurance market norms.

3. **Third Party Liability**

- Cover*** : Legal liability of the Insured Parties as provided below for death or bodily injury to third parties or loss or damage to third party property arising out of or in connection with the Mobilisation Activities and C&O Activities.
- Limit of Indemnity*** : No less than United States Dollars ten million only (USD 10,000,000/-) for each occurrence but in the aggregate in respect of sudden and accidental pollution risks.
- Deductibles*** : Not to exceed United States Dollars ten thousand only (USD 10,000/-) for each and every occurrence.
- Period of Insurance*** : As per the Construction All Risks insurance.
- Insured Parties*** : The GoS Parties, the EPC Contractor and all other contractors and sub-contractors of any tier and their respective directors, officers and employees, and including consultants for their activities on or about the Site only.
- Geographical Limits*** : Pakistan and including business trips worldwide in connection with the Project.
- Extensions and Conditions*** : To include:
- (i) Cross liability;
 - (ii) Worldwide jurisdiction subject to North American conditions; and
 - (iii) Sudden, unintended and unexpected seepage, pollution and contamination.

4. **Terrorism and Sabotage**

- Cover*** : Physical loss or damage and consequent loss of gross profit following delay to the anticipated Project Commercial Operations Date caused by an act of terrorism and/or sabotage to the Project.
- Sum Insured*** : A sum which is sufficient to cover the largest foreseeable loss scenario for full reinstatement value of such lost or damaged property.
- Indemnity Period*** : Twelve (12) Months from the anticipated Project Commercial Operations Date or as otherwise approved by the Independent Engineer.
- Deductibles*** : Not to exceed United States Dollars twenty-five thousand only (USD 25,000/-) in respect of physical loss or damage for each and every occurrence.
- Period of Insurance*** : As per the Construction All Risks insurance.
- Insured Parties*** : KW&SB, the EPC Contractor and all other contractors and sub-

contractors of any tier.

Geographical Limits : Pakistan.

5. **Marine Delay in Start-Up (“MDSU”) Insurance**

Cover : Loss of revenue following delay in start of commercial operations of the Project, as a direct result of physical loss or damage covered under the Marine Cargo Insurance above.

Sum Insured : Estimated gross revenue or an amount at least equal to the estimated amount due to Financing Parties under the Financing Documents and fixed expenses incurred during the Indemnity Period.

Indemnity Period : Not less than twelve (12) Months from the anticipated Project Commercial Operations Date.

Period of Cover : As per Marine Cargo insurance above.

Insured : The borrower and the lenders each for their respective rights and interests.

Deductibles : No more than forty-five (45) Days.

General : To include delay due to damage to the carrying vessel or conveyance.

6. **Delay in Start Up (“DSU”) Insurance**

Cover : Loss of revenue following delay in start of commercial operations of the Project as a direct result of physical loss or damage covered under Construction All Risk Insurance above.

Sum Insured : Estimated gross revenue or an amount at least equal to the estimated amount due to Financing Parties under the Financing Documents and fixed expenses during the Indemnity Period.

Indemnity Period : Not less than twelve (12) Months from the anticipated Project Commercial Operations Date.

Period of Cover : As per the Construction All Risks insurance.

Insured : The borrower and the lenders each for their respective rights and interests.

Deductible : No more than sixty (60) Days.

General : To include:

- (a) Denial of access; and
- (b) Customers’ and suppliers’ extensions (in respect of FLEXA perils.

7. **Miscellaneous**

Other insurance as is customary, desirable or necessary to comply with the Legal Requirements, such as workers’ compensation and employers’ liability insurance in relation to all workmen employed in the construction of the Project, and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in Pakistan in connection with the Project.

**INSURANCE FOR OPERATIONS AND MAINTENANCE ACTIVITIES (*during the
Concession Period*)**

From the Commencement Date, as applicable, and renewable annually unless otherwise agreed by KW&SB:

1. **Property Damage “All Risks”**

- Cover*** : To cover physical loss or damage to all assets comprising the Project, including but not limited to, buildings and their contents, machinery, spares, fixtures, fittings and all other personal property, against “all risks” of physical loss or damage and machinery breakdown.
- Sum Insured*** : An amount sufficient to reinstate the KWC.
- Deductibles*** : Not to exceed for each and every occurrence:
- United States Dollars twenty-five thousand only (USD 25,000/-) in respect of storm, tempest, flood, tsunami; and
 - United States Dollars fifteen thousand only (USD 15,000/-) for all other losses.
- Period of Insurance*** : From the Project Commercial Operations Date and renewable annually till the Term Expiry Date.
- Insured Parties*** : The GoS Parties, the O&M Contractor and all other contractors and sub-contractors of any tier and including consultants for their activities on or about the Site only.
- Extensions and Conditions*** : To include:
- (i) Offsite storage;
 - (ii) Inland transit of locally procured materials wholly within Pakistan;
 - (iii) Strike, riot and civil commotion (unless covered under the Terrorism and Sabotage insurance);
 - (iv) Insurers to waive all rights of subrogation against KW&SB and, in respect of their Site activities only, against all other Insured Parties as provided above;
 - (v) Escalation provision;
 - (vi) Inadvertent errors and omissions;
 - (vii) Claims will be paid in the currency in which the cost is incurred;
 - (viii) Removal of debris;
 - (ix) Expediting expenses;
 - (x) Public authority requirements; and

(xi) Professional fees,
and subject to sub-limits based on prevailing insurance market norms.

2. **Third Party Liability**

- Cover*** : Legal liability of the Insured Parties, as provided below, for death or bodily injury to third parties or loss or damage to third party property arising out of or in connection with the ownership, operation, use or maintenance of the Project, including supply of products.
- Limit of Indemnity*** : No less than United States Dollars ten million only (USD 10,000,000/-) for each occurrence but in the aggregate in respect of sudden and accidental pollution risks.
- Deductibles*** : Not to exceed United States Dollars ten thousand only (USD 10,000/-) for each and every occurrence.
- Period of Insurance*** : As per the Property Damage All Risks insurance.
- Insured Parties*** : The GoS Parties, the O&M Contractor and all other contractors and sub-contractors of any tier and their respective directors, officers and employees, and including consultants for their activities on or about the Site only.
- Geographical Limits*** : Pakistan and including business trips worldwide in connection with the Project.
- Extensions and Conditions*** : To include:
- (i) Cross liability;
 - (ii) Worldwide jurisdiction subject to North American conditions; and
 - (iii) Sudden, unintended and unexpected seepage, pollution and contamination.

3. **Terrorism and Sabotage**

- Cover*** : Physical loss following interruption in the O&M Activities by an act of terrorism and/or sabotage to the Project.
- Sum Insured*** : A sum which is sufficient to cover the largest foreseeable loss scenario for full reinstatement value of such lost or damaged property.
- Indemnity Period*** : Twelve (12) Months from the anticipated Project Commercial Operations Date.
- Deductibles*** : Not to exceed United States Dollars twenty-five thousand only (USD 25,000/-) in respect of physical loss or damage for each and every occurrence.
- Period of Insurance*** : As per the Property Damage All Risks insurance.

Insured Parties : The GoS Parties, the O&M Contractor and all other contractors and sub-contractors of any tier.

Geographical Limits : Pakistan.

4. **Business Interruption Insurance**

Cover : Loss of revenue as a direct consequence of loss of or damage to the Project insured under Property All Risks Insurance.

Sum Insured : Gross revenue or an amount equal to the estimated amount due to Financing Parties under the Financing Documents due and fixed expenses incurred during the Indemnity Period.

Indemnity Period : Not less than twelve (12) Months.

Period of Cover : As per Property All Risks Insurance above.

Insured : The GoS Parties, the O&M Contractor and all other contractors and sub-contractors of any tier and including consultants for their activities on or about the Site only.

Deductibles : No more than thirty (30) Days for each and every loss.

General : To include denial of access.

5. **Miscellaneous**

Other insurances which are:

- (i) customary or necessary to comply with the Legal Requirements, such as contractual insuring responsibility, workers' compensation and employers' liability insurances in relation to all workmen employed in the Project or in connection with its operation; and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in Pakistan in connection with the Project; and
- (ii) required by applicable Laws in Pakistan.

APPENDIX 4: CONDITIONS

Part 1: Mobilisation Conditions Precedent

1. Company's Responsibility

It shall be a condition precedent to the Mobilisation Date that each of the following conditions are satisfied and supplied to the Independent Appointees by the Company, unless any such condition precedent is waived or deferred in writing by the GoS:

- 1.1 copies of the corporate documents (*i.e.*, memorandum and articles of association, certificate of incorporation and certificate of commencement of business (if applicable)) of the Company, duly certified as true copies by the company secretary or director of the Company;
- 1.2 copies of the corporate documents (*i.e.*, memorandum and / or articles of association, certificate of incorporation, certificate of commencement of business, business license, charter and / or partnership deed (as the case may be) of the Sponsor(s), duly certified as true copies by the company secretary or director or other authorized person of the Sponsor(s);
- 1.3 copies of the Board Resolutions (or authority letters, in case the Sponsor(s) is a partnership) that duly authorize:
 - (a) the Company and the Sponsor(s) (as the case may be) to enter into the relevant Project Agreements (to which they are a party) and to undertake the obligations, liabilities, as set out in the applicable Project Agreements, and the transactions as contemplated by the Project Agreements (to which they are a party); and / or
 - (b) a specified person or persons to:
 - (i) execute the relevant Project Agreements, on behalf of the Company and the Sponsor(s), to which they are a party; and
 - (ii) undertake all other acts and to issue and / or execute any document / instrument, specifically relating to and / or under the Project Agreements (to which they are a party), as contemplated therein;
- 1.4 the Financial Model;

~~1.5 certified true copies of the signed Financing Documents;~~

~~1.6~~1.5 within thirty (30) Days of the Effective Date, the Company has signed and entered into a valid and effective:

- (a) Independent Engineer Contract for the appointment of the Independent Engineer; and
- (b) Independent Auditor Contract for the appointment of the Independent Auditor;

~~1.7 two (2) certified copies of the signed Concession and License Direct Agreement;~~

~~1.8~~1.6 two (2) certified copies of the signed License Agreement;

~~1.91.7~~ evidence of establishment of the:

- (a) Independent Engineer Payment Account and issuance of the Independent Engineer Payment Account Standing Instructions; and
- (b) Independent Auditor Payment Account and issuance of the Independent Auditor Payment Account Standing Instructions;

~~1.101.8~~ two (2) certified copies of signed EPC Contract(s) and the O&M Contract(s);

~~1.111.9~~ two (2) certified copies of the licenses issued by the Pakistan Engineering Council to the EPC Contractor and the O&M Contractor, for construction and operation works (respectively) in respect of the Project;

~~1.121.10~~ copies of a full or limited notice to proceed (as applicable), in the event the Company has issued a full or limited notice to proceed to the EPC Contractor;

~~1.131.11~~ copies of the Approvals procured by the Company and the same are effective and valid and have not been cancelled and / or rescinded;

~~1.14~~ ~~a copy of the Environmental and Social Impact Assessment (ESIA) report, duly approved by the Sindh Environmental Protection Agency, Government of Sindh;~~

~~1.151.12~~ two (2) certified copies of the evidence of establishment of the Company Payment Account, certified by the bank in which Company Payment Account has been opened by the Company;

~~1.161.13~~ a legal opinion from the legal counsel of the Company confirming that: (a) the Company 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 the EFU Agreement and to undertake the transactions as contemplated by this Agreement and the EFU Agreement and to assume the obligations as contained herein and the EFU Agreement and the enforceability of the same against the Company; (b) this Agreement and the EFU Agreement have been duly executed and are legally valid, binding and enforceable against the Company in accordance with the terms herein and the EFU Agreement; and (c) all consents and approvals or actions required to be undertaken, fulfilled and obtained (including the obtaining of any necessary Approvals on behalf of or in the name of the Company) in order for the Company to enter into and comply with its obligations under this Agreement and the EFU Agreement (as the case may be), have been undertaken, fulfilled or obtained;

~~1.171.14~~ a legal opinion from the legal counsel(s) of the Sponsor(s) confirming that: (a) the Sponsor(s) has / have been duly organized and is / are validly existing under the laws of the jurisdiction where it / they are incorporated and has / have the requisite power and authority to enter into the EFU Agreement and to undertake the transactions as contemplated by the EFU Agreement and to assume the obligations as contained in the EFU Agreement and the enforceability of the same against the Sponsor(s); (b) the EFU Agreement has been duly executed and is legally valid, binding and enforceable against the Sponsor(s) in accordance with the terms of the EFU Agreement; and (c) all consents and approvals or actions required to be undertaken, fulfilled and obtained (including the obtaining of any necessary Approvals on behalf of or in the name

of the Sponsor(s)) in order for the Sponsor(s) to enter into and comply with its / their obligations under the EFU Agreement, have been undertaken, fulfilled or obtained; and

~~1.181.15~~ such other documents which the GoS may require in connection with the above.

2. KW&SB's Responsibility

It shall be a condition precedent to the Mobilisation Date that each of the following conditions is satisfied and supplied to the Independent Appointees by KW&SB, unless any such condition precedent is waived or deferred in writing by the Company:

2.1 within thirty (30) Days of the Effective Date, KW&SB has signed and entered into a valid and effective:

- (a) Independent Engineer Contract for the appointment of the Independent Engineer; and
- (b) Independent Auditor Contract for the appointment of the Independent Auditor;

~~2.2~~ two (2) certified copies of the signed Concession and License Direct Agreement; and

~~2.32.2~~ two (2) certified copies of the signed License Agreement.

3. GoS' Responsibility

It shall be a condition precedent to the Mobilisation Date that each of the following conditions is satisfied and supplied to the Independent Appointees by the GoS, unless any such condition precedent is waived or deferred in writing by the Company:

3.1 within thirty (30) Days of the Effective Date, GoS has signed and entered into a valid and effective:

- (a) Independent Engineer Contract for the appointment of the Independent Engineer; and
- (b) Independent Auditor Contract for the appointment of the Independent Auditor;—

~~3.2~~ two (2) certified copies of the signed Concession and License Direct Agreement; and

~~two (2) certified copies of the signed License Agreement.~~

4. General Conditions Precedent

It shall be a condition precedent to the Mobilisation Date that by the Scheduled Mobilisation Date, as such date may be extended pursuant to the terms of this Agreement, or such later date as the Parties hereto may agree in writing, a closing certificate dated the date of the Mobilisation Date, from:

4.1 each Party hereto in favour of the other Parties to the effect that the representations and warranties of each of the GoS Parties and the Company, as the case may be, contained or incorporated by reference herein are true and correct in all material respects on and as of the Mobilisation Date with the same force as though made on and as of the Mobilisation Date; and

4.2 each party to the EFU Agreement in favour of the other parties to the EFU Agreement, to the effect that the representations and warranties of each of the parties to the EFU Agreement, contained or incorporated by reference in the EFU Agreement are true and correct in all material respects on and as of the Mobilisation Date with the same force as though made on and as of the Mobilisation Date.

Part 2: Commencement Conditions Precedent

5. Company's Responsibility

It shall be a condition precedent to the Commencement Date that each of the following conditions are satisfied and supplied to the Independent Appointees by the Company, unless any such condition precedent is waived or deferred in writing by the GoS:

5.1 a letter from the Financing Parties (or an agent of the same) confirming that the Financing Documents have been signed and that all conditions precedents to Financial Closing have been satisfied, ~~deferred~~ or waived except:

- (a) the issuance of the SBP Debit Authority or GoS Termination SBLC (as applicable); and
- (b) the funding of the GoS Payment Account with the GoS Payment Account Required Balance (the "**Partial FC Letter**");

5.2 not later than thirty (30) Days from the Mobilisation Date, submit the Operating and Maintenance Procedures in accordance with clause 10.3;

5.3 not later than thirty (30) Days prior to the Scheduled Commencement Date, submit the construction manual and the operations and maintenance manuals;

5.4 not later than thirty (30) Days prior to the Scheduled Commencement Date, submit evidence of establishment of the Environmental and Social Management System;

5.5 submit evidence of procurement of all insurances in terms of clause 18;

5.6 submit the Mobilisation Testing Acceptance Certificate in accordance with appendix 5;

5.7 evidence of incorporation of share transfer restrictions for Sponsors, as specified in clause 8 of the EFU Agreement, in the corporate documents of the Company;

5.8 certified copy of the Operations Handover Certificate; ~~and~~

5.9 such other documents which the GoS may reasonably require in connection with the above;

5.10 a copy of the Environmental and Social Impact Assessment (ESIA) report, duly approved by the Sindh Environmental Protection Agency, Government of Sindh;

5.11 certified true copies of the signed Financing Documents, with conforming electronic copies; and

5.12 two (2) certified copies of the signed Concession and License Direct Agreement.

6. GoS' Responsibility

It shall be a condition precedent to the Commencement Date that each of the following conditions are satisfied and supplied to the Independent Appointees by the GoS, unless any such condition precedent is waived or deferred in writing by the Company:

6.1 following confirmation by the Independent Appointees to the GoS that the Commencement Conditions Precedent set out in paragraph 5.1 of this appendix 4 have been satisfied, deferred or waived and the Partial FC Letter has been issued, evidence of:

- (a) establishment of the GoS Payment Account ~~and~~, issuance of the GoS Payment Account Standing Instructions and the GoS Payment Account Letter of Lien;
- (b) the funding of the GoS Payment Account with the GoS Payment Account Required Balance;-
- (c) establishment of the GoS Equity Account and issuance of the GoS Equity Account Standing Instructions; and
- (d) issuance of the SBP Debit Authority or the GoS Termination SBLC (as applicable).

7. General Conditions Precedent

It shall be a condition precedent to the Commencement Date that by the Scheduled Commencement Date, as such date may be extended pursuant to the terms of this Agreement, or such later date as the Parties hereto may agree in writing, that a closing certificate dated the date of the Commencement Date from each Party hereto in favour of the other Parties to the effect that the representations and warranties of the GoS Parties and the Company, as the case may be, contained or incorporated by reference herein are true and correct in all material respects on and as of the Commencement Date with the same force as though made on and as of the Commencement Date.

APPENDIX 5: TESTING

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1. INTRODUCTION

The Company shall establish the Metering and Monitoring System (including any additional systems) to address all metering and monitoring of inputs to and outputs from the KWC.

The Company shall also develop and implement a proper Metering and Testing Plan to address all metering and monitoring requirements to:

- demonstrate compliance with Legal Requirements;
- demonstrate compliance with its obligations as set out in the Concession Agreement;
- ensure that process monitoring is adequately implemented throughout the KWC including the canal, new pipeline and offtakes, ~~K-HKIII~~ Conduit, pumping stations, rising mains, power supply facilities such as the Solar Plant, and the Treatment Plant, including sludge handling and treated effluent discharge infrastructure.

During the C&O Period, the water quality parameters shall be determined through Mobilisation Testing. During the Operating Period, the main compliance monitoring of the KWC shall focus on the metering, monitoring and analysis of the received and the delivered water, as well as the by-pass discharges. These main compliance criteria shall be measured against the prescribed range of influent volumes and quality and set limits. The combined compliance and impact of events will be applied to the Service Payments and deduction formulae to calculate the Service Payments due to the Company for each Billing Period, in accordance with appendix 8.

The Performance Guarantees included in this appendix 5 constitutes the minimum parameters that are explicitly stated herein, as key performance indicators (KPIs) for the KWC. However, the Company can and should consider more variables in the Metering and Testing Plan that shall be approved by the Independent Engineer. In general, where the method or frequency for any activities is prescribed under Law, the Metering and Testing Plan shall adopt those frequencies and methods.

This appendix 5 is neither addressing nor referring to the quality control and quality assurance testing for construction materials, such as concrete and earthworks, where, for instance, compressive strength or compaction tests are carried out. The Detailed Engineering Design that must be developed by the Company and approved by the Independent Engineer, shall address the necessary materials quality control according to current regulations and engineering standards. This shall be explicitly included in all Construction Drawings and the quality control and assurance plan to be developed by the Company and approved by the Independent Engineer.

2. DEFINITIONS

2.1 General Definitions

“Performance Guarantees” means the performance guarantees of the KWC as provided in attachment 1, attachment 2 and attachment 3 to this appendix 5, including key parameters associated with water quality, water volumes, power consumption, and health and safety.

“Technical Limits” means the water quality design limits of the Treatment Plant, as set out in table 1.1 of attachment 1 of this appendix 5.

Different types of testing are considered in this appendix 5, though the Company can propose a different approach within the Metering and Testing Plan and, eventually, implement it if the Independent Engineer approves of the same.

2.2 Testing during the Mobilisation Period

“**Mobilisation Testing**” means all the tests to be carried out to assess the condition of the existing KWC prior to the handover of KWC to the Company on the Commencement Date, in accordance with paragraph 6 of this appendix 5.

The Mobilization Period is assumed to last for six (6) Months from the Effective Date, though the testing should be carried out during two (2) weeks, after the implementation of the minimum metering systems in accordance with appendix 1. This Mobilization Testing will set the performance parameters of KWC to be respected by the Company during the C&O Period.

2.3 Testing during the C&O Period

The Metering and Testing Plan shall consider Start-up Tests and Trial Runs according to the following:

“**Start-up Tests**” means the tests to be performed in respect of the KWC in accordance with paragraph 7 of this appendix 5. This testing shall be performed for the purpose of proving the operational performance of elements, equipment, and ancillary systems of KWC identified in the Metering and Testing Plan. During the Start-up Tests, the Company shall demonstrate that each applicable element of equipment and related system achieves the applicable technical specifications provided by the equipment manufactures as incorporated in the Construction Documents.

- The Start-up Tests can imply testing at the factory of each such item of equipment to ascertain the mechanical, electrical, electronic and structural suitability and reliability, as appropriate. For instance, the tests shall include hydraulic leakage testing of the equipment prior to installation.
- Upon arrival of equipment at the Site, all equipment shall be made available for inspection in order to determine whether any part of the equipment may have been damaged during transit. The equipment shall be installed without delay whenever possible. If the equipment cannot be installed immediately, it must be stored under the manufacturers’ recommended and appropriate conditions.
- Upon installation, the Start-up Tests shall confirm the operational reliability of the different elements and equipment.

“**Trial Run**” means the tests to be performed in respect of the KWC in accordance with paragraph 8 of this appendix 5. This testing shall encompass the entire KWC once all components have been rehabilitated, and construction is finished. A trial run may last for twenty-four (24) hours at least, and it will help the Company to assess the proper performance of the KWC as a prior step before commissioning.

2.4 Testing during the commissioning phase

The commissioning phase of the KWC (which will occur during the C&O Period) once the

construction is finished shall last for three (3) months, and during the commissioning, inflows from Hub Dam shall be introduced into the system in a stable state. During commissioning:

- the inlet works (Head Regulator) and all elements of the KWC will be operational,
- the Company shall monitor and check all equipment at regular intervals in accordance with the checklists established in the Metering and Testing Plan; and
- equipment may be stopped to make adjustments, but the KWC should not stop operations. The control systems shall be tested thoroughly under normal operating conditions with adjustments made to simulate process faults and equipment failures.

Commissioning is deemed completed once the KWC has been fully stabilized and achieves the performance requirements under a full range of anticipated flow conditions.

The following types of testing shall be considered in the Metering and Testing Plan during commissioning, in accordance with paragraph 9 of this appendix 5:

“Performance Tests” means the tests to assess the performance of the entire KWC for at least twenty-four (24) continuous hours, in terms of water losses, water quality, power consumption, and noise levels as set out in attachments 1, 2, and 3 of this appendix 5. Acceptance details are given in paragraph 9.3.8 of this appendix 5.

“Reliability Test Runs” means the tests to be carried out in order to assess the reliability of the entire KWC for a period of thirty (30) consecutive Days. Acceptance details are given in paragraph 9.4.4 of this appendix 5.

Once the Performance Tests, the Reliability Test Runs and such other tests agreed and set out in the Metering and Testing Plan are successfully completed, the Independent Engineer shall issue the Project Commercial Operations Certificate.

2.5 Testing during the Operating Period

Testing during the Operating Period shall be defined in the Metering and Testing Plan submitted to the Independent Engineer ninety (90) Days prior to the Schedule Project Commercial Operations Date and may consist of:

“Regular monitoring, metering and testing” during the Operating Period, which include the minimum flow and water quality monitoring requirements for the KWC, taking into consideration the Performance Guarantees. Flow and quality monitoring devices shall be installed, based on Good International Industry Practices, at the locations, and with reference to the metering and monitoring system schedule described in paragraphs 2.6.1 and 2.6.2 of appendix 1. Those are the minimum requirements that shall be defined and implemented according to the Metering and Testing Plan;

“Performance Tests” that are carried out for twenty-four (24) hours at least and **“Reliability Test Runs”** that are performed during thirty (30) consecutive Days, shall also be considered during the Operating Period as a complement to the regular monitoring, metering and testing. The Metering and Testing Plan shall define the frequency and details associated with these types of testing, and they shall be implemented after approval by the Independent Engineer.

“Handover Performance Testing” means all the tests to be carried out to assess the condition of the KWC during the handover from the Company to KW&SB at the end of the Concession Period. This testing shall be like the one carried out during the commissioning stage and will be further defined in the Metering and Testing Plan.

3. GENERAL CONSIDERATIONS

3.1 Metering and Testing Plan

3.1.1 The Company shall be responsible for providing all inputs, materials and other supplies required to carry out all tests under this appendix 5, except the quantity of water required to be provided by KW&SB under clauses 8.2.2 and 8.3.2 of the Concession Agreement.–

3.1.2 The overall Metering and Testing Plan for the Project shall be carried out over the following periods:

3.1.2.1 Mobilisation Period, during which, the Mobilisation Testing shall be carried out to set the parameters that should be respected during the C&O Period;

3.1.2.2 C&O Period, during which,

(a) Start-up Tests of the KWC and related equipment and systems;

(b) Performance Test;

(c) Reliability Test Run; and

(d) such other tests as agreed and approved in the Metering and Testing Plan,

shall be carried out; and

3.1.2.3 Operating Period, as per paragraph 2.5 of this appendix 5 including the Handover Performance Tests before handover of the Project in terms of clause 21.10 of the Concession Agreement.

3.1.3 At least thirty (30) Days prior to the start of Mobilisation Testing, the Company shall submit to the Independent Engineer, in writing, all relevant procedures in the Metering and Testing Plan relating to the Mobilisation Testing. At least ninety (90) Days prior to the proposed commencement of any subsequent phases of testing described in paragraphs 2.3, 2.4 and 2.5 of this appendix 5, the Company shall submit to the Independent Engineer, in writing, all relevant procedures in the Metering and Testing Plan, which shall include:

3.1.3.1 the test program and frequencies;

3.1.3.2 the test standards;

3.1.3.3 the type of inspection and tests;

3.1.3.4 the methodology of tests of the KWC;

- 3.1.3.5 the checklists, including process data to be recorded;
 - 3.1.3.6 the description of instrumentation to be used during testing and calibration of test results;
 - 3.1.3.7 a list of the tests which are to be witnessed by third parties;
 - 3.1.3.8 the quality control procedures;
 - 3.1.3.9 the Company / Contractor manpower allocation and deployment schedule for performing the tests; and
 - 3.1.3.10 the forms of test records and reports.
- 3.1.4 The Independent Engineer shall have the right, within forty-five (45) Days after receipt of the Metering and Testing Plan, to request the Company to amend the Metering and Testing Plan to include additional tests, which in the opinion of the Independent Engineer should be carried out to establish that the KWC is:
- 3.1.4.1 installed and capable of being operated according to the design, performance and operation requirements specified in appendix 1; and
 - 3.1.4.2 capable of attaining the requirements of this appendix 5,
- and the Company shall incorporate any such reasonable requests in the Metering and Testing Plan.
- 3.1.5 If the Company and the Independent Engineer are unable to agree upon any additional tests as required under paragraph 3.1.4 of this appendix 5, the Dispute shall be referred for resolution pursuant to clause 27 of the Concession Agreement, provided that the Company shall be entitled to proceed with the testing under its proposed Metering and Testing Plan pending resolution of such matter.

3.2 Right to Witness Inspections and Tests

- 3.2.1 The Company shall carry out all necessary off-site tests (including factory acceptance tests) on items relating to the KWC at the manufacturers' works before delivery of such items to the Site. The items shall include as a minimum, the major pumps, major flow meters, motors, pressure vessels, and major electrical and instrumentation and control equipment. The off-site tests shall comply with the appropriate standards for the equipment, and/or the ~~manufacturer's~~manufacturer's requirements.
- 3.2.2 Test certificates shall be submitted as part of the quality assurance / quality control plan, and shall include all test results, calculations, performance graphs and curves, and other requisite information. The test certificates shall be endorsed by representatives of the manufacturer and the Company and submitted to the Independent Engineer for approval.
- 3.2.3 KW&SB shall have the right to have one or more representatives present during any inspections or tests of major equipment and systems of the KWC in the workshops. Unless otherwise specified in this appendix 5, or in the Metering and Testing Plan to be developed in accordance with this appendix 5, the Company shall submit to the Independent Engineer a testing schedule at least ten (10) Business Days prior to the

commencement of such testing. The Company shall provide regular updates of such testing schedule to the Independent Engineer.

- 3.2.4 The presence of the Independent Engineer or KW&SB's representatives during any inspection or test shall in no way relieve the Company of its responsibility for supplying the equipment or systems in accordance with the milestone dates as set out in appendix 2 of the Concession Agreement.

3.3 Taking of Samples and Laboratory Tests

Unless otherwise specified in the Metering and Testing Plan, taking of samples required for the purposes of these tests shall be undertaken in accordance with national and international standards. Laboratory testing shall be performed by institutions which are licensed and accredited to perform the specific tests.

4. REPORTING

- 4.1 In addition to, or in combination with any other reporting that is required under the Concession Agreement, the Company shall submit monthly, quarterly, and annual reports for the Metering and Monitoring Systems.
- 4.2 The Company shall report only on those components of the infrastructure that were being operated by the Company in the corresponding reporting period.
- 4.3 The reports shall clearly address compliance with the applicable requirements of both the existing regulations and the Concession Agreement and shall include the relevant information, including at least, compliance with Performance Guarantees and other matters such as energy consumption and production data, analyses and trending of operational process monitoring and control data, etc.
- 4.4 Any incident that has or is likely to have a detrimental impact on the surrounding environment, and adjoining water resource quality or the quality of treated water to be supplied to an end-user must be reported to the Independent Engineer within twenty-four (24) hours of such incident.

5. INTERNAL AND EXTERNAL AUDITS

5.1 Internal Audits

- 5.1.1 The Company must conduct internal audits on a quarterly basis of its Metering Systems and Monitoring Systems. Audits shall be scheduled in advance for each year.
- 5.1.2 Each audit must assess / address any previous audit findings which remain unresolved. The internal audit process shall also provide for periodic inter-laboratory checking of laboratory analysis results.
- 5.1.3 The internal audit report shall be submitted to the Independent Engineer within no more than fourteen (14) Days of the completion of the audit.

5.2 External Audits

- 5.2.1 Independent external audits on the Metering Systems and Monitoring Systems must be conducted on an annual basis. This may be undertaken in conjunction with other audits, e.g., audits of the management and quality systems.
- 5.2.2 The external auditors shall be appointed by the Company and the scope of the external audit must include:
- assessing the effectiveness of the internal audits conducted;
 - making recommendations, if enhancements are required in terms of, but not limited to, the audit scope, audit participants or team, audit findings, corrective actions, and management approval criteria;
 - assessing, making findings and recommending corrective actions on the level of compliance with the Company's Metering and Testing Plan;
 - making recommendations for any enhancements to the Metering and Testing Plan.
- 5.2.3 All external audit reports must be submitted to the Independent Engineer within no more than fourteen (14) Days of the completion of the audit, serving as fulfilment of the auditing criteria.

6. MOBILISATION TESTING

- 6.1** The Mobilisation Testing shall be carried out for twenty-four (24) continuous hours for the existing KWC prior to the handover of KWC to the Company. Exact details of the performance test standards and procedures shall be mutually agreed upon by the Company and the Independent Engineer but proposed and defined by the Company in the Metering and Testing Plan.
- 6.2** The total electrical power consumption of the KWC shall be measured during the twenty-four (24) hour Mobilisation Testing. The average power consumption shall be used to determine the reference value for the C&O Period.
- 6.3** The Company shall notify the Independent Engineer of readiness of the KWC for Mobilisation Testing, and the installation and verification of the instrumentation required therefor. Within five (5) Days of such notification, the Mobilisation Testing shall commence.
- 6.4** The Mobilisation Testing is scheduled to take place when 100 MGD are being received by the KWC. If that situation does not take place during the Mobilisation Testing, the obtained values can be adjusted during the C&O Period after measuring the real values when 100 MGD are received by the KWC.
- 6.5** During the Mobilisation Testing, the Company and the Independent Engineer shall accept such tests that will define the technical parameters for the KWC during the C&O Period.
- 6.6 Certification of Mobilisation Testing**

- 6.6.1 Within five (5) Business Days of receipt of a test report from the Company on the Mobilisation Testing, including all information reasonably necessary to evaluate the results, the Independent Engineer shall indicate in writing whether it accepts or disputes the accuracy of the test results, and the successful completion of the Mobilisation Testing.
- 6.6.2 If the Independent Engineer disputes the results submitted by the Company, and the Company is unable to agree with the determination of the Independent Engineer, such Dispute shall be referred for resolution pursuant to clause 27 of the Concession Agreement. If it is agreed or determined that retesting is required, the Company shall perform such retesting as promptly as possible after the date of such agreement, or determination thereof under clause 27 of the Concession Agreement.

6.7 Issuance of Mobilisation Testing Acceptance Certificate

Within three (3) Days of the acceptance of the Mobilisation Testing results, the Independent Engineer shall issue the Mobilisation Testing Acceptance Certificate, setting out the:

- 6.7.1 Allowable NRW;
- 6.7.2 Output Water Quality Specifications; and
- 6.7.3 Contracted Specific Net Electricity Consumption.

