



**VOLUME - II**  
**DRAFT PPP CONTRACT**

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**BY & BETWEEN**

**GOVERNOR OF PUNJAB**  
**(THROUGH THE SECRETARY, COMMUNICATION & WORKS DEPARTMENT)**

**AND**

**[SPV INCORPORATED BY THE SUCCESSFUL BIDDER]**  
**(AS THE PRIVATE PARTNER)**

**DATED AS OF [●] MAY 2026**

**IN RESPECT OF**

**THE CONCESSION FOR MAINTENANCE, OPERATION AND MANAGEMENT**  
**OF**  
**BAHAWALPUR – YAZMAN & YAZMAN – AHMADPUR EAST ROAD**  
**(GROUP-3)**

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

## TABLE OF CONTENTS

1.	Definitions & Interpretation.....	6
2.	Concession.....	32
3.	Conditions.....	33
4.	Project Site.....	38
5.	Independent Engineer & Independent Auditor.....	42
6.	Not Used.....	46
7.	Private Partner’s Representations, Warranties And Certain Obligations & Undertakings.....	47
8.	Implementing Agency Representations, Warranties And Certain Obligations & Undertakings.....	59
9.	Indemnities & Limitation of Liability.....	63
10.	Funding Requirements & Shareholding Matters.....	66
11.	Bid Security, Installation Performance Guarantee & O&M Performance Guarantee.....	66
12.	Detailed Programme of performance.....	71
13.	Installation Works.....	73
14.	Completion.....	75
15.	Relief Extensions & Relief Compensations.....	77
16.	Change of Scope.....	82
17.	Tolling Arrangement.....	84
18.	Defects & Deficiencies, Notice of Remedy, Suspension.....	88
19.	Operation and Maintenance.....	90
20.	Insurances.....	99
21.	Force Majeure.....	102
22.	Events of Default.....	106
23.	Termination.....	110
24.	Divestment of Rights and Interest.....	113
25.	Defects Liability During Exit Implementation Period.....	116
26.	Disclaimer.....	117
27.	Assignment and Charges.....	118
28.	NOT USED.....	119
29.	Additional Matters.....	120
30.	Dispute Resolution.....	121
31.	Miscellaneous.....	122
32.	Authority fee.....	124
	List of Schedules.....	125
	Schedule A – Scope Of The Project.....	126
1.	Detailed Project Scope.....	126
	Schedule B – Design Requirements.....	131
	Schedule C – Installation Works.....	134
	Schedule D – Project Facilities.....	143

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

Schedule E – Installation Completion Schedule..... 145

Schedule F – Project Site..... 146

Schedule G – List of Tests & Completion Tests..... 147

Schedule H – O&M Requirements..... 150

Schedule I – Insurances..... 181

Schedule J – Specified Private Partner Permits..... 182

Schedule K – Corporate Documents..... 183

Schedule L – Form of Installation Performance Guarantee..... 184

Schedule M – Form of O&M Performance Guarantee..... 187

Schedule N - Indicative Independent Engineer Terms of Reference..... 189

Schedule O – Form of Vesting Certificate..... 192

Schedule P – Toll Notification Structure..... 194

schedule Q – requirements of electronic toll and traffic management system - ettms..... 196

Schedule R – Form of Toll Notification..... 199

Schedule S – Notices..... 200

Schedule T – Termination Payment..... 201

Schedule U – Financial Model..... 202

Signature Page..... 203

DRAFT

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

## PPP CONTRACT

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This **PUBLIC PRIVATE PARTNERSHIP CONTRACT** (this **Agreement**) is entered into on this [●] day of [●], 2026 at \_\_\_\_\_, Pakistan:

### BY AND BETWEEN

**THE GOVERNOR OF PUNJAB** (THROUGH **SECRETARY, COMMUNICATION AND WORKS DEPARTMENT**) having its offices at Old, Anarkali, Lahore for and on behalf of **THE GOVERNMENT OF PUNJAB** (the **Implementing Agency**);

### AND

[INSERT SPV NAME], a company incorporated under the Applicable Laws of Pakistan, having its registered office located at [●], Pakistan (the **Private Partner**, which expression shall, where the context so permits, be deemed to mean and include its, successors in interest, administrators and permitted assigns);

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

### RECITALS

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- a. To cater to the vehicular traffic to pass between Bahawalpur, Province of Punjab, Pakistan and Yazman, Province of Punjab, Pakistan and between Yazman, Province of Punjab, Pakistan and Ahmadpur East, Province of Punjab, Pakistan, the GoPb has decided to operate and maintain the road, through Public Private Partnership on a management contract (the “MC”) basis, the road connecting the aforementioned location, and install toll plazas, Electronic Toll and Traffic Management Systems (“ETTMS”) and weighbridges on this road, in accordance with this Agreement.
- b. On 16.05.2026 a Request for Proposals (the “RFP”) was published by the GoPB for the prospective bidders and subsequently a consortium comprising of, *inter alia*, the Sponsors (the “Consortium”) was selected by the GoPB for purposes of grant of the Concession and implementation of the Project in reliance upon the Applicable Laws. The Letter of Award was issued to the Consortium by the GoPB on [●], 2026.
- c. The Private Partner was incorporated by the Sponsors, in accordance with the provisions of Applicable Law: (i) in order to enable the Parties to enter into this Agreement and for the Private Partner to seek and avail the grant of the Concession and for the GoPB to grant the Concession; and (ii) for the specific purpose of implementing the Project on a MC Basis, in each case, in accordance with the terms of this Agreement.
- d. The Private Partner, subject to the terms of this Agreement, acknowledges and confirms that it has, based on the RFP provided by the GoPB, undertaken a due diligence audit of the Project, including technical and financial viability, legal due diligence, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession and for the implementation of the Project, in each case, in accordance with the terms and conditions of this Agreement.
- e. The Parties are now entering into this Agreement to set out the terms and conditions applicable to the Concession and the relationship of the GoPB and the Private Partner.

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

## 1. DEFINITIONS & INTERPRETATION

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### 1.1 DEFINITIONS

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

**AASHTO Standards** means the standards applicable to roads and highways published in the relevant publication of the American Association of State Highway and Transportation Officials;

**Abandonment or Abandon** means the voluntary cessation of the Operation and Maintenance of the Concession Assets by the Private Partner and / or the withdrawal of all, or substantially all, personnel by Private Partner from the Project Site for reasons other than a Permitted Event;

**Accounting Year** means in respect of each Party, the financial year commencing from 1<sup>st</sup> day of July of any calendar year and ending on 30<sup>th</sup> day of June of the next calendar year;

**Act** means the Punjab Public Private Partnership Act, 2025, as amended from time to time and shall include all future enactments in replacement thereof;

**Actual Project Revenues** shall mean the Toll Revenues of the Project for each Operational Year following Commercial Operations Date as determined by the Independent Auditor;

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

**Affected Party** shall have the meaning ascribed thereto in Section 21.1 (*Force Majeure Event*);

**Additional Facilities** means the facilities including, but not limited to, service stations, motels, hotels, restaurants, shopping areas, amusement parks and other facilities provided or procured to be provided for the benefit of the Users, and that are in addition to (and not part of) the Concession Assets, and are situated along the right of way;

**Agreement** means this 'PPP Contract' including the Main Body and all Schedules attached hereto;

**Alternative Route** means any non-tolled road, established and/or planned or materially improved by or on behalf of Implementing Agency or a Public Sector Entity, eighty percent (80%) of which falls within 10 km radius of Project Highway connecting same origin and destination as of Project Highway providing:

- same or better functional classification
- same or better components of typical cross-section
- same or better level of service and facilities

which will divert the traffic from the Project Highway leading to loss of Toll Revenues

**Alternative Route Event** shall have the meaning ascribed thereto in Section 17.7.2;

**Applicable Benchmark** shall mean, in respect of a given Operational Year:

- for the first Operational Year, the Benchmark Revenue Sharing Figure; and
- for each subsequent Operational Year, the Applicable Benchmark for the immediately preceding Operational Year increased by five percent (5%), calculated as:

$$\text{Applicable Benchmark (Year } n) = \text{Applicable Benchmark (Year } n-1) \times 1.05$$

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

**Applicable Permits** means the Private Partner Permits and all such approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions or similar items that relate to the Project and its implementation;

**Applicable Specifications** means the standards, specifications, requirements, criterion and timelines (as applicable) set out in relation to and applicable to:

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

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

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

provided, however, that in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the most stringent standards, requirements, criterion and timelines (as applicable), as contained in any of the above-mentioned, shall apply (unless otherwise mutually agreed between the Parties);

**Approved Detailed Programme of Performance** means the Detailed Programme of Performance approved by the Independent Engineer (in consultation with the Implementing Agency) in accordance with the Applicable Specifications (including Section 12.5.2 of this Agreement);

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

**Associate** or **Affiliate** means, in relation to either Party and/or the Sponsor, a Person who controls, is controlled by, or is under the common control with such Party and/or the Sponsor (as used in this definition, the expression “*control*” means, with respect to a Person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person and the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise), and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise);

**Authority** means the Punjab Public Private Partnership Authority, its respective departments and its administrators, successors and permitted assigns;

**Authority Fee** shall have the meaning ascribed thereto in Section 32.1;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Award** shall have the meaning ascribed thereto in Section 30.3.4;

**Base Case Equity IRR** shall mean post tax internal rate of return (expressed as percentage) on the Equity of Shares, as expressly set out in the Base Case Financial Model;

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

**Base Case** means the projections of cash flows contained in the Base Case Financial Model that are used to compute the Base Case Equity IRR;

**Benchmark Revenue Sharing Figure** means the product of the Percentage Revenue Shared and the Expected Revenue for the first Operational Year, as set out in the Bid and reflected in the Base Case Financial Model;

**Bid** shall mean the technical and financial proposal of the Sponsor with respect to the Project submitted to the Implementing Agency on [●], 2026;

**Bidding Process** shall have the meaning ascribed thereto in Recitals above;

**Bid Security** means the bank guarantee and or call deposit receipt (CDR) submitted by the Sponsor pursuant to the RFP in connection with its Bid for the Concession rights which shall remain valid and in effect until the Bid Security Expiry Date;

**Bid Security Expiry Date** shall have the meaning ascribed thereto in Section 11.1.4;

**Bid Submission Date** means 16.06.2026;

**Big Four Accounting Firms** means:

- (a) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network);
- (b) EY Ford Rhodes (a member firm of Ernst & Young Global Limited);
- (c) KPMG Taseer Hadi & Co.;
- (d) M. Yousuf Adil Saleem & Co. (a member firm of Deloitte Touche Tohmatsu);

and/or any other successor chartered accountancy firm categorized as one of the Big Four Accounting Firms;

**Board of Arbitrators** shall have the meaning ascribed thereto in Section 30.3.1;

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

**Certified Impediment Notice** shall have the meaning ascribed thereto in Section 4.15.2;

**Change in Complete Control** means any issuance, sale, transfer, conveyance, disposal or any event, transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in:

- (a) the issuance of any Share to any Person other than the Sponsor; or
- (b) the transfer of direct and / or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Shares of the Private Partner; and
- (c) the Sponsor, as a result of (a) or (b) above, divesting 100% of the Shares and/or holding less than 100% of the shares and / or losing the power to direct the management, policies, control and/or decisions, in each case, of the Private Partner;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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**Change in Control** means any issuance, sale, transfer, conveyance, disposal or any event, transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in:

- (a) the issuance of any Share to any Person other than the Sponsor; or
- (b) the transfer of direct and / or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Shares of the Private Partner; and
- (c) the Sponsor, as a result of (a) or (b) above, divests more than or equal to 51% of the Shares and/or holds less than 51% of the Shares and / or loses the power to direct the management, policies and decisions, in each case, of the Private Partner;

**Change in Law** means the occurrence of any of the following events on or after the Bid Submission Date:

- (a) the enactment of any new federal, provincial or local government law, as applicable in the Province of Punjab;
- (b) the repeal, modification or re-enactment of any existing federal, provincial or local government law, as applicable in the Province of Punjab;
- (c) the commencement of any federal, provincial or local government law, which has not entered into effect until the date of this Agreement;
- (d) a change in the interpretation or application of any Applicable Law (as applicable in the Province of Punjab) by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement;
- (e) the imposition by the Authority of any additional Private Partner Permit;

provided, that any:

- (i) coming into effect, on or after the Bid Submission Date, of any provision of a statute which is already gazetted in accordance with the Applicable Laws prior to the Bid Submission Date; or
- (ii) any new Applicable Law or any change in the existing Applicable Law under the active consideration of or in the contemplation of the Implementing Agency the Authority, or the Government of Pakistan as of the Bid Submission Date, which is already gazetted in accordance with the Applicable Laws prior the Bid Submission Date,

shall not constitute a 'Change in Law';

**Change in Law Termination Amount** shall have the meaning ascribed thereto in **SCHEDULE T (TERMINATION PAYMENT)**;

**Change in Shareholding** means any issuance, sale, transfer, conveyance, disposal or any event, transaction, arrangement, Encumbrance or agreement of any nature that results in or may result in:

- (a) the issuance of any Share to any Person other than the Sponsor; or
- (b) the transfer of direct and / or indirect, legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes or may cause the sale, transfer, conveyance or disposal of the Sponsor's legal and/or beneficial ownership, direct or indirect, in the total (or any part thereof) paid up and outstanding Shares of the Private Partner; and
- (c) the Sponsor, by virtue of (a) or (b) above, divests up to 49% of the Shares, does not hold up to 49% of Shares and/or does not lose the power to direct the management, policies and decisions of the Private Partner;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Change of Scope Notice** shall have the meaning ascribed thereto in Section 16.2 (*Change of Scope Notice*);

**Change of Scope** shall have the meaning ascribed thereto in Section 16.1 (*Change of Scope*);

**Civil Work Contract(s)** means the agreement entered or to be entered into between the Private Partner and the Civil Work Contractor(s) in accordance with this Agreement, for, *inter alia*, the installation of the toll plazas, ETTMS and weighbridges and the maintenance of the same on the Project Highway as per Schedule C, as such agreement may be amended by the parties thereto from time to time;

**Civil Work Contractor(s)** means the contractor(s) engaged by the Private Partner for the purposes of performance of Installation Works;

**Commencement Certificate** means a certificate to be jointly issued in writing by the Independent Engineer and the Independent Auditor, to the Private Partner and copied to the Implementing Agency in accordance with Section 3.4 (*Commencement Certificate & Commencement Date*);

**Commencement Date** means the date set out in the Commencement Certificate jointly by the Independent Engineer and the Independent Auditor in accordance with Section 3.4 (*Commencement Certificate & Commencement Date*) of this Agreement, being the date on which each of the Conditions Precedent stand satisfied, waived and/or deferred;

**Commercial Operations Date** means the date on which the Operations Period shall commence and the Project Highway is available for Users, such period commencing on the day immediately succeeding the Final Installation Completion Date;

**Competing Route** means any road with lower or equal toll rates as that of Project Highway, established and/or planned or materially improved by or on behalf of Implementing Agency or a Public Sector Entity, eighty percent (80%) of which falls within 10 km radius of Project Highway connecting same origin and destination as of Project Highway providing:

- same or better functional classification
- same or better components of typical cross-section
- same or better level of service and facilities

which will divert the traffic from Project Highway leading to loss of Toll Revenue.

**Competing Route Event** shall have the meaning ascribed thereto in Section 17.6.2;

**Competing Route Relief Event** shall have the meaning ascribed thereto in Section 17.6.2;

**Completion Tests** means the tests required to be conducted for completion of the Installation Works, as listed in SCHEDULE G (*List of Tests & Completion Tests*);

**Completion Tests Date Notice** shall have the meaning ascribed thereto in Section 14.1.1;

**Concession** shall have the meaning ascribed thereto in Section 2.1.1;

**Concession Assets** means and includes all tangible and intangible assets of the Project Site, the Project Highway, and the Project Facilities and all rights, title, benefits, facilities and easements, whether directly and / or indirectly related thereto, relating to and forming part of the Project including (only to the extent of the Project Highway, the Project Site and the Project Facilities) but not limited to (a) rights over the Project Site in the form of Licence, right of way or otherwise, (b) tangible assets such as civil works including foundations, embankments, pavements, road surface, bridges, approaches to bridges, roads, drainage works, lighting facilities, traffic signals, sign boards, milestones, equipment relating to regulation of traffic, road furniture, electrical works for lighting on the intersections and toll plazas, toll plaza, toll control building, toll gates, weighbridges, the Project Facilities and / or the Project Site, telephone and other communication systems and communication equipment for the Project, wayside amenities, administration maintenance facilities, equipment, vehicles etc. on the Project Highway and the Project Facilities (c) Project Facilities situated on the Project Site;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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**Concession Period** means, in respect of the Concession and the Concession Assets, the period commencing on the Commencement Date and ending on the Trigger Date;

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

**Condition(s) Subsequent** means the conditions subsequent listed in Section 3.2 (*Conditions Subsequent*);

**Conditions** means the Conditions Precedent and the Conditions Subsequent set out in Article 3 (Conditions);

**Contractor(s)** means any of the Private Partner's direct contractors and any of their direct sub-contractors integrally involved in the Project for the performance of Project Works (or any part thereof);

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

**Corrupt Act** means:

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

**Corrupt Act Termination Amount** shall have the meaning ascribed thereto in SCHEDULE T (*Termination Payments*);

**Cure** shall mean curing of breach or default of this Agreement by the Party responsible for such breach or default;

**Cure Period** means:

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (a) in respect of a Private Partner Event of Default, the period commencing on the date of receipt by the Private Partner of the Implementing Agency Preliminary Notice and expiring on the date falling ninety (90) days thereafter; and
- (b) in respect of an Implementing Agency Event of Default, the period commencing on the date of receipt by the Implementing Agency of the Private Partner Preliminary Notice and expiring on the date falling forty-five (45) days thereafter;

**Decommissioned Project Area** shall have the meaning ascribed thereto in Section 7.13 (*Emergency Decommissioning*);

**Defects & Deficiencies** means:

- (a) in respect of Project Works, any Project Works (or any part thereof) that fail to conform to the Applicable Specifications in any manner (including (without limitation) in provision of services, operational performance parameters, management performance parameters, materials, design, execution, engineering, operations and maintenance and/or workmanship);
- (b) in respect of the Concession Assets, any Concession Asset (or any part thereof) that fail to conform to the Applicable Specifications;
- (c) Non compliance of operational parameters and management parameters as provided under this Agreement.

**Delayed Payment Rate** means the three (3) month Karachi Interbank Offered Rate plus one percent (1%), compounded semi-annually, calculated for the actual number of days which the relevant amount remains unpaid on the basis of a three hundred and sixty five (365) day year;

**Detailed Programme of Performance** means the detailed programme of performance / plan for the Project Highway prepared by the Private Partner in accordance with Applicable Specifications;

**Design Requirements** means the design requirements of the Concession Assets, as set out in SCHEDULE B (*Design Requirements*);

**Development Rights** means such additional rights, property or assets that are not part of and are not anticipated to be part of the Project as on the Effective Date but are available to the Implementing Agency in accordance with Section 29.2 (*Commercial Rights & Additional Facilities*) and may include, without in any manner limited to, provision of additional facilities;

**Dispute** shall have the meaning ascribed thereto in Section 30.1.1;

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

**Divestment Requirements** shall have the meaning ascribed thereto in Section 24.1 (*Requirements for Divestment*);

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

**Effective Date** means the date on which this Agreement is duly executed by each of the Parties;  
**Emergency** means a condition or situation that is likely to endanger the security of the individuals on or about the Project Site including Users thereof or which poses an immediate threat of material damage to any of the Concession Assets and/or the Project Site;

**Emergency Decommissioning** shall have the meaning ascribed thereto in Section 7.13.1;

**Emergency Event** means any Emergency occurrence that may necessitate the execution of Emergency Works pursuant to the provisions of Section 19.3 (*Emergency Works*);

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Emergency Works** shall have the meaning ascribed thereto in Section 19.3.1;

**Emergency Works Account** shall have the meaning ascribed thereto in 19.3.3;

**Emergency Works Request** means a written request made by the Private Partner for execution of the Emergency Works and submitted in accordance with the procedure set forth in Section 19.3 (*Emergency Works*);

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

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

**Equity** means the share capital of the Private Partner, represented in PKR, subscribed to by any of the Private Partner’s shareholders for meeting the equity component of the Total Project Cost;

**Escrow Account** means the account established by the Private Partner with the Escrow Agent pursuant to the Escrow Agreement;

**Escrow Agent** means a scheduled bank in Pakistan (with a minimum long term credit rating of at least ‘AA-’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Implementing Agency selected by the parties to the Escrow Agreement to manage *inter alia* the toll revenues, compensation and expenditures of the Private Partner, the Independent Auditor Payments and Independent Engineer Payments and the disbursement of the Expected Revenue Share to the Implementing Agency;

**Escrow Agreement** means the agreement entered into between the Implementing Agency, the Escrow Agent and the Private Partner requiring *inter alia* all revenues of Tolls and fees from overloaded vehicles to be deposited in an Escrow Account managed by the Escrow Agent and allocating such funds to pay operation & maintenance expenses, payments to the Independent Auditor and Independent Engineer, payments to the Implementing Agency reserves and dividends payments in accordance with an agreed order of priority whereas the payments to the Independent Engineer and Independent Auditor shall have the highest priority;

**ETTMS** means “Electronic Toll and Traffic Management System” as further identified in **SCHEDULE Q (Requirements Of Electronic Toll And Traffic Management System - ETTMS)**.

**Exempted Vehicles** shall mean the following vehicles exempted from Toll:

- (a) ambulances;
- (b) defence vehicles, including vehicles of armed forces;
- (c) flag cars;
- (d) fire fighting vehicles;
- (e) funeral vans;
- (f) official vehicles of the Implementing Agency, the Authority, and the Private Partner;
- (g) Police vehicles;
- (h) Vehicles bearing the plates of:
  - 1. Presidency;
  - 2. Prime Minister Secretariat;

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3. Governor House;
4. Chief Minister Secretariat;
5. A Foreign dignitary on State visit to Pakistan;

i) Vehicles deputed for essential services like cleaning, maintenance of green areas etc;

**Exit Implementation Period** means:

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

**Expected Revenue** shall mean the amount reflected as revenue (toll revenue and non-toll revenue in the form of fees from overloaded vehicles based on the toll rates and fees for overloading as stated in Schedule P for the first Operational Year in the Base Case Financial Model) and shall bear the meaning ascribed thereto in Section 17.4.1;

**Expected Revenue Share** shall bear the meaning ascribed thereto in Section 17.4.1;

**Final Expiry Date** means the date falling on the seventh (7<sup>th</sup>) yearly anniversary of the Installation Completion Date;

**Final Installation Completion Certificate** shall have the meaning ascribed thereto in Section 14.6 (*Final Installation Completion Certificate*);

**Financial Model** means the Base Case Financial Model, as revised from time to time by the Independent Auditor (including as updated on or prior to the Commencement Date);

**First Day Deduction** shall have the meaning ascribed thereto in Section 19.10.2;

**First IA List** shall have the meaning ascribed thereto in Section 5.6;

**First IE List** shall have the meaning ascribed thereto in Section 5.1 (*Independent Engineer Selection*);

**Force Majeure Costs** means all such costs that are directly attributable to, arise from and are a direct result of, in each case, a Force Majeure Event; any additional capital expenditures; any additional installation costs; and any additional operating costs; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon;

**Force Majeure Event** means the occurrence of any or all of the Non Political Events and/or the Political Events;

**Force Majeure Notice** shall have the meaning ascribed thereto in Section 21.2 (*Obligation to Notify*);

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

**Good Industry Practice** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged in respect of the Private Partner under this Agreement and acting generally in accordance with the provisions of the Applicable Laws, and would mean good engineering practices in the installation of toll plazas, ETTMS and weighbridges and project management and which would be expected to result in the performance of its obligations by the Private Partner and in the operation and maintenance of the

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

Project in accordance with the Applicable Specifications. “Good Industry Practices” are not limited to optimum practices, methods, techniques, standards, skills, diligence, prudence or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods, techniques, standards, skills, diligence, prudence or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety;

**GoPB** means the Government of Punjab, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Punjab, and its administrators, successors and permitted assigns;

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

**Grace Period** shall have the meaning ascribed thereto in Section 19.10.3;

**Handover List** shall have the meaning ascribed thereto in Section 25.1 (*Liability for defects during Exit Implementation Period*);

**Implementing Agency** means the Communication and Works (C&W) Department of the Government of Punjab, and its officials, administrators, successors and permitted assigns;

**Implementing Agency Agreements** means:

- (a) this Agreement;
- (b) the Project Site Licence Agreement;
- (c) the Escrow Agreement; and
- (d) any other agreement entered into in respect of the Project between the:
  - (i) Implementing Agency; and
  - (ii) Private Partner and/or the Sponsor in respect of the Project and designated as a “*Implementing Agency Agreement*” with the written consent of the Implementing Agency;

**Implementing Agency Conditions Precedent** shall have the meaning ascribed thereto in Section 3.1 (*Conditions Precedent*);

**Implementing Agency Default Termination Amount** shall have the meaning ascribed thereto in SCHEDULE T (*Termination Payments*);

**Implementing Agency Event of Default** shall have the meaning ascribed thereto in Section 22.2.1 (*Implementing Agency Event of Default*);

**Implementing Agency Indemnified Persons** shall have the meaning ascribed thereto in Section 9.1 (*General Indemnity*);

**Implementing Agency Overriding Power Event** shall have the meaning ascribed thereto in Section 8.9 (*Implementing Agency Overriding Powers*);

**Implementing Agency Payment Account** means the account to be established by the Implementing Agency and Notified to the Private Partner as an Implementing Agency Condition Subsequent;

**Implementing Agency Remedy Amount** shall have the meaning ascribed thereto in Section 18.2.3;

**Implementing Agency Remedy Invoice** shall have the meaning ascribed thereto in Section 18.2.3;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Indemnified Party** shall have the meaning ascribed thereto in Section 9.3 (*Notice and Contest of Claims*);

**Indemnifying Party** shall have the meaning ascribed thereto in Section 9.3 (*Notice and Contest of Claims*);

**Independent Auditor** means the auditor appointed in respect of the Project in accordance with Article 5 (*Independent Engineer & Independent Auditor*) and in terms of the Independent Auditor Contract;

**Independent Auditor Appointment Term** shall have the meaning ascribed thereto in Section 5.7 (*Term of Appointment of the Independent Auditor*);

**Independent Auditor Contract** means the contract to be entered into between the Implementing Agency, the Private Partner, the Independent Auditor and any other Person agreed by the Parties in accordance with Article 5 (*Independent Engineer & Independent Auditor*);

**Independent Auditor Payments** shall have the meaning ascribed thereto in Section 5.10 (*Independent Auditor Remuneration*);

**Independent Engineer** means the engineer appointed in respect of the Project in accordance Article 5 (*Independent Engineer & Independent Auditor*) and in terms of the Independent Engineer Contract;

**Independent Engineer Appointment Term** shall have the meaning ascribed thereto in Section 5.2 (*Term of Appointment of the Independent Engineer*);

**Independent Engineer Contract** means the contract to be entered into between the Implementing Agency, the Private Partner, the Independent Engineer and any other Person agreed by the Parties, in accordance with Article 5 (*Independent Engineer & Independent Auditor*);

**Independent Engineer Payments** shall bear the meaning ascribed thereto in Section 5.5 (*Independent Engineer Remuneration*);

**Indicative Independent Engineer Terms of Reference** means the duties, functions and the scope of work to be performed by the Independent Engineer, as indicatively attached herewith as **SCHEDULE N (*Indicative Independent Engineer Terms of Reference*)**; provided, however, upon execution of the Independent Engineer Contract, the scope of work of the Independent Engineer set out therein shall be deemed to replace **SCHEDULE N (*Indicative Independent Engineer Terms of Reference*)**;

**Installation Completion** shall have the meaning ascribed thereto in Section 14.7.1;

**Installation Completion Check List** shall have the meaning ascribed thereto in Section 14.4.1;

**Installation Completion Date** shall have the meaning ascribed thereto in Section 14.7.1;

**Installation Completion Schedule** means the schedule attached herewith as **SCHEDULE E (*Installation Completion Schedule*)** setting out the Scheduled Installation Completion Date.

**Installation Inspection Report** has the meaning ascribed thereto in Section 13.6.2;

**Installation Performance Guarantee** means a first demand irrevocable and unconditional bank guarantee, issued by a scheduled bank in Pakistan (with a minimum long term credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Implementing Agency, of an amount equal to PKR. 27,000,000/- (Pakistan Rupees Twenty Seven Million only) or five percent (5%) of the cost of the Installation Works, whichever is higher, in the form of the instrument attached herewith as **SCHEDULE L (*Form of Installation Performance Guarantee*)**;

**Installation Performance Guarantee Expiry Date** shall have the meaning ascribed thereto in Section 11.2.6;

**Installation Period Insurances** means the Insurances procured and / or obtained by the Private Partner pursuant to the provisions of and in accordance with Section 20.1 (*Installation Period Insurances*) and **PART I (Installation Period Insurances) OF SCHEDULE I (Insurances)**;

**Installation Period** means the period commencing on the Commencement Date and ending on the Installation Completion Date;

**Installation Requirements** means the relevant standards, requirements, criterion and timelines (as applicable) that are set out in relation to and are applicable to the Installation Works as set out in **SCHEDULE C (Installation Works)**, provided, however, in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the most stringent standards, requirements, criterion and timelines (as applicable), as contained in any of the above-mentioned, shall apply (unless otherwise mutually agreed between the Parties);

**Installation Time For Completion** shall mean the time permitted herein for performance and completion of Installation Works and all other obligations to be performed by the Private Partner until issuance of the Final Installation Completion Certificate, as set out in and contemplated by the Applicable Specifications and the Installation Programme, including the completion of Installation Works on or prior to the Installation Completion Date;

**Installation Works** means all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Private Partner in relation to the installation of toll plazas, weighbridges and the ETTMS on the Project Highway until the Installation Completion Date pursuant to the Applicable Specifications including, *inter alia*, the obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Private Partner in respect of the activities consisting of, and for achievement of, the Installation Works on or prior to the Installation Completion Date;

**Insurances** means all insurances, reinsurance, agreements of insurance and reinsurance and / or arrangement for insurance and / or reinsurance in relation to the Project, the Concession Assets, the Installation Works and / or any part or portion thereof procured or to be procured by the Private Partner, including but not restricted to the Installation Period Insurances and the Operations Period Insurances;

**Invested Equity** means the aggregate of funds invested by the Sponsors and shareholders of Private Partner for funding of the Sponsor Base Equity Amount in accordance with this Agreement;

**Lapse of Consent** means any Private Partner Permit:

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

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

**Licence** shall have the meaning ascribed thereto in Section 4.1 (*Licence*);

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Loss of Toll Revenues** means the loss of Toll Revenues (as certified by the Independent Auditor and the Independent Engineer) from a relevant Relief Event including a Competing Route Relief Event, Alternative Route Relief Event, and a Toll Notification Relief Event, which shall be the lower of:

- (a) difference between (i) the estimated Toll Revenue (excluding fees for overloaded vehicles) ,calculated by multiplying the annual vehicle-category-wise traffic volumes as per the Base Case Financial Model by the toll rates notified by the Implementation Agency, and (ii) the actual Toll Revenue collected by the Private Partner during such period; or
- (b) the difference between (i) the average of two (2) years (immediately preceding the abovementioned Relief Event) of traffic data for each vehicle category multiplied by the traffic growth (calculated based on (I) if available, the actual traffic growth rate on the Project Highway in the last twenty four (24) months or (II) zero (0%) if actual traffic growth rate is not available because less than two (2) years have lapsed since Commercial Operations Date) and the applicable toll rates; and (ii) the actual Toll Revenues collected by the Private Partner during such period;

**Main Body** means this Agreement *excluding* the Schedules;

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

**Major Maintenance** shall mean any non-routine maintenance activities required to restore, rehabilitate or replace, in whole or in part, the Project Highway or its appurtenant assets in order to meet the required standards set by the Implementing Agency;

**MC** shall mean a Management Contract;

**Management Performance Measures** shall have the meaning ascribed thereto in Section 6 (*Management Performance Measures*) of **SCHEDULE H (O&M Requirements)**;

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

- (a) the business, operations, property, assets, present or future condition (financial or otherwise) or prospects of any Project Party in respect of the Project;
- (b) the ability or probability (financial or otherwise) of any Project Party to perform and observe its respective obligations under the Project Agreements;
- (c) the legality, validity or enforceability of, or the rights, obligations or remedies of, the Implementing Agency under this Agreement; and/or
- (d) the Private Partner’s ability to install toll plazas, weighbridges and ETTMS as per Schedule C, and operate and maintain the Project in accordance with the terms of the Project Agreements;

**Material Adverse Impediment** shall have the meaning ascribed to it in Section 4.15.1;

**Material Breach** means breach by either Party or Sponsor of any of its /their obligations under the Implementing Agency Agreements which has/is likely to have a Material Adverse Effect on the Project and which such breaching Party shall have failed to cure by the date falling forty-five (45) days following the date of receipt of a notice issued by the non-breaching Party to the breaching Party to cure such breach;

**Material Breach of O&M Requirements** shall have the meaning ascribed to it in Section 19.4.1;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Material Impediment Removal Period** shall have the meaning ascribed to it in Section 4.15.2;

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

**New IA List** shall have the meaning ascribed thereto in Section 5.7.3;

**New IE List** shall have the meaning ascribed thereto in Section 5.2.3;

**New O&M Performance Guarantee** shall have the meaning ascribed to it in Section 11.3.8;

**New Operational Year** shall have the meaning ascribed to it in Section 11.3.8;

**Non Political Event** shall bear the meaning ascribed thereto in Section 21.1.1(b);

**Non Political Event Termination Amounts** shall have the meaning ascribed thereto in **SCHEDULE T (Termination Payments)**;

**Notice, Notify, Notification and its grammatical variations** shall mean as notified in writing;

**Notice of Remedy** shall have the meaning ascribed thereto in Section 18.2.1;

**O&M Component** means the component of Toll Revenues that relates to the operations and maintenance expenses, as set out in the Financial Model and as adjusted from time to time for inflation in accordance with the Financial Model;

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

**O&M Contractor** means the Person of good repute with whom the Private Partner has entered into or may enter into the O&M Contract;

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

**O&M Inspection Report** has the meaning ascribed thereto in Section 19.22.2;

**O&M Manual** shall have the meaning ascribed thereto in Section 19.7 (*O&M Manual*);

**O&M Quarterly Status Report** shall have the meaning ascribed thereto in Section 19.21.1;

**O&M Performance Guarantee** means a first demand irrevocable and unconditional guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Implementing Agency in an amount equal to five percent (5%) of the estimated Operation and Maintenance cost for the relevant Operational Year, as set out in the approved O&M Programme for such Operational Year and reflected in the Financial Model or PKR. 9,000,000/- (Pakistan Rupees Nine Million only), whichever is higher, furnished from time to time by the Private Partner to the Implementing Agency in accordance with Section 11.3 (*O&M Performance Guarantee*), in the form of the instrument attached herewith as **SCHEDULE M (Form of O&M Performance Guarantee)**;

**O&M Performance Guarantee Date** shall have the meaning ascribed thereto in Section 11.3.7;

**O&M Programme** shall have the meaning ascribed thereto in Section 19.8.2;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

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

- (a) the Main Body;
- (b) the Scope of the Project;
- (c) the **SCHEDULE H (O&M Requirements)**;
- (d) the O&M Manual;
- (e) the Safety Requirements;
- (f) the AASHTO Standards (to the extent adopted by the C&W Road and Bridges Specifications, 2022, ASTM, AASHTO-LRFD (Latest Edition)”), being the requirements applicable in respect of matters relating to the Concession Assets;
- (g) the **SCHEDULE G (List of Tests & Completion Tests)**;
- (h) in respect of each Operational Year following Installation Completion Date, the O&M Programme prepared for such Operational Year in accordance with Section 19.8 (*O&M Programme*); and
- (i) any other standards, requirements, criterion and timelines (as applicable), mutually agreed between the Parties from time to time,

provided, however, in the event of any discrepancy in the standards, requirements, criterion and timelines (as applicable) set out in the abovementioned, the most stringent standards, requirements, criterion and timelines (as applicable), as contained in any of the above-mentioned, shall apply (unless otherwise agreed between the Parties);

**O&M Tests** shall have the meaning ascribed thereto in Section 19.23 (*O&M Tests*);

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

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

**Operational Performance Measures** shall have the meaning ascribed thereto in Section 5 (*Operational Performance Measures*) of **SCHEDULE H (O&M Requirements)**;

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

**Operations Period** means the period commencing on the Commercial Operations Date and ending on the Trigger Date;

**Operations Period Insurances** means the Insurances procured and / or obtained by the Private Partner pursuant to the provisions of and in accordance with Section 20.2 (*Operations Period Insurances*) and **PART II (Operations Period Insurances) OF SCHEDULE I (Insurances)**;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

**Parties** shall have the meaning ascribed thereto in the Preamble;

**Percentage Revenue Shared** means the uniform percentage of total revenue offered by the Bidder in its Bid to be shared with the Implementing Agency during each Operational Year from the Commercial Operations Date until the last Operational Year, as reflected in the Base Case Financial Model;

**Permitted Events** means:

- (a) Force Majeure Events;
- (b) Implementing Agency Events of Default;
- (c) Emergency Decommissioning, to the extent the same does not result from reasons attributable to the Private Partner;
- (d) Material Adverse Impediment, to the extent the same does not result from reasons attributable to the Private Partner;
- (e) [not used]
- (f) the occurrence of the circumstances set out in Section 4.9 (*Geological and Archaeological Finds*) causing a delay in the performance of the Private Partner’s obligations under this Agreement; and
- (g) the occurrence of the Implementing Agency Overriding Power Event, to the extent the same does not result from reasons attributable to the Private Partner;

**Persistent Breach of O&M Requirements** shall have the meaning ascribed to it in Section 19.4.1(e);

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

**Private Partner** shall have the meaning ascribed thereto in the Preamble;

**Private Partner Authorized Representative** shall have the meaning ascribed thereto in Section 7.4.1;

**Private Partner Conditions Precedent** shall have the meaning ascribed thereto in Section 3.1.2 (*Conditions Precedent*);

**Private Partner Default Termination Amount** shall have the meaning ascribed thereto in SCHEDULE T (*Termination Payment*);

**Private Partner Self Control Unit** means the unit within the Private Partner organization that contains the Private Partner’s representatives (including the Private Partner Authorized Representative and the Private Partner Project Engineer), agents, executives, employees, and other personnel, in each case, that are engaged, hired, appointed, contracted (directly or indirectly) by the Private Partner for the performance of Project Works or any part thereof;

**Private Partner Event of Default** shall have the meaning ascribed thereto in Section 22.1 (*Private Partner Event of Default*);

**Private Partner Indemnified Persons** shall have the meaning ascribed thereto in Section 9.1.2;

**Private Partner Preliminary Notice** shall have the meaning ascribed thereto in Section 23.2 (*Termination for Implementing Agency Event of Default*);

**Private Partner Project Engineer** shall have the meaning ascribed thereto in Section 7.4.1;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Private Partner’s Ownership And Management Control** means, with respect to the Private Partner, the ownership, directly or indirectly, legal or beneficial, of 100% (one hundred per cent) of the Shares; and the power to direct the management, policies and all decisions, in each case, of the Private Partner, whether by operation of law or by contract or otherwise;

**Private Partner Permits** means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, Licences, permits, decisions or similar items which is or are issued by the Implementing Agency and which the Private Partner is or its Contractors are required to obtain from the Governmental Authority and thereafter to maintain to fulfil its obligations under the Implementing Agency Agreements, including the Specified Private Partner Permits; provided, however, that in no event shall the Private Partner Permits include any concessions or exemptions from the Applicable Laws unless they are expressly granted pursuant to the terms of the Implementing Agency Agreements;

**Political Event** shall have the meaning ascribed thereto in Section 21.1.1(a);

**Political Event Termination Amounts** shall have the meaning ascribed thereto in **SCHEDULE T (Termination Payments)**;

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

**Preservation Costs** shall have the meaning ascribed thereto in Section 18.3.4;

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

- (a) the ownership and possession of the Concession Assets;
- (b) the installation, permitting, testing and commissioning of, in each case, the Concession Assets;
- (c) the procurement and contracting for goods, equipment and services for the Concession Assets;
- (d) the insuring and Operation and Maintenance of the Concession Assets;
- (e) the making available, on a continuous basis, of the Concession Assets for the Users;
- (f) payments by the Parties of amounts due and payable under this Agreement;
- (g) the recruitment, employment and training of staff for the Concession Assets;
- (h) the transfer of the Concession Assets to the Implementing Agency on the Transfer Date;
- (i) all activities incidental or related to any of the above.

**Project Agreements** means:

- (a) this Agreement;
- (b) the O&M Contract;
- (c) the Civil Work Contract;
- (d) any other material contract entered into or to be entered into by the Private Partner at any time after the Effective Date in connection with the Project and designated as a “Project Agreement” with the consent of the Implementing Agency.

**Project Facilities** means the facilities to be constructed, built, installed, erected and / or provided by the Private Partner on the Project Site, as detailed in **SCHEDULE D (Project Facilities)**;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

**Project Highway** means the approximately 85-kilometer highway comprising two road segments, with the first starting at Bahawalpur and ending at Yazman, and the second starting at Yazman and ending at Ahmadpur East, as more particularly described and indicated in the **SCHEDULE F (Project Site)**;

**Project Manager** means the representative of the Implementing Agency appointed by the Implementing Agency for purposes of this Agreement in accordance with Section 8.8 (*Implementing Agency Project Manager*);

**Project Management/Implementation Unit** means the project management/implementation unit established by the Implementing Agency in accordance with the Applicable Laws for the purpose of overseeing the day to day implementation of the Project in accordance with the terms of this Agreement and Applicable Laws, and shall be headed by the Project Manager;

**Project Milestone** mean, in respect of the Operations and Maintenance, the Project O&M Milestones;

**Project Milestone Date** shall mean, in respect of a Project O&M Milestone, the respective Project O&M Milestone Date for such Project O&M Milestone;

**Project O&M Milestones** means the progressive milestones relating to the performance and completion of Operation and Maintenance that are to be achieved by the Private Partner pursuant to the Applicable Specifications during an Operational Year of the Operation Period, as set out in:

- (a) the Applicable Specifications and specifications;
- (b) the O&M Programme for such Operational Year;

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

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

**Project Party** means the Private Partner, the Sponsor and / or any Contractor, as the case may be;

**Project Requirements** means the Design Requirements, the Installation Requirements and the O&M Requirements, as applicable;

**Project Site** means the site on which the Project is to be implemented comprising of the immovable property including the right of way on which the Project Facilities and the Project Highway are to be operated, maintained, installed, erected and / or provided by the Private Partner, in accordance with the terms of this Agreement, as demarcated in the map attached hereto in **SCHEDULE F (Project Site)**;

**Project Site Conditions** shall have the meaning ascribed to it in Section 4.4.1;

**Project Site Licence Agreement** means the agreement of Licence (in the form agreed between the Parties) to be entered into between the Implementing Agency and the Private Partner pursuant to which the Implementing Agency shall Licence the land comprising the Project Site to the Private Partner;

**Project Works** means all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Private Partner pursuant to the Applicable Specifications and shall include:

- (a) the Installation Works and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Private Partner until the Installation Completion Date;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

(b) the Operations and Maintenance and all obligations, works, services and duties undertaken and/or performed and/or to be undertaken and/or performed by the Private Partner during the Operations Period;

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

**Proposed Completion Tests Date** shall have the meaning ascribed thereto in Section 14.1.1;

**Proposed Detailed Programme of Performance** shall have the meaning ascribed thereto in Section 12.5.3;

**Proposed O&M Programme** shall have the meaning ascribed to it in Section 19.8.1;

**Protected Assets** shall have the meaning ascribed thereto in Section 8.10.1(b);

**Public-Private Partnership** means public-private partnership as ascribed in the Act;

**Public Sector Entity** means the Implementing Agency, the Authority, or any federal, provincial, district or local government, ministry, department, commission, board, body, bureau, agency, authority, instrumentality, Court or other statutory, regulatory, judicial or administrative body, having jurisdiction over the Private Partner, the Concession Assets, the Project Site, or any portion thereof, or the performance of all or any of the services or obligations of the Private Partner under or pursuant to this Agreement;

**Punjab Highway Patrol** means the police set up by the Government of Punjab to provide security on the highways located in the Province of Punjab;

**Quality Assurance Plan** shall have the meaning ascribed thereto in Section 3.1.2(m);

**Relief Costs** means the increase in such capital expenditures and costs and/or the operating costs, in each case, that are set out in the Financial Model and which directly result from a Relief Event (excluding such Relief Events that are set out in Section 15.2.1 (f) and (g)), as determined by the Independent Engineer and the Independent Auditor pursuant to Article 15 (*Relief Extensions & Relief Compensations*) and which are set out in the Relief Order; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon by the Independent Engineer and the Independent Auditor;

**Relief Event(s)** shall have the meaning ascribed thereto in Section 15.2.1;

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

**Relief Order Proposal** shall have the meaning ascribed thereto in Section 15.4.1;

**Relief Order Request** shall have the meaning ascribed thereto in Section 15.2.1;

**Remedy Event** shall have the meaning ascribed thereto in Section 18.2.1;

**Remedy Time Period** shall have the meaning ascribed thereto in Section 18.2.1;

**Revenue Share** means for a given Operational Year, the amount payable by the Private Partner to the Implementing Agency in accordance with Section 17.4, being the higher of (a) the Applicable Benchmark for such Operational Year; or (b) the Percentage Revenue Shared multiplied by the Actual Project Revenues for such Operational Year;

**Revenue Sharing Period** shall mean the period commencing on the Commercial Operations Date and ending on the Toll Collection End Date;

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Draft for Clean Road Project**

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

**SBP** means the State Bank of Pakistan, established under the State Bank of Pakistan Act, 1956 (Act No. XXXII of 1956);

**Scheduled Commencement Date** means the date falling ninety (90) days after the Effective Date, as may be extended from time to time in accordance with this Agreement;

**Scheduled Installation Completion Date** shall have the meaning ascribed thereto in Section 14.4.2;

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

**SCU Monthly Compliance Table** shall have the meaning ascribed thereto in Section 19.25.1;

**Service Levels** shall have the meaning ascribed thereto in Section 19.10.1;

**Service Levels Defect** shall have the meaning ascribed thereto in Section 19.10.1;

**Service Life** means the period during which the Project Highway can deliver its intended level of service, functionality, and safety to Users, in accordance with the Service Levels, before requiring substantial maintenance, rehabilitation, or reconstruction;

**Share(s)** means share capital issued to the shareholders of the Private Partner (excluding the Implementing Agency) from time to time and shall be the main recipient of Base Case Equity IRR in accordance with this Agreement. Moreover, these shares shall be recipients of the Termination Payment (if applicable in terms of this Agreement) as well; provided, however, for purposes of calculating the Termination Payment, the term “**Equity**” shall exclude all amounts comprising injections to the Equity affected after Installation Completion Date; provided, that such amounts shall constitute Equity to the extent the same are part of the Pre Estimated Project Cost and determined by the Independent Auditor to be part of the Total Project Cost;

**Specific Requirements** means:

- (a) in respect of Installation Works, the Installation Requirements; and
- (b) in respect of Operations and Maintenance, the O&M Requirements;

**Specified Private Partner Permits** means the Private Partner Permits set out in **SCHEDULE J (Specified Private Partner Permits)**;

**Sponsor** means [*to be finalized after bidding*], being the shareholder of the Private Partner that is required, together with its Associates (if any), subject to the terms of this Agreement, to hold (directly and/or indirectly) one hundred percent (100%) of the total Equity of Shares;

**Sponsor Base Equity Amount** means the amount set out in the Financial Model;

**Suspension** shall have the meaning ascribed thereto in Section 18.3.1;

**Temporary Works** means all temporary works of every kind (other than the Private Partner or its Contractor’s equipment) required at the Project Site for the execution and completion of the permanent Installation Works and the remedying of the Defects & Deficiencies;

**Termination** means the termination of this Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;

**Termination Date** means the date of issuance of the Termination Notice and this will be the date on which the actual Termination occurs following the Cure Period;

**Termination Dividend Amount** means the aggregate return on Equity for Shares for one (1) Accounting Year of the Private Partner falling immediately after the Termination Date, the same

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

being an amount equal to the aggregate of Termination Equity IRR applied to the Equity for the one (1) Accounting Year falling after the Termination Date;

**Termination Equity** means, as of the Transfer Date occurring due to Termination, the aggregate of the Invested Equity, up to maximum of PKR 590,000,000 (Pakistan Rupees Five Hundred Ninety Million only), reduced on a straight-line basis from the Installation Completion Date through the term of this Agreement;

**Termination Equity IRR** means the post-tax internal rate of return, the same being three months KIBOR plus one percent (1%), on the Equity;

**Termination Notice** means a notice to be issued in writing by a Party notifying the other Party of the Termination of this Agreement in accordance with the applicable provisions of this Agreement;

**Termination Payment** means:

- (a) in respect of Termination due to a Private Partner Event of Default, the Private Partner Default Termination Amount;
- (b) in respect of Termination due to a Corrupt Act, the Corrupt Act Termination Amount;
- (c) in respect of Termination due to a Implementing Agency Event of Default, the Implementing Agency Default Termination Amount;
- (d) in respect of Termination due to a Political Event, the Political Event Termination Amount; and
- (e) in respect of Termination due to a Non Political Event, the Non Political Event Termination Amount;

**Termination Payment Date** means the date falling ninety (90) days following the Termination Date;

**Time For Completion** means (as applicable):

- (a) in respect of Installation Works, the Installation Time For Completion; and
- (b) in respect of Operations & Maintenance, the O&M Time For Completion

**Toll(s)** means the amount of money determined, levied, imposed, demanded, charged, collected, retained and appropriated by the Private Partner and/or to be determined, levied, demanded, charged, collected, retained and appropriated by the Private Partner from the Users of the Concession Assets (except the Exempted Vehicles) or part thereof as the fee for the use of the Concession Assets or part thereof and fees for overloaded vehicles, commencing from the Commercial Operations Date (unless otherwise mutually agreed between the Parties) until the Toll Collection End Date. The words "Toll", "Tolling", "Tolled" and other grammatical variations of the word "Tolls" shall be construed accordingly;

**Toll Collection End Date** shall mean the date on which the Private Partner's right to collect Toll in terms of this Agreement shall stand cancelled and shall cease to exist, such date being:

- (a) In case this Agreement is not terminated prior to the Final Expiry Date, the Final Expiry Date;
- (b) In case this Agreement is terminated prior to the Final Expiry Date, the Transfer Date;
- (c) In case this Agreement is terminated prior to the Final Expiry Date, the Toll Collection End Date shall be: (i) in case the PPP Contract is terminated due to Implementing Agency Event of Default, the Transfer Date; or (ii) in case the PPP Contract is terminated due to Private Partner Event of Default, Force Majeure or Corrupt Act, the Termination Date.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Toll Concession** shall mean all concessions and rights granted to the Private Partner hereunder and under the Implementing Agency Agreements in relation to Toll and all matters relating to the same including determination, levying, imposing, demanding, charging, collection, retention and appropriation of the same by the Private Partner from the Commercial Operations Date until the Trigger Date.

**Toll Notification Structure** means the structure for imposition and adjustments in the Toll and fees for overloaded vehicles and the list of exempted vehicles, as specifically contemplated by **SCHEDULE P (Toll Notification Structure)**;

**Toll Notification** has the meaning ascribed thereto in Section 17.5.1;

**Toll Notification Event** shall bear the meaning ascribed thereto in Section 17.5.2

**Toll Notification Relief Event** shall bear the meaning ascribed thereto in Section 17.5.2;

**Toll Operations Manual** has the meaning ascribed thereto in Section 17.2.2;

**Toll Revenues** means all income derived by the Private Partner from the Project from collection of the Tolls and deposited into the Escrow Account;

**Toll Progress Report** shall bear the meaning ascribed thereto in Section 17.3;

**Total Project Cost** means the actual capital cost of the Project upon completion of the Project, as certified by the Independent Auditor; provided, that the same shall not include (unless otherwise agreed with the Implementing Agency) the Additional Cost;

**Transfer Date** means:

- (i) in case of early Termination of this Agreement prior to the Final Expiry Date, the Termination Payment Date subject to the Implementing Agency making payment of the relevant Termination Payment to the Private Partner on or prior to such date or the date on which the Termination Payment is actually made;
- (ii) in case of achievement of Final Expiry Date pursuant to this Agreement, the Final Expiry Date;

**Trigger Date** means and includes, the Final Expiry Date and / or the Termination Date, as the case may be;

**Unpaid Implementing Agency Amount** shall have the meaning ascribed thereto in Section 17.4.5;

**Unpaid Termination Equity Amount** shall have the meaning ascribed thereto in Section 23.5.2;

**User** means the Person who traverses or travels over or on the Concession Assets or any portion thereof;

**Utilities Affected Assets** shall have the meaning ascribed thereto in Section 4.12.2;

**Utility Proceeds** shall have the meaning ascribed to it Section 4.12.3;

**Vacant Possession** means delivery to the Private Partner by the Implementing Agency of possession of the Project Site in accordance with this Agreement and in accordance with Applicable Laws, free from all encroachments, and the grant of all Easementary Rights and all other rights appurtenant thereto, so that the Private Partner enjoys complete uninterrupted and quiet possession and control of the Project Site throughout the Concession Period; and

**Vesting Certificate** shall have the meaning ascribed thereto in Section 24.4 (*Vesting Certificate*).

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

## 1.2 CONSTRUCTION

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Pakistan or Pakistan law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) the table of contents, headings or subheadings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (e) references to “**installation**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the installation, and “**install**” shall be construed accordingly;
- (f) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Pakistan Standard Time;
- (h) any reference to day shall mean a reference to a calendar day as per the Gregorian Calendar;
- (i) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Pakistan are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to Relief Order;
- (l) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided, that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (q) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, Licence or document of any description shall be construed as

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

reference to that agreement, deed, instrument, Licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided, that this sub-section shall not operate so as to increase liabilities or obligations of the Implementing Agency hereunder or pursuant hereto in any manner whatsoever;

- (r) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party, the Independent Engineer or the Independent Auditor shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, the Independent Engineer or the Independent Auditor, as the case may be, in this behalf and not otherwise;
- (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, Articles, Sections, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty; and
- (v) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

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

**1.3 COSTS FOR DOCUMENTS**

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

**1.4 MEASUREMENTS AND ARITHMETIC CONVENTIONS**

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

**1.5 PRIORITY OF AGREEMENTS, ARTICLES, SECTIONS AND SCHEDULES**

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

- (a) this Agreement;
- (b) the Implementing Agency Agreements (other than this Agreement).

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

2. **CONCESSION**

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2.1 **GRANT OF CONCESSION**

2.1.1 In consideration of the Private Partner’s obligations contained in this Agreement and relying on the Private Partner’s representations, warranties and covenants contained herein, the Implementing Agency, subject to the terms of this Agreement, hereby grants to the Private Partner and authorizes it, for the duration of the Concession Period, to install toll plazas, weighbridges and ETTMS on the Project Site; to operate, maintain and implement the Project on a management contract basis, and to exercise and enjoy the rights, powers, benefits, privileges, collect Tolls, authorizations and entitlements as set forth in this Agreement (the **Concession**).

2.1.2 The Private Partner agrees and undertakes to implement the Project in accordance with the terms of this Agreement and the Implementing Agency Agreements.

2.2 **CONCESSION PERIOD**

2.2.1 The Concession hereby is granted and shall be effective for the Concession Period.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

### 3. CONDITIONS

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#### 3.1 CONDITIONS PRECEDENT

3.1.1 Save and except as expressly provided herein, the respective obligations of the Parties shall be subject to the satisfaction (waiver and/or deferral, in accordance with the terms herein) in full of the conditions precedent specified in Section 3.1.2 and Section 3.1.4 (the **Conditions Precedent**) on or prior to the Scheduled Commencement Date.

3.1.2 The Private Partner shall satisfy the following Conditions Precedent to the satisfaction of the Implementing Agency, the Independent Engineer and the Independent Auditor prior to the Scheduled Commencement Date (the **Private Partner Conditions Precedent**):

- (a) the Private Partner has provided copies of its Corporate Documents to the Implementing Agency (with copies delivered to the Independent Engineer and the Independent Auditor), duly certified as true copies by the company secretary or director of the Private Partner;
- (b) the Private Partner has provided to the Implementing Agency copies (with copies delivered to the Independent Engineer and Independent Auditor) of its Board Resolution that duly authorizes:
  - (i) the Private Partner to enter into this Agreement and to undertake the obligations, liabilities, as set out in this Agreement, and the transactions as contemplated by this Agreement;
  - (ii) a specified Person or Persons to:
    - (aa) execute this Agreement on behalf of the Private Partner; and
    - (bb) undertake all other acts specifically relating to this Agreement, as contemplated by this Agreement;
- (c) prior to the Effective Date, the Private Partner has provided the Installation Performance Guarantee to the Implementing Agency that remains effective and valid till the Installation Performance Guarantee Expiry Date;
- (d) each of the Specified Private Partner Permits have been procured by the Private Partner and the same are effective and valid and have not been cancelled and / or rescinded and the Private Partner has provided copies of the same to the Implementing Agency (with copies delivered to the Independent Engineer and the Independent Auditor);
- (e) [not used];
- (f) [not used];
- (g) the Implementing Agency has received the following legal opinions:
  - (i) a legal opinion from the legal counsel of the Private Partner confirming that the Private Partner has been duly organized and is validly existing under the Applicable Laws and has the requisite power and authority to enter into the Implementing Agency Agreements and to undertake the transactions as contemplated by the Implementing Agency Agreements and to assume the obligations as contained herein and the enforceability of the same against the Private Partner;
  - (ii) a legal opinion from the legal counsel of the Sponsor confirming that such Sponsor is validly existing under the applicable laws and that such Sponsor has the requisite authority and power to enter into the Implementing Agency Agreement(s) and the Project Agreement(s) to which such Sponsor is a party and to assume the obligations as contained therein and the enforceability of the same against the Sponsor;
- (h) the Private Partner has entered into the Project Site Licence Agreement with the Implementing Agency for Licence of the Project Site to the Private Partner in accordance with Article 4 (*Project Site*);

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (i) the Private Partner has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the counterparties to such contract;
- (j) the Private Partner has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the counterparties to such contract;
- (k) presentation of evidence that the Escrow Account has been established with a reputable bank, having at least AA+ credit rating by the Pakistan Credit Rating Agency (PACRA), approved by the Implementing Agency and that the Escrow Agreement has been executed;
- (l) the Private Partner's Approved Detailed Programme of Performance of the Project stands approved by the Independent Engineer and the Implementing Agency in accordance with Section 12.5;
- (m) the Private Partner has submitted to the Implementing Agency, a **Quality Assurance Plan** that will set out and define work methods and procedures (including in relation to the tests listed in Schedule G) to be adopted by the Private Partner to ensure that the same complies with all its obligations under this Agreement;
- (n) the Private Partner has established the Private Partner Self Control Unit (SCU) and names of members are disclosed; and
- (o) the Private Partner has submitted copies of documents evidencing satisfaction of each of the Private Partner Conditions Precedent to the Independent Engineer and the Independent Auditor.

3.1.3 [Not Used]

3.1.4 The Implementing Agency shall satisfy the following Conditions Precedent to the satisfaction of the Private Partner, the Independent Auditor and the Independent Engineer prior to the Scheduled Commencement Date (the **Implementing Agency Conditions Precedent**):

- (a) the Implementing Agency has Licenced the Project Site to the Private Partner in accordance with Article 4 (*Project Site*) and the Project Site Licence Agreement;
- (b) subject to section 12.5, the Implementing Agency has handed over Vacant Possession of the Project Site to the Private Partner in accordance with Article 4 (*Project Site*);
- (c) [Not used];
- (d) the Implementing Agency has entered into the Independent Engineer Contract for the appointment of the Independent Engineer with the other counterparties to such contract;
- (e) the Implementing Agency has entered into the Independent Auditor Contract for the appointment of the Independent Auditor with the other counterparties to such contract;
- (f) the Implementing Agency has entered into the Implementing Agency Agreements;
- (g) [the Implementing Agency has acquired all the necessary approvals for which the Implementing Agency is responsible for in relation to the Project and this Agreement];
- (h) the Private Partner has received a legal opinion from the legal counsel of the Private Partner confirming that the Implementing Agency has the requisite power and authority to enter into the Implementing Agency Agreements and to undertake the transactions as contemplated by the Implementing Agency Agreements and to assume the obligations as contained herein and the enforceability of the same against the Implementing Agency;
- (i) the Implementing Agency has submitted copies of documents evidencing satisfaction of each of the Implementing Agency Conditions Precedent to the Independent Engineer and the Independent Auditor;
- (j) [not used]

### 3.2 CONDITIONS SUBSEQUENT

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- 3.2.1 The Private Partner undertakes to fulfil the following Conditions Subsequent to the entire satisfaction of the Implementing Agency:
- (a) Ninety (90) days prior to the Scheduled Installation Completion Date, the Private Partner shall provide the Implementing Agency (with copies to the Independent Engineer and the Independent Auditor) with evidence of appointment of the O&M Contractor, if any.
- 3.2.2 The Implementing Agency undertakes to fulfil the following Conditions Subsequent to the satisfaction of the Private Partner:
- (a) On the issuance of the Commencement Certificate by the Independent Engineer (in consultation with the Implementing Agency), the Implementing Agency shall issue the Toll Notification in accordance with Section 17 authorizing the Private Partner to begin charging the Toll set forth in **Schedule P (Toll Notification Structure)**;
  - (b) Thirty (30) days prior to the Scheduled Installation Completion Date, the Implementing Agency shall provide evidence that the Implementing Agency Payment Account has been established.

**3.3 WAIVER AND/OR DEFERRAL OF CONDITIONS AND EXTENSION OF SCHEDULED COMMENCEMENT DATE**

- 3.3.1 The:
- (a) Implementing Agency may (at its discretion) waive and/or defer any of the Private Partner Conditions Precedent set forth in Section 3.1.2 of Section 3.1 (*Conditions Precedent*) and/or the Conditions Subsequent set out in Section 3.2 (*Conditions Subsequent*). For the avoidance of doubt, the Implementing Agency may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit;
  - (b) Private Partner may (at its discretion) waive and/or defer any of the Implementing Agency Conditions Precedent set forth in Section 3.1.4 of Section 3.1 (*Conditions Precedent*). For the avoidance of doubt, the Private Partner may, at its sole discretion, grant any waiver and/or deferral hereunder with such conditions as it may deem fit;
- 3.3.2 Notwithstanding anything contained herein, the Scheduled Commencement Date may be extended from time to time with the mutual consent of the Parties.
- 3.3.3 Any deferral and/or waiver of a Condition Precedent and/or Condition Subsequent in terms of this Section 3.3 (*Waiver and/or Deferral or Conditions and Extension of Scheduled Commencement Date*) shall be notified in writing to the Independent Engineer and the Independent Auditor by the Party granting such deferral and/or waiver of such condition in accordance with this Agreement.

**3.4 COMMENCEMENT CERTIFICATE & COMMENCEMENT DATE**

- 3.4.1 The Conditions Precedent shall be satisfied, waived and/or deferred by the Scheduled Commencement Date in accordance with this Agreement. Each Party shall promptly inform the other Party in writing (together with copies delivered to the Independent Engineer and the Independent Auditor) when the Conditions Precedent for which it is responsible have been satisfied.
- 3.4.2 The Parties agree that:
- (a) within thirty (30) days of the Implementing Agency's receipt from the Private Partner, (through the Independent Engineer and the Independent Auditor), evidence of satisfaction of a Private Partner Condition Precedent, the Implementing Agency shall (through the Project Manager) notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Private Partner) whether it has any objections on the satisfaction of such Private Partner Condition Precedent. In the event the Implementing Agency (through the Project Manager) does not raise any objection in writing on the satisfaction of a Private Partner Condition Precedent within the thirty (30) day period set out herein, such Private Partner Condition Precedent shall be deemed to be not objected to by the Implementing Agency. In the event the Implementing Agency raises any objections on the satisfaction of a Private Partner Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

(with a copy to the Private Partner) within the thirty (30) day period set out herein, the Private Partner shall address such objections and re-submit to the Independent Engineer and the Independent Auditor (with a copy to Implementing Agency) evidence of satisfaction of such Private Partner Condition Precedent and the process in this Section 3.4.2(a) shall be repeated until such time that the Implementing Agency has not objected to or is deemed to have not objected to the satisfaction of such Private Partner Condition Precedent. The provisions of this Section 3.4.2(a) shall apply to each Private Partner Condition Precedent for which evidence of satisfaction is submitted by the Private Partner to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency) from time to time;

- (b) within thirty (30) days of the Private Partner’s receipt from the Implementing Agency, through the Independent Engineer and the Independent Auditor, evidence of satisfaction of an Implementing Agency Condition Precedent, the Private Partner shall notify the Independent Engineer and the Independent Auditor in writing (with a copy to the Implementing Agency) whether it has any objections on the satisfaction of such Implementing Agency Condition Precedent. In the event the Private Partner does not raise any objection in writing on the satisfaction of an Implementing Agency Condition Precedent within the thirty (30) day period set out herein, such Implementing Agency Condition Precedent shall be deemed to be not objected to by the Private Partner. In the event the Private Partner raises any objections on the satisfaction of a Implementing Agency Condition Precedent and notifies the same to the Independent Engineer and the Independent Auditor (with a copy to Implementing Agency) within the thirty (30) day period set out herein, the Implementing Agency shall address such objections and re-submit to the Independent Engineer and the Independent Auditor (with a copy to the Private Partner) evidence of satisfaction of such Implementing Agency Condition Precedent and the process in this Section 3.4.2(b) shall be repeated until such time that the Private Partner has not objected to or is deemed to have not objected to the satisfaction of such Implementing Agency Condition Precedent. The provisions of this Section 3.4.2(b) shall apply to each Implementing Agency Condition Precedent for which evidence of satisfaction is submitted by the Implementing Agency to the Independent Engineer and the Independent Auditor (with a copy to Private Partner) from time to time.

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

- (a) Private Partner Conditions Precedent stand satisfied (and/or waived or deferred by the Implementing Agency in accordance with Section 3.3.1(a));
- (b) Private Partner Conditions Precedent are not objected to or deemed not to have been objected to by the Implementing Agency (acting through the Project Manager) in accordance with Section 3.4.2(a) and if any Private Partner Condition Precedent is objected to by the Implementing Agency in accordance with Section 3.4.2(a), the Private Partner has addressed such objections and re-submitted evidence of satisfaction of such Private Partner Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency) in accordance with Section 3.4.2(a);
- (c) Implementing Agency Conditions Precedent stand satisfied (and/or waived or deferred by the Private Partner in accordance with Section 3.3.1(b)); and
- (d) Implementing Agency Conditions Precedent are not objected to or deemed to not have been objected to by the Private Partner in accordance with Section 3.4.2(b) and if any Implementing Agency Condition Precedent is objected to by the Private Partner in accordance with Section 3.4.2(b), the Implementing Agency has addressed such objections and re-submitted evidence of satisfaction of such Implementing Agency Condition Precedent to the Independent Engineer and the Independent Auditor (with a copy to the Private Partner) in accordance with Section 3.4.2(b);

The Independent Engineer and the Independent Auditor, jointly, shall set out in the Commencement Certificate the date on which the Commencement Date is achieved.

**3.5 TERMINATION PRIOR TO COMMENCEMENT DATE**

3.5.1 In the event:

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

then the Implementing Agency shall have the right (to be exercised in its sole and absolute discretion) to terminate this Agreement by issuance of a written Termination Notice to the Private Partner. In such a case, the Implementing Agency shall be entitled to encash the Bid Security or the Installation Performance Guarantee (as in effect at such time) to its full value. Except for the encashment of the Bid Security or the Installation Performance Guarantee (as in effect at such time) in terms of this Section 3.5.1, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such termination of this Agreement.

3.5.2 In the event:

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

the Private Partner shall have the right (to be exercised in its sole discretion) to Terminate this Agreement by issuance of a written Termination Notice to the Implementing Agency. In such a case, the Implementing Agency shall (within fifteen (15) days of its receipt of the Termination Notice) return the Bid Security or the Installation Performance Guarantee (as in effect at such time) to the Private Partner without any encashments, demands or claims. Further, in the event the Private Partner has prepared the Detailed Programme of Performance and the same has been approved by the Independent Engineer and is transferred/ delivered to the Implementing Agency, the Implementing Agency shall (within fifteen (15) days of its receipt of the Termination Notice) make payment of the cost of Detailed Programme of Performance, as set out in the Bid and as approved by the Independent Engineer and the Independent Auditor. Except as afore-stated and except as may be mutually agreed between the Parties, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for Termination of this Agreement.

3.5.3 It is clarified that the provisions of this Section 3.5 (*Termination Prior to Commencement Date*) shall only apply to any Termination of this Agreement occurring on or prior to the Commencement Date.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

4. **PROJECT SITE**

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4.1 **LICENCE**

- 4.1.1 The Implementing Agency shall, as a condition precedent to achievement of Commencement Date, Licence to the Private Partner, pursuant to the Project Site Licence Agreement, for use and grant of the Vacant Possession of the Project Site (the **Licence**). The Project Site Licence Agreement shall be duly executed by the Parties and, to the extent required by Applicable Laws, registered by the Private Partner with the relevant Government Agency and all costs, fees, expenses, duties, charges and taxes (including charges relating to the registration of the Project Site Licence Agreement) relating to the same shall be borne by the Private Partner. For the purposes of clarification, the Project Site License Agreement or this Agreement shall not be construed as a transfer of ownership of the Project Site or lease rights in relation thereto to the Private Partner.
- 4.1.2 The Private Partner shall be responsible for payment of all charges in accordance with the Project Site Licence Agreement that relate to the Licence of the Project Site to the Private Partner by Implementing Agency.
- 4.1.3 The Licence shall commence on the physical handing over of the Vacant Possession of the Project Site to the Private Partner by the Implementing Agency and upon commencement shall be co-terminus on the Transfer Date without the need for any action to be taken by the Parties to terminate the Licence.

4.2 **TITLE OF PROJECT SITE & DELIVERY OF VACANT POSSESSION**

- 4.2.1 The Implementing Agency represents and warrants that it has the power and authority to grant the Licence in respect of the Project Site to the Private Partner.
- 4.2.2 Subject to Section 15.2, the Implementing Agency shall at its own cost and expense, deliver to the Private Partner the Vacant Possession of the Project Site (including all Easementary Rights), on or prior to the Scheduled Commencement Date.

4.3 **USE OF PROJECT SITE**

- 4.3.1 The Private Partner hereby unconditionally and irrevocably confirms, acknowledges and agrees that the Implementing Agency shall enter into the Project Site Licence Agreement with the Private Partner that shall grant the Licence of the Project Site to Private Partner for the sole purpose of implementation of the Project and for enjoying the rights and benefits of the Concession granted hereunder and that the Private Partner shall use the Project Site only for the purposes of implementing the Project thereupon and for purposes incidental or necessary thereto subject always to the terms and conditions of the Applicable Specifications. The Private Partner shall, in carrying out its obligations under this Agreement, utilize all existing roads and land areas at the Project Site.
- 4.3.2 The Private Partner hereby undertakes that it shall not without prior written consent of the Implementing Agency use the Project Site for any purpose other than:
  - (a) for the purposes of the Project and purposes incidental thereto;
  - (b) as permitted under this Agreement (including for the purposes set out in Article 29 (*Additional Matters*)); or
  - (c) as may otherwise be approved by the Implementing Agency in writing.

4.4 **PRIVATE PARTNER'S RESPONSIBILITY**

- 4.4.1 Subject to Section 4.15 (*Removal of Material Adverse Impediment*), the physical and the ambient conditions (including climatic, hydrological, hydro-geological, ecological, environmental, geotechnical, geological, paleontological and archaeological conditions) of the Project Site (the **Project Site Conditions**) shall be the sole responsibility of the Private Partner. Accordingly, without limiting any other obligations of the Private Partner that are included in this Agreement, the Private Partner shall be deemed as at the Effective Date of the Agreement to have:
  - (a) carried out an investigation of all Project Site Conditions and of any extraneous material in or under the Project Site including its surface, sub-soil and ground water to enable the Concession

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Assets to be designed and constructed and for its obligations to be performed with due regard for the Project Site Conditions and the seismic activity (if any) in the region of the Project Site;

- (b) for the purpose of such investigation in section (a), inspected and examined the Project Site and surroundings;
- (c) satisfied itself as to the nature of the Project Site Conditions, the surface, sub-soil and ground water of the Project Site, the form and nature of the Project Site, the load-bearing and other relevant properties of the Project Site, the risk of damage to property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, its obligations and material necessary for the implementation of the Project;
- (d) satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and any accommodation it may require for the purposes of fulfilling any of its obligations included in this Agreement, such as any additional land or buildings located outside the Project Site;
- (e) satisfied itself as to the possibility of interference by Persons with rights-of-way across, access to or use of the Project Site with particular regard to the owners and users of any land adjacent to the Project Site;
- (f) satisfied itself as to the precautions, times and methods of working necessary to prevent or minimize nuisance or interference being caused to any third parties; and
- (g) the Private Partner has provided the Installation Performance Guarantee to the Implementing Agency that remains effective and valid till the Installation Performance Guarantee Expiry Date.

4.4.2 To avoid doubt, the Private Partner accepts full responsibility for all matters in Section 4.4.1 above and the Private Partner shall, subject to Section 4.15 (*Removal of Adverse Impediment*):

- (a) not be entitled to make any claim against the Implementing Agency whether in contract, tort or otherwise on any ground relating to the matters in Section 4.4.1 above; and
- (b) indemnify the Implementing Agency against all direct Losses sustained by the Implementing Agency and/or any third party in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials being any natural or artificial substance, whether in solid, gaseous or liquid form capable of causing harm to any human or any other living organism supported by the environment (including air, water, land, surface land and sub-surface land) or capable of damaging the environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable environment law) at the Project Site.

**4.5 NO SALE OR CREATION OF ENCUMBRANCE**

4.5.1 The Private Partner shall not part with, dispose off, sell, sublease or create any Encumbrance of any nature whatsoever on the whole or any part of the Project Site and shall not place or create nor permit any Contractor or other person claiming through or under the Private Partner to place or create any Encumbrance over all or any part of the Project Site or the Concession Assets, or on any rights of the Private Partner therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

**4.6 PROTECTION OF SITE FROM ENCROACHMENTS**

4.6.1 Following the delivery and handing over to the Private Partner of the Vacant Possession of the Project Site by the Implementing Agency and until the Transfer Date, the Private Partner shall be fully responsible for and shall protect the Project Site and the Concession Assets from, in each case, any and all occupations, thefts (to the extent of the Concession Assets), encroachments and Encumbrances. The Private Partner further undertakes, covenants and confirms to indemnify the Implementing Agency, any Government Agency and GoPB from any costs, claims expenses or charges incurred resulting from any breach of its obligations under this Section 4.6. Provided always, that the Implementing Agency shall be responsible for ensuring police security of the Project Highway in accordance with the applicable law.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**4.7 SPECIAL/TEMPORARY RIGHT OF WAY**

4.7.1 The Private Partner shall, at its own cost and risk, after getting written approval from the Implementing Agency, obtain any special or temporary right of way that is not included in the Scope of the Project and description of Project Site and the Concession Assets, and is required by the Private Partner in connection with access to the Project Site and shall also obtain (at its cost and expense), after getting written approval from the Implementing Agency, such other facilities, the provision of which is not the responsibility of the Implementing Agency under the Implementing Agency Agreements, as may be required by the Private Partner for the purposes of the Project and its implementation in accordance with the Applicable Specifications; provided, that the Implementing Agency shall reasonably facilitate the Private Partner in obtaining the aforesaid special or temporary right of way.

**4.8 PROJECT SITE ACCESS**

4.8.1 Following Licence of the Project Site and delivery of the Vacant Possession of the Project Site to the Private Partner by the Implementing Agency, the Licence granted to the Private Partner shall always be subject to the right of access of the Implementing Agency, any relevant Government Agency, the Independent Auditor and the Independent Engineer and their representatives, officers, employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement; provided, that the exercise of such right of access shall not interfere with the Private Partner's performance of its rights and obligations under this Agreement. Further, the Licence granted to the Private Partner shall always be subject to the right of access of the Users.

**4.9 GEOLOGICAL AND ARCHAEOLOGICAL FINDS**

4.9.1 It is expressly agreed between the Parties that mining, geological or archaeological rights do not form part of the Licence to be granted to the Private Partner in terms of the Project Site Licence Agreement and the Private Partner hereby acknowledges and agrees that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that all such rights, interest and property on or under the Project Site shall vest in and belong to the Implementing Agency or the relevant concerned Government Agency.

4.9.2 The Private Partner shall procure all no-objection certificates and consents from the relevant department of the GoPB that may be required by the Private Partner under the Applicable Laws, in respect of any potential geological and archaeological finds on the Project Site, prior to commencement of the Project Works. Furthermore, the Private Partner shall take all reasonable precautions to prevent its employees, workmen, agents, representatives and/ or any other persons appointed by the Private Partner from having access to the Project Site, including the Contractors, from removing or damaging such interest or property (as set out in Section 4.9.1) and shall inform the Implementing Agency forthwith of the discovery thereof and comply with such instructions as the Implementing Agency and / or the concerned Government Agency may issue in relation to the protection and / or removal of such property. In the event any expenses are incurred by the Private Partner in fulfilling its obligations as set out in this Section 4.9.2 and/or as a result of the geological and/or archaeological finds being on the Project Site, then the same shall be reimbursed by the Implementing Agency (provided the same are duly certified by the Independent Engineer and the Independent Auditor) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Further, in the event the Private Partner is delayed in performance of its obligations under this Agreement due to the occurrence of the circumstances set out in this Section 4.9 (*Geological and Archaeological Finds*), the Private Partner shall be granted extensions in the timeline in which it has to perform its obligations under this Agreement (provided that such extensions are duly certified by the Independent Engineer) and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply. Notwithstanding anything contained herein, the Implementing Agency shall procure the issuance of the instructions required from the concerned Government Agency and referred to in this Section 4.9.2.

**4.10 EXISTING UTILITIES AND ROADS**

4.10.1 Notwithstanding anything to the contrary contained herein, the Private Partner shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Project Site are enabled by the Private Partner to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the Implementing Agency of the controlling body of that road, right of way or utility, and the Implementing Agency shall, upon written request from the Private Partner (as certified by the Independent Engineer), initiate and undertake, at

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

the Implementing Agency's cost, legal proceedings for acquisition of any right of way or any no objections or permits/ approvals necessary for such diversion.

- 4.10.2 The Private Partner shall be required to provide the details of the existing utilities, including the relocation plan to the Implementing Agency within ninety (90) days of the Signing Date. Upon submission of the relocation plan, the Implementing Agency shall procure the removal and/or relocation of the existing utilities including (providing for any alternate duct/ corridor) at its own cost and expense and, upon the completion of the same, provide Vacant Possession of the Project Site to the Private Partner in accordance with the timelines of the PPP Contract.
- 4.10.3 If the Private Partner fails to provide the details of the existing utilities within 90 days of Signing Date (as such date may be extended with mutual consent), the Implementing Agency shall not be responsible for all delays resulting from the same.

**4.11 INSTALLATION OF SIGNS**

- 4.11.1 The Private Partner shall, at its own cost, install and maintain signs marketing the Authority, the Implementing Agency and public private partnership projects every five (5) kilometres along the Project Highway. Each sign shall prominently display the names and/or logos of the Implementing Agency, the Authority, and other relevant stakeholders as may be specified by the Implementing Agency. The format, size, and positioning of the signage must comply with the standards or instructions issued by the Implementing Agency.

**4.12 NEW UTILITIES AND ROADS**

- 4.12.1 The Private Partner shall allow utility companies (subject to consent of Implementing Agency and subject to such conditions as the Implementing Agency may specify and subject to mutual agreement between the Implementing Agency and the utility companies), access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities; provided, that nothing contained in this Section 4.12.1 shall waive and / or relieve or be deemed to waive and / or relieve the obligations of the Private Partner contained in the Implementing Agency Agreements and any damage caused to the Concession Assets by such access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities shall be restored forthwith.
- 4.12.2 The affected part of the Concession Assets (or any part thereof) (the **Utilities Affected Assets**) shall be restored in accordance with the Applicable Specifications and Good Industry Practice by the Private Partner and the costs relating to the same shall be borne by the Private Partner and/or the utility companies in accordance with the terms mutually agreed between the Private Partner and the utility companies; provided, however, any such terms (including any amendments of the same) shall be subject to the prior approval of the Implementing Agency (which approval shall not be unreasonably delayed, conditioned or withheld). Notwithstanding anything to the contrary set out herein, the Implementing Agency shall neither be responsible for restoration of any Utilities Affected Assets nor for any costs relating to the same.
- 4.12.3 The Private Partner exclusively reserves the right to charge fees from the utility company or any other entity for allowing the passage of the telephone lines, water pipes, electric cables or other public utilities over or under the Project Site on the rates notified by the Implementing Agency based on the latest market rate system (MRS) applicable in the Province of Punjab (the **Utility Proceeds**).

**4.13 FELLING OF TREES**

- 4.13.1 The Private Partner undertakes to fell the trees only on those areas on the Project Highway, where Installation Works shall be carried out, the cost of which shall be borne by the Private Partner, provided, that the Private Partner shall be responsible for procuring any approvals and/or permits from the GoPB or any other governmental agency for compliance with this Section 4.13. The Implementing Agency shall provide reasonable assistance to the Private Partner in the acquisition of the permits required under this Section 4.13.
- 4.13.2 The trees removed by the Private Partner shall be deemed to be owned by the Implementing Agency and shall be disposed in such manner and subject to such conditions as the Implementing Agency may in its sole discretion deem appropriate provided, however, all costs, fees and expenses of such disposal shall be borne by the Implementing Agency.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

4.13.3 The Private Partner hereby undertakes that it shall, at its sole cost and expense, plant and maintain at least sixty (60) trees per kilometre on the Project Highway. Furthermore, the Private Partner undertakes to maintain in accordance with the Applicable Specifications all the trees planted by it pursuant to this Section 4.13 (*Felling of Trees*) till the Transfer Date and shall ensure that at all times until Transfer Date, a minimum of sixty (60) number of trees per kilometre remain planted and maintained on the Project Highway.

**4.14 IMPLEMENTING AGENCY INDEMNITIES IN RESPECT OF PROJECT SITE**

4.14.1 The Implementing Agency shall indemnify and shall hold the Private Partner harmless from any Losses incurred in relocating, rehabilitating or resettling persons in connection with making available the Project Site to the Private Partner for implementation of the Project and for delivery of Vacant Possession of the Project Site to the Private Partner.

4.14.2 The Implementing Agency shall not be responsible for any Losses suffered by the Private Partner as a consequence of the Private Partner’s failure to maintain the Project Site in its possession free from encroachments and encumbrances by third parties and/or is not as a consequence or failure by the Private Partner to meet its obligations under this Agreement.

**4.15 REMOVAL OF MATERIAL ADVERSE IMPEDIMENT**

4.15.1 Following delivery of the Vacant Possession of the Project Site to the Private Partner by Implementing Agency, the Private Partner shall be responsible for removal of all impediments, debris (including any structures not in anyone’s possession) on the Project Site, whether physical or legal, to the Installation Works and, Operation and Maintenance of the Concession Assets; provided, however, that the Private Partner shall Notify the Implementing Agency of any impediment (the **Material Adverse Impediment**) on the Project Site, whether physical or legal, to the Installation Works and/or, Operation and Maintenance of the Concession Assets which:

- (a) causes a Material Adverse Effect;
- (b) is not attributable to the Private Partner; and
- (c) does not result from any non-compliance by the Sponsor and/or the Private Partner under any Implementing Agency Agreements.

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4.15.3 Any Notice issued by the Private Partner pursuant to Section 4.15.1 shall be duly verified and certified by the Independent Engineer prior to submission to the Implementing Agency and the Independent Engineer shall, prior to delivery of such Notice to the Implementing Agency, duly certify in the Notice, inter alia, the occurrence and subsistence of the Material Adverse Impediment and the time period required for removal of the same (the Material Impediment Removal Period). Upon receipt by the Implementing Agency of the Notice duly verified and certified by the Independent Engineer (the Certified Impediment Notice), the Implementing Agency shall act so as to remove such Material Adverse Impediment within the Material Impediment Removal Period. In the event the Private Partner suffers delays in the performance of its obligations and/or incurs Relief Costs, in each case, as a direct result of the Material Adverse Impediment, the same shall entitle the Private Partner to issuance of a Relief Request and in such case, the provisions of Article 15 (Relief Extensions & Relief Compensations) shall apply.

**5. INDEPENDENT ENGINEER & INDEPENDENT AUDITOR**

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**5.1 INDEPENDENT ENGINEER SELECTION**

5.1.1 Within fifteen (15) days from the Effective Date, the Private Partner shall provide the Implementing Agency with a list of three (3) reputable firms of engineers for appointment of the Independent Engineer (the **First IE List**).

5.1.2 Within fifteen (15) days of receipt by the Implementing Agency of the First IE List, the Implementing Agency shall (subject to one (1) of the firms in the First IE List being acceptable to the Implementing Agency) select a reputed firm of engineers from First IE List and the Implementing Agency and the

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

Private Partner shall appoint such firm as the Independent Engineer in terms of the Independent Engineer Contract.

5.1.3 In the event the firms of engineers identified by the Private Partner in the First IE List are not acceptable to the Implementing Agency, the Private Partner and the Implementing Agency shall appoint (in terms of the Independent Engineer Contract) such firm as the Independent Engineer as is mutually acceptable to the Implementing Agency and the Private Partner and such appointment shall be in terms of the Independent Engineer Contract.

5.1.4 The Independent Engineer shall provide the services set out in the Independent Engineer Contract and as requested by the Parties with mutual consent from time to time. Unless mutually agreed otherwise between the Parties, the Independent Engineer Contract shall be in accordance with the mutual agreement between the Implementing Agency; and the Private Partner.

**5.2 TERM OF APPOINTMENT OF THE INDEPENDENT ENGINEER**

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

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

5.2.2 The appointment of the Independent Engineer may be terminated:

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

5.2.3 Upon the occurrence of any of the events listed in Section 5.2.2, the Parties shall have the right to terminate the Independent Engineer Contract in accordance with the terms of the same or and/or in the event of expiry of the Independent Engineer Appointment Term, the Parties shall appoint a new Independent Engineer in accordance with this Section 5.2.3. In the afore-stated circumstances, the Parties shall replace the appointed Independent Engineer with another consulting engineering firm or body corporate selected by the Implementing Agency from the First IE List provided by the Private Partner pursuant to Section 5.1.1 above; provided, however, that the termination and/or replacement of the Independent Engineer shall not have effect till such time as the replacement Independent Engineer has been appointed. In the event the Implementing Agency objects to the appointment of any firm of engineers named in the First IE List, then the Private Partner shall provide the Implementing Agency with a new list of three (3) reputable firms of engineers for appointment of the replacement Independent Engineer (the **New IE List**). Within ten (10) days of receipt by the Implementing Agency of the New IE List, the Implementing Agency shall either:

- (a) select a reputable firm of engineer from the New IE List and shall cause the Private Partner to appoint such firm as the Independent Engineer; or
- (b) reject the appointment of any of the firms provided in the New IE List, in which case, the Parties shall appoint such firm of engineers as the new Independent Engineer as is mutually agreed by the Parties.

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

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

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

**5.3 INDEPENDENT ENGINEER AUTHORIZED SIGNATORIES**

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

**5.4 DECISION OF INDEPENDENT ENGINEER & DISPUTE RESOLUTION**

- 5.4.1 Subject to Section 5.4.2, any advice, instruction, decision, direction and / or award of the Independent Engineer shall be binding on the Parties unless mutually agreed otherwise by the Parties.
- 5.4.2 In the event any Dispute arises between the Implementing Agency and the Private Partner with regard to any advice, instruction, decision, direction and / or award of the Independent Engineer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**5.5 INDEPENDENT ENGINEER REMUNERATION**

- 5.5.1 The Private Partner shall deposit into the Escrow Account the requisite amount for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract (the **Independent Engineer Payments**), notwithstanding that the Independent Engineer shall be appointed by and shall fulfil its obligations in accordance with the terms of the Independent Engineer Contract.
- 5.5.2 The Escrow Agent shall be responsible for the release of the Independent Engineer Payments from the Escrow Account to the Independent Engineer in a diligent and timely manner and in accordance with the Escrow Agreement and the Independent Engineer Contract. The Escrow Agent shall not require the consent or prior approval of the Private Partner for the purposes of releasing the Independent Engineer Payments and the Private Partner acknowledges that it shall have no right to either prevent or alter the quantum or timing of the Independent Engineer Payments.

**5.6 INDEPENDENT AUDITOR SELECTION**

- 5.6.1 Within fifteen (15) days from the Effective Date, the Private Partner shall provide the Implementing Agency with a list of three (3) reputable firms of chartered accountants which should be within the “A Category” of SBP for appointment of the Independent Auditor (the **First IA List**).
- 5.6.2 Within fifteen (15) days of receipt by the Implementing Agency of the First IA List, the Implementing Agency shall (subject to one of the firms in the First IA List being acceptable to the Implementing Agency) select a reputed firm of auditors from First IA List and the Implementing Agency and the Private Partner shall appoint such firm as the Independent Auditor in terms of the Independent Auditor Contract.
- 5.6.3 In the event the firms of auditors identified by the Private Partner in the First IA List is not acceptable to the Implementing Agency, the Private Partner and the Implementing Agency shall appoint (in terms of the Independent Auditor Contract) such firm as the Independent Auditor as is mutually agreed by the Implementing Agency and the Private Partner and such appointment shall be in terms of the Independent Auditor Contract.
- 5.6.4 The Independent Auditor shall provide the services set out in the Independent Auditor Contract and as requested by the Parties with mutual consent from time to time.

**5.7 TERM OF APPOINTMENT OF THE INDEPENDENT AUDITOR**

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

- (a) the Independent Auditor Appointment Term shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed for the purposes set out in this Agreement; or
- (b) the Parties shall be entitled to appoint a new Independent Auditor prior to the expiry of the Independent Auditor Appointment Term (such appointment to be effective upon expiry of the Independent Auditor Appointment Term) so as to ensure that at all times during the Concession Period an Independent Auditor is retained/appointed for the purposes set out in this Agreement. In the event of the appointment of a new Independent Auditor upon expiry of the Independent Auditor Appointment Term, the provisions of Section 5.7.3 shall apply.

5.7.2 The appointment of the Independent Auditor may be terminated:

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

5.7.3 Upon the occurrence of any of the events listed in Section 5.7.2, the Parties shall have the right to terminate the Independent Auditor Contract in accordance with the terms of the same or and/or in the event of expiry of the Independent Auditor Appointment Term, the Parties shall appoint a new Independent Auditor in accordance with this Section 5.7.3. In the aforementioned circumstances, the Parties shall replace the appointed Independent Auditor with another firm of chartered accountants selected by the Implementing Agency from the First IA List provided by the Private Partner pursuant to Section 5.6.1 above; provided, however, that the termination and/or replacement of the Independent Auditor shall not have effect till such time as the replacement Independent Auditor has been appointed. In the event the Implementing Agency objects to the appointment of any firm of chartered accountants named in the First IA List, then the Private Partner shall provide the Implementing Agency with a new list of three (3) reputable firms of chartered accountants for appointment of the replacement Independent Auditor (the **New IA List**). Within ten (10) days of receipt by the Implementing Agency of the New IA List, the Implementing Agency shall either:

- (a) select a reputable firm of chartered accountants from the New IA List and shall cause the Private Partner to appoint such firm as the Independent Auditor; or
- (b) reject the appointment of any of the firms provided in the New IA List, in which case, the Parties shall appoint one of the Big Four Accounting Firms with mutual consent of the Parties as the new Independent Auditor.

The provisions of Section 5.6 to 5.10 shall apply to any new Independent Auditor (including appointment and replacement of the same) appointed in accordance with the terms herein.

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

5.7.5 The Private Partner 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.

**5.8 INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

5.8.1 The Parties shall require the Independent Auditor to designate and notify to the Implementing Agency and the Private Partner of the authorized representatives of the Independent Auditor that shall be authorized by the Independent Auditor to sign for and on behalf of the Independent Auditor, and any communication or document required to be signed by the Independent Auditor shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Auditor; provided,

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

that the Independent Auditor may, by notice in writing to the Parties, substitute any of the authorized signatories.

**5.9 DECISION OF INDEPENDENT AUDITOR & DISPUTE RESOLUTION**

5.9.1 Subject to Section 5.9.2, any advice, instruction, decision, direction and / or award of the Independent Auditor shall be binding on the Parties unless mutually agreed otherwise by the Parties.

5.9.2 In the event any Dispute arises between the Implementing Agency and the Private Partner with regard to any advice, instruction, decision, direction and / or award of the Independent Auditor, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**5.10 INDEPENDENT AUDITOR REMUNERATION**

5.10.1 The Private Partner shall deposit into the Escrow Account the requisite amount for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Contract (the **Independent Auditor Payments**), notwithstanding that the Independent Auditor shall be appointed by and shall fulfil its obligations in accordance with the terms of the Independent Auditor Contract.

5.10.2 The Escrow Agent shall be responsible for the release of the Independent Auditor Payments from the Escrow Account to the Independent Auditor in a diligent and timely manner and in accordance with the Escrow Agreement and the Independent Auditor Contract. The Escrow Agent shall not require the consent or prior approval of the Private Partner for the purposes of releasing the Independent Auditor Payments and the Private Partner acknowledges that it shall have no right to either prevent or alter the quantum or timing of the Independent Auditor Payments.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**7. PRIVATE PARTNER’S REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS**

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**7.1 PRIVATE PARTNER REPRESENTATIONS & WARRANTIES**

7.1.1 The Private Partner hereby represents and warrants to the Implementing Agency that:

- (a) it is duly organized and validly existing under the Applicable Laws, and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under the Applicable Laws to:
  - (i) authorize the execution, delivery and performance of this Agreement; and
  - (ii) validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (d) it has the financial standing and capability to undertake and implement the Project in accordance with the Applicable Specifications and neither the Private Partner nor the Sponsors have committed a breach in respect of their payment obligations in relation to a financial indebtedness;
- (e) it is subject to the Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) the execution, delivery and performance of this Agreement does not and shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any of its constitutive and corporate charters, filings with Government Authorities, documents, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Agency which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect on the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (j) the Sponsor has the Private Partner’s Ownership And Management Control as of the Effective Date;
- (k) the Private Partner and the Sponsor (along with its Associates (if any)) have the financial standing and resources to fund the required Equity for Shares and to raise the debt/ financing necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) no representation or warranty made by the Private Partner and contained herein or in any other document furnished by it to the Implementing Agency or to any Government Agency in relation to the Private Partner Permits contains any untrue or misleading statement of material

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading;

- (m) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Implementing Agency in connection therewith and neither the Private Partner nor the Sponsor (together with their Affiliates) have engaged in any Corrupt Act in respect of the foregoing;
- (n) the Sponsor has complied with requirements of the Applicable Laws and the RFP (to the extent the same are applicable to the Private Partner and the bidders) in the preparation, finalization, delivery and submission of its Bid for the award of the Project and the Concession to the Private Partner and have undertaken all acts and deeds (to the extent the same are applicable to the Private Partner and the bidders) necessary for award of the Concession and the Project to the Private Partner in terms of the RFP and the Applicable Laws;
- (o) all representations, breach of which may cause a Material Adverse Effect, provided by the Sponsors in its Bid submitted in response to the RFP, is true and accurate in all respects;
- (p) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity (if any) in any jurisdiction.

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

**7.2 PRIVATE PARTNER’S GENERAL UNDERTAKINGS**

7.2.1 The Private Partner hereby undertakes that it shall, at its own cost and expense:

- (a) comply with and perform all duties, obligations, acts, deeds and obligations set out in, in each case, the Applicable Specifications;
- (b) continuously and diligently undertake, perform and complete all Project Works and Concession Assets in accordance with the Applicable Specifications and within the Time For Completion;
- (c) ensure that all Project Works and Concession Assets comply with the Applicable Specifications;
- (d) investigate, study, Operate and Maintain the Concession Assets in accordance with the Applicable Specifications;
- (e) ensure and achieve each Project Milestone on or prior to its Project Milestone Date in accordance with the Applicable Specifications including:
  - (A) Not used;
  - (B) achieve Installation Completion on or prior to the Scheduled Installation Completion Date;
- (f) remedy any Defects & Deficiencies in the Project Works (including in the performance of the same) and/or the Concession Assets at its own cost and risk;
- (g) obtain and maintain all Private Partner Permits (including any renewals of the same) in conformity with the Applicable Laws and be in compliance thereof, and deliver copies of the same to the Implementing Agency, the Independent Engineer and the Independent Auditor from time to time;
- (h) be in compliance with and perform all its obligations in accordance with, in each case, the Applicable Laws and fulfil the requirements (including the environmental requirements) under the Applicable Laws,

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- (i) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, Licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (j) appoint, supervise, monitor and control as necessary, the activities of the Private Partner Self Control Unit (including those of the Contractors under their respective and relevant Project Agreements);
- (k) make its own arrangements for materials (including installation materials), parts, components, supplies, tools, machinery etc. for performance of the Project Works;
- (l) be responsible for strict compliance with the relevant Applicable Specifications notwithstanding the appointment and/or engagement by it of the Private Partner Self Control Unit to implement the Project (or any part thereof) and performance of Project Works (or any part thereof);
- (m) keep and maintain the Project Site free from all encroachments and take all steps necessary to remove encroachments, if any;
- (n) except as provided in this Agreement, make payments to the relevant Government Agency, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (o) afford access of the Project Site to the authorized representatives of the Implementing Agency, the Independent Engineer, Independent Auditor and any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Works and the Concession Assets and, upon reasonable notice, to investigate any matter within their Implementing Agency, and provide to such Persons assistance reasonably required to carry out their respective duties and functions;
- (p) not engage in any business or activity other than the business or related to, and conducted for, the purpose of the Project and/or other than as provided in this Agreement;
- (q) maintain its corporate existence and its rights to carry on operations of its business;
- (r) provide all necessary assistance to the Project Manager, as the Project Manager may reasonably require for the performance of its duties and services;
- (s) make all payments to the Implementing Agency of the amounts due and payable by the Private Partner in accordance with the terms of this Agreement and the Implementing Agency Agreements;
- (t) ensure that no damage is caused to any property belonging to Implementing Agency and/or other third parties in the execution of the Project Works;
- (u) coordinate and manage all the Project Works and be responsible for the coordination and general management of the Project Works;
- (v) provide to the Implementing Agency, the Independent Auditor and the Independent Engineer all such information relating to the Project Works and the execution and completion of the same as is reasonably requested by the Implementing Agency, the Independent Auditor and the Independent Engineer from time to time;
- (w) Notify the Implementing Agency, the Independent Engineer and/or the Independent Auditor (as applicable) without undue delay upon becoming aware of any changes in the information provided and/or to be provided to the same by the Private Partner pursuant to the Applicable Specifications;
- (x) provide all necessary assistance to the Independent Engineer and the Independent Auditor as the same may reasonably require for the performance of their duties and services in accordance with the Independent Engineer Contract and the Independent Auditor Contract, respectively, and for the performance of its roles and obligations contemplated under this Agreement and the Implementing Agency Agreements;

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- (y) ensure that the Project Agreements entered into by the Private Partner shall not be inconsistent with the terms and conditions of the Implementing Agency Agreements;
- (z) submit from time to time to the Implementing Agency and the Independent Engineer its detailed installation, operation and maintenance methodology and quality assurance procedures for implementation and completion of the Project in accordance with the Applicable Specifications and the same shall be subject to the review and approval of the Independent Engineer;
- (aa) undertake, do and perform from time to time, all such acts, deeds and things as may be necessary or required before commencement of Project Works (or any part thereof) for the performance of the Project Works under and in accordance with the Applicable Specifications;
- (bb) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer at the Project Site commencing from the Commencement Date and until the Transfer Date;
- (cc) ensure the safety of the Concession Assets and the Users in accordance with the Safety Requirements;
- (dd) maintain the Project Site and the Concession Assets in good condition.
- (ee) comply with the Project Requirements.
- (ff) comply with all the conditions set out in any environmental impact assessment.