7. KWC START-UP TESTS DURING C&O PERIOD

- 7.1 The Independent Engineer shall have the right to witness the start-up and operational tests of the KWC, including all related equipment and systems. The Company shall submit to the Independent Engineer a test schedule for all Start-up Tests at least twenty (20) Business Days prior to the proposed commencement date of such tests and provide regular updates of such testing schedule to the Independent Engineer. The tests shall include, but not be limited to items such as:
 - 7.1.1 start-up and operational tests of the firefighting system;
 - 7.1.2 start-up tests of the fire protection system;
 - 7.1.3 the pre-energisation tests;
 - 7.1.4 the protection and trip setting of the pumping stations and the water treatment plant equipment, including related auxiliaries;
 - 7.1.5 demonstration of the functioning of various trip and bypass protections under operating conditions by initiating malfunctioning of any system or by genuine mistake in operation;
 - 7.1.6 start-up and operational tests of common systems such as, but not limited to:
 - 7.1.6.1 electricity supply system;
 - 7.1.6.2 compressed air system;

- 7.1.6.3 raw water supply system from the pumping station;
- 7.1.6.4 dosing system
- 7.1.6.5 chlorination system;
- 7.1.6.6 filtration systems; and
- 7.1.6.7 sand filters cleaning system;
- 7.1.7 protection systems/settings, in accordance with the agreed design and the requirements of the water and power connection systems;
- 7.1.8 protection and trip setting of main pumps installed in the KWC;
- 7.1.9 outage of one of the filters to simulate proper operation of the remaining filters in the Treatment Plant;
- 7.1.10 start-up tests of the relevant part of the Treatment Plant equipment and related facilities and systems, including checking of automatic change-over of standby facilities, interlocks, protections, and alarms;
- 7.1.11 verification of start-up times and loading rates of the pumping stations and the Treatment Plant at various downtime conditions;
- 7.1.12 hydrostatic testing using potable water, including the following as a minimum:
 - 7.1.12.1 hydrostatic testing of the potable water storage facilities, which shall include a twenty-four (24) hour leakage test for each product water storage facility; and
 - 7.1.12.2 pressure tests for all pressure pipes and elements of pressure systems including the potable water storage facilities interconnecting pipes and pumping station, as well as the delivery pipe work up to the Output Water Connection Point or the KWC offtakes;
- 7.1.13 environmental monitoring equipment, water quality monitoring equipment, functioning tests, and verification of guarantees;
- 7.1.14 demonstration of the dispatch and metering data acquisition systems, including the SCADA;
- 7.1.15 verification of mechanical completeness of the pumping stations and the Treatment Plant;
- 7.1.16 functional test of all electromechanical and safety equipment (e.g., pumps, blowers, backwash systems, wastewater treatment, filters, safety equipment, etc.); and
- 7.1.17 all other tests required to demonstrate the safety and security of the KWC and trip systems and to demonstrate compliance with requirements set out in the Concession Agreement.

7.2 Certification of Start-Up Tests

- 7.2.1 The Independent Engineer shall indicate in writing within five (5) Business Days after receiving from the Company a test report on the start-up tests, including all information reasonably necessary to evaluate the results, whether it accepts or disputes that such test results are accurate and the Start-up Tests have been successfully completed.
- 7.2.2 If the Independent Engineer disputes the results submitted by the Company, and the Company is unable to agree with the determination of the Independent Engineer, such Dispute shall be referred for resolution pursuant to clause 27 of the Concession Agreement. If it is agreed or determined that re-testing is required, the Company shall perform such re-testing as promptly as possible after the date of such agreement, or determination thereof under clause 27 of the Concession Agreement.

8 KWC TRIAL RUN

- 8.1 After the Start-up Tests have been completed, the KWC, including its corresponding integrated equipment and facilities, shall be operated for a minimum twenty-four (24) hour trial run at the load settings and operating conditions agreed by the Company and the Independent Engineer. The start, stop and switch-over (to standby equipment) procedures shall be included in the Trial Run. The Company shall be permitted to undertake such work during the Trial Run as is necessary to optimise the running of the KWC. The Company may extend (without adjustment to the Scheduled Project Commercial Operations Date) the duration of the Trial Run to evaluate whether the KWC shall be able to achieve the quality and stability of operations which would be required for the Reliability Test Run and the Performance Tests.
- 8.2 After the Trial Run has been duly completed, the Company shall, prior to undertaking the Performance Test and the Reliability Test Run, demonstrate that:
- 8.2.1 the KWC is providing the received volumes;
- 8.2.2 the Reservoir is fully capable of maintaining the capacity storage as specified in appendix 1 of the Concession Agreement;
- 8.2.3 the Treatment Plant is capable of delivering water in accordance with the Output Water Quality Specifications, and complying with the minimum Performance Guarantees; and
- 8.2.4 the pumping stations and the Treatment Plant are stable, and the treated water matches with the water quality values provided by the equipment suppliers as set out in the relevant attachments to this appendix 5.

9 KWC PERFORMANCE TEST AND RELIABILITY TEST RUNS

9.1 General considerations

The performance and reliability testing of the KWC shall be for the purpose of demonstrating the respective Performance Guarantees and the reliability of the KWC during commissioning.

9.2 Test Procedures and Reporting

- 9.2.1 The testing of the KWC items shall be conducted in accordance with the Metering and Testing Plan, and pursuant to the Operating and Maintenance Procedures.
- 9.2.2 A test report shall be prepared by the Company promptly after completion of each test of the KWC items. The report shall include data as recorded, including valid calibration certificates (not older than six (6) Months).

9.3 Performance Test

- 9.3.1 After successful completion of the Start-up Tests and the Trial Run, and after relevant test protocols have been submitted by the Company and accepted by the Independent Engineer, the Company shall be allowed to prepare the KWC for the Performance Tests.
- 9.3.2 The Company shall adjust the test results for capacity and power consumption in case the applicable conditions during the test are between the relevant Technical Limits for the:
 - 9.3.2.1 pH;
 - 9.3.2.2 Turbidity;
 - 9.3.2.3 Aluminium;
 - 9.3.2.4 Chlorine residual;
 - 9.3.2.5 Faecal Coliform; and
 - 9.3.2.6 Total Coliforms.
- 9.3.3 The Performance Test shall be carried out for twenty-four (24) continuous hours for the entire KWC. The exact details of the Performance Test standards and procedure shall be mutually agreed to by the Company and the Independent Engineer, in accordance with the requirements of the Operating and Maintenance Procedures and coherent with the Metering and Testing Plan.
- 9.3.4 The Company shall be permitted to annul a Performance Test upon demonstrating to the satisfaction of the Independent Engineer that any parameter of the Technical Limits was exceeded during the initial Performance Test and such exceedance was for a period of time and to a degree which was material to the results of the Performance Test. If a Performance Test is annulled, the Company shall at its own cost carry out a further Performance Test for a second continuous twenty-four (24) hours period as soon as the relevant parameter is within the Technical Limits.
- 9.3.5 The total electrical power consumption of the KWC will be measured during the twenty-four (24) hours Performance Test. The average power consumption shall be used to determine compliance.
- 9.3.6 The Company shall notify the Independent Engineer of readiness of the KWC for the Performance Tests and that the instrumentation for the Performance Tests is installed and checked. Within five (5) Days of such notification, the Performance Test shall commence.

- 9.3.7 During the Performance Test, the Company shall demonstrate by means of performance and acceptance tests that the KWC, including related equipment and systems, achieves the Performance Guarantees, such as:
- 9.3.7.1 percentage of losses as set out in attachment 1;
 - 9.3.7.2 guaranteed water quality specification as set out in attachment 3 based on water quality technical limits as set out in attachment 1;
 - 9.3.7.3 guaranteed specific power demand as set out in attachment 1; and
 - 9.3.7.4 the guaranteed noise levels as set out in attachment 2;
- 9.3.8 The Performance Tests shall be deemed to be satisfactorily completed only if the following conditions are met for the entire KWC:
- 9.3.8.1 the percentage of losses is not more than the value set out in attachment 1 of the transferred volume;
 - 9.3.8.2 the water quality specification achieves the guaranteed water quality specifications as set out in the attachments to this appendix 5;
 - 9.3.8.3 the specific power demand is less than the maximum specific power demand as set out in attachment 1; and
 - 9.3.8.4 the guaranteed noise levels as set out in attachment 2 are met.
- 9.3.9 The Independent Engineer shall indicate in writing within seven (7) Business Days after receiving from the Company a test report on the Performance Tests, including all information reasonably necessary to evaluate the results, whether it accepts or disputes that such test results are accurate.
- 9.3.10 If the following circumstances arise:
- 9.3.10.1 KW&SB or the Independent Engineer dispute the results submitted by the Company and the Company is unable to agree with such determination; or
 - 9.3.10.2 the Company disputes an Independent Engineer decision pursuant to paragraph 9.3.4 of this appendix 5 as to whether any Performance Test should be annulled,

such Dispute shall be referred for resolution pursuant to clause 27 of the Concession Agreement. If it is agreed or determined that re-testing is required, the Company shall perform such re-testing as promptly as possible after the date of such agreement, or determination thereof under clause 27 of the Concession Agreement. The Company shall bear all reasonable costs of KW&SB's advisors in attending any repeated testing procedures. For the sake of clarity, KW&SB shall bear the cost of attending the first testing procedure.

9.4 Reliability Test Run

- 9.4.1 After completion of the Performance Test for the KWC, and compilation of relevant

test protocols by the Company, the Company shall be entitled to prepare the KWC for its Reliability Test Run. The Company shall notify the Independent Engineer that the KWC is ready to commence the Reliability Test Run. Within five (5) Days of such notification, the Reliability Test Run shall commence.

9.4.2 The Reliability Test Run for the KWC shall last for a period of thirty (30) consecutive Days.

9.4.3 During the Reliability Test Run, the KWC shall be operated normally and complying with the Performance Guarantees.

9.4.4 The Reliability Test Run for the KWC shall be deemed to be satisfactorily completed only if the following conditions are met:

9.4.4.1 save as provided below in paragraph (a) to (d), no shutdowns shall be permitted during the Reliability Test Run, except if owing to causes beyond the ~~Company's~~Company's responsibility or control, which must be proven by the Company:

(a) between Day 1 up to Day 10 (both Days inclusive), an aggregate of four (4) interruptions in the operations shall be allowed. If these interruptions exceed four (4) in number or twenty-four (24) hours in aggregate, then the Reliability Test Run of the whole KWC must be restarted from Day 1;

(b) between Day 11 up to Day 20 (both Days inclusive), an aggregate of two (2) interruptions in the operations shall be allowed. If these interruptions exceed two (2) in number or twenty-four (24) hours in aggregate, then the Reliability Test Run of the whole KWC must be restarted from Day 11;

(c) between Day 21 up to Day 30 (both Days inclusive), one (1) interruption in the operations shall be allowed. If such interruption exceeds twelve (12) hours or if there is more than one (1) interruption, then the Reliability Test Run of the whole KWC must be restarted from Day 21; and

(d) if any interruption in the operations, occurs at any time which exceeds twenty-four (24) hours, then the Reliability Test Run of the whole KWC shall be restarted from Day 1;

9.4.4.2 cleaning of filter elements and other actions normally required during operation of the Treatment Plant shall be allowed, provided that the Company informs the Independent Engineer of such actions in advance and the target output is not affected.

9.4.5 An "interruption in operations" in this paragraph 9.4 of this appendix 5 shall be interpreted as any of the following:

9.4.5.1 a shutdown of a component of the KWC which causes a reduction in the target water output;

9.4.5.2 failure to comply with Output Water Quality Specifications at the Output Water Connection Point as set out in appendix 1; or

9.4.5.3 the occurrence of a Defective Metering Event.

9.4.6 A test report shall be prepared by the Company promptly after completion of each Reliability Test Run. The report shall include data as recorded, including valid calibration certificates (not older than six (6) Months).

9.5 Project Commercial Operations Certificate

9.5.1 Within three (3) Days of the acceptance or deemed acceptance (as the case may be) of the Performance Test, Reliability Test Runs and such other test agreed and approved under the Metering and Testing Plan, the Independent Engineer shall issue the Project Commercial Operations Certificate to the Parties.

9.5.2 The Independent Engineer shall indicate in writing within five (5) Business Days after receiving from the Company a test report on the Performance Tests or Reliability Test Runs, including all information reasonably necessary to evaluate the results, whether it accepts or disputes that such test results are accurate and that the KWC has been successfully completed.

9.5.3 If the Independent Engineer disputes the results submitted by the Company, and the Company is unable to agree with the determination of the Independent Engineer, such Dispute shall be referred for resolution pursuant to clause 27 of the Concession Agreement. If it is agreed or determined that re-testing is required, the Company shall perform such re-testing as promptly as possible after the date of such agreement, or determination thereof under clause 27 of the Concession Agreement.

10 HANDOVER PERFORMANCE TESTING

10.1 The Handover Performance Testing shall be carried out before the KWC is handed back to KW&SB at the end of the Concession period. The principles for performing the Handover Performance Testing shall be the same as the one described in paragraph 2.4 of this appendix 5 for the commissioning phase. That means that the Handover Performance Testing period shall include both Performance Tests and Reliability Test Runs as defined in paragraph 9 of this appendix 5.

10.2 The handover phase shall take place at the end of the Concession Period, and in any case, the Company shall prepare a detailed proposal in the Metering and Testing Plan for such testing, to be approved by the Independent Engineer, and in compliance with the Concession Agreement.

11 SUPPLY OF SPARE PARTS

Prior to the issuance of the Handover Certificate, the Company shall ensure that necessary spare parts (as determined by the Independent Engineer) required for operation of KWC for one (1) year are available on the Site for use by KW&SB (or its nominee).

ATTACHMENTS: PERFORMANCE GUARANTEE DATA FOR THE PROJECT

Attachment 1: Guaranteed Performance

DESCRIPTION	UNIT	DATA	
1.1: Guaranteed Water Quality Technical Limits (The required Treatment Plant to be implemented by the Company should be able to provide the adequate water quality when receiving influent quality parameters within the range shown below)			
		Design Technical Lower Limit	Design Technical Upper Limit
pH value	Hydrogen ion	6.5	8.5
Turbidity	NTU	0	50
Aluminium	mg/l	0	1.0
Residual Chlorine	mg/l	0	0.02
Faecal Coliform (E. Coli)	cfu/100ml	0	100
Total Coliforms	cfu/100ml	0	100
1.2: Performance of the Entire KWC			
		C&O Period	Operating Period
Percentage of losses from the volume provided / NRW	%	Allowable NRW (as per Mobilisation Testing Acceptance Certificate)	Allowable NRW (as bid by the Company)
Guaranteed total specific power consumption (total for the KWC). Total per m ³ electricity consumption (net gross per m ³ consumption including alternative energy per m ³ sources on Site and energy recovery measures).	kWh/m ³	Contracted Specific Net Electricity Consumption (as per Mobilisation Testing Acceptance Certificate)	Contracted Specific Net Electricity Consumption (as bid by the Company)
Capacity of KWC	m ³ /day	454,609 (Contracted Availability)	454,609 (Contracted Availability)

Attachment 2: Guaranteed Maximum Noise Levels

DESCRIPTION	UNIT	DATA
Noise levels at a distance of one (1) meter from the noise source and within the pumping station or water treatment plant and major buildings	dB(A)	max. eighty-five (85)
Noise levels at the Site boundary	dB(A)	max. sixty (60)
Noise levels within all offices and the laboratory	dB(A)	max. fifty (50)

Note: Guaranteed maximum noise levels and subsequent requirements may be adjusted depending on the ambient noise baseline which shall be confirmed as part of the ESIA.

Attachment 3: Potable Water Quality Specifications

The table below shows the contractual limits for water quality to be provided at the Output Water Connection Point by the Company.

During C&O Period: Output Water Quality Specifications as per the Mobilisation Testing Acceptance Certificate.

During Operating Period:- Output Water Quality Specifications summarized below:

PARAMETERS	UNIT	ALLOWED RANGE
pH value	Hydrogen ion	6.5 - 8.5
Turbidity	NTU	Max. 5
Aluminium	mg/l	Max. 0.20
Residual Chlorine	mg/l	0.2 - 0.5
Faecal Coliform (E. Coli)	cfu/100ml	Absent
Total Coliforms	cfu/100ml	Absent

Note: All the other potable water parameters not mentioned in the table above shall be in compliance with the most stringent of the latest applicable Pakistan standards or the WHO drinking water guidelines (latest revision).

APPENDIX 6: PERFORMANCE SECURITIES

Part 1 – C&O Performance Security

To

GOVERNMENT OF SINDH

[INSERT DETAILS]

GUARANTEE NO. [●] (hereinafter referred to as the “Bank Guarantee”)

Dated: [●]

[INSERT NAME OF BANK], being the Bank Guarantee issuing bank (hereinafter referred to as the “Guarantor Bank”) understands that the following parties shall enter into an agreement titled the “CONCESSION AGREEMENT” (hereinafter referred to as the “Agreement”) for the design, construction, rehabilitation, operation, maintenance, commissioning, financing and transfer of the Karachi Water Canal under the public-private partnership mode (the “Project”):

- (a) **THE GOVERNOR OF SINDH** (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) having its office located at Local Government & Housing Town Planning Department, Ground Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan, for and on behalf of the Government of Sindh (the “GoS”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);
- (b) **KARACHI WATER AND SEWERAGE BOARD**, a statutory body constituted pursuant to section 3 of the Karachi Water and Sewerage Board Act, 1996, with its office located at 9th Mile, Karsaz, Karachi, Pakistan (“KW&SB” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and
- (c) [**COMPANY**], a company incorporated under the Laws of Pakistan whose registered office is located at [●] (the “Company” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the request for proposals issued in respect of the Project by KW&SB (the “RFP”) read with the Agreement, the Company is required to provide the GoS with a Bank Guarantee (referred to in the RFP and the Agreement as the C&O Performance Security) in an amount equal to Pakistani Rupees one billion only (PKR 1,000,000,000/).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on-demand to pay to the GoS (without any notice, reference or recourse to the Company or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the RFP and the Agreement) whether executed or not), any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

Pakistani Rupees one billion only (PKR 1,000,000,000/-)
(hereinafter referred to as the “Guaranteed Amount”)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank’s receipt of the GoS’ first written demand (hereinafter referred to as the “Demand”) at the Guarantor

Bank's office located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], or through SWIFT instructions transmitted by the GoS' bank, on behalf of the GoS, to the Guarantor Bank, or through fax sent by the GoS at the Guarantor Bank's fax number i.e., [●], such Demand stating:

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

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

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

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

After having come into force, this Bank Guarantee and the Guarantor Bank's obligations hereunder shall expire on [INSERT DATE AND TIME] (the "**Expiry Date**") irrespective of whether this Bank Guarantee has been returned to the Guarantor Bank provided that, in the event that the GoS issues a Demand to the Guarantor Bank on or immediately prior to the Expiry Date and the same is received by the Guarantor Bank on or prior to the Expiry Date, the Guarantor Bank shall honour such Demand.

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

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the GoS and the Company of the revised Guaranteed Amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the GoS and the Company of the revised date.

The Guarantor Bank hereby agrees that any part of the Agreement or the RFP may be amended, renewed, extended, modified, compromised, released or discharged without:

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

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

and this Bank Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract, agreement, document or other instruments (including the Agreement and the RFP), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Bank Guarantee.

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

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

- (a) enter into, execute and deliver this Bank Guarantee; and
- (b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

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

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

**EXECUTED & ISSUED
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....
NAME:
DESIGNATION:
DATED:

Part 2 – O&M Performance Security

To
[•],
[•],
GOVERNMENT OF SINDH

GUARANTEE NO. [•] (hereinafter referred to as the “**Bank Guarantee**”)

Dated: [•]

[INSERT NAME OF BANK], being the Bank Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement titled the “**CONCESSION AGREEMENT**” dated [•] (hereinafter referred to as the “**Agreement**”) for the design, construction, rehabilitation, operation, maintenance, commissioning, financing and transfer of the Karachi Water Canal under the public-private partnership mode:

- (a) **THE GOVERNOR OF SINDH** (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) having its office located at Local Government & Housing Town Planning Department, Ground Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan, for and on behalf of the Government of Sindh (the “**GoS**”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);
- (b) **KARACHI WATER AND SEWERAGE BOARD**, a statutory body constituted pursuant to section 3 of the Karachi Water and Sewerage Board Act, 1996, with its office located at 9th Mile, Karsaz, Karachi, Pakistan (“**KW&SB**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and
- (c) [**COMPANY**], a company incorporated under the Laws of Pakistan whose registered office is located at [•] (the “**Company**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Company is required to provide the GoS with a Bank Guarantee (referred to in the Agreement as the O&M Performance Security) in an amount equal to Pakistani Rupees five hundred million only (PKR 500,000,000/-).

The above premised, the Guarantor Bank hereby undertakes irrevocably, unconditionally and on demand to pay to the GoS (without any notice, reference or recourse to the Company or to any other entity or without any recourse or reference to any contract, agreement, document or other instruments (including the Agreement) whether executed or not), any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

Pakistani Rupees five hundred million only (PKR 500,000,000/-)
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately, however not later than within five (5) business days from the date of the Guarantor Bank’s receipt of the GoS’ first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s office located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], or through SWIFT instructions transmitted by the GoS’ bank, on behalf of the GoS, to the

Guarantor Bank, or through fax sent by the GoS at the Guarantor Bank's fax number i.e., [●], such Demand stating:

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

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

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

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

After having come into force, this Bank Guarantee and the Guarantor Bank's obligations hereunder shall expire on [INSERT DATE AND TIME] (the "**Expiry Date**") irrespective of whether this Bank Guarantee has been returned to the Guarantor Bank provided that, in the event that the GoS issues a Demand to the Guarantor Bank on or immediately prior to the Expiry Date and the same is received by the Guarantor Bank on or prior to the Expiry Date, the Guarantor Bank shall honour such Demand.

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

The Guaranteed Amount shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the GoS and the Company of the revised Guaranteed Amount. The Expiry Date shall be revised upon receipt by the Guarantor Bank of a notice duly signed by the GoS and the Company of the revised date.

The Guarantor Bank hereby agrees that any part of the Agreement may be amended, renewed, extended, modified, compromised, released or discharged without:

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

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

All references to any contract, agreement, document or other instruments (including the Agreement), whether executed or not, are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Bank Guarantee.

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

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

- (a) enter into, execute and deliver this Bank Guarantee; and
- (b) perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

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

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

**EXECUTED & ISSUED
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....
NAME:
DESIGNATION:
DATED:

APPENDIX 7: FORM OF CONCESSION & LICENSE DIRECT AGREEMENT

CONCESSION & LICENSE DIRECT AGREEMENT

between

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

(2) THE KARACHI WATER AND SEWERAGE BOARD

(3) [THE COMPANY]

- and -

(4) [BANK]

AS AGENT

relating to

KARACHI HUB WATER CANAL PROJECT

Dated [●]

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THIS CONCESSION & LICENSE DIRECT AGREEMENT is made on [●], ~~2022~~2023, at [●].

BETWEEN

- (1) **GOVERNOR OF SINDH** (through Secretary, Local Government & Housing Town Planning Department, Government of Sindh) having its office located at Local Government & Housing Town Planning Department, Ground Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan, for and on behalf of the Government of Sindh (the “**GoS**”, which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and assigns);
- (2) **KARACHI WATER AND SEWERAGE BOARD**, a statutory body constituted pursuant to section 3 of the Karachi Water and Sewerage Board Act, 1996, with its office located at 9th Mile, Karsaz, Karachi, Pakistan (“**KW&SB**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns);
- (3) [**INSERT COMPANY DETAILS**], a company incorporated under the Laws of Pakistan whose registered office is located at [**INSERT ADDRESS**] (the “**Company**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and
- (4) [**INSERT NAME OF BANK**], a [bank] organized and existing under the Laws of Pakistan, whose registered address is at [**INSERT ADDRESS**], as agent for and on behalf of the Financing Parties (the “**Agent**”).]

(each a “**Party**” and together the “**Parties**”).

WHEREAS

- A. The GoS, KW&SB and the Company have entered into the Concession Agreement in relation to the Project.
- B. KW&SB and the Company have entered into the License Agreement in relation to the Project.
- C. In order to facilitate the Company raising finance from the Financing Parties in connection with the Project, the GoS Parties have consented to enter into this Agreement with the Company and the Agent (acting on behalf of the Financing Parties), which sets out certain rights and obligations of the GoS Parties, the Company and the Financing Parties.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise stated, words and expressions defined in the Concession Agreement and the License Agreement (including by reference to any other agreement or document) shall have the same meaning and expression in this Agreement. In addition, the following terms shall have the following meanings, unless the context otherwise requires:

“**Additional Obligor**” means any of: (a) the Agent; or (b) a company which: (i) is controlled or appointed by any of the Financing Parties; (ii) is not an Adverse Person; (iii) is authorized

to carry on business in Pakistan; (iv) has been approved by the GoS Parties in writing (such approval not to be unreasonably withheld where the relevant third party is able to demonstrate to the satisfaction of the GoS Parties (acting in consultation with the Independent Appointees) that it has the legal capacity and authority, and the technical and financial resources available to enter into, assume and perform the obligations of the Company under the Applicable Agreements) and; (v) has executed the undertaking contemplated in the definition of Step-In Notice and an original of the same has been submitted to the GoS Parties by the Agent;

“Agreement” means this Concession and License Direct Agreement (including the recitals and appendices hereto), as amended and supplemented from time to time;

“Applicable Agreements” means the Concession Agreement and the License Agreement, and **“Applicable Agreement”** means either of them;

“Arbitration” has the meaning given to it in clause 12.2.1.1;

“Arbitrators” has the meaning given to it in clause 12.2.1.1;

“Assigned Rights” has the meaning given to it in clause 2.1.1;

“Award” has the meaning given to it in clause 12.2.4;

“CA Novation Agreement” has the meaning given to it in clause 6.2.1 (a);

[“Common Terms Agreement” means the agreement so entitled, entered into, on or around the date hereof between, amongst others, the Company, the Financing Parties and the Agent;]¹²

“Concession Agreement” means the concession agreement dated [INSERT DATE] between the GoS, KW&SB and the Company (as may from time to time be amended, novated, supplemented or varied);

“Confidential Information” has the meaning given to it in clause 9.1;

“Default Notice” has the meaning given to it in clause 2.1.2;

“Discharged Rights and Obligations” has the meaning given to it in clause 6.2.2(a);

“Dispute” has the meaning given to it in clause 12.1;

“Effective Date” has the meaning given to it in clause 6.2.2;

“Enforcement Action” means:

- (a) the taking of any steps to wind up the Company; or
- (b) the taking of any steps to appoint a liquidator, receiver, administrator, custodian or other similar person in respect of the Company or any material part of its undertakings or assets; or

¹² To be updated based on Financing Documents.

(c) the taking of any steps to terminate the Applicable Agreements;

“**Enforcement Action Notice**” has the meaning given to it in clause 2.2.5.1;

“**Event of Default**” has the meaning given to it in the Common Terms Agreement;

“**GoS Additional Notification**” has the meaning given to it in clause 4.2;

“**LA Novation Agreement**” has the meaning given to it in clause 6.2.1(b);

“**Novation Notice**” has the meaning given to it in clause 6.1;

“**Revival Date**” has the meaning given to it in clause 7.1;

“**Step-In Date**” means, subject to clause 5.4, the date on which the Agent gives the relevant Step-In Notice;

“**Step-In Notice**” means a notice from the Agent to the GoS Parties, stating that an Additional Obligor is to become a party to the Applicable Agreements on and from the Step-In Date, which notice includes a legally binding and enforceable undertaking (governed by the Laws of Pakistan) in favour of the GoS Parties from the Additional Obligor in terms of which it has agreed:

- (a) to become a party to the Applicable Agreements in the capacity of the Company;
- (b) to comply with any Legal Requirements;
- (c) to be bound by the terms of this Agreement as applicable to the Additional Obligor; and
- (d) to exercise its rights and perform its obligations, in accordance with this Agreement and the Applicable Agreements;

“**Step-In Period**” means the period from and including the Step-In Date to and including the earlier of the:

- (a) Effective Date;
- (b) Step-Out Date; and
- (c) the date falling twelve (12) Months from the Step-In Date;

“**Step-Out Date**” has the meaning given to it in clause 5.6;

“**Step-Out Notice**” has the meaning given to it in clause 5.6;

“**Substitute**” means any third party which is: (a) authorized to carry on business in Pakistan; (b) is not an Adverse Person; and (c) has been previously approved by the GoS Parties in writing (such approval not to be unreasonably withheld where the relevant third party is able to demonstrate to the satisfaction of the GoS Parties (acting in consultation with the Independent Appointees that it has the legal capacity and authority, and the technical and financial resources available to enter into, assume and perform the obligations of the Company under the Applicable Agreements); and

“**Suspension Period**” has the meaning given to it in clause 3.1.

1.2 Interpretation

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

1.3 Conflict

In the event of any conflict between any provision of this Agreement and any provision of the Applicable Agreements, the provisions of this Agreement shall prevail.

2. ASSIGNMENT

2.1 Notice of Assignment

The Company hereby gives notice to each GoS Party that:

- 2.1.1 the Company has assigned by way of security all of its rights and interests in, and benefit of, the Applicable Agreements, to the Agent (the “**Assigned Rights**”);
- 2.1.2 until such time as it or the Agent notifies the GoS Parties in writing that an Event of Default has occurred and is continuing unremedied (a “**Default Notice**”), the Company may exercise all of its rights and powers under the Applicable Agreements;
- 2.1.3 the GoS is hereby authorized and instructed to make all payments due, or which may become due from the GoS to the Company under or arising from the Concession Agreement, to the Company Payment Account (account number [INSERT ACCOUNT NUMBER]) at [INSERT DETAILS] or to such other account in Pakistan as the Agent may from time to time direct by notice to the GoS), and the Company irrevocably agrees that, where the Agent so specifies payment to a different account, the account so specified shall be accepted by the Company as the appropriate account for payment, and any sums paid to such account shall be treated as sums paid in accordance with the Concession Agreement, and such account shall be construed as the Company Payment Account (ten (10) Business Days after the GoS has received notice thereof by the Agent) for the purposes of this Agreement and the Concession Agreement; and
- 2.1.4 the authority and instructions contained in clause 2.1.3 cannot be revoked or varied without the prior written consent of the Agent, and the GoS shall make all payments due or which may become due from it to the Company under or arising from the Concession Agreement in accordance with such authority and instruction, and payments so made shall *pro tanto* satisfy any and all obligations of the GoS under the Concession Agreement in respect of such payments.

2.2 Acknowledgement of Assignment

By execution of this Agreement:

- 2.2.1 each GoS Party acknowledges receipt of the notice of the assignment of the Assigned Rights provided by the Company pursuant to clause 2.1 and confirms that:

- (a) it has not received any other notice relating to assignment of the Assigned Rights; and
 - (b) it has not received any notice of, nor has it consented to, any previous assignment of the Assigned Rights;
- 2.2.2 each GoS Party agrees that it will not consent to any further assignment, transfer or lien by the Company under the Concession Agreement;
- 2.2.3 KW&SB agrees that it will not consent to any further assignment, transfer, or lien by the Company under the License Agreement;
- 2.2.4 each GoS Party consents to the creation of the assignment by way of security of the Assigned Rights, provided that such consent shall not extend to the creation of any Encumbrance of any nature on the Site;
- 2.2.5 each GoS Party undertakes:
- 2.2.5.1 to notify the Agent of its intention to take any Enforcement Action (to the extent it is permitted to take such action under the Applicable Agreements) including, without limitation, its intention to terminate any of the Applicable Agreements pursuant to clauses 21.2, 21.3, 21.4, ~~21.7~~ and 21.8 of the Concession Agreement or pursuant to the License Agreement (the **“Enforcement Action Notice”**);
 - 2.2.5.2 following receipt of a Default Notice pursuant to clause 2.1.2 or the issuance of an Enforcement Action Notice pursuant to clause 2.2.5.1, to accept as valid, any notices or demands given or made by the Agent under, and in accordance with the terms of, the Applicable Agreements in place of the Company;
 - 2.2.5.3 following receipt of a Default Notice pursuant to clause 2.1.2 or the issuance of an Enforcement Action Notice pursuant to clause 2.2.5.1, to accept performance of any of the obligations of the Company under, and in accordance with the terms of, the Applicable Agreements by the Additional Obligor as performance by the Company; and
 - 2.2.5.4 to pay any amount due from the GoS to the Company under the Concession Agreement in accordance with the provisions of clause 2.1.3, provided that this clause 2.2.5.4 shall only apply to the GoS, and not KW&SB.

2.3 Obligation to release security

Notwithstanding anything to the contrary, the Company and the Agent (for and on behalf of the Financing Parties) acknowledge, agree and undertake that once GoS has paid the Termination Payment under and in accordance with the Concession Agreement, the Agent and the Company shall forthwith release all Encumbrances held on the KWC and promptly execute any and all documents in relation thereto regardless of any payment due under any working capital facility or any other financing arrangement obtained by the Company from any other financial institution to which the Agent is also acting as an agent or a security trustee.

3. SUSPENSION

3.1 Suspension Period

Following:

3.1.1 the service by the GoS or KW&SB (as applicable) on the Agent of an Enforcement Action Notice pursuant to clause 2.2.5.1; or

3.1.2 the service by the Agent on the GoS Parties of a Default Notice pursuant to clause 2.1.2,

each GoS Party undertakes that, subject to clause 7, it shall not take any Enforcement Action until the expiry of a period of sixty (60) Days after the date on which the relevant Enforcement Action Notice or Default Notice as the case may be, was served (the “**Suspension Period**”).

3.2 Enforcement Action

Each GoS Party undertakes:

3.2.1 that it shall not take any Enforcement Action in relation to any relevant event or circumstance or breach or default at the end of the Suspension Period relating thereto:

(a) if such event or circumstance no longer subsists; or

(b) if in respect of any breach or default under the Applicable Agreements, such breach or default has been remedied; or

(c) subject as provided in clause 5.3 and clause 6.2, if there has been a Step-In Notice and no Step-Out Notice, or there has been a Novation Notice;

provided that in each such case, any damages due and payable to GoS resulting from such event or circumstance or breach or default, as the case may be, and notified in accordance with clause 4.1 and clause 4.2, have been paid in respect of any damages which may become due and payable in respect of such breach or default; and

3.2.2 each GoS Party shall continue to comply with all its obligations under the Applicable Agreement to which it is a party during such Suspension Period.