**7.3 PRIVATE PARTNER SELF CONTROL UNIT**

- 7.3.1 The Private Partner shall, commencing from the Effective Date, have requisite organization and set up a Private Partner Self Control Unit and designate and appoint suitable officers/ representatives (which will include an adequate number of qualified engineers and technicians) to the Private Partner Self Control Unit as the Private Partner may deem appropriate to implement and supervise the Project, to deal with the Independent Engineer/Independent Auditor/the Implementing Agency and to be responsible for all necessary exchange of information required pursuant to the Applicable Specifications.
- 7.3.2 The Private Partner shall ensure that the Private Partner Self Control Unit contains experienced and qualified persons for the purposes of Project implementation and performance of the Project Works and are at all times properly trained for their respective functions. The Private Partner shall appoint a duly qualified and experienced Civil Engineer as the head of the Private Partner Self Control Unit. The Private Partner shall further be responsible for maintaining harmony and good industrial relations amongst the Private Partner Self Control Unit.
- 7.3.3 The Private Partner shall be fully and solely responsible for:
  - (a) observance by all of the members of the Private Partner Self Control Unit of all the provisions and requirements of the Applicable Specifications;
  - (b) the acts, omissions, failure to perform, breaches or defaults of the Private Partner Self Control Unit of the Applicable Specifications as fully as if they were the acts, omissions, failures, breaches or defaults of the Private Partner of the Applicable Specifications under this Agreement and the Implementing Agency Agreement;
  - (c) maintaining comprehensive and detailed knowledge of the condition of the Project Highway;
  - (d) providing the Private Partner's personnel with all information necessary for the effective management and maintenance of the Project Highway, without assuming direct responsibility for the execution of the works;
  - (e) conducting regular patrols to monitor the condition of the roads on the Project Highway (with patrol frequency ranging from daily for high-traffic roads to weekly for low-traffic roads) unless otherwise agreed to in writing with the Independent Engineer;

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- (f) verifying and auditing the proper implementation of the Private Partner’s Quality Assurance Plan, including all testing methods and procedures required by this Agreement, to ensure the quality of the works and materials used.
- (g) conducting periodic surveys with the Independent Engineer, Implementing Agency and authorized persons for assuring maintenance standards set out in Specifications.
- (h) Establish communications with Implementing Agency, Private Partner and the Independent Engineer.

7.3.4 The Private Partner shall be responsible for strict compliance with the Applicable Specifications notwithstanding the appointment and/or engagement by it of the Private Partner Self Control Unit to implement the Project (or any part thereof) and performance of Project Works (or any part thereof) and any engagement by the Private Partner of any of the Private Partner Self Control Unit shall not release or discharge the Private Partner of any of its liabilities, responsibilities or obligations under the Applicable Specifications and the Private Partner shall not be entitled to any relief or compensation (including any extension of Time For Completion and/or monetary compensations) under this Agreement or otherwise for any acts, omissions, failures, breaches or defaults of the Private Partner Self Control Unit. Notwithstanding anything to the contrary, the Implementing Agency shall not be liable or responsible in any manner whatsoever under any Applicable Laws, in contract, tort or otherwise in respect of the Private Partner Self Control Unit.

7.3.5 Employment of any foreign persons as part of the Private Partner Self Control Unit shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall be the sole responsibility of the Private Partner and, notwithstanding anything to the contrary contained in this Agreement or otherwise, refusal of or inability to obtain any such permits and approvals by the Private Partner or the relevant Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Private Partner from the performance and discharge of its obligations and liabilities under the Applicable Specifications. The Private Partner shall use reasonable efforts to promote local contractors and to employ and engage, to the extent practicable local employees and contractors.

7.3.6 The Private Partner undertakes that it shall itself and any the members of its Private Partner Self Control Unit shall be available to attend any meetings with the Implementing Agency, the Independent Engineer and/or the Independent Auditor at all reasonable times, as required and Notified by the Implementing Agency, the Independent Engineer and/or the Independent Auditor (as applicable) to the Private Partner. All costs for attending such meetings by (including those relating to preparation and attendance in such meetings by the Private Partner Self Control Unit) shall be on the Private Partner’s account.

7.3.7 The Private Partner Self Control Unit or the Private Partner shall perform testing or quality assurance tasks in relation to the Project Highway only through other specialized personnel of the Private Partner. The Private Partner shall ensure that such tasks are carried out by appropriately qualified and experienced personnel, in accordance with the requirements of this Agreement.

7.3.8 The Private Partner Self Control Unit will establish a communications system for monitoring and communicating specific complaints about the Project Highway.

**7.4 PRIVATE PARTNER AUTHORIZED REPRESENTATIVE & PRIVATE PARTNER PROJECT ENGINEER**

7.4.1 Within seven (7) days following the Effective Date, the Private Partner shall:

- (a) appoint, with the prior written consent of the Implementing Agency (which consent shall be deemed to be accorded in case no response from Implementing Agency is received within fifteen (15) days of Implementing Agency’s receipt of the Private Partner’s written request for such consent) and prior Notification to the Independent Engineer and the Independent Auditor, its representative duly authorized to deal with the Implementing Agency in respect of all matters under or arising out of or relating to this Agreement (the **Private Partner Authorized Representative**);
- (b) appoint, with the prior written consent of the Implementing Agency (which consent shall be deemed to be accorded in case no response from Implementing Agency is received within

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

fifteen (15) days of Implementing Agency’s receipt of the Private Partner’s written request for such consent) and prior Notification to the Independent Engineer and the Independent Auditor, at its sole cost and expense one or more established consulting engineering firm to design and supervise the Installation Works and in particular to ensure that the Installation Works are performed and are in accordance with the Applicable Specifications and Good Industry Practice (the **Private Partner Project Engineer**);

- (c) ensure that the Private Partner Authorized Representative or the Private Partner Project Engineer perform their respective obligations in the same manner as the Private Partner is required to perform its obligations under this Agreement; and
- (d) prior to the appointment or any substitution of the Private Partner Authorized Representative and/or the Private Partner Project Engineer, the Private Partner shall submit the details of the same to the Implementing Agency in writing (with copies to the Independent Engineer and the Independent Auditor) and shall provide any other information reasonably requested by the Implementing Agency in respect of the same.

7.4.2 The Private Partner shall substitute the Private Partner Authorized Representative and the Private Partner Project Engineer with the prior approval of the Implementing Agency. The approval by the Implementing Agency shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event the Implementing Agency fails to grant its approval or disapproval to the Private Partner for the appointment and/or substitution of the Private Partner Authorized Representative and/or the Private Partner Project Engineer within fifteen (15) days following the receipt of such request by the Implementing Agency from the Private Partner, the approval of the Implementing Agency for the appointment and/or substitution of the Private Partner Authorized Representative and/or the Private Partner Project Engineer shall be deemed accorded. The Private Partner hereby unconditionally and irrevocably confirms, acknowledges and agrees that the liability of the Private Partner for the performance of its obligation pursuant to this Agreement shall neither be rescinded, waived, reduced, cancelled, terminated and / or in any manner adversely impacted as a direct and / or indirect consequence of the approval or otherwise of the Implementing Agency pursuant to this Section.

**7.5 THE CIVIL WORK CONTRACTOR & THE O&M CONTRACTOR**

7.5.1 The Private Partner hereby undertakes that it shall:

- (a) ensure that the Civil Work Contract and the O&M Contracts are entered into on an arm’s length basis and on commercially viable terms;
- (b) ensure that the assets created and/or constructed forming part of the Concession Assets pursuant to the Civil Work Contract and the O&M Contract vest in Implementing Agency on the Transfer Date;
- (c) ensure that the Civil Work Contractor or the O&M Contractor perform their respective obligations in the same manner that the Private Partner is required to perform its obligations under this Agreement; and
- (d) deliver copies of each of the Civil Work Contract(s) and the O&M Contract(s) to the Implementing Agency within five (5) days of its execution prior to Civil Work Contractors’ mobilization.

7.5.2 The Implementing Agency shall not be liable for losses (including any Losses) of any nature resulting from the Civil Work Contract and the O&M Contract entered into by the Private Partner as a result of the expiry of the Concession Period or Termination of this Agreement.

7.5.3 Prior to the appointment or any substitution of the Civil Work Contractor and/or the O&M Contractor, the Private Partner shall submit the details of the same to the Implementing Agency, the Independent Engineer and the Independent Auditor and shall provide any other information reasonably requested by the Implementing Agency, the Independent Engineer and the Independent Auditor in respect of the same.

7.5.4 The Implementing Agency shall have the right to approve and/or disapprove the appointment and/or replacement of the Civil Work Contractor and/or the O&M Contractor, if:

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- (a) any such appointment and/or replacement, in the reasonable opinion of the Implementing Agency, has any implications on national security interests of Pakistan; and/or
- (b) such Civil Work Contractor and/or O&M Contractor is from the country of origin that is proscribed by the Applicable Laws and/or is blacklisted by any Government Agency;

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

7.5.5 The Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters) shall have the right to approve and / or disapprove the appointment and / or replacement of the Civil Work Contractor and/or the O&M Contractor, if any, in the event (in the reasonable opinion of the Independent Engineer (in respect of technical matters) and the Independent Auditor (in respect of financial matters)):

- (a) such Civil Work Contractor is technically and financially incapable (to the extent of its scope of work) of performing the Installation Works (or any part thereof); or
- (b) such O&M Contractor is technically and financially incapable (to the extent of its scope of work) to perform the Operations and Maintenance (or any part thereof).

7.5.6 The execution of the Civil Work Contract(s) and/or the O&M Contract(s), or any amendment thereof shall be subject to the prior approval of the Independent Engineer in respect of payment terms, payment milestones, scope of the relevant Project Works and technical matters. The Private Partner shall deliver to the Independent Engineer copies of the proposed Civil Work Contract(s) and O&M Contract(s) (with a copy to the Implementing Agency), or any amendment thereof. The Implementing Agency shall, within fifteen (15) days of its receipt of the proposed Civil Work Contract(s) and/or the O&M Contract(s), provide its comments or observation on the same, if any, to the Independent Engineer. The Independent Engineer shall within twenty-eight (28) days of the delivery of the proposed Civil Work Contract(s) and O&M Contract(s) and/or any amendments thereof by the Private Partner, grant its approval or disapproval of the same, in consultation with Implementing Agency, and/or after removing any objection by Implementing Agency). In the event no approval or objections to the proposed Civil Work Contract(s) and/or the O&M Contracts is granted by the Independent Engineer within twenty-eight (28) days of the delivery of the same by the Private Partner, it shall be deemed not to have been objected to by the Independent Engineer.

7.5.7 The Private Partner shall deliver certified (as being true and correct) copies of the executed Civil Work Contract(s) and O&M Contract(s), together with all amendments thereto, to the Implementing Agency, the Independent Engineer and the Independent Auditor within seven (7) days of execution of the same.

## **7.6 PRIVATE PARTNER PERMITS**

7.6.1 The Private Partner shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Private Partner Permits in the prescribed form and with the prescribed fee (in each case, in accordance with the Applicable Laws) to the appropriate Government Agency and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the Applicable Laws applied in a “*non-discriminatory*” manner.

7.6.2 The Private Partner shall make or cause to be made, at least monthly prior to the Installation Completion Date, and at least quarterly thereafter, reports listing its schedule for submitting Private Partner Permits application forms or renewal application forms, the status of any Private Partner Permit applications then outstanding, notifications of the granting or denial of any Private Partner Permit or Private Partner Permit renewal, and notifications of any violations of any Private Partner Permit. Each report shall be submitted to the Implementing Agency, the Independent Engineer and the Independent Auditor and shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any Private Partner Permit or Private Partner Permit application that may materially affect the Private Partner’s performance under any Implementing Agency Agreement. In the event of any

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

Lapse of Consent, the Private Partner shall submit a report pursuant to this Section 7.6.2 within three (3) days after becoming aware thereof.

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**7.8 NOT USED**

**7.9 ACCESS ROUTE & TRANSPORTATION**

7.9.1 The Private Partner shall be responsible for selection and usage of all transportation means, transportation routes, roads, bridges, highways and routes within, and to and from the Project Site in respect of performance of its Project Works and the Implementing Agency shall not be responsible for any claims attributable to Private Partner in respect of the same. The Private Partner shall (as between the Parties) be responsible for the repair of access routes damaged by the Private Partner and/or the Private Partner Self Control Unit.

**7.10 TAXES AND SUBSIDIES**

7.10.1 The Private Partner shall be responsible to make all payments in respect of the rates, taxes (as applicable), charges, levies, assessments or equivalent taxes levied on it.

7.10.2 The Private Partner may raise any objections in terms of any charges levied on it by any Government Agency; provided, that such objections shall be filed and pursued at the Private Partner's cost and the Private Partner shall be entitled to any benefit accruing as a result of the Private Partner's successful objection.

7.10.3 The Private Partner fully understands that the Implementing Agency or any other Government Agency shall not provide any guarantee, subsidy, grant or any financial support of any nature to the Private Partner in respect of the Project other than as provided under the Implementing Agency Agreements.

**7.11 PROTECTION OF THE ENVIRONMENT**

7.11.1 The Private Partner shall comply with all Applicable Specifications (including any condition which may from time to time be imposed by any Governmental Authority, including the '*Punjab Environmental Protection Agency*' as regards collection, treatment and disposal or discharge of effluents or waste) pertaining to protection of the environment in its arrangements, execution of Project Works, procurement, and operations on Project Site. The Private Partner shall take all necessary steps to protect the environment (both on and off the Project Site) and shall not cause damage and nuisance to people and property resulting from pollution, noise and other results of its operations. The Private Partner shall ensure that air emissions, surface discharges and effluent from the Project Site during the Concession Period shall not exceed the values prescribed by Applicable Specifications.

7.11.2 The Private Partner shall provide properly designed storage areas for its hazardous materials that are impermeable to leakage into the surrounding soil for storage of hazardous wastes. Such storage shall also be covered and protected from inundation and overflow by rainfall into the surrounding soil. Any hazardous materials generated during completion of the Project Works by the Private Partner (including any members of its Private Partner Self Control Unit) shall be properly disposed off by the Private Partner on completion of the Works. The Private Partner shall be responsible for keeping safe and disposing any hazardous materials and any dangerous substances on the Project Site generated from time to time during performance and completion of the Project Works or brought on to the Project Site by the Private Partner.

7.11.3 The Private Partner undertakes to indemnify, defend and hold the Implementing Agency harmless from any and all liabilities, claims, damages, costs, penalties, fines, expenses, fees (including reasonable attorney's fees) and charges of any nature associated with any non-compliance by the Private Partner of its obligations contained in this Section 7.11.3 (*Protection of Environment*).

**7.12 INTERNAL INFRASTRUCTURE LINKAGES**

7.12.1 The Private Partner shall be responsible for internal infrastructure linkages required for the Project such as wastewater and storm water drainage at the Project Site. The Implementing Agency shall use reasonable efforts to facilitate the provision with respective Government Authorities at no cost to itself and it shall be the Private Partner's responsibility to fulfil any monetary or other compliances, as may be required by such Government Authorities.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**7.13 EMERGENCY DECOMMISSIONING**

7.13.1 In the event, during the Operations Period, in the reasonable opinion of the Private Partner, there exists an Emergency that warrants de-commissioning and closure to traffic and / or the Users of the whole or any part of the Concession Assets (the **Decommissioned Project Area**), the Private Partner shall be entitled to de-commission and close the whole or any part of Decommissioned Project Area, as the case may be, to the traffic and / or the Users for so long as such Emergency and the consequences thereof warrant (the **Emergency Decommissioning**); provided, however, that such Emergency Decommissioning and the particulars thereof shall be notified by the Private Partner to the Implementing Agency and the Independent Engineer without any delay, and the Private Partner shall diligently abide by the Applicable Specifications (including the Safety Requirements) in dealing with such Emergency Decommissioning and act in accordance with the directions that the Independent Engineer may issue for dealing with such Emergency Decommissioning; provided, however:

- (a) that the Independent Engineer shall, within seven (7) days from the date of the Emergency Decommissioning, certify whether such Emergency Decommissioning was warranted; and
- (b) that the Private Partner shall re-commission the Decommissioned Project Area, without any delay, whenever the Independent Engineer either: (i) notifies the Private Partner to re-commission the same; or (ii) certifies that such Emergency Decommissioning was not warranted.

7.13.2 Without prejudice to the provisions of Section 7.13.1 (b), the Private Partner hereby undertakes to re-commission the Decommissioned Project Area efficiently and in a time sensitive manner and as quickly as practicable after the circumstances leading to the Emergency Decommissioning have ceased to exist or have so abated as to enable the Private Partner to re-commission the Decommissioned Project Area and shall notify the Implementing Agency and the Independent Engineer of the same without any delay.

7.13.3 The Emergency Decommissioning of the Decommissioned Project Area and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected Persons / Users by means of public announcements/notice by the Implementing Agency. The Independent Engineer shall determine whether the Private Partner has successfully re-commissioned the Decommissioned Project Area and made the same available for traffic / Users as soon as practicable upon the termination / ceasing of the circumstances that have resulted in the Emergency Decommissioning.

7.13.4 All expenses, charges, fees, overheads and costs of any nature and all delays, in each case, resulting from and relating to the Emergency Decommissioning shall be borne by and shall be on account of the Private Partner; provided, however, in the event the Emergency Decommissioning results from a Implementing Agency Event of Default and/or a Force Majeure Event, the Private Partner shall be entitled to issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

**7.14 RESTORATION OF LOSS OR DAMAGE TO PROJECT**

7.14.1 Save and except as a result of a Permitted Events (excluding a Non Political Event), in the event that the Project Works and/or Concession Assets or any part thereof suffers any loss or damage during the Concession Period, the Private Partner shall, at its cost and expense, rectify and remedy such loss or damage forthwith in accordance with the Applicable Specifications so that the Project Works and the Concession Assets conform to the Applicable Specifications.

**7.15 ACCOUNTS AND REPORTS**

**7.15.1 APPOINTMENT OF AUDITORS**

The Private Partner shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment, as statutory auditors, of a reputed firm of independent chartered accountants reasonably acceptable to the Implementing Agency and the Independent Auditor.

**7.15.2 SPECIFIC RECORDS**

The Private Partner shall maintain complete and accurate records accounting for all transactions relating to any Relief Order, Relief Costs, extensions of Time For Completion, Change of Scope,

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

minutes of board meetings and shareholder meetings and other records, which records shall be subject to inspection and audit by the Implementing Agency, the Independent Engineer and the Independent Auditor.

**7.15.3 PERIODIC REPORTS**

The Private Partner shall in accordance with this Agreement furnish to the Implementing Agency, the Independent Engineer and the Independent Auditor the O&M Quarterly Status Report.

The Private Partner shall, as soon as available but in any event within ten (10) days of filing, furnish to the Implementing Agency, the Independent Engineer and the Independent Auditor two (2) copies of all documents filed in compliance with the requirements of the Companies Act, 2017 as amended or superseded from time to time or any other Applicable Laws.

The Private Partner shall, as soon as available, furnish to the Implementing Agency, the Independent Engineer and the Independent Auditor, a report on any factors materially and adversely affecting, or that might materially and adversely affect, the Project or the Private Partner’s business and operations.

**7.15.4 REPORTING OF CHANGES**

The Private Partner shall, at least fourteen (14) days prior to its becoming effective, report to the Implementing Agency, the Independent Engineer and the Independent Auditor any contemplated (i) material change in its memorandum and articles of association; (ii) change in its fiscal year; (iii) change in the constitution of its board of directors; (iv) change in its chief executive officer, and (v) without prejudice to the provisions of Section 10.3 (*Change of Control*), registration of a transfer of Shares to any Person who thereby becomes a registered holder of greater than five percent (5%) of the issued Shares, or of a transfer of Shares to or from a Person or entity who, immediately prior to such transfer, held greater than five (5) percent of the issued Shares; provided, however, that, reporting as aforesaid shall not relieve the Private Partner from its obligations or liabilities towards any other Government Agency having jurisdiction over any such matter.

**7.15.5 [NOT USED]**

**7.15.6 INFORMATION REGARDING STATUTORY NOTICE/WINDING UP PROCEEDINGS**

The Private Partner shall, within seven (7) days of receipt thereof, provide to the Implementing Agency, the Independent Engineer and the Independent Auditor a copy of any notice that the Private Partner may be served under Sections 301 and 302 (as such Sections may be amended, modified or relocated) of the Companies Act, 2017 by any of its creditors.

The Private Partner shall provide to the Implementing Agency, the Independent Engineer and the Independent Auditor all information in respect of any further actions taken by its creditors following any notice under Sections 301 and 302 (as such Sections may be amended, modified or relocated) of the Companies Act, 2017.

**7.15.7 FAILURE BY THE PRIVATE PARTNER TO SUBMIT REPORTS, DOCUMENTS AND INFORMATION**

In addition to the rights the Implementing Agency may have under this Agreement or under the Applicable Laws, in the event that the Private Partner fails to submit any of the documents, reports or information as and when required under this Agreement, the Implementing Agency shall be entitled to assess against and recover from the Private Partner reasonable costs established from time to time by the Implementing Agency for such non-compliance. Such reasonable costs shall be paid to the Implementing Agency within ten (10) days of notice of such non-compliance and assessment by the Implementing Agency.

**7.16 AFFIRMATIONS**

7.16.1 The Private Partner hereby declares that it has not obtained or induced the procurement of this Agreement and/or any Project Agreement and/or any Implementing Agency Agreement and/or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to this Agreement and/or any Implementing Agency Agreement and/or the Project from the Implementing Agency and/or any Government Agency through any corrupt (including Corrupt Act) or illegal business practice.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- 7.16.2 Without limiting the generality of the foregoing, the Private Partner represents and warrants that it has fully disclosed in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Private Partner for services provided) paid or payable to any Person within or outside Pakistan in relation to the Project and has not given or agreed to give and shall not give, or agree to give to any Person within or outside Pakistan either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of any Implementing Agency Agreement or any Project Agreement or any contract, right, interest, privilege or other obligation or benefit related to any Implementing Agency Agreement or the Project from the Implementing Agency or any Governmental Authority, except that which has been expressly declared pursuant hereto.
- 7.16.3 The Private Partner accepts full responsibility and strict liability for making any intentional false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Private Partner agrees in the event that any of the representations and warranties made by it in Section 7.16.1 and 7.16.2 are proved to be materially incorrect, that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Implementing Agency, be voidable and without legal effect at the option of the Implementing Agency.
- 7.16.4 Notwithstanding any rights and remedies that are available to and may be exercised by the Implementing Agency in this regard, the Private Partner agrees to indemnify the Implementing Agency for any loss (including Losses) or damage incurred by it on account of its corrupt business practices and further pay compensation to the Implementing Agency in an amount equivalent to ten (10) times the amount of any commission, gratification, bribe, finder's fee or kickback paid or given by the Private Partner (either directly or indirectly through any natural or juridical Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, sponsors or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders or sponsors), as aforesaid for the purpose of obtaining or inducing the procurement of any Implementing Agency Agreement or any Project Agreement or any contract, consent, approval, right, interest, privilege or other obligation or benefit related to any Implementing Agency Agreement or the Project from the Implementing Agency or any Governmental Authority.

**7.17 NO RELIEF FROM LIABILITY**

- 7.17.1 No review, non-objection or approval by the Implementing Agency, the Independent Engineer, the Independent Auditor or any Government Agency of any Concession Asset or Project Works (including any agreement, document, instrument, drawing, specifications or design proposed by the Private Partner) shall relieve the Private Partner from any liability that it would otherwise have had for its negligence in the performance and completion of the Project Works and the Concession Assets (including preparation of an agreement, document, instrument, drawing, specification or design) or failure to comply with the Applicable Laws with respect thereto, or to satisfy the Private Partner's obligations under the Implementing Agency Agreements, nor shall the Implementing Agency, the Independent Engineer, the Independent Auditor or any Government Agency be liable to the Private Partner or any other Person by reason of its review and approval of an agreement, document, instrument, drawing, specification, or design.
- 7.17.2 The Private Partner shall, at all times, be responsible and liable for all its obligations under the Applicable Specifications notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or other agreement shall excuse the Private Partner from its obligations or liability hereunder.

**7.18 WITHOUT PREJUDICE**

- 7.18.1 The representations, warranties, undertakings, obligations, roles and responsibilities of the Private Partner set out in this Article 7 (*Private Partner's Representations, Warranties And Certain Obligations & Undertakings*) shall not limit or prejudice in any manner the representations, warranties, undertakings, obligations, roles and responsibilities of the Private Partner set out elsewhere in the Implementing Agency Agreements.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**8. IMPLEMENTING AGENCY REPRESENTATIONS, WARRANTIES AND CERTAIN OBLIGATIONS & UNDERTAKINGS**

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**8.1 IMPLEMENTING AGENCY REPRESENTATIONS & WARRANTIES**

8.1.1 The Implementing Agency hereby represents and warrants to the Private Partner that:

- (a) it has taken all necessary actions under Applicable Laws to:
  - (i) authorize the execution, delivery and performance of this Agreement; and
  - (ii) validly exercise its rights and perform its obligations under this Agreement;
- (b) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (c) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (d) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a Material Adverse Effect;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Agency which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its material obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil liabilities which in the aggregate have or may have a Material Adverse Effect.

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

**8.2 GENERAL UNDERTAKINGS**

8.2.1 The Implementing Agency hereby undertakes to the Private Partner that it shall:

- (a) ensure peaceful use of the Project Site by the Private Partner without any let or hindrance from the Implementing Agency and/or any person or Government Agency claiming through or under them;
- (b) procure assistance from the Punjab Highway Patrol for regulation of traffic on the Project Highway and provide reasonable assistance to the Private Partner in procuring police assistance for removal of trespassers, removal of encroachments and security on and/or in respect of the Project;
- (c) upon written request of the Private Partner, provide Punjab Highway Patrol support at and/or near the Project Site as required by the Private Partner;
- (d) provide reasonable support and cooperate with and facilitate the Private Partner in the implementation of the Project in accordance with the provisions of the Implementing Agency Agreements; and

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (e) issue the Toll Notification (substantially, in the form set out in **SCHEDULE R (Form of Toll Notification)** as per **SCHEDULE P (Toll Notification Structure)** and Applicable Laws in order to implement the Toll Notification Structure.

**8.3 SUPPORT FOR PRIVATE PARTNER PERMITS & CONDITIONS FOR PRIVATE PARTNER PERMITS**

8.3.1 Subject to the Private Partner’s timely submission of reports required by Section 7.6.2, upon request of the Private Partner, the Implementing Agency shall support and use reasonable efforts to expedite consideration of the applications for the Private Partner Permits or reissuance(s) thereof filed pursuant to Section 7.6 (*Private Partner Permits*), and the timely issuance thereof or reissuance of a Private Partner subject to a Lapse of Consent by any Government Agency. Any request for support under this Section shall be made by the Private Partner and shall be accompanied with copies of the application for the Private Partner Permit, any notice that the issuance or reissuance of the Private Partner Permit was denied or deferred, and a statement of the efforts in obtaining the issuance or reissuance of the Private Partner Permit to date.

8.3.2 The Implementing Agency or any Government Agency may attach such “*non discriminatory*” terms and conditions (as explained in Section 8.6 (*Non-Discriminatory*)) to the issuance or renewal of any of the Private Partner Permits as are in accordance with the Applicable Laws and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Implementing Agency, a Force Majeure Event, or a Implementing Agency Event of Default. The Private Partner and its Contractors shall abide by all such terms and conditions (subject to this Section 8.3.2 and provisions in this Agreement relating to Lapse of Consent). If the Private Partner (including where it is acting through its Contractors) fails to abide by any term or condition of any Private Partner Permit, then the Implementing Agency or any Government Agency may exercise any power pursuant to the Applicable Laws (provided such power is exercised in a “*non-discriminatory*” manner) in respect of such failure and (subject to this Section 8.3.2 and provisions in this Agreement relating to Lapse of Consent) such exercise shall not of itself constitute a breach of this Agreement by the Implementing Agency, a Force Majeure Event, or a Implementing Agency Event of Default; provided, however, that, with respect to all such Private Partner Permits issued by the Implementing Agency or any Government Agency that is also a department or instrumentality of Implementing Agency, the Implementing Agency shall not, and the Implementing Agency shall ensure that no such Government Agency shall, terminate prior to its expiration date or revoke any such Private Partner Permit earlier than the later of (a) thirty (30) days after delivery to the Private Partner (or the relevant Contractor) of written notice by the Implementing Agency or such department or instrumentality of Implementing Agency of such failure and (b) the period of time, if any, that must expire under the Applicable Laws or the relevant Private Partner Permit prior to early termination or revocation of any such Private Partner Permit; provided, further, that nothing in this Section shall limit the Implementing Agency or any Government Agency from taking any action in relation to a breach of, or non-compliance with, a Private Partner Permit (other than termination or revocation) which it is entitled to take under the Applicable Laws (provided such action is taken in a “*non-discriminatory*” manner).

**8.4 SUPPORT FOR OBLIGATIONS**

8.4.1 Upon reasonable request by the Private Partner, the Implementing Agency shall use its reasonable efforts and its good offices to support the Private Partner’s performance of its obligations under and pursuant to this Agreement, including, its obligations to operate and maintain the Concession Assets. If the Private Partner has failed to comply with its obligations under any Implementing Agency Agreement and such failure is the principal cause of the Private Partner’s difficulties in performing such activities, the Implementing Agency may advise the Private Partner of such determination, and the Implementing Agency shall not be obligated to take any action to assist the Private Partner until such time as the Private Partner has fully complied with its obligations under the Implementing Agency Agreements. By agreeing to use its reasonable efforts and its good offices to support the Private Partner’s efforts, the Implementing Agency has not relieved, and does not relieve in any way, the Private Partner of its obligations or potential liability under the Implementing Agency Agreements and the other documents comprising the Project Agreements.

**8.5 PROCEDURE**

8.5.1 To the extent permitted under the Applicable Laws, all applications and any other necessary requisites, whether for the Private Partner, its employees or Contractors, are to be routed through the Private Partner.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**8.6 NON-DISCRIMINATORY**

8.6.1 The use of the term “*non-discriminatory*” or “*discriminatory*” in any Implementing Agency Agreement is not intended to prohibit or limit in any way the Implementing Agency or any Government Agency from making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the Implementing Agency or any Government Agency or of a Private Partner Permit. It is intended, however, to prohibit the use of Government Agency, over Private Partner Permits, for example, to deprive the Private Partner of the benefits of the Implementing Agency Agreements or any other Project Agreement by the application of a higher standard to the Private Partner (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

**8.7 PROJECT MANAGEMENT/IMPLEMENTATION UNIT**

8.7.1 The Project Management/Implementation Unit shall oversee the day-to-day implementation of the Project and facilitate implementation of the Project Highway in accordance with Applicable Laws on the Users.

**8.8 IMPLEMENTING AGENCY PROJECT MANAGER**

8.8.1 Unless already appointed prior to the Effective Date, the Implementing Agency shall, within seven (7) days following the Effective Date, appoint its representative duly authorized to deal on its behalf to facilitate on all matters under or arising out of or relating to the Implementing Agency Agreements (the **Project Manager**). The Implementing Agency may, by notice in writing to the Private Partner, substitute the Project Manager at its discretion at any time. The Implementing Agency shall ensure that at all times during the Concession Period, the Project Manager remains appointed.

**8.9 IMPLEMENTING AGENCY OVERRIDING POWERS**

8.9.1 Notwithstanding anything contained in this Agreement, the Implementing Agency shall have the right upon the occurrence of a national emergency, civil commotion and / or as a consequence of a Force Majeure Event, to take over the performance of any or all the obligations of the Private Partner to the extent deemed necessary by the Implementing Agency or as directed by the relevant Government Agency, and exercise such control over the Concession Assets and / or give such directions to the Private Partner as may be deemed necessary by the Implementing Agency; provided, however, that the exercise of such overriding powers by the Implementing Agency shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which causes the exercise of such overriding power by the Implementing Agency (the **Implementing Agency Overriding Power Event**). The Private Partner hereby agrees to act in accordance with the instructions issued by the Implementing Agency pursuant to the provisions of this Section and undertakes to provide assistance and co-operation to the Implementing Agency for performance of its obligations hereunder. In the event the Implementing Agency exercises its overriding powers under this Section 8.9 (*Implementing Agency Overriding Powers*) whereby the Private Partner incurs any costs and expenses and/or is delayed in performance of its obligations under this Agreement, the Private Partner shall be entitled to issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

**8.10 SOVEREIGN IMMUNITY**

8.10.1 The Implementing Agency unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of the Implementing Agency Agreements and all other agreements, documents and writings relating to the same constitute private and commercial acts and not public or governmental acts;
- (b) agrees that should any proceedings be brought against it or its assets (other than any of its assets which are significant in respect of national security of Pakistan (the **Protected Assets**)) in any jurisdiction in relation to the Implementing Agency Agreements or any transaction contemplated by the Implementing Agency Agreements, no immunity, sovereign or otherwise, from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Protected Assets);

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (c) waives any such right of immunity, sovereign or otherwise, which the Implementing Agency or its assets now has or may acquire in the future (other than the Protected Assets), in respect of proceedings under the Implementing Agency Agreements; and

**8.11 WITHOUT PREJUDICE**

8.11.1 The representations, warranties, undertakings, obligations, roles and responsibilities of the Implementing Agency set out in this Article 8 (*Implementing Agency Representations, Warranties And Certain Obligations & Undertakings*) shall not limit or prejudice in any manner the representations, warranties, undertakings, obligations, roles and responsibilities of the Private Partner set out elsewhere in the Implementing Agency Agreements.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

9. **INDEMNITIES & LIMITATION OF LIABILITY**

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9.1 **GENERAL INDEMNITY**

9.1.1 **The Private Partner**

The Private Partner shall indemnify and defend the Implementing Agency, for itself and its officers, servants, agents, Government Agency and Government owned and/or controlled entities/enterprises relating to the Project (the **Implementing Agency Indemnified Persons**) against, and hold the Implementing Agency Indemnified Persons harmless from, at all times after the Effective Date, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Implementing Agency Indemnified Persons for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Private Partner in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 9.1.1 shall apply to any Loss in respect of and to the extent of which the Implementing Agency receives proceeds from insurance policies relating to the Project.

9.1.2 **The Implementing Agency**

Except as specifically provided elsewhere in this Agreement, the Implementing Agency shall indemnify and defend the Private Partner, for itself and as trustee for its officers, directors and employees against (the **Private Partner Indemnified Persons**), and hold the Private Partner Indemnified Persons harmless from, at all times after the Effective Date, any and all Loss incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon the Private Partner Indemnified Persons for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Implementing Agency in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 9.1.2 shall apply to any Loss in respect of and to the extent of which the Private Partner receives proceeds from insurance policies or indemnification from another party relating to the Project.

9.1.3 **Joint Negligence**

In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties (as determined by the Independent Engineer and the Independent Auditor), each Party shall be liable under this indemnification in proportion to its relative degree of fault, as determined by the Independent Engineer and the Independent Auditor.

9.2 **ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT**

9.2.1 Each Party shall be solely liable and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Accounting Year, exceed the Minimum Indemnification Amount. For the purposes of this Section 9.2 (*Assertion of Claims to Exceed Minimum Indemnification Amount*), a Loss (or claim for indemnification) shall be deemed to arise in the Accounting Year in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one (1) Accounting Year, in the Accounting Year such event ends.

9.3 **NOTICE AND CONTEST OF CLAIMS**

9.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 9 (*Indemnities & Limitation of Liability*) (the **Indemnified Party**) it shall notify the other Party (the **Indemnifying Party**) within twenty-one (21) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

9.4 **DEFENSE OF CLAIMS**

9.4.1 The Indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defense of such claim, action, suit or proceeding, subject to the prior approval

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

of the Indemnified Party; provided, however, it gives prompt notice of its intention to do so to the Indemnified Party, and reimburses the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to assumption by the Indemnifying Party of such defense.

9.4.2 Not Used.

9.4.3 Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 9.4.1, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

9.4.4 Upon assumption by the Indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of the Indemnified Party in the defense of the claim, suit, action or proceeding prior to the Indemnifying Party’s acknowledgment of the Indemnification and assumption of the defense.

9.4.5 Following acknowledgment of the indemnification and assumption of the defense by the Indemnifying Party, the Indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

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

Provided that if Sections 9.4.5, (b), (c) or (d) shall be applicable, then the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**9.5 NO CONSEQUENTIAL CLAIMS**

9.5.1 Notwithstanding anything to the contrary contained in this Article 9 (*Indemnities & Limitation of Liability*), the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**9.6 SURVIVAL ON TERMINATION**

9.6.1 The provisions of this Article 9 (*Indemnities & Limitation of Liability*) shall survive Termination for a maximum period of five (5) years following Termination and the provisions of this Article 9 (*Indemnities & Limitation of Liability*) shall apply solely in respect of claims that arose immediately on or prior to the Termination Date.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**9.7 LIMITATION OF LIABILITY & INDEMNIFICATION FOR FINES AND PENALTIES**

- 9.7.1 Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability (except as may be expressly provided in any Implementing Agency Agreement), or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages; provided, that the Implementing Agency hereby agrees that the Termination Payment payable under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of any Implementing Agency Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to any Implementing Agency Agreement or to any activity not contemplated by the same.
  
- 9.7.2 Any fines or other penalties incurred by the Private Partner for non-compliance with the Applicable Laws or other governmental directions issued pursuant thereto and in accordance therewith or the Private Partner Permits shall not be reimbursed by Implementing Agency or any Government Agency but shall be the sole responsibility of the Private Partner.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**10. FUNDING REQUIREMENTS & SHAREHOLDING MATTERS**

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**10.1 FUNDING OF EQUITY**

10.1.1 The Private Partner hereby undertakes to procure funding by the Sponsor from time to time of the Sponsor Base Equity Amount through subscription in cash in Pak Rupees for Shares by the Sponsors.

**10.2 SHARES**

10.2.1 [not used].

10.2.2 Upon funding of the Sponsor Base Equity Amount (or any part thereof) by the Sponsors from time to time, the Sponsors shall be issued Shares by the Private Partner in accordance with the Applicable Laws. The obligation to fund the Sponsor Base Equity Amount shall be independent of the shareholding of the Sponsor in the Private Partner.

10.2.3 The Private Partner shall not create any classes of its shares without the prior approval of the Implementing Agency.

**10.3 CHANGE IN COMPLETE CONTROL, CHANGE IN CONTROL AND CHANGE IN SHAREHOLDING**

10.3.1 The Private Partner shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change In Complete Control until the Installation Completion Date unless such Change In Complete Control:

- (a) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Agency with appropriate jurisdiction;
- (b) is affected with the prior written approval of the Implementing Agency; and
- (c) Any Person, to whom any Shares in the Private Partner are being sold to, shall at least possess the similar level of professional expertise, technical capability, financial capacity and legal status as the Sponsor on the basis of which the Sponsor was awarded this Agreement.

10.3.2 The Private Partner shall not undertake or permit and hereby undertakes to procure that the Sponsor does not undertake or permit any Change In Control until the Transfer Date unless such Change In Control:

- (a) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Agency with appropriate jurisdiction; or
- (b) is affected with the prior written approval of the Implementing Agency; provided, that: (i) the Change In Control does not take place within a period of five (5) years from the Scheduled Commencement Date; (ii) any Person, to whom any Shares in the Private Partner are being sold to, shall at least possess the similar level of professional expertise, technical capability, financial capacity and legal status as the Sponsor on the basis of which the Sponsor was awarded this Agreement; (iii) the Implementing Agency shall provide its determination in writing within ninety (90) days of the Implementing Agency having received a written request by the Private Partner; and (iv) the Implementing Agency shall exercise its discretion to grant such approval under this Section 10.3.2 in accordance with, *inter alia*, the Applicable Laws.

10.3.3 Any Change of Shareholding, carried out pursuant to this Article 10.3 shall only be permitted if the Person(s) acquiring and/or subscribing to the Shares resulting in the Change of Shareholding is:

- (a) is not from a nationality proscribed by the Applicable Laws;
- (b) is not blacklisted by any Government Agency; and
- (c) is not a defaulter of any bank or financial institution.

**10.4 NOT USED.**

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**11. BID SECURITY, INSTALLATION PERFORMANCE GUARANTEE & O&M PERFORMANCE GUARANTEE**

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**11.1 BID SECURITY**

11.1.1 Pursuant to the requirements of the RFP, the Sponsor has submitted a duly valid and effective Bid Security to the Implementing Agency and the Private Partner hereby represents and warrants that:

- (a) the Bid Security is fully secured by the Sponsor as a principal debtor and not as surety without any recourse on the Private Partner, its assets or properties;
- (b) all costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Bid Security are solely on account of the Sponsor.

11.1.2 The Bid Security shall secure:

- (a) all of the Sponsor’s obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the RFP and any Implementing Agency Agreement to which they are a party; and
- (b) all of the Private Partner’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Implementing Agency Agreements, including the integrity and quality of the Private Partner’s and its Contractors’ workmanship, the timely and continuous performance of the Project Works, the quality and quantity of the equipment, materials, items and components supplied, the performance of Project Works by the Private Partner and compliance of the same with the Applicable Specifications and all other works and services to be provided by the Private Partner under the Implementing Agency Agreements.

11.1.3 The Bid Security shall be encashable in accordance with the terms thereof and shall be payable on the Implementing Agency’s first written demand without any prior notice, reference or recourse to the Private Partner, the Sponsors or any other entity or person.

11.1.4 The Private Partner shall be obligated to maintain and keep valid the Bid Security until submission by the Private Partner of a fully valid and effective Installation Performance Guarantee in accordance with the terms of this Agreement (the **Bid Security Expiry Date**). In the event the Bid Security expires prior to the Bid Security Expiry Date, the Private Partner shall extend the validity of the Bid Security, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the Bid Security Expiry Date. In the event of failure by the Private Partner to keep valid or extend the validity of the Bid Security in accordance with this Section 11.1.4, the Implementing Agency shall have the right to encash the Bid Security at any time prior to its expiry to its full outstanding value at any time.

11.1.5 Upon delivery of a valid and effective Installation Performance Guarantee by the Private Partner to the Implementing Agency in accordance with Section 11.2 (*Installation Performance Guarantee*), the Bid Security shall automatically terminate and be simultaneously returned to the Private Partner.

**11.2 INSTALLATION PERFORMANCE GUARANTEE.**

11.2.1 At any time prior to the Effective Date, the Private Partner shall provide and deliver to the Implementing Agency the Installation Performance Guarantee. The Installation Performance Guarantee shall not be secured through any Concession Assets. All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Installation Performance Guarantee are solely on account of the Sponsor(s).

11.2.2 The Installation Performance Guarantee shall secure:

- (a) all of the Sponsors’ obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Implementing Agency Agreements to which they are a party; and
- (b) all of the Private Partner’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Implementing Agency Agreements, including the integrity and quality of the Private Partner’s and its Contractors’ workmanship, the timely and continuous performance of the Project Works, including the

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Installation Works, during the Installation Period, the quality and quantity of the equipment, materials, items and components supplied, the performance of Project Works by the Private Partner and compliance of the same with the Applicable Specifications and all other works and services to be provided by the Private Partner under the Implementing Agency Agreements.

- 11.2.3 The Installation Performance Guarantee shall come into force and shall become automatically effective upon issuance and delivery of the same to the Implementing Agency.
- 11.2.4 The Installation Performance Guarantee shall be encashable in accordance with the terms thereof and shall be payable on the Implementing Agency’s first written demand without any prior notice, reference or recourse to the Private Partner, the Sponsors or any other entity.
- 11.2.5 The Private Partner shall be obligated to adjust the Installation Performance Guarantee from time to time to reflect any amounts payable by the Implementing Agency pursuant to Article 16 (*Change of Scope*), such increase being an amount equal to four point five percent (4.5%) of the amounts payable to the Private Partner from time to time in accordance with Article 16 (*Change of Scope*). In addition, the Installation Performance Guarantee shall be adjusted immediately so that it is equal in value to ten percent (10%) of the adjusted cost of the Installation Works.
- 11.2.6 The Private Partner shall be obligated to maintain and keep valid the Installation Performance Guarantee until the date falling six (6) months following the Installation Completion Date (the **Installation Performance Guarantee Expiry Date**), as evidenced by a completion certificate jointly issued by the Independent Engineer and the Independent Auditor. The Private Partner shall extend the validity of the Installation Performance Guarantee, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the Installation Performance Guarantee Expiry Date. In the event of failure by the Private Partner to keep valid or extend the validity of the Installation Performance Guarantee in accordance with this Section 11.2.6, the Implementing Agency shall have the right to encash the Installation Performance Guarantee at any time to its full outstanding value at any time.
- 11.2.7 Upon the issuance of the Installation Completion Certificate jointly issued by the Independent Engineer and the Independent Auditor, the Installation Performance Guarantee shall be returned to the Private Partner by the Implementing Agency in accordance with the terms of the Agreement.

**11.3 O&M PERFORMANCE GUARANTEE**

- 11.3.1 The Private Partner hereby undertakes to procure issuance and delivery to the Implementing Agency of the O&M Performance Guarantee from time to time in accordance with this Section 11.3 (*O&M Performance Guarantee*).
- 11.3.2 The Private Partner shall deliver the O&M Performance Guarantee to the Implementing Agency prior to the Installation Performance Guarantee Expiry Date and shall replace the same thirty (30) days prior to commencement of each Operational Year falling after the expiry of Installation Performance Guarantee Expiry Date. The O&M Performance Guarantee provided in the first instance shall become effective simultaneously upon return of the Installation Performance Guarantee to the Private Partner by the Implementing Agency and thereafter, each O&M Performance Guarantee provided prior to commencement of an Operational Year shall become automatically become effective simultaneously upon return of the O&M Performance Guarantee for the previous Operational Year.
- 11.3.3 [Not Used]
- 11.3.4 The O&M Performance Guarantee shall not be secured through any Concession Assets. All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the O&M Performance Guarantee are solely on account of the Sponsor(s) and/or the Private Partner.
- 11.3.5 The O&M Performance Guarantee shall secure:
  - (a) all of the Sponsors’ obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under the Implementing Agency Agreements to which they are a party; and
  - (b) all of the Private Partner’s obligations, liabilities, payments, liquidated damages, indemnities, representations, guarantees, warranties and responsibilities under the Implementing Agency

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Agreements, including the integrity and quality of the Private Partner's and its Contractors' workmanship, the timely and continuous performance of the Project Works during the Operations Period, the timely and continuous performance of the ETTMS, the quality and quantity of the equipment, materials, items and components supplied, the performance of Project Works during the Operations Period by the Private Partner and compliance of the same with the Applicable Specifications and all other works and services to be provided by the Private Partner under the Implementing Agency Agreements.

- 11.3.6 The O&M Performance Guarantee shall be encashable in accordance with the terms thereof and shall be payable on the Implementing Agency's first written demand without any prior notice, reference or recourse to the Private Partner, the Sponsors or any other entity.
- 11.3.7 The O&M Performance Guarantee provided by the Private Partner in respect of an Operational Year shall remain in force and effect until the date that falls one hundred and eighty (180) days after the expiry of such Operational Year or upon receipt by the Implementing Agency of a fully valid and effective O&M Performance Guarantee for the subsequent Operational Year in accordance with the Section 11.3.8 on or prior to such date (the **O&M Performance Guarantee Expiry Date**). The Private Partner shall extend the validity of the O&M Performance Guarantee, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Guarantee Expiry Date. In the event of failure by the Private Partner to keep valid or extend the validity of any O&M Performance Guarantee in accordance with this Section 11.3.7, it shall be considered a material breach of this Agreement and the Implementing Agency shall have the right to encash such O&M Performance Guarantee at any time prior to its expiry to its full outstanding value at any time in addition to any other remedies available to the Implementing Agency under this Agreement.
- 11.3.8 Upon the delivery of a O&M Performance Guarantee for an Operational Year (the **New O&M Performance Guarantee**) to the Implementing Agency by the Private Partner in accordance with this Section 11.3 (*O&M Performance Guarantee*) on or prior to the commencement of such Operational Year (the **New Operational Year**), the previous O&M Performance Guarantee issued for the previous Operational Year shall be null and void upon delivery of the New O&M Performance Guarantee and commencement of the New Operational Year and shall be returned to the Private Partner by the Implementing Agency upon provision of the New O&M Performance Guarantee.
- 11.3.9 Notwithstanding anything to the contrary, the Private Partner hereby undertakes and agrees that the O&M Performance Guarantee shall remain valid:
- (a) in case of Termination, at least for one (1) year after the Termination Notice has been issued;
  - (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

12. **DETAILED PROGRAMME OF PERFORMANCE**

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12.1 **NOT USED.**

12.2 **NOT USED.**

12.3 **NOT USED.**

12.4 **NOT USED.**

12.5 **DETAILED PROGRAMME OF PERFORMANCE**

12.5.1 Notwithstanding anything to the contrary, the Private Partner shall, within ninety (90) days of the Effective Date, procure issuance of the Approved Detailed Programme of Performance, which shall set out, *inter alia*, and in addition to any other matters determined by the Independent Engineer, the exact location of the Project Site, the sequence of works and operations by which the Private Partner intends to complete the Installation Works, attain and maintain the Service Levels as stipulated in this Agreement, the relocation of existing utilities on the Project Site, removal of impediments on the Project Site and all other matters relation to the operation and maintenance of the Project Highway.

12.5.2 The Parties hereby acknowledge and agree that the delivery of Vacant Possession of the Project Site, the exact area, location, relocation of existing utilities and other relevant matters relating to the same are a function of the Approved Detailed Programme of Performance.

12.5.3 The Private Partner shall, as part of the process of the Private Partner Conditions Precedent, submit its initial Detailed Programme of Performance to the Independent Engineer (with a copy to Implementing Agency) within two (2) months of the Effective Date for the approval of the Independent Engineer and Implementing Agency (the **Proposed Detailed Programme of Performance**). Within thirty (30) days of the receipt of the Proposed Programme of Performance, the Independent Engineer and Implementing Agency shall review the same and convey their observations to the Private Partner with particular reference of the conformity of the same with Applicable Specifications and **SCHEDULE B (Design Requirements)**. In case, no comments/observations are provided by the Independent Engineer and/or the Implementing Agency, as the case may be, within twenty (20) days of their receipt of the Proposed Detailed Programme of Performance, the Private Partner shall notify the Independent Engineer and Implementing Agency about such inactivity. In case, no comments are received from the Independent Engineer and/or Implementing Agency are received within ten (10) days following such notification, the Proposed Programme of Performance, as submitted by the Private Partner, will be deemed to be approved by the Independent Engineer and Implementing Agency.

12.5.4 In the event the specific observations of the Independent Engineer and Implementing Agency on the Proposed Detailed Programme of Performance indicate that the Proposed Detailed Programme of Performance is not in conformity with the Applicable Specifications, the Proposed Detailed Programme of Performance shall be revised by the Private Partner, at the cost and expense of the Private Partner, and resubmitted to the Independent Engineer and Implementing Agency, as the case may be, for their review and approval within a period of fifteen (15) days after receiving the observations of the Independent Engineer and Implementing Agency on the Proposed Detailed Programme of Performance. Following receipt of the observations on the revision (within the time periods contemplated herein), the Independent Engineer and Implementing Agency shall give their observations, if any, within seven (7) days of their receipt of the revised Detailed Programme of Performance from the Private Partner. In the event the Independent Engineer and/or Implementing Agency give their observations on the revised Detailed Programme of Performance, the Private Partner shall revise the Detailed Programme of Performance and submit the same to the Independent Engineer and Implementing Agency within 15 days after receiving of observations on the same.

12.5.5 Not Used.

12.5.6 The Private Partner may submit a revised Detailed Programme of Performance to the Independent Engineer (with a copy to the Implementing Agency) for approval, prior to the expiry of the time period prescribed in Section 12.5.5 hereinabove, if:

- (a) the actual progress of the Installation Works falls behind as per the timeframe provided in the submitted Detailed Programme of Performance; or

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (b) there are any material amendments to this Agreement which affect the ability of the Private Partner to carry out the Installation Works.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

13. **INSTALLATION WORKS**

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13.1 **INSTALLATION WORKS**

- 13.1.1 The Private Partner shall commence the Installation Works in accordance with the Applicable Specifications and shall perform and complete the same in accordance with the Installation Time For Completion. The Private Partner shall commence the Installation Works on the Commencement Date. The Private Partner shall immediately upon commencement of the Installation Works notify the Implementing Agency, the Independent Engineer and the Independent Auditor of the same.
- 13.1.2 The Private Partner shall perform the Installation Works in accordance with the requirements set out in **Schedule C (Installation Works)** and shall ensure that the same complies with the Applicable Specifications. During the Installation Period, the Private Partner shall be responsible for ensuring that the roads and lanes existing on the Project Site are available for the Users in accordance with the Applicable Specifications.
- 13.1.3 Without limiting the provisions of Section 13.1.2, the Private Partner shall be in particular responsible for the performance and compliance, in each case, of the Installation Works with the Installation Requirements.
- 13.1.4 The Private Partner shall perform the Installation Works within the Installation Time For Completion.
- 13.1.5 The Private Partner shall perform the Installation Works either itself, or through the Civil Work Contractor(s) appointed in accordance with the terms of this Agreement; provided, however, the Private Partner shall remain solely responsible and liable for performance (within Installation Time For Completion) and compliance of the Installation Requirements with the Applicable Specifications irrespective of whether the Installation Works are undertaken by the Private Partner or the Civil Work Contractor(s)

13.2 **NOT USED.**

13.3 **TRAFFIC FLOW & SAFETY**

- 13.3.1 Following commencement of the Installation Works, the Private Partner shall ensure that the existing functional roads on the Project Site remain open to traffic and that the traffic flow is safe at all times during the Installation Period in accordance with the Applicable Specifications. The Private Partner shall ensure minimal disruption in traffic on the existing functional roads and lanes situated at the Project Site.
- 13.3.2 The Private Partner undertakes to perform the Installation Works in such manner as to ensure compliance with the obligation set out in Section 13.3.1.

13.4 **NOT USED.**

13.5 **NOT USED.**

13.6 **INSTALLATION INSPECTION REPORT**

- 13.6.1 Commencing from the appointment of the Independent Engineer and until the issuance of the Final Installation Completion Certificate, the Private Partner shall procure that the Independent Engineer inspects the Installation Works and the Concession Assets, if required by the Implementing Agency, and shall make all arrangements for the same.
- 13.6.2 The Independent Engineer shall make a report of such inspection (**Installation Inspection Report**) stating in reasonable detail the Defects & Deficiencies, if any, in the Installation Works and /or the Concession Assets with particular reference to the Applicable Specifications.
- 13.6.3 The Independent Engineer shall, within fifteen (15) days of receiving a request by the Implementing Agency to inspect the Installation Works, provide a copy of the Installation Inspection Report to the Private Partner and the Implementing Agency.
- 13.6.4 The Private Partner hereby undertakes that, within thirty (30) days from receipt of the Installation Inspection Report, it shall rectify and remedy the Defects & Deficiencies, if any, stated in the Installation Inspection Report, on its own cost and expense.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

**13.7 DELAYS DURING INSTALLATION**

13.7.1 In the event the Private Partner fails to complete the Installation Works by the Installation Time for Completion, or the Independent Engineer shall have reasonably determined that the rate of progress of Installation Works is such that the Project cannot achieve Installation Completion on or before the Scheduled Installation Completion Date then the Independent Engineer shall issue a notice to the Private Partner to this effect and the Private Partner shall, within seven (7) days of such notice, inform the Independent Engineer in reasonable detail about the steps the Private Partner proposes to undertake to expedite progress and the period within which it shall achieve Installation Completion by the Scheduled Installation Completion Date.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

14. **COMPLETION**

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14.1 **COMPLETION TESTS**

- 14.1.1 At least thirty (30) days prior to the expected Commercial Operations Date, the Private Partner shall issue a notice to the Implementing Agency and the Independent Engineer (the **Completion Tests Date Notice**) fixing a date and time for performance of the Completion Tests (the **Proposed Completion Tests Date**).
- 14.1.2 The Proposed Completion Tests Date proposed by the Private Partner shall be final for the conducting of the Completion Tests; provided, however, in the event the Proposed Completion Tests Date is unacceptable to the Independent Engineer and/or the Implementing Agency, the Private Partner, the Implementing Agency and the Independent Engineer shall meet within seven (7) days of the Implementing Agency and Independent Engineer’s receipt of the Private Partner’s Completion Tests Date Notice with an aim to mutually agree on an alternative date and time for performance of the Completion Tests, which date shall be no later than ten (10) days from the Proposed Completion Tests Date. If the Parties are unable to mutually agree on an alternative date and time for performance of the Completion Tests, the Private Partner shall be entitled (with prior Notification to the Independent Engineer and the Implementing Agency) to carry out the Completion Tests on or after the tenth (10<sup>th</sup>) day from the Proposed Completion Tests Date.
- 14.1.3 Subject to the terms of this Agreement, in the event any Completion Tests are to be repeated due to reasons not attributable to the Implementing Agency, as determined by the Independent Engineer, such Completion Tests shall be repeated on account of the Private Partner.
- 14.1.4 The Completion Tests shall be attended by the Project Manager and such other representatives of the Implementing Agency as the Implementing Agency may nominate in writing, subject to notification of the same to the Private Partner and the Independent Engineer.
- 14.1.5 The Private Partner shall provide such assistance as the Independent Engineer may reasonably require for conducting the Completion Tests.

14.2 **NOT USED**

14.3 **NOT USED**

14.4 **INSTALLATION COMPLETION CHECK LIST & FAILURE TO ACHIEVE INSTALLATION COMPLETION**

- 14.4.1 The Installation Completion Check List shall be jointly signed by the Independent Engineer and the Private Partner as a confirmation of the outstanding works, actions and things required to be completed by the Private Partner in line with the relevant Project Requirements (the **Installation Completion Check List**).
- 14.4.2 The Private Partner undertakes to complete the Installation Completion Check List by the date determined by the Independent Engineer (the **Scheduled Installation Completion Date**); provided, however, the Parties agree that the Scheduled Installation Completion Date shall not be determined by the Independent Engineer to fall on any date that falls one hundred and eighty (180) days following the Scheduled Commencement Date.
- 14.4.3 In the event the Private Partner fails to complete the Installation Works within thirty (30) days of the Scheduled Installation Completion Date, then such failure of the Private Partner shall constitute a Private Partner Event of Default, and the Implementing Agency may, at its sole discretion and without prejudice to its other rights and remedies available under the Implementing Agency Agreements, terminate this Agreement in accordance with Article 23 (*Termination*).
- 14.4.4 Without prejudice to Section 14.4.3 hereinabove, in the event the Private Partner fails to complete the Installation Works by the Scheduled Installation Completion Date, the Implementing Agency may require the Private Partner to pay to the Implementing Agency damages in a sum calculated at the rate of one and a half per cent (1.5%) of the amount of Installation Performance Guarantee for each full day of delay in completing the Installation Works beyond the Scheduled Installation Completion Date up to a maximum of fifty percent (50%) of the amount of the Installation Performance Guarantee. All such damages becoming due and payable by the Private Partner shall be invoiced by the Implementing Agency to the Private Partner and shall become due and payable on the date falling thirty (30) days following the Private Partner’s receipt of such invoice. In the event of failure by the Private Partner to

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

pay such damages to the Implementing Agency by this date, the Implementing Agency shall have the right to encash the Installation Performance Guarantee in an amount equal to fifty per cent (50%) of the amount of Installation Performance Guarantee. Notwithstanding anything contained herein, the recovery of these damages shall be without prejudice to the rights of the Implementing Agency under the Implementing Agency Agreements (including the right of Termination in accordance with Section 14.4.3).

14.4.5 The Parties agree that the amounts of damages provided under this Section 14.4 (*Installation Completion Checklist & Failure to Achieve Installation Completion*) are in lieu of actual damages and are the Parties’ reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty.

**14.5 NOT USED.**

**14.6 FINAL INSTALLATION COMPLETION CERTIFICATE**

14.6.1 Within fifteen (15) days from the date of the successful conduct of the Completion Tests, the Independent Engineer shall issue a certificate certifying that the Project has achieved Installation Completion (the **Final Installation Completion Certificate**); provided, however, the Final Installation Completion Certificate may be issued only upon the confirmation by the Independent Engineer (in consultation with Implementing Agency) that the Installation Completion Check List has been completed in accordance with the Applicable Specifications.

**14.7 INSTALLATION COMPLETION DATE**

14.7.1 The Project shall be deemed to achieve installation completion (the **Installation Completion**) on the date of issuance of the Final Installation Completion Certificate (the **Installation Completion Date**).

**14.8 SCHEDULED INSTALLATION COMPLETION DATE**

14.8.1 Subject to the terms of this Agreement, the Private Partner hereby guarantees that the Installation Completion Date shall be achieved in accordance with the provisions of this Agreement and that the Installation Completion Date shall occur on or before the Scheduled Installation Completion Date.

**14.9 NOT USED**

**14.10 TITLE TO PROJECT SITE, INSTALLATION WORKS AND CONCESSION ASSETS**

14.10.1 The Implementing Agency shall retain all rights and title to the Project Site throughout the Concession Period. Subject to the terms of this Agreement, the Private Partner has, and shall have, no title to, ownership interest in or lien over, the Project Site nor shall create any Encumbrance with respect thereto.

14.10.2 Subject to Section 14.10.1, the Private Partner shall retain all legal and beneficial rights, as specified in this Agreement, and ownership on the Concession Assets (including the Installation Works) as and when the same are performed and/or completed until the Transfer Date.

14.10.3 On the Transfer Date, the Private Partner shall transfer all the ownership rights to the Concession Assets, granted pursuant to this Agreement, back to the Implementing Agency to the Implementing Agency in accordance with the terms of this Agreement.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

15. **RELIEF EXTENSIONS & RELIEF COMPENSATIONS**

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15.1 **NOT USED**

15.2 **RELIEF EVENTS**

- 15.2.1 The Private Partner shall be only entitled to initiate a request to the Independent Engineer and Independent Auditor (the **Relief Order Request**) for issuance by the same of a Relief Order relating to, as applicable, an extension of the Time For Completion and/or payment of Relief Costs by the Implementing Agency in the event of occurrence of the following event as certified by the Independent Engineer and circumstances (the **Relief Events**):
- (a) a Material Adverse Impediment; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays and to Relief Costs that, in each case, directly result from the Material Adverse Impediment and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (b) a Political Event; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays and to Relief Costs that, in each case, directly result from the Political Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (c) an Emergency Decommissioning directly resulting from a Implementing Agency Event of Default or a Political Event; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays and to Relief Costs that, in each case, directly result from Emergency Decommissioning caused by a Political Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (d) the occurrence of the circumstances set out in Section 4.9 (*Geological and Archaeological Finds*) causing a delay in the performance of the Private Partner’s obligations under this Agreement; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays and to Relief Costs that, in each case, directly result from the occurrence of the circumstances set out in Section 4.9 (*Geological and Archaeological Finds*) and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (e) the occurrence of the Implementing Agency Overriding Power Event; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays and to Relief Costs that, in each case, directly result from the Implementing Agency Overriding Power Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (f) a Non-Political Event; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays that directly result from the Non Political Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (g) an Emergency Decommissioning directly resulting from a Non-Political Event; provided, that the Private Partner shall be entitled to only an extension in Time For Completion for any delays that directly result from Emergency Decommissioning caused by a Non Political Event and as are determined by the Independent Engineer and Independent Auditor in the Relief Order;
  - (h) the Private Partner having to engage in Emergency Works due to a natural disaster as has been notified by the Government of Punjab or the Federal Government of Pakistan.
- 15.2.2 If due to the occurrence of a Relief Event the Private Partner is entitled to initiate a Relief Request, the Private Partner shall prepare and deliver to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency) a Relief Order Request, together with the Relief Order Proposal that is prepared in accordance with and is subject to Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*). Each Relief Order Request prepared in accordance with Section 15.4 (*Relief Order Procedure*) and, if applicable, Section 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*) shall specifically set out in detail the events and circumstances constituting the Relief Event, together with all supporting satisfactory documentary evidence relating thereto.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

15.2.3 Following submission to the Independent Engineer and the Independent Auditor of a Relief Order Request pursuant to Section 15.2.2, the Independent Engineer and the Independent Auditor shall proceed in accordance with Section 15.4 (*Relief Order Procedure*) and Section 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*).

15.2.4 Notwithstanding anything to the contrary, the Parties agree that the Private Partner shall not be entitled to any extensions of Time For Completion and/or Relief Costs, as applicable, due to occurrence of a Relief Event, until such time the same is determined by the Independent Engineer and the Independent Auditor and set out in the Relief Order issued by the same in accordance with this Agreement provided further that the Independent Engineer certifies that the Private Partner has no space for parallel or alternate sequencing of works available for carrying out its obligations within the prescribed timelines.

**15.3 NOT USED**

**15.4 RELIEF ORDER PROCEDURE**

15.4.1 In case the Private Partner submits a Relief Order Request to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency) pursuant to Section 15.2 (*Relief Events*) then prior to the Independent Auditor and the Independent Engineer issuing a Relief Order, the Private Partner shall prepare and submit to the Independent Auditor and the Independent Engineer (with a copy to the Implementing Agency), as soon as practicable, a detailed proposal (the **Relief Order Proposal**) containing:

- (a) a description of the proposed work to be performed and a detailed programme for its execution;
- (b) the Private Partner's proposal for any necessary modifications to the Installation Works and/or the O&M Programme, as applicable;
- (c) the Private Partner's proposal for any Relief Costs and any adjustments to Time For Completion and/or any Project Milestone Date, accompanied by detailed pricing and documentary evidence;
- (d) a statement whether and the extent to which, in Private Partner's opinion, the proposed proposals contained in the Relief Proposal would, notwithstanding the exercise of all due skill and care, result in defective Project Works or prevent the Private Partner from performing its obligations under the Agreement, including defects liability,

provided, however, each Relief Order Request and Relief Order Proposal submitted by the Private Partner that proposes an extension to Time For Completion or any Project Milestone Date for a Project Milestone shall be additionally subject to the provisions and requirements of Section 15.5 (*Additional Requirements For Relief Orders Relating To Extension Of Time For Completion*);

provided, further, however, in the event of submission of any Relief Order Request and a Relief Order Proposal, the Private Partner shall provide such additional information as the Implementing Agency, the Independent Engineer and/or the Independent Auditor may reasonably request; and

provided, further, however, the Private Partner shall keep and maintain such contemporary records (as may be necessary to substantiate any proposals contained in the Relief Order Proposal and/or the Relief Order Request) as may reasonably be requested by the Independent Engineer, the Independent Auditor and /or the Implementing Agency and the Private Partner shall permit the Independent Engineer, the Independent Auditor and /or the Implementing Agency to inspect all such records and shall provide the same Representative with copies as required.

15.4.2 The Parties agree that compliance by the Private Partner with the provisions of this Article 15 (*Relief Extensions & Relief Compensations*) shall be a condition precedent to the Independent Engineer and the Independent Auditor issuance of a Relief Order, unless waived in writing by the Implementing Agency. Further, notwithstanding anything to the contrary contained herein:

- (a) if the Project Works (or any part thereof) are not in accordance with this Agreement, any rectification in that respect undertaken by the Private Partner shall not entitle the Private Partner to issuance of a Relief Order;
- (b) the Private Partner is expressly precluded from any extension of the Time For Completion and any extension of a Project Milestone Date for Project Milestone or to payment of any Relief

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Costs due to delays resulting from any act or omission of the Private Partner and/or any member of the Private Partner Self Control Unit;

- (c) the Private Partner shall not be entitled to any extensions of the Time For Completion for any delays or failure to perform and hence shall not be entitled to initiate Relief Order Request for issuance of a Relief Order to the extent the Private Partner is, in any case, in delay of performance of its obligations under the Agreement.

15.4.3 Following receipt by the Independent Engineer and the Independent Auditor from the Private Partner of the Relief Order Proposal and the Relief Order Request, the Independent Engineer and the Independent Auditor shall review the Private Partner’s proposals contained in the Relief Order Proposal and the Relief Order Request, for the purpose of determining:

- (a) the occurrence and subsistence of the Relief Event and the Private Partner’s entitlement to issuance of the Relief Order Request;
- (b) whether to proceed with the proposals submitted by the Private Partner in its submitted Relief Order Proposal;
- (c) (if applicable) any amendments or modifications to the estimates and proposals submitted by the Private Partner in the Relief Order Proposal;
- (d) other matters set forth in the Relief Order Proposal and the Relief Order Request including determination of extension of Time For Completion and Relief Costs; and
- (e) any other matters considered necessary by the Independent Engineer and the Independent Auditor for the purposes of issuance of the Relief Order.

15.4.4 Following the Independent Engineer and the Independent Auditor’s determination of matters set out in Section 15.4.3 (together with any other matters relating to their evaluation for issuance for Relief Order), the Independent Engineer and the Independent Auditor shall either amend, approve or disapprove in writing the Private Partner’s submitted proposals contained in the Relief Order Proposal and the Relief Order Request within twenty-one (21) days following receipt by the Independent Engineer and the Independent Auditor from the Private Partner of the Relief Order Proposal and the Relief Order Request. If the Independent Engineer and the Independent Auditor amend, modify or reject the Relief Order Proposal and the Relief Order Request, in each case, submitted by the Private Partner, the Private Partner shall submit a revised Relief Order Proposal and Relief Order Request taking into account the amendments, modifications and comments on the same made by the Independent Engineer and the Independent Auditor, which shall be subject to approval by the Independent Engineer and the Independent Auditor within twenty-one (21) days of submission of the revised Relief Order Proposal and the Relief Order Request. In the event of the Independent Engineer and the Independent Auditor’s approval of the Relief Order Proposal and the Relief Order Request or, if applicable, a revision of the same approved by the Independent Engineer and the Independent Auditor, it is agreed that the Independent Engineer and the Independent Auditor shall jointly issue a written order of Relief Order to the Implementing Agency and the Private Partner simultaneously. All extensions in Time For Completion, the Concession Period and in any Project Milestone Date for achievement of a Project Milestone and all Relief Costs, as applicable, shall be expressly set out in the Relief Order and shall be (subject to Section 15.6 below) binding on the Parties; provided, however, that such extensions in Time For Completion, the Concession Period and in any Project Milestone Date for achievement of a Project Milestone and the Relief Costs set in the Relief Order shall not be in excess of the Private Partner’s request under the Relief Order Proposal and the Relief Order Request; provided, further, that any Relief Costs shall be paid by the Implementing Agency to the Private Partner within ninety (90) days of receipt of the Relief Order by the Implementing Agency. In the event, the Implementing Agency fails to make payment of Relief Costs (as determined and certified by the Independent Engineer and the Independent Auditor) within ninety (90) days of receipt of the Relief Order, late payment interest on the Relief Costs (or part thereof which is unpaid) shall be paid at the rate of Delayed Payment Rate, such interest commencing to accrue from the date of receipt of the Relief Order and ending on the actual date on which the Implementing Agency makes payment of the Relief Costs.

15.4.5 Notwithstanding anything to the contrary, in the event of occurrence of a Relief Event (excluding a Non Political Event and an Emergency Decommissioning directly resulting from a Non Political Event, in each case, for which no Relief Costs shall be payable), the Private Partner shall be only entitled to such Relief Costs that:

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (a) are directly attributable to the Relief Event; and
- (b) represent increase (as a result of a Relief Event) in only such costs that are expressly set out in the Financial Model.

15.4.6 Subject to the terms of this Agreement, the Project Works shall not be delayed pending the issuance of a Relief Order by the Independent Auditor and the Independent Engineer or by the granting of an extension of Time for Completion or payment of Relief Costs.

**15.5 ADDITIONAL REQUIREMENTS FOR RELIEF ORDERS RELATING TO EXTENSION OF TIME FOR COMPLETION**

15.5.1 The Parties agree the provisions of this Section 15.5 (*Additional Requirements for Relief Orders Relating to Extension of Time For Completion*) shall apply to each Relief Order Proposal and the Relief Order Request that, in each case, proposes an extension to the Time For Completion or to any Project Milestone Date for a Project Milestone.

15.5.2 Any Relief Order Proposal and/or, if applicable, the Relief Order Request submitted by the Private Partner shall be subject to the Private Partner otherwise being ready to progress with the aspect of the Project Works for which an extension is being sought. In the event the Private Partner is in any event delayed in the performance of its obligations due to reasons other than the Relief Event, the Private Partner shall not be granted any extension of Time For Completion to the extent of its delay.

15.5.3 In all cases where the Private Partner submits a Relief Order Proposal and the Relief Order Request, the Private Partner shall consult with the Implementing Agency, the Project Manager, the Independent Engineer and the Independent Auditor in order to determine steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Private Partner shall thereafter comply with all reasonable instructions that the Independent Engineer and the Independent Auditor shall give in order to overcome or minimize such delay.

15.5.4 If the Private Partner intends to initiate a Relief Order Request for issuance of a Relief Order for an extension of Time For Completion, the Private Partner shall give Notice to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency) of such intention as soon as possible and in any event within seven (7) days of the day the Private Partner should reasonably have become aware of the start of the Relief Event giving rise to the delay, together with any other notice required by the Agreement and relevant to such cause. The Private Partner is further required to submit to the Independent Engineer and the Independent Auditor (with a copy to the Implementing Agency), as part of the Relief Order Proposal relating to the Relief Order Request that pertains to an extension of Time for Completion, an acceleration strategy and schedule to demonstrate how such delay can be eliminated and/or mitigated.

15.5.5 Within twenty-eight (28) days of the first day of a delay that has resulted from the Relief Event in initiation of the Relief Order Request by the Private Partner for issuance of a Relief Order by the Independent Engineer and the Independent Auditor for an extension of Time for Completion, the Private Partner shall submit full supporting details of its request, including, without limitation, a critical path analysis of the alleged delay reflecting the considerations set forth in this Section. If the Private Partner cannot submit all relevant details within such period because the cause of delay has continued for a period exceeding seven (7) days, the Private Partner shall submit interim details at intervals of not more than twenty-eight (28) days (from the first day of such delay) and full and final supporting details of its request within sixty (60) days of the last day of delay. In the appropriate circumstances, the Implementing Agency shall have the right to waive the time periods set out as above.

**15.6 DISPUTES AND BURDEN OF PROOF**

15.6.1 Any Dispute between the Parties in reference to the issuance of a Relief Order and/or any matters relating to the same shall be resolved pursuant to Article 30 (*Dispute Resolution*).

15.6.2 In case of a Dispute regarding the application of the provisions of this Article 15 (*Relief Extensions & Relief Compensations*), the Private Partner shall have the burden of proof as to its entitlement to relief under this Article 15 (*Relief Extensions & Relief Compensations*).

**15.7 FULL COMPENSATION**

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

15.7.1 Any:

- (a) extensions of Time For Completion; and/or
- (b) payment of Relief Costs,

in each case, granted pursuant to a Relief Order shall be deemed to be full and complete compensation to the Private Partner by the Implementing Agency in respect of matters relating to the Relief Order.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

16. **CHANGE OF SCOPE**

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16.1 **CHANGE OF SCOPE**

16.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Agency may require a change / amendment in the Scope of the Project (the **Change of Scope**); provided, that the accrued and cumulative change at any given time does not result in an variation in the Pre Estimated Project Cost by more than five percent (5%), as determined by the Independent Engineer and the Independent Auditor. All Additional Costs to be paid by the Implementing Agency in respect of the Change of Scope and any extensions in the timelines for the performance by the Private Partner of its obligations resulting from a Change of Scope shall be in accordance with Section 16.2 and Section 16.3.

16.2 **CHANGE OF SCOPE NOTICE**

16.2.1 The Implementing Agency may request for the Change of Scope by issuing a Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*).

16.2.2 The Implementing Agency may request for a Change of Scope by issuing a notice in writing to the Private Partner through the Independent Engineer (the **Change of Scope Notice**):

- (a) at least thirty (30) days prior to the Scheduled Installation Completion Date in the event the Change of Scope is required in respect of the Installation Period; and
- (b) at any time in the event the Change of Scope is required in respect of the Operations Period.

16.2.3 In the event at any time during the Installation Period and / or the Operations Period, the Private Partner determines that a Change of Scope is necessary for providing safer and improved services to the Users, the Private Partner shall issue a request in writing to the Implementing Agency through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The Implementing Agency shall within forty-five (45) days from the date of receipt of such notice, either accept such request for Change of Scope, on an “as is” basis or with modifications, and issue the requisite Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*) or communicate its reasons for not accepting the same to the Private Partner.

16.3 **CHANGE OF SCOPE ORDER**

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

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

16.3.2 The Independent Engineer shall after reviewing the information, documentation and the budgeted estimate of the Additional Cost submitted by the Private Partner pursuant to Section 16.3.1, settle the rates, approve the designs and forward the budgeted estimates of the Additional Cost, as duly certified by the Independent Engineer and the Independent Auditor (in consultation with the Private Partner) to the Implementing Agency. Notwithstanding anything to the contrary set out herein, in the event the

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Private Partner disagrees with the determinations of the Independent Engineer, the decision of the Implementing Agency shall be final.

- 16.3.3 The Implementing Agency may, within a period of fifteen (15) days from the date of receipt of such statement, issue an order in writing to the Private Partner, through the Independent Engineer instructing the Private Partner to affect the Change of Scope (the **Change of Scope Order**).
- 16.3.4 In the event, the Implementing Agency for any reason whatsoever decides not to issue a Change of Scope Order in accordance with Section 16.3.1, then the Implementing Agency shall reimburse the Private Partner for the cost/expenses actually incurred by the Private Partner in the preparation and submission of the drawings, documents, estimates and other information in compliance with the Change of Scope Notice; provided, such costs and expenses are duly certified by the Independent Auditor and the Independent Engineer.
- 16.3.5 The mode for payment of the Additional Costs to the Private Partner shall be as follows and shall be complied by the Implementing Agency within forty five (45) days of the issuance of a Change of Scope Order and until such time that the following conditions are complied by the Implementing Agency, the Private Partner shall not be obligated to commence and/or perform the works forming part of the Change of Scope Order:
  - (a) the hundred percent (100%) of the Additional Costs shall be transferred by the Implementing Agency to an Escrow Account pursuant to the Escrow Agreement agreed with the Private Partner wherefrom the same shall be utilized progressively upon certification by the Independent Engineer of the performance of works.
- 16.3.6 The Change of Scope Order shall be effective from the date that the Implementing Agency notifies the mode of reimbursement of the Additional Cost to the Private Partner pursuant to sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*).
- 16.3.7 Save for the advance payment under Section 16.3.5(a), the Implementing Agency shall progressively pay the Additional Cost in accordance with sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*) or any other modality as mutually agreed between the Parties, only upon receiving a certificate from the Independent Engineer confirming that the Private Partner has completed the relevant milestone(s) of the works in accordance with the Change of Scope Order.
- 16.3.8 In the event, the Implementing Agency fails to make payment of Additional Costs (as determined and certified by the Independent Engineer and the Independent Auditor) for the Change of Scope in accordance with the Change of Scope Order, late payment interest on the Additional Costs (or part thereof which is unpaid) shall be paid at the rate of Delayed Payment Rate, such interest commencing to accrue from the date the payment was due and ending on the actual date on which the Implementing Agency makes payment of the Additional Costs.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

17. **TOLLING ARRANGEMENT**

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17.1 **TOLL COLLECTION OPERATIONS**

17.1.1 During the period commencing from Commercial Operations Date and until the Toll Collection End Date, the Private Partner shall be authorized to collect, demand, levy and charge the Tolls from the Users (except the Exempted Vehicles), in accordance with **Schedule P (Toll Notification Structure)**. All funds collected from Tolls shall be deposited immediately with the Escrow Agent and allocated in accordance with the terms of the Escrow Agreement.

17.2 **COMMENCEMENT OF TOLL COLLECTION**

17.2.1 Not Used.

17.2.2 At least fifteen (15) days prior to the Scheduled Installation Completion Date, the Private Partner shall provide a copy of a toll operations manual (the **Toll Operations Manual**) for the review and approval of the Independent Engineer and the Implementing Agency. If upon review of the Toll Operations Manual, Independent Engineer and/or the Implementing Agency determines that the procedures set forth therein require amendments, the Private Partner shall, at its sole cost and expense, incorporate such changes as are required in the Toll Operations Manual and undertake periodic review and revision of the Toll Operations Manual as instructed by Implementing Agency and the Independent Engineer.

17.2.3 The Implementing Agency hereby grants the right to the Private Partner to commence Tolling at the Project Highway, based on the Toll Notification Structure set out in **Schedule P (Toll Notification Structure)** from the Commercial Operations Date.

17.2.4 Not Used.

17.2.5 Subject to Section 17.2.3, the Private Partner shall commence commercial operations at the Project Highway on the Commercial Operations Date based on the Toll Structure set out in **Schedule P (Toll Notification Structure)**, and continue such collection until the Toll Collection End Date.

17.3 **TOLL PROGRESS REPORT**

Commencing from the Commercial Operations Date and until the Transfer Date, the Independent Engineer shall, no later than ten (10) days after the end of each calendar month, furnish to the Implementing Agency and the Independent Auditor a monthly report (the **Toll Progress Report**) stating in reasonable detail the status of the Toll collected from the Project and shall promptly give such other relevant information as may be required by the Implementing Agency and/or the Independent Auditor in respect of the Toll collected from the Project. The Private Partner shall facilitate the Independent Engineer in relation to the preparation of the Toll Progress Report.

17.4 **PROJECT REVENUES SHARING**

17.4.1 During the Revenue Sharing Period, the Private Partner shall pay to the Implementing Agency for the first Operational Year an amount (the **Expected Revenue Share**) equal to the higher of:

(a) the Benchmark Revenue Sharing Figure; or

(b) the Percentage Revenue Shared multiplied by the Actual Project Revenues for the first Operational Year,

And such Expected Revenue Share shall be deposited into the Implementing Agency Payment Account in accordance with the Escrow Agreement immediately upon the completion of each month of the first Operational Year.

17.4.2 For each Operational Year subsequent to the first Operational Year (each a Subsequent Operational Year), during the Revenue Sharing Period, the Private Partner shall pay to the Implementing Agency an amount (the **Revenue Share** for such Subsequent Operational Year) equal to the higher of:

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (a) the Applicable Benchmark for the relevant Subsequent Operational Year (being the Applicable Benchmark for the immediately preceding Operational Year increased by five percent (5%) on a cumulative basis); or
- (b) the Percentage Revenue Shared multiplied by the Actual Project Revenues for the relevant Subsequent Operational Year,

and such Revenue Share shall be deposited into the Implementing Agency Payment Account in accordance with the Escrow Agreement immediately upon the completion of each month of the relevant Operational Year.

- 17.4.3 The Actual Project Revenues for each Operational Year shall be determined by the Independent Auditor. In the event of any dispute as to the quantum of Actual Project Revenues, the determination of the Independent Auditor shall, in the absence of manifest error, be final and binding on the Parties.
- 17.4.4 The Parties hereby agree that the Expected Revenue Share and/or any Revenue Share payable to the Implementing Agency pursuant to this Section 17.4 shall be utilized by the Implementing Agency in its sole and absolute discretion.
- 17.4.5 To the extent:
  - (a) the Expected Revenue Share and/or any Revenue Share is payable by the Private Partner to the Implementing Agency; and
  - (b) the Private Partner fails to make payment of such due and payable Expected Revenue Share and/or Revenue Share (the **Unpaid Implementing Agency Amount**) by the date falling thirty (30) days following the date such amount was due,

then, the Private Partner shall (in addition to the payment of the due and payable Unpaid Implementing Agency Amount) make payment to the Implementing Agency of late payment interest on the Unpaid Implementing Agency Amount at the rate of Delayed Payment Rate, such interest commencing to accrue on the date falling thirty (30) days following the date such amount was due and ending on the actual date on which the Private Partner makes payment of the Unpaid Implementing Agency Amount. The stipulation regarding additional amounts payable in respect of delayed Unpaid Implementing Agency Amount contained in this Section 17.4.5 shall not be construed nor be deemed to authorize any delay in payment of any amount due to the Private Partner nor be construed or deemed to be a waiver of the underlying breach of payment obligations, in each case, in the afore-stated circumstances.

**17.5 ISSUANCE OF TOLL NOTIFICATION**

- 17.5.1 The Implementing Agency shall issue a notification (the **Toll Notification**) (substantially, in the form set out in **Schedule R (Form of Toll Notification)** and in accordance with **Schedule P (Toll Notification Structure)** in accordance with the Applicable Laws in order to implement the Toll Notification Structure. The Private Partner shall, at least three (3) months prior to the date on which Toll rates have to be revised, write to the Implementing Agency (along with a copy to the Independent Engineer and the Independent Auditor) requesting for the issuance of Toll Notification. The Toll Notification shall notify (in writing) the Toll applicable during each year of the Concession Period. The Toll rates between each Operational Year shall be increased as per the percentage amount specified in a notification issued by the Implementing Agency to the Private Partner, within fifteen (15) days of the beginning of the relevant Operational Year to which the increase in Toll relates to. In case the Implementing Agency reduces the Toll rates, the same shall entitle the Private Partner to a Relief Request and in such case the provisions of Article 15 (*Relief Extension and Relief Compensations*) shall apply.
- 17.5.2 The Implementing Agency shall ensure that the Toll Notification is issued throughout the Concession Period in accordance with this Agreement. In the event the Implementing Agency fails to issue the Toll Notification in accordance with the Toll Notification Structure (the **Toll Notification Event**) and provided that the Toll Notification Event does not directly result from breach by the Private Partner of its relevant obligations under this Agreement, then such Toll Notification Relief Event and all matters relating to the same shall constitute a Relief Event (the **Toll Notification Relief Event**) and the same shall entitle the Private Partner to issuance of a Relief Order Request and in such case the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**17.6 COMPETING ROUTE**

17.6.1 The Implementing Agency represents and warrants that there is no Competing Route as of the Effective Date.

17.6.2 In case, the Implementing Agency, or a Public Sector Entity, constructs or upgrades any existing road to a Competing Route, the Private Partner shall Notify the Implementing Agency of existence of such an event. In the event:

- (a) any Relief Costs are incurred and/or are projected to be incurred; and/or
- (b) the Private Partner is delayed and or is projected to be delayed in performance of its obligations under this Agreement; and/or
- (c) the Private Partner is unable to or may be unable perform its obligations (or any part thereof) under this Agreement; and/or
- (d) any of the Private Partner’s rights, titles, benefits and/or interests (in each case, including any part thereof) under this Agreement are or may be prejudiced under this Agreement;

directly result and/or may result from reasons attributable to any Competing Route (the **Competing Route Event**), and as a result thereof the average monthly traffic on the Project Highway declines by ten percent (10%) or more when compared to the average monthly traffic recorded over the three (3) months immediately preceding the date of assessment (as verified by the Independent Engineer and the Independent Auditor), then such Competing Route Event and all matters relating to the same (including rectification) shall constitute an Implementing Agency Relief Event (the **Competing Route Relief Event**) and the same shall entitle the Private Partner to issuance of a Relief Order Request in respect of (a), (b), (c) and/or (d) above (including for grant of extension of Time For Completion, Relief Costs (including Loss of Toll Revenues to be paid on a quarterly basis) and/or relief from relevant obligations and liabilities under this Agreement) (as applicable) and, in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

**17.7 ALTERNATIVE ROUTE**

17.7.1 The Implementing Agency represents and warrants that there is no Alternative Route as of the Effective Date.

17.7.2 In case, the Implementing Agency, or a Public Sector Entity, constructs or upgrades any existing road to an Alternative Route, the Private Partner shall Notify the Implementing Agency of existence of such Alternative Route.

In the event:

- (a) the Private Partner is delayed and or is projected to be delayed in performance of its obligations under this Agreement;
- (b) the Private Partner is unable to or may be unable perform its obligations (or any part thereof) under this Agreement;
- (c) any of the Private Partner’s rights, titles, benefits and/or interests (in each case, including any part thereof) under this Agreement are or may be prejudiced under this Agreement;

directly result and/or may result from reasons attributable to any Alternative Route (the **Alternative Route Event**), and as a result thereof the average monthly traffic on the Project Highway declines by ten percent (10%) or more when compared to the average monthly traffic recorded over the three (3) months immediately preceding the date of assessment (as verified by the Independent Engineer and the Independent Auditor), then such Alternative Route Event and all matters relating to the same (including rectification) shall constitute an Implementing Agency Relief Event (the **Alternative Route Relief Event**) and the same shall entitle the Private Partner to issuance of a Relief Order Request in respect of (a), (b)and/or (c) above (including for grant of extension of Time For Completion, Relief Costs (including Loss of Toll Revenues to be paid on a quarterly basis) and/or relief from relevant

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

obligations and liabilities under this Agreement) (as applicable) and, in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

**17.8 ESCROW ARRANGEMENT**

The Parties shall enter into an Escrow Agreement which shall, inter alia, set out the following provisions:

- a) mechanism to deposit/collect all Toll Revenues (and other revenues) and the mechanism for distribution of respective share of such revenues to the Private Partner and the Implementing Agency, including the mechanism for calculation and payment of the Expected Revenue Share and each Revenue Share in accordance with Section 17.4;
- b) right for the Implementing Agency and the Private Partner to set-off and make direct deductions of any amounts in case any amount contractually payable by the Private Partner or the Implementing Agency which have not been paid by the same;
- c) Implementing Agency’s ability (with the confirmation of the Independent Auditor) to determine the amounts of Insurance proceeds (to the extent they are deposited in the Escrow Account) and other compensations received by the Private Partner and to make adjustments in the amounts of Termination Payments payable by the Implementing Agency;
- d) the mechanism for the disbursement of funds from the Escrow Account to the Implementing Agency Payment Account, which mechanism shall provide for the deposit of the Expected Revenue Share and each Revenue Share into the Implementing Agency Payment Account in accordance with Section 17.4;
- e) the mechanism for the disbursement of the Independent Engineer Payments and the Independent Auditor Payments from the Escrow Account to the Independent Engineer and Independent Auditor, respectively;
- f) the mechanism for disbursement of the Authority Fee to the Authority in accordance with Section 32.1; and
- g) any other rights and matters contemplated by the Implementing Agency (in consultation with the Independent Engineer and the Independent Auditor) which it believes are reasonable and necessary for the transactions of this nature and deductions as determined with the Independent Engineer and the Independent Auditor.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

18. **DEFECTS & DEFICIENCIES, NOTICE OF REMEDY, SUSPENSION**

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18.1 **REMEDYING DEFECTS & DEFICIENCIES**

18.1.1 The Private Partner warrants that the:

- (a) Project Works shall be performed in good workmen like manner in accordance with the Applicable Specifications and shall be free from all Defects & Deficiencies; and
- (b) the Concession Assets shall comply with the Applicable Specifications.

18.1.2 In order that the Project Works and the Concession Assets comply with the foregoing warranties and that the same are in the condition required by this Agreement, the Private Partner shall execute all works and services relating to amendment, reconstruction and remedying of Defects & Deficiencies (including the removal, replacement and reinstallation of materials and equipment, remedying of Defects & Deficiencies and retesting of repaired or replaced portions of the Project Works (if appropriate in accordance with Good Industry Practices)) at its own cost, risk and expense; provided, however the amendment, reconstruction and remedying of such Defects & Deficiencies shall be at the cost, risk and expense of the Implementing Agency in the event the same is caused by a Permitted Events (except a Non Political Event).

18.1.3 If the remedying of any Defect & Deficiency or damage is such that it may significantly affect the performance of the Project Works and/or the Concession Assets, the Independent Engineer and/or the Implementing Agency may require that certain O&M Tests and/or the Completion Tests (as the case may be) to be repeated to the extent necessary. The requirement shall be made by written Notice after the Defect & Deficiency or damage is remedied. Such tests shall be carried out by the Private Partner in accordance with the Applicable Specifications and all costs and expenses of any nature associated with re-performance of such tests shall be allocated in accordance with Section 18.1.2.

18.2 **NOTICE REMEDY**

18.2.1 In the event the (the **Remedy Events**):

- (a) the Project Works (or any part thereof) are not performed in accordance with the Applicable Specifications; and/or
- (b) the Project Works (or any part thereof) fail to comply with the Applicable Specifications; and/or
- (c) the Concession Assets (or any part thereof) fails to comply with the Applicable Specifications, then the Independent Engineer and/or the Implementing Agency (through the Independent Engineer) shall be entitled to issue a Notice to the Private Partner to rectify and remedy the same (the **Notice of Remedy**). The Notice of Remedy shall set out the reasonable time period (as determined by the Independent Engineer) (the **Remedy Time Period**) in which the Private Partner shall remedy and rectify the Remedy Events in accordance with the Applicable Specifications.

18.2.2 In the event of failure by the Private Partner to remedy the Remedy Events within the Remedy Time Period, the Implementing Agency shall, without prejudice to any of its other rights and remedies under this Agreement, be entitled to, with the prior approval of the Independent Engineer and at the risk and cost of the Private Partner, cause the remedying and rectification of the Remedy Events.

18.2.3 The Private Partner shall reimburse all costs incurred by the Implementing Agency (as certified by the Independent Auditor and the Independent Engineer) on account of such remedying and rectification of the Remedy Events within thirty (30) days of receipt of the Implementing Agency's claim thereof set out in an invoice approved by the Independent Engineer and the Independent Auditor (the **Implementing Agency Remedy Invoice**). In the event of failure by the Private Partner to pay the amounts set out in the Implementing Agency Remedy Invoice (the **Implementing Agency Remedy Amount**) within the time period set out herein, the Implementing Agency shall be entitled to receive such Implementing Agency Remedy Amount through encashment of (as in effect at such time) the Installation Performance Guarantee or O&M Performance Guarantee. In the event the funds received by the Implementing Agency through encashment of the Installation Performance Guarantee or O&M Performance Guarantee are less than the Implementing Agency Remedy Amount, the Private Partner shall be obligated to pay the Implementing Agency the shortfall within three (3) days of the Implementing Agency's written demand.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**18.3 SUSPENSION**

18.3.1 The:

- (a) Implementing Agency may by Notice in writing to the Private Partner (with a copy to the Independent Engineer and the Independent Auditor) require the Private Partner to suspend forthwith the whole or any part of the Project Works if, in the reasonable opinion of the Implementing Agency: (i) such work threatens the safety of the Users and pedestrians; or (ii) such Project Works are not in accordance with the Applicable Specifications and/or Good Industry Practices; and/or
- (b) Independent Engineer may, by Notice to the Private Partner (with a copy to the Implementing Agency and the Independent Auditor), require the Private Partner to suspend forthwith the whole or any part of the Project Works which in the reasonable opinion of the Independent Engineer is being carried on / conducted in a manner that is not in conformity with the Applicable Specifications and / or is not in accordance with Good Industry Practice,

(the **Suspension, Suspend and its grammatical variations**).

18.3.2 The Private Partner shall, pursuant to the notice issued under Section 18.3.1, Suspend the Project Works or any part thereof for such time and in such manner as may be specified by the Implementing Agency and/or the Independent Engineer and thereupon carry out remedial measures to secure the safety of Suspended works and the Users and for compliance of the Suspended Project Works with the Applicable Specifications and Good Industry Practices.

18.3.3 The Private Partner may by Notice (with a copy to the Implementing Agency) require the Independent Engineer to inspect such remedial measures forthwith and the Independent Engineer shall, following such inspection, make a report to the Implementing Agency recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the Implementing Agency shall either revoke such Suspension or instruct the Private Partner to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Implementing Agency, and the procedure set forth in this Section 18.3 (*Suspension*) shall be repeated till such time as the Suspension hereunder is revoked.

18.3.4 All reasonable costs incurred for maintaining and protecting the Project Works (or part thereof) during the period of Suspension (the **Preservation Costs**) shall be borne by the Private Partner; provided, that if the Suspension has occurred as a result of a Permitted Event, the provisions of Article 21 (*Force Majeure*) and Article 15 (*Relief Extensions & Relief Compensations*), as the case may be, shall apply.

18.3.5 All delays caused as a result of the Suspension shall be on account of the Private Partner; provided, however, in the event the Suspension is caused due to a Permitted Event, any extensions of the Time For Completion shall be subject to the provisions of Article 15 (*Relief Extensions & Relief Compensations*) and Article 21 (*Force Majeure*), as the case may be.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**19. OPERATION AND MAINTENANCE**

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**19.1 OPERATION AND MAINTENANCE**

- 19.1.1 The Private Partner shall perform the Operation and Maintenance in accordance with the Applicable Specifications and shall ensure that the same complies with the Applicable Specifications. During the Operations Period, the Private Partner shall be responsible for Operating and Maintaining the Concession Assets on a twenty four (24) hours per day, three-sixty-five (365) days per year basis according to the Applicable Specifications so as to ensure that the same comply with the Applicable Specifications.
- 19.1.2 Without limiting the provisions of Section 19.1.1, the Private Partner shall be in particular responsible for the performance and compliance, in each case, of the Operation and Maintenance with the O&M Requirements.
- 19.1.3 The Private Partner shall perform the Operation and Maintenance within the O&M Time For Completion and hereby undertakes to perform and complete each Project O&M Milestone on or prior to its Project O&M Milestone Date.
- 19.1.4 The Private Partner shall perform the Operation and Maintenance either itself, or through the O&M Contractor appointed in accordance with the terms of this Agreement; provided, however, the Private Partner shall remain solely responsible and liable for performance (within O&M Time For Completion) and compliance of the Operations and Maintenance with the Applicable Specifications irrespective of whether the Operation and Maintenance is undertaken by the Private Partner or the O&M Contractor.

**19.2 OPERATION AND MAINTENANCE OBLIGATIONS OF THE PRIVATE PARTNER**

- 19.2.1 The Private Partner undertakes to perform the Operation and Maintenance of the Concession Assets during the Operations Period in accordance with the provisions of Section 19.1 (*Operation and Maintenance*) and undertakes to modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Concession Assets in accordance with the Applicable Specifications.
- 19.2.2 The Private Partner hereby agrees that the Operation and Maintenance obligations of the Private Partner hereunder shall include, without limitation, the performance of the following obligations in accordance with the Applicable Specifications and Good Industry Practices and within the O&M Time For Completion:
  - (a) ensuring that during the Operations Period, the Concession Assets are in a condition to permit safe, smooth and uninterrupted flow of traffic during normal operating conditions;
  - (b) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway and by providing a rapid and effective response and maintaining liaison with emergency services of the Implementing Agency;
  - (c) carrying out routine maintenance and the periodic preventive maintenance of the Concession Assets;
  - (d) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
  - (e) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Concession Assets;
  - (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
  - (g) protecting the environment (to the extent of the Private Partner’s activities) and providing equipment and materials therefor;
  - (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Concession Assets;

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (i) operate and maintain the toll plazas and toll gates in accordance with Applicable Specifications, **Schedule A (Scope of the Project)** and **Schedule Q (Requirements Of Electronic Toll And Traffic Management System – ETTMS)**.
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, the Implementing Agency, the Government Authorities, media and other agencies;
- (k) complying with Safety Requirements;
- (l) promptly removing from the Project Site, all surplus installation machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keeping the Project Site in a clean, tidy and orderly condition, in each case, in conformity with the Applicable Specifications;
- (m) performing all other activities and obligations relating to Operation and Maintenance so as to comply with the Applicable Specifications; and
- (n) ensuring that the Project Highway is managed and operated in a manner that Service Levels are maintained pursuant to the provisions of Section 5 (*Operational Performance Measures*) and Section 6 (*Management Performance Measures*) of **SCHEDULE H (O&M Requirements)**.

### **19.3 EMERGENCY WORKS**

- 19.3.1 The Private Partner shall, in addition to the obligations contained in Section 19.2.2 hereinabove, carry out remedial works if an Emergency Event occurs during the Operating Period (the “**Emergency Works**”), provided that such Emergency Works shall not include any works that are necessitated by a Force Majeure Event, which shall be governed exclusively by Article 21.
- 19.3.2 The Private Partner shall undertake to carry out the Emergency Works, unless a natural disaster, as notified by the Government of Punjab or the Federal Government of Pakistan, has occurred, in which case the Private Partner shall be entitled to the issuance of a Relief Request and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.
- 19.3.3 The Private Partner shall, on a monthly basis, deposit an amount of PKR. 3,000,000/- (Pakistani Rupees Three Million), into a dedicated bank account established by the Implementing Agency (the “**Emergency Works Account**”) for the exclusive purpose of meeting the costs of Emergency Works. Upon the expiry of the Concession Period, if there are any funds left to the credit of the Emergency Works Account shall be retained by the Implementing Agency.
- 19.3.4 The Private Partner shall submit an Emergency Works Request to the Independent Engineer immediately upon the occurrence of an Emergency Event. The Emergency Works Request shall include all necessary and supporting documentation to substantiate the Emergency Works Request, including but not limited to, a detailed description of the nature and circumstances of the Emergency Event, the extent of the damages sustained, and corroborating evidence such as photographs, video recordings, or any other relevant materials.
- 19.3.5 Upon receipt of the Emergency Works Request, the Independent Engineer shall, without undue delay, conduct a visit to the Project Site and prepare a detailed report on the proposed Emergency Works. The Independent Engineer shall promptly communicate its decision in writing to the Private Partner and shall notify the Implementing Agency of the classification of the damages as Emergency Works, along with any recommended actions. The Independent Engineer shall assess the cost of the Emergency Works and request the Implementing Agency to release funds from the Emergency Works Account to the Private Partner for the execution of such Emergency Works. If the funds available in the Emergency Works Account are inadequate to cover the required cost for the Emergency Works, the Private Partner shall be responsible for funding the shortfall. Any such funding by the Private Partner shall subsequently be reimbursed through adjustment against (i) future deposits to be made into the Emergency Works Account, or (ii) future periodic revenue share payments otherwise payable by the Private Partner to the Implementing Agency.
- 19.3.6 The Private Partner shall not commence Emergency Works until the Independent Engineer issues a work program governing the execution of the Emergency Works. During the execution of Emergency Works, the Private Partner shall remain fully responsible for compliance with the Service Levels set forth in Schedule H (*O&M Requirements*) and the continued use of the Project Highway, including for areas of the Project Highway affected by the Emergency Event.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**19.4 MATERIAL BREACH OF O&M REQUIREMENTS**

19.4.1 The Private Partner shall be deemed to be in material breach of the O&M Requirements (the **Material Breach of O&M Requirements**) if the Independent Engineer and/or the Implementing Agency (through the Independent Engineer), acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Private Partner:

- (a) there has been a failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
- (b) there has been a material failure in performance by the Private Partner of the Operation and Maintenance (or any part thereof) within the O&M Time For Completion which has resulted in a Material Adverse Effect;
- (c) the riding quality of the Project Highway or any part thereof has materially deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (d) there has been a serious or persistent let up in adhering to Safety Requirements and thereby the Concession Assets or any part thereof is not safe for operations;
- (e) there has been “Persistent Breach of O&M Requirements”.