4. OUTSTANDING OBLIGATIONS

4.1 Statement of Outstanding Obligations

4.1.1 Within thirty (30) Days after the date of receipt by the Agent of an Enforcement Action Notice or the service by the Agent of a Default Notice or a Novation Notice, GoS shall deliver to the Agent, details of:

(a) all amounts that, so far as GoS is aware, are due and payable by the Company or the Sponsors under or pursuant to the Relevant Agreements as at the date of the Enforcement Action Notice, Default Notice or the Novation Notice (as applicable) but remain unpaid on the relevant date;

- (b) all amounts that, so far as GoS is aware, are to become due and payable by the Company or the Sponsors under or pursuant to the Relevant Agreements during the remainder of the Suspension Period or from the date of the Novation Notice until the relevant Effective Date (as applicable); and
- (c) all outstanding claims by GoS of which it is aware, under or pursuant to the Relevant Agreements against the Company or the Sponsors, whether arising out of or in connection with any breach or default or otherwise specifying:
 - (i) the provisions of the Relevant Agreement under or pursuant to which such claim arises; and
 - (ii) the amount of any monetary claim.

4.2 Adjustment

If, following the end of any thirty (30) Day period referred to in clause 4.1 but before the relevant Step-In Date or Effective Date, as the case may be, GoS becomes aware of (and notifies the Agent accordingly of) any outstanding amounts and claims which would have been notified by GoS to the Agent pursuant to clause 4.1 had GoS been aware of the same at the relevant time (a “**GoS Additional Notification**”), such outstanding amounts and claims shall be treated as having been notified by GoS to the Agent during such thirty (30) Day period pursuant to clause 4.1 for the purposes of this Agreement. If such GoS Additional Notification is issued in less than seven (7) Days prior to the expiry of the thirty (30) Day period referred to in clause 4.1, the Step-In Date or Effective Date shall be postponed until the date that is seven (7) Days after the date of the GoS Additional Notification.

4.3 Conclusive Evidence

Without prejudice to the rights of GoS to pursue any claims against the Company or the Sponsors following the Revival Date (if any), any Additional Obligor and any Substitute shall not be liable to GoS in respect of any claims by GoS arising before the Step-In Date or the Effective Date, as the case may be, which were not disclosed by GoS pursuant to clause 4.1 or clause 4.2.

4.4 Overpayment

If the Agent or any Additional Obligor pays to GoS an amount which GoS is not entitled to receive under the Concession Agreement as determined by the Independent Auditor, the GoS undertakes to repay such excess amount to the Agent within thirty (30) Days of receiving a written demand therefor.

5. STEP-IN AND STEP-OUT

5.1 Step-In Notice

At any time during any Suspension Period, the Agent may deliver a Step-In Notice to the GoS Parties.

5.2 Rights and Obligations of Additional Obligor

On and from the Step-In Date:

- 5.2.1 subject to clause 4.3 and provided that any Legal Requirements have been complied with, the Additional Obligor shall become a party to the Applicable Agreements with all of the rights of the Company thereunder and, save as provided in clause 4.3, the Additional Obligor shall be jointly and severally be liable with the Company for all of its obligations thereunder whether arising before, on or after the Step-In Date;
- 5.2.2 as between the Company, the GoS Parties and the Additional Obligor, only the Additional Obligor shall be authorized to deal with GoS Parties and to exercise the rights of the Company under the Applicable Agreements, and each GoS Party shall be discharged of its obligations under the Applicable Agreement (to which it is a party) only to the extent that such obligations are performed in favour of the Additional Obligor.

5.3 Enforcement Action during Step-In Period

Without prejudice to clause 3.1, during the Step-In Period, the GoS Parties shall not take any Enforcement Action in respect of events or circumstances arising:

- 5.3.1 before the Step-In Date; or
- 5.3.2 to the extent the events or circumstances are the same or substantially the same as the events or circumstances contemplated by the Event of Default giving rise to a Default Notice, after the Step-In Date,
- unless:
- (a) where such breach or default is capable of remedy or cure, it is not remedied or cured by a date reasonably determined by the GoS after the Step-In Date; or
 - (b) where such breach or default is not capable of remedy or cure, and without prejudice to the terms of clause 5.2, the effect of such breach or default has not been mitigated to the reasonable satisfaction of GoS by a date reasonably determined by the GoS after the Step-In Date.

5.4 No Effect

On or before any Step-In Date, the Additional Obligor shall pay to GoS all amounts and outstanding claims which have been notified by GoS pursuant to clause 4.1 and clause 4.2. If no such payment is made on or before the relevant Step-In Date, then subject to clause 7, such Step-In Date shall be postponed until, and shall be deemed to occur on, the date on which the Additional Obligor makes such payment.

5.5 No Termination Event

The appointment of an Additional Obligor in accordance with the terms and conditions of this clause 5, subject to the terms of clause 7, shall not constitute a termination event in accordance with clause 21 of the Concession Agreement.

5.6 Step-Out Date

The Additional Obligor may, at any time during the Step-In Period, give the GoS Parties, a notice terminating the Additional Obligor's obligations and rights under the Applicable

Agreements (the “**Step-Out Notice**”) as and from a date falling not earlier than thirty (30) Days after the date of the Step-Out Notice (the “**Step-Out Date**”), provided that, other than where such obligations have been assumed by a Substitute, the Additional Obligor may not so terminate its obligations under the Applicable Agreements and the Step-Out Date shall not occur, until and unless the Additional Obligor has discharged all of its obligations under the Applicable Agreements that are existing or outstanding as at the Step-Out Date which have arisen due to the actions or inactions of the Additional Obligor occurring on or after the Step-In Date.

5.7 Release

On and from the earlier of the Step-Out Date and the Effective Date, the Additional Obligor shall:

5.7.1 be released from all obligations to the GoS Parties under the Applicable Agreements; and

5.7.2 not be entitled to exercise any rights under the Applicable Agreements.

6. NOVATION

6.1 Proposal for Novation

At any time:

(a) during any Suspension Period; or

(b) during a Step-In Period,

the Agent may give notice (a “**Novation Notice**”) to the GoS Parties that the Substitute shall assume the obligations of the Company under the Applicable Agreements and specifying the date on which such assumption is to be affected, provided always, that all Legal Requirements are complied with by such specified date.

6.2 Novation

6.2.1 The novation contemplated in the Novation Notice shall, subject to compliance of any Legal Requirements, be affected by:

(a) in respect of the Concession Agreement, execution by the Parties and the Substitute of the novation agreement substantially in the form appended hereto as attachment A (the “**CA Novation Agreement**”);

(b) in respect of the License Agreement, execution by KW&SB, the Company, ~~the Agent~~ and the Substitute of a novation agreement substantially in the form appended hereto as attachment B (the “**LA Novation Agreement**”);

6.2.2 In which event, subject to clause 6.3, on the first Business Day (as defined in the Concession Agreement) after the date of execution of both the CA Novation Agreement and the LA Novation Agreement (the “**Effective Date**”):

- (a) the Company and the GoS Parties shall each be released from further obligations to the other, under the Applicable Agreements to which they are a party and their respective rights against each other shall be cancelled (such rights and obligations being referred to in this clause 6.2.2 as “**Discharged Rights and Obligations**”);
- (b) the GoS Parties and the Substitute shall each assume obligations towards each other and/or acquire rights (which shall include the rights and obligations of the Company which arose prior to the Effective Date) against each other which differ from such Discharged Rights and Obligations only insofar as the GoS Parties and the Substitute have assumed and/or acquired the same in place of the GoS Parties and the Company; and
- (c) the GoS shall not take any Enforcement Action in respect of events or circumstances arising:
 - (A) before the Effective Date; or
 - (B) to the extent the events or circumstances are the same or substantially the same as the events or circumstances contemplated by the Event of Default giving rise to a Default Notice, after the Effective Date,
 unless:
 - (I) where such breach or default is capable of remedy or cure, it is not remedied or cured by a date reasonably determined by the GoS after the Effective Date; and
 - (II) where such breach or default is not capable of remedy or cure, and without prejudice to the terms of clause 6.2.2, the effect of such breach or default has not been mitigated to the reasonable satisfaction of the GoS by a date reasonably determined by the GoS after the Effective Date.

6.3 No Effect

On or before any Effective Date, the Substitute shall pay to the GoS all outstanding amounts and outstanding claims notified by GoS pursuant to clause 4. If no such payment is made on or before the relevant Effective Date, then subject to clause 7 and without prejudice to any other rights or remedies available to the GoS, such Effective Date shall be postponed until, and shall be deemed to occur on, the date on which the Substitute makes such payment.

7. REVIVAL OF REMEDIES

7.1 If an Enforcement Action Notice or a Default Notice has been given and:

- 7.1.1 neither a Step-In Notice nor a Novation Notice has been given prior to the expiry of the Suspension Period relating to that Enforcement Action Notice or Default Notice, as the case may be;
- 7.1.2 the Step-In Date has occurred, and a Step-Out Date occurs prior to or upon the expiry of the Suspension Period relating to that Enforcement Action Notice or Default Notice, as the case may be; or

7.1.3 the Step-In Date has occurred, but no Novation Notice has been given prior to the date falling twelve (12) Months from the Step-In Date relating to that Enforcement Action Notice or Default Notice, as the case may be,

then either the GoS Party, in the case of clause 7.1.1, on and after the expiry of the Suspension Period, in the case of clause 7.1.2, on and after the Step-Out Date, and in the case of clause 7.1.3, upon the expiry of the referenced twelve (12) Months period, (each of the foregoing, the “Revival Date”) shall be entitled to:

- (a) act upon any and all grounds for termination, in respect of breaches or defaults not remedied or waived, available to it, under or pursuant to the Applicable Agreements;
- (b) pursue any and all claims and exercise any and all remedies against the Company; and
- (c) take any Enforcement Action.

8. NOTICES

8.1 In Writing

Any notice to be served pursuant to the provisions of this Agreement shall be: (a) made in the English language; (b) made in writing; (c) delivered personally (by hand delivery or courier) to the address of another Party as provided in clause 8.2 or to such other address as another Party shall by notice require, or sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of another Party provided in clause 8.2, or to such other facsimile number as a Party shall by notice require. Any notice or other communication made by one Party to the other Party in accordance with the foregoing provisions of this clause 8.1 shall be deemed received by the other Party, if delivered by hand or by courier, on the day on which it is left at that Party's address, or, if sent by facsimile transmission, on the next Business Day following the day on which it is sent to that Party's address.

8.2 Address for Service

The address for service of notices shall be as set out below or such other address as the Party on whom the notice is to be served has notified in writing to the Party serving the notice.

8.2.1 GoS

Address:	[●]
Attention:	[●]
Fax:	[●]
Email	[●]

8.2.2 KW&SB

Address:	[●]
Attention:	[●]

Fax:	[•]
Email	[•]

8.2.3 Company

Address:	[•]
Attention:	[•]
Fax:	[•]
Email	[•]

8.2.4 Agent

Address:	[•]
Attention:	[•]
Fax:	[•]
Email	[•]

9. CONFIDENTIALITY

9.1 Confidential Information

Subject to clause 9.2, each Party shall, at all times during and after the continuance of this Agreement, hold confidential and not disclose to any third party and use only for the purposes of the Project and this Agreement all confidential information, reports or documents relating to the Project received by it pursuant to, or in the course of the negotiations leading to, this Agreement (the “**Confidential Information**”).

9.2 Permitted Disclosure

A Party shall be permitted to disclose Confidential Information:

- 9.2.1 to its insurers, auditors, or other professional advisers;
- 9.2.2 if required to do so by law or if required in connection with any legal proceedings; and
- 9.2.3 to each of the Financing Parties (or any prospective lenders) and their respective professional advisers subject to the relevant Party obtaining from the recipient of such Confidential Information an undertaking substantially in the terms of clause 9.1.

9.3 Exceptions

Nothing in this clause 9 shall apply to any information, reports or documents which shall have come into the public domain (otherwise than in consequence of a breach of clause 9.1). Nor shall clause 9.1 apply to any information, report or document received in good faith by a Party otherwise than from any of the Parties or a person acting on a Party's behalf.

10. MISCELLANEOUS

10.1 GoS Parties' liabilities

Except as expressly provided in this Agreement, nothing:

10.1.1 in this Agreement or in the arrangements contemplated thereby; or

10.1.2 arising as a result of the exercise by the Agent, the Financing Parties, any Additional Obligor and/or any Substitute of any rights given to any such party under or pursuant to this Agreement, shall in any way:

- (a) affect any limitation or exclusion of the GoS Parties' liability to the Company under the Applicable Agreements, which exclusions and limitations of liability are hereby incorporated into this Agreement (*mutatis mutandis*);
- (b) increase the total amount of any liability any GoS Party may have (whether to the Company, the Agent (for itself, or as agent for and on behalf of the Financing Parties), any Additional Obligor and/or any Substitute) under the Applicable Agreements; or
- (c) make the GoS Parties liable to the Company, the Agent, the Financing Parties, any Additional Obligor and/or any Substitute to any greater extent or for any longer duration, than the GoS Parties would have been liable to the Company under the Applicable Agreements.

10.1.3 In no event, shall any payment obligations (actual or contingent) of the GoS Parties under the Relevant Agreements increase as a result of the GoS Parties entering into this Agreement.

10.1.4 The GoS Parties shall have no obligation or liability under the Financing Documents due to any reference to any Financing Document being made in this Agreement or otherwise.

10.1.5 The Agent on behalf of itself and as agent of the Financing Parties, acknowledges and agrees that notwithstanding anything to the contrary expressed or implied in this Agreement, nothing contained in the Financing Documents and no amendment, supplement or other modification to the Financing Documents or any sell-down or other form of transfer of rights and obligations thereunder shall affect the obligations or liabilities of the GoS Parties under any Relevant Agreement. Furthermore, each of the Company and the Agent (acting for itself and on behalf of Financing Parties) hereby confirms and agrees that the Financing Parties as of the date of this Agreement have not transferred their rights and obligations under the Financing Documents or otherwise to any other bank or financial institution or to any third-party.

10.2 No Assignment

10.2.1 No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the written consent of the other Parties, provided that the Agent may assign or transfer its rights and obligations to a successor Agent under this Agreement in accordance with the Common Terms Agreement without the consent of (but prior notice to) the GoS Parties and the Company.

10.2.2 The GoS Parties acknowledge and agree that the Financing Parties or any of them, may sell down or otherwise transfer the rights and obligations under the Finance Documents, to any other bank or a financial institution, with written notice to GoS Parties, provided that:

- (a) if the bank is a scheduled bank, as defined in the Banking Companies Ordinance, 1962, or a financial institution, that in each case has been awarded a minimum long-term credit rating of “A” by a credit rating agency registered with the Securities and Exchange Commission of Pakistan, and meets the rules and regulations of the State Bank of Pakistan; or
- (b) if the bank or a financial institution has been awarded a minimum long term credit rating of “A” by Moody’s Investors Services Limited or equivalent rating by Fitch Rating Limited or Standard and Poor Rating Services provided that, in such case prior to any sell down or transfer, the Financing Party proposing to sell down or transfer its share shall give written notice to the GoS Parties of the jurisdiction of incorporation of the proposed bank or financial institution and the jurisdiction of incorporation of its ultimate beneficial holding company, if any. If the GoS Parties do not object to the proposed bank or financial institution within thirty (30) Business Days of the Financing Party notifying the GoS Parties of the same, the GoS Parties shall be deemed to have approved of the bank or financial institution for the purposes of sell down or transfer. The Financing Parties shall not sell down or transfer to any bank or financial institution to which the GoS Parties object in pursuance of this clause 10.2.2, provided that the GoS Parties shall ensure that such objection by GoS Parties is not unreasonable.

10.3 No Waiver

The failure of a Party to enforce an obligation or to exercise any right under this Agreement shall not be considered to be a waiver save when the same has been expressly waived in writing. Any written waiver at any time by a Party of its rights with respect to the non-compliance of the other Party with its obligations under this Agreement or with respect to any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent non-compliance or any other matter. Except as expressly provided in this Agreement, any delay in asserting or enforcing any right hereunder shall not be deemed a waiver of such right. The rights and remedies under this Agreement, may be exercised as often as necessary, are cumulative, and not exclusive of any rights or remedies provided by law.

10.4 Continuing Nature of Obligations

This Agreement shall remain in full force and effect until the Financing Termination Date.

10.5 Benefit

The benefit of this Agreement (including the warranties and undertakings and any sum received by the Agent pursuant to this Agreement) shall be held by the Agent upon and subject to the terms of the Common Terms Agreement for the benefit of the Financing Parties.

10.6 Entire Agreement

The terms and provisions contained in this Agreement constitute the entire agreement between the GoS Parties, the Agent and the Financing Parties on the matters addressed herein, and supersede all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to the subject matter hereof.

10.7 Amendments

No modification of this Agreement shall be valid unless it is in writing and signed by the Parties.

10.8 Counterparts

This Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same instrument.

10.9 Termination of No Effect

The Parties agree that any purported termination of the Applicable Agreements by the GoS Parties in breach of the provisions of this Agreement shall be void and of no effect.

11. GOVERNING LAW

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

12. DISPUTE RESOLUTION

12.1 Negotiation

The GoS Parties and the Agent agree to attempt to resolve any dispute, controversy, difference, or claim (“**Dispute**”) between them in connection with this Agreement promptly, amicably, and in good faith. If any Dispute is not resolved between the GoS Parties and the Agent within thirty (30) Days from the date on which it arises, then such Dispute shall be settled exclusively and finally by arbitration in accordance with this clause 12.

12.2 Arbitration

12.2.1 Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute, which cannot be resolved by the Parties pursuant to clause 12.1:

- (a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act, 1940, by appointment of a board of arbitrators, consisting of one (1) arbitrator appointed jointly by the Company and the Agent (acting for itself and each of the Financing Parties), and one (1) arbitrator appointed jointly by the GoS Parties and one (1) arbitrator appointed by the arbitrators so selected by the disputing Parties (the “**Arbitrators**”). Any arbitration proceedings commenced pursuant to this clause 12.2.1 shall be referred to as Arbitration (“**Arbitration**”);
- (b) not to claim any right it may have under the Laws to hinder, obstruct, or nullify the submission of the Dispute to Arbitration; and

- (c) to accept the Award rendered by the Arbitrators and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any decision rendered by the Arbitrators or a court of competent jurisdiction.

12.2.2 The place of arbitration shall be Karachi, Pakistan.

12.2.3 The language of Arbitration shall be English.

12.2.4 Any decision or award resulting from the Arbitration (“Award”) shall be final and binding upon the Parties.

12.2.5 The Parties hereby waive, to the extent permitted under the Laws, any rights to appeal or to review of such Award by any Competent Authority.

12.2.6 The fees and expenses of the Arbitrators and all other expenses relating to Arbitration shall be borne and paid by the respective disputing Parties unless the Award states otherwise. The Arbitrators may provide in the Award, for reimbursement to a Party, of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

12.2.7 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award for any Arbitration, which Award, if appropriate, shall determine whether and when any termination shall become effective.

12.3 Obligations Continuing

This Agreement and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award of such arbitration proceeding. Unless otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement which are not the subject of the Dispute during the period of any proceedings in accordance with this clause 12.

ATTACHMENT A

FORM OF CA NOVATION AGREEMENT

[TO BE EXECUTED ON STAMP PAPER]

Relating to the Concession Agreement between [INSERT DETAILS] (the “GoS Parties”) and [Company] (the “Company”) dated [INSERT DATE] (as may from time to time be amended, supplemented, or varied, the “Concession Agreement”).

Terms defined in the Concession and License Direct Agreement dated [INSERT DATE], between the GoS Parties, the Company and [Bank] (as agent for and on behalf of the Financing Parties, the “Agent”) (the “Direct Agreement”) shall, subject to any contrary indication, have the same meaning herein.

1. The Agent requests that the Substitute (specified below) accept and procure the transfer to the Substitute of all of the rights, title, and interest of any and all of the obligations of the Company under the Concession Agreement and the Direct Agreement by executing this CA Novation Agreement.
2. The Substitute hereby requests the GoS Parties to accept this CA Novation Agreement pursuant to and for the purposes of clause 6.2 of the Direct Agreement so as to take effect in accordance with the terms thereof on the Effective Date or on such later date as may be determined in accordance with the terms thereof.
3. The Substitute warrants that it is has received a copy of the Concession Agreement together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information, and further agrees that it has not relied and will not rely on the Agent in relation to its entering into this CA Novation Agreement and the Concession Agreement.
4. The Substitute hereby undertakes to each GoS Party that it will perform, in accordance with the terms thereof, all obligations of the Company which by the terms of the Concession Agreement and the Direct Agreement will be assumed by it on execution of this CA Novation Agreement.
5. The Agent makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Concession Agreement or any document relating thereto and assumes no responsibility for the performance and observance by any party of any of its obligations under the Concession Agreement or any document relating thereto and any and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.
6. This CA Novation Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Pakistan.

SIGNED by [] and the Substitute:

ATTACHMENT B

FORM OF LA NOVATION AGREEMENT

[TO BE EXECUTED ON STAMP PAPER]

Relating to the License Agreement between [INSERT DETAILS] (the “**KWS&B**”) and [Company] (the “**Company**”) dated [INSERT DATE] (as may from time to time be amended, supplemented, or varied, the “**License Agreement**”).

Terms defined in the Concession and License Direct Agreement dated [INSERT DATE], between the GoS Parties (as specified therein), the Company and [Bank] (as agent for and on behalf of the Financing Parties, the “**Agent**”) (the “**Direct Agreement**”) shall, subject to any contrary indication, have the same meaning herein.

1. The Agent requests that the Substitute (specified below) accept and procure the transfer to the Substitute of all of the rights, title, and interest of any and all of the obligations of the Company under the License Agreement and the Direct Agreement by executing this LA Novation Agreement.
2. The Substitute hereby requests the GoS Parties to accept this LA Novation Agreement pursuant to and for the purposes of clause 6.2 of the Direct Agreement so as to take effect in accordance with the terms thereof on the Effective Date or on such later date as may be determined in accordance with the terms thereof.
3. The Substitute warrants that it has received a copy of the Concession Agreement and the License Agreement together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information, and further agrees that it has not relied and will not rely on the Agent in relation to its entering into this LA Novation Agreement and the License Agreement.
4. The Substitute hereby undertakes to each GoS Party that it will perform, in accordance with the terms thereof, all obligations of the Company which by the terms of the Concession Agreement, the License Agreement and the Direct Agreement will be assumed by it on execution of this LA Novation Agreement.
5. The Agent makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the License Agreement or any document relating thereto and assumes no responsibility for the performance and observance by any party of any of its obligations under the License Agreement or any document relating thereto and any and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.
6. This LA Novation Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Pakistan.

SIGNED by [] and the Substitute:

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

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

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

KARACHI WATER AND SEWERAGE BOARD

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE COMPANY

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE AGENT

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

APPENDIX 8: SERVICE PAYMENT CALCULATIONS

1.1 Definitions

“**Actual Electricity Consumption**” or “**AEC**” means the electricity delivered by the Electricity Supplier (in kWh) at the Electricity Connection Point, as set out in the relevant electricity bill issued by the Electricity Supplier to KW&SB;

“**Actual Loss of Water Output**” or “**LCWa**” means the actual loss of water output (in m³) determined in accordance with paragraph A.4 of Attachment A (Agreed Values for Payment Calculation) to this appendix 8;

“**Allowable NRW**” means:

- (a) for the C&O Period, the figure stated in the Mobilisation Testing Acceptance Certificate; and
- (b) for the Operating Period, [●%]¹³

“**Available**” or “**Availability**” means the Contracted Availability or the Reduced Contracted Availability, as the case maybe;

“**Availability Payment**” or “**APW**” means the water payment (in PKR) payable for a Billing Period falling after the Project Commercial Operations Date, that covers capital cost recovery payment and the fixed operating and maintenance payment, paid by GoS for the Contracted Availability *less* any Deductions;

“**Billing Period**” means: (a) from the Commencement Date, each Quarter falling within the C&O Period, with the first Quarter starting at 00:00 hours on the Commencement Date and ending at 23.59 on the Day immediately preceding the start of the next Quarter, – with the last Quarter ending at 23.59 on the Day immediately preceding the Project Commercial Operations Date; (b) from the Project Commercial Operations Date, each Quarter falling within the Operating Period, with the first Quarter starting at 00:00 hours on the Project Commercial Operations Date and ending at 23:59 on the Day immediately preceding the start of the next Quarter and the last Quarter ending at 23:59 on the Term Expiry Date;

“**Bypass HD Water**” means the water, monitored and sampled at Input HD Water Connection Point reasonably expected to damage the Treatment Plant or impact health of people in the opinion of the Independent Engineer as a direct consequence of the presence of toxic or inhibiting substances;

“**Bypass Input Water**” means Bypass HD Water and / or Bypassed KIII Water;

“**Bypass KIII Water**” means the water, monitored and sampled at Input KIII Water Connection Point reasonably expected to damage the Treatment Plant or impact health of people in the opinion of the Independent Engineer as a direct consequence of the presence of toxic or inhibiting substances;

¹³ Insert percentage stated in Bidding Form E-4.2.E (Output Payment) of Proposal.

“Bypass Off-Spec Mixed Water” means the monitored and sampled Off-Spec Mixed Water, reasonably expected to damage the Treatment Plant or impact health of people in the opinion of the Independent Engineer as a direct consequence of the presence of toxic or inhibiting substances;

“Bypass Water Connection Point” means the physical connection point at which the KWC and drainage are connected, specified as M7 in attachment D of appendix 8;

“Bypass Water Output” or **“BPWa”** means the water (in m³ per specified period) metered at the Bypass Water Connection Point;

“Capital Cost Recovery Charge” or **“CCRW”** means the aggregate amount (in PKR/m³) of:

- (a) Foreign Debt Principal Recovery Charge,
- (b) Foreign Debt Interest Recovery Charge,
- (c) Local Debt Principal Recovery Charge,
- (d) Local Debt Interest Recovery Charge,
- (e) Foreign Equity Recovery Charge, and
- (f) Local Equity Recovery Charge;

“CME Group” means the Chicago Mercantile Exchange Group;

“Contract Year” means a Construction Contract Year or an Operating Contract Year, as applicable;

“Contracted Availability” or **“CAW”** means ~~(in m³/Day);~~ four hundred fifty-four thousand six hundred nine (454,609) m³/Day;

~~(a) — for the C&O Period, four hundred fifty four thousand six hundred nine (454,609); and~~

~~(b) — for the Operating Period, four hundred fifty four thousand six hundred nine (454,609);~~

“Contracted Specific Net Electricity Consumption” or **“ECR_{CC}”** means the efficiency (in kWh/m³):

- (a) for the C&O Period, the figure stated in the Mobilisation Testing Acceptance Certificate; and
- (b) for the Operating Period, as defined in paragraph 1.5 of this appendix 8 and specified in Table 2A of paragraph A.1 in Attachment A (Agreed Values for Payment Calculation) to this appendix 8;

“Contracted Specific Net Solar Generation” or **“ESG”** means the captive solar generation (in kWh) defined in paragraph 1.5 of this appendix 8 and specified in Table 2B of paragraph A.1 in Attachment A (Agreed Values for Payment Calculation) to this appendix 8;

“**Deductions**” means the deductions to the Availability Payments and Output Payments on account of Deductions for Reduced Water Availability, Deductions for NRW and Deductions for Off-Spec Output Water;

“**Deduction for NRW**” or “**DNRW**” means the deductions (in PKR) described in paragraph 1.5 of this appendix 8;

“**Deduction for Off-Spec Output Water**” or “**DRQW**” means the deductions (in PKR) described in paragraph 1.5 of this appendix 8;

“**Deduction for Reduced Water Availability**” or “**DRAW**” means the deductions (in PKR) described in paragraph 1.5 of this appendix 8;

“**Electricity Connection Point**” means the physical connection at which KWC and the electricity transmission and distribution facilities of the Electricity Supplier are connected;

“**Electricity Reimbursement Payment**” has the meaning given in paragraph 2.2.1.1 of this appendix 8;

“**Electricity Price**” or “**EP**” means, in any given period, A divided by B (in PKR/Kwh), where:

A = total amount (in PKR) set out in the electricity bill issued from time to time by the Electricity Supplier to KW&SB for electricity supplied to the KWC at the Electricity Connection Point in such Billing Period including taxes and charges, but excluding any late payment charges and any arrears prior to the Commencement Date,

B = total number of electricity units (in kWh) in such Billing Period as set out in the electricity bill issued from time to time by the Electricity Supplier to KW&SB for electricity supplied to the KWC at the Electricity Connection Point;

“**Fixed O&M Cost Recovery Charge for Water**” or “**FOMRW**” means the amount (in PKR/m³) as stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.3 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“**Foreign Debt Interest Recovery Charge**” or “**FD_I_RC**” means the amount (in PKR/m³) stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“**Foreign Debt Principal Recovery Charge**” or “**FD_P_RC**” means the amount (in PKR/m³) stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“**Foreign Equity Recovery Charge**” or “**FE_RC**” means the amount (in PKR/m³) stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability

Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“Input HD Water Connection Point” means the physical connection point where water from Hub Dam will enter KWC, specified as M1 in attachment D of appendix 8;

“Input HD Water Quality Specifications” means: the inlet water quality parameters / specifications for the Net HD Water Input set out in appendix 1;

“Input KIII Water Quality Specifications” means the inlet water quality parameters / specifications for the Net KIII Water Input set out in appendix 1;

“Input KIII Water Connection Point” means the physical connection point where water from KIII Conduit will enter the KWC, specified as M3 in attachment D of appendix 8;

“Input Water Connection Point” means Input HD Water Connection Point and/ or Input KIII Water Connection Point, as applicable;

“KIBOR” means the three (3) month Karachi Inter-Bank Offer Rate, being the average rate, Offer, for the three (3) months tenor, as published on State Bank of Pakistan page on that date or as published by the Financial Markets Association of Pakistan in case the State Bank of Pakistan page is unavailable;

~~**“LIBOR”** means the interbank offered rate administered by ICE Benchmark Administration Limited for three (3) month deposits in USD which appears on the relevant page of the Reuters Service (currently page LIBOR01) or, if not available, on the relevant pages of any other service (such as Bloomberg Financial Markets Service) that displays such ICE Benchmark Administration Limited rates. In the event that the Reuters service, or any successor thereto, no longer provides such information, such other service as agreed by the Commercial Parties (in consultation with the Independent Auditor);~~

“Local Debt Interest Recovery Charge” or **“LD_I_RC”** means the amount (in PKR/m³) as stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“Local Debt Principal Recovery Charge” or **“LD_P_RC”** means the amount (in PKR/m³) as stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period;

“Local Equity Recovery Charge” or **“LE_RC”** means the amount (in PKR/m³) stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Availability Payment calculation for a Billing Period;

“LCWp_{ns}” means the projected Unplanned Outages (in m³) during Summer Period as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8;

“LCWp_{nw}^P” means the projected Planned Outages (in m³) during Winter Period as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8;

“**LCWp_{nw}^U**” means the projected Unplanned Outages (in m³) during Winter Period as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8;

“**Mixed Water Monitoring Point**” means the physical point between the pumping station and the Treatment Plant, specified as M5 in attachment D of appendix 8;

“**N-CPI**” means the National Consumer Price Index as notified from time to time by the Pakistan Bureau of Statistics;

“**Net HD Water Input**” or “**HDWi**” means the water (in m³ in any given period) metered at the Input HD Water Connection Point;

“**Net KIII Water Input**” or “**KIIIWi**” means the water (in m³ in any given period) metered at the Input KIII Water Connection Point;

“**Net Water Input**” means the sum of the Net HD Water Input and the Net KIII Water Input;

“**Net Water Output**” or “**Wa**” means the water (in m³ for any given period) metered at the Output Water Connection Point;

“**Non-Revenue Water**” or “**NRW**” means (in m³) the amount calculated in m³ in accordance with paragraph 2.1.4 of this appendix 8;

“**Off-Spec Mixed Water**” means water that: (a) met the Input Water Quality Specifications at the Input Water Connection Point, but did not meet the Input Water Quality Specification when tested at Mixed Water Monitoring Point; or (b) did not meet the Input Water Quality Specifications at the Input Water Connection Point, and fell further outside those specifications when tested at the Mixed Water Monitoring Point;

“**Off-Spec Output Water based on Within Spec Input Water**” means, water that does not meet the Output Water Quality Specifications at the Output Water Connection Point, where water inflow is Within Spec Input Water;

“**Off-Spec Output Water due to Off-Spec Input Water and Off-Spec Mixed Water**” means water that does not meet the Output Water Quality Specifications, at the Output Water Connection Point, due to Off-Spec Input Water and Off-Spec Mixed Water;

“**Off-Spec Output Water**” means Off-Spec Output Water based on Within Spec Input Water or Off-Spec Output Water due to Off-Spec Input Water and Off-Spec Mixed Water, as applicable;

“**Off-Spec Input Water**” or “**OSIW**” means Off-Spec HD Water or Off-Spec KIII Water, as applicable;

“**Off-Spec HD Water**” means the water entering the KWC from the Input HD Water Connection Point that does not meet the Input HD Water Quality Specifications;

“**Off-Spec KIII Water**” means the water entering the KWC from the Input KIII Water Connection Point that does not meet the Input KIII Water Quality Specifications;

“**Outages**” means Planned Outages or Unplanned Outages, as applicable;

“**Output Payment**” or “**OPW**” means the water payment (in PKR) payable for a Billing Period, that covers electricity reimbursement payment and the variable operating and maintenance payment, paid by GoS for the Net Water Output delivered to KWSBKW&SB as defined in paragraph 1.2.2 of this appendix 8;

“**Output Water Connection Point**” means the physical connection point after the Reservoir at which the KWC and the water transmission facilities, operated by KWSBKW&SB for downstream water distribution, are connected, specified as M8 in attachment D of appendix 8;

“**Output Water Quality Specifications**” means the quality parameters / specifications for the Net Water Output:

- (a) for the C&O Period, as set out in the Mobilisation Testing Acceptance Certificate; and
- (b) for the Operating Period, as set out in appendix 1;

“**Projected Electricity Consumption**” or “**PEC**” means the electricity consumption for producing Net Water Output, calculated in accordance with paragraph 2.2.1.2 of this appendix 8;

“**Planned Outage**” means the removal of the KWC (or any part thereof) from service to perform work on specific components that is co-ordinated with KWSBKW&SB and scheduled not less than ninety (90) ~~days~~Days prior to the Contract Year in which it is to be undertaken and has a predetermined start date and duration, expressed in m³/~~day~~Day;

“**Projected Available Net Water Output**” or “**ANWOp**” means the net potential water production (in m³) defined in paragraph 1.5 of this appendix 8 and calculated according to the provisions of paragraph A.3 of Attachment A (Agreed Values for Payment Calculation) of this appendix 8;

“**Projected Loss of Net Water Output**” or “**LCWp**” means the projected loss of net water output (in m³) as per paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8;

~~“**Quarter**” means each three (3) Month period commencing at 00:00 on 1 January, 1 April, 1 July and 1 October in each calendar year;~~

“**Reduced Contracted Availability**” means (in m³/~~day~~Day) the reduction in the Contracted Availability due to Outages;

“**Reference Exchange Rate**” ¹⁴;

~~“**Reference LIBOR**” means, ⁺⁵;~~

¹⁴ Insert figure stated in clause 1.2.3(c) of clause 1.2 (Assumptions for Calculation of Required Values) of Section II (Financial Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

¹⁵ Insert figure stated in clause 1.2.3(d) of clause 1.2 (Assumptions for Calculation of Required Values) of Section II (Financial Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

“Reference Inflation Rate” means [●]¹⁶;

“Reference KIBOR” means [●]¹⁷

“Reference SOFR” means [●]¹⁸

“SOFR” means the three (3) month Term Secured Overnight Financing Rate (SOFR) published by the CME Group;

“Summer Period” or “Summer” means the period between 1 April and 30 September;

“Treatment Plant” means the water treatment facility to be upgraded by the Company to treat up to four hundred fifty-four thousand six hundred nine (454,609) m³/Day and achieve the water quality parameters set out in appendix 1;

“Unavailable” or “Unavailability” means any period during which the KWC (or any part thereof) is undergoing an Outage;

“Unavailability Notice” means the notice to be delivered by the Company to KWSBKW&SB in terms of clause of 10.1.9 of this Agreement, setting out the Outages as well as the extension of such Outages and declaring the Reduced Contracted Availability (in m³/~~day~~Day) on hourly basis during such Outages. Each notice shall supersede all previous notices, notwithstanding that an Unavailability Notice has to specify a duration, finish time or the Reduced Contracted Availability. Each Unavailability Notice shall specify the reason for the Outage and each component of the KWC that is affected;

“Unplanned Outages” means all outages which are not Planned Outages expressed in m³/~~day~~Day;

“Variable O&M Cost Recovery Charge” or “VOMRW” means the amount (in PKR/m³) stated by the Company in Attachment C (Cost Recovery Charges) to this appendix 8 and applied for Output Payment calculation for a Billing Period after being adjusted in accordance with paragraph B.4 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8;

“Within Spec Input Water” or “WSIW” means Within Spec HD Water and Within Spec KIII Water;

“Within Spec HD Water” means water entering the KWC from the Input HD Water Connection Point that meets the Input HD Water Quality Specifications;

“Within Spec KIII Water” means the water entering the KWC from the Input KIII Water Connection Point that meets the Input KIII Water Quality Specifications; and

¹⁶ Insert figure stated in clause 1.2.3(a) of clause 1.2 (Assumptions for Calculation of Required Values) of Section II (Financial Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP.