The term “*Persistent Breach of O&M Requirements*” means:

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

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

provided, however, the Private Partner shall not be deemed to be in Material Breach of the O&M Requirements in the afore-stated circumstances in the event such breach is caused by the Permitted Events.

**19.5 IMPLEMENTING AGENCY’ RIGHTS WITH REGARD TO MATERIAL BREACH OF O&M REQUIREMENTS**

19.5.1 Upon the occurrence of a Material Breach of O&M Requirements, the Implementing Agency shall without prejudice to and notwithstanding any other consequences provided thereof shall have the right and be entitled to Terminate this Agreement in accordance with Section 23 (*Termination*).

**19.6 PRIORITY OF TRAFFIC FLOW**

19.6.1 The Private Partner shall ensure that the Project Highway remains open to traffic and that the traffic flow is safe at all times during Operations Period in accordance with the Applicable Specifications.

19.6.2 The Private Partner undertakes to conduct the Operation and Maintenance in such manner as to ensure compliance with the obligation set out in Section 19.6.1.

**19.7 O&M MANUAL**

19.7.1 Ninety (90) days prior to the Scheduled Installation Completion Date, the Private Partner, the Private Partner Project Engineer and the Independent Engineer shall jointly prepare and submit to Implementing Agency, an operations, repair, maintenance and safety manual (together with arrangements and procedures for conducting safety related measures) in respect of the Concession Assets that shall comply with the Applicable Specifications and Good Industry Practices and shall set out, *inter alia*, the regular preventive maintenance and operating procedures for the Concession Assets, as to be performed pursuant to the Applicable Specifications and Good Industry Practices. Such operations, repair, maintenance and safety manual shall include provisions for operation and

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

maintenance of the Concession Assets and shall, *inter alia*, provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Concession Assets, including replacement thereof, such that their overall condition conforms to the Applicable Specifications. The operations, repair, maintenance and safety manual shall also set out certain Project O&M Milestones and their respective Project O&M Milestone Dates.

- 19.7.2 The operations, repair, maintenance and safety manual jointly prepared by the Private Partner, the Private Partner Project Engineer and the Independent Engineer shall be subject to approval of the Implementing Agency; provided, however, such approval shall be granted by Implementing Agency within fifteen (15) days of the Private Partner's request for such approval if the operations, repair, maintenance and safety manual is recommended by the Independent Engineer for approval after addressing any comments and observations of the Implementing Agency on the same. The operations, repair, maintenance and safety manual, as approved by the Implementing Agency, shall be binding on the Parties (the **O&M Manual**).
- 19.7.3 Four (4) copies of the O&M Manual shall be provided by the Private Partner to each of Implementing Agency and the Independent Engineer.
- 19.7.4 The O&M Manual shall be revised and updated on third (3<sup>rd</sup>) anniversary of its initial preparation and subsequently every three (3) years thereafter, in each case, with mutual consent of the Parties and in consultation with the Independent Engineer; provided, however, the Parties may revise, update and/or amend the O&M Manual with mutual consent at any time.

**19.8 O&M PROGRAMME**

- 19.8.1 Ninety (90) days prior to Scheduled Installation Completion Date and thereafter thirty (30) days prior to the commencement of each Operational Year during the Operations Period, as the case may be, the Private Partner, the Private Partner Project Engineer and the Independent Engineer shall jointly prepare and provide to the Implementing Agency, a proposed annual program, to be prepared in compliance with the Applicable Specifications and Good Industry Practices, of Operation and Maintenance during the upcoming Operational Year (including preventive, urgent and other scheduled maintenance of Concession Assets) (the **Proposed O&M Programme**). The Proposed O&M Programme shall include, without restriction, the following:
  - (a) the Project O&M Milestones to be achieved during the upcoming Operational Year and the respective Project O&M Milestone Dates for each of the same;
  - (b) routine maintenance and preventive maintenance schedule;
  - (c) arrangements and procedures for carrying out urgent repairs in respect of the Concession Assets;
  - (d) criteria to be adopted for determining and ascertaining the maintenance requirements of the Concession Assets;
  - (e) the timelines, intervals and procedures for conducting the inspection of all elements of the Concession Assets;
  - (f) the timelines and intervals at which the Private Partner shall conduct periodic maintenance in respect of the Concession Assets;
  - (g) arrangements and procedures for conducting safety related measures in relation to the Concession Assets;
  - (h) timelines and intervals for maintenance works and the scope thereof; and
  - (i) all major events and activities in the preparation of O&M Documents and submission of the same to the Implementing Agency, the Independent Engineer and/or the Independent Auditor (as applicable) for the review and approval (as applicable);
- 19.8.2 The Proposed O&M Programme jointly prepared by the Private Partner, the Private Partner Project Engineer and the Independent Engineer shall be subject to approval of the Implementing Agency; provided, however, such approval shall be granted by Implementing Agency within twenty one (21) days of the Private Partner's request for such approval if the Proposed O&M Programme is

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

recommended by the Independent Engineer for approval after addressing any comments and observations of the Implementing Agency on the same. The Proposed O&M Programme prepared in respect of an Operational Year, as approved by the Implementing Agency on the Independent Engineer's recommendation, shall be binding on the Parties for such Operational Year (the **O&M Programme**).

- 19.8.3 The Private Partner shall, whenever required by the Implementing Agency, the Independent Engineer and/or the Independent Auditor, provide in writing, a general description of the arrangements and methods which the Private Partner proposes to adopt for the execution of the Operation and Maintenance. Any alteration to the O&M Programme or to such arrangements and methods shall be made by the Private Partner with prior written consent of the Independent Engineer.
- 19.8.4 Any reports (including the O&M Quarterly Status Reports) submitted by the Private Partner and covering the execution of the Operation and Maintenance shall emphasize any delays in the O&M Time For Completion.

**19.9 SAFETY, VEHICLE BREAKDOWN AND ACCIDENTS**

- 19.9.1 The Private Partner shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant Applicable Specifications including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay, in each case, in accordance with the Applicable Specifications.

**19.10 SERVICE LEVELS**

- 19.10.1 The Private Partner shall ensure that the Project Highway is operated and maintained in accordance with Operational Performance Measures and Management Performance Measures set forth in Section 5 (*Operational Performance Measures*) and Section 6 (*Management Performance Measures*) of Schedule H (*O&M Requirements*) (the '**Service Levels**'). Failure of the Private Partner to meet the required Service Levels shall be called a "**Service Level Defect**".
- 19.10.2 The Private Partner shall be liable to pay a fixed amount to the Implementing Agency, as specified in Schedule H (*O&M Requirements*) for each Service Level Defect, which shall be imposed immediately upon the detection of the Service Level Defect during inspection of the Project Site (the '**First Day Deduction**'). The First-Day Deduction shall be paid by the Private Partner to the Implementing Agency the fixed amount specified in Schedule H for the period in which the Service Level Defect is detected. Notwithstanding the foregoing, the Implementing Agency may waive the First-Day Deduction if, at the time the inspection is conducted, the Private Partner demonstrates that its staff and equipment are actively engaged in rectifying the relevant Service Level Defect as verified and certified by the Independent Engineer.
- 19.10.3 Following the First Day Deduction, a time period is specified for each Service Level Defect, which shall allow the Private Partner an opportunity to remedy the identified Service Level Defect (the '**Grace Period**'). If the Service Level Defect is not rectified within the applicable Grace Period, the Private Partner shall be liable to pay similar additional amounts to the Implementing Agency for each subsequent day of the existence of the Service Level Defect, commencing on the second day following the detection of the said Service Level Defect. These daily charges shall continue to accrue until the Service Level Defect is fully remedied, with no limit on the duration of such charges being payable.
- 19.10.4 A Service Level Defect shall be deemed rectified only after the Private Partner submits a written notification to the Independent Engineer, along with supporting documentary evidence, clearly demonstrating that the Service Level Defect has been fully addressed and resolved. Upon receipt of such written notification, the Independent Engineer shall review the submitted evidence, and it is satisfied that the Service Level Defect has been remedied, it shall certify, in writing to the Implementing Agency with a copy to the Private Partner, that no further inspection is required. The Private Partner shall continue to be liable to make fixed amount payments to the Implementing Agency, in accordance with this Section, till the date of the issuance of the abovementioned certificate of the Independent Engineer stating that the Service Level Defect has been remedied satisfactorily.
- 19.10.5 The fixed amount payments that arise from multiple Service Level Defects within a single kilometre of the Project Highway shall be cumulative. The total amount applicable, for a Service Level Defect, to a one-kilometre section of the Project Highway shall be equal to the sum of all individual amounts that are payable for each identified non-conformance within that section.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- 19.10.6 The imposition of First Day Deductions and subsequent deductions shall not relieve the Private Partner of its obligations under the PPP Contract to *inter alia* comply with Service Levels.
- 19.10.7 Failure by the Private Partner to rectify a Service Level Defect for a continuous period of ninety (90) days beyond the relevant grace period (as per Schedule H) shall constitute a Private Partner Event of Default.

**19.11 MAJOR MAINTENANCE**

- 19.11.1 At any time during the Concession Period, the Implementing Agency may require that Major Maintenance be carried out on the Project Highway, during which time the portions of the Project Highway, on which Major Maintenance work is not taking place, shall remain open and Tolls shall continue to be collected.
- 19.11.2 Notwithstanding anything contained in Section 17.4 of this Agreement, for the Operational Year(s) during which Major Maintenance takes place, the Private Partner shall only be required to share with the Implementing Agency the Percentage Revenue Shared multiplied by the Actual Project Revenue for that Operational Year(s).

**19.12 NOT USED.**

**19.13 NOT USED.**

**19.14 IMPLEMENTING AGENCY PAYMENT ACCOUNT**

The Implementing Agency shall establish and maintain, from the Commencement Date and until the Trigger Date, the Implementing Agency Payment Account in a bank mutually agreed between the Private Partner and the Implementing Agency.

**19.15 NOT USED.**

**19.16 O&M DOCUMENTS**

- 19.16.1 The Private Partner shall prepare the O&M Documents in accordance with the Applicable Specifications and shall complete and deliver the same to the Implementing Agency, the Independent Engineer and the Independent Auditor (as applicable) from time to time within the O&M Time For Completion. Further, the Private Partner hereby undertakes that the O&M Documents shall comply with the Applicable Specifications.
- 19.16.2 The Implementing Agency, the Independent Engineer and the Independent Auditor (as applicable) shall have the right to review and inspect all O&M Documents. The Private Partner shall provide all such O&M Documents that the Implementing Agency, the Independent Engineer and the Independent Auditor may reasonably require to inspect in respect of the Operation and Maintenance. It is made clear that nothing in the above shall diminish the Private Partner's responsibility to provide the Implementing Agency, the Independent Engineer and the Independent Auditor with sufficient information to enable the same to satisfy themselves regarding the Operation and Maintenance.
- 19.16.3 For each part of the Operation and Maintenance, if the Implementing Agency, the Independent Engineer and the Independent Auditor (as applicable) wish to modify any O&M Documents, the Implementing Agency, the Independent Engineer and the Independent Auditor (as applicable) shall immediately submit their proposal for modification to the Private Partner. Subject to Section 19.16.4, performance of such modification shall be subject to mutual agreement between the Parties.
- 19.16.4 Defects & Deficiencies, errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the O&M Documents or arising there from shall be rectified by the Private Partner at its sole cost and risk.
- 19.16.5 The Implementing Agency, the Independent Engineer and the Independent Auditor (as applicable) may use the O&M Documents for such purposes as it may require for the purposes of the Project.

**19.17 TRAFFIC STUDIES**

- 19.17.1 The Implementing Agency may, in its sole discretion, commission up to two (2) traffic studies per Operational Year during the Operations Period, to verify the Actual Project Revenue collected,

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

vehicular volumes, traffic composition, and compliance with Toll collection data reported by the Private Partner and the costs of such traffic studies, including the fees of any consultant appointed by the Implementing Agency for this purpose, shall be borne entirely by the Private Partner.

19.17.2 The Implementing Agency may initiate or get a third party technical or electronic audit of the ETTMS and fee mechanism at any time during the Operations Period to confirm the authenticity of the data being submitted.

**19.18 NOT USED**

**19.19 MODIFICATIONS TO THE PROJECT**

19.19.1 The Private Partner shall not carry out any material modifications to the Concession Assets, save and except where such modifications are necessary for: (a) the Operation and Maintenance of the Concession Assets in conformity with the Applicable Specifications; and (b) compliance by the Concession Assets with the Applicable Specifications; provided, however, the Private Partner shall Notify the Independent Engineer and the Implementing Agency of the proposed modifications along with particulars thereof at least thirty (30) business days before commencing work on such modifications and shall only implement such modifications upon receipt of the Independent Engineer's and/or Implementing Agency's approval of the same, which approval shall be provided or declined by the Independent Engineer and/or the Implementing Agency within fifteen (15) days of its receiving the Private Partner's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Specifications.

**19.20 BARRIERS AND DIVERSIONS**

19.20.1 The Implementing Agency shall procure that during the Operations Period, no barriers are erected or placed by any Government Agency on the Concession Assets, except for reasons of national security, law and order; provided, that all such barriers shall be in accordance with the Applicable Specifications (including the Safety Requirements).

**19.21 O&M QUARTERLY STATUS REPORT**

19.21.1 During the Operations Period, the Private Partner shall, no later than seven (7) days after the end of each quarter of a calendar year (i.e. three months) of the Operations Period, furnish to the Implementing Agency and the Independent Engineer a quarterly report (the **O&M Quarterly Status Report**) stating in reasonable detail the condition of the Concession Assets including its compliance or otherwise with the Applicable Specifications and shall promptly give such other relevant information as may be required by the Independent Engineer, the Independent Auditor and/or and the Implementing Agency. In particular, the O&M Quarterly Status Report shall separately identify and state in reasonable detail the Defects & Deficiencies in the Private Partner Assets and/or the Operation and Maintenance that require rectification and any delays in the performance of its obligations by the Private Partner set out in the O&M Programme. The O&M Quarterly Status Report shall also expressly highlight all Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets identified by the Independent Engineer in its O&M Inspection Report and shall set out all actions taken and arrangements made by the Private Partner for remedying the same.

19.21.2 Each O&M Quarterly Status Report shall be updated by the Private Partner based on any observations and comments made by the Independent Engineer and shall be provided again to each of the Implementing Agency and the Independent Engineer until such time that it is approved by the Independent Engineer; provided, that the Independent Engineer shall not accord its approval of the O&M Quarterly Status Report until it is satisfied that all reasonable comments and observations of the Implementing Agency on the O&M Quarterly Status Report are addressed.

19.21.3 The O&M Quarterly Status Report shall be in the form approved by the Independent Engineer from time to time.

**19.22 O&M INSPECTION REPORT**

19.22.1 During the Operations Period, the Private Partner shall facilitate a joint inspection carried out by the Independent Engineer, the Private Partner, through its Private Partner Self Control Unit and the Implementing Agency, to inspect the Operation and Maintenance and the Concession Assets on a mutually agreed day each month in the Operations Period and the Private Partner shall make all

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

arrangements for the same. Additional inspections may also be carried out by the Independent Engineer or the Implementing Agency at any time during the Operations Period.

- 19.22.2 The Independent Engineer shall make a report of such inspection (the **O&M Inspection Report**) stating in reasonable detail the Defects & Deficiencies, if any, in the Operation and Maintenance and /or the Concession Assets with particular reference to the Applicable Specifications.
- 19.22.3 The Independent Engineer shall, within seven (7) days of commencement of a month, provide a copy of the O&M Inspection Report to the Private Partner and the Implementing Agency.
- 19.22.4 The Private Partner hereby undertakes that, within fifteen (15) days from receipt of the O&M Inspection Report, it shall rectify and remedy the Defects & Deficiencies, if any, stated in the O&M Inspection Report, on its own cost and expense.
- 19.22.5 The inspection or submission of the O&M Inspection Report by the Independent Engineer shall not relieve or absolve the Private Partner of its obligations and liabilities hereunder in any manner whatsoever.

**19.23 O&M TESTS**

- 19.23.1 The Private Partner shall conduct or procure to be conducted such tests, as specified in **SCHEDULE G (List of Tests & Completion Tests)** and the AASHTO Standards in order to determine whether the Operation and Maintenance and/or the Concession Assets conform to the Applicable Specifications (the **O&M Tests**). The O&M Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer and the Implementing Agency.
- 19.23.2 The Private Partner hereby undertakes to conduct the O&M Tests under the supervision of the Independent Engineer (in consultation with the Implementing Agency) and in accordance with the Applicable Specifications at its own cost and expense.
- 19.23.3 The Private Partner hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the Defects & Deficiencies in the Operation and Maintenance and/or the Concession Assets that are identified in the O&M Tests and to ensure that as a consequence of such remedial measures the Operation and Maintenance and the Concession Assets conform to the Applicable Specifications. The Private Partner further undertakes that the remedial measures required to be undertaken by the Private Partner pursuant to this Section 19.23.3 shall be repeated by the Private Partner at its sole cost till such time as the Operation and Maintenance and the Concession Assets conform to the Applicable Specifications to the satisfaction of the Independent Engineer. In the aforementioned circumstances, the Independent Engineer may require the Private Partner to conduct additional tests to determine whether the Defects & Deficiencies are rectified and in such case the costs of such additional tests shall be borne by the Private Partner.
- 19.23.4 The Private Partner shall maintain proper record of the O&M Tests and the remedial measures taken to cure the Defects & Deficiencies, if any, indicated by the O&M Test results.
- 19.23.5 Results of all O&M Tests shall be jointly recorded by the Independent Engineer and the Private Partner.

**19.24 REMEDIAL MEASURES**

- 19.24.1 The Private Partner shall repair or rectify the Defects & Deficiencies, if any, set forth in the O&M Inspection Report or in the O&M Tests results referred to in Section 19.23 (*O&M Tests*) and furnish a report in respect thereof to the Independent Engineer and the Implementing Agency within fifteen (15) days of receiving the O&M Inspection Report or the O&M Tests results, as the case may be; provided, that where the remedying of such Defects & Deficiencies is likely to take more than fifteen (15) days, the Private Partner shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.24.2 The Independent Engineer shall require the Private Partner to carry out or cause to be carried out the O&M Tests, at its own cost, to determine that such remedial measures have brought the relevant Concession Assets into compliance with the Applicable Specifications and the procedure set forth in this Section 19.24 (*Remedial Measures*) shall be repeated until the Concession Assets conform to the Applicable Specifications.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

19.24.3 The provisions of this Section 19.24 shall not in any manner limit the obligations of the Private Partner relating to remedying of Defects & Deficiencies set out elsewhere in this Agreement.

**19.25 MONTHLY COMPLIANCE TABLE**

19.25.1 The Private Partner Self Control Unit shall no later than three (3) days after the end of each month of the Operations Period, furnish to the Implementing Agency and the Independent Engineer a monthly report (the **SCU Monthly Compliance Table**) stating in reasonable detail its compliance with the Service Levels and shall promptly give such other relevant information as may be required by the Independent Engineer and/or and the Implementing Agency.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

20. **INSURANCES**

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**20.1 INSTALLATION PERIOD INSURANCES**

20.1.1 The Private Partner shall, at its sole cost and expense, procure and maintain during the Installation Period all such Insurances, as described in **PART I (*Installation Period Insurances*) OF SCHEDULE I (*Insurances*)**, that are necessary and required to be procured by the Private Partner in accordance with the Applicable Laws.

**20.2 OPERATIONS PERIOD INSURANCES**

20.2.1 The Private Partner shall, at its sole cost and expense, procure and maintain during the Operations Period all such Insurances, as described in **PART II (*Operations Period Insurances*) OF SCHEDULE I (*Insurances*)**, that are necessary and required to be procured by the Private Partner in accordance with the Applicable Laws.

**20.3 INSURANCE COMPANIES**

20.3.1 The Private Partner agrees that it shall procure the Insurances from such insurance companies that are acceptable to the Implementing Agency and further agrees that the Private Partner shall only procure Insurances through foreign insurance companies if the relevant Insurances are not being offered by local companies at comparable rates, subject always to the prior consent of the Implementing Agency.

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

**20.4 EVIDENCE OF INSURANCES**

20.4.1 The Private Partner shall, from time to time, provide to the Implementing Agency copies (duly attested as certified to be a true and correct copy by the relevant insurance company) of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Private Partner in accordance with this Agreement.

20.4.2 Failure by the Private Partner to obtain the Insurance coverage or certificates of Insurance required by this Article 20 (*Insurances*) shall not in any way relieve or limit the Private Partner’s obligations and liabilities under any provision of this Agreement.

20.4.3 In case the Private Partner fails to procure or maintain any Insurance required pursuant to this Article 20 (*Insurances*), then the Implementing Agency shall have the right to procure such Insurance in accordance with the requirements of **SCHEDULE I (*Insurances*)** and shall be entitled to offset the premiums paid for such insurance against any amounts owed to the Private Partner pursuant to the terms of this Agreement and the Implementing Agency Agreements. The Private Partner shall be named as the loss payee on any such Insurance procured by the Implementing Agency pursuant to this Section 20.4.3.

20.4.4 The Private Partner shall provide the Implementing Agency with copies of any underwriters’ reports or other reports received by the Private Partner from any insurance company; provided, that the Implementing Agency shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement or any other Implementing Agency Agreement or as may be required by any Governmental Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

**20.5 APPLICATION OF INSURANCE PROCEEDS**

20.5.1 All moneys received under the Insurance shall be promptly applied by the Private Partner towards repair, renovation, restoration and / or substitution of the Concession Assets or any part thereof which may have been damaged or destroyed; provided, that all costs relating to such repair, renovation, restoration and / or substitution shall be duly certified by the Independent Engineer and the Independent Auditor.

20.5.2 [not used]

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

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

**20.6 VALIDITY OF INSURANCES**

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

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

20.6.3 Notwithstanding anything contained herein, in the event the Private Partner fails to comply with its obligations to procure the Insurances in accordance with Section 20.1 (*Installation Period Insurances*) and / or Section 20.2 (*Operations Period Insurances*), then the Implementing Agency may, without prejudice to its other rights and remedies for breach, at its option, obtain and maintain such Insurance and all sums incurred by the Implementing Agency therefor shall be reimbursed by the Private Partner to the Implementing Agency within seven (7) days from the receipt of a claim by the Private Partner in respect thereof from the Implementing Agency.

20.6.4 The Private Partner shall notify the Implementing Agency in advance, prior to any material variation of the Insurances.

**20.7 MAINTENANCE OF “OCCURRENCE” FORM POLICIES**

20.7.1 A coverage required under this Article 20 (*Insurances*) and **SCHEDULE I (*Insurances*)** and any “umbrella” or excess coverage shall be “occurrence” form policies. In the event the Private Partner has “claims-made” form coverage, the Private Partner must obtain prior approval of all “claims-made” policies from the Implementing Agency.

**20.8 POLICY ENDORSEMENTS**

20.8.1 The Private Partner shall cause the insurance companies to provide the following endorsement items in the commercial general liability and, if applicable, umbrella or excess liability policies relating to the installation, upgradation, operation and maintenance of the Concession Assets provided pursuant to this Article 20 (*Insurances*) and **SCHEDULE I (*Insurances*)**:

- (a) the Implementing Agency, its officers, servants and agents shall be additionally insured under such policies with respect to claims arising out of or in connection with this Agreement;
- (b) the insurance shall be primary with respect to the interest of the Implementing Agency, its officers, servants and agents and any other insurance maintained by them is excess and not contributory with such policies;
- (c) the following separation of interests clause shall be made a part of the policy:

“In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance.”;

- (d) the insurer shall waive all rights of subrogation against the Implementing Agency, its officers, servants and agents; and
- (e) notwithstanding any provision of the policy, the policy may not be cancelled or not renewed without the insurer endeavouring to give thirty (30) days written notice to the Implementing Agency except in the case of non-payment, in which case it will be ten (10) days with prior

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

written notice to the Implementing Agency. All other terms and conditions of the policy shall remain unchanged.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

## 21. FORCE MAJEURE

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### 21.1 FORCE MAJEURE EVENT

21.1.1 A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Commencement Date materially and adversely affects the performance by such affected Party (the **Affected Party**) of its obligations under or pursuant to this Agreement; provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Concession Assets from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limiting the generality of the foregoing, “**Force Majeure Events**” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) the following political events that occur inside or directly involve Pakistan (each a **Political Event**):
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
  - (ii) any Lapse of Consent of which report to Implementing Agency, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 and that shall have existed for thirty (30) consecutive days or more; or
  - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide and that shall have existed for thirty (30) consecutive days or more;
- (b) the following events beyond the reasonable control of the affected Party (each a **Non Political Event**), including, but not limited to:
  - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado, which has, in each case, affected the work or operations for more than fifteen (15) consecutive days; or
  - (ii) any Lapse of Consent of which report to Implementing Agency, the Independent Engineer and the Independent Auditor shall have been given under Section 7.6.2 and that shall have existed for less than thirty (30) consecutive days; or
  - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide and that shall have existed for thirty (30) consecutive days or more; or
  - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Political Event, in which case such event or circumstance shall constitute a Political Event); or
  - (v) epidemic or plague.
- (c) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
  - (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
  - (ii) a delay in the performance of any Contractor;
  - (iii) a breakdown in machinery and/or equipment; and

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (i) normal wear and tear or random flaws in materials and equipment,
- (ii) a delay caused by rains, monsoons and fog;

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

## **21.2 OBLIGATION TO NOTIFY**

21.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, Notify the Independent Engineer, the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

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

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

21.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within five (5) days from the date of receipt of the same, convene a meeting, along with the Independent Engineer for the purpose of conducting discussions, in good faith, and where necessary the Parties shall agree to conduct inspections and / or surveys of the Project in order to:

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

21.2.4 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports in respect of the matters set out Section 21.2.3 and such other information, details and / or documents that the other Party may reasonably require.

## **21.3 CONSEQUENCE OF FORCE MAJEURE EVENT**

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

- (a) there shall be no Termination of this Agreement except in accordance with the provisions of Section 21.5 (*Termination Notice for Force Majeure Event*), Section 21.6 (*Termination Payment for Force Majeure Event*) and Article 23 (*Termination*);
- (b) in the event of occurrence of a Force Majeure Event:
  - (i) subject to Section 21.8, the Project Milestone Dates for the Project Milestones (affected by the Force Majeure Event) to be performed (together with the timelines for performance by the Private Partner of its relevant obligations to be performed)

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

shall be extended by the Force Majeure Period (as determined by the Independent Engineer and the Independent Auditor in accordance with Article 15 (*Relief Extensions & Relief Compensations*)) and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply;

- (ii) all costs, fees, expenses and charges arising from and relating to the Force Majeure Event shall be allocated in accordance with Section 21.4 (*Allocation of Costs Arising out of Force Majeure*).

provided, however, that no relief, including extension of Time For Completion, shall be granted to the affected Party to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred.

**21.4 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE**

21.4.1 Upon occurrence of a Force Majeure Event, the Force Majeure Costs shall be allocated as follows:

- (a) upon occurrence of a Non Political Event, all Force Majeure Costs shall be on the account of the Private Partner and the Implementing Agency shall not be liable or responsible for the same in any manner;
- (b) upon occurrence of a Political Event, the Implementing Agency shall fund and bear the Force Majeure Costs (as set out in a Relief Order) and in such case, the provisions of Article 15 (*Relief Extensions & Relief Compensations*) shall apply.

21.4.2 Not Used

21.4.3 Save and except as expressly provided in this Section 21.4 (*Allocation of Costs Arising out of Force Majeure*) and, if applicable, Section 19.3 (*Emergency Works*), Section 21.5 (*Termination Notice For Force Majeure Event*) and Section 21.6 (*Termination Payment For Force Majeure Event*), neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**21.5 TERMINATION NOTICE FOR FORCE MAJEURE EVENT**

21.5.1 If:

- (a) a Force Majeure Event subsists for a continuous period of one hundred and twenty (120) days, either Party may in its discretion Terminate this Agreement by issuing a Termination Notice to the other Party; or
- (b) in case of a Political Event, the Implementing Agency determines that the Force Majeure Costs relating the same are unacceptable then the Implementing Agency may in its discretion Terminate this Agreement by issuing a Termination Notice to the Private Partner,

in each case above, without being liable in any manner whatsoever, save as provided in this Section 21.5 (*Termination Notice for Force Majeure*) and Section 21.6 (*Termination Payment for Force Majeure Event*), and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand Terminated forthwith; provided, that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days’ time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

**21.6 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT**

21.6.1 If Termination is on account of a Non Political Event, the Implementing Agency shall make a Termination Payment to the Private Partner on or prior to the Termination Payment Date in an amount equal to the Non Political Event Termination Amount.

21.6.2 If Termination is on account of a Political Event, the Implementing Agency shall make a Termination Payment to the Private Partner on or prior to the Termination Payment Date in an amount equal to the Political Event Termination Amounts.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**21.7 FORCE MAJEURE DISPUTE RESOLUTION**

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

**21.8 EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

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

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

22. **EVENTS OF DEFAULT**

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22.1 **PRIVATE PARTNER EVENT OF DEFAULT**

22.1.1 Any of the following events shall constitute an event of default by the Private Partner (the **Private Partner Event of Default**) unless such event has occurred as a consequence of Permitted Events and/or as a consequence events or circumstances for which the Private Partner is relieved of its obligations under this Agreement:

- (a) any Material Breach by the Private Partner or the Sponsor of any Implementing Agency Agreement;
- (b) the Private Partner fails to commence the Installation Works within thirty (30) days from the Commencement Date;
- (c) the Private Partner fails to complete Installation Works by the date falling ninety (90) days following the Scheduled Installation Completion Date;
- (d) any statement, representation or warranty made by the Private Partner in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Private Partner's ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the rights and/or obligations of the Implementing Agency hereunder or under the Implementing Agency Agreements;
- (e) the Private Partner creates any Encumbrance on the Concession Assets in favour of any Person save and except as otherwise expressly permitted in terms of this Agreement;
- (f) the transfer, assignment or sub-contracting of the rights and/or obligations of the Private Partner under this Agreement, save and except as permitted in terms of this Agreement; and/or
- (g) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and further; provided, that such amalgamation has been agreed to by the Implementing Agency), the occurrence of any of the following events:
  - (i) the passing of a resolution for the dissolution or winding up of the Private Partner;
  - (ii) the voluntary filing by the Private Partner of a petition of bankruptcy, moratorium, winding up, or other similar relief;
  - (iii) the appointment of a provisional liquidator in a proceeding for the winding up of the Private Partner after notice to the Private Partner and due hearing, which appointment has not been set aside or stayed within ninety (90) days of such appointment;
  - (iv) the making by a court with jurisdiction over the Private Partner of an order winding up the Private Partner that is not stayed or reversed by a court of competent authority within ninety (90) days; and/or
  - (v) any proceeding being validly instituted under the Applicable Laws for the dissolution of the Private Partner or attachment of the Concession Assets in accordance with Applicable Laws that has a Material Adverse Effect and that is not stayed or suspended in ninety (90) days; provided, that, if, within seven (7) business days of the Private Partner becoming aware of such proceedings being filed, the Private Partner:
    - (1) confirms to the Implementing Agency that such proceedings relate to the recovery of a claim against the Private Partner that is disputed bona fide by the Private Partner as payable, and
    - (2) furnishes a certificate by the Independent Auditor to the effect that the Private Partner is and will remain solvent despite the payment of the claim subject to the said insolvency proceedings,

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

then, in such case, the Private Partner Event of Default set forth in Section 22.1.1(g)(v) shall not constitute a Private Partner Event of Default until such time that the said certificate by the Independent Auditor is revoked or otherwise ceases to remain accurate;

- (h) an Abandonment by the Private Partner, without the prior written consent of the Implementing Agency, for a period of thirty (30) consecutive days or for an aggregate period of sixty (60) days during any Accounting Year; provided, however, that the Private Partner shall not be deemed to have Abandoned the Concession Assets so long as it is using all reasonable efforts (as determined by the Independent Engineer) to regain control of the Concession Assets and reinstate its Installation Works and/or Operation and Maintenance, as applicable;
- (i) the Private Partner is in Material Breach of O&M Requirements, including but not limited to not meeting the required Service Levels provided in Schedule H (*O&M Requirements*);
- (j) any other events or circumstances expressly set out in this Agreement as a Private Partner Event of Default;
- (k) the Bid Security, Installation Performance Guarantee or O&M Performance Guarantee in each case, is not issued, renewed, replaced or provided (as the case may be) in accordance with this Agreement or becomes inoperative or ceases to remain valid or in force in breach of the relevant provisions of this Agreement;
- (l) a breach by the Private Partner of its obligation to take out and maintain the required insurances in accordance with Article 20 (*Insurances*);
- (m) a Change In Control, Change In Complete Control and/or Change In Shareholding has occurred in breach of this Agreement;
- (n) the Private Partner or the Sponsors repudiate any of the Implementing Agency Agreements or otherwise evidence an intention not to be bound by the same; and/or
- (o) termination of the Project Site Licence Agreement as a result of a material breach by the Private Partner that is not remedied in accordance with the terms of the Project Site Licence Agreement.
- (p) the Private Partner has delayed any payment that has fallen due and payable under this Agreement and any of the Implementing Agency Agreements and if such delay exceeds sixty (60) days, save where such payment is duly Disputed by the Private Partner in accordance with this Agreement;
- (q) any assets or shares of the Private Partner are expropriated, confiscated, compulsorily acquired or nationalised by any Government Agency or entity due to an act or omission of the Private Partner or its shareholders, causing a Material Adverse Effect;
- (r) the Private Partner has failed to deposit the funds collected from the Tolls with the Escrow Agent in accordance with Section 17.1.1;
- (s) a material breach by the Civil Work Contractors, the O&M Contractors or any other subcontractor or any of the parties to the Project Agreements or any of their respective contracts with the Private Partner having a Material Adverse Effect;
- (t) Not used;
- (u) the Private Partner has delayed the payment of the Expected Revenue Share payable to the Implementing Agency that has fallen due and payable under this Agreement and any of the Implementing Agency Agreements and if such delay exceeds sixty (60) days, save where such payment is duly Disputed by the Private Partner in accordance with this Agreement;
- (v) [Not used];
- (w) The Private Partner fails to remedy a Service Level Defect for ninety (90) days beyond the relevant grace period (as per Schedule H).

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**22.2 IMPLEMENTING AGENCY EVENT OF DEFAULT**

22.2.1 The following events shall constitute events of default by the Implementing Agency (the **Implementing Agency Event of Default**), unless the same has occurred and / or results from a Private Partner Event of Default or a Force Majeure Event:

- (a) any Material Breach by the Implementing Agency of any Implementing Agency Agreement and the same has not been cured within forty-five (45) days from the date of written notice thereof by the Private Partner, or within such time period as provided in the relevant Implementing Agency Agreement, respectively;
- (b) any statement, representation or warranty made by the Implementing Agency in any Implementing Agency Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Private Partner’s ability to perform its obligations under this Agreement and/or on the Project;
- (c) any termination, cancellation, resumption or revocation of the Private Partner’s interest established under the Project Site Licence Agreement in respect of the Project Site (otherwise than for a breach of the conditions of the Project Site Licence Agreement by the Private Partner entitling such termination, cancellation, resumption or revocation);
- (d) any change in any Applicable Laws:
  - (i) making unenforceable, invalid, or void any material undertaking of the Implementing Agency under the Implementing Agency Agreements; and/or
  - (ii) making:
    - (aa) it unlawful for the Private Partner, or the Sponsors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any Implementing Agency Agreement; or
    - (bb) any payment, the performance of any material obligation or the enjoyment or enforcement of any material right unenforceable under any Implementing Agency Agreement, invalid or void as a result of any such change in Applicable Laws;
- (e) the expropriation, compulsory acquisition, or nationalization by the Implementing Agency or any Government Agency of: (i) any Shares in the Private Partner; or (ii) of any Concession Assets or rights of the Private Partner;
- (f) any change in, or any change in the interpretation of, any of the Applicable Laws (including the Constitution of Pakistan and any other Applicable Laws that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making:
  - (i) unlawful, unenforceable, invalid, or void any material undertaking of the Implementing Agency under any Implementing Agency Agreement; or
  - (ii) unlawful for the Private Partner to make or receive or the Sponsors to receive any payment (including interest or return), for the Private Partner to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project; or
  - (iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the Applicable Laws,which in the case of (i) (ii) or (iii) above, has a continuing effect for more than one hundred and eighty (180) days without an arrangement being provided to exempt the affected party from the effect of such Change in Law;
- (g) Not used.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- (h) the Implementing Agency has delayed any payment that has fallen due and payable under this Agreement and /or any of the Implementing Agency Agreements and if such delay exceeds ninety (90) days, save where such payment is duly Disputed by the Implementing Agency in accordance with this Agreement and /or Implementing Agency Agreements;
- (i) non-implementation of Toll in accordance with the Toll Implementation Structure and/ or any adverse notification, non-issuance, revocation and/ or amendment of the Toll Notification, provided that the Private Partner had made a written request at least three (3) months before the date on which the Toll rates had to be revised in accordance with Section 17.5.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

23. **TERMINATION**

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**23.1 TERMINATION FOR PRIVATE PARTNER EVENT OF DEFAULT**

- 23.1.1 Without prejudice to any other right or remedy which the Implementing Agency may have in respect thereof under this Agreement, upon the occurrence and continuation of a Private Partner Event of Default, the Implementing Agency shall be entitled to Terminate this Agreement by issuing a Termination Notice to the Private Partner; provided, that before issuing the Termination Notice, the Implementing Agency shall by a notice in writing inform the Private Partner of its intention to issue the Termination Notice (the **Implementing Agency Preliminary Notice**).
- 23.1.2 In the event the underlying Private Partner Event of Default is not cured within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Implementing Agency shall be entitled to:
  - (a) Terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period; and
  - (b) encash the Installation Performance Guarantee or O&M Performance Guarantee, as applicable and in effect as such time, on or following the issuance of the Termination Notice.
- 23.1.3 The following shall apply in respect of Cure Period relating to a Private Partner Event of Default:
  - (a) the Cure Period provided in this Agreement shall not relieve the Private Partner from liability for damages (as expressly set out in this Agreement), if any, caused by its underlying breach or default giving rise to the Implementing Agency Preliminary Notice;
  - (b) the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
  - (c) if the cure of any breach by the Private Partner requires any reasonable action by Private Partner that must be approved by the Implementing Agency and/or the Government Agency hereunder, the applicable Cure Period shall be extended from the date the Private Partner notifies the Implementing Agency of the same until the date that the Implementing Agency, and/or the Government Agency, as the case may be, accords the required approval.
- 23.1.4 Upon issuance of a Termination Notice by the Implementing Agency (following expiry of the Cure Period) on account of occurrence and continuation of a Private Partner Event of Default during the Operations Period, the right of the Private Partner to charge Tolls shall stand terminated with immediate effect and no Toll Revenues shall accrue and / or be payable to the Private Partner from the date of occurrence of the Private Partner's receipt of the Termination Notice;
- 23.1.5 In the event of Termination due to a Private Partner Event of Default, the Implementing Agency shall pay to the Private Partner on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Private Partner Default Termination Amount.
- 23.1.6 Notwithstanding anything contained in this Agreement, in the event of the occurrence of the Private Partner Event of Default listed in Section 22.1.1(k), the Implementing Agency shall be entitled to immediately issue the Termination Notice without the issuance of the Implementing Agency Preliminary Notice or providing a Cure Period to the Private Partner to remedy the said Private Partner Event of Default.

**23.2 TERMINATION FOR IMPLEMENTING AGENCY EVENT OF DEFAULT**

- 23.2.1 Without prejudice to any other right or remedy which the Private Partner may have in respect thereof under this Agreement, upon the occurrence and continuation of any of the Implementing Agency Event of Default, the Private Partner shall by a notice in writing inform the Implementing Agency of its intention to issue the Termination Notice (the **Private Partner Preliminary Notice**).
- 23.2.2 In the event the underlying Implementing Agency Event of Default is not cured by the Implementing Agency within the Cure Period and the same is subsisting at the expiry of the Cure Period, the Private Partner shall be entitled to terminate this Agreement by issuing the Termination Notice upon expiry of the Cure Period.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

23.2.3 In the event of Termination due to an Implementing Agency Event of Default, the Implementing Agency shall pay to the Private Partner on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Implementing Agency Default Termination Amount.

**23.3 TERMINATION FOR CORRUPT ACTS**

23.3.1 The Private Partner warrants that in entering into this Agreement it has not committed any Corrupt Act.

23.3.2 If any Corrupt Act is committed, then the Implementing Agency shall be entitled to act in accordance with the following provisions of this Section 23.3; provided, that at all times the Implementing Agency shall bear the burden of proof for establishing that a Corrupt Act has been committed:

- (a) if the Corrupt Act is committed by the Private Partner or any Associate of the Private Partner, as the case may be, then in any such case, the Implementing Agency may issue a notice to the Private Partner of its intent to issue a Termination Notice;
- (b) if the Corrupt Act is committed by an employee of the Private Partner, then in such case, the Implementing Agency may give written notice to the Private Partner of its intention to issue a Termination Notice; provided, however, the Implementing Agency shall not be entitled to issue a Termination Notice in the event the Private Partner, within forty-five(45) days of its receipt the Implementing Agency’s notice stating its intention to issue a Termination Notice, terminates such employee’s involvement in the Project and (if necessary) provides evidence to the Implementing Agency of the performance of any part of the Project deliverables previously performed by such employee by another person;
- (c) Not used;
- (d) Not used;
- (e) if the Corrupt Act is committed by any other person not specified in sub-section (b) above but involved in the Project as a subcontractor or supplier to any Contractor or to the Private Partner, then the Implementing Agency may give notice to the Private Partner of its intention to issue a Termination Notice; provided, however, that the Implementing Agency shall not be entitled to issue a Termination Notice in the event the Private Partner, within thirty (30) days of its receipt the Implementing Agency’s notice stating its intention to issue a Termination Notice, procures the termination of such person’s involvement in the Project and (if necessary) procures the performance of the relevant contract and procures the performance of the relevant part of the Project Works by another person.

23.3.3 Any notice of intention to issue a Termination Notice by the Implementing Agency under this Section 23.3 shall specify:

- (a) the nature of the Corrupt Act;
- (b) the identity of the party or parties who the Implementing Agency believes has committed the Corrupt Act; and
- (c) the date on which the Termination Notice will be issued, which date shall be subject to the timelines provided in Section 23.3.2(b) and (e), as applicable.

23.3.4 Without prejudice to its other rights or remedies under this Section, the Implementing Agency shall be entitled to recover from the Private Partner, the greater of:

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

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

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

23.3.6 In the event of Termination due to a Corrupt Act in accordance with this Section 23.3, the Implementing Agency shall pay to the Private Partner on or prior to the Termination Payment Date, by way of Termination Payment, an amount equal to the Corrupt Act Termination Amount.

**23.4 RIGHTS OF THE IMPLEMENTING AGENCY ON TERMINATION AND/OR FINAL EXPIRY DATE**

23.4.1 In case of Termination of this Agreement for any reason whatsoever and subject to receipt by the Private Partner of the Termination Payment on or prior to the Transfer Date or in case of expiry of this Agreement on the Final Expiry Date, the Implementing Agency shall, on the Transfer Date, have the power and authority to:

- (a) take possession and control of Concession Assets;
- (b) prohibit the Private Partner and any person claiming through or under the Private Partner from entering upon the Concession Assets or dealing with or any part thereof except in the case where the Private Partner and any person claiming through or under the Private Partner enters the Concession Assets or deals with or any part thereof as a User.

**23.5 TERMINATION PAYMENTS**

23.5.1 The Termination Payment shall be payable to the Private Partner by the Implementing Agency on or prior to the Termination Payment Date in accordance with a demand being made by the Private Partner in writing, subject to the same being duly certified by the Independent Engineer and Independent Auditor.

23.5.2 To the extent:

- (a) the Termination Equity and/or Termination Dividend Amount is payable by the Implementing Agency to the Private Partner upon Termination of this Agreement; and
- (b) the Implementing Agency fails to make payment of such due and payable Termination Equity and/or Termination Dividend Amount (the **Unpaid Termination Equity Amount**) by the date falling fifty (50) days following the Termination Payment Date,

then, the Implementing Agency shall (in addition to the payment of the due and payable Unpaid Termination Equity Amount) make payment to the Private Partner of late payment interest on the Unpaid Termination Equity Amount at the rate of Delayed Payment Rate, such interest commencing to accrue on the date falling fifty (50) days following the Termination Payment Date and ending on the actual date on which the Implementing Agency makes payment of the Unpaid Termination Equity Amount. The stipulation regarding additional amounts payable in respect of delayed Unpaid Termination Equity Amount contained in this Section 23.5.2 shall not be construed nor be deemed to authorize any delay in payment of any amount due to the Private Partner nor be construed or deemed to be a waiver of the underlying breach of payment obligations, in each case, in the afore-stated circumstances.

**23.6 MODE OF PAYMENT**

23.6.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Private Partner, the Termination Payment, and all other payments that are or may be payable by the Implementing Agency under any of the provisions of this Agreement shall be made only by way of credit directly to a bank account of the Private Partner notified by the Private Partner.

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

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

24. **DIVESTMENT OF RIGHTS AND INTEREST**

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24.1 **REQUIREMENTS FOR DIVESTMENT**

24.1.1 In case of (as applicable):

- (A) Termination of this Agreement prior to Final Expiry Date and subject to the Implementing Agency fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date; or
- (B) one (1) year prior to expiry of this Agreement on the Final Expiry Date,

the Private Partner shall comply with and conform complete compliance with the following requirements by the Transfer Date (the **Divestment Requirements**):

- (a) Notify to the Implementing Agency forthwith the location and particulars of all Concession Assets;
- (b) deliver forthwith the actual or constructive possession of the Concession Assets, free and clear of all Encumbrances;
- (c) unless this Agreement is Terminated due to a Permitted Event (excluding Non-Political Event), cure all Concession Assets of all Defects & Deficiencies in accordance with the Handover List; provided, that in the event of Termination during the Installation Period, all Concession Assets shall be handed over on ‘*as is where is*’ basis after bringing them to a safe condition;
- (d) deliver and transfer all relevant records, reports, intellectual property and other Licences pertaining to the Concession Assets and its Installation Works, Operation and Maintenance, including all programs and manuals pertaining thereto, and complete O&M Documents as on the Transfer Date;
- (e) transfer and/or deliver to the Implementing Agency, all Private Partner Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Implementing Agency may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Private Partner in the Concession Assets, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, absolutely unto the Implementing Agency or its nominee; and
- (g) train all staff notified by the Implementing Agency for Operations and Maintenance in accordance with the O&M Manual;
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Private Partner in the Concession Assets, free from all Encumbrances, absolutely unto the Implementing Agency or to its nominee.

24.2 **INSPECTION AND CURE**

24.2.1 In case of:

- (a) Termination during the Operations Period, not earlier than thirty (30) days prior to Termination but not later than fifteen (15) days prior to the Transfer Date; or
- (b) expiry of this Agreement on the Final Expiry Date, not earlier twelve (12) months prior to Transfer Date but not later than six (06) months prior to the Transfer Date,

the Independent Engineer shall verify, after giving due notice to the Private Partner of the time, date and venue of such verification, compliance by the Private Partner with the Applicable Specifications, and if required, cause appropriate tests to be carried out. In the event of Termination (excluding Termination due to Political Event or a Implementing Agency Event of Default) or expiry of this Agreement on the Final Expiry Date, the Private Partner shall bear the cost for this purpose. In the event of Termination due to Implementing Agency Event of Default or Political Event, the

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Implementing Agency shall bear the cost for this purpose. All Defects & Deficiencies shall be cured by the Private Partner at its cost unless the same is due to a Political Event or a Implementing Agency Event of Default in which case, the Implementing Agency shall bear such costs.

24.2.2 Until the Transfer Date, all risks shall vest with the Private Partner for loss of or damage to the whole or any part of the Concession Assets and following the Transfer Date, all risks in relation to the same shall be deemed to have been transferred to and vest with the Implementing Agency.

**24.3 COOPERATION AND ASSISTANCE FOR TRANSFER OF THE CONCESSION ASSETS**

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

24.3.2 The Parties shall provide to each other (as applicable):

- (a) in case of Termination of this Agreement, two (2) months prior to the Termination Payment Date in the event of Termination and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be; or
- (b) in case of expiry of this Agreement on the Final Expiry Date, six (6) months prior to the Final Expiry Date,

as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Private Partner shall further provide such reasonable advice and assistance as the Implementing Agency, its appointed Private Partner or agent may reasonably require for operation of the Project until the Transfer Date.

**24.4 VESTING CERTIFICATE**

24.4.1 Subject to:

- (a) in case of Termination of this Agreement, the Implementing Agency fully complying with all its obligations in respect of making Termination Payments on or prior to the Termination Payment Date; or
- (b) expiry of this Agreement on the Final Expiry Date,

the divestment of all rights, title and interest in the Project shall be deemed to be complete on the Transfer Date, and the Independent Auditor and the Independent Engineer shall jointly, without unreasonable delay, thereupon issue a certificate (the **Vesting Certificate**) substantially in the form set forth in **SCHEDULE O (Form of Vesting Certificate)**, which will have the effect of constituting evidence of divestment by the Private Partner of all of its rights, title and interest in the Concession Assets, and their vesting in the Implementing Agency pursuant hereto.

**24.5 TRANSFER CONSIDERATION**

24.5.1 The Parties agree that the Concession Assets shall be transferred to the Implementing Agency on the Transfer Date for a sum of (as consideration) PKR 1/- (Pakistani Rupees One only).

**24.6 DIVESTMENT COSTS**

24.6.1 Subject to Section 24.6.2, the Private Partner shall bear and pay, in case of Termination due to a Private Partner Event of Default and/or due to Corrupt Act and/or due to a Non Political Event or in case of expiry of this Agreement on the Final Expiry Date, all costs incidental to divestment of all of the rights, title and interest of the Private Partner in the Concession Assets in favour of the Implementing Agency, save and except that all stamp duties payable on any deeds or documents executed by the Private Partner in connection with such divestment shall be borne by the Implementing Agency. In the event of Termination due to a Force Majeure Event and/or an Implementing Agency Event of Default, the Implementing Agency shall bear and pay all the above-mentioned costs.

24.6.2 The Implementing Agency shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Concession Assets to the

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Implementing Agency or its nominated agency on the Transfer Date. The Implementing Agency shall at its own cost obtain or effect all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws and take such other actions as may be necessary for such transfer.

24.6.3 In the event of any Dispute relating to matters covered by and under this Article 24 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**25. DEFECTS LIABILITY DURING EXIT IMPLEMENTATION PERIOD**

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**25.1 LIABILITY FOR DEFECTS DURING EXIT IMPLEMENTATION PERIOD**

25.1.1 Without prejudice to any obligation of the Private Partner in this Agreement, the Private Partner shall be responsible for all Defects & Deficiencies in the Concession Assets during the Exit Implementation Period in accordance with this Section 25.1.1 and it shall have the obligation to repair or rectify all Defects & Deficiencies observed by the Independent Engineer in the Concession Assets during the aforesaid period, as set out in a list jointly prepared by the Independent Engineer and the Private Partner (the **Handover List**) within:

- (a) in case of Termination of this Agreement, one (1) year of the issuance of a Termination Notice;
- (b) in case of expiry of this Agreement on the Final Expiry Date, one (1) year after the Final Expiry Date.

All costs for remedying of such Defects & Deficiencies in accordance with the Handover List shall be borne by:

- (a) the Private Partner in the event this Agreement expires on the Final Expiry Date or in the event this Agreement is Terminated due to a Private Partner Event of Default or due to a Corrupt Act or due to a Non Political Event;
- (b) the Implementing Agency in the event this Agreement is Terminated due to an Implementing Agency Event of Default or Political Events.

25.1.2 Notwithstanding anything to the contrary set out herein, the provisions of this Article 25 (*Defects Liability During Exit Implementation Period*) shall not apply to any Defects & Deficiencies caused by a Political Event that has resulted in Termination.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

26. **DISCLAIMER**

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26.1 **DISCLAIMER**

- 26.1.1 Subject to the terms of this Agreement, the Private Partner acknowledges that prior to the execution of this Agreement, the Private Partner has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of the Project, Project Requirements, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Implementing Agency or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Except as expressly provided in this Agreement, the Implementing Agency makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Private Partner confirms that it shall have no claim whatsoever against the Implementing Agency in this regard.
- 26.1.2 Subject to the terms of Agreement, the Private Partner acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Section 26.1.1 and hereby acknowledges and agrees that the Implementing Agency shall not be liable for the same in any manner whatsoever to the Private Partner, the Sponsors and their Associates or any person claiming through or under any of them.
- 26.1.3 Any mistake or error in or relating to any of the matters set forth in Section 26.1.1 shall not vitiate this Agreement or render it voidable.
- 26.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) above, such Party shall immediately notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the Implementing Agency to give any notice pursuant to this sub-section 26.1.4 of Section 26.1 (*Disclaimer*) shall not prejudice the disclaimer of the Implementing Agency contained in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) and shall not in any manner shift to the Implementing Agency any risks assumed by the Private Partner pursuant to this Agreement.
- 26.1.5 Except as otherwise provided in this Agreement, all risks relating to the Concession Assets shall be borne by the Private Partner and the Implementing Agency shall not be liable in any manner for such risks or the consequences thereof.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**27. ASSIGNMENT AND CHARGES**

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**27.1 RESTRICTION ON ASSIGNMENT AND CHARGES**

27.1.1 Subject to Section 27.2 (*Permitted Assignment and Charges*), this Agreement shall not be assigned by the Private Partner to any person, save and except with the prior consent in writing of the Implementing Agency, which consent the Implementing Agency shall be entitled to decline without assigning any reason.

27.1.2 Subject to the provisions of Section 27.2 (*Permitted Assignment and Charges*), the Private Partner shall not:

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

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

**27.2 PERMITTED ASSIGNMENT AND CHARGES**

27.2.1 The restriction set forth in sub-section 27.1.2 of Section 27.1 (*Restriction on Assignment and Charges*) shall not apply to liens and Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

**27.3 [NOT USED]**

**27.4 [NOT USED]**

**27.5 ASSIGNMENT BY THE IMPLEMENTING AGENCY**

27.5.1 Notwithstanding anything to the contrary contained in this Agreement or any other Implementing Agency Agreement, the Implementing Agency shall not assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement or any Implementing Agency Agreement to an assignee or any Person without the consent of the Private Partner.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

28. **NOT USED**

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**29. ADDITIONAL MATTERS**

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**29.1 ADVERTISING RIGHTS**

- 29.1.1 The Private Partner shall not have any right to engage in any advertising activities on the Concession Assets. The Implementing Agency retains all rights in relation to any advertising and promotional activities on the Concession Assets and any revenue generated from such activities.
- 29.1.2 Notwithstanding anything contained in Section 27.5.1, the Implementing Agency may transfer or assign any or all rights in relation to any advertising and promotional activities on the Concession Assets to any other Government Agency without the consent or approval of the Private Partner.

**29.2 COMMERCIAL RIGHTS & ADDITIONAL FACILITIES**

- 29.2.1 At any time prior to the expiration of the Concession Period, the Implementing Agency shall have the exclusive right to establish Additional Facilities along the Project Site or either through the Private Partner or any other party at its sole and absolute discretion. Nothing contained in this Agreement shall prevent the Implementing Agency from granting Development Rights to any person who is not affiliated with the Private Partner or its shareholders.
- 29.2.2 Subject to Section 29.2.1, nothing contained in this Agreement shall obligate the Implementing Agency in any way to grant or deny such Development Rights and its decision regarding such rights will be carried out at its complete discretion. For the avoidance of doubt, Development Rights are not a part of the Concession Assets.
- 29.2.3 For the purposes of implementation by the Implementing Agency of its development rights the Private Partner shall enter into all such agreements as may be reasonably required by the Implementing Agency to give full effect to the grant of Development Rights and to enable the Implementing Agency to use the Development Rights granted by the Implementing Agency and are solely for the benefit of Implementing Agency and/or its designated (as notified to the Private Partner) nominee.

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

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

30. **DISPUTE RESOLUTION**

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**30.1 DISPUTE RESOLUTION**

- 30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the **Dispute**).
- 30.1.2 The Parties shall, in the first instance, use their best efforts for resolving the Dispute(s), amicably amongst each other in an attempt to achieve consensus, and try to resolve the Dispute(s) promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

**30.2 MEDIATION**

- 30.2.1 In the event of no consensus being achieved, pursuant to Section 30.1.2, any Dispute between the Parties, the Dispute shall be referred for mediation by the Independent Auditor, for amicable settlement. In the event the Parties are unable to resolve the matters through mediation either Party may refer the Dispute to arbitration in accordance with the provisions of Section 30.3 (*Arbitration*).

**30.3 ARBITRATION**

- 30.3.1 Any Dispute which is not resolved amicably by mediation, as provided in Section 30.2 (*Mediation*), shall be finally decided by reference to arbitration by a board of arbitrators (the **Board of Arbitrators**) appointed in accordance with Section 30.3.3. Such arbitration shall be held in accordance with the provisions of the Arbitration Act.
- 30.3.2 The venue of such arbitration shall be Lahore and the language of arbitration proceedings shall be English.
- 30.3.3 There shall be a Board of Arbitrators of three (3) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two (2) arbitrators so selected, and in the event the two (2) arbitrators are unable to agree on the third arbitrator, then the same will be appointed in accordance with the Arbitration Act.
- 30.3.4 The arbitrators shall make a reasoned award (the **Award**). Any Award made in any arbitration held pursuant to this Article 30 (*Dispute Resolution*) shall be final and binding on the Parties as from the date it is made, and the Private Partner and the Implementing Agency agree and undertake to carry out such Award without delay.
- 30.3.5 The Private Partner and the Implementing Agency agree that an Award may be enforced against the Private Partner and/or the Implementing Agency, as the case may be, and their respective assets wherever situated.
- 30.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

31. MISCELLANEOUS

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31.1 GOVERNING LAW AND JURISDICTION

31.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the Applicable Laws and the courts of appropriate jurisdiction in the Province of Punjab shall have the exclusive jurisdiction over all Disputes or matters arising out of or relating to this Agreement.

*[The rights and responsibilities of the Implementing Agency in relation to laws applicable provincially shall continue to take precedence, explicitly and implicitly.]*

31.2 WAIVER

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

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

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

31.3 SURVIVAL

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

31.4 AMENDMENTS

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

31.5 NOTICES

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

31.6 CONFIDENTIALITY

31.6.1 Each of the Parties and their Contractors (including the Private Partner Self Control Unit), subcontractors, consultants, employees and agents and each of their respective successors and permitted assigns shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to insurance, Operation and Maintenance, installation, transfer, management and financing of the Concession Assets, and all

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

information and documents obtained in accordance with the terms of the Implementing Agency Agreements, and shall not, without the consent of the other Party, save as required by Applicable Laws or appropriate regulatory authorities, prospective financiers to, or investors in the Private Partner and their professional advisers, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. Notwithstanding the above, nothing herein contained shall preclude the use of provisions similar to those contained in the Implementing Agency Agreements and the other agreements referred to herein and in agreements prepared and issued or to be prepared and issued in connection with other projects by the Implementing Agency.

31.6.2 The provisions of paragraph (a) hereabove shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement or any other Implementing Agency Agreement;
- (b) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality.

**31.7 SEVERABILITY**

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

**31.8 NO PARTNERSHIP**

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

31.8.2 Notwithstanding anything to the contrary set out in this Agreement or elsewhere, nothing contained in this Agreement shall be construed or interpreted as the Private Partner providing designing and/or engineering consulting services to the Implementing Agency.

**31.9 LANGUAGE**

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

**31.10 EXCLUSION OF IMPLIED WARRANTIES**

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

**31.11 COUNTERPARTS**

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

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

32. **AUTHORITY FEE**

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**32.1 PAYMENT OF AUTHORITY FEE**

32.1.1 The Private Partner shall make a payment of an amount equal to two percent (2%) of the Actual Project Revenues (the “**Authority Fee**”) through the Escrow Account, to the Authority on the completion of each month during the Revenue Sharing Period into the designated bank account of the Authority, the details of which will be communicated to the Private Partner in writing by the Implementing Agency prior to the Commencement Date.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**LIST OF SCHEDULES**

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- SCHEDULE A – SCOPE OF THE PROJECT**
- SCHEDULE B – DESIGN REQUIREMENTS**
- SCHEDULE C – INSTALLATION WORKS**
- SCHEDULE D – PROJECT FACILITIES**
- SCHEDULE E – INSTALLATION COMPLETION SCHEDULE**
- SCHEDULE F – PROJECT SITE**
- SCHEDULE G – LIST OF TESTS & COMPLETION TESTS**
- SCHEDULE H – O&M REQUIREMENTS**
- SCHEDULE I – PART I– INSTALLATION PERIOD INSURANCES**
- SCHEDULE I – PART II– OPERATION PERIOD INSURANCES**
- SCHEDULE J – SPECIFIED PRIVATE PARTNER PERMITS**
- SCHEDULE K – CORPORATE DOCUMENTS**
- SCHEDULE L – FORM OF INSTALLATION PERFORMANCE GUARANTEE**
- SCHEDULE M – FORM OF O&M PERFORMANCE GUARANTEE**
- SCHEDULE N – INDICATIVE INDEPENDENT ENGINEER TERMS OF REFERENCE**
- SCHEDULE O – FORM OF VESTING CERTIFICATE**
- SCHEDULE P – TOLL NOTIFICATION STRUCTURE**
- SCHEDULE Q – REQUIREMENTS OF ELECTRONIC TOLL AND TRAFFIC MANAGEMENT SYSTEM - ETMS**
- SCHEDULE R – TOLL NOTIFICATION**
- SCHEDULE S – NOTICES**
- SCHEDULE T – TERMINATION PAYMENTS**
- SCHEDULE U – FINANCIAL MODEL**

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

## SCHEDULE A – SCOPE OF THE PROJECT

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### 1. DETAILED PROJECT SCOPE

Terms of Reference to achieve overall objectives of the Project are as follows:

#### 1.1 GENERAL

Project Highway is located in the province of Punjab comprising two road segments. Start point for the first segment is located in Bahawalpur and the end point is in Yazman. The start part point for the second segment is located in Yazman and the end point at Ahmadpur East. Total Length of this project is about 85 km.

#### 1.2 EXISTING CONDITION

Existing provincial road between Bahawalpur to Ahmadpur East is a divided dual carriageway, with median separator, having earthen shoulders on either side.

#### 1.3 PROJECT COMPONENTS

Project Components *include detailed installation, operation and maintenance* of following listed items:

1. Installation of four (04) toll plazas on the Bahawalpur – Yazman Road and Yazman – Ahmadpur East Road, at the following locations:
  - a. Bahawalpur Toll Plaza: (Lat. 29.32471, Long. 71.70618);
  - b. Yazman 1 Toll Plaza: (Lat. 29.13888, Long. 71.74581);
  - c. Yazman 2 Toll Plaza: (Lat. 29.09238, Long. 71.63962);
  - d. Ahmadpur East Toll Plaza: (Lat. 29.10645, Long. 71.46169);

together with all ancillary structures and utilities in accordance with Applicable Specifications and the designs set out in Schedule C (Installation Works).
2. Provided that the Private Partner may change the locations of the toll plazas described above if approved in writing by the Implementing Agency.
3. Installation of weighbridges in accordance with the Applicable Specifications and Schedule P (Toll Notification Structure). The exact location for weigh bridges to be decided by Private Partner.
4. Installation of an Electronic Toll and Traffic Management System (ETTMS) at each toll plaza in accordance with Schedule Q (Requirements of Electronic Toll and Traffic Management System - ETTMS).
5. Operation and maintenance of the Project Highway between the start and end points as described in Sections 1.1 and 1.2 of this Schedule A, to meet the Service Levels and O&M Requirements set forth in Schedule H (O&M Requirements).

#### 1.4 NOT USED

#### 1.5 DETAILED DESIGN OF THE PROJECT

Detailed design shall be based on preliminary design and its parameters as mentioned in RFP Documents.

#### 1.6 INSTALLATION AND/OR UPGRADATION OF TOLL PLAZAS, ETTMS AND WEIGHBRIDGES

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- The Private Partner will be responsible for all aspects of Installation Works in conformity with the C&W Road and Bridges Specifications, 2022, ASTM, AASHTO-LRFD (Latest Edition), WPHC-1967, and the applicable provisions of EN 12464-1 & EN 12464-2 , and in accordance with the PPP Contract, including the Installation Requirements as set out in Schedule C (*Installation Works*) and Schedule G (*List of Tests & Completion Tests*) of the PPP Contract.
- During installation, the Private Partner will be required to comply with the traffic management requirements set out in the PPP Contract to minimize the impact of installation on other roads and provide certainty for Users.
- As stated in the PPP Contract, the Private Partner must plan for the Installation Scheduled Completion Date no later than 180 days after the Commencement Date.
- Cost overruns and delays in completing the work shall be governed by the PPP Contract and related Implementing Agency Agreements.

**1.7 THE PRIVATE PARTNER SHALL NEED TO:**

- Install the toll plazas, weighbridges and ETTMS as per Schedule C within estimated time and the Installation Time for Completion
- Carry-out all quality control tests as per C&W Road and Bridges Specifications, 2022, ASTM, AASHTO-LRFD (Latest Edition) (see **SCHEDULE G (*List of Tests & Completion Tests*)** of the PPP Contract as per AASHTO and ASTM references). Records of tests will be signed-off by the Independent Engineer.
- Submit road safety plan and issues diversion plan during installation to obtain control of traffic and minimum hindrance to traffic and make proper liaison with the local police and other relevant civil and district administration/authorities of the area before commencement of work.
- The Private Partner should provide independent supervision officer and facilitates their offices and inspection vehicles
- Construction material for the Installation Works will be used from approved sources with appropriate tests and certification
- The Private Partner has to make sure that the Project Site is clean from any debris, construction material and-machinery during Operation Period
- International and local safety standards and best practice procedure should be followed during Installation Period
- The Private Partner has to submit the ‘As-built drawings’ at completion of Works in accordance with the PPP Contract

**1.8 FACILITIES TO BE PROVIDED BY PRIVATE PARTNER:**

**1.8.1 Temporary Water Supply**

- The Private Partner shall be responsible for supply of water for installation and upgradation activities and for the offices and accommodation of the Private Partner
- Where water tank and pumps are temporarily removed, supply to the property must be maintained by the Private Partner

**1.8.2 Engineer's Facilities**

- The Private Partner shall provide following facilities for the Independent Engineer and its staff:
  - **Construct/Provide, furnish, equip and maintain site office**

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

The office shall be provided/constructed, furnished, equipped and maintained by the Private Partner, at all times for the duration of the Concession Period including extension period if any

➤ **Provide, furnish equip and maintain accommodation**

The accommodation shall be rented, furnished, equipped and maintained by the Private Partner, at all times for the duration of the Concession Period including extension period if any

➤ **Survey Equipment**

The Survey equipment and their accessories shall be provided and maintained by the Private Partner along with survey helpers and all consumables, at all times for the duration of the Concession Period including extension period if any

➤ **Vehicles**

Vehicles shall be provided with driver, fuel, maintenance, insurance, registration etc. by the Private Partner at all times for the Concession Period including extension period if any.

1.8.3 **Laboratory facility with testing equipment:**

- The Private Partner shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running and maintenance cost for the tests to be conducted
- All tests shall be executed according to AASHTO, ASTM and BS standards as provided in C&W Road and Bridges Specifications, 2022, ASTM, AASHTO-LRFD (Latest Edition) and all required equipment for facilitation of tests should be furnished in the lab with two sets of latest edition of prescribed standards (one to be placed in the laboratory and other for the Independent Engineer)
- **Note:** The Private Partner should submit the list of tests to be carried out and their sample forms in the proposed methodology

1.8.4 **Temporary road, traffic management and control, general protection**

- Layout plans showing the detailed proposals of temporary diversions to be carried out by the Private Partner/its Contractor(s) shall be submitted to the Independent Engineer and to concerned district police, civil agencies and local administration for their written approval 10 days before the implantation date
- Diversions must be constructed in advance of any interference within the right of way / existing carriage way and shall be maintained in accordance to traffic load in a condition satisfactory to the Independent Engineer

1.8.5 **Operation and Maintenance**

- The Private Partner is required to carry out the Operation and Maintenance in respect of the Project in conformity with AASHTO standards and in accordance with the Operation and Maintenance - O&M Requirements which are set out in the Main Body of the PPP Contract (including Article 19 (*Operation and Maintenance*)) and **SCHEDULE H** (*O&M Requirements*) of the PPP Contract
- The general scope of Operation and Maintenance includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with AASHTO standards and with all performance measures set out in the PPP Contract

1.8.6 **Operations Role**

- The Private Partner should ensure the smooth flow of vehicles and minimization of traffic delay and closures

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- The Private Partner should ensure the safety of commuters and shall provide emergency support to commuters
- Control building, safety vehicles, tow trucks, ambulances, patrolling vehicles should be used by developer to ensure smooth operations of Project Works
- The Private Partner should ensure the administration, monitoring of conditions, traffic control, assessment of the need for load restriction, posting of warnings to vehicles, and signage
- Rest areas and other facilitations will be operated and maintained by the Private Partner
- Quality management on a self-auditing basis, in conformity with AASHTO testing procedures

**1.8.7 Operation Methodology**

- On Patrolling on three-hour intervals, on 24/7/365 basis
- Emergency & Rescue response system
- Provision of Tow away facilities
- Provision of emergency medical services/ambulance/clinic
- Maintaining traffic sign maintenance data
- Maintaining Cat eyes
- Maintaining Road marking
- Maintaining Culverts
- Maintaining road
- Maintaining weigh bridges
- Maintaining weight violations data
- Maintaining death/injuries data
- Preparing periodic report with peak hour flows and peak day flows and other statistics
- Maintaining operational crew & equipment for emergency Maintenance
- Preparing and implementing education programs and campaigns on:
  - Road safety and customer safety
  - Customer response & comments
  - Customer awareness
  - Operational staff awareness
  - Incentives for fragment road users
  - Maintaining firefighting systems

**1.8.8 Maintenance Role**

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

The Private Partner shall maintain the Concession Assets including road pavement, structures, pavement markings, drainage infrastructure, electrical systems, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, traffic maintenance, toll booths, toll collection buildings and emergency maintenance.

- a) Annual/Routine Maintenance (after the Final Installation Completion Date)
  - Isolated holes, pot holes, fold pavements, skin patch, windings and rutting in asphaltic layer should immediately be repaired
  - Any damages to side barrier due to any accident or other causes should immediately be repaired
  - Road Marking Maintenance
  - Cat's Eyes Maintenance
  - Traffic Sign Maintenance
  - Minor maintenance due to damage caused by Road accidents
  
- b) Periodic Maintenance
  - Over-lays
  - Potholes Maintenance
  - Guard Rail Maintenance
  - Shoulder Maintenance
  - International Road Roughness Test at selected sections identified by an Independent Engineer should be carried-out at every one (1) year of operation and any portion of pavement found failed should be maintained as per AASHTO standards with approval from Independent Engineer. All the formalities will be checked for their stability and smooth operation.

**1.9 SPECIAL PURPOSE VEHICLE**

- a. Not used.
- b. The successful bidder shall get incorporated a company exclusively for the purpose of implementing the Project (which shall be the “**Private Partner**”). The Private Partner shall not undertake or permit and hereby undertakes to procure that the Sponsors do not undertake or permit any Change in Ownership And/Or Control during the Concession Period, except as may be permitted pursuant to the PPP Contract.

**1.10 HAND-OVER OF THE STRUCTURE**

The Private Partner is responsible for handing over the structures to the Implementing Agency in a good working condition at the end of the Concession Period as specified in the PPP Contract without any further compensation to the Private Partner at the time of such transfer. These structures are subject to an inspection and correction process in order to ensure that they are handed over in accordance with established terms and conditions.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**SCHEDULE B – DESIGN REQUIREMENTS**

**1. DETAILED DESIGN OF PROJECT**

- a) Carryout map / satellite photographs study and review of all material/documents/studies/ preliminary design/drawings provided supplemented with area reconnaissance and detailed topographic survey, study options for alignment of additional carriageway, design of in-route towns and present all options with merits and demerits after ground assessment of salient features of each alignment.
- b) Carry out soil & material investigation to determine the “Subsoil Condition”, other required soil tests and analysis for the authenticity of any available report as the Implementing Agency will not be liable to any discrepancy.
- c) Carry out condition survey of existing structure (bridges, culverts, drains, retaining walls etc.), and pavement structure to determine load carrying capacity, strength evaluation, rehabilitation methodologies.
- d) Carry out hydrological studies for each structure by determining catchment areas for each and every structure.
- e) Carry out geotechnical investigations for new toll plazas, weighbridges and ETTMS (where required).
- f) Carry out traffic surveys and studies. Due consideration should be given to heavy vehicles/large vehicles traversing the Project Highway.
- g) [not used].
- h) [not used].
- i) Design of other minor structures and intersections (at-grade or grade separated).
- j) [not used].
- k) [not used].
- l) [not used].
- m) Clearance of encroachment will be the responsibility of the Implementing Agency.
- n) Carry out a detailed design of rest areas by modifying the designated existing fuel stations, weigh bridges, offices and residence of operation and maintenance staff.
- o) Give detailed plan of implementation strategy.
- p) A summary of the design criteria is provided hereunder, however, to promote innovation, Bidders are encouraged to develop Proposals that differ or vary from the reference design and that comply with the requirements of the PPP Contract. The general performance requirements for the Project Highway are given below:

**2. GEOMETRIC DESIGN CRITERIA**

Design life

Buildings & Bridges	100 years
Culverts/Drains/Retaining Walls etc	50 years
Communication & Electrical Cabling	10 years
Electric & Electronic systems	10 years
Rigid Pavement*	35 years

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**Design Criteria**

1) Standards for Geometric Design	A policy on Geometric Design of Highways and streets, 2004 of AASHTO
2) Standards for Pavement Design	British Road Note No. 31, AASHTO Guide 1993 for pavement and SHRP

Above design criteria is general, however, specific design criteria is provided in preliminary design.

**For Bridges & Culverts**

Live Load

Class AA Loading for bending movements and Class A loading for shear according to West Pakistan Highway Code (1967).

For Material and Testing:

ASTM -American Society for Testing Materials

AASHTO-American Association of State Highway and Transportation Officials.

For Structures:

AASHTO LRFD (Latest Edition) American Association of State Highway and Transportation Officials.

Loading:

West Pakistan Code of Practice for Highway Bridges 1967.

Seismic Design:

AASHTO analysis and design with latest seismic zoning map for Pakistan as per revised current Government of Pakistan seismic parameters.

Other design criteria not specified herein shall be approved by the Independent Engineer / Implementing Agency before being adopted for the design.

Structural Design:

Drawing scale of 1:500 shall be used showing the main features of the structure proposed, the centre line of the proposed carriageway, the topography of the adjoining terrain and the benchmarks, the final design plans shall include all details in appropriate scale necessary to construct the said structures. The choice of structure and specifications will be determined keeping in view the economy, aesthetics of material.

For Scale of drawings, refer Preliminary Design Drawings. All drawings must be in MKS system

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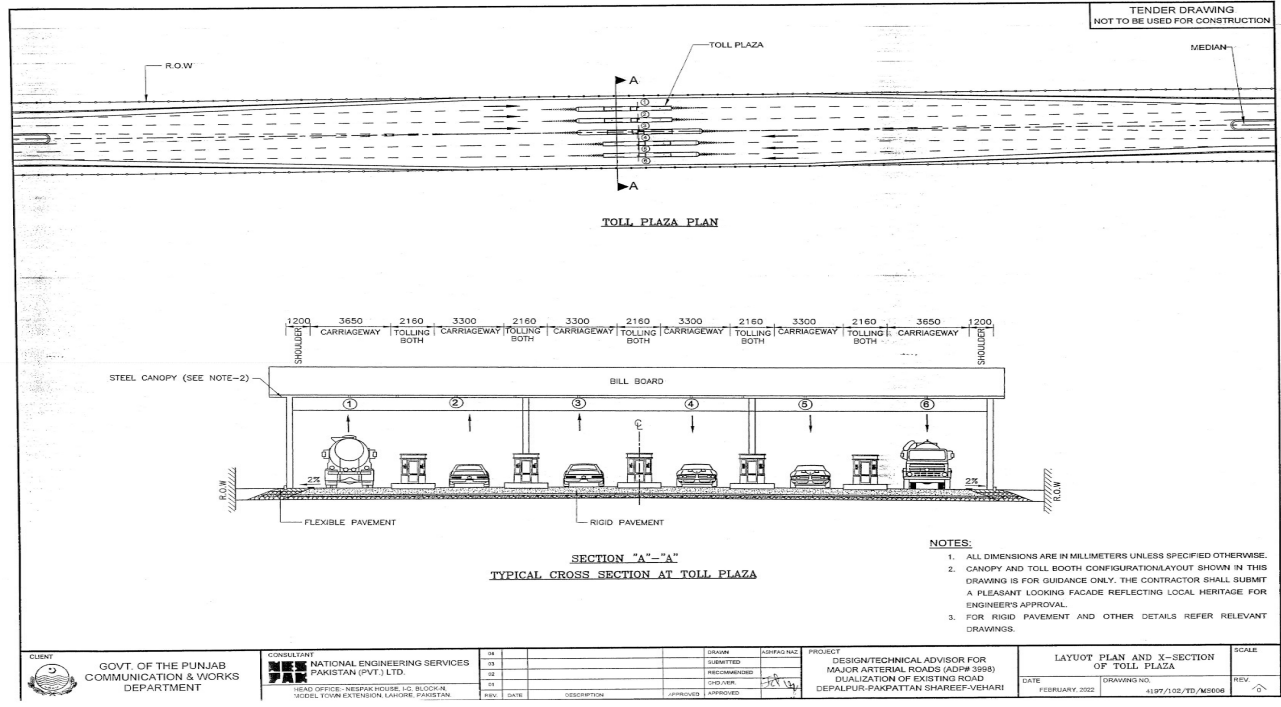
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## SCHEDULE C – INSTALLATION WORKS

### TOLL PLAZAS

2-Nos New Toll Plaza purposed on Bahawalpur – Yazman Road and 2-Nos New Toll Plaza purposed on Yazman - Bahawalpur East Road for Dual Carriageway Roads.

### TOLL PLAZA DESIGN DUAL CARRIAGEWAY



### Side View of Toll Plaza



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**EQUIPMENT**

Detail of Equipment minimum, but not Limited to

<b>Total of Bill No. 9b</b>			
<b>Ch./Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>
	<b>OPTICAL FIBER CABLE (OFC)</b>		
1	12 Core Optical Fiber Cable Armaid - Direct Buried Cable type Single Mode • Cable construction Loose tube • Layer of Aramid Yarn 5mm• Wavelength 1300/1550 nm • Max attenuation 0.36 db/km including Excavation, Backfilling and duct with all accessories	scM	3,000
2	<b>Man Hole/Hand Hole</b> Man Hole/Hand hole should pre-cast RCC structure. The Hand hole inner size shall W*L*D=0.9Mx0.9M*0.9M For Pre-cast manhole/hand hole, shall be • Concrete Ratio =1:1.5:3, target strength >2400 PSI • Steel Bar=10 mm (min) used every 4 inches horizontally & vertically • Thickness of Walls = 4 inches • Entry holes should be made in advance in four walls • Slab and cover should be same strength of material, which will be used for covering the manhole and hand hole	No.	12
3	Rope for spare HDPE Pipe, Route Markers, GI Pipe, Cable/HH Tagging, Caution Tape.	M	3,000
4	OFC Distribution Frame (ODF) IP 66	No.	12
5	<b>ROUTING &amp; SWITCHING</b>		
6	Core Switches 1) Interfaces: 48x10GBASE-R(SFP+)/1000BASE-X (SFP) 4x40GBASE-SR4/LR4 (QSFP) 2) Console port: RS232/RJ-45 3) Switching Capacity / Bandwidth: 1.28 Tbps 4) MAC table: 128K 5) L3 interfaces: 128 16) Jumbo frames: 12270 bytes 6) IPv4 Unicast routes: 16K 7) Hot swappable redundant power supply 8) Cooling Front-to-Back, 4 fans 9) Operating temperature from -0° to +50°C 10) Operating humidity 80% 11) Mounting Rack 19", 1U	No.	2
7	Main Rack mount Server for Video Management & Processing (with minimum of following specs): - Intel Xeon 14 Processor or eqvt - redundant Power supply - 16GB DDR4-RAM - Full height PCIe filler - Mega RAID Controller - 6 TB SAS, HDD/hot plug/drive sled mounted - Mega RAID (Raid card)	No	2

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IMPLEMENTING AGENCY INITIALS.....  
PRIVATE PARTNER INITIALS

8	Core i7 Ultra Slim Desktop PC • 2TB HDD • DVD Writer • Genuine Latest MS WINDOWS 10 Professional 64 bit pre-installed Operating System and associated software.	No	2
9	<b>Industrial Grade Access 8 port Switch</b> Features of 8 port POE access switch shall be as follows: • 8x100/1000BASE-T (PoE/PoE+, RJ-45), • Bandwidth : 20 Gbps • Power budget PoE : 120W • Device Housing : Metal, IP-30 rating • Operating humidity : 5 – 95% • Operating temperature: -40°to 70°	No.	12
<b>Ch./Item No. MRS</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>
10	<b>OUTDOOR ACCESS POINT 3x3 MIMO</b> • Dual band Wi-Fi 802.11ac • Data Transfer rate: 802.11ac: 1300 Mbps • 3x3 MIMO support • IEEE 802.11 a/b/g/n/ac standard support • Power supply: PoE+ 48V/54V (IEEE 802.3at-2009) • Operating temperature -40 C to +60 C	No.	4
11	24 Access Switches layer 3 with SFP Managed • 1000 Base –T (RJ-45) Ports(PoE / PoE+) : 24 Ports • 1000 Base-X (SFP) : 4 Ports • Console Port RS-232/RJ-45 • Switching Capacity Bandwidth 128 Gbps • Packet forwarding rate (64B) : 92.1Mpps • Buffer memory 12 Mb • RAM (DDR3) : 512 MB • ROM (RAW HAND) : 512 MB • MAC table : 16K • VLAN table : 4k • Link aggregation Group (LAG) : 16, up to 8 ports per LAG • Maximum size of ECMP group : 8 • Maximum Jumbo – frames size : 10240 B • Stacking : 08 devices • Max power consumption : 400W (PoE)	No.	2
12	Solar System 5KVA with Hybrid UPS/Inverter & 8 hour Power Back up	No.	1

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PRIVATE PARTNER INITIALS

13	<p><b>Indoor Wi-Fi Access points (APs) 3x3 MIMO</b></p> <p>a) Interface 2x 10/100/1000Base-T ports (RJ-45) PoE/PoE+</p> <p>b) User 400</p> <p>c) Maximum transmitter power 18 dBm</p> <p>d) Radius coverage up to 200 m</p> <p>e) NAND flash 128 MB</p> <p>f) RAM DDR3 256</p> <p>g) Power: - PoE</p> <p>i) 32 virtual access points</p> <p>j) Operating temperature +5 to +40 °C</p> <p>l) Humidity: up to 90%</p> <p>k) Dual-band antennas</p> <p>l) Support for 3x3 MIMO (Multiple-input multiple-output)</p> <p>m) Two built-in Broadcom chip (IEEE 802.11 b/g/n/a/ac)</p> <p>n) 802.11n: 216,7 Mbit/s (20 MHz channel), 450 Mbit/s (40 MHz channel and 802.11ac: 1300 Mbit/s (80 MHz)</p>	No.	2
14	<b>Poles</b>		
	<p>Surveillance poles with anti-climbing fixtures.</p> <ul style="list-style-type: none"> <li>• 10 Meters height Poles.</li> <li>• 8-M25 Anchor Bolts (Grade 8.8)</li> <li>• Foundation shall be Designed as per site survey</li> <li>• steel plate shall be 250 MPa or 36 Ksi</li> </ul>	No.	10
15	<b>Cabinets</b>		
	12 U Outdoor Equipment cabinet for sites having rating of IP68 with active temperature control for both heating and cooling.	No.	10
<b>Ch./Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>
16	<b>Cables</b>		
	Ancillary equipment Power cable, ducts, clamps, ties and allied accessories.	No.	10
	UTP Network Cabling, One Roll CAT 6. 306 M Minimum 23 AWG. Low Smoke Zero Halogen (LSOH)	Roll	3
21	<b>IP BASED VIDEO SURVEILLANCE SYSTEM</b>		
22	<b><u>NETWORK BASED CAMERAS</u></b>		
23	Fixed and PTZ Cameras:		
24	<p><b>Fixed Bullet IP Camera 8MP</b></p> <ul style="list-style-type: none"> <li>• Image Sensor : 8 MPX (4K Ultra HD)</li> <li>• Lens: motorized, auto-iris and auto-focus function, f=2.8 ~ 12 mm/F1.4</li> <li>• Human/Vehicle Object Classification</li> <li>• D/N function - IR cut filter</li> <li>• Min. Illumination: 0.015 lx (0 lx, IR on)</li> <li>• IR LED, range up to 70 m</li> <li>• 128Gb SD card</li> <li>• Video Intelligent Analytics</li> <li>• facial recognition.</li> <li>• Deep learning algorithm having People and Vehicle Counting technology</li> <li>• Detect, track, capture vehicle, non-motor vehicle and people</li> <li>• Protection class: IP67</li> </ul>	No.	10
25	<p><b>Outdoor PTZ Camera 4MP</b></p> <ul style="list-style-type: none"> <li>• IP Camera 4MP</li> </ul>	No.	10

	<ul style="list-style-type: none"> <li>• 30X Optical Zoom</li> <li>• Lens Type motorized, auto-iris function, f=4.7 ~ 141 mm/F1.5 ~ F4</li> <li>• Edge Analytics</li> <li>• facial recognition.</li> <li>• Deep learning algorithm having People and Vehicle Counting technology</li> <li>• Detect, track, capture vehicle, non-motor vehicle and people</li> </ul>		
26	<p><b>IP Based Outdoor ANPR Camera with Software</b></p> <ul style="list-style-type: none"> <li>• Image Sensor : 2 MPX</li> <li>• Lens Type :motorized, auto-iris function, f=7 ~ 22 mm/F1.4</li> <li>• IR Range : 100 meter</li> <li>• Frame Rate 60 fps for 1920 x 1080 (Full HD)</li> <li>• Recommended maximum speed of the vehicle 70 km/h</li> <li>• Minimum IP Class: IP67</li> <li>• Memory Micro SD Card Slot up to 128 GB</li> <li>• along with ANPR software</li> <li>• Operating Temperature -30°C ~ 60°C</li> </ul>	No.	12
27	55 inch 4k Display Screen for CCTV Cameras	No	1
28	<p>Wall Mounted Communication Rack 27U (Floor Mounted) suitable for installation of standard patch panels and etc. Complete with floor base, vertical cable managers. Rack shall be equipped with power distribution units (PDUs) with at least 5 imported power sockets etc. Complete in all respects.</p> <ul style="list-style-type: none"> <li>• 4 no. cooling fans</li> <li>• Steel front door</li> <li>• Earthing strip</li> <li>• Door lock</li> </ul>	No	2
<b>Ch./Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>
29	<p><b>Biometric System</b></p> <ul style="list-style-type: none"> <li>• Fingerprint capacity: 8000</li> <li>• Card capacity: 10 000</li> <li>• Record capacity 200 000</li> <li>• Display 3.5 inch Screen</li> <li>• Communication: RS232/484, TCP/IP, USB host</li> <li>• Wigand ports: 2 - IN/OUT</li> <li>• standard functions: Work code, SMS, DST, scheduled-bell, self-service query, automatic status switch, T9 input, photo-ID, 9 digits user ID, anti- passback</li> <li>• Optional functions: ID/MIFARE/HID, webserver, Wi-Fi, 3G,</li> <li>• Biometric identification speed &lt;1sec</li> <li>• operating temperature 0°C do +45°C</li> <li>• operating humidity 20% - 80%</li> </ul>	No.	2
30	Web Base Time Management Software and integration with Existing Time Management Software System	No.	1
31	<b>ELECTRONIC TOLL COLLECTION AND ACCESS CONTROL SYSTEM - 06 No. of Toll Station</b>		
32	Fog Light	No.	6
33	Lane Status Indicator ↓×	No.	6
34	Motorized Entry Barrier	No.	6
35	Automatic Vehicle classification system	No	6
36	Camera Pole	No.	6

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

37	<p>IP Based Fixed Bullet Camera</p> <ul style="list-style-type: none"> <li>• Image Sensor : 5 MPX CMOS sensor 1/2.7”</li> <li>• Lens Type : motor-zoom,f=2.8 ~ 12 mm/F1.4 or higher</li> <li>• IR Range : 50 meter</li> <li>• Frame Rate: 30 fps</li> <li>• Multi-streaming</li> <li>• Compression : H.264+, H.265+, G.711</li> </ul> <p>Facial Recognition Advanced Analytics</p> <ul style="list-style-type: none"> <li>• Video Intelligence Analytics</li> <li>• Minimum IP Class: IP-67 with IK-10 rating &amp; Aluminium Casing</li> <li>• Memory Micro SD Card Slot up to 128 GB</li> <li>• Operating Temperature -30°C ~ 60°C</li> <li>• Power Supply High POE.</li> </ul>	No	6
38	Lane Traffic Light	No.	6
39	Alarm Rotating Beacon	No.	6
40	Alarm Siren	No.	6
41	Traffic Light Pole	No.	6
42	RFID Antenna	No.	6
43	<p>Automatic Transit Distributor (ATD) fitted with 4 Contactless cards distributors including:</p> <ul style="list-style-type: none"> <li>- Lane Controller,</li> <li>- I/O boards.</li> </ul>	No.	2
44	Toll Station attendant PC (Core i7) with Toll Collection software	No.	6
45	Thermal Printer / booth	No.	6
46	UPS for Toll Station 2 KVA / Booth	No.	6
47	2D LiDAR sensors, Traffic Controller FPS		
48	<p>2D LiDAR sensor</p> <p>Shall records the contour of the passing vehicle, measuring range and scans the vehicle using a non-contact time of-flight process. The laser beam shall emitted through the inspection window.</p> <p>The scan plane position shall indicated by a housing marking next to the inspection.</p>	No	2
49	<p><b>Traffic Controller FPS</b></p> <p>The Traffic Controller FPS shall be used the installed profiling software to calculate the vehicle dimensions, vehicle class, and number of axles. These calculations shall based on the vehicle contour that has been recorded and the position of the vehicle within the lane. At the same time, the Traffic Controller FPS acts as the central control unit for the profiling system. Using its TCP/IP Ethernet interface, it constantly provides the downstream systems with all system data, the measuring points, measurement results, and system messages. The TCP/IP interface shall also used for set-up, calibration, and fault analysis with the aid of tools.</p>	No	1
50	<p><b>IP Medium Executive Phone</b></p> <ul style="list-style-type: none"> <li>• High quality TFT LCD Touch colour screen of at least 480 x 320 pixels</li> <li>• 10 programmable keys (2x19)</li> <li>• 2 VIP touch buttons on screen</li> <li>• 2-way conference</li> <li>• HD Audio voice quality</li> <li>• Two access level: administrator, user</li> </ul>	No	6

Ch./Item No.	Item Description	Unit	Quantity
51	Proximity Door Access Controller suitable for Standard controller, 4 doors one way, 2 doors two way, 4 readers ports, TCP/RS-485 communication ports, 20 000 card buffer, 50 000 events buffer, 20 000 alarm buffer. Supported readers with Wiegand interface 26-40 bits	No	2
52	Proximity card reader with keypad for Unique (EM), HID Prox (125 kHz) and Mifare Classic (13.56 MHz) card type. Work with Wiegand port. Switched output Wiegand format - 26/34-bit for Unique and Mifare, 26/37 for HID Prox (automatic). Switched output keypad format - 4/8-bit or virtual card number. Read range from 2 to 10 cm.	No	6
53	Proximity Cards ISO credit card standard size and thickness, thin, MIFARE® compatible, Operating frequency: 13.56 MHz, flexible polyvinyl chloride laminated, passive type, easy printable on both sides.	No	100
54	Administrator proximity card Unique, MIFARE®, HID, Prox, reader type, operating frequency: 125 kHz, 13.56 MHz and USB interface.	No.	1
55	Magnetic Drop Bolt Lock (Single Door) with holder and fixing accessories.	No	5
56	Magnetic Drop Bolt Lock (Double Door) with holder and fixing accessories.	No	1
57	Push Button (Exit Switch) suitable for installation on BS standard size back box connected to door controller for access including emergency door release break glass button.	No	5
58	<b>Power Supply</b> The buffer power supply shall intended for the uninterrupted supply of demanding devices stabilized voltage of 12V DC (+/- 15%). The PSU supplies voltage $U = 13.8V$ DC with current efficiency $I = 4.5A + 0.5A$ battery charging controller (1 door) and for RS controllers. In the event of a power failure, it shall instantaneously switch to battery operation. With high energy efficiency and placed in a metal casing (RAL 9003 colour) with place for 7Ah / 12V battery. The maximum battery charging current is 0.5A *. Total current of receivers + battery is max. 5A	No.	2

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

59	<p><b>32 channels (NVR Network Video Recorder)</b></p> <ul style="list-style-type: none"> <li>• Resolution : Resolution (4K) (video + audio)</li> <li>• Internal storage : 8 x HDD 3.5" 14 TB SATA (each)</li> <li>• Video Intelligence Analytics</li> <li>• Recording: Recording speed up to 960 fps at 3840 x 2160</li> <li>• High quality images and support H.264, H.264+, H.265, H.265+</li> <li>• Supported protocols: ONVIF, RTSP</li> <li>• Supports up to 2 monitors simultaneously</li> <li>• disk mounting: 8 x S-ATA 3,5 or higher"</li> <li>• Operating system: Microsoft Windows 10 IoT</li> <li>• Recording and surveillance system: VMS (Video Management System)</li> <li>• Redundant multi-site video storage with primary and backup storage</li> <li>•Integration with Access Control System</li> <li>• Power Supply High POE.</li> </ul>	No.	1
<b>Ch./Item No. MRS</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>
60	<p><b>IP Based Power Amplifier 2x150 W RMS (EN standard)</b></p> <ul style="list-style-type: none"> <li>• High efficiency amplifier (class D)</li> <li>• 2 analogue audio inputs x 2 powered audio outputs</li> <li>• Euroblock input and output connectors</li> <li>• High efficiency, auto standby function and convection cooling (fanless, 100% silent)</li> <li>• THD+Noise @ 1kHz Full Power &lt;0.05%</li> <li>• S+N/N 20Hz - 20kHz @ 1W/4Ω &gt;85dB</li> <li>• Frequency response (-1 dB, -3dB) 20Hz - 25kHz</li> <li>• BRIDGE mode ready</li> <li>• Thermal protection</li> <li>• Complete in all respect.</li> </ul>	No.	1
61	<p><b>20W Outdoor Sound Projector Speaker EN STANDARD</b></p> <ul style="list-style-type: none"> <li>• 20 WRMS</li> <li>• Suitable for extreme humidity and/or temperature</li> <li>• Frequency response (-10dB) 80Hz - 20KHz</li> <li>• Sensitivity (dB@1m 1W) 89dB</li> </ul>	No	10
62	<p><b>16 Zone Call Station with Keypad</b> (as per EN standard) has a microphone on a flexible stem, a push-to-talk button, a speaker, and a headset socket suitable for rack mounting. Complete in all respects including all accessories.</p> <ul style="list-style-type: none"> <li>• Call station interface via a CAT-6 cable of up to 500 m</li> <li>• Supervised microphone on a gooseneck stem with good speech intelligibility with 4 programmable keys and 16 keypads</li> </ul>	No	1
63	<p><b>2C, 2.5 Sq.mm LSZH imported Speaker Cable</b> for Public Address System from Speaker to Speaker as per zoning layout to be installed in Conduit / Cable tray with cover complete in all respects.</p>	m	500
64	4G Device to transfer data from Toll Plaza to Control Room	No.	2
65	UPS for Toll Station 10 KVA For all system	No.	1
<b>Total of Bill No. 9c</b>			

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

<b>Ch./Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>
-	Operational Building for Toll Plaza	Sq.m	50

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**SCHEDULE D – PROJECT FACILITIES**

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**1. TEMPORARY WATER SUPPLY**

Where private or government owned water tank and pumps are temporarily removed a supply to the property must be maintained by the Private Partner.

**2. ENGINEER’S FACILITY**

- The Private Partner shall provide furnished, equip and maintain site office for the engineer. Office provided shall be maintained by the Private Partner; all times during the duration of the Concession Period including extension period if any.
- The Private Partner shall provide following facilities for the Independent Engineer and its staff:
  - Provide, furnish, equip and maintain site office  
The office shall be constructed, furnished, equipped and maintained by the Private Partner, at all times for the duration of the Concession Period including extension period if any.
  - Provide, furnish equip and maintain accommodation  
The accommodation shall be rented, furnished, equipped and maintained by the Private Partner, at all times for the duration of the Concession Period including extension period if any.
  - Survey Equipment  
The Survey equipment and accessories shall be provided and maintained by the Private Partner along with survey helpers and all consumable, at all times for the duration of the Concession Period including extension period if any.
  - Vehicles  
The vehicles shall be provided with driver, fuel, maintenance, insurance, registration etc. by the Private Partner at all times for the duration of the Concession Period including extension period if any.

**3. LABORATORY FACILITIES WITH TESTING EQUIPMENT**

The Private Partner shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants/helpers, furniture and its running maintenance cost for the tests to be conducted.

The Private Partner shall also provide for the laboratory a vehicle with driver to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipment, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the same period.

All the tests shall be executed according to AASHTO and ASTM and all required equipment for facilitation of the tests should be furnished in the lab with two sets of latest editions of prescribed standards (one to be placed in the laboratory and other for the Independent Engineer).

The number of vehicles, survey equipment, laboratory equipment, furniture for office /accommodation/laboratory will be finalized with the approval of the Independent Engineer.

**4. TEMPORARY ROAD, TRAFFIC MANAGEMENT AND CONTROL, GENERAL PROTECTION**

Layout plans showing the detailed proposals of temporary diversions to be carried out by the Private Partner shall be submitted to the Independent Engineer / Implementing Agency and to concerned district police and civil agencies and local administration for their written approval 10 days before the implantation date.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

Diversion must be constructed in advance of any interference within the existing carriageway/RoW and shall be maintained in accordance with the traffic load in condition satisfactory to the Independent Engineer.