¹⁷ Insert figure stated in Insert figure stated in clause 1.2.3(d) of clause 1.2 (Assumptions for Calculation of Required Values) of Section II (Financial Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP

¹⁸ Insert figure stated in clause 1.2.3(e) of clause 1.2 (Assumptions for Calculation of Required Values) of Section II (Financial Evaluation Criteria) of Annexure B (Evaluation Criteria) of Part 4 (Annexures) of Volume I (Bidding Procedure) of the RFP

“Winter Period” or “Winter” means the period between 1 October and 31 March.

1.2 Payment Structure

The Service Payments to be paid for Contracted Availability and Net Water Output shall consist of two components, as follows:

1.2.1 The Availability Payment:

This part of the Service Payments shall constitute payment for Contracted Availability and shall consist of Component AW (as set out in paragraph 2.1.1 of this appendix 8) and Component BW (as set out in paragraph 2.1.1 of this appendix 8), each such component to be calculated as provided in paragraph 2.1 of this appendix 8. Availability Payments will be subject to the Deductions.

Availability Payments will only be applicable after the Project Commercial Operations Date.

1.2.2 The Output Payment:

This part of the Service Payments shall constitute payment for Net Water Output and shall consist of Component CW (as set out in paragraph 2.1.1 of this appendix 8) and Component DW (as set out in paragraph 2.1.12 of this appendix 8), each such component to be calculated as provided in paragraph 2.2 of this appendix 8. Output Payments will be subject to Deductions in the C&O Period.

Output Payments will be applicable from the Commencement Date.

1.3 Term and Structure of Availability Payments

Availability Payments will be payable in accordance with clauses 11, 12 and 13 of this Agreement and this appendix 8.

1.4 Electricity Reimbursement Payment

Electricity Reimbursement Payments will be billed by the Company in respect of Net Water Output and will be determined in accordance with the procedures set out in paragraph 2.2.1 of this appendix 8. Electricity consumption will be adjusted for the generation through the Solar Plant in accordance with this appendix 8.

1.5 Performance Criteria

The formulas for payment set out in paragraph 2 of this appendix 8 include factors related to the performance of the KWC. The derivations of these performance factors are as follows:

ECR_{CC}: The Contracted Specific Net Electricity Consumption is the efficiency (in kWh/m³) of the KWC, as agreed in Table 2A of paragraph A.1 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8, for each Operating Contract Year. For each Construction Contract Year, ECR_{CC} will be as stated in the Mobilisation Testing Certificate.

ESG: The Contracted Specific Net Solar Generation is the captive solar generation (in kWh) for the KWC, as agreed in Table 2B of paragraph A.1 in Attachment A (Agreed Values for

Payment Calculation) of this appendix 8, for each Operating Contract Year. The ESG for the Billing Period will be deducted from overall electricity requirement of the KWC for the Billing Period. For each Construction Contract Year, ESG will be zero (0).

DRAW: Deduction for Reduced Water Availability will be calculated based on the Actual Loss of Water Output (in m³) due to Unavailability being greater than the Projected Loss of Net Water Output (in m³) due to Unavailability. In case of actual loss of water is higher than the projected loss of water, then deduction is made for actual losses or losses over and above the projected losses. However, in case the actual loss of water is less than the projected, then benefit of lower loss shall be shared between the Commercial Parties (as set out in paragraphs 2.1.3 of this appendix 8).

DNRW: Deduction for NRW will be calculated based on the NRW as a percentage of Net Water Input, being greater than the Allowable NRW limit (as calculated in paragraphs 2.1.4 of this appendix 8).

DRQW: Deduction for Off-Spec Output Water (as set out in paragraphs 2.1.5 of this appendix 8) will be calculated based on the deviation between the required and actual output water parameters. (Note: Attachment D To Appendix 8 has the general scheme for monitoring and metering)

For any Billing Period, DRQW will not apply where:

- (a) Net Water Output is within Output Water Quality Specifications;
- (b) Net Water Output that does not meet the Output Water Quality Specifications due to Off-Spec Input Water, provided there is no Off-Spec Mixed Water;
- (c) in case of Bypass Water Output due to Bypass Input Water and there is no Bypass Off-Spec Mixed Water;

For any Billing Period, DRQW will apply:

- (a) to Off-Spec Output Water based on Within Spec Input Water;
- (b) to Bypass Water Output based on Within Spec Input Water;
- (c) to Off-Spec Output Water due to Off-Spec Input Water and Off-Spec Mixed Water;
- (d) in case of Bypass Water Output due to Bypass Input Water and Bypass Off-Spec Mixed Water.

Moreover, the water quality output requirements will be different during the C&O Period and the Operating Period.

ANWOp: The Projected Available Net Water Output (in m³), as values in Table 3 of paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8, for each Contract Year. ANWOp means the net potential water production at the Output Water Connection Point and Water Access Points specified as M2 in attachment D of appendix 8, which shall be derived from: (a) the maximum potential net output that could have been produced at the Output Water Connection Point and Water Access Points if the KWC had

been operated at the Contracted Availability (in m³/d) of the KWC during the Contract Year; (b) minus the total number of anticipated Outages in such Contract Year (in m³).

1.6 Payment Formulas

The formulas for calculation of the payment components are defined in paragraph 2 (Payment Calculation) of this appendix 8.

In applying the payment formulas for each Billing Period, the factors to be used shall be, where applicable, those to be in effect for such Billing Period as specified in or derived from Attachment A (Agreed Values for Payment Calculation) and shall, where applicable, be adjusted in Attachment B (Indexation / Adjustment to Cost Recovery Charges).

1.7 Rounding of Calculations

In making the calculations required in this appendix 8, values shall be calculated to five (5) decimal places of accuracy.

2. Payment Calculation

2.1 Availability Payments

The Availability Payment shall be computed as the sum of Component AW and Component BW and it will be subject to Deduction for Reduced Water Availability (DRAW), NRW (DNRW) and Off-Spec Output Water (DRQW). For each Billing Period m:

$$APW_m = AW_m + BW_m - DRAW_m - DNRW_m - DRQW_m$$

APW_m = Availability Payment (in PKR) for the Billing Period m

AW_m = Capital Cost Recovery Payment (in PKR) for the Billing Period m

BW_m = Fixed O&M Cost Recovery Payment (in PKR) for the Billing Period m

$DRAW_m$ = Deduction for Reduced Water Availability (in PKR) for the Billing Period m

$DNRW_m$ = Deduction for NRW (in PKR) for the Billing Period m

$DRQW_m$ = Deduction for Off-Spec Output Water (in PKR) for the Billing Period m

m = Billing Period

2.1.1 Availability Payment Equation for Component AW

Component AW (the “Capital Cost Recovery Payment”) of the Availability Payment for a Billing Period m in an Operating Contract Year n shall be calculated as follows:

$$AW_m = CCRW_m * DCW_m / 24 * PH_m$$

$$CCRW_m = FD_P_RC_m + FD_I_RC_m + LD_P_RC_m + LD_I_RC_m + FE_RC_m + LE_RC_m$$

where:

AW_m = Capital Cost Recovery Payment (in PKR) for the Billing Period m

- CCRW_m = Capital Cost Recovery Charge for the Billing Period m
- FD_P_RC_m = Foreign Debt Principal Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as per paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8
- FD_I_RC_m = Foreign Debt Interest Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as per paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8
- LD_P_RC_m = Local Debt Principal Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8
- LD_I_RC_m = Local Debt Interest Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as per paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8
- FE_RC_m = Foreign Equity Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as per paragraph B.2 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8
- LE_RC_m = Local Equity Recovery Charge (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8
- DCW_m = Contracted Availability (m³/dayDay) for Billing Period m
- PH_m = Total hours in the Billing Period m
- m = as previously defined

2.1.2 Availability Payment Equation for Component BW

Component BW (the “Fixed O&M Cost Recovery Payment”) of the Availability Payment for a Billing Period m in an Operating Contract Year n shall be calculated as follows:

$$\mathbf{BW_m = FOMRW_m * DCW_m / 24 * PH_m}$$

where:

- BW_m = Fixed O&M Cost Recovery Payment (in PKR) for the Billing Period m.
- FOMRW_m = Fixed O&M Cost Recovery Charge for Water (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as

per paragraph B.3 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8

DCW_m = As defined previously

PH_m = As defined previously

m = As defined previously

2.1.3 Deduction for Reduced Water Availability

The Deduction for Reduced Water Availability (DRAW) shall be calculated as follows:

(i) For Billing Periods during a Summer Period:

Case One:

LCW_{a_m} for the Billing Period m exceeds LCW_{p_m} i.e.

$$LCW_{a_m} > LCW_{p_m}$$

In this case:

$$DRAW_m = (CCRW_m + FOMRW_m) * LCW_{a_m}$$

Case Two:

LCW_{a_m} for the Billing Period m is equal or less than LCW_{p_m} i.e.

$$LCW_{a_m} \leq LCW_{p_m}$$

In this case:

$$DRAW_m = (CCRW_m + FOMRW_m) * (LCW_{p_m} - b * (LCW_{p_m} - LCW_{a_m}))$$

Where in both cases:

$DRAW_m$ = as previously defined

$CCRW_m$ = as previously defined

$FOMRW_m$ = as previously defined

LCW_{p_m} = Projected Loss of Net Water Output due to Unavailability during a Summer Period according to paragraph A.3 of this Attachment A (Agreed Values for Payment Calculation)

LCW_{a_m} = Actual Loss of Water Output due to Unavailability during a Summer Period, calculated according to paragraph A.4 of this Attachment A (Agreed Values for Payment Calculation)

m = as previously defined

b = 0.5

(ii) For the Billing Periods during Winter Period:

- for the first Billing Period during Winter Period of an Operating Contract Year n:

$$\text{DRAW}_m = (\text{CCRW}_m + \text{FOMRW}_m) * \text{LCWp}_m$$

- for the last Billing Period during Winter Period of an Operating Contract Year n:

Case One:

- LCWa_{nW} for the Winter Period exceeds LCWp_{nW} i.e.

$$\text{LCWa}_{nW} > \text{LCWp}_{nW}$$

$$\text{DRAW}_m = (\text{CCRW}_m + \text{FOMRW}_m) * (\text{LCWp}_m + (\text{LCWa}_{nW} - \text{LCWp}_{nW}))$$

where:

DRAW_m = as defined previously

DFA_m = as defined previously

CCRW_m = as defined previously

FOMRW_m = as previously defined

LCWp_m = Projected Loss of Net Water Output due to Unavailability during the Billing Period m in Winter Period according to paragraph A.3 of this Attachment A (Agreed Values for Payment Calculation)

LCWp_{nW} = Projected Loss of Net Water Output (in m^3) due to Unavailability in the two Billing Periods in Winter Period in the Operating Contract Year n, calculated as aggregate value of i) LCWp_{nW}^U and ii) LCWp_{nW}^P . LCWp_{nW}^U and LCWp_{nW}^P are tabulated in Table 3 in paragraph A.3 (Agreed Values for Payment Calculation)

$$\text{LCWp}_{nW} = \text{LCWp}_{nW}^U + \text{LCWp}_{nW}^P$$

LCWa_{nW} = Sum of all Actual Losses of Net Water Production (in m^3) LCWa_m due to Unavailability in the two Billing Periods in Winter Period in the Operating Contract Year n, calculated according to paragraph A.4 of this Attachment A (Agreed Values for Payment Calculation)

n = Operating Contract Year

m = as defined previously

Case Two:

- $LCW_{a_{nw}}$ for the Billing Period m is equal or less than $LCW_{p_{nw}}$ i.e.

$$LCW_{a_{nw}} \leq LCW_{p_{nw}}$$

In this case:

$$DRAW_m = (CCRW_m + FOMRW_m) * (LCW_{p_m} - b * (LCW_{p_{nw}} - LCW_{a_{nw}}))$$

Where in both cases:	
$DRAW_m =$	as previously defined
$CCRW_m =$	as previously defined
$FOMRW_m =$	as previously defined
$LCW_{p_m} =$	as previously defined
$LCW_{p_{nw}} =$	as previously defined
$LCW_{a_{nw}} =$	as previously defined
$m =$	as previously defined
$b =$	as previously defined

2.1.4 Deduction for NRW

The Deduction for NRW (DNRW) shall be calculated as follows:

$$NRW_m = (HDW_{i_m} + KIIIW_{i_m}) - (OW_m + APOW_m + BPW_m)$$

where:

- $NRW_m =$ NRW (in m^3) for the Billing Period m
- $HDW_{i_m} =$ Aggregate of daily Net HD Water Input (in m^3) in Billing Period m
- $KIIIW_{i_m} =$ Aggregate of daily Net KIII Water Input (in m^3) in Billing Period m
- $OW_m =$ Aggregate of daily water metered at Output Water Connection Point (in m^3) in Billing Period m
- $APOW_m =$ Aggregate of daily water metered at Water Access Points (in m^3) in Billing Period m
- $BPW_m =$ Aggregate of daily water metered at Bypass Water Connection Point (in m^3) in Billing Period m (Note: not applicable prior to the Project Commercial Operations Date)

m = as previously defined

$$\mathbf{DNRW}_m = ((\mathbf{NRW}_m / (\mathbf{HDWi}_m + \mathbf{KIIIWi}_m)) - \mathbf{ANRW}_m) * (\mathbf{CCRW}_m + \mathbf{FOMRW}_m) * \mathbf{V} * \mathbf{NRW_DCW}_m$$

$$\mathbf{NRW_DCW}_m = \sum_{d=1}^{\mathbf{D}} (\mathbf{DCW}_d)$$

where:

\mathbf{DNRW}_m = as previously defined

\mathbf{NRW}_m = as previously defined

\mathbf{HDWi}_m = as previously defined

\mathbf{KIIIWi}_m = as previously defined

\mathbf{ANRW}_m = Allowable NRW (in %) for the Billing Period m

\mathbf{CCRW}_m = as defined previously

\mathbf{FOMRW}_m = as defined previously

\mathbf{DCW}_d = Contracted Availability (m^3/dayDay) for Day d during Billing Period m

\mathbf{D} = Number of Days in Billing Period m

m = as previously defined

\mathbf{V} = Case 1: If $(\mathbf{NRW}_m / (\mathbf{HDWi}_m + \mathbf{KIIIWi}_m)) > \mathbf{ANRW}_m$ then $\mathbf{V} = 1$.

Case 2: If $(\mathbf{NRW}_m / (\mathbf{HDWi}_m + \mathbf{KIIIWi}_m)) \leq \mathbf{ANRW}_m$ then $\mathbf{V} = 0$.

2.1.5 Deduction for Off-Spec Output Water

The Deduction for Off-Spec Output Water (DRQW) shall be calculated as follows:

$$\mathbf{DRQW}_m = \mathbf{DRQW_WSIW}_m + \mathbf{DRQW_OSIW\&OSMW}_m + \mathbf{DRQW_BPOSMW}_m$$

$\mathbf{DRQW_WSIW}_m$	$\sum_{d=1}^{\mathbf{D}} (\mathbf{DCW}_d * \mathbf{X}_d * 1 * (\mathbf{CCRW}_m + \mathbf{FOMRW}_m))$
	$\sum_{d=1}^{\mathbf{D}} (\mathbf{DCW}_d * \mathbf{Y}_d * 0.5 * (\mathbf{CCRW}_m + \mathbf{FOMRW}_m))$

DRQW_OSIW &OSMW_m	d = 1
--	--------------

DRQW_BPOSMW_m	D $\sum_{d=1} (\mathbf{DCW}_d * \mathbf{Z}_d * \mathbf{0.5} * (\mathbf{CCRW}_m + \mathbf{FOMRW}_m))$ d = 1
--------------------------------	--

where:

$\mathbf{DRQW}_m =$ as defined previously

$\mathbf{CCRW}_m =$ as defined previously

$\mathbf{FOMRW}_m =$ as defined previously

$m =$ as previously defined

$\mathbf{DCW}_d =$ as previously defined

$\mathbf{D} =$ as previously defined

$\mathbf{X}_d =$ Case 1: $\mathbf{X} = 1$ if Day d during Billing Period m is a Day on which either a) Off-Spec Output Water based on Within Spec Input Water occur, or b) Bypass Water Output based on Within Spec Input Water occur.

Case 2: $\mathbf{X} = 0$ if Day d during Billing Period m is not a Day on which either a) Off-Spec Output Water based on Within Spec Input Water occur, or b) Bypass Water Output based on Within Spec Input Water occur.

$\mathbf{Y}_d =$ Case 1: $\mathbf{Y} = 1$ if Day d during Billing Period m is a Day on which Off-Spec Output Water due to Off-Spec Input Water and Off-Spec Mixed Water occur.

Case 2: $\mathbf{Y} = 0$ if Day d during Billing Period m is not a Day on which Off-Spec Output Water due to Off-Spec Input Water and Off-Spec Mixed Water occur.

$\mathbf{Z}_d =$ Case 1: $\mathbf{Z} = 1$ if Day d during Billing Period m is a Day on which Bypass Water Output due to Bypass Input Water and Bypass Off-Spec Mixed Water occur.

Case 2: $\mathbf{Z} = 0$ if Day d during Billing Period m is not a Day on which Bypass Water Output due to Bypass Input Water and Bypass Off-Spec Mixed Water occur.

2.2 Output Payments

The Output Payment shall be computed as the sum of Component CW and Component DW. For each Billing Period m :

$\mathbf{OPW}_m = \mathbf{CW}_m + \mathbf{DW}_m$
--

where:

OPW_m = Output Payment (in PKR) for the Billing Period m
=

CW_m = Electricity Reimbursement Payment (in PKR) for the Billing Period m

DW_m = Variable O&M Cost Recovery Payment (in PKR) for the Billing Period m

m = Billing Period

2.2.1 Component CW of the Water Output Payment – Electricity Component

2.2.1.1 Electricity Reimbursement Payment for Water

The Electricity Component CW (the “**Electricity Reimbursement Payment**”) of the Net Water Output for the Billing Period m in a Contract Year n shall be calculated as follows:

If $AEC_m \geq PEC_m$:

$$CW_m = PEC_m * EP_m$$

If $AEC_m < PEC_m$:

$$CW_m = (AEC_m + (PEC_m - AEC_m) * V) * EP_m$$

where:

CW_m = Electricity Reimbursement Payment (in PKR) for Billing Period m

PEC_m = Project Electricity Consumption (kWh) of the KWC in Billing Period m as determined under paragraph 2.2.1.2 below

AEC_m = Actual Electricity Consumption (kWh) of the KWC in Billing Period m

EP_m = Electricity Price (in PKR/kWh) in Billing Period m

V = 0.5

m = Billing Period

2.2.1.2 Projected Electricity Consumption

The Projected Electricity Consumption for the Billing Period m in a Contract Year n shall be calculated as follows:

$$PEC_m = (W_m * ECR_{CCn}) - ESG_m$$

where:

PEC_m = as defined previously

W_m = Net Water Output (in m³) during Billing Period m

ECR_{CCn} = Contracted Specific Net Electricity Consumption (in kWh/m³) for each Contract Year n as specified in Table 2A of Attachment A

ESG_m = Contracted Specific Net Solar Generation (in kWh) for the Billing Period m. To be calculated as the aggregate Contracted Specific Net Solar Generation for the months within the Billing Period m, for each Contract Year n as specified in Table 2B of Attachment A

During C&O Period ESG will be zero (0).

2.2.2 Component DW of Water Output Payment - Variable O&M Costs

The Variable O&M Component DW (the “Variable O&M Cost Recovery Payment”) of the Output Payment for Net Water Output for a Billing Period m in a Contract Year n shall be calculated as follows:

$$DW_m = W_m * VOMRW_m$$

where:

DW_m = The Variable O&M Cost Recovery Payment (in PKR) for Billing Period m

W_m = Net Water Output (in m³) in Billing Period m

VOMRW_m Variable O&M Cost Recovery Charge for Water (in PKR/m³) for Billing Period m as defined and stated in Attachment C (Cost Recovery Charges) to this appendix 8 and subject to indexation as per paragraph B.4 of Attachment B (Indexation / Adjustment to Cost Recovery Charges) to this appendix 8

m = as previously defined

2.3 Service Payment for Water

During the Operating Period:

The Service Payment for Water for the Billing Period m in an Operating Contract Year n shall be calculated as follows:

$$SPW_m = AW_m + BW_m + CW_m + DW_m - DRAW_m - DNRW_m - DRQW_m$$

where:

SPW_m = Service Payment (in PKR) for Billing Period m

AW_m = as defined previously

BW_m = as defined previously

CW_m = as defined previously

DW_m = as defined previously

DRAW_m = as defined previously

DNRW_m = as defined previously

DRQW_m = as defined previously

m = as defined previously

During the C&O Period:

The Service Payment for Water for the Billing Period m in the C&O Period shall be calculated as follows:

$$\mathbf{SPW_m = CW_m + DW_m - DRAW_m * 40\% - DNRW_m * 40\% - DRQW_m * 40\%}$$

where:

SPW_m = as defined previously

CW_m = as defined previously

DW_m = as defined previously

DRAW_m = as defined previously

DNRW_m = as defined previously

DRQW_m = as defined previously

m = as defined previously

Attachment A To
Appendix 8 (Service Payment Calculations)
Agreed Values for Payment Calculation

A.1 The Contracted Specific Net Electricity Consumption ECR_{CCn} is as stated in Table 2A for each Operating Contract Year n.

Table 2A: Contracted Specific Net Electricity Consumption¹⁹

Contract Year n	Contracted Specific Net Electrical Energy Consumption ECR_{CCn} (kWh/m³)
CY1	█
CY2	█
CY3	█
CY4	█
CY5	█
CY6	█
CY7	█
CY8	█
CY9	█
CY10	█
CY11	█
CY12	█
CY13	█
CY14	█
CY15	█

¹⁹ █ Insert figure stated in Bidding Form **F-10.12.C (Electricity)** of the Proposal.

The Contracted Specific Net Solar Generation ESG is as stated in Table 2B for each month and Operating Contract Year n.

Table 2B: Contracted Specific Net Solar Generation²⁰

Operating Contract Year n	Contracted Specific Net Solar Generation ESG (kWh)												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
CY1													
CY2													
CY3													
CY4													
CY5													
CY6													
CY7													
CY8													
CY9													
CY10													
CY11													
CY12													
CY13													

²⁰ Insert figure stated in Bidding Form ~~5.4.1.2~~ C (Electricity) of the Proposal

CY14	█	█	█	█	█	█	█	█	█	█	█	█	█
CY15	█	█	█	█	█	█	█	█	█	█	█	█	█

A.2 CAPITAL COST RECOVERY CHARGE FOR WATER (CCRW)

The Capital Cost Recovery Charge for Water CCRW consists of following components:

- (i) Foreign Debt Principal Recovery Charge or FD_P_RC,
- (ii) Foreign Debt Interest Recovery Charge or FD_I_RC,
- (iii) Local Debt Principal Recovery Charge or LD_P_RC,
- (iv) Local Debt Interest Recovery Charge or LD_I_RC,
- (v) Foreign Equity Recovery Charge or FE_RC and
- (vi) Local Equity Recovery Charge or LE_RC;

The CCRW components to be used in the calculation of Payment Component AW as stated in Attachment C (Cost Recovery Charges) subject to adjustment according to Attachment B (Indexation / Adjustment of Cost Recovery Charges) to this appendix 8.

The foreign component of CCRW, i.e. FE_RC, FD_P_RC and FD_I_RC will be subject to indexation to the USD/PKR exchange rate as specified in Attachment B (Indexation / Adjustment of Cost Recovery Charges), to this appendix 8.

The debt interest components of CCRW, i.e. FD_I_RC and LD_I_RC, will be subject to indexation to the floating interest rates as specified in Attachment B (Indexation / Adjustment of Cost Recovery Charges), to this appendix 8.

The annual capital costs cover without limitation:

- Senior Debt service payments (interest paid on outstanding debt and principal repayment),
- returns on Equity, and
- all costs arising out of the total project budget, which includes but is not limited to:
 - construction costs;
 - owner's contingencies;
 - costs for initial inventory;
 - development costs and success fees;
 - owner's costs;
 - insurance costs during C&O Period;
 - initial working capital and any reserve accounts;
 - taxes, levies and duties;

- financing costs during construction, and
- fixed operating costs during the construction period.

A.3 PROJECTED AVAILABLE NET WATER OUTPUT

The Projected Net Water Output of KWC ANWO (in m³) is defined to be the maximum potential net water output during a Contract Year less the Projected Loss of Net Water Output due to Unavailability during the same Contract Year period. Planned Outages are not accepted during the Summer Period.

The Projected Net Water Output ANWO during each Contract Year n is calculated as follows:

$$\text{ANWOp}_n = (\text{PH}_n * \text{CAW}_n / 24) - (\text{LCWp}_{nS} + \text{LCWp}_{nW}^P + \text{LCWp}_{nW}^U)$$

where:

ANWOp_n = Projected Net Water Output measured at the Output Water Connection Point and Water Access Points in Contract Year n

PH_n = total hours in Contract Year n

LCWp_{nS} = Projected Unplanned Outages (in m³) during Summer Period in the Contract Year n, as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8

LCWp_{nW}^P = Projected Planned Outages (in m³) during Winter Period in the Contract Year n, as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8

LCWp_{nW}^U = Projected Unplanned Outages (in m³) during Winter Period in the Contract Year n, as per Table 3 in paragraph A.3 in Attachment A (Agreed Values for Payment Calculation) of this appendix 8

CAW_n = as previously defined

n = as previously defined

Outages allocation / distribution

For payment calculations, including Availability Payments, allocation of Unplanned Outages in Summer Period and Outages in Winter Period will be as follows:

- The Projected Loss of Net Water Output due to Planned Outages, LCWp_{nW}^P, as agreed in Table 3, must be allocated in the Winter Period of the Contract Year concerned.
- The Projected Losses of Net Water Output due to Unplanned Outages, LCWp_{nW}^U and LCWp_{nS}, as agreed in Table 3, will be equally distributed over the Billing Periods m of the corresponding season (Summer Period and Winter Period) of the Contract Year concerned.
- The Projected Losses of Net Water Output due to Unplanned Outages during Summer, LCWp_{nS}, will be distributed throughout the two Summer Billing Periods based on the numbers of hours in each Billing Period;

- The Projected Losses of Net Water Output due to Planned Outages and Unplanned Outages during Winter, $LCW_{p_{nW}^P}$ and $LCW_{p_{nW}^U}$, will be distributed throughout the two Winter Billing Periods based on the numbers of hours in each Billing Period.
- The Availability Payments for the first Billing Period of the Winter Period will be based on the Projected Losses of Net Water Output during Winter Period, $LCW_{p_{nW}^P}$ and $LCW_{p_{nW}^U}$, distributed throughout the two Billing Periods of the Winter Period based on the number of hours in each Billing Period; and
- The Availability Payment for the last Billing Period of the Winter Period will be based on the Projected Losses of Net Water Output during Winter Period, $LCW_{p_{nW}^P}$ and $LCW_{p_{nW}^U}$, reconciled and adjusted at the end of the second Billing Period of the Winter Period against the actual losses of output during the whole Winter Period.

Projected Loss of Net Water Output (LCW_{p_m}) in Billing Period m

The Projected Loss of Net Water Output, LCW_p , in Billing Period m to be used in the Availability Payment calculation of this appendix 8 shall be calculated as follows:

- for such Billing Period m during Summer Period

$$LCW_{p_m} = LCW_{p_{nS}} * PH_m / PH_s$$

- for such Billing Period m during Winter Period

$$LCW_{p_m} = (LCW_{p_{nW}^U} + LCW_{p_{nW}^P}) * PH_m / PH_w = LCW_{p_{nW}} * PH_m / PH_w$$

where for both are:

LCW_{p_m} = as defined previously

$LCW_{p_{nS}}$ = as defined previously

$LCW_{p_{nW}^U}$ = as defined previously

$LCW_{p_{nW}^P}$ = as defined previously

$LCW_{p_{nW}}$ = Projected Loss of Net Water Output (in m^3) due to Unplanned Outages and Planned Outages during Winter Period, i.e. $LCW_{p_{nW}^U} + LCW_{p_{nW}^P}$

PH_m = as defined previously

PH_s = total hours in Summer Period

PH_w = total hours in Winter Period

m = as defined previously

Table 3: Projected Availability of Water

During C&O Period

Contract Year n	Hours in Contract Year		Projected Available Net Water Output ANWOp _n (m ³)	Projected Loss of Net Water Output due to Unavailability (m ³)			
	Summer	Winter		Summer LCWp _{ns}	Winter		Total, LCWp _n
	PH _s	PH _w			Planned, LCWp _{nw} ^P	Unplanned, LCWp _{nw} ^U	
CY1 (1 year)	4,380	4,380	161,386,195	1,818,436	909,218	1,818,436	4,546,090
CY2 (6 months)	2,190	2,190	80,693,098	909,218	454,609	909,218	2,273,045

During Operating Period²¹

Contract Year n	Hours in Contract Year		Projected Available Net Water Output ANWOp _n (m ³)	Projected Loss of Net Water Output due to Unavailability (m ³)			
	Summer	Winter		Summer LCWp _{ns}	Winter		Total, LCWp _n
	PH _s	PH _w			Planned, LCWp _{nw} ^P	Unplanned, LCWp _{nw} ^U	
CY1	4380	4380					
CY 2	4380	4380					
CY 3	4380	4380					
CY 4	4380	4380					
CY 5	4380	4380					
CY 6	4380	4380					
CY 7	4380	4380					
CY 8	4380	4380					
CY 9	4380	4380					
CY 10	4380	4380					
CY 11	4380	4380					
CY 12	4380	4380					
CY 13	4380	4380					
CY 14	4380	4380					
CY 15	4380	4380					

²¹ Insert figures stated in Bidding Form **2.2.2.A** (Projected Available NWO) of the Proposal.

A.4 ACTUAL UNAVAILABILITY OF WATER

The Actual Loss of Water Output due to Unavailability LCW_{a_m} shall be determined as follows:

$$LCW_{a_m} = \sum_{j=1}^J (UD_j / 24 * (DCW_m - DCW_j))$$

where:

LCW_{a_m} = as defined previously

DCW_m = Contracted Availability (m^3/dayDay) for Billing Period m

UD_j = Length of actual period (in hours) of declared Unavailability for Water, as per Availability Notice, for each Period j

DCW_j = Reduced Contracted Availability of the KWC (in m^3/dayDay) declared, as per the Unavailability Notice, in the period j, provided that DCW_j (in m^3/dayDay) is equal or less than DCW_m ;

j = each period of declared Unavailability (as per Availability Notice)

J = number of periods of declared Unavailability (as per Availability Notice) in Billing Period

For the determination of the Actual Loss of Water Output due to Unavailability LCW_a , the Company shall notify and provide supporting data to the Independent Engineer and KW&SB all the Planned and Unplanned Outages.