**5. LOCATION OF UTILITY SERVICES**

Location and identification of all services, in consultation with relevant Utility service providers, companies whether above ground or below the ground shall be Private Partner and its Contractor(s)' responsibility following transfer of that utility by Implementing Agency and providing the right of way to the Private Partner, free from any encumbrances.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

**SCHEDULE E – INSTALLATION COMPLETION SCHEDULE**

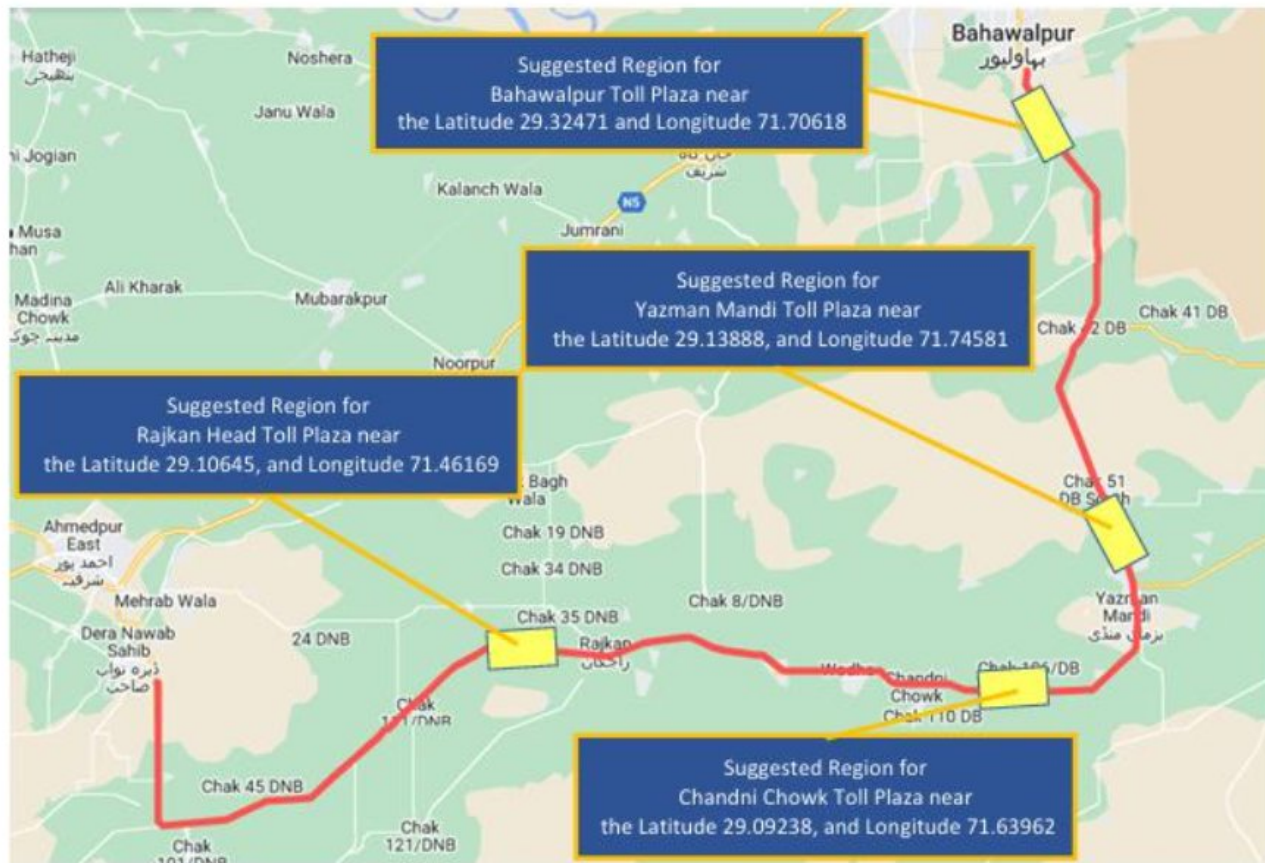
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Commencement Date	Within 90 days from the Effective Date
Anticipated start of installation	Commencement Date
Scheduled Installation Completion Date	As determined by Independent Auditor but in any event not exceeding 180 days following the Commencement Date

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PRIVATE PARTNER INITIALS

SCHEDULE F – PROJECT SITE



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PRIVATE PARTNER INITIALS

## SCHEDULE G – LIST OF TESTS & COMPLETION TESTS

The Private Partner shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants/helper, furniture and its running and maintenance cost for the tests to be conducted. The Private Partner shall also provide for the laboratory a vehicle with driver to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipment, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the same period.

All tests shall be executed as per the designated standard and all required equipment for facilitation of the tests should be furnished in the lab with two sets of latest edition of prescribed standards (one to be placed in the laboratory and other in the Independent Engineer office).

The Private Partner should submit the list of tests to be carried out and their sample forms in the proposed methodology.

### **THE TESTS**

#### **A) LABORATORY TESTS**

The Laboratory shall be equipped to perform the following tests:

SR. NO.	TESTS	AASHTO DESIGNATION
1	Dry preparation of soil samples	T-87
2	Soil Classification	M-145
3	Determination of Moisture Content	T-265
4	Atterberg Limits	T-89 & 90
5	Moisture density relationship (Modified Method)	T-180
6	C.B.R Test and swelling test	T-193
7	Relative Density Test	ASTM D4253, D4254
8	Sieve Analysis of Soils, aggregate and Mineral Filler	T-88, T-27 & T-37
9	Los Angeles Abrasion test of aggregates	T-96
10	Sand Equivalent	T-176
11	Soundness of aggregates	T-104
12	Asphalt Coating	T-195
13	Coating and stripping of Bitumen Aggregate	T-182
14	Specific Gravity & Absorption of Coarse Aggregate	T-85
15	Specific Gravity and Absorption of Fine Aggregate	T-84
16	Penetration of bitumen material	T-49
17	Amount of Passing No. 200 sieve	T-11
18	Quantitative Extraction of Bitumen from Mixtures	T-164
19	Gradation analysis of bitumen extracted aggregates	T-30
20	Specific gravity of compacted bitumen mixture	T-166
SR. NO.	TESTS	AASHTO DESIGNATION
21	Marshall test and loss in stability	T-245
22	Maximum specific gravity of bitumen paving mixture	T-209
23	Air voids in compacted paving bitumen mix	T-269
24	Specific gravity of bitumen material	T-228
25	Softening point of bitumen (Ring and Ball method)	T-53
26	Sampling aggregates	T-2

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

27	Fineness Modulus	T-27
28	Organic impurities	T-21
29	Mortar Strength	T-71
30	Friable particles	T-112
31	Potential reactivity of carbonate rocks for concrete aggregates (rock-Cylinder method)	ASTM C-586
32	Unit weight of aggregates	T-19
33	Air content of freshly mixed concrete by volumetric method	T-196
34	Making and curing of concrete test specimens	T-126
35	Curing concrete compressive test specimens	T-23
36	Compressive strength of cylinder concrete specimens	T-22
37	Setting time and consistency of cement	T-131
38	Normal consistency of hydraulic cement	T-129

**B) FIELD TESTS:**

The following tests will be carried out for field control/spot checking purposes as the Works proceeds: -

SR. No.	TEST	AASHTO DESIGNATION
1	In-place density by Sand Cone Method	T-191
2	Sampling fresh concrete	T-141
3	Slump of Portland cement concrete	T-119
4	Sampling bituminous materials	T-40
5	Determining the temp. of bituminous paving mixtures	-
6	Determining Degree of Pavement Compaction by coring	T-230
7	Bulk specific gravity	T-166
8	Density of soil and soil aggregate by Nuclear methods	T-238
9	Moisture content of soil and soil aggregate by Nuclear method	T-239

**THE COMPLETION TESTS**

Completion Tests shall mean the following final inspection and tests of the Toll Plazas, Weighbridges and ETTMS by the Independent Engineer to ensure that the same conforms to the Installation Requirements:

I. TOLL PLAZA TESTS		II. WEIGH-IN-MOTION (WIM) TESTS	III. ELECTRONIC TOLL TRANSACTION MACHINE (ETTM) TESTS
A. Civil & Structural Tests		A. Static Calibration Tests	A. Lane Hardware & RFID E-Tag Read Tests
1	Concrete Tests	Zero Load Test	Lane Equipment and AVC (Automatic Vehicle Classification) Integration Test
2	Steel Fabrication & Welding Test	Known Weight Test	RFID M-Tag Read Rate Accuracy and Read Range Test
3	Steel Pipe Thickness Test	Axle Load Accuracy Test	Multi-Tag Discrimination and Tag Blacklist Test

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

4	-	Gross Vehicle Weight (GVW) Test	Speed Tolerance Test
<b>B. Transaction Tests</b>		<b>B. Dynamic Performance Tests</b>	<b>B. Transaction &amp; Financial Tests</b>
5	Cash Denomination Handling Test	WIM Speed Range, Consistency & Multi-lane Test	E-Tag Account Deduction & Balance Management Test
6	Receipt Printer Accuracy Test	Temperature Sensitivity Test	Double Deduction Prevention Test
7	Shift Change & Reconciliation Test	Vehicle Separation Test	Transaction Reversal Test
<b>C. Physical Infrastructure</b>		<b>C. Classification and Enforcement Tests</b>	<b>C. Integration &amp; System Tests</b>
8	Central Server Connectivity Test	Overload Detection & Enforcement Chain Test	Connectivity Resilience & Recovery Test
9	Power Failover / UPS Test	Data Integrity & Audit Trail Test	Clearinghouse Integration & Reconciliation Test
10	Interoperability Test (Plaza to Plaza)	-	CCTV & ANPR Integration Test
-		<b>D. System Certification Tests</b>	<b>D. Environmental &amp; Stress Tests</b>
11	-	Sealing & Tamper Test	Rain / Dust / Temperature Ingress Test
12	-	Legal Compliance Test of Equipment and Approvals	Surge Protection and continuous operations Test (Voltage surges from power grid fluctuations)

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

## SCHEDULE H – O&M REQUIREMENTS

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### 1. OPERATION AND MAINTENANCE

- The Private Partner is required to carry out Operations & Maintenance – O&M in respect of the Project in conformity with AASHTO standards and the Service Level requirements set out in this Schedule. The O&M Requirements are set out, *inter alia*, in Article 19 (*Operations and Maintenance*) and this **SCHEDULE H (O&M Requirements)** of the PPP Contract.
- The general scope of Operations & Maintenance includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with AASHTO standards and with all performance measures set out in the PPP Contract.

### 2. OPERATIONS ROLE

- The Private Partner will ensure the smooth flow of vehicles and minimization of traffic delays and closures
- The Private Partner will ensure the safety of commuters and will provide emergency support to commuters
- Safety vehicle, two trucks, ambulances, patrolling vehicles will be used by Private Partner to ensure smooth operations of works
- The Private Partner will ensure the administration, monitoring of conditions, traffic control, assessment of the need for load restriction, posting of warnings to vehicles, and signage
- The Private Partner will ensure the Quality Management on a self-auditing basis, in conformity with AASHTO testing procedures
- Following Operation methodology should be followed by the Private Partner:
  - Patrolling on three hour intervals, on 24/7/365 basis
  - Emergency & Rescue response system
  - Provision of emergency medical services/ambulance/clinic
  - Maintaining traffic sign maintenance data
  - Maintaining Cat eyes
  - Maintaining Road marking
  - Maintaining Culverts
  - Maintaining road
  - Maintaining weigh bridges
  - Maintaining weight violations data
  - Maintaining death/injuries data
  - Preparing periodic report with peak hour flows and peak day flows and other statistics
  - Maintaining operational crew & equipment for emergency maintenance
  - Preparing and implementing education programs and campaigns on:
    - Road safety and customer safety

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

- Customer response & comments
  - Customer awareness
  - Operational staff awareness
  - Incentives for fragment road users
  - Maintaining firefighting systems
- Ensuring that the following classes of Service Levels are maintained, as per the requirements set out in Section 5 (*Operational Performance Measures*) and Section 6 (*Management Performance Measures*) of this Schedule H (*O&M Requirements*), during the Operational Period:

Service Level Class A (the highest and normally applicable for multi-lane highways with high traffic volumes);

Service Level Class B (lower level which is normally applicable for roads and highways with medium traffic levels); and

Service Level Class C (normally applicable for lower-traffic roads of secondary importance).

### 3. MAINTENANCE ROLE

Private Partner is responsible for maintaining the Concession Assets, including the Project Facilities, the Project Highway and the relating road pavement, structures, pavement markings, drainage infrastructure, electrical systems, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, traffic maintenance and emergency maintenance mentioned as under.

a) Annual/Routine Maintenance (From year 3 of Operations phase)

- Isolated holes, Pot holes, fold pavements, skin patch, widening roads in asphaltic layer should immediately be repaired
- Any damages to side barrier due to any accident or other causes should immediately be reported periodically
- Road Marking Maintenance
- Cat's Eyes Maintenance
- Traffic Sign Maintenance
- Minor maintenance due to damage caused by Road accidents

b) Periodic Maintenance

- Over-lay
- Potholes Maintenance
- Guard Rail Maintenance
- Shoulder Maintenance

### 4. OPERATION AND MAINTENANCE CRITERIA

#### 4.1 Operation Requirements - General Criteria

The Private Partner shall be responsible for the efficient operation of the Project Highway, the recovery and removal of broken-down vehicles, the removal of debris and spillage from the Project Highway, the provision of basic services to Users of the Project Highway and all toll collection responsibilities. The Private Partner will be required to liaise closely with police and the emergency services to ensure that performance and safety standards are met at all times.

The Private Partner shall ensure that the Project Highway is operated and maintained in a manner that Service Levels are complied with. A series of Operational Performance Measures and Management Performance Measures are set out that must be met at all times by the Private Partner to maintain Service Levels. The O&M Manual shall set out procedures whereby these standards – or higher performance standards as may be agreed upon – are to be met.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

The Project Highway shall be divided into distinct classes for the purpose of applying both Operational Performance Measures and Management Performance Measures. The classification shall be as follows:

<b>Class</b>	<b>Description</b>
<b>A</b>	Dual Carriageway Minimum 24-ft carriageway either side
<b>B</b>	Collectors Road with 20-24ft Carriageway Asphaltic Surface with or without Treated Shoulders
<b>C</b>	10-12ft Carriageway Asphaltic Surface.

**5. OPERATIONAL PERFORMANCE MEASURES (OPM)**

The “**Operational Performance Measures**” or “**OPMs**” shall be utilised as a set of performance criteria that pertain to the physical condition of the roads and shall be used to evaluate the Private Partner’s compliance with the Service Levels.

The Private Partner shall monitor the Operational Performance Measures continuously and measure them on a monthly basis in accordance with this Section 5 of this Schedule H. The results of such monitoring shall be expressed and reported as either “in compliance” or “not in compliance.” If the Private Partner is found to be “not in compliance” with any of the Operational Performance Measures, such non-compliance shall remain recorded until it is fully remedied by the Private Partner to the satisfaction of the Independent Engineer and the Implementing Agency. Payments for non-compliance with the OPMs set forth in this Section 5 shall be linked to the costs for carrying out the Operation and Maintenance works of the Project Highway for the relevant year.

The Private Partner shall comply with the following OPMs:

1.	<i>OPM-1:</i>	<i>Usability (availability of each lane-km for use by traffic)</i>
2.	<i>OPM-2:</i>	<i>Pavement defects (potholes, rutting, ravelling, cracking in pavement, edge break, etc.)</i>
3.	<i>OPM-3:</i>	<i>Pavement Roughness</i>
4.	<i>OPM-4:</i>	<i>Shoulder and Verge Maintenance</i>
5.	<i>OPM-5:</i>	<i>Drainage</i>
6.	<i>OPM-6:</i>	<i>Bridges, Structures and Embankments</i>
7.	<i>OPM-7:</i>	<i>Incident Response and Emergency Works</i>
8.	<i>OPM-8:</i>	<i>Road signs, line-markings and road furniture</i>
9.	<i>OPM-9:</i>	<i>Vegetation control</i>
10	<i>OPM-10:</i>	<i>Performance of the Private Partner’s Self Control Unit (SCU)</i>

**5.1 OPM-1: Usability**

The Private Partner must ensure that the Project Highway, including all traffic lanes and other lanes, is open to traffic and free of interruptions at all times. Permitted exceptions are:

- lane closures following serious traffic accidents (not exceeding four (4) hours after release of the accident site by traffic police);
- necessary restrictions on traffic flow for the Private Partner to carry out scheduled works on the Project Site;
- natural disasters;
- lane or road closures as a result of direct instructions of the traffic police or other relevant authorities, not attributable to the Private Partner; and
- any traffic restriction which is not caused by an act or omission of the Private Partner.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Method of Inspection: By driving on the Project Highway in a normal manner, utilizing a vehicle type that is similar to the vehicles typically used by Users. This requirement is not complied with if one or several traffic lanes of the Project Highway are partially or fully interrupted or blocked at any point. This requirement is complied with if the Project Highway, including all travel and turning lanes, is fully open to traffic and usable as designed.

Payment for non-compliance if all travel lanes of the Project Highway are interrupted: one percent (1%) of the monthly lump-sum for the full length of the entire Project Highway that is affected (not only of the specific point or length where the obstruction is located), for each two (2) hour period of non-compliance between any two interchanges/intersections.

Payment for non-compliance if one or several travel lanes are interrupted, but at least one lane remains open in each direction: one half of one percent (0.5%) of the monthly lump-sum for the entire length of the Project Highway that is affected, for each two (2) hour period of non-compliance between any two interchanges/interchanges.

**5.2 OPM-2: Pavement Defects**

OPM-2.1: Potholes

The different values of the performance indicators for the corresponding Service Levels are given in the table below:

	Service Levels		
	Class C	Class B	Class A
Potholes (Max. allowed diameter of any single pothole in cm)	30	30	15
Potholes (Max. number in any one (1) km section, with a diameter greater than 10 cm)	10	6	3
Potholes (Max. allowed depth of any single pothole, in cm)	4	3	2
<b>Grace Period granted after First-Day Payment Deduction</b>			
Grace Period in days*	28*	14*	7*

\*For OPM-2.1, the Grace Period refers to the time allowed for technically appropriate repairs, such as patching, to be completed in accordance with the requirements of the O&M Manual or Good Industry Practice. However, as potholes pose a risk to Project Highway safety, the Private Partner is required to temporarily fill potholes using cold mix or other materials approved by the Independent Engineer within 24 hours of their detection.

Frequency of Inspection: Daily.

Method of Inspection: By visual inspection with video/image backup. Measuring shall be carried out using a tape measure, ruler or straightedge, transparent ruler or calibrated steel probe.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Payment for non-compliance: ten percent (10%) of the monthly lump-sum rate for each one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.3 OPM-2.2: Patching**

Patching is the mandatory repair method to be used for different kinds of pavement defects that may be detected on the Project Highway.

*Table: Patching for all Service Levels*

Patches shall be in the manners including but not limited to the following: Patches (i) shall be square or rectangular, (ii) must have squared edges cut with a blade or a similar tool, (iii) shall be level with the surrounding pavement, (iv) shall be made using materials similar to those used for the surrounding pavement, and (v) shall not have cracks wider than three (3) mm.
<b>Grace Period granted after First-Day Deduction:</b> 28 days for permanent repair, but 24 hours for temporary repair.
<b>Frequency of inspection:</b> Monthly

Method of Inspection: Patches shall have a smooth and regular surface, flush with the surrounding road surface. When checking with a straightedge extending across the surface of the patch in any direction, there shall be no deviation from the lower edge of the straightedge of more than 5 mm.

Methods and equipment used for inspection:

- Visual inspection with video/image backup (for detection of shape and materials used);
- Straightedge (for patch evenness);
- Ruler (to check if patch is level with surrounding pavement); and
- Small transparent ruler (for measuring cracks).

Payment for non-compliance: Ten percent (10%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.4 OPM-2.3: Isolated cracking in pavement**

An isolated crack is defined as a linear opening in the pavement with a width of more than three (3) mm, such as longitudinal cracks, transverse cracks and edge cracks.

The Private Partner is obliged to seal all linear isolated cracks wider than three (3) mm. Sealing must be preceded by routing of the crack (if needed) and cleaning to ensure adherence of sealant material. The seal must ensure that water cannot enter the road structure through the crack.

Linear isolated cracks more than 3 mm wide must not exist on the pavement.
<b>Grace Period for repairs, after First Day Payment Deduction:</b> 14 days
<b>Frequency of inspection:</b> Monthly

Method of Inspection: The Laser Crack Measurement System or crack widths are measured with a small transparent ruler.

Payment for non-compliance: 0.5% percent of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.5 OPM-2.4: Multiple cracks in the pavement**

OPM 2.4 applies in cases of multiple visible cracks (such as alligator cracks, block cracking or cracks crossing each other). For multiple cracks, the cracked area is equivalent to a square or rectangle, parallel to the traffic lanes, which fully encloses the cracks, and where the closest crack is at least 0.25 m away from the sides of the square.

The cracked areas shall not exceed ten (10) percent of any 50-meter section of road. Cracked areas exceeding this threshold must be repaired, with a repair method proposed by the Private Partner and approved by the Independent Engineer.

The repair methods that may be used are (i) patching, with or without repair of underlying pavement layers, (ii) applying a seal coat to the entire cracked area or (iii) sealing of the individual cracks. All repair methods must ensure that water cannot enter the road structure through the repaired area.

For any 50-meter section of the pavement, the cracked area shall not be more than ten (10) percent of the pavement surface. Repairs must be performed as per the requirements.
<b>Grace Period for repairs, after First Day Payment Deduction:</b> 28 days
<b>Frequency of inspection:</b> Monthly

Method of Inspection: Laser Crack Measuring System or detection of multiple cracks by visual inspection or analysis of video images along with video/image backup. Measurement of cracked areas by measuring tape, handheld measuring wheels or other appropriate measuring devices. The “cracked area” is equivalent to a square or rectangular area, parallel to the traffic lanes, which fully encloses the cracked area.

Payment for non-compliance: ten percent (10%) of the monthly lump-sum rate for one km, to be applied for each one-km section in which a non-compliance exists and for each day during which the non-compliance persists.

**5.6 OPM 2.5: Cleanliness of the pavement, shoulders and right-of-way**

Cleanliness refers to the absence of soil, debris, trash, rubbish, dead animals and other such objects. The terms “cleanliness” and “absence” are defined further below for the purposes of the contract. The requirement is that the road and shoulder surface must always be “clean”.

Also, debris, trash, rubbish and other objects, including dead animals, must be absent from the Right-of-Way of the road at least up to 20 meters away from the edge of the pavement on both sides of the road, unless otherwise specified by the Independent Engineer.

	<b>Service Level (Grace Period for removal, in days)</b>		
	<b>Class C</b>	<b>Class B</b>	<b>Class A</b>
Cleanliness of the <b>pavement surface and shoulders</b> when unclean conditions present a <b>safety risk</b> .	To be cleaned during patrol. No Grace Period.	To be cleaned during patrol. No Grace Period.	To be cleaned during patrol. No Grace Period.
Cleanliness of the <b>pavement surface and shoulders</b> when there are no safety risks	14	7	3
<i>Absence</i> of trash/rubbish <b>from the Project Highway</b>	30	30	14

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

<b>right-of-way</b> , outside the pavement and shoulder surface		
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Frequency of inspection: Daily

Method of Inspection: Visual inspection.

Payment for non-compliance: Five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.7 OPM 2.6: Rutting:**

There are two performance criteria for rutting: (i) Rutting shall not exceed the defined maximum tolerable depth at any point along any one-km road section; and (ii) Rutting of more than 75% of the maximum tolerable depth shall not be present for more than the maximum tolerable percentage of length within any one-km road section. Different levels are set for roads with one traffic lane in each direction (single carriageway) and for multiple carriageway roads and highways.

*[Note: For areas with high rainfall, the tolerances may need to be lower to reduce the risk of aquaplaning with the approval of IE.]*

Frequency of inspection: Daily	Service Levels		
	Class C	Class B	Class A
Max. allowed rutting depth (mm) – for multi-lane highways	30	25	20
Max. allowed rutting depth (mm) – single carriageway roads	35	25	20
Max. allowed rutting % of any km length)	≤ 10	≤ 10	≤ 5
<b>Grace Period for repairs, after First Day Payment Deduction:</b>			
<b>Rutting (Grace Period in days)</b>	56	56	30

Method of Inspection: Measured with one straightedge & ruler and one calibrated wedge. Straightedge of three meters length placed horizontally and perpendicularly across lane. Rut depth is measured as the space between the lower edge of straightedge and the lowest point of rut, using a small ruler / calibrated wedge with scale in mm.

Payment for non-compliance: 5% percent of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.8 OPM 2.7: Ravelling/ Stripping of pavements**

Ravelled pavement areas must not exist for roads at Service Level A. For Service Levels B and C, the maximum surface area of ravelling within any continuous one-km centreline length shall be less than one percent (1%) and two percent (2%) respectively.

Service Level A- Ravelled areas must not exist at all.
Service Level B - Maximum tolerable Ravelled areas: two percent (2%) of

surface in each one km section of road.
Service Level C - Maximum tolerable Ravelled areas: four percent (4%) of surface in each one km section of road.
<b>Grace Period for repairs, after First Day Deduction: 56 days</b>
<b>Frequency of inspection: Monthly</b>

Method of Inspection: Detection of Ravelling by visual inspection with video/image backup.

Measurement of ravelled areas by measuring tape, handheld measuring wheels or other appropriate measuring devices. The “ravelled area” is equivalent to a square or rectangular area, parallel to the traffic lanes, which fully encloses the ravelling.

Payment for non-compliance: 05%of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.9 OPM 2.8: Loose pavement edges**

*Pavement edges, for all Service Levels*

There shall not be loose pavement edges, or pieces of pavement breaking off at the edges. A one-km section is non-compliant if pavement edges are loose or broken off for a combined length of more than 5 meters and width 2 cm at any location.
<b>Grace Period for repairs, after First Day Deductions: 30 days.</b>
<b>Frequency of inspection: Monthly.</b>

Method of Inspection: Edge dropout by straight edge of 3 meters and calibrated wedge or ruler, Visual inspection with video/image backup.

Payment for non-compliance: five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.10 OPM 3: Pavement roughness and skid**

*Maximum tolerable pavement roughness (measured in m/km).*

Frequency of inspection: Bi-annually	Service Levels		
	Class C	Class B	Class A
Max. tolerable roughness (IRI) – (m/km) single carriageway (1-2-lane) roads	≤5	≤4	≤3.2
Max. tolerable roughness (IRI) – (m/km) Dual or multiple Carriageway highways: Left- most traffic lane	≤6	≤4.8	≤4
Max. tolerable Roughness (IRI) – (m/km) Dual or multiple Carriageway highways: Other traffic lanes	≤4.5	≤3.8	≤3.2
Pavement Condition Index	<b>2</b>	<b>2.1</b>	<b>2.5</b>
<b>Grace Period for Repairs, after First Day Deduction:</b>			
Roughness (Grace Period in days) after First Day Deduction	180	180	120

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

By using Class I Profilometer SCRIM (Sideway force Coefficient Routine Investigation Machine or equivalent or Road Roid Software)

**Method of Inspection:** The pavement roughness for each traffic lane of the Project Highway shall be measured using the methods described in the O&M Manual or as advised by the Independent Engineer or Road Roid Software.

**Payment for non-compliance:** One percent (1%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.11 OPM-4 Embankment, slope, shoulder and verge Maintenance**

**OPM-4.1: Paved shoulders**

The shoulder is defined as the width from the edge of the paved traffic lane to the end of the verge or the start of the side drain. The shoulder must be maintained (i) to support the pavement edge, (ii) to allow for the occasional use by traffic, (iii) to ensure its function as the drainage path for water runoff from the carriageway and (iv) to ensure the elimination of an edge drop off at the edge of the sealed pavement.

The criteria of OPM-2 (Pavement Defects) also apply for paved shoulders. In addition, paved shoulders shall always be adequately sealed to prevent water penetration, without deformations or erosions in excess of 15mm under a 3-meter straightedge in any direction

**Grace Period for Repairs granted after First Day Deduction: 56 days**

Method of Inspection: Visual inspection with video/image backup to detect defects. Straightedge and calibrated wedge / ruler (for measuring evenness).

Payment for non-compliance: Five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

<b>OPM-4: Shoulder &amp; Verge Maintenance</b>	<b>Service Levels</b>		
	<b>Class C</b>	<b>Class B</b>	<b>Class A</b>
Max. allowed shoulder drop: Height of pavement vs. Height of Shoulder (difference in mm), over any lengths of 10 meters or more	40	35	25
Max. allowed shoulder rise (in mm), over any lengths of 10 meters or more	4	2	2
<b>Grace Period for Repairs granted after First Day Deduction: 56 days</b>			

**OPM-4.2: Unpaved Shoulders**

*Table: Unpaved shoulder for all Service Levels*

Unpaved (gravel) shoulders shall be maintained compacted and graded to a smooth condition across the full width, with no depression or hump in excess of 75mm under a 3-meter straightedge in any direction.

**Grace Period for repairs granted after First Day Deduction: 60 days**

Method of Inspection: Visual inspection with video/image backup to detect defects. Straightedge and calibrated / ruler (for measuring evenness).

Payment for non-compliance: Five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.12 OPM-5: Drainage**

*Table: Drainage for all Service Levels*

<b>Frequency of inspection:</b> 4 times in a year (specifically before and after the rainy season).
The Private Partner must ensure that all drainage elements are structurally sound, clean and without obstructions (due to sediment or debris) which may reduce their normal cross- section and impede the free flow of water. The basic principle used to determine the cleanliness of drainage structures or devices is “the percentage of the theoretical cross- section of the structure or device which is obstructed”. The obstructed percentage shall not exceed 15% of the theoretical cross-section. Also, erosion caused by runoff from drainage elements must be mitigated in order for (i) the structure itself to be protected against future structural failure and (ii) to avoid any significant damage and erosion to adjacent areas. Drainage elements include (but are not limited to) manholes, sumps, slot drains, catch pits, soak holes, flumes, outlets to subsoil drains, and access way/driveway culverts) and other drainage structures such as culverts (pipes and boxes), side drains.
<b>Recommended Remedial measures:</b> Cleaning silt up soils and debris in culvert barrel after rainy season, removal of bushes and vegetation, U/s of barrel, under barrel and D/s of barrel before rainy season. 15 days before onset of monsoon and within 30 days after end of rainy season.
<b>Grace Period for cleaning and/or repairs granted after First Day Deduction:</b> 30 days

Method of Inspection: Inspection is done visually to detect obstructions or defects. The percentage of obstruction is calculated for each type of drainage element, based on the measurement or estimate of obstructed cross-section areas. Compliance requires that drainage fulfils the requirements stated above. Determination of structural soundness is based solely on the judgment of the Independent Engineer.

Payment for non-compliance: Five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.13 OPM-6: Bridges, Structures and Embankments**

The Private Partner shall be responsible for the routine maintenance of all bridges, structures, and embankments along the roads and road sections of the Project Highway. This includes ensuring the proper functioning of structures, such as maintaining the paint on metallic structures (if not galvanized), the condition of road surfaces on structures, and the presence and upkeep of guardrails, to provide safety and comfort for Users traveling at normal speeds.

The Private Partner must immediately notify the Independent Engineer of any conditions that may compromise the structural integrity of any structure on the Project Highway. However, the reconstruction, structural repair and improvement of bridges (including culverts, retaining walls and embankments) is included in the Private Partner’s obligations, unless specified elsewhere in the Agreement.

OPM-6.1 Bridges and structures

<b>Item</b>	<b>Requirements (for all Service Levels)</b>	<b>Measurement/ Detection and frequency of inspection</b>	<b>Grace Period granted after First Day Deduction</b>
Bridges and structures	Road surface, kerbs, guard rails, pedestrian hand railing and	Visual inspection with video/image	Damages and defects must be repaired within

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

generally	barriers must be in sound condition. Guardrails on bridges and access ramps must be present, painted or galvanized, and not deformed.  There shall be no erosion or undermining of bridges and structures.	backup  Monthly Inspection	(28) days.
Steel or other metal parts and structures	All metal parts of the overall structure shall be painted or otherwise protected and free of corrosion. All the corroded reinforcement shall need to be thoroughly cleaned from rusting and applied with anti-corrosive coating before carrying out the repairs to affected Concrete portion with 3poxy mortar/concrete	Visual inspection with video/image backup By-Annually Inspection	Any corrosion must be cleaned and over-painted using a paint system approved by the Independent Engineer, within (28) days.
Concrete structures (minor or non-structural repairs)	Beams and all other structural parts must be in good conditions, free of spalling/delamination and fully functional. The cracks wider than 0.30 mm shall not be more than one meter in length. There will be no rainwater seepage through deck slab	Visual inspection with video/image backup  Quarterly inspection using mobile bridge inspection unit between 15 to 30m	Grouting with epoxy mortar, investigating causes for cracker development and carry out necessary rehabilitation within 48 hours.  Structural damage to be notified to the Independent Engineer same day /immediately. Proposals for rectification submitted to The Independent Engineer within fourteen (14) days.
Retaining walls	Private Partner must ensure presence and adequate condition of retaining walls and their drainage.	Visual inspection with video/image backup	Damages and defects must be repaired within twenty-eight (28) days.
Riverbeds	Private Partner must ensure free flow of water under bridges and through culverts, and a clear, unobstructed channel at least equal to the structure opening for at least 100 meters upstream and downstream. Private Partner must maintain design clearance under bridge. The Private Partner shall take all reasonable measures to control erosion around bridge abutments and piers.	Visual inspection with video/image backup	Causes for non-compliance must be eliminated within (56) days after water has sufficiently receded to allow minimum working conditions.
Level of expansion joints	No bump shall exist. Moreover, the upper surface of the pavement shall not be more than 5 mm below the upper surface of the expansion joint, measured with a 1m straightedge put on top of the expansion joint in the direction of the road.	Straightedge and ruler measurement  Daily inspection	Damages and defects must be repaired within (30) days.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Expansion joints	Expansion joints shall be operating properly be watertight if designed to be so, without any loose parts or visible wear and tear. The new expansion joint should have the same or better specifications as compared with the existing expansion joint.	Visual inspection with video/image backup	Temporary replacement of a non-compliant joint part with cold sand-asphalt must be made within (3) days. Damages and defects must be repaired within (28) days.
Leakage in expansion joints	No damage to elastomeric sealant compound in strip seal expansion joint, no leakage of rain water through expansion joint in case of buried and asphalt plug and copper strip joint	Quarterly inspection using mobile bridge inspection unit	Replace of seal in expansion joint within 15 days
Debris and dust in strip seal expansion joint	No dust or debris in expansion joint gap.	Monthly inspection using mobile bridge inspection unit	cleaning of expansion joint gaps thoroughly within 7 days
Drainage spouts	No down take pipe missing/broken below soffit of the deck slab. No silt, debris, clogging of drainage spout collection chamber.	Monthly inspection using mobile bridge inspection unit	Cleaning of drainage spouts thoroughly Replacement of missing/broken down take pipes with a minimum pipe extension of 500mm below soffit of slab. Providing sealant around the drainage spout if any leakages observed Within 3 days
Bridge Substructure Bearings	Delamination of rearing enforcement not more than 5%, cracking or tearing of rubber not more than 2 location per side, no rupture of reinforcement or rubber	Bi-Annually inspection using mobile bridge inspection unit	In case of failure of even one bearing or my pier/abutment, shall be bearings on that pier/abutment shall be replaced, in order to get uniform load transfer on to bearings Within 3 months
Bridge Foundations; Scouring around foundations	Scouring shall not be lower than maximum scour level for the bridge	2 times in a year (before and after rainy season) Condition survey) and Visual inspection with video/image backup using Mobile Bridge Inspection Unit. in case of doubt, use an underwater camera for inspection of deep wells in major Rivers.	Suitable protection works around pier/abutment  30 days
Suitable protection works around pier /abutment	Damaged of rough stone apron or bank revetment not more than 3 sq.m, damage to solid apron (concrete apron) not more than one sq.m	Using mobile bridge inspection unit	30 days after defect observation or 2 weeks before onset of rainy season whichever is earlier.
Note: Any Structure during the entire Concession Period which is found that does not comply with all requirements of this Table will be prepared, rehabilitated or even reconstructed under the scope of the Private Partner.			

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Method of Inspection: Visual inspection with video/image backup using mobile bridge inspection unit will be undertaken as part of the formal and informal inspections. Bridges, structures and other items listed in the table above will be checked during inspections at points selected by the Independent Engineer based on visual appearance. The Independent Engineer shall be the sole judge of compliance. If a specified criterion is not met, the one-kilometre section in which the defect occurs will be judged non-compliant.

Payment for non-compliance: Ten percent (10%) of the monthly lump-sum rate for one km, to be applied for the one km section where the non-compliant bridge, structure or item is located, for each day during which the non-compliance persists.

OPM-6.2 Embankments, Slopes and Retaining walls

The Private Partner shall be responsible for the maintenance of all embankments, slopes, and existing retaining walls along the Project Highway. The Private Partner shall ensure that all embankments and slopes shall be kept stable, well compacted, and free from deformations or erosion at all times. All existing retaining walls and stabilization measures shall be maintained in a stable and fully operational condition.

The Private Partner’s routine maintenance obligations shall include routine maintenance, stabilization, and preventive measures, as well as minor repairs of slopes and retaining walls. The Private Partner shall conduct regular inspections of slopes and promptly notify the Independent Engineer upon detection of any risk of slope failure requiring major rehabilitation or Emergency Works, along with a detailed proposal of remedial measures.

The Private Partner shall comply with the following performance measures:

*Table: Embankment and Slopes, for all Service Levels*

<b>Item</b>	<b>Service Level (applied to all Service Levels)</b>	<b>Measurement/ Detection</b>	<b>Grace Period granted after First Day Deduction</b>
Cut and Embankment slopes	Shall be stable and without deformations and erosions.	Visual inspection with video/image backup	Repairs must be completed within (28) days after the detection of the defect.
Retaining walls	Private Partner must ensure presence and adequate condition of retaining walls and their drainage.	Visual inspection with video/image backup	Damages and defects must be repaired within (28) days.
Removal of slides	Fallen slope material must be removed immediately.	Visual inspection with video/image backup for fallen slope material on shoulders or pavement	Fallen slope material must be removed.  For quantities below 50 m3: from pavement within 12 hours after detection From shoulders and side drains within 48 hours after detection.  Above 50 m3: from pavement within 24 hours after detection from shoulders and side drains within seven (7) days after detection

Method of Inspection: The visual inspection with video/image backup of cut and fill slopes and of retaining walls will be undertaken as part of the inspections of the Project Highway. Compliance with

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

the criteria for slopes and retaining walls will be based on visual appearance. The Independent Engineer shall be the sole judge of compliance with performance measures. If a specified criterion is not met, the one-kilometre section in which the deficit occurs will be judged non-compliant.

Payment for non-compliance: Ten percent (10%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.14 OPM-7: Incident Response and Emergency Works**

An **Incident response** is defined as:

- a) The response to all storm damage and to other weather-related incidents;
- b) Carrying out special road patrols in advance of and during
  - Announced storms and other extreme weather-related events;
  - Major public events on road or adjacent to the Project Highway;
- c) Responding to accidents, incidents and other events that may affect:
  - the safety of Users or people adjacent to the Project Highway;
  - the safety and integrity of the Project Highway.

Incident response includes:

- Assisting police and other emergency service providers at accident sites with traffic management, detours and site clean-up; or clean-up of the accident debris including oil, fuel or other spillages, sufficient to maintain the safe passage of vehicles and pedestrians.
- Repairing any damage caused by the accident or incident and reinstating the road.
- Attending any other incident that may affect User safety, Project Highway availability and integrity, and completing temporary works to make the site safe. This includes activities such as eliminating obstructions to the free flow of traffic and removing unauthorized deposits of materials and abandoned vehicles from the road and its Right-of-Way.
- During wet weather the Private Partner shall pay particular attention to sections of the Project Highway which are likely to be inundated by water. The Private Partner shall provide signs on inundated sections of road, clear waterways, pit entrances and culverts of obstructions, and divert water from the roadway when possible and necessary.
- The Private Partner shall remove all blockages from bridges and culverts immediately after water levels permit such work to proceed. In case of flood, the highest level reached by the water on both sides of the road shall be recorded and informed the Independent Engineer within (07) days for his advice.

**Response Time:** This is the time within which the Private Partner must be on site with at least basic equipment for the clean-up, traffic control and site securing, after becoming aware or receiving notification of an incident. The Private Partner is required to record and report his own conformance with the Response Times. Where the Independent Engineer becomes aware of a failure to achieve the response time requirement, a non-conformance will be recorded by the Independent Engineer unless the Private Partner can provide clear and verifiable evidence to be acceptable by the Independent Engineer.

The term **Time of Notification** is defined as the time when the Private Partner is advised of the incident, accident or emergency; by the Independent Engineer/ Implementing Agency or by the Private Partner’s personnel, or by a third party such as the police or a member of the public.

**Supplementary Resources.** The Implementing Agency reserves the right to engage additional resources (chargeable to the Private Partner) to supplement those provided by the Private Partner if the Private Partner is unable to provide adequate resources to manage the incident or emergency work.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

**Temporary Warning Signage.** Where required, the Private Partner shall provide and install all necessary temporary warning signage, cones, high visibility netting etc.

**Incident Response Site Boundaries.** In certain circumstances during an incident the Private Partner may be required to undertake work outside the Project Site, or another Private Partner may be required to undertake work within the Project Site. In either circumstance, undertaking of such work by a third party shall not constitute a breach of this Agreement. In such instances of working outside Project Site, the provisions of the Agreement shall nevertheless apply. The Independent Engineer/Implementing Agency/ GoPb will confirm in writing any specific cross boundary protocols that may apply during large scale emergency events.

**Incident Response - prior programming requirements.** To facilitate conformance with the required response times, the Private Partner shall identify in advance all such high-risk locations or road sections within the Project Highway and the travel times required from the nearest Private Partner’s camp. The Private Partner shall have developed and instituted adequate systems and measures to ensure that timely response to any incident is achievable. The Private Partner shall also develop and maintain an up to date a list of relevant contact numbers for the local police, hospitals, and utility providers. This information shall be readily available to the Private Partner’s personnel and to the Independent Engineer at all times and included in the Private Partner’s Quality Assurance Plan.

Incident and Emergency Response Activities - Response Times

Maximum response time taken (from the Time of Notification to the Private Partner):

- to contact and inform appropriate authorities: ten (10) minutes
- to secure the site: four (4) hours
- remove materials, vehicles and any other obstructions etc. to re-establish normal traffic flow: twelve (12) hours, unless the volume of materials obstructing the road is such that it cannot be reasonably be expected that the Private Partner can remove them within 12 hours, with the Independent Engineer being the sole judge if this condition is applicable.

Method of inspection: The incident and emergency response times shall be assessed based on communication records and written confirmations of actions taken by the Private Partner, as submitted to the Independent Engineer or Implementing Agency, in writing, or through on-site observations by the Independent Engineer/Implementing Agency or others. The resources deployed by the Private Partner to manage emergencies and incidents must be deemed satisfactory by the Independent Engineer/Implementing Agency.

Payment for non-compliance: A payment of PKR 100,000/- is to be applied for each case of non-compliance.

**5.15 OPM-8: Road signs, line-markings and road furniture**

OPM-8.1: Signalling, Lighting and Road Safety

The Private Partner is responsible for ensuring that all horizontal and vertical signalling, as well as lighting, traffic lights, electrotechnical equipment, guardrails and road safety devices are fully functional and comply with the Applicable Specifications and Good Industry Practice.

*Signalling, lighting and road safety devices for all Service Levels:*

Item	Service Level (applied to all Service Levels)	Measurement/ Detection	Grace Period granted after First Day Deduction

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Vertical signs (Information signs, warning signs, traffic rule signs, etc.)	Signal has to be present, complete, clean, legible, structurally sound and clearly visible day and night.	Visual inspection with video/image backup	Absent* or defect signs must be replaced within fourteen (14) days.
Horizontal Road markings	Have to be present, clearly legible during day and night, and firmly attached to the pavement.	Visual inspection with video/image backup with video/image backup	Non-compliant parts must be repainted or replaced within (30) days.
Delineators and additional road furniture	Have to be present, clean, structurally sound, firmly attached to the surface and clearly visible day and night.	Visual inspection with video/image backup with video/image backup	Non-compliant items must be replaced within (30) days.
Mileposts, guidance posts and similar markers	Have to be present, visible, complete, clean, legible and structurally sound; surface painted or otherwise covered.	Visual inspection with video/image backup with video/image backup	Absent* or defect elements must be replaced within (30) days.
Guardrails	Have to be present, clean, without any structural damage, without corrosion.	Visual inspection with video/image backup with video/image backup	Damaged guardrails must be replaced within (30) days
Road and Street lighting, traffic lights and lighted signs	The Private Partner is responsible that all installed street and road lighting, and traffic lights, including power supply systems (cables, transformers, switching equipment, etc.) is functional at all times.	Visual inspection with video/image backup with video/image backup	Non-functioning lights and equipment shall be made functional within (14) days

\* **“Absence”** refers to the signs and elements that are either listed on the initial road inventory or that have been installed by the Private Partner as scope of work.

Road Markings: Road markings must include all carriageway markings required by the Applicable Specifications, including edge lines, centre lines, double centre lines, etc. together with markings on intersections (give way line, side road centre line, pedestrian crossings, etc.), hazardous locations, parking and the markings on kerbs. All road marking should conform to the design standards stated above. If it is not covered, the provisions of the Program of Performance are to be applied.

Unless specified otherwise, the use of thermoplastic reflective road marking materials is mandatory for all lines in the primary road network and the central line of the secondary road network.

For roads or road sections scheduled for pavement Rehabilitation Works to be completed within 24 months after the Commencement Date, other reflective road marking paint can be used until the Rehabilitation Works are completed. For all other road markings, the relevant parts of the O&M Manual must be respected.

Road Signs: Unless otherwise specified in the O&M Manual, road signs to be installed by the Private Partner shall conform to the design standards defined in the Program of Performance. A sign must be

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

considered ineffective when it can no longer be detected or easily read by day and night from a vehicle travelling at the average speed of traffic on the road on which the sign is placed, or when the luminosity is 70% of the minimum values stated in the relevant standards. Ineffective signs must be replaced. For all roads with posted speed  $\leq 80$  km/h medium size signs will be used and for posted speed  $> 80$  km/h large size signs shall be used.

Distance Marker Posts (mileposts): The Private Partner’s bid for Maintenance Services must allow for the provision and maintenance of distance marker posts on one side of the project road (at least one post per km) unless otherwise indicated in the PPP Contract. The design and specifications of distance marker posts must conform to the relevant standards. Posts that are absent at the beginning of the Agreement must be installed within the first 12 months of execution of the Agreement.

Method of measurement: Visual inspection with video/image backup. The Independent Engineer shall be the sole judge as to the compliance with the requirements.

Payment for non-compliance: Ten percent (10%) of the monthly lump-sum rate for one km, to be applied for each case of non-compliance and for each day during which the non-compliance persists. If there are multiple cases of non-compliance on a one-km section, the payment shall be applied separately for each case of non-compliance.

OPM-8.2: Retro-reflectivity of Road Signs and Markings

*Table: Retro-reflectivity of Road Signs, Road Markings and Road Safety devices - all Service Levels*

<b>Item</b>	<b>Service Level (applied to all Service Levels)</b>	<b>Measurement/ Detection</b>	<b>Grace Period granted after “First- day” payment deduction</b>
Vertical signs (Information signs, warning signs, traffic rule signs, etc.)	Reflectivity $>80\%$ of the values in the relevant design standard	Visual inspection with video/image backup with video/image backup	Non-compliant items must be replaced within fourteen (14) days.
Horizontal road markings	Luminance (Qd) or Retro reflectivity (RL) is greater than or equal to 80 mcd/m <sup>2</sup> /lx	Visual inspection with video/image backup with video/image backup	If non-compliant, must be repainted or replaced within fifty-six (56) days.
Delineators and additional road furniture	Retro reflective items must have retained at least 80% of their original reflectivity.	Visual inspection with video/image backup with video/image backup	Non-compliant items must be replaced within twenty-eight (28) days.
Mileposts, guidance posts and similar markers	Retro reflective parts must have retained at least 70% of their original reflectivity.	Visual inspection with video/image backup with video/image backup	Absent or defect reflective elements must be replaced Fifty-Six (56) days.

Method of measurement: Inspection with testing apparatus. The Illumination level shall be measured with Luxmeter .

Payment for non-compliance: Five percent (5%) of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

**5.16 OPM 9: Vegetation control, Green Environment, Plantation of Trees, Horticulture**

OPM-9.1: Vegetation Control

Vegetation growth is to be limited to the heights, at the locations and with the restrictions advice by the Independent Engineer. However, the Sightline shall be free from obstruction by vegetation. And furthermore, the drainage structure shall also be free from the vegetation by all means.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

The Plantation: The Vegetation/Plantation shall comply with the requirement and as desired by the Implementing Agency, Punjab EPA, or instructions issued from time to time.

Table: Vegetation growth control for all Service Levels

Type	Maximum permitted height (cm)	Applied to:
1	maximum average permitted height is 25 cm	Urban highway shoulders, medians, traffic islands and highway verges, grass in rest areas (including around rest area furniture).
2	maximum average permitted height is 40 cm	Non-urban roads and large vegetated areas, including surface water channels with longitudinal gradient $\geq 3\%$ .
3	maximum average permitted height is 25 cm	Vegetation control around: Edge marker posts Signposts Bridge end and culvert markers Guardrails Sight rails Lighting Columns Bridge abutments
4	Vegetation-free or near Vegetation-free	Applies to vegetation control around: Culvert ends Culvert headwalls Side drains Culvert waterways Surface water channels with gradient $< 3\%$ (except where nominated for mowing in the specific contract requirements) Weigh pits Kerb and channel Lined channels All sealed surfaces Metalled shoulders Bridge decks.
5	Growth must be removed when it encroaches into the Vegetation-free Zone from the side or top.	Applies to vegetation control in the envelope (grey shaded area in Figure below), including trees, scrub or branches hanging into the Vegetation Free Zone (within 0.5m of the line of the edge marker posts or to within 6.0m above the pavement).
6	The Plantation/forestation under EIA Report	The Vegetation/Plantation shall comply with the requirement of the EIA Report. And as desired by the Punjab EPA, time to time in pursuance of the EIA Report/ updated EIA Report.

**Grace Period for vegetation control after First Day Deduction: 14 days**

Method of inspection: The height of vegetation is defined as the vertical distance between the ground and the highest point of the plant. It is measured by using a ruler or measuring tape. Clearance is also measured with a ruler or tape and defined as the distance between the lowest point of the tree (or other plant) above the road surface. The average height of vegetation in a one km section will be equal to the average of five values measured at points selected by the Independent Engineer, with each point being at least 10 meters apart from the next.

Payment for non-compliance: Ten (10%) percent of the monthly lump-sum rate for one km, to be applied for each one km section that does not comply and for each day during which the non-compliance persists.

OPM-9.2: Green Environment, Plantation of Trees, Horticulture

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

The Plantation: The Vegetation/Plantation shall comply with the requirement and as desired by the Implementing Agency, Punjab EPA, or instructions issued from time to time.

Type	Type and Minimum permitted (No)	Applied to:
1	The Private Partner will be required to plant trees to a minimum of 60 trees on either side of the road.	Rural highways, highway edge of RoW, rest areas (including around rest area furniture).
2	Type of trees allowed	Acacia (kikar), Shisham, Mahagony, Arjan, Toot and other shade bearing trees and all fruit bearing trees, like Jamun, Mango, Cherry, etc. which also bear shade.
3	Average height is 5m when grown	The Private Partner will procure or build its own nursery for saplings, plant, water and nurture tree plants till the end of Concession Period.