If the Independent Engineer or KW&SB have grounds to believe that the Company has failed to provide the Unavailability Notice at the earliest time notice is possible in accordance with the requirements of this Agreement, the Independent Engineer or KW&SB may request the Company to, and the Company shall, provide the Independent Engineer and KW&SB with such information as may be necessary for the Independent Engineer to determine whether earlier notice by the Company was, under the circumstances, possible. If, after such investigation, the Independent Engineer determines that earlier notice was possible and the Company agrees with the determination, GoS may reduce the Availability Payments payable to the Company by an amount for such Unavailability that will not exceed one full day'sDay's Availability Payment.

If the Parties are unable to agree upon such determination, the matter in dispute shall be resolved pursuant to clause 27 of this Agreement.

Subject to approval by the Independent Engineer, Planned Outages not used in a Winter Period may be shifted to following Winter Periods, but not otherwise, which approval shall not be unreasonably withheld or delayed.

A.5. FIXED O&M PAYMENT CALCULATION

Fixed O&M Cost Recovery Charge for Water

The Fixed O&M Cost Recovery Charge for Water (“FOMRW”) is expressed as one level charge rate for any applicable Billing Period. The FOMRW to be used in the calculation of

Payment Component BW on the Commencement Date are as stated in Attachment C (Cost Recovery Charges), subject to adjustment according to Attachment B (Indexation / Adjustment of Cost Recovery Charges) to this appendix 8.

FOMRW is subject to indexation to the inflation rate as specified in Attachment B (Indexation / Adjustment of Cost Recovery Charges) to this appendix 8.

A.6 VARIABLE O&M PAYMENT CALCULATION

Variable O&M Cost Recovery Charge for Water

The Variable O&M Cost Recovery Charge for Water VOMRW is expressed as one level charge rate for any applicable Billing Period. The VOMRW to be used in the calculation of Payment Component DW as stated in Attachment C (Cost Recovery Charges), subject to adjustment according to Attachment B (Indexation / Adjustment of Cost Recovery Charges) to this appendix 8.

VOMRW is subject to indexation to the inflation rate as specified in Attachment B (Indexation / Adjustment of Cost Recovery Charges) to this appendix 8.

**Attachment B To
Appendix 8 (Calculation of Payment)
Indexation / Adjustment of Cost Recovery Charges**

B.1 GENERAL

The cost recovery charges used in paragraph 2 (Payment Calculation) shall be adjusted in accordance with the provisions of this Attachment B.

(a) Adjustments for fluctuation of the USD / PKR exchange rate:

Any change between the Reference Exchange Rate and the arithmetic average of exchange rate (“**Exchange Rate**”) for the Billing Period m shall result in an adjustment of FE_RC, ~~FD P RC and FD I RC~~ component of those Capital Cost Recovery Charge on a Quarterly basis. Any Exchange Rate adjustment or arithmetic average of exchange rate in Billing Period m will use the TT selling rate for Dollars expressed in Rupees, as published by the National Bank of Pakistan –prevailing at the close of Wednesday that is also a Business Day, and with respect to any Wednesday that is not a Business Day, the TT selling rate for Dollars expressed in Rupees, as published by the National Bank of Pakistan prevailing at the close of the last preceding Business Day prior to such Wednesday.

(b) Indexation based on Inflation Rate National Consumer Price Index:

The FOMRW and VOMRW, as specified in Attachment A (Agreed Values for Payment Calculation) of this appendix 8, will be adjusted quarterly according to the N-CPI or –if the index is not available or if the Commercial Parties agree otherwise, then another mutually agreed index, or in the event of a failure to agree then such index or method of calculation as shall be determined in accordance with the provisions of clause 27 of this Agreement.

Quarterly N-CPI values will be calculated as the average of each of the end of month values for N-CPI in the Billing Period immediately preceding the relevant Billing Period, which shall equal the sum of the month end N-CPI values in the Billing Period immediately preceding the Billing Period divided by the number of such values; provided, that if any such values for any of such Billing Period are not available, then the average of the end of month value for the most recent available three (3) months shall be used.

(c) Indexation based on Karachi Interbank Offer Rate:

Any change between the Reference KIBOR Rate and the KIBOR for the Billing Period m shall result in an adjustment of the LD_I_RC on a quarterly basis. Quarterly KIBOR values will be calculated based on the KIBOR on the Day prior to the Project Commercial Operations Date and thereafter the last Day of the previous Quarter (31st March, 30th June, 30th September or 31st December, as applicable).

(d) Indexation based on ~~Foreign Financing Base Rate LIBORSOFR~~:

Any change between the Reference ~~LIBORSOFR~~ and the ~~LIBORSOFR~~ for the Billing Period m shall result in an adjustment of the foreign debt interest component

(FD_I_RC) of those Cost Recovery Charges on a quarterly basis. Quarterly LIBORSOFR values will be calculated based on the LIBORSOFR on the Day prior to the Project Commercial Operations Date and thereafter the last Day of the previous Quarter (31st March, 30th June, 30th September or 31st December, as applicable).

The cost recovery charges subject to indexation are:

Availability Payment for Water:

- AW: Capital Cost Recovery Payment. Following component of Capital Cost Recovery Payment shall be indexed:
 - Availability Component FD_P_RC: Foreign Debt Principal Recovery Charge
 - Availability Component FD_I_RC: Foreign Debt Interest Recovery Charge
 - Availability Component LD_I_RC: Local Debt Interest Recovery Charge
 - Availability Component FE_RC: Foreign Equity Recovery Charge
- Availability Component BW: Fixed O&M Cost Recovery Payment

Output Payment for Water:

- Water Component DW: Variable O&M Cost Recovery Payment

B.2 ADJUSTMENT OF THE CAPITAL COST RECOVERY CHARGE

The Capital Cost Recovery Charge or CCRW components to be used for any Billing Period m shall be calculated based on agreed values in Attachment C (Cost Recovery Charges) after adjustment in accordance with this Attachment B (Indexation / Adjustment of Cost Recovery Charges).

To determine CCRW for any Billing Period m, the value of CCRW components will be calculated and adjusted in accordance with Attachment B (Indexation / Adjustment of Cost Recovery Charges) and Attachment C (Cost Recovery Charges) as follows:

Foreign Debt Principal Recovery Charge

$\underline{FD_P_RC}_m = \underline{FD_P_RC} * (\underline{EXR}_m / \underline{EXR}_r)$

Where:

FD_P_RC_m = Foreign Debt Principal Recovery Charge in Billing Period m (PKR/m3)

FD_P_RC = Foreign Debt Principal Recovery Charge as specified in Attachment C (Cost Recovery Charges) (PKR/m3)

EXR_m = The USD/PKR exchange rate to be applied for the Billing Period m calculated as per paragraph B.1 Attachment B

EXR_r = The Reference Exchange Rate

Foreign Debt Interest Recovery Charge

$$FD_I_RC_m = \frac{(((FD_I_RC * (FIR_m / FIR_r) * F_f) + (FD_I_RC * (1-F_f)))) * (EXR_m / EXR_r)}$$

Where:

F_f = [●] %²²

FD_I_RC_m = Foreign Debt Interest Recovery Charge in Billing Period m (PKR/m3)

FD_I_RC = Foreign Debt Interest Recovery Charge as specified in Attachment C (Cost Recovery Charges) (PKR/m3)

FIR_m = The LIBORSOFR to be applied for the Billing Period m calculated as per paragraph B.1 Attachment B;

FIR_r = The Reference LIBORSOFR

EXR_m = The USD/PKR exchange rate to be applied for the Billing Period m calculated as per paragraph B.1 Attachment B

EXR_r = The Reference Exchange Rate

Local Debt Interest Recovery Charge

$$LD_I_RC_m = (LD_I_RC * (LIR_m / LIR_r) * F_k) + (LD_I_RC * (1-F_k))$$

Where:

F_k = [●] %²³

LD_I_RC_m = Local Debt Interest Recovery Charge in Billing Period m (PKR/m3)

LD_I_RC = Local Debt Interest Recovery Charge as specified in Attachment C (Cost Recovery Charges) (PKR/m3)

LIR_m = The KIBOR to be applied for the Billing Period m calculated as per paragraph B.1 Attachment B,

²² Insert Percentage of Foreign Debt Interest Recovery Charge (FD_I_RC) that is based on LIBORSOFR amount from Bidding Form 54E2-G (Termination Payments) of the Proposal, specified as “Percentage of Foreign Debt Interest Recovery Charge linked with LIBORSOFR”.

²³ Insert Percentage of Local Debt Interest Recovery Charge (LD_I_RC) that is based on KIBOR amount from Bidding Form 54E2-G (Termination Payments) of the Proposal, specified as “Percentage of Local Debt Interest Recovery Charge linked with KIBOR”.

LIR_r = The Reference KIBOR

Foreign Equity Recovery Charge

$$\mathbf{FE_RC}_m = \mathbf{FE_RC} * (\mathbf{EXR}_m / \mathbf{EXR}_r)$$

Where:

FE_RC_m = Foreign Equity Recovery Charge in Billing Period m (PKR/m³)

FE_RC = Foreign Equity Recovery Charge as specified in Attachment C (Cost Recovery Charges) (PKR/m³)

EXR_m = The USD/PKR exchange rate to be applied for the Billing Period m calculated as per paragraph B.1 Attachment B

EXR_r = The Reference Exchange Rate

B.3 ADJUSTMENT OF THE FIXED O&M COST RECOVERY CHARGE FOR WATER

The FOMRW to be used for any Billing Period m shall be calculated based on agreed values in Attachment C (Cost Recovery Charges) after adjustment in accordance with this Attachment B (Indexation / Adjustment of Cost Recovery Charges).

To determine FOMRW for any Billing Period m, the value of FOMRW will be calculated and adjusted in accordance with Attachment B (Indexation / Adjustment of Cost Recovery Charges) and Attachment C (Cost Recovery Charges) as follows:

$$\mathbf{FOMRW}_m = \mathbf{FOMRW} * (\mathbf{IR}_m / \mathbf{IR}_r)$$

Where:

FOMRW_m = Fixed O&M Cost Recovery Charge for Water in Billing Period m (PKR/m³)

FOMRW = Fixed O&M Cost Recovery Charge for Water as specified in A.1 of Attachment C (Cost Recovery Charges) (PKR/m³)

IR_m = N-CPI as applicable for Billing Period m calculated as per paragraph B.1 Attachment B

IR_r = Reference Inflation Rate

B.4 ADJUSTMENT OF THE VARIABLE O&M COST RECOVERY CHARGE

The VOMRW to be used for any Billing Period m shall be calculated based on agreed values in Attachment C (Cost Recovery Charges) after adjustment in accordance with this Attachment B.

To determine VOMRW for any Billing Period m, the value of VOMRW will be calculated and adjusted in accordance with Attachment B (Indexation / Adjustment of Cost Recovery Charges) and Attachment C (Cost Recovery Charges) as follows:

$$\mathbf{VOMRW_m = VOMRW * (IR_m / IR_r)}$$

Where:

VOMRW_m = Variable O&M Cost Recovery Charge in Billing Period m (PKR/m³)

VOMRW = Variable O&M Cost Recovery Charge as specified in A.1 of Attachment C (Cost Recovery Charges) (PKR/m³)

IR_m = as previously defined

IR_r = as previously defined

Attachment C To
Appendix 8 (Calculation of Payment)
Cost Recovery Charges

During C&O Period

Year	FD_P_R C	FD_I_R C	LD_P_R C	LD_I_R C	FE_RC	LE_RC	FOMR W	VOMRW²⁴
	PKR/ m³	PKR/ m³	PKR/ m³	PKR/ m³	PKR/ m³	PKR/ m³	PKR/ m³	PKR/ m³
CY 1	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	[REDACTED]
CY 2	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	Same as CY1 in Operatin g Period*	[REDACTED]

²⁴ [REDACTED] Insert figures stated in Bidding Form **6-3-F-2 B (Cost Recovery Charges)** of the Proposal.

During Operating Period²⁵

Year	FD_P_R C*	FD_I_R C*	LD_P_R C*	LD_I_R C*	FE_RC**	LE_RC**	FOMR W	VOMR W
	PKR/ m ³	PKR/ m ³	PKR/ m ³	PKR/ m ³	PKR/ m ³	PKR/ m ³	PKR/ m ³	PKR/ m ³
CY1								
CY2								
CY3								
CY4								
CY5								
CY6								
CY7								
CY8								
CY9								
CY10								
CY11								
CY12								
CY13								
CY14								
CY15								

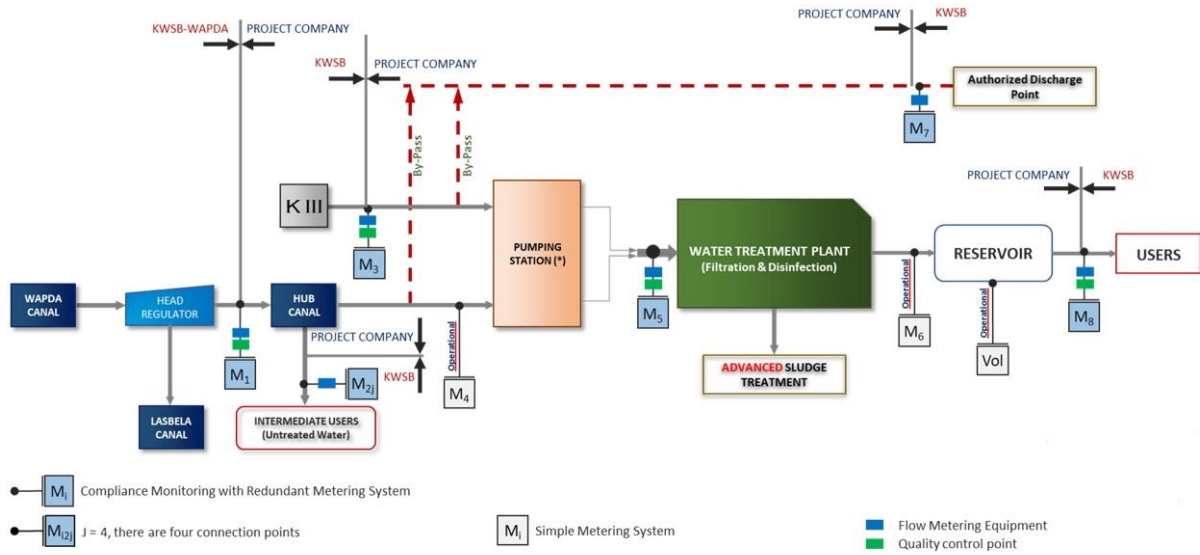
***Note:** During C&O Period CCRW components (FD_P_RC, FD_I_RC, LD_P_RC, LD_I_RC, FE_RC, LE_RC and FOMRW) will be used only for deduction for availability (DRAW), NRW (DNRW) and quality (DRQW). CCRW or Availability Payments will not be applicable during C&O Period.

****Bidders** are referred to [clause sections 8.5 and 8.7](#) of the Instructions to Bidders (Volume I (Bidding Procedure)) of the RFP.

²⁵ **Insert figures stated in Bidding Form [B-3-F-2](#) B (Cost Recovery Charges) of the Proposal.**

Attachment D To

Appendix 8 (General scheme for monitoring and metering)



Attachment E
Appendix 8 (Calculation of Payment)

[Insert table in Bidding Form ~~R3E~~-G headed 'Debt Repayment Profile' submitted with Proposal]

Attachment F
Appendix 8 (Calculation of Payment)

[Insert table ~~E2-B (Shareholding Composition)~~ in Bidding Form ~~E2-G(E2-)~~ headed '~~Equity-Payment-Profile/Sources and Uses~~' submitted with Proposal]

APPENDIX 9: GoS PAYMENT ACCOUNT STANDING INSTRUCTIONS

[ON THE LETTERHEAD OF THE GoS]

DATE: [●]

REFERENCE: [●]

To,

[GoS Payment Account Bank]

.....

.....

CC:

.....

RE: STANDING INSTRUCTIONS IN RESPECT OF GoS PAYMENT ACCOUNT

Dear Sir / Madam,

1. GoS PAYMENT ACCOUNT & ISSUANCE OF STANDING INSTRUCTIONS NOTICE

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

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

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

2. DEFINITIONS

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

(a) “**Account Bank**” has the meaning given to it in paragraph 1 of the Standing Instructions Notice;

(b) “**Account Holder**” has the meaning given to it in paragraph 1 of the Standing Instructions Notice;

(c) “**Certified Lien Amount**” means the amount payable by the GoS to the Company in accordance with clause 12.1.5.3 of the Concession Agreement, as set out in the Lien Enforcement Certificate;

(e)(d) “**Certified SP Amount**” means the amount payable by the GoS to the Company as set out in the Service Payment Certificate;

- (e) “Certified Unrecovered TP Amount” means the amount payable by the GoS to the Company as set out in the Unrecovered Termination Payment Amount Certificate;
- (f) “Company” means [●], a company incorporated under the laws of Pakistan, having its registered office located at [●];
- (g) “Company Payment Account” means the account to be established and maintained by the Company, in which the Company shall receive the amounts payable by the Account Holder in accordance with the Service Payment Certificates;
- (h) “Concession Agreement” means the concession agreement dated [●] between the Governor of Sindh (acting through Secretary, Local Government & Housing Town Planning Department, Government of Sindh), the Karachi Water & Sewerage Board, and the Company in respect of the Project;
- (i) “GoS Payment Account” has the meaning given to it in paragraph 1 of the Standing Instructions Notice;
- (j) “Independent Auditor” means [●];
- (k) “Independent Engineer” means [●];
- (l) “~~Payment~~ Lien Enforcement Certificate” means the ~~certificate~~ written confirmation jointly issued and duly signed by the Independent Auditor and the Independent Engineer, setting out the Certified Lien Amount;
- (m) “Project” means the designing, building, constructing, testing, commissioning, operating, maintaining, financing, and transferring by the Company of the Karachi Water Canal to be undertaken in public-private partnership mode by the Company in terms of the Concession Agreement;
- (n) “Revocation Notice” has the meaning given to it in paragraph 5.1(b) of the Standing Instructions Notice;
- (o) “Service Payment Certificate” means the certificate jointly issued and duly signed by the Independent Auditor and the Independent Engineer, setting out the Certified SP Amount;
- (p) “Sponsors” means [●];
- (q) “Standing Instructions” means these standing instructions for the operations of the GoS Payment Account; ~~and~~
- (r) “Standing Instructions Notice” has the meaning given to it in paragraph 1 of the Standing Instructions Notice-; ~~and~~
- (s) “Unrecovered Termination Payment Certificate” means the certificate jointly issued and duly signed by the Independent Auditor and the Independent Engineer, setting out the Certified Unrecovered TP Amount.

3. INTERPRETATION

3.2 Save where the contrary is indicated, any reference in this Standing Instructions Notice to:

- (a) a paragraph or an annexure shall be construed as a reference to a paragraph of or an annexure to this Standing Instructions Notice;
- (b) any instrument, memorandum, agreement, contract or document shall be construed as a reference to that instrument, memorandum, agreement, contract or document (together with any recitals or sections thereto) all as amended, varied, restated, novated or supplemented from time to time;
 - (i) any person shall be construed so as to include their respective administrators, successors in interest and permitted assigns from time to time;
 - (ii) a statute, enactment or order shall be construed as a reference to such statute, enactment or order as the same may have been, or may from time to time be, amended or re-enacted and all subsidiary legislation and other instrument made under or deriving validity therefrom;
 - (iii) the singular shall include the plural and vice versa, where appropriate;
 - (iv) the words ‘including’ and ‘includes’ and any grammatical variants of those words, will be read as if followed by the words ‘without limitation;’
 - (v) a reference to a person shall be construed to include a juridical person;
 - (vi) a time of **dayDay** shall be construed as a reference to Pakistan Standard Time; and
 - (vii) headings in this Standing Instructions Notice are for ease of reference only and shall be ignored in construing this Standing Instructions Notice.
- (c) The annexures to this Standing Instructions Notice shall form an integral part of this Standing Instructions Notice.

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

4.1 The Account Holder instructs and authorizes the Account Bank to act as follows:

THAT, upon receipt of a **Service** Payment Certificate by the Account Bank from time to time, the Account Bank shall, within one (1) Business Day of receipt of the **Service** Payment Certificate, debit the GoS Payment Account in an amount equal to the Certified **SP** Amount and credit the same to the Company Payment Account.

THAT, upon receipt of an Unrecovered Termination Payment Certificate by the Account Bank, the Account Bank shall, within one (1) Business Day of receipt of the Unrecovered Termination Payment Certificate, debit the GoS Payment Account in an amount equal to the Unrecovered Certified TP Amount and credit the same to [insert details of relevant company account].

THAT, upon receipt of a Lien Enforcement Certificate by the Account Bank, the Account Bank shall, within one (1) Business Day of receipt of the Lien Enforcement Certificate, debit the GoS Payment Account in an amount equal to the Certified Lien Amount and credit the same to [insert details of relevant company account].

5. REVOCATION AND AMENDMENT OF STANDING INSTRUCTIONS

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

- (a) the date on which a written certificate, duly issued by the Independent Auditor, is received by the Account Bank from the Independent Auditor certifying that the Account Holder has fully complied with and has satisfied its payment obligations for the Project;
- (b) the date on which the Standing Instructions are revoked pursuant a written revocation notice (the “**Revocation Notice**”) duly executed and confirmed by the authorized representatives of each of the Account Holder and the Company and subsequently duly issued by the Account Holder to the Account Bank instructing revocation of the Standing Instructions;
- (c) the date on which a written certificate, duly issued by the Account Holder, is received by the Account Bank from the Account Holder certifying that the Concession Agreement has been terminated in accordance with the terms thereof and the Termination Payments have been made; and
- (d) the date on which a written certificate, duly issued by the Account Holder, is received by the Account Bank from the Account Holder certifying that the ‘GoS Service Payment SBLC’ has been established in accordance with the Concession Agreement.

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

6. SEVERABILITY

6.1 If for any reason whatsoever any provision of this Standing Instruction Notice is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Account Bank and the Account Holder will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

7. GOVERNING LAW & DISPUTE RESOLUTION

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

APPENDIX 10: INDEPENDENT APPOINTEES TERMS OF REFERENCE

Part 1: Indicative Independent Auditor Terms of Reference

The scope of work of the Independent Auditor for the Project shall include the following:

- (a) Perform all actions and services set out in the Relevant Agreements to be performed by the Independent Auditor diligently and within the timelines set out therein (the “IA Services”).
- (b) Exercise, in the performance of the IA Services, all skill, care and diligence to be expected of a properly qualified and competent professional experienced in each of the disciplines to which the IA Services relate.
- (c) Cooperate with the other parties to the Relevant Agreements in respect of matters relating to the Independent Auditor for the purposes of, *inter alia*, facilitating of the Project and the Project Activities.
- (d) The IA Services include:
 - monitoring financial aspects;
 - certification and approvals;
 - issuing monthly progress reports;
 - cost certification;
 - expert adjudicator on financial matters relating to force majeure, terminations, project delays or other project issues as and when they arise of the Project’s issues, funding mechanisms, project risks and intimate the party concerned of their responsibility as laid down in the Relevant Agreements; and
 - other matters detailed in Relevant Agreements.
- (e) To work in close coordination with the Independent Engineer and exchange information as required for the performance of their respective tasks.
- (f) To give presentations to various Government tiers on the Financial Model and explain the impact of tariff indexations, Deductions, payments related to a Relief Event, Force Majeure Event and termination events, on the value for money. Also be in meetings of the GoS at during various approvals (if and as required).
- (g) On intimation from the Company, the Financing Parties or GoS Parties, establish the occurrence of a material adverse effect on the Project and recommend based on the terms of the Relevant Agreements, a mechanism to overcome the same.
- (h) Follow a system of periodic reports in such frequency and formats as determined by the Company and the GoS Parties.
- (i) During the C&O Period, monitor financial progress against the Implementation Schedule.

- (j) Determine, *inter alia*, the Availability Payment and Output Payment to be paid in accordance with appendix 8 of the Concession Agreement (including the Deductions).
- (k) Determine, *inter alia*, the Increased Costs to be paid by the GoS in accordance with clause 20 of the Concession Agreement. In case the Increased Costs are funded by the Company, the Independent Auditor will be required to propose necessary adjustments to the Availability Payments and Output Payments (if and as applicable) in accordance with the Concession Agreement.
- (l) Issue certifications to facilitate disbursement of funding from stakeholders (including equity) with respect to construction and other expenditures in accordance with the Relevant Agreements.
- (m) In respect of the occurrence of a Relief Event or Force Majeure Event in accordance with the provisions of the Concession Agreement, consult with the Company and the GoS Parties in order to determine the amount of resultant compensations, if any, in accordance with the provisions of the Concession Agreement and issue necessary certifications in this respect.
- (n) In respect of Termination Payments, determine the amount of resultant compensations, if any, in accordance with the provisions of the Concession Agreement and issue necessary certifications in this respect.
- (o) Certify the Financing Termination Date as defined in the Concession Agreement.
- (p) Issue the GoS Termination SBLC Certificate or the GoS Termination SBLC Failure Certificate (as the case may be) in accordance with clause 12 of the Concession Agreement.
- (q) Issue certificate confirming the GoS Termination Secured Amount, the GoS Termination SBLC Failure Certificate and Unpaid Termination Payment Amount Certificate, each in accordance with clause 12 of the Concession Agreement.
- (r) Issue the GoS Payment Account Certificate determining the GoS Payment Account Required Balance in accordance with clause 12 of the Concession Agreement.
- (s) Monitor the debt-to-equity ratio of the Company and ensure it does not exceed 80:20.
- (t) Monitor the shareholding percentage of each Shareholder on a quarterly basis from the Commencement Date.
- (u) Endorse calculations prepared by the Company of any amounts in respect of Refinancing Gains described in clause 16.3.7 of the Concession Agreement.
- (v) Issue Lien Enforcement Certificate in accordance with clause 12.1.13 of the Concession Agreement.
- ~~(v)~~(w) Issue various certificates in consultation with the Independent Engineer (where applicable) including Commencement Certificate, Handover Certificate, Mobilisation Certificate, ~~Payment Certificates~~relevant payment certificates and Project Commercial Operations Certificate as more particularly described in the Concession Agreement. The Independent Auditor will rely on reports, studies, surveys, and other documents provided by the Company or its appointed consultants.

~~(w)~~(x) In case of a failure to achieve the scheduled project milestones, issue delay notices, in consultation with the Independent Engineer, as described in the Concession Agreement.

~~(x)~~(y) Together with the Independent Engineer, act to resolve any disputes arising due to a conflict between the clauses and appendices of the Concession Agreement.

~~(y)~~(z) Together with the Independent Engineer, advise GoS on the financial implications of a Change in Scope requested by the Company.

~~(z)~~(aa) Together with the Independent Engineer, advise GoS on any changes, modifications, amendments, supplements or waivers to the Financing Documents, the EPC Contract, the O&M Contract or in respect of any Refinancing. The Independent Auditor will rely on the timely provision of relevant documents by the Company and will make its recommendations in accordance with clause 16.3 of the Concession Agreement.

~~(aa)~~(bb) Together with the Independent Engineer, advise GoS on any changes, modifications, amendments, supplements to the Insurance Policies.

~~(bb)~~(cc) Together with the Independent Engineer, issue the Service Payment Certificate in respect of invoiced Service Payments in accordance with clause 13.5 of the Concession Agreement.

~~(cc)~~(dd) Comply with the Laws of Pakistan in its performance of the IA Services.

~~(dd)~~(ee) Perform such other obligations and responsibilities as set out in the Relevant Agreements.

~~(ee)~~(ff) Perform such other obligations and responsibilities as mutually agreed between the Parties.

~~(ff)~~(gg) Perform any other action or services set out in the Independent Auditor Contract.

Independent Auditor Criteria

An international or local auditing firm (not individuals) appointed as the Independent Auditor shall meet the following criteria:

- Have the experience of undertaking a similar role in at least two (2) either i) project financed infrastructure projects or ii) PPP projects.
- Have the following permanent employees for at least one (1) year:
 - (i) team leader with at least fifteen (15) years of experience with complete knowledge and understanding of project financed infrastructure projects or PPP projects;
 - (ii) tax expert with at least ten (10) years of experience with complete knowledge of Pakistani tax law and its application to the Project;
 - (iii) auditing expert with at least ten (10) years of experience;
 - (iv) financial modelling expert with at least ten (10) years of experience;
 - (v) other experts required to perform the obligations of the Independent Auditor under the Project as specified herein.

- Provide an undertaking that the above staff shall be employed on the Project if the work is awarded to the firm. Relevant staff members must be available to attend all inspections and meetings with the GoS officials. Any change in staff for this assignment would need to be replaced with similar experience.
- Ensure that its staff are fully familiar with project financed infrastructure projects or PPP projects and the role of the Independent Auditor in such projects. In addition, staff should be familiar with Pakistan Income Tax Ordinance, 2001, GoS public procurement regulatory framework and Relevant Agreements.

Part 2: Indicative Independent Engineer Terms of Reference

1.1 General

The scope of work of the Independent Engineer for the Project shall include the following:

- (a) Perform all actions and services set out in the Relevant Agreements to be performed by the Independent Engineer diligently and within the timelines set out therein (the “**IE Services**”).
- (b) Exercise, in the performance of the IE Services, all skill, care and diligence to be expected of a properly qualified and competent professional experienced in each of the disciplines to which the IE Services relate.
- (c) Cooperate with the other parties to the Relevant Agreements in respect of matters relating to the Independent Engineer for the purposes of, *inter alia*, facilitating implementation of the Project and the Project Activities.
- (d) Review the Relevant Agreements delivered by the Parties and all documents that are provided to it pursuant to the Relevant Agreements.
- (e) Coordinate and liaise with the Parties in respect of matters that require the Independent Engineer’s inputs for performance of the IE Services.
- (f) As and when requested or required, consult with the parties to the Relevant Agreements and / or any other relevant stakeholders of the Project for the performance of IE Services and request (where available and applicable) any documents that are required by the Independent Engineer to perform the IE Services.
- (g) As and when requested or required pursuant to this Agreement and other Relevant Agreement, review and comment on any documents provided to it pursuant to the Relevant Agreements and request further documents as may be required for performance of the IE Services.
- (h) Prepare, issue, deliver, review and / or approve (as applicable) all documents contemplated to be prepared, issued, delivered, reviewed and/or approved (as applicable) by the Independent Engineer under this Agreement or the other Relevant Agreements.
- (i) Visit any of the offices of the Company or any other location where relevant personnel or records of the Company are located.
- (j) Comply with the Laws of Pakistan in its performance of the IE Services.
- (k) In performing the IE Services, not in any way materially adversely interfere with the performance of the Company’s, the Contractors’ and the GoS’ obligations and with the conduct of their business.
- (l) Report to the Parties in case the quality standards and quality control provisions are not maintained on the Site.

- (m) Perform all such duties and obligations that are to be performed by the Independent Engineer under the Relevant Agreements.
- (n) Perform functions, including issuance of directions to the Company or its Contractors, in respect of the emergency decommissioning of the KWC, as may be required by the Relevant Agreements.
- (o) Perform its duties in respect of insurance claims and proceeds, as set out in the Concession Agreement.
- (p) Perform functions in respect of a Change in Scope, as set out in the Concession Agreement.
- (q) Perform the respective roles and duties that are to be performed by the Independent Engineer upon termination of the Concession Agreement or upon expiry of the Concession Period.
- (r) As and when requested or required, attend / visit, during normal working hours, any place where work is being carried out in respect of any equipment or material to be incorporated into the KWC, with full opportunity to inspect, examine, measure or test any such works, equipment or material.
- (s) As and when requested or required, certify any delays in the achievement of the Project Commercial Operations Date (including identifying the party responsible for such delay) and coordinate with the Independent Auditor in respect of matters relating to the same.
- (t) Consult with the Parties in respect to the sufficiency and / or insufficiency of the insurance proceeds required to repair, replace, reinstate or rectify the relevant loss or damage to the KWC in accordance with the Concession Agreement.
- (u) Upon receipt of an invoice in relation to the C&O Activities, certify to all Parties of the completion of the relevant milestone under the EPC Contract.
- (v) Be present at and observe performance of all Test Procedures under appendix 5 of the Concession Agreement or provide for authorized representatives to perform the foregoing functions.
- (w) Provide operational recommendations in risk management reports to the Parties, from time to time, during the Concession Period.
- (x) Upon receipt of a notice of Change in Law from the Company pursuant to the Concession Agreement, as and when requested or required, confirm occurrence of the Change in Law and certify the consequent financial impact, in accordance with the Concession Agreement.
- (y) Inspect the KWC at the time of handing over thereof by the Company to the GoS and perform functions in respect of such handing over as provided in the Concession Agreement.

- (z) Present to the Parties as and when required on the progress of the Project and other milestones specified in the Implementation Schedule.
- (aa) Pursuant to the terms of the License Agreement, review and approve the status report submitted by the Company, on an annual basis, on the occurrence and status of occupations, thefts, encroachments and Encumbrances arising from time to time on the Site to ensure compliance by the Company of its obligations to protect the Site from such encroachments under the Relevant Agreements.
- (bb) Issue Lien Enforcement Certificate in accordance with clause 12.1.13 of the Concession Agreement.
- ~~(bb)~~(cc) Issue various certificates in consultation with the Independent Auditor, including Commencement Certificate, Handover Certificate, Mobilisation Certificate, ~~Payment Certificate~~relevant payment certificates and Project Commercial Operations Certificate as more particularly described in the Concession Agreement. The Independent Engineer will rely on reports, studies, surveys, and other documents provided by the Company or its appointed consultants.
- ~~(ee)~~(dd) In case of a failure to achieve the scheduled project milestones, issue delay notices, in consultation with the Independent Auditor as described in the Concession Agreement.
- ~~(dd)~~(ee) Together with the Independent Auditor, act to resolve any disputes arising due to a conflict between the clauses and appendices of the Concession Agreement.
- ~~(ee)~~(ff) Together with the Independent Auditor, advise the GoS on the technical implications of a Change in Scope requested by the Company.
- ~~(ff)~~(gg) Together with the Independent Auditor, advise the GoS on any changes, modifications, amendments, supplements or waivers to the Financing Documents, EPC Contract, O&M Contract or in respect of any Refinancing. The Independent Engineer will rely on the timely provision of relevant documents by the Company and will make its recommendations in accordance with clause 16.3 of the Concession Agreement.
- ~~(gg)~~(hh) _____ Together with the Independent Auditor, advise GoS on any changes, modifications, amendments, or supplements to the Insurance Policies.
- ~~(hh)~~(ii) Together with the Independent Auditor, issue the Service Payment Certificate in respect of invoiced Service Payments in accordance with clause 13.5 of the Concession Agreement.
- ~~(ii)~~(jj) Perform such other obligations and responsibilities as set out in the Relevant Agreements.
- ~~(jj)~~(kk) Perform such other obligations and responsibilities as mutually agreed between the Parties.
- (ll) _____ Perform any other action or services set out in the Independent Engineer Contract.

1.2 Proposed Construction Documents Review Phase

With respect to the review and approval of Proposed Construction Documents, the IE Services shall include the following:

- (a) Review and approve the adequacy of primary data collected for the Project, including topographical surveys, geo-technical and sub-soil investigations, hydrological investigation and any other surveys, investigations and analyses conducted to prepare the Proposed Construction Documents.
- (b) Review and approve the condition survey of existing utilities & their relocation design, and Proposed Construction Documents prepared and submitted by the Company to the Independent Engineer for the construction of various components of the Project, including the pipeline, canal, pumping stations, rising mains, Treatment Plant and Reservoir, Solar Plant, civil structures, aqueducts, bridges, estimates, reports and other deliverables with regard to adequacy, completeness, optimality and capability of design to perform as required in anticipated operating conditions and to meet the technical requirements specified in the Concession Agreement.
- (c) Identification of Project design features or any major equipment component that does not appear to meet the design or performance requirements or fails to adhere to the technical specifications provided in the Concession Agreement.
- (d) Provide an opinion on the quality of the designs with respect to their effect on the anticipated service life of the KWC, the degree of maintenance needed to meet performance requirements and long-term availability over the Concession Period.
- (e) Comply with the design parameters set out in appendix 1 of the Concession Agreement.
- (f) Review and approve the reports prepared and submitted by the Company or its Contractors, with respect to the Implementation Schedule, the Operating and Maintenance Procedures, canal closure, safety and management plan, and water diversion plan.
- (g) Determine that adequate provisions have been made for the following in the Proposed Construction Documents:
 - (i) design;
 - (ii) material sourcing;
 - (iii) material transportation equipment;
 - (iv) utilities;
 - (v) equipment procurement;
 - (vi) construction; and
 - (vii) testing.
- (h) Review and comment on the consistency of all Relevant Agreements.

- (i) Review the available Approvals or applications for Approvals.
- (j) Review and comment on the utilities' arrangements for the Project, including (without limitation) the water supply and Electricity supply.
- (k) Review and approve the adequacy and reasonableness of the Project coordination and monitoring systems.
- (l) Review the safety measures proposed for the construction of the facilities and their compliance with the safety regulations.
- (m) Review, audit, comment and approve the working methodology submitted by the Company regarding the construction of Project infrastructure in densely populated areas to avoid disturbance to traffic and public.
- (r) Report to the GoS Parties in case the quality standards and quality control provisions are not maintained on the Site.

1.3 Environmental and Social Matters

Concerning the environmental and social matters under the Project, the IE Services to be performed by the Independent Engineer shall include the following:

- 1.3.1 Before the start of operations: review for compliance with the Legal Requirements, including the E&S Standards:
 - (a) the ESIA to be prepared by the Company in accordance with the Concession Agreement (and drafts and revisions of the same); and
 - (b) the ESMS and associated programs to be prepared by the Company in accordance with the Concession Agreement (and drafts and revisions of any of the same) and, where any such assessment or plan is not compliant, recommend changes to address any shortcomings.
- 1.3.2 During the C&O Activities, at least visit the Site monthly to:
 - (a) review environmental and social management, monitoring and reporting undertaken by the Company, including implementation of mitigation measures, which shall include but not be limited to:
 - (i) labour and working conditions,
 - (ii) access to water and any grievances in relation to water availability, made by the Settlements;
 - (iii) potential impacts to agriculture and livestock from changes in soil moisture;
 - (iv) development and implementation of a Biodiversity Action Plan as required;

- (v) solid and hazardous waste management, storage, treatment and disposal, including sub-contractor practices;
 - (vi) noise level compliance at nearby sensitive receptors;
 - (vii) treated effluent quality and receiving water quality;
 - (viii) emergency response procedures;
 - (ix) other required environmental, health, and safety management practices;
 - (x) Stakeholder Engagement Plan and Grievance Redress Mechanism; and
 - (xi) health and safety procedures;
- (b) undertake independent verification field monitoring of the Company's compliance with its environmental and OHS requirements; and
 - (c) inspect the Site, review grievance logs and interview representatives of Affected Communities,

in each case, as needed to ascertain whether the Company's activities are in compliance with the Legal Requirements, including the E&S Standards.

1.3.3 On a semi-annual basis during the first two (2) years of the Operating Period, and on an annual basis for another three (3) years thereafter:

- (a) review environmental and social management, monitoring and reporting undertaken by the Company;
- (b) undertake independent verification field monitoring of the Company's compliance with its environmental and OHS requirement; and
- (c) inspect the Site, review grievance logs and interview representatives of affected communities,

in each case, as needed to ascertain whether the Company's activities are in compliance with the Legal Requirements, including the E&S Standards.

1.3.4 Within sixty (60) Days following the end of the first three (3) years of the Operating Period, the Independent Engineer shall issue a report indicating whether:

- (a) the Company has performed the C&O Activities and is conducting the O&M Activities in accordance with the Legal Requirements, including the E&S Standards, and has in place adequate procedures and practices to manage environmental and social risks and impacts; and
- (b) the GoS and any relevant Competent Authority is adequately equipped to monitor and enforce, and is effectively monitoring and enforcing, the Parties' environmental and social obligations under the Concession Agreement.

If both the foregoing conditions are met, there will be no need for further annual review. If at least one of the two foregoing conditions is not met, the Parties will in good faith agree on a supplementary scope of work to be carried out by the Independent Engineer for a period up to the duration of the Project.

1.4 Supervision Services during the C&O Period

During the C&O Period, the IE Services to be performed by the Independent Engineer shall include the following:

- (a) Supervise the C&O Activities in detail and to approve the materials, formworks, and workmanship of the C&O Activities on a daily and fulltime basis. As stated in the Concession Agreement, the Independent Engineer shall have no authority to relieve the Company of any of its duties or to impose additional obligations.
- (b) Review and approve the construction manuals and operation and maintenance manuals prepared and submitted by the Company. The Service Payments will be made upon Independent Engineer's certification, with final approval of the Independent Auditor.
- (c) Supervise / approve the C&O Activities, including material testing, water sampling, water quality testing, equipment installation, facility integration, treatment process testing, and review the water quality and treatment testing results and to order special tests of water quality and / or completed works, and / or order removal and substitution of substandard material, equipment and / or work as required.
- (d) Review and approve work methodology of each component of the C&O Activities.
- (e) Review quality assurance and quality control during the C&O Period.
- (f) Identify construction delays, if any and recommend to the GoS the remedial measures to expedite the progress of the C&O Activities.
- (g) Review and approve shop drawings for each component of the Project Activities prepared and submitted to Independent Engineer by the Company.
- (h) Review the "*Construction Drawings*" and "*as-built*" drawings for each component of the Project Activities prepared and submitted to Independent Engineer by the Company.
- (i) Review the safety measures provided for the Project workers.
- (j) Review the adequacy and operational effectiveness of the canal diversion / bypass program.
- (k) Determine any extension of the Implementation Schedule, to which the Company is entitled and notify the GoS in writing accordingly.
- (l) Review compliance by the Company of its obligations under the Concession Agreement.

- (m) Have a review period not exceeding twenty-one (21) ~~days~~Days, or as otherwise stated in the Concession Agreement, calculated from the date on which the Independent Engineer receives a document or a notice from the Company (the “**Review Period**”).
- (n) Within the Review Period, give a notice to the Company:
 - (i) of 'no-objection,' which may include comments concerning minor matters which will not substantially affect the Project Activities; or
 - (ii) that the Company fails, to the extent stated, to comply with the requirements of the Independent Engineer or as otherwise stated in the Concession Agreement, with reasons.

If the Independent Engineer gives no notice within the Review Period, it shall be deemed to have given a notice of no-objection to the Company.

If the Independent Engineer instructs that further documents are reasonably required from the Company to demonstrate that the Project Activities or design comply with the Concession Agreement, the Company shall prepare and submit the same promptly to the Independent Engineer at the Company's cost.

If the Independent Engineer gives a notice that the Company fails to comply with the requirements of the Independent Engineer or those stated in the Concession Agreement, the Company shall revise the documents, resubmit them to the Independent Engineer in accordance with this clause, and the review period shall be calculated from the date that the Independent Engineer receives the documents.

For performance testing, the Independent Engineer shall:

- (a) Review test procedures developed by the O&M Contractor and confirm compliance with applicable test codes and standards and with testing criteria specified in the Concession Agreement and appendix 5 thereto;
- (b) Review the quality control reports, water testing results and testing reports and results in accordance with appendix 5 of the Concession Agreement.
- (c) Review test reports prepared by Company or the Company's testing consultant; and
- (d) Make visits to the Site to verify that the C&O Activities, including testing requirements, have been completed and thereafter sign and issue the Project Commercial Operations Certificate.

1.5 Commissioning Supervision Services

During the commissioning phase, the IE Services to be performed by the Independent Engineer shall include the following:

- (a) Supervise and approve 'as-built records' of the execution of the C&O Activities, as prepared by the Company, showing the exact as-built locations, sizes and details of the C&O Activities. As stated in the Concession Agreement, the Independent Engineer shall have no authority to relieve the Company of any of its duties or to impose additional obligations.

- (b) Require as-built records before the beginning of the testing on completion of the C&O Activities, but also updated as-built records to the extent that any construction and / or rehabilitation activities are executed by the Company during and /or after the testing.
- (c) Review and approve the Operating and Maintenance Procedures prepared by the Company. The Operating and Maintenance Procedures shall include enough detail to ensure the operation, maintenance and performance of the KWC to comply with the key performance indicators included in the Concession Agreement and following the 'Performance Guarantees' specified in appendix 5 of the Concession Agreement. The Operating and Maintenance Procedures shall also allow to operate, maintain, dismantle, reassemble, adjust and repair the KWC as necessary, including an inventory of spare parts.
- (d) Detect errors, omissions, ambiguities, inconsistencies, inadequacies or other defects in the C&O Activities and issue the necessary notices of no-objection.
- (e) Review the test programmes submitted by the Company to carry out the tests on completion, as specified in appendix 5 of the Concession Agreement.
- (f) Give a notice to the Company stating the extent to which the testing programme does not comply with the Concession Agreement or the Independent Engineer's requirements. Within fourteen (14) ~~days~~Days after receiving this notice, the Company shall review the test programme to rectify any non-compliance. If the Independent Engineer gives no such notice within fourteen (14) ~~days~~Days after receiving the test programme (or the revised programme), the Independent Engineer shall be deemed to have given a notice of no-objection. The Company shall not commence the tests until a notice of no-objection is given, or is deemed to have been given, by the Independent Engineer.
- (g) Issue the Project Commercial Operations Certificate after checking the results and workability of the KWC after the prescribed tests.

Independent Engineer Criteria

An international or local engineering firm (not individuals) appointed as the Independent Engineer shall meet the following criteria:

- Have the experience of undertaking a similar role in at least two (2) either i) project financed infrastructure projects; or ii) PPP projects.
- Have the experience of supervising at least two (2) bulk water supply projects which included the construction of a pipeline or canal.
- Have the experience of supervising at least two (2) water sector projects involving the construction of pumping stations and water treatment plants.
- Have the experience of supervising at least one (1) solar project. (Note: this is applicable in case the Company plans to develop a Solar Plant).
- Have the following permanent employees for at least one (1) year:
 - (i) team leader with at least twenty (20) years of experience with complete knowledge and understanding of water projects, project financed infrastructure projects and PPP projects;
 - (ii) hydraulic expert with at least twenty (20) years of experience;
 - (iii) civil engineering expert with at least fifteen (15) years of experience;
 - (iv) water treatment expert with at least fifteen (15) years of experience;
 - (v) mechanical expert with at least fifteen (15) years of experience;
 - (vi) contract management expert with at least ten (10) years of experience;
 - (vii) electrical power supply / renewable energy expert with at least ten (10) years of experience (Note: the renewable energy expert is required in case the Company plans to develop a Solar Plant); and
 - (viii) other experts required to perform the obligations of the Independent Engineer under the Project as specified herein.
- Provide an undertaking that the above staff shall be employed on the Project if the work is awarded to the engineering firm. Relevant staff members must be available to attend all inspections and meetings with the GoS officials. Any change in staff for this assignment would need to be replaced with similar experience.
- Ensure that its staff are fully familiar with project financed infrastructure projects or PPP projects and the role of the Independent Engineer in such projects. In addition, the staff should be familiar with FIDIC conditions of contract, GoS public procurement regulatory framework, and the Project Agreements.
- Ensure that its staff have at least a minimum bachelor's degree in the relevant engineering field with a specialization in water sector projects.

APPENDIX 11: LICENSE AGREEMENT

LICENSE AGREEMENT

between

(1) THE KARACHI WATER AND SEWERAGE BOARD

- and -

(2) [*THE COMPANY*]

**relating to
KARACHI HUB WATER CANAL PROJECT**

Dated [●]

THIS LICENSE AGREEMENT is made on [●], ~~2022~~2023 (the “**Signing Date**”), at Karachi, Pakistan.

BETWEEN

- (1) **KARACHI WATER AND SEWERAGE BOARD**, a statutory body constituted pursuant to section 3 of the Karachi Water and Sewerage Board Act, 1996, with its office located at 9th Mile, Karsaz, Karachi, Pakistan (“**KW&SB**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns); and
- (2) [**COMPANY**], a [●] company incorporated under the Laws of Pakistan whose registered office is located at [●] (the “**Company**” which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors in interest, administrators and permitted assigns).

(KW&SB and the Company are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”).

RECITALS

- A. **WHEREAS**, the Governor of Sindh, acting through the [Local Government & Housing Town Planning Department, Government of Sindh] (the “**GoS**”) and the Parties have entered into a concession agreement dated [●] (the “**Concession Agreement**”);
- B. **WHEREAS**, in terms of the Concession Agreement, KW&SB has agreed to grant a license to the Company in respect of the Site for the purposes of carrying out the Project Activities;
- C. **AND WHEREAS**, the Parties are now entering into this Agreement to set out the terms and conditions relating to the use of the Site by the Company and the rights and obligations of the Parties with respect thereto.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this License Agreement, as amended, and supplemented from time to time;

“**Company**” has the meaning given to it in the Preamble;

“**Concession Agreement**” has the meaning given to it in Recital A;

“**Encumbrance**” means any encumbrance on the Site (or part thereof), 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 physical encumbrances and encroachments thereon;

“**GoS**” has the meaning given to it in Recital A;

“**KW&SB**” has the meaning given to it in the Preamble;

“**License**” has the meaning given to it in clause 2.1.1 of this Agreement;

“**License Period**” has the meaning given to it in clause 2.1.1 of this Agreement;

“**Parties**” has the meaning given to it in the Preamble;

“**Party**” has the meaning given to it in the Preamble;

“**Preamble**” means the preamble of this Agreement;

“**Recitals**” means the recitals of this Agreement;

“**Signing Date**” has the meaning given to it in the Preamble; and

“**Site**” means the site on which the Project is to be implemented, comprising of the immovable property, including the rights-of-way, on which the KWC is to be rehabilitated, constructed, installed, and erected in accordance with the terms of the Concession Agreement, as demarcated in the map attached in appendix 1 (*Technical Specifications*) of the Concession Agreement.

1.2 Interpretation

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

2. RIGHT TO ACCESS, LICENSE AND RELATED MATTERS

2.1 Right to Access and License of the Site

2.1.1 KW&SB grants to the Company, commencing from the Mobilisation Date (upon the physical handing over of the possession of the Site by KW&SB to the Company) and until the issuance of the Handover Certificate (the “**License Period**”), a license in respect of the Site for the purposes of carrying out the Project Activities in accordance with the Concession Agreement (the “**License**”).

2.1.2 Subject to clause 3.1, the License granted in terms of clause 2.1.1 shall terminate without the need for any action to be taken by the Parties on expiry of the License Period.

2.1.3 KW&SB shall provide the Company such assistance as may be reasonably requested by the Company to enjoy the License, provided always that the Company is in compliance with all Legal Requirements and the provision of any assistance by KW&SB (including delay or omission to provide such assistance) shall not relieve or absolve the Company of its obligations under this Agreement or the Concession Agreement.

- 2.1.4 The Company shall ensure that, during the License Period, KW&SB, any relevant Competent Authority, the Independent Appointees and each of their representatives, officers, employees, and agents shall have the right to access the Site to exercise their rights under the Law and perform their obligations under the Concession Agreement, provided, however, such access shall be subject to any reasonable requirements of the Company regarding safety and security of the KWC.
- 2.1.5 During the Mobilisation Period, the Parties acknowledge and agree that KW&SB shall be operating and maintaining the KWC, and the Company shall be carrying out the Mobilisation Activities. The Parties shall coordinate their respective activities in the Mobilisation Period so as not to interfere with each other, provided always, that during the Mobilisation Period, KW&SB's operations and maintenance activities shall take priority over the Mobilisation Activities of the Company.
- 2.1.6 This Agreement shall be duly executed by the Parties and all costs, fees, expenses, duties, charges, and taxes relating to the same shall be borne by the Company. Notwithstanding anything contained herein or the Concession Agreement, the Parties hereby acknowledge and confirm that no right, title, interest, benefit or otherwise is granted to the Company under this Agreement which may attract the registration requirement under the Laws. However, in the event it is envisaged that this Agreement is a registrable instrument with the relevant Competent Authority under the Laws, all costs, fees, expenses, duties, charges, and taxes relating to the registration of this Agreement shall be borne by the Company.

2.2 Title and Use of Site

- 2.2.1 KW&SB represents and warrants that it has the power and authority to grant the License to the Company for the Project Activities during the License Period, provided the title to the Site shall always vest with KW&SB.
- 2.2.2 The Company undertakes, covenants and agrees that it shall only use the Site solely for the purposes of undertaking the relevant Project Activities in accordance with the requirements of the Concession Agreement.

2.3 No Sale or Creation of Encumbrance

The Company shall not part with, dispose of, sell, lease, sub-lease, license or sub-license or create any Encumbrance of any nature whatsoever on the whole or any part of the Site and shall not place or create nor permit any Contractor or other person claiming through or under the Company to place or create any Encumbrance over all or any part of the Site, or on any rights of the Company therein or under this Agreement.

2.4 Protection of Site from Encroachments

- 2.4.1 For the duration of the Mobilisation Period, KW&SB shall be responsible for and shall protect the Site from all occupations, thefts, encroachments, and Encumbrances, and shall ensure the security of the Site.
- 2.4.2 For the duration of the License Period (excluding the Mobilisation Period), the Company shall:

- (a) be fully responsible for and shall protect the Site from, in each case, any and all occupations, thefts, encroachments and Encumbrances;
- (b) develop a security protocol for security of the Site and arrange for (at its own cost and expense) appropriately trained and qualified security personnel to undertake the security of the Site;
- (c) immediately upon becoming aware, notify KW&SB and the Independent Engineer, of any occupations, thefts, encroachments and Encumbrances on the Site, and KW&SB shall, upon receipt of such notification, provide reasonable assistance to the Company in procuring police assistance for removal of trespassers and/or encroachments on the Site, provided however, the provision of any assistance by KW&SB (including delay or omission to provide such assistance) shall not relieve or absolve the Company of its obligations under this Agreement or the Concession Agreement; and
- (d) submit an annual report intimating to KW&SB and the Independent Engineer either: (i) occurrence and status of occupations, thefts, encroachments, and Encumbrances on the Site in the relevant year (if any); or (ii) confirming that the Site is free from any occupations, thefts, encroachments and Encumbrances in the relevant year of the License Period.

2.4.3 The Company undertakes, covenants and agrees that it shall: (a) for the Mobilisation Period, remain liable for any Claims and/or damage to the Site or the KWC caused by it or the Contractors or any of their representatives, officers, employees and agents; and (b) for the C&O Period, remain liable for any Claims and/or damage to the Site or the KWC.

3. BREACH AND TERMINATION

Any breach or default by a Party of its obligations under this Agreement shall be dealt with in accordance with the terms of the Concession Agreement. This Agreement shall stand automatically terminated on the expiry of the License Period.

4. REPRESENTATIONS AND WARRANTIES

4.1 KW&SB's Representations and Warranties

KW&SB hereby represents and warrants to the Company that ~~it has the power and authority to:~~

- (a) it has the power and authority to grant the License to the Company; ~~and~~
- (b) it has the power and authority to enter into and deliver this Agreement, and that this Agreement forms the valid, binding, and enforceable obligations of KW&SB-; and
- (c) at the time of grant of License, the Site shall be free of Encumbrances.

4.2 Company's Representations & Warranties

The Company hereby represents and warrants to KW&SB that:

- (a) it has the power and authority to enter into and deliver this Agreement and that this

Agreement forms the valid, binding, and enforceable obligations of the Company; and

- (b) the execution and performance of this Agreement by the Company does not violate any Law or any other obligations to which the Company is subject.

5. NOTICES

5.1 Notices

The provisions of clause 30 of the Concession Agreement shall be incorporated by reference into this Agreement and apply, *mutatis mutandis*, hereto.

6. GOVERNING LAW AND DISPUTE RESOLUTION

6.1 Governing Law

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

6.2 Dispute Resolution

The provisions of clause 27 of the Concession Agreement shall be incorporated by reference into this Agreement and apply, *mutatis mutandis*, hereto.

7. MISCELLANEOUS

7.1 Partial Invalidity and Severability

If for any reason whatsoever, any provision of this Agreement is, or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provision(s), as nearly as is practicable.

7.2 Amendment

No amendment or modification of this Agreement shall be valid and effective unless agreed to by the Parties, confirmed by the GoS, and evidenced in writing.

8. ORIGINALS

8.1 Number of Originals

This Agreement shall be executed in two (2) originals.

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

KARACHI WATER AND SEWERAGE BOARD

Signature

Name
(block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

THE COMPANY

Signature

Name
(block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

Witness signature

Witness name
(block capitals)

APPENDIX 12: ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS

PART-I - ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

The Environmental and Social Impact Assessment (ESIA) shall be prepared by the Company in accordance with the following minimum criteria:

- (a) The Environmental and Social Impact Assessment shall address all environmental and social risks and impacts of the Project, including ancillary and associated facilities, as presented in the terms of reference specified in part 3 of this appendix 12. The Environmental and Social Impact Assessment must comply with the Legal Requirements, including E&S Standards, and be prepared by a competent professional with experience in similar projects in the region and the application of E&S Standards.
- (b) The Company shall undertake specific surveys to confirm in the Environmental and Social Impact Assessment the location of the species *commiphora wightii* (*Gugal/Mukul* tree) and its status as a critical habitat and identify relevant avoidance / mitigation measures.
- (c) If the Environmental and Social Impact Assessment confirms the presence of and potential impacts to the *commiphora wightii* (*Gugal/Mukul* tree), the Company shall develop a Biodiversity Action Plan, in alignment with IFC Performance Standard 6, to avoid impacts to the *commiphora wightii* (*Gugal/Mukul* tree) and other conservation significant species if residual impacts are determined (such as, *manis crassicaudat255ndianian pangolin*).
- (d) The Environmental and Social Impact Assessment shall identify any areas where additional land use along the right of way is required temporarily during the C&O Activities and any subsequent mitigation measures, such as compensation, for planned or unplanned temporary land use during the C&O Activities shall be aligned with the IFC Performance Standard 5.
- (e) Protected area managers and secretariats for the internationally recognized areas shall be consulted in preparation of the Environmental and Social Impact Assessment to ensure consistency with the management plans of such areas and to enhance the conservation aims and effective management of the area.

PART II – ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSSYTEM

The Environmental and Social Management System shall be established by the Company and provide for the following:

- (a) An overarching policy that states the E&S principles, including reference to applicable aspects of E&S Standards, to effectively manage risks and impacts during the Concession Period.
- (b) Organizational capacity and competency to implement the ESMS, defining key E&S roles and responsibilities, assigning staff with appropriate skills and expertise, and training staff in the management of E&S risks and impacts.
- (c) A risk assessment procedure to identify potential negative E&S risks and impacts, and the appropriate strategies to address these issues.
- (d) A management program defining mitigation and performance improvement measures and actions that address the E&S risks and impacts, including monitoring activities, and the

timelines and responsibility for each task. The management program shall consist of a documented combination of operational procedures, practices, plans and relevant supporting documents that further develop and detail the plans and measures defined in the ESIA (not all plans/procedures would be needed as a Condition Precedent if not necessary at the start of the Mobilization Activities or C&O Activities (as the case may be); definition of plans must be at least thirty (30) Days before needed). The program shall comply with the Environmental and Social Requirements, and cover at minimum:

- (i) Waste Management: standard operating procedures to manage solid and hazardous waste, during the concession period through handling, sorting, recycling and/or disposal of different materials, including: (a) materials suitable for combustion; (b) hazardous and toxic substances; (c) other materials unsuitable for combustion; and (d) recyclable materials, whether undertaken by the Company, its contractors or sub-contractors. Where companies are to be contracted for the management, treatment and disposal of solid and hazardous wastes, the Company shall only contract such companies that have the required legal and valid permits.
- (ii) Biodiversity Action Plan (BAP): with the aim for no-net losses for any impacts identified to natural habitat values and net-gain outcomes for any critical habitat values. The BAP shall be developed in consultation with the Sindh Wildlife Department, Government of Sindh and Sindh Forest Department, Government of Sindh. The BAP shall also outline additional programs to enhance the conservation aims and effective management of the protected areas the KWC shall operate within and to meet requirements set out in paragraph 20 of IFC Performance Standard 6.
- (iii) Canal Decommissioning Plan, including detailed information on quantities, sources, and transportation of materials to be used to infill the disused canal, and further information on future use of the disused canal, including access by the public, and associated risks of decommissioning.
- (iv) Energy conservation and resource management to minimize impacts of the Project Activities on resources and promote efficient use of water and other resources.
- (v) Wastewater Management to manage effluents from the treatment plant according to Good International Industry Practices and based on the type and characteristics of wastewater, including maximization of recycling and treatment and disposal to meet the Legal Requirements.
- (vi) Soil Management Plan: including measures to manage excavated soils such as separation and storage, minimising vegetation clearance, working strip rehabilitation and soil re-use.
- (vii) Pollution Prevention and Spill Response and Hazardous Materials Management, including plans and procedures for the handling and storage of hazardous chemicals (including those used for disinfection) and for the mitigation of excessive dust, air emissions and of noise pollution, including reduction measures, monitoring, and corrective actions to achieve compliance with the E&S Standards.
- (viii) Water Management: develop a plan to monitor water quality delivered to communities, released to the city of Karachi from the water treatment plant of the KWC and used for

PV panel cleaning. Water quality to meet the required national and international standards, with management measures to be developed in the event of noncompliance.

- (ix) Occupational Health and Safety (OHS): the Company, Contractors and subcontractors shall ensure safe working conditions for their employees, including staff training, job safety instructions and measures to ensure workplace safety and mitigate OHS risks. Such requirements, at a minimum, shall include:
 - (A) Job- and task-specific hazard analysis and controls for all activities.
 - (B) Safety training for all personnel in their language, covering hazards and safety protocols of their jobs.
 - (C) Special training for specific hazards: handling of hazardous chemical, exposure to pathogens and vectors, in excavations, with electricity, in water, in enclosed space, alongside the open water canal, fire and explosion etc.
 - (D) Provision of personal protection equipment (PPE), requirements for use of PPE, and enforcement of PPE use.
 - (E) OHS monitoring implemented by accredited professionals. Arrangements in place to manage OHS incidents, including first aid arrangements, emergency response plans, including provision for emergency medical treatments, and system for reporting and acting on 'near misses'.
 - (F) Recording incident statistics, including total work hours, lost time incidents, major injuries, fatalities, etc.
- (x) Safety management including health and safety for the community around all Project facilities at the Site, with specific measures to monitor access to the open section of the KWC and protect against accidental slips and falls, and unauthorized entry. Safety management shall also include emergency preparedness and response, and life and fire safety. Emergency preparedness and response plan shall specify responsibilities of the parties and the relevant authorities, procedures to minimize the harm of any potential accident and ensure that appropriate response equipment and materials are in place. The plan shall also include provisions for continual updates, including drills to test the effectiveness.
- (xi) Contractor / sub-contractor management: to manage EHS planning and performance of Contractors/sub-contractors, including at a minimum:
 - (A) Inclusion of relevant E&S Management Program requirements in contracts/subcontracts (OHS requirements shall be adopted by all Contractors/subcontractors as applicable).
 - (B) Clear assignment of EHS responsibilities for the Company, Contractors and sub-contractor.
 - (C) Contractor / sub-contractors reporting adequate information to allow the Company to evaluate the need for corrective actions and provide relevant data and information to the required authorities.

- (D) Verification of training and/or proper credentials for Contractor / sub-contractor managers and staff responsible for EHS management.
- (xii) External communication protocol, Stakeholder Engagement Plan and the Grievance Redress Mechanism²⁶: to receive and address the Stakeholders' grievances. The Grievance Redress Mechanism shall be easily accessible, understandable, and sufficiently advertised to the Stakeholders, and ensure the confidentiality of a person raising a complaint.
- (xiii) Code of conduct to avoid gender-based violence among the workforce, including Contractors and sub-contractors, and towards the Affected Communities, and definition of differentiated training to workers' supervisors and managers on its implementation.
- (xiv) Traffic and Pedestrian Safety Plan: setting out construction and operation management measures, including safe movement of traffic during construction, operation and decommissioning, and allowing safe access to communities and crossing of the pipeline/canal.
- (xv) Security Personnel Management Plan: a common plan for personnel hired or contracted by the Company or KW&SB, including Contractors/sub-contractors. The plan shall be based on the Company's assessment of the risks posed by its security arrangements for workers, the public and Affected Communities, and shall include a code of conduct for security personnel in line with applicable E&S Standards. The code of conduct shall: aim to ensure that security personnel are screened for implication in past abuses and adequately trained in the use of force and appropriate conduct toward communities, the public, and workers; include a mechanism to raise grievances related to the conduct of security personnel, an assurance that any incidents will be properly investigated, and that the Company does not sanction use of force in relation to the Project, except when used for preventive and defensive purposes and in proportion to the nature and extent of the threat.

PART III – ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT TERMS OF REFERENCE

1. Introduction

The KW&SB aims to engage the private sector on a Public Private Partnership (PPP) basis for the rehabilitation of the KWC that supplies part of the Karachi water supply system.

The KWC is a twenty-two kilometres (22 km) canal that conveys water from the Hub Dam to the Treatment Plant located in Manghopir-Karachi. The KWC was originally designed to treat 100 MGD (5.26 m³/s) of water coming from the Hub Dam. Presently, the KWC's capacity is limited to around 75 MGD (3.95 m³/s). The successful implementation of the Project will enhance its capacity by around 25

²⁶ Specific requirements for stakeholder engagement can be found in Performance Standards 1, see also IFC's publication: Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets. Specific requirements for grievance mechanisms can be found in Performance Standards 2, 4, 5, and 7. For additional guidance on grievance mechanisms, see IFC's publications: Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (IFC, 2007) and Addressing Grievances from Project-Affected Communities (IFC, 2009).

MGD (1.32 m³/s), to reach the total expected capacity of 100 MGD (5.26 m³/s). The Project entails the following:

- rehabilitation of eleven kilometres (11 km) of the existing KWC;
- construction of a nine point eight kilometres (9.8 km) new pipeline in the last stretch;
- upgrade of Hub pumping station (to achieve 100 MGD; 5.26 m³/s);
- connection with the ~~K-III canal~~ KIII Conduit at the Hub pumping station during drought periods.
- upgrade of the two point two kilometres (2.2 km) rising mains that connect the pumping station with the Treatment Plant;
- upgrade of the Treatment Plant, moving from 80 (4.21 m³/s) to 100 MGD (5.26 m³/s);
- SCADA and metering system, including telecommunications;
- a new Solar Plant to optimize energy requirements with a two point five kilometres (2.5) km distribution line; and
- E&S mitigation measures.

The water supply scheme for the city of Karachi from the Hub Dam was planned and executed in the late 70s and commissioned in 1981. The scheme relies on the availability of water received from the upstream catchment after rains. There have been instances when due to drought conditions in the Hub Dam catchment area, the water levels in the reservoir were so low that water could not be supplied to the city. The WAPDA Canal (also known as main Hub canal) offtakes from the Hub Dam and travels approximately eight point three kilometres (8.3) km in a south-westerly direction. This eight kilometres (8 km) section of the canal and the Hub Dam itself is owned, operated and maintained by the Water and Power Development Authority of Pakistan (WAPDA), a federal agency in Pakistan.

The Hub Dam consists of an embankment dam and a large water storage reservoir, constructed on the Hub river for the purpose of supplying municipal, industrial and irrigation water to Sindh and Balochistan provinces. The WAPDA Canal from the Hub Dam bifurcates into two (2) branches at about eight kilometres (8 km) downstream from the dam at a Head Regulator into: (i) the Lasbela canal which flows west towards Balochistan and the (ii) KWC which continues for twenty-two kilometres (22 km) in a south-westerly direction towards the KW&SB pumping station and Treatment Plant, as shown in Figure 1. The twenty-two kilometres (22 km) section of the canal is owned, operated, and maintained by KW&SB.