**Grace Period in days for plantation of trees First Day Deduction:** 180 days.

**Inspection Frequency:** Every six months.

**Method of Inspection:** All trees will be numbered and a register of record of trees will be maintained by SCU bearing date of plantation, type of tree, average girth of tree every year. All trees shall be individually numbered and recorded by the Private Partner Self Control Unit. The Private Partner Self Control Unit shall maintain a comprehensive tree register, which shall include, for each tree: the date of plantation, species/type, and the average girth measured annually. This register shall be updated on a yearly basis and made available for inspection by the Implementing Agency or the Independent Engineer.

All trees within the Project Site shall be properly enumerated. In the event that the number of trees enumerated in any one-kilometre stretch falls short of the required count by more than five (5) trees due to loss caused by neglect, disease, or inadequate maintenance by the Private Partner, such shortfall shall trigger a penalty, as specified below.

**Payment for non-compliance:** Rs. 500 for loss of 5 trees in one km, to be applied for each one km section that does not comply.

**5.17 OPM-10: Performance of the Self Control Unit**

The correct execution depends to a large degree on the adequate functioning of the Private Partner Self Control Unit and on the accuracy of the data provided by the Private Partner Self Control Unit. The Independent Engineer will assess the performance of the Private Partner Self Control Unit by comparing the data provided by the Private Partner Self Control Unit in the SCU Monthly Compliance Table with the data measured or observed in the O&M Inspection Report.

The Private Partner must ensure that the data included in the SCU Monthly Compliance Table prepared by the Private Partner Self Control Unit and provided to the Independent Engineer prior to the inspections of the Project Highway is accurate and based on actual measurements or observations carried out by the Private Partner Self Control Unit. The Independent Engineer will verify the data provided by the Private Partner Self Control Unit in the O&M Inspection Report through inspections of the Project Highway.

If the Independent Engineer finds that the data provided by the Private Partner Self Control Unit for any road or road section of the Project Highway is incorrect for more than 20% of the individual data on OPM's 1 to 9 provided for a road or road section, this will be considered as a non-compliance with OPM-10 and will trigger the application of the corresponding payment under OPM-10 for the same road.

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

Furthermore, if a situation of non-conformance with OPM-10 continues for more than six months, the Implementing Agency will have sufficient grounds to terminate the contract, if it desires.

**Method of assessment:** The assessment is done on the basis of the verification by the Independent Engineer all of the 20 performance criteria and sub-criteria included under OPM-1 to OPM-9. The 20% threshold limit corresponds to four (4) criteria. If the information provided by the Private Partner Self-Control Unit for five (5) or more criteria of a road or road section of the Project Highway is incorrect, this shall constitute a non-compliance with OPM-10 for that road or road section of the Project Highway. An example for calculation is provided hereunder:

**Sample Calculation - Payment for OPM-10**

Data No.	OPM List	Non-compliant length (km)		
		Data from SCU Monthly Compliance Tables	Data from Monthly Inspection	Incorrect Data supplied by SCU*
1	OPM-1	0	0	No
2	OPM-2.1	2	4	<b>YES</b>
3	OPM-2.2	0	0	No
4	OPM-2.3	0	0	No
5	OPM-2.4	0	0	No
6	OPM-2.5	0	4	<b>YES</b>
7	OPM-2.6	2	2	No
8	OPM-2.7	0	0	No
9	OPM-2.8	1	1	No
10	OPM-3	0	0	No
11	OPM-4.1	0	0	No
12	OPM-4.2	0	0	No
13	OPM-5	0	0	No
14	OPM-6.1	0	0	No
15	OPM-6.2	1	3	<b>YES</b>
16	OPM-7	0	0	No
17	OPM-8.1	0	1	<b>YES</b>
18	OPM-8.2	1	1	No
19	OPM-9	3	5	<b>YES</b>

Total No. of Data: **19**

No. of "Yes":

**5**

20% of 19 OPM's would be 4 OPM's, which means that if the number of "Yes" is higher than 4 then the penalty is triggered and to be applied.

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

\* Only applies if road condition is "worse" than reported by SCU, not if better.

Payment for non-compliance: Ten percent (10%) of the monthly lump-sum rate for the entire road or road section, to be applied for each road or road section for which incorrect information was provided by the Private Partner in the O&M Quarterly Status Report for five (5) or more of the OPM criteria or sub-criteria.

**Reduced Service Levels prior to Major Maintenance**

The Independent Engineer with the consultation of the Implementing Agency/Project Manager may reduce the service levels (OPM) gradually, and especially six months prior to the Major Maintenance / end of concession except OPM-2.1 “Potholes” and OPM-2.5 “Cleanliness of Pavement Surface and Shoulders” and Road Marking under OPM-8: Thermoplastic markings shall not be required for roads or road sections which are under Major Maintenance. In those cases, reflective paint can be used instead. *(It would not be reasonable to require the rather expensive reflective pavement markings if the pavement is to be or/and overlaid for Major Maintenance).*

**6. MANAGEMENT PERFORMANCE MEASURES (MPMS)**

**6.1 Management Performance Measures**

“**Management Performance Measures**” or “**MPMs**” refer to a set of performance criteria that the Private Partner is required to meet for managing the Concession Assets. These measures include quality assurance and testing requirements, as well as the collection, reporting, and timely submission of various data and information to the Independent Engineer, which may be needed as input to the Implementing Agency’s Road Asset Management System (RAMS). The specific Management Performance Measures applicable to the Project Highway are outlined in the table below.

Compliance with the Management Performance Measures shall be evaluated monthly or as otherwise specified in this Agreement. Results shall be classified as either compliant or non-compliant. In the event of non-compliance, such non-compliance shall continue to be recorded until the Private Partner achieves compliance to the satisfaction of the Independent Engineer.

In cases of non-compliance with the Management Performance Measures, the Private Partner shall be liable to make monthly lump-sum payment by the amounts specified in the table below, multiplied by the duration of the non-compliance, calculated in calendar days.

<b>MPM #</b>	<b>Item</b>	<b>Compliance criteria</b>	<b>Penalty/day PKR</b>
MPM-1	Quality Assurance Plan (QAP) with its Supplements (ITP including frequency of tests, desirable value of results and tolerance limit; Inspection/ Check request system, Check request register, Mock-up Plan etc.)	The Private Partner shall submit a draft Quality Assurance Plan (QAP) ninety (90) days prior to the anticipated date for commencement of the Operations Period to the Independent Engineer / Independent Auditor.  In case of comments, the revised document must be resubmitted within fourteen (14) days after the issuance of written comments by Independent Engineer /Independent Auditor.	1,000

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

MPM-2	O&M Manual	The Private Partner shall submit draft O&M Manual ninety (90) days prior to the anticipated date for commencement of the Operations Period to the Independent Engineer in accordance with the section 19.7 of the PPP Contract. The O&M Manual shall not be less qualitative than this document. The tolerance limit provided in the O&M Manual shall not be more than tolerance limit provided in this document.	1,000
MPM-3	Programme of Performance and	Must be complete and submitted by due date, separately.  In case of comments, the revised documents must be resubmitted within fourteen (14) days after the issuance of written comments by the Independent Engineer/ Independent Auditor / Project Manager. Penalty is enforced for each and every separate non-compliance, and for each day during which non-compliance persists.	1,000
MPM-4	Works Completion Reports		
MPM-5	<b>DAILY REPORT:</b>  (cause for any Relief Order, Relief Costs, extensions of Time For Completion and any Change of Scope)	The Private Partner shall maintain complete and accurate records and provide promptly to the Independent Engineer, Independent Auditor and the Implementing Agency for any event or cause for any Relief Order, Relief Costs, extensions of Time for Completion and any Change in the Scope.	Rs. 100/- per day of delay. If the event/cause is not reported up to 28 day of its occurrence then no claim will be entertained.
MPM-6	<b>WEEKLY REPORT</b>  (Minutes of meeting of Board/stakeholder including site inspection)	The record of minutes of board meetings and shareholder meetings and other records, which records shall be subject to inspection and audit by the Implementing Agency, the Independent Engineer and the Independent Auditor, shall be included in the weekly report.	Rs. 100/- per day of delay. If the event caused for change of scope, no claim will be entertained if reporting is after 28 days
MPM-7	<b>Classified Traffic Count/Reporting System:</b> with Toll Collection on Daily, Weekly and Monthly Basis on appropriate format of Report	In case of any breakdown of ETTM system, the Private Partner should switch to manual operating system with the required number of manpower and should update the system after restoration of system.	Rs. 100/- per day of delay of report  In case of any breakdown of ETTM

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

			Rs.1000/hour/ entry or exit point; and
MPM-8	Asset Inventory Reports and updates	<p>The reports will be submitted including but not limited to the following:</p> <ul style="list-style-type: none"> <li>i. Pavements, including shoulders (Hard Shoulder / Emergency Lane)</li> <li>ii. Slopes, Embankments and Cuttings</li> <li>iii. Drainage facilities, gullies, culverts, lined channels, sumps etc.</li> <li>iv. Signs, traffic signals and lighting installed</li> <li>v. Pavement markings</li> <li>vi. Bridges and Major Structures</li> <li>vii. All other road furniture (i.e. Safety Barriers, Lighting Points)</li> </ul> <p>Reports must be complete and submitted by due date. Revision must be completed within twenty-one (21) days after the issuance of written comments by the Independent Engineer, Independent Auditor and Project Manager.</p>	1000
MPM-9	Submission of Designs	Initial Submission of complete design by due date. Revisions must be completed within fourteen (14) days after the issuance of written comments by the Independent Engineer/Implementing Agency, or as agreed in writing with the Independent Engineer/Implementing Agency.	1000
MPM-10	SCU Monthly Compliance Tables for <b>Maintenance Services</b>	<p>Submission of complete</p> <p>The Compliance Tables shall be submitted complete in all respect within 3 working day after each month, in accordance with Section 19.25.1 of this Agreement.</p>	2,000

.....  
IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

MPM-11	Monthly Progress Report for Maintenance Work, Major Maintenance and Emergency Works including out of scope work (if any)	Initial Submission must be done within 3 days after each month. Revision and resubmission must be completed within seven (7) days after the issuance of written comments by the Independent Engineer/Independent Auditor/Implementing Agency.	5000
MPM-12	Road Asset Damage and Emergency Incident report	Submission by due date.	1000
MPM-13	Compliance with requirements in the areas of Environment, Social, Health and Safety of workers, and Traffic Management Plans	The Private Partner has to be in compliance at all times. Penalty is enforced for each and every separate non-compliance, and for each day during which non-compliance persists.	100
MPM-14	Grievance Redressal System	The Private Partner shall submit draft Grievances Redressal Mechanism (GRM) ninety (90) days prior to the anticipated date for commencement of the Operations Period to the Independent Engineer / Independent Auditor that how grievances and complaints will be received, monitored, resolved and reported on.  The Private Partner shall submit status of redressal of community complaints and time spent to resolve the community grievances.	100

**FACILITIES AND EQUIPMENT TO BE PROVIDED BY PRIVATE PARTNER**

The Private Partner is obliged to provide the following equipment/facility:

**Project Manager Office:**

- i. Vehicles with fuels and maintenance for the entire project period
  - 1600 / 1800 CC, Vehicles: 1 numbers
- ii. Site Office with furniture and utilities services for the entire period of project
- iii. Computers, Printers, Scanner, Internet, Networking
- iv. MIS Access i/c internet facility

**Independent Engineer Offices:**

- v. Vehicles with fuels and maintenance for the entire Concession Period
  - 1000 CC, Vehicles: 01 numbers
- vi. Site Office with furniture and utilities services for the entire Concession Period
- vii. Computers, Printers, Scanner, Internet, Networking

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

- viii. Mobile material testing lab equipped with necessary tools for sampling, testing and formal and informal inspection

**Independent Auditor Offices:**

- ix. Computers, Printers, Scanner, Internet, MIS Access

**Data collection, reporting and documentation**

The role of the Private Partner extends much beyond the execution/O&M of works and includes important activities related to Road Asset Management. This requires that the Private Partner must:

- continuously collect different types of data and information on the roads included in the Agreement;
- organize and store such data and information in an electronic database;
- prepare various types of reports presenting the data and information, in formats to be agreed with the Independent Engineer/Auditor, for the Private Partner’s own use and for the use of the Independent Engineer/Auditor, Implementing Agency; and
- Submit those reports to the Independent Engineer/Auditor, Implementing Agency in accordance with deadlines defined in the contract.

The timely collection of data and presentation of reports are part of the Management Performance Measures. Some of the reports must be prepared periodically (typically monthly) while others are one-time reports to be submitted at specific times or at special occasions during the duration of the Agreement. The reports are listed in the table below and described in the sub-sections further below.

Report Title	Frequency / Periodicity
Quality Assurance Plan (QAP) with its Supplements (ITP including frequency of tests, desirable value of results and tolerance limit; Inspection/ Check request system, Check request register, Mock-up Plan etc.) (MPM-1)	The Private Partner shall submit draft Quality Assurance Plan (QAP) Ninety (90) days prior to the anticipated date for commencement of the Operations Period to the Independent Engineer / Independent Auditor  In case of comments, the revised document must be resubmitted within fourteen (14) days after the issuance of written comments by Independent Engineer /Independent Auditor/ Project Manager
O&M Manual (MPM-2)	The Private Partner shall submit draft O&M Manual Ninety (90) days prior to the anticipated date for commencement of the Operations Period to the Independent Engineer in accordance with the section19.7 of the PPP Contract. The O&M Manual shall not be less qualitative than this document. The tolerance limit provided in the O&M Manual shall not be more than tolerance limit provided in this document.
<b>DAILY REPORT</b> (cause for any Relief Order, Relief Costs, extensions of Time For Completion and any Change of Scope) (MPM-5)	The Private Partner shall maintain complete and accurate records and provide promptly to the Independent Engineer, Independent Auditor and the Implementing Agency for any event or cause for any Relief Order, Relief Costs, extensions of Time For Completion and any Change of Scope for recommendation of the Independent Engineer, Independent Auditor and for approval of the

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IMPLEMENTING AGENCY INITIALS

.....  
PRIVATE PARTNER INITIALS

	Implementing Agency.
<b>WEEKLY REPORT</b> (Minutes of meeting of Board/stakeholder including site inspection) <b>(MPM-6)</b>	The record of minutes of board meetings and shareholder meetings and other records, which records shall be subject to inspection and audit by the Implementing Agency, the Independent Engineer and the Independent Auditor, shall be included in the weekly report.
SCU Monthly Compliance Tables for Maintenance Services <b>(MPM-10)</b>	Monthly self-reporting by the Private Partner on his own compliance with Service Level requirements which is the basis for the part of the Private Partner Monthly Statement which relates to Maintenance Services.
Monthly Progress Report for Maintenance Work and Major Maintenance including out of scope work (if any). <b>(MPM-11)</b>	Monthly report - Initial Submission must be done within 3 days after each month. Revision and resubmission must be completed within seven (7) days after the issuance of written comments by the Independent Engineer/ Independent Auditor/Implementing Agency.
Classified Traffic Count/Reporting System with Toll Collection on Daily, Weekly and Monthly Basis on appropriate format <b>(MPM-7)</b>	Daily, Weekly and Monthly reports containing traffic data collected by flow counters shall be submitted to the Implementing Agency/Project Manager. Reports shall contain all details of Traffic Count with Toll Collection.  ETTM system (Japanese or European Make) of minimum scale is to be provided which should have the capability of reporting daily, weekly and monthly classified traffic passing through each tolling gate. This system should also have the capability of automatic toll gate opening and closing system.
Road Asset Inventory Database and Condition Reports <b>(MPM-8)</b>	<ul style="list-style-type: none"> <li>● Initial Report</li> <li>● Periodic updates as specified</li> </ul>
Road Asset Damage Reports <b>(MPM-12)</b>	These are reports due each time when damages to road assets occur.
Design Reports <b>(MPM-9)</b>	These are required for all works requiring a detailed engineering design.
1. Programme of Performance 2. Works Completion Reports <b>(MPM-3 &amp; 4)</b>	Separate reports for each 1. Programme of Performance; and 2. Works Completion Reports shall be submitted by due date.

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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

<p>Report for Environment, Social, Health and Safety of workers, and Traffic Management Plans (MPM-13)</p>	<p>Shall be submitted by due date, separately for</p> <ul style="list-style-type: none"> <li>i. Environment including addressing issues related to child labour, sexual exploitation, sexual abuse and sexual harassment and women empowerment (provide equal pay to men and women for work of equal value, in accordance with national laws and international treaty obligations)</li> <li>ii. Social, Health and Safety of workers Report</li> <li>iii. Traffic Management Plans Report</li> </ul>
<p>Grievance Redressal System (MPM-15)</p>	<p>The Private Partner shall submit status of redressal of community complaints and time spent to resolve the community grievances.</p>

**7. DEFINITIONS**

This Annexure contains numerous technical terms. For those that may be ambiguous or potentially confusing, definitions are provided herein. These definitions are also applicable to related manuals and a handbook.

**Asphalt Mixture** “Asphalt mixture” is a material used for the wearing course and binder course of pavement. It is a mixture of asphalt, coarse aggregate, fine aggregate, and filler, and refers specifically to the material after use.

**HMA (Hot Mix Asphalt)** “HMA” is a material used in asphalt layers, consisting of asphalt, coarse aggregate, fine aggregate, and filler heated and mixed together.

Specifically, it refers to the loose state of the material before it is compacted.

**Asphalt Layer** “Asphalt layer” refers to a layer composed of asphalt mixture in a pavement structure, including wearing course and binder course.

**Wearing Course** “Wearing Course” refers to the layer that forms the surface of the asphalt layer.

**Binder Course** “Binder course” refers to the layer between the basecourse or subbase and the surface layer in an asphalt layer.

**Base Course** “Base Course” refers to the layer of the subbase that is located directly beneath the asphalt layer, with a thickness of 20 cm or less. It does not exist in cases where the pavement structure is simple.

**Subbase** “Subbase” refers to a layer composed of materials such as granular crushed stone that forms the lower layer beneath the asphalt layer. In high-specification roads, when the

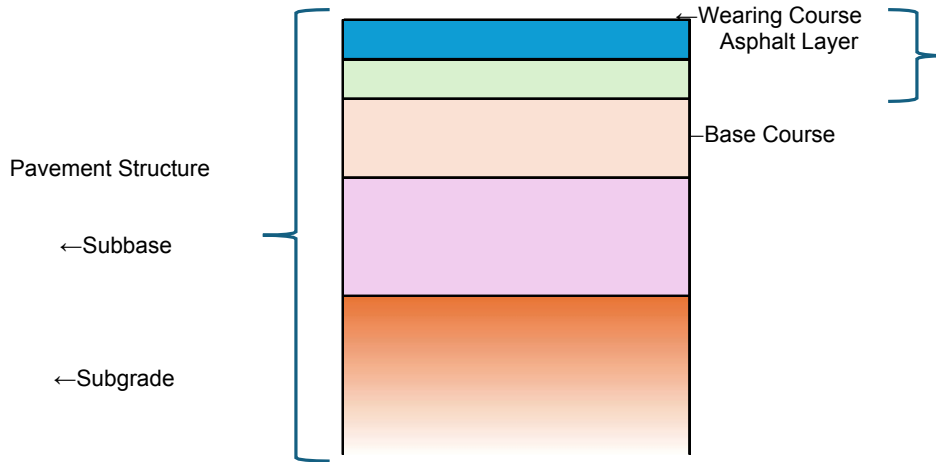
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IMPLEMENTING AGENCY INITIALS

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PRIVATE PARTNER INITIALS

base course exists, it specifically refers to the layer between the upper roadbed and the roadbed.

**Subgrade**

“Subgrade” is the lowest layer of the pavement structure and is up to 1 m thick. It mainly consists of existing ground.



**Maintenance** “Maintenance” refers to planned, repetitive care or emergency minor repairs that are performed for the purpose of restoring the performance of the road surface. Main maintenance activities include patching and surface treatment.

**Repair** “Repair” is performed for the purpose of restoring a pavement to its original level of performance when maintenance work is uneconomical or not sufficiently effective.

**Road Surface Condition Survey** “Road surface condition survey” refers to survey that evaluate road surface conditions using visual inspection results and PCI, as well as surveys that quantitatively evaluate road surface conditions using RSP.

**Structural Survey** “Structural survey” refers to gaining a detailed understanding of the pavement structures and investigating the causes of damage. They include FFWD and GPR surveys, as well as core sampling and test pit surveys.

**Core-sampling** “Core sampling” refers to the process of collecting asphalt layers using a boring machine to investigate the properties of asphalt mixtures (such as asphalt content and void ratio).

**Test pit** “Test pit” refers to a type of pavement structure survey in which test excavations are carried out on site to directly investigate the thickness of each layer and the condition of the base course, subbase and subgrade. Base course, subbase and subgrade materials are collected for use in CBR tests and other tests.

**Deterioration** “Deterioration” refers to the overall deterioration of pavement performance and condition (pavement structure, layers).

**Aging** “Aging” refers to changes in material properties over time.

**Degradation** “Degradation” refers to the deterioration of material properties and quality (chemical and physical changes).

**Patching** “Patching” refers to filling of pothole with asphalt concrete with average depth up to 2 inches in Wearing course and/or Binder course.

**Heavy Patching** “Heavy Patching” refers to filling of pothole with asphalt concrete with average depth up to 4 inches in Wearing course and/or Binder course.

**Functional Overlay** “Functional Overlay” refers to milling of the existing Wearing course (default value = 2 inches) and may include laying a fresh Wearing course (again 2 inches).

**Structural Overlay** “Structural overlay” refers to the removal of existing asphalt layers and the restructuring of the asphalt layer and/or basecourse, subbase.

**Surface treatment** “Surface treatment” refers to a method of maintenance in which the existing pavement is left as is and treated on top of it. Examples include thin overlay and fog seal.

- Fog seal** “Fog seal” refers to a maintenance method in which modified asphalt is sprayed directly onto the surface of the asphalt layer to ensure curing time.
- Chip Seal** “Chip seal” refers to a road resurfacing repair method that involves cleaning the road surface, heating and spraying asphalt, spreading a mixture of gravel and crushed stone, and compressing it. There are three types of chip seal: single layer (1 layer), double layer (2 layers), and triple layer (3 layers).

## SCHEDULE I – INSURANCES

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### **PART I – INSTALLATION PERIOD INSURANCES**

It is mandatory that the following insurances should be acquired:

<b>Insurance Type</b>	<b>Coverage Description</b>
<b>Contractor's All Risk (CAR) Insurance</b>	Covers damage to works (toll plaza, weighbridge etc.), construction equipment, and materials due to fire, flood, theft, etc.
<b>Third-Party Liability Insurance</b>	Covers bodily injury or property damage to third parties during construction (e.g., local public or passing vehicles).
<b>Workers' Compensation Insurance</b>	Statutory cover for injuries, illness, or death of workers during construction.

In addition to the above, the Private Partner may take on additional insurances as required by it.

### **PART II – OPERATIONS PERIOD INSURANCES**

It is mandatory that the following insurances should be acquired:

<b>Insurance Type</b>	<b>Coverage Description</b>
<b>Property All-Risks Insurance</b>	Covers damage or loss to toll plaza, ETTM equipment, buildings, etc., due to fire, flood, vandalism, etc.
<b>Business Interruption Insurance</b>	Covers loss of toll revenue due to interruption from insured events (e.g., fire, flood).
<b>Public Liability Insurance</b>	Covers claims from third parties for injury or property damage (e.g., from system malfunction, vehicle damage).
<b>Motor Vehicle Insurance</b> ( <i>if weighbridge or maintenance vehicles are owned</i> )	Mandatory cover for vehicles used in operations.
<b>Cash Insurance</b>	Coverage of Cash in transit collected from toll plaza

In addition to the above, the Private Partner may take on additional insurances as required by it.

## **SCHEDULE J – SPECIFIED PRIVATE PARTNER PERMITS**

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The following shall constitute the Private Partner Specified Permits, to the extent the same are required to be procured and are applicable/relevant for the purposes of the Project:

1. Communication & Works Department, Government of Punjab
2. [not used]
3. Punjab Environmental Protection Agency.
4. [not used]
5. National Transmission & Despatch Company Limited.
6. Sui Northern Gas Company Limited.
7. Pakistan Telecommunication Authority.
8. [not used]
9. Forest Department, Government of Punjab.
10. Irrigation Department, Government of Punjab.
11. [not used]
12. Graveyards through the Ministry of Municipalities and Rural Affairs, Government of Punjab.
13. Culture Department, Government of Punjab.

## **SCHEDULE K – CORPORATE DOCUMENTS**

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1. The certified copies of the memorandum and articles of association of the Private Partner;
2. Board Resolution duly passed by the board of directors of the Private Partner resolving that the Private Partner may undertake the Project and stating the name of the authorized signatory of the Private Partner who shall sign this Agreement, the Implementing Agency Agreements, and the Project Agreements (to which the Private Partner is a party) and all other necessary documents in favour of the Implementing Agency for and on behalf of the Private Partner;
3. Certificate of incorporation; and
4. Latest corporate filing with the Securities & Exchange Commission of Pakistan.

## SCHEDULE L – FORM OF INSTALLATION PERFORMANCE GUARANTEE

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To:

**PROJECT MANAGER,  
BAHAWALPUR – YAZMAN & YAZMAN – AHMADPUR EAST ROAD PROJECT  
ROAD PROJECT  
GOVERNMENT OF PUNJAB,**

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

Dated: .....

[INSERT NAME OF BANK], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “PPP CONTRACT” dated [●], 2026 (hereinafter referred to as the “**Agreement**”) for the installation of toll plazas, weighbridges and ETTMS on the Bahawalpur – Yazman & Yazman – Ahmadpur East Road Project under the public private partnership mode:

- (a) **THE GOVERNOR OF PUNJAB** (THROUGH COMMUNICATION AND WORKS DEPARTMENT), having its offices Old Anarkali, Lahore (hereinafter referred to as the “**Implementing Agency**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] (hereinafter referred to as the “**Private Partner**”, which expression shall, where the context so permits, be deemed to mean and include its successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Private Partner is required to provide the Implementing Agency with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Implementing Agency, without any notice, reference or recourse to the Private Partner or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])  
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately upon the Guarantor Bank’s receipt of the Implementing Agency’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND WILL BE MADE], such Demand stating:

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

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the Implementing Agency.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee immediately (however not later than ten (10) business days) of its receipt of the Implementing Agency’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account.

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

After having come into force, this Guarantee and the Guarantor Bank’s obligations hereunder shall expire on [INSERT DATE AND TIME] (the “**Guarantee Expiry Hard Date**”) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, in the event that the Implementing Agency issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

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

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

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

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

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

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

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and Implementing Agency to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

**EXECUTED & ISSUED  
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....  
NAME:  
DESIGNATION:  
DATED:

**WITNESSES**

**WITNESS I**

**WITNESS II**

.....  
NAME:  
CNIC No.:

.....  
NAME  
CNIC No.:

## SCHEDULE M – FORM OF O&M PERFORMANCE GUARANTEE

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To:

**PROJECT MANAGER,  
BAHAWALPUR – YAZMAN & YAZMAN – AHMADPUR EAST ROAD PROJECT,  
GOVERNMENT OF PUNJAB**

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

Dated: .....

[INSERT NAME OF BANK], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “PPP CONTRACT” dated [●], 2026 (hereinafter referred to as the “**Agreement**”) for the operations and maintenance of the Bahawalpur – Yazman & Yazman – Ahmadpur East Road Project under the public private partnership mode:

- (a) **THE GOVERNOR OF PUNJAB** (THROUGH COMMUNICATION AND WORKS DEPARTMENT), having its offices at Old Anarkali, Lahore (hereinafter referred to as the “**Implementing Agency**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●], Pakistan (hereinafter referred to as the “**Private Partner**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Private Partner is required to provide the Implementing Agency with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Implementing Agency, without any notice, reference or recourse to the Private Partner or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])  
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately upon the Guarantor Bank’s receipt of the Implementing Agency’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND WILL BE MADE], such Demand stating:

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

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the Implementing Agency.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee immediately (however not later than ten (10) business days) of its receipt of the Implementing Agency’s Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account.

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

After having come into force, this Guarantee and the Guarantor Bank’s obligations hereunder shall expire on [INSERT DATE AND TIME] (the “**Guarantee Expiry Hard Date**”) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, in the event that the Implementing Agency issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

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

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

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

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

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

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

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws, it has the necessary power and authority to:

- (a) enter into, execute and deliver this Guarantee; and
- (b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

**EXECUTED & ISSUED  
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....  
NAME:  
DESIGNATION:  
DATED:

**WITNESSES**

**WITNESS I**

**WITNESS II**

.....  
NAME:  
CNIC No.:

.....  
NAME  
CNIC No.:

## **SCHEDULE N - INDICATIVE INDEPENDENT ENGINEER TERMS OF REFERENCE**

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### **1. GENERAL**

The Independent Engineer of the Project shall, in principle, be responsible for review of installation, upgradation, progress monitoring, operation and affirmation of all certification done by the Private Partner.

The Independent Engineer shall supervise that the requirement of the PPP Contract and its various appendices, other than mentioned for Independent Auditor-IA of the Project, are met by the Private Partner and in case of any discrepancy / deviations, and shall inform Implementing Agency and the Private Partner. The responsibility of the Independent Engineer during various phases of the Installation Works and Operation and Maintenance shall be but not limited to the following.

### **2. DESIGN REVIEW PHASE**

- (a) Review and approve the adequacy of topographical surveys, geo-technical and sub-soil investigations, hydrological investigation for the Project Highway and other structures.
- (b) Review and approve the condition survey of existing bridges, culverts and other structures conducted by the Private Partner to establish the structure adequacy, and proposed strengthening for the Project Highway.
- (c) Review and approve reports prepared and submitted by the Private Partner, with respect to the traffic, traffic management etc.
- (d) Review and approve the implementation schedule of Installation Works of the Project submitted by the Private Partner and determine that adequate provisions have been made for the following:
  - (i) Raw material sourcing
  - (ii) Raw material processing equipment
  - (iii) Utilities
  - (iv) Other Equipment procurement
  - (v) Installation
  - (vi) Testing
- (e) Review and approve the capability of the proposed toll collection system to perform as required in anticipated operating conditions.
- (f) Review and approve the Operation and Maintenance during the Operations Period.
- (g) Review and comment on the consistency of all project documents.
- (h) Review the available permits or permit applications.
- (i) Review the environmental management plan for the Project Highway during the Installation Period (and the Operations Period, if required).
- (j) Review and comment on the utilities arrangement for the Project, including, but not limited to the water supply and electricity supply.
- (k) Review and approve the adequacy and reasonableness of the Project coordination and monitoring systems.
- (l) Review quality assurance and quality control provisions during the Installation Period and O&M phase:
  - (i) Independent Engineer is required to prove due diligence and utmost expertise in ensuring that quality control provisions are maintained at all times during the Installation Period and the Operations Period; and
  - (ii) Independent Engineer will be responsible to report to the Implementing Agency in case the quality standards and quality control provisions are not maintained on the Project Site.
- (m) Audit the safety of the Project Highway during Installation Period and the Operations Period.

### **3. ROLE OF INDEPENDENT ENGINEER DURING INSTALLATION PERIOD**

- (a) The duties of the Independent Engineer are to supervise the works and to approve the materials and workmanship of the works. As stated in the PPP Contract, the Independent

Engineer shall have no authority to relieve the Private Partner of any of its duties or to impose additional obligations.

- (b) The Independent Engineer shall review and approve works program prepared and submitted by the Private Partner. Payments will be made upon Independent Engineer's certification, with final approval of Independent Auditor.
- (c) The Independent Engineer shall review the material testing results and mix designs and to order special tests of materials and / or completed works, and / or order removal and substitution of substandard material and / or work as required.
- (d) The Independent Engineer shall review quality assurance and quality control during Installation Period.
- (e) The Independent Engineer shall ensure that the Installation Works are accomplished in accordance with the Applicable Specifications.
- (f) The Independent Engineer shall identify installation delays, if any and recommend to the Implementing Agency/Lender the remedial measures to expedite the progress.
- (g) Not Used.
- (h) Review the safety measures provided for the traffic and Project workers.
- (i) Determine any extension of the Project Completion Schedule, to which the Private Partner is entitled and shall notify the Implementing Agency.
- (j) Review compliance by the Private Partner of its obligations under the PPP Contract.
- (k) Not used.
- (l) Issue Final Installation Completion Certificate after checking the results of the Completion Tests.
- (m) For performance testing, the Independent Engineer will:
  - (i) Review test procedures developed by the Private Partner appointed O&M Contractor and confirm compliance with applicable test codes and standards and with testing criteria specified in PPP Contract and its Schedules;
  - (ii) Review the quality control reports, material testing results and mix design and to order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required;
  - (iii) Review test reports prepared by Private Partner or Private Partner's testing consultant; and
  - (iv) Monitor successful completion of the Project Completion Checklist. Make one final visit to Project Site to verify that Project Completion Check List has been completed and thereafter sign and submit the Final Installation Completion Certificate.

#### **4. ROLE OF INDEPENDENT ENGINEER DURING OPERATIONS PERIOD**

- (a) Review and approve work plans and schedules of various operation and maintenance activities.
- (b) Review and approve the O&M Manual(s) prepared by the Private Partner for their completeness and compatibility with those of similar facilities.
- (c) Review and approved the performance of Operation and Maintenance activities including equipment, service, traffic, operation and safety.
- (d) Recommend necessary actions to the Implementing Agency to undertake maintenance obligations of the Private Partner at risk and cost of the Private Partner in the event of his failure to carry out the Operations and Maintenance.
- (e) Undertake audit of the traffic using the Project Highway at reasonable times.

- (f) Review and inspect the Project Highway at all reasonable times and upon reasonable notice to the Private Partner during the Operations Period and issue a Installation Inspection Report and O&M Inspection Report of such inspections to the Implementing Agency.
- (g) Review the accident record, prepared and submitted by Private Partner, on the Project Highway and suggest remedial measures at reasonable intervals.

**5. THE OTHER FUNCTIONS OF THE INDEPENDENT ENGINEER SHALL BE THE FOLLOWING.**

- (a) Perform functions, including issue of directions to the Private Partner, in respect of the Emergency De-commissioning of the Concession Assets as provided in this Agreement.
- (b) Verify and ascertain evidence of insurance cover as provided in this Agreement.
- (c) Perform functions in respect of Change of Scope as provided in this Agreement.
- (d) Inspect the Concession Assets including the Project Highway at the time of handing over thereof by the Private Partner to the Implementing Agency and perform functions in respect to such handing over as provided in this Agreement.

**SCHEDULE O – FORM OF VESTING CERTIFICATE**

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- a. [insert details] being the Independent Engineer, and [insert details] being the Independent Auditor, refer to the agreement entitled “PPP Contract” dated [●], 2026 (as amended from time to time) (the “**PPP Contract**”) relating to, *inter alia*, the operation and maintenance (through Public Private Partnership on a management contract basis) of the Bahawalpur – Yazman & Yazman – Ahmadpur East\_Road and the installation of toll plazas, weighbridges and ETTMS on the Bahawalpur – Yazman & Yazman – Ahmadpur East\_Road (the “**Project**”);
  
- b. The Independent Engineer and the Independent Auditor hereby acknowledge the compliance by the Private Partner of the Divestment Requirements set forth in Article 24 of the PPP Contract and, on such basis, hereby issue this Vesting Certificate (the “**Certificate**”). Upon issuance of this Certificate, the Implementing Agency shall be deemed to have acquired, and all title and interest of the Private Partner in or about the Concession Assets (*as defined in the PPP Contract*) and the same shall be deemed to have vested unto the Implementing Agency, free from any encumbrances, charges and liens whatsoever, other than such encumbrances which the Implementing Agency was responsible to prevent under the terms of this Agreement.

Signed this ..... day of ....., at

**FOR AND ON BEHALF OF**  
**[INSERT DETAILS]**

\_\_\_\_\_

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Designation

Signed in the presence of the following witnesses:

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

NIC No.

\_\_\_\_\_

NIC No.

**FOR AND ON BEHALF OF**  
**[●]**

\_\_\_\_\_

Signature

\_\_\_\_\_

Name

---

Designation

Signed in the presence of the following witnesses:

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Signature

---

Signature

---

Name

---

Name

---

NIC No.

---

NIC No.

## SCHEDULE P – TOLL NOTIFICATION STRUCTURE

1. Toll rates applicable to the road users for the first Operational Year.

Road	Bahawalpur Yazman Road		Yazman Ahmadpur East Road	
	Bahawalpur Toll Plaza	Yazman 1 Toll Plaza	Yazman 2 Toll Plaza	Ahmadpur East Toll Plaza
Cars/Jeeps/Taxis	35	35	35	35
Pickups/Vans	60	60	60	60
Minibus	60	60	60	60
Large Buses	120	120	125	125
2/3 Axel Rigid Truck	150	150	155	155
Trailer	300	300	305	305
Tractor	35	35	35	35
Tractor with Trolley	90	90	90	90

2. Annual toll escalation shall be applied for each subsequent Operational Year at a rate equal to either eight point six percent (8.6%) or the prevailing Consumer Price Index (CPI) (as determined by the Independent Auditor), whichever is lower. All calculations of Tolls have been made in the metric system and rounded to the nearest multiple of five (5) Rupees. Users passing through each toll plaza shall be required to pay the applicable Toll as set out in this Schedule P, as revised from time to time in accordance with Section 17.5.1 of this Agreement.

3. Vehicles that are above the permissible weight will be charged in accordance with the following structure:

**A. Permissible Load**

S. NO.	Types of Trucks	Maximum Allowable Weight
1	2 Axle Single	17.5 M. Ton
2	3 Axle Tandem	27.5 M. Ton
3	3 Axle Single	29.5 M. Ton
4	4 Axle Single Tandem	39.5 M. Ton
5	4 Axle Tandem Single	39.5 M. Ton
6	4 Axle Single	41.5 M. Ton
7	5 Axle Single Tridem	48.5 M. Ton
8	5 Axle Single Tandem-Tandem	49.5 M. Ton
9	5 Axle Single-Single Tandem	51.5 M. Ton
10	5 Axle Tandem Single-Single	51.5 M. Ton
11	6 Axle Tandem-Tridem	58.5 M. Ton
12	6 Axle Tandem- Single Tandem	61.5 M. Ton

**B. Special Condition**

1. Axle Load limits for Single Axle is 12 tons, Tandem Axle is 22 tons and Tridem Axle is 31 tons with Front Axle Load Limit is 5.5 Tons.

2. The Pressure of Rear Axle should not be more than 120 psi and for Front Axle 100 psi.

**C. Fee on Overloading**

<b>S. NO.</b>	<b>Excess Over Permissible Limit</b>	<b>Fee</b>
1	1.1% to 5%	Rs. 1000
2	5.1% to 10%	Rs. 2500
3	10.1% to 15%	Rs. 5000
4	Above 15%	Vehicle will not be allowed to use the road

Fees on overloading shall be escalated at the same rate provided in paragraph 2 hereinabove.

**SCHEDULE Q – REQUIREMENTS OF ELECTRONIC TOLL AND TRAFFIC MANAGEMENT  
SYSTEM - ETTMS**

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**1. TOLLING METHODOLOGY**

Project Highway will be provided with at least two Toll Gates, one at each side in a manner determined by the Independent Engineer and approved by the Implementing Agency.

All vehicles entering the toll gate from one side will pay applicable toll and will be issued a machine readable toll ticket. At the exit toll gate from the same side, the vehicle will show the ticket, and pass the gate without any further payment.

Vehicles entering the Project Highway in between the toll gates and having no machine readable toll ticket, will stop at any of the exit toll gates and pay applicable toll and will be issued a machine readable toll ticket before exiting the Project Highway.

**2. COMPONENTS OF ETTMS**

Following are the components of ETTMS comprising both hardware and software:

**a. Electronically Operated toll gates barrier**

Electronically operated toll gates tractable barriers or boom gates shall be a bar, or pole pivoted to allow the boom to block vehicular access through a controlled point. The tip of a boom gate shall rise in a vertical arc to a near vertical position. Boom gates shall be counterweighted, so the pole is easily tipped. Boom gates shall be paired either end to end, or offset appropriately to block traffic in both directions. Boom gates may also have a second arm, which pivots on links that allow the second arm to hang 300 to 400 mm below the upper arm when it descends into the horizontal position, to increase approach visibility.

**b. Variable Message Signs System including Information signs (electrical) for “stop” and “go”**

The VMS shall consist of Video Display with LED Panels, controllers, flicker-free display and IP65 rating with dimensions and specification mentioned below, all necessary hardware and software fulfilling the requirement. VMS shall provide information signs (electrical) for “stop” and “go”.

**c. Vehicle Scanning, Type Identification and Number Plate Recording System including ANPR cameras at each lane**

The Automatic Number Plate Recognition Cameras (ANPR) shall be used for Entry /Exit Toll stations and/or other locations to record number plate’s information. The ANPR Camera shall have 5 Mega pixels. ANPR camera shall have capability of operating day/night and capturing image of standard and nonstandard number plates of vehicles.

**d. Machine Readable Toll Ticket Generation System**

Electronic toll collection system shall be deployed to collect tolls with use of machine assistance and thereafter maintain primary and backup records thereof. The Toll Collection systems shall be set up as a closed loop system allowing automatic toll collection proportionate to the distance covered. Low cost reusable Magnetic Card shall be deployed for this purpose.

**e. System of Video Filming, and achieving with time and date of all vehicles entering and exiting the toll gates, round the clock**

The Private Partner shall provide an integrated digital video filming system that provides Implementing Agency the capability to investigate lane performance issues and support Implementing Agency in customer dispute resolution. The Private Partner shall develop, procure, furnish, and install two or more IP addressable, colour video cameras at each Tolling Zone sufficient to meet the requirements. The cameras installed shall be the same at all Tolling Zones.

**f. Reporting System of Toll Ticket Generation to Control Centre**

The Private Partner shall provide high-speed connectivity between all storage, database, application, and reporting servers, and backup systems for sending and receiving toll

collection data to Control Centre using latest wireless technologies such as Radio-frequency identification (RFID). RFID is the wireless non-contact use of radio-frequency electromagnetic fields to transfer data, for the purposes of automatically identifying and tracking tags attached to objects. The tags shall contain electronically stored information. Tags can be powered by and read at short ranges (a few meters) via magnetic fields (electromagnetic induction). Alternatively may use a local power source such as a battery, or else have no battery but collect energy from the interrogating EM field, and then act as a passive transponder to emit microwaves or UHF radio waves (i.e., electromagnetic radiation at high frequencies).

**g. Database and Data Back-up Centre for this system**

Control Centre shall comprise Blade Servers, Video Servers/Processors and Video archiving, Video Recorder(s), IP Contact Centre, Video wall and Work Stations. Video Storage of 72 Hours shall be provided. Software Licenses shall be included for creating video walls on the operator's machines where they can see the output of multiple cameras on a single screen. This control centre shall be located at the position determined by the Independent Engineer, which shall be approved by the Implementing Agency with backup recording features for 72 Hours and viewing facility of all cameras.

**h. Telecommunication System**

The telecommunication backbone for the ETTMS shall be a modularly expandable system to cater for data video and speech requirements of the future with running out of reserve capacity.

To provide a real-time Toll information system, different technologies can be applied. Optical Fibre Cable (OFC) based communication backbone can be used for primary network. Alternatively wireless/ radio networks can be used for communication. Wireless network may consist of 4G networks of licensed cellular mobile operators for ETTMS applications.

**i. Proper Illumination/Lighting**

Energy Efficient LED lights shall be used to achieve the required lighting level with minimized power consumption. 5 to 10% lights shall be connected on “**Central Battery System**” to provide minimum uninterrupted lighting to avoid 100% black-out during power failure.

The illumination shall be designed keeping in view the basic illumination levels in accordance with the recommendations in EN12464-1 & EN12464-2, IES and CIBSE Standards.

**j. Stand-by power generation system for uninterrupted ETTMS Operation**

AC UPS of Twenty four hour backup shall be provided to power all the equipment and systems. It shall comprise; redundant chargers; battery bank; redundant invertors. The switch over from mains to the UPS supply and vice versa shall be accomplished in less than 5 msec.

**k. Classified Traffic Count/Reporting System with Toll Collection on Daily, Weekly and Monthly Basis on appropriate format**

Classified Traffic Count/Reporting System shall include Poles, 2D LIDAR sensors, Traffic Controllers FPS, Ethernet Switches, UPS, Power, Control and UPS cabinets, Electrical/Data Cables etc.

3G/4G devices can be used for connecting all sites to Control Centre. Data stored in Traffic Controller shall be transferred using 3G/4G devices to Control Centre in csv format for statistical purposes. Daily, Weekly and Monthly reports containing traffic data collected by Flow counters shall be submitted to Implementing Agency. Reports shall contain all details of Traffic Count with Toll Collection.

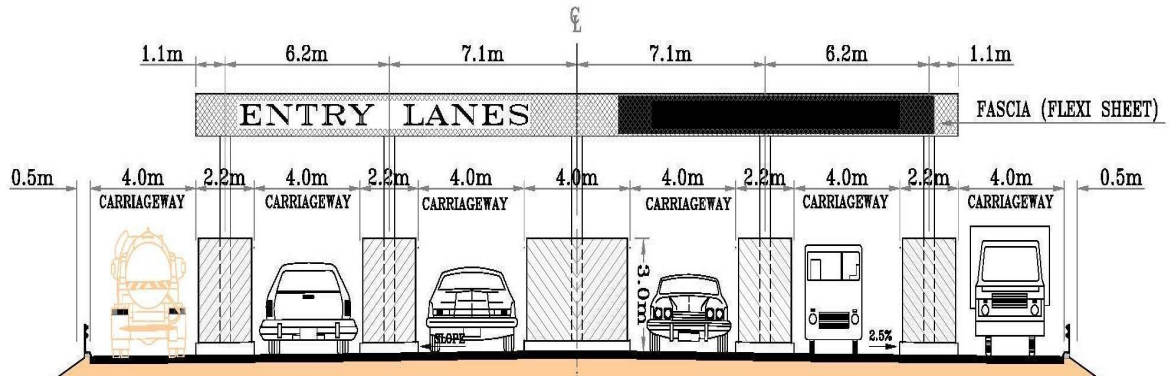
ETTM system (Japanese or European Make) of minimum scale is to be provided which should have the capability of reporting daily, weekly and monthly classified traffic passing through each tolling gate. This system should also have the capability of automatic toll gate opening and closing system.

In case of any breakdown of system, Private Partner should switch to manual operating system with the required number of manpower and should update the system after restoration of system.

On entry of each toll gate, the Private Partner will issue a machine readable ticket to the passing vehicle. On arrival at the exit toll gate, the vehicle driver will give this ticket back to Private Partner's representative, who will enter the machine readable card to the system. The system should have the capability to automatically determine the vehicle type, travelling length and amount of toll chargeable.

### 3. COMPOSITION OF TOLL GATES

Following Typical Cross Section shows the schematic arrangement of Toll Gates, which are similar for both the Toll Plazas:



## SCHEDULE R – FORM OF TOLL NOTIFICATION

### NOTIFICATION

No. [number]:

1. In pursuance of Section 17.5.1 of the PPP Contract signed on [insert date] between [insert Private Partner name] and the Government of Punjab in relation to the Bahawalpur – Yazman & Yazman – Ahmadpur East Road Project under the Public Private Partnership (PPP) mode, the Government of Punjab authorizes [insert Private Partner name] to levy, demand and collect tolls and fees from the users of the said road on the rates as agreed vide Schedule – P of the PPP Contract, which is reproduced as under:

Road	Bahawalpur Yazman Road		Yazman Ahmadpur East Road	
	Bahawalpur Toll Plaza	Yazman 1 Toll Plaza	Yazman 2 Toll Plaza	Ahmadpur East Toll Plaza
Cars/Jeeps/Taxis				
Pickups/Vans				
Minibus				
Large Buses				
2/3 Axle Rigid Truck				
Trailer				
Tractor				
Tractor with Trolley				

2. Abovementioned toll rates are applicable for FY [insert year] (starting from [insert date] and ending on [insert date]).
3. The following vehicles shall be exempted from payment of tolls:
- a) ambulances;
  - b) defence vehicles, including vehicles of armed forces;
  - c) flag cars;
  - d) fire fighting vehicles;
  - e) funeral vans;
  - f) official vehicles of the Implementing Agency, the Authority, and the Private Partner;
  - g) Police vehicles;
  - h) Vehicles bearing the plates of:
    - i. Presidency;
    - ii. Prime Minister Secretariat;
    - iii. Governor House;
    - iv. Chief Minister Secretariat;
    - v. A Foreign dignitary on State visit to Pakistan;
  - i) Vehicles deputed for essential services like cleaning, maintenance of green areas etc

## SCHEDULE S – NOTICES

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**1. IMPLEMENTING AGENCY:**

Attention: Secretary,  
Communications and Works Department,  
Government of Punjab.

Address: Communications and Works Department,  
Government of Punjab,  
Old Anarkali,  
Lahore.

Phone: +92-42-992 13716

**2. PRIVATE PARTNER:**

Attention: [●]

Address: [●]

Phone: [●]

**SCHEDULE T – TERMINATION PAYMENT**

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<b>SR. NO.</b>	<b>TERMINATION PAYMENT AMOUNT</b>	<b>COMPENSATION PAYABLE BY IMPLEMENTING AGENCY</b>
1.	Non Political Event Termination Amount	the Termination Equity
2.	Political Event Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount
3.	Private Partner Default Termination Amount	[No payment]
4.	Implementing Agency Default Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount
5.	Corrupt Act Termination Amount	[No payment]
6.	Change in Law Termination Amount	(a) the Termination Equity; plus (b) the Termination Dividend Amount

**SCHEDULE U – FINANCIAL MODEL**

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[TO BE INSERTED AS PER THE BID OF THE SUCCESSFUL BIDDER PRIOR TO THE EXECUTION  
OF THIS AGREEMENT]

.....  
IMPLEMENTING AGENCY INITIALS  
PARTNER INITIALS

.....  
PRIVATE

**SIGNATURE PAGE**

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For and on behalf of  
**GOVERNOR OF PUNJAB**  
**(Through**                      **SECRETARY,**  
**COMMUNICATION AND WORKS**  
**DEPARTMENT)**  
through its authorised signatory



SIGNATURE

Name: .....  
Designation:

Name: .....  
Designation:

in the presence of:  
signature of **WITNESSES**

1-     Name:  
       Address:  
       NIC No:

2-     Name:  
       Address  
       NIC No:

For and on behalf of [●] through its  
authorised signatory



SIGNATURE

.....

.....

SIGNATURE

Name: .....  
Designation:

.....

in the presence of:  
signature of **WITNESSES**

1-     Name:  
       Address:  
       NIC No:

2-     Name:  
       Address  
       NIC No:

SIGNATURE

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