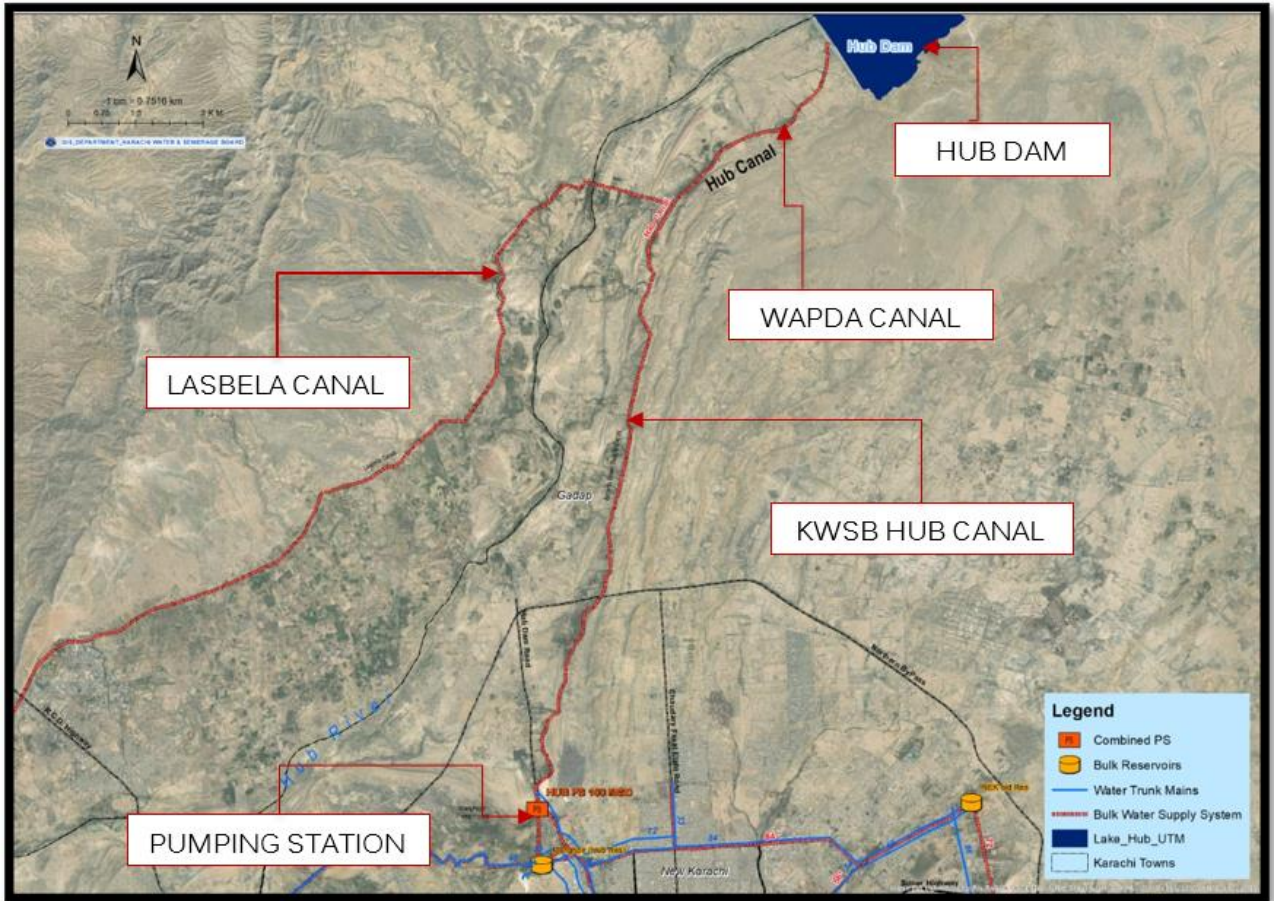


Figure 1. Project location north of the City of Karachi.

The Project includes the rehabilitation of the twenty-two kilometres (22 km) long KWC from the Head Regulator (bifurcation point) up to and including the rehabilitation of the pumping station, rising mains and the Treatment Plant. In addition, the Project includes the development of a Solar Plant to be located on KW&SB land adjacent to the Treatment Plant. The KWC requires rehabilitation due to damage, cracking and significant seepage losses. The eleven (11) aqueducts within the KW&SB-owned portion of the canal (Figure 2) show visible cracks and leaks which contribute flow to seasonal watercourses flowing west towards the Hub river.

The current condition of the KWC causes leakage and seepage of water from the conveyance infrastructure (aqueducts and canal) into the surrounding environment. Studies carried out during the scoping stage indicate that seepage may be contributing to soil moisture, and to the development of vegetated areas, particularly on the west side of the canal in the direction of the Hub river valley.

The rehabilitation of the KWC would require the complete disruption of flow in the KW&SB canal and to the Treatment Plant, representing a significant portion of Karachi’s water supply or the provision of costly diversion works. To avoid disrupting Karachi’s water supply, alternatives involving pipelines which can be built within the canal right-of-way (RoW) while the canal continues to convey water to the Treatment Plant have been studied. The preferred alternative is a hybrid configuration although a full alternatives assessment will be required as part of the Project ESIA.

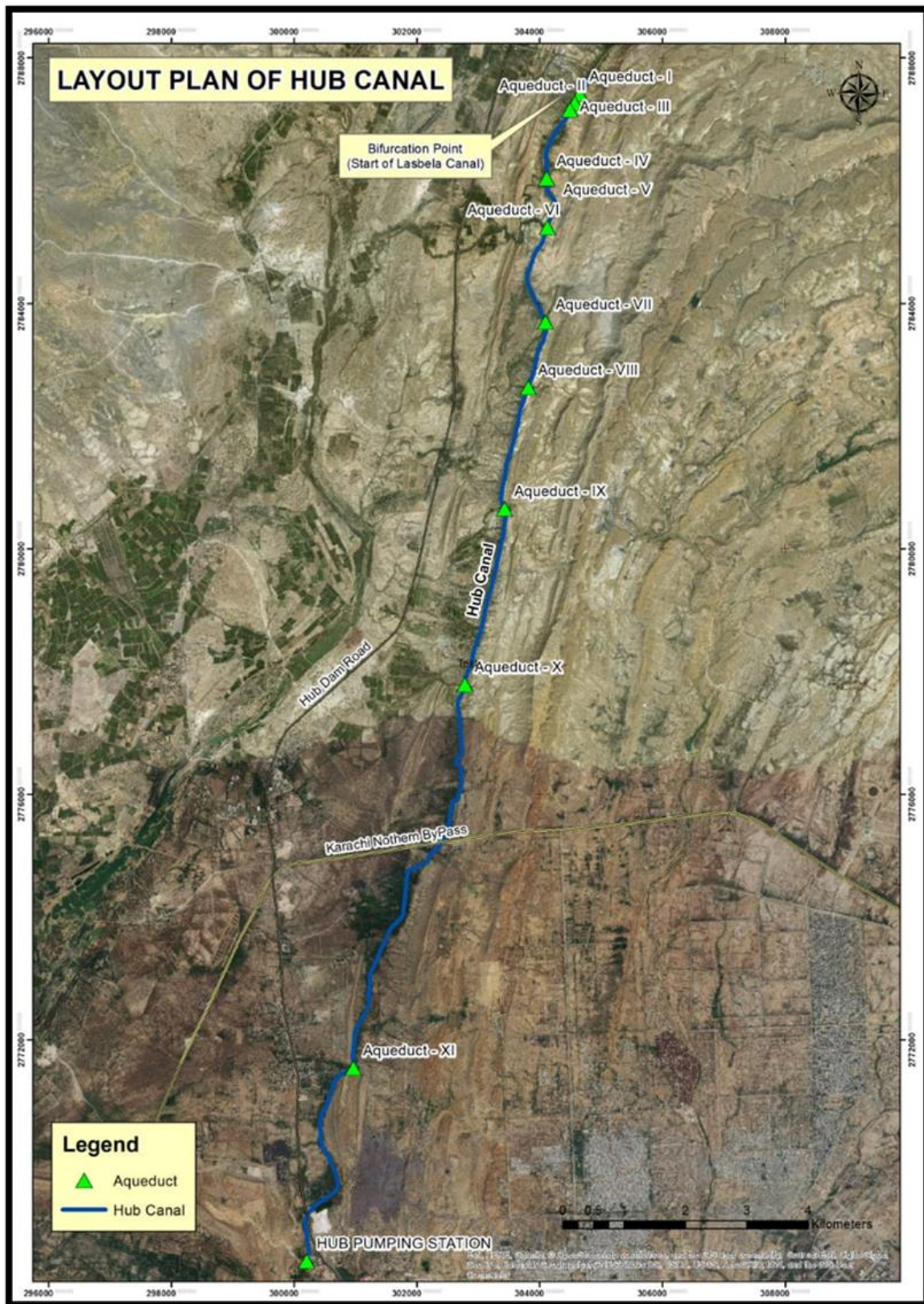


Figure 2. KW&SB Hub Canal layout with location of aqueducts.

A detailed outline of the Project components will be provided to the successful ESIA consultant.

2. Overview

KW&SB is seeking to appoint an environmental and social consultant (the “**Consultant**”) to provide and undertake the Environmental and Social Impact Assessment (ESIA) for the Project to meet IFC Performance Standards, Good International Industry Practices (GIIP), Asian Development Bank’s Safeguard Policy Statement (2009), and other relevant standards.²⁷

The aim is to gather all relevant data concerning the environmental and social baselines, evaluate the impacts of the Project, to assess the impacts as per the relevant national and international requirements and guidelines, and develop mitigation, and management plans to enable these impacts to be avoided or minimized to an acceptable level.

These ToRs describe the minimum requirements for the development of the ESIA under the Project. The applicable provincial legislation in Sindh, applicable national legislation, Asian Development Bank’s Safeguard Policy Statement (2009), and the IFC Performance Standards should be used to establish minimally acceptable conditions for satisfying the requirements of the ESIA for the Project.

The Company will be required to complete an ESIA and detailed ESMP that is fully compliant with IFC’s sustainability framework and Performance Standards, World Bank Group General EHS Guidelines, World Bank Group EHS (sector specific) Guidelines for Water and Sanitation, ADB’s environmental and social safeguard standards i.e. SPS 2009, local environmental and other relevant legislation notified by provincial and federal governments in order to obtain environmental approvals from the Sindh Environmental Protection Agency, Government of Sindh and other relevant agencies, as described herein and the E&S Scoping Report.

The basic format for the ESIA document that should be followed is:

- Table of Contents;
- Acronyms and Abbreviations;
- Executive Summary;
- Project Description and Justification;
- Regulatory Framework;
- Environmental and Social Setting (baseline);
- Assessment of Impact, including cumulative impacts;
- Stakeholder Engagement and Public Consultation;
- Mitigation and Monitoring Measures;
- Environmental and Social Management Plan;

²⁷ When referring to E&S, this includes also assessment and management of labour and working conditions including workers’ rights and occupational health and safety (OHS) risks and impacts

- Appendices.

The tasks and responsibilities described in the ToRs are indicative only and cannot be considered as a complete and comprehensive description of the expected consultancy services. It is rather the Consultant's responsibility to critically review the outlined ToRs and propose a complete scope of work, detailed and thorough enough in the Consultant's own professional judgment to achieve KW&SB's objectives and meet national and international standards, requirements and good practices.

In general, the ESIA must identify and address:

- Applicable environmental standards, norms, and international requirements set forth in national, local and international law, along with the IFC Performance Standards and ADB standards.
- Identification of Project Stakeholders and undertake broad Stakeholder engagement, including dissemination of relevant Project information and gathering of feedback. Develop a Stakeholder Engagement Plan (SEP), which will systematically assess and map Stakeholders, develop engagement methods for each, record all interactions and plan ongoing engagement throughout the Project lifecycle. A Grievance Redress Mechanism will also be developed as part of the SEP to track, respond and monitor all complaints and grievances.
- Detailed description of all phases of the Project from feasibility studies to Site preparation, construction, operations to closure. This should also include an assessment of alternatives including the technically feasible alternatives as well as the proposed Project.
- Develop a baseline of all E&S aspects within the relevant project Area of Influence (the "pAoI"), which will include primary data collection, along with the use of relevant secondary data sources.
- Describe the methodology used to assess impacts, and identify all direct, indirect and cumulative impacts and their significance level. Detail all mitigation measures to be implemented to address unavoidable impacts and include details of how mitigation can reduce impact levels, with a final residual impact rating provided.
- A detailed description of all relevant plans related to the proposed project Area of Influence, for example, engineering and Site preparation plans, operations and decommissioning or closure, environmental management, and mitigation in whatever form these may take.
- Uncertainty and how that uncertainty will be addressed through monitoring and contingency plans as may be needed to reduce risk of adverse impacts in the future.
- Specific commitments, including who is responsible, what will be done, when and how it will be monitored, reported, and audited to confirm that commitments are met.

Throughout the life of the Project, other consultants and professional advisors will be providing services to the KW&SB and the Project, and the Consultant shall be expected to refer the work product of these other parties where relevant. The Consultant while submitting the proposal agrees to cooperate and coordinate its activities with those other parties (e.g., technical, legal, financial consultants and contractors involved in the Project) so as to provide support in case of any queries in future and not to interfere with the overall smooth progress of the Project.

3. Table of Contents of the ESIA

A general table of contents for the ESIA shall be provided in the report. The table of contents shall be organized in such a manner as to facilitate the use of the ESIA by reviewers and project implementers. At a minimum, the table of contents shall include the following:

- Acronyms and Abbreviations;
- Executive Summary;
- General Information;
 - Objectives and Justification;
 - Project Proponents;
- Project Description and Alternatives Description;
- Legal and Regulatory Framework;
 - National Legislation;
 - Provincial and Local Legislation;
 - International Requirements and Conventions;
 - Institutional Arrangements;
- Environmental and Social Setting/Baseline;
 - Physical Environment;
 - Geology;
 - Soils;
 - Water Resources and Quality;
 - Air Quality;
 - Climate and Meteorology;
 - Noise and Vibration;
 - Landscape and Visual Amenity;
 - Biological Environment;
 - Protected Areas;
 - Vegetation/Flora;
 - Terrestrial Wildlife/Fauna and Habitat;

- Endangered or Threatened Species and Habitat;
- Social-Economic-Cultural Environment;
 - Demographics;
 - Livelihoods and Income;
 - Land Use and Ownership;
 - Health and Education;
 - Infrastructure and Utilities;
 - Archaeology and Cultural Heritage Ecosystem Services;
- Assessment of Impacts;
- Mitigation and Monitoring Measures;
- Environmental and Social Management Plan;
- Stakeholder Engagement;
- Roles and Responsibilities;
- References;
- Appendices;
 - Stakeholder Engagement and Public Consultation;
 - Technical Support Studies;
 - Maps and Plans;
 - Other Special Studies if needed.

4. Scope of Work

The ESIA Consultant shall undertake the following work:

- Propose a specialized team of experts required to undertake the ESIA study;
- Review all available existing information on environmental and social baseline conditions and potential impacts related to the Project, and ancillary and associated facilities, including the E&S Scoping Report and technical studies related to the Project that will be made available to the Consultant;
- Review, analyse and provide the policy, legal, and administrative framework for this Project as part of the ESIA report;

- Undertake an E&S desk-based, and early review of available primary and secondary data, to focus on key issues / impacts;
- Clearly define the Project’s area of influence, including ancillary and supporting facilities that are part of the Project, and the area of influence related to ‘associated facilities;’
- Design E&S relevant field based social and environmental baseline studies;
- Conduct Site visits, with the team of specialized experts, and baseline studies, covering the whole spectrum of analysis and modelling relevant to the construction and operation of the Project. Such studies should also include formal and informal discussions/meetings with local communities, government entities and other key stakeholders, in each project affected area / influence area (municipality level and district level). Consultations will enable both verification of the information reviewed from existing sources about the Project’s social and environmental context, an initial screening of likely environmental and social impacts and sensitivities, and for all relevant stakeholders to be informed about the Project. Any contact or interviews for preparation of baselines or social assessment should be planned and carried out in a culturally appropriate manner, in a language acceptable and used by the communities. Consultations shall be held in the national and / or relevant local language (or with translation). During the COVID pandemic, close consideration should be given to prevention of infection to stakeholders and the Project teams.
- Based on the above, prepare an ESIA report consistent with the applicable national and international standards (see following sub-sections);
- Design, carry out, and document the public / Stakeholder consultations and engagement throughout the ESIA process. This will lead to preparation of: (i) the Project’s grievance redress mechanisms and channels; and (ii) a Stakeholder Engagement Plan (SEP), annexed to the ESIA main report. Men, women and vulnerable groups/persons²⁸ should be included in the Stakeholder identification and analysis. This will ensure the impacts and mitigation measures are properly consulted with affected communities and any received feedback incorporated into the design, mitigation and management measures.
- The ESIA should include Environmental and Social Management Plans (ESMPs) in compliance with the applicable requirements, which may include but not limited to:
 - Project E&S standards based on applicable local, Asian Development Bank’s, and the World Bank’s requirements;
 - Environmental and Social Monitoring Program and Key Performance Indicators (KPI);
 - Waste Management Plan;
 - Biodiversity Action Plan;

²⁸ This disadvantaged or vulnerable status may stem from an individual’s or group’s race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. KW&SB should also consider factors such as gender, age, ethnicity, culture, literacy, sickness, physical or mental disability, poverty or economic disadvantage, and dependence on unique natural resources.

- Canal Decommissioning Plan;
- Energy Conservation and Resource Management Plan;
- Wastewater Management Plan;
- Soil Management Plan;
- Pollution Prevention and Spill Response and Hazardous Materials Management Plan;
- Water Management Plan;
- Occupation Health and Safety Plan and procedures;
- Safety Management Plan;
- Contractor / Sub-Contractor Management Plan;
- External Communication Protocol, Stakeholder Engagement and Grievance Mechanism;
- Code of Conduct to Avoid Gender Based Violence;
- Traffic and Pedestrian Safety Plan;
- Security Personnel Management Plan; and
- Emergency Preparedness and Response Plan (EPRP).

Issue all disclosure documents in (include local languages) and English for web disclosure and hard copy distribution to the public (add any detailed of distribution requirements).

The Consultant shall comply at any time with the relevant national and international data protection law and regulations.

5. Acronyms and Abbreviations

All acronyms and abbreviations used in the ESIA must be clearly and succinctly defined and described in this section.

6. Executive Summary

A general summary of the ESIA shall be provided in this section. The summary shall be written using a vocabulary that can be easily understood by the public. It shall include at a minimum the following information about the project from the ESIA:

- Objectives and Justification;
- Location;
- Project Proponents;
- Project Description;

- Project Alternatives;
- Environmental and Social Setting/Baseline;
- Evaluation of Impacts;
- Mitigation and Monitoring Measures;
- Environmental and Social Management Plan;
- Issues raised by stakeholders and any outstanding issues.

7. General Information

7.1 Introduction

A brief overview of the Project, including who is developing the Project, where it is located and the current stage of development. Further information to include who is developing the ESIA and the purpose of the document.

7.2 Project Objectives and Justification

7.2.1 Objectives:

A statement of the general and specific objectives (purpose) of the proposed Project.

7.2.2 Project Justification:

Provide a justification for the proposed Project (need) highlighting the benefits of the Project, including to surrounding communities and the economic development of the region and country.

8. Legal and Regulatory Framework

This section of the ESIA shall define the legal framework under which the ESIA is being completed and international safeguards or standards used, including the IFC Performance Standards (2012), World Bank Group's general and industry specific EHS Guidelines to be used a benchmark, and ADB's standards. This section should include:

- Information that demonstrates rights and access such as land ownership and rights-of-way, etc., with written authorization and mapping across all identified population settlements.
- Applicable environmental standards, norms and requirements set forth at the international, national, regional and / or local levels.
- Required regulatory approvals and / or permits for all stages and their status.
- Applicable land use requirements.
- Institutional arrangements including relevant government agencies and key players in the ESIA approval process, along with those that will be responsible for monitoring oversight.

It is recommended to use Good International Industrial Practices as well as the following good practice guidance:

- Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets (IFC, 2007);
- IFC's Good Practice Note on Managing Contractor's Environmental and Social Performance (2017);
- Workers' accommodation: processes and standards: A guidance note by IFC and the EBRD" (IFC and EBRD, 2009);
- IFC's Good Practice Handbook: Use of Security Forces: Assessing and Managing Risks and Impacts (2017); and
- UN Voluntary Principles on Security and Human Rights.

9. Project Description

This section shall include the following: a full description and location of the proposed Project and associated infrastructure and reasonable alternatives, including ancillary facilities and operations such as the camp / housing for construction (if applicable) and operation phases, borrow and disposal areas, sanitary services, waste disposal and transportation infrastructure. It shall include at a minimum:

9.1 Project Location

- The general location of the Project and associated activities in terms of:
 - Political-administrative location (region, district, town and other relevant political administrative units) with accompanying location map;
 - Means of Site access;
 - Latitude and longitude of Project area;
 - Maps of Project area at a scale of no less than 1:50,000;
 - All drawings should present scale and key coordinates.

9.2 Project Description

9.2.1 General

9.2.1.1 Type and nature of the Project:

- Type (in this case rehabilitation and upgrade of water supply canal/conveyance system, rehabilitation and upgrade of Treatment Plant, new Solar Plant, etc.).
- Capacity (MGD and m³/s) for the water conveyance system and Treatment Plant components, MW for the Solar Plant, KV for the interconnection line of the Solar Plant, etc.).

- Diagrams and drawings, general plan for the facilities, showing the location and layout of all Project components and their relationship to each other.
- Project operations: Description of how the Project would operate (seasonally, monthly, daily, hourly, as appropriate).
- Design details for each component of the Project, dimensions, materials of construction and configuration.
- Other works: describe additional works not covered above.
- Design Drawings for Project facilities: Plan (overhead view), Elevations (front view), Profiles (side view), Sections.

9.2.2 Site Access

Identify all new and existing roads to be used (including closed roads that will be reopened, and temporary roads if applicable), traffic volume, operating speeds and trip times, detailed information on any roads to be constructed or upgraded (including on-Site roads).

9.2.3 Construction phase and schedule

- Indicative schedule for each phase of construction for all Project and ancillary facilities including, but not limited to: mobilisation, road construction and improvements, land clearing, drilling, blasting (if required), borrow and spoil disposal, erosion and sediment control, excavation and subgrade preparation, foundation preparation, concrete work, construction or installation of each Project facility and stabilization of disturbed areas.
- Waste management for each Project component (demolition and spoil material etc.).
- Labour during construction: Number and type of employees (local and non-local) by field of expertise (~~days~~Days per week, hours per ~~day~~Day, shifts per ~~day~~Day).
- Raw materials to be used for construction: indicate the amounts per ~~day~~Day, month, storage and disposal, include an inventory of chemical, toxic or hazardous substances and their storage, safety aspects regarding transportation and handling of hazardous substances and materials (including sourcing of aggregates from nearby quarries, water for construction etc.).
- Construction camp (if applicable): description of the camp including but not limited to: a map showing all facilities at a legible scale appropriate to the size of the Project and in compliance with “Workers’ accommodation: processes and standards: A guidance note by IFC and the EBRD” (IFC and EBRD, 2009).

9.2.4 Operation phase

9.2.4.1 Operation information:

- Activities and equipment and machinery to be used during operations, including preventive and corrective maintenance);
- Labour during operations (number and type of employees (local and non-local) by field of expertise (~~days~~Days per week, hours per ~~day~~Day, shifts per ~~day~~Day);
- Overall energy requirements and sources;
- Inventory of chemical, toxic or hazardous substances used during operations and storage safety aspects regarding transportation and handling and any other relevant information;
- Waste management, i.e., screened debris carried by the canal, Treatment Plant sludge, solid, liquid, and hazardous waste streams, as relevant;
- Solar Plant cleaning and maintenance activities, and
- Public safety and security requirements.

9.2.5 Closure and Decommissioning Phase

- Describe activities that will be required when the Project nears the end of its service life, including contact with regulatory agency(ies) to obtain the environmental guidelines to carry out the closure or decommissioning. Closure and decommissioning (or rehabilitation) shall include at least a general 'Restoration and Closure Plan,' recognizing that terms of closure may be very different when this phase approaches. The description of restoration measures should include the size of the area to be restored as well as potential restoration measures.
- Plans for the decommission of system components, including disposal of potentially hazardous wastes incorporated into components.

9.2.6 Project Alternatives

- All Project alternatives that are reasonable and feasible and meet the purpose and need for the proposed Project shall be identified and summarized in this section (and evaluated in the ESIA, as appropriate).
- In addition to the proposed Project, such alternatives include alternative water supply sources, alternative conveyance systems, alternative routing or configuration of elements of the Project, alternative size and output capacity, and alternative plans for construction, operation and decommissioning of the facilities, including best practices that may avoid and / or reduce the adverse impacts to the physical, biological or social-economic-cultural environments.

- The ESIA should also describe potential alternative uses of any future unused sections of the canal.
- The ESIA should also describe alternative ways to clean PV panels to minimize water usage for this purpose.

10. Environmental and Social Setting/Baseline Conditions

Based on information available from secondary data sources such as existing literature and government data, along with primary data collection conducted specifically for the feasibility studies of the ESIA. Indicate the direct and indirect and cumulative impact areas of influence for physical, biological, and social-economic-cultural impacts and basis for defining area. This section shall include at a minimum, the following information:

Physical Environment

10.1 Geology and Soils

- Description of the geology, surficial geology and soils and characteristics at all Project component locations and in the area of influence, including a geological map of the Project area and area of influence of the Project.
- Topography and slope conditions and geomorphology.
- Seismicity and stability characteristics.
- Describe geologic hazards within the Project area.
- The ESIA shall describe baseline soil resources, project geotechnical and geophysics reports and make use of maps, tables and accompanying narrative text to describe the soils within the project Area of Influence, with particular attention to canal RoW and future pipeline alignment corridor and areas that will potentially be impacted by stoppage of canal water seepage during operations and compaction during construction (e.g. types of soils, capacity and uses, fertility and potential uses of the land for agriculture, stability and permeability, erosion and sedimentation potential, quantity and quality available for revegetating and restoring the disturbed area at time of closure etc.).

10.2 Water Resources

10.2.1 Surface water

- Include names and locations on maps of all permanent and intermittent streams, rivers, wetlands, lakes, and reservoirs (as applicable) within the area of influence of the Project.
- Describe flows in intermittent and permanent streams, ponds, and irrigation channels, located in and around the Site and seasonal fluctuations, as applicable including flood conditions.

- Delineation of watersheds and water drainage patterns within the Project area and in the area of influence of the Project, using for example, cadastral/aerial/remote sensing satellite imageries (mapping) and runoff characteristics of watersheds.

10.2.2 Groundwater

Provide a map of ground water wells in the area and identify and describe aquifers and underground waters, the hydrogeologic characteristics, groundwater potential yield (if groundwater might be required for the Project), water table levels (dry and rainy season) (for the purposes of this particular Project, secondary data will be sufficient) and groundwater quality. If no groundwater quality data is available for nearby wells that might be impacted by C&O Activities, baseline groundwater quality data will be required.

10.2.3 Surface water and groundwater standards

Describe the surface water and groundwater standards applicable to the Project (including national standards and international standards (e.g., World Bank/IFC General Environmental Health and Safety Guidelines).

10.3 Air Quality

Air quality monitoring baseline should be undertaken for the Site, and any sensitive off-Site locations which may be impacted by the Project. The minimum suite of air quality parameters that will be monitored are those that are expected to be affected by the Project's development.

The ESIA Report is expected to provide a classification of Site environment (e.g., degraded or non-degraded airshed), establish present background air pollutants, applicable ambient air quality limits for the area.

10.4 Climate and Meteorology

Available baseline information for weather and climate related data shall be collected and shall include at a minimum the following:

- Source of data (meteorological station(s) from which climatological data have been obtained, information should include data from the Pakistan Meteorological Department and WAPDA);
- Temperature variations;
- Relative humidity;
- Solar radiation and evaporation rates;
- Rainfall (total precipitation, rainfall intensity and duration by month);
- Wind rose (Wind direction and speed, twenty-four (24) hourly data)

- Climate change impact scenarios to be analysed in three (3) time frames (short-term, medium-term and long-term) while keeping in view the design life of the Project components.

10.5 Noise and Vibration

Noise, and if applicable vibration, monitoring baseline should be undertaken at the Site, and any sensitive off-Site locations which may be impacted by the Project. Provide a classification of the Site environment, establish existing background noise levels, and identify applicable noise limits and location of boundary to a level sufficient for the development of mitigation measures envisaged and to assess the future expected noise, and if applicable vibration, levels during operations, especially from the Treatment Plant. The ESIA shall include location of monitoring stations, daytime, and night-time noise levels (measured in decibels) and an inventory of existing noise sources.

10.6 Solid, Liquid and Hazardous Waste

Determine the expected types and amounts of waste streams from Project related activities. Map local disposal options and associated quality requirements, including the permitting status of local landfills and their compliance with international standards and guidelines. Assess local recycling capacity for wastes generated by the Project (including the potential for old canal demolition waste), and any needs, longer term, for building local capacity (including wastes from the Treatment Plant, canal cleaning, etc.).

10.7 Landscape and Visual Amenity

Based on the Site visit, identify general landscape and topography conditions within the area of influence. In addition, based on Site assessment and consultations with relevant entities, identify any key visual receptors which could be impacted (touristic sites, villages, key archaeological/cultural sites, etc.) by the Project.

Biological Environment

The ESIA shall provide detailed information on the location and condition of species, ecosystems and habitats in the Project area and the Area of Influence, considering the following:

Identify relevant conservation stakeholders and consult with them in the identification of priority biodiversity values (refer to the E&S Scoping and include others as appropriate). Include a section in the ESIA that describes which conservation stakeholders were contacted, how they were contacted and how their views were considered in the identification of priority values.

Identify a set of priority biodiversity values (species and habitats) based on the criteria of Irreplaceability and Vulnerability (see IFC Performance Standards Guidance Note GN6 para. GN13). The following factors should be considered:

- Map all KBAs, IBAs, other recognized areas of high biodiversity value (e.g., Ramsar sites, World Heritage Sites, protected areas etc.) within the Area of Influence of the Project.
- For each priority biodiversity value, identify a discrete management unit (DMU), if one could be identified (e.g., Area of Occupancy – AOO). Otherwise, indicate the Extent of Occupancy (EOO).

- Ensure that birds, mammals, reptiles / amphibians, fish, and plants are surveyed and sampled using best practices and considering any seasonal survey requirements.

10.8 Vegetation/Flora

- Vegetation mapping of terrestrial and wetland habitats (as applicable) for the Project areas, and any other area affected by the Project.
- Identify and map any endangered and threatened species according to the IUCN Red List (International and National) and species of local conservation concern (refer to the E&S Scoping Report)
- Species present (abundance, density, status, plant communities, presence of invasive species, etc.).
- Conduct a survey and identify and map areas that are at high risk for invasive species encroachment. These areas will be subject to specialized mitigation measures if required.

10.9 Wildlife/Fauna

- Fauna, including Avifauna (including status, i.e., resident, endemic, migratory, endangered, and threatened species according to the IUCN Red List (International and National) and local species of conservation concern, life history, and seasonal use, mating and/or breeding areas, Key Biodiversity Areas (i.e., Hub Dam Ramsar site), and IBAs according to BirdLife International.
- Conduct surveys of aquatic fauna in wetlands, streams, and ponds, as relevant (waterbodies may become seasonal as a result of the Project when seepage stops).
- The extent of the above will not be limited to the Project footprint, and will include its pAoI, based on the ecological requirements of the species potentially to occur. This pAoI will be clearly defined prior to the fieldwork and agreed together with IFC, ADB, and relevant stakeholders (Sindh Wildlife Department and others as relevant).
- It will provide a description on the times of surveys, providing a justification for the methods (sampling) undertaken using relevant literature, and the species groups targeted. Any limitations to the survey are to be described. The ESIA must include the raw data in Annexes.

10.10 Endangered or Threatened Species and Habitats

- The previous sections should identify all species in the Project area. This section should include the endangered and threatened range-restricted and migratory species occurring in / or the vicinity of the Project (pAoI) and determine the extent of any Critical Habitat (refer to the E&S Scoping report for Critical Habitat discussion).
- The ESIA will confirm the presence natural and modified habitats as per IFC PS6 and its Guidance Note (GN). As a minimum, descriptions of the different habitat types identified (including photographs) are to be included as well as justification of the classification of the habitat types as being either natural or modified. A map should

also be produced for the Project area and pAoI defining the areas of natural and modified habitats. A table is also to be included that defines the areas of habitats and total areas (in hectares) of natural and modified habitats within the Project area and pAoI.

- Evaluate the priority biodiversity values (species and habitats) for Critical Habitat per IFC’s PS6 criteria (see GN6 paragraphs 69-97).
- For Critical Habitat Species, prepare a Biodiversity Action Plan in collaboration with Sindh Forest and Wildlife Department, Government of Sindh that complies with IFC Performance Standard 6.

Habitats

- Through mapping, identify the extent of the study area that is either Modified, Natural or Critical Habitat per IFC PS6 definitions. Calculate the amount of Modified or Natural Habitat to be removed (in hectares) and identify this figure in the ESIA. Through mapping, identify habitat types and calculate the amount (in hectares) of each habitat type to be removed by direct and indirect impacts.

Socio-Economic-Cultural Environment

10.11 Demographics

Building on the exiting information gathered in the scoping report, identify human settlements, including the following information for each settlement: population size, gender, and age distribution, cultural characteristics, religion, ethnicity and language. The Consultant shall conduct detailed representative household surveys in all relevant population settlements in order to obtain quantitative indicators in all mentioned demographic aspects.

The preliminary list of settlements identified in the scoping report is presented in the following table:

Table 1.

#	Village Name	Land rights	Estimated population
1	Haji Noor Mohd Goth	Permanent	300
2	Haji Ibrahim Goth (Deh Jam Chakra)	Landless	7000
3	Haji Gul Mohd Goth	Permanent	30000
4	M. Murad Brohi Village (Haji Abdul Rehman)	Permanent	500
5	Maharaj Goth	Landless	150
6	Patai Brohi Goth	Permanent	290
7	Allah Dino	Permanent	96

10.12 Livelihoods and Income

Description of all income generating activities performed by PAP household members, including detailed account of the following aspects:

- Activities performed by PAP household members by basic demographic characteristics in all identified settlements, including both formal and informal sources.
- Qualitative description of the most common income generating activities in the identified settlements, including the analysis of recent changes in the structure of livelihood resources in the areas, as well as prospective analysis and likely projected evolution based on stakeholder consultation.
- Estimated average income per household and provision of relative poverty measurement indicators (e.g., percentage over average national, regional and local income levels).
- Description of commuting and travelling habits by PAP associated to livelihood and income generating activities.

10.13 Land Use and Ownership

Actual and potential land use showing location, size, and proximity within and surrounding the Project area, including land use maps, and to extent possible, integrated into one map. Population centres, including information and locations of schools, cemeteries, religious buildings, other public buildings, housing (including housing density), commercial areas, agricultural lands, forested lands, protected areas and environmentally sensitive areas, tourism and recreation areas, recreation facilities, eco-cultural-tourist locations, culturally sensitive areas, food plains and water bodies, and other land uses as appropriate. Consultations with relevant local entities should be undertaken as applicable to determine any additional land uses not recorded onsite (e.g., land uses for other utilities maintenance) as well as to verify above information.

10.14 Health and Education

Identify all public health infrastructure elements available and accessible by PAP and provide survey-based indicators on current health status, including the identification of communicable diseases, as well as disabilities present in the area. The Project developer shall collect specific information on current and past incidence levels of COVID-19 in the Project area, including mortality rates. Identify all available education facilities accessible in the area and those attended by PAP, by level of education (primary, secondary, etc.). Provide survey-based indicators on the level of education of PAP, as well as schooling rates for all household members. This shall also include detailed account, broken down by basic demographic characteristics of literacy rates,

10.15 Infrastructure and Utilities

For each human settlement identified in the previous section, describe the infrastructure in or serving the settlement, including the following information: transportation infrastructure, roads, airports, railways and ports, pipelines, public, drinking water supplies and treatment, wastewater treatment, locations of transmission and distribution lines (if applicable), locations

of microwave towers and/or antennae (if applicable), energy infrastructure, fuel storage facilities etc.

10.16 Archaeological and Cultural Heritage

Identify all cultural, archaeological, ceremonial, and historic resources within the area of influence, and including the following information: site survey and review of secondary data by an archaeology and cultural heritage expert to ascertain the presence of any archaeological and historical remains within the Project site, as well as tangible and intangible cultural heritage items. Any sites of importance should be recorded and delineated appropriately and their implications for the Project assessed. In addition, consultation should be undertaken with relevant authorities as applicable to determine if there any additional requirements which the Project is required to consider.

10.17 Ecosystem Services

Ecosystem services are the benefits that people, including businesses, derive from ecosystems. Based on the framework used for the Millennium Ecosystem Assessment (2006), ecosystem services are organized into four types:

- Provisioning services, which are the products people obtain from ecosystems (for example these may include food, freshwater, timber, fibres, medicinal plants). The KWC provides a source of fresh water to the communities living in the Project Affected Area that are not connected to the Karachi or other water distribution networks. These communities are highly dependent on the KWC water. The KWC water is used for drinking (both human and for livestock), domestic use (washing and bathing, etc.). There are significant differences across settlements in the specific ways in which the KWC water is accessed and used.
- Regulating services, which are the benefits people obtain from the regulation of ecosystem processes (for example, regulating services can be surface water purification, carbon storage and sequestration, climate regulation, protection from natural hazards). Regulating services provided by the KWC and seepage include a source of water for communities and crops during periods of prolonged drought. Water losses through seepage in the KWC and aqueduct structures constantly contribute streamflow to the seasonal streams flowing under the aqueducts and moisture and water to the surrounding areas.
- Cultural services, which are the non-material benefits people obtain from ecosystems (for example, these could be natural areas that are sacred sites and areas of importance for recreation and aesthetic enjoyment). In particular, the use of green recreational areas around the KWC shall be investigated in detail (camping and picnics and for recreational and leisure activities).
- Supporting services, which are the natural processes that maintain the other services (such as soil formation, nutrient cycling, and primary production). Particularly, the Company shall investigate the potential ecosystem services stemming from seepage from the KWC, in terms of soil moisture levels, vegetation supporting grazing and fodder for livestock and possible agricultural benefits (cropland) in the surrounding areas.

Carry out an ecosystem's services review for the Project area and area of influence and assess which ecosystem services will be impacted by the Project, as per the methodology presented in the World Resources Institute's Weaving Ecosystem Services into Impact Assessment, A Step-by-Step Method (2013).

10.18 Development of E&S Constraints and Red Flag Mapping

Based on the outcomes of the scoping and baseline studies above, constraint analysis mapping should be undertaken, and which will need to be considered by the KW&SB and the Company during the development of the Detailed Engineer Design phase of the Project (including the Alternatives Analysis). This constraint analysis could include for example, biodiversity or socio-economic related aspects within the Site to be avoided, sensitive receptors which need to be avoided, or require buffer or set-back zones, etc.

11. Assessment of Impacts

The ESIA shall provide information on potential impacts (direct, indirect, induced and cumulative) and the magnitude and frequency of potential impacts on the physical, biological, socio-economic, and cultural environments resulting from construction, operation and closure of the proposed Project and alternatives.

The assessment shall use standardized predictive methods, such as models for example, to determine the specific range of impacts on environmental and socio-economic resources. A methodology section will describe the methods used to determine the impacts and their significance. The ESIA shall identify which impacts are significant and the criteria used to make this judgment. Critical data input from Project description and environmental setting analysis projecting the conditions in the environmental setting in the absence of the proposed Project shall be used as the baseline upon which potential impacts are predicted.

The ESIA shall also identify sources of data used in the analysis and the uncertainties associated with the outputs of each method used.

The assessment of impacts will be carried out for all Project phases (pre-construction, construction, operations, closure, and decommissioning, as applicable).

Physical Environment Impacts

Potential impacts to the physical environment shall be described, including but not limited to the following:

11.1 Geology and Soils

Potential impacts to geologic resources and potential effects on the Project facilities shall be described including but not limited to the following:

- Geologic hazards and potential effects on facility;
- Changes in topography and drainage patterns;
- Soils: Potential impacts to soil resources shall be described including but not limited to the following: soil quality, structure and moisture (from eliminating seepage, from

trenching excavations and placement of pipeline, from compaction due to heavy machinery and construction activities), contamination (accidental spills of fuel, oil or other hazardous substances), disposal of component parts of photovoltaic cells, Impacts on use Erosion, slope alteration, vegetation removal and drainage patterns, sediment accumulation and transport, sediment and hazardous waste removal and disposal;

- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in context.

11.2 Water Quality and Resources

Potential impacts to surface water and groundwater resources shall be described, including but not limited to the following:

- Location of all stream crossings by rights-of-way and access roads;
- Bank erosion (surface water discharges, stream crossings and dredging);
- Quality: Effects of Project construction and operation on water quality parameters in surface water and groundwater, including the results of any water quality modelling (if appropriate);
- Description of effects due to runoff, erosion, and sedimentation from roads, disturbed areas, and stream crossings, including sources, receiving waters, and effects on physical, chemical, and biological parameters;
- Description of impact from wastewater discharges (if applicable);
- Quantification of water to be used for PV panel cleaning at the Solar Plant and description of impact;
- Spills and accidents (chemical, hazardous waste and fuel spills, containment failures);
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope, and duration in the context of the Project.

11.3 Air Quality

Potential impacts to air shall be described including but not limited to the following:

- Impacts on ambient air quality;
- Sensitive receptors (e.g., communities, schools, water bodies, ecosystems etc.);
- Greenhouse gas generation (GHG);
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope, and duration in the context of the Project.

11.4 Climate and Meteorology

This section should include the potential effects of severe weather events on the Project (floods, prolonged periods of drought etc.) as well as the projected impacts of climate change on the Project.

This section should also describe the potential impacts of the Project on climate change, including the benefits or positive impacts due to GHG emissions reductions from the Solar Plant that is associated with the Project (i.e., how the Project contributes to climate change mitigation).

11.5 Noise and Vibration

Potential impacts from noise shall be described, including but not limited to the following:

- Noise modelling (if required), potential noise levels at different representative sites in the Project area and in communities near the Project area;
- Potential vibration due to blasting (if applicable) and movement of heavy equipment, and related damage to materials and structures;
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

11.6 Solid, Liquid and Hazardous Waste

Provide a description of impacts from solid, liquid and hazardous waste discharges, accidental spills and accidents or impacts on capacity of local land fill facilities.

11.7 Landscape and Visual Amenity

Potential impacts to Visual Amenity or Aesthetic Resources, including light pollution, shall be described as including but not limited to the following:

- Impacts on visual resources and landscapes (viewsheds, historically and/or culturally significant landscapes etc.).
- Increases in light contamination.
- Overall assessment of significance of direct, indirect and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

Biological Environment Impacts

Potential impacts to biological resources shall be described, including but not limited to the following:

11.8 Vegetation/Flora and Associated Habitats

- Describe and quantify alterations in vegetative cover due to deforestation, permanent or temporary, other vegetative type conversions, direct vegetative removal, indirect

vegetation impacts (e.g., by dust and air contaminants), increased road access leading to destruction of existing vegetative cover (land use changes), spread of noxious or invasive species.

- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope, and duration in the context of the Project.

11.9 Wildlife/Fauna and Associated Habitats

Describe and quantify alterations in terrestrial wildlife populations due to the following (aquatic fauna, not considered applicable to the Project):

11.9.1 Wildlife/Terrestrial Fauna

- Loss of habitat and breeding areas due to changes in vegetation cover/wetlands loss (as applicable).
- Disturbance of breeding areas due to Project construction, operation, and maintenance, recreational use, and human settlement associated with the Project (e.g., noise, vibration, illumination, vehicular movement).
- Loss or contamination of drinking water for wildlife species.
- Poisoning (e.g., air emissions, direct contact with toxic waste/substances).
- Animals attracted to garbage and food waste at construction camps or onsite facilities.
- Increased hunting (by workers for example).
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project, based upon analysis of magnitude, frequency, scope, and duration in the context of the Project.

11.9.2 Aquatic Fauna

- Loss of aquatic habitat and breeding areas when seepage stops (as applicable).

11.10 Endangered or Threatened Species and/or Habitats

- Describe and quantify impacts to endangered or threatened species, or critically endangered (CR) or endangered (EN) habitats.
- Individual species (with special emphasis on endemic, rare, threatened, and endangered species).

11.11 Protected Areas

- Describe any impacts to Protected Areas and overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed project based

upon analysis of magnitude, frequency, scope and duration in the context of the Project (if applicable).

Social-Economic-Cultural Impacts

The ESIA shall assess potential positive and negative impacts to the socio-economic environment and cultural heritage including but not limited to the following:

11.12 Socio-Economic Impacts

- Building on the existing information gathered in the scoping report, detailed assessment of the limitation of access to canal water for basic consumption and domestic needs for around eight thousand (8,000) inhabitants from six (6) different communities.
- Impact of rehabilitation on soil moisture and agricultural yield in the vicinity of the KWC because of the elimination of seepage. This shall include in depth studies to determine the agricultural water demand to address the dependence of agricultural land on seepage water.
- Although no land acquisition or resettlement impacts are expected along the corridor of the Project, some identified narrower areas, in which the existing right of way seems to have been compromised will need to be taken into consideration before the commencement of the work. In case that assets are affected, the Company shall prepare an assessment of physical and economic displacement impacts in the framework of a simplified Resettlement and Livelihood Restoration Plan (RLRAP), in accordance with the IFC's Performance Standard 5, and ADB's Safeguard Policy Statement (2009).
- Mobility restrictions during the Concession Period for local population (see section 8.10.1)
- Impacts on public health. COVID-19 risks as communicable respiratory diseases will most likely be the most significant concern for potential interactions between the workforce and community members.
- Assessment of other expected impacts over the affected communities:
 - Affected individual incomes.
 - Direct employment at the Project.
 - Indirect employment generated by Project Activities.
 - Employment opportunities for local residents.
 - Other economic activities stimulated in the community because of the Project.
 - Reduction in quality of life for residents from visual and noise impacts.
 - Change in crime rates (substance abuse, prostitution, etc.).
 - Change in character and social cohesion of community because of displacement and other impacts.

- Potential hazard to the public from KWC components resulting from accidents or natural catastrophes and how these events will affect reliability.
- Overall community acceptance of the Project.
- Impacts over community recreational facilities and leisure activities.
- Assessment of impacts over the labour force of the Project and the staff engaged in operation of the KWC:
 - Substitution of part of the current KW&SB staff by Company's personnel.
 - Impacts on worker health and safety, with particular attention to accommodation conditions and characteristics of workers' camps.
 - Identification of hazardous jobs and number of workers exposed with duration of exposure.
 - Occupational diseases due to exposure to dust and other Project-related activities such as handling of explosives, solvents, petroleum products, (if applicable) etc.
 - Identification of physical risks and safety aspects.
 - Potential for fires.
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

11.13 Infrastructure and Utilities

11.13.1 Transportation infrastructure

This section of the ESIA addresses impacts on transportation and traffic patterns on existing roads. The impacts of new and existing roads and interventions over them on the surrounding environment and land use should be addressed in those respective sections. The ESIA shall assess potential impacts to transportation systems, including but not limited to the following:

- Potential mobility restrictions during the Concession period, particularly in some specific settlements where villagers are highly dependent on the auxiliary road along the KWC. –Investigation of crossing paths used by villagers to access the opposite side of the KWC that could be also temporarily affected.
- Potential changes to traffic patterns, densities, and traffic safety issues in the area affected by the Project.
- A determination of vehicular traffic density in the Project area (before, during, and after the proposed activities).
- Potential for traffic accidents.

- Congestion.
- Noise.

11.13.2 Increased Pressure on Public Services

- Public health infrastructure:
 - Increased need for public health infrastructure;
 - Alterations to public health infrastructure;
- Communications infrastructure:
 - Increased need for communications infrastructure;
 - Alterations to communications infrastructure;
- Energy infrastructure:
 - Increased need for energy infrastructure;
 - Alterations to energy infrastructure;
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

11.14 Archaeology and Cultural Heritage

Impacts over cultural heritage elements are unlikely in the framework of the Project. Nonetheless, the Company shall assess and provide further details on the following aspects in the ESIA:

- Cultural heritage, archaeological, paleontological, religious, historic resources;
- Destruction during construction;
- Damage and alteration;
- Removal from historic location;
- Introduction of visual or audible elements that diminish integrity;
- Neglect that causes deterioration;
- Loss of medicinal plants;
- Loss of access to traditional use areas;
- Impacts to previously inaccessible resources from development/improvement of roads;

- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

11.15 Ecosystem Services

- Impacts to the ecosystem services identified in baseline section;
- Overall assessment of significance of direct, indirect, and cumulative impacts for all phases of the proposed Project based upon analysis of magnitude, frequency, scope and duration in the context of the Project.

11.16 Cumulative Impacts

Cumulative impacts are those that result from the incremental impact of the proposed activity on a common resource when added to the impacts of other past, present, or reasonably foreseeable future activities.

The cumulative impacts will be assessed by identifying other applicable projects, such as construction and upgrade of electricity generation, and transmission, distribution facilities or other infrastructure projects in the local area (i.e., within twenty kilometres (20 km) of the proposed Project) that have been approved or are currently underway.

Use IFC's Good Practice Handbook: Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets as Guidance (2013).

12. Mitigation and Monitoring Measures

Identify mitigation measures as per the Mitigation Hierarchy. Specifically, these should include the following:

- Avoidance measures;
- Minimization measures;
- Restoration measures;
- Compensation/offset measures.

This section of the ESIA must include measures designed to mitigate potential adverse impacts to physical, biological, and social-economic-cultural resources from construction, operation and closure of the proposed Project and alternatives. These shall include measures to avoid and prevent, and if needed, to reduce or minimize adverse impacts and, where residual impacts remain, compensate / offset for risks and impacts to workers, Affected Communities, and the environment, according to the mitigation hierarchy shown in the following figure. The Project proponent must include measures considered to be "best practices" in the design of all alternatives.

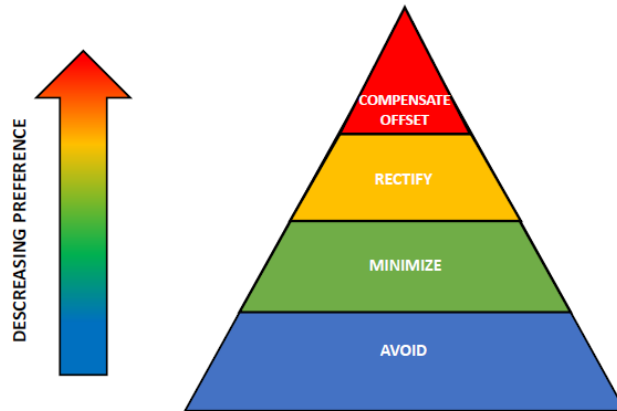


Figure 3. Mitigation hierarchy

Either herein and / or in the Environmental and Social Management Plan (ESMP) section, proposed mitigation shall be described in auditable terms and at a level of detail sufficient to demonstrate its effectiveness in addressing the concern or performance criterion, including its anticipated level of effectiveness and/or measurable performance, and design specifications.

The monitoring plan must include monitoring throughout the life of the Project for each potential mitigation to confirm the effectiveness of the measure and support contingency plans to provide assurance that the Project, at the Site preparation, construction, operation, expansion, and closure stages will meet applicable environmental and legal requirements and fall within the limits of impacts deemed acceptable upon approval of the ESIA. Some important items to address in the mitigation plan and associated monitoring plans include, but are not limited to the following:

13. Environmental and Social Management Plan

The ESIA shall include an Environmental and Social Management Plan to prevent, mitigate and monitor each impact identified in the ESIA. Plans will describe actions to be taken in sufficient detail to provide a basis for subsequent auditing of compliance with commitments made in the ESIA process, including who is responsible, how and when it will be implemented, what will be done and what results will be achieved, why it is being done, and how to know whether it is effective in addressing the underlying concerns. The Environmental and Social Management Plan shall have the following elements:

13.1 Overview of Environmental and Social Management Plan Organization and Policy

Describe the Project management and how environmental management and organization relates to overall Project responsibility. Describe the personnel and performance accountability system for design, operation, maintenance and closure for implementation of mitigation and monitoring measures.

Describe the environmental policy that will govern the Project throughout its implementation, including at least the objectives, scope, commitment to continuous improvement, control and environmental monitoring and good relationship with neighbouring populations and countries, as well as the commitment to internal controls such as compliance and environmental monitoring and routine audits.

Identify the persons responsible for the implementation of mitigation measures in each phase.

13.2 Mitigation and Monitoring Plans

The Consultant will develop detailed Environmental, Social, Health and Safety Management Plans (“ESMP” or “ESHS MP”) that identify for each impact the mitigation, monitoring and management measures to be taken during the various phases of the Project (construction, operations, decommissioning) to avoid, reduce, mitigate, or compensate for adverse environmental, social, and health and safety impacts.

For each identified impact the Consultant will establish:

- A set of mitigation measures that will include feasible measures to prevent significant adverse impacts or reduce them to acceptable levels. Such measures will involve technical requirements, guidelines or procedures and practices to be implemented during design, construction, operation and decommissioning phase of the Project;
- A set of monitoring requirements that ensure that the identified mitigation measures are considered, implemented properly and are sufficient measures for protecting the environment and environment resources, local communities, and workers.

In addition, as part of the ESMP, the Consultant shall also identify the proposed ESMS structure, as applicable, that will be followed for the project. The ESMS requirements will be included in detail for all the parties involved, including, the Sponsor(s), the EPC Contractor, and the O&M Contractor.

This ESMS shall be aligned with the principles of ISO 14001 and OSHAS 18001/ISO 450001 and include the necessary Elements, Programs and Management Plans and Procedures to manage the identified Project risks. As part of the ESMS, management plans will be developed in line with the applicable requirements for the key aspects identified in the ESIA such as, but not limited to pollution prevention (noise, dust, fuels, hazardous materials), biodiversity management, solid and liquid waste, flora and fauna, water management, occupational health and safety, transportation management, security management, emergency response, labour and supply chain management.

The Consultant will develop an outline management structure which will ensure the implementation of all the required mitigation and/or monitoring activities is achievable. This will include recommended training activities, and any additional management tools, etc.

13.2.1 Stakeholder Engagement Plan

The Consultant will develop a Stakeholder Engagement Plan (“SEP”) as a standalone document in line with the IFC’s requirements. The SEP should recognize that Stakeholder engagement is an ongoing process that involves Stakeholder analysis & planning, disclosure and dissemination of information, consultation & participation, grievance mechanism and on-going reporting to affected communities. In line with the requirements of IFC, the SEP must be developed and scaled to the Project risks and impacts and be tailored to the characteristics and interests of the Affected Communities and key Stakeholders.

The Consultant should build the SEP based on the environmental and social impact assessment outcomes considering local settings. The SEP should be developed to include the following:

- Introduce the SEP and include information on the purpose and scope;
- Include information on legislative and international requirements;
- Identify all Project related stakeholders influenced by the Project to include central governmental entities, local governmental entities, NGOs, local communities and CBOs; academic and research institutions; private sector companies; media organizations; and most important any vulnerable groups if applicable;
- Evaluate Project related Stakeholders to understand their priorities and relevance to the Project;
- Define the Project's approach to stakeholder engagement (post ESIA study, during construction and operations). Priority should be given to identification of engagement mechanisms that are: (i) culturally appropriate, (ii) scaled to the Project risks and impacts, (iii) tailored to the characteristics and interests of the Stakeholder group's language preferences, and decision-making process;
- Identify the objective of undertaking such consultation activities for each Stakeholder group;
- Identify the phase of involvement of Stakeholders. This will include: (i) summary of Stakeholder consultations and engagement undertaken as part of the ESIA (scoping process, baseline, impact assessment, mitigation, etc.) and (ii) future engagement including both disclosure of the ESIA and post-ESIA phase to be implemented through the project duration to include four distinct phases – planning, construction, operation, and decommissioning;
- Include information on monitoring requirements including frequency of all engagement activities and reporting;
- A detailed grievance / project complaints mechanism that is responsive and facilitates establishing and facilitating the resolution of Stakeholders' concerns and grievances.

Within the SEP, the Consultant shall describe the process by which PAPs and interested people can express their grievances for consideration and redress, in accordance with national law and the applicable international standards, and with IFC's Performance Standard 1. The process shall be free of any cost for users, and it will be implemented through an understandable and transparent consultative approach that is culturally appropriate and readily accessible. The GRM should ensure it can receive both external and internal grievances. The GRM should be designed to address complaints of gender-based violence between employees / contractors and members of the community. The Consultant shall describe at least the following elements of the GRM.

- Establishment of Grievance Committee, appointment of members and functioning rules;
- Eligibility criteria for grievances;

- Reception and registration of grievances;
- Referral process;
- Development, communication, and implementation of proposed responses.

A separate GRM shall be defined and implemented for the engagement of workers regarding possible health and safety occupational risks.

14. Appendices

These shall be numbered and referenced throughout the text and include, but not be limited to:

14.1 Technical Supporting Documents

- Including maps, plans, charts and figures in the sequence mentioned in the ESIA document;
- Zoning maps with resources and results of impacts;
- Special Studies if relevant but not readily accessible;
- Detailed materials on predictive tools/models and assumptions used for the assessment but too detailed for the body of the ESIA;
- Detailed survey reports (e.g., birds and other vegetation/fauna surveys) and the associated raw data.

14.2 References

Include a section with all references, (books, articles, technical reports, and other information sources) cited in the various chapters of the ESIA study with full biographic references, and the following conventional procedures cited in the literature: author, year, title, source, number of pages, and city of publication or issuance or webpages accessed on *[date]*.

15. Non-technical Summary

The Consultant shall prepare a Non-Technical Summary (“NTS”) report, which concisely discusses meaningful information on the project, its environmental and social footprint and impacts, significant findings and recommended actions in easily understandable (non-technical) language. The section will include a summary of the ESIA undertaken (project description, baselines, impact analysis and mitigation measures for the environmental, social and health and safety negative and positive impacts) and a summary of the stakeholder engagement process.

16. Schedule

The anticipated schedule for the ESIA is as follows:

TASK	DELIVERABLE	PROPOSED DATE [Add Dates]
1	Site Survey Priority List; kick-off meeting	
2	ESIA Methodology	
3	Scoping Report, follow-up meeting	
1	Policy, Legal, and Administrative Framework	
2	Project Description	
3	Analysis of Alternatives	
4	Environment and Social Baseline Conditions	
5	E&S Constraints Report	
6	Draft of ESIA Report, follow-up meeting	
8	Environmental, Social, Health and Safety Management Plans	
8	Stakeholder Engagement Plan	
9	Non-Technical Summary	
10	Final ESIA, final meeting	

17. Staffing and key personnel

The ESIA shall be prepared by an independent Consultant that has no conflict of interest with the Project. The Consultant is expected to appoint a team of specialists that will carry out the necessary investigations to gather, review and compile all relevant data and to consult with stakeholders. The Consultant shall provide and maintain all key experts throughout the assignment; any changes are subject to prior approvals by the KW&SB. The Consultant's team is expected to have experts who are familiar with the local area and have the appropriate language skills and should include local experts wherever possible.

It is expected that the Consultant will undertake field work for all the relevant specialist studies. In addition, collection of baseline data and surveys will be undertaken to enable a robust assessment appropriate to the nature and scale of the Project. The spatial and temporal extent of the baseline surveys will be determined through professional judgment and industry best practice. Data will be relevant to inform decisions about Project location, design, construction, operation, and mitigation measures. This section will indicate the accuracy, reliability, and data sources. Baseline information will be supported with figures and maps where possible.

The Consultant's team is expected to include the following core staff:

- Project Director: a consultant with experience in undertaking ESIA's in accordance with IFC's and ADB's standard, with excellent communication skills and minimum fifteen (15) years of professional experience.
- Environmental Specialist: with experience of delivering ESIA's against international standards and best practice, and minimum ten (10) years of professional experience.
- Social Specialist: with minimum ten (10) years' experience in management of labour, community health and safety, land acquisition, livelihood restoration issues, design and implementation of stakeholder engagement and community development plans, conflict resolution and community relations issues with indigenous peoples, if applicable.

These will be supported by a team of selected specialists appropriate to the Project, and with appropriate language skills, who will cover as a minimum the following areas:

- Air quality measurements and modelling;
- Soils, geology, hydrogeology and topography/landscape;
- Hydrology, hydrogeology and water quality measurements;
- Biodiversity (flora & fauna);
- Community health, safety and security;
- Socio-economic analysis, resettlement/land acquisition, stakeholder engagement;
- Gender and GBV;
- Archaeological, historical and cultural heritage; and
- Resource management including solid and hazardous materials and waste management.

APPENDIX 13: FORM OF GOS PAYMENT ACCOUNT LETTER OF LIEN

GOS PAYMENT ACCOUNT LETTER OF LIEN

ISSUED BY

SIGNATURE PAGES

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

GOVERNOR OF SINDH,
(THROUGH THE SECRETARY, LOCAL GOVERNMENT & HOUSING TOWN
PLANNING DEPARTMENT, GOVERNMENT OF SINDH) ²⁹

IN FAVOR OF

[BANK]
(AS AGENT)

relating to

KARACHI HUB WATER CANAL PROJECT

DATED: [●]

²⁹ Please confirm which department of the GoS will execute the Letter of Lien.

To:

[●], a [bank] organized and existing under the Laws of Pakistan having its place of business located at [●], (the “Agent”).

Dear Sirs,

This **GoS PAYMENT ACCOUNT LETTER OF LIEN** (hereinafter referred to as the “**GoS Letter of Lien**”) has been executed at Karachi, Pakistan on this [●] day of [●]:

BY

(1) **THE GOVERNOR OF SINDH (THROUGH SECRETARY, LOCAL GOVERNMENT & HOUSING TOWN PLANNING DEPARTMENT, GOVERNMENT OF SINDH)** having its offices located at Local Government & Housing Town Planning Department, Ground Floor, Tughlag House, Sindh Secretariat, Karachi, Pakistan, for and on behalf of the Government of Sindh (hereinafter referred to as “**GoS**” which expression shall mean and include where the context so requires or admits its successors-in-interest and permitted assigns);

IN FAVOUR OF

(2) [INSERT NAME OF BANK], a [bank] organized and existing under the Laws of Pakistan, whose registered address is at [INSERT ADDRESS], as agent for and on behalf of the Financing Parties (the “Agent”).]

(each a “Party” and together the “Parties”).

WHEREAS:

(A) The GoS and the Company have entered into the Concession Agreement dated [●] for the purposes of implementation of the Project.

(B) The Company has entered into the Financing Documents with the respective Financing Parties for the provision to the Company of finance facility in the amount up to [●] for the financing of the Project.

(C) Pursuant to the Concession Agreement, to secure payment of the Financing Due component of the applicable unrecovered Termination Payments (other than Value D and Value E) less any Deductible Termination Amounts (the “**Lien Amount**”), the GoS has agreed to create a lien over the GoS Payment Account in favour of the Financing Parties (“**Lien**”).

(D) The GoS has issued this GoS Letter of Lien for the creation of Lien in favour of the Agent (for and on behalf of the Financing Parties).

NOW, THEREFORE, GoS hereby agrees, declares and undertakes as follows:

1. In this GoS Letter of Lien (including the recitals):
 - (a) unless otherwise defined herein or unless the context otherwise requires, all capitalized terms shall have the meanings given to them under the Concession Agreement; and
 - (b) the rules of interpretation set out in the Concession Agreement shall be applied in the interpretation of the terms and provisions of this GoS Letter of Lien.
2. The GoS confirms that it has opened and is maintaining the account titled 'GoS Payment Account' bearing number [●] with the GoS Payment Account Bank, located at [●].
3. The GoS confirms that, for the purposes of the Concession Agreement the account described in clause 2 above shall constitute the GoS Payment Account as defined and used in the Concession Agreement.
4. The GoS agrees that the Agent (for and on behalf of the Financing Parties) shall have a Lien over the GoS Payment Account to secure the Lien Amount, in accordance with the Concession Agreement.
5. The Lien shall be enforceable by the Agent (for and on behalf of the Financing Parties) upon issuance of the Lien Enforcement Certificate (by submitting the Lien Enforcement Certificate to the GoS Payment Account Bank) stating that the Lien Amount, as specified in the Unrecovered Termination Payment Amount Certificate has not been paid to the Company in accordance with clause 12.1.5.2 of the Concession Agreement.
6. Upon the establishment of the GoS Payment Account, the GoS has issued the GoS Payment Account Standing Instructions containing instructions to the GoS Payment Account Bank to debit the GoS Payment Account with, *inter alia*, upon receipt of the Lien Enforcement Certificate, the Lien Amount, as specified in the Lien Enforcement Certificate, not otherwise recovered by the Company pursuant to clause 12.1.5.2 of the Concession Agreement.
7. Further, the GoS undertakes to procure that the GoS Payment Account Bank shall, subject to the applicable Legal Requirements, acknowledge in writing the creation and marking of a lien in terms of this GoS Letter of Lien, upon a request made by the Agent.
8. The GoS further undertakes that it shall not create, incur, permit, assume or suffer to exist any encumbrance whatsoever upon or with respect to the GoS Payment Account (including the amounts therein) other than the Lien created pursuant to this GoS Letter of Lien.
9. The rights, interest, powers, authorities and the security hereby vested in favor of the Agent (for the benefit of the Financing Parties) are irrevocable, to be exercised by the Agent in terms hereof and in accordance with the Concession Agreement and shall at all times be binding on the GoS solely for the benefit of the Agent (for and on behalf of the Financing Parties) until the Financing Termination Date.

10. The provisions of clause 30 (Notices), clause 23 (Governing Law) and clause 27 (Dispute Resolution) of the Concession Agreement shall be incorporated by reference into this GoS Letter of Lien and apply, mutatis mutandis, hereto.
11. This GoS Letter of Lien shall be effective from the date of its execution and shall terminate on the Financing Termination Date.
12. On the Financing Termination Date, the Lien hereby created shall automatically stand terminated and the Agent agrees to execute any further actions and additional documents necessary to give effect to such termination.
-

IN WITNESS WHEREOF, GoS has caused this GoS Letter of Lien to be duly executed by its duly authorized officer as of the date first above written.

Signature

Name (block capitals)

Title

For and on behalf of
[GOVERNOR OF SINDH
THROUGH SECRETARY,
LOCAL GOVERNMENT
& HOUSING TOWN
PLANNING
DEPARTMENT]



Signature

.....
.....

Name:
Designation:
CNIC No.

Signatures

in the presence of:
Witnesses

.....
.....

1- Name:
Address:
CNIC/Passport
No:

.....
.....

2- Name:
Address:
CNIC/Passport
No:

Witness signature

Witness name-
(block capitals)

Witness signature

Witness name-
(block capitals)

KARACHI WATER AND SEWERAGE BOARD

CONFIRMED, ACKNOWLEDGED AND ACCEPTED BY:

Signature _____

Name (block capitals) _____

Title _____

~~in~~ _____

For and on behalf of

[●]

(As the presence of: Agent)

Name: _____

Designation: _____

CNIC/Passport No.: _____

Witness signature _____

Witness name
(block capitals) _____

Witness signature _____

Witness name
(block capitals) _____

~~THE COMPANY~~

In presence of the following Witnesses:

1. _____ Signature: _____

_____ Name ~~(block capitals)~~: _____

Title

In the presence of:

~~1.2.~~ _____

Witness signature

~~Witness name
(block capitals)~~

~~Witness signature~~

~~Witness name
(block capitals)~~

SIGNATURE PAGES

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

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

Signature

Name (block capitals)

Title

In the presence of:

Witness signature

Witness name
(block capitals)

.....

Witness signature

Witness name
(block capitals)

.....

KARACHI WATER AND SEWERAGE BOARD

Signature

.....

Name (block capitals)

.....

Title

.....

In the presence of:

Witness signature

.....

Witness name
(block capitals)

.....

Witness signature

.....

Witness name
(block capitals)

.....

THE COMPANY

Signature

.....

Name (block capitals)

.....

Title

In the presence of:

.....

Witness signature

.....

Witness name
(block capitals)

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Witness signature

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Witness name
(block capitals)

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